

MISSOULA REDEVELOPMENT AGENCY

CONDENSED BOARD MEETING MINUTES

April 16, 2013

FINAL

A **Regular** 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, Nancy Moe, Daniel Kemmis, Rosalie Cates, Ruth Reineking

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

Public: Dallas Neil, Lifestyle Fitness; Ryan Schumacher, Gavin Hanks Architects; Vince Gavin, Gavin Hanks Architects; Alan White, Parks & Recreation Department; Dave Shaw, Parks & Recreation Department; Erin McCrady, Dorsey & Whitney, LLP; Mark Bellon, Territorial Landworks, Inc.; Lori Davidson, Missoula Housing Authority; Nathan Lucke, Territorial Landworks, Inc.; Andy Short, Territorial Landworks, Inc.; John Engen, City of Missoula Mayor; Bruce Bender, City of Missoula CAO; Patrick Corrick, Farran Group, LLC; James McLeod, Farran Group, LLC

CALL TO ORDER

12:00 p.m.

APPROVAL OF MINUTES - None

PUBLIC COMMENTS & ANNOUNCEMENTS - None

ACTION ITEMS

YWCA Secret Seconds (URD II) – Request to Proceed Without Prejudice (Gass)

Gass said the YWCA is currently expanding their Secret Seconds store by 5,890 square feet. He said the expansion will provide additional retail space and allow storage capacity for donated items. As part of this project, Gass said, the YWCA is required to construct new curb and sidewalk on West Broadway Street, Burton Street, and new

curb in the alley between West Broadway Street and Toole Avenue. He said it is possible that the curb and sidewalk work could begin prior to the completion of the YWCA's TIF application for assistance; therefore, staff recommends the Board approve the YWCA to proceed without prejudice.

KEMMIS: I MOVE THE BOARD APPROVE THE YWCA REQUEST TO PROCEED WITH WORK ON THE SECRET SECONDS STORE EXTENSION PROJECT WITHOUT PREJUDICE.

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

Territorial Landworks, Inc. (URD III) – FIP Request (Behan)

Behan said Territorial Landworks, Inc. (TLI) is currently located in an office building with very little space. In order to continue their business and grow, Behan said, TLI is purchasing the building at 1817 South Avenue which is the former Vann's Appliance building. He said the building has been occupied by various retail businesses but has been vacant for the past three years. Behan said renovation is necessary for both the interior and exterior of the building. He said TLI would like to add windows to the four sides of the building so that it functions like an operating office building. The interior retail space will need to be converted to office space. Behan said the request for assistance includes the maximum amount of Façade Improvement Program (FIP) grant funds totaling \$50,000 and an additional \$20,268 in a zero-percent, 10 year FIP loan.

Vince Gavin, Gavin Hanks Architects, presented photos of the new and existing building. Ryan Schumacher, Gavin Hanks Architects, said the exterior of the existing building utilizes synthetic stucco which tears easily especially at the joints. He said these areas of the building would be replaced by metal material as well as adding windows.

Mark Bellon, TLI, said there are 15 new employees who have recently been hired and he would like to provide a nice working environment for everyone.

Reineking asked if a portion of the FIP funds would be used for landscaping. Gavin said the existing landscaping is in pretty good shape so he didn't foresee any landscaping work at this time.

Moe asked if there was a breakdown of costs associated with the total requested amount of \$70,268. Behan said the FIP application that was prepared by TLI provides the breakdown. Moe asked why the loan payoff time frame was 10 years for such a small loan amount (\$20,268). Buchanan said the 10 year term was part of the FIP loan policy guidelines. Moe said she thought a five year term would be reasonable. Bellon said his preference is the 10 year loan term since TLI would be expending funds on office furniture, upgrades to the building, training of new employees, etc.

REINEKING: I MOVE THAT THE BOARD APPROVE AN ASSISTANCE PACKAGE TOTALLING \$70,268 THAT INCLUDES FAÇADE IMPROVEMENT PROGRAM GRANT FUNDS OF \$50,000 AND FAÇADE IMPROVEMENT PROGRAM LOAN FUNDS OF UP TO \$20,268 TO BE REPAID AT ZERO PERCENT INTEREST OVER 10 YEARS.

