

Rogers Waterworks and Sewer Commission

March 28, 2007

Minutes

The Rogers Waterworks and Sewer Commission held its regularly scheduled monthly meeting at 4:00 PM, Wednesday, March 28, 2007, in the Rogers City Hall. Commissioners in attendance were Lon Pepple, Donnie Moore, Donna Warren, and Don Kendall. Jerry Pittman was absent. Rogers Water Utilities staff in attendance were Tom McAlister, Mark Johnson, Joyce Johnson, Earl Rausch, Everett Balk, and Robert Moore. Others in attendance were Asa Hutchinson III, Alan Wooten, Robert Frazier, Drew Van Winkle, Bart Hester, Phil Swope, Evie Blad, and Lori Harrison-Stone. Chairman Moore called the meeting to order at 4:01 PM.

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

Moore recognized Mark Johnson, Utilities Engineer. Johnson presented a brief summary of the status of the several jobs in which the Commission had a monetary interest. He said that the contractor for the Dogwood St./Turtle Creek water transmission main project had been delayed, and would not start until about April 15th. He said the Dogwood St., west of 28th St., would be partially closed for a time due to the project.

Johnson said that the design on the proposed elevated tank at 24th St. and Olrich St. was nearly complete, and he judged that bids would be taken in April for the May Commission meeting.

Continuing, Johnson said that the S. 26th St. widening project was “on” according to the City of Rogers, but there was still a lot of right-of-way to obtain. He said that Horsebarn Road was to be improved, and that an eight-inch water main would have to be relocated. Johnson said that he would attempt to contract with the City’s consultant to do the necessary design work.

Continuing, Johnson told the Commission that the improvements to the interchange at Pleasant Grove Road and I 540 should not impact the Utilities. Johnson said that the plans for the expansion of the office building were complete, and the architect’s estimate of cost was still about \$1.2 million.

Moore recognized Everett Balk, Project Facilitation Engineer. Balk presented the Commission with a brief report on the activities of his section. Balk said that the average time to send out a review letter was about seven days. He noted a significant jump in the number of plans being submitted for review over the last month, compared to the proceeding months.

Moore recognized Tom McAlister, Utilities Manager. McAlister presented the Commission with a draft engineering contract with the Springdale Water and Sewer Commission and McGoodwin, Williams, and Yates, Inc. McAlister said that he and the Springdale Utilities Director, Rene Langston, had met with officials at ADEQ and McGoodwin, Williams and Yates, and decided that the best option to delay or stop the Total Maximum Daily Load (TMDL) process was to do a comprehensive assessment on Osage and Spring Creeks, in order to delist the streams from the 303(d) list (impaired water bodies list). If the data showed no impairment, then all the designated uses of the stream would be met, and there would be no reason to list the stream segments, McAlister opined, although he admitted that this was no “sure thing”. He said that, if the streams stayed on the 303(d) list, then a TMDL for phosphorus would be a legal inevitability, and that City would likely become involved in a lawsuit with EPA, the State, and even other cities in Northwest Arkansas, over how much phosphorus each city might be able to discharge.

McAlister said the contract stated that McGoodwin, Williams, and Yates, who would subcontract with the University of Arkansas, which would provide sampling and analytical services, would oversee the project. The proposed contract was for \$425,000, to be split evenly between the cities. The stream data would be collected over two years, with a report due by September 2009. He noted that the Springdale Water and Sewer Commission had already approved the contract, with the condition that Rogers Waterworks and Sewer Commission approved.

There were several questions about the contract and the scope of the study. McAlister said that the best-case scenario would be if all cities in Northwest Arkansas joined in, and the entire Illinois River watershed would be studied; however, in the interest of time and money, Rogers and Springdale were going to make sure that their cities were protected. McAlister said that the entire Illinois River basin should have been studied a long time ago by the State, since the 0.037-mg/L total phosphorus limit on Oklahoma Scenic Rivers might be best achieved at the border, since that was where the dilution of phosphorus had the greatest potential. He said that Northwest Arkansas Conservation Authority (NACA) and Bentonville could benefit directly from the stream study. Finally, there was a motion by Kendall, second by Pepple, to approve the contract. All in favor, motion carried.

McAlister gave the Commission a brief update on the situation with US Fish and Wildlife Service, who was insisting on a dye trace study on Osage Creek below the effluent outfall, to see if any dye entered into the Cave Springs Cave, home of a couple of endangered species. McAlister said that he was continuing to negotiate a fee for the study with a University professor and the required scope of the study with officials from US Fish and Wildlife.

Moore recognized Robert Moore, Operations and Maintenance Manager at the Rogers Pollution Control Facility. Moore updated the Commission on the sludge dewatering/disposal situation at the RPCF. He said that RPCF had been summarily dumped as a client by Waste Management, and had to contract with Roll Off Services to haul off the dewatered sludge. Moore said that the sludge was being hauled to a landfill

in Sand Springs, Oklahoma. He said that the new centrifuge was installed and working well. He said that the centrifuge produce a much drier “cake”, thereby reducing the number of tons to be hauled. Moore also said that the staff was looking at a sludge drier to further reduce haul costs.

Chairman Moore recognized Phil Swope, engineer for the Ro-Lynn Hills development near Monte Ne. Swope said that his client, Bart Hester, desired to extend a water main to serve five lots in the addition. He said that, although the details of the final design were still being discussed with RWU staff, he felt sure there was adequate capacity for the five lots. There was a motion by Pepple, second by Kendall, to approve the extension, contingent upon approval by City Council. All in favor, motion carried.

Moore recognized Joyce Johnson, Utilities Controller. Johnson presented the Commission with the solitary bid for property insurance from the Farris Insurance Agency. The \$2500 deductible insurance policy was for \$30,994. There was a motion by Kendall, second by Warren, to approve the bid from Farris. All in favor, motion carried.

Moore recognized McAlister again. McAlister presented the Commission with a copy of Act 310, which had just been signed into law by the Governor. McAlister said that the intent of the law, authored by Sen. Dave Bisbee, was to make the access fees and hookup fees of RWU, in fact, “development impact fees”, and subject to a 2003 statute, also authored by Bisbee. The second part of the Act was to call for reimbursement of all hookup and access fees collected as such, back to July 2003. McAlister said that the 2003 state statute required that development impact fees be set by ordinance. He recommended that the Commission’s attorney, Asa Hutchinson III, be directed to write an ordinance to codify the Utilities’ hookup fees and access fees.

Kendall agreed, saying that it was time for the Council to weigh in on the issue. He said that the City had three choices: enact fees, increased water and sewer rates, or a “no growth” policy. He also said that he did not think that the hookup fees and access fees were impact fees, as described in the Act. He noted that all fees collected by the Utilities were deposited into trust accounts, to be used for capital improvements, not to “generate funding”.

Asa Hutchinson said that he could not predict exactly what impact the new Act would have on the Utilities. He agreed that the City Council should consider an ordinance creating the fees. He said that the issue of making the statute retroactive would need to be tested in court. He said that he would get together with Utilities staff to draft an ordinance that would comply with the 2003 Development Impact Fee statute.

Moore recognized Hutchinson again, who presented the Commission with a copy of a complaint filed in circuit court, alleging that the Commission’s access fees and hookup fees amounted to “an illegal exaction” and calling for the return of all fees collected since the passage of Resolution No. 05-05 in December of 2004. He said that RWU staff had calculated that the amount of fees collected since that time to be \$2.2 million. He also

said that he had filed a motion with the court seeking dismissal, since the plaintiffs had not suffered any injury (paid any fees), and thereby had no legal standing to sue.

Moore asked Hutchinson to address the issue of a perception of conflict of interest, since Hutchinson's cousin, Tim Hutchinson, had filed the complaint. Hutchinson deferred to Alan Wooten, a partner in Warner, Smith, and Harris. Wooten said that there was no legal conflict of interest in having Hutchinson serve as the Commission's attorney; however, since he and his associate attorney Robert Frazier had extensive experience in class action lawsuits, that he would take the lead in the legal defense of the Utilities and the Commission, if the Commission so desired. The Commission agreed that there was no conflict, and instructed Wooten to defend the Commission in the legal action.

Moore recognized John Wary, engineer of record for the proposed NYK warehouse on N. Dixieland St. in Rogers. Wary said that, during the review and approval process of the fire protection water main for the warehouse, that the staff had asked for 900 ft of proposed eight-inch water main be upgraded to a twelve inch main, and that there be a second connection to the existing water main in Roselawn St. on the west side of the warehouse development. He said the required upgrades would cost \$32,484, and asked the Commission to pay the difference. McAlister said he recommended the cost share proposal, since the upgrades would help force more water to the west, and punch up the hydraulic profile in the area. There was a motion by Pepple, second by Warren, to approve the cost share proposal as requested. All in favor, motion carried.

Moore recognized Joyce Johnson again. Johnson presented the Commission with financial sheets for February 2007. She described water demand as flat, and noted that the Utilities would soon lose PGI, a major industrial customer. Kendall asked Johnson how much Utilities' reserves had gone down since he became a Commissioner two years ago. Johnson said that, not counting the bond revenue, RWU had spent down about four million dollars in reserves.

McAlister said that the next meeting would be April 23, and urged all Commissioners to be present, as there would be several weighty matters (proposed fee ordinance, Tom Gould's report on fees, an engineering contract for construction inspection services, and bids for the wastewater treatment plant expansion) on the agenda.

The meeting adjourned at 5:05 PM.

Respectfully submitted,

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

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