

Public Services Committee Meeting February 27, 2017

The Public Services Committee met Monday, February 27, 2017 at 6:00 pm in the Council Chambers in City Hall. 17 S. 8th Street, Miles City, Montana. Present were Committee Members Dwayne Andrews, John Uden, Ken Gardner and Kathy Wilcox.

Also present were Mayor John Hollowell, City Attorney Dan Rice, Public Works Director Scott Gray, Planner II Dawn Colton, Utility Director Allen Kelm, City Engineer Dennis Hirsch and Committee Recorder/Payroll and Claims Clerk, Ally Capps. Also present were, Police Officer Dustin Sloan.

Committee Chairperson Andrews said that the Chair proposes to take up the election of a chairperson as the first order of business.

1. Election of Committee Chairperson

***Committee Member Wilcox nominated Dwayne Andrews for Committee Chairperson, seconded by Committee Member Uden. On roll call vote the motion passed, 3-1. With Dwayne Andrews voting no.*

2. Ordinance No. 1309- An Ordinance of the City Council of the City of Miles City, Montana enacting Section 23-1 of the Code of Ordinances of the City of Miles City, Montana, and Adopting a Utility Rule Requiring a Property Owners' Consent to Annexation as a condition of Receiving Water and / or Sewer Services.

***Committee Chairperson Andrews moved to recommend and to refer this back to Council with a no recommendation. On roll call vote the motion passed unanimously, 4-0.*

3. Public Comment

Warren Schiller, 75 Sunset Drive, requested the names and addresses of each council person the committee.

John Uden, responded, 70 Neu Vu Avenue
Dwayne Andrews, responded, 1211 N. Custer
Kathy Wilcox, responded, 2217 Brisbin
Ken Gardner, responded, 406 Wells

Jerry Backlund, 603 Eichler, questioned, based on the Whitefish case and them not

having a water and sewer district and they did own the lines. How does the City of Miles City feel they can force an annexation? He approached the council and gave them the letter from attorney, Susan Swimley.

Keith Holmlund, 84 San Leo Road, spoke of a concern on tax estimates in the Michael's Addition a \$250,000.00 home tax would increase \$567.00 plus any SID or City Specials. He asked that the Committee not move forward with the annexation.

Chris Jensen Kukowski, 3420 Brisbin Avenue, asked about the vote they did last year regarding annexation, it clearly showed that they did not wish to be annexed.

George Luther, 508 N Haynes, questioned the Committee, as to why the City wants to annex? And why ten days before shut off, is this at the main shut off or for individual houses?

Public Utilities Director Kelm, responded, this question needs to be addressed to City Council.

City Attorney Rice responded to the shut off question. Explaining that, ten days is the Public Utility Rule. If the rule is put in place and the City decides to annex an area, and you decide to protest you would have to disconnect from public services. If you do not disconnect, then the owners protest would not be counted. That with this case law; the City has the right to annex any user. If a property owner purchased, ten lots or ten lots were purchased by one developer. The buyers are responsible for putting in the water and sewer lines. The City does not have a fund that pays to put in new infrastructure. The owner is required to pay this expense. The property owners pay for the improvements on existing infrastructures. You would pay a higher rate in perpetuity. If the City paid for the existing infrastructures there would be an SID, to pay for what the property owners just paid, it would just be circular.

Collette Butcher, 1280 US Hwy 12, questioned who would pay repairs and maintenance for the existing customers?

Citizen Keith Holmlund, commented when there is a new development put in, there is a contract signed with the new developer, and there was no contract signed by the Water and Sewer District. Using this Whitefish Utility Rule, would be the first step to annexation

Citizen Chris Kukowski, requested to the committee, just leave us in the County we do not want to be in the City.