Cates seconded the motion. Motion passed unanimously. (5 ayes, 0 nays)

Kemmis said the length of the loan term and the expected life of the district was a good question and suggested reviewing and discussing the policy guidelines. Buchanan said District III sunsets in year 2015 unless there's debt issued. She said state law states that once the district sunsets and there are loans being paid, then the income is placed in a special fund that can be used in any urban renewal district.

Lifestyle Fitness (URD II) – TIF Request (Behan)

Behan said at the February 28, 2013 Board meeting the Board approved Lifestyle Fitness to proceed with certain improvements of its project without prejudice. Since then, he said, various materials have been ordered. Behan reviewed the site plan. He said the Lifestyle Fitness total project cost is a little over \$5 million. Of those costs, Behan said \$3.9 million will be used for construction of the Lifestyle Fitness building, parking, and initial machinery and equipment. He said some of the inventory and workout equipment will be moved from the old Lifestyle Fitness location to the new location. Behan reviewed the Tax Increment Financing (TIF) eligible items detailed in his memo. He said the majority of the requested amount will be used for relocation of power and fiber communication lines as well as the extension of a new gas main that will be utilized by both developments. He said the Montana Apartments and Lifestyle Fitness projects achieve the model plan for Russell Street in terms of providing dense residential buildings, multi-story commercial buildings located near the street, and off street parking. Behan said if the Board approves the TIF assistance for Lifestyle Fitness, he suggests the amount be rolled in with the Montana Apartments (Intermountain) Bond. He said staff recommends the Board approve TIF assistance to Lifestyle Fitness in an amount not to exceed \$257,780.

Dallas Neil, Lifestyle Fitness, said one reason this site was selected for the Lifestyle Fitness Center is because it is near the Milwaukee Trail where people can run, walk, and bike. He said this location will make a great recreational hub. He said the plans also include a coffee bistro and a 5,000 square foot area that is open to the public and Montana Apartment tenants. Neil said the concept is much different than a regular fitness center.

Cates asked if there was a fitness center discount for the Montana Apartments' residents. Neil said the average monthly cost for a Lifestyle Fitness gym membership is between \$25-\$35. He said the goal is to ensure an immediate 10% profit. He said the target market is the blue collar market.

Lori Davidson, Missoula Housing Authority (MHA), said the MHA owns the adjacent lot and plans to construct an office building to complete the commercial component of the Intermountain Site.

Kemmis said Lifestyle's location decision, driven in part from the trail system, is of interest to MRA since it has invested in these trails. He said he's interested in knowing more about Neil's decision to relocate in this particular area. Neil said the second floor of the fitness center would include a walking/jogging track. He said he's been in contact with the non-profit running group here in Missoula and they have talked about offering non-profit events to the community. He said Missoula is a recreational community therefore he would like to create a recreational hub that ties in with the walking and biking trails.

Moe said Neil mentioned a coffee bistro as well as one other tenant and asked if he had commitments for the two commercial spaces. He said there is commitment for the bistro space and the massage and physical therapy space.

Moe said the employment generation section of Behan's memo states that among all the activities, up to 75 full and part-time jobs could be created. She asked if the employment figure was calculated assuming everything was subcontracted out and fully developed. Behan answered yes.

Moe said under the unique or special opportunities section of Behan's memo it talks about minimizing solar gain for the interior of the building. She asked Behan if he could provide an explanation. He said MRA promotes green architecture and in this case, the location of the large windows (facing east) will minimize the power usage.

Moe asked about the process to amend a city ordinance. Behan said the referral would go to the Administration and Finance Committee (A&F) on Friday, April 19, then to the City Council Committee on Wednesday, April 24. The public hearing and City Council's decision would be made on Monday, May 20.

Moe asked if this project plan included landscaping. Neil said the landscaping necessary will already exist. Behan said the landscaping will be in the parking lot on private property.

