

MISSOULA REDEVELOPMENT AGENCY
CONDENSED SPECIAL BOARD MEETING MINUTES

May 24, 2012

FINAL

A meeting of the Board of Commissioners of the Missoula Redevelopment Agency was held at the MRA Conference Room, 140 West Pine, Missoula, MT 59802 at 12:00 PM. Those in attendance were as follows:

Board: Karl Englund, Rosalie Cates, Dan Kemmis, Ruth Reineking, Nancy Moe

Staff: Ellen Buchanan, Chris Behan, Jilayne Lee, Tod Gass, Juli Devlin

Public: John Adams, OPG Brownfields; Jon Pederson, AMEC; Kevin Mytty, MRP; Ed Wetherbee, MRP; Becky Cloninger, MRP; Helena Maclay, Attorney for MRP; Erin McCrady, Dorsey-Whitney (by phone); Caitlin Copple, City Council-Ward 4

CALL TO ORDER

12:00 p.m.

APPROVAL OF MINUTES - None

PUBLIC COMMENTS & ANNOUNCEMENTS - None

ACTION ITEMS

Brownfields RLF – Additional Loan Request (Buchanan)

Buchanan said in February the Board had a lengthy discussion in regards to the proposed Brownfields Revolving Loan Fund (RLF) Amendment, requesting an additional \$250,000 for the Millsite cleanup. This amount would be added to the existing loan amount. The City and Millsite Revitalization Project (MRP) are co-borrowers on the loan. She said there are concerns whether the tax increment that is coming from the Millsite property, has the ability to amortize that additional burden. She said the additional loan request would increase the existing loan amount to \$1.775 million. Buchanan said there is adequate

revenue to amortize the loan at interest only which is in place now through year 2021, but the terms of the loan agreement require that, after 2021, the loan is amortized to pay principal and interest for a ten year period and the payments will increase considerably. During the February Board Meeting, Buchanan said the Board requested a few conditions to be added before approval. One of the conditions was an MRP guarantee of any deficiencies in tax increment capacity at the time that amortization is the principal and interest limited to the \$250,000 only, and not the entire loan amount. She said the second condition was for MRP to notify the Montana Department of Revenue (DOR) once the Voluntary Cleanup Program (VCP) is complete. Buchanan said the third condition was MRP must cover up to 20% of the additional loan amount of \$250,000, not to exceed \$50,000, if the \$250,000 is not adequate to complete the actions required by the VCP. The last several months, Buchanan said, MRP and MRA have been revising documents to reflect the conditions and to make them more current. She said this process started in 2006 so there were changes that needed to be made. Buchanan said this is the fifth amendment to the loan agreement. She said the Board expressed concern as to whether this was an adequate amount of money to clean the property and close out the VCP. Buchanan said Jon Pederson from AMEC was asked to attend this MRA Board meeting to address any concerns and answer questions. Erin McCrady with Dorsey-Whitney was on the phone to answer questions or discuss wording of the legal documents. Buchanan said if the Board does approve the amendments then it goes to the Brownfields Committee and from there goes to City Council. Englund said he understood that the larger concern of the Board was if this last loan amount was adequate to clean up the property. Englund proposed that Jon Pederson explain the process and costs.

Pederson said there are on-going construction activities and the last major component of the VCP is the methane abatement. He said the methane abatement plan was approved last summer by the Department of Environmental Quality (DEQ) and MRP started construction on the methane abatement components last fall. He said the methane abatement plan has several components. Since last fall, he said, the wood waste south of the ball park has been excavated and removed to eliminate the methane source. He said about 15,000 pounds of wood waste was removed and either sent to Eco Compost or used as backfill. He said there was a passive vent trench that was installed last fall between the western side of the ball park and the Silver Park parking area to vent the methane. Pederson said trail lighting was also added and was designed to camouflage the methane vent risers. He said the wood waste has been excavated and backfilled and repairs have been made to the parking area. Pederson said MRP is approaching the end of funding for that portion of the project. The remaining portions of the project he said include installation of two more vent trenches intended to protect the area for future development. He said the other two items remaining to this project include installation of a passive vent system to connect the vent trenches and provide continuity to intercept or cut off methane passage and installation of utility trench plugs in existing utilities. He said existing utilities trenches are often backfilled with materials that can easily convey methane to the surface because the backfill that is used is typically more porous such as gravel. In these areas, he said they propose to excavate down and around the pipes and then use a clay plug. Pederson said these are all items required to complete the methane abatement portion of the VCP.

As part of the on-going methane monitoring, he said the state requires monthly and quarterly reports showing the levels of methane for about one year as part of the completion of the VCP. Pederson said he anticipates the completion of the VCP report 60 days after the construction is complete which is dependent on the RLF funding.

Englund asked if the completion of the VCP wasn't done for 18 months, would the cost of monitoring be increased. Pederson said it may increase slightly but they have compensated for that in line item 'I' in the Exhibit F. Line item 'I' is used for long term methane monitoring. Buchanan asked how a years worth of monitoring coincides with the VCP being completed by August 2012. Pederson said if the VCP is completed by August of 2012, AMEC would be monitoring through that time plus in the operations/maintenance portion of the methane abatement plan there are provisions to continue monitoring prior to DEQ approval. Buchanan asked if that will stop the VCP from being complete by August. Pederson said no. Buchanan said completing the VCP is a critical bench mark. Pederson said "completion" doesn't mean monitoring. In the report to DEQ, Pederson said, "completion" means completion of the constructed elements. Cates asked what DEQ does with the monitoring data. Pederson said the reports are sent to DEQ to show the decreasing amount of methane and if the reports do not show a decrease then provisions are made to optimize the design so that the methane will evaporate into the air.

Cates asked if Silver Foundation was more apt to sell the property to MRP if there was a clean environmental bill of health. Pederson said that was correct. He said if all elements are constructed and installed by August 2012, then DEQ allows 60 days from then to complete and submit the report. The report shows DEQ that all the work has been completed for the VCP and asks for DEQ's approval of the VCP components. Pederson said DEQ then would provide an approval letter or essentially a clean bill of health.

Cates asked Pederson if he could provide a timeline. Pederson said the timeline depended on the funding but if MRP were to be awarded the loan and construction was done in August 2012.....Kevin Mytty interjected and said completion of the VCP by the end of June or middle of July.....Pederson continued to say, if the completion was done for example by July 15th then MRP would have 60 days from the completion date to prepare and submit the report to DEQ. Pederson said after DEQ reviewed the report, DEQ would then issue a letter to MRP. Cates asked if DEQ was tied to a timeline. Pederson said no. Cates asked what his experience was with DEQ. Pederson said his experience with DEQ is all over the board. He said it could be 6 months before MRP receives a letter from DEQ. Englund asked if this was an optimistic guess. Wetherbee said they're not real sure what the timeline would be. He said it could be 30 days. Englund asked if the requirements to complete the VCP are met and the year worth of monitoring is complete then what happens. Pederson said assuming all elements of the VCP are complete then they will monitor the levels of methane for one to two years but the monitoring won't prevent DEQ from saying the VCP is complete.

Cates asked at what point a buyer would be motivated to buy the property. Pederson said he thinks that would be when the DEQ approves the VCP. Buchanan asked if a bank would approve once the VCP is complete and Pederson said yes. Buchanan asked when

the monitoring of the methane levels start. Pederson said the monitoring is taking place now on a monthly basis and once the VCP is complete, will transition to quarterly monitoring. He said in order for the monitoring to discontinue the reports must show consecutive quarters in which the methane is measuring under a certain level, and the level is established by DEQ. Pederson said MRP and AMEC anticipate this monitoring process to take up to two years. Cates asked about the \$16,500 used for long-term methane monitoring and asked how much monitoring that would cover. Pederson said this would cover approximately two years worth of monitoring. Cates asked for clarification between the monitoring that was done prior to the VCP completion for \$2,500 and the monitoring that was done two years after the VCP completion for \$16,500. Pederson said that was correct, that AMEC was doing monthly monitoring right now but would move to quarterly monitoring. Pederson said a couple of the remaining cost items included legal fees and zone backfill material to bring the ground up to an elevation above the flood plain. He said WGM Group designed a grading plan which AMEC estimated the material slightly less than what was actually needed. Moe asked if the material cost included the purchase, hauling, installation, and compaction. Pederson said the cost was only for the material. He said the hauling, installation, and compaction was a work item in the existing contract. Buchanan said these items were being paid from the existing ARRA Grant. Mytty said the land would be graded and seeded, maybe not grass, but that was part of DEQ's plan and MRP will have that done by the middle of July.

