

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT
APRIL 19, 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, April 19, 2006. Chairman Aceto presided with the following members present: Ms. Bellamy, Mr. Bissette, Ms. Bryson, Mr. Creighton, Mr. Gantt, Mr. Newman, Mr. Pace, Mr. Sobol, Mr. VeHaun and Mr. Venable. Mr. Kelly 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, Joseph Martin with Woodfin Sanitary Water & Sewer District, Jason Young with the Town of Woodfin, Hudson Owen with Land Design, Eric Zetterholm with Riverwood Real Estate, Kevin Geagan, Jason Peltz and Judy Price with Brookwood Development, Chad Nesbitt and Jim Rhew with WNC Parking Lot Services, Stan Boyd, Martha Zeigler, Ed Bradford, Ann LeMieux, Peter Weed and Sondra Honeycutt, MSD.

2. Inquiry as to Conflict of Interest:

Mr. Aceto asked if there were any conflicts of interest with the agenda items. He excused himself from voting on the issue of the proposed Springs of North Asheville Subdivision. Mr. Bissette asked to be excused from voting on the Brookwood issue. Mr. Gantt disclosed that because he resides in the Brookwood basin, he may have an indirect interest in this project. Mr. Aceto asked if his interest was financial. Mr. Gantt stated that it could go either way. Mr. Clarke stated that it was not necessary for Mr. Gantt to excuse himself from voting, since he does not have a direct financial interest in the project.

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

Ms. Bellamy moved that the Minutes of the March 15, 2006 Meeting be approved as presented. Mr. Bissette seconded the motion. Voice vote in favor of the motion was unanimous.

4. Discussion and Adjustment of Agenda:

Mr. Sobol requested that Item c. (Appeal by Windsor Aughtry) of the Consolidated Motion Agenda be pulled for separate consideration. Mr. Venable asked if Item d. (Merit Pay Plan and MSD Self Insured Health Plan) should be pulled from the Consolidated Motion Agenda. Mr. Aceto stated that this issue will be discussed in the report of the Personnel Committee.

5. Informal Discussion and Public Comment:

Mr. Aceto welcomed Ms. Karpen, Mr. Martin, Mr. Owen, Mr. Zetterholm, Mr. Young, Mr. Martin, Mr. Geagan, Mr. Peltz, Ms. Price and Mr. Nesbitt, and Mr. Rhew who were present to address the Board. Mr. Aceto recognized Mr. Nesbitt.

Mr. Nesbitt reported that he represents WNC Parking Lot Services, which is owned by his Grandfather, Jim Rhew, who, during the past two years, purchased a Vactor 2100 truck to clean storm drains in the WNC area and Buncombe County. He stated that, to date, they have not cleaned a sewer line, but have cleaned out a sewer trap and a broken line located at Mission Hospital, which MSD called them to take care of and dump at MSD. He asked why they are not allowed to dump at the MSD if they clean more sewer lines in the county. Mr. Weed stated that, in talking to Monty Payne, Industrial Waste Coordinator, the concern was that the discharge was from storm sewers contained mostly grit along with other contaminants, not sanitary sewerage. Also, there is a security issue as to how and when the discharge would occur. Mr. Nesbitt asked who he could talk to at MSD that could answer his questions. Mr. Weed stated that he would be happy to meet with him.

6. Report of General Manager:

On behalf of the District, Mr. Hartye expressed his condolences to Kathy Blackwell and her family on the loss of her Son, Sergeant Kenneth Hess.

Mr. Hartye presented copies of communications from customers regarding their appreciation for a job well done. He expressed thanks to James Beaver, Wallace Foster, Roy Lytle, McKinley Hensley, Shane Meadows, Kevin Devlin and Eric Gillis.

Mr. Hartye reported that on March 21, 2006 an Industrial Waste workshop for significant industries served by the District was held with 35 representatives present.

Mr. Hartye reported that the District was represented at the 2006 Home Show at the Asheville Civic Center March 16-19. He stated that this was an opportunity to heighten the public's awareness of MSD's process/policies and that flyers, GIS Mapping information, grease information and lids were distributed to approximately 2,000+ customers. He expressed appreciation to Kay Farlow, Steven Briggs, Jon van Hoff, Wesley Banner, Mary Alice Hunter, Tom Peters, David Monteith and Marsha Kiser who worked the booth in shifts for the entire weekend.

