

**Troy City Council Meeting
Council Chambers
March 16, 2011
7:00 pm**

The meeting came to order at 7:00 pm. Present: Mayor Banning, Council: Phil Fisher, Fran McCully, Gary Rose, and John Clogston, and City Clerk Sandra Johnson.

Mayor Banning lead the Pledge of Allegiance.

GUESTS: Don Whedon, Denise Whedon, Darlene Smith, Chris Hartzmann, Jim Amell Sr. Bobbie Amell, Bob Cummings, Janine Price, Joyce Welch, Bob Welch, Joe Arts, Payton Norman, Shelly Garrison, David Norman, Nancy Wagner, Jeffrey Rebo, Keith Wagner, Donna Rugani, Barbara Pence, Robert McLeod – Chief of Police, Jeff Bonifas, Jennifer Bonifas, Neil Rose, Karen Clogston, Heather McDougall, Heidi Desch, Sandi Sullivan Jayne Brown, Allen Olson, Craig Pierce, Daren Coldwell, Clint Taylor, Susie Taylor, Brady Selle, and Roger Larson

DOG ORDINANCE VARIANCE- Denise Whedon, Christine Hartzmann: Mayor Banning read aloud the variance procedure and conditions. He let it be known that it had been discussed at the work meeting. He advised Whedon and Hartzmann to gather the information and return to the next Regular Council Meeting on April 20, 2011. Denise Whedon asked what to do about her court date for the citation. McLeod advised her to go to the Court and explain what was discussed here. Heather McDougall had questions regarding one of the conditions; neighbor's comments. Mayor Banning repeated the previously read variance procedure that involved neighbors.

MINUTES: Phil Fisher made the **Motion** to approve the Minutes of February 10, 2011 work meeting, February 16, 2011 regular meeting, February 18, 2011 special meeting at 7:00 pm, February 18, 2011 special meeting at 7:15 pm, February 24, 2011 special meeting at 6:30 pm, and February 24, 2011 special meeting at 7:00 pm and Gary Rose **seconded the motion**. Discussion: Fran McCully wanted the change on the February 16, 2011 regular meeting where Gary Rose was listed as Gary Jones. **Motion carried.** Phil Fisher – Y, Fran McCully – Y, Gary Rose – Y, John Clogston – Y

DEPARTMENT REPORTS:

Police Department: Robert McLeod –: McLeod read aloud his monthly report of 204 calls. McLeod advised that he and Officer White attended training in Libby regarding preparing and testifying in court proceedings. He also gave an Animal Control update.

Power Department. Clint Taylor – Taylor advised that he is still working on the transformer inventory for the auditor. He advised that his department and the Public Works employees had Hazard Communications training. He met with Mary Beth Evans with BPA's energy efficiency program to expand our services. He has been working with BPA on rebates and lighting surveys. He updated council on recent outages, and working at the hydros for unit one inspection to get ready for high waters. Taylor advised that they picked up the old Christmas decorations that were being stored at the annex. He has also been working on numbers for the expected BPA increase. Heather McDougall asked what caused the transformer loss behind the Holiday Motel. Taylor answered; it was just age.

Public Works: Dave Norman – Norman advised that he met with the VFW representatives and they want to place a new flag pole with a concrete base at Roosevelt Park. They will pay for it and do all the work. He also met with the coaches of the Girls Softball team and they discussed helping with some improvements for the new field. Maybe a scoreboard and a small mobile concession stand near the new field. There was discussion on whether or not they needed power to it, but were trying to keep costs down. Norman updated council on daily work and advised that he talked to the county about cold mix to repair potholes. He meets next week about the walking path. He plans on getting as much of his work done prior to the pavers coming in, so he can

concentrate on street repairs at that time. Phil Fisher asked about \$2,300 in construction costs for park. Dave Norman stated that he hasn't spent \$2,300 on a single project. Fisher was advised that a detailed query could be run for Fisher to see exactly what the total was for.

