

**Troy City Council Meeting
Council Chambers
February 15, 2012
7:00 pm**

The meeting came to order at 7:00 pm. Attending were Mayor Donald Banning, Council: Phil Fisher, Fran McCully, Joe Arts, Crystal Denton, City Clerk Tracy Rebo, and City Attorney Charles Evans.

GUESTS: Gary Rose, Linda Rose, Dennis Dupuis, Jayne Brown, Donna Rugani, Joyce Welch, Bob Welch, Wayne Maffit, Sylvia Maffit, Scott Sullivan, Sandi Sullivan, John Brown, Robert McLeod – Chief of Police, Sam Shupe, Karen Hubbard, Bill Hubbard, Susan Taylor, Clint Taylor, John Clogston, Sharron Johnson, Frank Day, Tiffany Day, Stacy Shaffer, Kristin Orr, Katie Davis, Heather McDougall, and Steve Bowen.

MINUTES: Crystal Denton made a **Motion** to approve the minutes of the City Council Special Meeting No. 1 and No. 2 on January 3, 2012, City Council Work Meeting on January 12, 2012 and the Regular City Council Meeting January 18, 2012. Joe Arts seconded the motion. Discussion: Phil Fisher would like his wording stated verbatim regarding Council President of the work meeting of January 12, 2012. City Clerk Tracy Rebo advised that it will not appear in the Minutes of January 12, 2012, but will show it on the Minutes of the current meeting. Changes are as follows: *Mayor Banning-Nomination and election will be held on January 18, 2012 at the regular council meeting. MCA 7-4-4403 states that the council may elect a president who, in the absence of the mayor, is the presiding officer and may perform the duties of mayor. In the absence of the president, the council may appoint one if its number to act in the president's place. Council Phil Fisher – Don't we go by what the charter says? Banning – What does the charter say? Fisher – It states exactly what this says. The council shall have a chairman who shall be elected by the members of the council from their own number for a term established by ordinance. The chairman of the council shall preside when the mayor is absent. Banning – Yep, that's what state law says. State law has authority over the charter. Fisher – Nope, we go by the charter Don, you know that. Banning – What are you trying to start now? Fisher – I'm not, (unable to hear). Banning – I read Montana state law. You need to look that up about the charter it's in the state law. It means the same thing in the charter also. Fisher – Term established by ordinance. Motion Carried.* Fisher – N, Denton – Y, Arts – Y, McCully – Y

DEPARTMENT REPORTS: *Mayor:* None. *Public Works:* submitted a written report to Council. *Power Department:* submitted a written report to Council. *Police Department:* Chief of Police Robert McLeod read aloud his report. McLeod advised that there is a major update on the SWIFT/CAD system for programs. He thanked Troy Area Dispatch for their resources to make the upgrade possible. There will be P.O.S.T. certified training in May in Kalispell and he will be attending. McLeod added that there is no cost for the training and it will go toward the mandatory hours needed to keep certified. McLeod advised that he has been in contact with MSPOA regarding the STEP grant and reimbursement is expected soon. He also advised that he ordered the new radar and it should be shipped shortly. Stacy Shaffer thanked the Police Department for their quick response to late night calls and stated how proud she was of the Troy Police Department. John Brown also expressed his gratitude. Phil Fisher questioned the BPA estimate on the report. Taylor explained the differences between estimated and actual. Fran McCully asked Taylor if he still planned on selling the surplus vehicles. Taylor said yes they were. *Council:* None.

