

Correspondence – Item 8 – Moratorium on Undergrounding 3/1/10

Dear City Council Members,

We were surprised and dismayed to read the City Staff report that recommended an undergrounding moratorium that did not include our Hampton Seaview District (HSV). If the City Council were to agree and vote that only the formation of new districts be delayed, rather than to also include delay of further undergrounding activity in HSV, the City would be ignoring another potentially significant cost overrun to the City and the rights of the HSV homeowners.

HSV is next to and in similar terrain as the Piedmont Hills District, where dense rock and project errors have led to over \$2 million in cost to City reserves. Many HSV owners are concerned that similar circumstances will affect our district's undergrounding activities, unless more detailed soil borings, engineer reports and better oversight are implemented – all of which will undoubtedly be considered as part of the new undergrounding processes implemented through the moratorium. To not include HSV in the moratorium and this process evaluation is ludicrous. What will the City then do instead when the Kurtin litigation is resolved? Continue HSV activities as if the Piedmont Hills experience never happened and expose the City to significant cost overruns? Or impose a hastily enacted “one-time” change to the cost allocation for HSV to protect the City against similar expenses, such as suddenly making the HSV homeowners responsible for cost overruns - or greatly padding the property assessments to cover all contingencies? The two latter possibilities are patently unfair to the HSV homeowners, who did not vote for this district under either of those alternatives. More importantly, it is a wrong approach for Piedmont as a whole, which needs to step back and consider an improved and more realistic approach for *all* undergrounding.

The Staff report implies that perhaps HSV cannot be included in the moratorium due to the pending Kurtin litigation. I urge the City Council to challenge this approach, since that litigation will be separately decided on its merit or settled before the two year moratorium is ended. If there is a concern that the moratorium would affect the litigation somehow, please consider that many factors underlying HSV have now temporarily stopped HSV activity already, without affecting the process or outcome of the Kurtin litigation. The City has lost the original Valley contract due to delay, and so must put out the project again for bidding. HSV homeowners must again vote whether to accept the new assessments, which will undoubtedly be much higher. Hopefully, recent experience will require a more detailed new HSV engineer's report and soil borings so that both the City and homeowners will have a more realistic expectation of project costs. None of these recent factors and delay has affected the Kurtin litigation processes, and neither would an additional bit of time in a moratorium.

Unfortunately, the Piedmont Hills district has unintentionally backed all of us into a situation where, from a financial perspective, district undergrounding became one of (if not *the*) single most important City project for this fiscal year. Please do not compound the problem. Both as a resident of Piedmont and of HSV, I urge you to include HSV in the moratorium.

Sincerely,

Diane Allen

Dear City Council Members:

The purpose of this email is threefold; (1) to encourage you to vote in favor of a moratorium on any new underground assessment districts, (2) to ask you to include or impose the same restrictions on any work on the Hampton Sea View District and (3) to raise the question of lateral connection cost overruns.

On March 19, 2009, a number of residents of the Hampton Sea View District attended a meeting at the Community Center to be briefed on the proposed undergrounding project. The City was represented by two staff members and a legal advisor. It was stated by City staff members that the price of approximately \$3 million quoted by the preferred contractor, Valley Utility, was “attractive” and “a very good price” in comparison to the costs of previous undergrounding projects in Piedmont. When we raised the question of what would happen in the event of project cost overruns or if the contractor declared bankruptcy, we were told by City staff, “You don’t have to worry about that. The contractor will have a performance bond. The City of Piedmont is the client and will be the one holding the bag.” After the meeting, some of us commented that the answer by City staff was technically correct, but was without regard for all the citizens of Piedmont who ultimately would have to bear these additional costs.

Fortunately, because of the ongoing litigation, work on the Hampton Sea View project hasn’t begun, but the worst of our fears have been realized with the Piedmont Hills project. As stated then by City staff, the City is the one “holding the bag,” but it is all the citizens who have to pay.

Not only is the Hampton Sea View District potentially subject to the same types and magnitude of cost overruns that were encountered in the main trench of the adjacent Piedmont Hills District, there are other potential cost overruns in both Districts that may not have been exposed. In spite of all the estimates, reports and discussions on the cost overruns for the Piedmont Hills project, I don’t recall seeing or hearing any information on actual or potential cost overruns for the lateral connections to individual properties and the resulting cost exposure the City (and all of its residents) may face.

It is my understanding that lateral connection cost overruns would be handled as follows:

- (1) If a property owner elected to have the City’s contractor install the lateral connection, the City could be responsible for any lateral cost overrun (causing a further drain on City funds), or
- (2) If a property owner elected to use a private contractor, the owner could be responsible for any lateral cost overrun, depending on the contract language.

