



HUMBOLDT BAY MUNICIPAL WATER DISTRICT
828 7th Street, Eureka



Minutes for Special Meeting of Board of Directors

January 17, 2018

A. **ROLL CALL**

President Woo called the meeting to order at 5:30 p.m. Director Rupp conducted the roll call. Directors Fuller, Hecathorn, Rupp and Woo were present. Director Latt arrived at 5:33 p.m. General Manager John Friedenbach, Superintendent Dale Davidsen, Business Manager Chris Harris and Board Secretary Sherrie Sobol were also present.

B. **FLAG SALUTE**

President Woo lead the flag salute.

C. **ACCEPT AGENDA**

On motion by Director Rupp, seconded by Director Hecathorn, the Board voted 4-0 to accept the agenda. Director Latt was not present for the vote.

- D. **PUBLIC COMMENT**-This is an opportunity for the public to speak on items not on the agenda. Mr. Kent Sawatzky stated he believes policies and procedures need to be clarified. He spoke with Natalie Duke, county counsel and he hopes she will provide the County with information on how a Board or Council member how to recuse yourself from a topic, what is a quorum and what an abstention from voting really means. He also stated he doubts this happens at the water district, but county staff often have their own agenda and only provide their side to boards and councils. This needs to stop so boards and councils can make informed decisions.

E. **NEW BUSINESS**

Prior to discussing the items under New Business, Director Latt declared a possible conflict of interest. Mercer Fraser is a client of the law firm he works for and therefore he recused himself from the meeting and left the premises.

Planning Commission Re-Zoning decision on APN 504-161-010, Mercer-Fraser property

President Woo acknowledged the many members of the public who were in attendance at the meeting. She shared the process for discussion. She stated the Board would hear from staff first, then open up the discussion for public comments, then discuss amongst the Board prior to making a decision. Director Rupp stated the protection of our asset, clear, clean water is our most important mission and highest priority.

Mr. Friedenbach provided the staff report. Initially staff believed the fee to file an appeal was \$750 however have since learned the cost is actually \$2,263 per staff at the Humboldt County Planning Department. He shared the letter from Mark Harrison, attorney for MCMP, LLC, (Mercer Fraser) to John Ford and Michelle Nielsen in the Humboldt County Planning Department, responding to our later dated January 3, 2018. He also provided the Board the latest news articles on the subject. He reviewed the process to appeal and shared a map of the Mercer Fraser property in relation to Collectors 1 and 2 and the surface intake to orient the Board and public as to the where property is. He stated the main purpose of this meeting is consider if the Board wants to appeal the Planning Commission's recommendation to change the zoning on the Mercer Fraser property. Staff presented four options to the Board: 1) accept the mitigation measures added at the Planning Commission meeting (the District has not received these documents yet); 2) file an appeal by January 26, 2018 (10 business days) and pay the \$2,263 filing fee. This option will require additional staff time and legal counsel; 3) negotiate further mitigation with Mercer Fraser; or 4) a combination of option 2 and 3. Mr. Friedenbach reminded the Board that Mr. John Ford, Humboldt County Planning Director is at the meeting and may be able to answer some questions. Director Rupp requested clarification on the appeal. He stated the Planning Commission recommended rezoning under the new General Plan and



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permitting for the project. Although the Planning Commission recommended rezoning, it is the Board of Supervisors that have the final decision. This means we are appealing the project at this point, since the Board of Supervisors will decide on the rezoning. Staff confirmed this.

A dozen members of the public addressed the Board. The common concern was that if rezoned from agricultural to heavy industrial, any number of business could go there. It may be a cannabis facility now, but could be a laundry mat or diesel repair shop in a few years. These heavy industrial uses are just too close to the drinking water and the risk level of contamination is too great. There was also great concern regarding the substances used in the cannabis extraction process getting into the water. All agreed the water must be protected and were supportive of the Board filing an appeal.

Mr. John Ford addressed the Board. He thanked them for the opportunity to address questions and apologized for the planning departments failure to properly communicate to our District early on in the process. His purpose at the meeting is to help the Board and public understand what has been done so far. He stated the Q Zone overlay limits the types of industrial uses allowed. Auto wrecking yards, diesel repairs and laundry mats are not permitted activities.

Mr. Ford confirmed that the Planning Commission did recommend the rezoning be changed. This will go to the Board of Supervisors no matter what. The permit for the cannabis processing facility can't go through without the zoning change. He shared options available. The District could advocate the Q Zone in its current form not be approved and request modifications or the District could appeal the special permit if the Board feels the conditions attached do not protect the water. The permit will not be effective until the zoning goes through. Mr. Ford stated the gravel extraction on the site will continue and is a legal non-conforming use on the site. They have a vested right for gravel extraction and processing. Director Hecathorn inquired if a different zoning other than heavy industrial could be used for the gravel extraction. Mr. Ford stated he would have to look into it and get back the District. Director Fuller asked if the current non-conforming use can continue without a zoning change and Mr. Ford stated yes.

Director Rupp inquired if the Board files an appeal, then decides it is no longer necessary, can the District get some of the money back. Mr. Ford replied yes, providing a great deal of work has not been done. Rezoning work is being done already so it is likely that it can be refunded. The money is more of a deposit than a fee. Director Fuller questioned why an EIR wasn't necessary. She noted that cannabis production was not addressed in the general plan and is a very different use than the previous EIR addressed. Mr. Ford stated the EIR will not address everything. It does allow for a look at impacts and mitigations. President Woo noted that she believes people like the idea of an EIR because of the transparency. She feels the process so far has not been transparent. Director Fuller also inquired if risk was addressed as she did not see it in the staff report. Mr. Ford stated no risk assessment was done. Director Rupp inquired if other parcels in the watershed were considered for a zoning change to heavy industrial. Mr. Ford stated he would provide that information to the District.

Mr. Ford stated there is still time to make adjustments to the Q overlay. He is willing to work with staff to modify the Q overlay if the Board would like to use this option. This does not require an appeal. The Board asked several questions regarding what can be added to the Q overlay. Mr. Friedenbach asked about the timeline for the zoning issue going to the Board of Supervisors. Mr. Ford thought it would likely go before the Board of Supervisors on February 27, 2018.

Mr. Friedenbach recapped the Board's options. Director Rupp stated the Board was verbally told that when the District formed, they attempted to purchase the Mercer Fraser property but they would not



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sell. This shows District has been concerned about this property for some time. He went on to say that Mercer Fraser has done work for the District and they do a great job. The District doesn't have any hard feeling against Mercer Fraser. The District's priority is protecting our water. President Woo made it clear that if they District appeals, it will cost some money for fees, attorney and staff time. This extra project will take ratepayer dollars to fund. There were no objections heard from the public. On motion by Director Rupp, seconded by Director Fuller, the Board voted 4-0 by roll call vote to file an appeal with the Board of Supervisors for the Use Permit and oppose the zoning change and work with Mercer Fraser to try and arrive at mutually agreeable Q Zone modifications. Director Latt was not present for the vote since he recused himself prior to discussions and left the premises as noted earlier.

Conflict Counsel

Mr. Friedenbach stated staff recommends obtaining conflict counsel. Staff has researched several land use firms and recommends the Pioneer Law Group, LLP, specifically attorney Andrea Matarazzo. She is available and the firm does not have any conflicts. The Municipal Rate is \$395 per hour. On motion by Director Fuller, seconded by Director Hecathorn, the Board voted 4-0 to hire Andrea Matarazzo of the Pioneer Law Firm, LLC.

Director Rupp requested staff send a letter signed by President Woo to the Board of Supervisors advising them of our concerns.

Director Hecathorn thanked the members of the public for showing up and stated they had good points and input.

ADJOURNMENT

The meeting adjourned at 7:12 p.m.

Attest:

 Sheri Woo, President

 J. Bruce Rupp, Secretary/Treasurer