NEW BUSINESS:

BUSINESS LICENSE: JOP Shop – Customized snowmobile shop. Location: 192 Mill Rd. Owners: John and Kristin Orr. Kristin Orr– explained that they repair snowmobiles and want to be legitimate by getting a business license. Fisher made the **Motion** to approve the business license for JOP Shop and Crystal Denton seconded. **Motion Carried.** Fisher – Y, Denton – Y, Arts – Y, McCully – Y

BUSINESS LICENSE: Troy Auto Parts – Auto part retail store. Location: 607 Missoula Avenue in Troy. Change of ownership to Debra Shupe. Sam Shupe explained that Debra purchased the business and needed the business license transferred into her name. Fisher asked if the hours were going to change. Shupe replied yes and Sunday's ten to four and all other days will be the same. Joe Arts made the **Motion** to approve the new business license for Troy Auto Parts and Crystal Denton seconded. **Motion Carried.** Fisher – Y, Denton – Y, Arts – Y, McCully – Y

FRASER MANAGEMENT & CONSULTING: Pay Request – EECBG- Crystal Denton made the **Motion** to approve Invoice # 2-2012 for \$600.00 to Fraser Management & Consulting and Joe Arts seconded the motion. Fisher stated that the last time there was a pay request from Fraser Management it was tabled because he wasn't here. Rebo explained that was because he was scheduled to be at that meeting to give an update and did not show up. He is not scheduled to be at this meeting. Mayor Banning stated that not all people show up to explain their invoices. **Motion Carried.** Fisher – N, Denton – Y, Arts – Y, McCully – Y

OLD BUSINESS:

RESOLUTION No. 651: Budget Amendment Fiscal Year 2011/2012, Park Picnic Area- Mayor Banning read aloud the resolution. Crystal Denton made the **Motion** to approve Resolution No. 651 and Joe Arts seconded the motion. Discussion: Fisher asked if the administration contacted the donor to ask for the additional \$5,000 necessary for material cost increases rather than wait for funding from the vehicle sales. Clint Taylor stated; yes, and advised that the donor had come into the office so he had an opportunity to speak with him at that time. **Motion Carried.** Fisher – N, Denton – Y, Arts – Y, McCully – Y

LIPPERT CONSTRUCTION CONTRACT: Covered Picnic Area: Joe Arts made a **Motion** to approve the contract for Lippert Construction to build the covered picnic area at Teddy's Pond and Crystal Denton seconded the motion. McCully asked if the contract had been to the City Attorney. Rebo answered yes, and he gave his approval. Fisher asked how we will know it will stay on price. Taylor explained that there is about \$7,000 leeway. More discussion on total costs including engineering and tables followed. Fisher asked if the contract will be paid at the end or invoiced periodically. Rebo answered; invoices as needed and they will be in the claims at the council meetings. **Motion Carried.** Fisher – Y, Denton – Y, Arts – Y, McCully – Y

CITY ATTORNEY: Mayor Banning asked if there was a motion to terminate the City Attorney. Joe Arts made the **Motion** to terminate Charles Evans as City Attorney and Crystal Denton seconded the Motion. Discussion: Charles Evans stated that the Mayor has not presented any reasons for terminating the contract. He asked how the Council can make an informed decision on terminating the contract when you haven't any written reasons why. Mayor Banning stated that he had given him a written reason last month in a short paragraph statement. Evans replied that he hasn't received even one reason. Fisher stated; what you gave him was a notice of termination, not a reason. Mayor Banning stated; the reason was for the illegal meeting held on September 8, 2011, in which you told the President of Council to move forward with another meeting without advertising it for 48 hours, and I gave you the Attorney General's opinion in which he said the 48 hours was the accepted amount of time. Evans stated; what we are

dealing with here is like a trial. You have to give me advance notice in writing with the reasons why you want to terminate me. Then I, with advance notice, get a chance to respond. The council is to act like the jury so to speak. They listen to your allegations and then to my response and then they make a decision. This isn't happening. You are not giving me advance notice so I can prepare. You are not giving the Council your written reasons. Mayor Banning answered; this was all given at the meeting in January and a month is plenty of time to prepare your argument. Mayor Banning asked for any further discussion. Evans asked for a copy of the reasons. Mayor Banning stated; I don't have a copy here. That was last month's meeting. Evans stated; you started at that meeting, to read verbally your reasons, and I interrupted you and stated in my opinion that the contract was not a valid contract. I told you that I had talked with the Attorney General's office and they were going to write an opinion with regard to the proper procedure, whether it be by contract or by Statute. That matter was tabled. You are putting the Council in a bad position for wrongful discharge if you proceed in this manner because every discharge needs to have written reasons given for it. Mayor Banning replied that he wasn't going to argue. Evans stated; you are put on notice then, and the Council is put on notice that what you are doing is illegal. Fisher stated; in our minutes, you stated that you can terminate someone then go to the Council for approval, the same way you appoint someone then ask the Council for approval. I requested a written reason prior to the regular council meeting and a member of the audience stated that it was not an unreasonable request. I have never received a written copy of any reasons. Only a short paragraph stating that you terminated the attorney. Banning replied; everyone was given the reasons. McCully stated; we actually tabled the entire process until there was an opinion from the Attorney General. Mayor Banning replied; and I was advised that there will be no opinion from the Attorney General because he does not give opinions on terminations. Evans asked Banning how he was advised. Banning replied; I was advised through Council, they had received a copy of his findings from David Neilson. McCully stated; our motion specifically said we were tabling the whole process until we had an opinion from the Attorney General. Banning replied; and you're not getting an opinion from that office. McCully replied; how do we know that. Banning stated; you have the reason. Fisher stated; that wasn't from the Attorney General, that was from a legal consultant firm and it didn't say anything in there except that the contract was a binding contract. McCully stated; we tabled it until a specific time. It is on the table until that happens. Mr. Evans stated; if that is the case, how can you bring it up now. Banning answered; the motion was tabled pending a report from the Attorney General. Evan's stated; this letter was just given to me tonight and it was postmarked February 6th. I hadn't received it prior to today, and the Council hasn't received it. This is not an appropriate time, it wasn't tabled to the next meeting; it was tabled until we received this, the Council has not had this presented to them and I have not had this presented to me until just now. Fisher read aloud from the minutes in question. McCully made the **Motion** to table this until the Council knows where they stand legally to proceed. Phil Fisher seconded the Motion. Joe Arts stated; we already have a motion on the table. Mayor Banning asked if there was any further discussion on the motion on the table. McCully stated; you can table in the middle of a motion. Banning asked that they complete the motion first. Evans stated; Mr. Mayor there can be sub-motions filed after the initial motion. Filing another motion is acceptable under Robert's Rules of Order. Mayor Banning answered; Okay, It's a big book. John Clogston stated; it's a big book when you don't know what you are talking about. Mayor Banning addressed Clogston and asked if he knew all of Robert's Rules. Clogston replied; a few of them. Banning directed City Clerk that there is a motion to table on the floor with no discussion, it will go to immediate vote. The Clerk called roll for the motion to table until the Council knows where they stand legally to proceed. **Motion Failed.** Fisher – Y, Denton – N, Arts – N, and McCully – Y, with the tie breaking vote from Banning – N. Mayor Banning called for the question on the original **Motion** to terminate Charles Evans as City Attorney. **Motion Carried.** Fisher – N, Denton – Y, Arts – Y, McCully – N, with the tie breaking vote from Mayor Banning – Y. From the audience, Linda Rose stated; you can't vote. You have to have a 2/3 vote and you don't have it. Mayor Banning stated; I break all ties.

Phil Fisher stated; it's in the MCA's. Linda Rose continued. It states to terminate somebody you have to have 2/3 of the Council's vote. Mayor Banning called to order stating; no comments please. Mayor Banning stated; motion carried and the contract is terminated. McCully responded; see you in court.

