
COUNTY WATER DISTRICT OF BILLINGS HEIGHTS

Board of Directors Meeting Notes

Location: Board Room, County Water District of Billings Heights 1540 Popelka Dr.

Date: November 17, 2021 (SUMMARY OF PUBLIC COMMENTS RE: RATES FOR SPECIAL BOARD MEETING May 9, 2022 5:00 pm)

Time: 6:00 p.m.

CALL MEETING TO ORDER: Board Member Ming Cabrera

BOARD MEMBERS: Ming Cabrera, Pam Ellis, David Graves,

ALSO PRESENT: Suzie McKethen
Dianne Crees

INVITED GUESTS: Scott Aspenlieder, Dave Goodridge,
Josh Jabalara, Chris Kukulski,
Jennifer Duray, Roy NeeseFrank
Ewalt,

GUESTS: Evelyn Pyburn, Tom Zurbuchen,
Sarah Brockel

Scott Aspenlieder, Performance Engineering and Dave Goodridge, local Realtor have been asked to speak to the board about rate issues that they believe are impacting development in the Heights.

Pam Ellis said that Scott Aspenlieder and Dave Goodridge were invited to talk about how the fees from the district are negatively impacting development. We still need the information and we're sorry there are not more people here. Evelyn Pyburn is present from the Yellowstone County News and Pam Ellis will take notes. If we can get the remainder of the board to show up and listen, maybe there is another time you can come. Please share.

Scott said his comments have been pretty consistent for the last 3-4 years. I think one of the biggest problems you have in the Heights is the way you assess annexation fees at 23 center per square foot. He has never gotten a full explanation of what the annexation fee is supposed to cover.

If you look at the growth of our community, there is a reason you are not seeing significant growth at the same level and at the same speed that you are seeing in the rest of the Billings community. When you charge somebody 23 centers a square foot to annex into the district, and then make them put the infrastructure in and then charge them the impact fees, you are hitting them 3x. It's not comparable, it's not competitive with Lockwood Water and Sewer District; it is not competitive with Laurel or the City of Billings. So your fees are impacting the way developers look at accessing and building on land in the Heights Water District. That is one of the primary issues that is impacting the way that you grow and the speed with which things are growing up here in the Heights. I'm not saying that that has neutered development completely because obviously it hasn't. But it has definitely changed the type of development that you are seeing and at the density and level of speed that we are seeing in other parts of our city. That is not an arguable thing in my mind.

Secondly, when you look at land that is already annexed into the community and you are talking about larger commercial scale development with property that is inside the city limits, the way that you assess impact fees and water meter service fees is vastly different than the way it is done with the City of Billings. And it is the reason you are not seeing bigger scale commercial development in the Heights. When we approach a commercial business, let's just say it is a big box store that is 40,000 square feet that requires sprinkler and fire suppression in the building. In the City of Billings we will put a 4" or a 6" fire service into the building. From that fire service, we will t-off and put a 2" domestic meter for servicing the water supply to the building. The City of Billings charges you for that 2" meter; they don't charge you for a 6" tap. Nor do they require you to put a 6" water meter in. In the Heights, if I put in a fire service line, you require me to put a 6" water meter in. The difference between a 2" and a 6" water meter is a quarter of a million dollars.

Ming Cabrera asked why he thought the district was doing that. Scott said he can't answer that question and I don't have a good justification that I can come up with in my mind for why that is. It's not done to that level in Lockwood. Lockwood does approach it a bit differently than the City of Billings. You have some fee structures and some impact structures here that are the reason, in my opinion, that you don't see the kind of development in the Heights that you see in the rest of the city. And they are easy changes to make. The board members obviously have to look at what the financial ramifications are from an operations standpoint. Those fees are what, in my opinion, in the eight years we've done business out here, those are the reasons you are not seeing the type of development and the speed of development that you see in the rest of our city. It's pretty easily done. We've had a number of due diligence meetings with different developers whether it's been residential or commercial, to talk about exactly those things and costing out properties in different parts of the city. Heights loses every time for those reasons.

