

**SANITARY DISTRICT NO. 1 OF MARIN COUNTY
REGULAR BOARD MEETING MINUTES**

Wednesday, May 19, 2010
6:45 p.m.

School District Board Meeting Room
750 College Avenue
Kentfield, CA

Members Present Patrick Guasco, President
 Marcia Johnson, Secretary
 Sue Brown
 Steven Vanni
 Peter Sullivan

Members Absent: None

Staff Present: Brett Richards, General Manager
 Bridget Wilson, Business Manager
 Michelle Kenyon, District Counsel
 Randell Ishii, District Engineer
 Dennis Gavallos, Program Coordinator
 Joe Cimino, Inspection Superintendent
 Kimberly Israel, Safety Coordinator
 Wendy Miller, Accounting Manager
 Elena Hastings, Administrative Assistant
 Sasha Amiri, Administrative Assistant
 Eva Waskell, Recording Secretary
 ADSI Security Guard

Public Present: The names reflected are those who signed in on the attendance sheet: Marty Goldsbrough; Steve Seely; Philomena Wurche; Mike Wurche; LaMonté Bishop; Rick Holland; Bob Donnelly. However, there were five (5) additional members of the public present.

Item #1-ORDER The meeting was called to order by President Guasco at 6.48 p.m. President Guasco then led the Pledge of Allegiance. Roll call was taken and a quorum was present.

Item #2-APPROVAL OF AGENDA General Manager Richards requested that Items 6 and 18 be pulled from the Agenda and that Item 11 be moved forward to take the place of Item 6.

M/S Sullivan/Johnson to approve the Agenda as amended. The motion carried unanimously.

Item #3-OPEN TIME FOR COMMENTS FROM THE PUBLIC Rick Holland of Fairfax said that this meeting was a transitional meeting for at least one member of the Board and hopefully for three members of the Board this will be their last meeting. He wanted to review the Civil Grand Jury report of 2006 because starting next month we're going to need to address some of the issues that after four years *still* have not been resolved. He referred to three of the findings and quoted the report. "Despite the availability of significant financial resources, the District has failed to take appropriately aggressive action to correct the serious physical deficiencies in its infrastructure in a timely basis." As we know, Mr. Holland continued, this year we've accomplished two one hundredths of a mile of pipe in the ground.

Infrastructure is not getting replaced, and despite a court order it would be great to see some actual effort to get pipe in the ground. Finding four. “The District Board has established a consistent pattern of poor public relations with its ratepayers.” And, of course, we have the ludicrous Board minutes, the first two. And also remember point three, i.e. “Berating and intimidating attendees at public Board meetings.” Mr. Holland hoped that tonight the berating and intimidation tactics would cease in going forward, and that the new Board can deal in a respectful manner with the public. “Certain District Board practices are inconsistent with the fiscal interest of the District ratepayers.” We know about all of the financial mismanagement that has been widely reported. He would like to see a change and hoped that in the next four years the personal vendettas. Pat, you know, transparency. We’ve been fairly lenient on you and because of the situation in which you were replaced from this District about six years ago for bullying your fellow employees. And it’s continued with the public and the public is not going to stand any more of the bullying tactics. It’s a good time for a change.

Bruce Baum, 1165 Butterfield Road, San Anselmo wanted the record to reflect the fact Mr. Holland, our perpetual candidate who was still running for the board of supervisors, once again did not have his timing or his facts correct. First, the 2006 Grand Jury report referred to a *past* Board and three of those members were no longer on this Board. Second, there’s a Consent Decree that this Board filed in federal court under The Clean Water Act and Garril Page also filed. This current Board was operating consistent with the terms and conditions of the Consent Decree. Mr. Baum noted that once again Mr. Holland was incorrect and the facts stood for themselves. There has been *no berating* of members of the public. The only one who has been doing the berating for these last months was Mr. Holland.

Upon the advice of District Counsel Kenyon, General Manager Richards clarified two points. First, this was *not* the last Board meeting before the transition. Even though the election was on June 8, the sitting Board members still attend the June Board meeting. The new Board members will start the new fiscal year with the July meeting. The second point was related to capital production. As has been extensively discussed through the budget and the Capital Improvement Program, the District was spending the better part of \$8-9M this year and another \$4.5-5M next year on two of the biggest projects the District will do. And if you read the Consent Decree clearly, between the average of \$1.4M that the District spends on a mile of pipe, *that alone* puts us at somewhere in the neighborhood of 5.5 miles of *in lieu pipe* just in these two projects. The reason our production *this year* was lower than was anticipated was because the people who own the facility we’re sitting in right now asked us if we would please push the Woodland/College/Goodhill Project back because of the safety of children. And so we coordinated with them in a great partnership and will continue working with them more than anticipated in the next 18 months. But the trade-off for that was having a slower past ten months in order to help Kentfield School District prepare for the dilemma posed by having this construction delayed.

Item #4-CONSENT CALENDAR The Board reviewed the Consent Calendar:

- a) Approve the Regular Meeting Minutes of March 24, 2010
- b) Accept Financial Statements – April 2010
- c) Adopt Finding of CEQA Categorical Exemption for the Gravity Sewer CIPP-Lining in the Kentfield Force Main Replacement Project – Segment 1A
- d) Approve Progress Billing No. 2 in the Amount of \$16,214.40 – Fence Project 2960 Kerner Blvd., San Rafael

- e) Authorize the Board President and Secretary to Sign a Settlement Agreement and Release for \$22,080 with Half Day Café Based on the Recalculation of EDUs

Director Vanni requested that Items 4a and 4b be pulled from the Consent Calendar. Rick Holland of Fairfax requested that Items 4d and 4e be pulled.

M/S Johnson/Sullivan to approve Item 4c of the Consent Calendar. The motion carried unanimously.

Regarding Item 4a, Director Vanni asked if we have or if we keep the audiotapes from Board meetings and for how long. There were some statements made by Mr. Richards, as reflected in the statement he read during the open time for comments from the public during the March meeting, that someone could question. He hoped that the District was keeping these tapes. Director Vanni said he knew that we had no procedure and we had nothing in writing that says we need to keep them for any certain amount of time apparently, and that sometimes they even get destroyed or cannot be heard. So he was wondering if the audio was being kept just so if someone ever wanted to review this and question some of the statements that were made.

Regarding page 3 of the March minutes, Director Vanni noted that seven out of nine times the minutes mention that Mr. Holland commented on a certain issue and that's all it says. Whereas we have Garril Page's comments two for two. She has her full comments written down. Mr. Steve Shaiken has all of his comments written down. Director Vanni wondered why Mr. Holland's comments are just that he commented on that particular item. That happened in seven out of nine items. It seemed like it would be a good idea to have everybody's comments in there if we're keeping these kinds of minutes.

Regarding the top of page 6 of the March minutes, Director Vanni referred to Mr. Richards' statement that "Mr. Holland's comments were factually dishonest." Director Vanni hoped that we had this all on tape so that we can, if someone asks what the actual dishonesty is, or asks for the words Mr. Holland is being dishonest about, that we have a tape of that. So if there's a question, we can refer back to that. Director Vanni also corrected the spelling of Steve Shaiken's last name on the bottom of page 8.

Director Vanni also noted that Items 11 (a status update) and 12 (informational only) on the March agenda were rolled together. These two items related to Capital Improvement Projects. However, there was no status given. He remembered that no action was taken on Item 11 and the minutes for Item 12 just said that this item was rolled together with Item 11. It seemed like the public would like to know what the status of the Capital Improvement Project is.

Regarding Item 4a, Rick Holland of Fairfax said it was fine with me if the Board would like the General Manager to demonstrate his child-like behavior here in the minutes. If you don't want to comply with the Brown Act, that's also fine with me. The district attorney will find this quite interesting. Mr. Holland said that Director Vanni brought up several points. I'm saying you could probably go back and take a look at this. It's not just the immature behavior of the General Manager but also opening up the Board to a libel suit in that on several instances I'm accused of being dishonest, uninformed, misleading. But in no instance is there ever any

clarification as to *what*. I said a few moments ago that two one hundredths of a mile of pipeline was put in last year and the General Manager essentially confirmed that. He said that oh yeah, in the last ten months we haven't got pipe in the ground but we're meeting the Consent Decree. It says that there's a court order each fiscal year to put two miles of pipe in the ground. You haven't met that. Therefore, you aren't meeting the Consent Decree. Therefore, I'm being honest and you're being dishonest. So you can move forward with how you'd like to approach this. I will take the legal action necessary. But it just seems again, as I've mentioned before, if you would like to corroborate what Mr. Baum says, if you haven't met in four years, made the changes that the Grand Jury requested, were found guilty of obstructing your fellow agencies in this last year's Grand Jury report. Things have gone from bad to worse in the past years. There has been no improvement.