Englund asked Erin McCrady, Whitney & Dorsey, LLC, if rolling this project into the bond was acceptable. McCrady said it is acceptable by the IRS regulations. She said the process is pretty straightforward especially since the original bond has not been closed. She said MRA will save on closing costs and bank fees by combining the two projects under one bond. She said she anticipates the bond closing either late May or early June.

MOE: I MOVE APPROVAL OF TIF ASSISTANCE TO THE LIFESTYLE FITNESS PROJECT IN AN AMOUNT NOT TO EXCEED \$257,780 WITH INDIVIDUAL PAYMENTS BASED ON ACTUAL COSTS INCURRED AND OTHER MRA STANDARD PRACTICES AND FURTHER RECOMMEND THAT THE EXPENDITURE BE INCORPORATED INTO THE TIF BOND THAT THE MRA BOARD PREVIOUSLY APPROVED FOR THE FARRAN GROUP (MONTANA APARTMENT COMPANY, LLC) PROJECT.

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

Intermountain Lumber Site – Resolution on Proposed Modification to Urban Renewal Plan and Intention to Issue Tax Increment Urban Renewal Bonds (URD II) – Request for Approval and Recommendation to City Council (Behan)

Behan said about a year ago the Board approved assistance for Farran Group to construct 196 apartments with amenities. Since then, he said, the Farran Group was able to reconfigure and enlarge their building to increase the number of apartments to 224. He said the expansion increased the total project cost by about \$3 million for a total project cost of nearly \$20 million. Behan said he recommends the Board approve the “Resolution Calling a Public Hearing”. He said if the resolution is adopted by City Council then the actions, outlined in his memo, would be included. Behan reviewed the five actions.

- Approval of \$101,074 in increased assistance to the Montana Apartment Company project.
- Added the TIF eligible items from the Lifestyle Fitness project.
- Recommended City Council amend Ordinance No. 3475 that declared the project at the former Intermountain Lumber Site an official Urban Renewal Project in order to recognize increased costs of the Montana Apartment Company project and addition of TIF eligible items related to the Lifestyle Fitness project. (Amending an Ordinance includes a public hearing at City Council.)
- Recommended an initial bond total of \$1,800,000 which includes the cost of bond counsel, the City’s financial advisor, buyer’s legal review, a one-percent origination fee (referred to in marketed bonds as “Underwriter’s Discount), capitalized interest for the period between the sale of the bond and the first full bond payment (January 2015) based on the first tax bill which will be paid by the end of November 2014. It also allows flexibility to staff and bond consultants to pursue the possibility of adding some or all of the cost of Milwaukee Trail Lighting between Russell and Catlin Streets into the bond. This action would only take place upon meeting all the required terms set forth by the bond purchaser.

- Approval and direction to MRA Staff to complete the TIF bonding process through City Council. Additional actions by the Council would include authorizing the Mayor to sign development agreements with the two developers (the agreements must be signed by MRA too) and adoption of the final TIF Bond Resolution. The TIF Bond Resolution finalizes the Ordinance amendment after the public hearing, provides final authorization and the process and terms for the bond sale within a finite range, and lays out the specific accounting processes and responsibilities of the City and the Paying Agent or Trustee who will receive taxes from the City and make the payments to the bond holder.

McCrary said there will be development agreements from both Montana Apartment Company and Lifestyle Fitness confirming a project will be constructed with the exchange that the City will reimburse the two companies for eligible costs.

Cates asked if Behan could provide a break down of project costs so that the Board had a better understanding as to how the \$1.8 million bond was calculated. Behan left the meeting to gather the requested information. The Board continued with the next agenda item.

Cedar Street Triangle Public Improvements (URD II) – Request to Approve Engineer, Proceed with Preliminary Design, and Negotiate a Professional Services Agreement (Gass)

Gass said at the December 2012 Board meeting, the Board directed staff to advertise a Request for Proposals (RFP) from engineering firms for a Cedar Street Triangle Public Improvements project. He said the improvements will realign the Cedar Street/West Broadway intersection and construct new curb, drainage structures, sidewalks, parking, landscaping, and street lighting for Cedar Street, Hawthorne Street, and West Broadway which surround the new Poverello Center. He said five proposals were received and a selection committee consisting of MRA and Development Services personnel selected Territorial Landworks, Inc (TLI) to recommend to the Board as the project engineer to provide design and engineering services. Gass said the Poverello Center is moving forward and will be awarding their bid for demolition and site clearing in May 2013. He said the staff recommends the MRA Board approve the selection of TLI as the project engineer for the Cedar Street Triangle Public Improvements, and authorize TLI staff to begin preliminary design work on a time and material basis while a professional services agreement is negotiated for Board consideration at the May 15, 2013 regular board meeting.

Moe asked what “time and materials” means since the recommendation is for design. Gass said TLI will keep track of the time spent on this project and materials used or needed from now until when the professional services agreement is in place. Buchanan said in this case materials might be classified as copies made, postage, etc.

CATES: I MOVE TO APPROVE THE SELECTION OF TERRITORIAL LANDWORKS INC. (TLI) AS THE PROJECT ENGINEER FOR THE CEDAR STREET TRIANGLE PUBLIC IMPROVEMENTS, AND AUTHORIZE TLI STAFF TO BEGIN PRELIMINARY DESIGN WORK BASED ON ITEMS TO BE BILLED AS TOD OUTLINED, AND MRA STAFF TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT WITH TLI FOR OUR CONSIDERATION AT THE NEXT REGULAR BOARD MEETING.

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

Continue discussion on the previous agenda item:

Intermountain Lumber Site – Resolution on Proposed Modification to Urban Renewal Plan and Intention to Issue Tax Increment Urban Renewal Bonds (URD II)

Behan handed out and reviewed a project cost worksheet and bond summary sheet for Montana Apartments and Lifestyle Fitness. He said one thing he forgot to highlight in his memo is the Farran Group came up with the idea of working with Garden City Harvest and implementing community gardens on this site near the Milwaukee Trail. He said there will be a mix of people near this location migrating from the Housing Authority, Lifestyle Fitness Center, Montana Apartments, Silvercrest Apartments, the Milwaukee Trail, etc. Cates asked if the community gardens would require the purchase of an easement. Behan said yes, the City would actually purchase a permanent conservation easement for the community garden area. Cates said she was concerned with the easement being permanent and was uncomfortable with expending approximately \$100,000 for land that the City would not receive title for. She expressed concerns on the financial ability of a non-profit organization to maintain and up-keep the gardens.

MOE: I MOVE APPROVAL OF THE ACTIONS LISTED IN THE RESOLUTION THAT WAS PRESENTED AT TODAY’S MEETING AND WITH THE RECOMMENDATION THAT CITY COUNCIL ADOPT THE RESOLUTION.

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

Jim McLeod, Farran Group, thanked the MRA Board and staff for all their hard work in making this project successful.

Bitterroot Branch Trail – Construction (URD III) – TIF Request (Behan)

Buchanan said the MRA Board has had a long-term commitment to build segments of the Bitterroot Branch Trail along the Bitterroot Rail Line. She said in July 2010 the Board authorized a 30% design for the section between South Avenue and Livingston Avenue which gave the Parks Department enough time to renegotiate with Montana

Rail Link (MRL) the in terms of receiving the easements necessary to build the trail. She said the process has been lengthy but the approval of these easements has been granted and construction of the trail can begin. Buchanan said staff recommends the Board approve \$8,586.74 for TLI to finish the design of the trail section and also \$43,956.27 for TLI to manage the construction. The total request for engineering services and construction is \$52,543. Buchanan said MRL will need to remove a spur line which will add to the request once construction begins, but the cost of removing the spur line is unknown at this point in time. Englund asked if there was an estimated cost for the removal of the spur line. Alan White, Parks and Recreation Department, said the spur is very small and would produce a small amount of work. He said he's not familiar with pricing from MRL but from a standard construction practice he estimates the cost to be between \$2,000-\$5,000. Buchanan said the cost to remove the spur line is not being requested today but, the Parks Department may request that cost be covered by MRA in the near future.

KEMMIS: I MOVE THE BOARD APPROVE THE REQUEST FROM THE PARKS & RECREATION DEPARTMENT TO FUND FINAL ENGINEERING, CONSTRUCTION AND CONSTRUCTION ADMINISTRATION FOR THE SEGMENT OF THE BITTERROOT BRANCH TRAIL BETWEEN SOUTH AVENUE AND LIVINGSTON AVENUE IN AN AMOUNT NOT TO EXCEED \$52,543 WITH THE CONDITION THAT THE PROJECT WILL BE MANAGED BY THE PARKS DEPARTMENT AND DESIGN AND COSTS WILL BE COORDINATED WITH THE MRA STAFF.

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

Silver Park/Wyoming Street/Trestle Projects – MRA Director's Maximum Spending Authority – Request to Increase (Buchanan)

Buchanan said her ability to approve a change order or spending allocation is \$5,000. She said the Board approved an increase in her spending authority to \$10,000 on phases two and three of Silver Park because of several surprises that resulted in change orders. She said because of the time constraints on Wyoming Street, the trestle, and Silver Park as well as a possible impact on the Civic Stadium events, she requests the Board increase her spending authority to \$20,000 on these three projects. Buchanan said staff is experiencing change orders, particularly with Wyoming Street and the trestle, that cost more than \$10,000. She said these items are time sensitive and can't wait a couple of weeks until the following board meeting. Buchanan said most of the change orders will not be recognized until digging occurs.

Kemmis said he was uncomfortable with the increase request and felt that it was a lot of money without the Board's consent. He said he realizes the unpredictable soil is an unusual situation. He asked about the possibility of meeting electronically rather than in person. Buchanan said it was state statute to give the Board and the public 48 hour notice before a public MRA Board meeting. She said three of MRA's Board of Commissioners must attend the meeting to have a quorum and take action. Buchanan

said staff and the Board could meet via phone or in person but she said her biggest concern is the possibility of limiting access to the Civic Stadium. She said the Civic Stadium lease is an onerous lease which the City manages. She said MRA needs to help minimize any disruption to revenue generating events at the Civic Stadium.

Cates said she was comfortable with the requested amount but wanted to clarify the increased spending authority would be just for these three projects (Wyoming Street, Silver Park, Trestle). Buchanan said yes that was correct. Cates asked Kemmis if he would be more comfortable with the increased spending authority amount assuming the amount spent was within the budgeted contingency amount. She also added that staff could report back to the Board during regular Board meetings with updated contingency amounts and unforeseen costs that were paid for.

Moe said she is aware of the contingency amount but is not comfortable with giving Buchanan the increased spending authority. She said that puts a lot of responsibility on Buchanan. Moe said the Board has been very responsive in meeting whether it is in person or by electronic devices. Reineking said she was comfortable with the increased spending amount of \$20,000 as long as it was within the budgeted contingency.

Englund asked the Board if they would feel more comfortable if the \$20,000 spending authority amount was set only for those costs/items that may disturb access to the Civic Stadium. Kemmis said Englund's idea was better but still felt the Board could easily meet by phone if necessary. Buchanan reiterated the 48 hour notice rule and gave the example that if something came up on a Friday and the Board was notified of a meeting on the following Monday then the Board meeting wouldn't be held until Wednesday. She said in some cases that isn't enough time. Buchanan spoke of the opening of the Civic Stadium and baseball tournament over Memorial Day weekend. She said there needs to be passable access to the Stadium that weekend even if the parking lot is not complete.

Cates asked what the time limit was for the \$20,000 spending authority. Buchanan said the most critical time frame would be from now through the end of May and at that point she said she is happy to revert back to the \$10,000 limit for Silver Park and \$5,000 limit for everything else.

KEMMIS: I MOVE THAT THE BOARD INCREASE THE DIRECTOR'S SPENDING AUTHORITY FOR THE SILVER PARK, WYOMING STREET, AND TRESTLE PROJECTS TO A MAXIMUM OF \$20,000 PROVIDED THAT ANYTHING IN EXCESS OF \$10,000 BE CONFIRMED BY THE BOARD CHAIR AND THAT THIS AUTHORITY TERMINATES AT THE OPENING OF THE CIVIC STADIUM.

