


TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL 
DATE: JAN. 4, 2008

AGENDA ITEM
E-5
JAN. 9, 2008

ADOPT WATER & SEWER MASTER PLAN

ITEM

Consider adoption of Water and Sewer Master Plan [RECOMMEND ADOPTION].

BACKGROUND

Your Honorable Board reviewed the Draft Water and Sewer Master Plan at your November 28, 2007 Board Meeting and directed Cannon to make edits. Staff distributed the Revised Plan to your Honorable Board at the 12/12/07 Board Meeting. A review copy of the Draft is available at the office and a review copy has been posted on NCS D's Website (www.NCSD.CA.GOV)

Larry Kraemer and Jeff Spannba uer from Cannon will present these materials to your Honorable Board and answer questions.

It should be noted that the Plan itself is exempt from CEQA but each project will require CEQA compliance before implementation.

RECOMMENDATION

Staff recommends that your Honorable Board adopt the Plan and direct staff to implement.

ATTACHMENT – NONE

NOTE: PLEASE BRING YOUR COPY OF THE PLAN TO THE BOARD MEETING.

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TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL *BBB*
DATE: JANUARY 2, 2008

AGENDA ITEM
E-6
JANUARY 9, 2008

INTRODUCE ORDINANCE AMENDING REIMBURSEMENT POLICY

ITEM

Introduce ordinance amending reimbursement policy and set hearing for adoption [RECOMMEND APPROVAL].

BACKGROUND

Your Honorable Board, on December 12, 2007, reviewed draft amendments to Chapter 5.01 of the District's Ordinance Code, Reimbursement Agreements. The purpose of the chapter is to provide a mechanism to at least partially reimburse private parties for a portion of the costs of the public service extensions installed to serve their property if the extensions may also serve adjacent landowners in the future. Staff believes that the current ordinance code needs to be revised to clarify the costs that are allowable for inclusion in the calculation of the reimbursement fee and to require the applicant to provide additional information with the application for reimbursement to facilitate processing.

RECOMMENDATION

Staff recommends that your Honorable Board receive public comment and then determine if there are additional edits to the ordinance. Once the Board has reached closure on the final proposed version of the Ordinance, the Board should vote to waive reading of the entire text by reading title only and then vote to set adoption for January 23, 2008.

ATTACHMENTS

- Chapter 5.01 with Proposed Changes Redlined
- Draft Ordinance

Title 5 SEWER AND WATER MAIN EXTENSIONS AND APPURTENANT FACILITIES

Chapter 5.01 REIMBURSEMENT AGREEMENTS

5.01.010 Purpose and applicability.

A. The District may impose a requirement that improvements installed by a developer for the benefit of the developer’s project shall contain supplemental size, capacity, number, or length for the benefit of property not within the subdivision and that those improvements be dedicated to the District.

B. This chapter is intended to provide an equitable procedure for at least partial reimbursement to private parties who construct and dedicate District Facilities to serve their private property, if such facilities are also used thereafter to directly serve and benefit private property owned by others.

C. Whenever an applicant is required as a condition of development, to construct and install any District Facilities, which are dedicated to the District, and which have the future potential and capacity to provide service to real property parcels, not under the control or ownership of the applicant, the reimbursement provisions of this chapter shall apply, unless the District specifically provides otherwise by ordinance or resolution.

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5.01.020 Definitions.

As used in this chapter the following words shall have the following meanings:

“**Applicant**” means sub-divider, developer, owner and/or builder.

“**District**” means the Nipomo Community Services District.

“**District Facility(ies)**” means water lines, water production facilities, sewer mains, sewer lift stations and appurtenant facilities that are dedicated and accepted by the District.

“**Engineer**” means district engineer.

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5.01.030 Reimbursement of excess costs.

A. Excess costs means:

1. Oversizing: the cost of installing the size of line required to serve Applicant’s needs pursuant to District’s plans and specifications or as identified in the Engineer’s Report and the actual cost of installing a larger line at the direction of the District.

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2. Off-site development: a pro rata share of the costs of installing District Facilities and appurtenances pursuant to District plans and specifications beyond the property of the Applicant that are subject to probable future use by connectors other than Applicant.

B. Allowable Costs Costs which are allowable for inclusion in the calculation of excess costs are those costs which are directly related to the planning, design and construction of the District facility, including payments to contractors and engineers, securing bonds, acquiring right-of-way for the project and including an amount attributable to interest and for the excess cost of Oversizing the District Facilities . Ineligible costs include, but are not limited to, attorneys’ fees, financing costs, and the

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Applicant's overhead and office expenses related to the coordination and supervision of contractors engaged to perform project work.

C. Maximum Recovery The maximum recovery of costs for installation of a District facility will be calculated as the sum of all allowable costs of the District Facility, less the share of costs for the Applicant's use of the District Facility based upon the number of Applicant's connections or residential units equivalent as determined by the Engineer. The Applicant's maximum recovery shall also be reduced by the sum of all reimbursement fees waived by the Applicant pursuant to Agreements regarding the share of costs between the Applicant and other party or parties.

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D. Approval of excess costs: District shall have the right to audit the excess costs submitted by Applicant, and to approve for reimbursement only so much thereof it determines to be just and reasonable. Such excess cost, if any, shall be computed when such facilities are completed by Applicant and accepted by District, and such shall be paid as provided in a reimbursement agreement.

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E. Proration of Costs:

- The Engineer shall prorate the approved excess costs against all lots or parcels which in the future may be served by direct connection thereto ("Area of Proration"). The District shall send written notice of the prorated amount to the person shown on the latest County Assessor's roll as the owner or agent of record for assessment purposes for each parcel. Such person may protest the proration in writing within fourteen days after the notice is mailed. If not protested within the fourteen days, the proration shall become final for the purposes of this section.

2. A protest shall be concerned only with the division or spread of the costs between or among the Applicant's property(ies) and all other properties to be included in the Area of Proration or the boundary of the Area of Proration. A protest shall not be concerned with the actual construction costs unless the protester can demonstrate fraud or willful concealment of actual cost information as presented by the Applicant or his agent to the Engineer.

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3. The District's Board of Directors shall hold a public hearing to consider all such written protests. All evidence in support of the protest shall be submitted in writing to the District at least ten days before the meeting. The Engineer shall prepare a written report and recommendation to the board on each protest. A copy of the Engineer's report shall be mailed, or otherwise delivered, to the concerned protester at least five days before the board meeting to consider the protest.

4. The Board's decision on the protest shall be in writing, and shall be final. If the Board's decision results in an increased proration amount for properties owned by anyone other than the protester or the Applicant, a new notice and a new fourteen-day period shall be given for each such property.

5. If no protest is filed for a property within the fourteen-day period after the first or any subsequent notice of prorated amount is mailed for that property, the proration shall become final as to the property.

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F. The Area of Proration and the final proration of costs shall be approved by Resolution of the District.

G. The District General Manager is authorized to record a Notice on all properties that are subject to reimbursement upon adoption of the Resolution referenced in subparagraph F, above.

5.01.031 Applications for Reimbursement.

A. In order to qualify for reimbursement of excess costs, pursuant to this chapter, Applicant shall, within ninety days of District's acceptance of District Facilities, deliver to District the following:

1. Written application requesting reimbursement of excess costs;
2. A certified statement showing the Applicant's allowable costs in constructing District Facilities.
3. A scale map that identifies the District Facilities and parcels which could reasonably be physically connected directly to the District Facility(ies).
4. A list of each owner's name, address, county assessor's parcel number and current zoning for each parcel identified on the scale map referenced in subparagraph 3 above.
5. A statement disclosing any agreements regarding the sharing of the Facility costs which exist between the Applicant and any other party or parties.

B. The Applicant shall provide other information requested by the District Engineer and shall cooperate with the Engineer in reviewing costs.

C. If Applicant does not submit the application and information required in subparagraph A, above, within ninety days of District's acceptance of the District Facility (ies), Applicant shall have waived all right to reimbursement.

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5.01.035 Reimbursement Agreement

Deleted: Reimbursement

A. Upon the Applicant complying with 5.01.031, the District shall enter into a Reimbursement Agreement that is consistent with this Chapter.

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B. The Reimbursement Agreement shall require Applicant to reimburse the District's costs in processing the application for reimbursement.

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5.01.040 Ten-year repayment obligation.

Deleted: , pursuant to a Reimbursement Agreement.

Provided that Applicant has complied with all provisions of this Chapter and the District has adopted a final Resolution pursuant to 5.01.030 (F), for a period of ten years from the date of acceptance of the District Facilities, the Applicant shall be eligible for reimbursement as provided in the Reimbursement Agreement from each parcel as the parcel, or portion thereof, connects to the District Facility(ies).

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5.01.050 District to serve as collection agency.

The District shall collect the prorated amount for each parcel before permitting the parcel to connect to the District Facility. It is the duty of the Applicant to keep a current address on file with the District. Reimbursement amounts returned to the District and unclaimed within one year thereafter shall become the property of the District.

5.01.060 District administrative costs.

As partial reimbursement to the District for its administrative costs in record keeping, collection and disbursement activities, the District shall charge, deduct and retain five percent (5%) of all reimbursement amounts collected from subsequent connections to District Facilities .

5.01.070 District connections.

A. The District may make connections to the water and sewer Facilities to serve public facilities that are outside the Area of Proration, without any obligation to pay any such reimbursement, upon a determination that there is sufficient capacity in the District Facility to serve the Area of Proration and the public facilities.

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B. The District may also make or permit connections to the Facilities to serve private property outside of the area of proration as determined by the Engineer; provided, however, that the District Board reserves the right to determine at that time whether or not the owners of such private property shall be obligated to reimburse Applicant as provided in this chapter.

5.01.080 All other District water and sewer charges in effect.

Nothing herein shall be construed or applied to affect or reduce any other District charges, fees, connections or other amounts payable to the District for water and sewer service.

5.01.090 District liability.

If for any reason the reimbursable cost is or becomes uncollectible, as determined by the District, the District shall not be liable to the Applicant for the excess costs in constructing the District Facilities.

ORDINANCE NO. 2008-XXX
AN ORDINANCE OF THE NIPOMO COMMUNITY SERVICES DISTRICT
AMENDING CHAPTER 5.01 OF THE DISTRICT CODE
REGARDING REIMBURSEMENT AGREEMENTS

WHEREAS, pursuant to § 66485 et seq. of the Government Code, the Nipomo Community Services District ("District") may impose by Local Ordinance a requirement that improvements installed by a subdivider for the benefit of the subdivision shall contain supplemental size, capacity, number or length for the benefit of property not within the subdivision, and those improvements be dedicated to the District, and thereon enter into an agreement with the subdivider to reimburse the subdivider for that portion of the costs of those improvements, including an amount attributed to interest, in excess of the construction required for the subdivision; and

WHEREAS, based on the Staff Report, Staff presentation, and public comment, the District Board of Directors finds:

- A. That the purpose of this Ordinance is compliant with §66485 et seq. of the Government Code; and
- B. The public meetings adopting this Ordinance have been properly noticed pursuant to Government Code §54954.2 (the Brown Act).

NOW, THEREFORE BE IT ORDAINED, by the District Board of Directors as follows:

Section 1. Amendment of Chapter 5.01 of the District Code

Chapter 5.01 of the District Code, as amended and attached hereto as Exhibit "1" and incorporated herein by this reference, is hereby approved and adopted by the District Board of Directors.

Section 2. Incorporation of Recitals

The recitals to this Ordinance are true and correct and are incorporated herein by reference.

Section 3. Severability

If any section, subsection, sentence, clause or phrase of this Ordinance (including Chapter 5.01) is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of

California, such decision shall not affect the validity of the remaining portions of this Ordinance or Chapter 5.01. The Governing Board of the District hereby declares that it would have passed this Ordinance adopting Chapter 5.01 and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

Section 4. Inconsistency

To the extent that the terms of provision of this Ordinance, including Exhibit "1". may be inconsistent or in conflict with the terms or conditions of any prior District Ordinance(s), Motions, Resolutions, Rules, or Regulations adopted by the District, governing the same subject matter thereof, then such inconsistent and conflicting provisions of prior Ordinances, Motions, Resolutions, Rules, and Regulations are hereby repealed.

Section 5. Effective Date. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage. Before the expiration of the fifteenth (15th) day after passage it shall be published once with the names of the members of the Board of Directors voting for or against the Ordinance in a newspaper of general circulation within the District.

Introduced at a regular meeting of the Board of Directors held on January 9, 2008 and passed and adopted by the District Board of Directors on the ____ day of _____, by the following roll call vote to wit:

- AYES:
- NOES:
- ABSENT:
- ABSTAINING:

MICHAEL WINN,
President of the Board of Directors
Nipomo Community Services District

ATTEST:

APPROVED AS TO FORM:

DONNA K. JOHNSON
Secretary to the Board

JON S. SEITZ
District Legal Counsel

Title 5 SEWER AND WATER MAIN EXTENSIONS AND
APPURTENANT FACILITIES

Chapter 5.01 REIMBURSEMENT AGREEMENTS

5.01.010 Purpose and applicability.

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B. This chapter is intended to provide an equitable procedure for at least partial reimbursement to private parties who construct and dedicate District Facilities to serve their private property, if such facilities are also used thereafter to directly serve and benefit private property owned by others.

C. Whenever an applicant is required as a condition of development, to construct and install any District Facilities, which are dedicated to the District, and which have the future potential and capacity to provide service to real property parcels, not under the control or ownership of the applicant, the reimbursement provisions of this chapter shall apply, unless the District specifically provides otherwise by ordinance or resolution.

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As used in this chapter the following words shall have the following meanings:

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“**Engineer**” means district engineer.

5.01.030 Reimbursement of excess costs.

A. Excess costs means:

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2. Off-site development: a pro rata share of the costs of installing District Facilities and appurtenances pursuant to District plans and specifications beyond the property of the Applicant that are subject to probable future use by connectors other than Applicant.

B. Allowable Costs: Costs which are allowable for inclusion in the calculation of excess costs are those costs which are directly related to the planning, design and construction of the District facility, including payments to contractors and engineers, securing bonds, acquiring right-of-way for the project and including an amount attributable to interest and for the excess cost of Oversizing the District Facilities . Ineligible costs include, but are not limited to, attorneys’ fees, financing costs, and the Applicant’s overhead and office expenses related to the

coordination and supervision of contractors engaged to perform project work. .

C. Maximum Recovery: The maximum recovery of costs for installation of a District facility will be calculated as the sum of all allowable costs of the District Facility, less the share of costs for the Applicant's use of the District Facility based upon the number of Applicant's connections or residential units equivalent as determined by the Engineer. The Applicant's maximum recovery shall also be reduced by the sum of all reimbursement fees waived by the Applicant pursuant to Agreements regarding the share of costs between the Applicant and other party or parties.

D. Approval of excess costs: District shall have the right to audit the excess costs submitted by Applicant, and to approve for reimbursement only so much thereof it determines to be just and reasonable. Such excess cost, if any, shall be computed when such facilities are completed by Applicant and accepted by District, and such shall be paid as provided in a reimbursement agreement.

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1. The Engineer shall prorate the approved excess costs against all lots or parcels which in the future may be served by direct connection thereto ("Area of Proration"). The District shall send written notice of the prorated amount to the person shown on the latest County Assessor's roll as the owner or agent of record for assessment purposes for each parcel. Such person may protest the prorations in writing within fourteen days after the notice is mailed. If not protested within the fourteen days, the proration shall become final for the purposes of this section.

2. A protest shall be concerned only with the division or spread of the costs between or among the Applicant's property(ies) and all other properties to be included in the Area of Proration or the boundary of the Area of Proration. A protest shall not be concerned with the actual construction costs unless the protester can demonstrate fraud or willful concealment of actual cost information as presented by the Applicant or his agent to the Engineer.
 3. The District's Board of Directors shall hold a public hearing to consider all such written protests. All evidence in support of the protest shall be submitted in writing to the District at least ten days before the meeting. The Engineer shall prepare a written report and recommendation to the board on each protest. A copy of the Engineer's report shall be mailed, or otherwise delivered, to the concerned protester at least five days before the board meeting to consider the protest.
 4. The Board's decision on the protest shall be in writing, and shall be final. If the Board's decision results in an increased proration amount for properties owned by anyone other than the protester or the Applicant, a new notice and a new fourteen-day period shall be given for each such property.
 5. If no protest is filed for a property within the fourteen-day period after the first or any subsequent notice of prorated amount is mailed for that property, the proration shall become final as to the property.
- F. The Area of Proration and the final proration of costs shall be approved by Resolution of the District.

- G. The District General Manager is authorized to record a Notice on all properties that are subject to reimbursement upon adoption of the Resolution referenced in subparagraph F, above.

5.01.031 Applications for Reimbursement.

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5. A statement disclosing any agreements regarding the sharing of the Facility costs which exist between the Applicant and any other party or parties.

B. The Applicant shall provide other information requested by the District Engineer and shall cooperate with the Engineer in reviewing costs.

C. If Applicant does not submit the application and information required in subparagraph A, above, within ninety days of District's acceptance of the District Facility (ies), Applicant shall have waived all right to reimbursement.

5.01.035 Reimbursement Agreement

A. Upon the Applicant complying with 5.01.031, the District shall enter into a Reimbursement Agreement that is consistent with this Chapter.

B. The Reimbursement Agreement shall require Applicant to reimburse the District's costs in processing the application for reimbursement.

5.01.040 Ten-year repayment obligation.

Provided that Applicant has complied with all provisions of this Chapter and the District has adopted a final Resolution pursuant to 5.01.030 (F), for a period of ten years from the date of acceptance of the District Facilities, the Applicant shall be eligible for reimbursement as provided in the Reimbursement Agreement from each parcel as the parcel, or portion thereof, connects to the District Facility(ies).

5.01.050 District to serve as collection agency.

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5.01.070 District connections.

A. The District may make connections to the water and sewer Facilities to serve public facilities that are outside the Area of Proration, without any obligation to pay any such reimbursement, upon a determination that there is sufficient capacity in the District Facility to serve the Area of Proration and the public facilities .

B. The District may also make or permit connections to the Facilities to serve private property outside of the area of proration as determined by the Engineer; provided, however, that the District Board reserves the right to determine at that time whether or not the owners of such private property shall be obligated to reimburse Applicant as provided in this chapter.

5.01.080 All other District water and sewer charges in effect.

Nothing herein shall be construed or applied to affect or reduce any other District charges, fees, connections or other amounts payable to the District for water and sewer service.

5.01.090 District liability.

If for any reason the reimbursable cost is or becomes uncollectible, as determined by the District, the District shall not be liable to the Applicant for the excess costs in constructing the District Facilities.

TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL *BB*
DATE: JANUARY 4, 2008

AGENDA ITEM
E-7
JAN. 9, 2008

2008 COMMITTEE ASSIGNMENTS

ITEM

Restructure the Finance, Audit and Personnel Committee; confirm 2008 committee assignments; and confirm 2008 Board Member Delegations to Agencies [RECOMMEND ADOPTION].

BACKGROUND

President Winn has proposed to divide the Finance, Audit and Personnel Committee into two committees -- the Finance and Audit Committee and the Personnel Committee. President Winn has also nominated the attached slate of committee membership and delegations.

RECOMMENDATION

Staff recommends that your Honorable Board first consider the President's proposal to split the FAPC into two committees. If the Board agrees, then staff recommends that the Board discuss, the proposed Committee and Delegation Nominations, edit the attached list as desired and then adopt 2008 assignments.

ATTACHMENTS

- 2008 Draft Committee Assignments

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DRAFT 2008 NCSD Committee Assignments

As of January, 2008

Standing Committee Assignments (2 members)	Chairperson	Member
Supplemental Water Project Design & Construction	Ed Eby	Cliff Trotter
Finance And Audit	Larry Vierheilig	Jim Harrison
Parks	Jim Harrison	Michael Winn
Southland Wastewater Treatment Facility Upgrade	Michael Winn	Jim Harrison
Water Conservation	Michael Winn	Larry Vierheilig
Personnel	Cliff Trotter	Michael Winn

Standing Committees and appointments are approved by the Board of Directors. A Standing Committee is a legislative body of the Board whose meetings are conducted in compliance with the Brown Act. The Committee Chair is responsible for coordinating meeting announcements with District staff, complying with the Brown Act, and making reports back to the full Board of Directors.

Delegates to Agencies & Community Organizations (1 member & 1 alternate)	Member	Alternate
South County Advisory Committee (Includes Land Use Committee)	James Harrison	None per SCAC Bylaws - no alternate allowed
Water Resources Advisory Committee	Bruce Buel	Ed Eby
Chamber of Commerce (meets last Wed. @ noon @ Blacklake Club House)	Cliff Trotter	-----
City of Santa Maria/CCWA	Bruce Buel	Michael Winn
Olde Towne Nipomo Association	Michael Winn	Larry Vierheilig
Blacklake Village Council/Committees	Cliff Trotter	-----
Liaison to the Nipomo Incorporation Education Committee (NICE)	James Harrison	-----

Delegates are appointed by the President of the Board of Directors.

*Subject to other requirements of the Brown Act, Committee appointments are not to be interpreted as limiting contacts between individual Board members or any other person or persons.

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TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL *BEB*
DATE: JANUARY 4, 2008

AGENDA ITEM
E-8
JAN. 9, 2008

SUSPEND PCAS MEETINGS

ITEM

Consider President's proposal to suspend Parks Citizens Advisory Sub-Committee (PCAS) Meetings until after activation of parks authority [RECOMMEND ADOPTION].

BACKGROUND

President Winn has proposed that the Board suspend additional meetings of the PCAS until after activation of Parks Authority. Although the Sub-Committee has held several good meetings, it is clear that the real need for citizen feedback would occur once the Parks power is activated.

RECOMMENDATION

Staff recommends that your Honorable Board suspend meetings and direct staff to send thank you letters to those that did participate.

ATTACHMENTS

- None

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TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL *BB*
DATE: JANUARY 4, 2008

AGENDA ITEM
E-9
JAN. 9, 2008

RE-NOTICE BLACKLAKE SEWER USER FEE PROTEST HEARING

ITEM

Authorize re-notice of Blacklake Sewer User Fee Protest Hearing [RECOMMEND ADOPTION].

BACKGROUND

Your Honorable Board previously approved a Financial Plan for the Blacklake Sewer Fund; set a Protest Hearing for January 23, 2008; and directed staff to notice this hearing. Staff mailed notices at the beginning of December in compliance with the 45 day protest window required by the state constitution, however, the notice had some technical errors and it only mailed to the respective customers' addresses. District Legal Counsel has ruled that the notice should have also been mailed to the property owner as shown on the last assessor's role where the address of the property owner is different than the customer.

Additionally, the Sub-Committee Appointed by the Blacklake Management Council to review the proposed rate increase has raised a series of issues regarding the Financial Plan itself and has requested an opportunity to discuss those issues prior to a re-noticing of the Protest Hearing.

RECOMMENDATION

Staff recommends that your Honorable Board:

1. Cancel the January 23, 2008 Blacklake Sewer Fund User Fee Hearing.
2. Direct staff to discuss the Sub-Committee's concerns and bring back recommendations regarding potential edits to the Financial Plan at a subsequent Board Meeting.
3. Once the Board has reached closure on any potential edits to the Financial Plan, staff requests authority to re-notice the Protest Hearing.

ATTACHMENTS

- None

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