

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT
APRIL 18, 2007

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 on Wednesday, April 18, 2007. Chairman Aceto presided with the following members present: Bellamy, Bissette, Bryson, Creighton, Newman, Sobol, VeHaun and Venable. Mr. Gantt, Mr. Haner and Mr. Kelly were 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, Stan Boyd, Martha Zeigler, Ed Bradford, John Kiviniemi, Ken Stines, Angel Banks, Jim Naber, Julie Willingham, Wesley Banner 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. None were reported.

3. Approval of Minutes of the March 21, 2007 Board Retreat and Regular Meetings:

Mr. Aceto asked if there were any objection to adopting the minutes of the March 21, 2007 Board Retreat and Regular meetings as presented. With no objections, the minutes were adopted by acclamation.

4. Discussion and Adjustment of Agenda:

None

5. Informal Discussion and Public Comment:

Mr. Aceto welcomed Ms. Karpen.

Mr. Aceto presented a copy of the Planning Issues for 2007 from the Board Retreat prioritized according to importance. He called for comments on the updated list. Mr. Bissette asked for a clarification on No. 2 (Review incentives toward MSD goals). Mr. Hartye stated that it means that development incentives should be looked at again to see if they correspond with MSD's current goals. Mr. Aceto suggested that the Board look at the list next year to see how many of the issues were addressed and in what way. He asked the Board for input on how to proceed. Mr. Venable stated that No. 9 (review consolidation of employee benefits with member entities) will be addressed in the report of the Personnel Committee. Mr. Hartye suggested that he, Mr. McGill and Mr. Clarke come up with a plan of action on the best way to address these issues and come back to the Board with recommendations. He stated that some of the issues can be grouped together and be a part of the same Planning Committee discussion and some will be addressed in the updated Master Plan. Mr. Sobol stated that No. 11 (How much growth do we need/at what cost) should be tied into No. 3 (Initiatives to consider service to unsewered areas as affected by the Land Use Plan). Ms. Karpen asked if No. 1 (Define MSD role in land use planning) is related to No. 2 (Review Incentives toward MSD goals). Mr. Aceto said yes. With no further discussion, Mr. Aceto directed Mr. Hartye to meet with Mr. McGill and Mr. Clarke to come up with a plan of action.

6. Report of General Manager:

Mr. Hartye presented an article from "Southern City" on Wilmington Sewer Issues.

Mr. Hartye presented a memorandum and table from Ms. Zeigler that relates the distribution of employees within the quartiles of their respective pay scales. He stated that this information was requested by the Personnel Committee.

Mr. Hartye reported that the Finance Committee will meet Monday, April 30th at 9AM and the next regular Board meeting will be held May 16th at 2PM.

With regard to the article on Wilmington Sewer Issues, Mr. Venable asked if a break in a line caused by developers, then covered up, could happen in Asheville. Mr. Hartye stated that it could be done by someone other than a sewer crew, but is not a common occurrence.

7. Report of Committees:

Personnel Committee

Mr. Venable reported that the Personnel Committee met March 26, 2007 to consider the Cost of Living/Merit Pay Plan; changes to the Self Insured Health Care Plan and whether or not to consider Domestic Partner Benefits.

Regarding salary increases, Mr. Venable reported that the Committee reviewed the following two (2) options recommended by the Employee Advisory Committee and recommended approval of Option #2.

Option #1 – Keep the health plan as is and increase MSD and employee funding by 7.5% In addition, approve a 2.6% merit increase to reflect the cost of living rate.

Option #2 - Reduce plan benefits and increase health care funding by 1% and salaries by 1%, reflecting a 3.6% merit increase and a 1% increase in health care funding.

In connection with health care funding, Mr. Venable reported that Ms. Bellamy approached the Committee about MSD's interest in joining the City of Asheville and/or Buncombe County to increase the size of its insurance pool. It was suggested that the Board Chairman draft a letter to the Mayor and City Council to initiate a dialogue. Mr. Venable further reported that the Personnel Committee recommends that the EAC and Board explore the options of joining in with either the City or County in their health care plan. Mr. Hartye stated that the first step is to draft a letter to both the City and County and develop a task force to look into a pooling of resources. Mr. Sobol stated that the proposed cost of living is not reflective of what is out in the market today. Mr. Venable stated that the Board is constantly looking at these issues, but at the same time, MSD cannot ignore the rate payers. Regarding the health care issue, Ms. Bellamy reported that she had an opportunity to attend a meeting with the Chamber's Health Care Roundtable which is also asking the City and County to create a task force to look at health care partnering.

