

# **BOARD OF THE METROPOLITAN SEWERAGE DISTRICT**

**OCTOBER 10, 2001**

## **1. Call to Order and Roll Call:**

The regular monthly meeting of the Board of the Metropolitan Sewerage District was held in the Boardroom of MSD's Administration Building at 2:00 p.m., Wednesday, October 10, 2001. Chairman Blackburn presided with the following members present: Aceto, Ball, Bryson, Gantt, Graham, Pace, Sobol and Venable. Ms. Field and Mr. Kelly were absent.

Others present were: Thomas E. Hartye, General Manager, William Clarke, General Counsel, Gary McGill and Danny Bridges of McGill Associates, Brian Lacour of Sperling & Barraco, Inc., Randy Smith and Don Griffin of Bryant Electric Company, Richard Tsang of Camp Dresser & McKee, Bob Hanley of Beers Construction Company, David Herbert representing the Clean Water Fund of NC & Kenilworth, William Mull, Ann LeMieux, John Kiviniemi, Jim Fatland, Ed Bradford, Peter Weed, Bill Conner, Sharon Walk and Sondra Honeycutt.

## **2. Approval of Minutes of the September 19, 2001 Meeting:**

Mr. Gantt moved that the Minutes of the September 19, 2001 meeting be approved as presented. Ms. Bryson seconded the motion. Voice vote was unanimous in favor of the motion.

## **3. Discussion and Adjustment of Agenda:**

Mr. Blackburn moved items 7 & 8 (bid protest hearing and consideration of bids for North Swannanoa Phase II, Section 2) up in the agenda.

## **4. Bid Protest Hearing - North Swannanoa Phase II, Section 2:**

Mr. Blackburn declared the Bid Protest Hearing open at 2:10 p.m. He reported a letter was received from Bryant Electric Company, bidder on the project, questioning the validity of the bid bond submitted with the bid of Beers Construction Company. He stated North Carolina law requires MSD to advertise for bids for construction projects over \$100,000.00 and that all proposals must be accompanied by a bid security in the amount of 5% of the bid. If the bid security does not meet the requirements of the law, the proposal cannot be accepted.

Mr. Hartye presented a map showing the location of Phase II, Section 2 of the North Swannanoa project. He reported the following bids were received on September 27, 2001: Beers Construction Company with a bid of \$4,206,045.00; Bryant Electric with a bid of \$4,651,232.00; Thalle Construction Company with a bid of \$4,880,598.00; Haren Construction Company with a bid of \$5,303,625.00; Buckeye Construction Company with a bid of \$5,575,538.15; BC&D Associates with a bid of \$6,574,230.00; Moorhead Construction Company with a bid of \$7,774,821.00 and Hobby Construction Company with a bid of \$8,343,347.00. He further reported that Beers Construction Company was the apparent low bidder in the amount of \$4,206,045.00 and the second low bidder was Bryant Electric Company in the amount of \$4,651,232.00. He stated Bryant Electric Company is questioning the validity of the Beers Construction bid bond because it lacks a counter signature, which is not required, but on the form. He presented and briefly reviewed supplemental information with regard to the proposals received.

Mr. Griffin of Bryant Electric Company stated the basis of his firm's protest rests with Article 2 of the bid document, which states " The Contractor (bidder) is cautioned that all spaces on the proposal must be fully completed

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including all identified or voluntary alternates, if any, and that the proposal must be properly signed with the name of the company, and its authorized representatives, and shall be fully executed in all respects". He pointed out that at the pre-bid conference, bidders were cautioned to completely fill in the bid document and properly present it or, it would not be accepted. He stated that since their firm's principal insurance company is out of state they were told by MSD staff they were required to get the signature of a NC resident insurance agent. He further stated his firm feels if this provision of the contract is invalid, what else is invalid and it appears that on public money and the work that they pursue, all provisions of a contract are required. Chairman Blackburn asked if anyone else wanted to make a presentation.

At 2:13 p.m., Mr. Sobol moved that the Board go into closed session. Mr. Pace seconded the motion. Voice vote was unanimous in favor of the motion.

At 2:30 p.m., the Board went back into open session.

Mr. Aceto moved that based on the testimony of the witness, the information supplied to the Board, and the advise of Counsel, that the Board find there is nothing in the omission of the signature that would prejudice the District's ability to enforce the bid bond. Also, that the bid bond in question is valid, that the Board waive any informalities represented by the omitted signature, and that the protest be denied. Mr. Gantt seconded the motion. Roll call vote was as follows: 9 Ayes; 0 Nays.

Mr. Venable commended Bryant Electric for the work they have done for the District in the past and expressed his regret that this issue came up. However, since there is such a large difference in the bid amounts, and because the protest is based on a technicality, the District would not be spending the public's money responsibly if it invalidated the bid bond of Beers Construction. Mr. Griffin stated Bryant Electric appreciates the opportunity for a hearing and would actively pursue bidding on future projects. Mr. Gantt stated the Board's decision is in no way a reflection on Bryant Electric's work

At 2:35 p.m., Mr. Blackburn declared the Bid Protest Hearing closed.