Pederson said there were three contingency items left which included general site clean up, long term methane monitoring and zone excess unsuitable soils. He said the unsuitable soil was soil that contained too many minerals as well as wood waste. Pederson said these funds would be used to manage the unsuitable soils whether the soils were hauled off or used to fill in green spaces. Moe asked if the \$42,000 for unsuitable soils was an estimated number since they didn't know whether they were going to remove or use the soil. Pederson said the amount is based on estimated trucking costs to haul the material to where it can be used as surface fill or to a landfill. Moe asked if this was for excavation as well as hauling. Pederson said the material has already been excavated.

Moe said it was her understanding the funds used for contingency items would need to be pre-approved by MRA before MRP could utilize them, although the written material shows that once the loan agreement is approved then the alternates are also approved. Buchanan said it was discussed at the February meeting that if the additional loan amount is approved, then it must be spent on VCP expenses first. She said once the VCP items are complete then MRP has to come back to the Board for approval to use the remaining loan for contingency items. Discussion ensued.

Buchanan asked how many numbers in the budget were concrete numbers. Pederson said line items A, B, C, D, and F were all bid prices they had received from LS Jensen.

- A) Passive vent trench No. 2
- B) Passive vent trench No. 3
- C) Installation of passive vent wells
- D) Trench plug installation
- F) Zone A backfill material

Cates asked for clarification that once the VCP is complete then the contingency items are brought to the Board for approval. Englund said that's how he understood it. Maclay said it was her understanding if MRP runs into problems or issues are discovered while completing the VCP then the alternate funds can be used towards that without first going to the Board. Englund asked McCrady if MRA has the ability to amend Exhibit F if something were to be added to the current costs. McCrady said yes the agreement is written so that if there is an overage in any VCP category then MRP can use the contingency funds.

Cates asked if completing the VCP would initiate Silver Foundation to close on the loan. Maclay said closing the VCP is a very important element. Maclay said MRP has received numerous extensions which are determined by the seller. Maclay said she believes MRP's current extension expires July 31st 2012. She said a notice needs to be provided to the City as to whether MRP will purchase the property by June 1st. Maclay said the seller has altered the deadline but June 1st is current as of today. Cates asked if MRP felt confident in providing the notice with or without the completion of the VCP. Maclay said MRP and Silver Foundation have discussed the purchase without closing on the VCP. She said she is not certain as to what Silver may require for seller financing. She said the requirements given by Silver have been modified throughout the process. Cates asked if the completion of the VCP or the RLF funds being provided were a part of those discussions. Maclay said Silver has engaged an environmental counsel and is revising the purchase and sale agreement for seller financing. She said she is unsure what the wording may entail but thinks it will focus on mandatory indemnities that are unacceptable to MRP. She said MRP has a long-term lease on the property, which MRP, with cooperation from all parties, is cleaning up. Maclay said MRP would like to purchase the property with the use of seller financing but has no assurance as to what Silver will require. Maclay said Kirby Christians, attorney for the Silver Foundation, promised MRP the drafts to the new agreements seven days ago. Cates said she felt that MRA is and has been contributing towards the transfer of the title. Maclay said every day Silver delays, MRP works toward completing the VCP which she believes is Silver's objective. Wetherbee said MRP is working towards the VCP completion and making this project work. He said MRP continues to plug along even though it's been challenging.

Buchanan asked if the conditions of the sale of the property are acceptable and additional loan money is approved then is MRP in a position to close or are there other obstacles. Maclay said Silver continues to grant the extensions as MRP continues to do the work and spend the money. Cates said if the construction is complete by July 21st is there any evidence as to whether or not Silver will grant another extension. Maclay said Silver controls the extensions.

Myty asked Pederson what the monitoring results were on the first trench that is already installed. Pederson said the first trench was completed about 2 ½ weeks ago but the connection from the trench to the methane risers has not been installed and he expects to do this the first week of June. He said the first methane monitoring results would probably be available mid-June. Buchanan asked if it would be several months before there was a

methane monitoring trend. Pederson said that was correct. Buchanan asked Pederson if the figures shown in Exhibit F were adequate to complete the VCP. Pederson said with this additional RLF money he anticipates MRP will be able to complete the rest of the components required for the VCP however, it's up to DEQ to decide.

