

**HAYDEN LAKE RECREATIONAL WATER AND SEWER DISTRICT
MINUTES OF SPECIAL MEETING
MARCH 23, 2011
LID6**

CALL TO ORDER

People were in attendance at 5:00 p.m. and discussion began. Board members present at this meeting were Dave Weinstein, Todd Walker, Carole Stringer and Tom DePew. Larry Comer, Attorney Mike Schmidt, Superintendent Dustin Jacobson and Ken Thompson were also present as representatives of the Board. Administrator Lynn Hagman recorded the minutes of the meeting.

Visitors present were Attorney Janet Robnett, Sandy Young, Del Kerr, Rick Gunther, and Steve Meyer.

Chairman Sewell introduced the new Board members to the LID6 consortium and then asked Larry Comer to update the group on the information he sent out to the Board on the construction costs for LID6 and how they were bid and how they came out in the end.

Larry Comer stated the LID roll report came out in January, 2010. The construction costs were estimated by the LID6 consortium. All changes that were made during the construction were approved by the Board and discussed with the developers.

Rick Gunther addressed the Board with a request to re-evaluate the late comer agreement. The cost of construction was due to larger pipe and other needed changes and Mr. Gunther felt that the consortium was not being told what was going on with the overages. Mr. Gunther feels the fair thing was to get reimbursed and when the late comer agreement was previously presented to the Board, the consortium felt that they were in agreement with it. Mr. Gunther stated that the consortium has had no control over the finances. The consortium would like to resolve this issue.

Larry Comer corrected Mr. Gunther regarding a meeting in May, 2009 that was held with Mr. Gunther present. Mr. Smetana from Frame and Smetana Engineering was also present and there was an update on the construction costs discussed.

Attorney Robnett discussed the original petition of the late comer agreement and stated at the time of the LID construction costs were estimated to come in under the ER cost of \$9,500. Attorney Robnett reviewed what had happened with the cost overage and how it was handled by their engineer, Mr. Smetana. Attorney Robnett stated that the installation can handle far more than the 280 ER's they purchased and the District has gained a large benefit. The consortium is asking for recognition of this benefit and wants participation by the Sewer District in the project costs.

Mr. Del Kerr informed the Board that he had paid for half of his ER's before the bonds were sold and paid the rest of his ER's before the due date. Mr. Kerr stated that the parcels were figured at one acre per ER. Board member Walker questioned if the \$500,000 the District forgave was for upsizing the pipe. Attorney Robnett stated that the oversizing of the pipe is not the issue. The ER costs have gone up for the consortium and the District will get the benefit of it.

Larry Comer explained that the \$500,000 was a reduction in the cap fee to the consortium. Steve Meyer voiced his concern with the construction overage and felt there was no involvement with the consortium on the decision making or management of the project and did not remember the 1% surcharge on the interest rate being discussed. Mr. Meyer suggested the District consider some relief and possibly adjusting the 1% surcharge. Mr. Ken Thompson explained that the 1% is administration costs for administering the LID. Mr. Meyer again suggested reconstructing the late comer agreement and re-adjusting the 1% administration fee.

Larry Comer added that Mike Sperle gave the cost estimate through Frame and Smetana. Welch Comer did no preliminary estimates. When the bids came in, SI Construction was not the low bidder. Frame and Smetana designed the work. If Welch Comer and the Sewer District would have done extensive preliminary engineering some of the costs could have been predicted better, however, this is not what the consortium wanted, time was of the essence.

Attorney Mike Schmidt stated that the lift station was designed by Welch Comer and discussed extensively at several meetings. Coming in on the Lakes Highway District project made cost and delay in preliminary engineering. Change orders were all approved by the Sewer District Board. The original construction estimate was 1.8 million and the original cost came to approximately 2.0 million. Attorney Schmidt stated that the bond costs had also doubled.

Chairman Sewell questioned if there was a mechanism to do the reimbursement. Attorney Robinett asked if the District is open to the concept to future fees to spread out the cost. Board member Weinstein reminded the Board that he had previously stated that he would consider the late comer agreement, however, the market was much different then. Board member Weinstein recalls the SI Construction estimate and the discussions held and stated that the District was using the consortium's numbers. The recovery of funds will be taken under submission.

Attorney Schmidt stated that previously the District was willing to discuss the late comer agreement and several questions evolved. The LID document says the District may consider a late comer agreement at a later date. It was determined in 2006 that the District would not do a late comer agreement according to Attorney Schmidt.

There was a brief discussion from the consortium of taking user fees and paying the consortium and Attorney Schmidt informed the consortium that this is not eligible for a late comer agreement. Attorney Schmidt's opinion is that a late comer agreement is a matter of contract law with stipulations and limitations. Attorney Schmidt stated that the project was financed and paid for by District funds and then explained how the assessments occurred. The LID was voluntary.

Steve Meyer questioned if the LID is not paid, would the recourse be to the District or would it be to the developer. Attorney Schmidt informed Mr. Meyer that the obligation runs with the property. Ken Thompson stated that the District would suffer rating issues if bonds are not paid. Attorney Schmidt continued to explain how the LID was formed and discussed the contract with the consortium on the late comer agreement. Attorney Schmidt explained that the District never took the position that they were alright with a late comer agreement. There is no obligation of debt and you can't take fees to pay to someone where there is not a legal obligation. The District could look at a discount of the 1% administration fee.

Board member Weinstein stated that he is willing to discuss the late comer agreement under the parameters of the law.

Attorney Robnett agreed that this is a contract issue and using the Sewer District was a financing mechanism. The burden is still on the developers and the District is able to sell hook ups on a line that the developers installed.

Steve Meyer questioned the \$1,400 credit for each ER fee when the project is done and the District takes it over. Larry Comer explained the fee for the ER's and how much of it that goes to HARSB. The \$1,400 credit was given and the net is what the District would have kept. The District forgave \$500,000 instead. Mr. Kerr questioned why John Beutler's cost was different. Larry Comer explained that he had already paid for his ER's and this added another \$70,650 to the \$500,000 credit to the project.

Steve Meyer asked what the total number was that was financed in the LID bond. Larry Comer stated that he has the report that shows all of the costs and the total amount financed and will send this to each member that wants it. Mr. Comer stated that an LID summary report and a statement from D.A. Davidson were emailed to each member of the consortium.

Mr. Kerr asked the Board if the District ever bought back an ER and at what price. Attorney Schmidt explained how the District would buy back an ER and stated that this would be at the price the owner paid for it less \$150.00 administration fee.

Attorney Schmidt voiced his concern with not including all properties in the area and having a vote on the LID. Attorney Robnett feels a fee is alright and is not "back dooring" the LID. Attorney Schmidt has a problem with a surcharge and Mrs. Robnett explained that they are not placing a lien on the property. Attorney Schmidt stated that the District can consider a contract or an adjustment to the 1% administration fee. Attorney Schmidt reminded the Board that this LID was voluntary.

Dell Kerr informed the Board that it is possible that he will need 100 more ER's in the future and this will be a large asset to the District. Steve Meyer again asked for some type of consideration and stated that there is a benefit that will come later.

Sandy Young, representing Falls at Hayden development, asked how North Kootenai Water District entered into a late comer agreement. Attorney Schmidt explained that it is a contract. Larry Comer explained the difference between this LID and North Kootenai Water District. Attorney Schmidt explained that the assessment is with the land and excess funds go to the land.

Board member Stringer stated that she would like to evaluate all of the information that has been given. Board member Weinstein asked if this would open up legal issues from the people who would pay the late fee. Attorney Schmidt stated that this would be the challenge.

Attorney Robnett stated analysis of absence of the LID, other people hooking to offsite improvements is where the late comer agreement would come in. Mrs. Robnett disagrees with Attorney Schmidt on the agreement. Board member Weinstein is concerned with the late comers paying more and creating liability to the District.

Steve Meyer stated that they don't expect all of the money back, possibly \$1,000 per connection. Mr. Meyer asked the Board to consider this with a contracted arrangement plus the 1% administration fee adjustment. Mr. Meyer asked Chairman Sewell to assign the District counsel to work the Attorney Robnett on an agreement.

Dustin Jacobson discussed how the property owners would get their share of the late comer agreement fee and Mr. Meyer explained that it would be the developer's responsibility.

Del Kerr asked what the closing date was for the sale of the bonds. Mr. Kerr questioned why the interest on his payoff was calculated on the principal and not the balance. Ken Thompson will look into this.

Chairman Sewell announced that the Board will take this information under advisement and discuss it further at a future meeting.

At 7:30 p.m. Chairman Sewell adjourned the meeting.

Dave Weinstein, SECRETARY

Lynn M. Hagman, ADMINISTRATOR