## **5. Informal Discussion and Public Comment:**

Mr. Herbert, who is a resident along Ross Creek in Kenilworth, expressed his appreciation to staff for their immediate response to a sewerage spill entering Ross Creek on August 29 and for arranging a meeting with residents to talk about the consequences of the spill and future prevention. He questioned how the duration of a spill is determined and the notification procedures and requested the Board consider the following: The credible observations of citizens when determining the duration of a spill, expanding the current public notification, provide direct notification to the proper authorities, and reconsider priorities in the Master Plan with regard to limiting new connections in the Kenilworth area until these lines are replaced.

Mr. Hartye reported public notification appeared in the Asheville Citizen-Times on Saturday, September 1 following the Ross Creek spill. He presented a map showing the location of the Ross Creek Basin and the two projects (Phase II & III) which have been bumped up in priority. He stated the entire Basin was recently cleaned and surveys are being done on the lower portion of the line (Phase II) to be followed by replacement. Upon completion of the surveys a public meeting will be held with residents who attended the meeting following the

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spill and property owners affected by Phase II of the project. He further stated the District would be trying to negotiate access points in order to get larger equipment to the line location. Mr. Pace reported a study is being done by Land of Sky Regional Council regarding Newfound Creek and Ross Creek. Mr. Venable asked what effect, if any, the spill had on Kenilworth Lake. Mr. Hartye stated the MSD tested the lake for fecal coliform, which is very low and the results from State testing are not yet available. Mr. Herbert presented pictures of the lake showing a heavy algae bloom and stated that Richard Maas, Chairman of Environmental Studies at UNC-A, said the sewerage spill is the likely cause.

Mr. Gantt suggested in order to formulate a better notification process, that this matter be addressed at the Committee level. Mr. Hartye stated additional signage immediately following a spill has been discussed. Mr. Blackburn suggested that Mr. Hartye look into the matter and give a report at the next meeting of the Board.

**6. Report of General Manager:**

Mr. Hartye presented information regarding the Master Plan, Kenilworth Lake, System Performance Annual Report (SPAR), Bond Issue, Planning Committee and WEFTEC.

Mr. Hartye reported there is a detailed SPAR report is on the District's web site and the Bond Issue remains on schedule for a late November pricing and December closing.

Regarding WEFTEC, he presented a listing of technical sessions that staff would attend during the week and stated that staff would tour the Exhibit Floor on Tuesday morning of the conference.

Mr. Blackburn asked if the brochure on the Wastewater Performance Report appeared in the paper. Mr. Hartye stated this brochure was distributed in the most recent water billing and that the Comprehensive Resource Guide for MSD, which has similar information, was published in the paper in September. Mr. Blackburn suggested an article regarding the report should be published.

**7. Report of Committee Chairs:**

**Planning Committee:**

Mr. Aceto reported the Planning Committee met September 25 and October 9 to consider a contract with Pace Laboratory. He stated the Committee recommends the General Manager and Legal Counsel be authorized to negotiate a contract with Pace Laboratory to lease identified space (lab) in exchange for analytical testing identified by MSD. Mr. Aceto referred this issue back to the Consolidated Motion Agenda.

In other business, Mr. Aceto reported the Committee considered a Cost Recovery Policy, which is a formula for MSD to participate in certain types of system extensions. This would be based on a guarantee to the District, secured by bond or other satisfactory payment, the District's contribution to the extension be recovered through user fees over a five-year period. Mr. Aceto stated the Committee recommends approval of the policy. Mr. Pace explained this is not a change in policy as far as extensions for municipalities, but a change in policy as far as extensions toward projects on a one-on-one basis considered by the General Manager. As a matter of clarification, Mr. Venable noted Item C (Petitions for Extension of Wastewater Service) Section 2 f. which states "The District Board

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will, in its sole discretion, determine the need and priority for the operation, maintenance, improvement, reconstruction or extension of such wastewater facilities, taking into consideration, among other factors, the capacity of the Sewerage System and available funding". Following a discussion regarding variable costs, roll call vote was as follows: 9 Ayes; 0 Nays.

**Right of Way Committee:**

Mr. Pace reported the Right of Way Committee met September 26, 2001 to consider two (2) condemnations on Lookout Road and one (1) on Merrimon Avenue. Staff recommends authority to obtain appraisal and proceed with condemnation if necessary. No action by the Board is necessary since condemnation authority was delegated to the Committee at the June 20, 1998 Board Meeting.

**8. Consolidated Motion Agenda:**

Mr. Clarke presented a letter from McGill Associates with regard to item 6.a.

