

BIG SKY WATER & SEWER DISTRICT NO. 363

Regular Meeting Minutes – May 5, 2009

WSD Community Room

The Big Sky County Water & Sewer District No. 363 scheduled a regular meeting for 8:00 AM on Tuesday, May 5, 2009, in the WSD Community Room. President Packy Cronin called the meeting to order with the following Board members present: Vice-President Gary McRae, Secretary Dick Fast, and Directors Dick Allgood, Jeff Daniels (left the meeting at 9:57 am), Bill Olson, and William Shropshire. WSD staff present were Ron Edwards, Marlene Kennedy, Terry Smith, and Jim Muscat. District legal counsel Susan Swimley participated via telephone until 10:54 am. The Big Sky Weekly reporter, Laura Bell, was also present.

PUBLIC FORUM

With no public comment, President Cronin called the meeting to order at 8:10 am.

MEETING MINUTES

Director Shropshire moved to approve the minutes of March 24, 2009, as written. Director Daniels seconded the motion. Motion passed, 7 yeas votes to 0 no votes with President Cronin voting.

FINANCIALS

Smith reviewed the March financials, stating that the April and May financials will be presented next month. Only contributed capital was not on target, but according to Smith that will change next month as one extension was recently conveyed. Edwards reported that Boyne made their annual payment. The cause of positive change in operating revenue was discussed, but Smith projects that those numbers will turn around at the end of June.

Director McRae moved to approve the March financials as presented. Director Shropshire seconded the motion. Motion passed, 7 yeas votes to 0 no votes with President Cronin voting.

Social Security Refund: Smith distributed a summary of the receipts on the reimbursement of social security. In the month of April the District received the entire SS refund, both employee and employer contributions—from 2005-2008. The employee refunds have already been made and the employer portion will be the same. The employer refund will be going through payroll and MPERA so that the district does not have any additional cost for the refund. The employee can take the second half as income and pay the taxes upfront, or when they take it out of their 457 plan. The employees have until June 24, 2009, to decide how they want to take the employer's refund. Director Shropshire said his concern is that an employee will take the funds and not put it into retirement. President Cronin stated that it was unanimous from the employees to have the two options. Smith noted that staff were told that it was the board's desire for the employer refund to go to a retirement vehicle, but it was up to the discretion of the employee.

FY 2009-2010 Draft Budget: The draft budget was provided in the board packet using the increased water and sewer rates that were approved last year. Smith projects that revenues will be down about 6%, and he felt this was leaning towards the optimistic side. Smith reported that line items were identified that could be lowered—such as the rug mat service, eliminate or downsize some of the dumpsters, and reduce the number of water samples as allowed by DEQ. All areas of operating costs will be going up, but the staff squeezed where they could. The previous SS retirement contribution is now going into individual 457 plans for retirement. President Cronin asked for comments on the draft budget. Smith reported that there will be another staff meeting this month to review the budget to make minor changes. Edwards said his goal is to have the budget adopted at the June meeting so that the budget is effective July 1.

Edwards reported that last year the Board adopted the rate increase for this year and a new public hearing will not be needed as long as the budget stays with the rates adopted last year. Edwards said with this new sewer rate increase it will get us off the subsidy of the sewer operations. Smith reported that we have used up the reserves a little more than he would like to—we have about a \$230,000 cushion where he would have liked to have about \$300,000 in reserves. In third quarter 2009, we should be breaking even—the money coming in will cover the expenses going out. The District is putting about \$50,000 a month away for repair & replacement of sewer infrastructure. Director Shropshire asked if he calculated assets on the balance sheet. Smith has not, but said he will do it. At the request of President Cronin, Edwards provided a quick review of the PIC funds—including the Boyne surcharge and their \$250,000 annual payment for another 2 years plus the Simkins exemption, the land exchange, and the District's purchase of the extra 30 acres from Simkins—where we now have about \$4.5 million dollars in PIC funds. The funds could be used for debt service, historically the board has looked at it for sewer debt, but the board could elect to use the money for other projects through board action. Director Shropshire said the District might consider using some of the funds to pay down the debt. Smith said he would prefer to wait 12 months to see what happens. Edwards said the debt is being reduced through the use of some of the funds. Director Shropshire said we fix on the operating statement and a lesson that he has learned is that we need to *manage WSD assets and it needs to be part of budget process*. Smith said the PIC funds will decrease this year with the decline in connections and that we are currently using 10% to reduce the debt. President Cronin said the District should *consider using the PIC funds to pay down debt*. Edwards noted that the Board could do a rate analysis and make adjustments—where we charge a PIC on sewer connections, but not on water connections. President Cronin advised against changing the \$3,500 per SFE for sewer connections since it is tied to a lawsuit.

