

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT

JUNE 9, 2004

1. Call to Order and Roll Call:

The regular monthly meeting of the Metropolitan Sewerage District Board and Public Hearing on the Budget for FY 2004-05 was held in the Boardroom of MSD's Administration Building at 2:00 PM, Wednesday June 9, 2004. Chairman Blackburn presided with the following members present: Aceto, Ball, Bellamy, Bryson, Gantt, Graham, Kelly, Pace, Sobol and Venable.

Others present were: Thomas E. Hartye, General Manager, William Clarke, General Counsel, Gary McGill of McGill Associates, Larry Frost with DENR, Alan Moss with iDesign and Daughter, Leah Moss, Maryann Butcher with the Woodfin Tribune, Jerry Vahaun, Mayor, Jason Young, Town Administrator and Joseph Ferikes, Attorney with the Town of Woodfin, Joseph Martin with the Woodfin Sanitary Water & Sewer District, Martha Zeigler, Stan Boyd, Ann LeMieux, John Kiviniemi, Ed Bradford, Monty Payne, Ken Stines, Jim Naber, Sharon Walk, Pam Thomas, Julie Willingham, Wayne Tipton, Adrian Ellis, Steven Briggs, Tim Coats, Pat Finley, Gaynell Brigman and Sondra Honeycutt, MSD.

2. Approval of Minutes of the May 12, 2004 Meeting:

Mr. Kelly moved that the Minutes of the May 12, 2004 meeting be approved as presented. Mr. Pace seconded the motion. Mr. Venable requested that under Item 10. (Old Business) paragraph two, the first word "Ms." be changed to "Mr." With no further additions or corrections, the Board unanimously approved the minutes as amended.

3. Discussion and Adjustment of Agenda:

Ms. Ball asked that Item e. (Greenway Agreements) be pulled from the Consolidated Motion Agenda.

4. Informal Discussion and Public Comment:

None

5. Public Hearing and Consideration of Final Budget and Rates for Fiscal Year 2004-05.

MINUTES OF PUBLIC HEARING

At 2:05 PM, Mr. Blackburn opened the Public Hearing on the Budget and Rates for Fiscal Year 2004-05.

Mr. Hartye stated that the Final budget is the same as the Preliminary Budget. He presented a Resolution adopting the budget and the sewer use charges, which represents a 2% rate increase. Mr. Pace moved that the Board adopt the Final Budget and Sewer Use Charges for FY 2004-05. Ms. Graham seconded the motion. Roll call vote was as follows: 9 Ayes; 1 Nay (Ms. Ball). Mr. Aceto was absent during the vote.

Mr. Venable expressed his appreciation to Tom Hartye, Martha Zeigler, Peter Weed and Teresa Gilbert for their work in preparing the budget document.

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Mr. Blackburn asked for comments from the public on the budget. There being no comments, Mr. Blackburn declared the Public Hearing closed at 2:07 PM.

6. Report of General Manager:

Mr. Hartye presented information regarding ISO (International Standards Organization) 14001 Certification, Press/Reading, Good Correspondence and Board/Committee Meetings.

Mr. Hartye reported that the District received its expanded ISO 14001 Certification, which now includes the Plant, Engineering (CIP + P&D) and Administration (including Fleet and Warehouse). He stated that the next step will include the System Services Division. He introduced Jim Naber, MSD's Safety Director who spearheads this effort for a presentation on the ISO 14001 Certification.

Mr. Naber reported that the District pursued the idea of ISO 14001 in the fall of 2000 and that John Kiviniemi was instrumental in helping to make it work at the treatment facility. In 2002, the District received its original registration at the Plant. He further reported that on March 31, 2004 the District announced it had expanded its scope to include the Engineering and Administration departments and by 2005 the System Services Division. He stated that MSD is one of 96 companies in North Carolina who are registered

to ISO standards, and the largest utility in the State. He gave an overview of the program, which is focused on environmental issues. He further stated that the Environmental Management System (EMS) brings what the District is currently doing under the umbrella of ISO and captures the knowledge of staff which is integrated into day to day operations. Mr. Hartye stated that one of the big issues coming forward for utilities and companies is the retirement of baby boomers and that ISO is one way to maintain the institutional knowledge going forward into the future. He further stated that the ISO team has developed Standard Operating Procedures with all of the knowledge that was available at the time. Mr. Naber explained how the system works. Ms. Bellamy asked how success is measured. Mr. Naber stated that internal audits are made by the ISO team. Ms. Bellamy asked if the auditor is part of the overall team or are they separate. Mr. Naber stated there is an audit team that is a separate entity to look at the whole structure and every 6 months a third party registrar audits MSD to ensure compliance with the standards.

Mr. Naber reviewed some of the benefits of being ISO certified which include reduced insurance rates; improved performance; protection of natural resources; cost savings on diesel fuel; implementation of Emergency Spill Control Procedures and a Recycling Program. He introduced the ISO Team, which is strictly voluntary, Adrian Ellis, Fleet Manager, Pat Finley, Mechanical Maintenance, Wayne Tipton, Administration, Tim Coates, Electrical Maintenance, Steven Briggs, Engineering, Sharon Walk, Engineering, Pam Thomas, Administration, Julie Willingham, Finance, Gaynell Brigman, Plant. Mr. Hartye recognized the Division Directors who were instrumental in the program and serve as the steering committee. He stated that this program gives MSD good standing in the community and with the bond holders and others. Mr. Aceto moved that the Board express appreciation to staff for an innovative program. Mr. Pace seconded the motion. Mr. Aceto reported that the underwriting candidates stated that management is being emphasized by the bond rating agencies and that this program is something that can be brought to the rating agencies to show the quality of MSD staff. Mr. Venable congratulated staff for their initiative in a

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very proactive program. With no further discussion, voice vote in favor of the motion was unanimous.

With regard to Press/Reading, Mr. Hartye presented articles on Durham, Gastonia, Greensboro and Memphis water/sewer rate issues; an article regarding local water rates and an article on the MSD plant project and odor in Woodfin. He presented information regarding odor issues in Woodfin and MSD's Nutri-Lime Process. Mr. Hartye reported that there have been some complaints with regard to the use of the Nutri-Lime process, which is being utilized while the incinerator is down. He gave a brief history on the use of this process and noted that additional measures have been taken since May including adding chemicals to the sludge prior to de-watering; spraying a masking agent on the Nutri-Lime building itself and adding a chemical in the scrubbing tower. He further reported that MSD planned originally for the incinerator to be down between January and April, but because of a delay in shipment from Singapore of special alloy tubes that are used in the heat exchanger and repairs made to the steel shell, the project won't be complete until early August.

Mr. Hartye reported that the District will hit the air waves the last week in June with a media campaign consisting of three 60 second radio spots and a 30 second TV spot. He stated that the primary thrust of the campaign will be "Call MSD First". He presented a video of the TV spot and audio of the radio spots. Mr. Blackburn presented a trophy of appreciation to Leah Hope Moss for her efforts in taping a radio spot for this campaign. Mr. Hartye stated that these spots will run between June 28th and July 4th.

Regarding Good Correspondence, Mr. Hartye presented a letter recognizing Bill Conner, Project Manager along with the District's Inspectors and contractor on the Swannanoa interceptor project.

Mr. Hartye reported that the Right of Way Committee will meet June 23rd at 2PM and the next meeting of the Board will be July 21st at 2PM.

7. Report of Committees:

Right of Way Committee

Mr. Pace reported that the Right of Way Committee met May 26, 2004 to consider condemnations on the Upper Ross Creek Rehabilitation Project and Compensation Budgets on the Riverside/Westover Drive Rehabilitation Project and Swindale Street Private Sewer Rehabilitation Project. Also, the Committee considered construction without an easement or condemnation on the Middle Beaverdam Creek Rehabilitation Project. He further reported that the City of Asheville/Town of Black Mountain Greenway Agreements approved at the March 31, 2004 Right of Way Committee Meeting will be considered in the Consolidated Motion Agenda.

Finance Committee

Mr. Kelly reported that the Finance Committee met June 2, 2004 to interview three prospective underwriters for MSD's upcoming bond issue. The firms interviewed were: Wachovia, Citigroup and Bank of America. He further reported that the Committee recommends the Board honor the request for proposal by Bank of America. He stated that this group is well

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versed about all MSD finances and has extensive experience with other water and sewer districts. Also, there was some discussion regarding variable rate bonds. Mr. Kelly moved that the Board approve the recommendation of the Finance Committee to engage Bank of America Securities as underwriters for the upcoming bond issue. Ms. Bellamy seconded the motion. Roll call vote was as follows: 11 Ayes; 0 Nays.

8. Consolidated Motion Agenda:

a. Consideration of Developer Constructed Sewer Systems: The Views of Asheville and Biltmore Lake Block A, Phase 4.

