

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT
MARCH 15, 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, March 15, 2006. Chairman Aceto presided with the following members present: Ms. Bellamy, Mr. Bissette, Ms. Bryson, Mr. Creighton, Mr. Gantt, Mr. Kelly, Mr. Newman, Mr. Pace, Mr. Sobol, Mr. VeHaun and Mr. Venable.

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, Joseph Martin with the Woodfin Sanitary Water & Sewer District, Stan Boyd, Martha Zeigler, Angel Banks, Peter Weed, John Kiviniemi, Ann LeMieux, Ed Bradford, Mike Stamey, Sharon Walk and Sondra Honeycutt, MSD.

2. Inquiry as to Conflict of Interest:

Mr. Aceto asked if there were any conflicts of interest with agenda items. No conflicts were disclosed.

3. Approval of Minutes of the February 15, 2006 Board Meeting:

Ms. Bellamy moved that the Minutes of the February 15, 2006 Meeting be approved as presented. Mr. Hartye requested that the word "non-refundable" on page four, paragraph c. be changed to read "non-recurring". Ms. Bellamy amended her motion to reflect the change. Ms. Bryson seconded the motion. With no further discussion, Mr. Aceto called for the question. Voice vote in favor of the motion as amended was unanimous.

4. Discussion and Adjustment of Agenda:

Mr. Newman requested that Item e. (Consideration of Surcharge for Pumped Systems) of the Consolidated Motion Agenda be pulled for further discussion.

5. Informal Discussion and Public Comment:

Mr. Aceto welcomed Ms. Karpen and Mr. Martin and called for public comment. There being no public comment, the Chairman proceeded with the agenda as presented.

6. Report of General Manager:

Mr. Hartye presented communications from customers with regard to the following employees for a job well done: Denver Bradley, Marcus Bynum, John Fields, Furman Dean, Julio Miguel, Robert Burnett, Ricky Bates, Wallace Foster, Roy Lytle, Kevin Devlin, Shane Meadows, McKinley Hensley and Eric Gillis. Also, a call was received congratulating MSD on the grease information flyer done in both English and Spanish. Appreciation for this flyer goes to Peter Weed, Monty Payne and Marie Hartye.

Mr. Hartye reported that the District's Environmental Management System was audited February 21st by an independent external auditor. The District passed the audit and was commended on a top-notch program.

With regard to the Budget process, Mr. Hartye called the Board's attention to Item g. (Industrial Revenue Loss) of the Consolidated Motion Agenda. He stated that in light of this, he feels that a meeting of the Finance Committee or a Board work session should be held prior to meetings of the Personnel and CIP Committees. He further stated that the anticipated major loss of revenues and increase in expenses are significant enough for the entire Board to get involved in helping staff with direction on some of the options. Following discussion, the Board agreed to meet on Friday, March 31, 2006

from 12 PM to 2 PM.

Mr. Hartye presented articles on Eminent Domain in North Carolina and A Local Sewer System that Creates Confusion. In addition, he presented the Asheville Economy Update from the Chamber of Commerce and NACWA Legislative Update.

Mr. Hartye reported that the next Planning Committee meeting is scheduled for March 29th at 10 AM; the next Right of Way Committee meeting is scheduled for March 22nd at 2 PM and the next regular meeting of the Board is scheduled for April 19th at 2PM.

With regard to the National Association of Clean Water Agencies (NACWA), Mr. Sobol reported that the Clean Water Trust Fund Bill (H.R. 4560) was introduced in the House through Representative Duncan of Tennessee. He stated that he plans to go to Washington DC next month and will report back to Board on the progress of this Bill at the May meeting.

7. Report of Committees:

Joint Planning/Finance Committee

Mr. Bissette reported that a joint Planning/Finance Committee meeting was held February 15, 2006 to consider two issues; Surcharge for Pumped Systems and “Extraordinary” Circumstances justifying the use of pump stations for the provision of sewer service. With regard to a surcharge for pumped systems, Mr. Bissette stated that staff recommends keeping the bar high for acceptance of Pump Stations and keeping the Pump Station Maintenance Fee at the 20 year present worth value of O&M and replacement costs. He further stated that, after careful consideration, the Committee recommended approval of staff’s recommendations. Also, that staff gather information on including affordable housing under this amendment, along with the differential rate issue and bring this back to the Committee at a later date.

