

Maryland Underground Facilities Damage Prevention Authority

MINUTES OF MEETING OF AUTHORITY

Wednesday, February 4, 2015

Agenda Items 1, 2 and 3:

Call to Order, Attendance Roll Call & Welcome

The meeting was called to order by Authority Chairman, Kevin Woolbright at 9:02 a.m. in the Miss Utility One Call Center, Conference Room, 7223 Parkway Drive, Hanover, MD 21076.

A roll call of the Board of Directors was conducted by Ms. Stroud. A quorum (6) was present.

In attendance were Authority members Kevin Woolbright, Walter Gainer, Marcia Collins, Tom Hoff, Art Bell and Veronica Davilla-Steele. Bernard Cochran was present for the afternoon session. Board Members Tom Baldwin and Tom Hastings were absent. Susan Stroud and Jim Barron were also present.

Guests included: Vince Healy, Verizon; Hector Sealey; Maria Fernandes; Jimmy Jennings; Dora Parks, Miss Utility; Matt Ruddo, One Call Concepts; Tomas Wettengel; Gary Biondi, B&B Site Management; Octaviano Castillo; Scott Brown, Washington Gas; Mark Hamrick, Verizon; Laurence Johnson, WSSC/Pinpoint; Georgia Goslee; Deena Ryce, WSSC; Satish Patel, WSSC; Hugh Humphrey, Humphrey and Son.

Agenda Item 4: (Handouts)

Approval of Minutes:

The January 7, 2014 minutes were approved and will be posted on the Authority website.

Agenda Item 5: (Handouts)

Authority Treasurer Report:

The Executive Director provided financial statements for the two previous periods. He reported that the General Account has a balance of \$47,689.64 and the Education and Outreach Account has a balance of \$49,430.62. There are no outstanding bills at this time. The Executive Director also noted that legal fees for the Authority to-date are \$31,331.15.

Agenda Item 6: (Handouts)

Morning Hearings

6a) NPV# 1874 – Cecil County Government v. Crouse Construction

- Alleged Violation – §12-124 (a) No locate request
- Recommendation - \$2000 fine and training

Chairman Woolbright opened the hearing and gave the floor to Executive Director Jim Barron. The Director stated that he had received an email from Crouse Construction at 1:00 p.m. February 3, 2015 stating that they were unable to attend the hearing. In addition, Crouse stated that if the Authority did not wish to reschedule, they would accept the Authority's finding. Board member Bell made a motion to go forward with the hearing, which was seconded by Board

member Gainer. A Roll Call vote was taken by Ms. Stroud and entered into the record. There were five (5) votes to proceed. Four (4) members were absent at the time of the vote. The Executive Director was sworn and presented the Evidence Log and accompanying documentation to the Board and was also given to the Secretary to be entered into the record. The Director presented the research he conducted for NPV# 1874, which corroborated the alleged violation. Board member Bell wanted to know if there was proof that Crouse was the contractor on the site. The director stated that the developer, Clark Turner verified that Crouse was the contractor. After a few more clarifying questions, the Chair closed the hearing at 9:35 a.m.

6b) NPV# 2446 – Washington Gas v. V. Fernandes Construction Co., Inc.

- Alleged Violation(s)
 - §12-127 (c) (2) – Failure to test pit gas line
 - §12-127 (c) (3) – Using mechanical equipment w/in 18” of an existing gas line.
 - §12-127 (e) – Clear evidence
- Recommendation - \$4000 fine and training

Chairman Woolbright called the hearing to order at 9:37 a.m. and requested that representatives of Washington Gas and V. Fernandes step forward. Scott Brown, Washington Gas and Maria Fernandes along with Hector Sealey were sworn; as well as the Executive Director Jim Barron. The Chair gave the floor to the Director who presented the Evidence Log and accompanying documentation to the Board and Ms. Fernandes; and was given to the Secretary to be entered into the record. The Director noted that the contractor had a valid ticket at the time of the alleged violation and were installing a water line.

The Chair invited the alleged violators to make their statement and provide any evidence in their defense. Maria Fernandes, represent V. Fernandes stated that they are guilty and made a mistake. She went on to state that she was very concerned about non-marked and miss-marked gas lines and that her company had had 7 previous incidents over the past 10 years with wrongly marked lines. Board member Bell suggested to Ms. Fernandes that she could file an NPV against the marking company in these situations. Hector Sealey, a professional trainer spoke on behalf of V. Fernandes. He stated that the company had been pro-active and had voluntarily taken three training sessions from him. Both field and management have taken the training. Ms. Fernandes was confused about whether it was permissible to use mechanical equipment just to break the surface.

