

Troy City Council Meeting
Council Chambers
May 19, 2010
7:00 pm

The meeting came to order at 7:00 pm. Present: Mayor Banning, Council: Fran McCully, Phil Fisher, Gary Jones Loretta Jones, City Attorney Mark Fennessy, and City Clerk Sandra Johnson.

Mayor Banning lead the Pledge of Allegiance.

GUESTS: Deb Welcome, Angelique Welcome, Ken E. Davis, Lana Managhan, Gary Managhan, Robert Warrington, Catherine LeCours, Mike Fraser, Colin McCoy, Linda Newstrom, Steve Newstrom, John Clogston, Larry Coryell, Danette Fisher, Lana Boss, Bob Peterson, Ed Hanson, Bob Egbert, Kristin Smith, Bradley Cooper, Tabatha Clark, Gabe Erickson, Nancy Wagner, Keith Wagner, Glen Garrison, Kimberly Rowse, Canda Harbaugh, and Tom Davis.

ROSE BUD FLATS SUBDIVISION – Kristin Smith - Continuation of hearing, Preliminary Plat approval: The planning department has no new information to convey, and now is the time to make a motion and have a discussion. Phil Fisher made the **Motion** to approve the preliminary plat of the Rose Bud Flats Subdivision. Mayor Banning opened it for discussion. Phil Fisher stated we want the road easement to be a 60' right-of-way, and added that both fire hydrants need to be moved; the one near Chapel Cedar needs to be placed near the cul-de-sac so everybody has access. Ken Davis stated that the two hydrants were approved two years ago. The Fire Chief approved it at the time. Ken Davis stated there is a 40' access for all services that cannot be fenced. The easement is already set aside for this. Fran McCully asked if we want the right-of-way widened will the hydrants be inside the right-of-way, anyway. Kristin Smith advised to keep the issues separate. Ken Davis asked council what the regulation is for the 60' easement. Fennessy replied; I believe there is an ordinance that establishes the width. Fennessy will look into it. Ken Davis said he would like to see it if it exists. If not the County regulations are 40'. McCully added, the other option is that if you wanted the city to accept it as a city street in the future, we don't have to. Kristin Smith suggested making it a requirement in the future when it becomes an issue. McCully said, then the hydrants would be inside the easement if it's not widened. Davis said I'm willing to move those hydrants whether it's a 40' easement or a 60'. Smith suggested language for the motion to read; require the easement increase to 60' pending verification of city ordinance. McCully asked Smith if future property buyers need to know this before purchase. Smith said to add a provision to the covenants that require notification to future property purchasers. That would be another condition to add. Davis asked if council was talking about an easement or a right-of-way. Smith replied I believe the council is interested in securing the easement. If they do take it over then it would become a public right-of-way. Gary Rose stated his understanding is that the southern road is a dead end. Yes, it is 30', and doesn't line up nicely. Discussion followed regarding the private property between the subdivision and Kalispell Avenue. McCully stated the city will not maintain a dead end road. Smith advised these are all conditions that need to be done before the final plat approval. The first condition would be the 60' easement, second would be the covenant provision. Phil Fisher stated that he would like to see those conditions. Ken Davis asked if he would be able to review it before hand. Kristin Smith assured Davis that the condition would be written with the wording. Discussion on motions to the conditions followed. Smith advised if you've read the conditions and they meet your satisfaction, you can move that they all be incorporated unless you want to amend any, or add to any of them. McCully asked Kristin Smith for more information regarding item No. 23, the sewer easement. Smith replied; looking at the plat, the water line easement moved 5' to be placed within the utility easement. Mayor Banning called for a second to the motion to approve the preliminary plat with these conditions and amendments. Gary Rose seconded the **Motion**. Fran McCully – Y, Phil Fisher- Y, and Gary Rose – Y. **Motion carried.**

