

**MINUTES OF THE REGULAR MEETING OF THE
BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS
FOR MARCH 6 , 2013**

The Regular Meeting of the Council of Commissioners was called to order Wednesday, March 6, 2013, in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by the Chief Executive, Matt Vincent.

ROLL CALL

Commissioner Morgan, *present*

Commissioner Shaw, *present*

Commissioner Palmer, *present*

Commissioner McDonough, *present*

Commissioner Andersen, *present*

Commissioner Henderson, *absent*

Commissioner Walker, *present*

Commissioner Fisher, *present*

Commissioner Foley, *present*

Commissioner Moodry, *present*

Commissioner Ralph, *present*

Commissioner Sorich, *present*

STAFF PRESENT

Eileen Joyce, Butte-Silver Bow County Attorney
Colleen Safratowich, Deputy Clerk & Recorder
Kareniesa Boyer, Council Secretary

PRAYER

Commissioner Shaw led the Commissioners in prayer.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF FEBRUARY 20, 2013.

It was moved by Commissioner Shaw, seconded by Commissioner Morgan and passed by a unanimous verbal vote to approve the minutes of the Regular meeting of February 20, 2013.

ITEMS NOT ADDRESSED ON THE AGENDA

None.

CHIEF EXECUTIVE REPORT

Chief Executive Vincent reported the following:

- ❖ Boards and Commissions update: the Chief Executive has received a good response and consideration is still open.

- ❖ Presentation on Economic Gardening was intriguing and the Chief Executive is working on the selection process.
- ❖ The draft on the comprehensive Historic Preservation plan is complete and open for public comment.
- ❖ The format for the 2013-2014 budget is changing with better communication for the public.

AI-37 Matt Vincent, Chief Executive, please accept this as my official approval for the selection of Mr. Brian Doherty to fill the open Fire Captain position in the Butte-Silver Bow Fire Department.

Jeffrey L. Miller, Director, Butte-Silver Bow Fire Services, stated the following:

- ❖ The promotional process is rigorous.
- ❖ Brian Doherty is the best candidate for this position.

It was moved by Commissioner Moodry, seconded by Commissioner Shaw and passed by a unanimous verbal vote to concur with AI-37 and promote Mr. Brian Doherty to Fire Captain within the Butte-Silver Bow Fire Services and place AI-37 on file.

SECTION 1 BID OPENINGS

1. AI-3 COMMUNICATION NO. 13-106

Patsy Coates, Property Specialist, Butte-Silver Bow Land Office, requesting Council's authorization to open and award a bid for Proposals/Title and Lien Search for 2013 County Tax Deed Process.

Patsy Coates, Property Specialist, Butte-Silver Bow Land Office, opened the following bids:

Summit Valley Title Co.	\$99 per parcel researched
Montana Abstract & Title	\$144.95 per parcel researched

It was moved by Commissioner Shaw, seconded by Commissioner Morgan and passed by a unanimous verbal vote to refer the bids to Patsy Coates with a recommendation back to Council.

2. AI-5 COMMUNICATION NO. 13-114

Larry Hunter PE, Operations Manager, Butte-Silver Bow Public Works Services Division, requesting Council's authorization to have a Bid Opening on March 6, 2013 for asphalt.

Larry Hunter PE, Operations Manager, Butte-Silver Bow Public Works Services Division opened the following bid:

Calumet Refining Co. Inc \$555.00/ton

It was moved by Commissioner Shaw, seconded by Commissioner Morgan and passed by a unanimous verbal vote to refer the bid to the Butte-Silver Bow Public Works Division and return to Council with a recommendation.

SECTION 2 CONSENT AGENDA

- A.**
 - 1. COMMITTEE OF THE WHOLE MEETING REPORT
 - 2. FINANCE AND BUDGET COMMITTEE MEETING REPORT
 - 3. JUDICIARY COMMITTEE MEETING REPORT
 - 4. PUBLIC WORKS COMMITTEE MEETING REPORT
 - 5. RULES COMMITTEE REPORT

- B.** **COMMUNICATIONS**

Before entertaining a motion for approval of the Consent Agenda, Chief Executive Vincent called for any friendly amendments or segregations.

Commissioner Shaw segregated AI-38 and the Committee of the Whole Report 13-106, Section 16.

Commissioner Palmer segregated the Committee of the Whole Report 13-78, Section 12.