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

b. Consideration of Compensation Budget Riverside/Westover Drive Rehabilitation Project:

Mr. Hartye reported that the Right of Way Committee recommends approval of the Compensation Budget.

c. Consideration of Compensation Budget – Swindale Street Private Sewer Rehabilitation Project.

Mr. Hartye reported that the Right of Way Committee recommends approval of the Compensation Budget.

d. Consideration of Construction without an Easement or Condemnation – Middle Beaverdam Creek Rehabilitation Project:

Mr. Hartye reported that the Right of Way Committee recommends proceeding with construction without an easement or condemnation action at this time. If land records are clarified such that a description and plat can be created, staff will negotiate or condemn if necessary at that time.

e. Consideration of Greenway Agreements with City of Asheville and Town of Black Mountain:

Mr. Hartye reported that the Right of Way Committee recommends approval of greenway agreements with both the City of Asheville and the Town of Black Mountain, which are based upon the current agreement between MSD and the Town of Fletcher.

f. Consideration of Direct Billing Policy:

Mr. Hartye reported that staff recommends adoption of the Sewer Direct Billing Policy and Procedures.

Mr. Venable requested that staff define the acronyms in the Policy & Procedures. Mr. Hartye stated he would direct staff to make the changes.

g. Cash Commitment/Investment Report for Month Ended April 30, 2004:

Presented as information only.

Ms. Graham moved that the Board approve Items a.b.c.d.f.g. of the Consolidated Motion Agenda. Mr. Gantt seconded the motion. Roll call vote was as follows: 11 Ayes; 0 Nays.

Mr. Pace moved that the Board approve Item e. (Greenway Agreements) of the Consolidated Motion Agenda. Ms. Graham seconded the motion. Mr. Blackburn excused Ms. Ball and Ms. Bellamy from voting. With no discussion, roll call vote was as follows: 9 Ayes; 0 Nays.

9. Consideration of Request by Town of Woodfin:

Mr. Vebaun stated that the Town of Woodfin is requesting a seat on the MSD Board as outlined under North Carolina General Statute 162A. He stated that when he was elected Mayor, he was under the impression that Ms. Bryson represented the Town of Woodfin on the MSD Board, but after some research found that she represented the Woodfin Sanitary Water & Sewer District (“WSWSD”). He introduced Mr. Jason Young, Town Administrator and Mr. Joseph Ferikes, Attorney for the Town of Woodfin.

Mr. Young stated that the Town of Woodfin was founded in 1971 and is the third largest municipality behind Asheville and Black Mountain, but does not have representation on the MSD Board. He presented maps showing the Town of Woodfin, the WSWSD and the MSD District. He stated that

approximately one-third of the Town of Woodfin is not represented by the WSWSD, which in the Town's opinion, disenfranchises hundreds of residents. In addition he presented a copy of "Commonly Asked Questions" from MSD's Web site.

Mr. Ferikes referenced North Carolina General Statute 162A-67, Paragraph (a), section (4), which states "The governing body of each political subdivision, other than counties, lying in whole or in part within the District, shall appoint one member to the District Board." He stated that the Town of Woodfin qualifies as a political subdivision as defined by North Carolina General Statute 162A-65, paragraph (a) section 8, which states: "Political Subdivision" shall mean any county, city, town, incorporated village, sanitary district, water district, sewer district, special purpose district or other political subdivision or public corporation of this State now or hereafter created or established." He further stated that it's simply been an oversight that the Town of Woodfin has not had a seat on the District Board. Mr. Ferikes stated that the WSWSD is a separate entity; they have their own meetings, they set their rates and have nothing to do with the Town of Woodfin. He pointed out that a large portion of the City of Asheville, i.e., UNC-A, and Beaver Lake areas are within the WSWSD and that a large area is not, therefore in his opinion, the Statute is very clear that the Town of Woodfin is entitled to a seat on the MSD Board. Mr. Gantt asked for a clarification on the portion of Woodfin that is not represented. Mr. Clarke stated that areas of the WSWSD that have been annexed by the City of Asheville are no longer a part of the WSWSD. Ms. Bellamy asked how this differs from the Water Authority not having a seat on the Board. Mr. Clarke gave some background on the creation of MSD and stated that because the Water Authority is not a political subdivision they are not entitled to a seat on the Board. He explained that the

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reason Woodfin is different than the other sanitary districts is that the Town of Woodfin was not getting water from the City of Asheville; it had its own water source. He stated that Legislation was passed in 1929 making Buncombe County Commissioners trustees of all of the other sanitary districts, but specifically exempting Woodfin. He further stated that at one time, Woodfin had a sanitary district and a water district, which were merged by act of the Legislature in 1931.

