

**City of Colorado Springs/ El Paso County
Drainage Board Meeting Summary
December 5, 2019**

The City of Colorado Springs/ El Paso County Drainage Board held its meeting at 3:00 PM, Thursday, December 5, 2019 in the Pikes Peak Room at City Hall at 107 N. Nevada Avenue.

MEMBERS PRESENT: Bob Irwin, Tim McConnell, Jonathan Moore, Marc Whorton, Jim Houk and Darin Moffett

MEMBERS ABSENT: Vince Crowell

OTHERS PRESENT: Erin Powers (City), Jeff Bailey (City), Anna Bergmark (City) Elizabeth Nijkamp (El Paso County), Lois Ruggera (City), Jessica Hyman (City), Carol Medina (City), Ryan Ruebensor (La Plata), Steve Rosssoll (La Plata), and Mike Bramlett (J.R. Engineering)

Item 1: Meeting called to order by Bob Irwin at 3:03 pm

Item 2: Approval of the minutes from the November 7, 2019 Drainage Board Meeting. Motion was made by *Marc Whorton* to **approve** the minutes of November 7, 2019. Motion was seconded by *Tim McConnell*.

Motion passed 6-0

Item 3: Old Business – None.

Item 4: New Business –

a) Sand Creek Drainage Basin reimbursement for Copper Range Apartments Subdivision, No. 1- (City)

ACTION REQUESTED: This action is requested to reimburse Copper Range Apartments, LLC for drainage facilities constructed within the Copper Range Apartments Subdivision, No. 1. The total request from Sand Creek Drainage Basin fund for drainage facilities is \$143,194.00.

Item was presented by *Jeff Bailey* (City). City staff is presenting a request for reimbursement for Copper Range Apartments, LLC for public facilities already constructed and accepted into probationary acceptance. These facilities include a 48" RCP storm sewer, manholes, and concrete forebay that conveys off-site public storm water through the subdivision with a total construction cost of \$189,065.00. As per the attached letter dated September 30, 2019, the developer is not seeking reimbursement beyond the amount of the deferred drainage fees (\$143,194.00).

Currently, the City is updating the Sand Creek DBPS that will recalculate the fee based on remaining improvements and unplatted land throughout the Sand Creek Drainage Basin. To minimize the frequency of the Board adjusting the basin fee, it is recommended to approve a basin fee modification at the time the Sand Creek DBPS be completed.

City staff recommends that the Drainage Board approve the reimbursement of \$143,194.00 for drainage facilities constructed to Copper Range Apartments, LLC to be applied to the Unpaid Drainage Fees of the Copper Range Apartments Subdivision, No. 1.

Bob Irwin – Asked if the applicant has the right to come back in when everything is settled to recoup the overage remaining.

Jeff Bailey – They are just requesting for this particular system and that's it and this is the amount. They've lost their opportunity to come back.

Erin Powers (City) – The Stormwater Enterprise / Water Resources Engineering Division staff have sent out notices to the people on the deferred fees list asking them to come in and clear out their balances; this was in response to that request.

Jonathan Moore – Is City staff anticipating any additional reimbursements that may lead to a fee increase in the Sand Creek basin before the new DBPS is approved?

Jeff Bailey – All will be included in the DBPS adjustment.

Erin Powers – This will be considered on a case by case basis. A larger increase may be made prior to approval of the DBPS.

Tim McConnell moved to reimburse Copper Range Apartments, LLC \$143,194.00 for drainage facilities from the Sand Creek Drainage Basin Fund and to be applied to the Unpaid Drainage Fees of the Copper Range Apartments Subdivision, No. 1, second by *Jonathan Moore*.

Motion passed 6-0

b) Middle Tributary Basin Fee Increase and Request for Reimbursement for the Farm Filing No 4 Box Culvert (City)

ACTION REQUESTED: This action is a request by Allison Valley Development Company, LLC to increase the Middle Tributary Basin fund by \$387,720.55. This would result in a fee increase of \$17,632/acre. The subsequent action is to reimburse to Allison Valley Development Company, LLC for the remainder of the cost associated with the 8' x 8' box culvert within Middle Tributary. A partial reimbursement was approved by the Board on May 2nd, 2019 in the amount accounted for in the Drainage Basin Planning Study (\$104,751.00). The total request from the Middle Tributary Basin fund for drainage facilities was \$492,471.55.

Item presented by *Anna Bergmark (City)*. This item is a follow up from May 2. Due to the amount of the increase and the impacts the remaining property owners the Board agreed to a partial reimbursement up to the amount estimated in the original DBPS. The Board then requested further coordination with the remaining property owners, the applicant has done so and has included the correspondence via email with the one remaining property owner besides the applicant agreeing to not oppose it. City staff recommends that the remaining approval be granted.

Bob Irwin – As I recall that was an extremely large increase, and the Board requested for the staff and applicant to see what the other property holders had and what their response was. Is this is only remaining property holder in the basin?

Anna Bergmark – Yes, there are two remaining property owners, Allison Valley and Pulpit Rock.

Marc Whorton - The October Drainage Board meeting included a financial update, and the Middle Tributary basin fund was around \$400,000. If Pulpit Rock will also be paying drainage fees, why is the proposed fee increase so high?

Anna Bergmark – There are further improvements that would be deemed reimbursable items in the Middle Tributary basin.

Tim McConnell – Are the remaining improvements the responsibility of the developer?

Anna Bergmark – Yes.

Steve Rossoll (La Plata) – In May, we were awarded \$100,000.00 that would be included in reimbursement.

Jessica Hyman (City) – Reimbursement has been paid.

Steve Rossoll (La Plata) – Council that when there is awards notification by email, approval of minutes, for the cash flow can be awarded

Erin Powers (City) – Based on meetings with legal staff, minutes do not have to be approved for reimbursement to be disbursed. Minutes are not able to reverse votes. There will also be quarterly payments from the basin funds moving forward.

Steve Rossoll – Middle Tributary from the box downstream to the Air Force Academy has channel improvements. It contains mouse habitat and involves a very long Federal Process.

Tim McConnell – Is it currently under design?

Steve Rossoll – It is not under design. Steve has met with the City, it is a very difficult creek with heavy mouse habitat and they would have to amend the mouse maps and don't want to do that until there are additional mouse map amendments elsewhere to pair it with so as to not overwhelm the US Fish and Wildlife Service. Have to come up with an innovative way to do these improvements, which is a big process.

Met with the one stakeholder which took 6 months after back and forth, but in principle don't need stakeholders.

Bob Irwin – When basin fee is being increased from \$2000 to \$17,000, there is an obligation to notify other property owners.

Steve Rossoll – Then Board would disapprove based on opposition from other property owners?

Bob Irwin – Not necessarily. Need to give fair notice, which is what the Board was asking. That kind of increase can sterilize property.

Steve Rossoll – I don't disagree that there should be a better way to notify property owners.

Jonathan Moore – Agree with chair. The amount of increase makes notification a fair thing to do. Property owner objection will not necessarily impact the vote. Many people are planning projects 5 years out, and this would be due diligence to get the word out.

Steve Rossoll – I don't disagree with notification, and think that's wise.

Bob Irwin – Board was not suggesting there wasn't an entitlement. Were discussing notification. The question for everyone involved is whether that should be done.

Steve Rossoll – There could be some type of notification mailer, similar to what City Planning does.

Jonathan Moore moved to increase the Middle Tributary Drainage Basin fund in the amount of \$387,720.55 which would result in a fee increase of \$17,632/acre, seconded by *Tim McConnell*.

Motion passed 6-0

Jonathan Moore moved to reimburse Allison Valley Company, LLC the remainder of the original request in the amount of \$387,720.55 for drainage facilities from the Middle Tributary Drainage Basin Fund bringing the total reimbursement for this item to \$492,471.55, seconded by *Tim McConnell*.

Motion passed 6-0

c) Black Squirrel Creek Drainage Basin Pond Land Fee Increase (City)

ACTION REQUESTED: This action is a request by Allison Valley Development Company, LLC to increase the Black Squirrel Creek Drainage Basin Pond Land Fee by \$2,950 per acre. This fee increase would cover the deficiency in the pond land portion of the fund as identified in the analysis completed by JR Engineering on behalf of Allison Valley Development Company, LLC.

Item presented by *Anna Bergmark* (City). Allison Valley took a proactive approach and asked JR Engineering to evaluate the basin as a whole to check the adequacy of the fee. This fee increase would take care of the deficiency in the pond land fee identified in the analysis completed by JR Engineering. City staff has reviewed and agrees with the recommendation.

Mike Bramlett (JR Engineering) presented item on behalf of the applicant, Allison Valley. Asking for an increase in the pond land fee based on the analysis. The DBPS was written in 1989, and many factors have changed from the original DBPS assumptions to current plans. There are approximately 408 acres that will plat in the basin.

Jonathan Moore – Commends Allison Valley for hiring an engineer to do this study. How much of the 408 acres remaining is developable?

Mike Bramlett – There are actually 538 acres remaining in the basin, and 408 acres are developable and will pay fees.

Jonathan Moore – How many property owners in the 408 acres?

Mike Bramlett – There are 6.

Jonathan Moore – Would it be a big deal to reach out to those property owners regarding this fee increase?

Mike Bramlett – Fair question. No opinion on whether it should or shouldn't be done. The only 2 properties that will be impacted are Pulpit Rock, which will be benefitted, and Nor'wood, which has deferred fees that will need to come back in to basin. 260EB LLC property owner will not be benefitted.

Jonathan Moore – Would the City be opposed to reaching out to the property owners in a letter?

Anna Bergmark – Not opposed, but there is no written requirement.

Bob Irwin – There isn't a written requirement, but maybe there should be. Actions are taken by this Board without notification, and property owners are caught unaware. It is concerning that the Board will take action and the land owners are not notified.

Mike Bramlett – What would be a reasonable attempt at notification?

Bob Irwin – A letter to the address on the assessor site would work. Would like Board members to give input on this issue.

Steve Rossoll (La Plata) – This is the right thing to do as discussed earlier, but it should not delay the motion. The longer the delay, the higher the necessary fee increase.

Jonathan Moore – In Sand Creek there are potentially thousands of property owners – make sure that is considered.

Bob Irwin – The previous notification was not a big issue because there were other issues to work out before the application came back to the Board.

Darin Moffett – There could be a process in place when there are only a few property owners left in a basin. When applying for a LOMR through FEMA, the applicant is required to send a letter. The property owners are not guaranteed a response, but they are notified. Would recommend City Engineering think about it, but should not hold up the item today.

Bob Irwin – Not suggesting holding up the item, but notification requirements should be considered further.

Jonathan Moore – Would not be difficult to do for a few properties on this item. Would like to see some type of notification when there are significant fee increases. City staff or applicant should make some sort of effort or attempt at notification.

Bob Irwin – Is time an issue for the present item?

Jim Houk – Appreciate the comments that have been made thus far. Agree with JR’s methodology and thought it was a good approach. Don’t believe there is any precedent or policy to require notification, though it is a good idea.

Bob Irwin – All for notification. As for the individual item, will support the item today, as the applicant is entitled to a decision on the item. In the future, there should be some sort of requirement for notification when it matters to protect everyone involved on future issues.

Tim McConnell – The Board should discuss notification further in the future.

Bob Irwin – Back to the present item, there is a negative amount in a column.

Mike Bramlett – Negatives represent deferred fees.

Tim McConnell moved I move to increase the Black Squirrel Creek Drainage Basin Pond Land Fee by \$2,950 per acre resulting in new fee of \$3,739 per acre, seconded by *Darin Moffett*.

Motion passed 5-1

d) Housekeeping –

Scheduling for Annual Meeting in January. City staff suggests January 9th as meeting date. Lunch will begin at 12:00pm, and Meeting will be held at 1:30pm. Adam Copper (Senior Engineer with the City) will present on City stormwater projects. Elections for Chair and Vice Chair will be held at the Annual Meeting.

Second terms for two members of the Board will expire October 1, 2020. Would need a bylaw amendment to allow for elections at Regular Meetings if a Chair or Vice Chair term expires midway through the year.

e) Open Discussion –

Jonathan Moore – Question from last time regarding Jimmy Camp Creek DBPS.

Elizabeth Nijkamp (County) – Jennifer Irvine is scheduled to present to the Board. The DBPS will not be completed by the end of year. The County Department of Public Works is spearheading that effort.

Jonathan Moore – Is the City and County pairing on this?

Elizabeth Nijkamp – The City already approved one recently.

Erin Powers (City) – Mike Cartmell approached the City.

Elizabeth Nijkamp – The County has not accepted the City’s DBPS because there was no fee calculation for the County.

Tim McConnell – Will the hydrology be recreated with the County’s DBPS?

Elizabeth Nijkamp – Hopefully not, but we can take that back to Jennifer Irvine.

Erin Powers – The potential to partner on the DBPS is still open.

Elizabeth Nijkamp – Jennifer Irvine will present more information.

Tim McConnell – Should have attorneys weigh in on the notification issue.

Elizabeth Nijkamp – Can move any direction the Board would like. Notification would be complex in a large basin such as Sand Creek.

Bob Irwin – It becomes difficult for the property owners to keep track of the locations of various postings without mailings or other specific notice.

Elizabeth Nijkamp – The posting is already there, but we would need additional parameters to implement a mailer requirement.

Bob Irwin – We will table the issue until a future meeting.

Erin Powers – City and County will do some research to discuss options at the next meeting.

Item 5: Meeting adjourned at 4:14 pm.