

MISSOULA REDEVELOPMENT AGENCY

CONDENSED BOARD MEETING MINUTES

August 2, 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, Ruth Reineking, Rosalie Cates, Daniel Kemmis

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

Public: Erin McCrady, Dorsey & Whitney, LLC; Alex Taft, Ward 3 Council Member; Ed Wetherbee, Millsite Revitalization Project (MRP); Helena Maclay, MRP Attorney; Kevin Mytty, MRP, Mayor John Engen, Mayor

CALL TO ORDER

12:00 p.m.

APPROVAL OF MINUTES - None

PUBLIC COMMENTS & ANNOUNCEMENTS - None

ACTION ITEMS

Old Sawmill District (Millsite) – Working Group Recommendations (Buchanan)

Englund thanked the Old Sawmill District (OSD) Working Group for their time and effort these past few weeks. He asked Cates to start the meeting conversation and asked McCrady, Dorsey & Whitney, LLC, to talk more about the specifics.

Cates said the Working Group had asked her to start the meeting by explaining the format of their recommendation process. She thanked MRP on behalf of the City and City agencies for opening opportunities in the OSD. She said the City recognizes the partnership with MRP and wanted to emphasize the anticipation of a long term partnership. Cates said the City is committed to seeing a high quality development on the Millsite. Cates felt it was necessary to explain why McCrady was chosen to talk about the City's

recommendations. Cates said MRP should not feel as if the City is backing away from the partnership but felt it was easier and less complicated to have one person speak for the City.

McCrady said Buchanan distributed a memo prior to today's meeting summarizing the Working Group meeting that was held on July 31, 2012 so everyone has had an opportunity to read it. McCrady said the Working Group met for a lengthy period to discuss the MRP memo which outlined MRP's detailed proposal for moving the Millsite Project forward. She said there were a number of items in the proposal that the Group felt were overly complicated and placed the City and MRA in a position outside of their normal project development parameters. McCrady said the Working Group is proposing to the MRA Board that they proceed with one of two options as outlined in the memo.

Options:

1. MRP does not require payment for the park property or parking rights, in exchange for which the City will pay for the construction of Wyoming Street. MRA and MRP will continue work on a simplified parking rights agreement which will benefit both parties. Any future use of tax increment revenues for the Old Sawmill District project will be considered by the MRA on a project by project basis for specific building construction projects which will create new tax increment.
2. The City purchases the park property from MRP for \$662,500, continues to work with MRP on a simplified parking rights agreement which will benefit both parties and does not pay for the construction of Wyoming Street. Any future use of tax increment revenues for the Old Sawmill District project will be considered by the MRA on a project by project basis for specific building construction projects which will create new tax increment.

McCrady said these are the two options being presented. She said there is a fairly tight timeline between scheduling this item on the City Council agenda and having it approved by the time the City and MRP want to close on the land.

Buchanan said there are two opportunities to have this presented to City Council. She said one would be a preliminary resolution referred on August 3, presented to Administration and Finance Committee (ANF) on August 8, and then to City Council on August 13. She said there would be a second opportunity in August to get the deal finalized before the September 17 deadline for MRP to purchase the fee.

McCrady said she hoped the two groups could agree on an option so they could move forward with the completion of the agreements before the closing date of September 17, 2012.

Mytty said MRP and MRA have been working on this project for quite some time. MRP was hoping to start where they left off four years ago but realizes now that it's not going to work because of the current market. He said MRP had planned on using increment from

the OSD property to bond the whole infrastructure and pay MRP back for previous expenses so MRP could purchase the land. First, he said, a portion of the money from the bond was going to be used to pay off Silver Foundation. He said that's not feasible at this point in time. MRP, Mytty said, has negotiated a loan agreement with the bank that was predicated on the \$889,000 MRP was anticipating upon the sale of the property. He said he thought the bank would be willing to trade that option for the completion of Wyoming Street. He said MRP will not have the ability to recapture a portion of the three or more million dollars that MRP has spent, to fund the land payment. At the time of the closing on September 17, Mytty said MRP will be paying the principle and interest on \$2.5 million, which he said is a scary thought but that's the only option.

