

UTILITIES SERVICE BOARD MEETING

September 14, 2009

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 5:02 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, Sam Frank, Julie Roberts, Pedro Roman, John Whikehart, Jason Banach and ex-officio members Tim Mayer and Tom Micuda. Staff members present: Patrick Murphy, Michael Horstman, Missy Waldon, Jane Fleig, Shawn Miya, Jon Callahan and Vickie Renfrow. Others present: Jeff Fanyo representing Bynum Fanyo & Associates, Inc, Michael Eaton representing Rubicon Construction, LLC, and Sue Mayer.

CLAIMS

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

Claims 0991168 through 0991251 including \$152,966.76 from the Water Operations & Maintenance fund and \$1,400.00 for water hydrant meter rental for a total of \$154,386.76 from the Water Utility; Claims 0930672 through 0930729 including \$196,895.16 from the Wastewater Operations & Maintenance fund for a total of \$196,895.16 from the Wastewater Utility; and claims 0970070 through 0970079 for a total of \$24,548.57 from the Wastewater/Storm water Utility. Total claims approved – \$375,830.49

Board member Frank asked about a large customer refund for Fazoli's. Assistant Director of Finance Horstman said that Fazoli's had a very large leak. They filled out all the required paper work so it was possible to make an adjustment to their account. Board President Swafford asked if the refund had been for the wastewater charges. Mr. Horstman said it was.

Mr. Frank also asked about a claim for video equipment. Utilities Director Murphy said it was for use in the camera truck.

Mr. Frank asked about 2 claims for Bynum Fanyo. Mr. Murphy said there would be a discussion of that later in the meeting but they are for the design for the reconstruction of the culvert under the Linnemeir building.

Utilities Director pointed out the claim for Illinois Central Wastewater Treatment Plant. He reminded the USB that this is a pass through charge. Utilities just administers the funds. Ex-officio board member Mayer asked if that would be an on-going relationship. Mr. Murphy said within 60 days the EPA and CBS will take over operation of the facility.

Motion carried, 6 ayes, 1 member absent, (Henke).

RENEWAL OF HALL SIGNS INDUSTRIAL PRETREATMENT PERMIT:

Pretreatment program inspector Miya said that Hall Signs is a local metal finisher that is regulated by the EPA. Their current permit will expire on September 20, 2009. It will be renewed for a period of 4 years. The only thing that has been added is a requirement for

biennial samples for low level Mercury. The Dillman Road WWTP NPDES permit has a new requirement for sampling for low level Mercury and also sets a limitation for it.

Board President Swafford asked if this will be a requirement for all future permits. Ms. Miya said it would.

Board member Banach asked how low level Mercury is defined. Ms. Miya said it is a particular sampling technique that uses nanograms per liter. That means there is a very low amount of Mercury that is acceptable. When sampling other metal finishers in the community no problems were found. This requirement is just to make sure the Wastewater Treatment Plants are not receiving any Mercury and if they are, measures can be taken to prevent it because of the limitations on the NPDES permit at Dillman Rd. Mr. Banach asked if the current NPDES permit allows a certain level of Mercury. Ms. Miya said the new NPDES permit is not yet available but a draft of it does show limitations on low level Mercury. Right now all that is required is sampling but the new permit will have limitations. Mr. Banach asked exactly what level is permissible under the new NPDES permit. Ms. Miya asked if he meant at the plants or in the Hall Sign Permit. Mr. Banach said he was interested in Hall Sign's new permit. Ms. Miya said the limitation is 140 nanograms per liter or .00014 mg. per liter. Mr. Banach asked who establishes the limits. Ms. Miya said they are defined in our local ordinance. Mr. Banach asked if Utilities could establish a limit that is stricter than the one required by the EPA. Ms. Miya said Utilities cannot be any less stringent than the EPA. Board President Swafford said he thinks Utilities can be more restrictive. Ms. Miya agreed. Mr. Banach asked that Ms. Miya find out if the local limit is more restrictive than the EPA's guidance and if so how much stricter.

Board member Roberts moved and board member Roman seconded the motion to approve the renewal of the Hall Signs Industrial Pretreatment Permit. Motion carried, 6 ayes, 1 member absent, (Ehman).

REQUEST FOR APPROVAL OF THE RED FLAG RULE POLICY REVIEW:

Attorney Renfrow with the City of Bloomington Legal Department said that the Red Flag issue was brought up briefly in April. There was a May 1st deadline for getting a program in place but that was extended to August 1st.

Ms. Renfrow says this relates to legislation that requires entities that have accounts where products or services are sold or provided and monthly payments are made depending on how much was purchased of those services. Utility accounts, including municipally owned ones, are covered. The point of the rule is to make the creditors (Utilities would be a creditor) pay attention to things that might arise that should cause them to wonder if there might be some kind of identity theft going on or some other kind of fraudulent activity. The rule requires that a program be adopted to identify red flags and have a way to respond to them to try to mitigate identity theft in the administration of these kinds of accounts. The legislation is really more focused on for-profit entities, especially credit card companies but it does also apply to Utilities. There are no other accounts in the city that would fall within this policy.

