

Marina Coast Water District

District Offices
11 Reservation Road
Marina, California

Regular Board Meeting
November 15, 2006
6:45 p.m.

Minutes

1. Call to Order:

President Brown called the meeting to order at 6:45 p.m. on November 15, 2006.

Board Members Present:

David Brown – President
Howard Gustafson – Vice President
Tom Moore – arrived at 6:47 p.m.
Ken Nishi
Charles Scholl

Board Members Absent:

None.

Staff Members Present:

Marc Lucca, General Manager
Lloyd Lowrey, Legal Counsel – arrived at 6:50 p.m.
Andrew Sterbenz, Interim District Engineer
Jim Dowless, Operations and Maintenance Superintendent
James Derbin, Operations Engineer
Paula Riso, Executive Assistant/Clerk to the Board

Audience:

Jeanne Loe, Catering Magik
LaTonya Olivier, TPO Human Resources
Bob Holden, MRWPCA
Dick Goblirsch, City of Del Rey Oaks
Bob Schaffer, Marina Community Partners
Salvador Lopez-Ramos, Bamboo Pavilion
Allison Imamura, Denise Duffy & Associates
Darryl Choates, City of Seaside, Seaside resident
Andre Vadas, Dishes Bistro
Mark Howell, Marina Club
Phillip Chau, Marina Donuts and Bagels
Augustine Arreola, Papa Chevros
Carl Klein, MRWPCA

President Brown deferred Closed Session items until the end of the meeting. In deference to the public present, President Brown began with agenda item 9-A.

9. Staff Reports:

A. Receive Fats, Oils and Grease Program Update:

Mr. Marc Lucca, General Manager, introduced this item. President Brown clarified that at the October 25, 2006 meeting several members of the public spoke to this issue and on the advice of the District's legal counsel, Board members were not allowed to ask questions because the issue was not on the agenda. President Brown stated that he then requested the Fats, Oils and Grease Program (FOG) be placed on the November 15th Board agenda so the Board members could discuss the issue.

Mr. Lucca reported that of the 36 businesses in Central Marina affected by the FOG program, only three have not agreed to comply. He added that the District has received four requests for extension of which three have been approved and one is pending. Mr. Lucca commented that on November 1, 2006, he and Mr. Jim Dowless, Operations and Maintenance Superintendent, met with two representatives of the Association of Marina Food Service Providers for Sensible Grease Collection System Requirements and they now understand the need for compliance, the Board's action, and what latitude the District staff has regarding compliance. Mr. Lucca added that these businesses not in compliance and who are not attempting to come into compliance, will be receiving a non-compliance letter from the District with actions following the District Code.

Mr. Phillip Chau, Marina Donuts and Bagels, inquired about the installation of grease traps. Mr. Lucca stated that the Board adopted an Ordinance in October 2003, which requires businesses to have an eighty gallon, or bigger, grease trap. The District Code does offer a variance process which offers a way to meet the spirit of the Ordinance. Mr. Lucca offered several examples of what could meet a variance request.

President Brown clarified that any restaurant regardless of size, number of tables, or type of food served, must have at least an eighty gallon grease trap. Mr. Lucca answered that the Ordinance is written that way. President Brown asked how a business owner went about requesting a variance. Mr. Lucca explained that they need to write a letter to the General Manager addressing the following conditions: 1) the strict application of the code would result in unfair or unequal treatment, undue hardship, or and emergency condition exists which requires that the variance be granted; and, 2) granting the variance will not cause a significant adverse effect on the water supply or on service to other persons service by the district; and, 3) the variance is in the best interests of the district. Once the letter is received, the General Manager must support that the three conditions have been met before the variance is brought before the Board for approval.

Agenda Item 9-A (continued):

Mr. Lloyd Lowrey, Legal Counsel, stated that when the variance comes before the Board, there must be facts to support that there is a hardship or that it is in the best interest of the District, before the variance can be granted.

Vice President Gustafson explained that a variance begins with a letter to the General Manager and proof of the conditions mentioned above. After that is done, the variance may be brought before the Board for possible approval.

Mr. Lowrey emphasized that this is not a requirement the District thought up on its own, it is a requirement imposed on the District by State Law and State Regulation. Because it is State Law, the District has less leeway than it would have with its own requirements when a variance is requested.

