

## **FOUR CORNERS WATER AND SEWER DISTRICT MINUTES**

### **HEARING ON TAX ASSESSMENT BOND, August 20, 2019.**

#### **Call to Order**

President Cory Klumb called the Hearing on Tax Assessment Bond of the Four Corners Water and Sewer District to order at 6:30 pm on Tuesday, August 20, 2019, in the library of Monforton School at 6001 Monforton School Road, Bozeman, Montana.

Board Members present: President Cory Klumb, Vice President Nancy Flikkema, Member Heather West (arrived 6:41 and left at 7:15), and member Phillip George.

Staff/Public: Marty Gagnon representing MMI; Susan Swimley, Attorney; Maralee Parsons, Secretary; Amy Ellingson, Larry Powers, Nathan Bilyeu, Bonnie Andes, David Andes, Amanda Knuteson, Tom Kallenbach, K. Griffith.

#### **Letters & Protests**

Phil George introduced Nathan Bilyeu of Jackson, Murdo & Grant P.C., bond attorney for the District. Mr. Bilyeu explained that DNRC (the financing agency for the WRF project) requires FCWSD to retain a bond attorney to ensure all processes are performed in accordance with state and federal law. One requirement prior to levying assessments for improvements in the District is to provide a Resolution of Intention, stating that it is the intent of the District to levy special assessments, the amount to be paid, and the purpose of the project. This Resolution was passed on July 9, 2019, and notice was mailed to the taxable entities and was also published in the newspaper on July 14 and July 21, 2019. A 30-day protest period occurred between July 14 and August 14, 2019, in which written protests could be submitted to the District. Under statute, if > 50% of the properties bearing more than 50% of the project costs protest, the project could be defeated. Mr. Bilyeu noted that just one written protest was received from Joel and Karen Marshall, which stated their opinion that developers seeking capacity for their new development receive the benefit of the plant expansion, and that the full cost of such expansion should be paid by those developers, not by existing tax and rate payers in the District. Mr. Bilyeu stated that the District noted in its Resolution of Intention that certain benefits of the project have been identified for existing customers, e.g. the existing wastewater treatment plant lacks the capacity to provide adequate redundancy for the existing system users, and also lacks the capacity to allow for needed maintenance activities to occur. It was noted that the one protest received represents 0.0005% of the costs of the improvements intended to be financed by the special assessments, which is less than the 50% required by statute to stop the use of special assessments to finance the project, but Mr. Bilyeu noted that the Board can consider this comment, and then asked the public for any questions or comments.

David Andes of Elk Grove asked if residents would have legal recourse through the courts or Public Utilities Commission to have the process reviewed. Mr. Bilyeu stated that the PUC regulates privately owned utilities, and FCWSD is not subject to their jurisdiction and noted that a private attorney could be consulted to determine if there were a violation of statute or lack of authority of the District. Bonnie Andes asked how long the assessment will last. Mr. Bilyeu replied that this is a 30-year bond, noting that a shorter term would result in a larger annual payment, so the District chose to extend the repayment over 30 years to 1) blunt the immediate impact and 2) allow additional growth in the District over 30 years to reduce individual annual payments over time. There was some general discussion and clarification on the amount of this assessment and existing assessments. Bonnie Andes asked as new people come into the District, what kind of assessment would they receive? Phil George replied that new customers

will be charged a capacity fee (now at \$12K per EDU) and will also receive the same tax assessment as existing customers. It was noted that each year the debt service is divided by the total number of taxable parcels, so as more taxable parcels come into the District, the assessed amount per parcel decreases. It was clarified that Elk Grove is now in the District and will be assessed. Tom Kallenbach of Elk Grove asked Mr. Bilyeu if he was aware that there is a set of covenants that the District assumed when they purchased the water & wastewater systems from Utility Solutions, which caps the amount Elk Grove can be assessed for capital expenditures for the system. It was noted there was an amendment in the legislature this past year which allowed subsequently annexed properties to be assessed through the tax rolls for the District's 2015 bond, rather than charge the special assessment equalization rate passed by the Board in 2018. Mr. Kallenbach claimed that the District's council mis-led legislators in those hearings regarding previous precedent for such an issue. Mr. Bilyeu said he is not aware of the covenants in question, as bond council's position is that covenants do not limit the ability of a public entity acting under its statutory authority, and as such covenants are not part of the regular bond council analysis on whether a District is properly applying procedures for levying charges.