In other business, Mr. Venable reported that the Committee considered whether or not to continue to investigate Domestic Partner Benefits. He stated that a motion was made and seconded to not go any further with the investigation at this time. However, because the motion was made by the Board Chairman he was mistakenly allowed to vote, the vote was 3 ayes, 2 nays in favor of the motion. Mr. Venable stated that although the Board Chairman is a member of every committee, he is a non-voting member; therefore, the vote should have been 2 ayes, 2 nays, which would have defeated the motion. Mr. Clarke stated that Robert's Rules of Order says "an ex-officio member of a committee is counted as a member for purposes of a quorum and is entitled to vote, etc". He explained that when the By-laws were amended it was suggested that this be included. However, the Board decided to let the Chairman remain an Ex-officio member of each committee, but not have the right to vote. Mr. Clarke further stated that he does not think it

makes a significant difference since committees of the Board have no authority other than make recommendations to the full Board. Mr. Aceto asked the Board how it would like to proceed in light of the voting error. Mr. Sobol stated that Committee members should have been given an opportunity to thoroughly discuss the issue before a motion was made and voted on. Mr. Aceto agreed. Mr. Newman stated that although he was supportive of the domestic partner benefits issue and remains so, he feels the Board should recognize that this is not a dead issue, and as information becomes available, the Committee might consider it at a later date. Mr. Clarke asked that the Personnel Committee minutes be corrected to show he did not send out a survey regarding the percent of employers in Western North Carolina who provide Domestic Partner Benefits coverage. The minutes should say his office reviewed information obtained in such a survey. Mr. Clarke recommended that the Board consider revising the By-laws; giving the Chairman the right to vote at Committee meetings. Mr. Venable asked for a clarification on whether the Board wants the Personnel Committee to reconsider this issue at its next meeting. Mr. Aceto said no; perhaps in the future when more information is available.

Right of Way Committee:

In the absence of Mr. Kelly, Mr. Hartye reported that the Committee met April 4, 2007 to consider condemnations on Sweeten Creek @ Rock Hill Road and Montford Avenue @ US 19/23 projects and Compensation Budgets for Crockett Road PRP and Riverside Drive/Westover Drive projects. He stated that these items are part of the Consolidated Motion Agenda and will be discussed during that report. Mr. Hartye further reported that the Committee considered an exchange of a small portion of WWTP land for an equivalent portion of adjacent land. Mr. Hartye turned the meeting over to Ms. Banks for a report.

Ms. Banks presented a map showing the property exchange in question. She reported that Altura Communities LLC (formerly KGR Properties) owns land both to the north and east of MSD's property and wants to acquire the 2 acres located on the extreme northeast portion of MSD's property in order to build a roadway to connect their property for a planned 900 unit development. She stated that Altura's only alternative is access via Riverside Drive, which would increase residential traffic in front of the WWTP site.

Ms. Banks reported that in looking at the possibility of a land exchange, both Mr. McGill and Mr. Clarke were of the opinion that MSD should stipulate that not more than a typical two lane road be built; that no structures be constructed on the exchanged piece of MSD land, that Altura would provide a new boundary fence and that Altura would fully disclose to potential buyers that they are purchasing land adjoining a fully operational wastewater treatment plant. Ms. Banks stated that if the MSD decides to proceed, an appraisal will need to be done and brought back for further consideration and that an opinion from Bond Counsel and MSD's Engineer of Record is required. She further stated that the Committee's recommendation is to proceed with the appraisal based on the fact that Altura is willing to proceed and withstand reasonable cost to be incurred with pursuing the land exchange and subject to all required MSD approvals. Mr. Venable asked if the appraisal would take into consideration that this land seems to be vital to Altura as far as its development is concerned. Mr. McGill stated that the property in question is not vital to Altura's development, but rather convenient. Mr. Aceto asked if this solution is in the best interest of District. Mr. McGill said he has no objection to the exchange and does not see any detriment to the District. Mr. Newman asked why MSD does not sell the property rather than exchanging it, if there is no real benefit to keeping it. Mr. McGill stated the exchange will move MSD's boundary approximately 150 feet further up the mountain; creating a larger buffer. A discussion was held regarding the location of units and road into the development. As a matter of record, Mr. Clarke stated that the Board has the right to sell, exchange or dispose of property. He further stated that if the Board chooses to proceed, it would require an opinion of Bond Counsel that the land exchange would not jeopardize the tax exempt nature of any

outstanding revenue bonds and the Engineer of Record or an appropriate consultant has to certify that exchanging the property will not adversely affect MSD's ability to operate the sewer system. Mr. Venable asked if MSD has to pay for consultations with Bond Counsel and the Engineer of Record. Mr. Clarke stated that there should not be a charge from Bond Counsel since this is part of its on-going relationship with MSD. Mr. McGill stated that the property owner has agreed to pay all of the cost associated with the exchange. Mr. Aceto asked Mr. Clarke to restate the motion. Mr. Clarke said the motion is to proceed with exchange of the property with Altura Communities LLC subject to obtaining all required certificates and that Altura would bear all of the appropriate costs. Mr. Clarke stated that he does not recommend that Altura pay any legal, engineering or opinion costs. Mr. Aceto stated that a vote on this item will follow the report on the Consolidation Motion Agenda.

With regard to Item 7.b of the Consolidated Motion Agenda, Ms. Bellamy asked if this is an upgrade of a sewer line or installation of a new sewer line. Mr. Hartye said this is a rehab project. Ms. Bellamy stated the City of Asheville has some issues with residents in this area and asked if there is some way these residents could tie into this system. Mr. Hartye stated that the residents would still have to extend the sewer line either to the line located along Sweeten Creek Road or to a public line up the hill, which is closer.

CIP Committee

Mr. Sobol asked Mr. Aceto to report on the CIP Committee meeting since he was unable to attend. Mr. Aceto reported that the CIP Committee met April 5, 2007 to hear presentations by staff on the current Capital Improvement Program and new Facilities Plan. Mr. Sobol expressed his concern that MSD is rehabilitating the system on borrowed money and hopes there is a point that the amount of rehab work being done either slows down or the amount of money MSD gains from pay-as-you-go will catch up where rehab work could be paid for on an on-going basis; making it possible for MSD to pay down its debt. He stated that Mr. Hartye assured him that there will come a time when MSD will not continue to borrow money. Mr. Sobol stated that MSD is fortunate to have staff and an Engineer of Record that is not only taking care of existing problems, but thinking about future problems and how to pay for them. Mr. Hartye stated that the major part of that is not throwing money away by waiting too long to address problems. He further stated that hopefully the 50% ratio of pay-as-you-go and 50% debt will be reduced over time.

8. Consolidated Motion Agenda:

a. Consideration of Developer Constructed Sewer Systems: Biltmore Lake Block H and Overlook @ Lake Julian:

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

b. Consideration of Condemnation – Sweeten Creek @ Rock Hill Road:

Mr. Hartye reported that the Right of Way Committee recommends authority to obtain appraisal and proceed with condemnation if necessary.

c. Consideration of Condemnation – Montford Avenue @ US 19/23:

Mr. Hartye reported that the Right of Way Committee recommends authority to obtain appraisal and proceed with condemnation if necessary.

d. Consideration of Compensation Budget – Crockett Road PRP:

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

e. Consideration of Compensation Budget – Riverside Drive/Westover Drive:

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

f. Consideration of Cost of Living/Merit Pay Plan/Self Insured Health Plan:

Mr. Hartye reported that the Personnel Committee recommends approval of a 3.6% merit increase and a 1% increase for health care cost. Also, that the EAC and the Board explore the options of joining in with either the City and/or County in their health care plan.

g. Consideration of RBC Blower Replacement – Phase II, Installation Contract:

Mr. Hartye reported that the blowers at the Water Reclamation Facility are used to turn the Rotating Biological Contactors. He stated that two of the blowers were replaced in FY 06 with excellent results, and in order to save money, the District purchased the three remaining units directly from the manufacturer. He further reported that the following bids were received April 5, 2007 for the installation contract: AGRR, Inc. with a base bid amount of \$287,000 and \$15,000 for the Add Alternate; J. L. Construction, Inc. with a bid amount of \$282,500 and \$25,500 for the Add Alternate; Dellinger, Inc. with a bid amount of \$280,557 and \$42,000 for the Add Alternate and Goodwater, Inc. with a bid amount of \$198,000 and \$15,000 for the Add Alternate. He stated that staff recommends award of the contract to Goodwater, Inc. in the amount of \$213,000, subject to review and approval by District Counsel. He further stated that there is money in the FY 07 Construction budget for this project.

