

Pagosa Daily Post

Sharing the Pie or Circling the Wagons? Part One

Glenn Walsh | 9/25/08

Representative from Archuleta County, the Town of Pagosa Springs, Pagosa Area Water and Sanitation and the local water conservancy, fire and hospital districts met Monday afternoon for another in a series of meetings officially titled “The Community Economic Roundtable.”

More accurately, it was another “Can We Coax PAWSD To Lower Their Fees” convention.

County Commission Chair Bob Moomaw opened the discussion with his concern. “All these fees stand up looking at individual impact fees. To me it gets in trouble when you try to look at them as a whole ... different timeframes bring up very different numbers.”

Moomaw, who is very practiced at chairing contentious meetings, was being diplomatic here. The County effectively assesses no impact fees. The Town assesses a nearly \$5,000 consolidated fee on each new home for roads, parks, trails, schools, fire, public buildings and water storage.

PAWSD choose to opt out of that consolidated fee developed by the consulting firm EPS in 2006 and now applies water impact fees on new homes which range from \$9,785 to \$24,462. When the water district begins to admit new properties into its service area next year, that fee will reach almost \$35,000 for large homes.

Critics of impact fees in general of course object to these fees. But supporters of more modest community-wide fees, such as Moomaw, object to the devotion of nearly all of the available public capital in the County for the rest of the century to one project which may be constructed in twenty or thirty years.

To place these fees within the context of the County’s declining second home market — the County’s economic mainstay — consider this: total water impact fees for a new 100-home subdivision of large, expensive homes have been raised by PAWSD from a little more than to \$200,000 a few years ago to well over \$3 million in 2009. At least in theory. There has been no such subdivision constructed since the implementation of these impact fees in 2006.

Consider this as well: after all of the estimated 5,000 readily buildable lots in Pagosa Lakes are filled in with new homes, the 35,000 AF Dry Gulch Project presumes the water demand of an additional 1,000 100-home subdivisions, or ten such projects completed to turn-key every year for 100 years. Ten TreeTops or ten Pradera Pointes fully built out every year for a century.

Given the clear dysfunction of PAWSD present plans — the district is collecting little more than 2% of the fees it anticipated to support the Dry Gulch Project — Moomaw has been pressing PAWSD to agree to consider agreeing to a community-wide consolidated impact fee study conducted by EPS.

However, Moomaw's argument was contradicted by his fellow County Commissioner Robin Schiro, who objected to using EPS as the lead consultant. "Their numbers were squishy and they admitted it. They said what do you want to see, and they moved the numbers that way." Schiro expressed concern that impact fee programs were of doubtful legality and suggested "a third party examine all of the studies together. ... They all have different timeframes, different assumptions, different modeling and different statistical analyses."

Moomaw's ability to negotiate successfully with PAWSD was clearly diminished by Schiro's objections. Bringing the obtuse triangulations of the County Courthouse into the hexagon of interests at this roundtable is somewhat pointless. At one point Schiro suggested the need for a spreadsheet of all the discrepancies in every relevant capital project study.

One question: when PAWSD is applying a \$35,000 water impact fee on a large home for a project aimed at year 2100 demand, and the County is applying a \$818 fee to the same home for its equally large but immediate project — the reconstruction and expansion of the County road system — which district is flirting with illegality? Which district is employing dubious timeframes, assumptions, modeling and analyses? Does it take complicated spreadsheet analysis to figure this out?

Karen Wessels, the Board President of PAWSD and a member of the San Juan Conservancy District, followed up on Schiro's objections about EPS effectively. She noted that PAWSD had contracted with the well-regarded consultant BBC to review the fees PAWSD is assessing.

Wessels objected to the rush to agree to another EPS study. "We feel we are being funneled into using EPS and we are supposed to make that decision today." Wessels characterized a study with an October 15 timeline as "quick and dirty" and added "two consultants would be better than one, because we have already had problems with the one."