Hearing no other comments, President Cory Klumb closed the hearing on tax assessment bond at 6:54 pm.

## **REGULAR MONTHLY MEETING, August 20, 2019**

### **Call to Order**

President Cory Klumb called the regular monthly meeting of the Four Corners Water and Sewer District to order at 6:54 pm.

### **Approval of Minutes**

July 9, 2019 Board Meeting:

**Motion:** VP Nancy Flikkema moved to approve the minutes as written; member Heather West seconded. There was no public comment. *The minutes were approved 4-0.*

July 16, 2019 Board Meeting:

**Motion:** Member Heather West moved to approve the minutes as written; member Phil George seconded. There was no public comment. *The minutes were approved 4-0.*

### **Public Comment on Non-Agenda Items:**

A question was raised regarding summary judgement and what will now happen to the connection that was made to the Elk Grove water system. President Cory Klumb stated that this section of the agenda is for public comment, not a question and answer session, and questions can be addressed to the District's attorney or engineer or requested to be placed as an item on a future agenda.

## **GENERAL BUSINESS**

### **2019-12 1<sup>st</sup> reading Nelson – 1 Sewer Edu**

*Ordinance 2019-12, Ordinance Accepting the Annexation Petition of Michael & Veronica Nelson, 5933 Monforton School Road, Bozeman, MT, for Sewer Only.*

It was noted the Board agreed to this in principle at the July Board meeting.

**Motion:** Member Phil George moved to approve the 1<sup>st</sup> reading of Ordinance 2019-12; VP Nancy Flikkema seconded. There was no public comment. *The motion carried 4-0.*

**2019-08 Bond Resolution**

*Resolution 2019-08, Resolution Determining Protests and Benefitted Properties and Authorizing Special Assessments to be levied to Pay for a Portion of the Acquisition and Financing of a Wastewater System for the District.*

Nathan Bilyeu summarized the resolution, finding the District passed Resolution 2019-07 on July 9, 2019, stating the District's intention to levy special assessments against benefitted properties, published a notice of its passage and of a protest period in the Bozeman Chronicle and mailed such notice to owners of all 2097 benefitted properties in the District, and has now held a protest hearing this evening. Under this resolution the District Board hereby determines that the written protests and objections to the special assessments, the benefitted properties and the method of assessment are insufficient under Section 7-13-2282, MCA to stop the creation of the special assessment, in that protests represent 0.0005% of the costs of the intended improvements, which is less than the 50% required by said statute to stop the use of special assessments to finance the project. The annual principle and interest for the Series 2019 Wastewater Special Assessment per lot is levied at \$256.81. The previously levied Series 2015 Special Assessment bond and the Series 2019 Special Assessment bond will be combined for a total annual wastewater special assessment amount for each parcel of \$473.81.

**Motion:** VP Nancy Flikkema moved to authorize the General Manager to insert the date of the mailing into the resolution, and to approve Resolution 2019-08; member Heather West seconded. A question from the public asked if the Board is going to ignore the protest letter received, stating his opinion that this is what everyone in Elk Grove feels. President Cory Klumb noted that the Board thanks the writers of the letter for their comments. There was no further public comment or Board discussion. *The motion carried 4-0.*

**2019-09 Bond Resolution**

*Resolution 2019-09, Resolution Relating to the Issuance by Four Corners County Water & Sewer District of its \$11,600,000 Wastewater System Bonds Consisting of a \$300,000 Revenue Subordinate Lien Taxable Series 2019A Bond and a \$11,300,000 Special Assessment Series 2019B Bond; Authorizing the Issuance and Sale and Fixing the Terms and Conditions Thereof; Creating Special Accounts and Levying Special Assessments for the Payment of the Series 2019B Bond.*

Nathan Bilyeu briefly reviewed the Bond Resolution, which describes the project, authorizations, findings, obligations and accounts related to the loans. It was noted that Resolution No. "2019-08" needs to be inserted on page 37. David Andes asked where does the "buy-in" (capacity fees) go and can this money be used to pay down the debt early? It was noted that capacity fees are used to pay for construction and also to maintain asset replacement funds and reserve funds. After all required funds reach a minimum required level, the Board can determine what to do with any excess funds.

**Motion:** VP Nancy Flikkema moved to approve Resolution 2019-09; member Phil George seconded. There was no further Board comment and no further public comment. *The motion carried 3-0.*

**2019-10 Resolution on Late Fees**

*Resolution 2019-10, A Resolution to Increase Water and Sewer Late Fees.*

Phil George noted that the District is currently processing over 100 late payments each month which requires extra administrative effort and proposes the District raise its late

fee on the monthly bill from 1% to \$5.00 + 1%. It was clarified that “late” means past 30 days from the invoice date and there is a 5-9 day grace period depending on the billing period, and the District does waive late fees when the customer provides a legitimate reason.

**Motion:** VP Nancy Flikkema moved to approve Resolution 2019-10; member Phil George seconded. In response to a public question on why the late fee is being set at only \$5.00, it was explained that due to statute, the District can only raise rates (or a penalty on a rate) by 5% or less each year without a rate hearing. There was no further Board discussion and no further public comment. *The motion carried 3-0.*

### **2019-11 Tax Assessment Resolution**

#### *Resolution 2019-11, A Resolution of Special Assessment*

Phil George provided a summary of all bond payments and tax levy per parcel (2,097 parcels), noting the total tax levy per parcel is \$622.36, (less than the \$644 previously advised).

Series 2015 Water Special Assessment Bond	\$171.00
Series 2015 Wastewater Special Assessment Bond	\$215.80
Series 2019 Wastewater Special Assessment Bond	<u>\$235.56</u>
	\$622.36

**Motion:** VP Nancy Flikkema moved to approve Resolution 2019-11; member Phil George seconded. There was no further Board discussion and no public comment. *The motion carried 3-0.*

### **2019-12 Resolution on Sole Source**

#### *Resolution 2019-12, A Resolution to Adopt Rules Governing Sole Source Procurement.*

Phil George noted that the WRF contract contains some items which are only available from a single source, and recommends the District adopt the sole source procurement powers and procedures based on Section 18-4-306, MCA.

**Motion:** VP Nancy Flikkema moved to approve Resolution 2019-12; member Phil George seconded. There was no further Board discussion and no public comment. *The motion carried 3-0.*

### **2019-13 Signatures for WRF Draw**

#### *Resolution 2019-13, A Resolution to Adopt Rules for Draw Signatures for Payment on WRF Construction.*

Phil George explained that 2 signatures are required for the SRF loan disbursement draw request, and this resolution designates Cory Klumb, Nancy Flikkema and Phil George as the authorized signers.

**Motion:** VP Nancy Flikkema moved to approve Resolution 2019-13; member Phil George seconded. There was no further Board discussion and no public comment. *The motion carried 3-0.*

### **Engineer’s Report**

Marty Gagnon provided the report. He noted that the WRF is under construction, primarily excavating and de-watering at this point. The relocation of the gas main is expected to be completed later in the week.

### **Monthly Operation & Maintenance Report**

Larry Powers provided the report:

- Mechanical headworks screen at WWTP (installed in 2015) is in need of repair and parts are on order.
- Zoot/NS disinfection upgrade tanks have arrived, and the system should be in use within 2 weeks.
- The fire hydrant and manhole adjustments which are required by the state's new design at the Baxter/Love Lane round-about have been provided and materials will be ordered.
- The WRF project is underway.
- A 6' gas main at the new WRD site is being relocated.

### **Monthly Financial Report**

Amy Ellingson provided the GA report:

- The new employee hired to replace Tom has started and is doing great.
- The District is adding trees to the Elk Grove plant.
- One of the trucks had an engine go out. The District got 2 new trucks with pulling capacity.
- The audit is on-going

Phil George reviewed the financials:

- Water: Revenues are over budget, primarily due to irrigation activities and expenses are under budget by about \$40K.
- Sewer: Revenues are over budget and expenses are under budget, primarily due to the sludge hauling which was not invoiced in July.
- Shared expenses are under budget by about \$50K
- No capital projects scheduled for this year have started yet.

### **Board Member Topics**

Phil George advised that lot 10, Spanish Peaks LLC near the Korner Klub would like to hook up to sewer only, and Mr. Ritter would like to do the same thing at lot #4. The Board agreed in principle. The annexation paperwork will be prepared for a future agenda.

### **Adjourn**

There being no further business before the Board, the Four Corners Water & Sewer District meeting of August 20, 2019 adjourned at 7:55 p.m.

Maralee Parsons  
Secretary