

Statements bolded and in quotes are from Building Industry Association representative, Mr. Michael McSweeney's Public Comment followed by a response from FVC Co-founder and Former VWD CFO, Tom Scaglione.

**“It is proper and appropriate for organizations such as the BIA to meet with your management team and members of the community. There is nothing nefarious about this.”**

Of all Mr. McSweeney's comments, this one is the closest to being accurate. Under normal circumstances, it is proper and appropriate for developers to meet with management in private to discuss proposed changes that impact only developers. The word “community” is misleading as no one representing ratepayers either attended or was invited to these private meetings. “Building community” would be more accurate.

Vallecitos faces a very unique set of circumstances. Vallecitos is the only water district in San Diego County with a deficit in its restricted developer funds. Vallecitos is the only water agency in San Diego County where ratepayers are burdened with paying developer obligations.

The fee changes proposed have the potential to impact ratepayers to a greater degree than developers. From July 1, 2013 to June 30, 2019, ratepayers have paid \$54 million to fund the developer fund deficit and amass reserves sufficient to continue financing developer obligations with ratepayer cash instead of issuing bonds. During this same period of time, developers paid in \$31.3 million towards their obligations – less than ratepayers have paid.

Meeting with developers in and of itself, is not inappropriate, but ignoring ratepayers is inappropriate. The Board has a legal obligation to developers not to charge more than their impacts, but the Board has a much higher, legal and fiduciary, responsibility to ratepayers. In representing the interests of ratepayers, I sent a letter to the VWD Board on May 28, detailing and correcting deficiencies in the rate calculation that favored developers, and no one from Vallecitos to this date has responded. Among the deficiencies, is a calculation error in the rate model which favors developers, that at the time I surmised was unintentional, and requested it be corrected. The error was not corrected or mentioned at the Public Hearing. Apparently, now, an intentional understatement of the fee .

**“We are here tonight to ask you to postpone the adoption of the new fees until this agency does a legally sufficient nexus study.”**

This request was accommodated immediately without discussion by the Board.

In 2015, the Board suspended and refunded the Sewer Density Impact Fee, and noted that the Master Plan will be done later that same year and the new Cap Fee will be higher to include needed sewer treatment capacity that was supposed to be paid for in the Sewer Density Impact Fee. The delay – four years now – has saved developers \$11 million. Vallecitos staff reviewed the currently proposed fees with the BIA back in February. Ratepayers are paying for what developers are saving.

The District has spent over \$1 million for the Master Plan that supports the cost and timing of capital improvement projects. Black & Veatch is a highly-regarded and reputable firm. Vallecitos has a legally sufficient nexus study.

Director Martin mentioned that the closed session preceding the August 7 Public Hearing was related to the Cap Fees, so one can only assume the “initiation of litigation” noted on the closed session agenda was from developers or the BIA, which is a smart strategic move on their part given the precedent set by this Board. In 2013, a developer initiated litigation and VWD. The Board caved in, settled and gave the developer a \$3.2 million accommodation. Because of the developer fund deficit, ratepayers are paying for such settlements. VWD needs to reverse precedent and defend such challenges aggressively, to the point of going to trial, if necessary.

**“The State is encouraging agencies such as yours to remove any impediments to new housing construction and not adding costs ... Every dollar you charge becomes part of the cost of a dwelling unit. ... those people that buy those houses finance that over thirty years, tripling the cost of what the fee is.”**

While an increase in developer fees will add to the developers’ costs, developers cannot and will not adjust the price of a home for additional fees. The market (demand) establishes the price of a home. An appropriate adjustment to developer fees is not an impediment to buying a home. It does, however, cut in to the developers’ profit margin.

**“While it appears he [Tom Scaglione] wants to play politics after leaving this highly-paid position working for you he is now spreading falsehoods and misinformation to residents and ratepayers.”**

Mr. McSweeney is either very courageous or didn’t really think before he threw this one out there. I am not running for any political office, I have not received any money from any ratepayer, and I have not given any money to any Board Member. On the other hand, developers and the BIA have contributed substantially to the campaigns of Directors Sannella and Martin, including \$20,000 of “dark money” from the BIA to Director Sannella for his unsuccessful run at the City Council. During that same period of time, while development activity increased, the balance in the developer fund plummeted to record deficit. During that same period of time, ratepayers paid \$54 million to fund the developer fund deficit and amass reserves sufficient to continue financing developer obligations with ratepayer cash instead of issuing bonds. This trend needs to be reversed. Developers need to start paying their share.

