

# MISSOULA REDEVELOPMENT AGENCY

## CONDENSED BOARD MEETING MINUTES

August 20, 2012

FINAL

A special 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, Ruth Reineking, Nancy Moe, Daniel Kemmis

**Staff:** Ellen Buchanan, Chris Behan, Jilayne Lee

**Public:** Erin McCrady, Dorsey-Whitney; Ed Wetherbee, Millsite Revitalization Project (MRP); Helena Maclay, Attorney for MRP; Ed Childers, City Council

### **CALL TO ORDER**

12:00 p.m.

### **APPROVAL OF MINUTES**

None submitted.

### **PUBLIC COMMENTS & ANNOUNCEMENTS**

None

### **ACTION ITEMS**

#### **Old Sawmill District (Millsite) – Approval of Agreements (Buchanan)**

Englund said the Board received a packet of information on Friday. He met with Buchanan and McCrady before the meeting to discuss how to approach the approval of all these documents. The decision was to address the Park Conveyance and Wyoming Street Construction Agreement first.

Buchanan reviewed the list of material the Board received last Friday, which included the Park Conveyance and Wyoming Street Construction Agreement, the Shared Parking Agreement and the Street & Overpass Use Agreement.

Moe asked about the Exhibits to the Park Conveyance and Wyoming Street Construction Agreement. Buchanan said a few of the Exhibits were not attached, i.e. Warranty Deed and Methane Monitoring Well Locations.

Buchanan said the Park Conveyance and Wyoming Street Construction Agreement reflects what the Board discussed at their August 2, 2012 meeting; that MRA would build Wyoming Street in exchange for the Park land parcel. The intent is that the Park parcel would be conveyed to the City with no monetary exchange. There were some benchmarks that were defined, such as:

- If a construction contract for Wyoming Street is not entered into by June 1, 2013, then the MRA/City would pay MRP \$662,500 for Park parcel.
- Design/engineering documents completed by WGM to date would be turned over to MRA.
- MRA would engage WGM Group to complete design/engineering documents.
- If MRA doesn't build Wyoming Street and pays for the Park parcel, MRA will give back to Millsite Revitalization Project, LLC (MRP) whatever engineering has been done to date.

Buchanan said one of the issues that needs to be addressed is MRP's request to reprioritize the projects and construct Wyoming Street before Silver Park.

Other issues include covenants and easements that go along with the Park parcel. These have been submitted to Department of Environment Quality (DEQ) but they have sixty (60) days to review those. As of last week, there is no certainty those would be approved. MRA's concern is if they proceed with the exchange and then the City owns a piece of property that DEQ ultimately determines can't be used for park purposes.

Issues to discuss:

1. Prioritization of construction of Wyoming Street, Trestle, and Silver Park
2. DEQ Covenants

Maclay explained that the Covenants are split into two concepts:

1. Ground Water Covenants – includes issues having to do with taste due to the manganese and iron levels. MRP has known since the beginning of the Voluntary Cleanup Plan (VCP) that there would be restrictions on new potable water wells. This covenant concerns the entire Mill Site area.
2. Methane Covenants – these issues only affect the Park, Zone G ("restaurant pad"), and Zone A which is the "big dig" area south of the Stadium.

The Covenants addressing both of these concerns are supposed to be submitted to DEQ and reviewed by them when the VCP is completed, which will be in a few months. DEQ would normally not start the review process until VCP completion and then they would have sixty (60) days to review. Maclay said MRP has put in an email request to put these at the top of their list but MRP doesn't know if that will happen.

Maclay said the design of the methane improvements has been ongoing for a long time and has been approved by DEQ in the methane abatement plan.

Wetherbee said Chris Cerquone, AMEC-Geomatrix Consultants, said most of the methane covenants were covered in the Methane Abatement Plan that was submitted years ago. Wetherbee reviewed some of the Park covenants regarding methane issues, which included:

1. Can't build enclosed structures over buried wood waste (without appropriate vents).
2. Parking area has existing methane trench system that must be protected.
3. Prevent methane accumulation under impervious surfaces.
4. Prevent migration of sub-surface methane.
5. Zone G, existing structures must...(inaudible).
6. Active methane depressurization system must be installed under all new structures in Zone G.
7. Must install trench plug where underground utilities exist.

Wetherbee said as far as he knows, the only item in all of these covenants that is of concern is whether or not MRP and its successors can have the right to enter, at reasonable times, to inspect for violations. He hoped MRA and MRP could agree that the covenants submitted to DEQ are ok and unless something changes dramatically, both parties are in agreement.

McCrady said the issue is not what was submitted to DEQ for the covenants, other than the one Wetherbee just pointed out which the City feels strongly is not appropriate, but the real issue is that DEQ has not reviewed or signed these covenants and the City doesn't know ultimately what covenants and restrictions will be placed on the property. The covenants will most likely be approved after the closing on the property in September. The City could end up in a situation where all of the planning done to date has to be redone. For example, in the extreme case, the City could be prevented from using the property as a park.

Moe asked what is driving the September 17<sup>th</sup> purchase date. Buchanan said the Purchase Agreement between Silver Foundation and MRP requires that they close on the property by 5pm on September 17, 2012 or MRP must pay \$300,000 not applicable to the purchase of the property. Buchanan said when MRP closes on the property, the base lease is extinguished and that in turn terminates the sub-lease that the City has with MRP for the Park property. Buchanan said if we don't do a simultaneous purchase agreement, there would be a period when the City has no rights to Silver Park. Buchanan said one solution, if the MRA Board is not comfortable with closing on the Park land without the covenants being final, would be to somehow extend the sub-lease.

Wetherbee said there is a more compelling reason to move forward now and that is the loan to buy the property requires either a cash payment for the Park or a deal that solidifies the construction of Wyoming Street.

Kemmis clarified that the Park covenants are created by DEQ. Wetherbee said the Ground Water covenants were submitted with the original VCP application and the Methane covenants were submitted with the Methane Abatement Plan about three years ago. Wetherbee said the covenants are not new but were never anticipated to be effective until MRP and MRA transferred property. The initial DEQ covenants were for Silver Foundation to place on the property. MRP instead choose to be able to control the timing of the covenants, which are supposed to be placed on the property by MRP at the completion of the VCP after approval by DEQ. The issue is timing; MRP won't be completed with the VCP closeout by the closing date on the property required by the Silver Foundation. MRP has no choice but to proceed to closing with Silver Foundation. Maclay said the MRA advised MRP that the City wanted to close simultaneously with the fee acquisition of the whole property. Maclay said the only way to do this, and comply with what is known to be required of MRP, is to agree that the form of the covenants is substantially acceptable to both parties and the City will join with MRP, after the covenants are approved, to place them on the title to the property.

Discussion ensued regarding covenants and responsible parties. Maclay clarified that covenants are placed on the land and they bind the land to be managed in a certain way. The covenants are placed on the property by DEQ. Cates was concerned that the City would be responsible for any clean-up once the property is transferred. Discussion ensued. McCrady said it would be made clear that the completion of the VCP will be the responsibility of MRP. Cates asked about future liability. McCrady said if the City violates the covenants, then the City would have direct liability. McCrady said she has had several conversations about this issue with Buchanan. MRA has had access to all of the monitoring reports coming off the land and MRP has completed a Phase I environmental assessment. McCrady said she feels the City knows what it's getting. Wetherbee read a few sentences from the Phase I Environmental Assessment Executive Summary, which was conducted by AMEC-Geomatrix, that confirmed substantial completion of VCP and that the only remaining item is long term monitoring.

Kemmis asked about the specific covenant that the City has issue with. Buchanan said it is number nine of Exhibit E, "DEQ Methane Covenants", of the Park Conveyance and Wyoming Street Construction Agreement, which states, "MRP and its successors and assigns retain the right to enter or cause its agents to enter the Property at all reasonable times in order to inspect for violations of these Restrictive Covenants."

Kemmis said it seemed to make sense that the City could have some say in how the covenants are presented. He wondered if modifications could be made to the covenants before DEQ acts on them. Maclay said it wouldn't be advisable to tinker with the covenants if the MRA/City and MRP wants approval in a timely manner. Discussion ensued.

McCrady said the City disagrees with including Methane Covenant number nine and proposes a separate agreement between the City and MRP that allows them appropriate access to the monitoring wells and probes until completion of the VCP. Maclay felt that the more MRP rocks the boat with DEQ, the less likely it'll get a resolution in a timely manner. Cates asked why these couldn't be addressed in a separate agreement. Englund said the

covenants are not approved yet and were proposed back in 2007. Maclay said she's trying to accomplish what she feels will be the minimum requirements of DEQ. She agreed that the final covenants could be less or more; but if DEQ is predictable, they are likely to stick with what they have given the Silver Foundation and MRP to follow.

Wetherbee asked if, in lieu of another document, additional or different words could be added to number nine in the existing covenant proposal.

Cates said she is still not clear where in the Conveyance Agreement it states that the environmental clean-up, in its entirety, is the responsibility of MRP. Moe said as she understands it, even though MRP transfers the Park land to City, MRP has a continuing obligation to perform the VCP in perpetuity. Maclay said yes. Moe asked if the Deed could include this language.

Maclay said the farthest that MRP will go as far as liability is stated in the RLF Loan Agreement. Maclay said these two agreements match. MRP will complete the work under the current VCP. DEQ could try to expand it but MRP is not accepting that responsibility. MRP will do everything that is commercially reasonable and in their power to get DEQ what they need to closeout or sign off on the VCP.

Englund clarified that MRP will be responsible for maintenance of the vents and other equipment on the property. McCrady said yes. Discussion ensued on language in Section 1.05 of the Park Conveyance and Wyoming Street Construction Agreement and the limitations of the VCP and the potential of DEQ expanding it.

Maclay said MRP just completed a Phase I Environmental Assessment, which permits the City to retain the innocent purchaser's status. The City could still point fingers at the predecessors in title if something additional is found on the site at a later date. Predecessors in title include MRP, Silver Foundation, Champion Lumber and International Paper. Maclay said the City has the benefit of knowing more about the property than anyone else, including MRP.

Kemmis asked Buchanan what her preferred action would be with respect to this issue. Buchanan said there are really two paths forward:

1. Close on the property and hope that DEQ doesn't add any restrictive covenants, or
2. Continue to sub-lease the Park property from MRP until the VCP is closed out and covenants are approved by DEQ.

Kemmis said he thought a third option was side agreements that clarified what the relationship between City and MRP would be for continued monitoring of the property. McCrady said she proposed clarifying it in the Park Conveyance and Wyoming Street Construction Agreement or in some sort of "license" document that specifies the access relationship.

Englund said that doesn't address the potential of DEQ adding some restrictive covenant after closing that prohibits the City from building Silver Park as planned. McCrady said there is language in the Park Conveyance and Wyoming Street Construction Agreement, Section 2.01(ii), that states the City will build Wyoming Street subject to "...final approval from DEQ with respect to the DEQ Ground Water Covenants and the DEQ Methane Covenants in a form reasonably acceptable to the City and which do not materially interfere with the City's plans to develop Silver Park or materially increase the costs thereof...". McCrady said that takes away some of the City's obligations but it doesn't change the fact that the City would own the Park property.

Wetherbee said MRP hasn't accepted the language McCrady just spoke of because it puts too many players into the pot to negotiate something that MRP is depending on, which is the construction of Wyoming Street. Wetherbee said he doesn't understand the City's issue with Covenant number nine. He asked if number nine could be changed, or another way around it agreed to, or if nothing else comes back of a material nature, then could MRA and MRP just agree to move forward. Buchanan said the issue the City has is the right of inspection in perpetuity by MRP and its successors. McCrady says it's more of a policing right then just having access to inspect the wells and probes.

Kemmis asked if the Board agrees to not ask DEQ to modify the proposed covenants, then doesn't that put MRA and MRP in the position of having a side agreement to address this issue.

Maclay didn't agree that MRP should lead DEQ to believe MRP has this right of access and then have a side agreement that says it doesn't. She said the access could be restricted but the reason for submitting these now is to set up covenants that are appropriate.

Cates said MRA and MRP are negotiating a set of covenants but neither party has control over what ultimately is approved. Discussion ensued among Board members on whether to move forward with closing on the land without knowing what the restrictions will be from DEQ. Cates said DEQ will probably not negotiate with a non-owner on the covenants. McCrady said MRA would be in the middle but MRP would have to be involved in any request to DEQ to amend the covenants to remove number nine. Cates said it appears that all we can do is agree to work on these in good faith with DEQ if we want to close on the land. McCrady said she tried to address that in the Agreement. McCrady said ultimately the City knew what was on the property when it entered in the sub-lease and a lot of environmental work has been done to provide clarity on what is still there.

Cates said she felt like the language regarding MRP being responsible for the VCP completion needs to be more explicit. McCrady thought some stronger language could be utilized in Section 1.05. McCrady proposed rewording it to say "...MRP shall complete the Remediation Activities...and use commercially reasonable efforts to obtain from the DEQ the closeout of the VCP and Cleanup Order...".

Discussion ensued on the bigger question of whether to move forward with the transfer of the Park land without knowing what the final covenants will be as determined by DEQ after closing on the property in September. McCrady said if the covenants come back too restrictive, then the City's options would be to not build Wyoming Street and the Park and pay MRP \$662,500; but the City would still own the land, unless the intent of the Board is to somehow try to unwind that transaction. McCrady said the City has done a lot of work so far and expended a lot of money along with MRP with the intent all along of owning the Park property.

Englund asked if DEQ knows what the City is doing on the Park property. Behan said DEQ has approved each step or phase of the Park construction. Englund said hypothetically DEQ could come back with a covenant that says "no recreational use" but realistically they've already approved a trail and park structures. McCrady agreed and said DEQ is aware of what is going on out there. McCrady said she hasn't read the Phase I but the potential contamination out there, as far as she knows, is limited to wood chips, not mercury or polychlorinated biphenyls (PCBs).

Kemmis said there seems to be two different levels of concern. The first being the City's willingness to take on the uncertainty of DEQ's approval or designation of the Park covenants. Kemmis said if the City wants to own the Park, then we need to take on the uncertainty. The other level of concern, which is much smaller, is the right of entry and inspection by MRP. Kemmis felt the Board should deal with the first concern and then move to the second.

Englund agreed and asked what Kemmis would recommend. Kemmis felt the Board should go forward with the Agreement as proposed, i.e. the closing and land transfer despite the uncertainty of DEQ. Englund clarified that the deal as proposed is set forth in the Park Conveyance and Wyoming Street Construction Agreement, Section 2.01.

Kemmis said he appreciates McCrady proposing the options in Section 2.01 if the covenants come back too restrictive. Discussion ensued regarding the language in Section 2.01. Englund suggested if MRA was going to take the risk of buying the property without final covenants from DEQ, then maybe MRA should just buy the property for \$662,500 instead of agreeing to build Wyoming Street for the estimated \$1.7 million.

Wetherbee said the challenge in how Section 2.01 is currently written, is not only does it not provide the flip side of what was just said, that Wyoming Street would be built, but there are several different agencies and organizations deciding what is "...material interference". He said currently there are designs being changed and what if a final covenant says a building has to be built there and not over there, or you can't build an ice rink out there.

Englund and Cates said they felt material interference would be related to the City's intended use of the property, not where a building would or would not be built. Discussion ensued. Maclay wanted clarification on Cates' statement of intended use of the Park versus "materially interfere with the City's plans to develop...or materially increase the

costs thereof". Englund said if the covenants materially increase the costs then that is an issue. Maclay clarified if that happens then the City would terminate their plan to construct Wyoming Street and just purchase the Park. Englund said that was how he read Section 2.01. McCrady said the City could also waive this issue, in other words there could be a material interference or material cost increase but the City could waive their option to not construct Wyoming and just purchase the Park for \$662,500.

Wetherbee said there is another provision that says if construction of Wyoming Street is not under contract by June 1, 2013, then the City would promptly pay to MRP the Park Parcel Payment of \$662,500, which is defined in the Agreement. His concern was that if the City didn't like what was going on, it would just wait until that date and write a check. Englund said I think the pledge is that the MRA/City is going to be reasonable in pursuing the construction.

Cates said it sounds like we would be moving forward with construction of Wyoming and the Park and the bonding process but we won't necessarily know any more about the covenants for some time. McCrady said that is an interesting point, since how do you really determine the amount of money it takes to build the Park if you don't know what the covenants will be. It is hard to finalize Park plans if the covenants are in flux, and subsequently hard to bond. Discussion ensued.

Wetherbee said these covenants have been discussed and in the files of DEQ for several years. He didn't feel there would be any big unknown that would now appear. He hoped the plans wouldn't be put on hold based on something he felt was very unlikely to happen.

Cates said the problem is timing. It's difficult to design something without having the final covenants in place; therefore it delays the bonding process. McCrady said from a bond counsel perspective, if you can pay off tax increment financing (TIF) bonds, then you can bond. Buchanan added the danger is coming up short, bonding for a certain amount and then having design changes that cause the project costs to increase.

