

**MINUTES OF REGULAR MEETING  
OF THE BOARD OF COMMISSIONERS OF  
COAL CREEK UTILITY DISTRICT  
OF KING COUNTY, WASHINGTON**

**Held February 11, 2015**

A regular meeting of the Board of Commissioners of Coal Creek Utility District was held at the District Office, 6801 – 132<sup>nd</sup> Place SE, Newcastle, Washington, on February 11, 2015. Commissioner Kunkel, president pro tem, called the meeting to order at 5:00 p.m. Commissioner Anderson was present. On motion made, seconded, and carried unanimously, Commissioner Martin's absence was excused. District Staff Robert Russell and Todd Hynek were present. Dave Hutley, consulting engineer, and John Milne, General Counsel, were also present.

**CONSENT AGENDA**

Approval of minutes - Regular Board Meeting of January 28, 2015.

Anderson made the motion to approve the consent agenda. Kunkel seconded the motion, which carried unanimously.

**CITIZENS' COMMENTS AND CONCERNS**

There were no comments from the citizens in attendance.

**BOREN CREEK LATECOMER AGREEMENTS**

Hutley advised that neither the District nor his office had received any comments to letters that had been sent to the property owners included in the proposed Boren Creek Townhomes Project water and sewer latecomer reimbursement agreements. Therefore, Hutley and District staff recommended the latecomer reimbursement agreements be approved.

Following discussion, the Board authorized and directed District staff to prepare resolutions approving the project water and sewer latecomer agreements for consideration on the consent agenda at the Board's next regular meeting.

**ATTORNEY'S COMMENTS**

Milne reported on his presentation at the January 31, 2015, Commissioners' Workshop on recent cases addressing public records issues.

**OPERATIONS MANAGER'S COMMENTS**

Hynek advised the water and sewer extension improvements for the Wolvin Subdivision project were ready for final acceptance. However, he advised certain manhole coating work had not yet been completed and recommended the extension improvements be given final acceptance conditioned on the completion of the manhole work. District staff will hold the developer's performance bond until the manhole work is completed. Following discussion, Anderson made the motion to grant conditioned final acceptance of the extension improvements as recommended by Staff on the conditions identified by staff. Kunkel seconded the motion, which carried unanimously.

Hynek recommended the present District administration and operations building be pressure washed, but certain work was required to prepare the building for the pressure wash, including sealing the sides and gutter repair. He will obtain bids for the project work and report back to the Board.

**GENERAL MANAGER'S COMMENTS**

Russell advised that representatives for the City of Newcastle had completed an inspection of the District's former operations center which the City wants to acquire from the

District. He also advised the City would soon undertake a Phase I environmental assessment of the property.

### **COMMISSIONERS' COMMENTS**

Anderson reported he planned to attend the State Association Government Relations Committee meeting the following day and will report back to the Board.

### **ADDITIONAL CITIZENS' COMMENTS AND CONCERNS**

There were no comments from the citizens in attendance.

### **APPROVAL OF VOUCHERS**

The Board approved for payment Water/Sewer Maintenance Fund Voucher Nos. 043369 through 043406 in the amount of \$271,901.78.

The Board approved for payment Capital Improvement Fund Voucher No. 043407 in the amount of \$59,129.79.

The Board approved for payment Water/Sewer Maintenance Fund Voucher Nos. 010553 through 010575 in the amount of \$106,458.69.

The Board approved for payment Water/Sewer Maintenance Fund Voucher Nos. 010576 through 010585 in the amount of \$10,250.00.

### **FORMER OPERATIONS CENTER – PROPOSED SALE TO CITY OF NEWCASTLE –**

#### **PUBLIC HEARING**

At 6:00 p.m. Commissioner Kunkel convened the public hearing on the proposed sale of the District's former operations center property to the City of Newcastle. He advised the purpose of the hearing was for the Board of Commissioners to hear comments from the public regarding the proposed sale of the District's former operations center property to the City of Newcastle. He then introduced the Board commissioners, noting that Commissioner Martin had an excused

absence, District Staff Robert Russell and Todd Hynek, and Andrew Maron, special counsel, who was advising the District on the matter.

