

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT
APRIL 16, 1997

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., Wednesday, April 16, 1997. Chairman Post presided with the following members present: Bryson, Joyner, Holcombe, Kelly, Pace, Selby and Sobol. Those members absent were, Casper, Graham and Slosman.

Others present were: W.H. Mull, General Manager, John S. Stevens, General Counsel, Walter L. Currie, Attorney for MSD, Bill Morris, of Hendon Engineering Associates, Inc., Patti Beaver with CIBO, Tom Cathey with APAC Carolina, Inc. and Sondra Honeycutt, MSD.

2. Approval of the Minutes of the March 19, 1997 Meeting:

Mr. Holcombe moved that the Board approve the minutes of the March 19, 1997 meeting as presented. Mr. Pace seconded the motion. Voice vote was unanimous in favor of the motion.

3. Consideration of Service Agreement Between MSD, Cane Creek Water & Sewer District (CCWSD) and Stephen D. Rice, Owner and Developer of the Airport Technology Park (ATP):

Mr. Mull reported that the following concerns were expressed by the Planning Committee after review of the service agreement between the MSD, CCWSD and ATP: whether the system is built to MSD standards; if the billing will be done by the Asheville-Buncombe Water Authority instead of Henderson County, and whether the terms of the agreement will be applicable should any portion of the Airport Technology Park become part of the District. He further reported that following investigation of the above concerns, staff recommends approval of the agreement as presented.

Mr. Selby questioned page 5, paragraph 1, line 3 of the Agreement regarding disconnection from the CCWSD Sewerage System should another individual person or legal entity come to own the ATP System. He also questioned whether the owner of the ATP agreed to build his system to MSD standards, and if they are required to pay facility fees. With regard to page 6, item 6, Mr. Selby asked why the flow allocated to portions of the ATP will not be deducted from the 1.35 mgd allocation granted to CCWSD. Following a brief discussion regarding these concerns, Mr. Selby moved that the Board approve the recommendation of staff. Mr. Pace seconded the motion. Roll call vote was as follows: 8 Ayes; 0 Nays.

4. Consideration of Approval of Annual Paving Contract:

Mr. Mull reported that MSD's Annual Paving Contract was advertised twice, with APAC-Carolina, Inc. being the only bidder. He further reported that because APAC's proposal was over budget, staff met with Mr. Cathy, Estimator for APAC, to negotiate the unit price. As a result, staff recommends approval of the two (2) year contract as follows pending review by the MSD Attorney: 1996-97, \$73,829.00; 1997-98, \$295,317, and 1998-99, \$221,488. Mr. Currie reported that the General Statutes state that if the lowest bid does not come within available funds the bid can be negotiated.

Mr. Turner presented a chart showing the negotiated prices and reported that the MSD will save \$17,763.82 in budget year 1997-98 and \$3,358.07 in budget year 1998-99. Mr. Selby asked for a clarification on the price increase over

two years ago. Mr. Turner stated that this represents an 8% increase over 1996, but was negotiated down to reflect a 5% increase for 1997 and an additional 5% for 1998. A discussion followed regarding why other paving companies did not submit bids. Mr. Cathey reported that the reason other companies did not bid is because they must commit a patch crew 24-hours a day and have the ability to respond immediately. He stated that the price of material in a patch is minimal compared to the cost of labor and equipment. With no further discussion, Mr. Holcombe moved that the Board approve the recommendation of staff. Ms. Bryson seconded the motion. Roll call vote was as follows: 8 Ayes; 0 Nays.

5. Consideration of Informal Bid for Re-Roofing of the Four (4) Buildings at the WWTP:

Mr. Mull reported that the following bids were received April 4, 1997 for re-roofing of four (4) buildings at the WWTP, which is funded through the General Fund-WWTP Structural Improvements: Service One, with a total base bid of \$49,291.00; Freedom Contracting Group, Inc., with a total base bid of \$160,318.00; Stroup Sheet Metal Works, with a total base bid of \$46,818.00, and Bonitz Company, with a total base bid of \$35,501.00. Mr. Mull further reported that the low bid of Bonitz Company was not in conformance with the specifications, therefore, it is recommended that the contract be awarded to Stroup Sheet Metal Works for their responsive bid of \$46,818.00. A discussion followed regarding the difference in the price of the bids; whether a comparison was made on the durability of PVC single-ply versus rubber (EDPM) roofing material; metal versus stainless or copper flashing; whether the bids were reviewed by the MSD Attorney, and why further discussion on these bids was not handled at the Committee level before it was presented to the Board. With no further discussion, this issue was referred back to staff for further investigation.

6. Acceptance of Developer Constructed Sewer System for Biltmore Commons, Phase II and Phase III (a/k/a Phase IV):

Mr. Mull presented a sketch showing the location of sewers in Phase II, III and IV of the Biltmore Commons development. He reported that staff recommends acceptance of the developer constructed sewer system with the following contingencies: 1) That legal counsel draft a letter to Ms. Crowell stating for the record, MSD's position related to sewer taps agreed to in the easement document between Crowell and Nappier and Gunnells Construction. 2) That completion of adjustments as required by MSD inspections be made, which cannot be completed until all site work is done, but can be inspected during the warranty period according to R.L. Haynes, MSD Project Inspector. With no discussion, Mr. Holcombe moved that the Board approve the recommendation of staff. Mr. Pace seconded the motion. Roll call vote was as follows: 8 Ayes; 0 Nays.

7. Report on Meeting with City of Asheville Regarding MSD Legislation:

Mr. Mull reported that a meeting was held April 8, 1997 between himself, MSD Attorney Billy Clarke, MSD Vice Chairman Benson Slosman, City Manager James Westbrook, Jr., Mayor Russ Martin, Vice Mayor Barbara Field, Council Member Charles Worley, Assistant City Manager Doug Spell, and Budget Director Bob Wurst to discuss the proposed legislation requested by the MSD, along with other concerns. He presented a letter from Mr. Westbrook, addressing three (3) concerns by Council Members as a result of the meeting. He further reported that staff will prepare a response to Mr. Westbrook's letter to be discussed at a City Council work session next month. The concerns noted are as follows: 1) A listing

of 1,700 accounts within the City limits that do not appear to have sewer service. 2) Exhibit "B" of the Consolidation Agreement listing projects that were to be completed by Fiscal Year 1994-1995. 3) Analysis of the financial status of MSD. A discussion followed regarding the MSD's obligation, if any, to provide sewer service within the City, and whether this issue is addressed in the Consolidation Agreement. Mr. Stevens reported there was an obligation set forth in Schedule "D" of the Consolidation Agreement that provides for certain projects within the various municipalities and the County over a five (5) year period, from July 2, 1990. However, after the provision in the Agreement for Schedule "D", it states that, "The District shall have no further obligation to construct extensions, but City and other political subdivisions comprising the District may ask the District to construct or finance the cost of additional extensions. The decision as to whether or not the District is to construct or provide financing shall be in the sole discretion of the District."

Regarding Exhibit "B", Mr. Mull reported that because of inadequate information on projects within the Sewer Master Plan, they have not been done. However, all but one of the Street and Sidewalk Projects are complete at costs well above what was anticipated. A lengthy discussion followed regarding the analysis of the financial status of MSD, prepared by Mr. Wurst. Mr. Joyner suggested that in the future, staff refrain from using the term "fund balance", since the funds referred to are allocated to projects. Mr. Selby suggested that the Board have an opportunity to digest the concerns listed in Mr. Westbrook's letter; instruct staff to review the 1,700 customer account list; look at the Consolidation Agreements then comprise a resolution that identifies the reality of those concerns. Mr. Mull stated that since the MSD called the meeting of April 8, that he be given an opportunity to respond to the concerns and meet with the MSD's three (3) City appointees for their opinion. Mr. Stevens stated that in a conversation with Senator Ledbetter, he was told that the bill was on the Senator's desk and will be introduced in the Senate. Mr. Selby questioned whether the bill has been introduced to the House of Representatives. Mr. Stevens stated that the bill was sent to Representative Ives, but the House restricts the number of bills that can be introduced each session and, therefore, Senator Ledbetter was introducing both the MSD bill and the earlier one dealing with financing alternatives.

8. Committee Report:

CIP Committee

Mr. Selby reported that the annual meeting of the Capital Improvement Plan Committee was held April 2, 1997 with representatives from the various municipalities. He further reported that the following two 2) recommendations were passed from the Committee to the District Board:

- a. Ms. Pamela Stynes of Montreat made a motion to approve the CIP schedule as it pertains to Consolidation Projects. Mr. Pace seconded the motion, with members of the Committee voting unanimously in favor of the motion.
- b. Mr. Jon Creighton of Buncombe County made a motion to recommend continuing with the current funding strategy of Revenue Bonds and "Pay As You Go" financing for the CIP program, along with small, incremental rate increases. Mr. Pace seconded the motion, with members of the Committee voting unanimously in favor of the motion.

In other business, Mr. Selby stated that a discussion was held regarding the possible redesign of a portion of the North Swannanoa Phase II line, to go under

the river and pick up a section of homes located in Botany Woods. Staff will investigate this issue and bring a recommendation back to the Board. As Chairman, Mr. Selby expressed his concern that the Committee try to be realistic with the schedule of projects. A discussion followed regarding the \$1.6 million in the CIP Budget last year for the expansion of the Administration facilities and a reference made regarding consideration of a \$4.6 million maintenance facility, which was removed from further discussion by the Committee.

9. Unfinished Business:

Mr. Joyner questioned whether a smoking area has been provided for employees. Mr. Mull reported that an area will be made available.

As a follow-up regarding the subject of "yield burning", Mr. Stevens presented a memorandum he drafted to the Board and an opinion letter from an expert in New England who is of the opinion that the MSD did suffer "yield burning". He reported that this opinion runs to another law firm in Minneapolis who would like for the MSD to join it's class action law suit. He further reported that he is awaiting an opinion from another expert, who has done arbitrage work for the MSD. In addition, he talked on several occasions with the District's Bond Counsel Tax lawyer, who feels there was no yield burning. He stated that the law suit would be against Lehman Brothers, who did a float forward contract, and Merrill Lynch, who furnished the escrow securities. He further stated that the opinion says that the MSD paid \$32,000 more than it should have for the escrow securities, and that Lehman Brothers paid the MSD approximately \$85,000 less than it should have for the float forward contract. A discussion followed regarding bids for the bonds. Mr. Stevens requested that the Board review the information and contact him with any questions.

A brief discussion followed with regard to when staff will address the issue of the value of a new user on the system. Mr. Mull reported that this is scheduled for 2:00 on April 23, immediately preceding the Finance Committee meeting as outlined in the April 8 informational memo to the Board.

10. New Business:

a. Landfill Gas

Mr. Currie reported that Asheville Landfill Gas, (LLC) is requesting that the MSD renegotiate the Contract approved by the Board at its December, 1996 meeting. He further reported that because Buncombe County only has eighteen months, after closing the Landfill, to dispose of the gas, it signed a contract with the LLC, by which the County gets paid, rather than having to pay for the remediation. In turn, the LLC signed a contract with the MSD to purchase the gas in order to generate electricity. Mr. Currie stated that because of a change in timing of a Clinton Administration recommendation, to do away with the Alternative Energy Tax Credit, the anticipated Tax Credit Partner has backed out of the contract with the MSD and the LLC. As a result, he does not recommend that the MSD sign a new contract, since it puts itself at risk to lose revenue. Mr. Currie further stated that he and Mr. Mull met with Mr. McElrath, Buncombe County Manager and Mr. Bob Hunter of Buncombe County Solid Waste, to discuss the new contract and ownership of the transmission line from the Landfill to the MSD. In addition, because there is a limit on the amount of gas the MSD can generate, CP&L has made an offer to handle all of the MSD's energy needs.

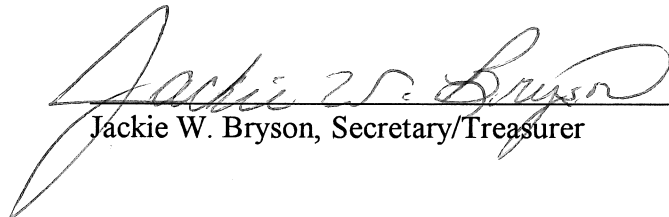
A lengthy discussion followed regarding the difference in pricing and liability of the current contract compared to the new proposed contract; CP&L's offer, and whether the MSD should proceed to negotiate a new contract with the LLC.

Regarding the price difference between the existing and new contract, Mr. Morris reported that if the MSD has the same guarantees in the existing contract, (quality of gas, quantity and continuity of service) with no less than 10% downtime, changing the graduated three-step price to a one price for all will not affect the overall benefits to the MSD using the existing generators. He further reported that if the MSD adds the 450kw under the limitation of the Hydro, the cost will remain at \$770,000 over a ten-year period. However, the LLC does not want to give the MSD a longer time period to determine how its systems will operate; how the quality of gas can be maintained and its uses.

Mr. Mull reported that a meeting is scheduled with CP&L, Mr. Currie and Mr. Woodruff of Hendon Engineering Associates, Inc. to discuss these issues. Following a discussion regarding MSD's responsibility to Buncombe County, tax credits, the cost of supplemental fuel, and the need to keep track of legal and engineering fees during renegotiations, Mr. Selby moved that MSD staff, the consulting engineer and attorney continue to work with Asheville Landfill Gas, LLC and Buncombe County to resolve whether the MSD will participate in the cost effective use of methane gas from the landfill, and continue to negotiate with CP&L. Mr. Holcombe seconded the motion. Roll call vote was as follows: 8 Ayes; 0 Nays.

11. Adjournment:

With no further business, Mr. Holcombe moved for adjournment at 3:55 p.m. Mr. Pace seconded the motion. Voice vote was unanimous in favor of the motion.


Jackie W. Bryson, Secretary/Treasurer