

**BOARD OF THE METROPOLITAN SEWERAGE DISTRICT
OCTOBER 24, 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, Wednesday, October 24, 2007. Chairman Aceto presided with the following members present: Bellamy, Bissette, Bryson, Gantt, Haner, Kelly, Sobol, VeHaun and Venable. Mr. Creighton and Mr. Newman 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, Greg Phillips with Mayfair Partners, Winston Pulliam, Drew Norwood with Windsor Autry, Stan Boyd, Martha Zeigler, Ed Bradford, Angel Banks, John Kiviniemi, Mike Stamey 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. No conflicts were reported.

3. Approval of Minutes of the September 19, 2007 Board Meeting:

Mr. Aceto asked if there were any objections to approving the Minutes of the September 19, 2007 meeting as presented. With no objections, the minutes were approved by acclamation.

4. Discussion and Adjustment of Agenda:

None

5. Informal Discussion and Public Comment:

Mr. Aceto welcomed Mr. Phillips, Mr. Pulliam, Mr. Norwood and Ms. Karpen. Ms. Karpen announced that on November 15, 2007 at 7PM, the League is sponsoring an open forum on the Economics of Immigration to be held at the Calvary Baptist Church on Haywood Road.

6. Report of General Manager:

Mr. Hartye called on Mr. Sobol for a report on the Clean Water Trust Fund. Mr. Sobol reported that in 1999-2000 the Association of Metropolitan Sewerage Agencies (AMSA), now the National Association of Clean Water Agencies, (NACWA) and others starting thinking about a Trust Fund to fund major rehab to all the sewer systems across America. He stated that a committee of 22 was appointed to pursue this effort, and is now at a point where they are beginning to think about the introduction of a bill. However, before a bill can be introduced, the present House of Representatives needs to see a funding stream and hopefully, the office of Management and Budget will look at this over this winter. He reported that NACWA called on a Senate subcommittee September 19th to urge the committee to introduce and pass Clean Water State Revolving Fund (CWSRF) reauthorization legislation similar to the Water Quality Financing Act (H.R. 720), which the House passed in March, as a short-term goal. He stated that H.R. 720 would provide \$14 billion over four years to the CWSRF, however, the long-term solution is a trust fund similar to those that exist for highways and airports. He further stated that if the Board decides to support this, it needs to go out as a group and talk to various organizations about this issue and encourage them to write Congressman Shuler in support of a Clean Water Trust Fund. Mr. Aceto thanked Mr. Sobol for his report and article.

Mr. Hartye presented a copy of the Departmental list of accomplishments for FY 07. He reported that the Finance Division received the GFOA "Excellence in Financial Reporting" award for FY ending June 30, 2006 and received the GFOA "Distinguished Budget" award for FY ending June 30, 2007. The CIP Division rehabilitated 53,260 Linear Feet of collection system during FY 07 and completed a Storm Contingency Plan for twelve critical river crossings (resulting in failures from major storm events) linked to GIS with full copies available to key personnel. He stated that plans were prepared for repair and temporary bypass along with ensuring materials are on hand and a plan for using both District and contracted resources if needed. He further stated that additional material and equipment needed to accomplish these emergency plans have been included in the current budget. Mr. Hartye reported that in the Administrative Services Division, Fleet Maintenance has utilized the Biodiesel program since 2003 and in the spring, E10 (10 percent ethanol) was introduced for all gasoline powered vehicles fulfilling MSD's commitment to alternative "green" energy sources. Environmental, Health and Safety had zero (0) OSHA violations and MIS/GIS purchased and configured a new SQL Server, consolidated servers and added additional database servers to improve performance and storage capacity. They also developed new software applications and customizations including new CCTV management tools, updates to ArcGIS/MIS site, and numerous other database applications, and moved to an automated system for updating County GIS parcel, address, and streets information. Mr. Venable asked about the Dukes Root Application and how it eliminates the need for data entry on hundreds of work orders. Mr. Hartye stated that this application is for entering work orders coming from a contractor working on MSD lines, which is tied into the GIS data base, thus eliminating data discrepancies between MSD and Dukes.

