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Wastewater Meeting Minutes

August 12, 2009

Offices of the Chicago Metropolitan Agency for Planning (CMAP)
DuPage County Conference Room
Suite 800, 233 S. Wacker Drive, Sears Tower, Chicago, Illinois

Members Present: Wallace Van Buren; Debra Shore; Frank Beal

Staff Present: Jesse Elam; Randy Blankenhorn; Megan Elberts

Others Present: Pat Armstrong, Esquire Reporting; Joe Schuessler, MWRDGC; Marlo Del Percio, Grand Prairie Sanitary District; David Patzelt, Sho-Deen, Inc.; Bob Minetz, DiMonte; Don Manikas, Locke Lord; Jason Fowler, Sheaffer and Roland; Wayne Cowlshaw, Sheaffer and Roland; Victor Filippini, Holland and Knight; Mary Krasner, Wyndham Deerpoint Homes; Tim Kellogg, Grand Prairie Sanitary District; Peter Brennan, Foxford; Mark Ruby, Mill Creek Water Reclamation District; Jeremy Lin, Lintech

1.0 Call to Order

The meeting was called to order at 10:30 p.m.

2.0 Agenda Changes

There were none.

3.0 Approval of Minutes – April 8, 2009

A motion to approve minutes of the April 8, 2009, meeting, as presented, was made by Mr. Beal and seconded by Mr. Van Buren. The motion carried.

4.0 Water Quality Plan Amendment Requests

ACTION REQUESTED: Approval, Denial or Deferral

4.1 Grand Prairie Sanitary District (09-WQ-005): has submitted a request to install a new spray irrigation wastewater treatment facility to serve the Settlements of LaFox development in Kane county, IL. The treated effluent will be 100% land applied throughout the development.

Commissioner Shore asked Mr. Elam to summarize the staff review of the amendment request. He did so, first explaining that CMAP staff reviews are based on nine evaluation criteria, published on the CMAP website among other places, that are intended to assess conformance with the Areawide Water Quality Management Plan. Staff found the application inconsistent on criteria 6 and 7, and therefore recommended non-support for Grand Prairie's amendment request. Furthermore, staff found the applicant's request to construct a new treatment facility to run counter to the areawide plan's emphasis on regionalization. Staff also determined that since the areawide plan discourages the duplication of infrastructure improvements to serve the same area, and Mill Creek Water Reclamation District had already made such improvements, Grand Prairie's application to serve the area would not be in keeping with the plan. A motion was made to accept the staff recommendation. Commissioner Shore requested comments from committee members. With no comments from the committee members, she requested comments from the audience.

Ms. Del Percio, assistant clerk for Grand Prairie, was called and provided the committee members with additional written comments dated August 12, 2009. She argued that procedural anomalies during the processing of the amendment request were unfair to GPSD, in particular that the timeline for its submission had been accelerated by CMAP and that GPSD had not been informed of the staff review's conclusions early enough to respond to them without practical difficulty. When the Mill Creek FPA was expanded in 2006, she said, the GPSD had not been notified of the amendment request. She also argued that the staff review contained factual inaccuracies, that it opposed the amendment request on irrelevant grounds, that it made use of information not contained in the public record, and that it misunderstood the regionalization policy in the areawide plan by assuming it applied to non-discharging systems, among other points. Ms. Del Percio argued finally that state law provides GPSD exclusive jurisdiction to provide wastewater service to the area within its boundaries.

Mr. Fillippini, attorney for the landowners, was called and provided the committee members with additional written comments dated August 12, 2009. He called attention to the Illinois Appellate Court's recent decision in *Northern Moraine Water Reclamation District vs. Illinois Commerce Commission* to the effect that having DMA status does not grant a monopoly to provide wastewater service. Mr. Fillippini argued that the Wastewater Committee had an obligation to follow the case law in its recommendation. Furthermore, he suggested that having Mill Creek Water Reclamation District (MCWRD) serve the property in question would permit Sho-Deen, Inc. excessive profits, and that it would not be the Wastewater Committee's proper role to protect those profits. He took issue with the staff report's characterization of the landowners as "shopping around" for the best deal on wastewater service, and contested the staff report's conclusion that the courts would need to decide whether or not the recapture provisions in the purchase agreement were lawful

before the Wastewater Committee could consider them valid. Mr. Fillippini also argued that regionalization policy does not apply to land application systems.

Mr. Beal asked Mr. Fillippini to clarify several points, such as the relationship between the three GPSD trustees and the landowners (there is one blood relation) and the status of the litigation over the purchase agreement (it is in court currently).

Mr. Mark Ruby, a MCWRD trustee, was called. He stated that MCWRD has always been willing to serve the subject property, and that area in the GPSD had been made part of the Mill Creek FPA in 2006 at the GPSD trustees' request. The landowners had negotiated with MCWRD to provide wastewater service but had not finalized an agreement. Mr. Beal asked why an agreement was not reached. Mr. Ruby said that many of the landowners' points had changed, and he thought that the downturn in the economy may have made them unwilling to pay the fee for MCWRD's excess capacity. He also urged the committee to consider a deferral if it voted against the staff recommendation of non-support.

Mr. Lin, engineer for GPSD, was called. He said that he had consulted with the Illinois EPA near the beginning of the design process for the treatment plant to determine whether one wastewater operator could construct a non-discharging plant within another operator's FPA, which he said Illinois EPA agreed could be done. He noted that the plant would be a membrane biological reactor design and suggested that it would produce high-quality effluent. Considering his efforts to consult with CMAP and IEPA early on, he said the GPSD's efforts to design and gain approval for the plant had been a good faith effort.

Mr. Fowler, engineer for MCWRD, was called. He referred to a poster-sized map of part of the subject area to describe the improvements that had been made to serve the subject property. A developer had purchased land from a park district to make two parts of MCWRD contiguous. He indicated that MCWRD had required Sho-Deen to make the improvements. Mr. Beal asked whether this had been done prior to a signed agreement, to which Mr. Fowler answered yes.

Mr. Brennan, a landowner, was called. He said that Mr. Fowler had indicated that MCWRD had not incurred the costs for the infrastructure improvements, as Sho-Deen had put up the funding, so that the staff report was incorrect. He also asserted that the improvements had been made to serve other developments besides only Settlements of La Fox.

Mr. Manikas was called. He said that MCWRD made its expansion to include the subject area in 2006 based on a request by the developer and landowners, that MCWRD had always wanted to annex the area and serve the property with sewer service, and that MCWRD and the landowners had had basic agreement on this point. Once the economy changed, he said, the landowners changed their mind about receiving sewer service from

MCWRD. He also said that although MCWRD did not pay the cost of making the \$582,000 in improvements mentioned in the staff review, it did incur losses related to those improvements. Mr. Manikas noted that GPSD had been in existence since 2002 and chose to negotiate with MCWRD to provide wastewater service, but then changed its mind.

Mr. Fillippini was called again. He stated that the disagreement was basically about the money required of the landowners to use the excess capacity at MCWRD. Ms. Del Percio was called again, and she reiterated that she believed the facts and analysis in the staff recommendation were inadequate.

Commissioner Shore closed the floor and said that the rushed nature of the amendment review was due to GPSD's desire to have its request heard at the August Wastewater Committee meeting. She also asserted that the Wastewater Committee is not a court, and would not be able to adjudicate certain issues. Mr. Beal said audience comments had raised issues that were difficult to digest and that he found it hard to support the staff recommendation. He noted that the legal issues raised by GPSD and the landowners should carry some weight with the committee. Mr. Van Buren addressed the question of having two DMAs within one FPA, noting that it is the committee's custom not to support that arrangement. Commissioner Shore called the motion to a vote. Mr. Van Buren and Commissioner Shore voted to accept the staff recommendation of non-support for the amendment request; Mr. Beal voted against it.

MOTION: A motion to defer the amendment request was then made by Mr. Frank Beal and seconded by Commissioner Shore. The motion carried.

An audience member asked when the request would be reconsidered. It was answered that the request would be on the September Wastewater Committee agenda.

4.2 Thorn Creek Basin Sanitary District (09-WQ-041): has submitted a request to transfer 30 acres of non-FPA land to the Thorn Creek Basin Sanitary District FPA to provide wastewater service for two parcels currently located in unincorporated Will County.

Commissioner Shore asked Mr. Elam to summarize the staff review. He noted that staff found the request consistent with the criteria and that the Metropolitan Water Reclamation District had indicated in a letter to CMAP that it had no objection to the amendment request.

MOTION: A motion to support staff's recommendation of support for the amendment request was made by Mr. Van Buren and seconded by Mr. Beal. The motion carried.

5.0 Upcoming Amendment Requests Scheduled for September 9, 2009

There are none known except for reconsideration of the Grand Prairie Sanitary District request.

6.0 Other Business

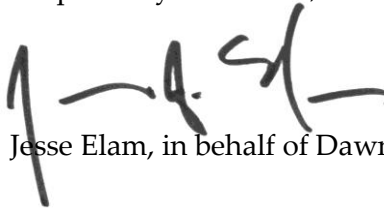
None.

7.0 Public Comment.

None.

8.0 Adjournment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jesse Elam', written over the typed name below.

Jesse Elam, in behalf of Dawn Thompson

08/18/09