Regarding “Extraordinary” Circumstances justifying pump stations, Mr. Bissette reported that following Mr. Hartye’s review of the factors that could be considered in determining “Extraordinary” Circumstances, the Committee recommended adding the wording “allowing the pump station would serve the best interest of MSD” to the list of factors and changing the Sewer Extension Policy to include those factors.

Mr. Venable requested that page two of the Planning Committee with regard to the issue of Surcharge for Pumped systems be changed to show he made the motion to accept staff’s recommendation, and voted in favor of the motion. Ms. Bellamy requested that the spelling of her name in the same section be corrected.

Planning Committee

Mr. Bissette reported that the Planning Committee met today to consider a request for approval of a pump station for the proposed Brookwood Development. He stated that a motion was made to approve the pump station, but the motion was defeated by a vote of 4-2. A subsequent motion was made and approved to refer this matter to the County Commissioners at its next meeting scheduled for March 21st. Mr. Gantt and Mr. Creighton will present this to the Commissioners to see if they are willing to work with the District on this project.

Mr. Bissette reported that the Committee considered changes to the Sewer Extension Policy with regard to “Extraordinary” Circumstances. He noted Page 6 of the Planning Committee packet showing the nine factors the Board may consider in making

a determination as to whether or not sewer service is not physically achievable or that “extraordinary” circumstances justify the use of a pump station. He further noted the statement that “Such other factors as the Board, in its sole and absolute discretion, may determine are necessary and important to preserve and promote the public health and welfare and the best interests of the District” and the three (3) findings the Board must make in order to accept a pump station.

Mr. Bissette reported that the Committee recommends acceptance of the aforementioned changes as recommended by Staff and Counsel. Mr. Venable asked where the changes can be found if approved by the Board. Mr. Clarke stated that the changes will be incorporated into the Sewer Extension Policy. Ms. Bellamy asked how the District will inform the community about these changes. Mr. Hartye stated that the changes will be sent out to the developers and engineers. With no further discussion, Mr. Aceto called for a vote on the recommendation of the Planning Committee. Voice vote was as follows: 11 Ayes; 1 Nay (Mr. Sobol)

Right of Way Committee

Mr. Pace reported that the Right of Way Committee met February 22, 2006 to consider the Compensation Budget for the Northwood Road Rehabilitation project and the sale of a small portion of WWTP land. Ms. Banks reported that Mr. Carter of the Real Estate Group of Asheville, Inc. is interested in purchasing the property and is preparing a survey of the area at his expense. She stated that as soon as she and John Kiviniemi have reviewed the survey, Mr. Carter will obtain an appraisal at his expense.

Mr. Pace reported that the Committee considered the issue of Parcel Owner Identification on compensation charts and condemnations. He stated that the Committee discussed the first two sentences of the Conflicts of Interest section of the Ethics, Conduct and Attendance Policy for the Board of Directors and the advantages and disadvantages of not knowing who owns a particular parcel. After some discussion, the Committee decided to continue using PIN numbers for identification purposes and not disclose the names of the property owners.

In other business, Mr. Pace reported that Mr. Kelly questioned whether compensation budgets were based on 2005 values or 2006 values. He stated that the budget is based on 2006 values.

8. Consolidated Motion Agenda:

a. Consideration of Compensation Budget – Northwood Road Rehabilitation:

Mr. Hartye reported that the Right of Way Committee recommends approval of the Compensation Budget for Northwood Road Rehabilitation.

b. Consideration of Cost Recovery for Broadview Drive Subdivision:

Mr. Hartye reported that the Broadview Drive Subdivision is located on Broadview Drive and consist of 5 residential units, with an estimated 5-year net revenue of \$5,198.00. He stated that staff recommends authority for the General Manager to reimburse Habitat for Humanity (Keith Levi) \$5,198.00 upon receipt of surety and Board acceptance of the sewer system.

c. Consideration of Cost Participation for Kailee’s Court Sewer Rehabilitation:

Mr. Hartye reported that this project is located off Appalachian Way and consist of replacement of 772 feet of existing 4 and 6 inch public sewer and manholes with 8 inch pipe to serve a 20+ unit subdivision. He stated that MSD’s percentage of

participation in construction cost is 25 percent (\$12,931.00) and staff recommends authority for the General Manager to reimburse Paul Duval/Duval Enterprises an amount not to exceed \$12,931.00 upon completion of and Board acceptance of the system.

d. Consideration of Developer Constructed Sewer Systems: The Wildes at Chunns Cove, Woodland Avenue Subdivision, Hamburg Crossing, Forest Professional Park, Woods Edge Townhomes, Tasha Lane and Forest Lake Park:

Mr. Hartye reported that staff recommends acceptance of the developer constructed sewer systems and that all MSD requirements have been met. He noted that all of the systems are inside the District boundary.

e. Consideration of Surcharge for Pumped Systems:

Pulled for further discussion.

f. Consideration of Bids for Construction Contract – Black Mountain Four-inch Rehabilitation Project:

Mr. Hartye reported that the following bids for the Black Mountain project were received and opened on March 2, 2006: Buckeye Construction Co., Inc. with a total bid of \$1,282,982.25; H&M Constructors, Inc. with a total bid of \$914,460.00 and Terry Brothers Construction Co., Inc. with a total bid of \$798,355.00. He further reported that staff recommends award of the contract to Terry Brothers Construction Co., Inc. in the amount of \$798,355.00 contingent upon review by District Counsel.

Mr. Venable asked if staff considered whether Terry Brothers Construction is taking on more than they can handle, since it does so many of the MSD projects. Mr. Hartye stated that this is taken into consideration, but that Terry Brothers has done good work for the MSD. Mr. Sobol asked if MSD gets many change orders from Terry Brothers. Mr. Hartye said no.

With regard to the Chunns Cove Project, Mr. Pace asked if MSD is finished with this line. Mr. Hartye stated that MSD is now in the third phase of the project and has rehabilitated this line from Sweeten Creek, through Kenilworth, across I-240 into Chunns Cove. Ms. Bellamy asked if MSD plans to rehabilitate the entire line. Mr. Hartye said yes. Ms. Bellamy asked if MSD has a Minority Business requirement. Mr. Hartye said yes, which is reported on annually.

g. Projected Industrial Revenue Loss:

Mr. Hartye presented a table showing the loss of several industries and potential loss of another industry, which has resulted in revenue loss to the District. He stated that the combined total loss of revenue is between \$1.7 and 1.9 million. Ms. Bellamy asked if this loss will affect the rates this year. Mr. Hartye said yes. Mr. Hartye also presented a graph showing a history of revenue and flow since Consolidation.

h. Cash Commitment/Investment Report – Month Ended January 31, 2006:

Mr. Sobol asked how the 10-year notes are affecting the adjustable rates. Ms. Zeigler stated that the amount MSD pays on the variable rate is based on the short-term. Currently MSD is paying about 3%, which is below the 3.5% budgeted. Mr. Sobol requested that staff provide total amounts. Ms. Bellamy asked how the investments are doing. Ms. Zeigler stated that MSD's rate of return on all

investments is approximately 3.6%. Ms. Bellamy asked how this compares with what was anticipated. Ms. Zeigler stated it was favorable since she conservatively budgeted less than 1%.

Mr. Pace moved that the Board approve items a.b.c.d.f.g.h. of the Consolidated Motion Agenda. Mr. Gantt seconded the motion. With no discussion, Mr. Aceto called for the question. Roll call vote was as follows: 12 Ayes; 0 Nays.

Regarding Item e. (surcharge for pumped systems) Mr. Hartye reported that the Planning Committee recommends keeping the bar high for acceptance of Pump Stations, which refers to "Extraordinary" Circumstances, to clearly define some of the factors involved and to have some of the developers come before the Committee and present information so the Planning Committee and Board can make those findings. Also, keep the current Pump Station Maintenance Fee at the 20-year present worth value for a particular pump station. Mr. Bisette stated that the Committee looked at extending the maintenance fee to 50 years, but felt it would be unfair. For this reason, the Committee voted to keep the fee at the 20-year level.

