

UTILITIES SERVICE BOARD MEETING

November 10, 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 5:01 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, John Whikehart, Jeff Ehman, Pedro Roman, Jason Banach and ex-officio members Tim Mayer and Tom Micuda. Staff members present: Patrick Murphy, John Langley, Jon Callahan, Mike Bengtson, Michael Horstman, Jane Fleig and Tom Staley. Others present: Tom Berry representing Heritage Woods Neighborhood Association and Sue Mayer.

MINUTES

Board member Roman moved and Board member Ehman seconded the motion to approve the minutes of the October 27th meeting. Motion carried, 4 ayes, 3 members absent, (Banach, Frank and Roberts).

CLAIMS

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

Claims 0991435 through 0991506 including \$119,851.59 from the Water Operations & Maintenance fund and \$400.00 for water hydrant meter rental for a total of \$120,251.59 from the Water Utility; Claims 0930843 through 0930872 including \$197,176.43 from the Wastewater Operations & Maintenance fund for a total of \$197,176.43 from the Wastewater Utility; and claims 0970086 through 0970091 for a total of \$69,192.12 from the Wastewater/Storm water Utility and \$435.00 from the Stormwater Construction fund for a total of 69,627.12 from the Wastewater/Storm water Utility. Total claims approved – \$387,055.14.

Board member Ehman asked about the claim for the town of Ellettsville for use of their Vector truck to clean out a septic pad system. Superintendent of Operations Staley explained that Utilities' Vector was broken so one was rented from Ellettsville.

Mr. Ehman then asked about a claim for Crider & Crider. It was for Utilities portion for the Cascades Creek wall repair. Public Works is paying the remaining balance of the total. Mr. Ehman asked what the total was and what Utilities share is.

Utilities Director Murphy explained that Utilities did a joint project with Public Works to repair the wall. Utilities shared both the engineering and construction costs. He wasn't sure what the exact amounts were but said he would get the information for Mr. Ehman.

Board President Swafford asked about a claim for Harrell Fish Mechanical to repair a 6" Ames backflow device in the residuals building at Monroe WTP. Assistant Director of Engineering Bengtson explained that it is a backflow device that Utilities recommends for all fire lines, but this particular one belongs to Utilities. Everything that settles out of the water is taken to the Residuals Building. The water that is used in that building needs a backflow preventer so that water is not intermingled with drinking water. The backflow devices must be checked every 6 months to be sure they are working properly. The most recent check showed that repairs were needed.

Motion carried, 4 ayes, 3 members absent, (Banach, Frank and Roberts).

MEMORANDUM OF UNDERSTANDING WITH HERITAGE WOODS ROAD ASSOCIATION FOR A COOPERATIVE SANITARY SEWER EXTENSION PROJECT:

City attorney Renfrow said this is an agreement that is very similar to one from earlier in the year. It involves extending sanitary sewer service to a neighborhood that currently is not receiving service but is on City water. The neighborhood consists of all the residences along Heritage Woods Rd. which is a private road going east from 446. There are 36 residences along that road that are on septic systems. They contacted Utilities several months ago about the possibility of doing a neighborhood project. The property immediately south of the Heritage Ridge Road neighborhood was approved for a sewer extension so they will be bringing in a main and upgrading a lift station. This will make the sewer contiguous with some of the lots along Heritage Ridge Rd.

Rule 13 of the Rules, Regulations and Standards of Service lays out how a neighborhood sewer extension of this sort can be made. The rule says if the neighborhood can show that at least 60% of the properties or residences (this rule only applies to residential neighborhoods) in the neighborhood sign a petition in favor of the extension then Utilities will look into the cost of the project. Once that has been done at least 60% of the residents must agree to pay their pro rata share and hook on to the sewer, then Utilities will pick up whatever portion of the cost has not been paid up to 40%. The document before the USB today takes the place of the letter that is usually sent to the petitioners saying that Utilities will participate in this agreement. The cost to Utilities is recouped later when the remaining residences hook on. This is very similar to an earlier project in the Broadview neighborhood that was approved this year. A document is recorded that puts on notice the owners and subsequent purchasers of the lots that aren't initially hooked up that if they intend to connect to the system they will have to pay their pro rata share at that time, adjusted for changes in the construction price index, in addition to the normal hook up fee that is applicable at that point in time. These kinds of projects have been done many times over the years, some inside and some outside of the City. This particular project is outside the City but in the sewer utility service area. The City boundaries are not relevant to this because municipal boundaries don't come into play for sanitary sewers. There was a case that Utilities took to the Court of Appeals a few years ago in which one of the important points that Utilities successfully demonstrated was that a neighborhood inside the City is treated the same as a neighborhood outside the City. That boundary does not come into play. The important thing is that the neighborhood that is going to be served pays for the extension that is going to serve them.

