

UTILITIES SERVICE BOARD MEETING

April 14, 2008

Utilities Service Board meetings are recorded electronically or stenographically and are available during regular business hours in the office of the Director of Utilities.

Board President Swafford called the regular meeting of the Utilities Service Board to order at 5:07 p.m. The meeting was held in the Utilities Service Board room at the City of Bloomington Utilities Department Administrative Building in Bloomington, Indiana.

Board members present: Tom Swafford, Tim Henke, John Whitehart, Julie Roberts, Jeff Ehman, Pedro Roman, Jason Banach and ex-officio member Tim Mayer. Staff members present: Patrick Murphy, John Langley, Mike Bengtson, Phil Peden, Mike Hicks, Michael Horstman, Jon Callahan, Tom Staley, Jane Fleig, Mike Trexler and Rachel Atz. Others present: Donnie Ginn representing Black & Veatch, Steve Smith representing Smith Neubecker Associates, Rob Barnes and Cindy Fort representing American Structure Point, Sarah Morin representing the Herald Times, Ben Beard representing Gentry Estates, Margaret Fette representing the Libertarian Party and Sue Mayer.

MINUTES

Board member Roberts moved and Board member Henke seconded the motion to approve the minutes of the November 13th and March 31st meeting. Motion carried 7 ayes.

CLAIMS

Board member Roberts moved and Board member Roman seconded the motion to approve the claims as follows:

Claims 0890477 through 0890540 including \$101,472.64 from the Water Operations & Maintenance fund for a total of \$101,472.64 from the Water Utility; Claims 0830297 through 0830328 including \$210,452.69 from the Wastewater Operations & Maintenance fund for a total of \$210,452.69 from the Wastewater Utility; and claims 0870022 through 0870028 for a total of \$13,277.97 from the Wastewater/Storm water Utility. Total claims approved – \$325,203.30.

Ex-officio board member Mayer asked about the claim for Scottsdale insurance. Utilities Director Murphy said that the insurance company settled with Pinnacle school for damage done to a sewer main when boring was done at the nearby armory. Risk Management did not feel that Utilities had been negligent in any way but Scottsdale Insurance settled with them anyway. Board member Henke asked if the \$10,000 claim was the deductible. City Attorney Renfrow said that it was.

Board member Henke asked about the claim for Owens' Septic Service. Superintendent of Operations Staley said that during a heavy rain event there was a sewer back-up at Hospitality House on Curry Pike. T & D's trucks weren't adequate to keep up with the flow so they hired Owens to do it for them.

APPROVAL OF THE PROPOSED CHANGES TO RULE 24:

City attorney Renfrow said that there are two possible versions of Rule 24 which has to do with sewer extension approvals. One was developed in the Rules and Regulations Subcommittee although there is still some work to be done on it. The other is the version that was presented last fall to make the language fit with the new sewer extension map and also some slight modifications of the language in some other respects. It was generated by Planning Director Micuda. It mostly preserves the way these matters are handled currently in terms of extensions in the exclusionary area needing to go through the Mayor's Office.

Board member Henke said that the Rules and Regulations Subcommittee has spent a lot of time preparing a draft of the rule. He said that the sticking point with this draft is in the area of allowing a board member to challenge a sewer extension. He asked board member Ehman to explain his reasoning for that.

Board member Ehman explained that the reason that procedure was proposed in Rule 24 was to provide a way to protect the Utility against instances in which there is an automatic approval for a user that would need large volumes of water or add a large volume to the Wastewater/storm water Utility. There have been enquiries regarding proposals for developments that would require 1 million gallons per day of water use. The wastewater portion isn't known. None of the inquiries was for water bottling so it can be assumed that it would go to a wastewater treatment plant. This would have a large impact on the Utility both in capacity and finances. It would be necessary to assess whether or not Utilities would be able to provide for that type of situation. Mr. Ehman said it is hard to come up with specific examples but making the process automatic and subject to political pressures, as might be the situation with a director, could bring about repercussions such a financial, environmental or a systems issue. This is the reasoning behind including that procedure.

Board member Henke said that as it is written it is not as clear or as limited as the Rules & Regulations Subcommittee had intended. There is more work to do if that procedure is kept as a part of Rule 24 but some USB members have indicated that they do not like this part of the rule.