With regard to reading, Mr. Hartye presented a letter from the North Carolina State Treasurer regarding the NC Retirement System and an article regarding discharge violations. He stated that the District's violation was its only one in five years, which occurred during the floods and was for a weekly average of TSS (silt) being 45.8 parts per million versus 45.0 parts per million. Mr. Aceto asked Mr. Hartye to distinguish how this violation fits into the Planning Committee discussion on SSO's and the Collection System Permit. Mr. Hartye stated that most systems do not have a Collection System Permit like North Carolina, but every state requires a Discharge Permit for treatment plants. He stated that the Discharge Permit stipulates levels of treatment and operation limits. The TSS average is one of the many water quality constituents that are monitored and reported.

Mr. Hartye reported that on April 6th Peter Weed gave a presentation at the Biofuels Forum in Transylvania County on MSD's successful use of Biodiesel (B20) since June of 2003.

With regard to Board/Committee Meetings, Mr. Hartye reported that the next ROW Committee Meeting will be held April 26th at 2PM and the next regular Board Meeting will be held May 17th at 2PM.

7. Report of Committees:

Right of Way Committee

Mr. Pace reported that the Right of Way Committee met March 22, 2006 to consider Compensation Budgets on the Nasty Branch Interceptor, Sweeten Creek @ Rock Hill Road and Long Shoals Road PRP. Also, the Committee considered condemnations on the Merrimon Avenue @ Beaverdam Creek project.

Planning Committee

Mr. Bissette reported that the Planning Committee met March 15th and March 29th to hear an appeal by Windsor/Aughtry of the denial of a request for a private sewer system and lift station for the Woodbriar Subdivision. He stated that based on the evidence in the record from MSD staff and Windsor/Aughtry, and testimony presented to the Planning Committee, the Committee recommends to the full Board that the decision of the MSD staff to deny Windsor/Aughtry's request for a private sewer system and private sewer pump station be affirmed and Windsor/Aughtry's appeal of that decision be dismissed.

With regard to the Brookwood Development, Mr. Bissette reported that after hearing evidence on this development at several Planning Committee meetings, the

Committee voted today to recommend to the Board, based upon staff's recommendation, that the Board accept the Brookwood pump station. He stated that in order to do this under MSD policy, the Board must make the following findings:

1. The District has funds available to operate, maintain, repair and replace, if necessary, the pump station.
2. The District would benefit from the projected revenue from the proposed development.
3. Allowing the property to be served by the pump station would be in the best interest of MSD and would preserve and promote the public health and welfare of the District and the District service area.

Mr. Aceto called for discussion on the recommendation of the Planning Committee regarding the Brookwood Development. With no discussion, Mr. Aceto called for the question. Roll call vote was as follows: 8 Ayes; 2 Nays (Mr. Newman and Mr. Sobol). Mr. Bissette was excused from voting.

With regard to the appeal by Windsor Aughtry, Mr. Aceto stated that the recommendation of the Planning Committee, based on the evidence in the record and testimony given on March 29, 2006, is that the Board affirm the decision of MSD staff denying Windsor/Aughtry's request for a private sewer system and pump station to serve a proposed 58 unit development (Woodbriar Subdivision) near Reems Ceek. Mr. Aceto asked for discussion. With no discussion, Mr. Aceto called for the question. Roll call vote was as follows: 11 Ayes; 0 Nays.

Budget Work Session

Mr. Aceto reported that the purpose of the Budget Work Session was to make the Board aware of where the District is financially due to the loss of \$1.85 million in industrial revenue and resulting impact to the budget for FY 06-07. Under General Questions, Ms. Bellamy asked if the District is recommending a 5% rate increase for FY 06-07. Mr. Hartye stated that as previously discussed, staff is continuing to adjust the CIP as much as possible with more lining jobs and incorporating items from the Facilities Plan, which is not quite complete. He further stated that after incorporating these changes along with the third quarter numbers, the proposed rate increase is now 4.5%. Ms. Bellamy asked if the average monthly bill for 2005 is in line with the State and less than the Region. Mr. Hartye said yes.

Personnel Committee

Mr. Venable reported that the Personnel Committee met April 10, 2006 to discuss and formulate a recommendation for the Board regarding a salary increase for employees. He stated that the Committee compared the proposed increase of 4.1% to other utilities in the area and found MSD to be both above and below the range. He further reported that since staff recommends that all of the increase be merit, there was some discussion and concern that employees on the low end of the scale would not get an increase, but staff assured the Committee that this would not be the case. Also, there was a concern that the salary increase would have an impact on the rate increase, but the Committee felt this was not a consideration and recommended approval of the 4.1% merit increase. In other business, the Committee considered the Self-insured Health Plan and approved staff's recommendation that MSD contribute an additional 8% and the employee an additional 10%.

