

MINUTES OF THE JOINT SPECIAL MEETING
OF THE CITY COUNCIL OF THE CITY OF RUIDOSO DOWNS, VILLAGE OF
RUIDOSO, AND REGIONAL WASTEWATER JOINT USE BOARD
TUESDAY, AUGUST 1, 2006
9:00 A.M.

The Council of the City of Ruidoso Downs met in Joint Special Session on August 1, 2006 in conjunction with the Council of the Village of Ruidoso and Joint Use Board. Mayor Miller called the meeting to order at 9:00 a.m. upon roll call, the following were present:

Councilor Hood	Councilor Miller
Councilor Holman absent	Councilor Garrett

Administrator Waters informed Mayor Miller there was a quorum.

Also present:

Dan Bryant, City Attorney
John P. Waters, City Administrator
Carol Virden, City Clerk/Treasurer
Tom Stewart, Public Works Director

Village of Ruidoso Councilors:

L. Ray Nunley, Mayor
Lorri McKnight, Village Manager
Angel Shaw, Councilor
Michele Rebstock, Councilor
Greg Cory, Councilor
Jim Stoddard, Councilor
Don Williams, Councilor
Irma Nava, Village Clerk
Ken Mosley, Public Works Director
John Ramos, Regional Wastewater Treatment Plant Director
John Underwood, Village Attorney

Joint Use Board:

L. Ray Nunley
Bob A. Miller
Maury St. John
Bertha Polaco, Deputy Clerk

Chair Lonnie R. Nunley called the joint special meeting of the Regional Wastewater Treatment Plant Joint Use Board with the Governing Body of the Village of Ruidoso and the Governing Body of the City of Ruidoso Downs to order at 9:10 a.m. There were approximately 20 visitors present.

Chair Nunley stated the purpose of the joint special meeting was:

Presentation by Carl Kelley and his Consultants on the Regional Wastewater Treatment Plant.

Under Presentation by Carl Kelley and his Consultants on the Regional Wastewater Treatment Plant, Mr. Kelley requested part of his presentation be in public session and part in closed session. Mr. Kelley stated a design-build RFP was treated the same way as an RFP from an Engineering Firm. Mr. Kelley stated the reason he requested his presentation to be in closed session was the respondents to the RFP did not do a public presentation. H. John Underwood stated it was not an action item and procurement was not part of the "Open Meetings Act". John Waters stated procurement was not listed as an exception in the State of New Mexico, per the New Mexico Municipal League (NMML) and the Attorney General's Office. Daniel Bryant stated the intent of the meeting was to provide the decision makers with all the information to make a decision. Mr. Bryant stated a letter was received from Bob Beauvais, which entertained the idea of representing Mr. Kelley in a lawsuit. Mr. Bryant stated Mr. Kelley requested a part of his presentation be allowed in closed session due to the sensitive nature of a design-build method. Mr. Kelley stated he was aware that two Professors were hired by the municipalities and requested the opportunity to be able to present his proposal with them present. Chair Nunley stated Mr. Kelley did not respond to the RFP. Mr. Underwood stated, if Mr. Kelley would have responded to the RFP, he would have been able to do his presentation for the Selection Committee in privacy.

Mr. Kelley introduced his team as: Eddie C. Livingston with Livingston & Associates, Jeri L. Meyer with Aero-Mod Wastewater Process Solutions, Brooks Newbry with Water Technology Group, Adrian T. Hanson with New Mexico State University, W. Daniel Boivin with Smith Engineering Company, and Ron Maness with General Electric. Mr. Kelley stated water reuse was instilled into the proposal as much as possible to keep operating costs at a minimal. Mr. Kelley stated the benefits with the design-build method were: 1) the plant could be in compliance by February 7, 2007; 2) the .1 phosphorous limit could be met within four months; 3) two million gallons of water supplied per day; construction could begin one year in advance and eliminate the need for a second phase; contractor assumed the larger portion of the risk; and supported the Village's infrastructure. John Ramos stated the current average flow of the treatment plant was 1.1 to 1.2 million gallons per day (mgd). Mr. Kelley stated all the data received was from a report created by Molzen-Corbin & Associates, known as the Preliminary Engineering Report (PER). Mr. Kelley stated the treatment plant was built in 1982, the Joint Use Board was formed in 1974, only one third of it was actually built, and it had reached its full capacity. Ms. McKnight stated there were a number of

alternatives for funding the treatment plant, such as a \$10 million G.O. Bond with a term of approximately 20 years and the specifics as to how it affected each user could be provided. Mr. Bryant stated the Joint Powers Agreement was set up so each municipality would contribute to the costs for their fair share of flow. Mr. Bryant stated, in the early 70s there were no percentages, the 85%-15% distribution was chosen later, which went to arbitration and remained the same. Mr. Bryant stated a review of the flow numbers was going to be conducted. Councilor Cory stated \$35 million was a very large amount of money compared to others he researched. Chair Nunley stated the bulk of the cost was for the treatment of phosphorous and other municipalities did not have to be concerned about placing the water back into the river. Mr. Bryant stated the Rio Ruidoso was designated as a cold-water fishery, under which the water quality standards from International Treaties to provide clean water was the reason Ruidoso had some of the most stringent conditions in the United States. Mr. Bryant stated phosphorous could be treated by biological interaction, but there were a significant number of months per year when the water temperatures were very low, which made it difficult for biological interaction to work. Mr. Bryant stated the answer to the phosphorous treatment was similar in Molzen-Corbin's proposal and Mr. Kelley's proposal. Mr. Bryant stated the PER was an important part of the National Environment Protection Administration (NEPA) process. Mr. Kelley stated the .1 phosphorous level had to be in the water exiting the treatment plant. Mr. Kelley stated the residents of the County were not allowed to hook on to the sewer plant, but Mescalero was being hooked up. Mr. Kelley stated a \$35 million Treatment Plant would not be able to get the water to the plant, due to the size of the current interceptor line. Chair Nunley stated Kenneth Mosley presented satellite treatment plants for the golf course, which could decrease the need for increasing the size of the interceptor line.

Councilor Rebstock was excused from the meeting at 9:50 a.m.

Mr. Bryant stated the PER included variable alternatives. Mr. Kelley stated Molzen-Corbin presented three different designs of a plant in the PER. Ms. McKnight stated the RFP for the design did not specify a design, but requested alternatives from the Engineer. Mr. Kelley stated the RFP was worded for a proposal of 2.5 million gallons per day. Mr. Waters stated Mr. Kelley had not responded to the RFP. Eddie Livingston stated the RFP was reviewed and the main reason Mr. Kelley or the others opted not to respond, was because their proposal could not be accomplished through a design-bid process as the RFP requested. Mr. Livingston stated Mr. Kelley and his team wanted to respond with a different alternative. Daniel Boivin stated the RFP was restricted and water reuse, water rights, etc. could not have been worked into the alternative, which forced them to create something that could not be supported. Mr. Kelley stated he presented the ideas to Cleatus Richards in the past. Councilor Stoddard stated the Joint Use Board had not made decisions based on what was most beneficial to the community. Mr. Boivin stated the RFP was very clear in its wording and questions were not submitted during the RFP process. Mr. Kelley stated he spoke to the previous Mayor, Leon Eggleston, about the possibility of sending someone to design-build school. Councilor Shaw stated Mr. Kelley presented nothing in written form. Councilor Garrett stated there was no concrete evidence that supported the method worked. Mr.

Kelley provided some detail on funding agencies and options available. Councilor Stoddard stated water reuse was an issue the Village really needed to review. Mr. Bryant stated, in October 2001, an RFP was advertised and requested a PER for expansion of the treatment plant and the proposal was awarded to Molzen-Corbin in 2002. Mr. Bryant stated the PER was developed with approximately 60 meetings of discussion and, if the process was halted, the PER had to be redeveloped as an amended PER. Mr. Bryant stated, during the entire process, Mr. Kelley had not been present. Mr. Bryant stated Mr. Kelley was informing citizens an operational treatment plant could be in compliance by February 2007, which was unfair to the decision makers. Mr. Bryant stated new ideas were dangerous and should be approached with fear and caution. Mr. Bryant stated part of the resolution of the lawsuit by the Forest Guardians and several citizens was to choose alternatives that did not reduce the flows in the Rio Ruidoso. After brief discussion, Maury St. John stated the Joint Use Board reviewed various alternatives of water reuse and investigated all the different options to build a treatment plant, for which Mr. Kelley was not present until recently. Mr. Kelley stated the technology was not available until the last 2-3 years. Ms. McKnight stated she was informed by e-mail from the NMED that, if the Village of Ruidoso considered Mr. Kelley's alternative, it would require another year through NEPA. Ms. McKnight stated the Joint Use Board hired Ross & Associates to evaluate the watershed to work with non-point sources to reduce phosphorous, which took approximately 6-9 months and could not be done, since there was not sufficient supply for a trading opportunity in the Rio Ruidoso with the treatment plant. Mr. Kelley stated he and Councilor Williams spoke with Richard Rose from the NMED, who liked Mr. Kelley's method. Chair Nunley stated Mr. Rose could be present on Friday to answer any questions. Mr. Kelley stated, in order to avoid legal issues, a parallel path could be followed to allow up to a year, for a proposal to be presented in great detail.

Chair Nunley recessed the special session at 10:45 a.m. and reconvened at 10:55 a.m.

John Ramos stated the plant was designed for 2.5 million gallons per day and the equalization basin had to be used when it rained. Mr. Ramos stated a sludge press was used and solids were removed to help the treatment plant operate efficiently. Mr. Ramos stated it would be beneficial to the treatment plant to replace the interceptor lines. Mr. Ramos stated solid handling was the major problem of the treatment plant. Mr. Kelley stated Mr. Ramos and his staff had done many things to increase the capacity of the treatment plant. Mr. Bryant stated \$3 million had been earmarked with grant programs and, if the requirements were not met, the funds had to be paid out-of-pocket. Mr. Livingston stated an Environmental Consultant informed him a change to the PER required an amendment, which could change the time frame. Mr. Kelley stated, from the time the order was issued, the treatment plant could be in compliance within 120 days. Mr. Livingston stated the work performed by them did not require approval by NEPA in order to be in compliance by February 2007. Mr. Kelley stated an Engineering report was available. Mr. Kelley stated the existing treatment plant could be modified and another plant built without making any adjustments to the existing interceptor line for approximately \$35 million. Mr. Kelley stated the piece of property needed would be included in the proposal. Mr. Boivin stated existing conditions were

being modified and NEPA approval was not needed. Mr. Boivin stated agencies providing funds set the standards, and if more than one funding was utilized, the standards had to be followed by one of the funding sources. Mr. Bryant suggested Mr. Waters, Ms. McKnight, Mr. Ramos, and the two professors met with Mr. Kelley and his consultants to review his presentation and returned to the Governing Bodies with a report. Mr. Kelley suggested Bobby Snowden be included in the meeting. Chair Nunley stated the two professors hired were Engineers from New Mexico State University. Mr. Bryant stated meeting with Mr. Kelley did not interrupt the integrity of the RFP process, since the other respondents would be allowed the opportunity to do a presentation for the Selection Committee. Mr. Underwood stated all the benefits of the new proposal would have to be accepted by the Forest Guardians. Ron Maness stated GE stood behind the design-build method and funded other similar projects. Mr. Maness stated GE could finance the project. Mr. Maness stated the technology was proven. Mr. Maness stated there were 500 operating systems worldwide. Mr. Maness stated GE provided the membranes needed for the system, which were warranted for 10 years Mr. Maness stated GE would own the treatment plant as a mortgagee would own a home. Mr. Underwood stated the technology was not new, but the combination of the technology was. Mr. Bryant stated local governments were not allowed to incur debt and borrow money in New Mexico. Mr. Bryant stated large expenses could be financed and, in order to work with GE, a lease purchase could be discussed, where ownership and financing would be flexible.

Next on agenda was CLOSED SESSION:

Discussion subject to the attorney-client privilege pertaining to

Threatened or pending litigation in which the Village of Ruidoso is
Or may become a participant. ' 10-15-1.H.7, NMSA 1978.

- Forest Guardians, Gerald Ford, and William Midkiff; Civil Case No. 05-00-159MV/LFG.
- Carl Kelley Construction vs. Village of Ruidoso, City of Ruidoso Downs, and Regional Wastewater Treatment Plant Joint Use Board.

Any action taken as a result of the closed session will be brought back
Into open session.

Chair Nunley stated a closed session was not needed.

There being no further business, Mayor Miller entertained a motion to adjourn.

Councilor Miller moved to adjourn at 11:45 a.m. seconded by Councilor Garrett.

/s/ Bob A. Miller, Mayor

ATTEST:

/s/ Carol Virden, City Clerk