NEW BUSINESS:

Business License – Riverfront Maintenance, located at 235 Hummingbird Lane in Troy, Owner Brady Selle. Banning asked for more information about the business. Selle stated that he is starting a small business to keep his options open for retirement. Gary Rose made the **Motion** to approve the Business License for Riverfront Maintenance and Phil Fisher **seconded** it. Discussion: Phil Fisher asked if maintenance would entail remodeling. Selle answered; no, pretty simple cleaning and painting; nothing that would require a contractor's license. **Motion carried.** Phil Fisher – Y, Fran McCully – Y, Gary Rose – Y, John Clogston – Y

Time cards – Payroll: Mayor Banning presented the agenda item and stated to the Council; this was on a list of things you wanted to add to the agenda that I don't have any information on. Fran McCully stated; we just want to make a motion. I **Move** that the council hires Peter Michael Meloy to represent the City Council in the current dispute involving time cards, payroll reports and other public documents. Phil Fisher **seconded the motion.** Discussion: Clint Taylor asked for clarification; the City Council is hiring or the City, representing the Council is hiring? Fran McCully stated; the City Council is hiring under the MCA 7-4-4605. We have the right to hire other counsel, so we just want to get this done. Mayor Banning asked; for what. McCully replied, we want to get a ruling on whether we can see time slips and payroll reports. Do we have budget for this? Fran McCully replied; we have money in the attorney's fees, and we can always amend the budget if we have to. A guest asked if there was estimate on the cost. McCully answered; we don't know. **Motion carried.** Phil Fisher – Y, Fran McCully – Y, Gary Rose – Y, John Clogston – Y

Union: Mayor Banning presented the agenda item and stated; again I have no information on this. Fran McCully stated; again that is just that we move to hire Daniel Johns to represent the City during the negotiation. I understand we have used him in the past. So I make the **Motion** that we hire Daniel Johns when the time comes, to negotiate the contract to represent the City, with the Mayor, to negotiate the contracts. Gary Rose **seconded the motion.** Discussion: Mayor Banning stated that the mayor is the person that negotiates contracts for the city and is assisted by the city attorney, which at this point, we don't have one. So, I would do it myself and if I need assistance, I would hire someone of my choosing to work with me on the negotiations. Banning added; we have not always used this person, who I understand is quite expensive. The contract is already negotiated, the only thing left is the wages, which will not be talked about until the contract is almost over, which is the first of July. So, there probably isn't going to be any negotiations until probably the first part of May. Fran McCully stated; I don't know how we can have any idea what union negotiations will entail at this stage of the game. How do we know that it isn't going to be anything, we don't know until we are in it. Mayor Banning answered; it is the responsibility of the administration to do that. It is not a legislative function. John Clogston stated; I disagree with you, it is legislative. Banning replied; you can disagree with me, but until I am told by legal authority otherwise, that is the way it has to stand. We have to go by what the law says. Phil Fisher asked; you stated that the contract is already negotiated. Banning answered; the only thing this year is wages, benefits, and working hours. The contract is not up for negotiation. Phil Fisher asked; isn't that when you re-negotiate, isn't that negotiation? Mayor Banning answered; you don't re-negotiate the entire contract, all you negotiate is the wages, hour, and working conditions for the next two years. Fran McCully asked; what do you negotiate besides wages, hours, and working conditions? Banning answered; that's it, for this time. McCully replied; well that's the whole contract. Banning replied; no it's not. Mayor Banning advised; when the contract negotiations are completed, the package is presented to the Council for their approval or rejection. That is the way it has always been done. Clogston replied; it might get rejected. Banning replied back, that is your prerogative, but that is the way it has always been done, those contracts are negotiated by mayor and city attorney. Clogston continued; well, when I hear about raising rates all the time, I don't want that contract thrown down in front of me; saying you have to sign it today, before we can go through it and study it. I want to know what's

in it. Phil Fisher asked; what is wrong with hiring an attorney. Mayor Banning answered; there is nothing wrong with hiring an attorney as long as you hire one that is going to do the job at the best price. Fran McCully added; sometimes the best price isn't the best job. Mayor Banning answered; well, you were just complaining about a wage increase and you want to spend \$10,000 on an attorney to negotiate wages, hours, and working conditions. Fran McCully stated; I represent the Council for the Dispatch Board, and even they use Mr. Johns for their negotiations. McCully continued; Clint said that the City has used him in the past. The City of Libby said they use Mr. Johns, and the County said they use Mr. Johns. So it seems to me that he represents a lot of people in these types of negotiations and he must be pretty knowledgeable. Clint Taylor advised that yes, the City of Troy has used Dan Johns in contract negotiations. 1994 was the last time, because at that time, the city didn't feel like they got their money's worth. After that they started using the city attorney to make sure the i's were dotted and the t's were crossed. Clint Taylor stated; it was 1988 when they brought in the IBEW; that is when the base contract was written. Banning asked if there were any more questions. Fran McCully stated; I **move** the question. Mayor Banning called for the vote. **Motion carried.** Phil Fisher – Y, Fran McCully – Y, Gary Rose – Y, John Clogston – Y. Susie Taylor asked; does that mean you just hired an attorney for \$10,000. Mayor Banning stated; no, it's recommending we hire. Fran McCully stated; we don't know its \$10,000, people have just thrown that out there. Susie Taylor asked; how come you didn't ask his hourly rate. Fran McCully answered; how do we do that? Susie Taylor answered; you just asked to have him represent you, why didn't already contact him to see how much it was. Phil Fisher stated; we made the Motion because we want him to represent us. Know we seek the other avenues to talk to him and finding out his wages. Craig Pierce asked, so you are not able to go forth and ask him those questions until you go through the motion process. Fisher answered; right.