Ming asked, "let's say that you take that away from the Heights district in terms of cost. Let's say that we are able to change the fees so that they are comparable to what everybody else is charging in Lockwood and Billings. Do you think that that would raise residential rates? Scott said he could not answer that question. Pam Ellis said that is one of the points for inviting Josh Jabalara. We need to lay those calculations out, we need to figure out what the wholesale cost of water is, operations cost, capital improvement plan. The bottom line is that development needs to pay for their costs and residential needs to pay for theirs. We don't know and I don't know that it has ever been done that way. To my knowledge, they have followed the city of Billings. So if the City of Billings jumps their rates 15%, we jump our cost of water 15%. The cost of wholesale water is only 50% of our expenses.

Scott said when you look at the Bar 11 Subdivision, the gross acreage was 220 acres. You do the math on that. Now all 220 was not annexed. But they are going to pay upwards of \$1.5 million just in annexation fees. How do you still have affordable housing on top of all the other expenses? If you take that same 220 acres just across the border and you take it out to the west end and you don't have that \$1.5 million annexation fee, we don't have to do a bunch of statistics and mathematical analysis to come to how that is affordable and how it's not and why people do and make the decisions they make about where to develop primarily. My comment is that if you want the Heights to be competitive and to see similar growth and grow as a community like the rest of Billings, what has to happen to your water rates after what you do to the impact fees is up to you. But your impact fees are definitely driving development away from the Heights. And I don't know that you can find someone in the development arena that will argue with that. Land costs are not low enough to off-set that difference. And I think there is a possibility for awhile that the cost of real property in the Heights was depressed because of that.

Ming Cabrera asked if Scott ever brought these concerns up to prior boards or anyone else. Scott said he was going to leave that one alone. It is pretty well noted and documented, his attempts to have conversations with past boards. Pam Ellis said there was no documentation in the minutes of past board meetings. Scott said that was not accurate (Pam has a document with 6 years of board minutes; no comments from Scott Aspenlieder have been recorded).

Pam Ellis said one of the complaints she heard when she was going door to door was the cost of installing a fire hydrant. I know the City of Billings does not charge. Scott here is a fee structure for a private fire hydrant but he can't remember how much it is. I was told by another engineer that the cost of a fire hydrant is \$2500 and the fire hydrant wasn't necessary. The fire department told the business they would not have required an additional fire hydrant nor would they have used a fire hydrant in the location the district demanded.

Ming Cabrera said we have Dave Goodridge here. Ming asked Dave as a realtor, "what are you seeing in the development of the Heights?" Ming is a business owner in the Heights. Nobody wants to move to the Heights. It is one reason I ran for office is because we have been told time and time again that the water district does not want to work with businesses and the cost of doing business has stifled any business development on Main Street.

Dave Goodridge, Goodridge Real Estate I have been doing Real Estate 17 years. Grew up in the Heights. Graduated from Skyview, used to go see movies in Crossroads Plaza. I am rooted in the Heights and have always wanted to see the Heights do well. For the longest time, I thought the lack of development was the lack of land because commercial core was along Main Street and it was always penned in by residential. But I was always expecting that something would happen at the triangle of Hwy 87 & 312. Dave would piggy-back on the numbers. A wise Real Estate guy once told me, just make it a math problem. All you have to do is do an either/or. Even if you are doing \$10 a square foot in the west end and \$5 a square foot in the Heights. Using Scott's example of 220 acres, the \$1.5 million annexation fee is a cover charge to go into the bar. You haven't even gone through the doors, sat down, ordered a drink, figured out who is playing on the stage yet. You throw \$1.5 million into a pro forma, that will change what most investors look (IRR—Internal Rate of Return). I would venture a guess that it will change it at least a point if not 2. A good IRR is anywhere from 13 to 15% right now. So if you are on the low range and you lose a point, that will change. Most investors will most likely sell the development 5-7 years out it and roll it into another investment. But that thing needs to start paying it's bills and putting some cash into the coffers by 1 1/2 to 3 years. If all of sudden just using that annexation fee, you are at year 4 before you get out of the hole, it is just done at that point.

The other thing that I know from people who have done stuff in the Heights is just the ambiguity once they start a project. So maybe they figure out how they can stomach the annexation fee, they purchase the land and engage Scott, engage a builder, they get going, now all of a sudden is the ambiguity about the fees. I cannot go to the website and see, like Scott was talking about, and he can probably talk in way more detail than me. You can't take a project on a spreadsheet or something and take it from taking down the ground to the final build and be fairly confident in the numbers. There are a lot of ambiguities from the fire lines to all the technical stuff that Scott knows way better than me, but there is a lot of ambiguity around the fees. Now maybe they got that number to work at year 2 1/2 and now new ambiguity, new fees come into play, and all of sudden they are at year 4 before they are making money. They have to hold longer which investors are not crazy about.