Mr. Hartye reported that the Wastewater Treatment Division received the "Peak Performance Award" from NACWA for the 7th consecutive year. The WRF Facilities Plan was completed; an H2S monitoring system and a supplemental air scrubber system @ Carrier Bridge Pump Station were installed. Staff completed in-house rehab on the old Administration Building. Regarding Background Lake Testing for Spill Response Procedures: we have conducted four full seasonal tests for area lakes (by the Environmental Quality Institute for independent reference value) and analyzed the information to develop background fecal levels and trigger values for responding to potential lake spills. He stated that testing will continue on the more critical ones that have had sporadic values. Also, continuing this year is the in-house construction of the de-chlorination facility and in-house construction of the grit removal system.

Mr. Hartye reported that the System Services Division added a night first responder as a full time position in October, 2006 to handle emergency calls between 4:00 and 11:30 PM, thus reducing after hour response time from 1.50 hours to .80 hours and reduced overtime by \$50,000. In addition, System Services cleaned 637,706 LF of pipeline with in-house crews, mechanically removed or chemically treated for roots 107,578 LF of pipeline, rehabilitated 6,387 LF of pipeline with in-house crews through dig and replace, completed 93 IRS (lining) repairs resulting in rehabilitation of 15,509 LF of pipeline with in-house crews and cleared 37,698 LF of right of way. Mr. Sobol asked what percentage of total rights of way, does this represent. Mr. Hartye stated that there is no clear assessment of the percentage, since this is a new program and a major effort. The program at this point is only addressing areas where MSD has easements. Regarding Wastewater Certification, Mr. Venable asked if classes are held in-house and if the certification is a job requirement. Mr. Hartye stated that the state Wastewater Agency gives out the certifications and Stan Boyd and John Kiviniemi are involved in teaching classes in-house to wastewater operators and system services operators to help them get certified, but that they must pass a state exam for each level of certification. He further stated that the Directors of the Treatment Plant and System Services are required to have a Class Four certification to oversee these divisions and that they encourage other key employees to take the classes and get certified, but is not a job requirement for them.

Mr. Hartye reported that in 2007, the Planning and Development division issued 270 allocations and has given \$154,800.00 in affordable housing rebates. He further reported that the asset value of systems transferred is \$8,404,343, which is a large increase over last year, and the linear feet of systems transferred is 129,025.

7. Report of Committees:

Right of Way Committee:

Mr. Kelly reported that the Right of Way Committee met September 26, 2007 and today, prior to the Board Meeting. He called on Ms. Banks for a report on these meetings.

Ms. Banks reported that at the September 26th meeting, the Committee considered three compensation budgets; Dingle Creek Interceptor Phase II, Weaverville Highway @ Hillcrest Road Replacement and Eastwood Avenue @ Old US 70 PRP, which are part of the Consolidated Motion Agenda. Also, the Committee considered condemnation on the Merrimon Avenue @ Stratford Road Project. She stated that the property owner's major concerns with the project are tree loss, disturbance to a retaining wall, and disturbance to the landscaped area on the creek bank located on the northern side of this property. A special provisions detail sheet was prepared for this property and was given to the property owner, which addressed his concerns. She further stated that the property owner hired an attorney to represent his interest, but despite repeated phone calls to his attorney there has been no response. The owner has no issue with the compensation offered, but will not grant the necessary easement without his attorney's approval. Staff recommends authority to obtain appraisal and proceed with condemnation if necessary.

Ms. Banks reported that at today's meeting, the Committee considered a compensation budget for Dunwell Avenue Sewer Replacement in the amount of \$23,218.00. The Committee also considered condemnation on Riverside Drive @ Westover Drive, which consists of two commercial parcels. Ms. Banks explained that the owners are planning expansion of warehouse space and have rejected MSD's original alignment due to their plans. Two alternate alignments were proposed in an effort to work around the expansion plans, but the owners rejected both alignments. Standard compensation in the amount of \$9,322 was offered plus an additional \$5,000 to avoid the expense of litigation. The owners countered with \$60,000, however, staff feels this is unreasonable for the easement, therefore, recommends authority to obtain appraisal and proceed with condemnation if necessary. Also, the Committee considered condemnation on Mardell Circle 4" Main; a residential tract which is currently unimproved. Ms. Banks explained that the owner requested an alternate alignment; moving the line closer to a neighboring home on the adjacent parcel. The project engineer shifted the proposed alignment toward the neighboring property line as much as possible without jeopardizing the structural integrity of the house on the adjacent lot. She stated that the owner has no issue with the compensation offered, but wants the line shifted more toward the adjacent lot. Staff recommends authority to obtain appraisal and proceed with condemnation, if necessary.