2009 Estimated Mill Rate: The projected mill rates are 18.91 mills for the water bond debt and 19.02 mills for the sewer bond debt. Smith asked for board approval on the projected mill rates for submission to the counties. The rates are where the District had told the taxpayers where they would be—adjusting the rates through the use of reserve funds. Edwards and Swimley reported that the bond has been reviewed by Mae Nan Ellingson.

Director Shropshire moved to approve the estimated mill rates of 18.91 for water project debt and 19.02 for sewer bond debt, as presented. Director Allgood seconded the motion. Motion passed, 7 yeas votes to 0 no votes with President Cronin voting.

WATER OPERATIONS

Muscat reported that Meadow Village production is up a little bit, and that the Mountain is also up. A leak was found on the mountain, but Muscat did not have an explanation for the extra use in the meadow. The Yellowstone Club has their use under controlled. Muscat reported that the State recently classified the District as one water system now that the mountain and meadow are connected. Now that the District is one water system, fewer samples will be taken than previously required. However, Muscat said that the District is not fully aware of ramifications with consideration to total coliform sampling and the groundwater rule. The reduced lab costs are reflected in the budget. Muscat was confident that we are taking enough samples for having data to dispute any future need for chlorination—he feels that the sampling we do is representative of the system. TD&H is finalizing the plan to get the new meadow village wells on line.

SEWER OPERATIONS

Burroughs was not available to review his flow report. *Edwards reported that we do not know why the flows are up and he will talk to Burroughs as to what he thinks is going on.*

MOUNTAIN LAKE CONDOS ANNEXATION AGREEMENT

As directed by the Board at their March meeting, Edwards made the changes to the agreement by adding the 52.5 SFEs build-out limit, stating the SFEs are non-transferrable from the parcel, and that the easement allows construction of a well pump house. The timeline was added at the last draft. A copy of the agreement signed by Liston was provided in the board packet. Edwards asked the Board to approve the document if there are no other changes desired.

Director Olson moved to accept the Mountain Lake Annexation Agreement as presented. Director Shropshire seconded the motion. Motion passed, 7 yea votes to 0 no votes with President Cronin voting.

BIG SKY COMMUNITY CORPORATION

Road Access Agreement: Edwards reported that two months ago the easement width was discussed and the Board had asked that the issue be revisited with BSOA to make it a 60' easement. There are a few park improvements that would be within the 60' easement, but Edwards did not see that as a problem. The District would make any repairs, at their cost, to the park improvement if necessary. Swimley feels that all the issues previously discussed have been resolved—30' easement to 60' easement, insurance provision, and tweak the language on access through the park that is consistent with water and sewer district uses (Search & Rescue and Northwestern Energy) then access is granted. The Board was concerned that the access language may be too specific and would not allow other access if the District wanted to allow other uses on its land within the zoning regulations. The way the document is written the board felt that BSOA/BSCC would have a veto power of use on any entity other than Northwestern, Search & Rescue, and the WSD. Swimley stated that it is a private easement and if we are not transferring the property (only leasing/renting), then we have broad authority to grant road access as long as it meets zoning requirements. Swimley did not feel that the District is being restricted by this language and feels that we are reserving every right we have as long as we are not transferring the property. The Board feels that the document is pretty much what we started with years ago, other than it is a lengthy document.

Director Allgood moved to approve the Road Access Agreement as presented. Director Shropshire seconded the motion. Motion passed, 7 yea votes to 0 no votes with President Cronin voting.