Dianne Crees asked about how much the mindset people have impact where they go? It seems to me the people in the Heights don't have a qualm about going to the west end. The west end people think if they come to the Heights they have to pack a lunch, car pool. Don't you think that has something to do with it also?"

Dave Goodridge says he cannot speak to the mindset. An investor, a site selection guy...If I go out to other major investors, Utah, Colorado, anywhere in the country, they are looking at roof tops, traffic, what they are competing against, and what is available in raw land and services. I will speak to the triangle. You have services right there; you have raw land right there. The Heights has oodles of rooftops. Main Street is the busiest road in the state. So that is pretty much checking all the boxes. Those guys are interested and honestly of the new board and at least discussion on having these things maybe looked at and changed, I am starting to push land to these investors. Whereas before I would not have been able to get any interest at all.

Suzie McKethen said the Heights has the stigma that they are the lower end of the city. Suzie says it has gotten 1000% better. Scott said that Dave's point is really good though in that when you are not dealing with an in-town investor, they are dealing with the stigmas that we think we have for our city. They are strictly looking at the numbers and the data and that is it. One of the suggestions that he made to the previous board, when is the last time that you had an independent third party come in and do a rate analysis for you. Scott worked as a volunteer sitting on the impact fee analysis committee for Lockwood Water and Sewer Board representing the development community. Every four years they go through that. I know the City of Billings goes through a very similar process. I don't know when the Heights district ever had a third party come in and do a full analysis not just your impact fees, but your rate structure, how it is set up, what exactly is this annexation fee and what it is not? What is the impact of all of those things on your budget and how that actually works? I don't know the answer to that. I have asked that question before and I haven't gotten an answer. It is something I would suggest highly. And at that point you have an independent third party telling you, "here's some decision points for you to make: this is what it is, this is the comparison to these development markets of Laurel, Lockwood and the City of Billings."

Pam Ellis said that was one of the reasons we contacted the Midwest Technical Assistance group and normally they work with smaller districts, but they did OK Josh working with us. Josh, can you explain what you are capable of doing. We are lacking information. There are many things that have not been done in the district including we have no budget. Scott said Raftelis is the group that did the work in Lockwood. Raftelis was hired by the County Water District to fight the city's rate increase which to me

is just money down a rat hole. I voted against it but I lost. There has been no contract let to do a thorough rate study.

Josh Jabalara, Midwest Technical Assistance Program will provide copies of the references to assist the Board in management and rate setting.

Josh Jabalara says they do rate studies across the United States. That is something we can do for the district; our rate study is no cost. We have not done one in Montana of this size; this is the largest district in the state. The line items remain the same no matter the size of the district. We would be looking at all of that. Perhaps a water loss analysis. How much you are billed each month from the city vs what you are billing. I don't know if the district has done that, a water audit. How much of the water we are purchasing from Billings are we selling? Capital Improvement Plans we do. We identify short lived assets, start looking at that. We help do budgets across the state. Any questions? The bylaws have not been updated since 1956. We would go through the by-laws and make they are compliant with MCA.

Pam Ellis said all the bylaws have been updated and we would have approved them at this meeting had Tom not sent his threat. The Montana statutes will be completely rewritten for county water and sewer districts. We were advised by Jeff Weldon, the attorney hired by the district, to take out all references to specific statutes so you don't have to rewrite them every time.

Josh says he believes that there will be a large increase coming to the fees. Pam Ellis said 30.6% increase is for the cost of wholesale water. The cost of wholesale water is about 50% of our costs. Pam asked Chris Kukulski if there is a chance the rate increase would be postponed if the city is hoping to receive funds through the federal infrastructure bill. Chris Kukulski said the rate increase may be delayed by a few months, not years. The city is continuing to work on design. They have about \$120-\$150 million of work to do on the west end. We are seeing if we can get grant dollars. But we are talking weeks and months not months and years. The city is continuing to make investments. We are being deliberative about not signing contract or authorizing contracts that would prevent us from getting federal funds. Pam noted that Andrew Rheem did recommend in an undated email that the board received at the October meeting is that regardless of any dispute over the amount of the rate increase, the 30.6% increase is effective July 1, 2022.

