

UTILITIES SERVICE BOARD MEETING

December 20, 2007

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 5:04 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, Julie Roberts, Jeff Ehman and Pedro Roman. Staff members present: Patrick Murphy, John Langley, Jon Callahan, Mike Trexler, Mike Bengtson, Mike Hicks, Adrian Reid and Michael Horstman. Others present: Scott Dompke representing GRW, Ben Beard representing Gentry Estates, Paul Soderquist representing Black and Veatch, Sue Mayer, John Diamond, John Burnham Sr., John Burnham Jr., Mike Snapp, Marc Haggerty and Suzette Weakly.

MINUTES

Board member Roberts moved and Board member Ehman seconded the motion to approve the minutes of the December 10th meeting with "ex-officio member Tim Henke" being changed to "ex-officio member Tim Mayer". Motion carried. 4 Ayes, 3 members absent, (Banach, Henke and Whikehart).

CLAIMS

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

Claims 0791917 through 0791985 including \$166,720.05 from the Water Operations & Maintenance fund, \$56,600.00 from the Water Construction fund and \$1,400.00 for water hydrant meter rental for a total of \$224,720.05 from the Water Utility; Claims 0731158 through 0731215 including \$122,006.51 from the Wastewater Operations & Maintenance fund for a total of \$122,006.51 from the Wastewater Utility; and claim 0770129 for a total of \$2,677.26 from the Wastewater/Stormwater Utility. Total claims approved - \$349,403.82.

Board member Ehman asked what the benefit was in sending 31 employees to the IWEA conference. Deputy Director Langley said that this conference has many on-topic presentations for Utilities' employees. Another major reason for so many people attending is because Utilities requires all the operators to be certified by the State of Indiana that they have the minimal knowledge, skill and ability to do their jobs. Part of that certification is a continuing education requirement. The employees receive continuing education credits when they attend such conferences.

Board President Swafford asked if the HNTB project at Dillman Road was on schedule. Capital Projects Coordinator Hicks said that the contractor for this project was Bowen Engineering. A substantial completion certificate had been authorized for the project the previous week. That is about 60 days behind the schedule for the contract. There had been a meeting earlier in the day with HNTB, the engineering consultant for the project, to discuss how the project will be closed out and monetary compensation for the damages the delay caused.

Motion carried. 4 ayes. 3 members absent, (Banach, Henke and Whikehart).

Wire transfers and fees for the month of November 2007:

Board member Roberts moved and Board member Ehman seconded the motion to approve the wire transfers and fees for the month of November 2007 in the amount of \$596,672.10.

Motion carried. 4 Ayes, 3 members absent, (Banach, Henke and Whikehart).

APPROVAL OF CHANGE ORDER NUMBER 2 FOR REYNOLDS INLINER, LLC:

Utilities Engineer Peden said this change order is for the C.E. Mini-basin 6 & 7 Rehabilitation Project. This was the first of two sewer lining projects that had been approved in November of 2006. Originally 3 million dollars was budgeted for the two projects, 1.5 million for each of them. The original contract amount was \$766,410.00. Change order number one was for \$101,310.00 which was based on the good unit prices received on the original contract. This allowed the project to be extended into the South Downs area just east of Bryan Park. Change order number two is for \$10,962.00 for a total contract amount of \$878,682.00. That left \$621,318.00 that may be used for more lining projects.

Board President Swafford asked what the \$10,962.00 would cover. Mr. Dompke, representing GRW said it was the final quantity adjustment for the material list.

Ex-officio board member Mayer asked if this project was to deal with the sanitary sewer overflow problems in the area. Mr. Dompke said it was.

Board member Roberts moved and board member Roman seconded the motion to approve Change Order Number 2 for Reynolds Inliner, LLC. Motion carried. 4 Ayes, 3 members absent (Banach, Henke and Whikehart).

OLD BUSINESS:

Utilities Director Murphy gave the USB a list of properties he had received from Beazer Homes that they had built houses on that weren't yet occupied. Beazer is asking to receive the summer sewer average for watering newly placed sod at these properties. Mr. Murphy is reluctant to allow this since the summer sewer average isn't geared for that. These are not pre-existing homes and there are no pre-existing records on which an average could be based. The summer sewer average is based on an average of the April and May usage. He asked the USB if they thought it would be appropriate to offer the summer sewer average to a business entity.

Board President Swafford suggested that this issue be referred to the Administrative Subcommittee. Mr. Murphy agreed.