CATHERINE LECOURS – DEQ Soil Depository: asked for an agreement to enter into negotiations with the State of Montana to utilize up to two and a half acres located at the city landfill site to dispose of very low level contaminated soil with the Libby asbestos super fund removal. We're looking at approximately 34,000 to 37,000 cubic yards of soil. The disposal facility will be built and maintained as a class three landfill with no permit required; however DEQ will meet all the substance of requirements for the permit. There are no worries about ground water contamination with this material because it doesn't migrate. They will monitor the facility and take soil samples taken before and after. Upon closure, it will be capped and seeded then turned over to the city for maintenance. Catherine LeCours explained that it is the best choice in the area for the facility because of the historic use of the property, and this would not inhibit its future use in any way that hasn't already been done in the past. There is discussion of putting in a well, which would be left for city use. They want to relocate the County transfer station and green boxes out of the DEQ work area for traffic and safety reasons, and reopen the property down below when complete. LeCours asked for questions. Loretta Jones asked what the future liability would be. LeCours explained that the City's responsibility would be to maintain the cap against erosion, grass growth; all liability for the materials placed in the facility will be the State's responsibility. LeCours explained that the agreement will assure that the only thing going in the hole is yard and garden soil from operable unit seven of the Libby asbestos site, which is the Troy area. There were rumors of it opening up to different areas; she guaranteed that this will not happen. She feels that the facility could be closed as soon as this year. Gary Rose asked what the estimated yardage would be for the facility. LeCours answered; about 34,000 yards. Gary Rose asked if the proposed well is going to be potable water. LeCours answered; it will be used to keep the ground wet and rinsing off the trucks for the State's use; it does not have to be potable. It will not be licensed for public drinking, but they can work with the City on the constructing it for public water for future use. Mark Fennessy asked Mike Fraser to explain the difference between a public water source and one that's not. Fraser introduced himself and explained that he is a consulting engineer and works for the city on retainer for issues like this. The well construction would meet the requirements for a public water supply. To be a public water supplier, there are lithium requirements. You want to see a couple of those requirements addressed in construction. So if the City ever wanted to, it would have the correct diameter, materials, etc. The City would still have to do some testing, some hydraulics, and permitting etc. Fraser advised that the basic construction should be in compliance. McCully asked LeCours; if the citizens of Troy would have job preference for the project. Catherine LeCours replied; the contractor is Environmental Resources out of southern Lincoln County and their local hire is around 90%. The DEQ will not be operating the landfill. We will build it, oversee it, and close it. The operation of it will be through the Army Corp of Engineers, which in turn, hires the contractor Environmental Restoration. Discussion followed. McCully asked if the DEQ had given thought to using the old Troy landfill. LeCours answered; yes, but as far as liability, the State doesn't want to take over something that they are not sure of the history on. There would also be excavation, and they don't want to dig anything up. Fisher asked LeCours if she had checked into the railroad easement. LeCours answered; yes, the railroad right of way is 75' off the center of the center line, and it was surveyed last week. LeCours advised that she has been in contact with the Environmental Manager for Montana's BNSF and he is looking into any other requirements or legal accesses they may have. She also stated that the DEQ doesn't see any reason why they could not comply with any requirement they may have based on the design and how flexible they can be in that area. Gary Rose asked if the sand seam is going to be mined out. Yes, she had met with Ron Downey of the County and he showed them exactly what needed to be moved and where it needed to be moved to. Larry Coryell asked Mark Fennessy if he has reviewed the warranty deed with the railroad, as nowhere does it state it is an easement or right-of-way. It is referred to as a strip of land. Coryell in my opinion the railroad owns the surface rights. Fennessy stated that he would have to look at it and he has other documents that do refer to it as an easement. Regardless, we're not going to deal with anything within that area anyway. Coryell stated, if you're talking about mining out where the County has mined materials, it is on top of the railroad land. By that deed, I maintain the railroad owns it. Fennessy replied we are not going to be involved in that area. Coryell expressed his concern that by the presented DEQ map, it looks like it. Fennessy replied; it isn't to scale. Coryell stated; it is inside the gate. LeCours said; correct, and stated that she has also asked the BNSF manager to look into the vertical versus

