

MINUTES OF A REGULAR MEETING
OF THE BOARD OF DIRECTORS OF THE
MOUNT WERNER WATER & SANITATION DISTRICT
HELD AT THE FISH CREEK WATER FILTRATION PLANT
STEAMBOAT SPRINGS, CO 80487
8:00 A.M. Friday-May 19th, 2023

DIRECTORS PRESENT: John Shively, Alan Koermer, Gavin Malia
(in-person)

DIRECTORS ABSENT: Wade Gebhardt, Don White

STAFF PRESENT: Frank Alfone, General Manager
Tyler Gilman, Operations Manager
Cat Smith, Business Manager
Tom Sharp, General Counsel
(all in-person)

OTHERS PRESENT: Michelle Carr, Distribution & Collection Manager, City of Steamboat Springs
Alex Fink, Controller, Clifton Larson Allen, LLP
Robert G. Rogers, Shareholder, White Bear Ankele Tanaka & Waldron
Attorneys at Law
(all via Microsoft Teams)

I. ESTABLISHMENT OF QUORUM AND CALL TO ORDER

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

II. OATH OF OFFICE

Director Malia administered the Oaths of Office to elected directors, Mr. Shively, and Mr. Koermer.

III. ACKNOWLEDGE PUBLIC

IV. APPROVAL OF AGENDA FOR MEETING

Director Malia asked if there were any changes to the agenda. Mr. Alfone recommended moving a few agenda topics around to address necessary items while all three board members are present. It was suggested to have Mr. Fink with CLA present the 2022 draft financial statements audit first, then the Snow Country Nursery topic to discuss the Out of District Services Agreement, followed by the proposed water and wastewater cost of service rate fee study; both topics will fall under the General Manager Report. The next topic would be to discuss the two items related to Ski and Resort Corp., the Metro District proposal and a request from Ski and Resort Corp to the Board to consider a fee in lieu as opposed to installing the Right of Way sewer main and monitoring manholes. Lastly the executive session will be moved to the end to allow the public to depart from the meeting.

MOTION: To approve the agenda with the re-ordering of the discussion topics as discussed and possibly defer a few agenda topics depending on time.

APPROVED: Vote 3-0

V. APPROVAL OF SUBMITTED MINUTES OF PREVIOUS MEETING

- A. From the March 17, 2023, Regular Board Meeting
- B. From the May 24, 2023, Special Board Meeting

MOTION: To approve the minutes from the March 17, 2023, Regular Board Meeting and the March 24, 2023, Special Board Meeting

APPROVED: Vote 3-0

VI. COMMITTEE REPORTS

A. Budget and Audit Committee

- 1. 2022 Financial Statements Audit Presentation – Alex Fink with Clifton, Larson, Allen, LLP. Mr. Fink gave a high-level overview of what the 2022 draft audit report entails. He explained that the audit report serves as a financial snapshot for all the activities of the District and compares it to the previous year. The Management Discussion and Analysis shows major sources of revenue, the history of the District as well as larger variances in revenues and expenditures and the reasons for the variances. Included in the report is a comparison of financial statements between 2021 and 2022, as well as a summary of capital assets and expenditures, statements of revenues, expenses, and changes in net position. Other statements included in the report are the income statements comparing 2021 versus 2022, and statements of cash flows. The report also gives an overview of accounting policies, budget procedures, investments, and long-term obligations which includes the three loans that the District has with the Colorado Water Resources & Power Development Authority (CWRPDA). Agreements with the City as well as water storage agreements are included in the report. The supplementary information section in the report includes budget to actual figures and debt service requirements for the CWRPDA loans. There were no comments or questions from the Board.

VII. REPORT OF GENERAL MANAGER

A. Snow Country Nursery

- 1. Consideration of Out of District Service Agreement – Mr. Alfone recapped the former discussion with Snow Country Nursery noting that at the March board meeting there was a presentation from the applicants Mitch Clark and Walter Magill to provide sewer services to a parcel of land outside of the District boundary. The applicant originally requested sewer collection services for 1 unit and came back to ask for service for 2 units. The applicant has an approved County PUD which allows for 2 units to be constructed. The Board approved a resolution, and the resolution triggers the development of the Out of District Service Agreement and then review and consideration for approval by City Council. District approval needs to be in place prior to City Council being able to approve the agreement. The goal for this meeting is to have the Out of District Service Agreement signed so that the applicant can schedule a review meeting by City Council. Counsel Sharp is working on a few items identified in the agreement; a proposed option agreement that will be granted to the District regarding Snow Country’s 2 wells and conveying

those to the District and Mr. Magill is working on the map and legal description for the access easement which was granted to the District by Mr. Clark. Counsel Sharp will prepare the road access easement grant.

MOTION: To approve the Out of District Service Agreement with Snow Country Nursery.

APPROVED: Vote 3-0

- B. Water and Wastewater Cost of Service Rate and Fee Study- Carollo – Mr. Alfone has been working with Carollo Engineers on Phase 2B for the Fish Creek Treatment Plant. A project meeting was held with Moltz Construction and Moltz provided a 60% estimate which came in at \$6.2M. Now that this estimated cost has been received, Mr. Alfone would like to engage Carollo to look at the water financial model and plant investment fees rate structure. Within the District there are a lot of near-term large projects that might be paying substantial plant investment fees; thus, it is important for District staff to recognize the plant investment income and take that into consideration when updating the water financial model, and associated future service rate increase(s), mainly to determine how much loan money might be needed for Phase 2B. The District would continue to work with Cody Berg with Carollo and look at near and long-term financial planning. Once plant investment fees are predicted, the income could offset some rate increases and loan issuance amounts. Working with Carollo on the financial model update will give the District insight as to potential rate increases for 2024 and how much money will need to be borrowed for Phase 2B.

MOTION: To have Carollo start work on the fee and rate study.

APPROVED: Vote 3-0

- C. Mr. Alfone noted he has been working with Mark Hamilton, the District's Water Rights Attorney on City of Steamboat Springs Agreements. The final draft should be ready to send to the City soon and Mr. Alfone is scheduled to meet with Mr. Hamilton next week to go through the draft. Counsel Sharp asked to review the draft before it is sent to the City.

VIII. NEW BUSINESS

- A. Steamboat Ski and Resort Corp. – Metro District(s) Proposal: IGA and MWW Consent. Counsel Sharp provided background information on the subject: Alterra Corp. and Ski Corp. engaged White Bear Ankele Tanaka & Waldron, the firm in which Mr. Rogers works for. Ski Corp. presented a petition to the Steamboat Springs City Council as the approving authority for creation/approval of 6 Metropolitan (Metro.) Districts composed of real property land on 6 separate parcels owned by Ski Corp. at and or near the base area. Their proposal is to create these Districts and prepare a consolidated service plan for those districts. By statute when you create a Title 32 District, you must follow the Special District Control Act which involves creating a service plan that describes what authorities each District has and what expenditures you expect to make and how you intend to finance those. Every metro. district that is created by must select authorities (services) with which they wish to engage in and propose to engage in two or more authorities. A consolidated service plan was prepared and filed with the City late last fall or early winter, with hopes that the City would

start the process of review. The proposed issue is up to \$230M in bonds. The bonds will be paid back by a Mil Levy that is capped at 50 mils assessed against the property owners at the 6 parcels.

For the creation of metro. districts currently, you must designate a small property as the initial boundary of the District and designate areas in the service plan that you intend to include by an inclusion preceding after creation into the District. The reason for that is to control the voting and creation process. Counsel Sharp was unaware of the service plan until it was in the newspaper. If there is an overlapping District, it can't be created without the consent of the overlapping (existing) Districts and Mount Werner Water is considered an overlapping District for water and sewer services. Counsel Sharp asked Mr. Rogers if water and sewer were included in the Service Plan. Mr. Rogers stated water and sewer would be included and sent a copy of the service plan to Counsel Sharp. The service plan was then forwarded to the Board. Mr. Sharp noted that the District is trying to react in a timely manner since the District has a good relationship with Ski Corp. As an example, Counsel Sharp showed where Ski. Corp will create a small piece of property in the NE corner of the parking lot near Vectra Bank thus creating property interest option that will entitle individuals to be elected as directors and voters for the proposed District(s).

To create a Title 32 District, you need approval of a governmental authority and must file a petition with the District Court. You must then file with the court an election initiative, hold an election, report election results, and get a court decree. They will get a 5-0 vote in favor of creation of the District(s) since Ski. Corp. will be the sole owner. A bond authorization is then needed so they can issue bonds for infrastructure development. A bond authorization election must be under TABOR; held in November only. The developer will buy the bonds, and over time, the future owners are paying for these bonds, used to create the public improvements that the districts will construct. The improvements listed include water and sanitation services, road and recreational improvements, base area transit etc. The goal is to create a mechanism by which those improvements are paid for by property owners of land that Ski Corp. will sell. Counsel Sharp mentioned the advantages to the developer include tax advantages and improvements that are paid for by owners of the developed property.

Counsel Sharp listed items in the service plan by Ski Corp for water authority including plan, design, relocate, acquire, construct, install, redevelop, operate, maintain, potable, non-potable, irrigation water systems, transmission lines, distribution mains and laterals, storage, and treatment facilities, etc. He also noted wastewater collection authority is identified in the service plan. After the creation of the District, Mr. Rogers stated they are proposing an Intergovernmental Agreement (IGA) with MWW, but you can't enter an IGA before creation of the District(s). The Mount Werner Water and Sanitation District provides water and sanitation services within the proposed Metro District Boundaries. The statute requires that the Board must decide if it consents to the creation of the Metro District(s). Counsel Sharp made a recommendation to the Board to consider the enclosed draft resolution that notes recitals and the statutory provision that a District cannot be created with power to do overlapping services unless the other District gives its consent. The draft also states that the

District does not consent to this and urges City Council to require modification of the service plan to remove the water and sanitation provisions and to advise District Court not to enter its decree since it is contrary to consent requirement.

Counsel Sharp provided suggested language to Mr. Rogers for his company to consider modifying the service plan. His response was that it would be better for them to modify the plan rather than have the District approve the proposed resolution. Counsel Sharp explained the major problem is that there has been no presentation from Ski Corp explaining what water and sanitation facilities it intends to have the Districts perform after they are created. It does not describe the water and sanitation improvements and there has been no explanation of intent and why they want to be in the water and sanitation business and what limitations they may agree to. A presentation should occur detailing what they intend the District's to provide for services. If the proponents decide to modify the service plan and withdraw water and sanitation authorities, it would be the easiest in Counsel Sharp's opinion for the District and for Ski Corp. to move forward quickly.

Mr. Rogers introduced himself and explained that his company is proposing the organization of 6 Metro Districts. He stated that Ski Corp. does now want to be in the Water and Sanitation business, the language that appeared in the draft of the service plan was due to the City asking them to use the most previously used and approved service plan (downtown development on the Yampa River) as a template, thus they copied the language verbatim. Mr. Rogers was not aware of the background when the draft was put together. Mr. Rogers explained the history that when asking a municipality to approve a service plan, they start with all authorized powers within the statute, include those in the service plan, and when they know there is an of an overlap of services, they include a reference to the applicable District and note there is a consent requirement and will get it addressed (IGA). He stated it is common amongst his company and municipalities to have IGA's that go above and beyond the limitations in the service plan and condition approval on the District's Service Plan and entering said IGA. It was assumed that the service plan given to the City would include a discussion with the water and sanitation district and provisions would be worked out, recognizing the District has 100% leverage to compel conditions, contractual remedies, damages etc.

Mr. Rogers provided background information about the service plan: The service plan includes a debt cap of \$150M and anticipates the first bond issuance in 2023 or 2024 of \$16M which will cover some of the anticipated gondola project costs; the gondola is planned to travel from the meadows parking lot to the ski base area. The gondola project will be subject to negotiations with the City, Wildhorse Condo. Assoc. and other interested shareholders. A private side land use negotiation will have to occur before the Districts can fund this improvement and all these steps are Phase I of bond financing. Phase II is still in the works. A 40-year mil levy "shock clock" will start at first bond issuance, depending on what happens with the development, the economy and market factors with interest rates and there will hopefully be another opportunity for the Districts to band together to raise additional funds. Mr. Rogers pointed out the parcels of land that make up each District on

the map. There aren't specific districts assigned to certain parcels due to the development being subject to different variables, especially the City approval process and market considerations before they can be developed. These factors may impact the timing of when the parcels come online. The reason for 6 districts being proposed is due to differing use types anticipated such as commercial and residential uses which will have different mil levy sensitivities on different parcels. Each parcel has an independent mil levy clock that starts to run when they develop and impose debt service mil levies. All those factors play into which Districts will be overlaid onto which parcels.

Mr. Rogers expectation was that MWW would be willing to provide a consent to organization of the Districts but subject to approval by MWW of an IGA that is mutually agreed upon that would be executed as the first item of business at the organizational meeting.

Mr. Rogers stated Counsel Sharp's provided language might address some of the concerns. He considered the language clarifying and adequately protects both sides. The language suggested by Counsel Sharp would be that of the Metro. Districts can fund the construction of water and sewer lines, but the lines would be conveyed to MWW free of charge upon completion. Mr. Rogers recommended that the Board consider including the recommended provisions in the IGA rather than in the service plan. His two reasons are they don't want to slow down the timeline on the City review and comment period for the proposed service plan and it would be easier to negotiate the IGA after, or concurrently with the service plan approval. Mr. Rogers suggested one revision to the service plan language which would state that the Districts would not provide water and sanitation services including construction of infrastructure unless pursuant to the IGA that the District signs agrees to. Mr. Rogers stated that the resolution (if approved) could create concerns on the City's side which could slow down the process and might be viewed as Ski Corp. not being cooperative. Mr. Rogers suggested they include a condition in the service plan which would state that the District shall not have water and sanitation powers unless and until a mutually agreed executed IGA between the Districts and MWW is executed. Mr. Rogers has been working on a proposed IGA that will include language drafted by Counsel Sharp, will send it next week, with his goal to gain approval by MWW at the July Board meeting.

Mr. Rogers explained that Alterra wants the ability to be reimbursed for water and sewer lines that the Water and Sanitation District is going to be required to build as conditions of service and they want the ability to finance those and if there is anything that MWW didn't want to maintain and own (private service lines) Alterra/Districts would maintain them in perpetuity; that is the main reason the water and sanitation language is included in the draft service plan.

Counsel Sharp suggested the following items for the Board to consider:

- The City needs to be notified that MWW isn't going to give consent to the service plan and if Ski Corp. wants to make proposed language changes, that we can reach

agreement on, then a second resolution can be drafted that says we're prepared to give consent on the new terms and conditions.

- Adopt the drafted resolution, then let Ski Corp. propose what kind of language/modifications they would like to add, and they can then proceed forward with the City.
- Hold a special board meeting before the regular July board meeting. If Ski Corp. wants to get MWW consent before July, they need to make a presentation and provide proposed or alternative language to the MWW Board. From there, Ski Corp. could receive conditional consent from the District and advise of this approval to City Council. The other alternative is Ski Corp. could remove all associated water and wastewater services language, advance that draft for creation of the Districts, and come back to MWW after the November election and discuss petitioning the court to allow certain limited water and sanitation facilities, thus amending the plan for supplemental court decree.
- The simplest way to move it along is to strike all water and wastewater provisions, as taking out certain provisions does not affect the other provisions noted.
- Draft a letter to City Council stating MWW's reason for the resolution; based on the concerns of language related to water and sanitation services.

The major concerns raised by the Board regarding the service plan and proposed IGA concept include:

- The sewer services' language might conflict with the Special Connectors Terms and Conditions Agreement with the City and their requirements, thus that would have to be addressed. MWW should not limit future negotiations to just two entities due to all the agreements in place between the District and the City it would have to involve all 3 entities involved.
- The District hasn't seen an IGA and doesn't know what it will contain.
- Since 2 board members are absent, the preference is to have all MWW board members see what is being presented.
- Ski Corp. is asking for more authority than they want, and need.
- Ski Corp. knew what the statute says including the overlapping District provision consent requirement. They inserted it in the original service plan anyway and are now stating they would like to get District consent based on their timeline.

MOTION: To adopt the Resolution in which the Board of the Mt. Werner District has reviewed the proposed Consolidated Service Plan for the Proposed Metro Districts, and objects to the inclusion in such Plan of Water and Sanitation services authority and construction of water and sewer improvements. The Board of Directors of the Mt. Werner District hereby states that it does NOT consent to the creation of the Proposed Metro Districts as currently presented for consideration by the City Council, and states that pursuant to Colo Rev. Stat. Section 32-1-107(2), such Proposed Metro. Districts cannot be authorized or created by the District Court with such Water and Sanitation services authorization. The resolution will be accompanied by a letter from the Board to City

Council indicating overall support of the service plan subject to future negotiations and modified language to the service plan and court decree.

APPROVED: Vote 3-0

- B. Steamboat Ski and Resort Corp.- Right of Way/Monitoring Manholes Sewer Project- Fee in Lieu – Jim Schneider with Ski and Resort Corp. asked if the Board would consider a fee in lieu of construction of two sewer components; removal and replacement of the right of way sewer main and constructing two monitoring manholes. Director Malia asked what sort of cost recovery the District would have for administration, management, and project oversight. And, if there is an acceleration of cost how would the District account for that? If the District agreed to a fee and was paid now, but the work wasn't done until a year out, costs could go up substantially and how would that be handled. The District has never agreed to a fee in lieu of a project of this nature. Staff recommended that the request be denied and require Ski Corp. to complete the project. Also, if approved, the decision could set a precedent for future projects.

MOTION: The MWW Board will not accept a fee in-lieu payment and the project work must be completed by Ski Corp.

APPROVED: Vote 3-0

2:02

MOTION: To adjourn the Regular Meeting and go into executive session at approximately 10:05 A.M. under §24-6-402(4)(e)(I), C.R.S., for determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators.

APPROVED: Vote 3-0

This item pertains to specific legal questions and direction for negotiations: Yampa Meadows Infiltration Gallery Project

MOTION: To come out of Executive Session and reconvene the Regular Meeting at 10:33 A.M. with no action having been taken.

APPROVED: Vote 2-0 (since Alan departed)

- C. Officers and Committee Assignments – After each Board election cycle, the District determines committee and officer roles, and more discussion will take place on this subject when all board members are present at the next Board meeting.

IX. UNFINISHED BUSINESS

- A. Mr. Alfone received a call from Jay Hanley who owns a 40-acre parcel above Laurel Lane, outside of the District Boundary. Mr. Hanley asked if the Board would consider providing water and wastewater services to his lot. Since the lot elevation is above the normal operating service elevation for the District, he would have to install a booster station to receive adequate pressure at the home. The infrastructure would be designed, paid for, and maintained by him. An Out of District Service Agreement would have to be approved, then

City approval required since it is an extension of District services outside of District boundaries. The parcel is also not within the Urban Growth Boundary. Mr. Alfone will request that he present his plans to the Board and ask the City how they feel about an Out of District Service Agreement for his parcel.

X. ADJOURN

The next Regular Board meeting Date is July 21, 2023, at 8:00 A.M.

There being no further business, the meeting was adjourned at 10:47 A.M.

Respectfully submitted,

Frank Alfone, Secretary/General Manager

STATEMENT FROM ATTORNEY REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned Tom Sharp hereby attests, pursuant to C.R.S. 24-6-402(4)(e)(I), that the executive session was not recorded because, in his opinion, his participation in answering legal questions and discussion of negotiations constituted a privileged attorney-client communication.

Tom Sharp, General Counsel

Date:

STATEMENT FROM CHAIR OF EXECUTIVE SESSION REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned chairperson hereby attests, pursuant to CRS Section 24-6-402(4)(e)(I), that the executive session was not recorded and were confined to the topics authorized for discussion in an executive session pursuant to subsection (4) of CRS Section 24-6-402.

Gavin Malia, President, and Chair

Date: