

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT

FEBRUARY 18, 2004

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, February 18, 2004. Chairman Blackburn presided with the following members present: Aceto, Ball, Bellamy, Bryson, Gantt, Kelly, Pace, Sobol and Venable. Ms. Graham was absent.

Others present were: Thomas E. Hartye, General Manager, William Clarke, General Counsel, Leah Karpen with the League of Women Voters, Gary McGill of McGill Associates, Larry Frost with NCDENR, Martha Zeigler, Stan Boyd, Ed Bradford, Peter Weed, Julie Willingham, Teresa Gilbert, Linda Hanner, Scott Powell, Cheryl Surrent and Sondra Honeycutt, MSD.

Mr. Blackburn welcomed Councilwoman, Terry Bellamy, who was recently appointed to serve on the MSD Board by Asheville City Council.

2. Approval of Minutes of the January 21, 2004 Meeting:

Mr. Pace moved that the minutes of the January 21, 2004 meeting be approved as presented. Mr. Kelly 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:

Ms. Karpen stated that during construction at the North Asheville Branch Library, a storm sewer collapsed causing a delay in the project. She expressed her appreciation to MSD for being proactive in repairing sewer lines, so these types of delays won't happen.

5. Report of General Manager:

Mr. Hartye presented information regarding the GFOA Award, Press/Reading, Community Meetings Update and Board and Committee Meetings.

Regarding the Government Finance Officers Association (GFOA) Award, Mr. Hartye reported that the District has received the Distinguished Budget Presentation Award for the current fiscal year and recognized Martha Ziegler and Teresa Gilbert for their significant efforts. He presented a Certificate of Appreciation to Teresa Gilbert for her work in preparing the Budget.

With regard to Press/Reading, Mr. Hartye presented a copy of the Asheville Economy Q&A from the Chamber of Commerce on Education Attainment. Mr. Hartye congratulated Mr. Clarke who was recently elected by the Board of Directors of the Golden LEAF Foundation to serve as its new Chairman. Mr. Hartye presented an article in the Asheville Citizen-Times regarding faulty water meters in the Asheville water system. He reported that the Water Authority is in the process of testing the meters, which should take from 4 to 6 weeks, but the preliminary testing indicates the meters are not as bad as originally thought. He stated that Mr. Hanks, Interim Director of the Water Authority, will provide him with an interim report on February 24th and that he will report to the Board at the next meeting. He further stated that the

Minutes

February 18, 2004

Page Two

large meter customers involved in MSD billings represent 591 with 2" meters and 120 with meters from 3" to 10". This class of users represents approximately \$4 million billings per year, but at this point, the Water Authority does not know what the percentage of under reading is as a class. Ms. Ball stated there was some misrepresentation in the article which stated that "the meters are only recording 30 percent of the water used". Mr. Hanks actually said "some of the meters were only recording 30 percent." The Citizen-Times stated that they would clarify the statement in a re-print. Mr. Pace stated that he attended a meeting where Mr. Hanks said commercial meters were worst than residential meters, but were not all bad. Mr. Hartye stated that as meters age they typically register less. Occasionally a meter will register more, which is typically caused by a manufacturer's defect. Mr. Blackburn stated that the Board needs to be aware that it has an obligation to stay abreast of the situation since it affects MSD revenues. Mr. Hartye stated that a write up and recommendation will be available after the completion of an investigation by Brown & Caldwell as a part of the City's Asset Management Program.

Regarding Community Meetings Update, Mr. Hartye reported that a Developers/Engineers Meeting regarding the Extension Policy was held January 27th and was well attended. The Plumbers Meeting regarding the Sewer Service Policy was held February 4th and was very well attended with a good deal of discussion and sharing of ideas. The Kenilworth (Ross Creek) Preconstruction Public Meeting was held February 5th with a moderate number of landowners in attendance. He stated that this project should be underway within the next 4 to 6 weeks. He further reported that he and Mr. Blackburn attended a City of Asheville Housing & Community Development meeting on February 9th regarding affordable housing issues. He stated that information on rebates and cost recovery were provided and well received. He presented a letter from Mr. Scott Shuford, Director of Planning and Development for the City of Asheville, asking MSD to consider adding small

scale sewer easements to the Cost Recovery Program, which may be brought before the Right of Way Committee.

Mr. Hartye reported that the Right of Way Committee will meet February 25th at 2PM. The next Board meeting will be held March 24th at 2PM and the annual CIP Committee meeting will be held April 1st at 8:30 AM.

Mr. Blackburn stated that he attended the Plumbers Meeting and congratulated staff for the numerous compliments received regarding the customer service provided by MSD. The Homebuilders Association was also very complimentary.

6. Report of Committees:

Right of Way Committee

Mr. Pace reported that the Right of Way Committee met January 28, 2004 to consider Construction without Easement or Condemnation on three (3) parcels and Condemnation on four (4) parcels for the Broadway @ Five Points Rehabilitation Project.

Minutes

February 18, 2004

Page Three

Finance Committee

Mr. Kelly reported that the Finance Committee met February 4, 2004 to consider several issues. He called on Ms. Zeigler for a full report on the recommendations.

Ms. Zeigler reported that the Committee considered several issues, the selection of External Auditor Services, Billing Data Acquisition and an update on the Accounting Procedures Manual. She further reported that the six (6) month billing data from the City of Asheville has enabled the District to better understand trends, verify revenue and refine financial forecasting. With regard to revision of the Investment Policy, Ms. Zeigler stated that the Investment Policy was discussed in three separate Finance Committee meetings and after exploring several options, the Committee realized that adoption of the Policy does not obligate MSD to any sort of agreement with an outside person, but is a basic foundation upon which MSD can build strategy.

Ad Hoc Committee

In the absence of Ms. Graham, Mr. Blackburn reported that the Ad Hoc Committee met with the developer of New Salem Park LLC who requested a variance of MSD Policy regarding service to a private development. Mr. Clarke stated that the Committee met, and after hearing from New Salem Park, LLC, and with the consent of New Salem Park, LLC, decided to defer action on the request for 120 days to explore other options.

7. Consolidation Motion Agenda:

a. Consideration of Cost Recovery for Bradford Park:

Mr. Hartye reported that Bradford Park (14 lot subdivision) is located on Sand Hill Road. Staff recommends approval of authority for the General Manager to reimburse Mr. Charles Burnett of Burnett Associates, Inc. \$12,031.00 upon Board acceptance for ownership of the sewer system and receipt of the Letter of Credit.

b. Consideration of Cost Recovery Request for Cedar Crest Heights:

Mr. Hartye reported that Cedar Crest Heights (8 lot subdivision) is located off Charlotte Highway. Staff recommends approval of authority for the General Manager to reimburse Conrad Clark of Colby Construction, Inc. the amount of \$4,371.00 upon Board acceptance for ownership of the sewer system and receipt of surety.

Mr. Hartye reminded the Board that Cost Recovery is the District's participation in the sewer lines that are run between the MSD system and a new development. The District reimburses a developer the estimated net revenues it expects to recover from sewer user charges over the first five years.

c. Consideration of Construction without an Easement or Condemnation – Broadway @ Five Points Rehabilitation Project::

Mr. Hartye reported that the Right of Way Committee recommends proceeding with construction without an easement or condemnation action

Minutes

February 18, 2004

at this time. If owners or heirs do come forth, staff will negotiate or condemn if necessary for taking at that time.

d. Cost Recovery Program Status Report:

Mr. Hartye reported that the Cost Recovery Program has been a very successful program, which was implemented in 2001. To date, the total amount approved is \$371,549.00 with \$79,841.00 disbursed and \$222,378.00 pending. He further reported that the money for this program comes from the CIP Budget Contingency, but staff intends to create a separate line item for this program starting in FY-05 for better tracking and planning. Mr. Sobol requested that both the status report on Cost Recovery and status report on Cost Participation be made available to the CIP Committee at its April meeting.

e. Cost Participation Program Status Report:

Mr. Hartye reported the District adopted a policy to share in the cost of rehabilitation to existing sewers. He stated that when a sewer is in bad shape or too small to tie on, the District will participate in the cost based on point values which are determined by certain criteria. He further stated that to date the total amount disbursed is \$357,164.00, with \$33,132.00 pending.