NEW BUSINESS:

Board member Ehman asked if Hanum, Wagle and Kline had been notified to proceed with the review of Phase 2 of the Long Range Water Plan. Assistant Director of Engineering Bengtson said he had been discussing the contract with them during the previous week. They are still working on the exhibits that will be attached to the final contract. He had expected it in the mail that day but it had not come. They probably will not start on it until after Christmas. There have been some difficulties with some of the legal language.

Board member Roman said he had been receiving some phone calls and email messages from people who had liens put on their property because their tenants had left without paying their wastewater bills. He asked that the possibility of requiring a deposit for service be studied. He agrees that the law requires that liens be placed on properties with unpaid wastewater bills but he thinks it would be a good idea to find a way to avoid doing it.

Board President Swafford said that it could be looked into.

Board member Ehman pointed out that one of the financial consequences of these unpaid bills is that the USB writes them off if they are under \$40 and more than 90 days overdue. Recently about \$18,000 had been written off.

Utilities Director Murphy said that he thinks that under state statute it might be necessary to pay interest on deposits.

SUBCOMMITTEE REPORTS:

No subcommittees had met.

STAFF REPORTS:

There were no staff reports.

PETITIONS AND COMMUNICATIONS:

John Burnham said he had come to address an issue that has developed over the past 6 or 7 weeks. He is building a new building at 320 S. Dunn St. On November 14th he applied for a water hook-on. All the required plans were submitted. He was told that the water hook-on would not be allowed until he agreed to put storm drains in Dunn Street. The building is designed so that all the water goes to a detention pond built underneath the parking garage. The detention pond will hold about 10,600 gallons of water. There is no water run off from this property. Ten years ago he put in a storm sewer on Dunn Street from Smith Avenue to Third Street so all the properties along there, except for about 4 downspouts, flow to the back of the properties and into the storm sewer. The six buildings are contributing a negligible amount of run off to the street. Whenever it rains water collects on Atwater Avenue. There are no storm sewers from Second Street to Third Street other than the one put along Dunn Street by Mr. Burnham. This had not been required of them but they did it anyway. The sewer line was extended back to the ally and inlets were put in at the spots the water flowed to naturally. Now he has been told he must put in another 147 to 160 feet of storm sewer on Dunn Street and install 2 new inlets. One of his concerns is that there is a possibility that the exit ramp for Dunn St. is going to be moved south about 100 to 150 feet to allow more of a delay before the curve. If that occurs the water from Atwater Avenue will come down to Dunn Street and into the inlets. He wants to know why he has to assume the responsibility for the storm sewers on Dunn Street when he has been careful to make sure none of the runoff from his properties goes to Dunn Street. He has been told that he will not be allowed to have the water hook-on until he has agreed to put in the storm sewers on Dunn Street. He doesn't think it is his responsibility to correct an issue that the City should be handling.

Board President Swafford said that this matter should be taken up by the Engineering Subcommittee.

Ex-Officio board member Mayer said that he believes the City Council put \$100,000 in the 2008 budget for the design of the Atwater, Henderson and Third Street intersection which does anticipate what Mr. Burnham had said.

John Diamond asked if this would be the appropriate time to discuss what he has read in the newspaper about delinquent payment of water bills by tenants. His understanding is that if a tenant disappears without paying the water bill a lien is put on the property until the bill is paid by the owner of the property. Mr. Swafford agreed that it would be appropriate to discuss that. Mr. Diamond said he believes that is not a logical solution based on what is right and what is wrong. He owns some rental properties and he knows that regardless of the water issue the taxes are twice as high as they would be for an owner occupied property. He suggests that the reasons for a person to not pay their bill are because they don't have the funds or they have no intention of making a payment. Mr. Diamond thinks that someone is looking for someone to dump the bill on. It doesn't seem logical or right that one person would have to pay for the services someone else received. He would like to have the fairness of it explained to him.

Board President Swafford said that the State Audit is requiring this action from Utilities. City of Bloomington Utilities has been written up for the past 2 or 3 years because they have not followed the law in filing liens for wastewater. Liens may not be filed for water only wastewater. The State mandated that utilities must do this. An attempt to collect from the tenants is made and unpaid accounts are turned over to a collection agency before the lien is filed. If it becomes impossible to collect from the tenant the State requires that the lien be placed on the property.

Mr. Diamond agreed that the problem might not lie with Utilities but with the State. He still doesn't see any logic in it. Mr. Swafford said that if the USB thought this policy was a good idea they probably would have been doing it years ago. Mr. Swafford recommended that all rental property owners register their properties with City of Bloomington Utilities which will allow them to check on line to see if their tenant's bill is paid up before they return the deposit. Mr. Diamond asked if a deposit is required when tenants sign up for service. Mr. Swafford said that Utilities used to do that but there was an issue with the amount of staff time deposits required and the interest that had to be paid on them. He said that nevertheless the USB will be looking into reinstating the policy of charging a deposit. He added that the deposit was also very unpopular. Mr. Diamond reiterated that the present policy is logically unfair.

John Burnham Jr. said that he hadn't planned to speak because his father had covered what they had come to talk about. However, when it comes to the past due water bills, one of the problems he sees in the billing system for rental properties is the billing cycle. If a resident moves out August 14th, which is when most of their releases expire, a bill is not generated until September 1st. If someone moves out September 1st the meter is not read until they cancel service and a full month may pass before the bill arrives. Because of the way Utilities' billing cycle works he may not be able to return deposits until October. He believes the bills should be generated as soon as service is cancelled. He understands that might cost more due to the accounting requirements but if the tenant transfers service out of their name and it automatically goes into the landlord's name then the people should be billed shortly there after. The delay allows people to leave town with no intention of paying the bill or things can get lost in the shuffle. He thinks it would be easier for Utilities to collect their money if the bill came more quickly.

Board President Swafford said that this is not a situation he can address. People have all different dates when they may move out. He encouraged people with rental properties to check with Utilities before they return deposits.

Mr. Burnham Jr. said he was glad to know this free service is being offered. It's the first he's heard of it.

Suzette Weakley said that she came to represent a lot of people from the Bloomington Board of Realtors. They are cooperating with the Monroe County Apartment Association to try to work on this situation at a state level. In the meantime she doesn't think that the suggestion that the landlords withhold the unpaid bills from the deposit with the landlord is practical. If a tenant left owning money to Utilities they probably also owe past rent to the landlord. They may have also left the apartment in a condition that the deposit couldn't possibly cover. The only good local solution would be for Utilities to collect a deposit themselves. This is the only utility that people have to go and physically sign up for. She said she's sorry if it is inconvenient for Utilities to have to collect deposits. It's something that landlords have had to deal with for years. She feels that Utilities is transferring their job to her. It's not her job to collect a deposit for Utilities. She wants to know who is representing the landlords in the City of Bloomington.

Marc Haggerty said that he is also a landlord. He bought a lot and spent a year fixing up the house. He rented it to someone who left without paying three months rent and it took him another month to get it fixed up to where it could be rented again. Four years later he has been sent the water bill for this person and told that if he doesn't pay it a lien will be placed on his property, which has happened. He calls this theft. Something is being taken that does not belong to the person who is taking it. He believes that men do not steal from each other. If the State Legislature were to tell him that he has to steal from Utilities he would not do it. The same as when he was a Marine in Viet Nam he would not have shot a prisoner just because he was told to do it. The reason Utilities shouldn't be doing this is because of the Constitution. Every public official in the state has sworn to uphold the Indiana Constitution. He read article one, section one which he believes that most public officials have not read. He emphasized that the people have an indefeasible right to alter the Constitution. He is asking for a Constitutional intercession. Section 24 of the Constitution says that no law impairing the obligation of contracts shall ever be passed. The USB has transferred his former tenant's debt to him. This is not just theft but unconstitutional in his opinion. Section 21 says that no person's services shall be demanded without just compensation. The USB is asking landlords to be the holder of their deposits and the collector of their money. If they don't the Sheriff gets sent to separate landlords by main force from their land. That is this process exactly according to Mr. Haggerty. It's the Sheriff who comes to separate them from their land. The Constitution says that the General Assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens. That is exactly what the USB as the Board of Directors of this Corporation have done. They have created a class of citizens that do not have to have the same business practices. Utilities do not need to collect a deposit because they have a mortal lock. It's not just not fair. It's theft. It's not just theft because it is the Sheriff who supports it with a use of force. He says that the Municipal waste water Attorneys lobbied for all this for the tens to multi million dollars corporation that is probably the biggest contractor in the County. He would like to have the Legal Department go to work for the citizens to stop this theft from occurring.

John Burnham Sr. asked how long a bill can be delinquent before the water is shut off. Assistant Director of Financing Horstman said that it usually takes 30 to 60 days. Mr. Burnham suggested that if the bill is not paid when it is due there should be some consequences. One consequence would be to shut off the water and he suggests that it be done as quickly as possible. Not in 30 to 60 days. He asked if credit is checked when water service is applied for. He thinks that should be looked into also.

ADJOURNMENT:

The meeting was adjourned at 5:37 p.m.

L. Thomas Swafford, President