

# **Gallatin Gateway County Water & Sewer District**

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## **PUBLIC MEETING**

**Date:** January 5, 2015  
**Time:** 6:30PM  
**Place:** Gallatin Gateway Fire Station, 320 Webb St., Gallatin Gateway, MT  
**For:** Regular Meeting of the Board of Directors

## **AGENDA**

- 1. Public Participation on Non-Agenda Items<sup>1</sup>**
- 2. Approval of Minutes**
  - a. Approval of Meeting Minutes for December 1, 2014
- 3. Reports of Officers, Standing Committees, and Special Committees**
  - a. Report of General Manager & Report of Financial Condition
  - b. Report of Community Liaison Committee
  - c. Report of Engineer
    - i. Technical Status and ongoing design review comments
    - ii. RUS Reports, Administration and Draw Requests
    - iii. TSEP Reports, Administration and Draw Requests
    - iv. CDBG Reports, Administration and Draw Requests
    - v. DNRC Reports, Administration and Draw Requests
- 4. Unfinished Business and General Orders**
  - a. Discussion of Gateway Village v. DEQ/Gallatin Gateway County Water and Sewer District – attorney Susan Swimley. NOTE: This item may be closed to discuss litigation strategy.
- 5. New Business**
  - a. Any New Business Which May Come Properly to the Board

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<sup>1</sup> The opportunity for members of the public to comment on District matters which are not on the agenda. Time limits may be imposed at the discretion of the President.

# **Gallatin Gateway County Water & Sewer District**

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## MINUTES OF THE

### **BOARD OF DIRECTORS**

A regular meeting of the Board of Directors of the Gallatin Gateway County Water & Sewer District was held at the Gallatin Gateway Fire Station, 320 Webb St., Gallatin Gateway, MT, on January 5, 2015. Present at the meeting were board members Merle Adams, Eric Amend, Ted Border, Steve Janes, and David Sullivan. General Manager Matt Donnelly and Secretary Maralee Parsons Sullivan were also present. In attendance were Kurt Thomson & Greg Benjamin from Stahly Engineering, and Larry Watson from Gallatin County. District council Susan Swimley was present, and District council Mark Buyske from the Helena firm of Doney, Crowley, Payne, Bloomquist P.C. was present via teleconference. Public attendees included Sandra & Lee Hart, Delsie Flategraff, Christie Francis, Carol Lee-Roark, Dick Shockley, Jeff Prescott, & Pete Stein.

President Border called the meeting to order at 6:31 p.m. Secretary Maralee Parsons Sullivan recorded the minutes of the meeting.

#### PUBLIC COMMENT

President Border asked for public comment on non-agenda items. There were no non-agenda items raised.

#### APPROVAL OF MINUTES

After confirming that all directors had a draft copy of the December 1, 2015 meeting minutes, President Border asked whether there were any corrections. None were noted. Director Janes made the motion to approve the minutes as written, Director Sullivan seconded the motion and the minutes were approved unanimously.

President Border proposed the meeting begin with a general discussion of the results of the lawsuit so members of the public present could hear the summary of the results from District council, and ask questions of the Board or District council, prior to District council's recommendation to close the meeting to the public to allow the Board to enter into closed session.

#### Discussion of Gateway Village v. DEQ/Gallatin Gateway County Water and Sewer District

Council Mark Buyske and Susan Swimley presented an overview of the judge's ruling, which was handed down on 12/29/14. The judge stated that the DEQ did not properly and fully answer the comments of Dr. Nicklin, and because of that, the court felt the DEQ had not taken a "hard look" approach, but the court left the door open for DEQ to take a hard look, if it chooses to do so. DEQ had the burden to demonstrate why evidence presented in public comment did not create

a significant controversy that warranted an Environmental Impact Statement (EIS), and needed to present a convincing explanation of that in the permit, which DEQ did not present, according to the court. The second issue raised by the Court is that the DEQ has to take a hard look at the compliance with non-degradation, and the court said that DEQ allowed the District to do the 5 hour pump test, confirming that the 5 hour pump test was consistent with the 24 hour pump test previously submitted, and agreed that the 5 hour pump test did not fall in the “how to perform” standards, but DEQ did not explain why it was ok to use the 5 hour pump test. The Nicklin report calculated all of the limits based on the 50K gallons, which was included in the discharge permit application, and DEQ did not explain why those calculations did not raise a “hard look”. Third, in light of environmental laws, DEQ should have further examined the mixing zone, but the judge did not actually rule on that point. The judge sent it back to DEQ to make findings, but what is currently in the permit and the explanation of the comments, were insufficient to meet the standards in Montana. There is the potential for the District and DEQ to appeal, or for one to appeal, or for no one to appeal. In discussion of a timeline moving forward, Ms. Swimley advised that whether the District re-writes the existing permit, or starts over with a new permit incorporating the chosen SBR system, it will likely be a minimum of 9 months before the district could have a proper discharge permit in hand.

One member of the public asked if the sewer does not go in, what will happen to the district’s land, and will people of Gateway continue to be responsible financially (for the District’s debt). Council Swimley advised that strategy will need to be determined by the Board and will be discussed in closed session, but she did mention that the property was purchased by money granted by the state, and a state agency has never retracted money granted (and spent) in the history of Montana. The status of future grants and loans, already earmarked for the project, will need to be determined in forthcoming discussions between the District and the granting agencies. A question was raised by a member of the public to clarify the issue regarding the mixing zone trespass on private property claim. Council Swimley said the argument presented by District council on this was 3-fold: 1) the new law being cited by the plaintiff, which states for new subdivisions, mixing zones cannot go onto a neighbor’s property without an easement was not applicable, since the District land is not being developed as a new subdivision, 2) you do not trespass when you get a permit to discharge into ground water since the ground water is owned by Montana, and discharge permit is your permission to discharge the water, and 3) we have a prescriptive easement because there is an existing mixing zone. The judge stated that all 3 issues would need to be addressed by the DEQ in the new permit. Since the District has chosen an SBR over a level II system, there is a possibility that a mixing zone will not be required, so this mixing zone issue would go away and would resolve the trespass claim. Pres. Border asked if the judge was actually making a ruling that an EIS is required for this discharge permit? Council believes the ruling was implying that since DEQ did not adequately explain why there was not a controversy, and did not adequately explain why it didn’t need an

EIS, that lack of explanation would require an EIS, but does not necessarily require that the District go through the EIS process.

The critical paths and timeline for the Board making a decision on how best to move forward were discussed. Should the District choose to appeal, the costs of attorney fees being covered under insurance is being investigated. The status of the grants and loans will need to be discussed in conversations with the granting agencies.

Council Swimley summarized the discussion by saying the District's attorneys spent a lot of time in strategy with the DEQ attorneys to ensure their responses hit the mark and educated the Court, and also DEQ's responses hit the mark and educated the Court. There was enough information for the judge to go either way.

#### REPORT OF GENERAL MANAGER, TREASURER & APPROVAL OF EXPENDITURES

GM Matt Donnelly provided the report. Grants will be expiring this year, and we will need to seek renewals and/or extensions, and the District will need to present a plan to the agencies that will keep the project viable over the next several months while the District is seeking a new permit. CDBG needs county commissioner's input this month, the TSEP and DNRC grants will need legislative approval for extension in late February, and the RD grant & loan will need an extension in the August timeframe. Mr. Donnelly recommended a conference call with the granting agencies soon to discuss the situation, and present the District's plan to move forward. The 7-9 month process for getting a new permit includes having the engineers re-write the discharge permit application which will include the 24 hour pump test, and re-written to include an SBR system, rather than Level II (about 2 months), followed by a 4 months DEQ review period, followed by a 30 day public comment period.

A member of the public asked if the Board has ever sat down with Mr. Loseff to work together. Ms. Swimley stated that the District made offers before Mr. Loseff applied for his subdivision, and after the county denied his subdivision, and Mr. Donnelly also wrote an email to Mr. Loseff in early December which stated that there is a lot of miscommunication being spread around the community, and sought Mr. Loseff's cooperation in moving things forward for the good of the community. Mr. Loseff responded that it would have to be a global settlement that involved the county, and that Ms. Swimley should meet with his lawyer, which she has tried to do. Back in the spring Mr. Loseff had suggested the District hook up to his system, and Ms. Swimley sent a response asking for his rate structure, and never heard back from him. She stated that she and Mr. Donnelly have had numerous discussions about how a joint project could potentially work, but they have been unsuccessful in getting Mr. Loseff to the negotiating table. She stated she still does not know what he wants in order to allow the District to go forward with the sewer project. Director Adams pointed out that the District is very aware of the high rates being charged by the Sewer

District in Four Corners, and the Board has been very reticent to go down the path of abandoning a public sewer system, in favor of connecting to a private sewer system, for fear that the residents of Gallatin Gateway would also have to pay unaffordable rates for their sewer.

Treasurer Maralee Sullivan reviewed the current monthly financial package (P&L and Balance sheet) for FY starting July 1, 2014: Quarterly invoices for the Benefited lot charge were completed on 12/31/14 and are ready to go. She has held up the mailing since the newsletter needs to be re-written with the results of the lawsuit. She asked the Board if they wanted to continue with the billing, or suspend it, pending a decision of the Board on how best to move the project forward. After some discussion among the public present, Director Sullivan made the motion to continue invoicing; Director Adams seconded the motion and it passed unanimously. Ms. Sullivan asked permission from the Board to change the due date on the invoices to 30 days from the date of mailing (from 30 days from the invoice date), to allow time to update the newsletter and still allow customers the usual 30 days to pay. Director Janes made the motion granting permission to change the due date on the invoices, Director Sullivan seconded the motion and it passed unanimously. Ms. Sullivan reviewed the status of the delinquent accounts that were reported to the County for collection; all but 3 accounts have been collected and a check from the County for \$141.25 was received on 12/31/14. One customer paid her bill in full at the end of December, in addition to the money collected by the County. Since the District does not have a policy on how to apply the overpayment (a credit to her account or a refund), Ms. Sullivan asked the Board to direct her to apply the overpayment as a credit on her account. Director Janes made the motion to apply the overpayment as a credit on account, Director Sullivan seconded the motion and it passed unanimously.

#### REPORT OF COMMUNITY LIAISON COMMITTEE

Director Janes reported he had nothing to report other than to suggest a community meeting in the near future.

#### REPORT OF ENGINEER, GRANT AGENCY DRAWS & REPORTS

Kurt Thomson provided the engineer's report. The DEQ submittal package is ready to go, but can't be submitted without a new discharge permit. Mr. Donnelly has stopped working on the design aspects, until we ask them to submit a new discharge permit application.

- RUS: Nothing to report
- TSEP: Nothing to report
- CDBG: Larry Watson provided the report. He provided a brief background on the timeline and environmental assessments (EA) written for the project. A third 30-day public hearing was held on the most recent EA, at which questions were raised by Mr. Loseff and Mr. Threlkeld. At the end of the hearing period, the County filed a request for release of CDBG funds. On

12/24/14 he received an email from Dept. of Commerce finding that the comments received were substantial enough to warrant another extended environmental hearing period. They asked for 3 things: A fourth environmental hearing which will have an additional 15 days public hearing period (45 days in total); document the financial commitment of all grant and loan agencies; an updated project schedule. When the results of the litigation came in on 12/30/14, Mr. Watson was told by the County Administrator to stop work until the agency has had a chance to discuss scheduling and next steps with the Board. The majority of the CDBG is of direct benefit to the low-to-moderate income residents of the District (\$5800 offset per lot).

- DNRC: Nothing to report

#### UNFINISHED BUSINESS AND GENERAL ORDERS

##### Discussion of Gateway Village v DEQ/Gallatin Gateway County Water and Sewer District – attorney Susan Swimley.

Ms. Swimley recommended to the Board that they close the session to the public since it will be detrimental to the District's position, to keep the session open as they discuss strategy regarding the outcome of the litigation.

#### NEW BUSINESS

No New business was presented for discussion.

President Border then asked for unanimous consent to close the meeting to the public. Seeing no objection, the meeting was closed to the public at 8:01 p.m.

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Secretary