Mr. Ferikes stated that he believes MSD considers the entire municipal corporate limits of the Town of Woodfin to be in the District. Mr. Clarke stated that technically, the boundaries of MSD were established when it created itself in 1962 and the only official change since that time was the addition of the Candler Water & Sewer District. He further stated that Statute 162A-67 says every political subdivision within the District has the right to a Member and at the beginning of the Statute it says "Immediately after the creation of the District", which he feels is the key. If an area wants to join the District after its creation, there is a process in Statute 162A-68 that they can petition to come in. Mr. Gantt asked how many residents of the town are outside the WSWSD. Mr. Young said approximately 300-400. Ms. Ball asked if the Consolidation Agreements changed the statutory requirements in any way. Mr. Clarke said no, that the Consolidation Agreements are a restatement of the original Agreements of 1964 plus, the actual sewer systems were conveyed to MSD. Ms. Ball asked if there are political subdivisions that are within the District that could make the same request. Mr. Clarke stated he was not aware of any. Mr. Venable asked if other Water & Sewer Districts that were part of MSD in 1990 were considered political subdivisions and if so, why didn't they get representation on the Board. Mr. Clarke stated they were considered political subdivisions, but if the Board of Commissioners served as the governing body they did not appoint a member. WSWSD had its own Board, (not the County Commission) so it appointed a member to the MSD Board.

Mr. Aceto asked if there is a particular issue that has caused the Town of Woodfin to be concerned about a lack of representation. Mr. Vehaun stated that after researching the Statutes he felt like the Town of Woodfin is entitled to a seat on the Board. Mr. Aceto asked if there is something the MSD has failed to do that the Town is particularly concerned about. Mr. Vehaun stated that MSD did not inform the Town that the incinerator was going to be shut down. Mr. Hartye stated that this issue has been discussed in the CIP Committee meetings for the last two years and the Town Manager has been invited to attend, but did not. Also, during the last two years power point presentations have been made at CIP Committee Meetings with regard to the

incinerator project. Mr. Young stated that communications between the Town of Woodfin and MSD have been poor in terms of things like the permit process and that Statute 162A requires MSD to present plans for improvements, which is something the Town missed out on entirely and in his opinion, reconstructing the incinerator from the inside out would be considered an improvement. Mr. Aceto asked whether the situation that existed in 1962 was addressed by Statute 162A and the situation going forward is addressed by 162A-68. Mr. Young stated that 162A-68 is there for the purpose of considering the addition of new areas into the District and 162A-67 provides for those who are currently being served. Ms. Ball asked if all of the city limits of Woodfin are within the District. Ms. Ball stated that there are approximately 300 – 500 Regional Water Authority bills that go to different structures that are serviced by WSWSD and even if there are four (4)

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persons per household, this would equal to about 1,200 out of 70,000 which is not a significant amount of Asheville that is served by the WSWSD. Ms. Bellamy suggested that the Board develop a sub-committee to look at this issue in detail and make a recommendation to the Board. Ms. Graham asked if the request is for two (2) representatives on the Board; one from the Town of Woodfin and one from the WSWSD. Mr. Vehaun stated that they are asking that a representative from the Town of Woodfin have a seat on the Board. Mr. Pace stated that it doesn't seem right that 3,600 residents have two (2) representatives on the Board.

At 3:15 PM, Ms. Graham moved that the Board go into closed session to consult with its Attorney. Ms. Bryson seconded the motion. Voice vote in favor of the motion was unanimous.

At 3:33 PM, the Board went back into open session. Ms. Bellamy moved that the request by the Town of Woodfin be referred to the Planning Committee and General Counsel with a recommendation to the Board. Mr. Sobol seconded the motion. Voice vote in favor of the motion was unanimous. Mr. Martin with the WSWSD asked to be notified of the date of the Planning Committee.

10. Old Business:

None

11. New Business:

None

12. Adjournment:

With no further business, Ms. Bellamy moved for adjournment at 3:45 PM. Ms. Graham seconded the motion. Voice vote in favor of the motion was unanimous.

Jackie W. Bryson Secretary/Treasurer