CIP Committee

Mr. Sobol reported that the CIP Committee met April 13, 2006. Ed Bradford gave a presentation on new projects and highlights of the current Capital Improvement Program. In addition, a status report on the District's Reimbursement Programs was given. He further reported that the Committee reviewed the Rehabilitation Program priorities and the 10-year CIP document. Regarding the 10-year CIP, Mr. Sobol stated

that some of the funds are pay-as-you-go, but the majority of the money that comes to the CIP is borrowed money and the Collection System Permit requires the District to spend this money to rehabilitate 50,000 lineal feet of line per year. However, with the recent loss of industrial revenue, this puts the District in a position to increase rates in the future, which is an issue the Board needs to talk about now. Mr. Pace gave a history of rate increases since Consolidation. Mr. Sobol requested that staff provide a comprehensive list of SSO's, where they were located, etc. so the Committee can see how these are being addressed. Mr. Hartye stated that this information was incorporated into the District's Pipe Rating Program, which he will provide to the Committee as well. Mr. Aceto stated that the 4% rate increases are in line with what is expected and the pay-as-you-go plan is working very well. Also, cash reports show the mix of variable and fixed rate financing is doing well, and MSD is the leader in the State in the standard for responding to SSO's, while maintaining and improving its Bond rating. He further stated that he sees no problem with going forward, since MSD has already demonstrated its ability to handle these situations. Mr. Venable stated that, in the past, he has been against rate increases, but since talking to Mr. Aceto, he feels that if he and the Board concentrate more on the positive part of rate increases, which is the actual amount of money each rate payer is paying for the service they are getting, this will help the public be more positive. Mr. Aceto expressed his thanks to staff for the good results to date.

Mr. Martin asked about the CIP Committee's recommendation that the Board consider eliminating cost reimbursement to high end developers. Mr. Hartye reported that the Committee discussed the Cost Recovery and Cost Reimbursement Programs and development in the county and what was driving these programs. He stated that originally the reasoning behind these programs was to get more customers on the system and was an incentive for development. He further stated that because of the increase in development MSD has put caps on these programs, particularly cost recovery, so one large development could not usurp all the funds from the program, thereby a greater number of people could be served. As a result, the Committee recommends that the Board look at trying to steer this program more toward affordable housing, utilizing Buncombe County and City of Asheville criteria for affordable housing. Mr. Sobol asked the Board to consider, during the budget process, higher facility and tap fees to reduce rate increases while maintaining the CIP. Mr. Gantt stated that it's the responsibility of this Board and staff to continue to make sure the people know where the money is going. Regarding facility fees, Mr. Hartye stated that staff will bring options for new impact fees for new development to the Finance Committee on May 1st. Also, the Board needs to decide where it wants to take up the idea of revisiting the Cost Recovery program and steering it more toward affordable housing.

8. Consolidated Motion Agenda:

a. Consideration of Compensation Budgets for Nasty Branch Interceptor; Sweeten Creek @ Rock Hill Road and Long Shoals Road PRP:

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

b. Consideration of Developer Constructed Sewer Systems: Morgan Office Park and Lake Julian Trails, Phase 2:

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

c. Consideration of Appeal by Windsor Aughtry for a Private Sewer System and Pump Station – Woodbriar Subdivision:

Considered and voted on under the report of the Planning Committee.

d. Consideration of Merit Pay Plan and Increase in MSD Self Insured Health Plan:

Mr. Hartye reported that the Personnel Committee recommends a 4.1% merit

increase and 8% MSD increase in contribution of medical expenses and a 10% increase in employee premiums.

e. Cash Commitment/Investment Report – Month ended February 28, 2006:

Presented as information only.

Mr. Venable moved that the Board approve the Consolidated Motion Agenda Items a.b.d.e as presented. Mr. Gantt seconded the motion. Mr. Aceto called for discussion. With no discussion, roll call vote was as follows: 11 Ayes; 0 Nays.