Park Irrigation Agreement: Edwards reviewed the agreement noting the term is 20 years and his initial reaction was to make it 10 years, and the second issue he had is providing free water. Edwards suggested rewording it to make it possible for the District to charge for treated wastewater. This agreement would supersede the previous irrigation agreement with BSOA, expanding the irrigation area to approximately 8.5 acres. Edwards noted that the Boyne golf course irrigation obligation is first in line, the Yellowstone Club is second in line, and the District is solely in charge of when and what volume of treated wastewater they will receive. Director Allgood suggested making the agreement for 5 years and to have the ability to charge for treated wastewater. The SFE consideration for their building was not tied to this document. (Director Daniels left the meeting at 9:57 am) Swimley read a capacity letter from BSOA sent in

February that stated they want WSD to grant 3.0 SFEs for their development plans. Edwards said there is nothing in the irrigation agreement that makes a commitment of SFEs. Edwards reported that they have submitted a million dollar resort tax request and Edwards doesn't feel that they will be doing any building this year as they will not know the allocations until June. Edwards said BSOA has a separate issue on the pond and the need for water rights—either getting permission to drill wells, or obtain water rights from the WSD. Director Allgood asked if there is any liability from BSCC/BSOA on the use of treated wastewater. President Cronin asked the board if they wanted to table the irrigation agreement.

Director Shropshire moved to approve the park irrigation agreement subject to a 5-year renewal term, to allow a charge for the treated wastewater after 5 years, include a 30-day termination, and BSCC/BSOA must have a proof of insurance certificate. Director McRae seconded the motion. President Cronin called for discussion. The Board wanted to make it clear that by signing this agreement, it does not make a commitment for SFEs. Motion passed, 6 yea votes to 0 no votes with President Cronin voting. The board will delay signing the irrigation agreement provided by BSOA until the road access agreement is signed

President Cronin asked that future agreements be drafted by the District, not the party asking for concessions—all board members were in agreement.

PERMITTING POLICY REVIEW

Edwards stated that at the last meeting the permitting policy review was tabled until we had a full board. The issue stemmed from the Spanish Peaks permit where the board agreed to delay the payment of their permit fees via a payment schedule. Spanish Peaks subsequently asked to stop the payment schedule after 3 payments due to the down turn in the economy. The board agreed to their request while accruing interest on the balance. From that, the Board decided it should review its permitting policy. President Cronin feels that the District is on solid ground for making the concession they did at the time. Director Allgood directed Smith to send Spanish Peaks the schedule with interest. Edwards recommended voiding the permit and refunding the permit fees already paid. Director Olson stated that, proportionately, the payment of fees has the same affect on a homeowner and asked if we should be making any future concessions. President Cronin called for a straw vote and discussion on refunding the Spanish Peaks permit fees already paid. Director Allgood is concerned that they would build the entire building prior to paying any fees. Director Shropshire feels that the permit fees need to be refunded so that the WSD is not in violation of its current ordinance. Director Fast asked how we can hold their feet to the fire, where the fees must be paid prior to construction re-starting. Director McRae reported that all they have done is put a stub out from their building, they are not technically connected. Director Fast stated that if the District wants to have flexibility in the future, then we need to leave it the way it is. If we don't want to be flexible then we need to refund the permit fees and void the permit. The current ordinance states that the permit fees must be paid within 60 days of the conditional approval.

Director Shropshire moved to refund the 3 permit installments paid by Spanish Peaks and to rescind the deferred payment schedule and to void the conditional approval with a letter stating that they cannot reapply for 180 days unless they make full payment of all permit fees within 30 days from the date of the letter. Director McRae seconded the motion. President Cronin called for discussion. Swimley felt that the Board is doing the right thing in refunding the permit fees and voiding the conditional approval. Director Allgood reported that two

project supervisors are still on site and feels that it would be appropriate to send them a letter that they are delinquent in the payment schedule and they have to pay the total fees within the 30 days or the permit is voided. Director Shropshire stated that a refund should be included in the letter. The District is to copy Gallatin County of correspondence to Spanish Peaks. The interest will be forgiven on the payments they have not paid. The administrative cost of \$100 will be retained, per District Ordinance, but the accrued interest on their payment will be refunded. Motion passed, 6 yea votes to 0 no votes with President Cronin voting.

