

BIG SKY WATER & SEWER DISTRICT NO. 363
Regular Meeting Minutes –February 17, 2009
WSD Community Room

The Big Sky County Water & Sewer District No. 363 scheduled a regular meeting for 8:00 am on Tuesday, February 17, 2009, in the WSD Community Room. President Packy Cronin called the meeting to order with the following Board members present: Vice-President Gary McRae, and Directors Dick Allgood, Jeff Daniels (left at 9:48 am), Bill Olson, and William Shropshire (left at 11:00 am). Secretary Dick Fast was not present. WSD staff present were Ron Edwards, Marlene Kennedy, Terry Smith, and Grant Burroughs. Others present were Mountain Lakes representatives Leonard Liston and Lenny Liston; Allied Engineering representative Doug Chandler; Big Sky Search & Rescue representative Steve Johnson; Northwestern Energy representatives Matt Micklewright, Emmett Rierdan, Ned Johnerson, Ernie Hulit, Pat Asay, and Sid DeBarathy; and adjacent property owner Bill Erwin.

PUBLIC FORUM

With no public comment, President Cronin called the meeting to order at 8:12 am.

MEETING MINUTES

Director Olson moved to approve the minutes of January 13, 2009, as written. Director Daniels seconded the motion. Motion passed, 6 yea votes to 0 no votes with President Cronin voting.

FINANCIALS

Smith noted that the December and January financials were combined and, with the exception of contributed capital and net income, all items are either favorable or on target. Smith said that there were no other particular items of note to bring to the Board's attention. Director Olson noted the accounts receivable aging is about as high as it has ever been. Smith said in January 2006 the aging receivables were about the same. According to Smith, a big chunk of the delinquency is from Farmhouse Partners and Smith has spoken to them and they have said they were putting a check in the mail last Friday. The interest rate for delinquent accounts was raised to 12% last year.

Director Shropshire moved to approve the December and January financials as presented. Director McRae seconded the motion. Motion passed, 6 yea votes to 0 no votes with President Cronin voting.

MOUNTAIN LAKES CONDOMINIUMS ANNEXATION AGREEMENT

A revised annexation agreement for annexing Mountain Lakes Condominiums into the Big Sky County Water & Sewer District was included in the board packet. Edwards stated that he met with Leonard and Lenny Liston last week and then distributed and reviewed an amended annexation agreement from the revisions that were made at that meeting. Edwards said the document is the first step in the annexation and then once all the conditions are met an ordinance can be done by the District. Edwards stated that a timeline was not in the agreement document, but that a timeline could be added. President Cronin felt that timelines are standard in an agreement. Leonard Liston said everyone is sitting at the same spot where we are waiting for the economy to change. President Cronin said that there should be a reasonable timeline in the agreement that allows for the adjustment in the economy. Edwards said the document is

amendable if they didn't perform within a timeline. Liston reported that they cannot move forward without the agreement. Liston considered bonding, but said that is even difficult in today's economy. The board asked that a two-year timeline be added where the agreement will be reviewed if the conditions are not met. Liston asked for a three-year timeline. *Edwards will add the timeline of December 31, 2011 to the agreement for review if the conditions are not met.* Liston believes that the document clearly states who is responsible for what. Edwards stated that the per SFE is still \$10,000 and they are also on the hook for repayment of bond debt from year one. They also have to pay for all costs of the election and they have to provide a new 8-inch well that has been pump tested and provides at least 35gpm. The developer also has to provide recordable easements for the pipeline and Edwards would like that in the plat if possible. If the easements cannot be done with the plat, then Edwards agreed that a separate recordable easement could be done. Doug Chandler asked about where a pump would need to go. Edwards doesn't feel a pump house would be necessary, just an RTU for the telemetry. Chandler explained their reasoning for adding the \$30,000 cap for their improvements. President Cronin and Director Olson felt that a list of items to be completed would better serve the District than putting a dollar cap on the improvements. Director Allgood felt that specking the improvements should take care of the developers concerns. *The board agreed to a clear set of specs to be included in place of a dollar cap.* Edwards noted that the District is in a better position to get water rights and it will be the District's responsibility to provide a water right for the new well by re-appropriating some of its existing water rights from Cascade wells 5 & 6. The agreement goes to any successors if the project is sold. Edwards will make the changes as discussed and email the revised document to board members for review.