In either case, if homeowners had been aware of the potential cost overruns that have been experienced in the Piedmont Hills District, they might have voted differently on undergrounding in general and/or how to handle the lateral connection costs.

For example, since the cost overruns for the main trench in the Piedmont Hills District have been estimated at approximately 50% of the original \$4 million cost estimate, what is the likelihood that the cost overruns for the 140+ lateral connections in that District could be in a similar ratio? One would think there would be far less geological and engineering information available on the individual properties than there was on the main trench under previously explored city streets. Consequently, lateral connection cost overruns equal to or in excess of 50% would appear to be possible.

In the case of the Hampton Sea View District, the original cost estimate for all lateral connections to the 100+ properties quoted for the City by Tennyson Electric was \$804,000, or about 27% of the \$3 million original cost estimate for the main trench. A 50% cost overrun for lateral connections could add another

\$400,000 or more to potential costs for the District and would have to be paid in some ratio by individual homeowners and the City. Using similar assumptions for the 140+ properties in the Piedmont Hills District, lateral connection cost overruns there could be in the order of \$500-\$600,000 to be shared in some ratio by District residents and all City residents.

The question of these unidentified lateral connection cost overruns should provide additional justification for a decision to place a moratorium on the Hampton Sea View District as well as all future undergrounding districts. The delay resulting from the litigation over the Hampton Sea View District possibly has saved the residents of the District and all of the citizens of Piedmont another \$2 million in main trench and lateral connection cost overruns. Why should this additional cost risk be taken just because the City Council already has made a decision to go ahead with the Hampton Sea View District? The contract price quoted by Valley Electric for this District has expired. Why not settle the litigation and let this District's project remain dormant until better information is available? At that time, the City and District residents can decide jointly whether the Hampton Sea View District and/or other new undergrounding projects can be justified.

Thank you for your consideration. An email reply is not necessary.

Respectfully yours,

Bill Massengill

Dear Ms. Swift,

Please include the following comments in the City record for tonight's meeting on undergrounding:

I understand from one of my neighbors that the undergrounding moratorium discussion is not intended to include Hampton Seaview. If true, I think this is a serious mistake, in light of the \$2 million cost overrun for Piedmont Hills. I hope the Council has learned from the debacle of the past few months to stop and reconsider. Does the City really want another \$2 million overrun? Imagine what the non-district residents would say to that!

At a minimum, I believe that nothing should happen on Hampton Seaview until an independent review of Piedmont Hills has been completed. It would be folly to proceed on HSV with Valley and the current contract, once again forcing the residents of Piedmont to bear all the risk of rock. I am sure there is plenty of rock in HSV, at least on Indian Road, based on our experience excavating 18" in our back yard several years ago to put in a lawn. It took our contractor 2 days of jackhammering through rock to do this small job (the lawn area is only about 25' x 20'. And Ray's Electric, one of the contractors I contacted for a bid on my lateral connection, told me last May that the reason their bid was 2x Valley's was because of their experience dealing with the rock in Piedmont. In the last week, I have also stopped by to look in the trench on Hampton near the soccer field and have asked the Valley workmen about the rock. They said that it "comes and goes" and that they just don't know from moment to moment what they are going to hit. I'm sure Piedmont can do better next time around.

I believe HSV must be included in the moratorium. Moving forward after the Piedmont Hills review, I would hope that the following items would be included in any new project:

1. A clear and published process for how an undergrounding district is to be formed and how projects move forward that will not be subject to the preferences of one Council over another.

2. A 2/3 majority vote to go ahead.
3. City financial participation in the upfront engineering report so that individual homeowners cannot pressure the City against the wishes of other residents OR a guarantee by individual homeowners that they will finance any overruns.
4. No contract shall include a rock clause of the nature in the Piedmont Hills contract. The City simply cannot afford to bear all the risk.
5. Contractor rebid for the project; selection of a contractor other than Valley.
6. Policy to assist elderly homeowners or those who simply cannot pay the cost of undergrounding. (Palos Verdes has a policy for undue hardship.)
7. Revision of the methodology to reflect different sized properties and property values. The cost allocation should be based, at least in part, on the square footage of each lot, not just the lateral street frontage.
8. Full disclosure up front of total costs (last spring, the cost for the lateral connections was made public by one of the homeowners, not the City).
9. Project supervision by an experienced construction project manager with prior work on undergrounding projects.

Why not let Hampton Seaview be a test case for a new approach and policy? This could save the City and its residents many headaches downstream.

Thank you,

Jennifer Trainor