Mr. Hartye presented a table showing the delineation between the three sizes of pump stations; 30 units, 60 units and 300 units, with each type broken down into 20-year, 50-year and 100-year present worth cost to the District and the difference in the cost per unit. He also presented the pros and cons of two scenarios for managing pump station costs.

Mr. Aceto stated that the recommendation of the Planning Committee in the form of a motion is that no action be taken on consideration of a surcharge for pumped systems. Mr. Venable stated that if the District does not want pump stations, it should reconsider increasing the cost of putting in pump stations. Mr. Aceto stated that Mr. Clarke informed the committee that there are some difficulties with the pump station charges since they are part of the sewer rate and it's necessary that the Board rationalize what its charges are. Mr. Newman stated that it would be legally defensible to say we can use 20 years, 30 years, or what ever is reasonable. Also, there is the question of surcharging customers who are connected to a pump station for the present worth value of the system, which in his opinion is the fairest way to do this, but there seems to be some billing questions involved in doing this. He further stated that he will support the motion, but feels this issue warrants more research and discussion. Mr. Newman asked if MSD decided to go with a surcharge for customers connected to pumped systems, can it be done? Mr. Hartye said yes, you can identify and charge differently for a property based on either a PIN number or location with the City of Asheville. However, there are five (5) other municipalities that bill for the District that do not currently have this capability. In addition, the size of the pump station further complicates the billing issue. Mr. Hartye stated that it's important that the issue of being arbitrary was brought up because this is why no one else in the nation is doing this. Mr. Pace stated that the only thing that is really arbitrary is the time, since everything is based on facts of when things wear out. However, the reason why it was decided to keep the fee at 20 years is because there may be an issue of health concerns should the system need to be replaced. With no further discussion, Mr. Aceto called for the question. Voice vote in favor of the motion was unanimous.

9. Old Business:

a. West End Clingman Avenue Sewer Lines:

Mr. Hartye reported that he and Stan Boyd visited the area and stated that there are a lot of private lines. He further reported that short of digging up the entire area and putting in a new sewer system, MSD's Engineer will attempt to map

out the private lines to come up with a plan that is practical and creative to address the situation. He stated that this might entail partnering with the City of Asheville, perhaps with some CDBG money to extend some of the public lines in order to get closer to the private lines without reconstructing the entire sewer system at great expense. He further stated that staff will bring back to the Board a recommended plan showing what would be required. Ms. Bellamy asked about the possibility of placing a moratorium on this area for further development. Mr. Hartye stated that he does not feel this is appropriate at this time. Mr. Venable asked if the District is looking at taking this area over and making it a public system. Mr. Hartye stated that initially the District is not looking to take it over, but come up with a combination of alternatives, i.e., CDBG money and PSR money to make the public sewer accessible and to make other provisions without having to redo the private lines. He further stated that after the plan is complete, he would like to meet with the residents of the community along with the City and walk the area to explain what was found and what the District recommends. Mr. Newman asked if it's completely clear which lines are public and which are private. Mr. Hartye stated that most of the currently active lines serving the area are private. However, there is one line that is a 6" clay pipe line that is dry. While inspecting the line, it was found that the line dead-ended at the next street. It was apparent that this line was intended to extend the public sewer, but no one ever tied on.

b. Project Status Report:

With regard to Page 2 of the Status Report, Mr. Sobol asked if Biltmore Lake Block F-Phase 3 and Crest Mountain Phase 2 are private pump stations. Mr. Boyd said no; they are public. Mr. Sobol asked if the District is still disallowing pump stations. Mr. Boyd stated that these pump stations predate the Sewer Extension Policy of February, 2004.

c. Revisions to By-laws:

Mr. Venable asked Mr. Clarke when the Board will consider amendment to the Ethics, Conduct and Attendance Policy as per his letter of February 23rd. Mr. Clarke suggested that this be done at the April meeting.

10. New Business:

None

11. Adjournment:

With no further business, Mr. Bissette moved for adjournment at 3:00 PM. Mr. Pace seconded the motion. Voice vote in favor of the motion was unanimous.

Jackie W. Bryson, Secretary/Treasurer