

LAKEHAVEN UTILITY DISTRICT  
King County, Washington

REGULAR BUSINESS MEETING  
February 8, 2007

A regular meeting of the Board of Commissioners of the Lakehaven Utility District, King County, Washington, was held on February 8, 2007 at Lakehaven Center, 31531 First Avenue South, Federal Way, Washington, 98003.

President Miller called the meeting to order at 6:00 p.m. and asked Mr. Perry to lead the flag salute. Members/officials present were as follows:

Don Miller	President of the Board
Ron Nowicki	Vice President of the Board
Chuck Gibson	Secretary of the Board
Ed Stewart	Commissioner
Beverly Tweddle	Commissioner
Don Perry	General Manager
Bert Ross	Engineering Manager
Steve Pritchett	General Counsel
Morgan Dennis	Director of Finance/Information System

APPROVAL OF MINUTES

Upon motion of Commissioner Stewart, which was duly seconded by Commissioner Nowicki, the Board unanimously **adopted** the minutes of the Special Meeting of January 18, 2007.

APPROVAL OF AGENDA

Upon motion of Commissioner Nowicki, which was duly seconded by Commissioner Gibson, the Board unanimously **approved** the evening's agenda as amended below:

1. Executive Session; add a grievance discussion to the session.
2. Add Action Item #12 to consider a grievance
3. Add Action Item #13 to consider a grievance
4. Add Action Item #14 to consider a grievance
5. Add Strategic Planning to the pending items on the Board agenda.

CORRESPONDENCE

The Board discussed a letter from the King County Boundary Review Board regarding the City of Auburn and their proposed Lea Hill Annexation hearing on February 22<sup>nd</sup>, which is the date of the next Board meeting. The Board was advised that another letter had also been

received from the King County Boundary Review Board regarding the City of Auburn and their proposed West Hill Annexation. Subsequent to the discussion of this issue, it was the consensus of the Board to send a letter to the Boundary Review Board indicating that the District has no issues with the proposed annexations. It was noted that the area located in the eastern portion of the District may be included in a ballot issue next November for possible annexation into the City of Federal Way

CONSENT ITEMS

Upon motion of Commissioner Nowicki, which was duly seconded by Commissioner Tweddle, the Board unanimously **approved** the Consent Items as presented.

1. Accounts Payable Vouchers and Payroll Transactions with the warrant dates of 1/12/07, 1/15/07, 1/23/07, 1/26/07, 1/29/07, 1/30/07, 1/31/07, 2/8/07 and 2/9/07  
 Maintenance Fund No. 11-333-0510  
     1/12/07, voucher no. 7441-7450, total amount of \$2,995.81;  
     1/15/07, voucher no. 7451-7503, total amount of \$239,996.43;  
     1/26/07, voucher nos. 7524, total amount of \$47,205.44;  
     1/29/07, voucher nos. 7525-7554, total amount of \$6,884.23;  
     1/30/07, voucher nos. 7555-7661, total amount of \$419,970.42;  
     2/9/07, voucher nos. 7695-7715, total amount of \$2,401.84

**Construction Fund No. 11-333-3510**

- 1/15/07 voucher nos., 7504-7507, total amount of \$69,533.31;
- 1/31/07 voucher nos., 7662-7675, total amount of \$72,513.62;

**PWTF Wellsite & Emerg Power Fund No. 11-333-6020**

- 1/31/07, voucher no. 7678, total amount of \$6,223.40;

**PWTF Lakota BioDryer Fund No. 11-333-6030**

- 1/15/07, voucher no. 7508, total amount of \$5,264.37;
- 1/31/07, voucher no. 7676-7677, total amount of \$16,977.82;

<b>Payroll – Fund #11-333-0503</b>	<b>1/23/07</b>	<b>02/08/07</b>
Warrants:	\$517.03	\$0.00
Direct Deposits:	\$180,248.95	\$187,031.56
Benefit Warrants:	\$45,742.62	\$138,386.06
	(voucher nos. 7509-7523)	(voucher nos. 7679-7694)
<u>Withholding/FICA</u>	<u>\$76,390.79</u>	<u>\$79,404.03</u>
<b>Total Amount of:</b>	<b>\$302,899.39</b>	<b>\$404,821.65</b>