Russell then reported to the Board regarding the history of the District's former operations center and the City of Newcastle's interest in acquiring the property from the District as set forth in his written staff report on the matter. He advised the District had developed the former operations center in 1974, but the District had outgrown the facility and moved to its present office and operations center in 2000. The office portion of the former operations center had not been used for several years, although the District continues to operate and maintain the Hazelwood Pump station on the northern portion of the property. The District also maintains several water mains and appurtenances on the property, and he stated the District must be able to continue to own, access and operate those facilities. In 2005 the District leased the office building and garage facilities to a commercial maintenance company. He advised the lease will expire in October, 2015, if not renewed or extended.

He also reported that, over the years representatives of the City of Newcastle have expressed the City's interest in acquiring the former operations center property, and in late 2012, the City and the District jointly had the property appraised. In 2013, an appraiser reported the property was worth approximately \$745,000. The District then had informal discussions with the City about selling the property with the office building and garage to the City. Due to the City's funding limitations, the District attempted to work with the City on the purchase price, and the City offered funds in the amount of \$250,000 to acquire the property. The City has also offered to not attempt to assume the District, its facilities and its operations for at least a ten year period. Russell felt that selling the property to the City was a win-win situation for the City and the District. It was his understanding the City planned to use the property for public works and other

City functions, and City ownership of the property would also be compatible with how the District must operate and maintain the rest of the property. Russell also felt the non-assumption period would give the District certainty and the ability to plan for the future. For example, he stated that the District's water and sewer comprehensive plan has a six, ten and twenty year planning horizon. When the District sells bonds to pay for capital improvements, the District receives a better bond rate if those bonds have at least a twenty year term.

He reported the City Council at its January 20, 2015, meeting, had approved a formal purchase and sale agreement to acquire the property from the District, which the City Manager has signed on behalf of the City and provided to the District. He also reported that, according to special legal counsel, when the District is considering the sale of real property to another public agency like the City, the District must have a public hearing on that proposed action before approving such a sale. Therefore, the hearing had been scheduled to hear comments from the public on that proposal. He also reported that notice of the public hearing had been published in the Seattle Times on January 29, 2015, had also been posted electronically with that newspaper for a week. He reported notice of the hearing had also been posted on the District's web site, and the District had issued a press release on February 2, 2015, regarding the proposed sale and the hearing. The press release had been sent to the following media: Newcastle News, Seattle Times, Daily Journal of Commerce, KING 5, KIRO 7, KOMO 4 Q13 FOX, and KIRO FM, KOMO AM, KOMO FM, and NPR. He also advised the District had received written correspondence from an interested citizen which he would provide to the commissioners.

Mr. Maron then reported to the Board regarding the legal procedures which applied to the District's proposed sale of the property to the City or to any other purchaser. He advised the District has a choice of two different procedures to follow: RCW 57.08.015 and .016 provides a

public bidding process; or, alternatively, RCW 39.33.010 and .020 authorize a government to sell to another government without a public bidding process.

Further, he also advised that, in the situation of a sale of property by one government to another, the selling government may receive non-monetary consideration for the property. He advised that State law, as interpreted by an Attorney General's Opinion and an appellate court case which he cited, provided authority for non-monetary consideration in a government to government sale. Based on that authority allowing non-monetary consideration, City and District representatives had discussed a purchase of the property for both monetary and non-monetary consideration, including a "non-assumption clause." He advised that cities have the authority to initiate the "assumption" of a water-sewer district located within its boundaries, and in some cases, outside its boundaries, pursuant to RCW 35.13A and other processes. However, in his experience, it was very common for cities and districts to enter into agreements by which a city foregoes its right to assume a district for an agreed period of time, in return for monetary and other non-monetary consideration. He referenced several examples as presented by video display to the Board and audience. He also stated that, during discussions between District staff and the commissioners, several reasons were identified why a "non-assumption" condition if the District sold the property to the city brought value to the District, including:

- a) Knowing that the District would not face an assumption action by the City for at least ten years, the District could more effectively plan for its future operational needs and programs, and there would likely be greater stability in employment and administration. For example, the district has state-mandated comprehensive planning requirements for six, ten and twenty year horizons.