PAWSD was represented by Wessels and Finance Director Shellie Tressler. Given the weak hand they hold at present at these roundtables — charging the highest fees for the most distant project, collecting almost none of these fees, and presiding over a system in as much disrepair as the County roads — the two negotiated with the other districts skillfully and convincingly and placed the other districts on the defensive about EPS.

PAWSD was permitted to press the other districts to be careful that the impact fees be recalculated in a legal manner, and not confuse old growth and new growth costs. This despite their own fees being 500% above actual impact, and the district's attempt to assess reconstruction of the forty-year old Snowball pipeline and water treatment plant to new growth.

With Moomaw repeatedly contradicted by Schiro, and Town Councilor Mark Weiler absent, PAWSD was able to make these assertions without contradiction.

When the discussion threatened to lose focus, Fire Chief Ron Thompson offered a rapid fire series of questions one would expect from a fire chief trying to assess a disaster scene — who? how long? how costly? — and suggested "Why not throw them [EPS] out and hire another contractor and not have two?"

Wessels replied frankly, “That’s what we want.” And then shared her concern about the rush to hire EPS. “We want it done now. We want it done fast. I am not quite sure I understand why. The construction season is coming to a close right now... as far as new construction, it is coming to a close and it is not going to start until next spring.”

Of course, for critics of PAWSD water impact fees, the point is that not much is coming to a close and not much is going to start next spring.

PAWSD, readers should note, simply does not believe that water impact fees are affecting the residential construction market. Where PAWSD has been convinced that their fees were excessive — commercial and multifamily construction — they have lowered fees. How confident is PAWSD that residential rates are not excessive? They raised these rates on large houses 150% last month.

Moomaw labeled the EPS re-study as “more of an interim process” and added “the only reason we would use EPS is that it is an update of a study they had already started.” Moomaw objected that the construction season didn’t close when the snow starts. “Developers do start early — Blue Sky in particular — if we go back and try to go through the whole impact fee process we are two to three years out.”

It is worth noting that most of the large residential developments presently before the Town planning commission are outside of the PAWSD service area. And that almost all of the County’s water demand, even the 20-30% of it that will never be serviced by the Dry Gulch reservoir, is included in the demand figures justifying the 35,000 AF project.

Moomaw closed the first hour with a clever response to Wessels’ “why now?” question about impact fees — “This is a lot like planting a tree. When is the best time? Fifteen years ago. When is the next best time? Now. This should have been done five years ago.”

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PAWSD Board President Karen Wessels opened the second hour of the meeting requesting “to get right now to the bottom line.” Wessels was first direct — “My understanding is that urgency hinges on the amount of money that developers will pay ... the whole point is to get that fee to go down or to go away.”

And then Wessels was rhetorically clever, noting that without impact fees — “the only obvious source is service charges,” which Wessels characterized as going “up and up and up.” Wessels noted recent “Pagosa Sanitation District increases of 67%” and added, “We still have to have the capital projects. Those moneys have to come from someone.”

No one from the Town or County noted that PAWSD's own service charges have recently been hiked 50% and that PAWSD has extended guarantees to the Colorado Water Conservation Board that monthly service charges will be increased further to pay for a 35,000 AF Reservoir if the voters turn down a mill levy increase. And no one questioned just what capital projects we need to have — a 10,000 AF reservoir or a 35,000 AF model (about 20 times present actual potable water usage).

It is hard to see the County and Town negotiating with PAWSD successfully if PAWSD is playing — very smartly — rhetorical hardball and the other districts continue to play badminton.

PAWSD Assistant Finance Director Shellie Tressler then added “PAWSD operates under a different statutory guideline than any of the other special districts. I just have to say it out loud: PAWSD water resource fee is not an impact fee.”

No one from the other districts questioned Tressler about the “not an impact” fee or how such a “not an impact” fee was free from Breckenridge guidelines of fairness and proportionality.

