

HAYDEN LAKE RECREATIONAL WATER AND SEWER DISTRICT

MINUTES OF REGULAR MEETING

May 26, 2010

CALL TO ORDER:

The first regular May meeting of the Hayden Lake Recreational Water and Sewer District ("District") was called to order at 5 p.m. by Chairman Gerry House. Also in attendance were Dave Weinstein, Tom DePew, Ken Sewell, and Gerry House. Larry Comer, Ken Thompson, and Michael Schmidt were also present as representatives of the Board. District Superintendent Dustin Jacobson and Visitor Marshall Mend were also present.

AGENDA APPROVAL:

The Board first considered the Agenda for the May 26, 2010 meeting. Attorney Schmidt recommended that a Motion be made to amend the Agenda at the outset of the meeting. He recommended that a Motion to Amend the Agenda be made to add executive session pursuant to I.C. § 67-2345(e)-(f) (EPA and State of Washington discharge issues), as well as I.C. § 67-2345(f)-(j) (Assisted Living Facilities threatened litigation). The Good Faith reason this could not be posted prior to the outset of the meeting was the correspondence from Chuck Dean, attorney for the Assisted Living facilities, was not received and reviewed by counsel until it was too late to have Administrator Lynn Hagman (who is out of town in Reno at clerk's conference) post prior to the meeting. Board Member Tom Depew moved to amend the Agenda on the stated basis, which motion was seconded by Ken Sewell, and thereafter unanimously carried.

MINUTE APPROVAL

The minutes were next addressed considered for approval. Ken Sewell moved to table consideration of the minutes until the next meeting at which District Administrator Lynn Hagman could make corrections, which motion was seconded by Dave Weinstein, and thereafter unanimously carried.

CITIZEN ISSUES

Citizen Marshall Mend, of 2071 Pack Saddle, Coeur d'Alene, Idaho, addressed the Board concerning the Assisted Living Facilities ER request. Mr. Mend advised that he had questions about the demand on the "By the Lake Assisted Living" facility and the "Hayden View Cottage" facility. Mr. Mend stated that his concerns related to human rights issues, and that he felt the demand for payment for sewer services by the District violated the Fair Housing Act. He questioned the Board concerning how they justified the charges to the facilities. Attorney Schmidt responded that the charges were justified by District Ordinance 89-2. Mr. Mend also questioned why it took 22 years for this law to be enforced.

Mr. Mend then advised that he was "putting the Board on notice" that if there is discrimination, he was going to have attorney Ken Nagy look at taking action against the Board. Mr. Mend advised that

disabled people are protected under fair housing laws, and felt that the Ordinance was illegal if the occupants of the facilities were using less sewer than the amount demanded of them.

Mr. Weinstein questioned Mr. Mend if the individuals in the facility were in fact disabled. Mr. Mend responded that they are disabled because they need assistance. Mr. Schmidt clarified that disabled under the law is where you have a disability that affects a major life activity, or are perceived as to have such a disability.

Mr. Mend expressed concern related to the District charging based on occupancy, as opposed to actual usage. Mr. Mend felt it was improper to charge based on schedules rather than usage.

Mr. House explained that one of the main costs is a fixed cost at the HARSB treatment plant, and described those expenses. Tom Depew pointed out the charge to the District each month from the accountant's report. Mr. Weinstein asked whether Mr. Mend would have these same concerns and be before the Board if the individuals in the assisted living facilities were not actually legally disabled or of a protected class. Mr. Mend advised that he would probably not be here. Mr. Mend then stated it was a fair housing concern, and that alcoholism is a disability under that law. Mr. Schmidt questioned whether or not that was the case, but advised that whether any person is disabled under Fair Housing law is a factual, case-by-case inquiry.

Dave Weinstein explained that the Thames Court assisted living facility was charged based on water usage. When the District billed that facility, Mr. Mend didn't come before the Board to protest. Mr. Mend explained he is concerned as a member of the District, and he just wants them to pay their fair share. Mr. Mend felt this could be a major issue that the District could be held responsible for and incur legal fees and damages. He did not want to see that happen.

Tom Depew questioned Mr. Mend regarding the Chmuras, and that if they bought from somebody a number of years ago, why when they made the purchase did they not come in and find out what the sewer rate was going to be? Mr. Depew stated that during that time, they paid O&M fees for only one ER instead of the required number (7) based on their use. Mr. Depew stated he did not feel that was fair.

Mr. Mend stated that it was his opinion that if the facilities use a lot, they should pay a lot, and if they use a little, they should pay a little. He also stated that attorney Schmidt should contact attorney Nagey to hear what the law required.

Ken Sewell explained that one household could use more than one ER. Gerry House explained that if there is an issue with the Fair Housing law, he did not want attorney Schmidt contacting fair housing attorneys (Ken Nagey) who were allegedly ready to proceed against the District, and that if any attorneys wanted to write a letter or make demand against the Board, that Mr. Schmidt could respond to that demand. Mr. Schmidt who should not invite litigation.

Mr. Mend stated he would speak with Mr. Nagey concerning this, and if he contacts Mr. Schmidt, it will be a lawsuit. Mr. Mend also stated that if it is a discrimination case, it will be very expensive for the District. Mr. Mend would also like a copy of today's minutes.

ACCOUNTANT REPORT

Ken Thompson next presented the accountants' report, and explained that the District has finally received the LID #6 bond proceeds, but that costs were not currently being covered by fees, so that the District still needed to control spending on any capital projects or it could run out of money. Mr. Thompson then explained that approximately \$127,000 from the guarantee fund needed to be moved to the general fund, and that there was going to be a sewer capitalization fee reimbursement of approximately \$105,000 to Mr. Beutler. Mr. Thompson also explained the new requirements for the bond sale, which added a separate guarantee fund and allowed for interest to be increased to 10% if payments were missed to promote payment by property owners. This was necessary to sell the bonds in the difficult financial and real estate market that the District faced. Additionally there were higher-than-expected legal costs from both Bond Counsel and DA Davidson due to warrant renewals and the time expended in selling the bonds.

Invoices were then presented, and nothing appeared out of the ordinary to Mr. Thompson. Mr. Schmidt explained that his office had some issues with billing for LID#6, and that he did not see the bill on the invoice summary. He advised he had forwarded a letter explaining that at some point, the billing address was changed by "Stephanie" so that the bills were sent directly to SI Construction. Bills were paid for a few months by the Lancaster consortium, then a couple bills were paid by the District, but that payments then stopped and a significant account arrearage accrued which went unnoticed until recently. Ken Thompson stated he had not yet seen the bill, but recalled the emails about this issue. Mr. Schmidt stated he would follow up, but that he thought maybe the letter and bill had not yet been forwarded for payment or consideration by Lynn Hagman. Mr. Schmidt stated that he would make sure no late fees would be required for payment, and that he wanted to work with the District on this issue because of the confusion it had caused. Mr. Schmidt felt that with his estimate of attorney fees for the closing, there should be enough money in the LID funds for miscellaneous late bills to pay the fees. Mr. Thompson indicated some of the final costs came in lower, and it could probably be paid from those amounts.

Ken Sewell moved to approve the financials and pay the invoices, which Motion was seconded by Tom Depew, and thereafter unanimously carried.

ATTORNEY REPORT

Mr. Schmidt advised that he had nothing further to report that was not addressed during Mr. Mend's comments

ENGINEERING REPORT

Mr. Comer discussed the Avondale Loop Generator. Mr. Comer advised that the Lakes Highway District required more site work as a buffer, including paving to the sidewalk and a concrete curb, so

costs were higher than originally estimated. The prior estimate – without doing the work up – was approximately \$41,000. The total project cost estimate is now \$56,902. Sherrie from Welch Comer’s office will handle the public bidding process. Dustin Jacobson explained that paying more for the electrical engineering on this site will reduce costs in servicing the electrical panel, and could be used as a template for other lift stations that may be upgraded. Ken Sewell reminded the Board that to make it to February, he recommended that they spend no more than \$100,000 on capital costs. This would take care of nearly \$57,000 of that amount.

Dave Weinstein moved to approve the project cost estimates, keeping in mind that they are estimates. Ken Sewell Seconded the Motion, which thereafter unanimously carried.

DISTRICT SUPERINTENDENT

Dustin Jacobson and Ken Windram next discussed the update on efficient use of the Hayden Area Regional Sewer Board and Hayden Lake Recreational Water and Sewer District Personnel and equipment. Dustin explained that when staff is absent (including for national guard duty) that the staff should not be replaced immediately, and that it makes sense to “play it by ear”. Dustin felt the present system of having one employee cover for another in their absence was working well. Additionally, there is help to be had from other municipal entities, including the City of Coeur d’Alene, who is going to be cutting roots for the District tomorrow.

Dave Weinstein inquired from Mr. Schmidt as to whether an employee who is called up needs to be paid while they are absent. Mr. Schmidt indicated he would get back with the District to answer that question.

BOARD REPORTS

The Board next considered the Forest Ridge Estates Sewer Collector Reimbursement and Takeover Agreement. Mr. Schmidt explained the difficulties with the easement issues, which were run through privately owned land rather than directly to a right of way. Mr. Schmidt explained that he drafted some of the subject easements and has attached them to the letter to Mr. Smetana, and proposed that Smetana obtain signatures. Mr. Schmidt also explained that he cannot vouch for title ownership or the legal descriptions, but that the District could obtain surveys and title policies to cover their bases if they wanted insurance of those accuracies.

The Board requested that Larry Comer have somebody at Welch Comer review the legals. Gerry House and Dave Weinstein felt that if the Takeover Agreement included warranty language they were comfortable with the title issues and assurances that had been received, and that they did not want to get title insurance or order title reports. Mr. Schmidt also advised that the District had the power to condemn, so it was not as serious for the District to run into problems because it could not be “land-locked” like a private developer could.

Mr. Schmidt advised that as soon as the legals are approved, he was ready to forward and request that signatures be obtained, which could then be approved at the next Board Meeting.

EXECUTIVE SESSION:

At 7:10 p.m., Board member Sewell moved to recess to executive session per I.C. § 67-2345(f) to discuss pending litigation or threatened litigation with the EPA, State of Washington, and Assisted Living facilities. Board member Weinstein seconded the motion. A roll call vote was taken; Board member Weinstein, "aye", Board member Depew, "aye", and Board member Sewell, "aye." The motion carried.

Present in the executive session were attorney Michael Schmidt, Board members Weinstein, Depew, and Sewell, Chairman House, Dustin Jacobson, and Ken Windram. Ken Windram left the executive Session at 7:35.

At 7:50, the meeting was reconvened to regular session.

Dave Weinstein commented that he would be attending the County meeting to address Impact Fees, and proposed that a letter be Signed from the District, or he could present orally.

ADJOURN

With no further business before the Board, at 8:00, Board member Dave Weinstein moved to adjourn, which motion was seconded by Board member Depew, and thereafter unanimously carried.