

CUPERTINO SANITARY DISTRICT

SANTA CLARA COUNTY

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BOARD MEETING

WEDNESDAY MAY 6, 2009

The Sanitary Board of the Cupertino Sanitary District convened this date at 8:00 p.m. in the Stevens Creek Office Center, Suite 104, 20833 Stevens Creek Boulevard, Cupertino, California.

President Bosworth called the meeting to order and the following proceedings were had to wit: Roll call was taken, with the following members in attendance:

Directors: John M. Gatto, William A. Bosworth, Wendell H. Kerr, Jr., Curtis B. Harrison, and Christopher C. Lee.

Staff present: Manager Richard K. Tanaka, Staff Member Steven J. Machida, Staff Member Nichol Bowersox and Counsel Steve Baird.

On motion of Director Harrison, seconded by Director Kerr, it was ordered that the Minutes of the meeting of Wednesday, April 15, 2009, be approved as is. Director Gatto abstained.

The Board reviewed and discussed a letter from Nick Szabo.

Staff Member Machida will attend the Regular Meeting of the San Jose/Santa Clara Water Pollution Control Plant Technical Committee, to be held May 11, 2009.

Director Gatto will attend the Regular Meeting of the San Jose/Santa Clara Water Pollution Control Plant Advisory Committee, to be held May 14, 2009.

The Board discussed CASA Spring Conference held April 29 to May 2, 2009 in Napa Valley. Those who attended were: Directors Bosworth, Kerr and Harrison, Manager Tanaka and Staff Member Machida. Director Kerr reported on the topics covered at the conference. He will pass this information on to Directors Gatto and Lee.

Director Harrison attended the CSRMA Training Seminar, held Wednesday, April 29, 2009 in Napa Valley. He reported on the discussion of Injury Prevention. Sid Nash conducted a presentation on SSMP.

Director Bosworth reported on the CSRMA Directors Meeting, held Friday, May 1, 2009 in Napa Valley. Insurance rates are expected to go down 5% next year. CSRMA insurance company, Lincoln Insurance (a subsidiary of AIG) is doing ok, not in jeopardy. Worker's Compensation is low. Pool liability program is the lowest it's ever been.

Director Lee asked if the Economic Stimulus Package was discussed at the conference. He requested that Staff confirm if the City of San Jose is pursuing stimulus money and if so, what projects are they proposing to fund with the money.

Director Kerr reported on the Legislative Committee Work Group, held Friday, May 1, 2009 in Napa Valley. Director Kerr is to review 17 bills that are going to Legislation on Thursday. Copies will be distributed to the Board at the next meeting.

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President Bosworth led a discussion with the Board on the proposed Sewer Rate Increase. The Public Hearing was opened at 8:39 PM. President Bosworth announced that we would call the names of the individuals in the order that they signed in on the sign-in sheet.

1. Nick Szabo – (8:40 – 8:42)

- Mr. Szabo referred to a letter he submitted earlier to the Board stating that the CuSD, being a special district, is an unusual situation. Most cities provide sanitary sewer service for the citizens as part of city services. However, CuSD provides this service for the customers of Cupertino. He questions if there is a reason to have a separate district if the City of Cupertino has the equipment, staff and ability to consolidate election costs.
- Mr. Szabo also asked when the Prop 218 hearing would occur. Counsel Baird informed Mr. Szabo tonight's public hearing satisfies the notice requirement for Prop 218.
- He requests that the Board look at the efficiency of the district operations.
- He has initiated conversations with the City Manager regarding the possible merger of sanitary district operations and maintenance with the City Operations.

2. Neil Chen – (8:42 – 8:53)

- Mr. Chen wanted further explanation for the 33% increase. CuSD's proposed residential rate is higher than the cities of San Jose (\$325) and Santa Clara (\$12.76/month). When and what will the next rate increase to be implemented? For reference, EBMUD, Contra Costa Sanitary District, San Jose and Santa Clara have lower rates. Mr. Chen provided a handout for the Board.
- Mr. Chen believes that CuSD should not be required to pay more than 5% of treatment plant expenses based on the flow contribution to the San Jose plant. The CIP costs resulting from regulatory requirements are flexible and should be negotiated and possibly deferred.
- Mr. Chen requests that the scheduling of maintenance be reviewed and performed by areas.
- Budget baseline assumptions for expenditures should be re-evaluated to determine what would be a reasonable rate increase?
- CuSD deserves an equitable voice in the capital share of the Treatment Plant. CuSD should scrutinize every CIP project proposed by the treatment plant. Because CuSD is mostly residential, the District should not be required to contribute to CIP projects addressing commercial regulations such as treatment of heavy metal discharge.

3. Cynthia Chang – Resident of Saratoga. CPA. School Board Member. (8:53 – 9:04)

- Ms. Chang understands that the CuSD Board has a fiduciary responsibility to manage the District. She tried to obtain the information for tonight's meeting on the District web site but it was not available on line. She then came to the offices to review and make copies of the material and obtain a copy of the 2007-2008 Financial Audit.
- Ms. Chang is also speaking on behalf of Mr. Jack Mallory who would have been at the meeting but due to prior commitments, he and his wife was not able to attend. They were able to submit a protest letter which is included in the agenda packet.

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- Ms. Chang was able to determine from the February 4, 2009 report that five rate alternatives were evaluated by the Board. She understands that during a financial crisis, revenues must increase and expenditures must decrease.
- Ms. Chang requests that the Board evaluate expenditure efficiencies for both the San Jose/Santa Clara and CuSD CIP and O&M. CuSD should raise expenditure concerns to the Treatment Plant. An independent consultant can be hired to develop a cost analysis to evaluate the benefit/cost of the CIP projects.
- An independent efficiency consultant should be hired to evaluate and prepare an efficiency study of CuSD O &M processes to curtail some of the CIP projects during this economic environment.
- With this in mind, Ms. Chang recommended that a 15% increase should be considered for implementation this year (\$286/annually). This amount would be almost identical to the current West Valley Sanitation District rate (\$289/annually). WVSD serves the other portion of Saratoga not currently serviced by CuSD.
- Staff was helpful in providing her the information but she requests that all of the agendas and reports are put on the District's web site.

Ms. Chang provided copies of her handout to the Board.

4. Gilbert Wong – Cupertino Council Member. (9:05 – 9:08)

- Mr. Wong stated that he understands that increases are necessary.
- However, a 33% increase at one time is too strong.
- The timing of the rate increase is not ideal due to the current economic conditions.
- Mr. Wong suggested that the rate increase be implemented in 15% increments.
- He also requested that all of the agenda and reports be posted on the District website.

5. Patrick Kwok – (9:09 – 9:20)

- The CuSD is proposing a 33% rate increase.
- The Treatment Plant is preparing the Plant Master Plan. The cost sharing for CuSD should be 3-4% of the San Jose CIP. Mr. Kwok believes that collecting \$15 million is premature because the implementation of the Master Plan will not be for another 5-6 years.
- CuSD should provide more public education on the rate increase.
- Mr. Kwok stated that he understands that excess capacity was sold to Milpitas and he wanted to know if that money is in reserves.
- Three different School tax measures are being imposed by the School District, VTA is implementing a tax, and the sales tax has increased.
- Mr. Kwok suggested that San Jose must justify the Federal and State regulations to increase the charges to the tributary dischargers.
- Mr. Kwok requested that the O&M and CIP be deferred to lower or eliminate the rate increase.
- Mr. Kwok requested that the District's costs should be contained by deferring facility maintenance and CIP projects. He recommended that District operation efficiencies be evaluated and reviewed. Cutting back on engineering consultant, utilizing the formal bid

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process for projects, and reduction of personnel costs can also help District cost containment.

- Mr. Kwok suggested that a 10% increase over the next five years is adequate.
- Mr. Kwok requested that the Board be prudent and not spend any further fund for recycling projects at the treatment plant.
- He recommended that the Board be sensitive to the current economic conditions and set an example of leadership by asking for justifications for CIP projects for the Treatment Plant.

6. Nick Szabo – (9:20)

- Mr. Szabo asked to speak to the Board. He stated that he spoke to the Cupertino City Manager and that staff had been directed to look at the merger of the sanitary sewer services with the City of Cupertino operations.

Public Hearing was closed at 9:20 PM.

Director Gatto stated that CuSD is a collection and conveyance District. The District has a fiduciary duty to ensure that sewer services are provided to District customers as well as maintaining the health and public welfare of all customers. The costs associated with maintaining service and meeting regulatory requirements are passed on to the rate payers. Currently, CuSD is comprised of mostly residential units and contributes approximately 5% to the Treatment Plant flows. This translates to 5% pro-ration of Treatment Plant costs. The Board and staff are continuing to review the proration of the costs to San Jose and will continue to be an ongoing discussion. The Board and staff participate in TAC/TPAC meeting and provide the Treatment Plant with well-disciplined review of the proposed Treatment Plant CIP projects.

Director Gatto also stated that with the increasing regulations, increasing rates to continue maintenance and operation of the aging sanitary sewer system is more prudent than paying fines from sewer spills. Director Gatto also clarified that the \$500K in the CuSD CIP budget has been reduced and the costs of necessary improvement projects far exceed what has been budgeted. The original 5-year CIP budget allocated \$1.8 million annually but the board reduced this budget to \$500K in its attempt to reduce the required rate increase.

Director Lee requested that CuSD staff provide assistance to City Staff in their evaluation of merging CuSD with the City operations. Director Lee corrected for the record what had been written by Mr. Szabo in his April 22, 2009 white paper. Director Lee cited from the report "At that time, Cupertino's Chinese community flexed its electoral muscle and elected Christopher C. Lee." Director Lee clarified that all three of the Incumbent Directors ran for re-election. The elected Directors were voted in by voters in the city and not tied to any particular race or ethnic background.

Director Lee requested that Staff add the full agenda to the web. He also recommended that a budget workshop be conducted with the City of San Jose for a line by line review the CIP and Treatment Plant budget items. Director Lee expressed his concern about the discrepancy between the CuSD proposed rate (\$336) and that of West Valley Sanitation District (\$289).

Director Harrison stated that the Board had supported recycling treated water in response to the flow cap that the Regional Board would have implemented on the plant if the effluent exceeded 120 MGD. Due to public education, recycling, and water conservations the effluent flow is now approximately 100 MGD. Director Harrison stated that the District has met our commitment as part of the recycled water program and should not be expected to participate in further water recycling projects.

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Director Kerr stated that recycling water has been discussed for the last five or six months. Director Kerr agreed with Director Lee's suggestion that a work session be conducted to review the treatment plant budget.

President Bosworth indicated that extensive time and effort has been expended in the development of the proposed rate increase. The Board considered many different rate options as prepared and evaluated by staff. The Board reviewed all charts and reports and the decisions were considered very carefully. He acknowledged that reduction or deferring the CIP is an option if no failures in the system occur.

President Bosworth emphasized that he feared the potential dangers to health and public safety in the event of an unexpected major sewage spill. However, the aging District facilities are 30-50 years old and will require repairs and maintenance to ensure that they operate properly. President Bosworth indicated his unwillingness to put the District or community in a situation where a failure due to reduced maintenance results in a major spill in the streets, property or waterways.

Director Lee agreed with President's Bosworth's sentiment that the Board's top priority is for no spills. However, he would like assurances that District is operating at a high efficiency level and that District funds are optimized. Director Lee suggested that Board consider an O&M efficiency study to be conducted.

Director Kerr stated that an efficiency study would likely be conducted should the City pursue merging sanitary sewer operations with City operations.

Director Gatto recommended reducing the proposed annual sanitary sewer rate to \$288 for this year under the condition that this will be revisited next year. This should allow ample time to conduct efficiency studies and to allow the economy to improve.

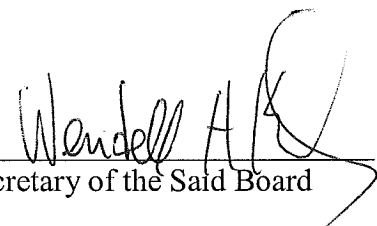
Director Gatto motioned to raise sanitary sewer rate by 14.3% to \$288 annual residential rate and directed staff to prepare ordinance for adoption and was seconded by Director Kerr. Director Bosworth is also in favor of the motion. The motion was amended by Director Gatto to include 14.3% rate increase for all other categories. Those in opposition to the motion were Directors Harrison and Lee.

Counsel Baird presented the Board with the Agreement between Cupertino Sanitary District and Harold S. Toppel and Atkinson-Farasyn, LLP, Amendment to Contract for Legal Services. On motion by Director Gatto and seconded by Director Kerr, it was unanimously ordered that this matter be continued at the next meeting.

On motion properly made and seconded, at 10:35 p.m. it was unanimously ordered that the meeting be adjourned.



President of the Sanitary Board



Secretary of the Said Board

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