Mr. Augustine Arreola, Papa Chevo's, questioned why the District waited until August 2006 to send letters regarding compliance, when the Ordinance was passed in October 2003. Mr. Lucca answered that before the Ordinance was passed it was published in a local newspaper and after two public meetings, it was published again. Mr. Arreola asked why the restaurant owners weren't made more aware of the Ordinance. Mr. Lucca stated that the District could have visited all the restaurant owners before the Ordinance was adopted, but the District went through the normal steps it takes when adopting an Ordinance.

Director Scholl commented that Mr. Arreola had a good point and suggested that the District learn this lesson for the future. He added that since the District is willing to work with restaurant owners in allowing reasonable extensions to comply, he did not feel there was real reason for outrage.

Mr. Salvador Lopez-Ramos, Bamboo Pavilion, questioned why he has to put in an eighty gallon grease trap when he has two grease traps, one sixty-five gallon, and a forty-five gallon grease trap. President Brown asked if the two grease traps meet the District's requirement. Mr. Lucca answered that the District had inspectors that will be visiting with Mr. Ramos to review his specific plumbing arrangement.

Mr. Lucca explained that over the next several weeks, District staff will visit each restaurant to review if the grease trap meets the requirements and if not, what it would take to get it into compliance.

Mr. Ramos asked if he cleaned his grease trap more often, would that help him comply. Mr. Lucca answered that those are some of the things District staff will be looking for.

Agenda Item 9-A (continued):

Director Nishi commented that he is concerned that staff already went to the businesses and there are a lot of unhappy people. He advised that the next time staff visits the businesses; they leave a more positive feeling.

President Brown asked how many of the businesses not in compliance do not have any grease trap at all. Mr. Lucca stated that he did not have that answer but Mr. Dowless would answer the question when he arrived.

Ms. Jeanne Loe, Catering Magik, stated that her concern is that there are a lot of people who will need a grease trap, but will have problems financing it. She stated that other cities offer help with financing and thought that something could be worked out where everyone works together. Ms. Loe also questioned how a variance would work for those businesses that clean their own grease traps. Ms. Loe stated that the City of Pacific Grove worked with Monterey County Bank and was able to offer low interest loans to businesses for grease traps.

Director Nishi stated that the Monterey Regional Water Pollution Control Agency had low-interest loans available for business to install grease traps.

Mr. Darrell Choates, City of Seaside, Seaside resident, stated that there were local companies that provide the grease traps for a minimal amount of money. Discussion on funding possibilities followed. Mr. Choates stated that he put in a grease trap for \$325 plus installation.

Director Nishi commented that business owners can request a variance through the General Manager and it will be brought before the Board to determine if it is acceptable.

President Brown asked if there was consensus for staff in the future to advise customers of the variance process and to work with businesses in using low-cost local vendors as well as looking into arranging loans for businesses.

Director Nishi commented that the real cost is in the plumbing of the building.

Director Moore commented that although the Board is required to go through this process, it is not required to approve any variance when it comes before the Board. He added that this requirement is pushed down to the District from a state agency which ties the District hands a great deal. Director Moore stated that it would be in the best interest to get all businesses in compliance with at least an eighty gallon grease trap to protect everyone from future requirements. And, from the comments he heard, it doesn't sound like there are facts to support variance requests to be approved. Director Moore stated he would like to see staff assisting the business group with group discounts on materials, plumbing work and low-interest loans.

Agenda Item 9-A (continued):

President Brown stated he didn't want to discourage customers from requesting a variance.

Mr. Lowrey stated that the Board might direct staff to talk with the Regional Water Quality Control Board to see what latitude the District has in administering this Ordinance.

Director Nishi commented that he believes the businesses want to put in the required grease trap, but are having a hardship with the short amount of time given to comply. If a variance is approved, it won't be open-ended and will have a reasonable time frame for the business to comply.

Mr. Carl Klein, MRWPCA, commented that he was part of the original team that surveyed the businesses for compliance. He stated that once contractors find out that a government agency is forcing requirements, prices are going to skyrocket. Mr. Klein commented that if a business owner selects a plumber who is licensed to work within the City of Marina, they need to make sure that they are aware of prices and make sure they don't get taken advantage of.

Director Moore suggested the business owners get together for a bidding process with the plumbing companies and that may keep costs reasonable.

Mr. Andre Vargas, Dishes Bistro, commented that he would like to see the business owners' work together to create some clout with the plumbers and he would like to see the District and business owners come to a compromise of a time extension.

Mr. Lucca stated that the District was already ranting reasonable time extensions to those who request it.

President Brown commented that there was a cake for Director Scholl who was leaving the Board and recessed the meeting from 7:34 until 7:50 p.m.

4. Pledge of Allegiance:

President Brown led everyone present in the pledge of allegiance.

6. Oral Communications:

Mr. Choates commented that City of Seaside residents on the Ord Community were being subjected to taxation without representation. The City of Seaside and Seaside homeowners are urging the Board to pass a resolution to consider election by District. Mr. Choates commented that an attorney has been contacted and there is a meeting scheduled the week of November 20th. He stated that a committee between the District and Ord Community leaders was supposed to be formed but that has never happened. Mr. Choates added that several land use jurisdictions on the

Agenda Item 6 (continued):

Ord Community are large enough to have a seat and representation on this Board. He stated that by March 2007, they will be in court or there will be a lawsuit filed. Mr. Choates said they will not support any expansions through LAFCO and will file any suits through LAFCO as necessary. Mr. Lowrey commented that additional discussion could be made by Board members under item 8-C and he would reserve his comments for that time as well.

7. Consent Calendar:

Director Nishi requested to pull item A (Adopt Resolution No. 2006-92 to Approve an Amendment to the Contract with Peninsula Fence Company for Replacement and Repair of Additional District Fencing and Amending the FY 2006/2007 Budget) from the consent calendar.

Vice President Gustafson made a motion to approve the consent calendar consisting of items; B) Adopt Resolution No. 2006-93 to Approve Revisions to Recycled Water Project and Authorize Filing a Notice of Determination; C) Approve Expenditures for the Month of October 2006; and D) Approve the Draft Minutes of the Regular Board Meeting of October 25, 2006. Director Scholl seconded the motion. The motion was passed.

Director Moore	-	Yes	Vice President Gustafson	-	Yes
Director Scholl	-	Yes	President Brown	-	Yes
Director Nishi	-	Yes			

- A. Adopt Resolution No. 2006-92 to Approve an Amendment to the Contract with Peninsula Fence Company for Replacement and Repair of Additional District Fencing and Amending the FY 2006/2007 Budget:

Director Nishi questioned the expense of installing a gate when the corporation yard site would be moving in the future. He added that he could support this expense if the light by the back gate is fixed.

Director Scholl made a motion to adopt Resolution No. 2006-92 approving an amendment to the contract with Peninsula Fence Company for replacement and repair of additional District fencing and amending the FY 2006/2007 budget. Director Moore seconded the motion. The motion was passed.

Director Moore	-	Yes	Vice President Gustafson	-	No
Director Scholl	-	Yes	President Brown	-	Yes
Director Nishi	-	No			

8. Action Items:

C. Consider Receiving the Revised Draft Municipal Services Review for the Monterey Peninsula and Provide Direction to the General Manager Regarding its Completion:

Mr. Lucca introduced this item. He added that an updated report was provided as a handout for this meeting. Mr. Lucca mentioned that all the comments made by the District were incorporated into this document.

Mr. Lucca stated that comments No. 12 and 14 address the issue of timing about when the District will speak on pursuing the issue of expansion and annexation.

Mr. Lowrey commented on the boundaries of the District in relation to the Ord Community. He explained that the District was one of three groups of entities that submitted a proposal to provide service to the Ord Community in response to the request from the Fort Ord Reuse Authority (FORA). The District's proposal was accepted and the District entered into contracts with the FORA and the Army to supply water to the Ord Community and is still supplying water under those contracts. Mr. Lowrey stated that the agreement with FORA took the position that there needed to be an interim period of time in which there was an interim governance mechanism before the District would expand its boundaries to include the Ord Community. There was the understanding that FORA would be going away in 2014 and that sometime between the 1996 timeframe and 2014, the County, the jurisdictions and the District would get together and figure out a new governance structure when the District expanded its boundaries. Mr. Lowrey stated that the District began looking at this issue about four to five years ago and the Board has held workshops and had serious discussions with LAFCO. In addition, the Board held a public workshop located on the Ord Community to discuss annexation and held a joint meeting with the FORA Board. Mr. Lowrey remarked that the District has been proactive in trying to figure out the next step. There are a lot of pieces that have to be fit together in order to take the next step with one of the major pieces being the Municipal Services Review (MSR). Mr. Lowrey stated that this necessary step is before the Board tonight and sets the stage for the action the Board can take to expand the jurisdictional boundaries of the District to include the service areas of the District. It is appropriate to say the Board has moved deliberately, has not sat back, has worked with LAFCO and is prepared to take the next step. Mr. Lowrey stated that the District is looking forward to, and invites and welcomes, all dialogue with members of the community to help the District understand what the communities see as an appropriate final governance structure within the constraints imposed by law.

President Brown commented that the District cannot add additional Board members arbitrarily due to the constraints of the law.

Agenda Item 8-C (continued):

Mr. Choates stated that was not true. The City of Seaside is the one that initiated and took the Monterey Peninsula Water Management District to District elections. Mr. Choates added that it begins at the Board level. He stated that the Ord Community needs Board representation and as a Councilmember, he fully supports the City of Seaside taking whatever action they need. Mr. Choates said that the FORA may even need to revisit the fact to see if the District can be the provider.

Mr. Lucca commented that perhaps he and Mr. Lowrey meet with Councilmember Choates and his attorney to discuss the issue and report back to the Board in December.

Mr. Choates stated that the Ord Committee has never met and the District has not responded to the letter from the City of Seaside regarding a meeting date and time.

Mr. Lucca answered that the Board has not formed the Committee yet and was not planning on forming the Committee until after the LAFCO MSR was complete. Once complete, the Board will form and appoint members to the Committee and schedule a meeting immediately following.

Director Nishi asked if a letter was received from the City of Seaside. Mr. Lucca answered that the District had not received a letter but the City of Seaside had taken an action at the same time the District was discussing forming the Committee.

President Brown made a motion to receive the revised Draft Municipal Services Review for the Monterey Peninsula. Director Moore seconded the motion. With a vote of 5-Ayes, 0-Noes, 0-Absent, the motion was passed.

A. Consider Directing Staff to Initiate an Amendment to the Agreement for the Financing Repair and Operation of Desalination Plant:

Mr. Lucca introduced this item.

Director Nishi commented that the discussion should be between the City of Del Rey Oaks and the developers. Mr. Lowrey answered that the District needs to be in on the negotiations as well. Mr. Lucca stated the developers are only entitled to the water they need, up to 300 afy, and the District can use any unused water for whatever purposes they deem necessary. By the District staying involved, the developers are unable to resell the unused portion of water to other entities. Mr. Lowrey stated that the District has to remain in control of the unused water. Discussion followed.

Agenda Item 8-A (continued):

Vice President commented that the developments will be constructed in phases and by the time they are complete, there will be additional sources of water available.

Director Scholl made a motion to direct staff to initiate an amendment to the agreement for the financing repair and operation of desalination plant. Director Moore seconded the motion. Director Moore stated that the Board should be providing specific direction in closed session. Director Nishi commented that this water is from the City of Marina and the developers are from the City of Marina while the City of Del Rey Oaks is a separate entity.

A public member inquired on the desal plant and if the District was having a private group do the repair on the desal plant. Mr. Lucca stated that this agenda item refers to the agreement to finance the repair and operation of the District's desal plant. The gentleman asked if the ownership was going to change. Mr. Lucca answered that the ownership would not change.

Mr. Goblirsch, City of Del Rey Oaks, commented that by the City of Del Rey Oaks joining the developers in financing the repair and operation of the District's desal plant, it is an insurance policy to help with long-term financing for their project.

Director Nishi commented that the City of Del Rey Oaks was involved in the initial discussions and then dropped out. The District continued discussions with the developers and came to an agreement. Director Nishi voiced his concern over changing the agreement to include the City of Del Rey Oaks.

The motion was passed.

Director Moore	-	Yes	Vice President Gustafson	-	Yes
Director Scholl	-	Yes	President Brown	-	Abstained
Director Nishi	-	No			

Director Moore requested to agendize a closed session item on the next agenda to discuss specific direction to staff regarding negotiations.

B. Receive and Accept the District Staff's Business Plan:

Mr. Lucca introduced this item and gave a brief explanation of the Business Plan.

President Brown made a motion to receive and accept the District staff's Business Plan. Vice President Gustafson seconded the motion. Director Scholl commented that that this was a meaningful step in the process of having measurable Goals and a game plan. On the other hand, Director Scholl commented that the reason he wouldn't support this is that item 3A,

Agenda Item 8-B (continued):

Conservation, was not well thought through. Director Scholl encouraged the staff and Board to revisit the Goals and sharpen them up a little bit.

Director Moore questioned the preventative maintenance programs and asked if there was a building preventative maintenance program. Mr. Lucca answered that all of the tactics could be placed in the Plan. Staff had to limit it to those tactics that could reasonably be achieved in the twelve month period. Director Moore stated he would like to see in writing preventative maintenance programs for buildings, vehicles, and information systems, no matter how far out in the future they are.

The motion was passed.

Director Moore	-	No	Vice President Gustafson	-	Yes
Director Scholl	-	Abstained	President Brown	-	Yes
Director Nishi	-	Yes			

The Board entered into closed session at 8:50 p.m.

4. Closed Session:

- A. Pursuant to Government Code Section 54956.8
Conference with Real Property Negotiator
Property: Easements, Rights-of-Way, Pipelines and Appurtenances, and Water Rights
Negotiating Parties: MCWD and MRWPCA
Under Negotiation: Price and Terms
- B. Pursuant to Government Code Section 54956.8
Conference with Real Property Negotiators
Property: Proposed Corporation Yard Site
Negotiating Parties: MCWD and City of Marina
Under Negotiation: Price and Terms
- C. Pursuant to Government Code Section 54957
Public Employee Performance Evaluation
Title: General Manager

President Brown reconvened the meeting to open session at 10:02 p.m.

Director Moore made a motion to continue the meeting until 10:30 p.m. or earlier if all business is completed. President Brown seconded the motion. With a vote of 5-Ayes, 0-Noes, 0-Absent, the motion was passed.

The Board re-entered into closed session at 10:03 p.m.

President Brown reconvened the meeting to open session at 10:25 p.m.

6. Possible Action on Closed Session Items:

President Brown announced that direction was given regarding item 3-B where the General Manager was directed to sign the agreement with one small change regarding water supply at the future site.

11. Informational Items:

A. General Manager's Report:

Mr. Lucca stated that there was nothing to report.

B. Counsel's Report:

None.

C. Committee and Board Liaison Reports:

1. Water Conservation Commission:

No comments.

2. Joint City-District Committee:

No comments.

3. MRWPCA Board Member:

No comments.

4. LAFCO Liaison:

No comments.

5. JPIA Liaison:

No comments.

6. Special Districts Association (SDA) Liaison:

No comments.

7. FORA:

No comments.

8. Executive Committee:

No comments.

9. Community Outreach:

No comments.

D. Director's Comments:

President Brown congratulated Vice President Gustafson and Director Moore on their victories in the last election. He voiced his appreciation to Director Scholl for his presence on the Board for the last four years.

Director Moore thanked Director Scholl for his ideas and comments while serving on the Board.

Director Nishi stated that he hoped in the future when the Board goes into closed session the Board members treat each other with respect and courtesy.

10. Discuss Possible Agenda Item for the December 13, 2006 Planning Workshop and Provide Direction to Staff:

Mr. Lucca stated that several meetings ago the Board requested to discuss "Duties of the President and Vice President". That is currently on the next meeting agenda but if the Board desires, other topics could be added. President Brown stated that "Duties of the President and Vice President" was sufficient.

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14. Adjournment:

The meeting was adjourned at 10:25 p.m.

APPROVED:

Howard Gustafson, President Date

ATTEST:

Marc A. Lucca, General Manager