CLAIMS: Joe Arts made the **Motion** to approve the claims in the amount of \$97,154.36 and Crystal Denton seconded the motion. Discussion: McCully asked; what work was done on the invoice as the administrative assistant Tori White. Banning answered; to do some research for me and it is still in the process. Fisher asked; what is it. Banning answered; work for me, and it doesn't have to be a claim to Council if you'll read the Statute. Fisher replied; there is no money appropriated to have an administrative assistant. Banning replied; there is money appropriated for consultants. McCully read aloud the statute that included that the administrative assistant answers solely to the administration. McCully continued; she does not fit the definition of an administrative assistant. Banning replied that the administrative assistant that I hired will report to me when she is done; which she is done, but I haven't deciphered the report yet. This is for her time for doing it. McCully stated; even though the Mayor has hired an administrative assistant; he must first come to the Council to obtain the appropriation for paying the wages for the assistant. Mayor Banning stated; that is your opinion. McCully stated; I can read my opinion. She asked if she was an independent contractor or an employee. Banning answered; that has nothing to do with this. Fisher stated; it has to do with budget money. Banning replied; everything has to do with budget money. Fisher replied; that's right, and who sets the budget and pays money out of the budget. Banning answered; there is money in the budget for consultants. McCully stated; well, I feel you should pay this out of your own pocket. Fisher stated; it says, administrative assistant, not consultant. Banning asked for the question. There was discussion on allowing the public to comment while there is a motion on the floor. Fisher read aloud from the rules and regulations. Heather McDougall stated; when you acquire services from someone, you are creating a contract, and the Council is the only ones that can approve a contract, so this should have been brought to Council before she was hired. McDougall commented on the Charles Evens subject. Sandi Sullivan asked Evans if the letter he had in hand was the opinion of the Attorney General. McDougall stated; it is a letter of advice, not an opinion. McCully asked Sullivan if she had seen the letter before. Rebo stated; it is sealed, we didn't open his mail. McCully stated; I thought it came through the City. Rebo replied; it came to the City and was addressed to Troy City Attorney Charles Evens. I had it setting up to give to him at the next council meeting. We didn't know to expect it. Mayor Banning called for the question. **Motion Carried.** Fisher – N, Denton – Y, Arts – Y, McCully – N, with the tie breaking vote from Mayor Banning – Y

PUBLIC COMMENTS: Linda Rose stated; the 14th can't come soon enough. John Clogston asked the Council and especially Joe Arts, in your letter, you stated that the council was trying to get rid of the City police. Where did you hear or how was it opined to you. Arts answered; it was opined to me by the person that the President of the Council had stated it to. Clogston asked; and all the other stuff, do you think that is stuff you should put right out there into the paper. Arts replied; what I put in the paper was my own opinion and I stand by what I said. McDougall stated; whatever the letter of advice says; there is a statute that only lets the council vote for the termination of the Mayor (meant attorney). If the statute that is applicable that the attorney general rules on fits this situation, then you can't have a tie vote, and would leave the attorney in position. Linda Rose asked Joe Arts if he had done his research, to disincorporate, everything you put in there was scare tactics. Upon Linda Rose's yelling, Mayor Banning gavelled and stated that she was out of order. Rose stated; no, I was recognized. McCully stated that she had attended a school board meeting where we were told that the citizen had the right to speak and he took a considerable amount of time and we couldn't do anything about it. I don't see how their rules could be any different than ours. Sylvia Maffit advised that it pertained to the School Board. Fisher spoke to Joe Arts stating; you said that I handed this [the

disincorporation MCA]. Fisher continued; this was given to me by a citizen. Arts answered; yes, you handed it to me when Crystal was gone. Fisher stated; I was asked to hand it out. Arts replied; there was no comment made, but the intimidation was there. McDougall addressed Arts and stated; my understanding is that Big Fork is unincorporated and they have police, and fire, and ambulance, and water and I believe that if you are going to put facts in the newspaper you better understand the difference between a recall and a disincorporation and you better get your facts straight. Arts answered; I don't remember commenting on a recall other than that I was against it. Banning called to order.

ADJOURNMENT: Joe Arts made a **Motion** to Adjourn and Crystal Denton seconded. Fisher – N, Denton – Y, Arts – Y, McCully – N, with the tie breaking vote from Mayor Banning – Y. Meeting adjourned at 7:50 pm.

Donald C. Banning, Mayor

ATTEST:

Tracy Rebo, City Clerk/Treasurer