EMIGRATION IMPROVEMENT DISTRICT

BOARD OF TRUSTEES WORK MEETING

MONDAY, OCTOBER 20, 2014

HOME OF FRED SMOLKA
5010 TRAILS END WAY
SALT LAKE CITY, UTAH

Board Members in Attendance: Mike Hughes – Chairman, David Bradford

Ex Officio: Fred Smolka—General Manager, Eric Hawkes—Assistant Manager, Don Barnett—Barnett Intermountain Consulting, Jeremy Cook—Legal Counsel

Chair Hughes called the meeting to order at 6:10 p.m.

1. TMDL project review and scope of project

Mr. Hawkes provided a map showing the properties to be included in the combined septic system project. Chair Hughes expressed concern that they will need more ground for the drainfields and noted that they can have multiple drainfield sites. Mr. Smolka indicated additional properties that could potentially have homes on them for a total of 11 potential lots. The Board Members reviewed several possible drainfield sites on the map. Chair Hughes offered to walk the areas they looked at and stated that they probably need to look for twice as much drainfield. Mr. Hawkes asked about the possibility of putting in a treatment plant. Chair Hughes replied that they would not want to do that for individual homes.

Board Member Bradford asked what problem they are trying to solve. Mr. Smolka explained that the Division of Water Quality claims there is TMDL evidence of e-coli throughout the canyon. Chair Hughes indicated the lots in the project area that experience serious septic system problems. He explained that they have an opportunity with this project to give some people relief from their septic issues, and he believed it is important for the first project to be a home run. He suggested that they contact Mike Huber about the system, because he would be an excellent engineer for this type of project.

The Board Members discussed the pros and cons of pumping from each property or having the waste go into a catch basin and pumping from there. They also discussed developing systems for the two separate clusters of homes shown on the map.

Mr. Smolka reported that the Division of Water Quality directed him to a website to get grant applications for this project. Board Member Bradford confirmed with Mr. Hawkes that option A is the preferred project. Mr. Hawkes explained that Option A meets all the criteria they are trying to achieve. He reported that the next meeting with the State and Salt Lake County is on October 29 at 1:00 p.m.

2. Criteria of buildable vs. unbuildable lots

Mr. Smolka recalled that a couple of people have approached the District claiming their lots are unbuildable, and he has removed them from the list of people who pay standby and hydrant fees. Chair Hughes expressed concern about that, because the EID cannot make a determination about

whether a lot is buildable. The EID needs to stay out of any debate about whether a lot is buildable and consider the lot to be buildable. Mr. Barnett discussed the possibility of setting up a citizen panel to make those decisions to keep the Trustees from coming under fire if someone disagrees with a determination. He believed people would complain when they learn that about 1,000 lots are not being charged the hydrant fee. Chair Hughes believed the criterion should be whether a building permit could be issued for the lot, which would deflect the decision from the Board. Mr. Barnett asked about a property owner who may have several contiguous pioneer lots and is not being charged a hydrant fee. Mr. Smolka reported that they are charged a hydrant fee, because they looked at lots together. He stated that they set up 525 lots to pay the hydrant fee, and he believed about 1,000 lots in addition to that are unbuildable and do not pay the hydrant fee. Board Member Bradford commented that there was no clear basis for making the decision to not charge those lots a hydrant fee. Mr. Smolka stated that he and Lynn Hales went all the way through the Canyon with the ownership records and looked at every lot. If someone owned four or five lots on a fairly flat area, they were subject to the fee. If they came to a lot that was extremely steep and there was no way it could be built on, they were not charged a fee. Mr. Barnett explained that opens Mr. Smolka and the District up to attack from people who are assessed the hydrant fee and do not think it is fair that their neighbor is not assessed the fee. He believed they need solid criteria for making that decision. Board Member Bradford agreed.

Board Member Bradford asked if the EID is charging a hydrant fee to everyone within 250 feet of a hydrant. Mr. Barnett commented that the first criterion should be that a property is within 250 feet of an EID hydrant. He asked how many lots are in the category of being too steep to build on. Mr. Smolka replied that there are about 1,000. Mr. Barnett explained that some people are likely holding onto their property hoping that eventually they will be able to buy property next door and build on it. People hold onto their property because they think they will do something with it someday. Mr. Smolka explained that the County has a foothill overlay zone, and if a lot is on 40% or greater slopes, they cannot build at all. If the lot is on slopes between 30% and 40%, they may be able to get a waiver for special circumstances. Mr. Barnett stated that 40% slopes could be another criterion. Chair Hughes explained that everyone will collect the value in their property at some point, not always based on buildable lot decisions. People hang onto their lots for all kinds of reasons. Mr. Barnett explained that people could combine their multiple lots and eventually make them buildable. Mr. Smolka felt it would be an administrative nightmare to track all these people down and send them bills.

