

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT
RETREAT
AUGUST 27-28, 1993

August 27, 1993

1. Call to Order and Roll Call:

The Board Retreat of the Metropolitan Sewerage District was held Friday and Saturday, August 27-28, 1993 at the Pisgah View Ranch. Chairman Post called the meeting to order at 9:05 a.m. on Friday with the following members present: Bryson, Casper, Dent, Frizzell, Joyner, Kelly, Penny, Post, Selby, Slosman and Wallace.

Others present were: W. H. Mull, Engineer-Manager, John S. Stevens, General Counsel, Tom Elmore, Facilitator with Land of Sky Regional Council, Susan Ennis, Assistant Facilitator with the Office of State Personnel, Wayne Richard of Municipal Advisors, Inc., Bill Morris of Hendon Engineering Associates, Inc., Stan Boyd, Angel Craven and Sondra Honeycutt, MSD.

2. Introduction of Facilitator and Assistant Facilitator:

Chairman Post introduced Mr. Tom Elmore, Facilitator and Ms. Susan Ennis, Assistant Facilitator. Mr. Elmore began the meeting by asking each attendee to give a brief background on themselves followed by a reviewed of the various proposed items to be discussed and assisted the Board in setting the agenda.

3. Management Consultant Report:

Mr. Elmore introduced Mr. Wayne Richard of Municipal Advisors, Inc. (MAI) for a report on the District's Organizational Study. Mr. Richard expressed his appreciation to the Board and staff for their individual input and briefly discussed the process in the development of the study. Mr. Richard reported that the preliminary study was submitted to the Engineer-Manager and Chairman for review with a final report provided to each Board member on August 18, 1993. Mr. Richard discussed the recommendations of Municipal Advisors, Inc., which are attached as a part of these minutes.

As a result of MAI's recommendations, the Board discussed in length the following concerns:

1. Committee Structure - How to combine the present structure into three standing committees and how the committees will handle recommendations to the Board when all members are not present at those meetings.
2. Customer Service Survey - Why there is a need for a survey and who should develop it.
3. Enhanced Public Relations Effort - How to address the concerns of the public and the type of information the public would be interested in knowing about the District.
4. Director of Administration Position - What type of qualifications will be required; job responsibilities and hiring procedure.
5. In-house Contract Administration and Inspections - Hiring of a Project Engineer and negotiations with the Consulting Engineer in taking over administration of Phase II of the North Swannanoa Interceptor Sewer.
6. Request for Proposals for Future Projects - Whether the District should go out for bid on all projects.

7. Absenteeism - How to best solve the problem and how the regulations of the Americans Disability Act (ADA) affect the problem.
8. Staffing Realignment - Shifting of positions to fill job vacancies and combining others.
9. Personnel Policies - Posting of positions, both internally and publically as they become available.
10. Duties of the Engineer-Manager - As stated in the District Bond Order.

At 1:49 p.m., Mr. Penny moved that the Board go into Executive Session to consider the evaluation of the Engineer-Manager. Mr. Joyner seconded the motion. Voice vote was unanimous in favor of the motion.

At 4:50 p.m., the meeting was reconvened.

4. Capital Improvement Program - Mr. Bill Morris, Hendon Engineering Associates, Inc.

Mr. Morris reported that Hendon Engineering was charged with the responsibility of developing a history of consolidation projects and other capital projects from the time of consolidation to the present and to report on what has occurred over the years in projections that were made in the Operations & Maintenance, Debt Service, Capital Expenditures and Fund Balance accounts. Mr. Morris presented a chart showing the expenditures for each fiscal year from July 1, 1990 through July 1, 1993 and presented the following five (5) options for future user fees:

1. No user fee increases with no new bond issue.
2. 5% user fee increase each year with an \$11 million dollar bond issue in 1995/96.
3. 5% user fee increase each year with no bond issue, but with a shifting of interceptor projects, (North Swannanoa Interceptor - Phase II moved up one year and spread out over six years instead of four years, with the design completed on schedule; moving the South Swannanoa Interceptor project up one year with a one year delay in the Reed Creek and other priority interceptor projects).
4. No increase, no bond revenues and no shifting of projects.
5. 4% user rate increase after FY 1993/94, to keep ahead of a 1.7 debt coverage ratio, an \$11.5 million dollar bond issue in 1999/2000 and a shift in interceptor and special request projects schedule over the next four years.