Scott Brown with Washington Gas stated that his company’s policy was to only report serious violations that could affect public safety. He stated that Washington Gas provides free training, and encouraged Ms. Fernandes to take advantage of the opportunity; which she indicated she would. Being no further questions or comments, the Chair closed the hearing at 10:02 a.m.

6c) NPV# 2447 – Washington Gas v. Compass Pointe, LLC.

- Alleged Violation(s)
 - §12-127 (c) (2) – Failure to test pit gas line
 - §12-127 (c) (3) – Using mechanical equipment w/in 18” of an existing gas line.
 - §12-127 (e) – Clear evidence
- Recommendation - \$4000 fine and training

Chairman Woolbright called the hearing to order at 10:12 a.m. and requested that representatives of Washington Gas and Compass Pointe step forward. Scott Brown, Washington Gas and Thomas Wettengel were sworn; as well as the Executive Director Jim Barron. The Chair gave the floor to the Director who presented the Evidence Log and accompanying documentation the Board and Compass Pointe; and was given to the Secretary to be entered into the record. The Director noted that the contractor had a valid ticket at the time of the alleged violation and were installing water and sewer at the time of the incident.

After a few questions regarding the placement of marks and if there was marks under the spoil pile the floor was given to Tom Wettengel of Compass Pointe. Wettengel stated that when they were excavating they hit a 2" T which was not marked and therefore they believe they are not guilty of hitting a marked line. The contractor was aware of a 4" (which was marked and flagged) line that ran parallel to the trench they were digging and that the distance from the trench to the gas line was 2-3 feet and that they had test pitted.

The Chair moved on to Scott Brown, Washington Gas who stated that Compass Pointe was working in an active construction site and should have looked for evidence of other marks. Brown submitted a photograph that showed markings for the 2" line. Board member Bell asked if there was evidence of any other marks adjacent to the trench site. Brown answered yes. Board member Gainer asked Brown if they had a manifest from Utiliquest. He responded yes and circulated it to the board. Wettengel stated that he had meet with the marking company at the site. There was further discussion about the age of the other marks and whether the 2" line was marked. Mr. Wettengel of Compass Pointe stated the Utiliquest did not know about the 2" line and could verify that fact. There was general discussion of best practices and member Bell recommended to Mr. Wettengel that he file an NPV against the utility owner if he feels they erred on the location of any of their lines.

Being no further questions or comments, the Chair closed the hearing at 10:55 a.m.

6d) NPV# 2459 - Washington Gas v. B&B Site Management, Inc. (NPV was form ally v. Della & Sons excavating)

- Alleged Violation(s)
 - § 12-124 (a) Notice to One-Call Center
 - § 12-127 (e) Clear Evidence
- Recommendation - \$2000 fine and training

Chairman Woolbright called the hearing to order at 11:00 a.m. and requested that representatives of Washington Gas and B&B Site Management step forward. Scott Brown, Washington Gas and Gary Borandi, owner of B&B were sworn. Also Luther Della, owner Della & Sons and Octaviano Castilla, site owner were sworn as witnesses for B&B, as well as the Executive Director Jim Barron. The Chair gave the floor to the Director who presented the Evidence Log and accompanying documentation the Board and B&B Site Management, Inc.; and was given to the Secretary to be entered into the record. The Director noted that the contractor had no valid ticket at the time of the alleged violation and were demolishing a burned out structure when they hit a gas line. Barron noted that in the Title 12, demolition activity requires a ticket, not just digging. B&B was not aware of that requirement.

The Chair gave B&B Site Management the floor. Mr. Borandi stated that his company “thrived on safety” and has pulled 500 tickets in the last year, mainly for silt fence installation. Mr. Borandi stated that he thought the Miss Utility law was misleading, but assumes responsibility for the incident. He stated he walked the site with the owner and noted that there were gas meters that needed to be removed from the dwelling. When the gas meter was gone they thought it was okay to proceed since the other utilities (electric and telephone) had been burned off the house.

Being no further questions or comments, the Chair closed the hearing at 11:40 a.m.

