

PUBLIC UTILITY DISTRICT NO. 1 OF CLALLAM COUNTY  
MINUTES OF THE WORK SESSION OF  
THE BOARD OF COMMISSIONERS  
JANUARY 17, 2011

A work session of the Board of Commissioners of Public Utility District No. 1 of Clallam County was held at the Port Angeles Office, 2431 East Highway 101, on the above date commencing at 11 a.m. The purpose of the work session was to discuss the Local Utility District formation process.

Commissioners present: Hugh E. Simpson, Jr., President; W.E. Purser, Vice President; Hugh Haffner, Secretary

Staff present: Doug Nass, General Manager; Joshua Bunch, Treasurer-Controller; David Papandrew, District Auditor; Mike Kitz, Water & Wastewater Systems Superintendent; Tom Martin, Water & Wastewater Systems Assistant Superintendent; Mike Howe, Executive Communications Coordinator

Others present: Simon Barnhart, Platt Irwin Law Firm (District General Counsel); Nancy Neraas (District Bond Counsel - via telephone)

The purpose of the work session was to answer questions on the formation of a Local Utility District ("LUD"), including handling misconceptions of the purpose of the project, the petition and resolution processes, short-term and long-term funding sources, and how to move forward from the current position in the process.

A letter to the County Commissioners is being drafted concerning the need for funding the next steps in the process. The District has received proposals from Macauley and Associates and BHC Consultants (see attached) to provide support throughout the LUD formation process and for developing preliminary assessments. The cost estimates of these proposals are \$58,800 for Macauley, \$68,700 for BHC, and \$21,000 for a public involvement firm. The District has about \$11,000 of funds available from the Reclaimed Water Program grant from the Department of Ecology, bringing the total needed from the County to \$137,500 to cover the costs of the proposed services. In addition, the District and County need to respond to state agency comments on the Facilities Plan. It is anticipated that BHC will assist with this response, and their costs for that assistance are unknown at this time. An interlocal agreement between the County and the District is needed for this funding and support. The District does not intend to proceed with the LUD process without a commitment from the County.

Chapter 54.16 RCW provides general guidance for the formation of an LUD by the District, and grants the District Commissioners substantial latitude in determining how the process is administered. Additional guidance is provided in Title 35 RCW concerning local improvement district procedures for cities and towns. An LUD may be formed either upon petition by landowners within the proposed LUD area, or by resolution of the District Commissioners. The District's Bond Counsel has recommended the use of a hybrid petition-and-resolution process mainly in order to avoid some of the inherent problems with the petition process.

Using this hybrid process, the District has solicited "advisory" petitions from landowners within the proposed LUD area in order to gauge support for the project. If the District receives advisory petitions from a sufficient number of landowners, the District Commissioners will consider a resolution declaring the District's intent to form an LUD. There is no legal requirement for the number of advisory petitions the District must receive before it may proceed. Rather, it is within the discretion of the Commissioners to determine whether to proceed with the resolution. The resolution shall declare the District's intention to order the improvement, set forth the nature and territorial extent of the improvement, contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property, notify all persons who may desire to object to the LUD to present their objections prior to noon of the date of the formation hearing, and state the date and time of the formation hearing.

Any such resolution passed by the Commissioners shall be published in at least two consecutive issues of the Peninsula Daily News, with the first publication being at least 15 days prior to the hearing on the formation of the LUD. Notice of the formation hearing shall be given by mail at least 15 days prior to the hearing date to the owners or reputed owners of all lots, tracts, and parcels of land or other property to be specially benefited by the proposed improvement, as shown on the rolls of the County Assessor, directed to the address shown on the Assessor's rolls. The notice shall set forth the nature of the proposed improvement, the estimated cost, a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property, and the estimated benefits of the particular lot, tract, or parcel.

Protests of the formation of the LUD may be filed with the District up to noon of the day of the formation hearing. If objections are filed by a majority of the landowners within the proposed LUD area, the Commissioners may refuse to proceed with the LUD. The Commissioners may allow testimony at the Formation Hearing to supplement the written protests. The Commissioners may consider only the protests of landowners within the proposed LUD area.

Under the resolution process, the Commissioners have the discretion to determine how to measure the sufficiency of the protests. Options include one "vote" per landowner, regardless of the number of parcels owned by that landowner within the proposed LUD area, or one "vote" per parcel owned by the

landowner. Another option would be to refuse to proceed if protests are received from owners of the property within the proposed LUD area subject to more than fifty percent (or some other amount fixed by the Commissioners) of the total estimated assessment amount.

At least one workshop should be held by the District prior to the Formation Hearing to communicate as much as possible to give participants the information they need to make an informed decision.

At the Formation Hearing, the Commissioners may hear comment from landowners within the proposed LUD area on matters such as the appropriateness of the project, the proposed boundary of the LUD, and the assessment methodology. At the Formation Hearing, the Commissioners will set the LUD boundary and assessment method. Those decisions will be final decisions of the Board. The District will receive guidance from Bob Macauley as to the preferred assessment methodology. Mr. Macauley will also conduct a special benefits study to determine the approximate assessment amount.

A separate hearing will be held to determine the final assessment roll. The Assessment Hearing will be held after construction is completed. At the Assessment Hearing, landowners may challenge only the calculation of their own assessment and not the assessments of other landowners.

It was determined that any property benefited by the LUD should be included in the boundary for the LUD and should pay an assessment.

The assessment may be levied only against the cost of constructing the sewer project. Hook-up costs may not be made part of the assessment amount. Everyone who hooks up, regardless of paying an assessment, will pay an additional charge for the work and materials to install the hook-up. As it is uncertain where stub-outs would be installed for future hook-ups for subdividable property, the system will be constructed to accommodate the properties within the LUD based upon their use at the time the system is installed. It is contemplated that a latecomer's fee may have to be assessed for hook-ups that are requested after initial construction is complete. Any such fee to latecomers will have to be determined.

A new LUD will have to be formed to fund construction of new infrastructure, such as a sewer main extension and treatment plant expansion, as the boundary of the LUD will be fixed at the Formation Hearing and cannot be expanded.

Bond Counsel has advised the District that LUD financing can run for a maximum of 28 years. Title 54 RCW is silent as to limitations on the term of an assessment roll for LUDs. Consequently, Title 35 RCW, concerning cities and towns, would control. According to RCW 35.45.020, local improvement bonds shall be made payable within 30 years from the date of issue. According to RCW 35.49.020, the number of annual assessment installments shall be less, by two years, than the number of years which the bonds issued to pay for the improvements are to run. The assessment period selected by the District will depend in part upon the type of financing the District receives for the improvement. If a bank loan or underwritten bonds are issued to finance the improvement, the bank or market typically will not want an assessment roll to exceed 10 or 15 years. Financing provided by USDA, on the other hand, generally is not restricted in this manner, so a longer assessment roll may be possible, resulting in a lower annual payment for the landowners within the LUD. However, one consequence to those landowners if a longer assessment roll is chosen is that the amount of interest paid over the term of the assessment roll will be greater than the amount paid on a shorter-term roll. The number of permissible annual installments to pay the assessment amount is significant to the District. If the assessment may be spread for a period longer than 20 years, the District may have greater flexibility in financing the project. The available methods of computing yearly assessment installments will be discussed at the Formation Hearing. It was noted that assessments usually use the declining balance method of computing yearly assessment installments. It was also noted that the law allows assessments to be paid from year 10 to year 20. In this case a revenue bond may be used to cover the gap of the first 10 years. A revenue bond may be funded by both revenues and assessments (revenues are used if assessments fall short). The District could also defer assessments on undeveloped lots, but the District would have to "carry" this cost.

It was noted that the Commissioners may by resolution form a conditional LUD, so long as the conditions are clearly specified. For example, the Commission may impose the condition that the final assessments shall not exceed a certain amount, or that only a certain percentage of the construction cost will be assessed. The District would have to adhere to any such condition regardless of any changes in construction cost or any impacts of other events that may occur between the formation hearing and the final assessment hearing.

Typically, USDA-RD grants/loans are used to fund construction of rural sewer projects. In that case, the District would give the USDA a bond. Revenue bonds work best with USDA because they are the most secure. Bond Counsel will provide guidance as necessary should the District wish to explore this option further.

The District is required to provide notice to owners of property outside the proposed LUD boundaries that would be required as a condition of Federal Housing Administration loan qualification to be connected to the sewer facilities. Bond Counsel advised that it is sufficient to provide notice to those landowners whose property abuts the proposed LUD boundary.

The work session adjourned at 1:00 p.m.