Josh Jabalara said they would look at implementing the rate increase—our rate studies across the U.S. suggest it is better to implement it incrementally rather than hit the customers with one big sticker shock right away. Pam Ellis said she agrees that she totally agrees but that is water under the bridge. The prior board knew there were rate increases coming and did not raise fees incrementally.

Josh said he is not sure what the Heights has for projects that need to be funded. The City of Billings got about \$16.4 million in ARPA funds and Yellowstone County got \$30.2 million. Those are both pools of money. Pam Ellis contacted the county commissioners. They have allocated all of the ARPA funds. We applied for ARPA grants through the state and didn't make the cuts, or anywhere close so that is not an option. The City of Billings got some money through the state ARPA grants.

Pam Ellis said the other thing Jeff Engel complained about when she and Jeff E talked with Scott Aspenlieder was there is no control of the engineering fee. Developers hire an engineer, develop their

plan, then as I understand it, the district takes that plan and sends it to Interstate Engineering who bill and then when it comes back to the district, the district adds another 10-15%. Is that accurate?

Scott said he doesn't know what the mark-up is on the district's side. There is a pretty ambiguous process for understanding the cost of review for submitted plans is. We have requested costs every time we have done something for review for a cost estimate from Interstate. They will now give an estimate, but it is an estimate only. There is nothing locked in. When we started Bar 11 it was an open check. There was no parameters or bounds on what that was or what the iterations were. I'm not saying that Interstate ran that out the door; but as to Dave's point, when you are budgeting these projects and you are trying to understand what the fee structure is and what you are going to pay. To the best of our ability, we can ask or assume but even Interstate cannot tell you in a planning meeting when you are looking at a 2 dimensional schematic, how much is it going to cost you to review the document? In all fairness to them, they cannot answer that question either. They don't know. It is a tough deal because you don't have your own staff capable of doing it like the city of Billings does and the review fee and submittal fee associated with that. But that is just one of those parameters that is ambiguous about what that is going to cost. I will tell you that Interstate has gotten a lot better in the last couple of years about giving us cost estimates and they have been pretty good about being within those cost estimates or under, lately, the last 2 or 3 that we have done. And that is appreciated. We have gone out of our way to try to work very closely with them as to work very closely with them. That is not an indictment against Interstate. It is just another thing that is ambiguous and tough to budget for as it is in the other jurisdictions.

Pam Ellis noted that the draft job description for the new General Manager is that an engineering degree would be preferred. That would make it more cost effective for developers and make the whole process smoother. Scott said you are going to have to figure out how to develop a fee structure depending upon how those applications come in. I don't know that developers are against paying a fee commensurate with the effort that they get on the backside to get things moving. Most developers frankly are willing to pay more for speed than anything else. Those are the things to keep in mind and take into consideration as you are going through this process. What you are asking for as a manager is admittedly going to be difficult to find, probably.

Pam Ellis said a number of engineers have looked at the job description and they have said it is an attractive salary and benefit package. Ming Cabrera said that was on the agenda for tonight's meeting. We need to get the job posted but unfortunately we don't have a quorum to get that done because of the disruption that has taken place tonight. We are now delayed in getting a new General Manager hired before the current manager retires December 10. That was one of the things we needed to do tonight to make sure that happened.

Ming Cabrera asked if anyone else had questions. These are questions Ming has had forever, about why, here in the Heights, we have not been able to keep up with the rest of the city with regards to development. When you have 30,000 people in the Heights and we cannot get any development. It is a big question. That is why I am so involved, trying to make the Heights part of the City of Billings and I think you brought up some good points today. The rate studies that need to be looked at to put us in the situation would help us out a lot.

Pam Ellis said she knows that Jeff Engel worked with the City of Billings in setting the rates when Billings rates were out of whack. I don't know if the board will choose to go through Raftelis in addition

to Josh, would you be willing to sit down with the group and help analyze. You have a lot more valuable information.

Scott responded he would, depending upon what we are specifically are looking for, they would be willing to help where we could. At the end of the day, we are all residents of the City of Billings. We are all supposed to be swimming in the same direction. We all want our community to develop and reach it's maximum potential. That's why we're all here at the end of the day. We are all here. We may have differences of opinion about how we get to that point. We should all be working to get to the same place that we all want. That is not west end vs Heights vs Central town. That is the City of Billings being the best City of Billings that we can be.

