

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT

August 17, 1994

1. Call to Order and Roll Call:

The regular monthly meeting of the Board of the Metropolitan Sewerage District was held in the Boardroom of MSD's Administration Building at 2:00 P.M., on Wednesday, August 17, 1994. Chairman Post presided with the following members present: Bryson, Casper, Dent, Joyner, Kelly, Selby, Slosman, Sobol and Wallace. Those Members absent were: Holcombe

Others Present were: W. H. Mull, Engineer-Manager, Jim Fatland, Director of Administration, John S. Stevens, General Counsel, Gary McGill and Danny Bridges of McGill Associates, P.A., Tom Deutscher, Steve Gold and Ron Reavis of Platinum Properties, Doug Thigpen of South Asheville Cinemas, Steve Gentry of Buncombe County, Albert Sneed, Attorney, Tim Penland, Richard Harper, Ken Pankow, representing the Hills of Avery's Creek, Bob Tinkler, representing the League of Women Voters, Angel Craven, Linda Mazingo and Sondra Honeycutt, MSD.

2. Approval of the Minutes of the July 9-10 Retreat and July 20, 1994 meetings;

Mr. Slosman moved that the minutes of the July 9-10, 1994 Board Retreat and July 20, 1994 regular meeting of the Board be approved as presented. Mr. Kelly seconded the motion. Voice vote was unanimous in favor of the motion.

3. Planning Committee Items:

a. Consideration of Appeal from Hills of Avery Creek to Construct Private Sewer System to Non-Public Standards.

Mr. Mull presented correspondence from the Hills of Avery's Creek regarding a request to construct a private sewer system to non-public standards. In addition, Mr. Mull presented a Notice of Violation and a Construction Permit from the North Carolina Department of Environmental Health and Natural Resources (DEHNR) and, a letter from the Avery Creek Sanitary District, requesting that the Hills of Avery's Creek be allowed to provisionally tie-on, subject to DEHNR approval. Mr. Mull reported that a request for allocation was submitted in March of 1994 and approved by the Board, May 11, 1994, but because it was determined that some sewer construction was started prior to plans being received by the District, the allocation was revoked. However, since that time, the allocation has been re-issued. Mr. Mull further reported that plans for construction were received on July 7, 1994, but were returned because they were incomplete and showed 6" instead of 8" sewers. Mr. Mull stated that it is the policy of the District that the sewers constructed by the developer would meet District standards. Mr. Mull further stated that following considerable review of the information received, the Planning Committee recommended approval of the development proceeding with construction of the Hills of Avery's Creek sewer system, contingent upon approval by the Avery Creek Sanitary Water & Sewer District of the allocation, and that the owners get final state approval to proceed with construction. Mr. Joyner expressed concern that based on the documents presented, that the Hills of Avery's Creek were made aware of the requirements, but chose to ignore them, and that in his opinion, if the District allows the Hills of Avery's Creek to construct a line not built to District standards, (6" instead of 8") it would loose future control, therefore, strongly objected to the Committee's recommendation.

Mr. Sneed, Attorney representing the Hills of Avery's Creek stated that the following inaccuracies were found in the facts surrounding this issue: First, his client was not notified of District standards. Second, the project is not a subdivision, and that all studies done and loans obtained, were based on a private system, and on unpublished

regulations. In addition, there are a lot of systems that do not require certification and felt it was unreasonable to expect that every project built in Buncombe County, be built to District Standards. Mr. Sneed further stated that the Hills of Avery's Creek are only asking that they be allowed to build a private system, in accordance with State standards, and that the issue is whether they can build on their own property, a public sewer system, or a private system on private property.

Mr. Harper reported that the lines in front of each building were inspected by Buncombe County, and the other line being laid at the time, would have been inspected, when the District asked them to stop construction. Mr. Harper further stated that it is not their intent to bypass anyone, and that it does not serve any purpose at all, to build an inadequate system. Mr. Sneed suggested that the District's regulations be put in writing in order that the public will be aware of the requirements beforehand. Mr. Slosman asked if the deed could be recorded prohibiting this line from every being taken over by the District. Mr. Sneed stated that it is the intention of the developers never to split the ownership. Mr. Selby suggested that the Board consider a motion to attack this problem, issue by issue that will address the following: Private systems meeting District standards; whether the District has the authority to remove an allocation, and educating the public as to when they need to follow District standards.

