

# **BOARD OF THE METROPOLITAN SEWERAGE DISTRICT**

**JANUARY 15, 2003**

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

The regular monthly meeting of the Metropolitan Sewerage District Board was held in the Boardroom of MSD's Administration Building at 2:00 p.m., Wednesday, January 15, 2003. Chairman Blackburn presided with the following members present: Aceto, Bryson, Field, Graham, Gantt, Kelly, Sobol and Venable. Ms. Ball and Mr. Pace were absent.

Others present were: Thomas E. Hartye, General Manager, William Clarke, General Counsel, Gary McGill and Danny Bridges of McGill Associates, Leah Karpen with the League of Women Voters, Marcus Barksdale with Mattern & Craig, Larry Frost with DENR, Martha Zeigler, Ann LeMieux, Ed Bradford, Angel Banks, Stan Boyd, Peter Weed, Sharon Walk, Teresa Gilbert and Sondra Honeycutt, MSD.

## **2. Approval of Minutes of the December 18, 2002 Meeting:**

Mr. Aceto moved that the Minutes of the December 18, 2002 Meeting be approved as presented. Mr. Venable seconded the motion. Voice vote in favor of the motion was unanimous.

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

None

**4. Informal Discussion and Public Comment:**

None

Mr. Blackburn presented awards of appreciation to Teresa Gilbert for her work in preparation of the 2002-2003 Budget and to Sharon Walk and Angel Banks for their efforts in the United Way Campaign.

**5. Report of General Manager:**

Mr. Hartye presented information regarding the Haywood Street Project; City of Asheville Billing; Reading; Budget Award, Legislative Survey, United Way and Cost Participation.

Mr. Hartye reported that MSD crews were at the Haywood Street water line project in the event service laterals were hit. He further reported that approximately 300 to 600 feet of ductile iron pipe was replaced to facilitate the installation of the water line.

Regarding City of Asheville Billing, Mr. Hartye reported that he received a notice from David Hanks of the Regional Water Authority that a meeting will be held between the Water Authority, City of Asheville and MSD representatives February 4, 2003 to discuss billing issues. He stated that Ms. Field, Mr. Kelly and Mr. Blackburn will represent the MSD. Lewis Daniels, Vonna Cloinger and Nathan Ramsey will represent the Regional Water Authority and Holly Jones and Jim Ellis will represent the City of Asheville. Associated staff from each unit will also be in attendance. Mr. Venable asked for clarification on the purpose of the meeting. Mr. Hartye stated the purpose of the meeting is to discuss the cost of billing. Currently MSD is charged \$1.75 per bill and the City of Asheville wants to increase the cost to \$3.97, in what it terms "full cost recovery".

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Mr. Hartye presented articles on sewage problems in Raleigh, Los Angeles and Birmingham. In addition, he presented a copy of the 2003 Legislative Survey of local issues conducted by the Asheville Area Chamber of Commerce.

Mr. Hartye presented a summary of developer constructed projects that the District has been a partner in since 1994. He explained the difference between a Cost Participation Project and Cost Recovery Project.

**6. Report of Committee Chairs:**

**Personnel Committee**

Mr. Venable reported that the Personnel Committee met today to discuss the procedure for the evaluation of the General Manager. He stated that the Committee did not make a recommendation, but directed him to meet with the General Manager to discuss the procedure and report back to the Board.

**7. Consolidated Motion Agenda:**

**a. Approval of Annual Meeting Dates:**

Staff recommends approval.

**b. Consideration of Resolution authorizing the filing of an application with the North Carolina Local Government Commission for approval of the issuance and private sale of refunding bonds.**

Mr. Hartye reported that the Resolution includes several provisions, which include authorization for the Local Government Commission (LGC) to sell bonds, the financing team and approval to issue a Preliminary Official Statement. With regard to the Savings Levels, the LGC recommends developing a target on the minimum savings the District wants to realize by refunding. He stated that the Finance Committee was polled and agreed with staff to recommend a 2% savings level. Mr. Venable asked for clarification on how the District is borrowing more money at a lower interest rate, but the original bonds are still there. Ms. Zeigler explained that some of the bonds are callable and will be paid off. She stated that for bonds that are not paid off, money will be put in escrow with the Trustee, which will be used to pay off bonds as they come due. Mr. Clarke stated that the District is not incurring any additional debt by making irrevocable deposits into an escrow account and paying off bonds as they come due.