Agenda Item 7:

Hearing Discussions and Decisions: NPV# 1874, 2446, 2447 & 2459

Moved to Executive Session

Agenda Item 8:

Lunch Break

Agenda Item 9:

Afternoon Hearings

Vice-Chairwoman Marcia Collins called the afternoon session to order at 1:20 p.m. The vice chair is presiding owing to the Chair; Kevin Woolbright’s recusing himself from the afternoon hearings. Ms. Stroud conducted the official roll call. A quorum was present.

9a) NPV# 1216 – Complete Sitework vs. WSSC/Pinpoint UG

- Alleged Violation(s) – §12-126 (c) The facility owner did not mark their facility per state statute.
- Recommendation - \$2000 fine and training

The Vice-Chair asked for representatives for the complainant, Complete Sitework and Defendants Pinpoint UG and WSSC. There was no one present from Complete Sitework. Lawrence Johnson was present for Pinpoint. WSSC declined to testify. Ms. Georgia Goslee, counsel for Pinpoint UG stated that she was there to represent both Pinpoint and WSSC. The Vice-Chair swore- in Mr. Johnson of Pinpoint and Jim Barron, Exec. Dir. of the Authority, as witnesses for the NPV# 1216 hearing.

Ms. Goslee proceeded to make an opening statement and a verbal motion to dismiss NPV# 1216 since there was no one present from Complete Sitework. The board made a motion. A motion to act on the dismissal request was made and seconded. The motion for dismissal failed unanimously.

Next Ms. Goslee presented three (3) written motions which were entered into the record:

Exhibit #1 – *“Motion to Recuse Authority Members”* – The motion cited bias on the part of four (4) Authority members and one (1) Miss Utility employee. Vice- Chairwoman polled the board on their ability to be unbiased in their deliberations. All members cited, swore that they could proceed with the hearing without bias. Ms. Goslee stated that Exhibit #1 applied to the four (4) Pinpoint hearings being held on February 4, 2015. In addition, Ms. Goslee presented Exhibit #'s 1(a) through 1(d).

Exhibit #2 – “*Affidavit of Lawrence Johnson WSSC/Pinpoint Underground, LLC*” - The affidavit stated that area cited in the “extent of work” did not contain any WSSC facilities.

Exhibit #9 – “*Motion to Dismiss Notion of Probable Violation Number 1853*” - The motion showed that the complainant had asked to withdraw the notice of probable violation via email.

Mr. Barron presented the research he had done for this NPV and entered the results into the official record.

Lawrence Johnson was given the floor to present his testimony. Ms. Goslee presented Exhibits # 3 through 6 to be entered into the official record. After Mr. Johnson’s presentation, the Vice – Chair moved to close the hearing. Ms. Goslee asked that additional photographs be introduced at a later date. The Vice-Chair stated that she would accept additional materials provided they were delivered to the Authority by noon on, Monday, February 9, 2015. The hearing was closed at 2:32 p.m.

Note: The additional exhibits were delivered as proscribed and were marked Exhibit # 6(a) , 6 (b) & 6(c)

9b) NPV# 1834 – Humphrey and Sons vs. WSSC/Pinpoint UG

- Alleged Violation(s) – §12-126 (c) The facility owner did not mark their facility per state statute.
- Recommendation - \$2000 fine and training

Prior to the swearing in of witnesses, the Vice-Chair polled the board members, cited in the recusal motion, to see if they could proceed with the hearing without bias. Those individuals so swore. (See Exhibit #1)

The Vice-Chair then asked for representatives for the complainant, Humphrey and Sons and Defendants Pinpoint UG and WSSC. Hugh Humphrey, Jr. was present for the complainant. Lawrence Johnson was present for Pinpoint. WSSC again declined to testify. Ms. Georgia Goslee, counsel for Pinpoint UG was also present, representing both Pinpoint and WSSC. The Vice-Chair swore-in Mr. Johnson of Pinpoint, Mr. Humphrey and Jim Barron, Executive Director of the Authority, as witnesses for NPV# 1834 hearing.

Mr. Barron presented the research he had done for this NPV and entered the results into the official record for NPV#1834.

Laurence Johnson was given the floor to present his testimony. He presented Exhibit # 7 to be entered into the official record. After Mr. Johnson’s presentation, the Vice –Chair moved to close the hearing. Ms. Goslee asked that additional photographs be introduced at a later date. The Vice-Chair stated that she would accept additional materials provided they were delivered to the Authority by noon on, Monday, February 9, 2015. The hearing was closed at 3:45 p.m.

