

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT

JULY 21, 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 PM, Wednesday July 21, 2004. Chairman Blackburn presided with the following members present: Aceto, Bellamy, Bryson, Graham, Kelly, Pace and Venable. Those members absent were: Ball, Gantt and Sobol.

Others present were: Thomas E. Hartye, General Manager, William Clarke, General Counsel, Gary McGill of McGill Associates, Leah Karpen with the League of Women Voters, Jason Young and Jerry VeHaun with the Town of Woodfin, Joseph Martin with the Woodfin Sanitary Water & Sewer District, Stan Boyd, Ann LeMieux, John Kiviniemi, Ed Bradford, Monty Payne, Ken Stines, Scott Powell, Roger Watson, Peter Weed and Sondra Honeycutt, MSD.

2. Approval of Minutes of the June 9, 2004 Meeting:

Mr. Venable moved that the Minutes of the June 9, 2004 Meeting be approved as presented. Ms. Bryson seconded the motion. Voice vote in favor of the motion was unanimous.

3. Discussion of Adjustment of Agenda:

None

4. Informal Discussion and Public Comment:

Mr. Blackburn recognized Mr. Young and Mr. VeHaun with the Town of Woodfin, Mr. Martin with the Woodfin Sanitary Water & Sewer District and Ms. Karpen with the League of Women Voters.

5. Election of Officers:

Mr. Blackburn called for nomination for Chairman. Mr. Aceto nominated Mr. Blackburn. Ms. Graham seconded the motion. There being no further nominations, Mr. Venable moved that the nominations be closed and Mr. Blackburn elected Chairman by acclamation. Mr. Pace seconded the motion. Voice vote in favor of the motion was unanimous

Mr. Blackburn called for nominations for Vice Chairman. Mr. Pace nominated Mr. Sobol. Ms. Graham seconded the motion. There being no further nominations, Ms. Graham moved that the nominations be closed and Mr. Sobol elected Vice Chairman by acclamation. Mr. Venable seconded the motion. Voice vote in favor of the motion was unanimous.

Mr. Blackburn appointed Jackie Bryson as Secretary/Treasurer subject to approval of the Board. Voice vote in favor of the appointment was unanimous. Ms. Bellamy was absent during the election of officers and the appointment of the Secretary/Treasurer.

6. Report of General Manager:

Mr. Hartye presented information regarding GFOA Certificate of Achievement, MSD Directors Business Report, Treatment Plant Compliance

Recognition, SSO's, Cost Recovery Program Update, Reading and Board/Committee Meetings.

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Mr. Hartye reported that the District received the Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association (GFOA) for FY 03. He expressed his appreciation to Martha Zeigler, Scott Powell and Teresa Gilbert for their efforts.

Mr. Hartye presented a copy of the MSD Directors Business Report, which highlights 2003. He provided additional copies for the Board to share with their constituency. He expressed his appreciation to Peter Weed for his work on this project.

Mr. Hartye presented a copy of the Association of Metropolitan Sewerage Agencies (AMSA) Peak Performance Award for 2003 recognizing the District's Treatment Plant Compliance record. He expressed his appreciation to all Staff at the Treatment Plant.

Regarding Sewer System Overflows (SSO's), Mr. Hartye presented a graph depicting SSO's for Fiscal Years 99 through 04, which is a direct result of System Services Preventative Maintenance efforts and the CIP Department with the Sewer Rehab Program. He expressed his appreciation to the Board and the entire District for the progress made in this area.

Regarding Cost Recovery, Mr. Hartye presented an update of the District's Cost Recovery Program from its inception to date.

Mr. Hartye presented several articles which included: MSD public service announcement, Fundamentals of Finance Come First, Water Budget and Sewer Rates, Woodfin wants say in Sewerage, Town crosses first hurdle at MSD, Asheville Economy Q&A and Asheville Metro Economy Update.

With regard to Board/Committee meetings, Mr. Hartye announced that the Personnel Committee will meet July 26th at 8:00 AM and the Right of Way Committee will meet July 28th at 2 PM. The next meeting of the Board will be held August 18th at 2PM.

Regarding SSO's, Mr. Venable asked if the weather was taken into consideration when preparing the chart. Mr. Hartye stated that there are many reasons for SSO's and some are weather related. Mr. Venable asked if any of the declines in the number of SSO's is affected by the weather or is it all attributed to the proactive efforts of the MSD. Mr. Hartye stated that even in wet weather, the decline continues and that SSO's attributed to wet weather are not a major proportion of what the District deals with.