MRP has been brainstorming ideas of how the increment from the OSD property can be shared between MRP and the City, Mytty said, as development occurs. Even though there's no formal commitment, Mytty said he hopes he can trust MRA when they say MRP can come back to the board and request funds for MRP's up front costs and for construction of future infrastructure. He stated that the construction of other infrastructure, such as Silver parkway, should happen sooner rather than later to access Silver Park and the most desirable land fronting the Park.

Mytty said he feels that MRA has locked into two options which don't include the option of sharing the increment. Mytty said he hopes that it is memorialized that MRP be eligible for future funding. Mytty said MRP is grateful that the City is willing to build half of Wyoming Street and MRP would build the other half (de facto by foregoing \$889,000 it would have used to build it themselves). He said MRP will have to choose Option One and move forward.

Mayor Engen entered the meeting at 12:15 p.m.

Mytty said he feels that the "certainty" between the City and MRP has diminished even though MRP continues to pay taxes, the lease, legal fees, environmental costs, etc. He said hopefully MRP can get buildings out of the ground and move forward sooner rather than later.

McCrady said she wanted to reiterate that no one is trying to close the door on developing the Millsite. She said it is important to the City and MRA that there is future development on the property. She said the City is making a good faith effort by utilizing URD II funds to build Wyoming Street. McCrady said MRA is unable to commit increment to MRP before knowing what the specific development is.

Wetherbee said he agreed with Mytty's comments. He said MRP sees the project as the whole Millsite property and felt that MRA viewed each building as a separate project. He said the original budget that was approved by City Council had a \$7.1 TIF component which was focused primarily on paying for infrastructure as well as smaller items. Wetherbee said if the City keeps their original prioritization which ranks construction of Wyoming Street last, behind the completion of Silver Park and access under the railroad trestle, then the increment from the property is lower than what it could be if Wyoming

Street was done first; therefore the increment paid to MRP is reduced. He said MRP would be coming back to MRA to discuss the insufficient funds in the project budget. He felt the Working Group has exhausted every avenue.

Maclay said since MRP is accepting Option One, the details need to be worked out. She said it was her understanding that the agreements needed to be in draft form before the next MRA Board meeting which is scheduled on the 16th of August. She said Option One needed to be prioritized so that building Wyoming Street would be the first priority before working on the Park and trestle. Maclay gave an August 1, 2013 deadline to have Wyoming Street complete. The Wyoming Street Project would include the use of MRP's \$660,000 [\$662,500] that would have been paid by the City for the purchase of the Park and \$220,000 [\$226,500] for the parking rights. The idea of building Wyoming Street sooner than later, she said, will provide synergy to developers, but if the City waits 2-3 years down the road, then the synergy will be lost. She said MRP would deliver the design documents that were created by WGM Group but then it would be up to the City to move forward. MRP has already spent \$50,000 on these documents but will not be able to afford the next \$50,000 or \$100,000 on design documents. Maclay said there needs to be an understanding between MRP and the City that Wyoming Street is completed and if not then the City pays MRP the \$662,500.

Mytty said the August 1, 2013 deadline was discussed in the Working Group meeting. He said if the sewer crossings and other items are in place this fall, then paving could start in the spring of 2013 and have a completion date of August 1. Engen said it was a fantastic goal but would need a considerable contingency. He said he doesn't want to be locked into the deadline of August 2013 and then have some unforeseen circumstances come up. McCrady said if a contractor is hired but the City cannot bond for the whole project, then both MRP and the City are stuck with a partially completed project.

Mytty said he suggested the Wyoming Street project go out for bid this fall (2012). Buchanan said she suggested MRP be in contact with WGM Group to see if this is feasible. Mytty said the deadline seemed doable because the sewer and water were already in place. He said building the actual road isn't a difficult project.

Englund asked how a road could be built without access to the MRL easement. Engen explained that the City may have to build the trestle in order to have legal access to build the road.

Cates asked MRP if August 1, 2013 was an important date or if it was set in place so that MRP had certainty the road would be built. Maclay said the date is mostly set so that the property is easily presented to lenders and buyers.