Buchanan said from a practical standpoint and from the way the Park is being designed, it is hard for her to visualize what DEQ might come up with that is that onerous. McCrady said the language in the Agreement really provides an incentive to MRP to get the covenants, in a form that everyone agrees with, approved so the City can move forward with the project.

Buchanan said MRA has engaged a design team to create a scope of work, which will lead to a several hundred thousand dollar contract to design the Park. She said she would like to have as many loose ends closed as possible before MRA goes down that road.

Moe felt the recommendation to City Council needs to set forth that there is an understanding of what the issues are and that they will have to be dealt with.

Englund said he felt it was fair to include the language that McCrady's proposed in Section 2.01 due to the fact that the City is buying a piece of contaminated property. Moe agreed.

Englund said the timing issue of when DEQ will approve the covenants is something we can't control.

Buchanan said she understands the Board is interested in moving forward with how the Park Conveyance and Wyoming Street Construction Agreement is structured right now and that the MRA/City should go ahead and acquire the Park property in September with the covenants still potentially unknown, but that the provision in Section 2.01 of the Agreement should remain as written.

Ed Childers re-entered the meeting at 2:20pm.

Kemmis explained the discussion was currently on the language in Section 2.01. Childers said he thought the language was reasonable considering the risk of the unknown covenants. Discussion ensued.

Wetherbee wondered if MRA and MRP were in a place where DEQ Methane Covenant number nine could be discussed. Englund said not quite, there is still the big issue of whether we are going to move forward with closing.

#### **MEETING BREAK – 2:25-2:30 PM**

**Buchanan made a recommendation:**

1. Proceed with purchase of Park land in September, understanding risk of moving forward possibly without having covenants finalized by DEQ.
2. Request DEQ to remove two covenants, one from Ground Water and one from Methane section, that allow MRP to inspect property in perpetuity for violations.
3. Leave Section 2.01 in Park Conveyance and Wyoming Street Construction Agreement as presented today allowing City to purchase property for \$662,500 if final covenants “materially interfere with” or “materially increase the costs” of developing the Park.

Englund clarified the reason for MRA's objection to the covenants referring to MRP having access to the property in perpetuity to inspect for violations has to do with the notion that somehow MRP would be the enforcers. He said MRA/City doesn't object to them coming on the land to inspect their monitoring equipment. Buchanan concurred.

Cates said she would like a date certain on final VCP report submitted to DEQ. Maclay said there is a VCP deadline of July 2013. Buchanan said MRP indicated the closeout report would be submitted to DEQ by September 15, 2012. Cates wanted to tie that date down because she is concerned about the timing.

McCrady said the other item already discussed is strengthening the language in Section 1.05 of the Park Conveyance and Wyoming Street Construction Agreement

**by including "... MRP shall complete certain remediation activities..." and that the City shall have no obligation on the current VCP.**

Kemmis asked if DEQ would consider the City's request to amend the covenants. Buchanan said MRP would have to make the request to DEQ. Maclay said MRP can highlight these two areas of the covenants and say the City objects to these and ask if they can be removed.

Wetherbee said the concern is since it is MRP's VCP, if something happens out there that violates the covenants, then it is MRP's responsibility to address it. He asked if the Park design plans could be submitted to MRP's environmental engineer for review. Buchanan said that would be MRA's intention.

Englund said the next issue is revisiting the prioritization of completion of the MRL Trestle. As he understands it, the Park Conveyance and Wyoming Street Construction Agreement puts construction of the Park and Wyoming Street as MRA's top priorities over the Trestle. McCrady said this language is in Section 2.01 and resulted from negotiations with MRP over the last two weeks.

Wetherbee said MRP's position was, as first presented, it looked as if the City had the option of building Wyoming Street later on. He felt MRP needs something more concrete so asked that Silver Park and Wyoming Street be built concurrently.

Englund asked how the MRA/City can build Wyoming Street and not have a permanent solution to the Trestle. He said I know the Staff and Board has looked at this and had prioritized the Park to show citizens are getting something back for the large amount of tax increment investment.

McClay said it seems to me that the City has finally realized that its legal access ends where Wyoming Street ends, which is west of the Trestle. If the City builds Wyoming Street then it will end at the right-of-way (ROW) of the railroad and not go under the Trestle.

Wetherbee said he and Mytty read the City's initial proposals as having Wyoming Street as the lowest priority. MRP asked for Wyoming Street to be raised to a higher priority.

Buchanan said if the City enters into this Agreement with MRL relative to the Trestle, and the priorities remain where they are, and there is a shortfall of tax increment and MRA can only build the Park and the Street, then in 2017 the City has to find about \$1 million to rebuild the Trestle completely to meet their contractual obligation. She said there may be enough tax increment to meet that contractual obligation at that time but there is no guarantee. Buchanan said for the MRA/City the Park is the priority in order to show the public benefit side to the amount of money that has been invested.

Wetherbee said if MRA builds a \$4 million park versus a \$2.5 million park then there isn't as much money left to do other things. He said if MRA builds a \$2.5 million park, then it all fits very nicely. Buchanan said conversely does MRP need a plain vanilla street or the

urban street contemplated for the Old Sawmill District development that we all want to see happen.

Cates said it's hard for the Board to obligate something contractually that will affect a lot of other contracts. Wetherbee said the deal was based on the premise that MRP was trading cash (\$662,500) now for a street to be built later and when MRP got the documents the commitments from the MRA/City were watered down pretty thoroughly. Wetherbee said anything that can be done to assure a third party reader that Wyoming Street will be completed will serve all parties well.

Wetherbee asked where the parties will be after the City Council meeting on September 10<sup>th</sup>. Buchanan said we hope to have the following approved:

1. Resolution approving these agreements, whatever form they may be in at that time.
2. Resolution of Intention to issue tax increment bonds in an amount not to exceed \$5.75 million.