BIG SKY SEARCH & RESCUE LEASE AGREEMENT

The final draft of the BSSAR lease was provided in the board packet. Susan Swimley stated that the lease is written specifically to not give BSSAR any interest in the ground, thereby avoiding the county subdivision regulations. The District acquires up to \$250,000 interest in the BSSAR building through a monthly fee. Edwards feels that the document legally skirts the county subdivision regulation. Steve Johnson said that BSSAR fully understands why the lease agreement is written the way it is and doesn't know of any other way to have a BSSAR building on the land. If improvements are required for parking BSSAR will take care of it. Johnson feels that the resort tax district just wants the building done and they probably won't care how the lease agreement is drafted as they are well aware of the permitting process at the county level. Susan Swimley said that the documents should not be recorded.

Director McRae moved to adopt the lease as written. Director Shropshire seconded the motion. Motion passed, 6 yea votes to 0 no votes with President Cronin voting. Director Daniels declared a conflict since he serves with BSSAR. Steve Johnson will work with Edwards to get an executed copy of the lease agreement.

Edwards reported that he submitted documents to the county for a zoning change and a waiver on the fee as a public entity and he will attend the county zoning meeting in March.

AMEND AGENDA

Director Shropshire moved to amend the agenda to address the sewer and water operations. Director Daniels seconded the motion. Motion unanimously passed.

SEWER OPERATIONS

Burroughs stated that flows are about where we were last year. Director McRae reported that a storm sewer manhole is open by Choppers and Burroughs will check it out. A manhole by Hill Condos was damaged and that has been repaired. Burroughs reported that they are testing out a new product that fills in around the manholes to prevent snowplow damage. The District is testing the fill at a manhole in South Fork and by the District office building at a cost of about \$180. If it works, Burroughs said they will start retrofitting other manholes. President Cronin reported that the retrofit seems to be working well at South Fork.

WATER OPERATIONS

In the absence of water operator Jim Muscat, Edwards reported that they met with the State and that the State has finally determined that the mountain water is ground water and they have withdrawn their requirements to have specs submitted for full-time disinfection by June 2009. Additionally, they agreed on a population number and letters have followed up that document the number they will use. Although the groundwater rule starts in December 2009, Edwards feels that the District has a good chance of deviation on the existing meadow wells and even possibly the new meadow wells. For the short term, the District is trying to stay out of disinfecting.

In regards to the Mountain Lakes development, President Cronin commented that the District may want to have a building at the well site and to allow for that in the agreement. Edwards will follow up.

NORTHWESTERN ENERGY

Matt Micklewright distributed rendering documents and introduced Sid DeBarathy, Pat Asay, and Emit Reardon. DeBarathy reviewed the renderings stating that the site has been lowered about 15 feet and not much of the substation will be in view of the adjacent property owner. The most visibility will be from the south looking back from the sewer plant road and from the spur road. With the trees coming off the site, they will try to replant them on the slope of the transfer station site. They have also changed the color to a darker grey to blend better with the colors of the landscape. The 12-foot wall will minimize sound from the transfer station and most of the equipment will also be obscured from site by the wall. The only lighting is for emergency and will only come on if people are working at the substation in an emergency. A 20-foot wide road would serve the site. No trees will be removed that are not necessary. Micklewright commented that, if it is acceptable, they would put some of the spade trees on the eastern side by the Kass and Erwin properties. Susan Swimley stated her concern was that only 4 acres are left on the other side of the property and asked about getting an easement through the substation so that the remaining property is accessible to the District. DeBarathy said that a trail can be reintegrated by their slope. Mr. Erwin stated that the plan shows the substation site is proposed where all the trees are. DeBarathy said that after much geo-tech work the original site was not appropriate due to the potential slide area and now the proposed site is being located on the flattest of the areas available. DeBarathy stated that they do not yet know if this new site will be acceptable until geo-tech work is done. They are just trying to represent the substation visually with the best information they have available without geo-tech work. They tried to press the substation into the site with the least amount of visual impact, trying to avoid a huge fill. DeBarathy said they are trying to avoid long-term issues. If the site is acceptable to the board, Asay said they will get the geo-tech work done. Mr. Erwin reported that the Anderson/Kass

