

BIG SKY WATER & SEWER DISTRICT NO. 363  
**Regular Meeting Minutes – August 11, 2009**  
WSD Community Room

The Big Sky County Water & Sewer District No. 363 scheduled a regular meeting for 8:00 am on Tuesday, August 11, 2009, in the WSD Community Room. Vice President McRae called the meeting to order with the following Board members present: Secretary Dick Fast and Directors Dick Allgood, Jeff Daniels, and William Shropshire. President Packy Cronin and Director Bill Olson were not present. WSD staff present were Ron Edwards, Marlene Kennedy, Terry Smith, and Jim Muscat. Others present were District legal counsel Susan Swimley; Tamarack Condo Association representatives Doug Timm, Frances Ackerman, and Jim Ackerman; and Northwestern Energy representatives Matt Micklewright and Ernie Hulit. Cottonwood Crossing representative Jim Schultz listened in via teleconference at the end of the irrigation discussion.

#### **PUBLIC FORUM**

With no public comment, Vice-President Gary McRae called the meeting to order at 8:12 am.

#### **MEETING MINUTES**

*Director Fast moved to approve the minutes of June 16, 2009, as written. Director Daniels seconded the motion. Motion passed, 5 yea votes to 0 no votes with Vice President McRae voting.*

#### **FINANCIALS**

Smith only included the June financials, which he said picked up the May financials. Smith reported that the revenues came in slightly above the projected revenues. Smith believes that 100% of all the expenses will be reported in the audit report, which will be presented at either the November, or December, board meeting. The loss on fixed assets is about \$35,000. The Farmhouse note is the plant investment fees that are paid over time, and Smith thought that this note was due in two or three years.

*Director Shropshire moved to approve the May and June financials as presented. Director Daniels seconded the motion. Motion passed, 5 yea votes to 0 no votes with Vice President McRae voting.*

Delinquent Accounts Status Report: Smith reported that all customers with delinquent accounts were notified to pay the accounts current by August 15, 2009, or the balance will be turned over to the county for collection through the tax rolls. Smith stated that there are still 142 delinquent accounts.

Tax Levy: The tax levy for the SRF payment is January 1, 2010 and July 1, 2010. Smith asked the Board to approve the rates at 25.9 mills for water and 25.32 mills for sewer. These numbers were increased from the original estimate as the resort tax did not fund the WSD as requested. Per Susan Swimley, the Vice President can sign the mill request.

*Director Daniels moved to approve the rates of 25.9 mills for water and 25.32 mills for sewer. Director Shropshire seconded the motion. Motion passed, 5 yea votes to 0 no votes with Vice President McRae voting.*

### **AMEND AGENDA**

*Director Shropshire moved to amend the agenda to address the correspondence from Tamarack Condos. Director Allgood seconded the motion. Motion unanimously passed.*

### **TAMARACK COURT & COTTONWOOD CONDOS IRRIGATION METERS**

Edwards reported that letters were received from Frances Ackerman of Tamarack Court and Jim Schultz of Cottonwood Crossing regarding the tiered rate system as applied to irrigation for condominium complexes. Francis Ackerman stated that she thinks the tiered rate system is a good idea, but highlighted the situation where she believes it is unfair when applied to multi-unit irrigation. Ackerman reported that Tamarack has 29 units in their association with 5 functional irrigation meters and the tiered system penalizes them. They have tried to conserve and their property manager has been cutting back on the water use when it rains. However, their irrigation meters will still go over the 60,000 gallons in the first tier during the summer. Edwards said that condominium associations are billed under an irrigation meter account and that multiple meters are not aggregated and each meter follows the tiered rate. Ackerman reiterated that their landscape maintenance person is manually adjusting the meters to conserve. Since the tiered system was adopted, Ackerman reported that their irrigation bill has gone up about \$1,000 even though they have been trying to conserve. Vice President McRae stated that the Board did have a long review of the tiered rate system prior to adopting it. Edwards stated that the water charge would even be higher if the irrigation accounts were aggregated. Director Allgood reported that the irrigation season is spread out over two quarters and that the July-September quarter will have a higher use than the spring quarter. Ackerman said that while the tiered system is excellent, it penalizes those who live in congregate living situations. Edwards explained the tiered rate system and, in the case of Tamarack irrigation meters, they are billed on this system for each irrigation meter. Edwards said that the loop hole in this is to add additional meters where the water use is spread out; which would probably reduce the use per meter to under the 60,000 gallon threshold. Ackerman reported that during the summer all their irrigation meters go over the 60,000 gallons and feels that condos are being penalized. Director Fast would like to know how many acres are being irrigated in multi-family complexes in comparison to single family homes. Swimley stated that the Board can review the irrigation rate situation when they review the rate structure. Ackerman thanked the Board for their consideration. Dr. Daniels asked if the total irrigation meters could be added up and averaged for a complex. Edwards stated that there isn't a perfect situation, and said that he will *go over the use and collect data after the irrigation season to review the tiered rate system as it relates to multi-family complexes.*

### **NORTHWESTERN ENERGY SUBSTATION**

Edwards hired an appraiser from Missoula that provided an appraisal on the 3-acre site based on the survey done by Northwestern Energy and a copy of the appraisal at \$120,500 was in the board packet. Edwards reported that a couple of the board members had told him that they felt that the appraisal was too low. Matt Micklewright stated that NW is in a holding pattern right now, and asked that the District make a proposal whether it be doubling or tripling the appraisal. Director Shropshire said all appraisals go on similar conditions, but that the appraisal is reflecting what is in the relevant market place. Director Shropshire asked why the board would want to argue with the appraisal and, if the timing is of the essence for Northwestern Energy, then we need to proceed. Director Shropshire also asked what would be the penalty, or precedence, if we moved forward. Swimley stated that the appraisal only sets the bottom price

for the land and the only precedence the Board needs to set is to make sure the District gets at least the appraised value of the land. Director Allgood feels that the problem with the appraisal is with the comparables as they produced a very low value and he believes that there is information out there where an electric company had to build a substation in an area like Sun Valley, Aspen, or another similar resort facility. Swimley informed the board that the appraisal is the baseline and if the board is uncomfortable setting a purchase price without an additional appraisal they can get one—just take the appraisal as a bottom price. Director Allgood stated that this appraisal establishes a base and we should not go under that price. Of the four land acquisition options, Matt Micklewright stated that the leasing option was the least acceptable to Northwestern Energy. Swimley reviewed the four options, noting that there is no way that NW would be able to accept a lease like we did with Search and Rescue. Swimley feels that if the District wanted the lease option, that the county would come back and require a subdivision. Looking at the interests of the District in the long term, Swimley would prefer that the District not own the property from a legal standpoint. Swimley reported that Northwestern Energy's first option would be to have a utility exemption that would allow the land to be conveyed.

**Director Allgood moved to pursue the utility exemption option if we do anything with the land with Northwestern Energy. Director Daniels seconded the motion. Vice-President McRae called for discussion. Director Shropshire feels that the appraisal will drive what we negotiate with Northwestern Energy and prefers to pick a value and go to Northwestern with that price. Director Allgood agreed. Vice President McRae felt that we would not be in this situation if we hadn't got this appraisal. Swimley stated that the utility exemption option would allow selling the land. Matt Micklewright said that the growth rate will come back and they arguably are approaching capacity with the current substation. Director Allgood asked if the vote of the board is to create a utility exemption. Director Shropshire called for question. Motion passed, 5 yea votes to 0 no votes.** Director Allgood stated that the price cannot be below \$120,500.

Swimley stated that the Board can decide the value of the land based on the information they know as long as the price is above the appraised base price. Edwards reported that other sites on the District's land were explored before this site was selected and we have basically created kind of an island with the proposed location of the substation. Director Shropshire asked if it is permissible to discuss the price in private. Swimley reported that a closed meeting can only be called on personnel and litigation/legal issues. Edwards stated that he doesn't know what rules an appraiser has to follow and if this appraiser could not go out of state for comparables. Director Allgood feels that the property has a higher value than the appraisal. Director Shropshire said that the real issue is to discover the price, which the District can set, and then if Northwestern Energy accepts it then it can be sold. Swimley said the appraisal is the defense that the District has. Director Shropshire suggested that Edwards meet with the WSD Board President and discuss the price to set. Edwards reported that he met with President Cronin last week and Cronin did set a price. The Board members did not want to discuss, or specify, a starting price in an open forum and wants Edwards and President Cronin to work together to present a price to Northwestern Energy. Swimley stated the benefits of the land to Northwestern Energy and then reviewed reasons for raising the value above the appraised price. Swimley also reported that the District has also asked Northwestern Energy for additional considerations, like reducing the impact of the existing substation, beautifying the proposed substation, building a trail, etc. Based on what he has heard, Vice-President McRae stated that Northwestern Energy

feels that the clock is ticking and asked if they wanted a number today. Matt Micklewright stated that if the deal gets to a point where it costs its customers millions of dollars and gets too grossly expensive then they would have to look at a special rate to serve the area. Edwards feels that, with this being a business transaction between two utilities, he wants to know what pool of NW customers would pay for the transaction. Micklewright reported that right now there are no special rates for specific areas, they have a statewide rate. They could potentially go to surcharges for certain areas, but they have not. Director Fast asked Director Shropshire to recap his suggestion. Director Shropshire asked Edwards to consult with individual members of the board on setting the purchase price and then prepare it in a form of a unanimous consent resolution which would be the authorization to establish a mutually agreeable purchase price. The Board would then have to approve the buy-sell agreement. *Director Fast directed Edwards to work on the unanimous consent within the week.* Matt Micklewright reported that the geotech/stabilization work will be \$200,000 and the dirt work will be about \$500,000 with total costs at about \$3 million to put in a substation at this location.

***Director Shropshire moved to direct Edwards and the WSD Board President to establish a selling price offer which will be submitted in a unanimous consent resolution by Friday, August 14, 2009. If after negotiations with Northwestern Energy and the District representative an agreeable sale price is established, a draft buy-sell document will be presented to the board for approval. Director Fast seconded the motion. Motion passed, 5 yeas votes to 0 no votes. Vice-President McRae directed Edwards to get the information circulated to the Board as expeditiously as possible.***

#### **FARMHOUSE PARTNERS/BIG SKY APARTMENTS**

Edwards reported that Dab Dabney of Farmhouse Partners is out of the area today and was not able to attend the meeting. In Dabney's absence, Edwards recommended tabling the rate reduction issue in Dabney's letter until he can attend a meeting to present the situation.

#### **SEWER OPERATIONS**

Burroughs was not in attendance to present a sewer operations report and review the flow report.

#### **WATER OPERATIONS**

Silverbow Project: Muscat reported that the contractor is about 80% done on the Silverbow project and, overall, they are doing a good job with the constraints that they are working within. About 25% of the people are hooked to the new line already. With alternate #2, they are on the home stretch. The area near the club house will be the most difficult area. All in all, Muscat feels that the project has been going well. In regards to the incident/accident where a gentleman fell in a hole that was fenced and covered, Vice-President McRae wanted to make sure that the District is on top of the situation legally. Edwards provided an update of the situation (which was an accident), stating that everything has been documented, that all insurance companies have been notified, and that he has heard the family has retained an attorney. The District has not been contacted regarding the accident, but Edwards stated that they have two years to file a suit. Edwards had previously notified the contractor that the gaping spaces between the embankment edge and the covering needed to be covered and that is documented in the inspector's reports. Director Shropshire stated that if the case cannot be settled within the contractor's insurance coverage, then we will probably still be liable. Edwards noted that the gentleman was walking around his deck on the day that the insurance company was inspecting the site and the insurance representative had taken pictures of this.

3 Rivers Fiber Optic Project: Muscat reported that fiber optic installation has created quite a bit of havoc with water and sewer lines and anticipates that there will be a few more problems through the summer. Edwards stated that the District has been working with 3 Rivers to get an update of where they are working. Muscat reported that all the boring is to be completed this summer and we have received hundreds of locates that no entity can keep up with.

Hill Condominium Water Bill: Smith reported that a Hill Condominium building had multiple toilets leaking which resulted in a very high bill. District operator Nic Wellenstein has worked with their management company to identify the leaks and get them repaired. Muscat explained that the complexes that are on single meters had a choice when meters were being installed to retrofit the building to allow for single meters.

### **MEADOW VILLAGE WATER SYSTEM PROJECT**

Edwards reiterated that the Silverbow project has progressed pretty well so far and that the contractor is trying to get everything wrapped up by September 4.

Edwards reported that we are still waiting for state approval on the meadow village well project and Mark Golz thinks it will be another couple of weeks before they complete their review of the application.

The manager's report included an update on the costs of the water projects.

### **DIRECTOR ELECTIONS**

Edwards reported that Bill Shropshire has filed for re-election and Dr. Daniels will also be filing for re-election. One other person picked up an application, but the election department has only received Shropshire's application.

### **FOLF COURSE**

Edwards reported that the District received a letter from Marlene Kennedy objecting to the location of some of the folf targets where they are in the area of the walking path and he also received two letters supporting the folf course. Edwards said that the folf course layout did go all over the WSD property. He has not seen an actual map of their layout, so he needs to map it and send BSCC a letter to have any course changes made. The BSCC (Big Sky Community Corp) maintains the course. Edwards reported that there is no easement agreement for the folf course use. Director Fast wants to make sure that by having the folf course on District land that it doesn't give them a prescriptive easement. *Edwards will work on an agreement for the land use for a folf course and require changes to its layout where it impedes other activities (substation, walking trails, etc.).* Director Shropshire noted that a folf course through a walking path is hazardous.

### **SEARCH & RESCUE BUILDING**

Edwards reported on the progress of the search and rescue building. Director Fast said that some dead trees have been cut in that area and asked *Edwards to follow up on getting them chipped.*

### **SEWER & WATER PERMITS**

Edwards said that we did receive a few permit applications since June. *Edwards will add the 2008 data back to his report.*

### **GENERAL CORRESPONDENCE**

Responding to Director Shropshire's inquiry on the pond lining project, Edwards reported that 300 more baskets have been ordered even though the project did not receive additional funding from resort tax.

Edwards reported that the bill for repairs on a house where damage was caused by a sewer back up from a broken line are not the responsibility of the District as the line was broken by a 3 Rivers subcontractor that is installing cable for fiber optic. *Director Allgood asked that the District follow up to make sure that 3 Rivers cleans up their staging area that is on District property.*

### **NEXT MEETING**

The next Board meeting is tentatively scheduled for Tuesday, October 13, 2009, at 8:00 am. There will not be a September meeting

### **ADJOURNMENT**

*Director Fast moved to adjourn the meeting at 10:48 am. Director Shropshire seconded the motion. Motion unanimously passed.*

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Dick Fast, Secretary

8/11/09 (Board Approved 10/13/09)