

BENNER TOWNSHIP WATER AUTHORITY

REGULAR MEETING

October 19, 2010

ATTENDANCE:

AUTHORITY MEMBERS PRESENT: Mark Capriani
Tom Eby
Steve Lanich
Andrew Swales

OTHER ATTENDEES: Warren Miller – SBWJA
Kelly Gill – SBWJA

CONSULTING ENGINEER: Charles Stover, E.I.T., Adrienne Vicari, P.E.

CONSULTING SOLICITOR: Richard Campbell, Esquire

CALL TO ORDER:

The October 19, 2010, Regular Meeting of the Benner Township Water Authority was called to order at 6:34 P.M. by Tom Eby, Chairman.

APPROVAL OF MEETING MINUTES:

The Minutes of the September 21, 2010 regular meeting were presented for review. **Mr. Lanich moved, seconded by Mr. Swales to approve the Minutes of the September 21, 2010 Regular Meeting as presented.** 3 ayes, 0 nays, 2 absent. **The motion carried.**

TREASURER'S REPORT:

Mr. Lanich reviewed the Treasurer's Report as presented. The total balance as of September 30, 2010 for both bank accounts is \$143,749.77. **Mr. Eby moved, seconded by Mr. Swales to approve the Treasurer's Report as presented.** 3 ayes, 0 nays, 2 absent. **The motion carried.**

Mr. Eby asked the Board if there were any questions regarding the Paid Checks or Bills by Vendor submitted for approval. **Mr. Eby moved, seconded by Mr. Swales to approve the Paid Checks in the amount of \$2,596.03 and Bills by Vendor in the amount of \$1,251.10.** 3 ayes, 0 nays, 2 absent. **The motion carried.**

Mark Capriani entered the meeting at 6:36 p.m.

SBWJA REPORT:

Opequon & Hampton Wells – Mr. Miller reported that both wells are currently functioning properly and the earlier issue with the Opequon well was corrected with the installation of new capacitors.

ENGINEER'S REPORT: See the attached Engineer's Report as made a part of these official Minutes.

Act 57 Study – Adrienne Vicari attended the meeting to answer any questions the Board may have regarding the Act 57 Study. Mr. Eby asked how much more money would have to be spent to complete the Act 57 Study. Ms. Vicari stated the study was approximately 95% complete and could be finalized for approximately \$600.00 once Grove Park Associates (GPA) provides documentation of the system costs.

Mr. Lanich stated based on the letter provided by HRG, he understood that the Authority really does not need to complete the Act 57 Study, but it is good to have if challenged by a future customer. Mr. Lanich also stated he didn't want to complete the Act 57 study if we don't really need it. Ms. Vicari stated that it was her understanding that typically the tapping fee resolution will reference the Act 57 calculations to support the costs. However, in this situation, if the Board felt comfortable referencing something else, such as the agreement with a developer then the Act 57 study wouldn't need to be finished. Mr. Campbell stated that the only real way of supporting the fee collected is through an Engineers Study, in case the Authority was ever challenged. Ms. Vicari stated the Authority already invested approximately \$5,000 in the study and for a few more hundred dollars the study could be completed and placed in the file in case the fees were ever challenged. She also stated it would be less costly in the future to revise the study if the authority invests additional equity in the system or has additional extensions because the framework has already been completed.

Mr. Eby asked if this study would only apply to connections within Grove Park and Ms. Vicari stated yes; however, the connection and customer facilities fees would apply system wide to cover the cost of the meter installation.

Mr. Lanich asked if there was any downside to completing this study and Ms. Vicari stated no that the study would simply state what the Authority is allowed to charge by law.

Discussion was then held regarding the Authority collecting the \$1,000 per lot fee, up to 40 lots, on behalf of GPA and how that would be handled if anyone contested the amount collected by our Authority. Mr. Campbell stated normally the seller would disclose all fees at the time the lot is being sold through the sales agreement; however, if that information wasn't disclosed, the Act 57 study would back up the tapping fee being collected. Mr. Campbell suggested that the Authority complete the Act 57 Study since a sizable sum of monies has already been expended, the study is now 95% complete and for approximately \$600.00, the study could be finalized in case the Authority was ever challenged.

Mr. Capriani questioned what would happen if another plot of land was developed and requested water service through the Grove Park Water System. Would a \$1,000 tap fee have to be collected and reimbursed to Garen Smith? Would it require an extension of the existing Act 57 study? How would this affect connections outside of the existing Grove Park Development? Ms. Vicari stated this depends on how the Authority's developer's agreement is worded. If the agreement states that GPA is entitled to \$1,000 per lot, up to 40 lots, then no further monies would have to be collected for GPA. The Authority would be entitled to collect a connection and customer facilities fee to cover the cost of the meter installation, but not a tap fee since the Authority did not invest any equity into the system. Mr. Campbell then suggested adding a paragraph to the Agreement of Sale with GPA stating that additional connections can be made to the system without any additional reimbursement component due to GPA.

Mr. Capriani stated that if the Authority invests any future funds to the Grove Park Water System that we should be entitled to some form of reimbursement. He then asked if that would require a separate Act 57 study or could those costs be plugged into this study? Ms. Vicari stated the Act 57 study could be updated to reflect those costs.

Mr. Miller then questioned who would challenge the Authority in this Act 57 study that we would need to have it completed for? Mark Derr, HRG, stated in his June 2008 email that he didn't believe an Act 57 study was necessary and that it could be handled through a sales agreement with the developer, GPA. Mr. Miller stated he does not believe the completion of an Act 57 study for the Grove Park Water System is necessary and a waste of the Authority's funds. Mr. Miller then questioned Ms. Vicari about whether or not the Authority's connection and customer facilities fee is part of the existing Act 57 study and Ms. Vicari stated yes, it is referenced within the study. Mr. Miller then asked if the actual figures are used to justify the connection and customer facilities fees system wide. Ms. Vicari indicated the current study does not justify those figures and only mentions these fees in a general statement. Mr. Miller stated that he was convinced by Mark Derr, years ago, that all of this should be handled through a sales agreement with the developer. As long as GPA is required to inform each potential buyer that the \$1,000 per lot tap fee will be collected by our Authority and reimbursed to GPA, then the fee should not be questioned.

Ms. Vicari then questioned what occurred after that June 2008 discussion with Mark Derr that led the Authority to proceed with signing HRG's proposal to complete the Act 57 study. Mrs. Gill indicated that the proposal was signed in March 2008 before the discussions occurred with Mark Derr.

Mr. Swales stated that with being \$600.00 away from having a completed Act 57 Study, he recommended proceeding with the completion of the study. If someone were to contest the fees collected, the Authority would spend more than that to defend the fees.

Mr. Capriani stated he doesn't understand why the Authority cannot claim the \$40,000 that will be collected and reimbursed to the GPA, along with the \$2,000 down payment as an asset purchase. He does not want to collect those monies for GPA and be considered their collection representative. If we cannot count this as an asset then there is no benefit to our Authority. Ms. Vicari stated the only benefit to this Authority is the 5% administrative fee that we will collect on top of the \$1,000 per lot.

Mr. Lanich then questioned why GPA would not collect these monies themselves. Mrs. Gill stated that Garen Smith indicated he didn't want to have to amend the

covenants to reflect this. Mr. Lanich recommended the possibility of establishing an escrow account to handle the collection and transfer of these funds. Mr. Campbell stated that the Act provides that the Authority collects the monies and turns the monies over to the developer. Mr. Campbell also informed the Board there is a ten (10) year limitation on the collection of these monies which is specified within the Act.

Mr. Swales moved, seconded by Mr. Lanich to proceed with the completion of the Act 57 Study for the Grove Park Water System. 4 ayes, 0 nays, 1 absent. The motion carried.