Chair Hughes commented that the Board has a bad habit of kicking decisions down the road. There are people in the Canyon who can be a big problem, and if the District can adopt a policy it can defend and get in front of them, then they can rely on that policy. When someone comes in and tries to create a problem, the District can say it has a policy and explain how it works. He believed they need to tighten up their policies so they do not have issues in the future. Mr. Barnett explained that, if they have a policy, people can ask to have the policy changed, but they cannot come in and argue that Staff and the Board are liars and cheats. Board Member Bradford added that the policies should be based as much as possible on objective criteria. Chair Hughes noted that the 1,000 lots probably belong to only a few hundred people. He asked how many of those billed for hydrant fees do not want to pay them. Mr. Smolka replied there are about 42. Chair Hughes suggested that they look at what people's complaints are and develop a policy to

address them. He asked what the policy should be if someone says there are too many problems with their lot to build on it, but the EID is already billing that property. Mr. Smolka believed they should remove the standby and hydrant fees on lots steeper than 40%. Mr. Cook explained that the District could record a document against a property that they believe is unbuildable with a requirement that the property owner pay all back fees if the property ever becomes buildable. Mr. Barnett expressed concern that could provide an avenue out for people who do not want to pay now and want to pay when they connect. Chair Hughes did not want to get involved in that. If the EID decides a lot is buildable based on whether the County says it is buildable, they could comfortably take the property off the fee rolls. If the property owner is able to get a building permit, the EID will provide them service. Mr. Cook noted that Jamie White's situation is entirely different from that, because he already has a house on his property. He discussed how they might handle a situation where someone indicates they will put a conservation easement on their property. Mr. Barnett asked about a situation where someone might own 20 pioneer lots and build a home on a few of them, but they could get three more homes on the remainder. He asked if the person would be charged 1 hydrant fee, 20 hydrant fees, or 3 hydrant fees.

Board Member Bradford suggested that they draft a proposed policy and then work on the hypotheticals and details. He did not believe this is a productive way to accomplish what they want without a document to start them off. Chair Hughes asked Mr. Hawkes to draft what they understand their policy to be right now and to include what they have talked about in their discussions. He would like the policy to reflect that, if a lot is buildable now, the EID will bill for it. If someone has multiple contiguous lots and is within 250 feet of a hydrant, they must pay a single standby fee and/or hydrant fee. If there is not contiguous ownership, they will be billed separately. Any situation where someone could combine lots to create a buildable lot should be charged the fee. Board Member Bradford commented that one approach would be to define the criteria for including lots, and an alternative would be to include all lots except those that meet certain criteria. He agreed that 40% slopes could be one criterion, and other criteria could be lot size and whether any portion of the lot line is within 250 feet of a hydrant. Chair Hughes agreed with the second approach and believed it would be a simpler process. Mr. Cook suggested that notice be sent to everyone telling them that the District charges the fee to all developable lots, and if they are not being charged the fee and think their lot is developable, they should contact the EID. Otherwise, if they later connect to the system, they will be charged interest. Chair Hughes asked Mr. Hawkes to prepare a notice to that effect.

3. Water right turn-in policy

Mr. Barnett provided an outline of options the Board may want to consider for the water right turn-in policy. He included three purposes and suggested that the policy itself should include a purpose statement. Board Member Bradford asked if people have a property right in surplus water rights beyond what they need to turn in for water service to their property. Mr. Cook confirmed that people have a property right in the water rights attached to their property. Mr. Barnett agreed that water rights are considered to be real property rights, but conditional property rights. Chair Hughes explained that the EID eliminated the market for excess water rights to a great extent when they developed the water system in the Canyon. Board Member Bradford asked if someone in Emigration Canyon could sell their water right to someone in another

canyon. Mr. Barnett replied that before it would be valuable to someone in another canyon, they would have to file a change application to move it to their property, and the State Engineer may not allow it if it is not in the same hydrologic system. Mr. Barnett reviewed the background and formula for determining the need for .75 acre feet for a lot in Emigration Canyon.

Mr. Barnett discussed the options for dealing with properties with an existing lease with the EID. He recalled that the lease says people must connect to the system when the EID puts a pipe in front of their house, and some people have not connected to the system as required in the lease. He believed there should be a written policy that clearly states that. Another point is whether someone should be able to keep their well to irrigate their yard or whether they must fully connect to the water system. Chair Hughes did not believe they should have to fully connect, because that would take pressure off the water system. Mr. Barnett asked if the lease is cancelled once someone connects to the water system. Chair Hughes stated that there is no point in the lease after that. Mr. Barnett stated that, in that case, the EID should pick up the well as part of its approved points of diversion. If people who were on a lease have already connected to the system and are still using their well, the District needs to know so the well can be added to its points of diversion. He asked if the EID can require people to plug and abandon their well when they connect to the system to protect the aquifer. Mr. Cook did not believe that is an issue, because the District does not pull water from the same aquifer as individual wells. However, he did believe they should notify people that they own their wells and are responsible for plugging them. They also need to think about how much time they should give those who have not yet connected to connect to the system. For new lines, he suggested that people be required to connect within one year. For existing lines, they should give the property owners notice that they have one year to connect and not allow them to use their wells for indoor use. He noted that they can finance their hook-up fees. Mr. Barnett suggested that they change the language in the lease to make it very clear so there will be no debate about when they are expected to hook to the system.

