



HUMBOLDT BAY MUNICIPAL WATER DISTRICT
828 7th Street, Eureka



Minutes for Special Meeting of Board of Directors

September 25, 2018

A. ROLL CALL

President Woo called the meeting to order at 11:31 am. Directors Fuller, Hecathorn, Latt, Rupp and Woo were present. General Manager John Friedenbach, Superintendent Dale Davidsen, Business Manager Chris Harris and Board Secretary Sherrie Sobol, and Pat Kaspari of GHD were also present. Legal Counsels Paul Brisso, Ryan Plotz and Leslie Walker (via phone) were present for a portion of the meeting. Director Fuller had to leave the meeting at 12:40 pm.

B. FLAG SALUTE

President Woo led the flag salute.

C. ACCEPT AGENDA

On motion by Director Hecathorn, seconded by Director Latt, the Board voted 5-0 to accept the agenda.

D. PUBLIC COMMENT

No public comment was received.

E. CONTINUING BUSINESS

Axel Property and City of Arcata

Mr. Friedenbach thanked the Directors for attending a Special Meeting on short notice. He Stated there are a couple of items needing immediate attention, one of which is the Axel property proposed development. Late last Friday, he was notified by Arcata Planning that there is a City of Arcata Planning Commission meeting scheduled for tonight. Arcata staff are recommending approval of the Design Review Permit for the project. Mr. Friedenbach recapped the District's concerns regarding the proximity of the buildings to our easement. As discussed last month, the District continues to oppose the project as is, however, is willing to approve it conditioned upon the Axel Properties agreeing to and signing an Agreement for Defense, Indemnity, and Hold Harmless. This agreement has not been signed by Axel Properties. The District also provided the City of Arcata with a Hold Harmless Agreement. Mr. Brisso stated he had a lengthy conversation earlier with Nancy Diamond, legal counsel for the City of Arcata. He stated Ms. Diamond understands and recognizes the District's easement and ingress/egress rights. She stated she could not advise the City of Arcata to sign a Hold Harmless agreement. He shared with Ms. Diamond that the District has consistently asked City of Arcata staff to inform developers that the property is encumbered by the District's easement and that they need to resolve this early on with the District. Ms. Diamond agreed this was reasonable and expressed surprise that was not being done. Mr. Brisso recommend attended the meeting this evening. If the City approves the permit and the developer does not sign the indemnity agreement, the Developer will be informed that the District will proceed to protect our easement rights and the next step is litigation. Director Latt inquired if the City of Arcata could be named as co-defendant. Mr. Brisso stated it will be easier and clearer if our court case is just between the District and developer, not with an added third party. He stressed that the District has consistently communicated to the City of Arcata that they are not anti-development, but want the easement rights reasonably protected. The Board asked several questions and Director Rupp stated it seems that the developer doesn't understand the impacts of what could happen should the 51 inch pipeline break. Mr. Brisso stated they were shown photos of other breaks but felt the chances of a pipeline break was low. He added that if they truly believe this, they should take the risk and sign the indemnity document. Director Rupp stated if they do not move the building or sign the agreement we go to court. He inquired what can be done to avoid having to go litigation each time this occurs. Mr. Brisso stated we



HUMBOLDT BAY MUNICIPAL WATER DISTRICT
 828 7th Street, Eureka



Minutes for Special Meeting of Board of Directors

September 25, 2018

can show practical precedence using the Moss case. We have shown a history of enforcing our easement rights. Mr. Friedenbach stated one of the next steps he would like the Board to consider is to ask Arcata to develop a land use policy ordinance which includes having the developer consult with the District and reach agreement when the District has easement rights on the property being developed. After additional discussion, on motion by Director Latt, seconded by Director Rupp, the Board voted 5-0 to direct staff and legal counsel to attend the meeting tonight, offer the indemnification agreement as settlement and if it refused, continue to oppose the project, file an appeal with the City and an injunctive relief with the courts. Staff was also directed to work with the City of Arcata to develop a land use policy ordinance that directs developers to consult with the District first when the District has easement rights on property proposed for development.

F. NEW BUSINESS

Humboldt County Public Notice re: New Zoning Districts proposed to be added and properties proposed to rezoned

Mr. Friedenbach shared the public notice he saw in the newspaper. He consulted Ms. Walker and they drafted a letter for public record for the upcoming hearing. He discussed the three areas of concern the letter highlights: 1) RR-Railroad Combining District; 2) MR-Mineral Resources; and 3) Other minor changes. Ms. Walker stated once the staff report is available from the Planning Commission, a follow-up letter may be needed. Mr. Friedenbach suggested the letter state we reserve the right to submit additional comments pending the staff report. The Directors provided input on the letter and several changes, including noting that the 12kV project is grant funded, including water quality concerns, consideration of environmental factors and softening the tone of the letter. Ms. Walker recapped the changes she will be making on the letter. On motion by Director Rupp, seconded by Director Hecathorn, the Board voted 4-0 to approve the letter as amended. Director Fuller had to leave after providing comment and was not present for the vote. Director Hecathorn inquired if the District was notified of the Public Hearing by the Planning Department as previously requested on more than one occasion. Mr. Friedenbach stated the only notice received was via the publication in the newspaper. He also inquired about another special meeting if a second letter is needed after seeing the Planning Departments staff report next week. The Board stated this is an important issue and agreed to meet again to discuss a follow up letter if needed.

G. CLOSED SESSION


Conference with Legal Counsel regarding anticipated litigation (two potential cases), in accordance with Section 54956.9, subdivision (b), of the Brown Act

The Board went into closed session at 12:55 pm. They returned to open session at 1:08 pm. President Woo stated there was no reportable action.

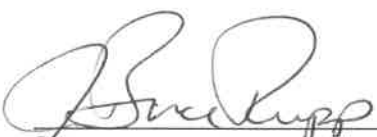
ADJOURNMENT

The meeting adjourned at 1:09 pm

Attest:



 Sheri Woo, President



 J. Bruce Rupp, Secretary/Treasurer