Ms. Banks further reported that the Committee considered amendment of the compensation budget for Old Home Road @ Weaverville Highway. She stated that because Market values in this corridor are much higher than tax values, an additional \$12,000 is needed to add to the budget to finalize two signatures and file one condemnation. Following a discussion, Mr. Kelly moved that the Board approve the recommendations of the Right of Way Committee at today's meeting. With no discussion, Mr. Aceto called for the question. Roll call vote was as follows: 10 Ayes; 0 Nays.

Planning Committee:

Mr. Bissette reported that the Planning Committee met October 10, 2007. He stated that in July, McGill Associates began updating the District's Master Plan in order to incorporate the new Land Use/Zoning Regulations from Buncombe County and other member agencies in order to combine them into a comprehensive document. He further stated that because of increased activity (development) in the Reems Creek Valley, they felt it would be wise to start there. He further reported that the Committee considered three items and made the following recommendations:

1. Endorsement of the Master Plan for the Reems Creek Valley.
2. Implement the design and right of way acquisition for Phase 1 of the Reems Creek Interceptor at a cost of \$90,000.
3. Approve a.c.& d. of the following Developer Incentives:
 - a. Limit developer incentives to expansion within current District Boundary and Primary areas as identified by the Buncombe County Land Use Plan.
 - b. Keep current cap on projects eligible for Cost Recovery Program.
 - c. Remove caps for Cost Reimbursement and Additional Capacity Reimbursements and let the Planning Committee review and approve these projects on ad-hoc basis.
 - d. Implement design and easement acquisition for interceptors in areas identified by member agencies as needing public sewer based upon activity and available funding.

Mr. Bissette reported that the Committee discussed the Cost Recovery Program, which was designed to spur development. He stated that it was the conclusion of the Committee that, at this time, there is no need to spur development, since it's moving at its own pace. He noted that in looking at some of the reimbursement projects, Ms. Bellamy pointed out that eliminating this program would significantly impact affordable housing in the area. She felt the cap was important, but did not see doing away with the program. For this reason, the Committee did not move forward on item b., but asked staff to look at alternatives to the Cost Recovery Program for affordable housing and come back with a recommendation at a future date.

Mr. Bissette moved that the Board approve the Master Plan for the Reems Creek Valley. Mr. Aceto called for discussion. With no discussion, voice vote in favor of the motion was unanimous.

Mr. Bissette moved that the Board approve the implementation and design of right of way acquisition for Phase 1 of the Reems Creek Valley Interceptor at an estimated cost of \$90,000. Mr. Aceto called for discussion. Ms. Bellamy asked if the EPA, through the Army Corp. of Engineers, administers funds for this type of project. Mr. McGill said no. With no further discussion, roll call vote was as follows: 10 Ayes; 0 Nays.

Mr. Bissette moved that the Board approve implementing items a.c.& d. of the developer incentives and for staff to bring back recommendations regarding alternatives to item b. Mr. Aceto called for discussion. With no discussion, voice vote in favor of the motion was unanimous.

8. Consolidated Motion Agenda:

- a. Consideration of Compensation Budgets – Dingle Creek Interceptor, Phase II; Weaverville Highway @ Hillcrest Road Replacement and Eastwood Avenue @ Old US 70 PRP:**

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

b. Consideration of Condemnation – Merrimon Avenue @ Stratford Road:

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

c. Consideration of Construction Contract for Reems Creek @ Balcrank:

Mr. Hartye reported that the following bids were received on September 27, 2007: Huntley Construction Co. with a total bid of \$1,307,975.00; Payne, McGinn & Cummins with a total bid of \$1,100,710.00; Thomas Construction Co. with a total bid of \$962,836.15; Terry Brothers Construction with a total bid of \$806,455.00; DPI Construction Co. with a total bid of \$729,560.00; Buckeye Construction Co. with a total bid of \$714,578.50; Wolfpen Associates with a total bid of \$652,640.00 and Mendon Pipeline with a total bid of \$635,075.00. Staff recommends approval of the bid of Mendon Pipeline in the amount of \$635,075.00, contingent upon approval of District Counsel. Mr. Venable asked if this is the first time MSD has used this company. Mr. Hartye said yes. He stated that Mendon Pipeline has an office in Ghent, West Virginia, is highly recommended and is interested in work in the area. Mr. Sobol asked how far the line extends. Mr. Hartye said approximately one mile. Ms. Karpen asked if construction will interfere with Reems Creek Road itself. Mr. Bradford said they will not open-dig Reems Creek Road, but bore underneath it. Mr. Venable asked if the creek is close to the Road in this area. Mr. Hartye said yes.

d. Consideration of Developer Constructed Sewer Systems – Eagles Landing, Hideaway Glen, Iris Drive, Weaverville Fire Station, Rutledge Road Industrial Park, Stewart Project on Liberty Street and Grandview Subdivision, Phase I.

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

e. Consideration of Reimbursement Resolution for Bond Projects:

Mr. Hartye reported that the proposed resolution identifies a major project intended to be solely or substantially financed by bonds anticipated to be issued in FY 09-10. He stated that Board approval is required to obtain the tax-exemption of interest paid on MSD bonds by authorizing reimbursement from bond proceeds of the expenditures for this project. He further stated that additional resolutions may be submitted for other projects when anticipated costs can more accurately be projected. Mr. Venable asked where the funds, MSD advances itself, come from. Ms. Zeigler stated they come from the pay as you go fund.

f. Cash Commitment/Investment Report – Month Ended August 31, 2007:

Presented as information only.

Mr. Venable moved that the Board approve the consolidated motion agenda as presented. Ms. Bryson seconded the motion. Mr. Aceto called for discussion. With no discussion, roll call vote was as follows: 9 Ayes; 0 Nays. Ms. Bellamy was absent during the remainder of the meeting.

9. Old Business:

None

10. New Business:

a. Letter from Mr. Latimore, Vice Chairman of the Woodfin Sanitary Water & Sewer District Board:

Mr. Aceto reported that in response to an article regarding MSD rate increases, a letter was drafted to Mr. Latimore explaining the reasons for those increases. Mr. Aceto stated that he received a response from Mr. Latimore stating that their Board is interested in attending some of the Finance Committee meetings and following up and observing MSD's decision making process.

b. Reems Creek Interceptor Extension:

Mr. Hartye recognized Mr. Pulliam and Mr. Greg Phillips with Mayfair Partners which is planning a 160 unit development in the Reems Creek area. He reported that Mayfair Partners has coordinated with MSD for over a year; prior to the Buncombe County Land Use Plan and update of the Master Plan. He stated that they began to develop plans to build a gravity line from their property to the 12" line along Reems Creek Road that serves the golf course, which they coordinated with the City of Weaverville and were at a point, where they obtained easements and design approval from MSD staff. The developer has met all of the design review and policy requirement of MSD. At the request of MSD, the developer agreed to hold off construction of the gravity line to serve his property until staff obtained authority to begin work on the new 16" line along the creek as part of the Master Plan, and utilize these funds for the new line instead.

Mr. Hartye presented preliminary cost estimates from various contractors for both the 12" line along Reems Creek Road and the 16" Master Plan line along the creek. He indicated that the differential cost for upsizing the line along the creek from 8" to 16" was \$200,000. He stated that because the Cost Recovery Policy is capped at \$40,000 and the cost of design is \$40,000, MSD's total participation is estimated at \$280,000 and is asking the Board to approve moving ahead with this scenario. He further stated that one of the problems is, the plans are not available yet, and because the estimates are not detailed estimates, there may be additional cost if the quantity of rock becomes an issue, so is asking for a 15% construction contingency, to be administered by MSD. Mr. Venable asked if the developer runs into rock, are they responsible to pay the difference? Mr. Hartye said that both of the estimates did include an assumed amount of rock, but that the contingency will cover up to 15% beyond which the developer would be totally responsible. Mr. Venable asked if the smaller development would be an incentive to the larger development as far as reimbursement. Mr. Hartye stated that the larger developer would be entitled to the "Developer to Developer" reimbursement if the smaller developer ties onto the line. Mr. Venable asked if there is some way MSD can reduce its exposure with the 15% contingency, since its not sure if rock is an issue or not. Also, since the larger developer would receive reimbursement from smaller developers who tie on, would they be willing to contribute more. Mr. Hartye said possibly, but feels this is a fair deal as is; in spreading the risk appropriately. A discussion was held regarding the small development

