

Missoula City Council Committee of the Whole Minutes - DRAFT

February 23, 2022

10:10 AM

ZOOM Webinar

Members present: Stacie Anderson, Mirtha Becerra, John P. Contos, Jordan Hess, Gwen Jones, Amber Sherrill, Sandra Vasecka, Heidi West, Kristen Jordan, Mike Nugent, Daniel Carlino, Jennifer Savage

1. ADMINISTRATIVE BUSINESS

1.1 Roll Call

1.2 Approval of the Minutes

The minutes were approved as submitted.

2. PUBLIC COMMENT

No public in attendance.

3. COMMITTEE BUSINESS

3.1 Global Settlement Agreement and Release with Carlyle Group, et al

Mayor Engen recapped the water litigation to date, including the City's attempt to pursue a bad faith claim against Carlyle Group before the arbitration panel, which concluded near the end of 2021. Mayor Engen recapped the possible outcomes in court and the settlement offer of \$4.13 million to resolve all claims. Water utility will absorb this cost and there will not be a rate increase to cover the settlement. The City attorneys litigated this based on a contingency fee agreement and will not be compensated based on this outcome. The resolution before the Council allows the Mayor to sign the settlement and to bond the debt being accrued.

Council President Jones thanked the attorneys regarding the condemnation case and following litigation. These are top flight attorneys who did everything they could and the City is in a very good situation now with the acquisition of the utility.

Hess: What is the extent of the risk we are exposed to if do not settle?

Schneider: The math is fairly straight forward. There is likely a \$12-15 million exposure with unresolved claims and attorneys fees. A very high likelihood that Carlyle will recover some portion of this. The settlement amount was surprisingly low, but Carlyle Group may be considering that further public litigation would not be favorable.

Hess: Previously discussed different types of bonds to fund this endeavor along the way. This is a lot better than it could have been. In 100 years, the only that will really matter is that the City owns the water utility in perpetuity.

Sherrill: Just because the panel did not rule in the City's favor doesn't mean Carlyle didn't act in bad faith, reading the panel's report demonstrates that a lot.

Anderson: Question for Dale Bickell, can you breakdown the numbers on how the debt will be serviced?

Bickell: Original model from 2017 based on rate before the penalty for the sale to Liberty. The bonding will allow us to pay over time and decrease impacts on the capital improvement funds.

Vasecka: Roughly \$318,000 paid by the City annually over 20 years.

Hess: Can we discussed capital investment under private ownership versus municipal ownership?

Bickell: When City took over, more water was leaked than made it to final destination. City has prioritized capital improvement.

Anderson: The money that Vasecka stated will be coming out of the water utility only, not property taxes or rate increases, correct?

Bickell: Yes, correct.

Sherrill: The payments will slow down capital improvements slightly over 20 years.

Nugent: Can the utility give an update to council in the future on capital improvements undertaking and planned? Also, glad that this is completed due to the misinformation among the public regarding the taxes and rates.

Engen: This settlement is neutral to the rate payer. In the scope and perspective of what we do, this amount is minimal to our capital improvement. We will not be raising property taxes to support this settlement.

Jones: This is the final phase of over a decade long project. I think that these are my two most important votes in my tenure: to acquire the water company and to finalize the settlement. This has been a decades long project, and we finally had a mayor and council that were able to take it on. Missoula is being taught as a case study across the country

Moved by: Jordan Hess

Approve and authorize the Mayor to sign the Global Settlement Agreement and Release with Carlyle Group, et al. and adopt a resolution relating to the financing of water system improvements and legal settlement; establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

AYES: (12): Stacie Anderson, Mirtha Becerra, John Contos, Jordan Hess, Gwen Jones, Amber Sherrill, Sandra Vasecka, Heidi West, Kristen Jordan, Mike Nugent, Daniel Carlino, and Jennifer Savage

Vote results: Approved (12 to 0)

4. ADJOURNMENT

Gwen Jones adjourned at 10:50am.