Item b. (Purchasing Policy) and Item c. (Pace Laboratory Proposal) were pulled from the Consolidated Motion Agenda for further discussion.

a. **Consideration of Resolution Authorizing District to Make Application with Local Government Commission for approval of Sewerage System Revenue Bonds, 2001:**

Staff recommends approval of the Resolution.

b. **Consideration of Approval of Amended Purchasing and Construction Policy and Procedures:**

Staff recommends approval of amendments to the Purchasing and Construction Policy and Procedures.

c. **Consideration of Pace Laboratory Proposal:**

The Planning Committee recommends the General Manager and Legal Counsel be authorized to negotiate a contract with Pace Laboratory to lease identified space (lab) in exchange for analytical testing identified by MSD.

d. **Cash Commitment/Investment Report for Period Ended 8/31/01:**

Presented as information only.

Mr. Pace moved the Board approve Items a. and d. of the Consolidated Motion Agenda. Mr. Gantt seconded the motion. Roll call vote was as follows: 9 Ayes; 0 Nays.

Mr. Venable moved that the Board approve Item 6.b. Ms. Bryson seconded the motion. Mr. Venable asked why the General Manager delegates authority to the Purchasing Coordinator for acquisitions up to \$50,000. He noted Item B. - 6., which was deleted from the Policy, delegating authority to the General Manager to award formal bids for budgeted acquisitions over \$30,000, but under \$50,000. Mr. Clarke stated the change was made because at one time advertising for bids was required for purchases over \$30,000, but authority could be delegated for purchases between \$30,000 and \$50,000 to the Chief Purchasing

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Officer. N.C. Law has now been changed so that advertising and bids is required only for purchases over \$50,000. Mr. Fatland explained the requisition process that must be followed by all employees. With no further discussion, roll call vote was as follows: 9 Ayes; 0 Nays.

Regarding Item 6.c., Mr. Aceto moved that the Board approve the recommendation of the Planning Committee. Mr. Venable seconded the motion. Mr. Sobol expressed a concern regarding Pace Laboratory's scope of work, beyond analytical testing for MSD, which could create a security problem at the plant. He also expressed a concern for the proposed annual lease cost of \$45,000, especially since utilities are included. He stated that after investigating other facilities he felt the lease rate should be in the range of \$65,000. Mr. Clarke stated approval of the recommendation would authorize the General Manager to negotiate a satisfactory lease agreement, these concerns could be addressed in that process.

A discussion was held regarding other possible uses of the space and terms of the lease. Ms. Ball stated the Board could authorize to negotiate, but not based on the \$45,000 price. She further stated she has serious concerns about liability issues, such as contamination and feels further investigation is needed. Mr. Clarke stated some laboratory work can be done in-house, but some must be done in State certified laboratories. Their proposal would eliminate the requirement for MSD's lab to maintain State certification. Mr. Pace stated he feels comfortable with the reputation of Pace Laboratory and the fact that the employee currently working in the lab would take another position within the District. With no further discussion, roll call vote was as follows: 9 Ayes; 0 Nays.

#### **6. Consideration of Bids - North Swannanoa Phase II, Section 2:**

Mr. Gantt moved that the Board award the contract for the North Swannanoa Phase II, Section 2 project to Beers Construction Company in the amount of \$4,206,045.00. Mr. Pace seconded the motion. Roll call vote was as follows: 9 Ayes; 0 Nays.

#### **7. Discussion of Master Plan:**

Mr. Blackburn called for any questions regarding the Master Plan. Mr. Sobol asked how tied the District is to the financing plan for the five-year State Collections Permit. Mr. McGill stated the District would negotiate with the State on options for the Capital Improvement Plan. Mr. Sobol stated he is very uncomfortable about constant rate increases every year without help from other sources, perhaps from Congress. Mr. McGill stated that help from Congress usually comes in the form of programs and

over the course of the Master Plan, it would be difficult to say what funds the District would be able to access. Mr. Blackburn stated a presentation on the Master Plan would be made to state and local representatives and to discuss where it's going and the financial impact it will have on the community. A discussion was held with regard to how the Board would make use of the Master Plan; how they would be kept informed as to where staff is in the process and the variables used in determining the percent of rate increases. Ms. Graham stated the entire burden of reporting should not be put staff, and as new members come on the Board, a synopsis of the plan should be provided. With regard to rate increases, Mr. Venable stated there should be an option of no increase. Mr. Hartye stated the Plan stands on its own, but the variables will determine the percent of rate increases, which may change year to year. Mr. McGill stated the State Permit will be the defining document in terms

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of what the District would be doing over the next five years, with regard to rates and capital improvement.

**11. Old Business:**

None

**12. New Business:**

None

**13. Adjournment:**

With no further business, Mr. Pace moved for adjournment at 4:10 p.m. Mr. Venable seconded the motion. Voice vote was unanimous in favor of the motion.

Jackie W. Bryson, Secretary/Treasurer