Suzie McKethen said there is only so much Main Street property to develop. We don't decide what can be put on that land—the city does that. I don't think we decide the planning. Pam Ellis said when the Johnson Road bridge opens, it opens up a lot of land for development. All of that area is in the Heights Water District. As I understand, a part of the new area will be zoned for commercial and part for residential. There has been a lot of public meetings, a lot of feedback, and a lot of data.

Scott said the district needs to acknowledge that they are part of the development issue. And acknowledge that the district does have an impact in that process. City planning has a large impact. But we are part of that.

Ming Cabrera noted that the Inner Belt Loop will provide additional access to the Heights. We have improvements on Main Street—it is nice and clean. The

Lockwood Bypass is coming through. We are looking at this in the future, and the Heights Water District is going to have a huge impact.

Tom Zurbuchen said he has heard a lot of discussion about commercial property. Why is there no commercial development in the Heights not serviced by the Heights Water District? I've heard a lot of discussion about affordable housing. How come HUD does all of their rehab in houses served by this water district? How come HUD bought acreage on Hawthorne served by this water district? If everything so much cheaper outside of this district, this doesn't quite add up to me. All of the commercial development is served by this district and yet this district is so horrible? Why hasn't some of this development occurred outside this district here in the Heights? Why hasn't HUD done things outside the district? They are for affordable housing. I'm sorry, I don't see the correlation with your discussion. Because comparing one part of the Heights to the other has got to be easy to do, isn't it?

Dave Goodridge says if it is already in the district. When he sold the piece of ground over on Wicks and the Kiwanis trail and they are building some townhomes there right now. That was the most recent piece of property I sold in the Heights. Most people who called that were a seasoned developer asked, "has that been annexed into the Heights Water District yet?" I would say, yes. The response, "OK, that helps". If it is in the district already, then they don't have to pay the annexation fee. My theory, this is my theory, not fact, why you see so many buildings get scraped on Main Street. They are already in the district. They scrape, it is Main Street, valuable property. So the value is there to buy it, scrape it, redo. If it is in the district, those ambiguity of fees, those annexation fees are gone. Outside of the district, that's when those fees start to bubble to the surface.

The only other thing Dave wanted to say to echo what Scott said, as far as the city goes. I grew up in the Heights, love the Heights. My parents lived up here from the time they bought their house until they moved into Edgewood Memory Care down on Wicks. So we are a Heights family. But it is the City of Billings. And if you look at property tax revenue per acre, there was a real interesting graph that showed it could be cordoned off by geography. You see cost per acre and property tax revenue really tall in the downtown core, relatively high graphs as you move west. Out in the Heights, it is flat....flat. Since there is such a large portion of the Heights that is City of Billings, it has asked for the same mills and levies. I would think that the Heights would want to get some commercial property developed. Because the commercial property is what kicks the most dollars into the tax bucket. Dave's theory, maybe then, we don't have to ask for levies every other year. The only one other thing I would say that you as a board and I'm glad Mr. Kukulski is here, because I have asked him about it before, cost of services. Cost of services study is on the table to be done within the city. That has to be prioritized. Especially with what is coming with the Johnson Road Bypass and what we are talking about happening out here in the Heights. Because if you know what the cost of services are to your properties within the city limits, you can start deciding whether it makes sense to build whatever you want to build with an actual expense side of what it is costing the city. Cost of services is a big thing that I think would be very important for you as a Board to keep poking the city on.

Suzie McKethen said she doesn't understand what is ambiguous about the buy in fees. Dave said the buy in fees are not ambiguous. The cost per square foot is posted. The district has worked with several customers to replatt so they don't have to annex in all their property. Pam Ellis said she heard the complaint frequently. They would work out and think they understood all the costs,

they would bring all the documents forward and then it would change. Some of the fees are posted and some are not. People feel that the costs keep changing and changing. People feel that they can never get a final cost. She talked with business owners that walked away from projects because they could not get a cost they could rely upon—every time they spoke with the General Manager the number changed. Pam referenced a project Scott had submitted. After submitting the documents, the district uploaded new rules and required the plan to be redone according the new rules. That should not have happened. Whatever the rules are when you start, should be the rules.