Tetra Tech Agreement: Mayor Banning presented the agreement to the council. Gary Rose made the **Motion** to approve the Tetra Tech agreement. Phil Fisher **seconded the motion.** No discussion. **Motion carried.** Phil Fisher – Y, Fran McCully – Y, Gary Rose – Y, John Clogston – Y

City Attorney Letters of Interest: Mayor Banning let it be known that there were three letters of interest for the City Attorney position; Kelsie A. Meyer, James D. Reintsma, and Russell S. Barnes. Banning stated; I've perused the applications and after discussion and references, I've made my decision to appoint James Reintsma. He asked if there was discussion or a **motion** from council to approve the appointment. **None.** Mayor Banning stated; I've invited Mr. Reintsma to appear before the Council to give us a statement at this time. James Reintsma thanked the Mayor and continued; first, I'd like to use this moment to address the first motion. It was a little out of order, but just as a reference, you really should check with your insurance agent before you hire a private city attorney to represent what might be personal litigation on your behalf. That aside, this is now going on over three months, and with the exception of Mrs. McCully who spoke with me briefly twice by phone back in December, I haven't had a chance to talk to the other three of you on the Council. I wasn't present last time when the Council had before them the opportunity to approve my appointment as the City Attorney; of course, I have the recordings and transcripts of that particular circumstance. Although I don't agree with what is in it, I wanted to present myself here today, so if there is a discussion on why it is that you choose not to appoint me as the most qualified for the position. The City of Troy is hanging itself. If you haven't heard, cases are now being dismissed in your criminal court due to lack of a speedy trial. So, before I consider my options, I just want you all to be aware, every single member of this council, that your immunities are limited. You are represented by MMIA, they have a position on this too, and you should really talk to them. That is not a threat. I just encourage all three, or four of you, in this case because John you are new to the council, to contact MMIA and talk to them about your immunities. Because if you are making decisions about my potential employment, and you are making those decisions based on the fact that you just don't get along with the Mayor, and not my personal qualifications, you may be finding yourself litigating by yourself instead of the protection of the City of Troy. Phil Fisher asked; litigating with whom? Reintsma answered; anyone who happens to sue the City. If you are working outside the course and scope of your job as City Council Members, or as Mayor, you are not protected by the insurance carrier of the City.