2. Lakehaven Letter Supporting Groundwater Management Recommendations
3. Jovita Heights Block 68 – Pearson Latecomer Agreement Approval; Resolution No. 2007-1081

## ACTION ITEMS

### **#10, Lakota Creek Fish Ladder Repair Project Rebid – Award Construction**

**Contract:** Andy Wilt, one of the District's Project Engineers, began by stating this project consists of removing sediment in the settling basin on Lakota Creek at the Lakota Wastewater Treatment Plant and repairing the fish ladder. Staff received four bids; the low bid was approximately 3.8% above the engineer's estimate. Mr. Wilt stated the proposal submitted by the low bidder included a round-off error in calculating the sales taxes due and, in addition, the proposal was missing a page that contains a summary for Bid Schedule A and Alternate Bid Item #12. However, Bid Schedule A is summarized in another area of the proposal and the missing page was faxed to the District. He stated that staff considers this missing page to be a minor informality. After a discussion, Mr. Wilt stated staff was recommending the Board consider awarding the contract to the low bidder. A review of this project was provided for the benefit of the new commissioners. Subsequent to the discussion, the Board took action on this item.

Upon motion of Commissioner Gibson, which was duly seconded by Commissioner Tweddle, the Board considered the missing page of the proposal to be a minor informality and unanimously **approved** awarding the construction contract for the Lakota Creek Fish Ladder Repair Project to WesTek Forest, LTD of Olympia, Washington in the amount of \$108,414.84, including sales tax, and **authorized** the General Manager to sign the contract on behalf of the District.

**#11, Creekside Lane – Sewer Main Oversizing Reimbursement:** Mr. Ross stated that this is a proposed 53 lot plat being developed by Harbour Homes. The District's Comprehensive Wastewater System Plan indicates a main sewer line going through this area, which involves the District's policy of providing over sizing of this pipeline. He noted discussions had been held with the developer and they had come to an agreement of the maximum reimbursement to be made; however, actual payment will be based on actual invoices submitted by the developer when the project is complete.

Upon motion of Commissioner Nowicki, which was duly seconded by Commissioner Tweddle, the Board unanimously **approved** amending the developer extension agreement for the Creekside Lane Plat project, to include a provision for sewer over-sizing participation in an amount not to exceed \$86,100.00, which includes sales tax and a 15% contingency.

## INFORMATION ITEMS

It was the consensus of the Board to hear Information Item #2 next as the first item could be lengthy.

**#2, Vehicle Replacements:** Gene Yoder, the District's Manager of Field Operations, reported this is a yearly project, based on need. There are four vehicles scheduled for

replacement in this budget year, which included Units 53, 63, 422 and 426. Mr. Yoder reviewed the reasons for the need to replace these vehicles. He noted he intended to replace two pickup trucks with half ton trucks and another pickup will be replaced with a Jeep Commander. The replacement for Unit 422 had been approved at a prior meeting and is currently on order. Subsequent to the discussion of these proposed replacements, it was determined that this item will be included on the Consent agenda for the next Board meeting.

**#1, Open Public Meetings Act Training:** The purpose of this item was to provide an overview of the Open Public Meetings Act (OPMA). The original Act was written in 1953 and the current version was adopted in 1971. Mr. Pritchett began by reviewing each provision of the Act, beginning with the preamble. He stated he felt the policy statement is among the most significant parts of the Act and added that the Supreme Court is very tuned into the policy of open government. He next reviewed the definitions included in the Act. During this discussion, Mr. Pritchett emphasized the definition of "governing body". He stated that a Board committee has no independent power on its own. If the Board wanted the committee more involved in the role of governance, the meetings have to be open to the public. He went on to discuss other definitions included in the Act, all of which were included in the agenda packet for each Board member. He provided a few examples of violating the Act; for instance, if Board members attend a luncheon and purposely discuss District business, this would be considered a violation of the Act. However, all Board members attending the same conference is permissible, as long as no District business is discussed. He then moved to the topic of discussion by email. This could be considered a violation of the Act and he went on to provide some scenarios to explain how the violation could occur. Mr. Pritchett then moved to discussions during closed meetings. He stated that it is very important to take final action only in the open meeting. The discussion moved forward relating to members of the public attending meetings, they are not required to identify themselves. Next, Mr. Pritchett discussed times and places for meetings – Emergencies – Exceptions. The governing body determines times and places for public meetings. If a meeting is scheduled on a holiday, according to the Act, it will be moved to the next business day. However, the Board typically votes to cancel the meeting. There is a provision that an agenda be created for special meetings. A special meeting can be called by a majority of the Board members, or by the Board President. During these meetings, only items that are listed on the agenda can be acted upon. There is also a requirement that notice of special meetings be provided to a local newspaper and Board members as well. There is no provision in the statute that requires notice be provided to the public. Mr. Pritchett next reviewed meeting adjournments, which provides for a continuation of a meeting. He noted that this Board has never exercised that provision. Executive Sessions were discussed next. He noted that this is most important in terms of where agencies get in trouble. The Executive Session gives the governing body the ability to deliberate and discuss certain issues outside of the public view. Some issues that may be discussed during Executive Sessions include considering the selection of a site or acquisition of real estate by lease or purchase; consider minimum price at which real estate will be offered for sale; reviewing negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs; receiving and evaluating complaints or charges brought against a public officer

