

January 18, 2010

Rogers Waterworks and Sewer Commission

Minutes

The Rogers Waterworks and Sewer Commission held its regularly scheduled meeting at 4:00 PM, Monday, January 18, 2010, in the new Commission Room in the new Rogers Water Utilities (RWU) administration building. Commissioners in attendance were Guy Cable, Don Kendall, and Travis Greene, Jene` Huffman-Gilreath and Lon Pepple were absent. Others in attendance included RWU staff Tom McAlister, Joyce Johnson, Mark Johnson, William Evans, Johnny Lunsford, Mike Lawrence, Robert Moore, and Earl Rausch. Guests included Alan Wooten, Robert Frazier, Collins Haynes, and Derrel Smith. Chairman Greene called the meeting to order at 4:12 PM.

There was a motion by Kendall, second by Cable, to approve the December minutes as submitted. All in favor, motion carried.

Greene recognized Joyce Johnson, Utilities Controller. Johnson presented the Commission with financial reports for December 2009. With the 2010 fiscal year half gone, she said that water demand was matching demand for the same period a year ago. She said that the Water Department's bottom line was ahead of the previous years, due in part to a six percent increase in water rates effective last October, and some unexpected water access and impact fees. While the Water Department showed a slight profit with fifty percent of the fiscal year gone, she said that, if demand did not increase, the Water Department would show a loss for fiscal year 2010.

Continuing, Controller Johnson said that the Sewer Department was still running a profit, albeit a smaller profit than for the same period last year, due to the debt service and operating expense associated with the completed treatment plant expansion project.

Cable asked about potential savings from the reduction in force (RIF)? Johnson said that the potential savings were substantial, after the severance costs and unemployment insurance benefits were paid out (up to 26 weeks, total).

Greene recognized Mark Johnson, Utilities Engineer. Johnson presented the Commission with a spreadsheet detailing the status of the several projects in which the Commission had a pecuniary interest. Green asked about the proposed sludge dryer project. Johnson said that, since he lost three engineers in the last year, his staff had been undermanned, and other project had taken precedence, such as the City's street projects (the priority of

which changed very frequently, he said). What about the study of the aging sanitary sewer system in Rogers? Cable asked. Johnson replied that the study had just begun, and that he would probably be performing the study himself.

Greene said that he had talked to Narry Krushiker with the Northwest Group, one of three contracting entities that pledged monies to bring water and sewer to development along S. 52nd St. (the project known as the Stoney Brook Road/Horsebarn Road water/sewer project). Krushiker could not attend the meeting, but expressed his desire to enter into a proposed forbearance contract (attached hereto), which called for monthly payments of \$5000 at five percent interest, until July 2012, at which time the outstanding balance was due.

Tom McAlister, RWU Manager, said that Krushiker had approved the contract, with a stipulation that Northwest Group could pay the balance early without a penalty. He said that he had seen the Group's unedited financial reports, which showed the hotels in the group operating at a loss. He said Krushiker wanted to keep his financial condition confidential, so Narry kept the profit/loss statements. McAlister said that the forbearance contract was preferable to bringing a lawsuit for payment.

There was a motion by Kendall, second by Cable to approve the contract with Northwest Group. The vote was two in favor, one abstention (Greene). Motion carried.

Greene recognized Collins Haynes, a principle in Metro Park South, LLC, another of the three contracting parties in the Horsebarn Road/Stoney Brook Road water/sewer project. Haynes said that his LLC had entered into a contract with RWU for a "looped" line which was never built and from which his LLC derived no benefit ("except water and sewer service with adequate capacity to allow the aloft Hotel to be built" - TSM). Haynes said that he went to a great deal of trouble to help the city obtain an easement for a proposed water line which was not built. He said that he dedicated a right-of-way on the LLC property to facilitate the proposed Ash Street bridge over Interstate I 540 ("flyover"), at no cost to the City of Rogers. However, the contract between the LLC and RWU existed, he said, and he wanted the LLC to meets its obligations to all. To that end, Haynes suggested that the amount owed by the LLC be paid through lot sales in Metro Park South, since there was no other revenue source available.

Kendall asked if the Commission would be a secondary lien holder on the lots, until the \$197,000 was paid? Haynes said the bank would have to approve, but, yes, that was the idea. At five percent APR? Kendall asked. "Yes", said Haynes. What would be the term of the contract, Kendall wanted to know? Haynes said it could be reviewed yearly, but reminded all present that he had not sold a lot in two years, and that 2010 was predicted to be another bad year for commercial development. Robert Frazier, of Warner, Smith, and Harris, attorneys to the Commission, said that he had already developed such an agreement, and could change it to suit the parties involved. The Commission directed staff to come back to the Commission next month with a contract agreeable to both parties.

Greene recognized Alan Wooten, managing partner with Warner, Smith and Harris. Wooten reported that he had recently scheduled a mediation conference with Bill Burckart and his legal representatives, in the illegal exaction lawsuit against the Utilities, the Commission, and the City of Rogers. However, an ice storm prevented the mediator from making the drive from Fort Smith. However, he had met with Tim Hutchinson and discussed possible settlement scenarios. Wooten reminded the Commission that a ruling by Judge Clinger had reduced the Commission's potential maximum liability from about \$10 million to about \$1.4 million, by disallowing claimants before Burckart joined the suit in June of 2008. Wooten said that, although he thought the Commission's position in the lawsuit was favorable to a good outcome, there was still an element of risk in any court case. He said that Hutchinson was appealing Clinger's ruling.

Kendall said that he wanted any proposed settlement that would be sure to avoid additional lawsuits in the future. Wooten said that he could not be 100 percent sure, but he thought that a settlement might be reached to avoid further litigation. Kendall said that he thought mediation would be a good next step, in order to gauge the strength of the lawsuit. Cable asked if time was an issue, since the court's ruling was under appeal. Wooten said that there was adequate time to hold mediation before the appeals court ruled. There was a motion by Kendall, second by Greene to direct the Commission staff and attorneys to attend mediation, and bring possible settlement offer(s) to the Commission and to the Council for approval. All in favor, motion carried.

Greene recognized Mark Johnson again. Johnson presented a third and final change order for \$14,000 for the wastewater treatment plant expansion project. He said that the project engineers, Black and Veatch were uncomfortable with the structural integrity of the deck holding large aerators on the existing nitrification basins. As a fix, they proposed an additional slab and reinforcing steel to better support the aerators. Johnson said that the work was complete, and that the total of the change orders for the \$21 million project was less than 0.6 %, a remarkable feat in today's litigious construction environment. There was a motion by Greene, second by Kendall, to approve the Change order. All in favor, motion carried.

The meeting adjourned at 5:06 PM.

Respectfully submitted,

Tom S. McAlister, Acting Secretary
Rogers Waterworks and Sewer Commission