Gary Ryder, 15 S. Strevell, commented the existing agreement that expires June 30, 2017 with the Water and Sewer District. Twice the Water and Sewer District came to the City Council meeting and asked the City Council where they were with this? This took place in summer and fall. The contract has a very explicit revision. Despite what Mayor Hollowell said about the one year extension, there is no extension. The contract is what it is. He had negotiated with Butch Grenz, Joe Whalen and Mark Ahner and was able to come forward with any agreement throughout the years. He asked how many of the committee members have read the contract. (Three indicated they had not read it.) Also asking if Aye substation needs to be replaced is the City willing to replace that substation.

Citizen Jerry Backlund, asked Mayor Hollowell, when he would inform the County when the Public Utility Rule was on the agenda. This needs a tremendous amount of discussion, before this goes to the Council for final vote. Nobody is going to make any money if this goes to litigation. This will cost the tax payers and the City a lot of money. We should just sit down at a table and discuss an amical agreement with the City.

City Attorney Rice responded the Utility Rule has been in the works for two years, even back to Mayor Grenz, when he wanted it done. It came up a handful of months ago and the Planning Staff and the Mayor met a couple of times. There is a revised proposal of the

City contract, I have made my edit, and it has been sent back to the Mayor.

Mayor Hollowell responded the reason we did not ask for negotiations is because we did not have a plan. When we had a plan, we met with you.

Citizen George Luther, commented this is supposed to be a democracy if we bring this to a vote and we out vote the City, where is the democracy if they still want to annex?

City Attorney Rice responded that in order to protest and be counted you would have to disconnect from City services or you would be annexed.

Citizen Collette Butcher, asked if the Whitefish Utility Rule is a way of overriding the fifty percent or greater disapproval on the vote of annexation? Why are we not doing a regular annexation instead of using this Utility Rule? She would like this put on hold with more discussion. The County will stand to lose money which they cannot afford and the City will gain money. The County will then have to find a way to get more money.

City Attorney Rice said the Whitefish Utility Rule was brought up by Mayor Grenz. Mayor Hollowell then asked what the status was. He and the Planning Staff put a draft together and it is now before the Council, just like any ordinance. Adopting the action does not put the rule in place it just puts the rule in the City books. It does not issue annexation, but it must be in place in order for the City to initiate the Utility Rule.

Bob Parker, 3410 Leighton Boulevard, stated anytime a resident of the City leaves City limits, you're using roads that someone else paid for, did you consider that? The City residents wear out the road out to the landfill and they don't pay for the road. My understanding on the proposed ordinance is if we do not sign a paper agreeing to annexation, the City will disconnect our services. In my mind that is blackmail. I do not know why the City is driven to do this? Or any reason why they would want to? Unless, it's only motivation is to raise more money for the City.

City Attorney Rice said that with the Utility Rule says they can shut you off. The City will never shut you off. If you do not disconnect, you can be annexed. I am not saying that's a better alternative, but the City will never shut you off. You would have to shut yourself off, if you wanted to protest.

Carol Bean, 3402 Brisbin, asked how that could be done?

City Attorney Rice responded you could use a plumber or you could hire the City crew.

Rob Muri, 637 Eichler, commented he had a septic tank and a well and would not be able to disconnect because I have City services within 500 feet?

City Attorney Rice responded that that is a DEQ regulation and is not a City decision.

Citizen Jerry Backlund, commented in order to protest we have to disconnect from City services? In Whitefish there was no water and sewer district; those lines were already paid for by the City.

Wade Berry, 1265 Highway 12, questioned how far out in each direction is this annexation planning on going?

City Attorney Rice responded it is not scheduled to go anywhere. There are twelve to fourteen different annexation districts being looked over. Anyone that receives treatment from the water facilities and sewage treatment plant would be subject to annexation.

Citizen Collette Butcher, asked what is the area of consideration for annexation? Is anything that receives services from the Custer Water and/or Sewer District being looked at right now?

Mayor Hollowell responded this rule does not annex anything. It does give certain

rights to annex those using City services. There are already those from before 1990 that have signed no protest to annexation. We could have done this a long time ago. When you hook up, you sign a no protest, which means we can annex you. Meaning you wave your right to protest. We could annex everything we want to because we have those no protests on file. The only ones we could not call in are the ones that are residential and signed after 1990.