9. Old Business:

a. Consideration of Amendment of Ethics, Conduct and Attendance Policy to Conform the Policy Provision Regarding Conflicts of Interest with the Bylaw Provision:

Mr. Clarke reported that currently the MSD By-laws have a provision where if a Member has a conflict of interest the member is to make it known to the Chairman and the Chairman makes a decision as to whether or not a Member can be excused. The Ethics, Conduct and Attendance Policy says that, at the beginning of any meeting of the full Board or Committee the Chairman inquires if anyone has a conflict or appearance of a conflict. The Member is then to publicly make known the extent and nature of the conflict of interest in accordance with paragraph 4.09 of the MSD bylaws. He stated that since Paragraph 4.09 does not require that a conflict be made “publicly known”, he suggest that the Board amend the Ethics, Conduct and Attendance Policy to say: “A Board member, who potentially has an actual or apparent conflict of interest in any matter before the Board or before any committee of the board, shall disclose the nature and extent of the conflict of interest in accordance with paragraph 4.09 of the MSD bylaws.” Mr. Pace moved that the Ethics, Conduct and Attendance Policy be amended as recommended by Counsel. Mr. VeHaun seconded the motion. With no discussion, Mr. Aceto called for the question. Voice vote in favor of the motion was unanimous.

10. New Business:

a. Consideration of Proposed Springs of North Asheville Subdivision:

Mr. Aceto turned the Chair over to Vice-Chair, Mr. Sobol, for consideration of the Springs of North Asheville.

Mr. Hartye presented a copy of a letter from Eric Zetterholm, President of Riverwood Real Estate and a letter and fax from Jason Young with the Town of Woodfin asking the Board to use its power of condemnation to obtain an easement that would give access to a gravity sewer line, or to reconsider the decision to deny use of a pump station for The Springs of North Asheville development. Mr. Hartye presented a map showing the location of the 33 acre parcel of land located in Woodfin. Mr. Zetterholm reported that in 2000 he started his business following a concern by the Chamber of Commerce and others that companies looking to locate in Asheville did not do so because there was a lack of affordable housing for employees, which resulted in his first subdivision, (Cherry Blossom Cove) in Swannanoa. He stated that his company is attempting to provide a similar subdivision with The Springs of North Asheville, geared to those who need moderately priced housing. He further stated that he attempted to purchase an easement from the adjacent property owner in order to cross their property to connect to an existing gravity line, but the owner declined his offers. Also, MSD denied this request for a pump station in its allocation letter of February 7, 2006. Mr. Zetterholm stated that, in meetings with MSD staff, he was under the impression that if he made a good faith effort to obtain the easement and was unsuccessful, he would be granted approval for a pump station. Based on this assumption, he moved ahead with planning and started moving dirt.

Mr. Young reported that it's the recommendation of MSD staff that Mr. Zetterholm wait until the area is annexed so the Town of Woodfin can exercise its right of eminent domain. However, it's the opinion of Counsel for the Town of Woodfin that the Town can not legally exercise an eminent domain proceeding, because it does not have any legal authority to assist the developer with this project. He stated that the process for annexation has begun, but Mr. Zetterholm is not in the financial position to wait 2 years to turn this project around. He presented a map showing developments in North Asheville; mostly in luxury housing, which the residents of Woodfin would not be able to afford, but feels The Springs of North Asheville represent affordable housing @ \$175,000. Mr. Pace stated that this is not low income housing and asked Mr. Zetterholm why he purchased property without access to sewer. Mr. Zetterholm said he assumed there would be no problem. Mr. Gantt asked how many units could be built using septic systems. Mr. Zetterholm said approximately 60 units or one-third of the project. Mr. Clarke was asked for his opinion on MSD's right of eminent domain. Mr. Clarke stated that he is not saying MSD could not exercise its right of eminent domain outside its boundary, but he has some concerns about it. He stated that in the past MSD has acquired some easements outside its boundary in South Buncombe, but some of those were acquired by Henderson County. Mr. Hartye stated that, in this particular case, the gravity sewer option is cheaper than a pump station. He explained that the cost of gravity sewer is approximately \$80,000 of which \$40,000 would be reimbursed in Cost Recovery. A pump station and the appropriate fees will run between \$200,000 and \$300,000. He further stated that since there is a private pump station for the adjacent trailer park, there would be two pump stations pumping back into the system should the District approve a pump station for this development. Whereas, if the developer can wait, the Town of Woodfin can obtain the easement under its power of eminent domain once the area has been annexed, then two pump stations could be eliminated.

