

**MOUNTAIN GREEN SEWER IMPROVEMENT DISTRICT**  
**Minutes of the Board of Trustees Meeting**  
**7:00 P.M., Thursday, February 18, 2010**

Board Members Present: Chairman Lynn Peterson, Tina Kelley, Shane Rice, Wendy Eliason and Mark Devoe. Others Present: Dennis Baldwin, Janet Boudrero, Brad Rasmussen, Kevin Allcott, Reed Price, Marvin Neff, Rulon Gardner and Mike Myers. Excused: Blair Larsen

Invocation: Mark Devoe

Item # 1. Discussion / Decision: Additional Funding for ABCO Construction

Marvin Neff and Reed Price, Principals of ABCO Construction, were present to explain why ABCO should be reimbursed for the cost over-runs incurred by ABCO during installation of the new headworks and lift station for the District. In the October 1, 2009 Board meeting, Reed presented a Change Order for \$44,669 in cost over-runs incurred or projected due to groundwater pumping and shoring costs that ABCO did not plan on in their bid. AQUA Engineering and the Board emphasized that the contract is fixed price and that the District is not liable for any of the cost overruns. In the October meeting, the Board commissioned the District administrator and the AQUA construction manager to negotiate a reasonable amount of reimbursement, understood by the Board members not to exceed the amount of the proposed \$44,669 Change Order. However, Reed said that he did not understand that the October 1 Change Order was the limit and ABCO subsequently incurred substantially greater costs for pumping and shoring. The Change Order ABCO presented was over \$76,500.

Lynn Peterson emphasized that ABCO should have expected substantial water pumping and shoring costs since the worksite is in a low elevation area adjacent to a stream bed and near the Weber River and that such a site should be expected to contain much sand, gravel and river rock. Before the bid was accepted, the Board was concerned that ABCO deliberately underbid and expected to recover costs and make profit from a series of Change Orders. Reed and Marvin explained that the estimator simply missed the need for dewatering and shoring, and asserted that the other two bidders would likely have submitted Change Orders for dewatering and shoring anyhow, and that their bids were much higher to begin with.

Tina explained that she had heard that ABCO did good work but was noted for submitting extensive Change Orders and that she had been assured that this contract was firm fixed price and that ABCO was liable for any cost over-runs. Tina said that she reluctantly agreed to the over-run negotiation but that she expected the settlement amount to be something on the order of \$20,000 and much less than the \$44,669 figure. She expressed sympathy for the situation ABCO faces but emphasized that the Board's primary concern is the financial well-being of the District and that ABCO's problems have to be secondary.

Other Board members asked a number of questions regarding the lack of planning by ABCO and whether ABCO had responded efficiently and competently to deal with the water and soil problems. Marvin explained that ABCO has suffered serious financial problems due to their comptroller embezzling a great deal of money over several years, aggravated by the downturn in the economy, and said that ABCO is in a desperate situation and really needs to be reimbursed for the full amount of cost over-runs.

After further discussion, Mark reminded Board members that the Board had already agreed to allow a negotiated settlement of up to \$44,669, and that in light of that agreement, coupled with the much higher over-runs actually incurred, Mark made a motion that the Board agree to a one-time Change Order of \$44,669 as payment in full for services rendered. Tina seconded the motion for purpose of discussion and not because she agreed with the motion. After further discussion about intent and wording, Mark withdrew his motion and Tina withdrew her second.

After some discussion about protocol, Mark then made a substitute motion and with Tina's participation worked out the wording to the effect that the Board would accept a one time change order with the maximum allowed by the October 1, 2009 discussion of \$44,669, with the understanding that this action is not required by contract and is done in good faith and is payment in full for services rendered. Shane seconded the substitute motion. All voted in the affirmative. Motion passed.

#### Item # 2. Discussion / Decision: Lilac Lane Homes in Well Protection Zone

Rulon Gardner and Mike Myer were present as representatives of the Wilkinson Cottonwoods Mutual Water Company to report on a problem with high levels of nitrates found in a well that provides water for the Cottonwoods and Rose Hill community. Rulon stated that this situation is in emergency status and must be corrected. He explained that the water company is seeking to put on line the well in the southwest corner lot of Ivy Avenue and Day Lily Drive. Water Quality officials have greatly enlarged the well protection zone around that well and that expanded zone now involves five or six homes on Lilac Lane that are still using septic tanks. In 2007 a sewer line was placed in Lilac Lane and the District paid for stubs into the fifteen lots affected but did not require homeowners to connect. In order for the well to be used, those homes will have to be connected to the sewer. Rulon asked about the '300-foot rule' and whether the District has a policy requiring home owners to connect to the sewer.

Dennis explained that wording of the '300-foot rule' in Title 10-8-38 allows the District to require homes within 300 feet to connect to a sewer line but does not mandate it. In addition, in 1989 a group representing 63 homes in the Rose Hill community won a lawsuit that removed those homes from the sewer district. Because of that judgement, the District cannot now require the subject homes to connect to the sewer, although County or State health officials could probably do so. Without that, the five or six homeowners would have to voluntarily connect, and since that could cost on the order of \$10,000 each, they would not likely agree to connect at their own expense.

Janet explained that, over the past twenty years, the residents of the Rose Hill Subdivision have been advised that they are sitting on top of their own water supply and have been invited to connect to the sewer. To date only seven homes whose septic systems were failing have connected to the sewer. Janet further suggested to Rulon and Mike that they may want to talk with former Board Chairmen Ron Lawson and Blair Larsen since both have extensive knowledge regarding this situation.

Rulon again emphasized the gravity of the issue and inquired if the District would be willing to participate with the Water Company in helping the six homeowners to make connection to the System. The Board agreed to make this an item on the next Board agenda.

Item # 3. Discussion / Decision: Advance Funding / Impact Fee Notices

Board Members reviewed the draft letters and newspaper announcement that Dennis wrote advising the major developers and builders about imposing the increased Impact Fee beginning April 1, 2010. Tina made some editorial changes which the Board reviewed and agreed with. Tina made a motion to issue the revised letters and newspaper announcement. Motion passed without objection.

Item # 4. Discussion: Headworks and Lift Station Status

It was explained to the Board that the headworks and lift station have been installed and tested satisfactorily and that a leak in the bypass line was repaired. Final cleanup of the worksite and reseeded will be accomplished when the snow melts. The final bypass work will be completed after the generator is installed and proofed.

Item # 5. Discussion: Plant Operations

Dennis explained that the monthly laboratory checks of treated wastewater continue to be well within state requirements, and that a problem of excessive blower shutdowns has been resolved.

Item # 6. Discussion: District Statistics (As of January 31)

The financial condition of the District continues to be sound. The number of equivalent residential units (ERUs) being served is now greater than the original 1989 design target for the system.

Item # 7. Discussion / Decision: Review and approval of February 4, 2010 Minutes.

After Board review of February 4, 2010 minutes, Tina made a motion to approve them as written. Shane seconded the motion. Motion passed. All voted in the affirmative.

Adjourned: 10:25 P.M.

Signed:\_\_\_\_\_