Taft said the City may have the intention to build roads and to move forward with design but there may be unforeseen obstacles that can delay a project. Maclay said if for some reason the City couldn't accomplish the construction of Wyoming Street by August 1, 2013 then the City would owe MRP \$662,500. Maclay said the City has a performance standard and if the City can't build Wyoming Street or can't commit by the August deadline, then

there needs to be consequences in place. She said since MRP is purchasing the fee and will be paying interest and principal, it is not commercially reasonable to have the lender or MRP say "we'll do all of this but we just don't know when". Cates said no one is expecting that but it is difficult for the City to agree on paying the \$662,500 to MRP because building a road by a certain date may be completely out of their (the City) control. Engen said he didn't think MRP's request was unreasonable but the City also needs to be protected. Engen advised the Board to agree and accept the notion that the City needs to make a commitment and suggested the attorneys work out the details.

Myty said MRP is willing to work with the City but wants to know the construction of Wyoming Street is the first priority. Englund said getting the road built is workable but was uncertain about making it MRA's first priority over having the access easement. Maclay said there was a separation between legal access and construction of the trestle. She said it was her understanding that MRL issued a permit to the City on an annual basis for people to go under the trestle. Buchanan said it isn't issued on an annual basis. She said it was a construction permit that was issued in 2004. Maclay said it is pretty tenuous and clearly does not provide the City legal access. Maclay said one concern that MRP had was the section of the meeting summary from the OSD Working Group in which "there was agreement that the MRA and City priorities continue to be the completion of Silver Park, permanent access under the MRL trestle to the City owned facilities and the construction of Wyoming Street, in that order". She said MRP has asked for the trestle access to be a public access road for City and MRP access. She said she hoped there wasn't some kind of agreement between MRA and MRL limiting the access. Buchanan said that wasn't the case. The easement is a public right away, Buchanan said.

Myty said the biggest reason why MRP is bringing up the Wyoming Street topic is because it was listed as the third item in the Working Group meeting summary. He said MRP would like to reverse those priorities. Buchanan said if the priorities are reversed and there isn't adequate bonding capacity to do everything, then the variables are: the City doesn't build the Park, the City only builds part of the Park, and/or the City doesn't efficiently and effectively fix the trestle. Then that expense would be deferred until 2017, she said, because MRP is requesting the street be built first. She said there should be adequate capacity to bond but there are decisions that need to be made and one question is, does the City want to use all of the bonding capacity in URD II to accomplish these three items. Wetherbee said the reason MRP will be able to make this argument to their lender is that the cash [\$889,000] that MRP is not receiving is replaced by the construction of Wyoming Street. Wetherbee said MRP has made promises to developers and builders and doesn't want to default on those promises. Maclay said in MRP's point of view the construction of Wyoming Street and public access were the two most critical pieces.

McCrady said the City doesn't have a hard estimate on what the replacement cost is going to be for the trestle. She said it is difficult to bond when there is no real estimate for the trestle or the Park. McCrady said the temporary access issue could be resolved by mid September. Buchanan said the temporary access would have to be approved by the MRA Board because it is a commitment of funds in the future. She said it would also have to go to City Council for approval as part of the package deal.

Englund said he's not comfortable settling on dates or saying Wyoming Street comes first and the Park comes last but is willing to make a commitment. Buchanan said MRA could revisit the bonding capacity issues and have it worked out before making commitments. She said this could be done before the next MRA Board meeting scheduled on the 16th of August.

Maclay had some questions about the parking rights. There were previous discussions that the City would pay \$226,500 for parking rights on MRP's property. It later was discussed that MRP would give up the \$226,500 as part of the agreement that the City would build Wyoming Street. Maclay said that she and McCrady spoke earlier and thought it would be manageable to come up with a parking rights agreement so MRP and the City understood what the parking could and could not be used for. Maclay said giving up the \$226,500 and having a parking agreement is acceptable to MRP. She said the past conversations have involved providing the City 100 parking spaces but the OSD Working Group expanded that to 180 spaces. Maclay said MRP is willing to consider the 180 spaces but for now is comfortable with the 100 spaces, which would be located on commercial sites developed by MRP. The parking area would be available for Stadium events which typically occur on the weekends or week nights. Maclay said there needs to be parking available for the commercial use. She also said when the Park is conveyed to the City, Zone G which is the restaurant pad, becomes land locked. She said MRP would not only need access to the restaurant but would have dedicated restaurant parking during a stadium event. These are just some examples that need be added to the parking rights agreements and Maclay said this has to be done as part of the package deal. She said the parking rights agreements need to be negotiated and complete before the sale of the Park.

