

City Council Meeting  
July 11, 2011

Present: Mayor John Williams, Councilpersons Evan Stewart, Gale Palmer, and Tom Jankowski  
Absent: Councilperson Dan Becker  
Also Present: City Clerk/Treasurer Michelle Richards, Police Chief Larry Reinlasoder, City Attorney Gary Ryder, Public Works Director John Bleth, Building/Planning Official Jan Morgan, and Fire Chief Ryan Reid

Mayor Williams called the meeting to order at 7:00 pm. Following the Pledge of Allegiance, Clerk/Treasurer Richards called the Roll Call.

**Consent Agenda:**

Councilperson Stewart moved to approve the Consent Agenda. Councilperson Jankowski seconded the motion. No discussion. Motion carried with all in favor.

- a. Minutes of 6/28/11 Regular Meeting
- b. Claims Roster 7/8/11

**Departmental Reports:**

Reports were given by Chief Reinlasoder, Building/Planning Official Morgan, Fire Chief Reid, Attorney Ryder, Public Works Director Bleth and City Clerk/Treasurer Richards.

**Mayor's Communications:**

Mayor Williams reminded the City Council of the Coal Board meeting this Friday in Billings. The city has a grant application before the board for \$35,000 of the estimated \$65,000 cost of an emergency alert system.

Mayor Williams asked the Budget/Finance Committee members when they would like to meet this week. Members of the committee agreed to meet Thursday at 1:00 pm with Department Heads regarding their budget requests.

**Public Comment and Participation:**

Mayor Williams opened the Variance Hearing for 4416 Remington Drive at 7:16 pm. Building/Planning Official Morgan introduced the request and explained the situation. The request is for a variance to use and size requirements in the R-3 District. Mrs. Morgan stated the code specifically states variances are not to be granted to allow a use that is not permissible by the code.

Ed Buchholz, 4416 Remington Drive, explained the reason they want to do this is they want to build a new house in 15 years when they retire and his mother-in-law has cancer and the family needs to keep an eye on her but she wants to have her own place and not live with them. The Buchholzs want to wait to build the new house after they retire and sell their current home. The plan is to put an apartment for his mother-in-law in the shop and stated it would not be a second floor but in the attic

on attic trusses. At some point the mother-in-law would probably be put into an assisted living facility and the apartment would then only be used for company. He has woodworking equipment and likes to build things out of wood and because of this equipment and the vehicles they own they need to have a large shop to store everything inside. Mayor Williams closed the hearing at 7:25 pm.

Mayor Williams opened the Variance Hearing at 7:25 pm for 3125 Antelope. Building/Planning Official Morgan introduced the variance request and explained it is for a 3' variance to the front setbacks for a carport. Mrs. Morgan explained variances are permanent to the property and suggests granting a conditional use for this situation.

Chuck and Tana Pippin, 3125 Antelope, spent \$7,000 on concrete and realized they were closer to the street than they anticipated. The carport would not obstruct the view of anyone on either side. Mayor Williams closed the hearing closed at 7:29 pm.

Bill Neumiller, 4030 Prospector, stated he approached the City Council last year about paving the streets in the Sweetgrass Subdivision area. He is back tonight to ask the Council to consider hiring an engineer for ideas and possibilities and put it on a 5 or 10 year agenda for budget items. Public Works Director Bleth reported they discussed this with the engineers last year and the cost was over \$2.5 million without curb/gutter and over \$3 million with curb/gutter.

Cheryl Fulkerson, 39 Yucca, stated she is not the author of the anonymous flyer recently circulated around town. After reading city Ordinance No. 2009-01, which states no city employee may hold any political office in Colstrip city government including the office of council member, she contacted the Montana Attorney General's office and asked about Attorney General Opinion 47-19. She was advised that a Public Works Director nor Public Works Employee can serve as a council member. She was also advised an Attorney General's opinion carries the weight of the law unless overturned by a court or the legislature changes the law. They advised the position of being a city employee and council member are clearly a conflict of interest. Mrs. Fulkerson feels the city needs to follow the law.

Shawn Bullard spoke in support of continuing funding for the Schoolhouse History and Art Center.

Jim Atchison, 7405 Castlerock Lake Drive and representing the SouthEastern Montana Development Corporation, invited the Mayor and City Council to the Energy Open and thanked the city for their continued support.

Lu Shomate, Executive Director of the Schoolhouse History and Art Center, reminded the City Council of all the activities and programs sponsored by SHAC and requested continued funding from the City of Colstrip.

Louise Davenport, 7425 Castlerock Lake, voiced her support of the Schoolhouse History and Art Center.

Frank Barreto, 6608 Browning Drive, supports continued funding of the Schoolhouse History and Art Center. He stated SHAC is part of the community and feels SHAC is needed.

Rebecca Miller, 7428 Lakeview Court, was involved in the beginning with SHAC from 1988-1996. She explained the history and fund raising held to open SHAC and that getting city support was a huge blessing for SHAC. She asked for the continued funding of this resource.

**Unfinished Business:**

Councilperson Stewart does not have any major concerns with a mail ballot election but prefers the traditional voting at polling places. Councilperson Palmer stated the city has previously done a mail ballot and it was very successful and doesn't have a problem with it as long as people can vote on election day. Councilperson Palmer made a motion to request a mail ballot election for both the primary and general elections as long as Colstrip voters can vote on election day with a drop-off point in Colstrip. Councilperson Jankowski seconded the motion. Discussion: Councilperson Palmer explained he feels this is the right thing to do and it worked well last time. Councilperson Stewart feels the local polling places promote the spirit of community and the cost will be quite a bit more due to having both a primary and general election. Councilpersons Palmer and Jankowski voted in favor. Councilperson Stewart voted nay. Motion carried.