It was then moved by Commissioner Shaw, seconded by Commissioner Morgan and passed with a unanimous verbal vote to approve the Consent Agenda, Section A, Items 1 through 5, and Section B, Items 1 through 25, excluding AI-38 and the Committee of the Whole Report, Communication Nos. 13-78 and 13-106.

Segregation - Committee of the Whole Report, Communication No. 13-106

Patsy Coates, Property Specialist, Butte-Silver Bow Land Office, requesting Council's authorization to open and award a bid for Proposals/Title and Lien Search for 2013 County Tax Deed Process.

Commissioner Shaw segregated this communication to move forward with Ms. Coates request to award the bid.

Ms. Coates asked Council to approve the bid award to Summit Valley Title Company.

It was moved by Commissioner Shaw, seconded by Commissioner Morgan and passed by a unanimous verbal vote to award the bid to Summit Valley Title Company and place Communication No. 13-106 on file.

Segregation - Committee of the Whole Report, Communication No. 13-78

Commissioner Palmer asked Chief Executive Vincent to give a report regarding Communication No. 13-78.

Chief Executive Vincent stated the following:

- ❖ Based on the analysis, Chief Executive Vincent asked the Council to consider amending Rick Larson's suggestion to Council and deny all bids and place the communication on file.
- ❖ This was not a decision arrived at lightly.
- ❖ The bid opening was on January 16, 2013.
- ❖ There was a communication that made the suggestion for Council to approve the low bid and award the bid to Swank.
- ❖ There was a motion in due diligence where Council approved Dave Schultz to be hired for an independent analysis.
- ❖ Mr. Schultz felt the items he saw did not work with the bid.
- ❖ The design and lead engineers gave presentations on the improvements as did Mr. Schultz.
- ❖ After receiving input from three independent engineers and the result of the Chief Executive's own research, it has led to this decision.
- ❖ Additional and more comprehensive data is needed.
- ❖ From a technical standpoint, there was not enough initial information for the proposed cost.
- ❖ Butte-Silver Bow citizens will not see a decrease in the quality of the water during this time.
- ❖ This will allow time for a responsible plan to meet the required standards.

Rick Larson, Operations Manager-Utilities Division, Butte-Silver Bow Public Works Department, stated the following:

- ❖ Requesting Council to authorize his recommendation to amend his previous request and to note and place on file his communication.
- ❖ Butte-Silver Bow was in compliance in 2012.
- ❖ New instrumentation has been purchased.
- ❖ Due diligence will require testing in 2013.
- ❖ This will not stop all the work needed on Butte-Silver Bow water issues.
- ❖ Work on the Moulton System will continue.
- ❖ The transmission line work will continue.

- ❖ Drive replacement, the work on the ponds, electronic work, and filter beds replacement will continue.
- ❖ Need to pull back and make sure funding is spent responsibly.

Chief Executive Vince stated Swank Enterprises had been contacted regarding this decision.

Commissioner Fisher stated Mr. Larson said there are four parts of the bid that Public Works would like to proceed with. Commissioner Fisher asked if those parts would need to be re-bid.

Chief Executive Vincent stated yes.

Commissioner Morgan asked when funding was sought after for NRD, it was based on the initial plan submitted to Council. He asked if the plan is changing, does this affect Butte-Silver Bow's relationship with NRD.

Chief Executive Vincent stated this has the possibility of improving the relationship with NRD and will not affect Butte-Silver Bow's ability to spend the funding.

Commissioner Palmer stated this was awkward. He stated Council was told by engineers this was a needed project, the citizens of Butte-Silver Bow were convinced this was the way to go, and now Council is being told this is not necessary. Commissioner Palmer stated he would like to see what is needed and what is not needed before the bid is denied.

Chief Executive Vincent stated he appreciated Commissioner Palmer's concerns. Chief Executive Vincent stated this was why an additional engineer was asked to give his opinion and he felt comfortable with moving forward with the new recommendation.

Commissioner Sorich stated he agreed with Commissioner Palmer. He asked if all the new standards are being worked into the other projects upcoming.

Chief Executive Vincent stated everything has been about standards and Butte-Silver Bow is significantly below those standards.

Commissioner Morgan asked what was wrong with the original bid and does Council need to second guess every engineer that comes before Council.

Chief Executive Vincent stated this was not going to be a new practice but this was something he paid close attention to before becoming the Chief Executive. He stated Butte-Silver Bow could do this for less than \$7.2 million dollars and Butte-Silver Bow was the only municipality in Montana to consider these types of improvements.

Commissioner Shaw stated in 7 years she has been on Council, bids have not been rejected. She stated time was spent on the RFP and feels the system can be viewed with less trust when Council is second-guessing an item time has been spent on.

Mr. Larson stated the bid package was written by HKM with help from Mr. Larson and the treatment operators, based on several years' worth of work. He asked Council to recall when the process was first started, Butte-Silver Bow was in violation of the law. He stated they could come into compliance without spending this money. He also stated the money is still in place if it is needed.

Mr. Larson stated he has spoken with Swank Enterprises regarding this decision and Swank Enterprises stated they understood.

Commissioner Andersen stated he did not have reservations to decline the bid, especially when the new solution might be cheaper. He stated he had been disappointed the original bid did not take into consideration the reservoir.

Commissioner Moodry stated the following:

- ❖ It is difficult there were people that thought they were going to get work out of this but Butte-Silver Bow has a technical review committee for a reason.
- ❖ Have to keep in mind Council has to listen to the majority and show due diligence in holding onto and not spending \$7.2 million of NRD money.
- ❖ This is unfortunate but not a bad choice.

Commissioner Foley stated the following:

- ❖ Council as a whole are not engineers and decisions are based on what information is given to Council.
- ❖ Council needs to make sure Butte-Silver Bow is receiving clean water.
- ❖ The new Chief Executive has looked at things differently and Council needs to accept things are now being done differently.
- ❖ Every week in the Finance & Budget Committee, approvals are made for different engineers based on faith.
- ❖ Commissioner Foley is uneasy but will support the Chief Executive on this decision.

Commissioner Fisher stated he agreed with Commissioner Foley. He felt the bid raised a red flag from the beginning and if the tax-payers can be saved money and be given clean water, Council should support the decision.

Commissioner Morgan asked the county attorney about any legal issues from this decision.

County Attorney Joyce stated the law allows the rejection of bids.

Commissioner Palmer stated he was not commenting on people who might lose work or bids, but rather that Council states to the community this work needs to be done, it is approved, and Council approves a bid process to take place to only turn around and change decisions previously made. He stated he would go forward with the recommendation but hopes due diligence is done before it comes back to Council.

Chief Executive Vincent stated this was not a new rule and duly noted Commissioner Palmer's comments.

It was moved by Commissioner Andersen, seconded by Commissioner McDonough and passed by a verbal vote to reject all bids regarding Communication No. 13-78 and to place the communication on file. Commissioner Morgan voted nay.

SECTION 3 TO BE READ AND ACTED UPON

AI-25 Sally Hollis, Butte-Silver Bow Clerk and Recorder, requesting Council's authorization for a presentation on redistricting.

Sally Hollis, Butte-Silver Bow Clerk and Recorder, stated the following:

- ❖ A deadline has been set to redistrict the district lines.
- ❖ All commissioners have been given a packet regarding the redistricting.
- ❖ Map A are the Senate districts.
- ❖ Map B are the House Districts.
- ❖ The third map is the commissioner districts.
- ❖ Eight of the districts have 2,850 people for population numbers.
- ❖ Four of the commissioner districts are close to this number.
- ❖ March 29, 2013 is the deadline for the redistricting.

Chief Executive Vincent asked if the boundary changes affect the commissioner residences. Ms. Hollis stated the boundaries are made to fit where a commissioner lives so they remain in their district.

Commissioner Andersen stated he received an email from the Clerk and Recorder's Office with the different precincts and registered voters. He asked if the population base was being looked at or the registered voters. Ms. Hollis stated the first part is population and the second part is electors and as of Monday, the electors had changed.

Commissioner Palmer stated that Butte-Silver Bow had two senators and now we will have four. Ms. Hollis stated yes.

Commissioner Palmer stated the people from Dillon and Deer Lodge will be on the Butte-Silver Bow ballots, therefore theoretically Butte-Silver Bow could have no one from this city/county on the ballot. Ms. Hollis stated this was correct.

Commissioner Foley stated this has been approved through the legislature and Butte will suffer from this action. He asked Ms. Hollis when this will officially take place. Ms. Hollis stated it has already taken place in regards for the senate and legislature. She stated the deadline for commissioners is March 29, 2013.

Commissioner Foley asked when a plan has been approved by the state, is it effective immediately or the next election. Ms. Hollis stated it is effective the next year.

Commissioner Moodry asked if it was possible that residents in Fairmont could be driving to Dillon or Phillipsburg to vote. Ms. Hollis stated she had not been notified regarding this.

Commissioner Moodry stated when districts move it will encompass more of Beaverhead County than that of Butte-Silver Bow, which will force people to go to Dillon to vote.

Commissioner Foley stated no one will have to travel outside of their county to vote.

Commissioner Morgan stated the answer to all of this was for Butte residents to run for those seats.

Commissioner Shaw stated on April 1, 2013, Council will have to certify the results. She asked the county attorney if a resolution was needed.

County Attorney Joyce stated she believed so.

Commissioner Andersen asked if the changes to the house and senate districts were changes Council did not have a say in. Ms. Hollis stated this was correct; those changes have already been made.

It was moved by Commissioner Shaw, seconded by Commissioner Morgan and passed by a unanimous verbal vote to note AI-25 and place it on file.

AI-29 Karen Byrnes, Director, Butte-Silver Bow Urban Revitalization Agency, Presentation of the 1st draft of the Urban Forest Management Plan for BSB.

Karen Byrnes, Director, Butte-Silver Bow Urban Revitalization Agency, stated the following:

- ❖ This project was started over a year ago.
- ❖ There have been stakeholder meetings held and two public hearings.
- ❖ Would appreciate input from the draft of the Urban Forest Management Plan.

Scott Makoutz stated the following:

- ❖ Urban Forest Management Plan is a vision in managing the urban forest.
- ❖ Butte-Silver Bow does not have an Urban Forest Department.
- ❖ Trees need to be thought of as part of the city's infrastructure.
- ❖ Implementing an UFMP can increase population.
- ❖ Trees can filter urban particulates in the air and provides shade.
- ❖ Trees in shopping districts benefit the retailers and have greater patronage to their stores.
- ❖ Trees cool buildings and shade the buildings.
- ❖ In the winter, trees can greatly reduce the need for heat.
- ❖ \$20 annually in economic development can be attributed to each tree in the Uptown area.
- ❖ Urban trees address the need of urban beautification.

Ms. Byrnes stated she could provide everyone with the slideshow shown at the meeting if there are questions that need to be answered.

Chief Executive Vincent ask how Butte has been called the tree-city, and had been the last 18 years, and that designation seems to conflict with what has been presented.

Mr. Makoutz stated there are requirements that basically define the distinction but not the benefits.

Ms. Byrnes stated there is not much that has to be done to meet the requirements.

Commissioner Morgan asked how we start this. Mr. Makoutz stated he would present this plan in its final draft to Council and will ask Council to adopt the final draft and to provide funding.

Commissioner Morgan asked if UFPM provides funding to buy trees or do they buy trees. Mr. Makoutz stated tree vouchers are provided to help fund the purchase of trees.

Commissioner Morgan stated he remember there was more funding available to the public but there was a problem getting it out there.

Dan Olson, 1066 Standby Creek Road, Butte, Montana, stated he sees a benefit to the tree-bate program and the vouchers were for \$50 each. He also stated if there was more funding, more people would become involved.

Commissioner Shaw stated she noticed there was an RFP for Urban Forestry with a new section on arborists.

Ms. Byrnes stated the ad in the paper was related to the contracted services contracted out currently under the Community Enrichment Department. This is how beautification projects have been maintained.

Commissioner Shaw asked when it mentions trees it means fertilizing and watering only. Ms. Byrnes stated this was correct.

Commissioner McDonough asked who currently has the contract. Ms. Byrnes stated that at the moment there was not a contract with anyone and only one bid had come in.

Commissioner McDonough asked if in years past if it was Norm that had the contract for the services and if this was the case, how much has been spent in the past.

Ms. Byrnes stated it has ranged from \$35,000 - \$40,000 per year. She stated proposals in the past have gone upwards of \$100,000.00.

It was moved by Commissioner Shaw, seconded by Commissioner Morgan and passed by a unanimous verbal vote to note AI-29 and place it on file.

SECTION 4 SUSPENSION OF THE RULES FOR FINAL PASSAGE

It was moved by Commissioner Shaw , seconded by Commissioner Morgan and passed by a roll call vote of 11 yea and 0 nay to suspend the rules for the purpose of passing Council Resolution Nos. 13-7, 13-8, and 13-9 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.

1. AI-35 RESOLUTION NO. 13-7

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING REVENUE TO THE BUTTE-SILVER BOW GENERAL FUND (DIVIDE REFUSE DISTRICT) FROM CASH RESERVES RECEIVED FROM LEVIED FEES TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

It was moved by Commissioner Shaw and seconded by Commissioner Morgan that Council Resolution No. 13-7 be placed on final reading and be passed, having been deemed read at length. The motion carried by a roll call vote of 11 yea and 0 nay.

2. AI-34 RESOLUTION NO. 13-8

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING REVENUE RECEIVED FROM A HOMELAND SECURITY GRANT TO THE BUTTE-SILVER BOW GENERAL FUND (DISASTER AND EMERGENCY SERVICES DEPARTMENT BUDGET) TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

It was moved by Commissioner Shaw and seconded by Commissioner Morgan that Council Resolution No. 13-8 be placed on final reading and be passed, having been deemed read at length. The motion carried by a roll call vote of 11 yea and 0 nay.

3. AI-36 RESOLUTION NO. 13-9

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING REVENUE FROM A MONTANA DEPARTMENT OF ADMINISTRATION GRANT TO THE BUTTE-SILVER BOW GENERAL FUND (9-1-1 EMERGENCY OPERATION BUDGET) TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

It was moved by Commissioner Shaw and seconded by Commissioner Morgan that Council Resolution No. 13-9 be placed on final reading and be passed, having been deemed read at length. The motion carried by a roll call vote of 11 yea and 0 nay.

SECTION 5 ORDINANCES AND RESOLUTIONS REFERRED TO JUDICIARY

1. AI-21 RESOLUTION NO. 13-6

A RESOLUTION AUTHORIZING AND APPROVING THE DONATION BY THE CITY AND COUNTY OF BUTTE-SILVER BOW, ("City-County") STATE OF MONTANA TO THE EAST RIDGE FOUNDATION THE REAL PROPERTIES HEREIN DESCRIBED ON EXHIBIT "A" TO THIS RESOLUTION FOR THE PUBLIC BENEFIT AND IN THE PUBLIC INTEREST AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

SECTION 6 ORDINANCES FOR SECOND READING

1. AI-27 SECTION 2 COUNCIL BILL NO. 13-3 ORDINANCE NO. 13-3

AN ORDINANCE AMENDING BUTTE-SILVER BOW ORDINANCES NO. 195, 266, 356, 475, 579, 99-12, 02-3, 03-1, 16-9, AND 10-8 AND TITLE 15 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED "BUILDINGS AND CONSTRUCTION", AMENDING CHAPTER 15.18 ENTITLED "ELECTRICAL CODE"; AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

It was moved by Commissioner Shaw and seconded by Commissioner Morgan that Council Bill No 13-3, Ordinance No. 13-3 be placed on second reading and be passed, having been deemed read at length. The motion carried by a roll call vote of 11 yea and 0 nay.

SECTION 7 ORDINANCES AND RESOLUTIONS FOR FINAL READING

1. AI-28 SECTION 1 COUNCIL BILL NO. 13-1 ORDINANCE NO. 13-1

AN ORDINANCE AMENDING TITLE 6 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED "ANIMALS"; AMENDING SECTION 6.04.010 (G) AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

It was moved by Commissioner Shaw and seconded by Commissioner Morgan that Council Bill No. 13-1, Ordinance No. 13-1 be placed on final reading and be passed, having been deemed read at length. The motion carried by a roll call vote of 11 yea and 0 nay.

Segregation - AI-38

Eileen Joyce, Butte-Silver Bow County Attorney, requesting time on the March 6, 2013 agenda to discuss litigation strategy regarding Communication No. 12-467. Pursuant to 2-3-203, (4)(B), MCA, the County Attorney requests this portion of the meeting to be closed.

Commissioner Shaw segregated this item to close the meeting.

Meeting closed at 9:35 p.m.

Meeting opened at 10:10 p.m.

It was moved by Commissioner Morgan, seconded by Commissioner Andersen and passed by a verbal vote to instruct the County Attorney to ask for a declaratory judgment regarding the Brinks Building. Commissioner Fisher voted nay.

ADJOURN

It was moved by Commissioner Shaw, seconded by Commissioner Morgan and passed with a unanimous verbal vote to Rise to the Call of the Chair.

The meeting adjourned at 10:15 p.m.

MATT VINCENT
CHIEF EXECUTIVE

ATTEST:

CLERK & RECORDER