

**BOARD OF THE METROPOLITAN SEWERAGE DISTRICT
JANUARY 18, 2006**

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, January 18, 2006. Chairman Aceto presided with the following members present: Ms. Ball, Mr. Bissette, Ms. Bryson, Mr. Creighton, Mr. Gantt, Mr. Kelly, Mr. Pace, Mr. Sobol, Mr. VeHaun and Mr. Venable. Ms. Bellamy was absent.

Others present were: Thomas E. Hartye, General Manager, William Clarke, General Counsel, Gary McGill with McGill Associates, Leah Karpen with the League of Women Voters, Jim Cargile, David Lee and Eric Nichols with Harris, Murr & Vermillion, Marilyn Westphal, Buncombe County VWIN Coordinator, Stan Boyd, Martha Zeigler, Ann LeMieux, Ed Bradford, Peter Weed, Mike Butler, Adrian Ellis, Teresa Gilbert and Sondra Honeycutt, MSD.

Mr. Aceto welcomed Jon Creighton who was appointed by Buncombe County to replace Elizabeth Graham. Mr. Aceto expressed his appreciation to Elizabeth Graham for her years of service on the MSD Board.

2. Approval of Minutes of the December 14, 2005 Meeting.

Mr. Venable moved that the Minutes of the December 14, 2005 meeting be approved as presented. Mr. Pace seconded the motion. Mr. Clarke requested that the word "then" on page two, paragraph 2, line 2 be changed to read "than". With no further discussion, Mr. Aceto called for the question. The minutes were unanimously approved as amended.

Mr. Aceto asked if amendments to the By-laws will be voted on at this meeting or presented only, since Article IX of the By-laws state "that a copy of the proposed amendment(s) must be distributed to all Board members and considered as an agenda item at a Regular Meeting of the Board before adoption at a later Regular or Special Meeting of the Board." Mr. Clarke stated that this is the first time these amendments have been distributed to the full Board. Therefore, the Board should have a month to review the changes before voting. Mr. Aceto stated that the amendments to the By-laws will be voted on at the February meeting of the Board.

3. Discussion and Adjustment of Agenda:

None

4. Informal Discussion and Public Comment:

Mr. Aceto welcomed Ms. Karpen, Mr. Cargile, Mr. Lee, Mr. Nichols and Ms. Westphal. Ms. Karpen requested that the Board recognize the loss of Dr. Richard Maas, a former member of the MSD Board. Mr. Aceto stated that Dr. Maas was a member of the Board for several years and contributed a great deal to the Board and its deliberations and that he would be missed in all the endeavors he was involved with in the community.

5. Report of General Manager:

Mr. Hartye presented information regarding the Clean Water Trust Act of 2005, which was introduced in the House on December 15, 2005. Mr. Sobol stated that he will present additional information on this at the February meeting of the Board.

Mr. Hartye reported that the District received the "Distinguished Budget Presentation Award" for the current fiscal year. He expressed congratulations to Teresa Gilbert, Scott Powell and Martha Zeigler.

Mr. Hartye reported that the District received a "Standing Ovation Award" from the WNC Regional Air Quality Agency for the District's efforts to improve air quality in the region by becoming the first public utility in WNC to use biodiesel in its diesel powered vehicles and equipment. Mr. Hartye recognized Peter Weed and Adrian Ellis for this effort. Mr. Aceto presented the award.

Mr. Hartye presented the following articles: NACWA Fax-alert – EPA Release key wet weather flow policy, which has bearing on the District's long-term Master Plan; an article from the NY Times - The Next Retirement Tom Bomb, having to do with the GASB 45 accounting standards and retirees health benefits, and an article by Dr. Mike Walden – NC Cooperative Extension, regarding the local economy.

Regarding Board/Committee Meetings, Mr. Hartye reported that the next regular meeting of the Board is scheduled for February 15th at 2PM. He further reported that the ROW Committee meeting scheduled for January 25th has been cancelled and that a joint Planning and Finance Committee meeting will be scheduled for late January or early February. Also, the annual Developers/Engineers meeting will be held February 2nd at 9AM.

With regard to bio-diesel fuel, Mr. Pace stated that MSD represents the majority of bio-diesel use in the county. Mr. Aceto asked what changes are anticipated as more people began to use bio-diesel fuel. Mr. Weed stated that the District has purchased over a quarter million dollars worth of bio-diesel fuel over two and half years and have displaced 20 thousand gallons of diesel petroleum with peanut oil. Mr. Kelly asked what the financial impact is on MSD by using bio-diesel. Mr. Weed stated that it fluctuates according to the market price, but basically it's a 5 to 8% extra charge. Mr. Hartye stated that the reduction in air emissions is approximately 20%. Mr. Sobol asked if mileage is increased by using bio-diesel. Mr. Weed stated that in a nationwide study, a very small reduction in mileage was found.