horizontal ownership. McCully asked for clarification that regardless, the work would be outside of this area. Catherine LeCours answered; yes. Discussion followed. Lana Manahan asked if the City is going to receive financial compensation for the use of the ground. Mayor Don Banning replied that there has been a preliminary offer, but we're still negotiating. Manahan presented a letter to council as an adjacent private property owner. She stated they have two parcels of property nearby. One we sell product from, the other is for sale. We feel the use of this land that is next door to ours is going to have an extreme and negative impact on both the sale ability on one parcel, and the public perception of the quality of our product from the other parcel. Gary Rose stated it is already a class three landfill. Lana Manahan replied you don't take your garbage out dressed in a protective suit. Everybody in this room knows the hysterical association that there is with asbestos. If it is that safe, put it someplace else, I don't want it in my back yard. Discussion followed regarding the land parcels in question. A guest if it had already been decided that it is going to be placed there. Mayor Banning answered; No, we're not there yet. A different guest asked if there is going to be a public comment time. Mark Fennessy answered; it would be an agreement between the State of Montana and the City of Troy. It would come before the council for an approval and be a regular notice item on the agenda. There isn't any requirement to have a public hearing on any particular contract. Discussion followed. Coryell quoted Article Nine. Section One of the Montana Constitution, and let it be known that he feels the placement of the contaminated soil would be unconstitutional. Coryell asked if the property in question has ever been annexed into the City. Mayor Banning answered; no, it is city owned but not within the limits of the City of Troy. Coryell added; then the question should be, what is the best thing for Lincoln county residents, not what is the best thing for Montana DEQ. Larry Coryell stated; I am totally against having that site used for contaminated soil. Discussion followed regarding the tax funds used for clean up. Catherine LeCours wanted it clarified that it is not an unlimited fund. There is a limited dollar amount from the settlement from WR Grace. If the funds are used in one area, there is less funds available for additional removals and clean up. Discussion on liability followed. Mayor Banning asked for any other questions. Louie Garrison brought up that there are also two power line right-of-ways in the area of topic. LeCours advised that this is a conceptual rendering. There will be adjustments that will be done. This is just showing the general design. Another landowner stated that they owned 63 acres adjacent to this property and thinks that this would seriously impact his property.

Discussion was closed and the regular council meeting was opened.

DEBBIE WELCOME: Closure of Yaak Ave- asked council for permission to close Yaak Avenue between Second and Third Streets for a pool tournament put on by the VFW and Club bar in honor of Tracy Wilson. They plan to put the pool tables in the street. Phil Fisher stated his concern that the street will not be paved because of the ongoing construction. Welcome stated she is aware of this. Don Banning asked Ryan Mitchell what the prognosis is on the paving. Mitchell advised it will be prepared next week and all the paving will be done the week following. Mayor Banning advised Debbie Welcome that it is the Council's consensus to approve her proposal as long as she knows the surface will be uneven. Debbie Welcome stated that if it rained, it would be inside, and is not an issue. McCully asked about the barricades. Chief of Police McLeod asked who is going to make the arrangements to have the barricades brought in. Mayor Banning stated that the Public Works Department will bring them down and set them to the side. The event organizers can move them to and from the center of the street.

NOMINATION AND APPOINTMENT TO POLICE COMMISSION: Mayor Banning explained the process of appointing a new member to the Police Commission. The vacant seat was advertised in the Western News and posted it on the public bulletin board. Bob Peterson was the only letter of interest the city received. Mayor Banning nominated Bob Peterson to the Police Commission. Phil Fisher made the **Motion** to approve Bob Peterson to the Troy Police Commission and Gary Rose seconded it. **Motion carried.** Mayor Banning advised that Ed Hanson and Ron Rebo are the other members of the Commission and reminded them that all Police Commission meetings are public and there must be public notice posted at least 24 hours prior.