- b) The staff and commissioners believe that a special purpose government is the most efficient and economical way to provide utility services, as opposed to the utilities becoming part of a general purpose government. There have been many instances where cities have over-allocated city overhead and capital expenses to the utilities. That would cause utility rates to increase.
- c) The District had incurred extraordinary cost and lengthy process in the past assumption by Bellevue of a portion of the District. A non-assumption agreement would avoid those potentially significant transactional costs.

He also stated it was difficult to place a precise value to the District of these factors, but the staff and commissioners have stated it is quite significant. As Russell had reported, Maron stated that the 2013 appraisal of the property was \$745,000. The negotiations between the District and City staff resulted in an offer for the District to sell the property to the City for \$250,000, plus an agreement not to initiate an assumption of the District for ten years, without the District's consent.

He also noted the commissioners had requested that District staff contact the Washington State Auditor's Office (SAO) regarding the proposed transaction, and seek its counsel. The SAO had responded by confirming that value for a transfer of property between governments could include non-monetary considerations, and did not raise objections to the proposed sale. Therefore, a Purchase and Sale Agreement had been prepared by which the City would purchase the property and grant an easement over the property to provide District access to the pump station parcel which will be retained by the District. He felt the key terms of the proposed purchase agreement were:

- a) The City's payment of \$250,000;

- b) The City's agreement to not initiate an assumption of the District for 10 years from closing of the sale;
- c) The District's assignment of the current tenant lease to the City;
- d) A 60-day contingency period for the City to conduct its due diligence; and
- e) A closing in 90 days.

He reported the City Council had approved the Purchase and Sale Agreement on January 20, 2015, which had been signed by the City Manager and submitted to the District. Therefore, it was now appropriate for the Board of Commissioners to consider whether it would approve or decline to sign the agreement. Because the District and the City have chosen the procedure in RCW 39.33.010 for the possible sale of the property to the City, he advised the District is required to have a public hearing on the proposed sale before the Board can give final approval to the sale. He advised that was the purpose of the hearing tonight, and, following the receipt of any comments from the public, the Board of Commissioners could then consider its options.

Commissioner Kunkel then opened the portion of the public hearing for public comment on the proposed sale. He reminded the citizens who had signed up to speak that the hearing was being recorded, to begin their remarks by stating their name and address, and, if they so desired, to provide to the General Manager any written comments or materials the citizens wanted the Board to consider.

Mr. Sonny Putter, 14701 SE 80<sup>th</sup> Ct., addressed the Board requesting that the District terminate its proposed agreement to sell the District's former operation center to the City of Newcastle. He contended the proposed agreement to sell the property to the City was illegal. He contended RCW 57.08.016 provided specific requirements for the sale of the real property and the District has not complied with those requirements. Therefore, he requested the Board



terminate the agreement with the City to sell the property and provided a copy of his comments and supportive documentation to the General Manager for the record.

Ms. Jean Garber, 8436-129th Place SE, Newcastle, addressed the Board and also requested the District not sell the former operations center property to the City of Newcastle. She stated the District's sale of the property to the City would violate the provisions of RCW 57.08.016 which she contended prevented the District from selling the property for less than ninety per cent of its appraised value. She also contended a ten year non-assumption agreement had no value because the City could simply take the District's property under RCW 35.13A.030 without payment for the property. She felt the non-assumption provision only served the purpose to allow the commissioners to continue to hold their positions on the Board. Therefore, she requested the Board not sell the property to the City and provided a copy of her comments to the General Manager for the record.

Garber requested that she be allowed to present the comments of Mr. Claudia Hirschey, a District customer residing at 12527 SE 72<sup>nd</sup> Street, Newcastle, who was not available to attend the hearing. Commissioner Kunkel stated Ms. Garber could present Ms. Hirschey's comments. On behalf of Ms. Hirschey, Ms. Garber contended the District should receive full monetary value for the property, and the non-monetary compensation offered by the City would be the gifting of public funds. She also contended the public process regarding the proposal was inadequate. Garber then provided a copy of Hirschey's written comments to the General Manager for the record.

Mr. Bill Erxleben, 7625 120<sup>th</sup> Pl. SE, Newcastle, addressed the Board and requested the District not sell the former operations center property to the City of Newcastle. He contended public records obtained from the District show the non-assumption provision had no value, the

City of Newcastle and the District had unlawfully failed to release written legal opinions relating to the proposed sale, and, if the non-assumption provision in the agreement was challenged and invalidated, the entire sale would be void or voidable. He also contended the District's failure to obtain the full monetary value of the property, if the agreement was approved, would be a gifting of public funds and bad public policy. Therefore, he requested the Board not sell the property to the City and provided a copy of his comments to the General Manager for the record.

Mr. John Dulcich, 14247 SE 83<sup>rd</sup> Street, Newcastle, a District customer and a member of the City of Newcastle City Council, addressed the Board and requested the District approve the sale of the former operations center property to the City of Newcastle on the terms and conditions set forth in a purchase and sale agreement recently approved by the City Council. He felt the sale of the property with both the monetary and non-monetary consideration was reasonable and a "win-win" for the City and the District. He felt the City had a need for the property and the non-assumption provision was appropriate given the District was doing a great job, would allow the District to retain its employees, and the District would have more certainty to plan and operate its utilities. Therefore, he supported the proposed sale as proposed.

Mr. Russell then provided the commissioners with a copy of an email/letter dated January 30, 2015, from Ms. Grace Stiller who was not available to attend the public hearing. In the email Ms. Stiller expressed her support for the sale of the property to the City, including a non-assumption provision. She felt the sale was a "win-win" for both the City and the District, and the location was perfect for a City maintenance office with needed parking spaces for City vehicles. Therefore, she supported the sale of the property to the City on the proposed terms and conditions, including a non-assumption provision.

Mr. Rich Crispo, 14406 SE 89<sup>th</sup> Pl., Newcastle, a District customer and a member of the City of Newcastle City Council, addressed the Board regarding the proposed sale and suggested the commissioners consider what was in the best interest of both the District's ratepayers and the City's citizens, because they were almost the same group of people. He also suggested the City and the District work on and take advantage of efficiencies, and not build walls between them.

Commissioner Kunkel then asked if there were any other parties who wanted to address the Board regarding the matter. As no more interested parties came forward, Kunkel then closed the portion of the hearing for public comment on the proposed sale of the property to the City. He then identified the following options for the Board to consider regarding the proposed sale as follows:

1. Take the proposed sale of the Former Operations Center Property to the City of Newcastle under advisement;
2. Approve the sale of the Former Operations Center Property to the City of Newcastle by the adoption of a resolution, and authorize and direct the General Manager to execute the purchase and sale agreement on the District's behalf to sell the property to the City; or
3. Determine not to approve the sale of the Former Operations Center Property to the City of Newcastle.

Following discussion, given the absence of Commissioner Martin and the desire of Commissioners Kunkel and Anderson to have the full Board consider whether to approve the proposed sale on the terms and conditions proposed by the City, and to review the District's legal authority to sell the property to the City on those terms and conditions, the Board determined to take the matter under advisement for discussion at a future Board meeting.

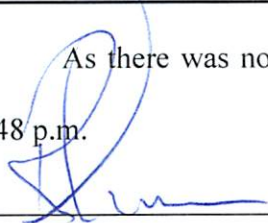
Commissioner Anderson stated that he had served as a Commissioner for sixteen years, had been elected by the District's ratepayers several times, and was disturbed by the public comments that the commissioners were only interested in protecting their positions on the Board. He stated that his purpose in being a commissioner was to serve the ratepayers, and not his personal interest.

Commissioner Kunkel also expressed concern about the public comments that the commissioners were only interested in protecting their positions on the Board. He stated he had not served as long as Anderson on the Board, but he did not choose to serve as a commissioner for the compensation, but rather, he lost money serving as a commissioner given the time he took away from his business to serve on the Board.

On motion made, seconded and approved unanimously, Commissioner Kunkel then closed the public hearing.

**OTHER DISTRICT BUSINESS**

As there was no further business or persons to be heard, the meeting was concluded at 6:48 p.m.



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Richard D. Anderson, Commissioner



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Douglas C. Kunkel, Commissioner