

March 14, 2011

Rogers Waterworks and Sewer Commission

Minutes

The Rogers Waterworks and Sewer Commission held its regularly scheduled monthly meeting at 4:00 PM, Monday, March 14, 2011, in the Rogers Water Utilities (RWU) Administration Building. Commissioners present were Don Kendall, Jene' Huffman-Gilreath, and Roger Surly. Travis Greene and Guy Cable were absent. RWU Staff in attendance were Tom McAlister, Mark Johnson, Joyce Johnson, William Evans, Johnny Lunsford, Earl Rausch, Robert Moore, and Stephen Ponder. Others at the meeting were Mayor Greg Hines, John Gore, Clay McGill, Mark Haguewood, Robert Frazier, and Alan Wooten. Acting Chairman Kendall called the meeting to order at 4:06 PM.

There was a motion by Surly, second by Huffman-Gilreath, to approve the minutes of the February meeting as submitted. All in favor, motion carried.

Kendall recognized Mark Johnson, P. E., Utilities Engineer. Johnson presented Ken Mitchell, RLS, RWU Engineering Technician, with a certificate of appreciation for fifteen years of loyal service to RWU and the citizens of Rogers.

Kendall recognized Joyce Johnson, CPA, Utilities Controller. Johnson presented the Commission with financial reports for February 2011. She said that, even though demand for water continued to be slow, that the losses for the water department were less than for the same period last year. Johnson said that, depending on the water demand this spring, the Water Department could show a net profit for FY '11 (as opposed to the last two fiscal years).

Surly asked about an item under "field repair and maintenance". Johnny Lunsford, Sewer Field Operations Supervisor, said that the large amount was due to an order of "Pipe Patch", in order to build up the necessary inventory of patches for the different pipe diameters in the sewer system. He said that holes in the sewer pipes could be patched from inside the pipe, without the necessity of excavation.

Kendall recognized Mark Johnson again. Johnson presented the Commission with a small spreadsheet detailing the status of the several projects in which the Commission had a pecuniary interest. Huffman-Gilreath asked if staff had received any good RFP's for the sludge dryer project. Johnson said that three qualified contractors had submitted bids last month. He said that he and the project engineer, Stephen Ponder, were going to California next week to visit the

manufacturing facility of ThermaFlite, Inc., the sludge dryer specified by staff, in order to gain insight on whether or not ThermaFlite could perform according to the contract documents.

Kendall recognized Mark Haguewood of Hight – Jackson Associates, Inc., the architectural firm working on the remodel plans for the old administration building. Haguewood said that seven contractors had bid the job. The lowest bid was from Danny Robinson Builders, for \$198,200. He said that Robinson had been hired by RWU to perform groundwater intrusion remediation on the same building last summer, and that staff was pleased with Robinson’s efforts. There was a motion by Huffman-Gilreath, second by Surly, to approve the low bid of \$198,200 from Danny Robinson. All in favor, motion carried.

Kendall recognized Mark Johnson again. Johnson presented the Commission with a bid tabulation for the water and sewer extensions on the proposed Price Lane extension. Johnson explained that the City of Rogers had plans to extend and straighten Price Lane from the railroad tracks to S First St. near Kirksey Middle School. As a condition of granting the necessary rights-of-way for the new road, the landowner desired water and sewer to his property. RWU engineering staff had designed and bid the necessary water and sewer line extensions, he said. The low bid was from DECCO, a local contractor, for \$228,869.75. There was a motion by Huffman-Gilreath, second by Surly, to approve the low bid from DECCO. All in favor, motion carried.

Kendall recognized Alan Wooten, Managing Partner of Warner, Smith, and Harris, attorneys for the Commission. Wooten gave the Commission a brief history of the illegal exaction, class action lawsuit that his firm has defended for about three years. Last year, Wooten and the RWU Manager met with the plaintiffs twice to seek mediation. In February 2010 the Commission approved a settlement agreement (subject to approval by City Council). The main tenets were:

1. Neither side admitted any fault
2. Qualified persons who paid impact/access fees after a certain date would be issued vouchers equal to 53% of the amount paid RWU. These vouchers must be applied for and spent within five years and are only good for similar fees with RWU.
3. RWU would pay the plaintiff’s attorney \$200,000.
4. The Commission would recommend that the council adopt impact and access fees for low income housing at 60% less than the existing fees. A low income home was defined as one that costs \$120,000 or less, according to its building permit.

On March 9, 2010, the Rogers City Council approved a resolution approving the settlement agreements as enumerated above. The resolution was taken to the circuit court, and was approved by the plaintiffs and the judge. An order was entered, and RWU waited thirty days for the appeal period to expire. Finally, vouchers were issued and redeemed by builders, and four out of 160 access and impact fees charged over the last four months were charged the low income class rate. RWU was holding up its end of the bargain, Wooten said. The only matter left was to

go to the council to pass an ordinance, since the Council was the rate making body for RWU, and since the original impact fee schedule was ordained by the Council.

Wooten said that an ordinance was written that mirrored the settlement agreement passed by the Council in resolution form a year before. The ordinance went to Council at the last meeting in February, 2011, and was subsequently tabled by the Public Works Committee. At the Council meeting held on March 8, 2011, the Public Works Committee allowed the ordinance to be voted on, without a recommendation. The final vote defeated the ordinance by a split vote. Therefore, there was no lower rate for low income housing.

Wooten presented the Commission with a draft of a “motion to reopen a lawsuit”. He said that, since the Commission was not legally able to perform all that it had told the court it would do (specifically with the regard to the lower impact fees for lower cost or affordable homes), the “motion to reopen” asked the judge for direction on how the Commission should proceed. To delay might expose the Commission to a charge of “contempt of court”, Wooten said.

Kendall expressed concern over the possible contempt charge. Surly said he thought the matter must be resolved. There was a motion by Huffman-Gilreath, second by Surly, to send the matter back to the judge for direction. All in favor, motion carried.

The meeting adjourned at 4:40 PM.

Respectfully submitted,

Tom McAlister, Acting Secretary
Rogers Waterworks and Sewer Commission

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