The present document says that the feasibility of this project has been determined and there is a general understanding of how the project would be done. In this case a force main would be needed due to the elevations. There is an estimate for the cost and Utilities agrees to commit to no more than 40% of the actual cost. Once the USB has signed this commitment, Tom Berry, who is a resident and is representing the neighborhood, can go to the remainder of the residents to determine whether there will be at least 60% of them participating and paying their pro rata share. The cost would include not only the construction but also all the design work. They will have to cooperate with the Gentry Park Senior Living Center which is the entity that is bringing the sewer to just South of the neighborhood in question. It will be up to the neighborhood association to make sure the project can happen. If they don't the project won't go forward.

Once the project is finished and the evidence of the cost of the project is satisfactory, Utilities will pay whatever their share of the cost is, not to exceed 40%, and the necessary documents regarding the residences that are not participating initially will be recorded so Utilities will be protected and will be able to recover the amount that was paid.

There are some issues about septic fields failing and impacting the watershed that make this project important.

Assistant Director of Engineering Bengtson showed the USB the location of Heritage Ridge Rd. on a map and pointed out that it is inside Area A for sewer extensions. He said this neighborhood has been on septic since 1964 and according to the Health Department some of them are failing. It falls within the Lake Monroe watershed. Mr. Bengtson also showed the development that has already been approved for a sewer extension. He then explained that the neighborhood would have a common force main and each house would require a pump to pump up to the force main which would then pump to the general main.

Board member Roman asked if the neighborhood has City water. Attorney Renfrow said they do have City water. Mr. Roman asked if it was correct that the neighborhood is in Area A for sewer connections which implies they are able to get an extension by applying to the Director of Utilities rather than coming to the USB. It is not specified under which conditions an extension may be granted. Normally when people get sewer extensions they pay for it themselves. Sometimes Utilities may request that a system be oversized to allow for future development. In those cases Utilities will pay the extra cost. He asked why Utilities is being asked to pay some of the cost for this when that is not the way it is normally done. Ms. Renfrow said that is not the way a sewer extension for an already established neighborhood would normally be handled. That would be correct for a newly developed neighborhood. Mr. Roman said Rule 13 was intended to provide the solution for neighborhoods in the City limits. Ms. Renfrow said it has not been limited to that. Mr. Roman said it is logical for a City owned utility to provide service for entities that don't have service. He said he does support this extension, he just doesn't see why Utilities should pay the 40% because most people who get an extension outside the City limits pay for all of it. Assistant Director of Engineering Bengtson said the 40% paid by Utilities would be paid back as the non-participating residences hooked on. Mr. Roman said the 40% is money in advance that gets paid back as people hook up. The people who hook up initially have already paid and the people who hook up in the future will pay the 40% back. If it were in the City where there is an obligation to provide service he said he would understand it, he thinks that was the intent of the neighborhood rule. If it is not in the City he doesn't see how there is a justification for not doing this in the ordinary way. Ms. Renfrow said City boundaries are not really relevant for the sewer utility. It has nothing to do with the tax base so City taxes have nothing to do with it. When it comes to where service is to be provided, when it comes to Area A, it doesn't matter if it is Area A inside the City or outside the City limits. Mr. Roman said it does matter, Area A only defines the border of the area in which sewer extensions may be provided. There is also a commitment with the County Planning Commissioner Mr. Martin and the City Planning Director Mr. Micuda to provide for the USB to take the matter in their hands to make a decision, with some exceptions, even in Area A. The idea that Area A means the City cannot continue because it does not. It is relevant only to the process by which the Director or the USB approves an extension. The extension is not in dispute. Utilities Director Murphy can write a letter and grant an extension. The neighborhood has not come to the USB to ask for an extension, they are requesting a way to finance this project. Ms. Renfrow said this has been done in neighborhoods outside the City many times in the past. Usually those neighborhoods get annexed and one of the benefits that Utilities gets is that one condition of letting them hook on is that the residents have to sign a waiver of the right to protest annexation. The City will be expanding and this process is meant to facilitate that. These pockets, where Utilities has provided water service and there are problems with septic systems and watersheds, etc., can be problematic. Mr. Bengtson said a very close example is Janet Drive. It was built in 1994 and annexed in 1996. The Broadview area is where the last Memorandum of Understanding was executed. There have probably been about 8 to 10 projects of this sort before the Broadview area was annexed. Mr. Roman said those projects were in the area intended for annexation whereas this one is not. The other property was a specific situation and was done in 1994, 16 years ago, so he can see a precedent from this year and the year before when people had to pay the whole cost of the sewer. All he is looking for is a way for advancing this money for a project that Utilities doesn't need. The neighborhood is not under the