Citizen Collette Butcher commented but this is a first step to annexation? Why are you looking at doing the annexation this way?

Utilities Director Kelm, anybody that hooked up to water through the Custer County Water and Sewer District, was required to sign, a no protest to annexation, from the inception of the contract until 1990. These are filed at the court house. After 1990 the city government, the municipality at that time, removed that from the contract. The District said we will let you put in the contract, that all business will be required to sign a no protest of annexation in order to get city services through the Custer County Water and Sewer District. This is in effect even today and is the same as this Utility Bill. The only thing is today the District, would not agree to residential properties. The no protest of annexation has been going on for years and years.

City Attorney Rice, commented the contract also acknowledges that there are residential no protests, but the District will not assist the City in calling those in and annexing property. Most of the property owners here have signed or a previous owner has signed a no protest, when the property was originally hooked up to City water.

Utility Director Kelm, commented that Gary Ryder, will probably make mention, that he does not believe these are legal. But, these are legal documents and filed at the County Courthouse, filed agreements between the City of Miles City and property owner.

Citizen Gary Ryder commented that there was history of a court case back in the late 80's. The people in the district in order to expand the City water and sewer services, for both the rural and the City customers, they needed the Sewer Districts help, in order to do this, and the City needed the Districts customers. They were told and there were witness saying, there was a council person involved and gave a no protest agreement and people signed it, being told that the City never plans to annex. I am hearing that same argument today. The City has tried to annex and we stopped it based on the testimony of many of the land owners. We were told this was never going to happen. The City didn't fight it. Mr. Kelm, talks about what the agreement says, and I ask the City officials too independently and on their own read that agreement and look at the language in the agreement. Our members are customers in the District and they are City residents. The agreement is between the District and the City; it is not between the customers and the City. That is important legal difference and not being taken in to account by City staff. They spent a lot of money on a planner in addition to having a City Planner. They kept us in the dark until February 14th. I believe we are in a bad situation here. Our customers do not want to be annexed in. They voted 120 to 30 not to be annexed in and there are a lot of technical issues that have to be fixed in the District, we have funds to fix it, the City doesn't.

City Attorney Rice, The case you mention from the 80's, I found some court filing in the City files. Was that resolved short of a judgement? It did not go through full blown litigation. It did not even go to District Court. Did it have a final judgment from District Court? I could not find a final judgment for District Court.

Citizen Gary Ryder said it was not litigated; there was a writ to stop annexation. In those days we could solve things without going to Supreme Court. After papers were filed and provided the preliminary evidence, it was resolved.

Nolan Michaels, Michaels Addition, commented I have been here for 31 years. I have been paying services for nothing. I have \$108,000.00 dollars at \$29.99 per month, out of my pocket that is in this whole deal. The District and the City have gotten their share, of all that money. Mr. Luther asked, why? I would like to ask the Council members to come up with a list specifically telling me, what my \$500.00 and some dollar raise that the Commissioner told us about, what is it going to give me above and beyond what I am getting now? So, please tell me what services I am going to get, I have a contract with the City for fire protection on my house. I was also being charged a commercial rate for five years and never received a refund, when I went to residential. So, for tomorrow night would you people get a specific answer to what I am going to get with my \$500.00 increase in taxes? And again, I could name about six or seven people, and I am the youngster as far as the \$108,000.00, which started out there with the \$29.99, and they have \$108,000.00 or more of their money paid for all that.

Citizen Carol Bean, asked if I was to protest and shut my water off, I would not be annexed, correct?

City Attorney Rice, responded, the protest would be counted. If you were one of ten properties that were being looked at for annexation and you were the only one that disconnected to protest, it would still pass and you would be annexed. If the property is one owner and they disconnected to protest, it would be counted.