6. Report of Committees:

Board Governance Committee

Mr. Gantt reported that the Board Governance Committee met December 14, 2005 to finalize revisions to the Ethics, Conduct and Attendance Policy for MSD Board Members and amendments to the MSD By-laws. Mr. Gantt expressed his appreciation to Committee Members, Counsel and Staff for their input and compilation of material. He stated that the Committee looked at the ethics rules and regulations for comparable groups and State laws where applicable. Mr. Gantt went over the recommendations of the Committee on the sections of the Ethics policy and revisions to the MSD By-laws.

Ms. Karpen asked if there is a specified term of office for Board Members and if this is covered by State law. Mr. Clarke stated that those terms are established by State laws and that Members are appointed for a three-year term. However, it's up to the governing body as to the number of terms a Member can serve.

With regard to a Member being physically present to vote, Mr. Venable asked if this applies to Committee meetings. Mr. Gantt stated that Board Members must be present to vote at all regularly scheduled Board meetings. Committee meetings, special and emergency meetings are exempt. Ms. Ball stated that there are cases where a member should be able to vote over the phone and feels the Chairman should make that decision. She moved for approval of the Policy with the revision that the Chairman decide on a case by case basis in emergency situations whether or not a Member can attend by phone and vote. A discussion was held regarding whether Ms. Ball's motion affects changes in the By-laws. Mr. Clarke said no. Mr. Sobol stated that he does not feel the Chairman should decide if a Member can vote by phone, since this gives him the power to

influence a vote in situations where the vote is close. A discussion was held on how other boards handle this situation and whether to amend the motion to approve the policy without change. Ms. Ball withdrew her motion. Mr. Aceto deferred adoption of the Policy and revisions to the By-laws until the February meeting of the Board.

Mr. Aceto expressed his appreciation to Mr. Gantt for chairing this committee.

Mr. Aceto presented the Distinguished Budget Presentation Award to Teresa Gilbert for her efforts in preparing the Budget for the current fiscal year.

As a matter of information, Mr. Hartye reported on an SSO that occurred in the Beaver Lake area on January 15, 2006. He stated that the sewage did not discharge into Beaver Lake, but into an adjacent pond and that this line is scheduled for replacement next year. He further stated that lines across the road have already been replaced and there are three (3) projects in this area scheduled for replacement in the next 2-3 years.

Planning Committee

Mr. Hartye reported that the Planning Committee met January 10, 2006 to consider three items. First, an Extension Policy amendment concerning connection to existing pumping stations. The District does not currently allow pump stations to be tied to one another because of the potential of odor problems and operational complications resulting in overflows. Mr. Hartye stated that the Committee agreed with the staff recommendation and staff will bring the wording back to the Board following consideration of this and other issues regarding the policy at a joint Finance and Planning committee meeting. Using the Minehole Gap development as an example, Mr. Hartye stated that staff would like to require a developer who wants to develop sewer lower in a basin and connection to an existing pump station, to relocate and upgrade the pump station in order to avoid the use of several small pump stations in one area., which is predicated on the Board deciding two things. First, that MSD has already determined there are "extraordinary" circumstances which allow the second development to build a pump system in the basin, and second, there is enough capacity in the receiving basin for the additional flow. He stated that if these two conditions are met, then this is a standard that should be written into the policy.

Mr. Hartye reported that the second item discussed was MSD reimbursement for rehabilitation of an existing system and upsized line extensions. He stated that the Committee went over the programs for reimbursement to developers and one in particular that has not been used; whereby if a developer extends a line and MSD asks that developer put in a larger size to provide for the whole basin MSD would then pay the developer the cost differential between an upsized line and the size needed for just the development. The Committee discussed how this would be funded since this could take money away from the rehabilitation program. Mr. Hartye stated that the Committee will consider the various options presented at the next meeting when staff provides specific numbers on the financial impact to MSD. The idea is centered around developing caps either for the project or for a budget year for this type of program.

In other business, Mr. Hartye reported that the Committee discussed inviting representatives from planning agencies in areas served by MSD to the Planning Committee to make presentations on their planning efforts and to be asked questions about what they see as MSD's role in Planning and Development and what MSD can do to fulfill that role. He stated Scott Shuford from the City of Asheville will be asked to attend and make a presentation at the next meeting.

