

NIPOMO COMMUNITY SERVICES DISTRICT

JUNE 23, 2004

9:00 A.M.
MINUTES

REGULAR MEETING

BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT

BOARD ROOM 148 S. WILSON STREET NIPOMO, CA

BOARD MEMBERS

MICHAEL WINN, **PRESIDENT**
JUDITH WIRSING, **VICE PRESIDENT**
ROBERT BLAIR, **DIRECTOR**
CLIFFORD TROTTER, **DIRECTOR**
LARRY VIERHEILIG, **DIRECTOR**

STAFF

DOUG JONES, **GENERAL MANAGER**
LISA BOGNUDA, **ASSISTANT ADMINISTRATOR**
DONNA JOHNSON, **BOARD SECRETARY**
JON SEITZ, **GENERAL COUNSEL**

The Nipomo Community Services District's mission is to provide the citizens of the District with quality, innovative, and cost-effective services through responsive and responsible local government to meet the changing needs of the community.

NOTE: *All comments concerning any item on the agenda are to be directed to the Board Chairperson. Consistent with the Americans with Disabilities Act, NCSD Board agendas and other writings will be made available to disabled persons in an appropriate alternate format. (If assistance is needed, please contact the District office at least two days before the meeting.)*

A. CALL TO ORDER AND FLAG SALUTE

B. ROLL CALL

C. PUBLIC COMMENTS PERIOD

PUBLIC COMMENTS

Any member of the public may address and ask questions of the Board relating to any matter within the Board's jurisdiction, provided the matter is not on the Board's agenda, or pending before the Board.

Presentations are limited to three (3) minutes or otherwise at the discretion of the Chair.

The following member of the public spoke:

Ed Eby, NCSD resident – announced that there will be a planning workshop for affordable housing, June 29 & 30 3-5 p.m. SLO Library.

D. ADMINISTRATIVE ITEMS (The following may be discussed and action may be taken by the Board.)

D-1) NIPOMO FLOOD CONTROL STUDY – Dean Benedix
Review status of implementing flood control projects

Dean Benedix, SLO County Public Works, spoke about the Nipomo Community Drainage and Flood Control Study. The County applied for \$42 million in Federal grants for earthquake damage. Director Blair stated that he does not support NCSD being the lead agency in flood control basically because the rules do not allow machinery (modern equipment) to clean out the creeks. Director Trotter stated that it would be foolish to be the lead agency. Director Vierheilig stated that he does not support being the lead agency because the problem within the entire Water Shed area is beyond our sphere. President Winn suggested that perhaps when Nipomo is incorporated and has planning powers, the flood control issue may be feasible.

Mr. Benedix requested comments from the Board concerning the study. There was no public comment.

The Board discussed sending a letter to the Flood Control District expressing that the District does not wish to be the lead agency. Mr. Seitz listed a number of reasons why the District does not wish to be the lead agency to be included in the letter:

- a) Funding and liability
- b) Lack of planning authority, also related to areas outside the District
- c) Regulatory issues stated by Director Blair

The letter will also support appeal for grant funding and the possibility of taking on the powers after incorporation. Upon motion of Director Vierheilig and seconded by Director Wirsing, the Board unanimously agreed to have the Board President send a letter to SLO County Flood Control District with the above information included. Vote 5-0

- D-2) REVIEW POSSIBLE RESTRICTION OF INTENT-TO-SERVE LETTERS
Review staff report on water supply and possible limitation of Intent-to-Serve letters

Jon Seitz, District Legal Counsel, reviewed a few points concerning the report developed by Mr. Jim Garing, Doug Jones and himself.

Jim Garing, Garing, Taylor and Associates, District consulting engineer – explained that the District has the ability to restrict the issuance of new Intent-to-Serve letters based on findings. He reviewed the report as presented in the Board agenda packet.

The Board discussed the report. Director Blair asked why are we giving more credence to the Papadopolous Report than the DWR and the Cleath reports and the judge say that we are not in an basin-wide overdraft.

Jon Seitz explained that the judge said that this is one single basin and not sub-basins.

Director Vierheilg asked if WRAC used the Papadopolous Report.

President Winn said WRAC used the Papadopolous Report and adopted it.

Director Wirsing asked how many wells NCSD has in service.

Mr. Garing answered there are 9 wells including the two Blacklake wells.

How reliable would the 15% conservation be?

Mr. Garing – With a tiered rate schedule, the 15% is achievable.

The following members of the public spoke:

Ed Eby, NCSD resident – Commented about the NCSD report:

- a) 10 year seawater incursion – when did the decade start? He described other places that have that occurring now.
- b) Cannot predict court decision
- c) Supplemental water – there is no date or evidence that it is available
- d) Ad hoc committee should have a mix of professionals and it is urgent.

Terry Flatley, developer – asked Mr. Garing if the numbers were an average for a residential unit and how the number is figured.

Greg Nester, local developer – stated that some pumping in one particular area may have caused a depression in one area but not necessarily the whole basin. Also, with this confusion about Intent-to-Serve letters, it is difficult to make plans for development. He recommends adopting the same growth cap as the County.

Peg Miller, NCSD resident – asked if Mr. Garing would comment on commercial developments.

Jim Garing responded to the public comments.

Seawater intrusion – Papadopolous Study states several decades before it happens but a substantial drought could shorten that time. The decade stated is a safe planning period.

We determined cones of depression increased through 1995, filled in some and are increasing the cones again. The decade started at the receipt of the report.

Court determined safe yield – may not result in more water available to the District.

We calculate 0.55 AFY per dwelling unit for typical, standard, single family residences and use 0.2 AFY for multi-family units. Commercial is not considered because generally it uses an insignificant amount of water and is exempt under the growth cap.

The District positions the wells where there is water. The two Dana Wells are beyond the edge of the cone.

President Winn stated that there is no evidence of seawater intrusion.

Director Blair stated that the County growth cap is about housing. The high cost for housing is land costs and fees imposed by the County, etc. He thinks there is plenty of water with conservation efforts and Santa Maria water or desalination.

Director Trotter states that the cost of homes is driven by the market not the cost of development.

Director Wirsing – stated that she disagrees with Mr. Blair because he will not have to cut back 15% for conservation. She stated that this District needs to be the lead agency for all of Nipomo. We are using more water than is being replenished. To continue issuing Intent-to-Serve letters and pumping from the aquifer could cause seawater intrusion. We must wait until we have more water in the pipeline.

Director Vierheilig – stated that the District needs to adopt findings in order to halt pumping.

President Winn – stated that the Nipomo Valley Basin in the report should be named Nipomo Valley. He agreed that the Church Well is reliable but not the Savage Well.

Mr. Jones stated that the Savage Well is off line because of electrical problems.

President Winn – stated that the 2.3% growth cap is misleading; it has many exemptions in the count. The majority of the growth in Nipomo has been within the District because of the availability of water. He would like to look at well water degradation as well as seawater intrusion. He does not want to place limits on commercial developments except landscaping water use.

Director Blair stated that Nipomo's rainfall is about normal. He thinks the reports such as Beebe, Cleath and Papadopolous reports work toward whichever they wish to support.

Director Trotter stated that Mr. Beebe has great integrity and one can consider his report accurate as possible.

Upon motion of Director Vierheilig and seconded by Director Trotter, the Board agreed to the following:

- i. Form an Ad Hoc Committee consisting of two (2) Board members and other members of the public to return to the Board with a recommendation for allocating Intent-to-Serve Letters between residential, mixed-used and multi-family units and the procedures for developing a waiting list; and
- ii. Direct Staff to delay processing Intent-to-Serve Letters until the application methodology is resolved, but to continue issuing Will-Serve Letters that are in the process.
- iii. Direct the District Consulting Engineer to meet with SAIC and USGS to determine whether or not there are diagnostic tools available to more accurately predict when seawater intrusion and well-water degradation (water quality) could occur under various scenarios.

Jon Seitz, District Legal Counsel, stated that these findings and these actions will be taken based on the staff report, the public comment that was received, specifically the findings, the Superior Court's determination of safe yield and management is pending. The true production capacity of the Nipomo Valley wells [are not verified], the District has not entered into an agreement for the delivery of supplemental water and those basic findings contained in the staff report with reference to the various reports referred to and that these rules are being enacted and actions are being taken on an interim basis for the health safety and welfare of the District residents.

Mr. Seitz explained the difference between an Intent-to-Serve letter and a Will-Serve letter. A request for an Intent-to-Serve letter comes before the District with a request for water service. The District makes the determination if there is sufficient water, then places conditions on the letter. The applicant then comes back for a Will-Serve letter. A Will-Serve letter is issued when the applicant has met the conditions and paid the capacity charges which were determined for the project.
Vote 4-1 with Director Blair voting no.

D-3) REQUEST FOR SERVICE – APN 092-130-016 (FLATLEY)

Reconsider a request for water and sewer service for a mixed-use development at 691 W. Tefft St.

The District received a request for water and sewer service for a mixed-use development at 691 W. Tefft Street.

Terry Flatley, developer – stated that he changed the project slightly from the last meeting. The water use will be less. Jon Seitz, District Legal Counsel, asked if the applicant would agree to design the landscaping according to the District's conservation policy. Mr. Flatley agreed.

Director Wirsing asked how the decision in the last item affected these requests for service. It was explained that any requests received after these requests on the agenda today, will be held until the Board arrives at a decision about issuing Intent-to-Serve letters.

Upon motion of Director Vierheilig and seconded by Director Blair, the Board approved the issuance of an Intent-to-Serve letter for APN 092-130-016 with the conditions as outlined in the Board letter. Vote 4-1 with Director Wirsing voting no.

D-4) REQUEST FOR SERVICE - RENEWAL OF INTENT-TO-SERVE LETTER - TRACT 2439 (NOVAK)

Request for water service for a 5-lot development off Pomeroy Rd.

Ms. Hana Novak, developer - requested an Intent-to-Serve letter for Tract 2439.

Director Trotter stated that there seems to be a contradiction with what was decided in the restrictions proposed in Item D-2.

Jon Seitz, District Legal Counsel, asked if the applicant would agree to design the water uses according to the District's conservation policy. Ms. Novak agreed.

Director Wirsing asked the applicant if she would be disclosing that there will be a 15% reduction of water use required.

Upon motion of Director Blair and seconded by Director Vierheilig, the Board approved the issuance of an Intent-to-Serve letter for Tract 2439 with the conditions as outlined in the Board letter. Vote 4-1 with Director Wirsing voting no.

D-5) REQUEST FOR SERVICE - 166 & 186 N. THOMPSON (NESTER)

Request for water and sewer service for a mixed-use development

Greg Nester, developer – stated that housing prices seem to be driven by a supply and demand rather than the costs of fees. This project was designed by the County's guidelines. There will be 10 condo units on the upper floors with commercial units on the first floor.

Jon Seitz, District Legal Counsel, asked if the applicant would agree to design the water uses according to the District's conservation policy. Mr. Nester agreed and stated that he would put include conservative water use in the CC& R's.

Director Wirsing asked if the commercial projects were counted in water use.

Mr. Seitz answered that the commercial use is minimal compared to household use.

Upon motion of Director Blair and seconded by Director Vierheilig, the Board approved the issuance of an Intent-to-Serve letter for APN 090-384-0130 & 014 with the conditions as outlined in the Board letter. Vote 3-2 with Directors Wirsing and Trotter voting no.

D-6) REQUEST FOR SERVICE -365 BUTTERFLY LANE (NESTER)

Request for water and sewer service for an 8-lot development

The Board discussed the 8-unit development proposed for 365 Butterfly Lane.

Greg Nester, developer - agreed to design the water uses according to the District's conservation policy.

Upon motion of Director Blair and seconded by Director Vierheilig, the Board approved the issuance of an Intent-to-Serve letter for CO 76-595 with the conditions as outlined in the Board letter. Vote 3-2 with Directors Wirsing and Trotter voting no.

- D-7) PROPOSED ANNEXATION NO. 26 – PROPERTY TAX EXCHANGE (PATTERSON)
Consider Property Tax Exchange with SLO County for Annexation No. 26 (Lyn Rd area)

The Board discussed the property tax revenue exchange for Annexation No. 26.
Upon motion of Director Vierheilig and seconded by Director Trotter, the Board approved Resolution 2004-909 accepting negotiated exchange of property tax revenue. Vote 4-1 with Director Blair abstaining.

**RESOLUTION NO. 2004-909
A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
ACCEPTING NEGOTIATED EXCHANGE OF PROPERTY TAX REVENUE
AND ANNUAL TAX INCREMENT FROM COUNTY OF SAN LUIS OBISPO
TO NIPOMO COMMUNITY SERVICES DISTRICT
FOR ANNEXATION NO. 26 (PATTERSON)**

E. OTHER BUSINESS

None

- F. **CONSENT AGENDA** *The following items are considered routine and non-controversial by staff and may be approved by one motion if no member of the Board wishes an item be removed. If discussion is desired, the item will be removed from the Consent Agenda and will be considered separately. Questions or clarification may be made by the Board members without removal from the Consent Agenda. The recommendations for each item are noted in parenthesis.*

F-1) WARRANTS [RECOMMEND APPROVAL]

F-2) BOARD MEETING MINUTES [RECOMMEND APPROVAL]

Minutes of June 9, 2004, Regular Board meeting

There was no public comment.

Upon motion of Director Blair and seconded by Director Wirsing, the Board unanimously approved the Consent Agenda. Vote 5-0

G. MANAGER'S REPORT

G-1) REQUEST FOR ANNEXATION – MEHLSCHAU

Doug Jones, General Manager, reported to the Board that an application for annexation was received from Donna Mehlschau. This is an information item. No action is required at this time.

There was no public present in the audience.

H. COMMITTEE REPORTS

The Finance Committee (Directors Vierheilig and Trotter) met with Ms. Bognuda and the auditor on June 14, 2004. Director Vierheilig stated that it was a very informative meeting.

I. DIRECTORS COMMENTS

Director Blair reported on his trip to the AWWA conference in Florida. He stated that during the desalination tour, the processing was described. He also brought back information about low flow toilets.

Director Vierheilig requested a copy of the signed MOA with the County. On June 17th, the CDF opened a fire hydrant on Peggy Lee that caused hammering in the pipes of several households. He stated that the District needs to meet with CDF to coordinate with us. He asked who is responsible for the hydrants. Mr. Jones answered that the District is responsible.

President Winn stated that there will be an ad hoc meeting consisting of a task force (Directors Winn and Trotter) and several members of the public to lead the meeting. It will be agendized and noticed.

There will be a public meeting Monday, July 19, 6:30 p.m. in the NCSD Board room – Water Planning Forum.

J. DIRECTORS COMMENTS (continued)

President Winn suggested organizing a training session about TDC's, density bonuses, final and tentative tract map classifications, certificate of compliance etc.
The Board of Supervisors is possibly revising ag and open space level.
Street Faire, Saturday, June 26

Jon Seitz, District Legal Counsel, announced the need to go into a Closed Session to discuss the following items. There was no one in the audience to make comments on the items in the Closed Session

CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL GC§54956.9
Existing Litigation SMVWCD VS NCSD SANTA CLARA COUNTY CASE NO. CV 770214 AND ALL CONSOLIDATED CASES
Anticipated Litigation – POTENTIAL CASES
- B. PUBLIC EMPLOYEE ANNUAL EVALUATION – GENERAL MANAGER GL§54957
- C. PUBLIC EMPLOYMENT – GEN MGR GC§54957

The Board came back into Open Session and had no reportable action.

ADJOURN

President Winn adjourned the meeting at 1:14 p.m.

The next regular Board meeting will be July 14, 2004.