

**WEST SLOPE WATER DISTRICT**  
Regular Board of Commissioners Meeting

FEBRUARY 18, 2015

**MEETING SUMMARY**

**CALL TO ORDER**

Present: Commissioners Charlie Conrad, Donna Davis, Bruce Hellebuyck, Noel Reiersen, and Bob Rieck

Management Staff: General Manager Jerry Arnold; Finance and Customer Service Manager Heidi Starks

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Chair Donna Davis called the Regular Meeting of the West Slope Water District Board of Commissioners to order at 5:00 PM, Wednesday, February 18, 2015.

**PUBLIC COMMENT/COMMUNICATIONS**

Staff distributed a letter received from Bob and Carol Lazrine (attached). It was the consensus of the Board to address the issue on the next Regular agenda.

**CONSENT AGENDA**

Following a brief discussion Commissioner Conrad made a motion to approve the Consent Agenda as presented. Commissioner Hellebuyck seconded the motion and it was approved unanimously.

**TRI-MET TRANSIT PROGRAM**

The District is eligible to participate in the TriMet Universal Annual Pass Program for employees. Staff conducted the required commuting habits of all employees and submitted it to Tri-Met. Tri-Met then issued an estimated price for the remainder of FY 2014-15 in the amount of \$550.00.

Commissioner Reiersen stated this is a very good thing for lots of reasons and a good message, plus it conveys things like this are really important for a small organization. Commissioner Conrad made a motion to authorize the General Manager to execute an agreement with Tri-Met for a period of six months, with the understanding the District will purchase the transit passes for all employees and will review its cost effectiveness and benefits prior to the end of the six month period. Commissioner Hellebuyck seconded the motion and it was approved unanimously. In response to a request from Commissioner Conrad, staff will contact Tri-Met to see if they collect usage data.

### **BUDGET COMMITTEE VACANCY AND APPOINTMENTS**

Commissioner Reiersen made a motion to appoint Mr. Phil Miller to a new three year term on the Budget Committee. Commissioner Conrad seconded the motion and it was approved unanimously.

### **DRAFT SWOT ANALYSIS REPORT**

Manager Arnold said a representative from Barney & Worth was not available to present their report. Commissioners expressed disappointment, given the amount of lead time. It was the consensus of those present Mr. Arnold contact Barney & Worth and reschedule the presentation for July or August. Before accepting report, the Board needs to know/understand the data behind the report.

### **FINANCIAL REPORT**

The District is 1.76% over projected revenue and 6% under on expenses.

### **DISTRICT ACTIVITIES**

Manager Arnold briefly described monthly operations and the scheduled preventive maintenance of the District's pressure reducing valves.

Manager of Finance & Customer Service Heidi Starks distributed a copy of the newest annual mailing insert to all customers regarding lead. The brochure is an integral part of the District's policy to proactively notify customers of the lead hazards in their home as required by EPA of all water providers.

### **COMMISSIONER COMMUNICATIONS**

None.

Commissioner Hellebuyck and Ms Starks left the meeting due to a potential conflict of interest.

### **EXECUTIVE SESSION**

Chair Davis called an Executive Session pursuant to ORS 192.660(2)(a) which allows the Board of Commissioners to meet in executive session to discuss employment of a chief executive officer  
.5:42 pm

### **RECONVENED REGULAR SESSION AT 6:35 PM**

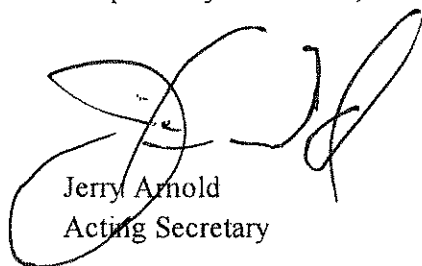
### **ADJOURNMENT**

There being no further business to discuss, Commissioner Rieck made a motion to adjourn the meeting. Commissioner Reiersen seconded the motion and it was approved unanimously.