h. Consideration of Dechlorination Sole Source Pump Purchase:

Mr. Hartye reported that this project is for a dechlorination process, which is a requirement of the new NPDES Permit. He stated that this process will remove residual chlorine from the plant's effluent by dosing it with Sodium Bisulfite. He further reported that since only one bid was received, which totaled \$438,000, staff's opinion is that this price is excessive and therefore has decided to construct this project in-house. He stated that staff recommends approval of a sole-source purchase of the itemized Pulsafeeder equipment in the amount of \$60,560.00 subject to review and approval by District Counsel.

i. Cash Commitment/Investment Report – Month Ended February 28, 2007:

Presented as information only.

With regard to items b. and c. (condemnations) Mr. Venable asked what happens after the Board approves condemnations. Ms. Banks explained that an appraisal is obtained and the results are offered to the owner. If through continued negotiations after the appraisal, the owner still does not agree to grant an easement, a 30-day Notice of Condemnation is mailed to the owner by MSD's attorney. After the 30-day time period is up a Complaint and Declaration of Taking is filed with the Clerk of Superior Court. This institutes the action of Condemnation and provides MSD access to the easement corridor to accomplish construction of the line. After construction is complete, the

condemnation case is placed on the court calendar and a mediation conference is held in further attempts to settle. Mr. Venable asked what happens if the owner does not agree. Ms. Banks stated that if mediation is unsuccessful a trial is scheduled, however, during this process MSD is still open to negotiations and attempts to reach reasonable settlement with the owner.

Mr. Aceto called for a vote on the recommendation of the Right of Way Committee with regard to the exchange of property with Altura Communities LLC. Roll call vote was as follows: 8 Ayes; 0 Nays. Ms. Bellamy was absent during the vote.

Mr. Aceto called for a motion on the Consolidated Motion Agenda. Mr. VeHaun moved that the Board approved the Consolidated Motion Agenda as presented. Mr. Creighton seconded the motion. Mr. Aceto called for discussion. With no discussion, roll call vote was as follows: 8 Ayes; 0 Nays.

9. Old Business:

None

10. New Business:

Mr. Aceto announced the upcoming WEFTEC conference to be held October 13-17, 2007 in San Diego, California.

Mr. Aceto called on Mr. Hartye for a report on proposed legislation. Mr. Hartye reported that there are two proposed bills in the House and Senate with regard to eliminating retainage on projects under \$300,000 and reducing retainage by 5% on larger projects. Mr. Hartye stated that MSD has a lot of projects that fall under the \$300,000 range and retainage is essential to ensure that contractors finish a project in accordance with the job specifications. He further stated that staff has drafted a letter registering its opinion on this issue and ask the Board for its input on the best way to proceed. Mr. Venable asked if the retainage is a certain percent of the contract. Mr. Hartye said 10% is the standard retainage. Mr. Bradford stated that if the contract is going well, the retainage is reduced to 5% after the project is complete, however, if the contractor does not clean up the site, the retainage will be increased up to 20%. Mr. Hartye stated that this bill will eliminate the 10% retainage at the outset for these types of projects, which involve restoration of the site. Mr. Newman asked what the argument is for these bills. Mr. Hartye stated that the contractor gets its money sooner. Mr. Clarke stated that there is a provision in the State Statute that says retainage must be paid within 15 days and that any amount not paid within 15 days bears interest at a rate of 18%. Mr. Hartye stated that this is also counter productive since the longer the project goes without being complete, the more interest the contractor gets. Mr. Newman moved that a letter in opposition to the legislation be sent under the signature of the Chairman and General Manager. Mr. Sobol seconded the motion. Mr. Aceto called for discussion. With no discussion, voice vote in favor of the motion was unanimous. Mr. Hartye expressed his appreciation to Julie Willingham, Martha Zeigler and Ed Bradford for providing information.

Regarding the Smith Mill Creek Project, Mr. VeHaun reported that in conversation with a couple of the property owners, they were very complimentary of staff for the work they are doing on this project.

11. Adjournment:

With no further business, Mr. Aceto called for adjournment at 3:30PM.