SOLICITOR'S REPORT:

Grove Park Water System:

Collection of Tap Fee – Mr. Eby informed the Board that he recently spoke with Ed Guenot regarding the collection of the \$1,000 tap fee per lot and questioned why GPA wouldn't collect this fee on their own. Ed Guenot agreed with Mr. Eby and stated he would discuss this with Garen Smith. The existing covenants of Grove Park allow for the collection of \$1,000 per lot of which \$850.00 is for the water system construction. With our Authority collecting \$1,000, GPA would receive a total of \$1850.00 per lot to offset the cost to construct the water system. Mr. Lanich stated that he is bothered that Garen Smith hasn't made an effort to attend any of the Authority's meetings to discuss any of these issues.

Sales Agreement – Mr. Campbell provided the Board with a sales agreement for review and comment. The Board discussed having Mr. Campbell add the following to the sales agreement:

#1 – Any additional connections to the system through the Grove Park Subdivision will be handled solely by the BTWA and there will be no additional reimbursement component to the developer. BTWA will negotiate directly with any new connections.

#2 – Any agreement of sale for a lot will disclose the additional payment due to the BTWA so it will not come as a surprise when they attempt to connect to the system.

#3 – BTWA would like to place a time limit on the agreement, such as 10 years, which is a standard part of Act 57.

Mr. Lanich moved, seconded by Mr. Swales to authorize Dick Campbell to incorporate the above provisions within the sales agreement and negotiate a sales agreement with Grove Park Associates. 4 ayes, 0 nays, 1 absent. The motion carried. Mr. Campbell stated he will make the changes to the agreement and email them to the Board.

Future Connections to System – Mr. Campbell suggested that at a future meeting the Board could discuss how to proceed with any connections outside of Grove Park and the tap fees that could be collected. Mr. Capriani stated that he believes the \$2,000 down payment and any of the monies collected for GPA would be fees that the Authority would be entitled to recoup.

Inspection of System – Mr. Miller informed the Board that a list has been compiled of all information we are requesting to complete the inspection of the water system, but the list has not been forwarded to Garen Smith at this point. Mr. Miller is requesting assurance that the SBWJA will not be held liable for anything that is found/caused during the inspection. Mr. Eby suggested that SBWJA just simply witness the exercising of the valves and flow testing of the hydrants completed by Matt Milliron, GPA's operator, to avoid any issues. The Board suggested removing the last paragraph of the list provided and revising it to reflect that we will witness the exercise of all valves and flow test of all hydrants within the system. Once the changes are made, the list is to be provided to Garen Smith. **The list is attached and has been made a part of these official meeting minutes.**

Mandatory Comment/Notification Period – Mr. Capriani questioned if there is a mandatory notification that should be provided to all affected customers of the pending acquisition of the system. Mr. Smith does not want any of the potential customers being contacted until the closing occurs. Mr. Campbell stated that there are no laws requiring this form of public notification.

Mr. Campbell left the meeting at 7:45 p.m.

GUESTS: There were no Guests present.

CORRESPONDENCE: There was no Correspondence presented for discussion.

OLD BUSINESS: There was no Old Business presented for discussion.

NEW BUSINESS:

2011 Proposed Budget – The 2011 Proposed Budget will be presented for approval during the November meeting with final approval being at the December meeting. Mr. Miller informed the Board that he and Mrs. Gill will work with Mr. Lanich to prepare the proposed budget for presentation at the November meeting.

2011 Board Meeting Schedule – Mrs. Gill informed the Board that the 2011 Board meeting schedule will be presented for approval during the November meeting.

ACTION ITEMS:

- **SBWJA to revise list of items needed to complete inspection of Grove Park Water System and forward list to Garen Smith**

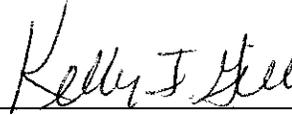
- Richard Campbell to revise Sales Agreement and negotiate agreement with GPA
- SBWJA work with Steve Lanich to prepare 2011 Proposed Budget

Next regular scheduled meeting is November 16, 2010 at 6:30 p.m.

