

MINUTES OF THE REGULAR MEETING OF THE BOARD OF COMMISSIONERS
OF BIRCH BAY WATER AND SEWER DISTRICT,
HELD September 28, 2006

Commission Vice President Carl Reichhardt called the meeting to order at 4:30 PM. Other persons present included Commissioner Don Montfort, General Manager Roger Brown, Attorney Robert Carmichael, Engineering Services Manager Dan Eisses, Treasurer Glenn Golay, Earl Listebarger, Frank Oldrich (BBVC), Blair Murray of Trillium, Wes Hayworth from BP and Engineer Rodney Langer.

Agenda additions/changes: Roger noted that we would not need an Executive Session and would like to add status of Pump Station #3 construction. BBVC was moved up in the agenda.

Public Input: Janet Burke was present to ask for credit for lock-off fee. After discussion, it was moved Reichhardt and seconded Montfort to allow the credit of \$50 because of the mix-up regarding the mailing address of record. Passed unanimously.

Consent Agenda included: Minutes for the Regular meeting of September 14, 2006; Accounts Payable Warrants #35366-35412 paying Claims #35366-35412 for \$83,034.11. It was moved Montfort and seconded Reichhardt to approve the Consent Agenda. Passed unanimously.

Engineering Services Manager Dan Eisses reported on developer extensions & projects:

Birch Bay View Community – Dan noted that only 6 lot owners do not have either a signed agreement with the District or have paid their fees. The majority of the connections are in process. Dan discussed asking whether there should be a blanket extension of the completion date to the next board meeting date. He suggested that the extension would include allowing the property owners to sign up for the LFC deferral until October 12th. After discussion, it was moved by Montfort and seconded by Reichhardt to allow an extension of the 90-day election period (including the installment agreement option) until October 12th. The motion passed unanimously.

Trillium-Drayton Harbor 4 lots: Dan reviewed the previous staff recommendation on this project. He discussed an option for the developer that would be based on the county not requiring fire flow to the property (by letter from the county). Dan also mentioned that the 12" extension on Drayton Harbor Road had frontage of 3 properties, one of which was connected to the existing water line. The one property currently connected to the existing line could be eligible for District reimbursement up to the 8" water line size. Blair Murray said he didn't need a decision on this issue right now, but discussed his position and options. Any further discussion was deferred to the next meeting.

Reserve at Semiahmoo: Dan reviewed the project recommendations, with Rodney's assistance. There were some questions regarding the requirements and how they impact future development as well as this project. It was moved Montfort and seconded Reichhardt to approve the recommendations on this project with the following revisions to the conditions presented in the CHS letter of September 26, 2006: Revise Condition 1 to require a 4' main instead of 12" main, delete Condition 2 and change reference in Condition 3 from 12" to 4". Passed unanimously.

BP Wastewater Service: Roger discussed the project proposal. BP is asking for an increase in the wastewater service from the district. There was general discussion regarding this proposal. No action was taken.

Dan discussed the Horizons development and their water service installation. Dan reported that no information has been provided per his request regarding purpose, size and use of several large irrigation services/meters that were not part of the DE agreement or approved water plans and that their installation would not be allowed without District approval.

Dan reviewed his meeting with Blaine City staff and the **Inverness** developer regarding their project and the possibility of taking their wastewater to the city. Dan would like to stay with the current district recommendation.

Dan also discussed the request for sewer service at the **Meditation Center**. This project is also impacted by its location within the City of Blaine and outside of the District's sewer service area. He recommended acceptance of the project recommendations. It was moved Montfort and seconded Reichhardt to approve the recommendations as presented. Passed unanimously.

Dan reported that Blaine School District has withdrawn their DE application for consideration of a parcel in the south Drayton Harbor area.

Birch Bay State Park: There was some discussion of the condition of the existing wastewater pump station in the park and Rodney reviewed the summary of recommendations. Dan asked for approval of the recommendation letter as presented. It was moved Montfort and seconded Reichhardt to approve the recommendations. Passed unanimously.

Dan also reviewed a letter to a property owner that has changed the use of the property and now owe additional charges based on that change. The board approved sending the letter and use of this as a general template for similar situations.

Roger discussed the District's current **annexation procedure**. Staff will continue to review the issue of annexation and what the procedures should be. The Board concurred that the resolution method was not a method that they were interested in. It was also mentioned that this particular application did not meet the 80% contiguous boundary requirement. Roger noted that the proponents of annexation of the Greens at Loomis Trail area have stated that their reason for seeking annexation is to eliminate the surcharge currently applied to properties in that area. Roger explained the District's policy on rates for properties outside the District's jurisdictional boundaries:

Properties within the District's jurisdictional boundaries, unlike those served by District facilities but lying outside such boundaries, are subject to taxation. Hence, properties within the District's jurisdictional boundaries serve as the ultimate guarantors of the District's financial security. The absence of this potential liability for properties outside the District provides the basis both for distinguishing such properties as a separate rate class and for allocating additional costs to that class.

In addition to different exposure to tax liabilities, there are several other factors indicating a generally higher cost of service for the "Outside-District" customers. Properties in this rate class are generally located further from the plant and within comparatively less densely developed areas. Moreover, such properties are often associated with jurisdictional questions that must be addressed at District expense. The Greens at Loomis properties, for example, are located within Blaine's Urban Growth Area. Roger said the City has stated that they would prefer to provide water and sewer services within their City limits and that all City water and sewer face uniform rates. He said he will initiate discussions with the City about service arrangements within the Loomis Trail area.

Roger said the District has applied a 50% surcharge for the Outside District rate class and reported that the most recent cost of service rate study, completed in 2003, affirmed that surcharge. Bob summarized two court cases, *Sudden Valley Community Association v. Whatcom County Water District No. 10*, 113 Wn.App. 922, 55 P.3rd 653 (2002); and *Geneva Water Corporation et al., v. City of Bellingham*, 12 Wn. App. 856, 532 P.2d 1156 (1975).

In *Geneva Water*, several water districts challenged the City of Bellingham's 50% surcharge on water provided outside city boundaries. Plaintiffs claimed (1) that the classification distinction between in-city and outside the city was unlawfully discriminatory and (2) assuming arguendo that such classification is valid, that the 50% surcharge was unreasonable and arbitrary. The appellate court upheld the trial court's determination that the plaintiffs failed to meet their required burden of proof on both claims. The

court said its review of the unlawful discrimination claim “is limited to a determination of whether the classification was manifestly arbitrary and unreasonable.” *Id.* at 864. Insufficient evidence was presented to meet this burden. On the second claim that the rates were unreasonable and arbitrary, the court found no showing by plaintiffs of arbitrary or “unreasoning action.” Rates were set on the advice of a consulting engineer and there was room for more than one opinion. Under these circumstances, the court ruled it must uphold the rates.

In *Sudden Valley*, the community association (“Association”) challenged Water District 10’s (“District”) pass through of a City of Bellingham (“City”) charge to acquire property in the Lake Whatcom watershed. The District imposed the charge on all water customers district-wide, despite the fact that large segments of customers did not receive water from the City. The Association pointed out that the District had historically set rates and made rate classification distinctions in accordance with the costs associated with the source of the water, e.g. City or District water and waterworks. Because the Association did not obtain water from the City, the Association argued that it should not pay a rate increase directly attributable to the City surcharge. The appellate court rejected the Association challenge. The Court noted that the District may in its discretion consider any or all of the factors in RCW 57.08.081(2) in classifying customers and that although the District may classify its water customers based on differences in cost, it is not required to do so. *Id.* at 925. The court also found the rate was not arbitrary and capricious because there was room for two opinions. Here, the Association arguably benefited from the City surcharge for watershed property acquisitions because the program was intended to improve Lake Whatcom water quality, which is the source of water for all District customers, even those in Sudden Valley.

Birch Bay Drive Forcemain: The archaeological permit is not ready for review yet. The SEPA checklist is ready for review by the district attorney and staff, but Dan recommended deferring sending it out until the permit application is ready.

Roger reported on his attendance at the PUD meeting.

Dan discussed current water upgrade projects, including the result of the new large meter installs. Dan proposed using this fund to pay for the demolition of the Birch Pt. well house. He also discussed potential small water system improvement projects, as recommended by the water department. The Board approved replacing the small line at the end of the Loomis Trail 16” water line for this year and defer more work until later. Further analysis will be conducted to facilitate further discussion of priorities and criteria for replacement of substandard water mains.

Regarding the pump station upgrade project, Dan reported that the bypass pumping is finished at **Pump Station #3** and that the project seems to be going well. There will be some additional paving work done around the wet well and valve vault.

There being no further business, the meeting was adjourned at 8:30 pm.

COMMISSIONER

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THIS IS TO CERTIFY that the above is a true and correct copy of the minutes for the regular meeting of the Board of Commissioners of Birch Bay Water and Sewer District, Whatcom County, Washington, held **September 28, 2006**.

BOARD SECRETARY