**c. Consideration of Cost Participation Request for Brotherton Co-housing:**

Mr. Hartye reported that staff recommends MSD participate in 50% of the construction costs for the Brotherton Co-housing Rehabilitation Project in an amount not to exceed \$2,867.75.

**d. Consideration of Intent to Adopt the Sewer Use Ordinance:**

Mr. Hartye reported that staff recommends approval of the Declaration of Intent to adopt the Sewer Use Ordinance, which must go through a 90-day

review process prior to approval. He stated that the majority of revisions have to do with required regulatory changes. He further stated that he will bring comments from the entities back to the Board in March, but in the interim, staff will give a presentation at the February

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meeting on MSD's Grease and Pre-treatment Program. Ms. Graham asked if small commercial businesses would be notified during the review process on the requirements of the Ordinance and if there are any associated costs. Mr. Hartye stated that the Grease Program is already being carried out and that any questions regarding costs can be answered following the presentation. Mr. Venable asked if the development of an Education and Enforcement Program means the District would need to hire additional help to enforce the program. Mr. Hartye stated that no new employees would be hired. He further stated that grease has always been a problem, which the District has addressed through its Pretreatment Program, and that enforcement will largely be on commercial businesses. Mr. Sobol asked when specifics of the Ordinance would be discussed. Mr. Hartye stated that the Board will discuss specifics when comments are received from the various entities.

**e. Consideration of Bids for Inglewood Road:**

Mr. Hartye reported that the following bids for the Inglewood Road Rehabilitation Project were received January 7, 2003: Buckeye Construction with a total bid of \$142,638.00; Buncombe Construction with a total bid of \$130,835.00; Hobson Construction with a total bid of \$93,410.00 and Terry Brothers Construction with a total bid of \$97,690.00. He further reported that staff recommends award of the contract to Hobson Construction Co., Inc. in the amount of \$93,410.00, contingent upon review by District Counsel.

**f. Consideration of Developer Constructed Sewer Systems for Carrington Place, Mt. Carmel Commercial Center, Asheville Housing Authority, Site 17, Bedford Lane; Asheville Housing Authority, Site 15, Long Street; Riverhills Shopping Center and Crowell Farms Villas.**

Mr. Hartye reported that staff recommends acceptance of the developer constructed sewer systems. All MSD requirements have been met.

**g. Consideration of Cost Recovery for Mt. Carmel Commercial Center:**

Mr. Hartye reported the cost to extend sewer to the Mt. Carmel Commercial Center is \$55,270.00 and that the estimated 5-year revenues are estimated to be \$171,466.00. He presented a map showing the location of the property, a letter from Day Engineering Services requesting that the MSD Cost Recovery Program be utilized to pay for the off-site sewer for this project, a copy of the Cost Breakdown and Phasing of the Development and a Breakdown of MSD costs versus the Extension Costs at payoff. He stated that in addition to the 5-year revenues, the developer will pay an estimated \$142,000.00 in facility fees. Mr. Hartye further reported that staff recommends the Board approve authority for the General Manager to reimburse Mount Carmel Properties, LLC the amount of \$55,270.00 upon Board acceptance for ownership of the sewer system and receipt of a Letter of Credit.

**h. Cash Commitment/Investment Report for Period Ended 11/30/02:**

Presented as information only.

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**i. Approval of Budget Calendar:**

Staff recommends approval of the Budget Calendar as presented. Mr. Venable questioned the time of the June 11, 2003 Board meeting. Mr. Hartye stated the meeting should be 2:00 p.m. instead of 3:00 p.m.

Ms. Field moved that the Board approve the Consolidated Motion Agenda as presented. Mr. Gantt seconded the motion. Roll call vote was as follows: 9 Ayes; 0 Nays.