Reintsma continued; so, in regards to this application process, I'm not going to go any further with giving free legal advice, because that is not why I am here today. Fran McCully asked; are you saying that you would be a litigant against the City if you are not hired. Reintsma answered; no, I'm not saying that. Phil Fisher stated; that's what it sounded like to me. Fran McCully added; that's what I thought I heard. Reintsma; Anybody who chooses to sue the city, whether it is a criminal issue or whatever the case may be, if the Attorney General's office pulls back, whether it's your access to personal records, the union contracts or anything else. You guys are potentially personally on the line. I'm not saying I'm going to sue the city if you don't appoint me that is certainly your choice. But I want you to know, I am not the Mayor's buddy, or anybody's buddy. I want to talk to the three of you and Fran if you want to join feel free. I'll talk to any of you right here standing on my own two feet. So we can clear the air right now if there is an issue. Mayor Banning stated; they had reasons for voting no last month. They were asked a question by the chairman of the committee at the time, to run through the people who had requested being the City Attorney. At the time it was just you and one other. The committee came out with the recommendation to hire you, which became my appointment, and I'll take responsibility for the appointment like I take responsibility on all the appointments. It is up to them to approve of the appointment. They told Mr. Maffit that you had made some comments over the phone. This was from Phil Fisher. The Mayor asked Fisher to repeat what he had said then. Phil Fisher stated; that you (Reintsma) had made comments about citizens of Troy that were derogatory. James Reintsma stated; feel free to elaborate, because I haven't, and I certainly haven't spoken to you on the phone about this appointment. Phil Fisher stated; no, this came to me from another member. Reintsma asked; through Fran, she is the only one I've spoken to. Fisher continued; and, I've talked to a judge and a clerk and they recommended that we not hire you. I vote on what the people I talk to, and I take highly to that recommendation. James Reintsma stated; I would be willing to bet, that I could get statements from every judge and clerk in the County back here by the next meeting to see what's on there. Phil Fisher stated; well, I've already had that response told to me, so you think I'm supposed to give it to you because you go out and get other ones. I don't want to share attorneys with the City of Libby. Fran McCully agreed and added; and that has been a big concern all along. Mayor Banning asked; why would that be. Fran McCully answered; because number one, you used to be a public defender, you left that to be the City of Libby's attorney. You still have your private practice, so we look at all this thinking okay, you have the City of Libby's attorney job, and your private practice, and then you want to be the City of Troy's attorney. That seems like under the best of circumstances its spreading it awfully thin. And, looking at Libby's situations, we keep thinking that the City of Libby's job is probably going to be more than it was a year ago. So, we want our own attorney for Troy. And now it seems we have two other options. John Clogston added; we feel like we would be third down the line. Reintsma answered; my civil practice, for what it's worth, is extremely limited and almost entirely family law work. The City of Libby is only a half time position; this is a quarter time position by definition. You're not paying for a full time attorney. John Clogston answered; that's right, but we still feel last in line, because you would have other priorities in Libby to take care of. As long as we know we are going to be equal for the amount of dollars, that's what we need to know from you, that we are not going to be put off to the side. Reintsma answered; can I ask, have you ever had a full time attorney in this town, or has any rural community in Montana had a full time or working part-time lawyer for the City that does nothing else? They don't exist. Even Mr. Fennessy had his own practice. Nobody in this room can work a quarter time job and expect to live, I can't. I am going to have more work, because I have to, you don't pay enough as the City of Troy. John Clogston agreed and added; I know it's not enough to take care of a practice. Fran McCully stated; point being though, we obviously have two other options at this point. Why are we not even considering the other options? Mayor Banning stated; because of their qualifications. John Clogston stated; well I don't know them. Mayor Banning answered; and you don't need to know them. James Reintsma stated; well, before you get into a debate between yourselves, are there any other questions for me before I sit down. Mayor Banning asked; do we still have no **motion**? None. Ok, we'll move on with **no motion** on the City Attorney.

OLD BUSINESS:

Ordinance No. 632- Second Reading: Mayor Banning read aloud the Ordinance No. 632 and asked for a motion. This ordinance repeals Ordinance No. 629. Gary Rose made the

Motion to approve Ordinance No. 632 and Fran McCully **seconded** it. **Motion carried.** Phil Fisher – Y, Fran McCully – Y, Gary Rose – Y, John Clogston – Y. Mayor Banning stated; it will be effective 30 days from today, March 16th, 2011.

Clint Taylor – Power Manager, asked for the floor stating; I know this isn't on the agenda, but I need to make a request to hire an attorney to review the Residential Exchange contract by April 15, 2011. I was hoping we would have an attorney tonight, but since we don't, I'd like to make the request to hire Mark Fennessy to review the residential exchange settlement, which is a Bonneville contract that has to return by April 15, 2011. I'm requesting Fennessy because he is familiar with the power department's contracts. I'm not sure if we need a motion from the Council, or just your approval, but since he is familiar with this, and it has to be returned before the next Council meeting, I request that I would be able to talk to him and hire him to review it. Mayor Banning stated; the only thing that needs to go before the Council is the agreement itself. Do you have that with you right now? Taylor answered; normally what we do is; I review it, then the attorney reviews it, then it goes to council, and if it needs to be re-reviewed it would go to the attorney again. I've received it, but I have no legal council to take it to. So what I'm requesting now, is through power company funds, if we can hire Mark Fennessy since he is familiar with BPA contracts. Mayor Banning answered; I will hire him to look at that contract and recommend he get back to you about it. Then we will have a special meeting to vote on it.