Wetherbee asked about budgets for the bonded projects. McCrady and Buchanan said those numbers won't be available. Buchanan said there is a four year old estimate for the Trestle, a number with big contingencies for the Street, and just a construction estimate for Silver Park.

Englund said there is an estimate of \$2.5 million for the Park and \$1.7 million for the Street, so that's \$4.2 million total. If it turns out MRA's bonding capacity is \$4 million, Englund asked where the MRA/City will be as far as its contractual obligations. Buchanan said it will have an obligation to build Wyoming Street as it's currently designed as a complete urban street. She said elements of the Park could be peeled off and simple fields could be built and other elements added back later. Buchanan said she would prefer not to do that because sometimes they never get added back.

Childers said he understands that MRP wants a commitment and their lenders want some assurance, but asked if there needed to be a date certain for construction of the entire road or could it be for a portion of the road. Buchanan said one of the conditions of the plat is that there is legal access from both east and west of property.

Wetherbee said MRP needs to have legal access under the Trestle and it has to have some short term improvements. He said the Trestle needs much more improvement over time which we all want to happen. Buchanan said the short term improvements have been approved by MRL and the Office of Planning and Grants (OPG) in order to approve the plat; permanent improvements must be made to the Trestle in 2017 under the Street and Overpass Use Agreement.

Wetherbee felt adding Wyoming Street to the same level of completion priority as the Park helped them tremendously with respect to third parties. He said the intent was not meant to exclude the Trestle, which is important to all parties.

Buchanan wanted to know what Childers thought from a City Council perspective with respect to moving the Trestle to the third priority. She said there is a risk of City Council agreeing to make the Trestle improvements down the road when there is no guarantee there will be adequate tax increment to do it.

Childers wondered if the three items needed to be prioritized at all. Wetherbee said the way the items were presented the first time Wyoming Street was last on the list. Wetherbee said if they can all be of equal priority then that's fine. Cates said she felt the language in Section 2.01 needed to be reworked to address this issue. Discussion ensued.

Englund asked when MRA might bond. McCrady said probably in spring of 2013. Englund said he didn't want to commit the MRA/City to waiting until 2017 depending on the bonding capacity. He said he wanted to have the flexibility of making that decision when the estimates come back and the bonding capacity is determined.

McCrady said the prior language in the Agreement stated the MRA/City had the complete option to build Wyoming Street. If it didn't, then it would pay MRP the \$662,500 for the Park property. McCrady asked if that was the language the MRA/City wanted to go back to. Discussion ensued.

Wetherbee said MRP has concerns because they have lease agreements that are subject to the construction of Wyoming Street. He said any language that can be added to reassure the reader that will happen would be great. Maclay said MRP is just asking that if bonding capacity is such that all three projects (Park, Street and Trestle) cannot be completed, then the Trestle be deferred.

Maclay asked what the Resolution of Intent would say. McCrady said it will be a Preliminary Resolution of Intention to give the MRA Staff the authority to get the bids worked out and then at that time come back to City Council. Buchanan said the \$5.75 million is the bonding capacity cap set forth in the Civic Stadium Purchase Agreements when MRA agreed to spend \$2 million to pay off the secured lenders. It is a cap for bonding until the secured lenders are paid off.

McCrady said typically MRA would not submit a Resolution on the bonds to City Council at this time, but MRP has asked MRA to submit a preliminary Resolution for Council consideration to further show the City's intent to their investors.

Discussion ensued on the language in Section 2.01. Cates felt the Agreement clearly states MRA has a contractual obligation to build Wyoming Street for up to \$1.7 million and if cost estimates come in higher, MRA will consult with MRP to reduce the cost. She said other than the DEQ unknown; the obligation is only subject to MRA's ability to bond for the projects.

Buchanan asked if the Trestle is integral to Wyoming Street and the Street is approved as an urban renewal project, why would the Trestle need to be approved separately. McCrady

said the urban renewal plan didn't contemplate any railroad improvements. Discussion ensued.

Wetherbee said all three projects are estimated at \$5.2 million, which is about a half million below URD II bonding capacity of \$5.75 million. He said if all goes as expected, then it should all work out fine. He said MRP just wants whoever reads these documents to believe Wyoming Street is not on the bottom of the totem pole as far as priority.

Kemmис said other than that sentence that begins "The City in its sole discretion, may...", the MRA/City has committed to building Wyoming Street provided there is bonding capacity to do it. Kemmis said the MRA/City is committed by all of its past actions to building a Park. He said he did not want to commit to rebuilding the Trestle. Kemmis said the Agreement between the City and MRL is as far as he wants to commit at this point. Kemmis recommended removing the sentence from Section 2.01 that begins "The City in its sole discretion, may...". The Board concurred. McCrady said for clarification, the Park Conveyance and Wyoming Street Construction Agreement then will not tie MRA to doing anything on the Trestle. Englund said that's correct.

Cates said in Article 3, Section 3.02 "MRP Representations" on pages 5 & 6, there is nothing that states that MRP is in good financial condition. She asked if stronger language could be added that represented MRP was in good financial condition and is not in default on anything, etc. McCrady said there is some standard language that could be added.

The Board discussed the following parts of the **Park Conveyance and Wyoming Street Construction Agreement**:

Section 1.07 Methane Lights - McCrady said the MRA/City is waiting on MRP for some language for this one. Maclay said she would get it done.

Section 1.09 – Mountain Water Easement – McCrady said this has to do with a well on MRP property but it is being addressed.

Section 2.02 – Engineering Plans – Maclay said we may have to say "...MRP has paid approximately \$50,000 to WGM Group for the preparation..." because that work is rolled into a larger WGM amount that MRP has paid.