**8. Primer on Public Records:**

Mr. Clarke began by stating that North Carolina has a very broad public records law. Essentially, any document made in connection with the transaction of public business by an agency of the state or local government is a public record and is available for inspection and copying by the public unless exempted by a specific statute. He further stated that internal communications including e-mails, communication to and from employees, communications to Board Members from staff or from Board Members to staff are all public record. There is no requirement to create a record, but existing records can be inspected and copied. Minutes of Board and Committee meetings are public records except the law allows Boards and Committees to go into Closed Sessions to discuss certain

matters. Minutes must be kept of Closed Sessions, and those minutes do not have to be made available for inspection and copying so long as to do so "...would frustrate the purpose of the Closed Session."

He then listed some of the exemptions to the Public Records Law:

- Certain personnel information - The only information that can be released about employees is hire date, current position and salary and last promotion, demotion or transfer. The information in an employee's file can be released to the employee, to his or her supervisor, to another government agency for certain reasons and by the public body if necessary to ensure the continued administration of services. As a rule, Board members are not entitled to information in an employee's file.
- Confidential Trade Secret Information - Information which is 1) Confidential Trade Secret, 2) owned by a private party, 3) submitted to the District in connection with a bid, RFP, performance of a contract, or audit and 4) is designated as confidential when submitted is not a public record and is not subject to inspection.
- Cost Estimates for projects prior to bidding and the names of persons picking up plans, etc. to bid, are not public record and subject to inspection. Actual bids must be publicly opened and become public record when they are opened. Informal bids do not become public record until the informal bid is awarded.
- Written communications from the MSD attorney made within the scope of the attorney client relationship concerning a claim for or against MSD or one which directly affects it are not public record although such communications do become public record three years after the date made.



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Mr. Aceto asked what MSD's obligation is for preservation of records with regard to writing notes or memos to each other. Mr. Clarke stated that rough notes are probably not public record. He further stated that MSD as a governmental agency has a right and obligation to preserve public records and can only destroy or dispose public records pursuant to a policy approved by the Department of Cultural Resources, Division of Archives. This policy has been drafted, but not approved as yet. With regard to copies of public records, Mr. Clarke stated that there is no need to keep copies since the official records are maintained by MSD. Mr. Hartye reported that staff will come back to the Board when the policy is approved by the Division of Archives.

With regard to Open Meeting Laws, Mr. Clarke reported that this law requires public bodies and committees to conduct their official meetings in open session and that they provide notices of meetings and adopt a regularly scheduled meeting. He stated if there is a special meeting, a 48-hour notice to the public or anyone requesting a notice is required. He further stated that emergency meetings can be held for extraordinary circumstances. Also, you can go into closed session at any regular, special or emergency meeting, but there are only certain things you can discuss, i.e., confidential information, consulting with an attorney, discussions regarding settlements, consideration of property acquisition, personnel issues, expansion of an existing or new business or industry being served by MSD. However, Board Members cannot discuss their own performance as a Board collectively or individually.

Mr. Clarke stated that he would come back to the Board when the document is finalized. He recommends the Board consider adopting a policy on how to handle public record request. With regard to personnel records, Mr. Venable asked if MSD maintains two sets of records or does the Personnel Manager have to pull the information requested. Mr. Hartye stated there is a list of approximately nine items that the Personnel Department is allowed to give out. Mr. Clarke stated that this information is only available to the employee's supervisor, the employee, officials of other governmental entities and to the

public if the belief is essential to maintain confidence in administrative government services. Also, no one has direct access to these files. Ms. Field suggested that the policy say how much information can be delivered, when it can be delivered and the cost for copying.

**9. Old Business:**

None

**10. New Business:**

A brief discussion was held regarding the Status of Phase 2 and 3 of the North Swannanoa Interceptor Sewer Project.

**11. Adjournment:**

With no further business, Ms. Bryson moved for adjournment at 2:45 p.m. Ms. Graham seconded the motion. Voice vote in favor of the motion was unanimous.

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Jackie W. Bryson, Secretary/Treasurer