

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT

February 15, 1995

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, February 15, 1995. Chairman Post presided with the following members present: Bryson, Casper, Joyner, Kelly, Pace, Selby, Slosman, Sobol and Wallace. Those Members absent were: Holcombe.

Others Present were: W. H. Mull, Engineer-Manager, John S. Stevens, General Counsel, Danny Bridges and Gary McGill of McGill Associates, P.A., Ed Byas of Hendon Engineering Associates, Inc., Albert Sneed, R. A. Harper, Timothy Penland, representing the Hills of Avery's Creek, Letta Jean Taylor, representing the Town of Montreat, Robert Wheeler and Jerry Wheeler, Sr., representing Wheeler Construction Company, Jim Fatland, Stan Boyd, Linda Mazingo, Wayne Watkins, Sharon Walk, Dan Cook, Randy Hintz and Sondra Honeycutt, MSD.

2. Approval of the Minutes of the January 18, 1995 meeting;

With no additions or corrections, Mr. Slosman moved that the Minutes of the January 18, 1995 meeting be approved as presented. Mr. Selby seconded the motion. Voice vote was unanimous in favor of the motion.

3. Introduction of New Board Member:

Mr. Post introduced Mr. Ben Pace, appointed by Buncombe County to serve on the District Board. Mr. Post appointed Mr. Pace to serve on the Planning and Capital Improvement Plan (CIP) Committee's, and Mr. Selby to serve as Chairman of the (CIP) Committee. In addition, he presented a Resolution for Mr. Charles M. Dent recognizing his service on the District Board.

Mr. Post read a letter from the County of San Bernadino, California requesting that a Resolution be presented to Mr. Fatland for his service as Mayor of the City of Ontario, California.

4. Engineer-Manager's Report

CONSOLIDATED MOTION AGENDA

Mr. Mull reported that the following Consolidated Motion items were brought before the Finance Committee, February 7, 1995. Ms. Bryson moved that the Board approve the Consolidated Motion items as presented. Mr. Slosman seconded the motion. With regard to Item a.4.b., (Cancel RFP for Investment Banking Services and Authorize Director of Administration to coordinate review of MSD's Investments with other local Public Finance Officers) Mr. Selby requested that this item be pulled for further consideration. With no further discussion, roll call vote was as follows: 10 Ayes; 0 Nays.

The Consolidated Motion Items not in question are as follows:

Finance Committee:

a.2 Approve Amended Budget Calendar for 1995-96 Fiscal Year:

The Committee recommended that the Budget Calendar be forwarded to the Board for approval.

a.3 Receive and File Six-Month Budget Report for Period Ending 12/31/94:

The Committee recommended approval of the Six-Month Budget Report, ending 12/31/94

a.4.a Authorize Staff to Distribute RFP for Annual Audit Services:

The Committee recommended approval of staff's recommendation to forward RFP's to firms on it's distribution list.

a.4.c. Authorize Director of Administration to Develop Approach with Asheville's Risk Manager to Obtain Insurance Quotes for 1995-96:

The Committee recommended to postpone distribution of the RFP and approve Director of Administration to Contact City of Asheville's Risk Manager to review proposed RFP and prepare a cost estimate to retain his services as an insurance broker.

a.5. Annual Guardian Insurance Contract for Medical and Dental at Same Terms and Conditions of Current Contract with Employee Deductible Remaining Unchanged.

The Committee recommended approval of the Annual Contract with The Guardian Insurance Company for medical and dental coverage under the same terms and conditions with employee deductible remaining unchanged.

Regarding Item a.4.b, Mr. Post reported that the Committee recommended canceling the issuance of the RFP, and instruct the Director of Administration to coordinate a review of MSD's investments with local Public Finance Officer(s) and David Gray of Robinson-Humphrey. Mr. Selby stated that he would abstain from voting on this item, saying that his formal position with Robinson-Humphrey is as an Account Executive and he derives his income from those accounts he provides services to. He clarified to the Board that he is not in a management position with Robinson-Humphrey in any division or department or share with any account executives who participate in business with the MSD. Mr. Selby further stated that he talked with the District's Counsel and that he has not received compensation nor will he receive compensation as a result of his firm doing business with the MSD. He said that he would not participate or vote on any action that takes place concerning Robinson-Humphrey. Mr. Kelly moved that the Board excuse Mr. Selby from voting on this item. Mr. Sobol seconded the motion. Voice vote was unanimous in favor of the motion, with Mr. Selby abstaining.

Mr. Kelly moved that the Board adopt the recommendation of the Finance Committee with regard to Item a.4.b. Mr. Casper seconded the motion. Voice vote was unanimous in favor of the motion.

Mr. Mull reported that the following Consolidated Motion Items were presented to the Planning Committee February 2, 1995, but requested that Item d.II.9., (Report on Hills of Avery's Creek) be pulled for further consideration.

The Consolidated Motion Items not in question are as follows:

Planning Committee Items:

d.II.4 Consideration of Construction Bids for East Street Sewer Rehabilitation:

The Committee recommended that the Board award the bid of Buckeye Construction Company in the corrected amount of \$56,398.04 and that a contingency in the amount of 10% or \$5,639.00 be approved to cover unanticipated changes in the work.

d.II.5 Consideration for Authorization to Advertise for Bids:

- a. Sweeten Creek Rehabilitation - Priority 1 Interceptor - Engineer's Construction Cost Estimate: \$2,100,000.00.

b. Pisgah View Sewer Rehabilitation - Buncombe County - Engineer's Construction Cost Estimate: \$350,000.00.

The Committee recommended authorization to advertise for construction bids the Sweeten Creek and Pisgah View Sewer Rehabilitation Projects.

d.II.8 Consideration of Construction Contract Change Order - North Swannanoa Interceptor Sewer Project:

The Committee recommended that the Board authorize the addition of \$5,694.00 to the Construction Contract amount for the North Swannanoa Interceptor Sewer Project, Phase 1.

With no discussion, Mr. Joyner moved that the Board approve the Consolidated Motion Agenda. Ms. Wallace seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

Regarding Item d.II.9, Mr. Mull reported that the Planning Committee recommended the Board allow release of the restriction on issuing building permits and that the language in the restrictive covenants be worked out between the attorneys to satisfy the intent of the Agreement between the Hills of Avery's Creek and the Metropolitan Sewerage District.

Mr. Sneed reported that the February 7, 1995 letter from Mr. Clarke, Attorney for the District, suggesting language for Article XI, Section 2 of the Agreement, was reviewed by Mr. Doug Thigpen, who drew the restrictive covenants. Following review, Mr. Thigpen advised his client's that the language was fine and would be drafted verbatim, but to date, has not been done. Mr. Stevens reported that the condition on joint maintenance of roads is as follows: "The system of collector sewers and sewer related improvements together with all easements therefor as shown on the Plans and Specifications. It is understood and agreed that Declarant (The Hills of Avery's Creek) will retain the ownership of and the responsibility to operate, maintain, repair and replace if necessary the collector sewer system. In addition, Declarant will retain easements and rights of way for the purpose of connecting water, sewer, electric, telephone and other utility lines for the benefit of other property of Declarant." Mr. Stevens further reported there is a recommendation that any transfer from the Hills of Avery's Creek contain "specific language in any instrument of conveyance obligating purchasers of real property from the Hills of Avery's Creek to be bound by the terms and conditions of this Agreement."

Mr. Casper questioned the reason for the sale of a lot, which was contrary to the District's understanding with the Hills of Avery's Creek. Mr. Slosman reported that for financing purposes, the Hills of Avery's Creek sold one piece of property, (with the intent of conveying it back at a later date) to a relative because the bank would not give additional financing on the project. Mr. Sneed briefly explained why there was a need for additional funding and reported that following the August 17, 1994 Board meeting it wasn't clear that a material condition of the Board's approval was that the Hills of Avery's Creek could not sell units, and that the contract specifically talked about being able to sell on a life-lease concept. Mr. Sneed further reported the realtor attempted to sell on this concept for approximately three (3) months, and as a result, no sales were made. He stated that in November, (about the time the contract from the District was received) it was decided that another type of sales approach was needed, therefore, the realtor started to sell on a zero lot line basis. Mr. Sneed stated that MSD staff contacted them to inquire about the lot that was sold and after explaining the situation, permits were issued, fees were paid, an inspection was done and no problems were encountered until a letter was received from Mr. Stevens, January 24, 1995. He further stated that at no time did the Hills of Avery's Creek misrepresent the facts or its intentions to the District Board. Mr. Sneed then restated the Hills of Avery's Creek's plans in this matter.

Mr. Joyner asked when the District plans to formalize requirements for Out of District sewer construction. Mr. Post reported that the Blue Ribbon and Planning Committee's will meet separately this month, with a joint meeting to be scheduled in March to finalize the issue. With no further discussion, Mr. Slosman moved that the Board adopt the recommendation of the Planning Committee. Ms. Wallace seconded the motion. Voice vote was as follows: 9 Ayes; 1 Nay (Mr. Joyner)

REGULAR AGENDA

Planning Committee Items:

d.II.1 Report on Project Close-Out - Montreat CIP Phase 2:

Mr. Mull reported that the Engineer's estimated project cost was \$1,300,000.00; the low bid amount was \$999,876.00, with the final construction amount at \$904,425.54, (\$90,000.00 under the actual bid amount). He further reported that the project involved 17,507 linear feet of 8" sewer; 1,796 linear feet of 4" service lines and 132 manholes. Mr. Mull expressed the Board's appreciation to Ms. Letta Jean Taylor, Town of Montreat Board Member and Commissioner for Water and Streets, who provided assistance during design, right of way acquisition and services and, public relations during construction; Mr. Gary McGill and Mr. Danny Bridges of McGill Associates, P.A., who provided design services, survey plats, and construction contract administration; Mr. Dan Cook, MSD Project Inspector, who performed all aspects of inspection, (one of the first project where the District used it's own inspector) including public relations associated with construction; Mr. Jerry Wheeler, Sr. and Mr. Robert Wheeler of Wheeler Construction Company, who provided a well constructed project.

d.II.7 Consideration of Proposal - Sludge Management Study - McGill Associates, P.A.

Mr. Mull presented a proposal from McGill Associates, P.A. for a Sludge Management Study at a fee of \$57,635.00. In addition, he presented the projected Scope of Work and Schedule for completion of the Study, expected prior to the July meeting of the Board. He reported that although the proposal was not presented to the Planning Committee, the intention of the proposal was discussed and the Committee agreed to proceed with approval. Ms. Wallace questioned whether the recommendations will be made by McGill Associates, P.A. or the MSD-McGill Project Team, and if there is a disagreement, who will make the recommendations. Mr. Mull reported that recommendations will be made by the Project Team and that if there are any disagreements a minority report will be brought to the Board. A lengthy discussion followed regarding the difference between this contract and the Marketing contract; if they overlap each other in any way; the cost of the Marketing Contract; if RFP's were submitted for the Sludge Management Study and whether funds have been budgeted.

With regard to pilot testing for the dewatering alternative, Mr. McGill reported testing is scheduled for late April, early May and will be dependent upon the availability of pilot units. There being no further discussion, Mr. Selby moved that the Board approve the proposal of McGill Associates, P.A. in an amount not to exceed \$57,635.00. Mr. Joyner seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

d.II.10.b Consideration of Policy Concerning Claims:

Mr. Mull reported on a claim brought against the District in the amount of \$1,900.00 by Mr. John Cain who was involved in an accident resulting from a manhole cover being thrown up and hitting his car. In addition, He reported that the claim was referred to the District's insurance carrier who denied payment. Mr. Mull stated that following review of the claim, the Planning Committee recommended staff contact the insurance company and request that they re-open and re-examine the claim. Since that

time, the Travelers Insurance Company has paid the claim. Mr. Mull further stated that in general the District or other municipality would not be held liable if prior notice of the problem was not given. Mr. Stevens stated that for a municipality to be held liable for this type of accident, evidence must be shown that work had just been finished by the District or that a problem existed for a period of time and the municipalities made aware of it and the problem ignored. A brief discussion followed with regard to whether regular manhole security checks are done; if there are other manholes that might cause problems, and why the District carries liability insurance on manholes.

Right of Way Committee Items:

e.II.2.a. Sweeten Creek Interceptor - B&F Slosman:

Deferred to Closed Session.

e.II.3.a. Beaverdam Creek Interceptor - Maddox:

Deferred to Closed Session.

5. Report of Officers

None

6. Report of Committees:

a. Finance Committee - February 7, 1995 - Mr. Casper

Mr. Casper reported that all items were previously discussed under the Consolidated Motion. He then presented a copy of the minutes of the February 7, 1995 meeting for the Board's review and comments. Mr. Casper stated that the Six-Month Budget Report looked very favorable in terms of percentage of dollars spent, but that Mr. Fatland needs to work on an accrual basis as well as the capital budgeting process; as far as how many projects are complete and the amount of money spent. In addition, the revenue projections are on line. A brief discussion followed regarding the amount of interest revenue received; the decrease over last year in the amount of insurance premiums, and whether the District's employee insurance is a self-insured plan.

d. Planning Committee - February 2, 1995 - Mr. Slosman:

No further report.

e. Right of Way Committee - February 2, 1995 - Mr. Selby:

No further report.

7. Unfinished Business:

None

8. Old Business:

a. Status Report on Biosolids Distribution and Marketing Program:

Mr. McGill reported that based on the direction of the Board at its January meeting, they have proceeded with the study on the assumption that the N-Viro royalty fee and availability of product will not affect completion of the program. He further reported that on the short term, they have identified potential bulk quantity users, and for scheduling purposes, anticipate concluding the long-term Distribution and Marketing Program within the next six (6) weeks. Regarding the amount of tonnage currently

available, Mr. McGill stated that at present, 8,000 + tons of product has been processed and they are currently seeking options for distribution. He further stated that in addition to approval to distribute (450 tons) to Warren Wilson College, Mr. Crowell has agreed to take (600 tons); Biltmore Company (80 tons) and the N.C. Department of Transportation (D.O.T.) and Buncombe County Solid Waste have committed to or is considering demonstration projects. A lengthy discussion followed regarding the costs of hauling the product and whether potential users are willing to pay that cost; storage capacity; liming and fertilizer value of the product, and the difference in costs to produce the stabilized product per ton compared to the costs of fuel to run the incinerator. With no further discussion, Mr. Joyner moved that the Board authorize up to \$11,000.00 to haul and spread (600 tons) of product at the Crowell farm. Mr. Sobol seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

With regard to Item #1 of the Scope of Services, Ms. Wallace asked what product they were referring to with incineration. Mr. Bridges stated that the word "product" refers to the biosolids. Mr. Mull reported in addition to opening the facility to the public, a site will be established at the bottom of the hill for easier product access.

9. New Business:

a. Consideration of Establishing Additional Procedures for Review of Claims Against the District and Development of Notification to Rate Payers:

Mr. Fatland reported that staff is recommending that the Collections, Engineering and Administration Departments create a committee of three (3) to meet with the District's Insurance Carrier to review all claims against the District. The Committee will utilize the services of the Public Information Officer at the Asheville-Buncombe Water Authority to develop a public information brochure. Mr. Fatland further reported that the brochure, to be included in the water billing, will deal with backflow valves and a recommendation that MSD water and sewer users add insurance coverage on their homeowner's policy for potential sewer backups. Mr. Fatland stated that following development of the brochure, this marketing effort will be presented to other municipalities. Mr. Stevens presented the circumstances of a recent claim against the District regarding a sewer backup. Following a brief discussion with regard to whether funds for this effort will come out of the public relations budget, and if the brochure will encourage claims against the District, Mr. Slosman moved that the Board adopt the recommendation of staff. Mr. Sobol seconded the motion. Voice vote was unanimous in favor of the motion.

b. Land of Sky Regional Council's Annual Dinner 2/22/95:

Following a brief discussion as to the purpose of the meeting, Ms. Wallace moved that the Board authorize funds necessary for it's Members and Staff to attend the Land of Sky Regional Council's Annual Dinner. Mr. Selby seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

Regarding legislation for the inclusion of Avery's Creek Sanitary Water & Sewer District into the MSD District, Mr. Selby questioned whether the Board needs to take action on this matter in 1995. Mr. Stevens reported that he has drafted an amendment to the District's Bond Order, which is being reviewed by Bond Counsel.

Mr. Selby reported that in review of the six-month audit, the Finance Committee discussed loss of revenue as a result of trying to maintain a certain flow at the dam. On the recommendation of Congressman Taylor, he contacted the Department of Interior regarding jurisdiction over the dam. It was suggested that the District submit a draft summary of flow and report on the reason why the District is maintaining a habitat for fish coming from Tennessee that may or may not live there, when there might be a species of fish that's more conducive in native waters. Mr. Selby stated that Mr. Mull has condensed this information into an abbreviated summary with the intention of

meeting with Congressman Taylor when he returns to Asheville.

With regard to the Hills of Avery's Creek, Mr. Joyner stated that the Board should be more cognizant of this type of situation, in order that its decisions are consistent with District policy. Mr. Selby stated that the decision of the Planning Committee was based on the fact that the sewerage collection system in the Hills of Avery's Creek would be maintained by one owner, whether it was built to State standards, MSD standards or some other new standard. Mr. Selby further stated that the real issue is that the District does not have a policy to assist developers in its planning on the acceptance of private systems. Mr. Mull informed the Board that the District will be faced with two (2) other similar situations, both of whom are waiting for a decision by the Board.

At 3:47 p.m. Ms. Bryson moved that the Board move into a closed session to consider rights of way negotiations. Mr. Pace seconded the motion. Voice vote was unanimous in favor of the motion.

At 4:13 p.m. Ms. Wallace moved that the Board reconvene the regular meeting. Mr. Joyner seconded the motion. Voice vote was unanimous in favor of the motion.

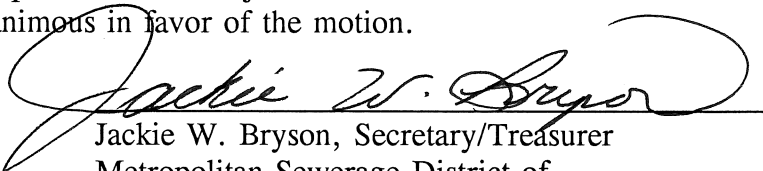
Mr. Joyner moved that the Board approve a settlement offer in the amount of \$2,500.00 to the property owner on the Beaverdam Creek Interceptor Project, and if the offer is not accepted, proceed in obtaining judgement. Mr. Slosman seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

Mr. Joyner requested that staff inform the Board when the contract was awarded to McGill Associates, P.A. to design the road to the pump station at Lake Julian.

10. Date of Next Regular Meeting, March 15, 1995

11. Adjournment:

At 4:35 p.m. Mr. Casper moved for adjournment. Mr. Slosman 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