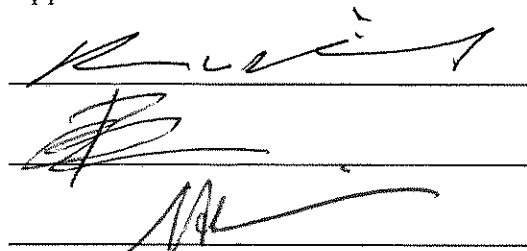
Chair Davis adjourned the January 21, 2015 Regular meeting at 7:07 PM.

Respectfully Submitted,

Approved:



Jerry Arnold  
Acting Secretary



Three handwritten signatures are present on three horizontal lines. The top signature is clearly legible as 'Davis'. The middle and bottom signatures are more stylized and difficult to decipher.

February 18, 2015

Thank you for taking the time to visit our property last Thursday and Friday to see firsthand what the issues are regarding the recently disclosed easement. Hopefully that made it apparent that we, as well as WSWD, have significant concerns over where we are now, and where we go from here.

We've had some preliminary discussions with Jerry Arnold about the wording of the easement and the fact that the carport was an existing structure when we purchased the property 9 years ago. There was not an easement record in our title insurance policy. We understand that there are legitimate concerns for both us and WSWD regarding this matter, and our goal is to come to an agreement that would take each parties issues into consideration and avoid costly litigation.

We have attached a copy of the easement, the offer letter from our attorney to Jerry Arnold and Steven Shropshire, along with the response to our offer from Steven Shropshire. We felt, and continue to feel, that our offer as outlined in the attached letter is not unreasonable.

As we explained when we met last week, we have expended a considerable amount of money, time and energy essentially rebuilding Carol's studio at another location on our property when this easement was discovered. We have already agreed that the small shed located to the west of the carport will be moved out of the easement. As outlined in our offer letter, we are willing to take the risk that we may have to remove the portion of the building that is on the easement in the event of a leak. It is our understanding that if there is ever a catastrophic break, our entire structure is at risk, including the office/studio space attached to the carport, which is fully outside of the easement. One or both of our insurance policies would cover any portion of our property outside the easement that is damaged or destroyed if such an event were to occur.

As stated in our offer letter, we understand that if this were to go to litigation there is a risk on both our parts in how the court would rule. We don't believe it is in anyone's best interest to expend a considerable amount of time and resources battling this type of litigation. As we said when we met with you, we would have to represent ourselves because of the financial burden of continuing to engage a lawyer, but we are willing to take that risk if we continue to be demanded to remove our structure

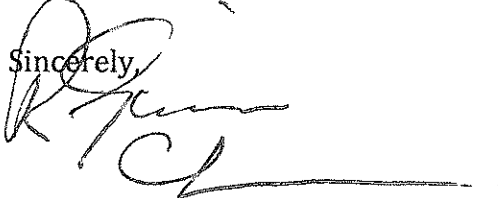
Following are the options we propose for consideration:

Option #1 - Leave the structure in its current state under the conditions stated in Clark Balfour's 'Compromise and Settlement Offer' letter to WSWD on October 31, 2014, including either the installation of monitoring equipment or periodic inspections to determine the condition of the connection points.

Option #2 – Replace the east, west and south walls within the easement area with portable walls that could maintain a secured area within the carport, but also be removed relatively quickly so WSWD could gain access with equipment if needed to do repairs to the line. We envision this as multiple sliding barn-type doors that could be removed by hand if necessary. These doors would be on the entire south wall, running the length of the buried line, and replacing the east and west walls that are within the easement area. This option would require lead-time to remove any stored items in the area. We would share equally in both the design and cost.

We understand that neither party will be fully satisfied regardless of the outcome of this negotiation, and we hope that both parties' issues are taken into consideration. We look forward to continuing to work with you on this issue to determine a reasonable solution.

Sincerely,

A handwritten signature in black ink, appearing to be 'Robert & Carol Lazrine', written over the word 'Sincerely,'. The signature is fluid and cursive, with a long horizontal line extending to the right.

Robert & Carol Lazrine  
503/998-8980 (Robert)  
503/679-3863 (Carol)  
[robertlazrine@icloud.com](mailto:robertlazrine@icloud.com)  
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8885 SW Birchwood Road  
Portland, OR 97225-2715

—+—  
CABLE HUSTON, L.P.