Director Brown said that since we're correcting the minutes, she wanted to know if it was appropriate for staff to clarify that which you may have been taking notes on the different issues. She wanted to comment on the ability to quote or to at least report what, in those areas that Director Vanni brought up, the comments by Mr. Holland or anyone else actually. She liked the idea of everybody's comments being included and she realized that we have videotape and people can see it. She appreciates very much that we have all of this on tape. And it may be that the comments that we will publish might be embarrassing, even particularly for the person who made them. But she would rather allow that person's comments to be included in the public record so that everyone's comments are... She concurred that it would be important as long as we're putting in other's comments to include all. She also realized that it was *extensive* and went on for a long, long time. However, she liked it better than having just that someone commented.

M/S Johnson/Sullivan to approve Item 4a, the minutes of the March 24, 2010 Board meeting as amended with the spelling of Mr. Shaiken's name. The motion carried unanimously.

Director Sullivan asked that we agendaize for a future agenda the question of saving the audiotapes that was put forward by Director Vanni. In response to a question from Mr. Richards, Director Sullivan replied that he was asking staff to clarify what the policy was.

Regarding Item 4b, Director Vanni wanted to know what the LL Option Agreement on line 14 of the Balance Sheet was. Business Manager Wilson said that it was the Larkspur Landing deposit made on the sale of the property. Director Vanni referenced line 22 Loans Payable and wanted to know how the District was paying back the loan. He said it looked like this year's repayments on the \$10M loan have been small (\$1300 and \$1600) and it's going to take a long time. He wanted to know what the payment schedule was and how we're paying that loan.

Regarding line 2 of the Statement of Activities, Director Vanni noted that property taxes are down from last year *and* he realizes that only 97% have been collected. But that still represents a \$600,000 loss of property taxes because of the economy and the way things are and people losing houses. He said that line 25 indicates that the District hasn't spent any money on putting pipe in the ground. The year's almost over and we've only used 15% of it so we're not putting pipe in the ground—with the Capital Improvement Projects anyway. In addition, line 25 of the line-by-line Analysis of the Statement of Revenue and Expenses says that "Capital Improvements Projects are low year to date due to delayed spending on the

SCADA Building and the Kentfield Force Main projects.” Director Vanni said he understood how we’ve broken up and delayed the Kentfield Force Main project, but the SCADA Building isn’t a Capital Improvement Project. It was never on our capital improvement list. He didn’t know how you could put in the SCADA Building as having anything to do with Capital Improvement projects. He asked for clarification on this.

Regarding the Check Detail, Director Vanni observed that in the last two months the District spent nearly \$20,000 on temporary help, including an accounting manager. He wanted clarification on this particular position and asked how long we would be temping.

Mr. Richards asked staff to address Director Vanni’s question about the loan payments. Accounting Manager Miller said that there were two loans. The payments for the Kerner building were about \$1500-1600 per month to the principle. The larger portion of the loan was a \$10M installment sale loan that the District has had for a couple of years and these payments occur only twice a year.

Regarding the question about lower revenue, Mr. Richards asked the Board if he could confirm the following at another time, and he will do so, but he believed that the lower property tax revenue received was because the state came in and took payments from agencies. It forced them to pay whether they wanted to or not. Some agencies were in a position where they could not afford to pay the money up front. The state took the money anyway and they were given a loan through this clearinghouse organization that the state put together. For agencies such as ourselves, that could endure the upfront hit. We will get our money *sooner* but we didn’t get a loan. We *will* get our money back.

Regarding Director Vanni’s question about the SCADA building, Mr. Richards noted that a capital project does not need to be on a capital project list for it to be capital project work. We *do have* a capital project list and we use that as a *guide* for our capital planning, but the SCADA facility was absolutely a capital installation for the District. As far as the temporary help are concerned, each and every position that’s being filled has been approved and funded through the Board. We have the Accounting Manager who has stayed with us during the recruitments. We’ve done a couple of recruitments to fill that position with the Board’s support. We have a couple of other temporary positions. We have some vacancies on staff and staff made the decision to use that salary savings, which was already allocated and approved, to fund temporary employees for those positions. There are no employees that the Board was unaware of or that were not approved.

Bruce Baum, 1165 Butterfield Road, San Anselmo had questions about how the property tax revenues were shown on the Statement of Activities and why there was a \$5M difference between 2009 and 2010. After Accounting Manager Miller answered his questions in detail, Mr. Baum concluded that the District was basically running on budget.

Director Sullivan requested that in the future the Statement of Activities contain the property tax statements compared year-to-year regarding what came in. Ms. Miller clarified for Director Johnson that next year the District should be receiving somewhere between \$5-5.1M in property taxes.

Rick Holland of Fairfax said it will be interesting to see if the property tax actually comes in. Last year's budget was three months late and hopefully this year, which will be next month's meeting, we'll have an on-time budget. It's showing here that property taxes are down 11%. It will be interesting to see if that comes in. I said last year that you could expect to see lower property taxes. Again, we'll see throughout this evening about who's honest and who's dishonest. One question for clarification I have here is about loans payable on the Balance Sheet because on line 22. Are both loans included in that amount? The \$10M and the \$3M? Yes, replied Ms. Miller. Mr. Holland then noted the small repayment amounts and agreed with Director Vanni's point that very little money has been paid despite the District's fees doubling two years ago. You can see the concern here. Pipe wasn't put in the ground and our fees doubled. We took out a \$10M loan and of course that was because of the Larkspur property which was up here on lines 14 and 17, which of course is now a \$15M lawsuit and the legal expenses. And it looks like in two years there's been very little paid down. And I just wonder where the money's going to come from to pay down the large debts that this District has. And again, it's about the financial mismanagement that has been talked about now or several years.

Mr. Holland pointed out another question that wasn't brought up on the Statement of Activities on lines 31 and 32. Here we have our Litigation Reserve of \$2M and District Operational Reserve of \$4M. And here in April it shows zero. Is that zero reserves? Business Manager Wilson stated that that zero indicates that zero has been spent and therefore the District has \$6M in reserves, as indicated on lines 31 and 32. Mr. Holland thanked Ms. Wilson for her reply.

Mr. Holland said that the record is sometimes hard to follow and you look at all these expenses for the legal costs etc. And then another concern of an issue that I brought up about a PR firm which I stated was going to be for propaganda. And we've seen all the misinformation sent out to the public in the Pipeline newsletter, which shows here about \$10,000 a month between mailing, Wren's PR, our two lobbying firms, etc. It would just seem that our ratepayers are not getting their money's worth here.

M/S Johnson/Sullivan to approve Item 4b of the Consent Calendar. The motion carried unanimously.

Regarding Item 4d, Mr. Holland said he pulled this item because you were talking about approval of \$16,214 for a fence project. And the \$16,000 is actually part of what looks like a \$46,000 project to build a fence. The \$16,000 is the current payment due. So \$46,000 to build a fence around the property purchased in San Rafael. Is that correct? Program Coordinator Gavallos said that the total was actually \$56,000. Boy, remarked Mr. Holland, the next thing you know we'll probably have engraved manhole covers going on here. Just I guess the question, I don't know if you could answer it now, have we hit \$3M now invested in the building outside of our district which will never be recuperated? I don't know if you can come up with that number. I imagine probably at least \$3M.

M/S Johnson/Sullivan to approve Item 4d of the Consent Calendar. The motion carried unanimously.

Regarding Item 4e, Mr. Holland said I just have a question. I think it's great and I imagine you would approve it for the Half Day Café. The question I have again is going back to the public hearing two years ago for the rate increase. And I'm trying to recall. There were several questions raised by ratepayers during the discussion. On Item 4e it says the District established its current sewer service charges for the fiscal year in accordance with Ordinance No 59. Restaurants are billed based on water usage and the FOG ordinance high-strength factor." And it goes on to apply instances of that. My question is, homeowners, and I believe San Quentin, also asked if there was an alternate way, rather than just EDUs, for ratepayers to be paid. And I don't remember this District ever getting back to the ratepayers as to the alternate means of assessing the rates.

Director Brown stated she wasn't quite sure why Item 4e was pulled from the Consent Calendar. Mr. Holland said it seemed inconsistent that business can be billed based on their water usage, yet homeowners have not been presented with this alternative. And no response was ever given to homeowners why this didn't occur.

Mr. Richards clarified that homeowners are not billed on a graduated fee schedule, whereas a business like Marin General Hospital and Half Day Café are *directly* billed in proportion to their strength factor which is set by another agency or in conjunction with us, but more importantly, is based on their water usage through MMWD. It would be cumbersome, to say the least, to be taking a single static charge for a home that doesn't change. That's not really done in the industry. But when you have a larger property like a retail or commercial property, it's a lot easier to do that. He also pointed out that he wasn't here at the time of those public hearings so he didn't know what the dialogue was.

Director Sullivan said that Mr. Holland's comments were relevant to Item 4e and that we talked about looking at it and had some feedback that it was very cumbersome to do it and there wouldn't be much benefit. He also didn't remember the Board publishing that discussion so he suggested that maybe we can have that discussion again and publish or put something in the newsletter about alternative means of sewer bill charges.

Mr. Richards said that with the Board's permission, staff will probably bring something on this issue for the Board to review. He also pointed out that in the case of both Marin General and Half Day Café, it was *they* who did the homework, proved what was wrong, and presented the District with the evidence.

M/S Sullivan/Johnson to approve Item 4e of the Consent Calendar. The motion carried unanimously.

Item #5-CONSIDERATION OF ADOPTING RESOLUTION OF APPRECIATION NO 10-1375 TO SENATOR MARK LENO General Manager Richards noted that Senator Leno's aide, who was in the audience earlier, had to leave because he had a meeting in San Francisco. However, staff would be certain that Senator Leno received a copy of the Resolution, if approved, and a letter thanking him for his time.

Director Johnson said it was very helpful and a huge service to our agency to have Senator Leno help out with the television commercial, which was directly related to the lateral grant program and the environment. And she appreciated everything else he's done for us. Other Board members were also very appreciative of the Senator's help.

Rick Holland of Fairfax said I think this is great and I appreciate it. I'm just sorry that in the appreciation that you didn't include a big thank you to Senator Leno for his support of AB 1232 and Jared Huffman's consolidation bill. You know Leno was a strong supporter of consolidation here in Marin and approved the bill for southern Marin. And we are now urging for sanitary districts, which will occur in January. And I look forward to the consolidation occurring here. And I'm sorry again that you pulled the agenda item tonight for discussion. But it's just too bad that for Mark Leno you couldn't include also a big thank you for his consolidation efforts.

Bruce Baum, 1165 Butterfield Road, San Anselmo said he thought it was great that Senator Leno got involved and worked with the staff in creating the PSA. He recommended that the PSA be shown on the CMCM channel to educate people, and that little shots could be shown on the Headlines News which airs every hour.

Director Brown said she was a bit concerned about Mr. Holland's description of Senator Leno's perspective on consolidating because it didn't match what she knows. She felt that Senator Leno needed to speak for himself. Director Sullivan observed that there was nothing in the Resolution about consolidation.

After a short discussion, M/S Johnson/Brown to adopt Resolution No. 10-1375 of Appreciation to Senator Mark Leno for his outstanding effort in community service to the people of the Ross Valley. Roll Call vote: Ayes: Brown, Guasco, Johnson, Sullivan, Vanni; Noes: None; Absent: None; Abstain: None. The motion carried unanimously.

Item #6-IMPLEMENTATION OF ROSS VALLEY SANITARY DISTRICT PUBLIC RATEPAYER FOCUSED STRATEGIC FORUM ANALYZING CONSOLIDATION OF SANITARY SEWER DISTRICTS IN CENTRAL MARIN: WITH AN EMPHASIS ON FORENSIC FINANCIAL ANALYSIS IN THE AREAS OF ASSET MANAGEMENT; OPERATIONAL EFFECTIVENESS; ENVIRONMENTAL EFFECTIVENESS, CAPITAL PRODUCTION AND EXPENDITURES; STAFFING RESOURCES; ORGANIZATIONAL STRUCTURE AND PREPAREDNESS; HISTORICAL CONSOLIDATIONS: EXPERIENCES AND CONSEQUENCES; LAFCO 2007 SPHERE OF INFLUENCE: CONCLUSIONS AND RECOMMENDATION; RESPONSIBLE OPPORTUNITIES FOR GROWTH; COMMUNITY OUTREACH AND EFFECTIVENESS; COMPLETE SWOT ANALYSIS (STRENGTHS – WEAKNESS' – OPPORTUNITIES – THREATS); AND THE HISTORIC, AND POTENTIAL FUTURE FINANCIAL IMPACT TO THE RATEPAYERS OF THE ROSS VALLEY SANITARY DISTRICT – SANITARY DISTRICT NO. 1 OF MARIN COUNTY This item was pulled from the Agenda.

Item #11-REQUEST FROM PROPERTY OWNERS OF 242 THE ALAMEDA, SAN ANSELMO, FOR RETROACTIVE LATERAL REPLACEMENT GRANT PROGRAM (LRGP) FUNDING General Manager Richards reviewed the staff report and gave a brief background surrounding the request. Mr. Richards noted that the homeowners were not aware of the grant program at the time they had the work done and they used a plumber who was not on the approved list. They also did not do an application to the District which means that staff wasn't there to witness the video taping of the property.

Homeowners Michael and Philomena Wurche spoke in detail about the circumstances surrounding their request and answered questions from Board members. Mrs. Wurche said that when she called the District to ask what they needed to do about their badly leaking

lateral, no one told them at that point about the grant program or they would have applied. Mr. Wurche described the condition of the lateral, which was in urgent need of repair.

Director Johnson observed that the fax to the District from the Wurches was dated August 6 and the grant program was not approved until August 25. So the program was not even in existence when Mrs. Wurche contacted the District office.

District Counsel Kenyon said that there was language in the program that prohibits staff from making any kind of recommendation to approve a retroactive application. However, the Board could choose to waive that requirement.

Director Sullivan stated that the Board had indeed discussed the negative impact of precedent setting in cases where work had been done by homeowners *years* before the grant program was approved. But this appeared to be a unique situation in which the application was right before the grant was approved and the permit was given right after the grant was approved. There can't be but one or two other people who did the *same* thing. Therefore, he didn't think this would be precedent setting.

President Guasco suggested that the Wurche's private sewage overflow, if it can be independently verified, could be considered an emergency repair because there was really no other way to clear the blockage.

Mr. Richards noted that staff can go out and video the line and determine whether or not there's new pipe in the ground. He clarified for Director Johnson that if they could not put a camera in the line to video it in the first place (because of the offset), the pipe met the criteria of being bad enough that it needed to be replaced. Director Johnson suggested that a clause dealing with emergencies be put in the language of the grant program.

Mr. Richards asked that if there were criteria that would meet the Board's expectations to approve or disapprove this request, would the Board please give staff direction so they can go and confirm or unconfirm those criteria and bring it back to the Board. President Guasco asked staff to do more investigation on this issue. Director Sullivan said that staff could look at the service call and the dates on the permit. Mr. Richards said that staff will video the line and confirm the presence of new pipe, and check the lat-cards.

Ms. Kenyon remarked that what staff was looking for was facts that would make this case unique so that it wouldn't be a precedent setting situation, and facts that were so unique they would be difficult to apply to a future situation. These facts can be put in a staff report that's brought back to the Board who can then vote on it.

There was Board consensus to give staff direction to do more investigation and bring back a staff report with the relevant facts.

Item #7-CONSIDERATION OF FORMATION OF AD HOC COMMITTEE FOR CONSOLIDATION FORUM APPLICANT SELECTION PANEL

General Manager Richards reviewed the staff report and noted that he was asking that the words "applicant selection" be deleted from the description of the ad hoc panel. After a brief discussion of the impact that the upcoming June election would have on selecting Board members (and potentially *new* Board members) to serve on this ad hoc committee, there was Board consensus to table this item.

Director Brown said that after the June election, she would appreciate having an ad hoc committee address what was going to be considered in Item 6 so they can work with all of the material that's already been gathered on consolidation and report their findings back to the

Board.

Rick Holland of Fairfax said the circus continues. Sorry that it's above Marcia's head to understand all of the complexities of consolidation. And it would be interesting to know why we didn't discuss it tonight. Director Guasco made a commitment to the towns here in Ross Valley to hold a Town Hall meeting and it doesn't look like there's a Town Hall meeting now. And we don't have agenda Item 6 to discuss. But just so we don't waste your time and other people's time, let me just give you a little bit of a timeline so you can fit that in. Between now and the end of the year there are going to be one or several applicants to LAFCO to take over the consolidation process. We have about six months if you want to have any input to have your input. It's very clear we're going to save easily 5% operational cost in consolidation. We're going to save millions of dollars in wasteful spending from this district which can't even manage to get pipe in the ground. Everybody else is willing. You tabled the item in September of 2007 and everybody else is on board to move forward. So if you're going to *do something* and rather than make whatever statement it is or whatever circus this is that you're trying to conjure up, keep in mind the timeline. You have until the end of the year if you want to have any input. And you can then apply that to LAFCO and with your other fellow members. Thank you.

President Guasco asked Mr. Holland if he was giving this district notice as chair of the committee whose name he couldn't remember. Mr. Holland said he was the official chair of the Committee for Sanitary Consolidation. Director Guasco asked for the best way to get in touch with the Committee. Mr. Holland said, "You can call me directly." President Guasco wanted to know who the members of the Committee were. Director Johnson wanted to know if the Committee had any meetings they could go to.

Mr. Holland said we would be letting the public know about this. So we've had, and again, we've had Mark Leno— President Guasco interrupted to ask if he could check in with Senator Leno. Yeah, replied Mr. Holland. Okay, said President Guasco. And he knows that you're saying that he's part of this?

Mr. Holland said he's not on the Committee. No. We're collaborating with the assembly member, with our state senator, with the city council members, the mayors. And there are various meetings that are taking place. And frankly, you're not invited to them because of the circus that you guys have been going through. President Guasco asked if he could contact Senator Leno and he'll confirm that you're speaking on his behalf at these public meetings. I'm not speaking on his behalf, Mr. Holland replied. Oh, it sounds like you are. That's all, said President Guasco. Mr. Holland said, No, I'm just saying that he's a supporter of consolidation.

Bruce Baum, 1165 Butterfield Road, San Anselmo said he agreed that this item should be tabled and that the ad hoc committee should be involved with drawing up the consolidation materials. He stated that Mr. Holland once again confused the facts. There was no *proposal* to consolidate. *It's a merger with San Rafael*. Corte Madera withdrew by resolution on May 1, 2007. They are not part of any joining together. And you always have to think in terms of what are the benefits to the ratepayers of Ross Valley to assume San Rafael's liabilities, like the pension liability of \$140M.

Mr. Holland wanted to reply to Mr. Baum's comments but Director Guasco pointed out that he had already had his allotted time to speak. In spite of the reminder from Director Guasco to respect meeting decorum, Mr. Holland called out to say he wanted to verify that Mr. Baum was clueless with respect to what my... [unintelligible] Director Guasco again reminded Mr. Holland to respect meeting decorum. I have little respect myself, called out Mr. Holland, for

somebody that's totally clueless as to what it is we're proposing.

After a short discussion, M/S Sullivan/Johnson to table Item 7. The motion carried unanimously.

Item #8-CONSIDERATION OF FORMATION OF AD HOC COMMITTEE TO SERVE AS THE CITY OF LARKSPUR CMSA COMMISSIONER COMMITTEE General Manager

Richards reviewed the staff report and said that unfortunately staff didn't have a lot of detailed information about this item. We sent a letter to Larkspur indicating we wished they would use the process spelled out in the Annexation Agreement for selection of their CMSA Alternate, which included an ad hoc committee from Ross Valley working with the town to select the next candidate. (When a recent CMSA Commissioner's seat was vacated, Larkspur announced that one of their city council members would be taking that role.) There was no response to this first letter so we sent a follow-up letter, again asking them politely to please honor the terms of the Annexation Agreement. They didn't respond to us personally or send us anything or give us any information, but a District staff member was looking through the city's website and noticed what looked like an Internet promo ad advertising for interested candidates that would like to serve at the CMSA Board for Larkspur. The ad stated that the city *would be* working with the District after all, which was what we requested. So we're thankful they did that. And in anticipation of that cooperation advertised on their website, we would like to partner with them in the selection of the next CMSA candidate. In response to questions from Board members, Mr. Richards clarified that while Larkspur never officially notified the District, they didn't do anything wrong. He was just making the point that there hasn't been much inter-dialogue.

There was Board consensus to table this item because of the potential impact of the upcoming June election on the composition of the Board and the desire to give any potential new Board member an opportunity to serve on the ad hoc committee.

In response to a question from Director Vanni, District Council Kenyon clarified that two Board members have to be on the ad hoc committee.

After a short discussion, M/S Johnson/Brown to table Item 7. The motion carried unanimously.

Item #9-ADOPTION OF RESOLUTION AMENDING AND RESTATING RULES OF DECORUM AT MEETINGS OF THE DISTRICT'S BOARD OF DIRECTORS General

Manager Richards reviewed the staff report and noted that time limits and a number of other issues related to the rules of decorum at Board meetings had been discussed previously. He said that staff was ready to implement the Resolution Amending the Rules of Decorum upon Board approval.

Director Johnson recommended that the word "District" be deleted in paragraph (7) on the third page of the Resolution so that the language would refer to any property where the meeting was being held. There was Board consensus to do this.

Director Brown said she was uncomfortable with the Resolution's language limiting comments for a period up to three minutes. She wanted to know if it was possible to use language such that the Board president could, in certain times, or may have to impose a time limitation depending on the number of people wanting to speak. District Counsel Kenyon said that the concern with putting in a time limit was that what we're trying to avoid was the

appearance of being arbitrary. She said it was important for the Board to have a time limit in there of some sort. The Board president can always extend it upon approval but there should be a limit so that everybody was treated the same. If there's a lot of discretion that's provided in the presiding officer, it's hard to determine when somebody was being treated differently than another person. That creates the due process concerns which she has had to deal with before in terms of some public speaker saying someone received four minutes and I only got three minutes. That's unequal treatment, it's unfair, and it's discriminatory. Putting in a time limit ensured that everyone was treated equally. In response to further questions from Director Brown, Ms. Kenyon explained that if you have protocols that say that it's three minutes, then when the timer goes off, your presiding officer will say, as he has been doing, can you wrap it up? And that usually directs somebody to wrap it up. Director Brown said she understood the value of equal treatment of speakers and appreciated the time that Ms. Kenyon put into the detail of the Resolution so that we have it *prior* to any kind of situation that might arise.

Director Sullivan pointed out that if there were something complicated being discussed, this language didn't allow for a longer time, only a shorter time. So the current language should be modified. Ms. Kenyon said that the issue was that the decision to extend the time would have to be made *prior* to anybody speaking on the item. She said that language to allow that type of discretion can be put in the Resolution.

President Guasco wondered about the concept of people yielding their speaking time to the current speaker. Ms. Kenyon stated that that was not provided for in these protocols. She clarified for Director Vanni that the three minutes rule does *not* apply to Board members. She then clarified for Director Johnson that in regards to the Non-Exclusive Rules as seen in paragraph (c) on the third page of the Resolution, she preferred to actually put more limits on the presiding officer's ability to extend those limits so that it remained fair. Such language would say: Prior to a complicated agenda item, the presiding officer may determine that more time may be necessary for comments. And if so, he may extend that period.

Garril Page, 70 Fawn Drive, San Anselmo said that if the Board did not recognize that there was a generally accepted ability for someone in the audience to waive their speaking time to the person speaking, it was looking for a problem. And it's not just a complicated issue that's involved, but in addition to talking about an issue, people need to be able to make a presentation or bring a representation that was germane to the subject at hand. Ms. Page thought that having a time limit was a good thing and suggested that if there were a limit of up to five minutes, the Board could establish a three-minute limit at every meeting except when there was something complicated, or it could establish a time limit *prior* to each agenda item. She also observed that comments generally were addressed to the Board chair and not to individual Board members. Ms. Kenyon said that the point was not to single out any particular Board member but to treat the Board as an entire body as opposed to individual Board members.

Ms. Kenyon stated that she had just now drafted language addressing the issues previously discussed. The Board could approve this change and then adopt the amended Resolution tonight. There was Board consensus for Ms. Kenyon to read the amended language for paragraph (b) (1) on the first page of the Resolution. Right after the sentence beginning with "The presiding officer...", the following sentence was inserted: Prior to opening the public comment period on any agenda item, the presiding officer may also extend the three-minute time limit due to the complexity of the item to be considered.

M/S Johnson/Sullivan to approve Resolution No. 10-1378 Amending and Restating Rules of Decorum at Meetings of the District's Board of Directors, as amended. Roll Call vote: Ayes: Brown, Guasco, Johnson, Sullivan, Vanni; Noes: None; Absent: None; Abstain: None. The motion carried unanimously.

Item #10-CONSIDERATION OF PARTICIPATING IN THE ROSE GARDEN SEWER SIPHON PIPE NEAR THE FORMER NIVEN NURSERY, LARKSPUR, CA General

Manager Richards reviewed the staff report and noted that this was an issue that utility agencies face from time to time. A development team was attempting to put the final touches on the Niven property in Larkspur. The project had a number of different uses and there was some sewer infrastructure already in the ground. However, in order for their project to succeed or to move ahead, there needed to be a relocation of existing sewer facilities on the back end of this property. Part of that included either replacing and/or inserting an inverted siphon and then relocating some sewer line. This was also a project that the District had in a capital project of its own some years ago. It was removed at the District's discretion at that time for a couple of issues. The developers were now ready to finish the Niven property and they felt that since it was a project the District had identified at one time, they would like the District to pay for the work to be done on this portion of the property.

President Guasco wondered why the District would do this since the sewer extension was a requirement for the developer. Director Johnson agreed and added that it would raise the issue of spending public funds for a private developer's requirement. Mr. Richards suggested that the issues of the developer and the infrastructure should be separated. He said that the issue *here* was that in the past the District identified this line for replacement. He also clarified for Director Johnson that he was sure that the City of Larkspur said this was a requirement for the purposes of the developer.

Steve Seely of Larkspur Housing Partners said that after 12 years of processing, the project was ready to move forward. He's been working very cooperatively with the District for a year and a half and noted that something along the lines of this work needed to be done by the District. His thought was to work on this off-site improvement cooperatively in conjunction with the District as a District project. He also stated that he supported what the staff report said and hoped the Board would ultimately concur with it.

Mr. Seely, Marty Goldsbrough, one of the civil engineers for the project, and District Engineer Ishii answered numerous questions posed by Board members regarding the details of the new pipe pathway and how the pipe relocation would take place.

Director Brown wanted to know if staff had a recommendation. Mr. Richards said this was a policy decision that District Counsel could address. Ms. Kenyon remarked that she had worked for cities in the past and normally when you ask a developer to construct infrastructure, it was at their cost. She didn't know what the benefit to the District was in terms of constructing this public improvement. Her understanding was that it was not on the District's list of capital improvements that we have determined to build at this time. She didn't see any *legal* requirement for the District to do this at all. She would like to hear what the benefit was to the District for constructing this infrastructure. What was the necessity for it?

Director Vanni wanted to know if there was any legal reason *not* to do this because that would put an end to the discussion. Ms. Kenyon said there should be a benefit of some sort to the District for constructing it put into the public record because her only one legal concern was, is this a gift of public funds?

Director Vanni observed that this was in the public right of way and not on private property. Mr. Richards commented that parts of our infrastructure may at one time or another be under or on private property, but it's still our public infrastructure. Director Vanni said that this *would* be an opportunity to put pipe in the ground and for the District to get credit for pipe in the ground and have somebody else *help pay* for pipe in the ground. He knew that the District would be putting money into this and that it would be done under the District's guidelines. So disregarding the estimated \$260,000 for the project, he wanted to know if there was some way to be working with these people so the District could get some pipe in the ground. Director Vanni noted that the concern about a gift of public funds arose with the lateral grant program and the District got around that by saying we were trying to fix old pipe. And this project was on a list at one time, most likely because it was in need of repair, and it *is* in need of repair. Perhaps we can use that as a reason to do it.

Director Johnson said her concern was that if we had \$260,000 for pipe replacement, we would want to replace some of our already identified and highly prioritized pipe that needs replacing versus doing it because a developer needs to have it done.

Mr. Richards said he didn't believe it would be a gift of public funds. It's older pipe in the ground that *has been identified* but it's not essential that it be replaced immediately. It's not in desperate condition. But it *is* an older pipe and by replacing it the District would benefit in that we would have newer pipe in the ground in a location where it would be very difficult to do that if houses were put there.

Director Vanni said that if the District funded half of the project's \$260,000 we would still get credit for 1,000 feet of pipe. That would be a win-win situation and it would help the District pay half of the cost for 1,000 feet. President Guasco said he thought it was a good idea. Director Johnson calculated that this represents \$1.372M per mile, which was the District's \$1.4M per mile rate.

Mr. Richards recommended that the Board chose option three in the staff report and specifically direct the General Manager to work with the development team and attempt to negotiate a compromise price which would be brought back to the Board for approval.

Director Brown requested that the staff report coming back to the Board delineate the benefits to the District for doing this.

After a lengthy discussion, M/S Johnson/Sullivan to direct the General Manager to negotiate on the District's behalf with the developer and bring a report back to the Board. The motion carried unanimously.

The Board took a break from 8:58 p.m. to 9:10 p.m.

Item #12-REQUEST FROM PROPERTY OWNER AT 200 DOHERTY DRIVE, LARKSPUR SCHOOL DISTRICT, FOR WAIVER OF SEWER FEES

General Manager Richards reviewed the staff report and said there were a number of difficult aspects to this difficult issue. The short version was that the District inherited a lift station on Doherty Drive from the City of Larkspur when it annexed the southern downtown portion of the City. That lift station sat mostly on or almost all on the Larkspur School District property in the front of the school in the area they used as their parking lot. He was sure the lift station had been there for decades. In addition to that sewer lift station on the property, the District held an easement for another pipe that went under part of one of their buildings. This pipe was currently abandoned. Discussions that took place probably two or three years prior to the Board's hiring an permanent General Manager centered around forming an easement for that lift

station for the District. These discussions went on for maybe a year with previous administrators with the Larkspur School District. The administration teams at both the School District and the District turned over and the issue was not immediately dealt with. Then during Mr. Richards' first year on the job, he received notice that the School District had notified the District that they were not paying their bill that year. Mr. Richards sent a letter to them saying they need to pay and that was when he was introduced to Wolf Gutscher, the Director of Operations, and Valerie Pitts, the Superintendent of the Larkspur School District. There were a few meetings at that time with these individuals and with staff. The School District's position was that because the lift station was on School property and because the District needed an easement *for* the lift station to *remain* on School property, they would like the Board to consider waiving fees for the School District in exchange for the easement.

Mr. Gutscher stated that the fee waiver was for *one school and not the entire School District*. There was another school that the School District leased out, he said. We received funds from them and then gave those funds to the District. So we're passing that payment through to the District and it doesn't impact the School District's budget.

Director Johnson said she was struck by the one-sided negotiation tactic where the City of Larkspur just stopped paying. And her understanding was that when you get an easement, you pay for it once and that's it. You make one check out. It's a flat rate. It's not an annual fee. You don't pay on-going to the tune of two years at \$15,000 a year for over \$30,000. In addition, we're not supposed to be waiving sewer charges like this. She asked for a legal opinion regarding what the Board couldn't and couldn't do.

District Counsel Kenyon said that the reason this was here and there was a possibility for the Board to do anything was based on the fact that there was an allegation that the District was using School District property without compensating the School District for it. That fact takes this out of the normal issue of providing sewer service and then getting payment for it. Her issue with this was that normally when you're talking about an easement or fee interest in a property, you pay for that fee interest, whatever it maybe, and then you're done with it. It isn't on on-going expense. If that was what the Board was interested in exploring, her suggestion was that the District was legally required to get a valuation for that fee interest, whatever it may be, and then *that* was what the comparable payment or waiver of fee would be. In other words, we would need to value this easement if the Board wanted to consider this item.

Regarding the timeline, Director Johnson pointed out that in December 2002 the District sent them everything and the deal was almost consummated. Mr. Richards clarified that staff's file on this issue indicated that at that time, and with previous administrations in *both* districts, the District understood that the issue had been resolved and there was *not* going to be an exchange of fees for the easement. The reason for this, from what we can see from the notes, was that the District inherited the lift station from Larkspur. And basically what would be happening inadvertently if the Board *did* make this decision was that the District would be paying more money in exchange for the Larkspur Annexation Agreement that was not allocated out, and it would have been *their* obligation to clean up *their* easements. In sum, the notes show that the District thought that the issue was wrapped up, that we had acted in good faith, and we had come to the final step where we were waiting for paperwork to comeback from Larkspur. Then administrations turned over, people focused on other priorities for about a year and a half, and this was what we had.

In response to a question from President Guasco regarding potential negligence on someone's part, Mr. Richards said that it was certainly not unreasonable to say that the fact

that the paperwork and easements were not cleared up *years ago* was probably an indication of poor performance on the part of the previous Larkspur sewer agency. But there were also other issues under law, which he wouldn't want to speak to, called prescriptive easement or prescriptive right which said that when there were facilities already in place and in use, it's all right to use them.

Ms. Kenyon said that you may not be able to enforce that against another public agency. She said that the Board's option was whether or not to combine the two issues or keep them separate. The two issues were the payment of sewer fees and compensation for the easement. Normally those were two *separate* issues. The request before the Board tonight was trying to combine those two issues. Yes, the Board should address the issue of the easement, but it shouldn't necessarily be addressed in conjunction with the sewer fees.

In response to a question from Director Sullivan about the location and characteristics of the lift station, Ms. Kenyon stated that she didn't know the particular details about this facility or its location, but from what Director Sullivan described, it may be that it's an actual fee interest as opposed to just an easement. But she didn't know what use they were making of the lift station.

President Guasco thought that the District should get a legal opinion on this. Director Johnson wanted to know if the verbal agreement in 2002 for no funds paid for the easement had any validity today.

Mr. Richards pointed out that we should not assume that monies were not paid for the easement. There was a *large* transaction of funds with the Larkspur Annexation and there was over \$1M that had to do with some studies and paperwork and easement issues. So the District may very well have compensated Larkspur for the easement, in which case our expectation would be that we get it. But we would have to dig hard to find the answer to this. Director Johnson thought that Larkspur School District should have a record of any compensation for the easement. President Guasco suggested going to Larkspur and asking them what's going on here.

There was Board consensus that the two issues of sewer fees and compensation for the easement should be kept separate.

Mr. Richards clarified for Director Sullivan that sewer fees for the School District were calculated by an EDU rate with a strength factor and also included water usage, just like Marin General Hospital, the Half Day Café and EAH.

