

**Minutes of a Public Hearing and Regular Meeting of the  
Board of Sanitary Commissioners  
Terre Haute, IN  
August 15, 2017**

A Regular Meeting of the Board of Sanitary Commissioners was held in the Mayor's Conference Room on the third floor, City Hall, 17 Harding Avenue, Terre Haute, Indiana, on the 15th day of August 2017, at 10:00 a.m. Those present were Chuck Ennis, Larry Auler, Tim Adams and Jim Winning for the Board of Sanitary Commissioners. Terry Modesitt was also present. Brad Bush was not present.

**PUBLIC HEARING**

The public hearing was called to order by Vice President Tim Adams.

**PUBLIC COMMENTS**

Richard Shagley approached the Board. He asked what the end result of today's meeting is and if they are going to vote. Mr. Adams said the Board is going to vote to pass or not pass the resolution so they can proceed with the WWTP. Mr. Shagley asked what the resolution says. Mr. Otten of Bose McKinney and Evans said any time the Sanitary District undertakes a project that is going to involve bond financing one of the first steps in the approval process is for the Board to adopt a resolution that they refer to as the declaratory resolution. Under statute, they declare that there is a need to undertake projects of the Sanitary District. That was the resolution that was adopted at the August 1st meeting. That resolution included a description of the projects. These are the Phase 2 LTCP projects that are approved by the Court order. Chuck Ennis said the projects include the main lift, 2nd phase of the High Rate Treatment Facility and some green infrastructure components and infrastructure needed for those to function. Mr. Otten said there are 3 key projects which were outlined in the Declaratory Resolution. By statute, the Sanitary District has to advertise notice of hearing which was done on August 4th. Then they have to hold a public hearing to undertake public comment on that resolution. After receiving the public comment, the next step is to adopt a resolution confirming the Declaratory Resolution or making modifications or denying if after public comment they decide that is not what they are going to do. We are at the stage right now of getting public comments on the need or necessity of the projects. The Board will consider the Confirmatory Resolution. Mr. Shagley asked if we have several outstanding bonds. Mr. Otten said yes. Mr. Shagley asked what obligations does the Sanitary Board have in disclosing or are they even required to disclose the FBI investigation. Are those type of issues material enough to disclose to the bond holders that this is going on in the community? Will the FBI investigation have adverse effects on us trying to sell these bonds? Do you think this is the right time to do this? Mr. Otten said they are not handling the FBI investigation. That is being handled by the City Attorney. They are not very involved with that as bond counsel. That does involve the bond issue to the extent that they need to know what is going on with the finances of the Sanitary District. They

need to let the bond holders know that there is sufficiency of funds there and there is not an ongoing concern. This bond issue is being proposed to be sold to the SRF program which is the same entity that purchased the bonds for the WWTP project. We have had continual dialogue with them over the last couple of years. We contacted them about the FBI investigation. They are aware that it is ongoing and they will be carefully scrutinizing the records of the Sanitary District before any bonds are issued. That will be fully vetted before anything is issued. Mr. Shagley asked why not wait 6 months to see how this shakes out. Mr. Otten said this a timing issue with the LTCP. There are timing restrictions on when projects need to occur and if these aren't met there will be ramifications under the Court order. Mr. Ennis said that we are behind schedule on the LTCP. We have asked for extensions in the past and we are currently in the middle of an extension right now. He would prefer not to ask for another extension if we don't have to. Mr. Shagley said that his experience with IDEM working with them on a situation at the sewage plant. He received a call that said we understand what is going on and they will give him another 30 days. Mr. Shagley said under the circumstances, he doesn't think anyone is going to hammer the City or the Sanitary Board for putting this back 60 days or even 6 months or a year. He has some concerns. If he was a bond holder or even thinking about buying bonds, you Google Terre Haute and our Mayor, our former WWTP Director, and former City Attorney were mentioned in a lawsuit in New Jersey. He knows as an attorney that he can sue anyone at anytime and say whatever he wants but this has already been litigated once and it is out there. Then the FBI comes in and the term "pay to play" frightens him. It is his opinion this Board needs to evaluate the processes of choosing engineers and choosing down the line. It is concerning that all this is going on and we are moving forward with an \$85 million bond issue. Then you throw in that the City has to pay \$8 million per the DLGF while at the same time taking \$5 million from the sewer utility. What is your opinion moving forward and how do you think the \$8 million is going to effect the PILOT fee? Deen Rogers of Umbaugh said it is \$4 million PILOT. He said as far as timing on this, legitimate concerns for sure, but they have worked with another community who was being investigated by the FBI and did disclose that in open market bond issue and were able to issue those bonds. He thinks it would be tough here if we were going the open market route. We have another means and it is preferable as far as interest rates and opportunity with the SRF. He thinks given the agreed order and the timing that is required, he doesn't know that we have a choice. Mr. Shagley asked if they think it is worth looking into pushing this back. Mr. Otten said he thinks that the last thing we want to have it for the City to get penalties and incur additional cost because of asking for repeated delays in a plan that they are required by law to do. They have been in touch with the SRF program and they are very well aware of what is going on with the City. They are by far the largest borrower of the City, given all of the debt that they hold. They are keenly aware of this. The SRF program works with IDEM and the EPA that is a large part of their funding so all of these things are very inter related. If there were opportunities to delay things or push them off, he thinks we would be hearing about those. He said they can definitely explore those. They have not issued the bonds by any means. They are trying to do everything they can. Mr. Shagley said that brings up another frightening aspect with all this, which is transparency. He said Umbaugh can tell us that the City was notified in January that they had to cut \$8 million by the DLGF and it wasn't until 3 weeks that the City Administration thought it

was important enough to tell the City Council. Transparency concerns him. Maybe there is something out there that we have received from an entity that we don't even know about. The lack of transparency that we are receiving from this administration is concerning to him and it is concerning moving forward with such a big project where until we have been told we can't delay it, what is the harm in asking to push this back. Mr. Otten said he thinks the issue is, if we push this back, with the court orders. We can certainly follow up with the SRF with this. He doesn't know what input they have as this is more of an EPA issue.

Earl Elliott of the City Council approached the Board and provided a hand out. Mr. Elliott said the City Council was expecting a \$37.1 or \$42.1 million bond issue. He went over the content of the papers he provided. He said for some reason they are being asked to comment without a lot of documents being presented. He requested a copy of any report that Umbaugh was going to present and received it on Friday. He sees two bond issues being proposed. One is a \$15 million bond issue being proposed payable from WWTP proceeds. A \$60 some million bond issue payable from property taxes. The City Council approved a rate increase based upon a \$42 million bond issue and a \$2 million annual debt service payment. Now we have a \$15 million bond issue with a \$700,000 payment. They could have passed a rate increase of \$1 - \$1.3 million less in revenue and still satisfied the requirements. He thinks they ought to think about lowering the rates a little bit because they set them too high. He noticed on page 2 of Umbaugh's report that Engineering fees final design is \$10,300,000 on a \$55,680,000 project. He said he is an accountant not an engineer but he has seen a lot of fee relationships and that is a lot of fees for a \$55 million project. On page 5 of Umbaugh's report, he noticed the \$12,608,000 they used the 2017 budgeted expenditures. The actual expenditures were \$11,040,000. The budgeted numbers are higher. Umbaugh has a replacement and improvement number of \$5,150,000. He has no idea where that number comes from other than maybe if that is the number needed to make the math work. He calculated the debt service reserve calculation ratio using the full 2017 budget and he gets 1.4 when 1.25 is the amount that is necessary. If he plugs in a \$800,000 under spend, he gets 1.46 so again that tells him that the revenue increase that the City Council passed is higher than it needs to be because all of a sudden the debt service number dropped by \$1,300,000. Why did we go to a property tax bond on the \$60,000,000? How did we get to \$75,000,00 or whatever from \$42.1 million? He realizes we have a property tax bond that pays out in January of 2019. Is this intended to replace that? That property tax that is going in that fund is in the \$6 - \$6.5 million range a year. He doesn't have any information in there that tells him what the annual debt service is going to be based on the \$60 million. His best estimate is \$3 million so what happens to that \$6 million vs. \$3 million difference is another question he has. He realized this is public comment and he has access to data that others did not but this is his chance to get that out. Chuck Ennis said the numbers that were presented last year originated in the LCTP in 2011. It is an old number. Since that estimate was generated we have been through a preliminary design phase and have a better handle on some of the cost. Most of it is the main lift station. We have another big component in that is that we had done the High Rate Treatment Facility in two phases instead of one, which pushed that cost from Phase 1 into Phase 2 because it wasn't really necessary in Phase 1. We have some value engineering.

There are some things that were put into the 2nd cost estimate that will come out. He expects that \$85 million number to come down. We haven't even been through design yet. The \$85 million has some contingencies that will be coming out as we fine tune the design. He expects that number to come down dramatically. Those are the two main reasons why those numbers are so much different than they were before. It was a shock to him, too. They didn't expect the numbers to be that high. As far as the engineering cost, our contract is considerably less than what is in that estimate as well. We are pairing those numbers down as best we can. The other part of that is that the 2nd bond is not going to be until next spring. We will have a better idea when we get through design what that 2nd bond will be. If we borrowed more money than what we actually use in this first bond. The money doesn't disappear. There is always the next phase of the LTCP. The restrictions on this money are pretty severe. We can't use it for a sewer project. We can't use it for a WWTP project. We can't use it for anything other than LTCP projects. The SRF controls the purse strings. We don't spend that money out of our office, we submit payment vouchers and the SRF pays the bill. They scrutinize every invoice that comes through. After this phase of the LTCP, there is another phase. So, if there is \$10 million dollars left over from these bonds, there is another series of projects waiting for the next pile of money. Mr. Elliott said Phase 2-5 was \$85 million according to the original schedule and now Phase 2 is \$75 million. Mr. Rogers said that a rate increase was adopted and we had higher project cost than what was originally anticipated. We still wanted to get through this process without forcing another rate increase on the community. With the January 1, 2019 maturity of the GO bond, they saw that as a mechanism to accomplish that. They did push a piece of the financing to the general obligation side. In regards to Mr. Elliott's question of what is the average annual debt service, he would like to meet with the City Council and go over things in detail. There is going to be flexibility as far as term, with the SRF you get an excellent interest rate. Even with a 20 year term you are looking at a pretty attractive interest rate. Some of the general obligation bonds in the past have had a shorter structure. The most recent was 5-7 years. What the annual debt service would be on a 20 year term for the \$62 million is roughly \$4.3 million. If that were the case and we financed using a 20 year term, we would actually see a tax rate decrease for the general obligation bonds through the Sanitary District. The strategy is still open for discussion whether you want to maintain that tax rate where it is and shorten the terms of the bonds so we have flexibility for future phases or if we want to maximize that term and lower that tax rate. He would like everyone's opinion as we move forward. In regards to Mr. Elliott's question regarding the \$5 million plus that is in there to allow for replacements and improvements. One thing the SRF has made clear is that they want to a plan to pay off the bond anticipation note. We have a \$6 million bond anticipation note that matures at the end of 2021. Obviously, we will not need that \$5 million plus each year for replacements and improvements in the system. There should be funds available there. Ideally we would have a 5-10 year capital improvement plan to base that replacement and improvement number on. We don't have that. He thinks realistically that \$3 million is a reasonable allowance for what we need. There should be \$2 million there each year to set aside to pay off that BAN when it comes due and avoid long term borrowing. Mr. Elliott asked if that \$6 million can be repaid in increments instead of being set aside. Mr. Rogers said we would have to check the legal documents to see if that is authorized. Mr. Elliott said he thinks the

County would gladly accept an partial repayment we could make to them ahead of the 5 year term. Mr. Elliott said he had no idea that was going to be a 5 year term when that was agreed to. He thought it was going to get repaid out of this bond issue for Phase 2. That is how we got to \$37 million from \$42 million. Mr. Rogers said he will say we talked about 125% coverage as target. This is the minimum. He thinks given the scrutiny that the SRF has given to the City, they wouldn't be entirely comfortable with that. They target at least 135% for rate design purposes. He thinks that 140% that is going to give the SRF some comfort with the City to finance these projects. Mr. Elliott said the debt service reserve payments on the big issue are finished this year. That is \$147,000 a month and that obligation will be met. He said that what he is hearing is that there are still a lot of moving parts. But what the Board is hearing from him is that the rate increase that the City Council passed last year isn't being used for debt service even though that is what they were told it was going to be used for.

Karrum Nasser said that his concern is to build the trust of the community. He asked if there is going to be a request for a sewer rate increase any time in the next 2-3 years before the Council. Mr. Rodgers said that this phase 2 will not. Mr. Ennis said you are talking three years into the future and he has no idea. Mr. Nasser said when the administration back in 2012 said we wouldn't have another sewer rate increase, he thinks the public would like to have a clear answer on that. He finds it hard to believe that construction cost have doubled from November when this was brought before the City Council. He thinks the public would appreciate it if we delay any vote on this until we find out what the final results are with the City administration doing an investigation and the FBI regarding the issues going on.

Mr. Adams asked if we vote to delay what happens. Mr. Otten said we have a proposed timetable which he handed out. The current plan is to be in the position to issue the first series of bonds in November. That first series of bonds will equal about \$15 million dollars and will be paid from Sanitary District revenues. That is to fund the planning and design cost of the projects. The next series of bonds for the actual construction cost would be done late May after the bids had been received for the project. That way that bond issue can be appropriately sized so we aren't basing it on estimates, we actually know what the cost will be. Right now we are getting approvals for the whole set of bonds because we can't just authorize just the plan and design cost. We want to get the whole thing approved. We will do this process and then an ordinance will be filed with the Council on September 8th. The Council will be considering approval of the GO issue in the October time frame. If this gets delayed, it just means we are then delayed going to Council and it delays the ability to issue the bonds for the design cost. He thinks if this get pushed to the next meeting it will delay about a month. Mr. Rogers asked Mr. Otten if there was an agreed to must start date. Mr. Ennis asked Troy Swan to update the Board. Troy Swan updated the Board on where we are with the schedule. Based on the information given to them on the Preliminary Engineering Report, an extension was granted in June. He said that the 25 year plan has not been impacted. The milestone completion date has not been exceeded. Mr. Shagley asked if the engineering firm has already been hired to do this work. Mr. Ennis said yes. Mr. Shagley said if that is the case we have to delay this. We are being investigated by the FBI and the terms pay to

play have been brought into this. A review should be done to see if any of the vendors we have hired are participating in this. He then asked what would trigger a sewer raise again. Mr. Rogers said simply put when your revenue requirements exceed the revenue coming in.

Pat Goodwin approached the Board and asked why the City Attorney is handling the FBI investigation. Mr. Adams said that has nothing to do with this. Mr. Goodwin said it does because Mr. Shagley asked should we delay this because of the investigation and the attorney said I don't know anything about that investigation because the City Attorney is handling it. Two years ago the Sanitary Board decided that this Board would be in charge of the WWTP. Now the WWTP is under FBI investigation. It seems to him that it is very relevant. He wants to know why the City Attorney is handling it. Why isn't the Board or the Board's attorney handling it. Mr. Modesitt said the Board may end up doing an investigation of their own. Right now the City has started an investigation. The FBI has told us very little. Some of the people that were interviewed were told who the target was and that is it. We don't have any other information at this point. The City has access to all of those records. They were the ones that were given in the summons to provide records to FBI. The City was also looking through this record and are preparing a report to give to the Board. At that point we can decide if we want to do our own investigation. Mr. Goodwin asked if anyone informed them that they are talking to the wrong people. They shouldn't be talking to the City, they should be talking to the Sanitary Board. The Sanitary Board is in charge of that plant. Mr. Ennis said it has nothing to do with what we are doing. Mr. Ennis said we are trying to move forward on the LTCP projects. The FBI has nothing to do with the business at hand. It has nothing to do with the City, nothing to do with this Board. Mr. Goodwin said he understands that the Board would like for it to have nothing to do with it but it most certainly does.

Mr. Shagley informed the Board that he absolutely disagrees on the relevance of the FBI investigation. If we have already picked vendors to do this work and we are under investigation and we believe that there are kickback schemes or improper handling of funds then we hear the cost has gone up. If a vendor is having to kick back the easy way to make that up is increase your fees. You know you can throw in any submittal you want because you know it is going to get approved because you have made the right person happy. Is the Board not worried about this? He asks that the Board be good stewards of our funds and ask for a delay until we know what is going on. Or, at least reevaluate the bidders the Board has already chosen and go through a proper bidding process, maybe we will see a cost reduction. That is the purpose of competitive building, to get good numbers.

The public hearing was adjourned at 10:45.

### **REGULAR MEETING**

The regular meeting of the Board of Sanitary Commissioners was called to order.

Mr. Elliott addressed the Board regarding Controlworx. He asked what good or service does Controlworx provide to the WWU. Mr. Ennis said they were hired to provide Semens programming to control the equipment remotely. This is the automation system. Mr. Elliott asked if it is an ongoing process. Mr. Ennis said it was.

Mr. Winning asked for a moment of silence in honor of Mark Thompson and his family. He asked that we keep them in our thoughts and prayers.

### **APPROVE MINUTES**

The minutes from the August 1st, 2017 meeting were presented to the Board.

On motion of Charles Ennis, seconded by Jim Winning, and unanimously approved, it was resolved that the minutes from the August 1, 2017 meeting be approved.

### **APPROVE CLAIMS**

The list of claims was presented to the Board for Sanitary District General and Waste Water Treatment Plant and discussed.

On motion of Jim Winning, seconded by Chuck Ennis, and unanimously approved that claims be approved as presented.

### **CONFIRMATORY RESOLUTION #3, 2017**

Confirmatory Resolution #3, 2017 was presented to the Board and discussed.

On motion of Jim Winning, seconded by Chuck Ennis, and unanimously approved it was resolved that the Confirmatory Resolution #3, 2017 be approved.

### **REVENUE BOND RESOLUTION #4, 2017**

Revenue Bond Resolution #4, 2017 was presented to the Board and discussed.

On motion of Larry Auler, seconded by Jim Winning, and unanimously approved, it was resolved that Revenue Bond Resolution #4, 2017 be approved.

### **GO BOND RESOLUTION #5, 2017**

GO Bond Resolution #5, 2017 was presented to the Board and discussed.

On motion of Chuck Ennis, seconded by Jim Winning, and unanimously approved it was resolved that GO Bond Resolution #5, 2017 be approved.

**WWTP OPERATIONS**

Chuck Ennis said that Debbie Padgett has been acting as interim director as the WWTP. He would like to nominate her as full time permanent director. Debbie Padgett introduced herself to the Board.

On motion of Larry Auler, seconded by Charles Ennis and unanimously approved it was resolved that Debbie Padgett will be full time permanent director of the WWTP.

**ISU 4th STREET SEWER ACCEPTANCE**

Marc Maurer presented the Board with a request to accept the 4th Street ISU sewer. This has been tested and meets all requirements.

On motion of Jim Winning, seconded by Charles Ennis, and unanimously approved it was resolved that the ISU 4th Street sewer be accepted.

**OTHER**

There was no other business.

**ADJOURNMENT**

The next regular meeting of the Sanitary Board will be held on September 5, 2017 at 10:00 a.m. in the Mayor's Conference Room, 3<sup>rd</sup> Floor, City Hall, 17 Harding Avenue, Terre Haute, Indiana.

APPROVED on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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Brad Bush, President

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Tim Adams, Vice President

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Jim Winning, Secretary

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Larry Auler, Member

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Chuck Ennis, Member