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

South Avenue Right-of-Way – TIF Request (Buchanan)

Buchanan said this item has been moved from an action item to a discussion item. She said in 2005 the City initiated a street improvement project on South Avenue between Johnson and Reserve Streets. She discussed the project and MRA's involvement. She said during the planning phases the question arose on the amount of right-of-way that was available to the City. Buchanan said there were discrepancies in the monumentation in this area and the City's engineering firm at the time, WGM Group, believed and advised the City that any additional land that resulted from the measurements of those monuments was right-of-way and could be used by the City. She said private property owners disputed the use of this land and sued the City. She said District Court ruled that the City should have compensated the property owners for the additional land and this ruling was recently upheld by the Montana Supreme Court. Buchanan said the current acquisition of the land is around \$150,000 although an additional lawsuit has been filed that may require the City to reimburse additional property owners in the amount of \$50,000.

Mayor Engen said it was his idea to approach the MRA Board. He said this decision is the product of being in a position to fund the acquisition without punishing the tax payers with the City operating in good faith. He said the City did operate in good faith in terms of this project. Mayor Engen said the options are to either pay the entire costs from the City's general fund or look at other funding streams. He said MRA does help fund important public infrastructure within the districts to benefit the tax base over the life of the district. He said he is not asking that MRA fund any legal fees. Mayor Engen said if MRA funds would have been available at the time the project was being completed, MRA funds would have been requested. He said if the issues regarding the right-of-way would have been known at the time, MRA funds would have been requested then to acquire the necessary right-of-way. The lesson learned from this situation, and has been practiced since this incident, is that the City acquires the right-of-way or easement before any project is started. Mayor Engen said he is looking for opportunities to pay for the right-of-way acquisition without adding an additional burden to the general fund. He described the benefits of the street improvement project on South Avenue. He said MRA is an arm of the City and would not exist but for the City. He said while he recognizes a check and balance and some separation is good, he felt the MRA and the City are here for the greater good and are serving the same constituency and hopes the MRA Board will consider the request.

Englund said he read the case and it sounded like the City of Missoula relied on WGM's conclusion of the excess land which happened to be wrong, so he asked why WGM Group isn't covering the fees associated with the right-of-way. Mayor Engen said he and Bruce Bender, City of Missoula, Chief Administrative Officer (CAO), have met with Jim Nugent, City of Missoula Attorney, and have concluded the issue was caused by WGM Group's interpretation of the excess land, not erroneous surveying. The City has been advised by legal counsel, that the City does not have a case.

Cates asked “don’t we rely on their (WGM Group) assurances?” Bender said what WGM Group provides on paper can be relied on but not their opinion. He said WGM Group provided the City the boundaries on the south side of South Avenue, the boundaries on the north side, as well as this undetermined land. Englund said the court case said WGM Group provided the City the information that the excess land belonged to the City but the court disagreed. Englund said the engineer’s professional work and survey were accurate but the engineer went on to also provide additional advice which was inaccurate. Bender said the additional advice was a professional opinion from WGM Group’s engineer. Englund said if the City’s lawyer says the City does not have a claim, he would like to know why. Moe said this was a mistake made by WGM Group. Bender said the City made an error in not taking a conservative approach. He said the parking lane was the reason the City had to go beyond the 60 foot right-of-way. Bender said the property owners should have been told the parking lane could not be built unless the property owners agreed to release the rights to this excess land. Englund said he understood the circumstance but from the court case, it seems that the City relied on the advice from the professional who was hired, and it happened to be wrong advice. Buchanan said WGM Group did the surveying of the street, designed the street, and built the street based on the incorrect opinion that the excess land could be used. Bender reiterated that the City has received legal advice that the City does not have a case.

Englund said the MRA Board has agreed that if projects are done incorrectly but could have been done correctly in the first place, then MRA doesn’t feel it’s appropriate to provide funding. He said MRA is willing to make changes during a project process but not once the project is actually complete.

