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To: Four Corners County Water and Sewer District Board
Date: 4/16/2018
Subject: Annexation of Elk Grove Subdivision
From: Susan Swimley, District's attorney

RECOMMENDATION: Determine the petitions sufficient to proceed with annexation and conduct 1st reading of the Ordinance to Annex Elk Grove Subdivision Residential, Utility and Park lots.

This recommendation does not include annexation of the undeveloped commercial lots in Elk Grove subdivision. The District has a contractual obligation to provide services to the commercial lots at the time of development.

HISTORY

During the purchase process of infrastructure and water rights from Utility Solutions, Inc. (US), Elk Grove Subdivision was under the jurisdiction of the Public Service Commission (PSC). There is significant debate as to whether or not the PSC has jurisdiction over County Water and Sewer Districts. Rather than spend time and resources arguing with the PSC about that jurisdictional debate, the Four Corners County Water and Sewer District (District) intervened in the US action seeking the PSC approval of the sale of US assets, which included Elk Grove water and sewer facilities as well as Elk Grove water rights.

As part of the PSC process, the District agreed with Montana Consumer Counsel and US as follows:

At the conclusion of the first full calendar year following the closing of the transaction, Four Corners will provide to the Board of Directors of Elk Grove Homeowners Association and to the MCC financial statements that display the actual cost of providing water and sewer service to Elk Grove Subdivision, as well as a discussion of implications of those costs for the PSC-approved rate levels. Elk Grove residents and Elk Grove Owners Association (or its representative) shall have access to the information comparing the rates and taxes should Elk Grove be annexed into the District as compared to choosing to remain outside of the District.

The District closed the purchase of US's assets on December 23, 2015. At that point the District commenced collecting the data to provide the actual costs of provision water and sewer services to Elk Grove together with projecting short term and long term maintenance and repairs for those systems. On June 20, 2017, the District conducted its first public meeting presenting the information described above. The information was submitted to the Board of Directors of Elk Grove Homeowners Association and to the MCC. The PSC sought the District to provide the same information in a format that the PSC utilizes. That information was presented to the PSC in late September, 2017.

During the summer of 2017, Elk Grove owners and residents started submitted petitions for annexation. The Board of Directors, through Minnick Management, sought clarification of the information provided. The exchange of questions and information concluded as of October 30, 2017.

The District Board was made aware that upon receipt of valid petitions from 10% of the electorate within Elk Grove Subdivision, the District could proceed with considering annexation. The District Board expressed that it would like to see more than 10% of the electorate petitions in order to ensure that the owners and residences of Elk Grove were aware of the possible annexation and that a small minority did not drive the process.

During the same time, the District commenced obtaining the information to process the annexation petitions. One of the topics was to seek out response from the shareholders of Elk Grove Development Company, to learn if they desired for their commercial lots to be annexed. The attorney for Elk Grove Development Company responded to both inquiries stating that he would contact his clients. No further information was received. Due to prior communications with Elk Grove Development Company regarding the interpretation of the covenants as well as a lack of responsiveness, the undersigned is recommending the District NOT annex the commercial lots owned by Elk Grove Development Company. The District remains under a contractual obligation to provide service at the time of development of said lots.

DATA ON LOTS, PETITIONS AND ELECTORS

There are 299 residential lots, 1 day care lot and 12 commercial lots finally platted within Elk Grove Subdivision in Gallatin County. The District received 262 petitions for annexation. If each petition represented one lot, that would mean that 84% of the lots sought annexation. However, that is not the criteria upon which the District must consider the petitions.

Petitions for annexation may either represent 100% of the ownership of the area to be annexed or pursuant to §7-13-2204, MCA, which states in pertinent party, “A petition, which may consist of any number of separate instruments, must be presented at a regular meeting....signed by at least 10% of the qualified electors of the territory included in the proposed district.

According to the Gallatin County Clerk and Recorder, Election Department, there are 599 qualified electors within Elk Grove Subdivision. Ten percent (10%) of the qualified electors within the boundaries of Elk Grove Subdivision would be sixty (60) petitioners. At the time of submission, of the 262 petitions, 213 were signed by qualified electors.

In order to ensure that the 262 petitions submitted were being reviewed, the District hired Magpie Consulting to ensure that each petition signed by a qualified electors was reviewed and if there were any questions about the information provided, that the District attempted to contact the elector and verify the petitions meaning. For the most part the issues on the petition appeared to be a lack of the petitioner proving a legal description, a street address and a statement of whether the petition was seeking annexation of Elk Grove subdivision or individual lot. Three attempts to contact each qualified elector for which an aspect of the petition was not clear.

During the clarification process, of the 213 qualified electors, twelve (12) withdrew their petitions. Of

the electors who stated a reason for withdrawal, delay and confusion of the costs difference between annexing or not annexing were the majority of stated reasons. By law anyone who signs a petition may withdraw their signature at any time prior to action being taken upon the petition. Of the 201 remaining qualified electors, 59% or 118 verified they desired the Elk Grove Subdivision to be annexed and the balance could not be reached.

RATIONAL FOR RECOMMENDATION

Based upon the information provided to the Owners Association and the public, if left out of the District, and if the maintenance and repair for the Elk Grove systems were isolated from the balance of the District, the costs to the Elk Grove owners would be significant.

Each early purchaser of a lot in Elk Grove paid a capital fee for sewer/water infrastructure.¹

Elk Grove owners went through PSC rate hearing which set their current rates. Many believe that the rate adopted by the PSC included some type of depreciation account, which was collected to repair and replace the infrastructure within Elk Grove. While depreciation may be considered by the PSC as part of rates, the PSC has no rule or regulation requiring the regulated entity to segregate a portion of the rate for depreciation. Stated another way, even if that was a part of the rate process, the rate payers did not receive any direct replacement of infrastructure or documentation of the allocation of rates which could be applied to depreciation. The PSC Elk Grove rate is not a result of a ruling by the PSC. Rather, the current PSC rates, which the District adopted as a bulk out of district customer rate, was a negotiated rate between US, MCC and the PSC which became the default rate when the PSC did not rule on the rate hearing within the time set forth by law.

Based upon the information provided to Elk Grove and the public, the current rate being charged is not sufficient to build the reserves at the rate the District desires to build the reserves for the District and for Elk Grove.

Generally, based upon random sampling, with annexation of Elk Grove at the current District rate structure, the monthly rate will be reduced for Elk Grove lots. Additionally, each Elk Grove lot will be assessed the tax payment which is used to pay the bonds sold to purchase the infrastructure and water rights, including those which serve Elk Grove.

With annexation Elk Grove owners and residents are eligible to be elected to the Board of Directors of the District. Such representation is healthy for the community as it makes *includes* Elk Grove rather than segregating it.

While there may be a short term reduction in cash flow (especially in light of the summer irrigation rates in Elk Grove), the addition to the bond payments meets the long term goals of the District. The spreading of capital replacements costs and simultaneous building of reserves also supports the long term goals of the District.

The District has capacity to provide service to Elk Grove.

¹ Information provided by long time Elk Grove resident who purchased from the developer.