or employee. However, upon request of such officer or employee, a public hearing or meeting open to the public shall be conducted upon such complaint or charge. However, there is no requirement to inform the person that you will be discussing the issue in Executive Session. Setting salary benefits of non-represented staff must be done in public meeting. He added that evaluation of the qualifications of candidates for appointment to elective office can be done in the Executive Session; however, the interview process and final action must be in open session. A discussion with legal counsel of matters relating to pending or potential litigation is held in Executive Session. He noted here that some agencies may apply this too liberally, which is causing more attention to this requirement. When discussing litigation, an attorney must be present. Those that may be useful to a discussion of the issue may be in attendance as well. Prior to convening the Executive Session, the presiding officer must state the purpose for the session as well as the estimated time of conclusion. If the session will extend past the estimated time, the presiding officer must announce the estimated length of the extended session. No minutes are taken at the Executive Session. If a violation of the OPMA occurs, the plaintiff would have to show that the governing body took action and had knowledge that the body knew the meeting was a violation of the OPMA. The prevailing party is entitled to have their attorney's fees and costs paid by the other side. Mr. Pritchett stated that a violation of the OPMA can be a matter of malfeasance and can support a recall petition. The court can take jurisdiction to order the body to do something or an injunction to stop the body from doing something. He noted it is important to be aware that there are more and more challenges to the OPMA. Next, Mr. Pritchett noted that from time to time the Board will meet out of public meeting for discussions of collective bargaining, grievances, etc. These discussions are not considered to be executive sessions, even though they are a part of the meeting that is closed to the public. It is not required that the purpose of the closed session be provided or how long the closed session may last. Minutes of these sessions may be taken, if deemed appropriate.

In his conclusion, Mr. Pritchett stated that the governing bodies of agencies should heed the declaration in the Act that purposes of this chapter are declared remedial and shall be liberally construed. He added that he felt the spirit and the letter of the OPMA have been considered very important by this Board. The Board thanked Mr. Pritchett for his presentation.

#### STAFF REPORTS

**General Counsel:** Mr. Pritchett reported that a hearing has been scheduled in Olympia at 1:30 p.m. the next day regarding the Washington Association of Sewer and Water Districts' assumption bill at 1:30 and he, along with Commissioners Nowicki and Tweddle, planned to attend to provide support to the voting portion of the bill. He then reported that an unemployment hearing for a former employee was recently held and the decision was to deny unemployment benefits. He added however, that the decision can be appealed. Next, Mr. Pritchett reported that the summary judgment motion on the District's lawsuit against Pierce County regarding the sewer service area dispute in the Lloyd's Pit property was anticipated for the next morning. He stated the District could have the motion granted, or it could be granted to Pierce County, or it could be denied, which would require the District to go to trial. If it goes to

trial, the trial would be scheduled for December of this year. The District is requesting the court grant Lakehaven the jurisdiction to serve those areas of the City of Milton that are within the boundaries of King County; the decision for this issue will be made by a King County Superior Court judge. Mr. Pritchett next reported the District had received the final contract settlement agreement back from Komline Sanderson and once the monetary transaction is completed, this issue will be concluded.

**Director of Finance and Information Systems:** Mr. Dennis reported the District received a clean opinion during the exit conference with the State Auditor's office that occurred earlier in the week for the 2005 audit. He added that the opinion should be published in a month or two.