All information provided on the Friendship of Vallecitos Customers website was accumulated from Vallecitos’ audited financial statements, budgets, reserve reports, board and committee meetings, as well as documents from other agencies for comparisons presented. There are no “falsehoods or misinformation” presented on the website. All the information is factual and accurate.

**“The previous management tried to impose an excess sewer capacity fee without proper justification and the district rescinded those fees after they were legally challenged.”**

The previous Board did impose a fee to recover impacts of development in excess of General Plan densities. The fee was conservatively calculated, supported by a consultant’s extensive study, and properly and legally justified. At that time, a representative from the BIA consented to the fee, expressing that it only burdened those developing beyond General Plan densities and was therefore a fair fee. The legal challenge was discussed at a January 2, 2013, regular Board meeting and resolved by settlement two weeks later in closed session. It was not until two years after that point that developers requested the fee be suspended. I do not believe a legal challenge gave rise to suspending the fee. It was just a request from the development community that was accommodated and fees collected to that point refunded, even though the developer fund deficit was spiraling out of control. Yet another accommodation to developers paid for by ratepayers.

**“There is no give away allowing a developer to defer fees until a unit is finished.”**

If the developer fund had a sufficient positive balance when the Board deferred the due date of the fees, the accommodation would not have an impact on ratepayers. However, there was a developer fund deficit when the accommodation was made, and the District always has multiple projects in progress (between date of project inception and date of occupancy). At any point in time, the increase to the deficit is equal to the capital facility fees associated with all projects in progress at that time (\$ million). The increase in deficit and the corresponding subsidy from ratepayers will reverse itself when there are no projects in progress. There will be no projects in progress only after the last building is built in San Marcos.

**“I commend the management for allowing the openness and transparency this is in stark contrast to how this agency was run by the previous administration when Mr. Scaglione was part of senior management.”**

While the administration must carry out the policies and actions adopted by the Board, the administration, specifically executive management, has the responsibility to make the Board and the public aware of the impacts of actions considered and taken by the Board. There has been a significant and destructive lack of transparency as the negative fiscal impacts of the delays and insufficiency of the proposed capital facility fees have never been disclosed to the Public or Board at any public proceeding. The \$54 million paid by ratepayers for developer obligations and the impossible repayment with the fees as proposed has never been disclosed.

The Building Industry Association (BIA) provided the capital facility fee comparison shown at the August 7 Public Hearing. The comparison was misleading as the lowest rates presented were from agencies that haven't adjusted their rates in decades – no need since there is no new development in those agencies. Olivenhain Municipal Water District has five zones for water capacity ranging from \$10,256 to \$21,644. Only the lowest rate was included in the comparison without a footnote or explanation. A fair presentation would be to average the zones as I did when I presented the State of the Water Rates lectures at Palomar College. The BIA has clearly demonstrated a lack of credibility, particularly in these comments, nearly all of which were misleading, inaccurate, or false. VWD management has a responsibility to the public to review information, particularly from the BIA, before presenting such information to the Public. In effect, even though the report was prepared by the BIA, it was VWD that misled the public, due to lack of due diligence.

VWD used to post all materials presented in a public meetings on the website. Nothing presented at the August 7 Public Hearing or any finance committee meetings related to the proposed capital facility fees have been posted on the VWD website. There are no materials posted with the August 29<sup>th</sup> Workshop Agenda.

At the August 7 Public Hearing, Finance Manager Owen presented the last year of a five-year projection showing the deficit down to “only” seven or eight million dollars. What he failed to disclose was the \$28 million in debt proceeds included towards the end of the projection period. VWD has demonstrated no intention to debt finance developer obligations. Without the debt proceeds and with the capital facility fees as proposed, VWD is projecting that the current \$14 million developer fund deficit will increase to \$35 million in five years – to be funded by ratepayers. These impacts need to be disclosed to the Public.

Under the direction of this current Board, this administration is far less open and transparent than the previous administration.