Citizen Carol Bean responded Dwayne didn't even know taxes went up with this happening. I don't think anybody has all the information and both parties need to meet before this goes to City Council tomorrow night. I did not find out about this until three days ago. I request you table this until both sides can meet.

Citizen Jerry Backlund, asked what services are you going to give us over and above the \$500.00 that is not paid on a SID? County supplies road services, purchases the gravel, snow plowing, are we going to be forgotten in that area? I just wanted to get that clarified.

Utilities Director Kelm commented you say you are paying \$29.99 in assessment fees, all that that goes to the Custer County Water and Sewer District the City does not keep that money.

Warren Shiller, 75 Sunset Drive, commented not all of it goes to the Custer and Water and Sewer District. We are paying \$70.00 a month to the City for sewer. What I understand is it is for the maintenance of the treatment plant. I would like a financial statement; I would like someone to show me where my money goes.

Utilities Director Kelm commented the only thing you get billed for is the amount of water you use minus twenty percent. You may be classified as sewer only account, so you pay a fixed fee. The same as sewer only accounts in the City of Miles City less 20 percent. The County customers pay twenty percent less then City customers. The District adds their maintenance fees and debt repayment on top of that. That money is not coming to the City.

Don Bundy, 3113 Box Elder, responded it is not classified as debit repayment. It's an assessment fee for operation and maintenance. We have not raised our fees in thirty years and that's why the fees have not gone down.

Utility Director Kelm, responded do the people of the Custer County Water and Sewer District know that the debit has been paid?

Citizen Don Bundy, referred to a letter that he wrote to Mayor Chris Grenz, and Mayor elect Hollowell, December 8th 2015, to start negotiations, and had not heard anything until February 6th, 2017.

Mayor Hollowell, commented, had not received that letter until today. I would not

enter into negotiations until I have something to negotiate with. We did not know what direction we were going to go with this.

Citizen Gary Ryder, commented on the debit repayment, Mayor Grenz told me, they were not going to take over until Custer County paid the debt down. The debit is paid off and we want to adjust the rates, but we don't have a commitment from the City of Miles City to continue the water and sewer contract. Is there a written report from the planning staff on the pros and cons of annexation, and how much money the City is actually going to get?

City Attorney Rice, responded, this is just a copy of the Whitefish Ordinance. There cannot be action taken under this Ordinance, and there cannot be action taken until there is a plan of services and all the other annexation requirements are met. The public hearing is on the Ordinance not on annexation.

Citizen Jerry Backlund stated this Ordinance is just the first step to annexation. Because it states, you either sign this no protest or we shut your services off.

City Attorney Rice responded the City is just looking at putting the Utility Rule in place. The City has been looking at this for years and years. This ruling conforms to the State law handed down by the Supreme Court on the ruling on the Whitefish case.

Randy Anderson, 3405 Brisbin, asked if there is an existing contract and it ended in June, if this contract is between the City and Sewer District, how can they divvy that up to individuals until that one year negotiation period is over?

City Attorney Rice said they are not taking any action. The District is a separate issue. That does not mean the District will no longer exist or that the City cannot have a contract with the District for maintenance, service and water.

Citizen Randy Anderson, asked if we are still in the one year negation period and they are still negotiating the contract that identifies the sewer district as a whole and not individual's, how can the city ordinance break that up individually?

City Attorney Rice responded if the City passed the Ordinance and the City tried to annex you, before that contract expires, that is not what is happening.

Citizen George Luther stated the Whitefish case should have gone to Federal court, not State court, and then you can tie up these people in court for years.

Mayor Hollowell responded it is simple economics, we grow or we die. The City cannot grow without the annexation. There are multiple laws in the State that recognize that fact.

Citizen George Luther, questioned the Mayor, why is the City dissatisfied and want to grow?

Mayor Hollowell, responded, let's say this Ordinance passes tomorrow night, what gets annexed? This Ordinance gives us the ability to request annexation.