Section 2.03 – Vacating of Streets and Alleys – Moe asked what the effect was of vacating the streets and alleys. Maclay said this allows development to take place south of the Stadium in a pattern that the Parking Rights Agreement requires. Buchanan provided further explanation on the vacations and how the City currently has access to the Stadium and the plans for future access using Wyoming Street.

Section 3.02 (f) – MRP Representations – Cates wondered if there was anything unique about MRP's relationship with DEQ that needed to be considered. McCrady said the Agreement does say that MRP represents they are not in default of the Brownfields RLF Loan Agreement, which subsumes all of MRP's obligations on the VCP.

Exhibit A – The Property – no comments

Exhibit B – Park Parcel – no comments

Exhibit C – Special Warranty Deed – McCrady said this is in draft form and is being reviewed by attorneys. She said the title company will also need to review it. Most of what is in the Warranty Deed is summarized in the Agreement.

Buchanan said the two permanent easements are the square parcel that attaches the Park to Wyoming Street and the easement across the Silver Park parking lot giving MRP permanent access.

Exhibit D – DEQ Ground Water Covenants – Cates asked for clarification that the covenants go with the land so the City will have to follow those and MRP is obligated to follow any VCP requirements. McCrady said those are spelled out in the Park Conveyance and Wyoming Street Construction Agreement.

Exhibit F - Reservation of Servitudes on Silver Park

- Recitals – no comments
- Section 1 – no comments
- Section 2 – no comments
- Section 3.a.1 – Moe said this is the first reference to the City of Missoula Parks & Recreation Board. She asked if they had approved this language. Buchanan said yes, the Parks Board approved it last week with two minor changes. McCrady said she got this section last Friday and asked if Jim Nugent had seen it yet. Buchanan said yes.
- Section 4 – Remedies for Violation – Moe said in Section 4.b, the statement "...as permitted in subsection 3.a above..." should say "...4.a above..." .
- Englund said Section 4.a.1 allows MRP to assign its interests to one or more landowners' associations. He said this could create a burden for the City if several homeowners' or landowners' associations are set up in the new development. Englund said he would like to see a finite number of associations that can be assigned MRP's interests. Maclay suggested changing it to say no more than two associations. The MRA Board agreed.
- Section 5 – no comments
- Section 6 – no comments

Exhibit G – Monitoring Wells – The map will be attached.

Exhibit H – Methane Probes – no comments

Exhibit I – Temporary Public Use Permit – Buchanan said this deals with the road that MRP built to maintain access to the Stadium during excavation of wood waste south of the Stadium. She said it gives the City legal access to the Stadium, Park and parking lot until October 1, 2013 or until we have permanent access via Wyoming Street. Maclay said

WGM Group confirmed this road is not on MRL right-of-way. Moe asked if McCrady felt the language in paragraph numbered six accounted for incidents that may be caused by use of the road by MRP for construction purposes in addition to negligence. McCrady said she and Maclay have had many discussions regarding this issue. McCrady felt the language needs to be improved to include exceptions for not only negligence by MRP but for other uses going on that are not within the City's control. Maclay and McCrady agreed to work on the indemnification language in this paragraph.

**Shared Parking Rights Agreement - Discussion:**

Englund said he was really confused by this Agreement. McCrady said the version in front of the Board was sent out early Friday morning by Maclay. McCrady said she didn't have time to review it before it went out. She said she spent Saturday redrafting the Shared Parking Rights Agreement to simplify it and make it much shorter. McCrady suggested discussing and approving the Shared Parking Rights Agreement in concept and let Buchanan and maybe one of the Board members approve the final terms based on our conversation today.

McCrady said there is a lot of history to this Agreement and it's been floating around for six or more years. It contemplates Play Ball or Mountain Baseball being a party to this Agreement. Now that the City owns the Stadium, McCrady said there were a lot of amendments that needed to be made. McCrady said the most efficient use of this group's time would be to talk about what needs to be in the Agreement and leave it to a subset of people to make the final approval.

Maclay described the pertinent points of the Shared Parking Rights Agreement. As currently written, the City or Stadium Operator has the ability to use 100 spaces when they are built out in the Old Sawmill District development. On weekdays, there are time restrictions to avoid conflicts with commercial uses. The Agreement allows the Stadium Operator to have control of the parking two hours before to two hours after an event. Maclay said the MRA/City and MRP are in substantial agreement with what McCrady sent on Sunday except allowing the Stadium Operator to control all of the parking spaces set aside, not just the 100 spaces in the Park parking lot during a Stadium event. Maclay said MRP doesn't feel they agreed or should agree to set aside more than 100 spaces for exclusive use by the Stadium. She said that would prohibit Park users from using the remaining spaces in the parking lot unless they pay a parking fee and buy a ticket to the Stadium event. MRP feels that whatever user enters the parking lot beyond the 100 spaces reserved should be able to do what they want to do.

Buchanan said originally the MRA/City anticipated building 150 parking spaces in Silver Park; 100 spaces in the upper lot and 50 more built in the entry parking area. Buchanan said what is actually built to date is 143 spaces. Some will be lost when the south parking lot is built but the MRA/City anticipates netting about 173 spaces out of both lots combined. Buchanan said she and Maclay discussed where to segregate the parking for the Stadium so it makes the most sense.

Buchanan said the Stadium Operator can charge for parking in both of the lots but in the original draft of the agreement, they could barricade and sign 100 spaces, i.e. upper lot and require patrons to not only pay for parking but to have a ticket for the event. This would preclude someone from going in and paying \$5 to park and put their boat in the river. For the rest of the spaces, the Operator could control the parking and charge a parking fee but not require a ticket to the event. Buchanan said the City's obligation to the Stadium was to provide 250 parking spaces for baseball use.

McCrady said the Lease Agreement between the City and Mountain Baseball says the "...Team shall have the right to exclusive use and control of Silver Park parking lot during baseball games and other defined events..." and "...the City will work to develop additional parking for the Civic Stadium...and upon completion...the Team will gain access to approximately 100 additional parking spaces under the same working agreement as described above."