Board member Banach said that one of the over-arching concerns that he has is understanding the hesitancy of leaving the decision to the staff. In particular he does not believe that the director would be subject to any more political pressure than the members of the USB might be. He said he senses a hesitancy to trust the staff that isn't seen in other city departments. Mr. Ehman said that his thought is that Rule 24 was a change from the previous policy. It was put in place by the former administration and is a power that the USB advocated for. He believes the USB should retain the right for review if they have a concern.

Board member Whikehart said that he has a few areas of concern with the proposed language for Rule 24. In section 24.2 area A is spoken about as an area that generally allows sewer connections. He said that he has been on the USB for 3 years and for all of those 3 years work was done on the sewer extension map. There was finally consensus about the map from multiple players. He interpreted the meaning of the map to be that area A is pre-approved for sewer extensions and he thinks everyone agreed with that. In 24.2 the Director is authorized to make those decisions. If he denies such a request there could be an appeal process that would allow the request to come to the USB for them to take a look at it. In 24.2 the criteria for the director to consider in making extension decisions is spelled out. Mr. Whikehart is reluctant to do that because that is reason there is a professional staff. The criteria could change so he doesn't want to specify what they may be. He had listened closely to what Board member Ehman said and he feels if a member of the USB were to say they have their own concerns about a petition for a sewer extension in area A that member could be subject to political pressures as board member Banach noted. All the USB members have different constituencies who want to talk to them about different things all the time. Mr. Whikehart said that he has to rely on the staff to protect the Utility from automatic approval of issues that could affect capacity and some of the other things that are mentioned. As the language is written now it would imply that if any of the USB members brought a concern about area A to the USB, suddenly area A becomes exclusionary area B. He doesn't think that was anyone's intent but that is certainly a major correction that must be made. Otherwise the whole purpose of the map designating area A and area B will have been negated, wasting 3 years of work. When he looks at the area B exclusionary area, which is the area the subcommittee committee would evaluate when taking a request under consideration, numbers 6 and 7 of the rule gives the USB the ability to make determinations about, not plant capacity, not sewer extensions, not policy related to

the Utility, but policy related to economic development and development that benefits Bloomington. He does not believe that he was appointed to the USB to make those kinds of decisions. The USB should not set itself up as a quasi planning board or a shadow board that sits in judgment of whether a development offered in area B is one that the USB believes has sound economic development potential or would benefit Bloomington. He doesn't believe that is his role as a member of the USB. For those reasons he cannot support the draft as it is currently written.

Board member Henke said that as long as there is an area B there will be appeals for service in area B. In the Rule 24.5.1 and 24.5.7 are meant to give the USB some sort of criteria to allow an appeal for service if service is to ever be allowed in that area. He asked Mr. Whikehart if he had suggestions about how to handle that. Mr. Whikehart said that the exclusionary area language that is proposed would bring petitions for extensions into area B to the USB instead of through the Office of the Mayor and through that particular process, yet those are the same people who are to be involved in helping the USB make the discussion. Mr. Whikehart is reluctant to write the prescription for what makes an appropriate sewer extension request for professional staff. He is inclined to direct them to come up with what the criteria are and to stick to them. Board member Ehman said that the staff cannot provide all the information necessary to make a decision. That's why they have the Mayor giving a determination of economic benefit to the city. Mr. Whikehart said he thinks with the way the application process is written for area B, with all the folks involved, any application for extension of services will certainly be well vetted. To include almost every conceivable department and elected body in the process and allow them to have input and then to turn around and prescribe exactly what they must look at isn't a good direction to go. Mr. Ehman said he agrees but it does say "and other things" which means there are even more.

