

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the Complaint	)	<b>SUMMARY OF FACTS</b>
Against the Bitterroot	)	<b>AND</b>
Building Association	)	<b>STATEMENT OF FINDINGS</b>

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The BFP Action Committee filed two complaints against the Bitterroot Building Association, alleging that as a political committee it violated Montana campaign finance and practices laws.

**SUMMARY OF FACTS**

1. In the November 7, 2006 election a ballot issue was submitted to the voters of Ravalli County. Commonly known as the “1 per 2 measure,” the ballot issue proposed adoption of an interim zoning regulation that would limit subdivisions within the county to a density of one dwelling per two acres, with limited variances permitted.
2. The Bitterroot Building Association is a trade and industry membership organization that supports the construction and building industry in the Bitterroot Valley area. BBA has been in existence since 1996. The organization has changed its name to the Bitterroot Building Industry Association, but it will be referred to herein as “BBA.”
3. In 2006, BBA had 170 members, and its total budget was \$203,371.74, which included the amount collected from donors and placed into its special issues fund (See Fact 13). The organization reported that it is normally funded through three primary sources: membership dues, “Home Expo” booth rentals and sponsorships, and “Tour of Homes” ticket sales and sponsorships.
4. BBA opposed the 1 per 2 measure and faxed a C-2 Statement of Organization to the office of the Commissioner of Political Practices (CPP) on September 21, 2006, identifying itself as an incidental political committee. The C-2 lists Karen Thompson as the committee Treasurer, Paul Wilson as the President, and Chris Palin as the First Vice President. At the time Wilson and Palin held the same titles with BBA, while Thompson was BBA’s Executive Director. The original of BBA’s C-2 was received at CPP on October 23, 2006.
5. On the C-2 form BBA checked a box indicating that it is incorporated. BBA is registered with the office of the Montana Secretary of State as a public benefit corporation

(under the name “Bitterroot Building Industry Association” – See Fact 2). Its current status is “good standing.”

6. BBA was originally formed in 1996 as the Bitterroot Chapter of the National Association of Home Builders. BBA filed Articles of Incorporation as a nonprofit, public benefit corporation whose purposes include:

- To associate the builders within the Ravalli County area for the purpose of mutual advantage and cooperation;
- To collaborate with all fields related to the residential building industry within the Ravalli County area for the benefit of the residential building industry as a whole;
- To promote a greater awareness of the residential building industry to the general populace of the State of Montana.

BBA filed Restated Articles of Incorporation in 1997, which are similar in substantive respects to its original Articles of Incorporation.

7. In 2006 BBA’s Mission Statement was the following:

“The Bitterroot Building Association is comprised of a group of professionals working cooperatively to enhance the integrity of our industry through education, community involvement, and quality construction.”

The Bitterroot Building Industry Association’s current mission statement is similar:

“The mission of the Bitterroot Building Industry Association shall be to unify and enhance the building industry in the Bitterroot Valley through education, community involvement, and quality construction practices.”

According to Karen Thompson, BBA was originally formed as a membership organization under a national chapter of building associations. Its mission, Thompson states, is to promote the building industry in the Bitterroot Valley area and to maintain the health of the building industry. As examples of BBA’s promotion of the building industry, Thompson cited home tours, fundraising, home expos, following up on association leads, and publishing a member directory.

8. According to Thompson, the 1 per 2 measure is the first ballot issue that BBA was involved with during Thompson’s tenure at BBA (Thompson is no longer Executive Director.) She said that BBA supported another ballot issue in 2002, prior to her beginning work at the organization, but she did not identify the ballot issue. CPP records show no registrations or reporting from BBA for state or local political activity since 2000, other than those reports related to the 1 per 2 measure described in this decision.

9. Residents for Responsible Land Use (RRLU) was formed as a ballot issue committee when it filed a C-2 Statement of Organization on September 27, 2006. Ramona Wagner was listed as the Treasurer. The C-2 stated that the purpose of RRLU was to oppose the 1 per 2 measure.
10. Marilyn Owns Medicine was the President of the Bitterrooters for Planning Action Committee (BFP Action Committee), a political committee that supported the 1 per 2 measure. On October 26, 2006, Owns Medicine filed a complaint against BBA on behalf of the BFP Action Committee, alleging that BBA published election materials on its website that did not include a disclosure statement required by § 13-35-225, MCA.
11. Phillip Taylor was the Treasurer of the BFP Action Committee. On November 2, 2006, Taylor filed a complaint alleging that BBA was not an incidental political committee, but was instead a principal campaign committee opposing the 1 per 2 measure. The complaint also alleges that BBA failed to properly report contributions it received opposing the 1 per 2 measure, and failed to comply with other filing and reporting requirements.
12. Jason Rice identified himself as Co-Chairman of RRLU. Rice was also a member of BBA. Karen Thompson described Rice as the “link” between BBA and RRLU. According to Rice BBA’s government relations group “helped spearhead” RRLU activities. Some of the meetings for RRLU were held at BBA offices in Hamilton, Montana.
13. BBA made the following contributions to RRLU:
  - \$10,000 on September 28, 2006
  - \$10,000 on October 10, 2006
  - \$17,000 on October 16, 2006
  - \$5,000 on October 23, 2006
  - \$5,000 on October 26, 2006
  - \$7,500 on November 1, 2006

The contributions to RRLU were derived from funds solicited by BBA from donors who were aware their donations would fund payments by BBA to RRLU to oppose the 1 per 2 measure. A letter from Paul Wilson, who at the time was President of BBA, was distributed to “members and friends of the building industry.” According to counsel for BBA, a copy of the letter was sent by email to the BBA membership, with 30 members receiving a mailed copy because they had no email address. The top of the letter contains the notation “Residents for Responsible Land Use, ‘No 1 per 2.’” The letter advises the reader that if they wish to contribute to the effort to defeat the 1 per 2 measure they could contact BBA for instructions on how to make a donation. Donors were specifically informed they were contributing to the effort to defeat the 1 per 2 measure. BBA kept the donations in a “special issues fund,” and then periodically made payments to RRLU from the account.

14. Owns Medicine's complaint alleges that when BBA posted its October 2006 newsletter on its website it neglected to include the attribution language required by § 13-35-225, MCA. Owns Medicine attached to her complaint a copy of page 4 of the newsletter, which includes the following message on the bottom right-hand corner of the page:

On November 7 vote against ballot issue "election to adopt interim zoning, limiting subdivisions to a density of one house per two acres."

There is no "paid for by" attribution language following the statement urging the reader to vote against the ballot issue.

15. Karen Thompson explained that BBA publishes a monthly newsletter in both hard copy and online formats. Hard copies of the newsletter are mailed to BBA members who request it or who do not have email access. Both the hard copy and online versions of the newsletter are entitled "Bitterroot Building News." The top of the first page of the newsletter contains the name "BBA -- Bitterroot Building Assoc.," and includes the address 501 N. 1st Street, Hamilton, MT 59840, BBA's telephone number and fax number, BBA's email address, and BBA's website address.

16. According to Thompson, one of her responsibilities was to format and publish both the hard copy and online versions of the newsletter. She explained that she had made some formatting changes in the online version of the October, 2006 newsletter, and in the process the attribution language that should have followed the campaign message on page 4 was inadvertently moved behind other text blocks, thereby obstructing the language. Thompson claims that she did not notice the lack of attribution language in the online version until the complaint was filed on October 26, 2006, and by that time it was too late to correct the omission. Thompson provided a copy of what she said was the hard copy version of the October, 2006 newsletter that was distributed to some BBA members. Page 4 contains the same message that is in the online version, urging a vote against the 1 per 2 measure, followed by the language:

"Said [sic] for by Bitterroot Building Association, 501 N 1st Street, Hamilton, MT 59840, Karen Thompson, Treasurer."

The online version of the October newsletter was posted for the entire month of October, 2006, without attribution language.

17. Phillip Taylor's complaint alleges the C-2 Statement of Organization filed by BBA does not indicate whether BBA is a corporation, and that BBA is not registered with the Secretary of State. The complaint alleges BBA was actually a ballot issue committee and not an incidental political committee. Taylor's complaint also claims that BBA failed to report and disclose the contributions it received to fund the expenditures that BBA made to RRLU to defeat the 1 per

2 measure. Finally, the complaint alleges that BBA violated filing requirements by not filing the original of its C-2 within a reasonable time after faxing the C-2 to CPP.

18. On October 20, 2006 BBA faxed a C-4 incidental political committee financial disclosure report to CPP for the period from September 21 to October 19, 2006. The report listed no receipts or contributions, and disclosed the \$37,000 combined total in expenditures that BBA made to RRLU through payments on September 28, October 10, and October 16, 2006 (See Fact 13). BBA filed the original of the C-4 with CPP on October 23, 2006.

19. On October 31, 2006 BBA faxed an amended C-4 to CPP. On November 1, 2006 BBA faxed a second amended C-4 to CPP. The originals of both amended C-4's were received at CPP on November 2, 2006. Both amended C-4 reports cover the reporting period from September 21 to October 21, 2006, and include a listing BBA's receipts for the reporting period. The second amended C-4 explains that a \$5,000 cash transfer reported on the first amended C-4 had been "erroneously" reported.

20. The amended C-4 reports disclose 20 receipts from 18 different contributors (several of whom made two contributions during the reporting period). The reports also disclose the names and addresses and, where appropriate, the occupations and employers of the contributors. The report disclosed a \$150 in-kind contribution from BBA, described as: "portion of October newsletter creation, printing, publication, and mailing."

21. No contributions are listed in a section of the amended C-4 reports designated for listing earmarked contributions. A notation typed on a section of the amended C-4 designated for corrections to prior reports states: "Decision made to over-report all contributions to BBA 'special issues' account, even though they do not satisfy the definition of 'earmarked.'"

22. BBA faxed a C-4 to CPP on November 21, 2006. The original was received at CPP on November 24, 2006. The report, which covers the period from October 20 to November 20, 2006, was designated by BBA as its closing report. The closing C-4 discloses seven more receipts from six contributors (one of whom made two contributions during the reporting period), and reports \$17,500 in combined total expenditures reflecting BBA's three additional contributions to RRLU dated October 23, October 26, and November 1, 2006. The report does not list any earmarked contributions.

23. BBA's bank records show that between September 13 and November 14, 2006, BBA received 27 contributions that BBA designated for placement in its special issues fund to support the effort to defeat the 1 per 2 measure. Most of the contributions BBA received were deposited into BBA's bank account within five business days of receipt, with the exception of the following:

Contributor	Amount	Date Received	Deposit Date
Dorene Sain	\$500.00	9/26/06	10/19/06
Dorene Sain	\$400.00	9/27/06	10/12/06
Stewart Excavating	\$200.00	10/19/06	10/31/06
MT Build. Ind. Assoc.	\$1,000.00	10/27/06	11/09/06

## STATEMENT OF FINDINGS

### Reporting and Filing Violations

#### Incidental Committee Status

Phillip Taylor’s complaint alleges that BBA was a ballot issue committee rather than an incidental political committee. 44.10.327(1), ARM, lists three types of political committees:

- (a) principal campaign committee;
- (b) independent committee; and
- (c) incidental committee.

A principal campaign committee is specifically organized to support or oppose a particular candidate or issue. (44.10.327(2)(a), ARM.) A ballot issue committee, which is one type of principal campaign committee, is specifically organized to support or oppose a ballot issue. (44.10.327(a)(ii), ARM.) An incidental political committee is defined as:

. . . a political committee that is not specifically organized or maintained for the primary purpose of influencing elections but that may incidentally become a political committee by making a contribution or expenditure to support or oppose a candidate and/or issue. (44.10.327(2)(c), ARM.)

“Primary purpose” is determined based on criteria including allocation of budget, staff or members’ activity, and the statement of purpose or goals of the individuals or person. (44.10.327(3), ARM.)

BBA was not specifically organized, and it is not maintained, for the primary purpose of influencing elections. BBA was not organized to specifically support or oppose a ballot issue. BBA’s Articles of Incorporation and its Mission Statement represent that its main purpose is to support and strengthen the residential building industry in the Bitterroot Valley area. (See Facts 2, 6, and 7.) Although BBA allocated a substantial portion of its 2006 budget to oppose the 1 per 2 measure, the funds used to do so were derived from contributions solicited from donors and placed into BBA’s special issues fund. No evidence was disclosed tending to show that BBA typically allocated significant portions of its budget to influence elections. Former BBA Executive Director Karen Thompson recalls only one other ballot issue that BBA took a position on, in 2002. BBA was properly registered as an incidental

political committee.

### Questions Regarding BBA's C-2

Taylor's complaint alleges that BBA's C-2 filing does not state whether BBA is a corporation. Contrary to that assertion, on its C-2 BBA checked the box indicating that it is incorporated. (See Fact 5.)

Taylor also alleges BBA did not file the original of its C-2 within a reasonable time after fax-filing the C-2. As described in Fact 4, BBA fax-filed a C-2 Statement of Organization with CPP on September 21, 2006, and then filed the original on October 23, 2006, more than a month later. CPP permits fax-filing of statements and reports, but the original report must be filed within five days after the fax transmission (excluding Saturdays, Sundays, and holidays. 44.10.401(2)(c), ARM.) BBA's original C-2 was not filed within the time required.

### Earmarked Contributions

BBA failed to report the contributions that it deposited into its "special issues fund" as earmarked contributions, as required by 44.10.519(2)(a), ARM.

An earmarked contribution is one that is "made with the direction, express or implied, that all or part of it be transferred to or expended on behalf of a specified candidate, ballot issue, or petition for nomination." (44.10.519(1), ARM.) According to 44.10.519(2)(a), ARM, an "intermediary" political committee (such as BBA) that receives an earmarked contribution shall report it as such, and shall report the name and address of the political committee for which the earmarked contribution is ultimately intended. When transferring an earmarked contribution the intermediary political committee shall report it as an expenditure, pursuant to 44.10.531, ARM, and shall inform the political committee receiving the earmarked contribution of the full name, mailing address, occupation, and place of business, if any, of the original contributor. (44.10.531(b), ARM.) BBA failed to comply with these requirements.<sup>1</sup>

### Depositing Contributions

§ 13-37-207(1), MCA requires all funds received by a campaign treasurer to be deposited within five business days following receipt of the funds. Although BBA complied with the law with respect to the majority of the contributions it received, the four contributions listed in Fact 21 were deposited into BBA's account more than five business days after their receipt.

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<sup>1</sup> BBA filed an amended C-4 on November 2, 2006, listing individual contributors and providing most of the information required by 44.10.519, ARM. However, BBA claimed in a typed note that the individual contributions it received that were placed in a fund to finance contributions to RRLU do not meet the definition of "earmarked" contributions. (See Fact 20.) And BBA did not comply with the other requirements of the rule.

### Other Reporting Violations

BBA failed to report as an in-kind contribution to RRLU the value of the meeting space BBA provided to RRLU on several occasions. (See Fact 12.) BBA properly reported as an in-kind contribution from BBA the value of the portion of the costs associated with the publication and mailing of the October newsletter, which urged a vote against the 1 per 2 measure. (See Facts 14 and 20.) BBA should also have reported as an expenditure the value of the preparation and mailing of a letter to members soliciting funds to be paid to RRLU to oppose the 1 per 2 measure. BBA mailed the solicitation letter to at least 30 of its 170 members, and emailed the letter to the rest of its members. (See Facts 3 and 13.) The value of the staff time to prepare the letter, postage, envelopes, computer costs, and related expenses should have been reported as well.

### **Lack of Attribution Language**

Complainant Marilyn Owns Medicine alleges that BBA violated § 13-35-225, MCA, which provides in relevant part:

**Election materials not to be anonymous -- statement of accuracy.** (1) All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer. (*Emphasis added*).

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Owns Medicine alleges that BBA's website contained political materials opposing the 1 per 2 measure that did not have the attribution language required by § 13-35-225, MCA.

BBA published an online version of its October, 2006 newsletter containing the following message on page 4:

On November 7 vote against ballot issue "election to adopt interim zoning, limiting subdivisions to a density of one house per two acres." (See Fact 14.)

Although the online version of the newsletter did not contain language indicating who paid for the materials, Karen Thompson produced a hard copy of the newsletter that contains the name and address of BBA and its treasurer, Thompson. (See Fact 16.) The online version of the newsletter was available for anyone to read, so the exemption in § 13-1-101(7)(b)(iii), MCA for membership communications does not apply. (See *Matter of the Complaint Against Montana Education Association, et al.*, Summary of Facts and Statement of Findings (Oct. 5, 2006).) While the online version of



BBA's newsletter should have contained attribution language disclosing the name and address of the person who paid for the communication, I have concluded that under the circumstances this violation should not be prosecuted.

First, I believe the omission of the attribution language was unintentional. Karen Thompson explained that the language may have been inadvertently pushed behind other text blocks, thereby obstructing the message, when she formatted the online version of the newsletter. (See Fact 16.)

In addition, the first page of the newsletter contained most of the identifying information required by § 13-35-225, MCA, including the name, address, phone number, and other contact information for BBA. The only missing information was the name of the committee's treasurer, Karen Thompson. In my view the fact that the name of the treasurer was not included did not deprive the public of notice regarding which political committee paid for the campaign materials and how that committee could be contacted. (See Matter of the Complaint Against Yes CI-97 Stop Overspending Montana, et al., Summary of Facts and Statement of Findings (April 15, 2008).)

### **CONCLUSION**

Based on the preceding Summary of Facts and Statement of Findings there is sufficient evidence to conclude that the Bitterroot Building Association, currently known as the Bitterroot Building Industry Association, violated Montana campaign finance and practices laws and rules.

Dated this 6<sup>th</sup> day of January, 2010.



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Dennis Unsworth  
Commissioner