President Cronin asked what the Board's direction will be if approached for a payment concession in the future. Director Shropshire feels that since the Ordinance states 60-days is required for payment, then that is the policy the Board should follow. President Cronin feels that the Board can make an exception on the 180-day penalty to reapply if someone comes to the District with permit fees in hand. Director Olson stated that we are not a bank and we should leave the ordinance the way it is. (Susan Swimley left the meeting at 10:54 am.) Edwards discussed what would be allowed under closed session, which is very limited. *Director Shropshire advised the Board that we should disclose to our attorney what public members are present when they are participating via telephone.*

MEADOW VILLAGE WATER SYSTEM PROJECT

Mountain to Meadow Pipeline Project: Snow Machines Inc has completed the mountain to meadow pipeline project and their last pay request was processed. Monthly summary reports for this project will be closed out for future board meetings.

Hidden Village Water System Repairs: The replacement of Bough's water line that runs along the west side of Hidden Village was approved by DEQ. Edwards reported that the work will be done during the fall after the area dries out. *Director Fast asked that Edwards look at the placement of the rocks by the beaver ponds as they may need to be moved.*

Silverbow Water System Repairs: A pre-construction meeting for the Silverbow Project was held on April 15. A start date of May 5 was set but, with the weather, it was pushed back a week. Edwards reported that there will be a meeting with 3 Rivers onsite today and a determination will be made on abandoning their old lines. Edwards feels that the locates are right, but if the lines are not located within 18" then the contractor is not responsible. The new 3 Rivers fiber optic line is at risk, but their locator will be there to help our contractor to avoid hitting their line. There is approximately 1,000 feet of water line to install next to the fiber optic line. Last year 3 Rivers made the decision to install their fiber optic line by Silverbow even though they knew we would be installing new water lines in the area soon. Muscat stated that he felt like he fell on deaf ears when asking them to delay their fiber optic work last year. *President Cronin recommended that the District hold off on any easement considerations for 3 Rivers, if needed, until this is resolved.* Edwards stated that *Kristen Ramirez is the manager at Silverbow and recommended giving her a dinner gift certificate once we are done with this project.*

Meadow Village New Water Wells Completion: Edwards reported that TD&H submitted the pipeline plans and specifications for the new Meadow Village wells 4 and 5 to DEQ for review and approval.

Meadow Village Water Projects Costs: A table showing the contracts and their status was provided in the manager's report in the board packet. *The Silverbow project will be added once we start up.*

NORTHWESTERN ENERGY SUBSTATION

Edwards reported that HKM has given them a favorable geotech report with a cost of about \$100,000 for site improvements. Edwards needs to work on a lease agreement with Northwestern. President Cronin and Director Allgood suggested *having an industrial appraisal be done to aid the District at making decisions on the lease value and on the concessions the District will require*. Director McRae will provide Edwards with a name of an appraiser. The District will pay for the appraisal, but *build the cost of the appraisal into the lease payment*.

Edwards stated that there is no lease cost to the Search & Rescue.

2009 RESORT TAX APPLICATION

Edwards submitted resort tax applications for \$300,000 for combined water/sewer debt service projects, \$20,000 for cost sharing a pilot snowmaking project above the Yellowstone Club storage pond, and \$50,000 for the storage pond liner cover project. The Resort Tax Board received 20 applications totaling \$4.173 million dollars, plus \$535,000 of rollover requests and \$500,000 for the District's annual commitment. Edwards has not heard the total dollars available but thinks they will have about 3 million to allocate. The Fire District is requesting \$800,000. The chamber is asking for about a half million dollars. The Q & A will be 5/20/09.

DISTRICT LAND RE-ZONING

Edwards reported that we received our re-zoning that we applied for—everything in now zoned community facility.

SEWER & WATER PERMITS

One permit for 2.6 SFEs for a house in Cascade was received. Edwards noted that the Spanish Peaks Lodge SFEs were never booked on the table so their SFEs will not have to be backed out.

GENERAL CORRESPONDENCE

A copy of the Yellowstone Club creditor correspondence was included in the board packet. Edwards said a CD with additional information on the bankruptcy assets was also received and it is available if any board members want to review it.

NEXT MEETING

The next Board meeting is tentatively scheduled for Tuesday, June 16, 2009, at 8:00 AM.

ADJOURNMENT

Director McRae moved to adjourn the meeting at 11:30 am. Motion unanimously passed.



Dick Fast, Secretary