Maclay said MRP feels it has always been understood that the Stadium Operator (currently Mountain Baseball under Lease Agreement) could charge a fee and regulate the parking, but they couldn't require that every person entering the parking lot have a ticket to the event.

Englund asked how Mountain Baseball is handling the parking currently for its events. Buchanan said they regulate Silver Park parking lot and charge for parking for the event and if you are going in to pick up your boat, they let you in without a fee to pick up your boat. Maclay asked if there are reserved spaces for special parking. Buchanan said there are handicapped spaces.

Wetherbee said he felt McCrady's concern is the way the Lease Agreement is written, it reads as the Stadium Operator could demand that you have a ticket to the event. McCrady said it reads "...exclusive use and control...", which means the Operator could exclude people if they are not attending the game.

Maclay said MRP's position is allowing "exclusive use and control" is acceptable for 100 spaces, i.e. giving the Stadium Operator the ability to guarantee parking to certain patrons, but that the rest of the parking could be used by anyone as long as they paid the parking fee.

Englund said conversely MRP has use of the City parking lots as "shared parking" to meet their OPG zoning requirements for the development. Maclay said this means anyone could park in the lots on a first come, first served basis, and doesn't include any exclusivity for MRP.

Discussion ensued about reconciling the Shared Parking Rights Agreement with the language in the Lease Agreement between the City and Mountain Baseball. Moe said the conflict is in amending a previous executed Agreement. Wetherbee said he felt it comes down to interpretation of the language in the Lease Agreement. He said MRP hopes the interpretation by Mountain Baseball doesn't anticipate requiring tickets to the events.

Childers said he didn't think Mountain Baseball would do that, except for a few reserved spots, because it would preclude someone from parking and walking to the ticket office and buying a ticket.

McCrady said the City can't impair an existing contract with another contract. She said if the additional parking built by the City is deemed Silver Park parking, then the language from the Lease Agreement prevails and Mountain Baseball will have "exclusive use and control" of all the parking. Wetherbee said this is unacceptable to MRP. Buchanan said the Lease Agreement with Mountain Baseball will not be renegotiated at this time. Discussion ensued. Maclay asked if the MRA/City could get an understanding from Mountain Baseball to allow other users to park in the lots and not require a ticket to the event. Buchanan said the question is really what is "exclusive use and control". The Board directed MRA Staff and counsel to investigate the issue further and put some more work into the language in the final Shared Parking Rights Agreement.

### **Exchange Agreement – Discussion:**

Buchanan said there is further work to be done on this Agreement so it is on hold for the time being. She said the Agreement will address the following situation:

- When Stadium was built, it was thought the property to the south would be acquired by the City for parking, but that didn't happen.
- There were some accessory uses to the Stadium that were built on that property (now leased by MRP from Silver) assuming it would be acquired including the well, the irrigation control equipment and the dumpster.
- The dumpster and irrigation equipment are easy to move but the well is not. The water rights rules are very different today than they were when the well was drilled.
- MRA has worked with MRP to exchange a semi-circle of property on the northwest corner of the Civic Stadium (to be used for a future restaurant) for the City's encroachment onto the property south of the Stadium.
- Nothing changes as far as use until something is built on restaurant pad. There are conditions on what can be built and it protects access to the Stadium for maintenance equipment and special events.
- Mountain Baseball is quite concerned with this Agreement because one of their revenue streams is their party deck that they lease out. If the future restaurant has a deck, it is limited to 40 patrons and they would all have to buy a ticket to whatever event is taking place. If there are windows where patrons can be seated and see or hear what is going on, then they have to buy a ticket.
- There are set backs and restrictions on how the building can be built that preserves integrity of Stadium and its view sheds, etc.

Maclay said she is drafting the Exchange Agreement, but is still working on it. Maclay said the terms have been negotiated and the zoning already allows the restaurant use.

Buchanan said she has been through the terms with Mike and Matt Ellis of Mountain Baseball and they are alright with it. McCrady said she has seen an old draft of the Agreement but it needs to be updated. Buchanan said it used to be a three-party agreement between the City, Mountain Baseball and MRP but now things have changed.

McCrady suggested the Board approve the Exchange Agreement in concept with the terms described. Buchanan said MRA can send it out when it's done so the Board can review it and raise questions if applicable.

**Street and Overpass Use Agreement – Discussion:**

Kemmis said he is hesitant to invest heavily in a Trestle for a railroad that was shut down for several months and is now being subsidized by businesses and government entities in Ravalli County. He said his preference all along has been to go slow and do what has to be done, but not more until we see how railroading in the Bitterroot evolves. There may be some greater use for this land down the road, i.e. urban transportation. Kemmis hoped the MRA/City could keep the option open for that type of use down the road.

Kemmis said he wished there was some language in the Agreement giving the City right of first refusal in the case of the sale of any segments of the railroad right-of-way. Buchanan said she thought a verbal commitment had been made by MRL giving the City the first right of refusal but that MRL has no intention of selling the rail line. She said it is an asset MRL wants to keep.

Buchanan said the 2017 date specified in the Agreement as the date by which the City has to install a permanent Overpass Structure was set by MRL. She said it may have to do with their last assessment of the structure and determining that date was its remaining useful life at the time.

Moe asked about the other trigger for replacement, the 6,000 vehicles per day. Buchanan said that is measured as the average daily traffic count. She said when WGM was doing the modeling for the Old Sawmill District, they projected with Wyoming Street completed, but without any development on the site, the count would jump to 3,000 vehicles per day. Buchanan predicted that December 31, 2017 would come before traffic counts would reach 6,000 vehicles per day.