ADJOURNMENT:

Mr. Capriani moved, seconded by Mr. Lanich to adjourn the meeting at 7:52 p.m. 4 ayes, 0 nays, 1 absent. **The motion carried.**

Respectfully submitted,



Kelly J. Gill, Recording Secretary

CC: Benner Township 11/17/2010

October 15, 2010

Benner Township Water Authority
1224 Buffalo Run Road
Bellefonte, PA 16823

Re: Status Report - Engineering Activities

Dear Authority Members:

The following summarizes our recent activities on behalf of the Benner Township Water Authority.

Act 57 Tapping Fee Report (1494.007)

Over the past month, HRG has received correspondence from board members and SBWJA regarding the need for the Act 57 study. These questions and comments are further complicated by developer negotiations and changes in HRG personnel. It appears there may have been some misinterpretation of June 2008 correspondence from HRG regarding Act 57. We hope to provide clarification through this report and in discussions with Board members at the October 19, 2010 Board meeting.

Specifically we offer the following comments:

1. Act 57 establishes Tapping Fees as a method to recover equity invested in the construction of the system. Since BTWA has not constructed or purchased the system, equity investment is minimal which inhibits the ability for the Authority to collect the Capacity and Distribution component of the Tapping Fee.
2. The Authority may collect Connection and Customer Facilities Fees relative to costs associated with connecting a property to the system, these costs include charges for meter installation and inspection.
3. The Authority may also collect the Reimbursement Component of the Tapping Fee which in essence equals fees due to Garen plus a 5% administrative fee due to the Authority.
4. HRG has prepared an Act 57 study which outlines the above. The study is approximately 95% complete and can be finalized for approximately \$600, following the execution of the developer's agreement.
5. HRG recommends completion of the Act 57 Study for the following reasons:
 - a. Tapping Fee resolutions generally reference the Act 57 study calculations. (However, if your solicitor feels comfortable making some other type of reference, then finalizing the study is not necessary for the resolution to be passed. But this should be verified with Dick prior to the Authority making a decision to halt the study.)
6. The Authority has paid for the portion of the study completed to date. For a few hundred dollars more the Authority can retain a completed study in your files in case a resident or developer ever questions the fee. If you chose not to finish the study now, it will likely cost more in the future to:
 - a. Reevaluate the basis for the fees
 - b. Update the study when new extensions are constructed or the Authority invests equity in the system.
 - c. Formulate a response if the fee is questioned by a resident or developer.
7. There also seems to be confusion whether completion of the Study limits the amount of the fee that can be charged. This is not the case. The Municipal Authorities Act (MMA) contains the Act 57

language and outlines allowable charges. If the Authority chooses to not complete the study and impose a higher fee to customers in or outside of the Grove Park Development, it would be in violation of the Municipal Authorities Act.

Based upon the reasoning outlined above, HRG recommends for the Authority to complete the study. If the Authority determines the completed document is not warranted at this time, then we encourage you to still charge allowable fees as outlined in the MMA. Please let us know if you have any questions regarding Tapping Fee structure and charges allowable under the Act.

Peru Feasibility Study (1494.0425)

At this time, there is nothing new to report. HRG remains available to assist the Authority regarding this matter.

We look forward to discussing these and any other issues at tonight's meeting.

Very truly yours,

Herbert, Rowland & Grubic, Inc.

Charles W. Stover II /dlp

Charles W. Stover II, E.I.T.
Water and Energy

CWS/dlp
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GROVE PARK WATER SYSTEM REVIEW

In order to perform the testing and evaluation of the Grove Park Water System, we request the following be provided:

- ◆Record Drawings of System
- ◆All EPA/DEP Water Quality Testing Completed and Results
- ◆All Drilling Logs and Source Testing including DEP pump test results in well development
- ◆All flow monitoring and records of daily usage/flows

We will witness the exercise of all valves and flow test of all hydrants within the system.