Mr. Penland stated that Mr. Mull's statement that all out of District sewers when hooked to more than two units, are built to public standards, is not an accurate statement, and that they did not come to the MSD during the application process, but instead went to Henderson County where they were given approval for a private line. Following a brief discussion regarding the total cost of the project, and the cost to bring the line up to public standards, Mr. Penland reported that the units will be rented for a lifetime and all utilities, with the exception of telephone, are included in one sum grant. A lengthy discussion followed regarding whether Avery's Creek is out of the District's jurisdiction and if the District can require these areas to build a line according to its standards. Mr. Stevens stated that the District is not required to accept anyone's sewerage outside the District. It treats sewerage solely under a contract basis outside the District. Mr. Mull stated that the problem lies in the policy language, in that it does not specify public or private standards, only District standards.

With the understanding that the Planning Committee consider the issues suggested by Mr. Selby, followed by a recommendation to the Board, Ms. Wallace moved that the Board approve the development proceeding with construction of the Hills of Avery's Creek sewer system, contingent upon approval by the Avery Creek Sanitary Water & Sewer District of the allocation, with the owners obtaining final State approval to proceed with construction. Following a brief discussion regarding capacity depletion fees, revocation of wastewater allocation, and if the facility plans to serve food, Mr. Dent seconded the motion. Roll call vote was as follows: 7 Ayes; 3 Nays (Mr. Joyner, Mr. Kelly and Mr. Post).

c. Consideration of Authorization to Advertise for Construction Bids - Black Mountain CIP and Beaverdam Creek Sewer Rehabilitation.

Mr. Mull reported that easements were acquired on the Black Mountain CIP Sewer Rehabilitation project at an estimated cost of \$600,000.00, with the Consulting Engineers incorporating the newly adopted technical standards and general conditions into the documents. Mr. Mull further reported that rights-of-ways are being acquired on the Beaverdam Creek Interceptor Sewer Rehabilitation at an estimated cost of \$1,000,000. Mr. Mull presented project data sheets for both projects and that following review, the Planning Committee recommended that the Board authorize advertising for construction bids. With no discussion, Mr. Dent moved that the Board adopt the recommendation of the Planning Committee. Ms. Bryson seconded the motion. 10 Ayes; 0 Nays.

d. Consideration of Claim for Loss of Business - North Swannanoa Phase I

Deferred to Executive Session

e. Consideration of Bids for Annual Pavement Repair Contract

Mr. Mull reported that due to receiving only two bids on the original advertisement, re-advertisement of bids was required for the Annual Pavement Repair Contract. Bids were received on July 26, 1994 as follows: Paving Enterprises, Inc., (Apparent low bidder) with a total base bid of \$208,045.00 and APAC-Carolina, Inc. with a total base bid of \$229,460.00. Mr. Mull presented a letter from Walter L. Currie, Attorney for the District, stating that in review of the bids, bid bonds and powers of attorney, the bids were found to be in acceptable form. Ms. Bryson moved that the Board approve the apparent low bid of Paving Enterprises, Inc. in the amount of \$208,045.00. Mr. Joyner seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

f. Consideration of Request for Statements of Qualifications for the Development of Distribution and Marketing Program for Biosolids Product

Mr. Mull reported that Request for Statements of Qualifications for the Development of a Distribution and Marketing program for the Biosolids Product were mailed July 22, 1994. As a result, two proposals were received, (McGill Associates, P.A. and Black & Veatch) and reviewed by the Planning Committee August 12, 1994. Mr. Mull further reported that the Committee recommended that a contract be negotiated with McGill Associates and brought to the Board for approval.

Mr. Mull presented a letter from McGill Associates, P.A., outlining the fee proposed. Mr. McGill stated that as a result of the District's consideration, McGill Associates, P.A. arrived at a total estimated fee of \$28,800.00. However, the fee does not include any cost associated with printing, production or advertising, estimated at a range from \$5,000.00 to \$9,000.00. Mr. McGill gave a brief report on similar projects McGill Associates, P.A. has done and reported that the key to a successful program is to maintain a high level of credibility. Mr. McGill further stated that he felt the District will not have a problem in disposing of its product, and that the product will offset the cost in terms of revenue, but will never be revenue neutral. Mr. McGill reported that once the product is marketed successfully, other entities may be interested, especially on a regional level, and that one of the most important issues is how much of the product can be stored, and for how long. In addition, they must determine the zinc content of the product, since it might affect agricultural interest. Mr. McGill further reported that although the incinerated product cannot be marketed, a decision needs to be made on how the District will dispose of it. Ms. Wallace expressed her concern as to whether McGill Associates, P.A. is depending on the incinerated product. Mr. McGill stated that they will be looking at everything that comes through the lime stabilization process, but that they will not focus on incineration. Following a brief discussion, Mr. Slosman moved that the Board adopt the recommendation of the Planning Committee. Mr. Sobol seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

g. Consideration of Request for Waiver of Easement Conditions - Boston Chicken Eatery.

Mr. Mull reported that Boston Chicken Eatery has requested that they be allowed to erect a sign and plant trees within the District's sewer easement. Ms. Craven reported that in order to waive the District's requirements to plant trees and place a pylon sign within the 25 foot permanent easement, the Right-of-Way Committee decided

to table the issue pending site visitation and discussion at today's meeting of the Board. Ms. Craven further reported that following Platinum Property's and Boston Chicken's discussions with the Department of Transportation (DOT) regarding tree planting issues, the DOT has agreed to allow trees, that are required by the City of Asheville under its Tree Ordinance, to be planted within the DOT right-of-way, which is outside the District's sewer right-of-way. However, because Boston Chicken's agreement with the DOT is not in writing, they were present to hear the Board's decision on the issue of trees, in order to know what they can or cannot do. Ms. Craven present a drawing showing the placement of the trees in DOT's right-of-way and the placement of the pylon sign in the District's right-of-way. Ms. Craven stated that following a lengthy review, the Planning Committee recommended that the footing for the sign be moved outside of the right-of-way; that the sign be allowed to hang over the right-of-way, with the bottom of the sign overhang at least 16 feet above the ground. In addition, that the owner be notified that the sign is an encroachment in the District's right of way and that if repair of the sewer line necessitates removal of the sign, the owner must do so at his own expense.

Mr. Gold, representing Platinum Properties and Boston Chicken, reported that they thought the whole situation was addressed, but because they only have a verbal commitment from the DOT, they cannot close on the property until they have a twenty percent commitment. Mr. Gold gave a brief overview of the issues involved, and asked for approval to place the trees in the District's right-of-way if written approval is not given by the DOT. A lengthy discussion followed with regard to whether the City of Asheville can require trees, when a utility forbids trees and, the District's policy of not planting trees in its right-of-way. With no further discussion, Mr. Slosman moved that the MSD not allow trees in its right-of-way, and recommended that the developer obtain a variance from the City of Asheville and go to the Board of Adjustments. Mr. Selby seconded the motion. Voice vote was unanimous in favor of the motion.

With regard to placement of the sign, Mr. Kelly suggested that in lieu of granting a permanent easement, that the Board grant a license, which it could revoke at any time. As an example, Mr. Stevens reported that although Southern Railroad does not allow construction of anything within a 100 feet on either side of a railroad track, it will occasionally grant a license. Following a lengthy discussion regarding the District's policy on trees in the right-of-way, and in consideration of the Satterfield case, Mr. Kelly moved that the Board adopt the recommendation of the Planning Committee with the exception that the word "license" be used with regard to any encroachment for the sign, with the understanding that the license can be revoked by the Board at any time. Mr. Dent seconded the motion. Ms. Craven asked that the Board consider what getting into the licensing business may mean to the District in terms of increased staffing and management needs to monitor who has a license for what. Also, how this would be handled in an emergency situation, and requested further clarification on this issue. Mr. Selby stated that he felt the District should inform the public that there is no construction within a right-of-way. There being no further discussion, voice vote was unanimous in favor of the motion.

In the same regard, Mr. Joyner stated that the District should notify South Asheville Cinemas that its marque is in the District's right-of-way and should be moved. Ms. Craven reported that the attorney for South Asheville Cinemas is aware of the situation and that they are currently discussing whether to move the marque or the sewer line. Ms. Craven presented a map showing the location of the marque and the sewer line affected.

4. Right of Way Committee Items:

a. Consideration of Declaratory Judgment - Sweeten Creek Interceptor - Wilson Creek Manhole Rehabilitation Portion - Charles Tucker Property

Mr. Mull reported that existing trailers are parked over the sewer line and because construction work is proposed for this area, and the current District policy allows no structures over the easement, the Right-of-Way Committee recommended that the current easement be presented to the property owner again for signature, and if he refuses to sign, proceed in obtaining a declaratory judgement. Following a brief discussion on the location of the property, and if the right-of-way is recorded, Mr. Kelly moved that the Board adopt the recommendation of the Right-of-Way Committee. Mr. Joyner seconded the motion. Voice vote was unanimous in favor of the motion.

b. Consideration of Re-alignment and Appraisal - Beaverdam Creek Interceptor - Lowell Pearlman Property

Mr. Mull reported that right-of-way through the property of Lowell Pearlman is under negotiation, but because the property is currently on the market for sale, the property owner feels he will suffer a substantial loss in sales when the trees are removed. Mr Mull further reported that following review, the Right of Way Committee made the following recommendation: Pursue re-alignment proposed by McGill Associates, P.A, and if re-route cannot be accomplished due to close proximity of home or steepness of area, authorize to proceed with obtaining an appraisal to determine damages as an aid to continuing negotiations. With no discussion, Mr. Joyner moved that the Board adopt the recommendation of the Right-of-Way Committee. Mr. Casper seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

c. Consideration of Compensation Request - Beaverdam Creek Interceptor - North Asheville Pool Property.

Mr. Mull reported that the Committee offered compensation in the amount of \$3,000 for trees around the old swimming pool site at the Asheville Pool Property. However, because of a loss of buffer behind and to the sides of the pool house, the Asheville Pool Board, in exchange for an easement, has requested \$4,500.00 for the replacement of 35 trees, plus \$1,000.00 and a one (1) year warranty, for any other damages that might occur. In addition, they have asked that trees within the temporary easement be saved; significant trees to be cleared are to be cut into fireplace lengths and stacked on the west temporary easement; no construction activities allowed from one week prior to Memorial Day to Labor Day, and that the owner is willing to negotiate an alternate access or staging area with contractor for the job. Mr. Mull further reported that Ms. Craven has met with the property owner, who has refused the \$3,000.00 compensation. Mr. Williams, Attorney for the owner is asking for \$4,500.00 compensation, and that an inspection of the building foundation be performed by a registered engineer after construction, with a letter stating that the foundation has not been damaged. Mr. Mull stated that Ms. Craven feels the District has been more than fair, and that following further consideration, proposed that construction of the line stop at the manhole below the pool, and not construct the upper part of the line (approximately 400 feet). Following a brief discussion, Ms. Bryson moved that construction of the line be stopped at the manhole below the pool. Mr. Kelly seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

5. **Report of Officers**
None

6. **Report of Committees:**
None

7. Unfinished Business:
None

8. Old Business:

Mr. Post reported that the meeting with the City of Asheville regarding back sewer charges will be held August 30, 1994 at 4:00 p.m.

9. New Business:
None

At 4:30 p.m., the Board moved into Executive Session to consider compensation for loss of business and possible purchase of property.

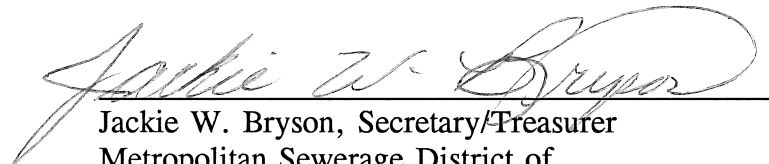
At 5:10 p.m., the Board reconvene the regular meeting.

Mr. Kelly moved that the Board reject the loss of business claim. Ms. Wallace seconded the motion. Voice vote was unanimous in favor of the motion.

Mr. Casper reported that a meeting of the Blue Ribbon Committee will be scheduled for early September.

10. Adjournment:

At 5:15 p.m., Mr. Kelly moved for adjournment. Mr. Sobol seconded the motion. Voice vote was unanimous in favor of the motion.



Jackie W. Bryson, Secretary/Treasurer
Metropolitan Sewerage District of
Buncombe County, North Carolina