Mr. Barnett discussed a situation where someone owns .75 acre feet and clarified that the policy is that they would deed their .75 acre feet to the District. If they want to irrigate with their own well, he asked if they should deed .45 or .75 acre feet to the District. Mr. Cook believed it would be difficult to go back and ask those who did not deed .75 to the District previously to deed the remainder to the District now. He believed they should require that .75 be deeded to the District going forward. Mr. Barnett asked what they should do if someone has less than .75 acre feet and is fully connecting to the system and whether they should be required to pay for the difference. He addressed the situation where the State Engineer historically determined that someone may have been irrigating a smaller portion and stated that he believed two verifications should be required before making a determination on those lots. One would be whether they have fewer acre feet because that is in the Blue Book at the State Engineer's Office, or whether the owner used to have more than that and sold part of their right to someone else for profit. He believed they should determine why the water right is deficient. Mr. Cook expressed concern that, if they are going to require people to pay the difference, they might go to their neighbors and try to buy additional water rights from them, which would open up the market for profiting from the sale of water rights again. Mr. Barnett agreed that there is no written policy about water rights having to be appurtenant to the property. Chair Hughes believed it would be difficult to require .75 acre

feet from someone when the State determined they did not need that much. Mr. Barnett suggested that they research whether some people had less than .75 acre feet based on the State Engineer's determination and the District made them pay for the difference. Also, they should look at whether someone might have less than .75 acre feet because they sold off water rights after the State Engineer's Blue Book determination, or whether there was just a cabin on the lot when the determination was made, and now there is a big year-round residence on the lot. Board Member Bradford believed that would be a rational approach to setting a policy. Mr. Smolka suggested that they put the responsibility on the property owner to prove that the State Engineer made the determination regarding their property and that they still only need that much for their irrigation needs. Mr. Cook addressed the fairness issue of someone who only turned in .75 acre feet but uses considerably more than that to irrigate his property. If they use the rationale that it depends on how much someone is irrigating, it is difficult to be fair to everyone. Chair Hughes said that, basically, if the amount is what the State Engineer gave them, and they have not sold any of it, the EID will accept it. Mr. Barnett suggested that he write a draft policy and then study the actuals to determine whether it will work. Mr. Cook requested that they put the burden on the property owner to provide proof, and if they want to hire someone like Barnett Intermountain to research it for them, they can do so.

Mr. Barnett asked what to do about water rights for multi-family dwellings. He asked if a duplex should be required to provide two water rights. Chair Hughes believed it should. Mr. Cook observed that a legal duplex should have separate connections for all the utilities and should pay for two water rights. Mr. Barnett asked whether a non-conforming duplex could make the argument that the State Engineer only gave them .45 acre feet. Chair Hughes replied that they could not, because the State Engineer gave their old situation .45 acre feet, not their new situation, and they should provide .75 acre feet for each unit.

Mr. Barnett addressed the costs associated with updating titles and tracking leases. He recalled that previously Barnett billed the District for their hours, the District paid the bill, and then the District billed the property owner. They also did that on the conglomerate filing. In the last 10 years or so, the District has stopped doing that. He explained that some situations are very complex and asked what the District's policy should be with regard to paying and recovering those costs. Chair Hughes stated that, if someone has work done, they should pay for it. He believed Barnett should bill the District and the District should bill the property owner. Board Member Bradford did not see that there would be a conflict if Barnett bills the property owner directly. Mr. Cook suggested that it might be better to average the fees charged over time and charge a flat fee. That takes the argument out of someone claiming that Barnett should not have taken that long to do the work for them. The District could give the property owner the option of having Barnett verify the water right or providing title insurance. Chair Hughes suggested that they charge a flat fee based on the average cost. He asked Mr. Barnett to draft a policy to address these issues for the Board to review.

4. Temporary change water right application to permanent change application

Board Member Bradford asked if individuals have to continually file their water rights like the District does. Mr. Smolka explained that property owners have permanent change applications,

but the District has to file temporary applications because of constant changes in their water rights. Mr. Barnett explained that they have a unique situation in the Canyon because of the water leases. He noted that the Brigham Fork well and Upper Freeze Creek well are not included in the District's permanent change application, so the permanent change application needs to be redone. The only thing holding that up is the legal description for Secret Spring. Mr. Smolka stated that they should now be able to get a reasonable description for Secret Spring. Mr. Barnett recalled that the last lease the District did was two years ago, and the one prior to that was about three or four years before that. He believed they might be able to move the little leases to permanent change applications and offered to bring that up with the new Regional Engineer.

5. Closed session

MOTION: David Bradford made a motion to convene in closed session to discuss pending litigation. Mike Hughes seconded the motion.

VOTE: Unanimous in favor of the motion.

The Board of Trustees met in closed session from 8:40 p.m. to 9:00 p.m. to discuss pending litigation.

MOTION: David Bradford made a motion to dismiss from closed session. Mike Hughes seconded the motion.

VOTE: Unanimous in favor of the motion.

8. Any items requested by the visiting public

No items were requested by the visiting public.

The next regular meeting will be Thursday, November 13, 2014, at 7:00 p.m.

The work meeting of the Emigration Improvement District adjourned at 9:05 p.m.

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Minutes Approved