The Board discussed in length the District's fund balance and what portion has been allocated for various projects. Mr. Morris stated that purpose of this process is to keep ahead of committing to projects the District does not have the funds for and that a decision on how the District will proceed must be determined as soon as possible.

Mr. Morris reported that the projects are larger in scope and more elaborate than originally anticipated and reviewed with the Board the consequences in the use of the various options as follows:

- a. Option #1 - would create a deficit of \$4 million dollars by 1995/96.
- b. Option #2 - would result in a negative cash flow of \$3.5 million dollars by 1998/99, thereby having an effect on new development and a possible moratorium.
- c. Option #3 - developed as a means to economize by shifting projects.
- d. Option #4 - would create a \$9 million dollar deficit by 1998/99.
- e. Option #5 - a possible cutback in services and salary increases.

A discussion followed regarding sewer user revenues; growth in volume; why the District cannot spend funds at a faster pace on various projects; revenues generated through capacity depletion fees; why the District has not used G.O. Bonds instead of Revenue Bonds; the difference between District and State construction standards and the Capital Improvement Plan Committee's recommendation to use Option #5.

With regard to Option #5, Mr. Morris presented a detailed breakdown of every project, which explains the rationale in coming up with current budget numbers and how the District stands today compared to what it knew back in 1981. Following a lengthy discussion on the scope of the major projects, Mr. Penny suggested that the Board authorize the Engineer-Manager to develop a recommendation on Option #5, taking other future projects such as Montreat and Black Mountain into consideration and present his recommendation to the Capital Improvement Plan Committee on September 10, 1993 followed by a presentation to the Board on September 15, 1993. Mr. Mull stated that staff will need to develop a spread sheet with an explanation as to the reasons for each project, to be presented to the Board for a final decision. A discussion followed as to whether the District should implement a rate increase or not; if the District has considered the future capacity of the treatment facility and how long it takes to design future expansions; revenue growth and the consequences of a decrease in the bond rating if no rate increase is implemented. With regard to the bids that are awaiting a decision from the Board, Mr. Boyd reported that the bids must be acted on at the September 15, 1993 meeting of the Board, however, the Board can request an extension from the contractor.

5. Staff Concerns:

Following a lengthy discussion regarding the concerns of staff, the meeting was recessed at 8:20 p.m.

August 28, 1993

1. Call To Order:

Chairman Post reconvened the meeting, Saturday, August 28, 1993 at 9:00 a.m. with the following members present: Bryson, Casper, Dent, Frizzell, Joyner, Penny, Post, Selby, Slosman and Wallace. Those absent were: Glenn Kelly and Wayne Richard

2. Right-of-Way Briefing

Mr. Stevens presented an outline and brief overview on the reasons and process used in obtaining rights of way and selected problems that are encountered in the acquisition of easements, followed by a brief discussion regarding the need for a unified approach to acquiring rights-of-way; the matter of restraining orders and the policy that addresses the 20 and 30 foot right-of-way easement standard.

Ms. Craven presented a policy on Right of Way Acquisition, which was developed through input from various North Carolina municipalities; Charlotte-Mecklenburg Utilities Division (CMUD), City of Greensboro, City of Winston-Salem, City of Raleigh, City of Asheville, Buncombe County and telephone conversations with Orange Water & Sewer Authority (OWASA). Ms. Craven reported that on several occasions the policy has been reviewed by the District's attorney and that several aspects have been discussed with engineering firms, survey firms and staff and as a result, suggested the following changes in the policy as highlighted below:

3.1 PRE-NEGOTIATION

3.1.2 The District's Engineering Division shall notify the Right of Way Coordinator of upcoming Projects and provide a schedule for each Project including preliminary design completion, easement procurement period, bid date, construction start and any other important schedule considerations and shall provide a copy of the contract(s) for preparation of easement plats and engineering assistance. **No acquisition shall begin on a project until plans and specifications have been reviewed and approved by the District's Engineering Division.**

3.1.3 **Upon completion and approval of plans and specifications, the Project Engineer shall provide the Right of Way Coordinator with two sets of plans and specifications, a form indicating affected property owners and the survey schedule.**

With regard to the above changes, Ms. Craven reported that in the past staff has tried to save time and keep the flow of work moving by acquiring rights-of-way as soon as easement plats and legal documents were available, but found that it was not feasible to proceed until a set of plans & specifications were submitted and approved by the District's Engineering Division. A discussion followed regarding any preliminary work that could be done prior to receiving the plans and specifications and whether the section (3.1.6) which refers to title searches, should be changed to read "twenty year".