f. Acceptance of Developer Constructed Sewer System – Bradford Park and Affordable Homes/Wilmington Street:

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

g. Distinguished Budget Award for FY 03-04:

Presented as information only.

h. Consideration of Revision to Investment Policy:

Mr. Hartye reported that the Finance Committee recommends approval of the revised Investment Policy as presented at the February 4th meeting. Also, the Committee recommends that the Director of Finance issue a request for proposal (RFP) for investment advisory services to determine whether retaining a professional advisor would be more cost effective than active in-house management of funds.

Mr. Sobol requested that this item be pulled for further discussion.

i. Consideration of External Auditor Services:

Mr. Hartye reported that the Finance Committee recommends the selection of Cherry, Bekaert & Holland for a three-year contract with fees not to exceed \$24,500 in 2004, \$26,000 in 2005 and \$28,000 in 2006. In addition, the Committee recommends permission to negotiate a contract to be approved in form by District legal counsel. Mr. Hartye stated that the District will automatically go out for RFP's every three years.

Minutes

February 18, 2004

Page Five

j. Cash Commitment/Investment Report for Period Ended 12/31/03:

Presented as information only.

k. Affordable Housing Discounted Fees Status Report:

Mr. Hartye reported that during the period from January 1, 2001 through December 31, 2003 the District discounted facility fees for affordable housing by a total amount of \$64,250.00 (\$31,350.00 from January 1, 2001 – June 30, 2003 and \$32,900 from July 1, 2003 – December 31, 2003). Ms. Bellamy asked how the fees worked. Mr. Hartye stated that most of the rebates are 50%, for example, the water access fee is \$1,600 where \$800 is rebated back for a net cost of \$800.00. The MSD facility fee is \$1,000. For affordable housing, \$700.00 of that amount is rebated to the developer after MSD receives confirmation from the City of Asheville that all of the criteria for affordable housing have been met. A discussion was held with regard to whether this reduction applies to affordable housing in the county. Mr. Hartye stated that reduced fees are extended to those in the county.

Mr. Venable moved that the Board approve items a.b.c.d.e.f.h.i.j.k. of the Consolidated Motion Agenda. Ms. Bryson seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

Mr. Aceto moved that the Board approve Item g. (Investment Policy). Mr. Kelly seconded the motion. Mr. Hartye noted that some questions had arisen

at the Finance Committee meeting about the District's Trustee for outstanding revenue bonds, the Bank of New York, and he had asked Martha Ziegler and Billy Clarke to respond to those issues.

Mr. Sobol expressed his concern about the possible effect of any investment by the District or its Trustee in "derivatives". He asked about the possible effect of an investment in derivatives and suggested the District should have a plan in place. Mr. Clarke pointed out that neither the District or the Trustee are permitted to invest in derivatives so the District currently has no exposure in derivatives.

In discussing the proposed Investment Policy, Mr. Clarke and Ms. Zeigler noted the District has available from time to time, significant amounts of cash in the form of bond proceeds, reimbursement for completed projects from bond proceeds and accumulated cash from pay-as-you-go financing. The purpose of the Investment Policy is to develop a strategy to increase the return on this cash consistent with applicable law and an acceptable level of risk. When the District issues revenue bonds, it is required under its Bond Order to fund a Parity Reserve or Debt Reserve Account. The Bond Order requires the District to fund this account in the amount of principal and interest due for that year in the particular issue. These accounts are held by the Trustee for the benefit of the bondholders. The District can and does direct the Trustee to invest these funds to earn interest. Debt Service Reserve Funds are currently invested pursuant to the following contracts, one with Lehman Brothers at a rate of 6.38% interest and the other with Salomon Brothers at a rate of 5.5% interest.

As MSD issues revenue bonds in the future, it may want to coordinate its investment of money in Debt Service or Parity Reserve accounts with its management of cash on hand. Mr. Clarke noted that, for prudent financial

Minutes

February 18, 2004

Page Six

management, it makes sense to have Ms. Ziegler bring to the Board, people who are qualified to submit proposals for services in this area.

Mr. Clarke stated another question raised by the Finance Committee was why the Bank of New York serves as Trustee for the District. Mr. Clarke explained that Wachovia was the Trustee under the District's 1985 Bond Order, but the Bank of New York purchased Wachovia's Trustee services in the early 1990's. Mr. Clarke noted that until last year, a Co-Trustee was required on revenue bond issues, but that requirement was eliminated last year. Mr. Venable asked if the requirement for a co-trustee was done away with for both existing as well as future bond issues. Mr. Clarke said the requirement was eliminated only for future bond issues. Ms. Bellamy asked if an entity has to go through the Local Government Commission (LGC) as well as counsel to issue bonds. Mr. Clarke stated that MSD bond issues must be approved by the LGC and the Board must adopt a resolution authorizing the issuance of bonds. Mr. Kelly noted that except for the Debt Service Reserve Fund, there does not seem to be much exposure.

Discussion followed regarding funds the District would have to replace if the Bank of New York went under. Mr. Clarke said the District could be required to replace the Debt Service Reserve Fund. In response to a question about principal and interest, Ms. Ziegler noted that while each bond issue has its own rules, most issues require monthly deposits of principal made to the Trustee who pays $\frac{1}{2}$ of the interest in July, the other $\frac{1}{2}$ of the interest and principal in January. In response to a question from Mr. Aceto, Mr. Clarke noted that the District's obligation to pay principal and interest to bondholders is discharged upon deposit of those funds with the Trustee. Mr. Aceto stated the best way to handle this is through diversification, investment, prudence and good advice. Ms. Zeigler pointed out the District is also relying on the bank regulators and the LGC to do their jobs. Mr. Pace asked if the District receives a check for interest earned on the Parity Reserve Account or if it is reinvested. Ms. Zeigler stated the money is generally reinvested, but the amount required for the Parity Reserve Account is recomputed annually, and if there is any overage, a check is issued to the District. Ms. Bellamy asked what part of the budget this is. Mr. Hartye stated that of the approximately \$33 million budget, approximately \$16 million is spent on construction, \$6 million is for debt service and \$11 million is for operations. Ms. Bellamy asked what is in the general fund and what amount the District tries to maintain. Mr.

Hartye said there is currently \$16 million in the general fund and pointed out the District is required to maintain 120% coverage on its revenue bonds, and also maintains a maintenance reserve fund, a fleet replacement fund and a wastewater treatment plant replacement fund.

Mr. Sobol asked if standards for pre-qualifying financial institutions should be included in the Investment Policy. Ms. Zeigler stated that the District would need to develop standards if it went out for RFP's for investment services. Mr. Clarke recommended that standards not be included in the Policy, but be developed as part of the Request for Proposals. Ms. Bellamy asked if long-term operating procedures should be included in the policy. Mr. Clarke stated that he feels the policy has operating principals that apply to everything. With no further discussion, roll call vote was as follows: 10 Ayes, 0 Nays.

Minutes

February 18, 2004

Page Seven

8. Consideration of Policy and Procedures for the Extension of Sewer Service:

Mr. Hartye reported that the Policy and Procedures for the Extension of Sewer Service was reviewed by the Planning Committee at its December, 2003 meeting. He called on Mr. Boyd for a full report. Mr. Boyd reported that the policy was mailed to 38 engineers, developers, Chamber of Commerce,

homebuilders, realtors and was on the agenda for the February 6, 2004 meeting of the Council of Independent Business Owners (CIBO). He stated that the general response has been positive, but there was some concern about charging a fee for pump stations as well as requiring public sewers in developments such as condominium projects. With respect to pump stations, the concern was that most of the remaining property that could be developed in the area would require pump stations and that the process for approval, plus the fee, will lead to less affordable housing. Other concerns included requiring spare parts in addition to the Maintenance Fee; an increase in cost to developers by requiring public sewers and that cost recovery does not offset enough of the construction cost. Mr. Boyd stated that some analysis was done, and for approved projects to date, the cost recovery is about 75% of the construction costs and the 5-year revenue estimate is about 106% of the construction cost. He further stated that there are two (2) large projects that are pending, and if approved, the cost recovery will be 31% of the construction costs and the 5-year revenue will be 42%. Mr. Hartye stated that as a matter of clarification Section C., paragraph 2.f., line 6 of the policy should read “estimated wastewater flow to the non-District, etc.”

Mr. Pace moved that the Board approve the Policy as corrected. Mr. Aceto seconded the motion. Ms. Ball asked if a fee would have to be paid if there is no other way to provide gravity flow and a pump station is required. Mr. Boyd stated that a fee would have to be paid. Ms. Ball asked if the cost of putting in a pump station could be reduced by 50% for affordable housing. Mr. Clarke stated that the proposed policy states that pump stations will only be allowed on extensions to the sewerage system where gravity service is not achievable or extraordinary circumstances justify the use of a pump station. Mr. Hartye stated that the purpose of this statement is to discourage people from installing pump stations simply because it's less expensive, which offers a greater burden to the customers and to the environment because of SSO's. He further stated that if it involves interceding on behalf of the developer in getting a gravity system, this is what the MSD wants. Mr. Aceto asked if pump station are eligible for cost recovery. Mr. Hartye said yes. Ms. Ball agreed that pump stations should be a last option, but there are some cases where there is no other option. She asked if the fee for affordable housing projects can be appealed. Mr. Clarke stated that the policy does not address this issue. Mr. Pace stated that whether it's affordable housing or not, the MSD is already giving a discount on connection fees and shouldn't expect the ratepayers to pick up the additional costs. He further stated that the District needs to discourage pump stations because of SSO's, thereby protecting itself from the EPA. Ms. Ball stated her problem is not with pump stations, but would like to see a reduced fee for affordable housing. A discussion was held regarding reduced cost for pump stations and what constitutes “extraordinary circumstances”. Mr. Blackburn stated that the Board can adopt the policy and

have the Planning Committee look at affordable housing as far as a reduced cost for pump stations. Mr. McGill stated that it will depend on how many extraordinary situations arise. He further stated that the affordable housing issue has nothing to do with how many pump stations there are and feels the policy should not be amended until the District knows what will occur.

Minutes

February 18, 2004

Page Eight

Mr. Hartye stated that the vehicle for addressing this issue is through the schedule of rates, fees and charges which is adopted as part of the budget each year. Mr. Sobol asked if “extraordinary circumstances” excludes low pressure systems. Mr. McGill stated that low pressure systems are excluded. Mr. Gantt suggested the policy be change to read “including but not limited to affordable housing considerations” and if the Board doesn’t agree, he requested that Mr. Hartye come back with what the District is doing for affordable housing with options on what other sewerage districts are doing.

Ms. Ball moved that the Board amend the original motion to include that the Planning Committee will take up the issue of a reduction in fees for affordable housing. Mr. Gantt seconded the motion. A discussion was held with regard to whether this issue should go before the Finance or Planning Committee. Mr. Blackburn called for a vote on the amendment. By a show of hands the amendment was defeated by a vote of 4 to 6. Those voting against the motion were Mr. Aceto, Mr. Blackburn, Ms. Bryson, Mr. Kelly, Mr. Pace and Mr. Venable.

Mr. Blackburn called for a vote on the original motion. Roll call vote was as follows: 6 Ayes; 4 Nays (Ms. Ball, Ms. Bellamy, Mr. Gantt and Mr. Sobol). Mr. Aceto stated that he would like to see some opportunity for those who objected to the motion to find out what the issues are. Mr. Gantt stated that it would be good to explore the options and research other sewerage districts around the country that have the same problems about affordable

housing and that this issue go before the Planning Committee for recommendations to the full Board. Ms. Ball expressed her appreciation to staff for putting the Policy together and that it is a good document.

9. Old Business:

Mr. Venable asked if delay in getting the belt filter presses on line will cause a problem later on. Mr. Hartye stated that one belt filter press is on site.

10. New Business:

None

11. Adjournment:

With no further business, Mr. Gantt moved for adjournment at 3:35 p.m. Mr. Kelly seconded the motion. Voice vote in favor of the motion was unanimous.

Jackie W. Bryson, Secretary /Treasurer