Mr. Hartye stated that he understands the developers desire to start the project as soon as possible, and is willing to work with him toward this end. He further stated that there is a lot of work to be done on site, which could parallel some type of conditional approval, if the Town of Woodfin is willing to work with the MSD. Mr. Hartye recommended the gravity option, both from an environmental and financial standpoint. Ms. Bellamy moved that the Board approve staff's recommendation to instruct staff to work with the Town of Woodfin and the Developer to provide access via gravity service for the area serving this development. Mr. Pace seconded the motion. Mr. Venable asked if the Woodfin Board has taken a stance on the use of eminent domain for private use. Mr. Young stated that in terms of whether the Town Board has taken a stance on eminent domain for private developers as per the Kelo decision, the answer is yes. He further stated that the condemnation of a sewer easement plus the condemnation of a road would be one of those protected elements that wouldn't be affected by the Resolution the Town Board passed last year.

Regarding Mr. Hartye's recommendation, Mr. Young pointed out that the developer is willing to put up the money for a pump station and that no matter how cheap a gravity line is, if the developer cannot cross private property then it's irrelevant. Also, most companies in the area could not absorb the two-year delay. Mr. Newman asked if this area were already within the Woodfin corporate limits and the MSD Board decided not to grant a pump station, how would the Town Board proceed? Mr. Young stated that the Board would consider the eminent domain option. Mr. Sobol asked Ms. Bellamy if her motion was still the same. Ms. Bellamy stated that she's okay with staff's recommendation, but if the Board is going to consider a pump station, she would prefer to have more time to look at the data. After some discussion on the wording of the motion, Mr. Sobol stated that the motion now reads "Instruct staff to work with the Town of Woodfin and the Developer to look at both the gravity and pump station options for this development". He asked Ms. Bellamy if this is her recommendation. Ms. Bellamy said yes, because this would give the Planning Committee more time to consider this issue. Mr. Pace withdrew his second to the motion since it was not the recommendation of staff. Mr. VeHaun seconded Ms. Bellamy's motion.

Mr. Venable asked how many trailers are in the park, and if there has been any trouble with the pump station that serves the park. Mr. Young stated that there are approximately 64 trailers, but the owner is planning to expand the park. With regard to the pump station, Mr. Young stated that the pump station went down a couple of months ago. Mr. Venable suggested that one of the options the Board has is to instruct staff to start eminent domain proceedings to gain access for a gravity line, which would eliminate the need for a pump station and do away with the private pump station for the trailer park. Mr. Venable stated that this solution is a much stronger case for eliminating possible environmental problems. Mr. Clarke stated that MSD has the authority to condemn for a public purpose. Mr. Newman agreed with Mr. Venable, but said he would be more comfortable using this authority if MSD received a request from Woodfin saying this would be beneficial for the area and they support infrastructure being extended into these areas. Mr. Creighton asked for a clarification on where the gravity line would run. Mr. VeHaun stated that it would be at least 15 months before the Town of Woodfin could annex this area and he doesn't want to lose the development because of it. Ms. Bellamy suggested that the Board take the time to consider the nine factors listed in the policy before making a decision. Following some discussion as to whether this should be brought back to next Board meeting, Mr. Sobol restated Ms. Bellamy's motion and called for any further discussion. Mr. Venable stated that if staff is going to reconsider this issue, he would like to see what the consequences would be if MSD used its power of eminent domain. Mr. Newman asked Mr. Venable if he would be more comfortable if the Town of Woodfin made a formal request and show of support. Mr. Venable said yes. Mr. Young stated that in his letter to Mr. Boyd, the Town of Woodfin specifically asked that MSD utilize its condemnation authority to gain an easement or allow Mr. Zetterholm to construct a private pump station. Mr. Venable asked for direction from Counsel. Mr. Clarke stated that this issue was looked at several months ago and that he provided a letter to the Right of Way Committee about this and will see that it is distributed again to the entire Board. Mr. Pace stated that he will not vote in favor of the motion since the developer was aware the property did not have sewer when he bought it. Mr. Sobol stated that although he does not know the property owner, he may not want a sewer line crossing his property and feels the Board should respect that right. Also, because the county does not lack for development, he will vote against the motion. Following a brief discussion regarding the letter from the Town of Woodfin, Mr. Sobol called for the question. By a show of hands the motion carried with a vote of 8 to 3. Mr. Pace, Mr. Creighton and Mr. Sobol voted against the motion.

Regarding the CIP Status Report, Ms. Bellamy asked why MSD is waiting on final documents for the City of Asheville (2003 Annex) project. Mr. Hartye stated that it typically takes a while to get the final easements documents.

11. Adjournment:

With no further business, Mr. Venable moved for adjournment at 3:50PM. Ms. Bryson seconded the motion. Voice vote in favor of the motion was unanimous.

Jackie W. Bryson, Secretary/Treasurer