“I don't picture PAWSD as being part of the EPS study,” Tressler continued, “but PAWSD could voluntarily choose to part of the community project.”

Tressler is very articulate defender — and articulator — of PAWSD policies. It is hard to picture a staffer of comparable level for the Town or County offering their big picture view of big policy choices at a joint meeting of elected officials.

Wessels expressed some support, “We need to beat the horse. We need to talk and keep talking,” but she clearly did not want to saddle up with EPS — “I think it is impractical. I think it is premature. I think it is a waste of money to do it now. It is not impartial. I think we can get an impartial consultant and have something by next spring ... I don't understand the urgency.”

Mayor Ross Aragon noted the number and size of annexation agreements the Town is considering. It is the biggest bargaining chip the Town has in negotiations with PAWSD. Thousands of units can be developed within the Town which have the water rights to remain outside the PAWSD service district if the Town permits them to. However, the value of this chip is watered down when local courts allow PAWSD to use County-wide water demand they do not and will not serve in their calculations supporting their 35,000 AF project.

Of course, the loss of potential revenue from these developments might persuade PAWSD. But if the district is willing to push its plans for a 35,000 AF reservoir when its receipts have fallen to 1% of forecast amounts, would a further fall to .75% really change district plans? Of course, eventually you have to stop hitting the snooze button, don't you?

Moomaw brought the discussion back to the big question about a potentially big number. “All these entities come on board, it is going to be a huge number. In all honesty, it is going to be a lot bigger number than the market will bear.” This is probably an understatement. If every district adopted PAWSD methodology and based their “not an impact” fee on 2000% growth over the next 100 years, the comprehensive impact fee would include 20 new North Pagosa Boulevards, 20 new high schools and 20 new hospitals, for starters. That fee would easily exceed \$100,000. Another skewed number you might scoff, but PAWSD will be applying a set of “not an impact” fees to new homes included in its service area next year of \$35,000.

Tressler noted that PAWSD engineers MWH would be updating reservoir cost numbers within the next month. She opened the window of opportunity a crack. “PAWSD could go its direction, and yet the two could meld back together to look at it from a community wide perspective. It’s possible. It’s possible.”

Note the weakness of the bargaining stance taken thus far by the County and Town. Reduced to having a staff member from another district teasing elected heads with the possibility that PAWSD might choose to cooperate.

It is impressive to watch PAWSD bluff its weak hand so adroitly. And walk away from the table still holding almost all the chips.

In the end, PAWSD agreed to sit down with EPS to see if they can agree on a methodology to assess fees for the Dry Gulch Reservoir Project. By next month, it is hoped to know whether EPS will undertake the impact fee study.

Or perhaps EPS will be asked to undertake a “not an impact” fee study which allows PAWSD to charge whatever proportion of whatever reservoir project it wishes to build on whatever timeline it finds most convenient, independent of impact fee restrictions or relevant case law.

It was left to audience member Lisa Reeve to question PAWSD’s “not an impact” fee assertion. “Every group can come up with a loophole so that they call it something else.”

Yet, only PAWSD to date has exploited the loophole.

County Director of Community Development Rick Bellis suggested one benefit of asking EPS to assess the complete infrastructure costs of the entire community on a PAWSD-like scope — “How do we all get together. Maybe the most important part of the EPS study would be to show exactly that: We cannot afford the infrastructure that is necessary for this community, and it becomes the basis of a needs assessment to go to the federal government, to go to the state

government and say we absolutely need this money or we are going to die.”

Whether this is a promising tactic or a deeply depressing observation is left to the reader.

As are these questions: Has Pagosa missed its window of opportunity to build public infrastructure of roads, reservoirs, schools, parks, trails, hospitals and fire houses? Can the local economy afford to have one district assess a menu of “not an impact” fees to one project to be built three decades from now and still provide all of the services that would support the growth which would make the Dry Gulch Project remotely plausible?