Maclay said there will need to be an encroachment exchange agreement between MRP and the City. She said just south of the Stadium on the northeast corner is the irrigation well (that irrigates the baseball field), stadium equipment, and stadium utilities. Buchanan said the only problematic area would be the irrigation well. She said everything else can be easily relocated. Maclay said at one time there was a negotiated per square foot exchange of the encroachment for the addition to the restaurant parcel. She said it's been surveyed and there's a long detailed agreement that has been negotiated by Playball and a previous Working Group. She said the section of the agreement discussing the piece of land added to the restaurant parcel is pretty complex. Maclay said the draft agreements state that during a stadium event, if there are windows in the restaurant overlooking the stadium or if there are patrons at the restaurant watching the event, then the owners of the restaurant would pay for a ticket to the event as if the participants at the restaurant were attending the stadium event. One agreement topic, Maclay said, that brought considerable discussion was how Playball was going to access the back of the stadium. She said Playball originally opposed using the road that goes through the parking lot to access the back area. Maclay said Joe Easton, then with Playball, had the vision of building a fenced area between the stadium and the Park that would provide ball players private access on the west side of the stadium. She said this causes access easement problems as well as logistical problems in which MRA and MRP would need to discuss, agree, and implement

within the timeframe of the voluntary clean-up plan (VCP) closure. She said MRP does not want the restaurant parcel to be added to the VCP.

Buchanan said MRP and the City could make it a goal to converse about all the different issues before the next MRA Board meeting on the 16th of August.

Kemmis said he was good with the discussion and felt they were heading in a workable direction.

Englund asked McCrady and Buchanan what they needed from the Board today. McCrady said she didn't think a formal vote of Option One was necessary but a direction to staff to pursue the necessary agreements. Discussion ensued of whether or not a motion was necessary.

Kemmis asked "why can't we have a motion that would express the Boards support for Option One and a direction to the staff to pursue and iron out the details that are going to be required in time for the August Board meeting. Englund asked if that was the motion. Wetherbee asked if the motion could include language that MRA would work in good faith with MRP regarding future TIF. Englund and Cates said that was part of Option one. Wetherbee said Option One stated TIF financing "might be considered" and had asked if MRA could add in the motion "the group is willing to work in good faith to review costs that could be financed with TIF funding" or something similar to that. McCrady said she wanted to reiterate what Cates had said earlier which was MRA would like to work as a partnership with MRP but, MRA at this time is unable to commit any tax increment to any project until something very specific is brought to MRA. McCrady said "working in good faith" is more of a commitment than what is appropriate at this time. Wetherbee said this sends a message to MRP that TIF financing is probably not going to happen. Englund, Cates, and McCrady said that was not the message. Mytty said he felt comfortable knowing that if MRP builds something out of the ground, then MRP can come back and ask for financial assistance. McCrady said the door is open and MRA encouraged MRP to come back at that time.

Kemmis asked if it would be helpful to take a short recess to come up with a more clear motion. McCrady said the group might be over complicating things. **Englund agreed and said the Board is directing the Staff to prepare documents necessary to implement Option One and have them available for the August 16 Board meeting.** Maclay said she wanted to add that MRA would negotiate with MRP to reach the completion of the agreements.

Englund said MRA anticipates working with MRP and can't wait to see a project on the Millsite.

CATES: SO MOVED.

Reineking seconded the motion. No discussion. Motion passed unanimously. (4 ayes, 0 nays, 1 absent)

NON-ACTION ITEMS - None

STAFF REPORTS - None

BUDGET REPORTS - None

STAFF ACTIVITY REPORTS – None

ADJOURNMENT

Meeting adjourned at approximately 1:10 p.m.

Respectfully Submitted,

Juli Devlin