7. Consolidated Motion Agenda:

a. Consideration of Annual Meeting Dates:

Presented as information only.

b. Consideration of Budget Calendar:

Presented as information only.

c. Consideration of Developer Constructed Sewer Systems: AB Tech Hospitality Bldg., Bellevue Road Subdivision, Brad Rogers Sewer Extension, The Ramble Biltmore Forest, Block A1, The Ramble Biltmore Forest, Block Z, Riverbend Marketplace, Southridge Shopping Center, U.S. 70 Sewer Extension and White Oak Grove:

Mr. Hartye reported that of the 9 systems, 3 are outside the District's boundary and that staff recommends acceptance of these systems and all MSD requirements have been met.

d. Consideration of VWIN Sampling and Testing Services:

Mr. Hartye reported that staff recommends continuing the services contract with the Environmental Quality Institute of UNC-A for the Buncombe County Volunteer Water Information Network (VWIN) program in the amount of \$18,400.00. He stated that MSD funds used for these services are leveraged three-fold by volunteer activities in sample taking, laboratory analysis and reporting.

e. Consideration of Variance to Allow Pumping Station and Force Main for Proposed Development – Highcliff (US 74-A):

Mr. Hartye reported that the Highcliff development includes approximately 318 residential units (single family lots and townhomes) and a commercial village fronting on Charlotte Highway. He presented a copy of sections of the Policy and Procedures for the Extension of Sewer Service; other supporting information and a memorandum summarizing some of the pros and cons brought up during discussions at the Committee meeting. He further stated that the Planning Committee recommends a variance to allow pumping station and force main for the proposed development. Mr. Sobol requested that this item be pulled for further discussion.

f. Consideration of Bids for Construction Contract for Lake Louise Interceptor:

Mr. Hartye reported that the following bids for the Lake Louise Interceptor project were received and opened on January 5, 2006: H&M Constructors, Inc. with a total bid of \$1,253,091.00; Buckeye Construction Co., Inc. with a total bid of \$1,045,784.35 and Terry Brothers Construction Co., Inc. with a total bid of \$858,836.00. He stated that staff recommends award of this contract to Terry Brothers Construction Co., Inc. in the amount of \$858,836.00 contingent upon review by District Counsel. Mr. Venable asked if this project will disrupt traffic since it runs along Merrimon Avenue. Mr. Bradford stated that he believed not, and that the reason for using pipe bursting is to minimize the impact to traffic.

g. Consideration of Sanitary Sewer Rehabilitation Project: Upper Ross Creek Interceptor (Phase 11- Dig and Replace)

Mr. Hartye reported that upon completion of this project, the entire interceptor along Ross Creek have been rehabilitated. He stated that the following bids were

received and opened on January 5, 2006: H&M Constructors, Inc. with a total bid of \$991,760.00; Buckeye Construction Co., Inc. with a total bid of \$795,052.20; Buncombe Construction Co., Inc. with a total bid of \$730,700.00; Hobson Construction Co., Inc. with a total bid of \$557,995.00 and Terry Brothers Construction Co., Inc. with a total bid of \$537,095.00. He further stated that staff recommends award of this contract to Terry Brothers Construction Co., Inc. in the amount of \$537,095.00, contingent upon review by District Counsel.

h. Cash Commitment/Investment Report – Month Ended November 30, 2005:

Presented as information only.

Ms. Bryson moved that the Board approve items a.b.c.d.f.g.h. of the Consolidated Motion Agenda. Mr. VeHaun seconded the motion. With regard to Item d. (VWIN Contract), Mr. Venable stated that in his opinion the County should be paying for this service and not the MSD rate payers. He noted that in the breakdown showing where the money came from it appears as though the \$18,400.00 came from the County not the MSD. He stated that this should be shown under Other Special Grants as coming from the MSD. Ms. Westphal stated that the grants listing showing Buncombe is actually a regional listing; not who's supporting what projects. Also, the listing for Other Special Grants are not VWIN projects. Mr. Clarke stated that MSD is not actually making a grant to VWIN, but entering into a service contract for monitoring data. Ms. Westphal stated that this should have been listed as grants and services, since some are service contracts. With no further discussion, Mr. Aceto called for the question. Roll call vote was as follows: 11 Ayes; 0 Nays.