jurisdiction of the City, they are under the jurisdiction of the County. To what extent does Utilities need to provide a solution for this? He asked how many dwellings are in this neighborhood. He said there are 8,000 dwellings in Monroe County that are in the watershed. Where would this stop? Attorney Renfrow said that is completely discretionary. It is at the discretion of the USB whether it is done under the normal Rule 13 procedure or in this way. It is possible for the USB to say this can't be done at all because Utilities priorities are different or the funds aren't there, etc. That is why there has to be a point, and for this project this is that point, where the City says "If your neighborhood gets the commitment required we will go forward with the project." This is just like a normal Rule 13 sewer expansion. Things are at the point where Mr. Berry (the neighborhood representative) must be told if Utilities will come up with not-to-exceed 40% of the cost.

Board member Ehman said he understands there is a limit on the amount of actual costs Utilities will pay. He would be more comfortable putting a maximum amount on that as well or a clause where the neighborhood would come back to the board if the expenditures exceed a certain amount. This opens Utilities up to unknown costs. Attorney Renfrow said that was discussed on the Broadview project. The problem is that it just isn't possible to know what the cost of the plan will be. In this case she said she expects the final cost to be closer to the estimate and possibly even less because the estimate is based on Utilities doing the project and paying prevailing wages as would be required for an in-house project. Legally this project cannot be done in-house because it is above the limit the statute allows. If Utilities did it by bidding it out the bidder would have to comply with common construction wages. If the neighborhood bids it out they would not have to do so, which may allow them to get a much better price than the estimate indicates. The other thing that would make it close to the estimate is that since it is not a ground sewer elevations don't have to be considered so there is less concern about hitting rock. The Broadview project was a gravity sewer which had to be deep enough to account for the elevations and they hit a lot of rock. On the other hand the per rata share for Broadview was higher than will be the case with this project but each residence in Heritage Woods will have to spend much more to get their individual pumps to actually connect to the sewer main. The main system will not be as expensive as Broadview but the cost to connect to it will be higher. If an upper limit were set and they got a bid, it would not necessarily be accurate because there may be additional costs. Mr. Ehman said Ms. Renfrow had described the justification for Utilities to not do the project, his question is why Utilities wouldn't want to be protected in terms of an upper limit. He asked if it would be difficult to put the language in the MOU. Ms. Renfrow said that could be done but her point is what happens when the neighborhood residents have paid their pro rata share, the project is started and they could be in the middle of the project when they hit the cap imposed and there is some additional expense. Mr. Ehman suggested language be included that would say "if Utilities' share exceeds \$60,000 they will need to come back to the USB." Why not do that to protect the USB? Utilities Director Murphy said the relevant part of the Rules & Regulations, 13.1 under estimated cost says, "If at the Utilities discretion it is determined that the cost per residential unit is excessive the Utility may choose to stop the project. If the overall scope of the project is of such magnitude it is determined that Utilities' budget cannot cover the cost of the project then the Utility may choose to substantially delay the project." Ms. Renfrow said that rule is for before the project even starts. It is the situation prior to where this project is. There is a good sense of what it is going to cost and the neighborhood needs to know whether Utilities will be on board. The language that was read really has to do with the step before that. The problem with having a cap is that it interferes with their ability to get the project done because they don't know if Utilities will be coming forward with their share of the actual cost. Mr. Ehman said it was just an idea he had and if the USB isn't in agreement that is O.K.

Board member Banach asked how the per household estimate was calculated. Attorney Renfrow said the estimate was prepared by the City Engineering Department. Mr. Banach said he can't believe that an amount of \$2,932 per household could be the total cost. Ms. Renfrow said the total was between \$105,000 and \$106,000. A lot has to do with the nature of the system being put in. The pipes are smaller and the force main is narrower in diameter. Mr. Banach asked if this would be a digesting pump

system. Ms. Renfrow said it is all under pressure. Mr. Banach said the reason he is asking this question is because about 10 years ago the City Council had this same discussion with the Browncliff neighborhood. At that time they saw an estimate go from \$3,000 to \$8,000 to \$15,000 to \$20,000 plus. Ultimately the sewer wasn't put in. He said he is concerned that the neighborhood goes into this recognizing what the possible variable costs could be. He is just being cautionary. He asked about the household costs because he wondered if the \$2,936 per household for an approximate total of \$105,000 is just a right-of-way acquisition.

Tom Berry said he has been working on this for 6 months. He said Assistant Director of Engineering Bengtson and Senior Project Coordinator Troy Powell have been wonderful to work with. He said what the \$2,900 pays for is just the central sewer line that everyone hooks on to. He pointed out on the map where it would be located. That is just the beginning of the project. It won't get anyone service; it just puts in the line. Then the residents will have to connect. It will then be around \$8,000 to \$10,000 more per household. Mr. Banach said that would put the per household cost around \$13,000. Mr. Berry said the question is how many residents said yes and how many said no. He has talked to everyone of them and so far he has oral commitments from 26 people that they will contribute to this. The hook on of course is 3 times the initial amount and he doesn't know exactly how many people will hook on immediately. Eventually they will all have to hook on because there is a rule that says if a line is available, and the septic isn't working the residence must be hooked on to the sewer so eventually Utilities will get all its money back. Without the MOU he won't be able to sell this project. He thinks the City would be doing a wonderful thing to help with this project. It also eliminates what amounts to potential pollution. He pointed out the locations of septic tanks that are, or are likely to be, failing. They are on top of a large stone ridge with 40 year old septic systems where the soil is quite shallow. This is tough to sell. The only reason he has been able to sell it is because they have been having lots of problems.

Board member Banach clarified his question. He said he has been sold on this project but he has been down this road before. He just wants to make sure everyone in the neighborhood understands what they are signing up for. He said they are now up to \$13,000 without considering rock removal. He asked if soil borings have been done. He asked Mr. Bengtson if he knew how much rock had to come out because he remembered that could add tens of thousands of dollars. Mr. Bengtson said there had been an occasional project that has doubled in cost but the construction methods for this project are probably different. A water line was installed in the neighborhood in 1964 that had to be buried 4 feet. He does agree that the slopes the septic tanks are on are pretty dramatic.

Mr. Banach said he supports the concept.

Board member Whikehart said according to the MOU, regardless of what the project costs turn out to be, if they are over the estimate Utilities costs are still at 40% of the actual project. Ms. Renfrow agreed. She said as Mr. Berry has indicated he has oral commitments from 26 residents. To have 60% of the residents he only needs 22 so probably Utilities won't have to come anywhere close to paying 40% of the project. The maximum that don't hook on would be 40%, which would be recouped later when people do hook on. This is the case with a normal neighborhood sewer project if it were being bid out or done in house. Mr. Whikehart asked if when the residents ultimately hook on they will have to pay the sewer connection fee. Ms. Renfrow said they would and they would also have to pay their personal share for the cost of installing the lateral with a pump. Mr. Whikehart said they are also agreeing to sign a waiver to not protest annexation as the state law requires.

Mr. Berry said he understands Mr. Banach's concerns and he will be doing everything he can to make sure the bid he gets is final although he doesn't know if that can be done.

Ex-officio member Micuda asked staff if they knew where in the budget Utilities' portion of the costs would come from. Utilities Director Murphy said it would come from Extensions and Replacements. He said his preference would be that Utilities' share would not go above \$40,000.

Mr. Berry said he isn't sure he can sell this but he thinks he can and he will really try to cover himself so he doesn't get in the position the Browncliff neighborhood experienced. It could be a disaster but if he doesn't try he will never know.

Assistant Director of Engineering Bengtson reminded the USB that every one of the customers coming forward to apply for a new service will automatically be charged \$1,000 as a new customer fee. That would be aside from any of the construction or connection costs. That represents about \$30,000 if everybody in the neighborhood connects.

Board President Swafford said he thinks this is a good project. His biggest concern with this project or any other project is, given the financial situation Utilities is facing now, \$40,000 from the budget would be a concern. He said he would like to take this to an Engineering Subcommittee unless the USB objects. He thinks more time is needed to talk about this project.

Board member Banach said one of board member Ehman's points is a concern for him. Is 40% for this project going to end up being \$40,000 or \$300,000? Conceptually he agrees with the need for this project and he will continue to support it as long as management says it is affordable. He commended Mr. Berry for going through this with his neighborhood.

Board member Roman said he wanted to clarify something. He does support the general idea of this project, he thinks an extension there would be a good thing for everybody. He has a problem with the money considering the current financial situation for Utilities and he has concerns about a precedent that might be created for other people.

Board President Swafford moved and board member Banach seconded the motion that this project be taken to the Engineering Subcommittee.

Board member Roman asked if a vote was needed. Board President Swafford said he can move an agenda item to a subcommittee without a vote.

OLD BUSINESS:

Utilities Director Murphy reminded the USB that they can re-visit a discussion about whether the USB would like to have a procedure to adjust for customers who have water but no sewer. He asked that they review a proposal that had been created by City Attorney Renfrow and Assistant Director of Finance Horstman.

Mr. Murphy pointed out a claim for arbitration that took place between Utilities and Maddox. Ms. Renfrow said this involved a project for filter rehabilitation at the Monroe WTP. Maddox got way behind when they started on the project and the USB had approved an authorization to terminate the contract because Maddox wasn't performing. Then Maddox got their act together and finished in a timely manner. They had extra expenses because they were working 7 days a week with more crews to finish in time. After the project was finished Maddox claimed they were entitled to additional compensation for various reasons. City Legal felt that was incorrect. The contract had a requirement that arbitration be demanded but to have the right to arbitrate certain procedures had to be followed, and due notice of certain things given in a timely manner. The Legal Departments' position was that Maddox didn't comply with those procedures so they didn't have a right to arbitrate. They submitted that position to an arbitrator who agreed there was no duty to arbitrate. Things are now finished with Maddox and they

have been paid the final payment that Legal felt was due. There was about a \$500 fee for the arbitrator that was split evenly between the parties.

NEW BUSINESS:

No new business was presented

SUBCOMMITTEE REPORTS:

There were no subcommittee meetings.

STAFF REPORTS:

Public Affairs Specialist gave a power point report on the status of the Linnemeier Culvert Replacement project. The report is attached to these minutes.

Board President Swafford said he had seen the re-bar that was used for the project and there was more steel in that project than he had ever seen before. It should be fine as a foundation for the building.

Utilities Engineer Fleig said substantial completion for this project is Saturday. That means the tunnel and the 42" pipe that is the old Dunn Branch will be finished. There will still be concrete replacement, replacing the sidewalk, the brick landscaping, etc. Mr. Swafford asked some questions when away from the microphone so they couldn't be heard.

Utilities Director Murphy said the new Vactor Truck will be delivered tomorrow. Superintendent of Operations Staley said it will have to go to through the Fleet Maintenance Department to get the signs and lights and get it checked in and properly insured before it is put on the road.

Board member Banach said he remembered that this was bought with a lease/purchase agreement which is not the way these things are normally done. He asked how long Utilities would make payments on it before they would own it.

Assistant Director of Finance said it would be 5 payments over 4 years.

PETITIONS AND COMMUNICATIONS:

Board President Swafford said he hoped Mr. Skomp from Crowe Horwath would be giving a report about rates soon.

ADJOURNMENT:

The meeting was adjourned at 5:59 p.m

L. Thomas Swafford, President