Mayor Engen provided an example that if MRA doesn’t have money in the bank today because there’s no increment, MRA can enter into an agreement that would allow payment at a later date once increment is received. He said even though there wasn’t an agreement similar to this for the street improvement project, he said if it would have been thought through more, the idea may have been suggested. He said this project wouldn’t have happened without the use of city tax payer dollars. Mayor Engen said if the revenue being received by MRA would have been anticipated at the time of the project or the understanding of the activity that MRA would be engaging in, then this cost would have been thought as an eligible cost. He said the purchase of the right-of-way is an investment to the City. He said the MRA Board is not being asked to refund a private individual; the MRA Board is being asked to relieve some of the burden of the general fund by using dollars set aside by the virtue of the district.

Moe said she believes MRA does help in relieving the general fund by helping with many projects for the Parks and Recreation Department, the Street Division, etc. She said she is concerned with the points that were brought up today and thinks the Board has been very responsive in terms of funding projects. Moe said she’s uncertain this request fits within MRA’s guidelines.

Bender said he believes the South Avenue Street Improvement Project has stimulated the area and initiated growth. He said the project was a TIF eligible project and if MRA at the time would have had the funding or capability to bond, then the request would have been made at that time.

Kemmis said he appreciates the conversation but he is not persuaded that MRA funds should be used for the South Avenue right-of-way purchase request. He said when he first read the Missoulian article in which Bender suggested using MRA funds, Kemmis said his first reaction was "no". He said that's not how we do things nor is it how we should do things. Kemmis said he continues to believe that WGM Group is responsible or should be responsible in this situation; more so than MRA or any other part of the City. He said MRA has been cautious with the use of tax increment and that this caution is especially important given repeated legislative scrutiny of the use of tax increment financing.

Cates asked what the liability is with the potential applicants. Bender said an additional group has filed a lawsuit but it hasn't been settled or determined. He said the City's argument is the statute of limitations makes this second group ineligible.

Mayor Engen said he would be interested in understanding how often MRA receives a request that would cause the Board to look back. Englund said the Board has experienced that concept but has said no to those requests. He said many times people come back to the staff and request additional money and are told no so it never even gets placed on a MRA Board agenda. Behan said it's pretty important that the folks making the request have their numbers correct the first time because they're reminded that they can't come back and request more funding because there were incorrect figures. Mayor Engen said he would like to understand what the principle is and what it's protecting. Englund said for one it's protecting how MRA budgets so that when an applicant does approach staff, staff can tell them whether funds are available or not. He said it's more efficient and effective to plan before a project starts than after the project is complete. Englund said MRA does not pay for errors on the back end. Bender said development and budgeting is being expressed and there are instances where MRA helps fund right-of-way improvements. He said MRA has helped with curb and sidewalk projects and is currently working with the Wyoming Street project. He said items come up sometimes during the process even though the project may be complete, which puts MRA at liability to make a correction. Bender said the South Avenue project is a project that MRA participated in and is an example of a project where true costs were not clear until later on. He said MRA could be presented with potential costs that it doesn't anticipate for any public improvement once a MRA project is complete.

Buchanan asked if there is a distinction between a private project and a public project in terms of the principle Englund was talking about earlier. Englund said an additional thought is MRA doesn't want to be providing different benefits to the City than it would to other public and private projects.

Mayor Engen said he is asking MRA to help with expenses that would have been eligible items. The second option is to find the \$150,000 in the City budget, which could result in the loss of two employees; or the third option is to raise taxes. He said requesting funding from MRA was a more attractive solution in his mind.

Englund said he would like to see the Errors and Omissions Insurance Report. He said this situation is an example as to why the City carries insurance. He said the court case made it very clear that the survey was accurate, the facts were laid out, but the City was provided incorrect advice.

Englund said this agenda item was originally listed as an action item but he asked that the topic be discussed first as a non-action item so if anyone had questions, additional information could be provided later.

NON-ACTION ITEMS - None

STAFF REPORTS

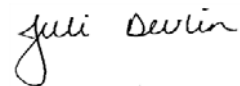
Director's Report

Budget Reports

ADJOURNMENT

Meeting adjourned at approximately 2:35 p.m.

Respectfully Submitted,



Juli Devlin