Wolf Gutschen, the Director of Operations for the Larkspur School District, said that he could see this was going to legal. He had two additional documents he handed out to Board member that were not included in the Board packet but were very germane to their decision-making process—a copy of a 1989 letter and a photo of the pump house. (Mr. Richards commented that copies of these materials would be available to the public tomorrow morning at the front counter of the District office.) Mr. Wolf said that they found in their records a letter from 1989 showing a payment in kind from the City of Larkspur for a sewer service charge when we gave them use of the properties for the dog park and the community garden area, which were still in their use. He didn't know what the legal ramifications of this were but he thought there might be some.

Directors Johnson and Sullivan noted that in the Annexation Agreement, the District did *not* get a dog park and a community garden but it *did* get all of Larkspur's obligations.

There was Board consensus to wait and get more information before making a decision on whether or not to grant the request to waive sewer fees. President Guasco gave direction to staff to look into this matter and bring a report back to the Board.

Rick Holland of Fairfax said he would like to point out that once Central Marin Sanitation District was consolidated, the effected issues would be much easier to resolve. Director Sullivan asked Mr. Holland to please elucidate on that.

Mr. Holland said that by creating a Central Marin Sanitation District in which all the members sit on one board so rather than four boards. I mean, Bruce Baum's comments were totally off the wall. So we have four districts— How in this instance, asked Director Sullivan, does the School *not paying* its sewer fee get solved by CMSA? Because well, replied Mr. Holland, the new Central Marin Sanitation District is a new district which each of the jurisdictions that are represented are able to come to the board. So with a question like this you're essentially saying, can we do this? Can we give up blaming Larkspur? Can we get the easements? Or did we not? Director Sullivan said that this was illogical because all of the consolidations that were taking place take into account all of the previous legal agreements. So he didn't see any point at all that Mr. Holland was making here.

Mr. Holland said, because with the City of Larkspur what you're saying is you're questioning the easement that existed between the City of Larkspur and Larkspur School District. Director Sullivan observed that that issue would still exist. So if the School didn't pay CMSA, how would that be solved? he asked.

No, replied Mr. Holland. It would need to be resolved. The issue here is that rather than badgering another public agency, rather than— Is that what's really occurring here? asked Director Sullivan. I think so, said Mr. Holland. You're going to legal. Director Sullivan thanked Mr. Holland for his comments. Mr. Holland continue speaking and said that he thought the public would feel less badgered— President Guasco asked Mr. Wolf if he was comfortable with Mr. Holland speaking on his behalf. Mr. Wolf said twice that he did not feel badgered.

Director Sullivan said he thought Mr. Holland didn't understand anything about consolidation unfortunately and he thanked him again for his thoughts. Mr. Holland said, I was just going to say, I still remember the comment because this comment of Mr. Sullivan I don't understand. When so obviously you fail to understand the benefits because it's well known that in management and efficiencies that first of all, this question that your General Manager, because these types of issues would be resolved and a recommendation provided to you. The micromanagement that goes on at this level because it's, it shouldn't just be policy. It should be an— Director Sullivan interrupted to say that Mr. Holland came up to talk about solving the School issue by consolidation. It's finished. He asked Mr. Holland to please sit down. Mr. Holland continued speaking while Director Sullivan was asking him to sit down. Mr. Holland went on to say that you're speaking about management— President Guasco sounded the gavel and asked Mr. Holland to sit down. Mr. Holland continued speaking without stopping and said, You failed— President Guasco asked Mr. Holland to give it a rest and sit down. You failed to understand the advantages of consolidation, Mr. Holland called out. President Guasco asked Mr. Holland to sit down and thanked him for his point. Mr. Holland laughed.

Mr. Wolf said that they were not trying to put Marin Primary into this arrangement because it was not part of the Larkspur School District per se. We were leasing it out and having them pay sewer fees that we pass on through to the District. He wanted to be clear that they were not trying to take advantage of any situation.

Mr. Richards stated that he would meet with legal regarding the separation/combination of issues, call Mr. Wolf personally, have a follow-up meeting based on what was discussed here this evening, and look at the documents Mr. Wolf brought here tonight and the valuation issue. If a valuation was feasible, staff would bring back options for that valuation for the Board to consider.

There was Board consensus and direction to staff to do the things Mr. Richards outlined.

Item #13-AWARD CONTRACT AND AUTHORIZE THE BOARD PRESIDENT AND SECRETARY TO EXECUTE CONSTRUCTION CONTRACT FOR CIP NO. 1: KENTFIELD FORCE MAIN REPLACEMENT PROJECT – SEGMENT 1A, WITH MAGGIORA & GHILOTTI, IN THE AMOUNT OF \$4,114,114.00 General Manager Richards reviewed the staff report, summarized the work that was included in the project, and recommended that the Board approve this item. He also noted that plans were underway for a ceremony which would include the stakeholders and would take place sometime next year when the berm work by Creekside Park was being done.

Director Johnson was thrilled that the project was getting started and said it would be of great benefit to the District. She was extremely pleased that 8,000 lineal feet of pipe would be put in the ground.

Rick Holland of Fairfax wanted to clarify that Marcia just stated that this represents 8,000 lineal feet. I want to know if this was just over a mile. I want to clarify this because of comments made last year. I want to see how this differs from what was said in September of last year and the project providing .7 miles worth of pipe construction. That was what was used in the budget. So I just see there's a discrepancy because it took several months in the budget last year and I'm wondering if we're going to see a budget for this year. And again, I realize that you and 20 other directors do not comprehend the advantages of consolidation.

After President Guasco noted that we were talking about the award of the contract, he read the title of Item 13 out loud. We're not talking about consolidation, he said. We're talking about *this* particular item without going off on tangents. He asked Mr. Holland to speak *specifically* to this project.

Mr. Holland said that this project should have occurred this year. That's *not* on the agenda, stated President Guasco. Thank you. Mr. Holland continued speaking and said that we've heard the excuses of why it wasn't. So I wanted to be clear. When I get to sit up here on the Board, I'll understand what's going on. Because you talked about .7 miles last year. And here we've got 8,000 miles. So almost 2 miles of—

President Guasco sounded the gavel and said that Mr. Holland should get his facts straight and talk to the item or sit down. It's not 8,000 miles, he observed. That would put us over our limit. So let's just speak to this contract. If you can't, President Guasco said he would ask Mr. Holland to sit down.

I am if I wasn't being constantly interrupted, said Mr. Holland. You're talking about 8,000 feet, excuse me. And so we're roughly 1.7 miles. I would just like to see that when we *do* have a budget, which would hopefully be on time, what other amount of pipe would be in the ground

because last year you failed. So I'm trying to see if this year you can actually accomplish what you're saying that you'll be able to do. Results would be nice.

After a short discussion, M/S Johnson/Sullivan to award the contract for the construction of the Kentfield Force Main Replacement Project – Segment 1 A, to Maggiora & Ghilotti, in an Amount not to exceed \$4,114,114.00, and authorize the Board President and Secretary to execute it. The motion carried unanimously.

Item #14-AWARD CONTRACT AND AUTHORIZE THE BOARD PRESIDENT AND SECRETARY TO EXECUTE CONSTRUCTION CONTRACT FOR CIP NO. 5: WOODLAND/COLLEGE/GOODHILL CAPACITY IMPROVEMENT PROJECT, WITH JMB CONSTRUCTION, IN THE AMOUNT OF \$3,294,547.25 General Manager Richards

reviewed the staff report and said that this was the second largest and second most critical capital project that the District will do, along with the one that was just approved in Item 13. This was *the* project that would have met our requirements for this year and also the project that the Kentfield School District asked us to please put off until this coming summer. Staff recommended approval of the staff report.

Rick Holland of Fairfax said he again wanted to clarify the misstatements from last point. We talked about 8,000 feet. And here you have 9,200 lineal feet and we just talked about. But in the summary of the previous points is 2,160 lineal feet. So when I bring up numbers, because you're never consistent in what your numbers are. So I imagine that you're putting together both projects to talk about 8,000 lineal feet. But the previous project was 2,160. So here you're talking about 9,200. So again, it would be great if we could actually see this pipe in the ground. But unless you can get your numbers straight, you just, you say you're going to do something, you don't do it. And I want to make sure we're all working off the same numbers. Thank you.

After a short discussion, M/S Johnson/Sullivan to award the contract for the construction of the Woodland/College/Goodhill Capacity Improvement Project, to JMB Construction, in an amount not to exceed \$3,294,547.25, and authorize the Board President and Secretary to execute it. The motion carried.

Item #15-APPROVAL FOR GENERAL MANAGER, TO ENTER INTO NEGOTIATIONS WITH BANK OF MARIN FOR A \$3 MILLION LOAN TO BE USED FOR REMEDIATION OF 2000 LARKSPUR LANDING CIRCLE OR OTHER ESSENTIAL CAPITAL IMPROVEMENTS AND FOR THE BOARD PRESIDENT AND SECRETARY TO SIGN FINAL LOAN DOCUMENTS General

Manager Richards reviewed the staff report and said that a number of years ago this Board approved a second additional loan as part of the Capital Improvement Program. This was part of last year's budget as a carryover and represented dedicated funds for remediation at 2000 Larkspur Landing Circle. Mr. Richards pointed out that this staff report specifically asks the Board for to allow the General Manager to pursue all negotiations with the Bank of Marin to get the \$3M bank loan ready for use for *either* remediation of 2000 Larkspur Landing Circle or capital projects. That was all it would be used for. When the note was ready to be signed, it would require the signatures of the Board president and secretary. Cash was being used to secure the loan in a dollar for dollar securitization, which gave the District a number of benefits with the bank.

In response to a question from Director Johnson about an estimate for the remediation cost, Mr. Richards explained that this was a changing target for a number of important factors. This

was *not a spill*. The District *did not contaminate* the site per se; it's non-liquid building debris that's involved and it *can* be used in certain situations that follow EPA guidelines, like under concrete. In addition, the previous development group had voiced resistance to our using the affected soils under concrete on *their* project. They claimed they purchased the land without that and they didn't want it there. This required an *alternative* that equaled complete remediation of their portion of the property. But they couldn't perform and eventually gave the land back. We believe that we have the right to use the soil *anywhere* on the site where there will be parking and/or roads. So we think the actual cost to remediate will be *significantly* less than we thought. And if we end up having an extra million, we would like to use it to put pipe in the ground.

In response to a question from President Guasco about the nature of the material, Mr. Richards said it's non-bioavailable and the tests that have been done indicate that it's so *unlikely* that the material would acquire biological functions in a human body to do things that it doesn't normally do to keep it in the body.

Director Vanni said that we must certainly have some idea of the area we're talking about and where it goes and where it can't go. It's also been eight or nine months since we asked for an estimate. Before he committed to a \$3M loan for remediation or a Capital Improvement Project, he noted that we had a \$10M loan that we took out in 2008. So he wondered why we needed \$3M to use for Capital Improvements Projects. As far as the remediation went, he would like to see an estimate before we go and get a loan for it. It just didn't make sense. He wanted to know where the \$3M number came from. And why did we need \$3M for remediation? We had a \$10M loan out there that couldn't be used up in two years. If we have these \$4M in reserves, we should at least see what the estimate was for remediation and see if our reserves couldn't take care of something like that. He said that while he came from the Board from the past where everything was pay-as-you-go, he *did vote in favor* of this \$10M loan. But he was under the impression that the loan was going to be for at least *five years* of Capital Improvement Projects. And now it's \$10M in two years and we still haven't put any pipe in the ground this year. He just didn't see where the \$10M was. These were the reasons he was voting against another \$3M in loans until we figure out where...

Director Vanni said he appreciated that when he was speaking, maybe we needed to put that in the Board decorum, which it was, that we don't get the comments from Marcia, who apparently knows *everything*. [Director Vanni was referring to Director Johnson's occasional comments while he was just speaking.] If he doesn't understand it, that means that he doesn't understand it. It didn't make him wrong and it didn't make him right. *It's a question*. We have a loan that we took out for \$10M. He wanted to know where that \$10M was and why we need \$3M more.

President Guasco said he had to admit that *whenever* people talk over each other, it was truly not the right thing to do. We need to respect each other's time when we're speaking. Director Johnson apologized to Director Vanni and said that her speaking while he was talking was inappropriate and she was very sorry. She shouldn't have said anything. She just assumed that when we approved the \$67M ten-year capital fund that everybody *knew* that's how much money we were spending.

President Guasco said that a large portion of the \$10M would be used for the Kentfield Force Main and the Woodland/College/Goodhill project.

Rick Holland of Fairfax said he would appreciate it if there was an answer to Director Vanni's question. It was a totally unacceptable explanation. Ten million dollars, after doubling fees, which all is supposed to pay for pipe in the ground which we know isn't being done. The \$3M which is for remediation. And the question is, if it isn't such a big deal, why wasn't it done in the past four years? Why did you lose a \$10M deal which resulted in a \$15M lawsuit for something that may not be such a good deal? It just doesn't make any sense whatsoever first of all. Look at this money. And if you look at the number, why would I understand how much feet you're talking about putting in. Even in the next year, if you're talking about spending \$5M, which I think would be a *high* estimate, you still have \$5M plus reserves. It's \$9M. And again, in the Grand Jury report the accusation against the Board was you're sitting on a bunch of reserves. Plus, you have this property. I mean, you talk about \$20M worth of assets. Yet you can't put pipe in the ground. And it hasn't changed. Nothing has changed in four years! And here you are asking for \$3M more. For what? Get. Use the money you have! You can't pay back the money you have. You're asking for more money. This is just ludicrous! And you wonder, when people talk about financial mismanagement, this is what they're talking about.

President Guasco observed that he only heard *one person* talking about financial mismanagement and it was Mr. Holland. Mr. Holland laughed out loud and said, Al Boro, John ?? Lecarr ?? and people at— President Guasco said he was done talking and indicated that Mr. Richards had requested to speak.

Mr. Richards said he had a few facts that may be relevant for the Board as they made their decision. As initially proposed *years ago*, the Capital Improvement Program required *two* \$10M loans. That program was designed by other engineers and other consultants, presented by other general managers, and discussed and reviewed by the Board. After some kind of reevaluation or realignment through the folks who presented the last financial report, it was determined that only a *second* \$3M loan would be required. Regarding where and how money has been spent, the District has kept a fairly good running tally of those dollars. Coming into *this* year, there was somewhere in the low \$2M range of that \$10M left, that will be spent and gone by August most certainly, if not sooner, on the capital projects that we're doing this year that total about \$9M for just this one fiscal year. Regarding the speaker's comment about the doubling of rates *all of which* was to put pipe in the ground. This was not correct. The reason the District doubled its rates was because CMSA built a \$70M Wet Weather Improvement Project of which the District was required to pay 54%. The quotes in the media about the doubling of rates for our sewer use are not true.

In response to comments by President Guasco about how the monies from rates are currently spent, Mr. Richards stated that his goal for the District was to *adjust* the rate structure at some point in the future so that the rate or fee that we draft covers operations *exclusively* and the Prop 1A Ad-Valorem money is used *exclusively* for capital projects.

While President Guasco explained how the District, as a member of the JPA, took on debt service, Mr. Holland called out from his seat to say that you still didn't put pipe in the ground, and then he laughed loudly. President Guasco said that Mr. Holland would be ushered out of the room if he didn't stop it. Okay, said Mr. Holland, be honest. You didn't put pipe in the ground. As President Guasco sounded the gavel, Mr. Holland continued speaking. You had a

Wet Weather Project, he called out. President Guasco then asked the ADSI security guard to escort Mr. Holland from the room. Mr. Holland remarked that this whole song and dance was not at all convincing, Brett. You can't put pipe in the ground so you have to take more money. I've already made my points. You're a bunch of bozos! Mr. Holland's comments were interspersed with laughter.

The Board took a break from 10:00 p.m. to 10:02 p.m. while Mr. Holland was escorted from the meeting room.

Director Vanni said he still had concerns about an estimate. When we took out a \$10M loan, we had projects lined up and had estimates for projects. We had a list of projects that we were going to perform. We are now going for a \$3M loan with *no estimates* on projects and *no estimates* for remediation. To him, it wasn't the way you do business. If you were looking for someone else to bring up a fact or an issue, *this was his issue*. He had *never* seen this in his 18 years of public service as an elected official! He had *never* seen an operation take out a \$3M loan *without* a plan of the projects and how much the remediation would cost. Do we agree that at some point *remediation has to happen*? If we don't, then fine. But if we agree that remediation has to happen at some point, *why don't we have an estimate*? How difficult was it to get an estimate and say: Here's the dirt. We know where it is. How much does it cost to get it out of here and offsite? I want an estimate to put it here where we're going to put a driveway. I want an estimate to put it over here where we're going to put a building. That's three estimates. It shouldn't be that difficult to come up with a plan like that. And just about the day after we got that \$10M loan, \$2.5M of it went to previous engineering that we'd done in the past because *we could use it for that*. In sum, he was concerned about where the \$3M was going without a plan to back it up.

Director Johnson pointed out that the Board had already voted to remediate the land. And from what she understood from past conversations about this, when the remediation actually begins, we could find out anything.

Mr. Richards explained that we as a District ought to be very cautious about putting firm numbers in the public eye at this point because, as had been previously pointed out, the people who could not perform on the contract were trying to get *some value* out of the agreement by suing us. And we and our ratepayers have no interest in showing them the details of confidential analysis that we've done about that stuff. That being said, the number really hasn't changed and has been discussed a number of times. Furthermore, the \$3M loan was part of the program for the list of projects that the Board saw. It's not a new idea. It was part of the list of projects the Board approved as the District's CIP program. This was done years ago. However, in the case of the remediation, we know that if it was as bad as it could be and if all of it needs to be completely removed, they've told us it could be as high as \$3M. That's where the \$3M comes from. Based on the EPA guidelines and the development of that group not being a part of the property anymore, we believe that we can probably do it for less. But we may need the \$3M and if we need it, we would like to have it to finish the work.

Director Vanni said that he must have missed the meeting about the amount it would cost to remediate that dirt. Anytime time we discussed it, it was that's an estimate that we consider on the back of an envelope. That's a quote of what our District manager told us. It was the only time Director Vanni heard of an estimate. It could be this; it could be that. It was back of

the envelope which means it was just a guesstimate. He understood that if there were some stronger numbers, we don't want to give them out. But he must have missed the meeting when we were told more cautiously how much this was going to cost. This was why he didn't understand that we had some estimates that were more than just back of the envelope.

After a short discussion, M/S Sullivan/Johnson to authorize the General Manager to enter into negotiations with Bank of Marin for a \$3 Million Loan not to exceed 5%, and approval will need to come back to the Board President and Secretary. Director Vanni voted no. The motion carried.

Item #16-ADOPTION OF RESOLUTION NO 10-1376 APPROVING CREATION OF A SECOND MAINTENANCE SUPERINTENDENT POSITION AND AUTHORIZE GENERAL MANAGER TO COMPLETE ALL ADMINISTRATIVE STEPS TO FILL THE POSITION

General Manager Richards reviewed the staff report and said this was a great opportunity for the District. He typically had a firm rule about not mentioning staff members' names at Board meetings, except for when a staff member had done something exceptional and noteworthy. Mr. Richards noted that the Board had approved taking employee Dennis Gavallos and making him the Operations Coordinator *while* that position was being evaluated. Mr. Richards listed the extensive duties that Mr. Gavallos had and said that Mr. Gavallos was one of the best performers he had ever worked with top to bottom; his overflow skills were extraordinary. Mr. Richards also pointed out that in this particular organizational realignment, this will not cost the District any additional money. Mr. Gavallos was an existing employee for over ten years and the salary ranges were very, very similar. His work was and continued to have a profound impact on operational performance. Mr. Richards strongly recommended approval of the staff report.

President Guasco and Director Johnson praised Mr. Gavallos and the work he had done for the District.

Director Vanni wondered if there was an interview process for this position. Mr. Richards replied that there would be a full competitive process and Mr. Gavallos would have to compete with whoever the broad variety of candidates will be. He highlighted his performance to emphasize how relevant and necessary this position was. Mr. Richards said that all this item did was approve the position. The District would conduct recruitment, Mr. Gavallos would have to choose to apply, and compete and continue what he's doing or go back to his previous position. Mr. Richards pointed out that this was not assigning into the position. Director Vanni noted that when you put something like this together in public, it makes it difficult for somebody else to apply when the General Manager has already given this glowing report about a certain person. That seemed a little bit like putting the cart before the horse.

District Counsel Kenyon suggested adding the following language to the Resolution as a part of the resolve on the part of the Board: hereby authorizes the additional of a second position of Maintenance Superintendent.

President Guasco said that in the past, one of the District's General Manager had recommended promoting an employee to superintendent level and the Board voted to open up the position so other people could compete. He thanked Mr. Richards for being consistent with past practices of the District.

After a short discussion, M/S Johnson/Brown to adopt Resolution No 10-1376 approving creation of a second Maintenance Superintendent position as amended, and authorize the General Manager to complete all administrative steps to fill the position. Roll Call vote: Ayes: Brown, Guasco, Johnson, Sullivan; Noes: Vanni; Absent: None; Abstain: None. The motion carried.

Item #17-ADOPT RESOLUTION NO 10-1377 AUTHORIZING GENERAL MANAGER TO RECRUIT AND TO COMPLETE ALL ADMINISTRATIVE STEPS TO FILL THE POSITION OF MAINTENANCE TRAINEE General Manager Richards reviewed the staff report and said this was the fourth maintenance position and was necessary for the pipe bursting work. It was part of previous staff reports and Mr. Richards recommended approval of this position for the capital pipe bursting crew. In response to a question from Director Sullivan regarding the timeline, Mr. Richards said that it appeared we would have our equipment in the field by the target date of the first part of July.

M/S Sullivan/Brown to adopt Resolution No 10-1377 authorizing General Manager to recruit and to complete all administrative Steps to fill the position of Maintenance Trainee. Roll Call vote: Ayes: Brown, Guasco, Johnson, Sullivan; Noes: Vanni; Absent: None; Abstain: None. The motion carried.

Item #18-ADOPT RESOLUTION 10-1373 TO AUTHORIZE: 1.) A RATE CHANGE FOR THE POSITION OF ACCOUNTING MANAGER 2.)RECRUITMENT OF ACCOUNTING MANAGER; AND 3.) RETENTION OF TEMPORARY EMPLOYEE IN ACCOUNTING MANAGER POSITION This item was pulled from the Agenda.

Item #19-AUTHORIZE GENERAL MANAGER TO HIRE 4 (FOUR) TEMPORARY PART TIME EMPLOYEES General Manager Richards reviewed the staff report and said that when crews currently go into an easement, they first have to clean and/or clear the access to the easement and then do the same thing for the easement itself. This can very significantly slow down the maintenance work. The proposal here was to hire four temporary part-time employees for the warm months only or until the work of cleaning up all of the easements was completed. It would probably take District staff *years* to try and simultaneously do both jobs. Mr. Richards thought we can have it finished by August or September.

President Guasco favored this proposal because the easements needed to be protected so the crew could have access to them. He also suggested a way to locate and clearly mark the location of manholes.

In response to questions from Directors Johnson and Sullivan regarding the cost involved, Mr. Richards explained that this was very short-term work and it may be done sooner than August. The hourly rate for experienced brush clearers was determined by calling several temp services.

Director Vanni wondered if the District could get a better rate by hiring a specialty service or a landscaping company to do the work since they already have all of the necessary equipment and the experienced people, and we wouldn't have to baby sit them. He also suggested and then later retracted the idea of using prisoners. He was going to vote no because he would like to look into this further.

After a short discussion, M/S Johnson/Brown to authorize the General Manager to hire 4 (four) temporary part time employees, not to go past the end of August. Director Vanni voted no. The motion carried.

Director Sullivan asked to agendize the options mentioned, like hiring a specialty service or using prisoners. Mr. Richards said that using prisoners was a great option *when it works*, but there are both challenges and cost savings. Director Vanni noted that some of the work would be done in areas that pass through or go alongside private property.

Item #20-GENERAL MANAGER'S VERBAL REPORT Mr. Richards said he was very excited to partially announce that the District was contacted by a national wastewater journal, was working with a writer, and will be the feature story for our innovative use of pipe bursting as a solution to putting pipe in the ground. At this point we're talking to them about it possibly being a cover story, which would be *very* significant. When more details become available, Mr. Richards will let the Board know. He added that the cost of pipe bursting was significantly less because the patent for the technology expired a few years ago and royalties no longer had to be paid.

Item #21-BOARD OPEN TIME Director Sullivan stated that Las Gallinas had increased their rates to \$563 for a fiscal year and Tam Junction rates were over \$1,000 a year. As a result, he expected that the cost of fixing our infrastructure will become more obvious to everybody.

Director Johnson said that the CMSA Board voted to hire an engineering firm consultant for \$165,000 to review the Capital Improvement Program that staff had already created and see if it should have anything more in it. Then they're going to come back with a giant shopping list of capital projects that could be millions of dollars over the next five to ten years. And CMSA will want 54% of that money from the District. Moreover, they've basically prioritized all of their projects above *any* of the District's pipe replacement projects. And indirectly, our rates will have to increase to cover all of that. They also don't explain to the CMSA Board what the individual projects are for or how they would benefit the District or the ratepayers. They're just on this list that the CMSA General Manger makes up, and the District was expected to honor everything like it was absolutely 100% necessary. The probable rate increase would be about a year and a half from now and it's something that all of the central Marin agencies were going to have to face.

President Guasco pointed out that two Board meetings ago Director Vanni recused himself from Closed Session and just disappeared. He had no idea why, other than that Director Vanni recused himself due to one of the items on the agenda. President Guasco asked if Director Vanni would tell him what agenda item he was referring to. No, replied Director Vanni.

Item #22-CLOSED SESSION The Board adjourned to Closed Session at 10:33 p.m. for

- a) CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION. Subdivision (a) of California Government Code Section 54956.9. Name of Case: CITY OF LARKSPUR, a public entity, Plaintiff, v. ROSS VALLEY SANITARY DISTRICT, a public entity, Defendants, Superior Court of California, County of Alameda, Case No. RG09477828.

- b) Reconvene to Open Session. Report on action taken by the Board during Closed Session, if any, pursuant to California Government Code Section 54957.1.

The Board reconvened to Open Session at 10:55 p.m.

No reportable action was taken during Closed Session.

Item #23-ADJOURN The Board adjourned at 11:00 p.m.

Marcia Johnson
Secretary of the Board