

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

Held February 25, 2015

A regular meeting of the Board of Commissioners of Coal Creek Utility District was held at the District Office, 6801 – 132nd Place SE, Newcastle, Washington, on February 25, 2015. Commissioner Martin called the meeting to order at 5:00 p.m. Commissioners Anderson and Kunkel were also present. District Staff Robert Russell and Todd Hynek were present. John Milne, General Counsel, and Andrew Maron, Special Counsel, were also present.

CONSENT AGENDA

Approval of minutes - Regular Board Meeting of February 11, 2015.

Resolution No. 1810 - Approving Boren Creek Townhomes Latecomer Agreement - Water.

Resolution No. 1811 - Approving Boren Creek Townhomes Latecomer Agreement - Sewer.

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

CITIZENS' COMMENTS AND CONCERNS

Martin advised that citizens have the opportunity to address the Board of Commissioners about any subject. She advised that, as most people in attendance knew, a public hearing on the District's possible sale of the District's former operations center to the City of Newcastle had been held at the February 11, 2015 Board Meeting. She stated that the Board was not willing to convert this public comment section of this meeting into a second public hearing on that subject.

She said that all Board members had heard the previous testimony and reviewed the written materials on the matter. She said the Board did not want to arbitrarily cut off input before the Board makes a decision on the possible sale of the former operations center. Therefore, she said if any individual had new information or a new argument they wish to provide to the Board, they were free to do so now. Further, if an individual was not able to attend the public hearing and would now like to express their views on that topic, they were free to do so at this time. Thereafter, she asked if anyone would like to address the Board. There were no comments from the citizens in attendance.

FORMER OPERATIONS CENTER - PROPOSED SALE TO CITY OF NEWCASTLE

Before discussing the topic in open public meeting, Martin advised the Board intended to convene an executive session with Mr. Maron, Special Counsel, for the purposes of considering a real estate transaction under RCW 42.30.110(1)(c) and considering potential litigation pursuant to RCW 42.30.110(1)(i). Before convening the executive session at 5:05 p.m., Martin advised the executive session would conclude at approximately 5:25 p.m. The Commissioners, Russell, Hynek, and Mr. Maron then attended the executive session.

At 5:25 p.m., the executive session was extended until 5:30 p.m., which was publicly announced.

At 5:30 p.m., the executive session was concluded and open public meeting reconvened.

Russell provided the Commissioners with copies of draft Resolution No. 1812, approving a real estate purchase and sale agreement with the City of Newcastle relating to the former operations center for discussion purposes. The resolution recited the history of the District's development and use of the former operations center; Newcastle's interest for many years in acquiring the property; the joint appraisal of the property; the negotiation of a draft purchase and

sale agreement providing for the District's sale of the property to the City; the District's compliance with the requirements of Chapter 39.33 RCW regarding the sale of property by one governmental entity to another governmental entity; and the requirement of a press release and public hearing before such action could be undertaken.

Maron stated he would address the comments and documents submitted to the District regarding the proposed sale of the former operations center by the District to the City, but that any comments he might make in open session did not and would not constitute the waiver of the District's attorney-client privilege.

He noted two different statutes applied to the District's sale of real property determined to be surplus to the District's needs. RCW 57.08.015 and 57.08.016 provide a process for the public sale of real property. However, he noted that Chapter 39.33 RCW provided another process to sell surplus real property to another governmental entity, which was an express alternative to the provisions of Chapter 57.08 RCW. He noted the District had elected to use the process in Chapter 39.33 RCW to consider the possible sale of the former operations center to the City, a governmental entity. Therefore, the comments from the public made at the public hearing that the District could only use the procedures set forth in Chapter 57.08 RCW to dispose of surplus real property were incorrect.

He also addressed comments made at the public hearing that the District had not undertaken enough public process to receive input regarding the proposed sale of the property to the City. It was his opinion the District had fully complied with the public process and public hearing requirements set forth in Chapter 39.33 RCW, including the publication of a notice of the public hearing in a newspaper and on-line notice for seven continuous days, and the issuance

of a press release which had been provided to several newspapers and radio media prior to the public hearing. Articles regarding the matter had also been published in the Newcastle News.

He also addressed comments made at the public hearing that the District could only accept the full monetary value of the former operations center in a purchase and sale. He noted that property had been appraised at a value at approximately \$745,000 and the City had offered funds in the amount of \$250,000 and in agreement not to attempt to assume the District for a period of ten years to represent the balance of the value of the property. Some citizens contended the District could not consider non-monetary consideration for the sale of the property. However, he noted RCW 39.33.010 authorizes two municipalities to sell property on such terms and conditions as may mutually be agreed upon. He also noted the Washington State Attorney General's Office had previously stated that a purchase and sale of property between two governmental entities could include non-monetary compensation, and the District confirmed that conclusion with the State Auditor's Office.

Maron also noted public comments at the hearing that the City could acquire the former operations center for "free," and therefore the City's paying for the property was not necessary and thus the non-assumption provision had no value to the City. In response, he noted this was an argument that could be made to the City, not the District. Nevertheless, he wished to respond. He observed that the District serves within the City of Renton and unincorporated King County. If the City was to assume the District, it would be required to keep the District's utilities separate from the City's general fund and the assets and liabilities of the utilities could not be intermingled. Therefore, if a utility uses an asset owned by the general City fund, the utility must pay a fair amount of rent to the general fund. Similarly, if a general funds-supported City department such as public works used a utility asset, such as a building, the general fund must

pay a fair amount of rent to the utility. He advised that requirement also applied to the use of the utility's equipment and personnel. So if the City assumed the District and its assets, and then used the former operations center for a public works facility, the general fund will be required to "buy" the operations center from the utility or pay rent to the utility fund. Therefore, the City would not be getting the District's property for "free" as some citizens contended.

He also noted that the District has a 40 year U.S. Department of Agriculture Rural Development loan, and it also has several state Public Works Trust Fund Loans. With respect to the Rural Development loan, Maron understood that it was a City Attorney's opinion the loan did not prevent the City from assuming the District. However, there was also an argument that the Rural Development loan did protect the District from a City assumption. Therefore, the issue was uncertain and a consensual purchase and sale of the property between the District and the City which resolves this issue by contract would provide certainty and therefore have value to both parties.

In response to public comments at the hearing that the sale of the former operations center to the City has no value to the District or its residents, ratepayers, employees, and commissioners, Maron noted that the District staff and Commissioners could consider these same factors and determine otherwise. For example, with respect to impact of assumption on the District's employees, some employees might prefer to work for a special purpose district, while others might welcome working for a general purpose government. Those who prefer a special purpose employer would place value on a non-assumption provision. Another example is the possible benefit to District ratepayers, Maron noted that some people believe consolidation of a water-sewer district into a general purpose government can provide an economy of scale that reduces costs. Others think a special purpose district like the District is the most efficient form

of governing a utility, without risk that the city overhead would be unduly allocated to the utility. Those persons who are of the latter opinion would place a value on a non-assumption clause. The point is that reasonable people might differ on the factors impacted by an assumption and on the value of a non-assumption clause.

In response to comments at the public hearing there was no rational basis to value a reduction in the monetary purchase price based on a non-assumption provision, he recognized it was difficult to value the proposed non-assumption provision with precision which, in effect, would be approximately \$50,000 per year for ten years. However, he noted the District had gross revenue in the year 2014 of approximately \$6,228,000 and that a value of \$50,000 per year to provide certainty of existence so the District can continue to plan for and operate the District long-term was a rational basis. Also, he provided a memo dated February 25, 2015, to the Board of Commissioners identifying other negotiated agreements between cities and districts containing non-assumption provisions. He advised they generally are one of two types, franchise agreements and other interlocal agreements. He then addressed, as identified in the memo, several franchise agreements between cities and districts which provided for the annual payment of a franchise fee by the District to the City for a non-assumption provision. The franchise fees paid by districts in 2014 ranged from \$27,846 to \$2,271,152.

He also identified an interlocal agreement between the City of Shoreline and Ronald Wastewater District, wherein, in consideration of a non-assumption provision, Ronald would pay Shoreline a fee of \$832,000 for the year 2015 for a non-assumption provision. The term of the Shoreline – Ronald interlocal agreement was fifteen years. His memo included a copy of that interlocal agreement.

He also noted an interlocal agreement between the City of Issaquah and the Sammamish Plateau Water and Sewer District from 2014 wherein that district agreed to pay for the cost of certain storm water projects to be undertaken by the City of up to \$1,000,000 in consideration of a ten year non-assumption agreement between that city and that district. He also provided the Commissioners with a copy of the agreement between Issaquah and Sammamish Plateau for their information.

Therefore, he stated that agreements between cities and districts which included non-assumption provisions were common, and that most of the agreements providing for an annual payment by the district to the city for a non-assumption agreement exceeded the amount of the \$50,000 that was the value for an annual non-assumption provision between Newcastle and Coal Creek.

Lastly, he noted some comments from the public hearing that the District's proposed sale of the former operations center property to Newcastle for less than full monetary consideration would be a gifting of public funds in violation of state law. However, he noted the provision of the Washington State Constitution, Article VIII, Section 7, only prohibited the gifting of public funds or services by public agencies to private entities and that provision did not apply between public entities. Further, for the sake of argument, if that provision did apply to the proposed sale, the proposed sale of the former operations center property to the City was supported by consideration and was not intended as a gift, and the funds expended were for a public purpose and not to benefit private parties.

Maron stated that all of the public comments made at the public hearing had been considered by the District and in his opinion, responded to adequately. Therefore, it was his opinion the sale of the District's former operations center property to the City of Newcastle on

the proposed terms and conditions set forth in the purchase and sale agreement provided by the City was lawful.

Martin then requested any comments from the Commissioners regarding the proposed sale of the former operations center property to the City of Newcastle.

Kunkel felt that the sale of the property to the City, including the non-assumption provision, was appropriate. He felt the continued existence of the District provided its ratepayers with local control and more accountability. For example, ratepayers could directly address the three elected Commissioners that determined utility policies, and had less input to the City Council with seven members. It was also his understanding the City had a policy to require certain properties to connect to a municipal sewer system if available, but the District had never required such. Therefore, the District's ratepayers had more freedom of choice regarding sewer utility service. If the City assumed the District's sewer utility, that policy might be changed by the City. He also noted that connecting to the District's sewer system, depending on the property, could cost between \$10,000 to \$30,000, and that could be financially onerous for some property owners. He was also concerned, if the City of Newcastle assumed the District, including those portions of the District located in the City of Renton and unincorporated King County, the District's customers and ratepayers located in those areas would lose representation because they would not be able to vote for the Newcastle City Councilmembers.

Anderson concurred with all of Kunkel's comments. He also felt the District, as a special purpose district, was a very efficient and cost effective provider of water and sewer utility service. Further, he noted that all revenues, fees and charges collected by the District were returned to the utility systems. Anderson also noted, unlike the City, the District had high employee morale and very low employee attrition. He felt the District's employees were very

specialized and ultimately the sale of the property to the City would be a win-win for the City and the District.

Martin advised that she had missed the public hearing on the matter held on February 11, 2015, due to health concerns but had reviewed all of the documents submitted by the citizens at that hearing and had also listened to a recording of the public hearing. She noted she had served as a Commissioner for 21 years and took exception to comments made at public hearing that the Commissioners were only trying to protect their positions as Commissioners. She noted she attended many meetings and educational conferences on behalf of the District without compensation, and that, for 18 of her 21 years of service on the Board while she had been employed, she had used her vacation time to attend District meetings and informational conferences. She also concurred with all of the statements made by Kunkel and Anderson, especially the comment that all fees and revenues received by the District were returned to the utility. She also noted that the District had a highly trained and very competent staff and that it was important to preserve and protect that expertise. Lastly, she noted that the City had approached the District to acquire the former operations center. It was her opinion the sale of the property on the proposed terms and conditions represented a win-win for the City and the District and would provide the District with certainty for planning and certainty for its staff.

Anderson stated he was confident the District could sell the former operations center to the City on the proposed terms and conditions based on the opinions provided by Maron.

Russell stated that the City had expressed interest in acquiring the property since the year 2003 but had not had the resources to do so until the current proposal.

Kunkel felt, given the District's extensive investigation and due diligence in considering the City's proposed offer to acquire the property, he was comfortable the District had the legal

authority to do so, that proper procedures have been followed as confirmed by Maron, and that the sale was a win-win for the District and the City.

Maron then advised if the Board was satisfied with the proposed purchase and sale agreement, the Board could consider the approval of the transaction by the adoption of Resolution No. 1812.

Kunkel then made the motion to approve the purchase and sale agreement for the sale of the property to the City of Newcastle by the adoption of Resolution No. 1812. Anderson seconded the motion, which carried unanimously. The General Manager was then authorized and directed to sign the purchase and sale agreement on behalf of the District, and he and Special Counsel were authorized and directed to take all steps and perform all actions necessary to carry out the purposes of the agreement.

Maron then explained the procedures and timelines in the purchase and sale agreement. He and Russell will keep the Board further advised.

SURPLUS PROPERTY

Russell recommended the District surplus certain personal property having a value of less than \$2,500 by the adoption of Resolution No. 1813. Following discussion, Anderson made the motion to surplus the personal property as recommended by Russell by the adoption of Resolution No. 1813. Kunkel seconded the motion, which carried unanimously.

ATTORNEY'S NOTES

There were none.

OPERATION MANAGER'S COMMENTS

There were none.

GENERAL MANAGER'S COMMENTS

Russell reported the Chair of the State Association Section IV had requested the section hold its May, 2015 meeting at the District on May 18, 2015. Following discussion, the Board approved holding the meeting at the District Office.

Russell reported District employees Patty Shank and Parker Shepard had recently attended a course on basic water management.

Russell reported District Employee Tish Hunter had attended a course on February 11, 2015, provided by the State Auditor's Office on on-line filing.

COMMISSIONER'S COMMENTS

Kunkel commended staff for attending the classes as identified by Russell.

Anderson reported on his attendance at the most recent State Association Emergency Preparedness Committee meeting and the State Association Board of Directors meeting. He also advised he had attended the most recent State Association Technology Committee meeting.

Anderson expressed his appreciation for all of the information provided on the proposed sale of the former operations center to the City of Newcastle. He felt that all issues and questions regarding the proposal had been answered to his satisfaction, but he expressed frustration that certain parties seemed to always oppose District actions. He stated he felt the District should work with the City of Newcastle, but felt the District was doing a great job to provide excellent utility service to and represent the best interests of its ratepayers. For those parties stating their interest in having the City of Newcastle assume the District, again he noted that all District fees and revenues went back into the utility systems and not to a general fund. He questioned whether the City could do a better job providing utility service to the District's customers. He noted the prior Bellevue assumption of a portion of the District and felt the District's customers assumed by Bellevue now receive a reduced level of utility service, and pay a utility tax which the District does not have the authority to impose.

Anderson also noted that only present or former City of Newcastle Councilmembers had testified at the public hearing, and despite the extensive publicity regarding the proposal to sell the former operations center to the City, no citizens other than the citizens affiliated with the Newcastle City Council had addressed the Board or expressed any opposition to the proposal. He truly felt the proposal was a win-win for both the City and the District and receiving the property would be of great benefit to the City.

Martin reported on her attendance at the most recent WASWD Board of Directors & Workshop meetings.

Martin noted the next State Association Section IV meeting would be held at King County Water District No. 125 on March 16, 2015.

Martin advised she would now start attending State Association Membership Committee meetings and would report back to the Board.

ADDITIONAL CITIZENS' COMMENTS

John Dulcich, a Newcastle City Councilmember, thanked the Board of Commissioners for approving the sale of the former operations center property to the City of Newcastle. He congratulated the Commissioners on being able to see "above the noise" of those who opposed the sale and noted that no ratepayers other than the present or former City of Newcastle Councilmembers had addressed the Board regarding the matter or expressed opposition to the proposal.

Gordon Bisset, a Newcastle City Councilmember, noted the parties who had addressed the Board at the public hearing, although they were all present or former Newcastle City Councilmembers, were still ratepayers. Although he had not addressed the Board regarding the proposed sale, he stated he supported the District and that it provided good utility service and

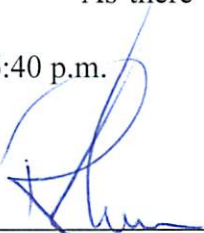
had excellent employees. However, he had voted against the proposed purchase and sale because he felt state mandates required him to oppose it.

APPROVAL OF VOUCHERS

The Board approved for payment of Water/Sewer Maintenance Fund Voucher Nos. 043408 through 043437 in the amount of \$65,250.98.

OTHER DISTRICT BUSINESS


As there was no further business or persons to be heard, the meeting was concluded at 6:40 p.m.



Richard D. Anderson, Commissioner



Douglas C. Kunkel, Commissioner



Pamela A. Martin, Commissioner