NEW BUSINESS LICENSES- NORTHWEST HARNESS & LEATHER: Business Owner: Robert Warrington, Located at 315 Kalispell Avenue. Mayor Banning asked Warrington to explain the operation of his business. Robert Warrington stated he will be manufacturing and repairing horse related leather items such as saddles and harnesses. Phil Fisher asked if he will employ anyone. Warrington answered; only myself. Loretta Jones made the **Motion** to approve the business license for Northwest Harness & Leather. Gary Rose seconded the motion. **Motion carried.**

AMEND TREE GRANT- \$20,000: Mayor Banning asked for a motion to amend the tree grant to include irrigation and to decrease the trees from 60 to 54. Fran McCully made the **Motion** to amend the tree grant to 54 trees. Discussion followed regarding the wording and placement of placement of trees. Gary Rose seconded the motion. **Motion carried.**

ORDINANCE No. 623 – STOP SIGNS: Mayor Banning gave the first reading of Ordinance No. 623 placing stop signs at unsigned intersections throughout the City. Phil Fisher made the **Motion** to approve Ordinance No. 623. Loretta Jones seconded the motion. Motion carried. Phil Fisher – Y, Gary Rose – Y, Fran McCully – Y, Loretta Jones – Y. **Motion carried.**

RIDE-ALONG POLICY- Gary Rose: MMIA and City Attorney Mark Fennessy will review the policy for approval. Gary Rose advised that Chief of Police Bob McLeod expressed his need for the policy, and the policy will expire when Chief McLeod leaves his position for any reason. Chief McLeod addressed an addition to the policy requiring a request form submittal and background check prior to the ride-along. He will approve or disapprove the request, then assign them to an officer. McLeod requested the change of wording from five hours to four hours; and advised that there is an agreement for the person requesting to ride along. The officer and the chief are to sign this. He also requested an addition to the wording; “once every six months”, to include, “unless approved by the Chief of Police.” McCully asked McLeod to add a confidentiality agreement to the policy. Gary Rose made the **Motion** to approve the ride-along policy with the changes and additional language. Fran McCully seconded the motion. Phil Fisher – Y, Gary Rose – Y, Fran McCully – Y, Loretta Jones – Y. **Motion carried.**

WATER PROJECT PHASE II:

RPA ENGINEERING – Pay Request #9 for \$20,112.22 A **Motion** was made by Gary Rose to approve Pay Request #9 for \$20,112.22 on Phase II of the water project. Loretta Jones seconded the motion. Phil Fisher – Y, Gary Rose – Y, Fran McCully – Y, Loretta Jones – Y. **Motion carried.**

FRASER MANAGEMENT – Invoice # 29-2010 for \$1,290.00 – Loretta Jones made the **Motion** to approve Invoice #29-2010 for \$1,290.00. Gary Rose seconded the motion. Phil Fisher – Y, Gary Rose – Y, Fran McCully – Y, Loretta Jones – Y. **Motion carried.**

S & L UNDERGROUND – Pay Request #3 for \$321,241.55 – Gary Rose made the **Motion** to approve the S & L Underground Pay Request #3 for \$321,241.55. Loretta Jones seconded the motion. Fran McCully expressed concerns on the restoration of the property at the museum. She requested a motion or something in writing that it would be restored and meets the museum director’s satisfaction before the project is done. Mark Fennessy stated; it is in the contract that any ground disturbed will be reseeded. McCully explained the director’s concerns. Ryan Mitchell explained that area in question is all State right-of-way, and the contract specifies top soil and seeding. The sidewalk will be replaced. Ryan Mitchell advised that he has asked the contractor to submit a price for sod replacement. Mayor Banning advised that there are future pay requests and a certain percentage can be held to guarantee satisfaction of the project. Phil Fisher had questions regarding a change request. Mark Fennessy stated; they are not part of this pay request and will be in the project update by Ryan Mitchell. Mayor Banning called for a vote on the motion. Phil Fisher – Y, Gary Rose – Y, Fran McCully – Y, Loretta Jones – Y. **Motion carried.** Mike Fraser advised holding a special meeting as soon as possible to hear the two items that were not on the agenda.