Kemmis asked about clarifying the language on page two referring to 6,000 vehicles per day so it's clear it means an average over a period of time, not just one day. Buchanan said the "vehicles per day" is an acceptable traffic engineering term and it always means average daily traffic, not just on one particular day.

Buchanan asked if it was Kemmis' preference to wait on doing any permanent improvements to the Trestle until it's required per the Agreement. Kemmis said yes.

Moe asked about the City's liability upon signing the documents. Buchanan said Nugent has worked with MRA throughout the process.

Wetherbee asked about the approval timing. Buchanan said it would go before City Council on September 10, 2012 and if approved the Mayor can sign the closing documents.

Reineking asked MRP what MRA could expect regarding final platting of the Old Sawmill District upon closing. Wetherbee said MRP hopes to have things ready to go for construction in the spring of 2013.

Kemmis said there are a package of Agreements that the Board went through with specific changes and amendments.

McCrady said there is a Resolution to approve the Agreements and a Resolution of Intention to issue bonds to finance the project. Discussion ensued.

Kemmis said there are agreements with specific changes and there are two the Board is being asked to approve in concept, the Shared Parking Rights Agreement and the Exchange Agreement. Discussion ensued.

The Board decided to take the following action:

1. Approve reviewed agreements as modified (Park Conveyance and Wyoming Street Construction Agreement; Street and Overpass Use Agreement)
2. Approve other agreements in concept to be reviewed by committee of the board (Shared Parking Rights Agreement; Exchange Agreement)
3. Approve resolutions to be reviewed by committee of the board (Resolution Approving Agreements; Resolution of Intention to Issue Bonds)
4. Make referral to City Council

**MOE: I MOVE THE PARK CONVEYANCE AND WYOMING STREET CONSTRUCTION AGREEMENT AND STREET AND OVERPASS USE AGREEMENT (MRL BITTERROOT BRANCH) BE APPROVED BY THE BOARD AND REFERRED TO CITY COUNCIL BASED ON THE BOARD'S DISCUSSIONS AND CHANGES DISCUSSED DURING DISCUSSIONS OF THOSE AGREEMENTS AND THE CONCEPTS THAT WERE DISCUSSED.**

Reineking seconded the motion.

McCrady read a list of amendments/changes to the Agreements referred to above:

- Purchase property with the understanding DEQ covenants are unresolved at this time
- Remove MRP policing covenants from DEQ covenant exhibits
- Make sure there is a date certain on VCP completion and paperwork submitted
- Reiterate City has no obligation to closeout the VCP; obligation remains with MRP
- Remove language in Section in 2.01, starting with "The City at its sole discretion..."

- **Clarifying VCP clean-up language, amending to read that MRP will “...use commercially reasonable efforts...” to obtain closeout of the VCP.**
- **Add language reiterating that MRP represents they are not default under any material agreements and that they are solvent.**
- **Amend Park Servitudes to include “...no more than two landowner associations...”**

**Moe accepted the list and Reineking’s clarification that removal of the MRP policing language will be submitted by MRP to DEQ as a requested change to the covenants as additions to her Motion.**

**Reineking seconded the Motion with the list and clarification.**

**Comments:**

Moe said as a comment on the DEQ covenants, and the fact that there is uncertainty on what those will eventually be, the Board did consider the fact that this project has been worked on for years, that the DEQ covenant’s as drafted were from DEQ requirements, and the expectation of the Board is that the final DEQ covenants will be similar to what was drafted, and also that Section 2.01 in the Park Conveyance and Wyoming Street Construction Agreement addresses the importance of the DEQ covenants as having a material impact or interference on the development of the Park.

Wetherbee said to the extent that MRA and MRP are still working out a few words here and there on stuff, could this approval be subject to final tweaking of....

McCrady said what she thought Wetherbee was asking is in the Park Conveyance and Wyoming Street Construction Agreement, if there are other changes as MRA, MRP and their counsel are finalizing the terms, i.e. something we have not discussed here today but something that is non-substantive or non-material, can MRA and MRP go ahead and make those changes. Englund said yes.

**Motion passed unanimously (5 ayes, 0 nays).**

**MOE: I MOVE THE BOARD REVIEWED IN CONCEPT THE SHARED PARKING RIGHTS AGREEMENT, THE EXCHANGE AGREEMENT AND RESOLUTIONS TO GO TO CITY COUNCIL, AND THE BOARD, AFTER DISCUSSION, AGREED TO THESE AGREEMENTS AND RESOLUTIONS IN CONCEPT, RESERVING THE RIGHT TO ITSELF, TO THE INDIVIDUAL BOARD MEMBERS, TO REVIEW THE DRAFTS OF THESE DOCUMENTS AND COMMENT ON THEM OR ASK FOR A CALLED BOARD MEETING TO CONSIDER THEM.**

**Cates seconded the motion.**

Reineking asked if this moved the documents forward without having another MRA Board meeting, in other words are they preapproved. Moe said she would like Buchanan to call

each Board member and ask if they have reviewed each document and if they have comments or changes.

**Motion passed unanimously (5 ayes, 0 nays).**

McCrary asked Maclay, as far as timing and getting the unfinished Agreements to the Board, when she thought she could get the Exchange Agreement completed. Maclay said it should be available tomorrow. McCrary said she would send out the revised Shared Parking Rights Agreement at the same time. McCrary said the Resolution will be ready when she fills in some information from the Exchange Agreement. Discussion ensued on the timing of when the Agreements would be finished and emailed to the Board. Buchanan said she would do the referral to City Council on Friday.

Englund thanked MRP and McCrary for their work. Wetherbee thanked the Board and Staff and members not present and acknowledged their work.

**NON-ACTION ITEMS**

**STAFF REPORTS**

**ADJOURNMENT**

Meeting adjourned at approximately 3:43 p.m.

Respectfully Submitted,

Jilayne Lee