**Engineering Manager:** Mr. Ross reported that staff intended to bring a change order to the Board at the next meeting for their consideration to increase the On-Call sewer design contract with Earth Tech, Inc. to enable them to address seven Wastewater Department projects, as well as an update to the Comprehensive Wastewater System Plan. He added that there had been a slight boundary adjustment for the Jovita Heights/West Hill annexation and staff intended to bring this item to the Board at the next meeting as well. Mr. Ross then reported that his staff had selected a temporary employee to work as an Engineering Technician. After working less than a week, the person resigned; consequently, recruiting for a replacement will begin very soon. He then noted the City of Federal Way's South 373<sup>rd</sup> Street Bridge Replacement project across Hylebos Creek that was mentioned at the December 14, 2006 Board meeting. Mr. Ross distributed a hand out that contained the project cost history of this project and noted that the original total estimated cost of the project was \$102,000, but this number had later been increased by the City's engineering consultant at the conclusion of the design of the water and sewer work pertaining to the City project. Bids were subsequently opened recently, and the construction costs were significantly decreased from the last estimate. It was noted that the District had given to the City of Federal Way a notice to proceed for the water and sewer work pertaining to the City project.

**General Manager:** Mr. Perry reported the EMAC Committee had been provided a copy of District's influenza pandemic response plan. He noted he will be bringing the plan to the Board for final review and approval. Next, Mr. Perry reported the District had received an estimate of \$622,000 for a pre-design report and to perform the necessary testing for the extension as well as increase the capacity of the Lakota Outfall. This information has been forwarded to the Departments of Natural Resources and Ecology along with an estimated cost of \$8.8 million dollars for the full project to measure their level of support for the project with better information than they had before.

#### COMMITTEE RPORTS/COMMISSIONER COMMENTS

Commissioner Gibson reported he had sent out feedback forms to selected people in preparation for the performance reviews of the General Manager and General Counsel. He

explained that he had requested names from each manager as to whom they wanted the surveys sent. He added that all the responses would be anonymous and the reviewers were asked only to indicate if they were a direct report to the manager, a peer, or from another category, such as a colleague. He noted that he had received 27 responses so far, which he felt was fairly good. He then gave a brief explanation of how he intended to consolidate the responses (by paraphrasing them) and the rankings to the survey. He stated he planned to have them ready to present to the rest of the Board members at the next Board meeting.

CLOSED SESSION

The President of the Board recessed the regular meeting in order to conduct a closed session for the purpose of discussing three grievances. Subsequent to the discussion, the closed session was adjourned and the President reconvened the regular meeting to determine the disposition of the three grievances. Subsequent to the discussion, the Board considered the following items.


**Action Item #12, Step 4 Grievance #2006-speak-1008-04:** Upon motion of Commissioner Tweddle, which was duly seconded by Commissioner Stewart, the Board unanimously denied the Step Four Grievance submitted by the IUOE Union on behalf of Tim Speaks.

**Action Item #13, Step 4 Grievance #2006-stoer-1122-04:** Upon motion of Commissioner Tweddle, which was duly seconded by Commissioner Stewart, the Board unanimously denied the Step Four Grievance submitted by the IUOE Union on behalf of Paul Stoermer.

**Action Item #14, Step 4 Grievance #2007-casta-0104-04:** Upon motion of Commissioner Tweddle, which was duly seconded by Commissioner Stewart, the Board unanimously denied the Step Four Grievance submitted by the IUOE Union on behalf of Joel Castaneda Castanza.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at approximately 9:14 p.m.


  
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President Miller

\_\_\_\_\_  
Yea

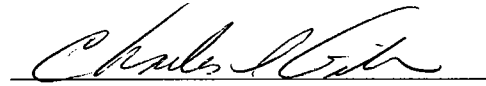
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Nay

\_\_\_\_\_  
Abstain

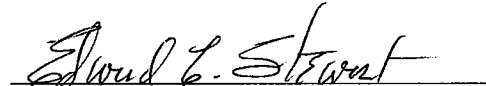
ATTEST:

  
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Vice President Nowicki

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Yea	Nay	Abstain

  
\_\_\_\_\_  
Secretary Gibson

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Yea	Nay	Abstain

  
\_\_\_\_\_  
Commissioner Stewart

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Yea	Nay	Abstain

  
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Commissioner Tweddle

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Yea	Nay	Abstain