The requirement is to adopt a program although there are no specific terms that must be adopted. In the Federal Register there is a discussion of the policy and a sample is provided of the kinds of things that should be considered. The policy that the USB is considering was taken almost verbatim from the sample in the Federal Register with the exception that there were things clearly related to financial institutions that were removed since they didn't apply. This policy is just a device to bring the creditor's attention to the kinds of things that should be noticed and dealt with. It is required that it initially be approved by the governing body of the entity, in this case that is the legislative body which is the City Council. After the Council has

approved it the policy can be changed or modified at any time. On-going re-evaluation of the policy is encouraged.

To develop the program that is in the USB packet Ms. Renfrow got samples from a number of different cities around Indiana and met with Accounting, Customer Service and IT staff. Using the guide of the policies and the language in the Federal Register the proposed program was developed. If adjustments are needed as time goes by that may be done.

The identifying red flags are suspicious documents, suspicious personal identifying information, and unusual use of or activity related to covered accounts. The description of these red flags is mostly verbatim from the Federal Register with the exception of language that wasn't really applicable. There are some situations where the example wasn't relevant but the language might be important such as the use of outside documents to check into a discrepancy. The kinds of documents that might be required for opening and deactivating accounts should verify that people being dealt with are honest and are who they say they are.

In Part 3 the response to red flags is described. There are stages or steps of response if something comes up.

The final section describes who is responsible for administering the program in Utilities. That will be the Assistant Director of Finance who will be assisted by representatives from ITS and the Customer Service Coordinator.

Board President Swafford reminded the USB that the first draft they had seen included 26 steps in it that everyone agreed should be removed. The document was modified to reflect this.

Board member Roman asked who will review the program. Ms. Renfrow said it would be the Program Director and the Director of Finance. Mr. Roman asked if the USB would approve any modifications of the program. Ms. Renfrow said the USB can set forth any requirements they want to including having modifications brought back to the board. Mr. Roman asked that be made part of the motion.

Board member Roman then asked Ms. Renfrow to explain the portion of the rule regarding third parties. Ms. Renfrow said there are contracts with some third parties that could give them access to personal identifying information. They will have the same red flag requirements imposed on them but Utilities must make sure they have a policy in place and are doing the same kinds of things to prevent identity theft. If necessary Utilities can share their red flag program with third parties and would certainly want to see any program they have adopted.

Mr. Roman said he is concerned about a section that addresses the situation of personal identifying information being inconsistent when compared with external information used by Utilities. He said he is as concerned with the protection of privacy as he is with identity theft. He asked for some examples to help him understand. Ms. Renfrow said that in general Utilities will not be looking for external information. There are certain kinds of documents that Utilities may not have but the Civil City does have, for example rental records. If something looks strange on an application the rental records might be checked or property information from GIS looked for inconsistencies. In the models they are usually referring to things like credit reports but that is not relevant for Utilities.

Mr. Roman said he does not want to see situations where customer's information is sold or made available externally. He wants to be assured that information the rate payers provide for obtaining service is used only for that purpose. Ms. Renfrow assured him that would not happen. She also said there isn't a problem with identity theft in Utilities. Occasionally

someone will try to use a credit card with someone else's name on it but it's usually an innocent thing.

Board member Roman then asked if Utilities asks for Social Security numbers when applying for service. Ms Renfrow said the application says it's optional.

Board member Roberts asked if the information would ever be shared with other companies. Ms. Renfrow said that companies such as the billing contractor or credit card companies or entities that deal with software might have access to the information.

Board member Roman moved that the Red Flag Program be approved with the addition that any changes must be brought to the USB for approval. Board member Roberts seconded the motion. Motion carried, 6 ayes, 1 member absent, (Ehman).

MEMORANDUM OF UNDERSTANDING FOR PAYMENT OF ADDITIONAL COSTS FOR JORDAN RIVER RECONSTRUCTION PROJECT:

Utilities Engineer Fleig explained that the Memorandum of Understanding sets forth an agreement for additional Engineering services for the Jordan River Reconstruction Project for which the USB awarded the bid at the last meeting. On September 3rd the Engineering staff met with the representative of the owner of the Linnemeier property. It has been determined they will be unable to span the width of the culvert when the building is constructed. This means the culvert must be designed to withstand some of the building's load. This Memorandum of Understanding sets forth an understanding that the culvert project will be re-designed to be able to carry some of their building load. The owner's representatives, 422 Kirkwood LLC, will cover all the costs for those additional expenses.

There are signature lines for Bynum Fanyo and BFW Crane, the structural engineer working through Bynum Fanyo, because there is language in the memorandum that includes liability insurance and requirements of the engineer that the owner's representative requested be included.

Board President Swafford asked if the re-design of this would reduce the capacity of the culvert itself. Ms. Fleig said it would not, all the extra strengthening would occur on the outside.

Ex-officio board member Micuda said Ms. Fleig had indicated that 422 Kirkwood LLC would be responsible for the engineering costs. He asked what the next step would be in terms of the actual construction. Ms. Fleig said the first draft of the memorandum included language indicating the owners would be responsible for the additional construction costs. Unfortunately those costs can not be quantified until the design work is finished, including an engineers estimate. Then the contractor, Weddle Brothers, can propose a change-order price. The owners weren't comfortable signing the document with an open ended ticket item so the Engineering services and the construction costs were separated into 2 different MOU's. Ms. Fleig said she hopes to bring another MOU for the additional construction costs to the USB at their meeting in 2 weeks.

Mr. Micuda asked if this will affect the timing of the project beyond the additional documentation. Ms. Fleig said she doesn't have an answer about that yet but there had been an initial misunderstanding of the timeline. The DNR permit was misunderstood. The permit was received on September 2nd, but there is an 18 day period for appeals so construction cannot begin before September 20th. The notice to proceed to Weddle Brothers will be issued for September 21st. Substantial completion will be 45 days later, November 4th. She said they hope to be able to meet that but it will depend on the extent of the necessary revisions. At this

time the engineers think the floor and the walls of the tunnel will be O.K., it would be the top that will be modified. That should not cause a huge change in the construction time.

Board member Roberts asked how common it is to have a culvert carry some of the load of the building and if it needs to be worked on in the future will it make it more difficult. Ms. Fleig said she hopes there won't be any need to work on that culvert for another 100 years. She said she can't say how common it is, but the last project that was done on the Jordan River Culvert was at Chipotle's and the culvert was designed to bear the weight of the building. It was such a small site it was not possible to span their load without the culvert supporting it. They had hoped there would be enough room, on this larger site, to span the culvert but evidently that wasn't possible. It has been encountered in other locations such as Century 21. Ultimately the tunnel should come out from underneath buildings but that isn't always possible.

Board President Swafford pointed out that the new tunnel is large enough for someone to go inside it to work on it if necessary.

Board member Banach asked if there is an easement for the culvert. If the worst happens and this culvert fails who will be responsible? Attorney Renfrow said Utilities has an obligation to build and maintain the culvert in a manner such that bad things won't happen to the building, which would be done anyway since the point is to have a culvert the water can go through. Most of the time there is nothing on top of Utilities pipes. In very rare situations it has been established that the thing on top, such as the Century 21 building, was there before the point in time when a prescriptive easement could be established. In those situations Utilities had responsibility for damages to the building caused by Utilities pipes. There was an easement for the Linnemeier Building but in case law, if there is a situation where a significant structure has been built over Utilities infrastructure, the law will not follow the narrow interpretation that because there is an easement Utilities has no responsibility for the building. It is seen as a risk worth taking to have the infrastructure in place. To have an empty space on Kirkwood because of the culvert would not be appropriate. Mr. Banach asked if there was a way to limit the City's exposure in these types of easements. Ms. Renfrow said they are trying to do that. When the last piece of the Jordan River culvert was reconstructed it was brought out from under the Snow Lion Restaurant. Whenever it is possible pipes are being moved out from under buildings.

Board member Roberts moved and board member Roman seconded the motion to approve the Memorandum of Understanding for Payment of Additional Costs for the Jordan River Reconstruction Project. Motion carried, 6 ayes, 1 member absent, (Ehman).

ADDENDUM ONE TO AGREEMENT FOR CONSULTING SERVICES FOR THE JORDAN RIVER LINNEMEIER CULVERT RECONSTRUCTION:

Utilities Engineer Fleig said this is just the amendment to the agreement with Bynum Fanyo & Associates and B.F.W. Crane to allow them to move forward with the design that was discussed in the previous item.

Board member Roberts moved and board member Roman seconded the motion to approve Addendum One to the Agreement for Consulting Services for the Jordan River Linnemeier Culvert Reconstruction Project. Motion carried, 6 ayes, 1 member absent, (Ehman).

Utilities Engineer Fleig thanked Capital Projects Manager Hicks for all the help he had provided on this project while she was on vacation. He kept the project moving.

OLD BUSINESS:

No old business was presented.

NEW BUSINESS:

Board President Swafford reminded the USB that they had discussed changing the meeting time at the last meeting. The 2 options that were suggested were to start later on Monday evenings or change the day to Tuesdays at the same time. Mr. Swafford said the majority of the USB preferred moving the meeting to Tuesdays at 5:00 p.m. The first meeting in November is scheduled for Tuesday, October 13th due to Columbus Day. He recommended that the change in the meeting day start on that day and continue for the rest of the year. Utilities Director Murphy had checked with CATS to make sure they could film the meeting at the new time.

Board member Banach moved and board member Roman seconded the motion that the USB meeting times be changed to Tuesdays at 5:00 p.m. starting on November 13th. Motion carried, 6 ayes, 1 member absent, (Ehman).

Utilities Director Murphy said a revised schedule of the USB meetings will be sent to the media and others who usually receive the schedule at the beginning of every year.

SUBCOMMITTEE REPORTS:

There were no subcommittee meetings

STAFF REPORTS:

There were no staff reports.

PETITIONS AND COMMUNICATIONS:

There were no petitions or communications.

ADJOURNMENT:

The meeting was adjourned at 5:44 p.m

L. Thomas Swafford, President