PUBLIC COMMENT:

Guest: asked if the contractor planned on picking up the large rocks left all over town. Mitchell advised that they will be cleaning all that up in the process. Keith Wagner asked that his business license be moved on. Johnson advised she didn't receive the application in order to place it on the agenda. Discussion followed. Mayor Banning asked what it was for. Wagner's purchased the Cenex station. This is not for a new license, only change of ownership.

Business License: Mayor Banning called for a motion to approve the business license for the Cenex/Mini Mart. Fran McCully made the **Motion** to approve the business license for the Mini Mart changing ownership to Keith and Nancy Wagner. Phil Fisher seconded the motion. Phil Fisher – Y, Gary Rose – Y, Fran McCully – Y, Loretta Jones – Y. **Motion carried.**

Ryan Mitchell: *Water project update.* The contractor is finishing the water line on Yaak Avenue and down to Second St. This is the final piece of the original plan. All the mains are in. They will be doing cleanup and preparations for paving. The engineer will do a punch list with the public works department on what needs to be completed or fixed. The contractor has 11 months to work on the punch list. There will be another pay request next month, which will be the bulk of what has been done. There will be three contract amendments; change order #1 has to do with difficulty of boring under Callahan Creek. There were unexpected materials necessary, and the man hours were four times the estimated amount. The contractor's original requested change order was over \$240,000, but with negotiations, it came back at a total change order price of \$146,124.00. The other two change orders deal with the budget. One to maximize the budget with funding available, adding additional work to the project; and the other is to reduce the RPA's fee by \$10,000.00 because there won't be a need for as much inspection as originally projected.

Mike Fraser: Starting a year ago, the anticipation of the construction amount was around 1.3 million dollars with a contingent amount of \$118,000.00 to cover the unforeseen things that happen during construction. In December when bids were opened, they were so low that we were able to award all the additional items and leave us with a contingent of \$297,000. In February there was talk about adding more line replacement. The City entered into an agreement with RPA and moved to add that in. Then we ran into the difficulty with Callahan Creek. One of the funding agencies is **Treasure State Endowment Program**. They advised that they will only participate in the work that was bid. So their prorated share of the \$297,000 is \$114,116. That amount of money was reserved only for contract contingency work. When we ran into the claim of \$146,124.00, it was a contract bid item, so we were able to use the \$114,116 to help offset that cost. We can still complete 151,434 in additional work in this contract. Fraser stated that Ryan Mitchell has worked with the City and public works would like to see a generator at Well #1. That was a request from the DEQ with their last sanitary survey. Now that the new tank is filling, they would like to see how the tanks are working together, so they requested additional control equipment (SCADA). We can add water main replacement to finish out Yaak Avenue, and add one more block on Fourth St. This will consume almost the entire contingency and leave \$6,209. Discussion on how this came about followed. Mike Fraser asked how soon the special meeting can take place. It is council's consensus to hold a special meeting Friday at 9:00 am the 21st of May, 2010.

MINUTES: April 20, 2010 Work Meeting, April 21, 2010 Rose Bud Flats Subdivision Hearing, CDBG Joint City/County Hearing and Regular Council Meeting: Loretta Jones made the **Motion** to approve the Minutes of April 20, 2010 Work Meeting, April 21, 2010 Rose Bud Flats Subdivision Hearing, CDBG Joint City/County Hearing and Regular Council Meeting. Gary Rose seconded the motion. Fran McCully asked to amend the April 21, 2010 Minutes concerning the business license of Dirty Deeds Done Dirt Cheap to show - **not** at the home of Fran McCully. On the work meeting Minutes of April 20, 2010, Fran McCully asked questions regarding the wording regarding the gravel pit. She would like to show the changing of the word renew to remove. Phil Fisher – Y, Gary Rose – Y, Fran McCully – Y, Loretta Jones – Y **Motion carried.**