Note: The additional exhibits were delivered as proscribed and were marked Exhibit #'s 7(a) through 7(f)

9(c) NPV# 1841 – B&P Utilities vs. WSSC/Pinpoint UG

- Alleged Violation(s) – §12-126 (c) The facility owner did not mark their facility per state statute.
- Recommendation - \$2000 fine and training

Prior to the swearing in of witnesses, the Vice-Chair polled the board members, cited in the recusal motion, to see if they could proceed with the hearing without bias. Those individuals so swore. (See Exhibit #1 & Exhibits 1(a) through 1(d))

The Vice-Chair then asked for representatives for the complainant, B & P Utilities and Defendants Pinpoint UG and WSSC. No one was present for the complainant. Lawrence Johnson was present for Pinpoint. WSSC again declined to testify. Ms. Georgia Goslee, counsel for Pinpoint UG was also present, representing both Pinpoint and WSSC. The Vice-Chair swore-in Mr. Johnson of Pinpoint and Jim Barron, Executive Director of the Authority, as witnesses for NPV# 1841 hearing. Ms. Goslee then asked to incorporate into the minutes her verbal motion for dismissal. The motion was denied and noted.

Mr. Barron presented the research he had done for this NPV and entered the results into the official record for NPV#1841.

Laurence Johnson was given the floor to present his testimony. He presented Exhibit # 8 to be entered into the official record. After Mr. Johnson's presentation, the Vice –Chair moved to close the hearing. Ms. Goslee asked that additional photographs be introduced at a later date. The Vice-Chair stated that she would accept additional materials provided they were delivered to the Authority by noon on, Monday, February 9, 2015. The hearing was closed at 4:50 p.m.

Note: The additional exhibits were delivered as proscribed and were marked Exhibit #'s 8(a) through 8(f)

9(c) NPV# 1853 – Deneau Construction vs. WSSC/Pinpoint UG

- Alleged Violation(s) – §12-126 (c) The facility owner did not mark their facility per state statute.
- Recommendation - \$2000 fine and training

Ms. Goslee, noted the motion to dismiss NPV 1853 (Exhibit #9), which was introduced during the hearing for NPV# 1216.

Mr. Barron read into the record the email he received from Deneau Construction asking that the NPV be dropped. He explained that the Executive Director has no authority to nullify an NPV. Member Bell stated that the hearing should move forward.

Prior to the swearing in of witnesses, the Vice-Chair polled the board members, cited in the recusal motion, to see if they could proceed with the hearing without bias. Those individuals so swore. (See Exhibit #1 & Exhibits 1(a) through 1(d))

The Vice-Chair then asked for representatives for the complainant, Deneau Construction and Defendants Pinpoint UG and WSSC. No one was present for the complainant. Lawrence Johnson was present for Pinpoint. WSSC again declined to testify. Ms. Georgia Goslee, counsel for Pinpoint UG was also present, representing both Pinpoint and WSSC. The Vice-Chair swore in Mr. Johnson of Pinpoint and Jim Barron, Executive Director of the Authority, as witnesses for NPV# 1853 hearing.

Mr. Barron presented the research he had done for this NPV and entered the results into the official record for NPV#1853.

Laurence Johnson was given the floor to present his testimony. After Mr. Johnson's presentation, the Vice –Chair moved to close the hearing. Ms. Goslee asked she be able to make a summation. Her request was denied by the Vic-Chair. The Vice-Chair stated that she would accept additional materials provided they were delivered to the Authority by noon on, Monday, February 9, 2015. The hearing was closed at 5:40 p.m.

Note: The additional exhibits were delivered as proscribed and were marked Exhibit #'s 9(a) and Exhibit# 10.

Agenda Item 10:

Hearing Discussions and Decisions: NPV# 1216, 1834, 1841 & 1853

Moved to Executive Session

Agenda Item 11:

Old Business

Tabled until 03/03/15 meeting

Agenda Item 12:

New Business

Tabled until 03/04/15 meeting

Agenda Item 13:

Next Meeting

March 4, 2015; 9:00 a.m. - Business only

There being no further hearings and the remainder of the agenda tabled until the March 4, 2015. The February 4, 2015 Authority meeting as adjourned at 5:42 pm.

Respectfully submitted by: Susan Stroud