Board member Henke commented that Attorney Renfro had argued strongly in favor of including the criteria. He asked her to explain why that was. Ms. Renfrow said there is a constant balancing when drafting legislation or rules. There must be enough information so there is some predictability without being too limiting. If there isn't some indication of criteria it sounds like the USB will decide depending on how they feel about it. That is why she had solicited from the subcommittee the kinds of things they had in mind. They are broader than what is in the current rule. In the current rule it is basically economic development and specifically job development. If someone is going to go through this process they should know the kinds of things that will be considered. It is not exhaustive; it does reflect that other governmental entities would need to be consulted with to get all the information to go through the vetting process. Board member Whikehart said what troubled him as he looked at points 1 through 7 is that the growth polices plan and the comprehensive plan have always been there and the potential to the Utility in terms of cost is already there. Effluent and environmental benefits and existing regulatory measures are all there. Currently the Mayor's office would advise the USB affirmatively that there is an economic value to the project. What troubles him is suddenly it seems to be saying that the USB doesn't want the Mayor's Office to do that any more but will do it themselves. He doesn't know how the USB can say they should determine issues of economic development and benefit to the City of Bloomington. Mr. Henke said he doesn't think it was meant like that. If a development was of some great benefit to the City this was meant to allow that to be weighed as a criteria. He assumed that input would come from some of the listed entities. Mr. Whikehart said that is why he felt they didn't need to be listed.

Board member Roman said that what is needed is consistency. If the USB is going to apply the Growth Policies Plan and the Comprehensive Plan and he believes there is a mandate to do that, they will have to be somewhat of a Plan Commission. There is no way to avoid that. The City Plan Commission consults with their staff, then they will make a decision as to whether the proposed plan is compliant with the Growth Policies Plan and the Utilities staff will make a decision about a sewer. However, in the County projects are approved that are against the Comprehensive Plan. The USB would be right to say that isn't their business. Is the Utilities staff qualified to decide if a petition in area A follows the Comprehensive Plan? Utilities Director Murphy said Mr. Roman had raised a good point. The Mayor's

Office has appointed the Plan Director as an ex-officio member of the USB. He is always involved in these kinds of decisions and they rely on his knowledge to make them. Mr. Roman asked if the USB would go to the City's Planning Director for information about the County's Comprehensive Plan. He said he doesn't see why the same can't be done for area B. Just let the staff make the decisions about the sewers. If the decisions will be stripped of anything but technical considerations he would like to leave all the decisions for everywhere to the Director. It makes no sense to him to differentiate between area A and area B unless there is a case where there is a strong economic development benefit, in which case he thinks the recommendation of the Mayor for the project would be good enough. If it is only a technical decision he sees no reason to change the plan from the way it is now.

Board President Swafford said that Rule 24 came into being when the County took back the 2 mile fringe. It took 3 years to get a sewer map of area A. Area A is to be treated just like the City. The County was asked to identify the areas where they want growth. Utilities staff modified it and approved a map saying that is where sewers would go. The County Plan Commission will decide whether a project is acceptable. As long as the criteria that Utilities has for getting a sewer in place are met, Mr. Swafford has no problem with relying on the staff. Area A should be treated exactly like the City. Rule 24 should really deal with area B. Mr. Swafford said that the staff would have gone through all of the things outlined in the new draft of the rule before bringing anything forward. The USB is not qualified to know whether something is important for economic development. A lot of the new language is over kill. Mr. Swafford said he has made it clear that he will not support anything in area B for the next 5 years. A lot of time has been spent on a map of where the County says they want growth. That is what will be relied on. If the staff approves something in area B they will have already done everything that is listed in the draft of Rule 24. Then the County would also have to agree to it. Appeals should only occur when something is denied. In the past the staff has denied a couple of requests that the USB has overridden. They have approved a couple of sewers in a couple of places where they felt it was the right thing to do. Rule 24 should still give the USB the right to do that. Mr. Swafford said he will not support this if it goes forward. This should be a very simple rule that says that area A will get sewers and the staff will see that it is done in accordance with Rules & Regulations. Area B will not get approval unless it can be shown that it is of great benefit to the community which means the County and the City would have to approve it has economic development benefits.

Board member Henke suggested that the Rules & Regulations Committee meet again on Thursday, April 17th at 4:00 p.m. Board President Swafford said this action will be delayed until the Rules & Regulations comes back with a new version.

City Attorney Renfrow suggested that to have a rule that has language that fits with the new map it would be a good idea to go ahead and approve the version the administration has proposed, which does that and very little else. The Rules & Regulations Subcommittee could go ahead with the work on their new version. There is some concern that there is not a rule with language that fits the map.

Board member Whitehart moved and board member Roberts seconded the motion to approve the map that was submitted by the administration.

Board member Henke said he didn't think that was necessary. He feels the map was approved by the USB whether it was written or not. There has been complete agreement about that. He thinks they should finish Rule 24 and get it right.

Attorney Renfrow said there is a problem with the rule which talks about municipal boundaries. Part of area A is outside of the municipal boundaries. This has left people who are outside of the municipal boundaries but inside area A not knowing how the situation will be dealt with, because the rule says one thing and the map says a different thing. Mr. Henke said he doesn't want to be stubborn about it, he just thinks that when the USB voted to approve the map it was the latest action taken. Whether it is written

or not he thinks it has the affect of the rule. Board member Roberts pointed out that Ben Beard of Gentry Estates had come before the USB at the last meeting to tell them that this is not what is actually happening. Mr. Henke said that was because a board member had gone to the County Plan Commission and said otherwise.

Board member Banach said he wanted to be clear about this. If there is not an affirmative vote for Attorney Renfrow's suggestion at this time then there is no acceptable language to back up what the map says currently. Board member Henke agreed that was the case. Board member Ehman asked if it isn't correct that has been the condition for a number of months and they will be meeting next Monday to come up with a new version. Mr. Banach said that his concern is that this is limiting predictability which is something that has been very important to him ever since he has been involved in politics. He doesn't think that it is good to have been operating that way for months.

Board member Roman said he didn't think an extension had been granted because the language wasn't there. During the meeting where the maps were approved there was a discussion about the need to update rule 24 and that's what they are doing. He wants to resolve rule 24 so it resolves and satisfies the needs of staff versus the Growth Policy Plan and the Comprehensive Plan. The real problem is that Utilities are being extended to areas that are being treated as if they are in the City but they are not the City or under the jurisdiction of the City. There is a reason why there is such a thing as jurisdiction of boundaries. He said he doesn't know how he will vote.

Board member Henke said he would approve the motion if the USB will continue to help get the new rule 24 done. He doesn't want it to sit on the shelf. Board President Swafford said the Rules & Regulations Subcommittee will be meeting next week.

Board President Swafford asked for a role call vote as follows:

John Whikehart – yes
Jason Banach – yes
Pedro Roman – no
Julie Roberts – yes
Jeff Ehman – no
Tim Henke – yes
Tom Swafford – yes

Motion carried, 5 ayes and 2 nays.

APPROVAL OF THE CONTRACT WITH AMERICAN STRUCTURE POINT:

Assistant Director of Engineering Bengtson said this contract is for \$211,098.50 which is an amount that was included in this year's budget. Utilities' has 43 lift stations. The GIS staff has checked into the age of each of them and they range from 1964 to the latest one in 2007 on Vernal Pike. There are many different era's represented by the lift stations. The information on some of the older ones is incomplete. There are different styles of lift stations also. The Engineering Department has tried over the years to develop a web page that would contain information about this. He wants to use this effort as a master plan for the lift stations. Mr. Bengtson explained that American Structure Point operated under the name Ace for many years and has worked for Utilities before. The Smith Avenue lift station was refurbished a few years ago and Cindy Fort of American Structure Point had helped with that. She was also instrumental in helping with the State Road 48 widening that is happening on the west side of Bloomington. A part of that project is to remove a lift station at the entrance to Daniel's Way in favor of a lift station at Fieldstone which will be made into a regional lift station. Ms. Fort was able to negotiate reimbursement for that project.

Board member Banach asked if this contract had gone out for bid. Mr. Bengtson said there was no bidding for professional services. He feels very confident in Utilities relationship with American Structure Point. They have done good work for Utilities before.

Board member Roman said that he had read the material about this project and he feels it is very important. He is glad to be able to support it.

Board member Ehman asked what processes will be put in place to insure that the knowledge base is kept updated in the future. Assistant Director of Engineering Bengtson said that would be a part of the final product. American Structure Point will populate the finished product with the data they will collect. Mr. Bengtson said that will be a part of the final product they will deliver. They will make sure it is consistent and current. Right now the maintenance of the lift stations is being kept track of on a spreadsheet that will be incorporated into this project. When new lift stations are built information about them will be included on the web site right away. Some of the lift stations were put in in a very preliminary way. They are in drainage basins that will eventually be populated by other developments. As that occurs the impeller in the pumps will have to be enlarged. This kind of information will be tracked. Mr. Ehman said that his only concern is once the project is over and all the information is current he doesn't want to see it remain static and that there is a plan in place to update it over time.

Ms. Fort, representing American Structure Point, said that systems have to be updated and the goal for them is to work with the operations/maintenance staff and the engineering staff, as the knowledge base is developed, so it is easy to use. When a maintenance crew goes out to do maintenance on a lift station and change out a gizmo, they have an easy way to put that into the data base so they will know they have a new gizmo and that it should be under warranty for repair. The data base entry will be very easy for the staff to use so they will use it for updates. Engineering can also use it for planning for capital projects to prioritize things so there are fewer surprises. Mr. Ehman asked if American Structure Point had built this kind of system for other communities. Ms. Fort said they had built similar systems. There is never one that is exactly the same.

Assistant Director of Engineering Bengtson said a knowledge base has been developed by IT and is a place they go now to extract information from. They want to make something that will harmonize with that. Mr. Ehman asked if they post stuff also and if it is going well. Mr. Bengtson said it is used and is going well.

Board member Banach said he doesn't have a problem with this contract since its for professional services and Utilities is comfortable with the company, however when a contract is for \$200,000 he thinks it would be a good idea to shop around a bit.

Board member Roberts moved and board member Whitehart seconded the motion to approve the contract with American Structure Point. Motion carried, 7 ayes.

APPROVAL OF CHANGE ORDER NUMBER 5 FOR CDI:

Capital Projects Manager Hicks reminded the USB that CDI is the Terre Haute based company that was responsible for building the new building. Along the way to closing the project there were some delays. They ended up with finger pointing and discussions about who was responsible for the delays. Several months have been spent trying to close this project. There was a claim for additional service fees for the architects for \$35,000 on the claim list for the last meeting. That claim was approved and paid. Mr. Hicks had told the USB that he would be coming back with a document that will assist in recovering a portion of that \$35,000. The amount will be \$25,000. This Change Order is a deduction on the contract

amount of \$25,000. In the spirit of compromise the contractor agreed to reimburse that amount. All the final documents have been received. With this Change Order the amount of retainage that Utilities is holding can be reduced by \$25,000, the contractor can be paid and the contract settled.

Board member Whikehart moved and board member Ehman seconded the motion to approve Change Order number 5 for CDI. Motion carried, 7 ayes.

APPROVAL OF PROFESSIONAL SERVICES FOR THE SOUTH EAST WATER SYSTEM IMPROVEMENTS:

Assistant Director of Engineering Bengtson said he is asking for approval of the contract and its scope including authorization to initiate phase 1. There are 5 phases of this contract with Black& Veatch. Phase 1 is design and bid phase services for the South East water system improvements that are commonly known as the second pipe line from Monroe WTP into town. The design and bid phase is \$1,410,000. There is \$1,550,000 designated as a line item in the budget for this design phase work.

Board President Swafford asked about the changing sizes of the pipes. There is a 36" line from the treatment plant to Harrel Rd. and Moffit Lane, then a 30" pipeline from Harrel Rd. and Moffit Lane to the proposed pump station site and then a 36" transmission main. He said he doesn't understand why it goes from 36" to 30" and then back to 36".

Donnie Ginn, representing Black & Veatch, said that the hydraulic modeling that they performed as a part of the long range water capital plan showed the distance to the south tank and the new south east tank is 1,000' so they need to burn a little bit of head to equalize the two. They will evaluate it further as they get into the design. Mr. Swafford said that it appears to him they are creating a bottle neck. Mr. Ginn said it will cause a velocity increase but it will be evaluated again. In the scope there is some initial hydraulic modeling they will need to verify. Mr. Bengtson said if there were less resistance in one pipeline than the other, one tank would fill much faster than the other. They should fill in unison.

Mr. Bengtson clarified that the request for approval is for the entire contract with authorization to proceed with phase one.

Board member Roberts moved and board member Henke seconded the motion for approval of design and bid phase services for the South East Water System Improvements. Motion carried, 7 ayes.

OLD BUSINESS:

No old business was presented.

NEW BUSINESS:

No new business was presented.

SUBCOMMITTEE REPORTS:

There was a Rules & Regulations subcommittee meeting that was discussed earlier in the USB meeting.

STAFF REPORTS:

There were no staff reports.

PETITIONS AND COMMUNICATIONS:

There were no petitions or communications.

ADJOURNMENT:

The meeting was adjourned at 6:01 p.m.

L. Thomas Swafford, President