CLAIMS: Loretta Jones made the **Motion** to approve the claims in the amount of 420,893.56. Gary Rose seconded the motion. Phil Fisher had questions regarding telephone charges to the sewer utility. They are paid separately. Fisher asked why there was more than on bill from BPA. The city didn't get the March billing until recently, so both March and April's are in the claims. The city has been in contact with the billing office of BPA to receive the monthly billing sooner.

Phil Fisher asked what the payment to DNRC was for. This is for the application fee for Phase III. Gary Rose asked how long have the claims to Montana Environmental Lab been \$943.00. A long time; it is for testing. Mark Fennessy added; it has gone up substantially in the past few years because of the required water testing and will probably go up more. Discussion followed. Fran McCully asked questions regarding the claim to Northwest Pipe Fitting for handheld upgrade. This is for reading the water meters. McCully also asked about the claim for Track Utilities. It is for a line to private property near Iron Creek that the Electric Department is working on. It has nothing to do with the current water project. Phil Fisher asked if we charge back the customer. Yes, we do. Phil Fisher – Y, Gary Rose – Y, Fran McCully – Y, Loretta Jones – Y. **Motion carried.**

DEPARTMENT REPORTS: Chief of Police: McLeod informed council that Officer White is doing very well at the academy and only has a couple weeks left. McLeod gave the status report from April 20, 2010 through May 17, 2010; including the number and description of the total calls. He advised that crime calls are down, animal complaints are up. Animal control patrols three hours a week; one hour a day three times a week. McLeod advised that has had to cover for County Animal Control spending two hours out of the City to transport animals to Libby. There was discussion on the past contract with the County that budgeted for a City animal control officer to patrol the City of Troy and a two mile radius. Someone asked McLeod if he would like to have it back. McLeod answered; I would like to, the animal complaints have come way up. Mayor Banning advised the he and Chief of Police McLeod have sent a letter to the County to renegotiate that contract. He continued, right now we pay \$300 per month for three hours a week which includes time back and forth to Libby. Discussion followed. **Fran McCully:** addressed City Attorney Mark Fennessy to advise them. Fran McCully stated; as a council, we are in a dilemma and need guidance. McCully continued; we have no department oversight assignments, so we have no department reports and no standing committees. So, I'm wondering how we gather and exchange information as a full council body. Fran McCully stated; the Mayor has told us that he controls the agenda. McCully said that they had attended a meeting put on by Dan Clark and he advised them to require the information of the Mayor. Fran McCully stated; it seems at this point, the council and the Mayor have totally different takes on what we were told at that meeting. As a council we have long term and short term goals for the City and would like to know how we are able to meet and discuss the things that are a priority to us. We need to know how we are able to form committees and need to know the procedure to write new policies and update existing policies. Mark Fennessy answered; I have your list and I'll get back to you. He added; it would be helpful, if you have questions like these, to get them to me earlier.

PUBLIC COMMENTS: Ed Hanson: Read aloud a letter to the Council and Mayor. The letter stated his feelings about his decision to resign and his resignation as a member of the Police Commission.

Phil Fisher: asked Mark Fennessy if he had had a chance look into the charges for people that are filling personal water tanks. Fennessy stated that he has notes on it and will get back to him. Fisher also asked Fennessy if the City is liable for the contractor's children that have been riding on their equipment. Fennessy advised that the City is not liable for the contractor's negligence; it would be something to bring to the inspecting engineer's attention. **Steve Newstrom:** stated that he would like to see the asbestos site request to a public vote.

Motion to adjourn meeting at 10:01 p.m. was made by Loretta Jones and seconded by Gary Rose. **Motion Carried.**

Donald C. Banning, Mayor

ATTEST:

Sandra Johnson, City Clerk/Treasurer