Mr. Blackburn expressed his appreciation to the Board and Mr. Hartye for their part in bringing a new industry to Asheville. He reported that the new industry will have a flow of 4 million gallons per month and create 70 new jobs.

7. Report of Committees:

Planning Committee

Mr. Aceto reported that the Planning Committee met June 29, 2004 to consider the Town of Woodfin's request for representation on the District Board. He further reported that the Committee recommends that the Town of Woodfin's application for inclusion be accepted. He stated that the Committee felt comfortable that they could interpret the law in this case to recommend giving the

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Town of Woodfin a seat on the MSD Board. He further stated that the Committee also considered the fairness issue with regard to other member agencies and determined that this decision was not an impediment to admitting the Town of Woodfin to the Board in light of the strength of the legal argument. Mr. Kelly requested that the Board go into closed session to discuss this issue further in that he had to leave the last meeting early and missed the discussion. Mr. Blackburn stated that discussion would take place under Item 9.

Finance Committee

Mr. Kelly reported that the Finance Committee met July 8, 2004 to consider issuance of variable vs. fixed debt and the selection of an Investment Advisor. The Committee instructed staff to enter into negotiations with Banc of America Securities to negotiate its fee downward and if the restated fee is competitive with the others to enter into a contract as the District's Investment Advisor. Mr. Hartye reported that Banc of America had the highest yield of the three bankers and after negotiation, they reduced the fee 10%; from \$62,000 to \$55,800.

8. Consolidated Motion Agenda:

a. Consideration of Preventative Maintenance Contract VIII:

Mr. Hartye reported that Contract VIII is a negotiated one year extension of Contract VII, which was bid and awarded last year to Compliance EnviroSystems. The Contract consist of line cleaning and TV inspection of approximately 372,000 lineal feet of line. He further reported that there is an increase of 8.4% in the cost of unit items primarily due to an increase in fuel cost. He stated that staff recommends acceptance of the proposal from Compliance EnviroSystems. Mr. Venable asked if an open bid process is required on this contract. Mr. Clarke stated no, that this is a contract for services and the initial contract had a provision to extend the contract for one year.

b. Consideration of Enforcement Response Plan for Pretreatment:

Mr. Hartye reported that Federal and State regulations require MSD to have an Enforcement Response Plan (ERP) to outline how MSD will address issues of non-compliance with the Pretreatment Program. He stated that the ERP was adopted in 1994 and the revised plan is to strengthen MSD responses for repeated non-compliance. Mr. Aceto asked how the District determines what type of business is required to install a grease trap. Mr. Payne stated that if there is no cooking on the premises, a grease trap is not required. Mr. Hartye stated that to MSD's knowledge, all existing establishments in the District are using traps and that staff is mainly dealing with new businesses.

c. Consideration of Education and Enforcement Program for Fats, Oils and Grease:

Mr. Hartye reported that the Collection System Permit issued to MSD required MSD to have an Education and Enforcement Program (EEP) for Fats, Oils and Grease. He further reported that the revised EEP was given to the Independent Restaurant Association of Asheville and the State's Collection and Pretreatment groups for review and comment. Since no comments were

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received and the State is in agreement with the policy, staff recommends that the Board adopt the revised program.

d. Consideration of Bids for Construction of a Septage Receiving Facility:

Mr. Hartye reported that the Septage Receiving Facility will combine the disposal of Septage Haulers' waste and MSD Vacuum Truck waste into one secured facility located across from the Treatment Plant. He stated that the current site at the WWTP has been problematic and the NCDENR has required that the District cease disposal of Vac-truck waste in the ash lagoon. He further reported that the following bids for construction of a Septage Receiving Facility were received and opened on June 24, 2004: Hobson Construction Company with a total bid of \$387,500.00; Buncombe Construction Company with a total bid of \$340,000.00; Buckeye Construction Company with a total bid of \$303,083.00 and Jerry Payne Construction with a total bid of \$278,900.00. He stated that staff recommends award of this contract to Jerry Payne Construction, Inc., in the amount of \$278,900.00 contingent upon review by District Counsel.

e. Consideration of Developer Constructed Sewer Systems: Moser's Place, Phase 1 and 2, Ross Creek Commons, Cherry Blossom Cove, Cedar Crest Heights, Aldi Store-Patton Avenue and Biltmore Lake Block C, Phase 1:

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

f. Consideration of Fixed Rate vs. Variable Rate:

