

MINUTES OF THE REGULAR MEETING OF THE BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS

FOR JULY 1, 2009

The **Regular Meeting** of the Council of Commissioners was called to order Wednesday, **July 1, 2009**, in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by the Acting Chief Executive, Dave Palmer.

ROLL CALL

12 present and 0 absent

PRAYER

Commissioner Hall led the Commissioners in prayer.

APPROVAL OF THE MINUTES OF THE SPECIAL MEETING JUNE 10, 2009 REGULAR MEETING OF JUNE 24, 2009

It was moved by Commissioner Palmer and seconded by Commissioner Lee to approve the minutes of the Special Meeting of June 10, 2009 and the Regular Meeting of June 24, 2009. The motion carried with a unanimous verbal vote.

ITEMS NOT ADDRESSED ON THE AGENDA

It was moved by Commissioner Palmer and seconded by Commissioner Lee to suspend the rules for the purpose of passing Council Bill No.09-44 by waiving Subsection 7 of Rule XXXVI, of the Rules and Order of Business of the Council of Commissioners, thereby having it considered for advanced passage without reference to the Judiciary Committee.

PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

None

CHIEF EXECUTIVE'S REPORT

Chief Executive Paul Babb stated Wally Frasz went through his last chemo treatment yesterday and thanked him for being an inspiration to all.

Chief Executive Paul Babb informed Commissioner Schultz that his presentation and the National Anthem sang by Rachel Roberts for Butte-Silver Bow's Patriot Week (July 1- July 7) was well done and was well-received.

Chief Executive Paul Babb shared the good news regarding new appropriations that Butte-Silver Bow will be receiving.

- \$800,000 from Homeland Security for an Emergency Operations Center,
- \$500,000 from a study grant for drinking water and
- \$500,000 for waste water treatment

Chief Executive Paul Babb stated on Monday the kick-off the Front Street Project which will be close to one-million dollars with three local contractors and one from the State of Montana doing the work. He also indicated Dan Dennehy has the Main Street project ready to go with other stimulus money.

Chief Executive Paul Babb gave an update on Animal Services saying that Phyllis Ruana is still on medical leave and all questions regarding Animal Services should go through his office.

SECTION I

PRESENTATION COMMUNICATION NO 09-482

Jeff Ammerman, Finance and Budget Director gave a presentation on the budget process and schedule.

Mr. Ammerman informed the Council the Department of Revenue need an additional three weeks to complete the certified values (August 24). This will create a very tight time-frame to get the tax bills out.

The budget will be available next week; however, Mr. Ammerman requested no formal actions be taken at this time. Recommends Council review and hold any action until the certified values are known.

Mr. Ammerman also noted the following:

- Fiscal year is not closed out yet
- The mill value has not been set
- No gross proceeds are known at this time
- All labor contracts have not been settled
- There will be many updates during the next month

Commissioner Shaw asked if the certified value date will be this late every year. Mr. Ammerman indicated he did not believe so, since the reason for the delay is it is an appraisal year. (occurs every six years).

Commissioner Palmer asked if possibly changing the fiscal year to September 30 would be advisable. Mr. Ammerman agreed it would be; however, this change would have to be made by the Legislature. Commissioner Palmer indicated he believes it should be a priority to petition our delegation to change the fiscal year end. Mr. Ammerman agreed and suggested the place to start would be with Mr. Sesso.

Segregation of Item 8, Communication 09-468

Rick Larson, Operations Manager/ Utility Division requesting reduction of interest on consumer deposit from 6% to 2.5%.

Commissioner Moodry questioned County Attorney Joyce as to whether this should have been run through her office? The County Attorney stated she did not review the communication and therefore cannot answer the question.

It was moved by Commissioner Moodry and seconded by Commissioner Sheehy to refer to the Committee of the Whole pending review by the County Attorney's office.

Rick Larson, Operation's Manager Public Works Department then commented on how interest must be paid on customer service connection deposits at the time of refund and at the current rate (6%) can be a substantial amount. He also indicated many renters leave town without paying water bills.

Mr. Ammerman recommended the rate should be the same as the Montana Board Investment rate.

Dan Dennehy director of Public Works stated Ordinance does provide the Council of Commissioners the authority to change the rate.