CLAIMS: Mayor Banning presented the claims and asked for a motion. Phil Fisher made the **Motion to approve** the claims and Gary Rose **seconded** it. Discussion: Fran McCully asked about the claim for \$900 BPA light rebate. Clint Taylor explained that it is a rebate check for Frontier. It is basically a pass-through check; we did some work for them and it is part of the lighting survey. BPA sends it to us, then we issue a check to Frontier for the amount of the rebate. Phil Fisher asked about the conference under the judicial. Banning answered; anything out of judicial would be the judge or his clerk. Fisher asked about the claim to the Spring Water School to Dave Norman. He asked if it was for travel. Yes, it was for travel, lodging, and meals. Discussion on where and when followed. Dave Norman added; to keep my certification I have to get all my points at one time. John Clogston asked about the power bill for the park host. That is not just the park host on that meter. Discussion followed. John Clogston also asked about the power bill for the apartments. Fran McCully made the comment that she noticed that the per diem for the Mayor training seminar is running really close to overspending on that line item. She stated; I would like that one item separated until we get all of the expenses for that training seminar. If we could hold that one until we get the hotel bill and tuition. I'd like to see it all at one time. **Motion carried** to paying the claims in the amount of \$100,404.42 excluding the amount for \$331.80. Phil Fisher – Y, Fran McCully – Y, Gary Rose – Y, John Clogston – Y

PUBLIC COMMENTS: Sandi Sullivan stated; I didn't hear a clear answer when Clint Taylor asked who was paying for the attorney you want to hire for the time cards. Mayor Banning answered; the motion was approved. Sullivan replied; I know that, but at who's expense. Is the City paying for it or is the Council paying for it. Banning answered; we don't know. John Clogston stated; the City is. Guest Linda Rose answered; the City's. Banning added, we will have to contact MMIA and it depends on what they have to say about it. Daren Coldwell, as the 4th of July committee spokesman, thanked the Council for passing Ordinance 632. He added; we appreciate you giving us the opportunity to try and make this work. Nancy Wagner asked Councilman Clogston; if you are so concerned about cutting back because we all have to earn our money, why do we have to hire such an expensive attorney when we could just vote in our city attorney and not worry about it so much. We don't want to pay those expenses because you're having a petty squabble. John Clogston replied; as yet, we don't know how much that attorney is going to cost us. It may save us in the long run. Nancy Wagner replied; having a competent attorney like Mr. Reintsma would save us in the long run. I believe with his very capable qualifications, he can decide and can budget his time well. Clogston replied; I'm sure he is very good; at the moment, I do not know much about him. I have not seen any qualifications on him or any other attorney at the time. Shelly Garrison stated; you guys are so concerned about spending money, don't you think that if you just appointed an attorney it would save a whole bunch of money. John Clogston answered; that's probably a good idea. Garrison continued; so

why not go with the person that is best qualified. Discussion followed. John Clogston stated; as far as the attorney, we could have John Wayne in here, how do we know they are a good attorney. We may have a good lawyer, but we haven't been given a chance to make an informed decision in my opinion. Don Banning stated; people are here to make that decision, you are here to approve or reject the decision. There are other branches of government that handles that. There is a part of government that handles legislation, executive, and judicial, and they don't interfere with each other's operations. It is that way in Montana Code Annotated. That is what is holding us up, because everybody wants to be involved in everybody else's job. And, that is not the way it is set up to be. We are elected to do a certain job, that's what we should be doing. Karen Clogston asked; from that, it kind of tells me, that you think the Council is supposed to blindly pick a lawyer. How can they vote if they don't have any information. Mayor Banning answered; they have all the information they need. They have the report of the committee that was appointed. That should have been plenty. That is what I based my decision on. Phil Fisher stated; that was on Reintsma and McDougall, this folder has two different lawyers besides the two. We have not seen anything from Meyers and Barnes. Mayor Banning stated; there are certain qualifications we ask for in the advertisement for City Attorney. One was three to five years experience; one was that you have to be a member of the Montana State Bar and licensed to practice law in the State of Montana. I do know that Mr. Reintsma is, because he is the president of the Lincoln County Bar Association, which means his peers have elected him to that position. Sandi Sullivan asked; do you plan to put the other two applicants to committee. Mayor Banning answered; no, the last time the council didn't accept the committee's recommendation, it didn't work. I'm not putting it to committee this time, I did it the way it is set up to be. Sandi Sullivan asked; did they not fit the criteria specified in the application. Mayor Banning answered; one has been a part-time attorney since 1988 in real-estate and the other one was an attorney for child advocacy. Heather McDougall answered; Sanders County Coalition.

Meeting adjourned 8:05 p.m.

Donald C. Banning, Mayor

ATTEST:

Sandra Johnson, City Clerk