CLARK I. BALFOUR

cbalfour@cablehuston.com

October 31, 2014

*Confidential Settlement Communication  
Subject to Oregon Rule of Evidence 408*

VIA E-MAIL

Jerry Arnold  
General Manager  
West Slope Water District  
3105 SW 89th Ave.  
Portland, OR 97298

Steven L. Shropshire  
Jordan Ramis PC  
Two Centerpointe Drive  
6th Floor  
Lake Oswego, OR 97035

Re: Compromise and Settlement Offer

Dear Jerry and Steve:

We represent Carol and Robert Lazrine, who own real property at 8885 SW Birchwood Rd., Portland, OR 97225. I am in receipt of West Slope Water District's ("WSWD") September 12, 2014 letter demanding that the Lazrines remove two structures partially occupying a water line easement in favor of WSWD that runs along the southern edge of their property. The letter indicates that WSWD is prepared to take legal action to cause removal of the structures. We understand WSWD's concern but we believe legal action in this situation would not be productive.

This easement was created in 1945 and was only recently discovered by the Lazrines. It did not show up on the title report when they purchased the home. One structure, a shed, is on piers. The other structure is the existing carport that was enclosed for occupancy as an art/music/project studio. The water line is under the very southwest corner of the studio according to the attached drawing WSWD provided. Both structures were placed without knowledge of the WSWD water line.

The 1945 easement does not specifically prohibit buildings or structures in the easement area. Silence on this point means that if this matter proceeds to Circuit Court, a judge would have to review the document to determine if the presence of the structures constitutes an unreasonable interference with WSWD's use of the easement. The easement entitles WSWD to bury a pipeline 30" under the Lazrines' property, but does not bar the Lazrines from using the property thereafter, including from placing structures. The easement also provides that WSWD's work under the easement "shall be conducted in such a manner as to cause the least possible annoyance to tenants on said property, and that said District will promptly repair or pay for any damages caused by said work." Because the easement does not specifically bar surface structures, and contemplates that WSWD bear the risk of loss arising from the easement's use, the Lazrines could reasonably expect an Oregon court to hold that no unreasonable interference

CABLE HUSTON

October 31, 2014

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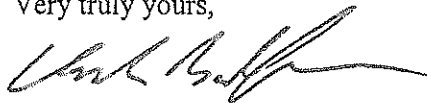
has occurred. A contrary result could also occur. Our point is that both sides have risk of an adverse result because of a poorly drafted document that is 70 years old.

Certainty for both parties is most important in this situation. The Lazrines wish to work with WSWD and dispose of this issue without litigation. They are willing to sign and record a new easement that clarifies the rights and obligations for all parties. We would propose an agreement that includes the following:

1. The Lazrines will move the existing shed within one year.
2. The existing studio remains in place but no new structures over the easement area will be constructed. The existing studio will be maintained and repaired, but not expanded over any part of WSWD's pipeline. If the studio is taken down or destroyed by catastrophe, there will be no replacement structure placed above any part of WSWD's pipeline.
3. Installation of leak monitoring or detection devices at the Lazrines' east and west property lines to determine if the pipe is leaking. We could also consider regularly scheduled inspection by WSWD personnel or a contractor for leaks if that is preferred.
4. If a leak is detected in the pipe under the Lazrine property area occupied by the structures and the structures interfere with the ability of WSWD to access the pipe area to be repaired, the Lazrines will bear the risk and cost of altering or moving the structures to allow access.
5. If the water line leaks in any area outside the area occupied by the structures, the cost is solely borne by WSWD.
6. Ultimately, WSWD will have to consider replacement of this 70-year-old metal pipe. The Lazrines would be very interested in working with WSWD for the future location of the replacement line away from the structures while allowing the old pipe to be grouted and abandoned in place with no further obligation for WSWD to remove it.

We hope WSWD will consider the foregoing and avoid the unnecessary expense and hardship of a legal fight. We believe the foregoing offer from the Lazrines is a fair agreement that protects both parties' rights and interests and provides a basis for future capital improvements when it is time to replace the line. Please let me know your thoughts on negotiation of an agreement, and we would be happy to prepare a document for consideration.

Very truly yours,



Clark Balfour

cc: Carol and Robert Lazrine