Cates asked in terms of Silver selling the property to MRP, was completing the VCP and being approved by DEQ the main factor. Maclay said the current buy/sell agreement which has been extended has a contingency period which expires July 31st. She said one of those contingencies has been the environmental condition of the property. Wetherbee said MRP is not interested in investing in this property unless there are certainties including the VCP completion, the development agreement of adding streets such as Wyoming Street is complete and the trestle is in place. He said those timelines are not coinciding as MRP hoped.

Cates said MRA's thoughts were this additional \$250,000 would help in closing the VCP, which in turn would then facilitate transfer of the property. Mytty said Silver's primary issue is completing the VCP. He said if it takes two years to monitor, at least the work is done. He said if that were the case then confirmation of the VCP and closure would be 1-2 years away depending on the monitoring results. Cates asked if MRP was willing to purchase the property if the monitoring isn't complete and conformation isn't received. Mytty said yes MRP was going to try. He said this process has taken so long and now MRP is being pushed against a deadline to close. He said that's a decision that Wetherbee and he will have to make.

Kemmis said "let's assume the worst case scenario". He said if MRA enters into this agreement, allows for the additional loan, then negotiations between MRP and Silver fall apart and MRP decides they can't continue sending money, then where will MRA be. Kemmis asked what protection the City has with this agreement as far as requesting MRP to pay back the \$250,000. Buchanan said someone will hold the lease, whether it's MRP or someone else, but MRP right now is obligated to pay the deficiencies. She said if all else fails then MRA will have the chance to build a park.

Englund asked for clarification if MRA buys the property then MRA can build a park. Buchanan said MRA has a sub-lease on the park property until 2033. She said if MRP doesn't buy the fee, then MRP can hold the lease until 2033 when the lease expires. At that time, Buchanan said if MRP doesn't buy the fee then MRA has the option to buy or MRP and MRA can buy it jointly. She said that regardless the park land is the City's. Englund asked if the \$1.525 million and the additional \$250,000 will be paid by the increment. Buchanan said yes the payment on the RLF loan is strictly from the increment being generated by the ground. Englund asked if the increment does not cover the additional \$250,000 then is MRP responsible. Buchanan said that was correct but there was no reason to assume the tax revenue wouldn't cover the additional \$250,000. She said there will be adequate tax revenue in 2022 when the principal and interest are amortized over a ten year period. Buchanan said the City is now paying \$29,000 [actual is about \$20,000] in interest only and the ground itself is generating approximately \$43,000 [actual is about \$41,000]. She said in 2022 when principal and interest are amortized, the

payments will be \$191,000. Buchanan said it is anticipated that once the land is cleaned up then the value of the land will increase which will also increase the tax revenue. She said there is that possibility that the loan won't be paid back in full and that is the risk that the City will take to get the land cleaned up.

Reineking said there is the possibility that the tax revenue will pay for the loan assuming there are no holdbacks to platting, planning or building on this land.

Reineking asked if MRP was asking for the approval of \$250,000 now even though the amount to complete the VCP was \$180,000. McCrady said yes they were asking for the approval of the \$250,000 but any funds needed for contingency purposes would have to come back to the Board for approval. She said if the \$250,000 is approved by City Council now then the contingency amounts won't have to be approved by City Council every time MRP requests them. Wetherbee said MRP would prefer a streamlined process when it comes to utilizing the contingency funds.

Cates said the loan agreement anticipates bonding capacity but she wasn't sure where the \$280,000 was calculated in section 2 page 6 of the loan agreement. Buchanan said when the original loan was made it was \$1 million. She said the original grant from EPA to the City was \$1 million which required a 20% match. Buchanan said the Missoula Area Economic Development Corporation (MAEDC) provided the 20% (\$200,000). Out of the \$1.2 million, Buchanan said, a small amount was set aside for administrative purposes, while the majority was set aside for brownfields projects which at the time there were no brownfields projects other than the Millsite project. She said the first monetary amendment to this agreement was to place the additional \$125,000 into the Millsite loan but MAEDC required if project bonds were issued then their \$200,000 would be repaid first to replenish the RLF loan funds since it was interest only. Because of this, she said, the loan funds weren't increasing quickly. She said another \$400,000 was added because a grant was written which amended the infusion of funds from EPA. Buchanan said the city is able to use program income to provide the matching funds for brownfields grants.