Ms. Craven reported it is the District's belief that the section, (3.1.7) dealing with providing new and/or upgraded sewer lines is a benefit to the community and that staff has been acting upon a policy in trying to apply easements with no compensation to the property owner. Ms. Craven further reported that in easement negotiations, staff does not bring up the subject of compensation, but if the subject is mentioned, staff explains to the property owner why they would benefit if the District did not have to expend large dollars for compensation, and as a result, asked for the Board's direction in printing the following statement in the policy:

"It is the District's policy to attempt to obtain easements with no compensation".

A discussion followed regarding the statement and the problems encountered in obtaining rights-of-way without compensation since other utilities are offering compensation on first contact. As solution to the problem, Ms. Craven suggested that a figure of 5% of the amounts in the compensation chart be allocated for each property owner, (with the minimum compensation being \$50.00), and offered up front as a matter of public relations and at the same time, possibly resolving problems surrounding the issue of trees. A lengthy discussion followed regarding the District's right to maintain lines that are in place, without offering compensation.

Mr. Stevens stated that if a sewer line is in the ground and if there is a right of way with an indeterminate width, the District has the right to go in and maintain and/or replace a line and that the courts would afford a reasonable width. Mr. Stevens further stated where there is no right of way, but the line is in place, he was inclined to think the District has the right of way, but the law is not clear on the point. He stated that North Carolina statutes say where there is a dedicated public street or highway the District is given a specific easement. Where there is a street with no dedicated right of way, it would not be unreasonable for the District to assume a right of way for a sewer line and let any property owner who objected bring an inverse condemnation. Mr. Stevens reported that if the District obtains a construction easement, it should proceed to get a permanent easement at the same time, because it would insure the right to cut trees, remove brush, and if required, maintain the line in the future.

A discussion followed regarding the costs incurred by the District beyond the cost of compensation; whether the District should consider going to court and demanding its rights when a line is in place, or inform the property owner that the District is in the process of replacing a line and what will happen to their property as a result of that construction. Siting as an example the Beaverdam Interceptor Project, Ms. Craven reported that the current total budget for compensation on that project is \$27,556.00, and explained that if the District used the 5% figure, previously mentioned, the total compensation budget would be \$1,377.00 (substantially less than the cost of attorneys fees and court costs) which would allow the District the ability to offer compensation up front without saying it was a minimum amount of compensation. Ms. Craven stated that if the District wanted a test court case, the Satterfield parcel would be the perfect one to use. Following a brief discussion, Mr. Dent moved that the District proceed with declaratory action on the Satterfield parcel. Mr. Selby seconded the motion. Voice vote was unanimous in favor of the motion. There being no further discussion regarding the Acquisition Policy, the Board authorized staff to make the recommended changes as presented and mail a copy to each Board member prior to its next regular meeting.

Ms. Craven presented a draft of a policy regarding the acquisition of additional sewerage system facilities constructed by private developers and political subdivisions within the District and reported that this policy is the final course of action the Board will need to take on privately developed systems that developers wish to transfer over to the District. Ms. Craven further reported that the Board will need to determine whether proper easements are in place; if construction has been done to District standards; if it is to the betterment of the public health and welfare; if there are any materially adverse liens against the property involved and whether there are sufficient funds in the budget to maintain this particular system in the future. In addition, Ms. Craven presented a chart on the District's required easement widths; an actual Easement Agreement and a Subordination Agreement to be used by the Board as a tool in review of the policy.

Regarding the issue of trees, Ms. Craven reported that the current practice of the District is to explain to property owners that trees within the permanent easement will be cleared and selective clearing within the temporary easement, depending on the lay of the ground, the size of the trench to be excavated and mobility of equipment, all of which determine how many trees must come off the temporary construction easement. Ms. Craven further reported that staff works with the property owner, within that temporary easement, in order to minimize damages. In addition, this process is explained in pre-bid and pre-construction meetings to both the contractors and property owners. However, there have been instances where the contractor has totally ignored these discussions. A lengthy discussion followed regarding the reasons for clear cutting within the 20 foot easement as opposed to selective cutting and if there was an alternative to clear cutting. Ms. Craven presented construction specifications showing

the language within the District's specifications, which have not been approved by the Board and are not presently being used.

With regard to the section that addresses structural excavation and landscaping, Ms. Craven asked who will determine what is to be excavated if the property owner understands that everything in the permanent easement will be totally cleared and assure that the contractor will be selective in clearing the temporary easement. Ms. Craven stated that if the contractor comes in with the specifications and sees that he can clear cut within the limits of the area to be excavated, will he be selective in his clearing or think that he can bulldoze the entire area because its there to excavate and work in. Ms. Craven further stated that because this is an on-going problem, felt it was necessary to tighten up the language in the District's construction specifications and enforce those specifications. As an example, Ms. Craven presented a section taken from McGill Associate's construction specifications which refer to the limits of construction and were administered and enforced correctly for the Kledis parcel. The Board agreed that the consulting engineers and/or staff need to be more direct with the contractor in making sure the requirements are not being violated. In addition, the Board discussed who was responsible for damage outside the construction area, for which the District may be held liable.

Ms. Craven then presented a section from the same specifications regarding tree and plant protection and reported that this section is not being enforced by some contractors. Ms. Craven stated that if she is telling property owners something that is not consistent with the District's policy on tree removal during construction, (which ties into damage claims, court cases and compensation paid up front to the property owner for damages) she needs to know so that staff can change its mode of operation in order to align with what the policy is. Ms. Craven recommended that the District develop an approved set of specifications to use, thereby alleviating the non-uniformity of using specifications from other firms. Following a lengthy discussion as to the best way to resolve the situation, Mr. Post stated that based on recommendations made in executive session, that staff develop a recommendation on a tree policy, separate from the present construction specification, but to be included in that document and that the recommendation should include costs options for more tree protection as opposed to less protection and presented to the Board for approval.

As matter of discussion, Ms. Craven asked the Board to consider whether it should obtain easements on systems that are being constructed outside District boundaries to District standards and if so, does that include easement standards as well. In addition, Ms. Craven asked the Board to consider whether the District wanted to obtain easements over sewers that it will not maintain, and if so, what kind of liability will that create for the District. The Board agreed that the issue should be resolved by the Right of Way staff and presented to the Engineer-Manager in the form of a recommendation.

3. Groundrules for Effective Groups - Susan Ennis and Tom Elmore

Mr. Elmore stated that as a lead-in to the Mission Statement, he would like to present a document that is used as the conceptual framework in facilitation, based on the research of experts throughout the country that study groups and how you differentiate effective groups from non-effective groups.

Ms. Ennis gave a presentation on Groundrules for Effective Groups and explained the three values underlying those groundrules. Following a brief discussion, Mr. Elmore briefly reviewed the 16 Group Groundrules.

4. Mission Statement

Ms. Ennis presented options on how to proceed in writing a Mission Statement and the Board discussed in length its individual reasons for the purpose of a statement and Mr. Elmore pointed out that Memorial Mission Hospital's statement and language found in the District's statutes could be used as a guide. In review of the wording in draft statements submitted by Charles Penny and Jack Stevens, the Board agreed on a tentative final draft as follows:

"It is the mission of the Metropolitan Sewerage District to provide wastewater collection and treatment to its users which promotes the health and safety of affected citizens in the most effective and efficient manner possible today and in the future".

With regard to the Organizational Study, Mr. Post called for a motion to receive the report as presented by Mr. Richard. Mr. Penny moved that the Board receive the Organizational Report of Municipal Advisors, Inc. and await the presentation of the Engineer-Manager's implementation plan before effecting any change in the Study. Mr. Dent seconded the motion. A brief discussion followed regarding the need to advertise locally for the Director of Administration position and a suggestion by Chairman Post that a recommendation from the Engineer-Manager, regarding this position, be presented to the Board at the September 15, 1993 meeting. There being no further discussion, voice vote was unanimous in favor of the motion.

In addition to the Mission Statement, the Board discussed whether there was a need for a Value Statement to be developed by the District. Mr. Stevens gave a brief background on the history of the District and stated that because the District is somewhat different and recognizes that it is responsible, it and could develop a creed addressing those responsibilities. Regarding the final Mission Statement draft, the Board directed Ms. Wallace and Mr. Stevens to refine the draft with District values included and mail a copy to each Board member for review.

At 3:29 p.m. on Saturday, August 28, 1993 Mr. Joyner moved that the Board go into executive session to discuss a personnel matter. Mr. Slosman seconded the motion. Voice vote was unanimous in favor of the motion.

At 3:45 p.m. the meeting was reconvened.

5. Capacity Depletion Fees:

Mr. Mull presented comparison charts showing the difference in sewer service charges, capacity depletion fees and tap fees for cities throughout North Carolina, South Carolina, Virginia and Tennessee, and explained the difference in charges for new service connections (capacity depletion and tap fees) for residential, commercial and industrial customers, based on water meter sizes. A discussion followed regarding the difference in the fees and the possibility of meeting with the various authorities to discuss the fees in connection with new industrial development. With regard to a question about the penny differential for users outside the district, Mr. Stevens reported that the Board decided that it wanted to make a distinction between people in the District, who were subject to being taxed, and those outside the District that it has no power to tax, therefore, the reason for the penny difference is that the District wanted to convey that there was a benefit to being in the District. Mr. Casper stated that the capacity depletion fee is higher in Asheville compared to other cities, but when combined with a lower monthly rate structure, the cost is lower, therefore, beneficial for those businesses looking to relocate to the Asheville area.

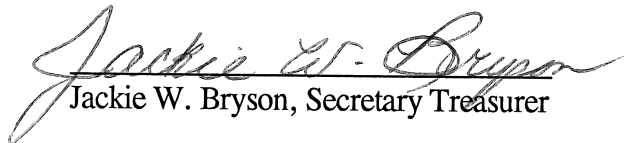
Regarding the R.L. Coleman matter, Mr. Mull reported that Mr. Coleman is in the process of converting an apartment complex into commercial space, which is served by three (3) 2" & 3" water meters and has requested that the Board waive the capacity depletion fee for twelve (12) 5/8" water meters at a cost of \$750.00 each with a credit for the existing meters. Mr. Mull further reported that the District had agreed to give Mr. Coleman a credit for the 2" & 3" meters, but since that time, Mr. Coleman stated that he would like to keep two of the three meters and that he did not understand the charge for the additional 5/8" meters since his capacity would not be increased.

Following a lengthy discussion on the cost to Mr. Coleman for the new meters and whether the Board would set a precedent by allowing a waiver of the fees, Mr. Penny moved that the Board inform Mr. Coleman that he can have the 5/8" meters and pay the difference between the capacity depletion fee for the current 2" and 3" meters if he is willing to give up those meters, otherwise, he will be required to pay the capacity depletion fee now for each 5/8" meter he receives and will be given a credit at the time he turns in the 2" and 3" meters. Ms. Wallace seconded the motion. A discussion followed with regard to doing away with the capacity depletion fee all together, or possibly raising the capacity depletion fees outside the District. Mr. Slosman's stated that he was still a proponent of deleting the capacity depletion fee charge, but until the District comes up with an answer to its financial problems he did not want to add another \$700,000 of burden until that burden was resolved. In addition, the Board discussed the fairness of capacity depletion fees based on square footage. There being no further discussion, voice vote was unanimous in favor of the motion. (Mr. Kelly was absent and did not participate in either the discussion or the vote on this question)

Regarding the Young Parcel, located in Montreat, Mr. Stevens asked the Board to consider paying Mr. Young \$1,000.00 for a right of way across his property. Mr. Slosman moved that the Board authorize payment to Mr. Young in the amount of \$1,000.00. Ms. Wallace seconded the motion. Roll call vote was as follows: 8 Ayes; 0 Nays. (Those absent were Bryson, Joyner and Kelly)

6. Adjournment

At 4:15 p.m., Mr. Penny moved that the Board adjourn the meeting. Mr. Casper seconded the motion. Voice vote was unanimous in favor of the motion.


Jackie W. Bryson, Secretary Treasurer