

Rogers Waterworks and Sewer Commission

August 17, 2009

Minutes

The Rogers Waterworks and Sewer Commission held its regularly scheduled monthly meeting at 4:00 PM, Monday, August 17, 2009, in the Council Chambers of the Rogers City Hall. Commissioners present were Don Kendall, Jene` Huffman-Gilreath, Travis Greene, and Lon Pepple. Guy Cable was absent. Rogers Water Utilities staff present were Tom McAlister, Joyce Johnson, Mark Johnson, William Evans, Earl Rausch, Robert Moore, and Johnny Lunsford. Others in attendance were Alan Wooten and Crystal Goederie. Chairman Greene called the meeting to order at 4:04 PM.

There was a motion by Huffman-Gilreath, and a second by Kendall, to approve the minutes of the June 15 meeting (there was no July meeting). All in favor, motion carried.

Greene recognized Mark Johnson, Utilities Engineer. Johnson gave those present an oral report detailing the status of the several projects in which the Commission had a pecuniary interest. He said that the W. Pleasant Grove water main project was nearly finished, and the pavement repair was complete, in time for school to start.

Johnson said that the Rogers Water Utilities had partnered with several private development companies to build the Horsebarn Road/Stoney Brooke Road water and sewer project, completed over a year ago. To date, the partners had not reimbursed their share, as indicated in agreements signed over two years ago. Johnson said that the partners had been reminded of their fiduciary responsibility by letter last September, but no response was received. Now, he had the Commission's attorney write letters, with the promise of impending lawsuits, if the required cash remittance was not forthcoming.

Who were the partners, and how much did they owe? Kendall asked. Johnson said that the partners were the Northwest Group (the developers of the new Holiday Inn, \$311,973.66), Horsebarn Partners (Pat Carroll, \$155,978.24), and Metro Park South LLC (Collins Haynes, \$197,495.90). Johnson said that the contracts stipulated that the costs could go up (they did), and that the developers would be responsible for a share of unforeseen expenses, but RWU asked for only the original contract amount.

Continuing, Johnson reported that the RWU administration building expansion project was progressing under the new contractor, MultiCraft, Inc. He said that Multicraft had taken the project on a "time and materials" basis, and had spent some time correcting deficiencies left by the previous contractor. He said that the contractor said that the new drive through would be ready by Labor Day, and that the building might be ready to move into in October.

Johnson said that the sludge dryer study was ongoing, with no recommendation available yet. Pepple wanted to know when a recommendation would be made? Johnson demurred, saying that only that it was a weighty problem with multiple solutions and costs. Huffman-Gilreath asked if the dryer could be used by the new Northwest Arkansas Conservation Authority (NACA) treatment plant? Greene asked if the Commission needed to hire an outside engineer to help? Johnson said that the dryer could be built to handle outside sludge. He said that NACA was busy building a wastewater treatment plant, and had little time or money for a regional sludge solution. Johnson said that there was no need to hire another engineer, that the in-house engineers were capable. The decision to go with a dryer (as opposed to hauling the wet solids to the Arkansas River valley to be used as fertilizer/soil amendment) had not been made yet. Drying sludge was not yet a popular method of disposal, but Johnson said that Fayetteville was seriously considering the same dryer (Rogers was looking at).

Continuing, Johnson said that Hutchens Construction had been hired to repair the damage done to New Hope Road near Craig Circle caused by sewer department workers as they attempted to bypass pump sewage around a manhole to be repaired. He said that the contractor would remove the top layer of asphalt, closing three lanes of traffic at a time, lay down HMAC, and repaint. Johnson said that the new elevated tank at S. 24th St. at Lilac was painted and ready to put into service.

Johnson said that the Arkansas Highway and Transportation Department was considering his request to allow construction in the controlled access near the New Hope Road interchange with Interstate Highway 540. He said that that the AHTD would not approve the hanging of a large water main on a proposed Fir Street bridge due to safety reasons.

Johnson said that the City's plan to widen Bellview Road would necessitate the relocation of some 12-inch water main, but the timing of the proposed street project was not yet known. He said that the proposed sewer replacement project in the Rogers Heights Addition was on hold for additional review. He said that the plans to replace the sewer system on E. Spruce and N. "B" and "C" Streets had been bid, and bids were opened today.

Greene recognized Joyce Johnson, Utilities Controller. Johnson presented the Commission with financial sheets for June and July. Addressing the month of June, which is also the year-end statements, Johnson showed the Commissioners what they already knew: a loss in the water department for FY '09 of over \$427,000. She said that when the budget was prepared last spring, she projected a very small profit for the year. With a sales drop of 5.2 %, and a drop in impact fees of over 47%, and a drop in interest income, the result was a dismal year for the water department.

Kendall asked Johnson about the water and sewer reserves. Johnson said that income in excess of expenditures were invested and these funds fit into one of two broad categories: restricted or unrestricted. Restricted funds were funds that could not be spent (debt service reserves, deposits) or were restricted in what the funds could be used for (impact fees, depreciation). She said that, usually once a year, she moved monies from restricted

to unrestricted reserves, to reimburse the unrestricted funds for capital outlays for system improvements.

Kendall asked where the money came from to move the sewer lines to get out of the way of the Perry Road interchange. Tom McAlister said the money came from unrestricted sewer department reserves initially. Kendall wanted to know if there were any more surprises like that (large capital intensive projects on the horizon)? Mark Johnson said no.

Joyce Johnson said that water sales were up for July, but sewer sales were down from a year ago. She opined that the reason for the drop in sewer sales was the popularity of the no sewer charge irrigation meters. She said that the water department showed a small profit in July.

Pepple asked if, with the financial sheets every month, Johnson might include a summary to help explain the numbers. Johnson said that she would do that.

Greene recognized Alan Wooten, managing partner for Warner, Smith, and Harris, LLC, the Commission's lawyers. Wooten gave the Commission a brief history of the illegal exaction lawsuit before Judge Clinger. He said that two previous lawsuits, filed by the same attorney, had been thrown out of different courts for different reasons. Now, Bentonville builder Bill Burkhart had joined the NWA Home Builders Association in an illegal exaction/illegal expenditure lawsuit. The Judge had thrown out NWAHBA as a plaintiff. He also ruled that the illegal expenditure part of the suit was invalid; however, the Burkhart complaint would probably go through, and the plaintiff's attorney would be advertising for additional plaintiffs. He said that the case would go to trial and be tried on its merits next year. Wooten said that he thought the fees were legally exacted, but, given the vagaries of courts and juries, a verdict could not be predicted. Worst case scenario, the Commission would have to give back all the fees, plus pay plaintiff's lawyer fees.

Kendall asked how much was the contingent liability? Joyce Johnson said that about \$6.7 million had been collected since 2004.

Continuing, Wooten said that his firm had sent letters to the three partners on the Horsebarn Road waterline project, demanding payment in twenty days. He opined that, if it became necessary to file suit for breach of contract, it might be easy to get a judgment, but harder to get any money, given the hard economic times.

Wooten said that the surety bond for Bossler Construction, Travelers Insurance, had hired another contractor to replace Bossler, who willingly defaulted on the Rogers Water Utilities Administration Building expansion project. He said that Traveler's had submitted a takeover agreement for signature by RWU, but it called for the waiver of rights to liquidated damages, which could amount to a large sum of money. Hence, there was no takeover agreement. Wooten said that when the contract amount had been expended, and the building project was not complete, then legal action would probably be required to complete the job and sue for liquidated damages.

Greene recognized Mark Johnson again. Johnson presented the Commission with a bid tabulation for the proposed sewer replacement project on N. "C" and "B" Streets, and E. Spruce St. There were eight bids; the lowest was from NEC Construction of Rogers, for \$329,879.40. Johnson said that NEC was qualified, and recommended the award for the stated amount. There was a motion by Pepple, second by Kendall, to approve the bid of NEC. All in favor, motion carried.

Greene recognized Tom McAlister, Utilities Manager. McAlister recapped the recent action by the Rogers City Council to raise water rates by six percent. He submitted a short spreadsheet predicting a loss for FY '10 of \$788,000. He said the rate increase would yield about \$300,000 for the remainder of the fiscal year, if consumption continued to slump.

McAlister critiqued the process by which the Commission had asked for two rate increases, a nine percent and a six percent next year, and received instead a one time six percent increase. He said that the council wanted to be apprised on some regular interim about the financial problems at RWU. He said he also thought that the Council wanted to hear about it from the Commission, rather than from himself or a paid consultant.

There was a lot of discussion about the best way to keep the Council informed. Kendall said that perhaps a report to the Public Works Committee on a quarterly basis would be sufficient. McAlister said that RWU had begun emailing the monthly financial sheets to the Council. Huffman-Gilreath suggested an updated Capital Improvement Plan (CIP), demonstrating the need to grow capital reserves. When Pepple asked if reserves would be used to operate the system, McAlister said yes.

Greene recognized Crystal Goederics. Goederics said that she represented the owner of Roller's Ridge Apartments, an unfinished 56 unit on E. Post Road. The owner, Ronnie Ball, was unable to borrow additional funds to complete the project, and she wanted to post a bond or a letter of credit for the required access fees. She said that she had talked to McAlister, Mayor Womack, and City Attorney Ben Lipscomb. Now she was before the Commission. Kendall said he did not think the Commission had authority to change the requirement of the ordinance that all fees be paid before connection to the system.

Goederics asked if the city attorney agreed that the posting of a letter of credit would satisfy the intent of the ordinance, could she then have water service? Wooten said that, if the City Attorney deemed a letter of credit to be "paid in full" as far as the law was concerned, then he saw no problem with the proposal. Otherwise, Goederics was directed to her alderman to amend the access fee ordinance. The Commission expressed its regret, but took no action on the request.

The meeting adjourned at 5:42 PM.

Respectfully submitted,

Tom McAlister, Acting Secretary
Rogers Waterworks and Sewer Commission

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