Mr. Hartye reported that MSD's debt is 100% fixed and most underwriters are now recommending a combined portfolio of 80% fixed and 20% variable rate bonds. He stated that with the next issuance being approximately \$20 million and with the current \$80 million, it works out that the next issuance should be a variable rate debt. He further stated that the Finance Committee recommends that variable debt in an amount not to exceed 25% of the total outstanding debt, be issued in the District's upcoming financing and that the underwriters and bond attorneys be notified to proceed accordingly. Mr. Venable asked whether it would be better to lock in a low interest rate, assuming the rates will go up, rather than using a variable rate. Mr. Hartye stated that there are other issues over the long term and currently the differential between the fixed and the variable is so great that MSD would not likely reach the fixed. Mr. Clarke stated that the current rate for fixed bonds is about 5%. Mr. Hartye stated that the MSD can go to a fixed rate at any time, but the Finance Committee will consider whether or not to recommend an interest cap contract or other risk management strategy at an appropriate point later in the debt issuance process. Mr. Aceto stated that there is a basic understanding that MSD is trying to match its assets and liabilities to the extent that it has cash assets that are exposed to interest rate fluctuations. If MSD has some debt that offsets that, it won't get caught in a situation like in recent years where there was a very low income on cash investments and fixed rate debt that had a spread of 2 to 4 percent.

g. Consideration of Investment Advisor:

Mr. Hartye reported that the Finance Committee recommends that staff contact Banc of America to negotiate a mutually agreeable fee. He further reported that because Banc of America reduced its fee 10%, which was a good

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faith measure, and their performance was better than the other bidders, staff recommends entering into a contract with Banc of America.

h. Consideration of Cost Recovery Request for White Oak Grove Subdivision:

Mr. Hartye reported that Staff recommends that the Board approve authority for the General Manager to reimburse Tim Swann of Swan Construction Company, in the amount of \$12,586.00 upon Board acceptance for ownership of the White Oak Grove Subdivision sewer system and receipt of surety.

i. Cash Commitment/Investment Report – Month Ended May 31, 2004:

Presented as information only.

Regarding Item e. (Biltmore Lake Block C, Phase 1) Mr. Pace noted that a public meeting was held with the developer regarding changing the name of Enka Lake to Biltmore Lake. He stated that it is the position of the developer not to change the name.

With no further discussion, Mr. Pace moved that the Board approve the Consolidated Motion Agenda. Ms. Graham seconded the motion. Roll call vote was as follows: 8 Ayes; 0 Nays.

9. Consideration of Town of Woodfin Request for Representation on the District Board of the Metropolitan Sewerage District:

At 2:30 PM, Mr. Kelly moved that the Board go into closed session to discuss with its Attorney Mr. Clarke the claim the Town of Woodfin asserted against the Board on June 9, 2004. Ms. Bellamy seconded the motion. Voice vote in favor of the motion was unanimous.

At 3:47 PM, the Board went back into open session. Mr. Aceto moved that the Board accept the recommendation of the Planning Committee to grant the Town of Woodfin's request and provide the Town of Woodfin the opportunity to appoint a member to the MSD Board of Directors. Mr. Venable seconded the motion. Ms. Graham stated that she requested during closed session that the vote be delayed for 30 days so that some of the questions that came up in closed session could be answered. Mr. Blackburn asked Mr. Aceto if he would accept an amendment to the motion. Mr. Aceto said no, but that the motion could be tabled. With no discussion, roll call vote was as follows: 5 Ayes; 3 Nays (Ms. Graham, Mr. Kelly and Mr. Pace). Ms. Bryson stated that she voted for the motion at the request of the Woodfin Sanitary Water & Sewer District.

10. Old Business:

Ms. Graham stated that in light of discussions on the request by the Town of Woodfin, the Planning Committee needs to review MSD rules and regulations so it's clear to the public how MSD handles requests to the Board. She requested that this be sent to the Planning Committee at its next meeting. She further requested that Mr. Clarke provide answers to questions raised during closed session. She stated that it might be to the Board's benefit to review the statute and decide whether or not to proceed with studying the statute. Mr. Clarke stated that he has already begun the process. Mr. Blackburn stated that the Planning Committee will work on both the process and review of the political subdivision question. Ms. Bellamy asked for the effective date of the motion passed

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regarding the Town of Woodfin. Mr. Blackburn stated that the effective date is the August 18th Board Meeting.

Mr. Blackburn stated that in 2002, the Board adopted a policy for Minority Inclusion, which includes an hour session for Board Members on diversity training. He requested that the Board decide if they wanted the session held before or after the next Board Meeting, or at a special meeting.

11. New Business:

None

12. Adjournment:

With no further business, Mr. Pace moved for adjournment. Ms. Graham seconded the motion. Voice vote in favor of the motion was unanimous.

Jackie W. Bryson, Secretary/Treasurer