Utilities Director Kelm commented there are other areas outside the city limits that are not Custer County Water and Sewer customers that this will also affect. The Custer County Water and Sewer District has the lines locked up, so that the City cannot grow.

Citizen Gary Ryder requested a change in the wording in the Ordinance to modify the District.

Citizen Keith Holmlund commented it just boils down to the dollar. They want to increase their revenue by annexation. You are broke and you are looking for money.

Utilities Director Kelm commented each and every city has to grow.

Citizen Jerry Backlund, commented you cannot just grow by taxing people?

Mayor Hollowell responded the city is the center on commerce. If the City grows

everything around it grows.

Citizen Keith Holmlund, commented to the committee, think about what you heard tonight this is just a small sample of what you are going to hear tomorrow night.

Mayor Hollowell responded if the City wanted to call in the no protest of annexation, it could do that right now. If you did not sign a no protest, the previous property owner probably did.

Citizen Collette Butcher, explained her role on the Planning Board and her job as the County Representative, It is an interesting committee to be on, if you do not understand how growth policy works or how annexation works. Stop at the office and review the growth policy. There is an annexation plan, but it has not been approved. There are areas outside the city limits that have been assigned a number. Like with any type of politics, you need to get yourself educated on the subject, before you jump to conclusions and make uninformed decisions.

She requested to the committee to hold off on making this decision, until you get everyone that wants to come to a meeting at a designated place. To get their feelings and maybe have the people who know more about the growth policy and annexation plan. Because every single time we have a meeting, regardless of the subject, if the word annexation is used, it's immediately annexation. People need to be more informed and you folks who did not get to read whatever you were supposed to read. As members of the committee it is your job to read these things and know what is going before you vote on it. You need to get more informed on how things work and have a better idea, and then maybe you can argue it. And do not hide anything, because it appears that is what is happening.

Citizen Backlund reiterated to have this tabled. We need more discussion on this in committee. I believe this is going to go to litigation.

City Planner Colton explained the tax questions; just because you are annexed does not mean your property values are going to go up. That is all decided by the Department of Revenue. If you get charged extra for City Specials, it is an SID. If you want streets, curbs, gutters and pavement, then you pay the SID.

Utility Director Kelm explained that the SID and City Specials using the Richland Addition as an example, it would be its own maintenance district, depending on level of services, then the people of that subdivision would have their own rates to pay.

Citizen Holmlund, asked, if this is also for people beyond the sewer district and their services come within 500 feet, are they are going to have to tie into those services? Those people need to come and have their voices heard.

Utility Director Kelm, responded what's the difference if the City owns those lines or if they are owned by Custer County Water and Sewer District?

Citizen Holmlund responded that if an existing septic system is in place, they can keep it. If the system fails and needs maintenance then they would have to hook up to City or County owned lines.

Citizen Robert Parker, asked the Mayor, what is going to make Miles City grow?

Citizen Collette Butcher commented a new dike would help.

Citizen Robert Parker responded a new dike would help in construction jobs, but when it's done, that will not create growth in Miles City. What is there here for people to do, for people who live here in town?

***Committee Chairperson Andrews asked for a motion. Being there was none.
No recommendation from the committee to take to Council.*

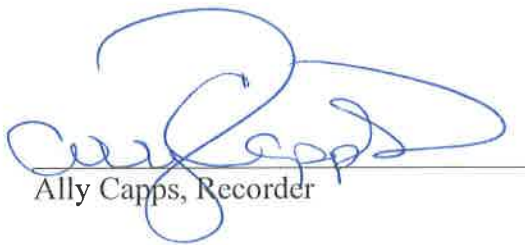
Committee Chairperson Andrews moved to adjourn the meeting, seconded by Committee Member Wilcox and passed unanimously, 4-0.

ADJOURNMENT

Having no further business, the meeting was adjourned at 7:50 p.m.

Respectfully Submitted:


Dwayne Andrews, Chairperson


Ally Capps, Recorder