After meetings between the City of Colstrip, the Department of Environmental Quality (DEQ) and the city's engineers a final Administrative Order of Consent has been prepared by DEQ. DEQ's justification is if there is current technology that we need to use it, regardless of the financial impact to the city. Councilperson Palmer asked about the penalties on page 8 of the order. Attorney Ryder explained there are no penalties for prior violations but any violations that occur after July 1, 2011 will be subject to the penalty provisions.

**New Business:**

Councilperson Palmer moved to approve the variance request for 4416 Remington to allow a shop larger than allowed by the code with an apartment. Councilperson Stewart seconded the motion. Discussion: Councilperson Palmer asked if there is any way to make this a conditional use. Building/Planning Official Morgan stated she doesn't know how to make this a conditional use; the other similar situation requires before they sell the property it has to meet the use requirements which would mean building a home larger than the shop or tearing down the shop before the property is sold. Councilperson Stewart stated he feels the acreage area is unique and there are some good ideas in the proposal but feels this request is asking too much of the code without any compromise from the property owner such as adjoining the lots or building a smaller shop. He would like to see some other ideas or compromise from the property owner. Councilperson Palmer asked if Mr. Buchholz has a problem with a conditional use. Mr. Buchholz stated he promises there will be a house built on the lot. Councilperson Palmer moved to amend his motion to a conditional use. Councilperson Jankowski seconded. Discussion: Attorney Ryder suggested having Mr. Buchholz resubmit his request as a conditional use with guidelines for the city to consider. Councilperson Palmer rescinded his motion amendment and original motion. Councilperson Palmer moved to have Building/Planning Official Morgan work with Mr. Buchholz to develop a conditional use permit request and bring back to the City Council. Councilperson Jankowski seconded the motion. No discussion. Motion carried with all in favor.

Councilperson Jankowski moved to approve a Conditional Use permit for 3125 Antelope Drive to allow a carport 3 feet closer than the front setbacks. Councilperson Stewart seconded the motion. Discussion: Councilperson Jankowski stated this seems the most reasonable option. Motion carried with all in favor.

Councilperson Stewart moved to approve the contract with the Schoolhouse History and Art Center with the exclusion of Section XVIII. Councilperson Jankowski seconded the motion. Discussion: Councilperson Stewart stated Section XVIII is not warranted to have a voting member from the City Council. He served as an ex-officio member without voting privileges and if the council wants to be involved they can attend their meetings as they are open to the public. Councilperson Stewart also stated out of the three meetings of the city council he can think of that had a large public turnout, two of these have been support for funding of SHAC which proves it is loved by the community. Councilperson Palmer asked where this requirement came from. City Clerk/Treasurer Richards explained the appointment has been in previous contracts with SHAC and Paula Peplow was appointed as the city's representative, not a council member. Motion carried with all in favor.

Councilperson Stewart moved to approve Resolution No. 2011-R11 regarding contracts. Councilperson Jankowski seconded the motion. Discussion: Councilperson Stewart stands by his objection from the previous meeting that there should be clarification of the one year exclusion and that if the committee of the whole is formed maybe it should go before them. Motion carried with all voting in favor.

Councilperson Palmer moved to approve Resolution No. 2011-R12, forming a committee of the whole. Councilperson Jankowski seconded the motion. Discussion: Councilperson Palmer feels this is a wise thing to do. Motion carried with all in favor.

Councilperson Palmer moved to approve Rod's Handyman's bid of \$4,500 for the City Hall repair. Councilperson Jankowski seconded the motion. Discussion: Councilperson Palmer asked if this repair could be done in-house. Public Works Director Bleth stated it is possible but would not get done for awhile. Motion carried with all in favor.

Councilperson Palmer explained he asked for Ordinance 2009-01 to be put on the agenda since we have two city employees running for city office. He doesn't feel government should restrict who can run for office and there are conflicting attorney general opinions. Attorney Ryder explained employees can run for office but cannot serve if elected unless they resign their employment. The attorney general's opinion explained having two employees on the city council could effectively shut down city business. Attorney Ryder stated one option is to refer this matter to the voters. He also reported on a US Supreme Court ruling that says the public has the right to the office, not the individual office holder. Attorney Ryder stated from the court standpoint he is convinced the ordinance is proper. Councilperson Palmer made a motion to start the process to rescind Ordinance No. 2009-01. Councilperson Jankowski seconded the motion. Discussion: Councilperson Stewart stated the council is asking for a lot of trouble and opening pandora's box if this motion is approved. Councilperson Palmer doesn't have a problem putting this issue on the ballot. Attorney Ryder will prepare three documents for the next meeting: one to put it on the election ballot, one for the council to rescind the ordinance themselves and one to amend the charter to allow an employee to

serve on the city council. Mayor Williams stated the ordinance is good government and to rescind the ordinance is poor government. He is very much opposed to the council rescinding the ordinance. Councilpersons Palmer and Jankowski voted in favor. Councilperson Stewart voted nay. Motion carried.

**Administrative Matters:**

Councilperson Stewart reminded that the Public Works Committee needs to meet regarding the “snowbird” rate.

Councilperson Palmer would like to have a discussion on the elected official’s compensation. Mayor Williams explained this is usually discussed during the budgeting process.

**Adjournment:**

Councilperson Jankowski moved to adjourn the meeting. Councilperson Stewart seconded the motion. Mayor Williams adjourned the meeting at 9:05 pm.

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Michelle Richards, City Clerk/Treasurer