Mr. McGill stated that there is a timing issue as it relates to the Master Plan. He presented a map showing the proposed line and where it would tie into the 12" line. He stated that the developer has waited to see how MSD plans to serve the Reems Creek Valley and that MSD is simply reimbursing the developer \$280,000 for the differential cost of the new 16" line, instead of the 8" line. He further stated that the 15% construction contingency has nothing to do with the developer, but is an investment in the Master Plan. He explained that if MSD does not do this line now,

there may not be another developer who is willing to lay over a mile of interceptor in the near future, and feels the 15% contingency is a very good investment. Mr. Sobol asked what will happen when the line between the 16" interceptor and Ballcrank is upsized; will other developers that tie on have to participate. Mr. McGill said yes. Mr. Sobol asked how much capacity is available in the existing 12" line and why there is such a difference in the cost per foot of the project previously approved compared to the cost of the new line. Mr. McGill stated that there is adequate capacity in the 12" line and the reason for the increase cost in footage between the two projects is because the line previously approved is rehab of an existing line that will have to be upsized as its rehabbed, which automatically makes it more expensive. He further stated that the new line is not a rehab project, but an open construction project where there is no inflow. Mr. Hartye stated that rehabbing a line is more difficult, since you have to worry about keeping the existing line going. Mr. Venable stated that he thinks its wrong on MSD's part to tell developers it does not allow pump stations and when it comes time to talk about making it easier for developers to build the right system, nothing is done. He further stated that MSD needs to do this, but he has a problem with the 15% contingency. Mr. Hartye stated that if it's just the money aspect, MSD will more than make this back in Capital Facility Fees, but if it's just the developer aspect, it's a matter of facilitating the Master Plan. Mr. Aceto pointed out that MSD is not spending 15% to benefit a particular individual or project, but to accomplish what it wants to accomplish anyway; putting sewer customers on both banks of Reems Creek and because it's a most cost effective way and time to do it. Mr. Sobol asked if MSD is reimbursing the developer \$40,000 for their design fees. Mr. Hartye said yes. Mr. Hartye pointed out that the developer has been through MSD's process and is ready to construct and has every right to build the other line. Mr. Clarke stated that the developer has the right to build the original line and MSD can not force him to do it the way it wants. Mr. Haner stated that he thinks the 15% contingency is a bargain, but asked what would cause the 15% to be actually used. Mr. Hartye said the big issue is rock. Mr. McGill stated that no rock assessment has been done on the new line; only the original line the developer planned to construct, which was done by Civil Design Concepts. Mr. Sobol asked if the 15% contingency would be calculated from the estimates given by the contractors. Mr. Hartye said yes. Mr. McGill stated that the contractors were taken out to the site in order to get a good estimate of the cost. Following a discussion regarding the 15% contingency, Mr. Venable moved that the Board approve MSD's cost participation in the amount of \$280,000.00, which consists of \$40,000.00 Cost Recovery, \$200,000.00 Increased Capacity reimbursement and \$40,000.00 reimbursement to the developer for design work. Also, MSD would be responsible for any construction costs overrun due to rock, not to exceed 15% of the contract price for the 5,575 LF Master Plan route. Mr. Sobol seconded the motion. Mr. Aceto called for discussion. With no discussion, roll call vote was as follows: 9 Ayes; 0 Nays.

11. Adjournment:

With no further business, Mr. Aceto called for adjournment at 3:35 PM.

Jackie W. Bryson, Secretary Treasurer