

MINUTES OF A REGULAR MEETING
OF THE BOARD OF DIRECTORS OF THE
MOUNT WERNER WATER & SANITATION DISTRICT
HELD AT THE OFFICE OF THE DISTRICT
8:00AM Thursday, September 3, 2009

DIRECTORS PRESENT: Jon Halverson, Nancy Mayer, Kathy Connell, Jim Randall
DIRECTORS ABSENT: Steve Gale
STAFF PRESENT: Jay Gallagher - General Manager
Tom Sharp, General Counsel

OTHERS PRESENT: For the Steamboat Christian Center:
Michael Buccino, Troy Lewis, Hugh Alexander, Jeff Bergeron, Erik Griepentrog

I. ESTABLISHMENT OF QUORUM AND CALL TO ORDER:

Mr. Halverson stated that a quorum was present and called the meeting to order at 8:03A.M.

II. APPROVAL OF AGENDA FOR MEETING:

MOTION: To approve the agenda; APPROVED: Vote 4-0.

III. APPROVAL OF SUBMITTED MINUTES OF PREVIOUS MEETINGS:

MOTION: To approve the minutes of the July 16, 2009 regular board meeting; APPROVED: Vote 4-0

IV. PUBLIC HEARINGS/PUBLIC INPUT AND COMMENT:

There was no public comment.

V. TREASURER'S REPORT:

Mr. Gallagher presented the August 28th YTD vs Budget Analysis. Operating revenues and expenses are in-line with budget, but capital expenses are well below budget because of the indefinite suspension of the Laurel Lane Tank Project originally scheduled for this year. The Board accepted the Treasurer's report.

VI. DIRECTOR AND COMMITTEE REPORTS:

A. Investments Portfolio

Mr. Gallagher commented that the District had cashed out a \$1M CD with Bank of the West and invested it in a CD with Mountain Valley Bank which offered a substantially better rate for a one-year maturity. The Board encouraged management to utilize CDAR's where offered to protect the District's capital reserves. The Board accepted the investment report.

B. Consolidation of billing and accounting software

The District has received a proposal from Caselle for conversion and training to add an accounting module to the Caselle billing software. Management believes that this is a sound objective and will plan to implement when we are training a new bookkeeper/Office Manager. Mr. Gallagher indicated that the District was evaluating free asset management software offered by the EPA to assist in District operations and budgeting.

VII. REPORT OF THE GENERAL MANAGER:

A. Fish Creek Reservoir

Mr. Gallagher reported that Fish Creek Reservoir was 85% full and drawing down at a rate to satisfy municipal demands and flows for riparian health below the filtration plant.

B. Community Water Conservation Plan

The City has applied for grant money to fund our consultant to flesh out the Plan to meet State requirements although the City and the District are not currently required by statute to do so. In the meantime, there are two events in September in which we will participate: the landscaping workshop at the Trillium House September 10th and a Sustainability Conference September 25-26.

C. Wellfield Security Fence

Mr. Gallagher reported that the wellfield security fence (2,455 LF) was completed August 13th. The District carried under its contract the City's fence section along the core trail easement and has billed the City for this portion under an MOU. As part of the project, the District cleaned up a large debris pile in the southwest corner which had been used as a site for wasting concrete and scrap wood from a concrete batch plant and sawmill that had operated on the adjacent parcel in the 60's and 70's.

D. South District Water Supply Improvements

Mr. Gallagher reported that the District was proceeding with an upsizing of 342 LF of water main in Val D'Isere, one of the South District improvements recommended by our hydraulic engineer, McLaughlin. The winning bid was well below our estimated cost; these funds will be sourced from the general water main upsizing budget. Staff will present a more comprehensive plan for South District improvements for Board consideration at the November meeting in conjunction with the 2010 Budget review.

E. City Interceptor

The City portion of the Wastewater Interceptor lies below the District's point of delivery at the Fetcher Pond Meter Vault. The District has provided projected flow data to the City to encourage them to move on the design process for upsizing approximately 10,000 LF of Interceptor to 13th Street. They and we are assisting the Yampa Valley Housing Authority in their grant proposal for upgrading the service lines and mains in the Fish Creek Mobile Home Park in which case they are examining the feasibility of relocating the City Interceptor from the Park to the core trail alignment.

F. Tree Haus Metro District Request

Mr. Gallagher reported that, on August 10th, he and staff had met with Tree Haus Metro directors, Bob Kuusinen and Jim Kohler, who wished to explore the possibility of the District providing potable water to Tree Haus. This arrangement would be an alternative to their commitment to a \$2.5M bond issue to build a surface water treatment plant. Mr. Gallagher reviewed the engineering, financial, strategic, legal, and political aspects of such an arrangement. Our conclusion was that such an arrangement would not be in the best interest of District constituents: the potential revenues generated could not justify the potential risks and costs to the District; also, such an arrangement would be contrary to our reasoning for exiting our service contract with Tree Haus Metro in 2008.

G. Tree Haus Mudslide Case

Mr. Gallagher reported that the District Court had ruled in favor of the District in denying the request for a waiver of governmental immunity in the case of Perea vs Yampa Valley Electric et al. However, this will not end District staff's involvement in their capacity as possible witnesses and the District as an "empty chair" in any settlement.

H. Shell Oil Application

Mr. Gallagher deferred to Counsel to report on the Shell Oil presentation of August 19th.

Mr. Halverson recommended that the Board move up the presentation of the Steamboat Christian Center representatives who had been waiting patiently outside the open doors of the conference room. The Board agreed.

VIII. NEW BUSINESS:

A. Steamboat Christian Center Proposal

Troy Lewis, Pastor, and Michael Buccino, Deacon, reviewed the most recent plans of the Steamboat Christian Center. The plans feature a fellowship hall to accommodate the current activities of the church including classrooms for the current youth group program and new pre-school program; also, two residential apartments for staff either in the re-located modular or in the fellowship hall itself. The open space of the fellowship hall – shown in the plans as a basketball court - would accommodate a group dining area for the approximate 350 parishioners. The original 540-person capacity was the maximum number of persons allowed in such a space by code; such intense standing-room use of the space is not anticipated by the church nor would it be accommodated by on-site parking. Mr. Gallagher asked why the church would invest in this size-limited campus if it had already grown 1000%; the pastor stated that the church was comfortable with its current size and did not wish to grow larger. The pastor also reviewed a spreadsheet and graph of current and planned daily activities on-site to demonstrate that the incremental intensity of use would be approximately 25% during the currently under-utilized weekdays; that weekend use levels would remain the same.

Erik Griepentrog of Landmark Consultants presented plans to mitigate water quality issues on the site which is adjacent to the District wellfields. The current parking area would be re-graded to direct stormwater to the north and east using curbs, sunken gutters, and a stormceptor basin to filter stormwater before it entered the pond and wetlands on the east side of the church.

Mr. Halverson said that District consideration of the Center's proposal would require addressing issues where the two entities interfaced: water service, sewer service, annexation, and wellhead protection. The Board indicated that District staff would need to review the new mitigation plans, but that they appeared to offer an improvement to the current situation. The Board thanked the presenters.

Executive Session: Attorney-Client Privilege – Negotiations

Mr. Halverson recommended that the Board go into executive session to determine positions relative to matters that may be subject to negotiations, to develop strategy for negotiations, and to instruct negotiators, with regard to the following: the Steamboat Christian Center Proposal.

MOTION: To adjourn the Regular Meeting and go into executive session pursuant to CRS Section 24-6-402(4)(e) at approximately 9:37A.M. to determine positions relative to matters that may be subject to negotiations, to develop strategy for negotiations, and to instruct negotiators, with regard to each of the items listed by Counsel for the District. The Board invited Richard Buccino, District Engineer, and Jeff Peterson, Operations Manager, to attend to provide technical support to the discussions. APPROVED: Vote 4-0.

MOTION: To come out of executive session and reconvene the Regular Meeting at approximately 10:02 A.M. with no action having been taken. APPROVED: Vote 4-0.

Counsel Sharp stated that, in his opinion, all of the discussion during the executive session regarding the Christian Center Proposal would constitute a privileged attorney-client communication. Therefore, no record was kept of the executive session.

Mr. Halverson noted for the record that, if any person who participated in the executive session believes that any substantial discussion of matters not included in the motion to go into the executive session occurred during the

executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, such person should state his/her concerns for the record.

No concerns were indicated.

Now in regular session again, the Board invited the Steamboat Christian Center representatives back into the meeting room. The Board reported its neutrality towards the proposal; that it was not going to take any formal action on this matter at this time. However, the Board indicated that it was favorably impressed by the site improvements offered in the latest plan and advised the representatives that the Board would refer the issue back to the City which had jurisdiction over land use issues. Once the project went through a unified planning process with District input for wellhead protection, and was approved by the City, presumably on condition of approval of service from the District, the Board would consider the proposal within its narrow jurisdiction regarding extension of water and sewer service and annexation.

B. Strings Tap Fee Deferral Request

The Board considered Strings request for an additional deferral of \$22,957 in light of the outstanding balance of tap fees with the Strings (\$7,372), the VNA Hospice (\$3,671), and the Yampa Valley Medical Center (\$75,000). Counsel reminded the Board that the District has no policy for tap fee deferrals and that any deferrals are at the discretion of the Board. The Board debated whether to add such a policy to the Rules and Regulations and recognized the difficulty of establishing qualification for such deferrals. Ultimately, the Board agreed that deferrals are a rare and uncommon action and to consider such requests on a case-by-case basis. Given that Strings has proved to be a successful fundraiser and that a Strings representative was not present to address the Board, the Board concluded that the organization was likely to be in a position to cover a substantial portion of the tap fees.

MOTION: That Strings in the Mountains will pay to the District within 30 days \$11,457.40 or approximately one-half of the total District tap fee due for the bathroom addition; that the Board agrees to defer \$11,500 of the total tap fee to be paid down in equal installments over a five-year period with payment details and agreement to be worked out between Strings and the District General Manager. **APPROVED. Vote: 4-0.**

IX. UNFINISHED BUSINESS:

There was no unfinished business to discuss.

X. REPORT OF GENERAL COUNSEL:

Mr. Sharp offered the following report:

A. Former Jerry More Water Rights

The District and the City are still discussing the best use of their respective 0.5 cfs water rights obtained from Mountain Development, the developer of the Steamboat Barn Village property. The City is contemplating filing a change of water right case to add the City Yampa River Well Field as a new point of diversion for the 0.5 cfs acquired by the City. Counsel is examining the legal aspects of that proposal, and its benefits or detriments to the District, as well as continuing to examine the best alternate use of the District's 0.5 cfs.

B. Shell Oil Filing

The General Manager, Counsel, and Upper Yampa Water Conservancy District and interested local entities in opposition to the Shell application met with the Shell Oil representative August 19th in the old County Courthouse. Counsel was impressed by the relatively low-key approach of the Shell representatives. He requested that any diversion plan be structured to reduce the risk of the Maybell Ditch placing a call on the upper Yampa River.

XI. ADJOURN:

There being no further business, the meeting was adjourned at 10:30 AM.

Respectfully submitted,

James R.L. Gallagher, Secretary/General Manager

STATEMENT FROM ATTORNEY REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned Thomas R. Sharp hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that the portion of the executive session that was not recorded and which related to the Steamboat Christian Center Proposal constituted a privileged attorney-client communication in the opinion of the undersigned attorney.

Thomas R. Sharp, Counsel

Date:

STATEMENT FROM CHAIR OF EXECUTIVE SESSION REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned chairman hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that all of the executive session was not recorded and was confined to the topics authorized for discussion in an executive session pursuant to subsection (4) of CRS Section 24-6-402.

Jon Halverson, Chairman

Date: