

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT
JULY 15, 1998

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, July 15, 1998. Chairman Casper presided with the following members present: Aceto, Field, Graham, Joyner, Kelly, Pace, Selby, Sobol and Spell. Ms. Bryson was absent.

Others presented were: W. H. Mull, General Manager, John S. Stevens, General Counsel, Will Abberger with The Trust for Public Land, Gary McGill of McGill Associates, Angel Banks, Jim Fatland, Sondra Honeycutt, MSD.

2. Approval of Minutes of June 10, 1998 Meeting:

Mr. Selby requested that the Minutes of the Public Hearing, Page 1, Paragraph 2, state that "Mr. Selby voiced concern about the lack of growth in revenue". With no further additions or corrections, the minutes were approved by a show of hands.

3. Election of Officers:

Chairman

Mr. Casper opened the floor for nominations for Chairman. He stated that because his term will expire within the coming months, he declines any nominations on his behalf as Chairman. He nominated Vice-Chairman Kelly as Chairman. Mr. Joyner seconded the motion. Mr. Selby asked whether the election of officers must take place in July. Mr. Stevens stated that the By-laws say that "at the Annual Organizational Meeting, as it's first order of business, the Board shall elect a Chairman and Vice-Chairman from the members of the Board". In addition, the "Annual Organization Meeting is the first regularly scheduled meeting of the Board following the end of each fiscal year of the District".

Mr. Sobol asked Counsel to clarify whether a member is qualified to serve if he or she does not reside in the District from which they were appointed. Mr. Stevens stated that in his opinion a member can continue to serve until one of the following occurs: a member resigns; a replacement is made by the appointing authority, or legal action is taken to determine whether a member is qualified to serve. He further stated that the Statute states "that any person who shall by proper authority be admitted and sworn into office (which Mr. Casper was) shall be held deemed and taken by force of such admission to be rightfully in such office until by judicial sentence upon a proper proceeding he shall be ousted therefrom or his admission in due course of law declared void." He reported that following research of similar cases, and because there has been no action taken construing the MSD Act, in his opinion, Mr. Casper is entitled to serve and to vote. A brief discussion followed.

Mr. Selby announced his desire to serve as Chairman. Mr. Sobol nominated Mr. Selby. Ms. Field seconded the motion. Mr. Aceto moved that the nominations for Chairman be closed. Mr. Pace seconded the motion, which carried. Mr. Aceto requested that the nominees express an opinion on their vision for the MSD. Mr. Kelly stated that he had no agenda except to follow the District's Mission Statement to complete what it has set out to do; to give the tax payers the most for their money, to be fair, and to support the General Manager in

his decisions. Mr. Selby stated that as a member of the Board he runs the risk of getting too involved and can be accused of being very thorough in looking at issues pertinent to the Board from both sides, especially the weaker side. He further stated that as an active member of the Board and Chairman of several committees, it's with a broad vision that he aspires to be Chairman. Also, if elected, he will allow the Board to consider and vote on the issues and not direct the outcome of the vote from a position as Chairman. Following a brief discussion, Mr. Selby was elected Chairman by a show of hands. Mr. Selby presided over the remainder of the meeting.

Vice Chairman

Mr. Selby called for nominations for Vice-Chairman. Mr. Pace nominated Mr. Kelly. Mr. Kelly declined the nomination. Ms. Graham nominated Mr. Sobol. Mr. Pace seconded the motion. With no other nominations, Mr. Spell moved that the nominations be closed and Mr. Sobol accepted by acclamation. Mr. Pace seconded the motion. Voice vote was unanimous in favor of the motion.

Appointment of Secretary/Treasurer

Mr. Selby appointed Ms. Bryson to serve as Secretary/Treasurer. Mr. Aceto moved that the Board ratify the appointment. Mr. Pace seconded the motion. Voice vote was unanimous in favor of the motion.

4. Asheville Greenway Presentation:

Mr. Mull presented a draft copy of the City of Asheville's Greenways Master Plan completed by a Consultant Team of two nationally recognized greenway planners (The Trust for Public Land and Greenways Incorporated). Mr. Will Abberger with The Trust for Public Land reported that in October their firm was invited by the City of Asheville to consider the potential for city-wide linear parks to help tie the community together. He further reported that the master plan process involved a great amount of public participation, which resulted in the formation of a Citizens Advisory Committee with representatives from local government, other public agencies and the business and environmental community. He presented maps of the proposed primary and neighborhood greenway corridors and stated that they are currently working on the acquisition of a greenway corridor along Reed Creek and Broadway. He further stated completion of the final draft is expected in August, with a presentation to City Council in September. In conclusion, Mr. Abberger stated that there is a strong potential for partnerships between the MSD, the City, other local governments, and private developers to develop corridors that will achieve multiple objectives for utilities, public recreation, alternative transportation and the conservation of natural resources. He further stated they are recommending a non-regulatory approach to greenway implementation and that the corridors be acquired only on a voluntary basis.

Several questions were asked regarding the number of greenways located on MSD rights of way; whether the District owns the majority of the rights of way or has an easement; liability issue, and the length of the Haw Creek greenway. Regarding the issue of liability, Mr. Abberger stated that if the MSD and the City shared a right of way along the river for a potential greenway, the City would assume liability and that there is also some protection under the North Carolina Recreational Use Statute. Mr. Sobol requested that additional information be

provided to the Board on this issue. With regard to easements, Mr. Abberger stated that where there is existing ownership by MSD and where the City would choose to establish a greenway corridor, it would be necessary to negotiate with property owners for public access.

Ms. Field stated that Greenways Incorporated has indicated that having greenways adjacent to residential developments greatly increases property values, therefore, the City hopes that this will have an effect on neighborhoods that are not as affluent as others. She further stated that this is a long-term plan and that one of the biggest concerns is how it will be managed. A brief discussion followed regarding public safety along greenways.

5. Consideration of Compensation Chart - Johnson Boulevard:

Mr. Mull reported that the Compensation Budget for Johnson Boulevard is \$43,200.00, which was prepared using the standard formula and adding the General Manager's contingency. He further reported that the Right of Way Committee recommends acceptance of the Compensation Budget as presented. With no discussion, Ms. Graham moved that the Board approve the recommendation of the Committee. Mr. Pace seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

6. Consideration of Out of Court Settlement - Riceville Road MSR Project:

Mr. Mull reported that the Right of Way Committee recommends acceptance of an out of court settlement on the Riceville Road MSR Project for \$10,000.00. At the request of Mr. Selby, Mr. Mull presented background information leading up to the lawsuit naming the District as a Third Party Defendant. He further reported that as a result of sewer overflows and unsuccessful attempts at negotiations and mediation, the District proceeded with condemnation; an appraisal was obtained reflecting damages in the amount of \$2,500.00, and on February 17, 1997, access to the property was secured. He stated that construction of the replacement line was completed in the spring, however, a right of way agreement across the property could not be reached, therefore, the owner's attorney offered to settle out of court releasing the District from all claims. Mr. Sobol stated he feels the settlement offer is reasonable considering that the property owner is not able to develop four (4) mobile home spaces over the District's permanent easement. Ms. Graham moved that the Board approve the recommendation of the Right of Way Committee. Mr. Pace seconded the motion. Following a brief discussion regarding the District's responsibility in the lawsuit, roll call vote was as follows: 10 Ayes; 0 Nays.

Mr. Mull stated there is a possibility this issue will resurface since the sewerline involved is old and overflows above the owner's property. He further stated that a chronology report is forthcoming regarding the District's attempts to maintain the line and consideration will be given to moving rehabilitation of the line up on the list of priority projects.

With regard to overflows, Mr. Mull reported that the District plans to replace the bar screens at the Treatment Plant, which will interfere with the bypass. As a result, \$50,000 to \$100,000 will need to be spent to reinforce the 20- foot deep wall to install the new screens and still have the by-pass operable. He further reported that the State has recommended that maximum consideration be given to permanently eliminating the District's by-pass capability, which will be reviewed upon renewal of the NPDES permit. He stated that in his opinion,

the by-pass is important in alleviating manhole overflows upstream and that Mr. McDevitt of the North Carolina Department of Environmental Health and Natural Resources plans to send representatives from the State to discuss this issue. Mr. Mull further stated that if the State closes the by-pass, property owners upstream would need to be notified regarding the possibility of overflows.

Ms. Field reported that she recently talked to Mr. McDevitt and he stated that sewerage treatment facilities that had long-range plans to address overflows, and were implementing them, would not be charged fines. She further reported that she asked Mr. McDevitt if he would be willing to address the Board on this issue and suggested that when a meeting be scheduled, that it be held on a Friday afternoon.

7. Consideration of Sole Source Purchase Request - The Foxboro Company:

Mr. Mull reported that staff recommends that the Board award the sole source purchase of four (4) computer monitors and associated hardware to The Foxboro Company at a total cost of \$23,912.60. He further reported that the District's MIS Analyst has reviewed the price quotation and concurs with the intended purchase plan. In addition, Mr. Currie, Attorney for the District was contacted and has given his approval. With no further discussion, Mr. Pace moved that the Board approve the recommendation of staff. Ms. Graham seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

8. Consideration of Temporary Modular Office Units:

Mr. Mull reported that the Construction Committee recommends leasing the modular office units for a period of 20 months at an estimated cost of \$66,960.00, but including an option for negotiating purchase of the units if needed at the end of the lease period. Mr. Pace stated that since this was reviewed extensively by the Committee, he feels the Board should approve the recommendation. Mr. Sobol asked what the price would be if the District renegotiated for a lease/purchase. Mr. Mull stated that the price would increase by \$10,000.00. Mr. Casper asked who will occupy the units. Mr. Mull stated that when the new building at the Burlington site is complete, equipment from System Services will be moved in and office personnel will use the modular units until completion of the CP&L building. Ms. Graham moved that the Board approve the recommendation of the Construction Committee. Mr. Spell seconded the motion. Roll call vote was as follows: 9 Ayes; 1 Nay (Mr. Casper).

9. Report on Historic Designation for CP&L Building:

Mr. Mull reported that the Historic Designation of the CP&L building was discussed in detail by the Construction Committee following concerns expressed by the Architects that the designation might require additional funding for preferred window specifications. He further reported that the Construction Committee recommends staying with the design of the building as it is now. Mr. Aceto asked why the District decided to apply for this designation. Mr. Pace stated that the initial reason for the designation was to receive private financing, which the District does not plan to do, therefore, the only other advantage is public relations. Ms. Field stated that other benefits of an historic designation is that road widening cannot occur on historic property; tax credits and grant funds. Mr. Aceto asked if there are any negative aspects of an historic designation. Ms. Field stated that an historic building can not be demolished without giving a sixty-(60) day notice. She further stated that since approval on Phase 1 of the designation process has been received, she recommends that the District leave it

as is. As requested by Mr. Mull, Ms. Field explained the difference between a national and local historic designation.

10. Committee Reports:

Right of Way Committee

No further report

Construction Committee

No further report

11. Unfinished Business:

None.

12. Old Business:

None

13. New Business:

a. Consideration of Professional Engineering Services - Hydro Electric Facility Trash Rake Design & Construction Administration (CIP Project):

Mr. Mull reported that as a result of small debris accumulation in the bar screen structure, there are losses in available power to the WWTP, as well as losses in revenue to the MSD for retail power sales back to CP&L. He further reported that following completion of a recent energy audit performed by ARCADIS Geraghty & Miller, several recommendations were made, one of which is the installation of a hydro facility trash rake at an estimated CIP budget cost of \$300,000. He stated that staff recommends award of the professional engineering services contract to ARCADIS Geraghty & Miller for design and construction administration services for a total lump sum fee of \$25,900.00 (less than 10% of the overall project cost). A discussion followed regarding the amount of revenue loss; whether the original trash rakes were replaced, and maintenance of the bar screens. Mr. Sobol requested that before the Board votes on this issue that staff provide additional information on the amount of revenue loss and maintenance cost. Mr. Mull reported that in the ARCADIS study, which was based on kilowatt-hour assumptions, the District will save \$56,300 a year on power loss and will realize some savings in the cost of maintaining the screens. With no further discussion, Mr. Casper moved that the Board approve the recommendation of staff. Mr. Pace seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

b. Status of Western North Carolina River Initiative Funding Request:

Mr. Selby reported that the District formally solicited Congressman Taylor, as a part of the Western North Carolina River Initiative (WNCRI), to consider some needs that are unique to the MSD. As a result, Congressman Taylor felt there was a significant opportunity to work this into an appropriation bill that would provide some type of funding. He further reported that in a recent conversation with Congressman Taylor's office, he

was told that any of the appropriation bills that have passed to date do not include funds for MSD or the WNCRI, and that a timely announcement will be made when there is.

c. City of Asheville Population Requirements for Appointments to the District Board:

Mr. Kelly reported that legislation governing the MSD Board provides that Buncombe County has three (3) appointees and each political subdivision one (1). In addition, if any political subdivision i.e., the City of Asheville has more than a combined population of all the municipalities plus any unincorporated areas of the District, it's entitled to three (3) appointees. He further reported that in looking at an up-to-date District map, he questioned whether or not Asheville's population is such that it is entitled to three (3) appointees to the Board. He stated that Mr. Clarke, Attorney for the District stated that there might be some question as to whether Asheville met the population requirement, which is based on the most recent census, i.e. the 1990 census. Therefore, he moved that the Board direct Mr. Stevens to check into the issue and give a report at the next meeting as to whether Asheville meets the population requirement, thereby being eligible for three (3) appointees, or should in fact only have one (1). Mr. Pace seconded the motion.

Ms. Field stated that if Asheville is over represented by at least one (1) appointee, then all of the votes made during the last eight (8) years need to be looked at. Mr. Casper stated that first the District must determine whether Asheville is over represented by interpreting the census data in context with the Statute. He further stated that the question of votes is a separate issue. A discussion followed regarding the census and how long after completion is the information available. Mr. Stevens explained that the State Legislature received the 1990 census in the 1991 calendar year. With no further discussion, voice vote was unanimous in favor of the motion.

Mr. Pace stated that in his opinion, the Board is attempting to correct mistakes of the past, and that by no means, does it rubber stamp any issue, but carefully deliberates all decisions with the best interest of the rate payer in mind.

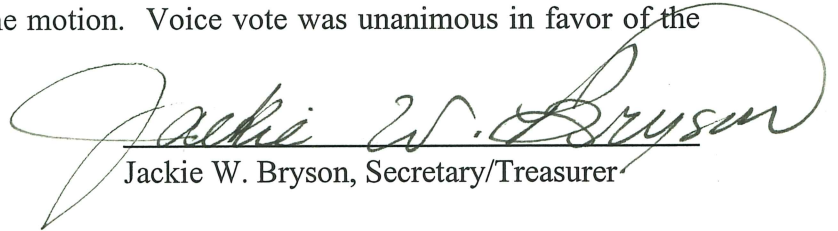
Ms. Field asked for further clarification on appointment requirements of the Statute. Mr. Stevens reported that the Statute states "If any city or town within the District shall have a population, as determined from the latest decennial census, greater than that of all other political subdivisions (other than counties) and unincorporated areas within the district, the governing body of any such city or town shall appoint three (3) members." As an example, Mr. Stevens stated that the Swannanoa area has a lot of property that is not in any town, but is in the District.

In other business, Mr. Mull presented a draft copy of the newspaper insert that will run in the Asheville Citizen Times July 28, 1998. In addition he presented a trophy won by the District during RiverFest for the "Anything that Floats" contest. He stated that the prize money of \$500.00 will be used to develop a greenway trail in the County Park downstream below the Treatment Plant. He expressed his appreciation to Peter Weed for designing the craft.

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14. Adjournment:

With no further business, Ms. Graham moved for adjournment at 3:50 p.m. Mr. Pace seconded the motion. Voice vote was unanimous in favor of the motion.


Jackie W. Bryson, Secretary/Treasurer