family told him that they feel the location should be farther to the west, instead of where the thickest cluster of trees is located. President Cronin feels that the board needs to have a consensus on Northwestern's request to lease the land if Northwestern's geo-tech work finds the site acceptable. Director Olson feels that Northwestern Energy has done a good job of the renderings, and feels that they have done what the board has asked for. President Cronin said that the view impact is both from the District property and the highway, but doesn't feel the view impact from the Kass and Irwin property is as affected. Steve Johnson noted that there is a bridge easement in place somewhere. President Cronin asked the board if they are okay with the renderings. Directors McRae and Shropshire feel that NW has done an excellent job on presenting their renderings. Northwestern stated that they do not have a lot of options for other places to go to build a substation and felt that they would probably do what the District wants to get the approval to build the substation at the proposed site. Pat Assay said they haven't even talked about compensation, just a dedicated feeder to the treatment plant, and, as far as the trails go, they would probably do what the District would want them to do. Speaking from experience on working on trail development, Director Olson said it would be more efficient for NW to fund trails than to put in a trail. Susan Swimley felt that NW would have to plant not only more trees, but more mature trees on the south side entry corridor to get county approval. DeBarathy reported that they can buy down 6-7% decibels by using low noise units. Director Daniels feels that if there is commitment from NW to hide the substation the best they could then he would agree with the site. Director Allgood asked how much land the District needs to take care of the District's future needs for the next 3 millenniums. Edwards feels that the overall site plan provided by HKM shows the third SBR basin and future undesignated expansion and doesn't feel a substation at the proposed location will interfere with District expansion. Additionally, the site constraints would make expansion on the parcel cost prohibitive. Director Allgood would not want the property to the east of the substation to be unusable or unserviceable due to the substation location. DeBarathy said the road would be improved or maintained to the standards that the District asks. Both Directors Olson and Shropshire feel that the proposed substation site provides for the least amount of impact on the least amount of people. Director McRae supports the request if the adjacent landowners are in agreement. Micklewright stated that getting geo-tech work done would be first and then, depending on the results of that, they would get some of the dirt work done and possibly some of the fence done. NW representatives felt that they could get the geo-tech work done in May and get an answer as to whether the site is acceptable. According to DeBarathy, if it came in good, they would get the site work done, order transfer equipment and by mid-September get the concrete work done, but they probably would not start on the fence. December 2010 would be the projected date for having the project completed. DeBarathy felt that the wild card is in the zoning, so before they can go beyond the geo-tech work, they need to get approval on the zoning. Swimley said that if we get the zoning change that we have applied for, then getting an approval for Northwestern's substation should not be a problem. (Director Daniels left the meeting at 9:48).

Director Shropshire moved to approve in concept the site for a substation, to have Northwestern continue with the geo-tech work, and have Swimley work with Northwestern and the county to get zoning approved. Director McRae seconded the motion. Motion passed, 5 yeas votes to 0 no votes with President Cronin voting. Director Daniels was not present to vote. Edwards asked NW to write up a purpose of need for the project and get that to him.

BIG SKY COMMUNITY CORPORATION ACCESS EASEMENT

A draft access easement for WSD through the BSCC park was provided in the board packet. Edwards stated that there is still cleanup work to be done on the document, but feels that the document is workable. The alternate access is the old bridge plan through James Taylor's property and Edwards doesn't feel that it states anything that isn't already a public document. Through the easement document, Swimley said the District agrees to have public hearings on any planned developments to the property, but doesn't feel that is a big concession since the District is a public entity that would have a public hearing any way. Edwards said a public hearing will not bind the District on decision making. Director Allgood and President Cronin discussed the need to delete the text on Limitation on Transferability. Swimley feels that the wording still allows for the lease of property. President Cronin feels that the District needs to maintain the flexibility of selling the tract, for instance to sell property to Big Sky Search & Rescue where their building will be located. Swimley said the property cannot be subdivided as the easement is written. Swimley stated that the District does have the right to eminent domain, but the District also has the ability to develop the bridge and gain access through James Taylor's property. President Cronin stated that, in his opinion, the document is an attorney's gold mine with the way it is written and it can be argued over for eternity on its interpretation. Director Olson stated that the only land with value/development possibility is the land that the District is agreeing to lease to Northwestern Energy. Director Allgood feels that the remaining land is the only logical location to plan for future wastewater from the canyon. Swimley said that parceling off land to a new sewer district would be allowed. Director Olson feels that this easement is a good compromise with BSCC. Director Shropshire feels that as long as we are not precluding the mission of the Water and Sewer District then he would agree to the language in the easement. Director Olson said if future development is needed for another entity, then we would just lease the land. Director McRae and President Cronin said the access needs to be a 60 feet easement—which would follow county regulations—and this must be changed in the easement document. Director Allgood stated onus needs to be put on them to ask for certificate of insurance with a 30-day response time allowed. A segment will be added that allows the property to be leased or sold to search and rescue.