Regarding Item e. (Highcliff Development) Mr. Hartye went over the information previously mentioned. He presented a map of the project showing the proposed location of the pump station, which will pump wastewater from the development over Minehole Gap to the existing sewer in the Reynolds area as opposed to constructing approximately 10 ½ miles of gravity sewer to tie into Cane Creek at a cost of up to \$10 million. He stated that the Committee discussed whether or not a financial issue is considered an "extraordinary" circumstance and decided that from a financial standpoint this project is good for MSD. Ms. Ball asked that the Finance Committee consider an additional surcharge for connections to force mains to make up for the cost differential. Mr. Hartye stated that a joint Planning and Finance Committee is scheduled to address this and other issues. Ms. Ball moved that the Board approve the variance to allow the pumping station and force main for the proposed development. Mr. Venable seconded the motion. Mr. Venable questioned the use of the term "variance". Mr. Clarke stated that the policy as its currently written says pump stations are not to be allowed except in "extraordinary" circumstances or where gravity is not achievable. Therefore, if the Board is relying on either of these exceptions, this would not be considered a variance. A discussion followed regarding whether there is a variance procedure in the policy. Mr. Clarke stated that the policy, as written, includes no procedure for a variance.

Mr. Sobol asked if the Pump Station Maintenance Fees will cover the cost of this development and if the developer pays the fee, will it also have to pay an extra surcharge. He stated that the Board needs to make it clear that whatever entity operates this gated community that they continue to pay the full cost of maintenance after the 20 years. He asked if there is some way the policy can be worded where the homeowners association has to pay. Mr. Clarke stated that the Board needs to be careful how it structures these fees. Mr. Hartye stated that the question is if the Board approves this development now, does this preclude the Board from changing the Maintenance Fee from 20 to 50 years. Mr. Clarke stated that this change could be retroactive to January 1, 2006. He further stated that if the Board decides to approve this development and has not adopted a fee, approval could be made subject to a fee that will be considered and adopted in the next

60-90 days. Mr. Pace stated that he voted against approval at the Planning Committee because he wasn't aware of the timeline of the allocation, which was given before the developer purchased the property. For that reason he feels this project should be exempt and will vote in favor of it. However, he does not feel that the financial issue is an "extraordinary" circumstance and that the Finance Committee should reconsider the fees. Ms. Ball stated that she would be willing to amend her motion to approve the project subject to any fees or surcharges that would be adopted in 90 days. Mr. Venable agreed to the amendment, but stated that he feels the overriding factor is not whether the developer is making money or not, but that the project is beneficial for the MSD. Mr. Kelly stated that the Finance and Planning Committees will look at revising these standards, but thinks this Board will have some serious legal problems if it amends the standards retroactive to January 1, since the developer met the necessary qualifications when they were given an allocation. Mr. Clarke stated that because this is an "extraordinary" circumstance and not a variance, he feels the Board can approve the project contingent upon payment of some surcharge in addition to a pump station fee, which should be tied to costs that can be shown. Mr. Aceto restated the motion as amended. Mr. Venable stated that under the circumstances he would have to withdraw his second to the motion. Mr. Sobol seconded the motion. Mr. Bisette stated that if the motion passes it does not necessarily mean more fees will be added, only that the Committees will take a look at it. Following a discussion, Mr. Aceto called for the question. By a show of hands, the motion was defeated with a vote of 5 Ayes; 6 Nays. Mr. Venable moved that the Board approve the pump station without the exception and that the Finance and Planning Committees look at the possibility of additional fees. Mr. Pace seconded the motion. Mr. Sobol stated the Board needs to be aware of the pressure that these developments put on the entire system; roads, schools, etc. and what MSD is paying for services and fees for infrastructure. With no further discussion, Mr. Aceto called for the question. By a show of hands, the motion passed with a vote of 9 Ayes; 2 Nays (Ms. Ball and Mr. Sobol).

8. Old Business:

Mr. Aceto stated that at the last Board meeting a discussion was held with regard to whether PIN numbers should be disclosed so Board Members could identify if they had a conflict of interest. He requested that the Right of Way Committee address this issue at its next meeting.

9. New Business:

Mr. Aceto appointed Mr. Bisette to serve as Chairman of the Planning Committee and Mr. Creighton as a member of the Planning and Finance Committees.

Mr. Aceto requested that staff develop a resolution regarding the service of Dr. Richard Maas who served as a member of the MSD Board.

Mr. Aceto stated that he has requested a meeting with County officials to discuss the District's involvement in the water system discussions and will also request a meeting with City officials.

Mr. Aceto requested that Mr. Hartye and Mr. Clarke invite the legislative delegation back for an update on what the District has accomplished during the last three years, as well as to hear any concerns they may have.

At 3:25 PM, Mr. Bisette moved that the Board go into closed session to discuss a legal matter. Mr. Kelly seconded the motion. Voice vote in favor of the motion was unanimous.

At 3:29 PM the Board went back into open session.

10. Adjournment:

With no further business, the meeting adjourned at 3:30PM.

Jackie W. Bryson, Secretary/Treasurer