Commissioner Schultz recommended following the investment rate set by the Board of Investments.

It was moved by Commissioner Moodry and seconded by Commissioner Sheehy to send the Communication to the Judiciary Committee.

Segregation of Item 9-Communion 09-469

Dan Dennehy, Director BSB Public Works Department requesting Chief Executive to approve notice to proceed with Jay Fortune Construction for the entrance renovation of the Water Co. Bldg.

It was moved by Commissioner Sheehy and seconded by Commissioner Moodry to move communication No. 09-469 back to Public Works for further review.

Commissioner Sheehy stated that he would like to send the communication back to Public Works to be reviewed. He asked if all the bidders had a chance to re-bid. Dan Dennehy replied that only Jay Fortune was asked to re-bid as he was the low bidder.

Commissioner Foley asked why the others were not given a chance to lower their bid. County Attorney Eileen Joyce stated that it was not required since the bid was under \$50,000 and that by law the bid could be negotiated with the lowest bidder.

Commissioner Foley stated that he was still not comfortable with the process and that it "didn't look right".

Commissioner Morgan asked the County Attorney for a legal opinion. County Attorney Eileen Joyce replied that the process was legal and that the bid didn't need to be competitive since it was under \$50,000.

Commissioner Foley questioned why Mr. Hinick awarded the contract before it had been approved by the Council. Dan Dennehy stated that he had discussed the situation with Mr. Hinick, and that it had been an oversight.

Commissioner Schultz questioned what would happen if all four bidders were given the chance to do the work for \$30,000. Dan Dennehy stated that he didn't know the answer.

Commissioner Schultz stated that Fortune did nothing illegal, but there was a difference between doing right and doing it righteously.

A substitute motion was, made by Commissioner Foley and seconded by Commissioner Granger to deny the request and place on file. The motion passed with a roll call vote of 8 yeas and 4 nays.

Segregation of Item 13–Communication 09-473

Randy O'Leary – letter informing of intention to exercise rights to mine and access claims by road No. 0106 and BH149.

Commissioner Kronenberger stated that he had traveled to the mining claim with Mr. O'Leary. He requested that the communication be placed on the agenda next week for expansion of the request.

It was moved by Commissioner Kronenberger and seconded by Commissioner Moodry that the communication be referred to Public Works.

Segregation of Item 15-Communication 09-475

Sean Johnson, President Evel Knievel Days requesting temporary closure of Park St from Main St to the alley to the West.

Commissioner Shaw asked if there was a possibility of an alternate route as the street closures had been held in abeyance and not yet approved. She also stated that there were some issues with this closure.

Josh Peck indicated that there were some residences that would be affected by this closure and that two ramps had been added which further blocked several businesses and residences off.

It was moved by Commissioner Shaw and seconded by Commissioner Moodry that this communication be sent to the Committee of the Whole.

SECTION III COMMUNICATIONS TO BE READ AND ACTED UPON

1. **COMMUNICATION NO. 09-460**

John P Walsh, Sheriff Requesting Council confirms appointment of Melissa O’Dell as a permanent member of the Butte-Silver Bow Law Enforcement Department.

It was moved by Commissioner Palmer and seconded by Commissioner Lee to concur, approve and place on file.

2. **COMMUNICATION NO. 09-477**

Josh Peck, Interim Special Events Coordinator requesting Council adopt the updated BSB street closure form and Original Mine yard use permit.

Josh Peck stated that the new street closure forms had been approved by County Attorney Eileen Joyce.

Commissioner Morgan asked if a bond from Insurance Company would cover liability if alcohol were a factor. Josh Peck indicated that if alcohol were present, there would need to be liability insurance as well as a bond.

Commissioner Frasz asked if the individual named on the form was not available, could a substitute person be named. Josh Peck asked Sheriff Walsh’s opinion on this matter. Sheriff Walsh stated that yes the Under-Sheriff would be able to sign the form in his absence.

Commissioner Palmer asked if there was a possibility of adding a time-frame of two weeks before the event so that approval could be obtained prior to the meeting. Josh Peck indicated that this was a preview to the ordinance.