Director Shropshire moved to conditionally approve the easement agreement subject to the amendments as discussed with the easement changed from 30 feet to 60 feet, changing the insurance clause, adding that the land can be leased or sold with respect to BSS&R, and for Swimley to go back and negotiate the changes with BSCC. Director Olson seconded the motion. President Cronin called for discussion. With no further discussion, motion passed 4 yea votes to 1 no vote that was cast by President Cronin.

BIG SKY COMMUNITY CORPORATION PIPELINE UTILITY EASEMENT

An easement that covers the water line that runs through the park area from Little Coyote Road to the treatment plant was included in the board packet. Swimley reviewed the locations of the three pipelines, noting that the easement is written to allow for maintenance and replacement. Like the previous easement, the certificate of insurance needs to be changed so that BSCC will have to ask for it.

Director Olson moved to accept the easement with modification to paragraph 5 on the insurance to be the same as the previous easement. Director Shropshire seconded the motion. Motion passed, 5 yea votes to 0 no votes with President Cronin voting.

BIG SKY COMMUNITY CORPORATION PARK IRRIGATION AGREEMENT

The BSCC submitted a letter and a revised irrigation agreement for their park expansion project and also requested 3 SFEs in capacity to cover the future park expansion needs. Edwards provided a history of the irrigation agreement, stating that this document will update the original irrigation agreement by expanding the irrigation to accommodate future expansion of the park. With this agreement, Director McRae feels that the cart is a mile and a half in front of the horse on this project so that BSCC could go to resort tax and others for funding options. BSCC planned on the bid letting on the 25th, but Director McRae feels that they won't be going forward as they do not have the funding. Directors Olson and Shropshire feels that the District doesn't even need to talk about the irrigation agreement as this point. The board tabled any action on the agreement.

Director Olson moved to table any action on the irrigation agreement. Director McRae seconded the motion. Motion passed, 5 yeas votes to 0 no votes with President Cronin voting.

Swimley reported that, essentially, the BSCC wants 3 SFEs for the access and pipeline easements and that is their requested consideration for giving the District the easements. Edwards explained his formula for computing the 3 SFEs, which will give BSCC service to the concession stand and a future pavilion.

In response to BSCC's February 13, 2009, non-exclusive consideration letter, the board tabled any action.

YELLOWSTONE CLUB

Susan Swimley discussed the Yellowstone Club bankruptcy issue as it relates to the operations of the District, stating that it does not affect the District in any way. YC may change their name and then the names in the documents may need to be updated. (Director Shropshire left the meeting at 11:00 pm) Director Olson noted that the storage for treated wastewater still needs to be expanded by YC.

RESOLUTION 09-01 TO WITHDRAW FROM FICA

Smith noted that this resolution is just for the District to pull out of social security. Prior to Director Shropshire leaving the meeting he stated that he supported withdrawing from social security and amending participation in the District's participation in the 457 plan. Kennedy noted that at a staff meeting, where the issue was voted on by all staff, it was agreed that staff could either participate in the 457 plan or another retirement plan of their choosing. For the record, President Cronin stated that all the staff supported withdrawing from social security with the condition of a personal choice for a retirement plan.

Director Olson moved to approve Resolution 09-01 to withdraw from the FICA social security program. Director McRae seconded the motion. Motion passed, 5 yeas votes to 0 no votes with President Cronin voting and recognizing Director Shropshire's absentee vote.

RESOLUTION 09-02 TO PARTICIPATE IN MONTANA 457 RETIREMENT PLAN

Smith noted that this resolution updates the District's current agreement to participate in the Montana 457 retirement plan.

Director Olson moved to approve Resolution 09-02 to participate in the Montana 457 Retirement Plan as presented. Director McRae seconded the motion. Motion passed, 5 yeas to 0 no votes with President Cronin voting and with recognizing Director Shropshire's absentee vote.

MEADOW VILLAGE WATER SYSTEM PROJECT

Edwards did not have any new information to report on the meadow village water system.

SEWER & WATER PERMITS

Edwards stated that this a new record where two months have passed with no new permit applications.

GENERAL CORRESPONDENCE


George Button's correspondence was discussed with Smith explaining that the water use was an overlap from the prior reading (3rd qtr) that was taken before the end of September and then the October-December period being listed for the 4th quarter statement.

NEXT MEETING

The next Board meeting is tentatively scheduled for Tuesday, March 24, 2009, at 8:00 am. Director Olson reported that he will be out of town that week.

ADJOURNMENT

Director Olson moved to adjourn the meeting at 11:26 am. Director Allgood seconded the motion. Motion unanimously passed.



Dick Fast, Secretary