Cates asked about the importance of platting and when that might happen. Buchanan said the platting will happen when MRP is in a position to sell lots. Englund said once the property is platted then taxes go up. Cates said on page 20 section J of the loan agreement, it states "immediately upon satisfaction of the plat conditions with respect to the Millsite Property, MRP shall record plats with the Missoula County Clerk and Recorder". Cates asked what the plat conditions are. Buchanan said there are several pages of conditions but the most significant conditions include resolving the trestle issues so there is access from the east, VCP completion, methane abatement, etc. Cates asked if the conditions were specific to the site. Buchanan said yes. She said there is a preliminary plat and these conditions have to be completed in order to have a permanent recorded plat. She said MRP would plat in two phases.

McCrady suggested there be a subtotal in Exhibit F after the list of required items for the VCP. She said that way it's clear as to what is budgeted for the VCP completion and what is budgeted for the alternates or contingencies.

Wetherbee asked what the process was between now and when the funds could be used. Buchanan said once the loan was approved through MRA then it would go to the Brownfields Committee and City Council to approve the resolution and the note. Adams said the Brownfields Committee could approve as early as the week of the 14th of June. He said depending on MRP's confidence, they could start spending the money now and then be reimbursed once City Council approves. Wetherbee asked if anyone had concerns that this may not be approved. Buchanan said to keep in mind there were four new council members who may not know the history of the Millsite. Copple said the council members had a few strategic planning sessions to review the priorities and she said the Millsite was one of them.

REINEKING: I MOVE THAT THE MRA BOARD APPROVE THE FIFTH MISSOULA BROWNFIELDS CLEANUP REVOLVING LOAN FUND AMENDED AND RESTATED LOAN AGREEMENT AND MAKE A RECOMMENDATION TO THE CITY COUNCIL THAT IT APPROVE THE AMENDED AGREEMENT ALONG WITH THE FOURTH RESTATED NOTE AND FIFTH NOTE RESOLUTION AS MODIFIED TODAY.

Kemmis seconded the motion. No discussion. Motion passed unanimously.
(5 ayes, 0 nays)

Silver Park Phase IV – Design Request for Qualifications (Behan)

Behan said MRA Staff issued a Request for Qualifications (RFQ) for design of the fourth phase of constructing Silver Park. He said four responses were received from local firms including PCI, DJ&A, Morrison-Maierle, Territorial-Landworks/ CTA Architects-Engineers. Behan said the request was slightly different than what is standard because of the obstacles that have occurred in Silver Park. Behan said MRA wanted to minimize the learning curve and have a firm or team of firms who are familiar with the site and know what the capabilities are of local contracting firms. He said over the years in terms of landscaping, there are fewer and fewer firms who are willing to do irrigation design. He said the review committee felt it was necessary to choose a firm that would do a large scale irrigation design. He said botanical expertise was also valued. He said MRA preferred to have a firm who not only had creative ideas but could make quick decisions especially given the issues in that area. Behan said the firm chosen for on-site construction engineering, would also be the lead firm. He said the review committee consisted of Ellen Buchanan (MRA), Alan White (Parks Department), and himself. Behan said they agreed to recommend Territorial-Landworks in combination with CTA Architects-Engineers to move forward with phase IV. He said CTA has in-house expertise to do all the engineering. Behan said MRA's recommendation is to begin project negotiations with Territorial-Landworks. Behan said he hopes to bring scope of services and cost estimates to the next Board meeting. Buchanan said she thought the RFQ would have been more competitive than what it was. She said there was no need for interviews since all three committee members agreed that TLI's response was so strong that interviewing the others would not change their recommendation.

There was discussion as to whether or not a motion was needed. Behan said the purpose of the motion was to give MRA Staff approval to begin negotiations so they could bring scope of services and cost estimates to the next MRA Board meeting.

CATES: SO MOVED.

Moe seconded. No discussion. Motion passed unanimously.
(5 ayes, 0 nays)

ADJOURNMENT

Meeting adjourned at approximately 1:30 p.m.

Respectfully Submitted,

Juli Devlin