Commissioner Shaw stated this was two separate forms, and that the second form was the street closure for the Original Mine Yard which does not require permission from the Department of Transportation.

Commissioner Schultz stated that there is a difference between a bond and insurance. A bond merely assures something will be done; it doesn’t have limits of liability. Insurance is necessary to cover risks.

It was moved by Commissioner Palmer and seconded by Commissioner Shaw that communication 09-477 be adopted for street closures for special events. The motion carried with verbal vote of 11 yeas and 1 nay.

3.

COMMUNICATION NO. 09-480

Mollie Kirk, Butte Celebrations requesting street closures for Freedom Fest 2009.

Commissioner Palmer asked if all necessary signatures had been obtained. Commissioner Lee responded that all items had been taken care of, however there was nothing in place at this time for the item on page two, requesting that there be no parking on Harrison until 6:00 pm on July third. He stated that it was too late to do anything about it now, but that Mollie Kirk was aware of this and that it would not be a problem.

It was moved by Commissioner Lee and seconded by Commissioner Palmer to approve with the exception of item 1 on page 2. The motion carried with a unanimous verbal vote

SECTION IV

**ORDINANCES AND RESOLUTIONS –
REFERRED TO JUDICIARY**

1.

**COUNCIL BILL NO. 09-3
ORDINANCE NO. 09-3**

AN ORDINANCE AMENDING SECTION 4 OF ORDINANCE NO. 204 AND SECTION 10.40.050 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (BSB MC) ENTITLED “SPEED LIMIT”; “ESTABLISHING A 25 MPH SPEED LIMIT BEGINNING AT THE INTERSECTION OF MONTANA STREET AND BEEF TRAIL ROAD CONTINUING WEST ALONG BEEF TRAIL ROAD APPROXIMATELY 3900 FEET; ESTABLISHING A 35 MPH SPEED LIMIT BEGINNING AT THE INTERSECTION OF BEEF TRAIL ROAD AND LITTLE BASIN CREEK ROAD CONTINUING SOUTHWEST ON BEEF TRAIL ROAD UNTIL THE ASPHALT PAVEMENT ENDS APPROXIMATELY 10,750 FEET; ESTABLISHING A 25 MPH SPEED LIMIT ON BEEF TRAIL ROAD CONTINUING SOUTHWEST FROM WHERE THE ASPHALT PAVEMENT ENDS AND THE GRAVEL ROAD BEGINS APPROXIMATELY 3 MILES UNTIL LITTLE BASIN CREEK ROAD ENDS AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

1.

COUNCIL RESOLUTION NO. 09-44

A RESOLUTION ACCEPTING THE DONATION OF THE LIZZIE LODGE, AN UNFILED PLAT, MINERAL SURVEY NO. 795, LYING IN SECTION 13, TOWNSHIP 3 NORTH, RANGE 7 WEST, P.M.M. AND SECTION 18, TOWNSHIP 3 NORTH, RANGE 8 WEST, P.M.M., OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA, AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner Palmer and Seconded by Commissioner Lee to suspend the rules in order to pass Council Resolution No. 09-44 by waving section 7 of rule XXXVI of the Rules and Orders of the Business of the Council of Commissioners, thereby having it considered for advanced passage without reference to the Judiciary Committee. The motion passed with a roll call vote of 12 yeas, 0 nays.**

2. COUNCIL RESOLUTION NO. 09-45

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT OF THE DAWSON EAST MINOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN

3. COUNCIL RESOLUTION NO. 09-46

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT OF THE DYNAMITE VIEW MINOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

4. COUNCIL RESOLUTION NO. 09-47

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE AMENDED PLAT OF TRACT 21-B1 OF THE KEARNEY MINOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

5. COUNCIL RESOLUTION NO. 09-48

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT OF THE TIPPETT MINOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

6. COUNCIL RESOLUTION NO. 09-49

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE AMENDED PLAT OF LOTS 15A 16 AND 17 OF THE BUTTE INDUSTRIAL PARK ADDITION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

ADJOURN

It was moved by Commissioner Palmer, seconded by Commissioner Lee and carried with a unanimous verbal vote to Rise to the Call of the Chair.

The meeting adjourned at 8:50 pm.

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER