

FOUR CORNERS WATER AND SEWER DISTRICT MINUTES
May 2, 2007

1. Call to Order

There being a quorum present, President John Hulme called the meeting to order at 6:30 p.m. in the library of the Monforton Elementary School, 6001 Monforton School Road, Bozeman, Montana.

Present: John Hulme, Don McHenry, Richard Smith and Ben Zavora

Also present: Susan Swimley, attorney for the District; Wendy Heibert, bookkeeper for District, Rosie Barndt, accountant for District

Public: John Close, Craig Caprara

2. Approval of Minutes for April 4, 2007 meeting

The minutes of April 4, 2007 were continued to the next District meeting.

3. Consideration of financial reports

- a. discussion of policies regarding reporting / receipting / payments, possible adoption

Ms. Hiebert directed the Board's attention to the financial reports. She concurred with the Board comments regarding timely issuance of checks and the adoption of a policy based on a percentage of taxes received and the amendment of the service agreement between the Four Corners Water/Sewer District and Utility Solutions. She asked for clarification of tax assessments. Ms. Swimley explained.

4. Old Business

- a. Amendment to Rules and Regulations (rates and charges), Utility Solution Contract for various service areas and report of ad hoc financial committee
 - i. contract negotiations for modification of US contract for additional service areas and proposed annexation of property.

President Hulme stated the Board should make a motion on items 4a and 4ai. Treasurer Smith responded they were waiting for Barb Campbell to provide them with rate structure information before the items were voted on; adding that she had begun a draft of the document. Mr. Close stated that Will Serve letters had been sent to the service area regarding the rates and charges and he was wondering why they were being discussed. Ms. Swimley responded that the District can not respond to will serve letter and needs to amend the contract. Mr. Hulme stated it was not currently amended and he does not anticipate a difficulty in amending the contract.

MOTION: Treasurer Smith moved, Mr. Zavora seconded to have Treasurer Smith

arrange a Sub-committee meeting to discuss contract negotiations, financial structures, and proposed annexation of properties. The motion carried 4-0.

b. Annual Report / Audit

Rosie Barndt of Holmes & Turner presented the review of the financial statements regarding the Board's financial focus on being its own entity. She presented billing and invoice flowcharts; adding that invoices and checks would be brought to the Board meeting for approval and signature until such a time as there were too many to do so. Treasurer Smith responded that some of the bills were timely and waiting for a Board meeting once per month would not work. Ms. Barndt stated that secondary method could be to drop the checks off to be signed. Treasurer Smith responded it was the Board's responsibility to be responsive to the needs of the customers. Ms. Barndt stated the payments would need to be sent to the post office box. Treasurer Smith responded that the District had contracted Utility Solutions to invoice the Board. Ms. Swimley discussed separation of the Water/Sewer District and Utility Solutions. Treasurer Smith responded anyone could be contracted for the utility billing; adding that it was difficult to understand the separation between the Water/Sewer District and Utility Solutions. Mr. Close added that there are many calls received by Utility Solutions for billing questions and suggested there should be only one person to refer to; avoiding confusion. Ms. Barndt stated she agreed that it should be one person and she thought there should be one person in control of depositing the checks with Utility Solutions. Mr. Close responded the payments were credited to their individual accounts and were kept current. Treasurer Smith stated bookkeeping in two locations would be inconsistent; adding it was too complicated for small business entities and errors would arise. Ms. Hiebert suggested that an e-mail could be sent to Utility Solutions daily to provide for current record keeping. Ms. Swimley cited the agreement between the District and Utility Solutions which called out that other authorities may be provided for; adding it might be more efficient for the accountant to keep the record of transactions. Ms. Brandt agreed that it would be a good control for the method Ms. Hiebert was already using; adding that the District's expenses did not show that taxes were being paid. Ms. Swimley stated there were discrepancies in charges for lots in Galactic Park (3 lots); adding that the annual budget required \$50,000.00 for operation costs and the overcharge would go to the District. President Hulme asked if the contract called out the difference between the rates on those lots. Ms. Swimley responded it did not. Treasurer Smith asked for clarification. Ms. Swimley responded that there had been no ordinance passed for up-charges. Treasurer Smith stated he thought an ordinance had been voted on and he would research his documentation to locate the date of the motion and vote. Ms. Hiebert stated policies would need to be formed that would represent equality to the customers regarding rates. She stated that the financial numbers did not match the existing contract unless the service had been prorated; adding that the multiplier was different for each lot and the multiplier for commercial was different than residential. Treasurer Smith suggested Ron Edwards and others be present for the discussion of the topic. Mr. Close responded the multiplier had been based on the number of E.D.U.'s and the sizes of the lots. Ms. Hiebert stated the agreement between Utility Solutions and residential or commercial lots was inconsistent. Treasurer Smith explained it would cost more to service some areas than others; adding that initially it would cost more, but as the service area grew, the cost

would decrease. President Hulme suggested a Sub-committee meeting would need to be arranged to discuss rates. Ms. Hiebert and Ms. Barndt ascertained they would need to meet with Treasurer Smith at a later date regarding projected finances.

- c. Petitions for Annexation:
 - i. Gallatin Heights
 - ii. APK (Buckland Siding)
 - iii. Black Bull Run
 - iv. Middle Creek Parklands (Flikkema)

Petitions for annexation were continued until such a time as the agreement between Utility Solutions and the Water/Sewer District could be amended.

- d. Litigation Update/ legislative update

Ms. Swimley stated the Faust case was still pending while the District waits for the Supreme Court decision; adding she had filed for dismissal and explaining on what grounds.

- e. Engineering Review of US (service areas and annexations) – HDR Engineering

Craig Caprara of HDR Engineering stated he had been contracted by the Water/Sewer District to determine if Utility Solutions could service the proposed annexation areas. He stated the facility plan was in accordance with current regulations; adding that he had not reviewed the APK (Buckland Siding) request for annexation as he had not been made aware of it. He stated Utility Solutions permit had expired, but the DEQ had not expressed concern. He explained the discharge permit process and added that he did not know if Utility Solutions had applied for renewal. Mr. Close added that Utility Solutions had applied for renewal, but it was still under review. Mr. Caprara stated that a concern would be the allowable discharge levels; adding that the risk would be if the discharge levels for pollutants were decreased, but Utility Solutions currently met those requirements. Treasurer Smith and Mr. Caprara discussed instances of revocation of the discharge permit. Mr. Caprara advised the Board to keep on top of the permitting for the District, adding that the Morrison-Maierle facility plan provided for the proposed annexations into the District. He recommended the service agreement be amended to include the flows that the annexed subdivisions would require and suggested the District contact the DNRC regarding Utility Solutions water rights. President Hulme responded the legislative bill would need to be more concrete before the Board made a decision regarding water rights. Ms. Swimley stated the legislative bill had been held up in negotiations. Treasurer Smith suggested Ms. Swimley review the legislative bill to ascertain how it would affect the Utility Solutions and the Water/Sewer District. Mr. Close added that the retroactive portion of the proposed bill had been removed. Treasurer Smith suggested the proposed annexations could be proved only sewer until such a time as the water rights were no longer in question; adding that Ms. Swimley would need to investigate the permits for the new wells and the proposed annexations

would be put on hold. Mr. Zavora suggested the liability would fall to Utility Solutions as the water rights were beyond the control of the District. Treasurer Smith responded the sewer could be annexed into the District, but the water service would have to wait. Ms. Hiebert asked if there were annexation agreements in place to protect the District from liability if capacity were insufficient. Ms. Swimley responded it was the District's responsibility to determine if capacity was sufficient. Mr. Caprara stated his report would be an endorsement of the facility plan. Treasurer Smith requested a one page summary of current capacity, volumes, flows, and maximum capacity. Mr. Close suggested he could provide the table that was in the Will Serve letters identifying capacity usage. Mr. Caprara suggested the Board to an impact fee and rate analysis to provide money for any future necessary facilities and agreed to submit a summary of his conclusions and recommendations; adding that he had not performed the scope of services and decreased the dollar amount, but would need a signed contract. President Hulme responded he would sign the contract as soon as he received it from either Ron Edwards or Ms. Swimley.

- f. Consideration of Horus Braisford request for sewer only in Service Area 3

Item 4f was continued to the next District meeting.

- 5. New Business
 - a. Consideration of Rate Resolution

Item 5a was continued to the next District meeting.

- b. Discussion, consideration and possible action on insurance for the Board

Mr. McHenry asked Ms. Swimley for clarification of how insurance would protect the Board of the District. Ms. Swimley explained the insurance would prevent personal exposure and, as a government entity, would provide security for the District in litigation defense. Mr. McHenry stated he had checked into insurance, but was unsure what type to acquire due to existing and foreseeable litigations. Item 5b was continued to the next District meeting pending further investigation.

- c. Discussion about pursuing purchase of Garden Center well(s) – Ron Edwards

Item 5c was continued to the next District meeting.

- d. Consideration of privacy policy for District consumers

Ms. Swimley stated there had been a request from a non-district member for all consumers in the Water/Sewer District, their addresses, usage, and rates. She suggested a privacy policy be instituted for the District. The Board concurred. Ms. Swimley responded that she would have a draft privacy policy to present at the next meeting.

- e. Other matters to be placed on Future agendas

There were not other items to be placed on future agendas at this time.

6. Public Participation on Non-Agenda Items: The opportunity for members of the public to comment on District matters which are not on the agenda. Time limits may be imposed at the discretion of the chairman.

There was no public comment forthcoming.

7. Board Member Issues

There were no Board member issues forthcoming.

8. Closure of meeting to consider litigation strategy, Lohmeier v. Hulme and District. Request for Lohmeier re: attorneys fees

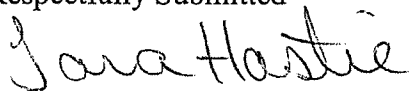
Ms. Swimley stated that in the Lohmeier case the judge had ruled that the District was entitled attorney's fees, the District had entered the judgment, and the \$10,000.00 in fees was earning 10% interest. She stated Lohmeier had requested deference of the \$10,000.00 due to still being in litigation. She stated she had explained to the opposition that she represented a governmental entity and that the Board would have to discuss the option before any decision was reached. The meeting remained open and Ms. Swimley recommended the Board not agree to any delay of collection of fees and allowing Lohmeier the use of a bond, if he didn't want to pay. The reason for the recommendation is that Lohmeier has the ability to bond and that would provide better financial insurance that the Board could collect someday.

MOTION: President Hulme moved, Mr. Zavora seconded to disallow deference of the \$10,000.00 in attorney's fees. The motion carried 4-0. The Board directed Ms. Swimley to proceed with collection.

9. Adjourn Meeting

The Four Corners Water/Sewer District meeting of May 2, 2007 was adjourned at 8:43 p.m.

Respectfully Submitted



Tara L. Hastie

Recording Secretary