



Minutes

**YPSILANTI COMMUNITY UTILITIES AUTHORITY
BOARD OF COMMISSIONERS MEETING
Tuesday, February 23, 2010 – 9:00 a.m.
YCUA Administration Building
2777 State Road
Ypsilanti, MI 48198-9112**

Members Present: J. Ray Scott, Mark Namatevs, Deedra Climer Bass, and Gregory A. Peoples.

Members Absent: Larry J. Doe

1. **CALL TO ORDER:** Scott called the meeting to order at 9:10 a.m.
2. **MINUTES OF THE PREVIOUS MEETINGS:** Motion by Namatevs to receive and file the minutes of the January 26, 2010 meeting as presented. Support by Peoples. In favor: All. Opposed: None. (Motion carried.)
3. **NEW BUSINESS:**
 - A. **Request to Approve – Comprehensive Annual Financial Report (CAFR) For Fiscal Year 2008 – 2009 – Larry R. Thomas**

Mr. Thomas advised the Board that the Comprehensive Annual Financial Report (CAFR) for the year ending August 31, 2009 has been completed by YCUA's auditing firm, Rehmann Robson. He indicated that the report and the Communications for Those Charged with the Governance of the Authority document was delivered to the Board last week both in electronic format as well as hardcopy. Mr. Thomas explained that the Single Audit had been distributed to them at the beginning of the meeting. He pointed out that Mark Kettner from Rehmann Robson was in attendance for a presentation on the report and to answer any questions that the Board may have regarding the audit.

Mr. Kettner congratulated the Board on another good year and complimented YCUA and its attorney for exemplary work during the long legal battles that took place. He indicated that the annual audit report contains his firm's clean and unqualified opinion on the financial statements. Mr. Kettner explained that this is not an opinion on the internal controls or the financial condition but only on the financial statements. He pointed out that, when his firm does an audit, they must

gain an understanding of and test the internal controls in order to determine the nature, timing, and extent of its procedures. Mr. Kettner also explained that the intent is not to issue an opinion on the Authority's controls but rather simply that the financial statements are fairly presented in accordance with a set of guidelines known as the General Accepted Accounting Principles for Government. He further advised that it is YCUA Board's expectation that management, particularly the finance department, will discharge their duties in such a fashion to allow for the ready preparation of the financial statements in accordance with the General Accepted Accounting Principles and that that is indeed the case with Dwayne Harrigan and his staff.

Mr. Kettner stated that the report contains results broken down between water and wastewater and city and township. He acknowledged that there are items there that should continue to be monitored to allow rates to be adjusted accordingly. Mr. Kettner confirmed that post-employment benefits and retiree healthcare implementation disclosures are also contained in the report. He explained that actuarial liability disclosures are contained as well, with a specific figure of \$31 million for the present value of the future cost.

Mr. Kettner pointed out that there is an environmental liability that is still being carried but that the Authority is well covered in terms of the liabilities expressed there and the amount that is shown as the current liability.

He also stated that the Single Audit is the audit on the federal programs. Mr. Kettner advised the Board that they should not be concerned about the findings that appear there and that this item may be going away.

He indicated that the management letter is longer than the previous year because there is a management representation letter attached, which is required of the auditor under the new standards for every auditing engagement. Mr. Kettner explained in detail the language contained there concerning scanned checks.

J. Ray Scott thanked Mr. Kettner for his report.

Mr. Thomas recommended approval of the Comprehensive Annual Financial Report (CAFR) For Fiscal Year 2008 – 2009.

Motion by Namatevs to approve the Comprehensive Annual Financial Report (CAFR) For Fiscal Year 2008 – 2009. Support by Bass. In favor: All. Opposed: None. (Motion carried)

B. Request to Approve – Annual Officer and Committee Member Appointments – Larry R. Thomas

Mr. Thomas advised the Board that February is the month that officers and committee assignments are selected by the Board. He indicated that the

current Board officers and committee appointments were in their packets for their review. Mr. Thomas also explained that any of the positions can be changed at this time but that even if it is decided that everything should remain as it is, there should be a motion to that effect.

J. Ray Scott interjected that a recommendation has been put forth that the YCUA Board officer and committee member appointments remain the same for the coming year.

Deedra Climer Bass indicated that she would prefer to not continue as Secretary – Treasurer if that role can be filled by a member of the Finance Committee, which seems more in line with the requirements of the position. She indicated that she was comfortable with tabling this item since not all Board members were present and able to vote.

Motion by Peoples to table the Annual Officer and Committee Members item until the March meeting. Support by Bass. In favor: All. Opposed: None. (Motion carried)

C. Request to Approve – YCUA Resolution No. 10-1 re: Retirement of Ken Colston – Larry R. Thomas

Mr. Thomas advised the Board that Ken Colston is a YCUA employee with 27 years of service. He indicated that Mr. Colston worked in the maintenance department. Mr. Thomas also explained that Mr. Colston has requested retirement as of February 26, 2010. He pointed out that this item is a standard retirement resolution.

Mr. Thomas recommended approval of YCUA Resolution No. 10-1 re: Retirement of Ken Colston.

Mark Namatevs inquired as to how this position will be filled. Gwyn Belcher responded that the position will remain vacant temporarily until economic conditions improve. She indicated that Mike Jessee will be fulfilling the position's duties with the assistance of the maintenance department supervisors.

Motion by Peoples to approve YCUA Resolution No. 10-1 re: Retirement of Ken Colston. Support by Namatevs. In favor: All. Opposed: None. (Motion carried)

D. Request to Approve – YCUA Attorney Fee Increase - Larry R. Thomas

Mr. Thomas directed the Board's attention to a letter that he received from YCUA's attorney Tom Daniels, which was included in their packets. He indicated that the letter requests consideration for an increase in the hourly rate charged by Mr. Daniels and his firm for his legal services to the Authority. Mr. Thomas explained that the \$175 hourly rate has remained unchanged since February of 2007. He pointed out that Mr. Daniels has also used an associate of the firm at a rate of \$125 per hour to assist in

recent large cases such as the WTUA arbitration and the Meade Westvaco lawsuit that is currently in progress.

Mr. Thomas also explained that, in his letter, Mr. Daniels is requesting an hourly increase to \$190 per hour and \$155 per hour for his associate. He further advised that, following the most recent hearing in the Meade Westvaco case, which was rather disappointing and upon which Mr. Daniels will elaborate in his attorney's report, the request was amended and Mr. Daniels will continue his work on that particular matter at his present rate.

Mr. Thomas stated that there is no budget adjustment necessary in order to grant Mr. Daniels's request, as it is well within the budget parameters for legal fees and the Meade Westvaco case is being funded through a trust fund as part of the expansion project. He acknowledged that Mr. Daniels has done a great job since becoming YCUA's attorney and that he concurs with the request.

Mr. Thomas confirmed that he received a phone call from Larry Doe, who could not be present for the meeting, who requested that this matter be referred to the Finance Committee prior to a vote from the Board.

Mark Namatevs asked for clarification that Mr. Doe is requesting that this matter be tabled pending a review of the YCUA Finance Committee. Mr. Thomas responded that tabling the item would be the easiest way to refer it to the Finance Committee as Mr. Doe requested.

Deedra Climer Bass inquired as to whether Mr. Doe expressed any specific concerns upon which the Finance Committee could offer an opinion or whether Mr. Doe is really just asking that this matter not be voted upon until he is present. Mr. Thomas responded that he thinks that the concern is that the employees didn't get an increase this year and also that Mr. Doe wants to be present and part of the discussion. Ms. Bass suggested that the item be tabled until March so that Mr. Doe can express any specific concern that might warrant referring the matter to the Finance Committee. Mr. Namatevs interjected that he would just as soon take it directly to the Finance Committee and come up with a recommendation.

Gregory A. Peoples commented that Mr. Doe's request is reasonable but that he would ask Mr. Thomas to ask Mr. Doe to submit his specific concerns to the Chair of the Finance Committee so that it can be discussed, otherwise the Finance Committee cannot properly address those concerns.

J. Ray Scott also commented that there don't seem to be any budgetary adjustment concerns and that he would like to go on record as saying that Mr. Daniels's work has been exemplary and some of the finest legal representation the Authority has had. Mr. Namatevs concurred,

expressing gratitude for everything that Mr. Daniels has accomplished and how well he has communicated with the Board.

Motion by Peoples to table the YCUA Attorney Fee Increase until the March meeting in order to consider a recommendation from the Finance Committee. Support by Bass. In favor: All. Opposed: None. (Motion carried)

E. Request to Approve – Change Order No. 2 re: Willow Run and Martz Road – T. Michael Jessee

Mr. Jessee reminded the Board that staff is in the process of replacing the headers in both Willow Run and Martz Road pumping stations and providing a redundancy discharge header, a larger additional pump, and new sewer chewers at Martz Road. He indicated that Tetra Tech submitted the change order, which addresses 11 items.

Mr. Jessee explained that the total for the change order is a reduction of \$6,091.84. He pointed out that YCUA budgeted a \$250,000 contingency for this project and that, with approval of this change order, there will be a total of \$21,091.84 in reductions.

Mr. Jessee also explained that his memo addresses each item in the change order and offered to review those items and answer any specific questions the Board may have.

Mr. Jessee recommended approval of Change Order No. 2 re: Willow Run and Martz Road in the credit amount of \$6,091.84.

Motion by Bass to approve Change Order No. 2 re: Willow Run and Martz Road in the credit amount of \$6,091.84. Support by Namatevs. In favor: All. Opposed: None. (Motion carried)

F. Request for Final Acceptance – Aspen Ridge as a Public Utility – T. Michael Jessee

Mr. Jessee advised the Board that Aspen Ridge is a development located at the south side of the corner of Textile and Munger Roads. He indicated that this project has been completed. Mr. Jessee explained that the project consisted of approximately 8,000 feet of 8-inch water main and 6,350 of 10-inch diameter gravity sewer main. He pointed out that a check in the amount of \$513.94 was issued to the developer for the excess of escrows for the inspection.

Mr. Jessee also explained that there were some issues with one of the duplexes in the complex in that it was discovered that the developer or the contractor had not installed three feet of sanitary lead from that location. He further advised that this was very concerning to Ypsilanti Township as well as the Authority. Mr. Jessee stated that YCUA staff met with Ypsilanti Township officials to discuss the issue and, last week,

approximately 1,500 feet of sewer main within the development was televised and spot-checked but that no evidence of any other issues could be found. He acknowledged that there were no fines for the omission of the three feet of lead but that Ypsilanti Township and the homeowners association have been following up on the matter.

Mr. Jessee recommended acceptance of Aspen Ridge as a Public Utility.

Motion by Namatevs to accept Aspen Ridge as a Public Utility. Support by Bass. In favor: All. Opposed: None. (Motion carried)

G. Fund Balance Report - Larry R. Thomas

Mr. Thomas directed the Board's attention to the Fund Balance Report for January 31, 2010. He then proceeded to give a detailed report of the information contained in the report and answered questions from the Board.

Informational only; no motion from the Board required.

H. Financial Report – Authority Net Assets - Larry R. Thomas

Mr. Thomas directed the Board's attention to the Financial Report – Authority Net Assets Report for January 31, 2010. He then proceeded to give a detailed report of the information contained in the report and answered questions from the Board.

Informational only; no motion from the Board required.

I. Usage Report – Consumption Report - Larry R. Thomas

Mr. Thomas directed the Board's attention to the Consumption Report. He then proceeded to give a detailed report of the information contained in the report and answered questions from the Board.

Informational only; no motion from the Board required.

J. Attorney's Report – Thomas E. Daniels

Mr. Daniels advised the Board that he has two items to report on.

Mr. Daniels advised the Board that the WTUA matter is finally coming to a conclusion. He reminded them that YCUA's Motion for Attorney Fee Sanctions was granted last month but that the court gave WTUA fourteen days in which to file objections to the reasonableness of the request for \$37,800 in fees. Mr. Daniels explained that the deadline was February 4th and no objection was filed. He pointed out that he is still waiting for the court's order relative to this matter but that it is expected at any time. Mr. Daniels also explained that when this order is received, this will signal the closing of this matter in circuit court. He further advised that WTUA still reserves the right to take the matter to the Court of Appeals but that he certainly does not expect that that would happen.

Mr. Daniels advised the Board that the pretrial that was held on the Meade Westvaco case was a bit disappointing procedurally. He indicated that there was a voluntary mediation back in September in an effort to settle the case at that time. Mr. Daniels explained that that effort failed, primarily because Meade Westvaco and Bioclimatic were still intent on filing motions to dismiss YCUA's claims. He pointed out that they did so and the Authority was successful in responding in that the court denied their motions.

Mr. Daniels also explained that, at Bioclimatic's request, YCUA then participated in a second session with the same mediator on February 9th. He further advised that Larry Thomas was present as well as a representative from the Christman Company, an assistant general counsel for Meade Westvaco, and the CEO of Bioclimatic. Mr. Daniels stated that the session lasted over eight hours but a settlement was still not reached. He acknowledged that, leading up to this, the judge, who knew the second mediation was about to take place, advised the parties that, if a settlement was not reached this time, they should plan to meet in court for a final pre-trial conference on February 18th.

Mr. Daniels confirmed that the parties were present again for the pre-trial conference with the judge. He explained that the fact that the judge did not participate in facilitating a settlement at that conference was the source of the disappointment. Mr. Daniels pointed out that the matter was passed off to a colleague of the judge, who didn't know anything about the case and was not vested in resolving it. He also stated that he had hoped that there was a good chance that the judge would set the case for trial within the next couple of months but that the trial date that was actually set is October 5th.

Mr. Daniels advised the Board that this takes away an incentive on the other side's part to talk about settlement. He indicated that, within the next week or so, he will be preparing a confidential document for the Board's review regarding the figures involved in the attempts to settle this matter. Mr. Daniels explained that YCUA has withdrawn its written settlement offer after learning about the October 5th trial date. He pointed out that he will proceed with preparing the case for trial.

Mr. Daniels also explained that the discovery issues previously discussed are also still outstanding and that he is awaiting a decision from the magistrate on that. He further advised that, two days before the pre-trial, Meade Westvaco and Bioclimatic filed a motion to have the case reassigned to a jury rather than a bench trial in a move that was a little bit desperate on their part. Mr. Daniels stated that this request was highly unusual, especially this late into the proceedings, but the judge did say that he expected the Authority's response to be filed according to the local court rule of 14 days from the date of filing. He acknowledged that he

will be responding and opposing this motion. Mr. Daniels confirmed that YCUA has no fears of a jury trial but that there are certain aspects of this case that are known as “equitable relief”, which are always decided by a judge anyway. He explained that this particular matter will probably be resolved in the next 30 or so days as the judge has been typically prompt on these kinds of motions.

Informational only; no motion from the Board required.

K. Director’s Report - Larry R. Thomas

Mr. Thomas advised the Board that he has two items to report on.

Mr. Thomas reminded the Board that, last spring, in light of forecasts for decreased revenue at the Authority, the Board directed YCUA staff to prepare for them recommendations for possible sources of additional revenue for the Authority. He indicated that staff recommended a revision of the fees that YCUA charges for special services. Mr. Thomas explained that the recommendation specifically called for special services to be paid through fees charged to the requesting party rather than subsidized by all customers as is the case now. He pointed out that the Board considered the recommendation but tabled it so that it could be revisited in the new year.

Mr. Thomas also explained that he will be discussing this matter at the next Finance Committee meeting in order to formulate a recommendation for the Board at the March meeting.

Mark Namatevs interjected that it will be the goal of the Finance Committee to discuss the current actual costs of providing these services because a big part of these fees is man hours and fleet costs.

Deedra Climer Bass added that the concern last year was that an additional cost to the citizenry at this time of economic crisis would need to be justified fully in order to circumvent a possible public relations issue.

Mr. Thomas advised the Board that, as the second item in his Director’s Report, he wished to thank and commend Dwayne Harrigan and Venita Terry for the work that they did on the audit, particularly for their research and information gathering so that the audit could be completed in a timely and satisfactory manner.

Informational only; no motion from the Board required.

4. OLD BUSINESS:

L. Informational Item - Change Order re: Sweet Road Project – Deedra Climer Bass reminded the Board that she was not present at last month’s meeting when this item was approved but that she wanted to express her concern that a process be put into place to make sure that a similar situation does not occur in the future. Ms. Bass advised the Board that it

is essential that outstanding amounts owed to contractors be audited before seven years worth of interest are incurred.

Mr. Thomas responded that this was a very rare situation and that he would have to look into devising an auditing system like the one Ms. Bass described. T. Michael Jessee indicated that he and the engineering department have already devised a plan to periodically review all construction projects that are still on the books.

Mark Namatevs inquired as to whether there is a certain account or some kind of designation made when such money is deposited that could be monitored on a continuing basis. Venita Terry responded that she monitors all retention funds from construction projects on a monthly basis and reconciles them in a bank account set up for YCUA's contractor deposits. Ms. Terry advised the Board that she is not sure what happened in this particular instance but that she has been working with the state to do due diligence regarding unclaimed property submissions.

Dwayne Harrigan advised the Board that this project took place prior to the establishment of the monitoring systems currently in place for construction project retention funds so the money was, in essence, closed out and the asset depreciation began. He indicated that the process in place now will prevent this from happening again.

J. Ray Scott also commented that the Board's major concern was the magnitude of the effects of this occurrence but that he does understand that measures have been taken to assure it does not happen again.

Mr. Harrigan explained that the crux of the matter is that this was money that YCUA owed to another party that did not do their due diligence in requesting payment. He pointed out that, if this were to happen now, the retainage amount would be in an interest-bearing account so that the interest due to the contractor would be covered by that.

Informational only; no motion from the Board required.

5. OTHER BUSINESS:

There was no other business for the month.

- 6. STATEMENTS AND CHECKS:** Motion by Bass to pay the bills in the amount of \$2,591,740.56 with an addendum in the amount of \$19,235.00. Support by Peoples. In favor: All. Opposed: None. (Motion carried)

- 7. PUBLIC COMMENTS:** Pat Morris, AFSCME Chief Steward and Ypsilanti resident of 38 years, addressed the Board regarding potential rate increases from Detroit. Mr. Morris advised the Board that it seems to him that the YCUA Board's hands are sometimes tied politically when it comes to passing on the rate increases that private sector businesses would have no choice but to pass on to their customers in order to stay viable. He indicated that, since 2003, YCUA

employees from upper management on down have taken layoffs and pay decreases and the Authority has sacrificed manpower through attrition in order to continually cut costs. Mr. Morris explained that all other possible means of cutting expenses have been done to the point that there is nothing left to cut and the number of employees on staff is at an all time low. He pointed out that, despite the fact that AFSCME staff has been cut from 121 to below 100, they are still delivering the kind of service that the residents deserve and expect.

Mr. Morris also explained that, if YCUA does not begin to operate like a business without getting caught up in Ypsilanti politics, eventually it is the public that is going to suffer. He further advised that the Authority as a whole is already suffering and this can even be seen in the political reluctance to provide Mr. Daniels with the rate increase he clearly deserves.

Mr. Morris stated that he wanted to leave the Board with a quote from Brenda Stumbo, taken directly from the minutes of an Ypsilanti Township charter meeting in 2003, when Ms. Stumbo was clerk: "Sometimes when someone reads the paper, they think the Authority is in bad shape or that there is something that they did wrong in their management and expenditure of funds. But this is not the case." She added that she "appreciates the efforts that have been taken and that, as a politician, no one likes to vote for rate increases but, as a business person, you have to. YCUA can no longer afford to absorb the increases and it is time to run the Authority like a utility company."

Mr. Morris confirmed that, more than ever, this is the case.

Deedra Climer Bass commented that she is extremely appreciative of Mr. Morris's recognition that there is a very fine line to walk between representing the wishes of the citizenry that has elected the Board to their positions and appreciating the tremendous negative impact on the community that would occur should YCUA not continue to remain fiscally viable. She added that not only is the community relying on YCUA to provide their water in the manner in which they are accustomed but they are also relying on YCUA for the jobs it provides and for food on the tables of a large number of families in this community. Ms. Bass indicated that the Board is in a very difficult position when it comes to matters such as this and that she appreciates Mr. Morris's courageous comment.

J. Ray Scott also indicated that he has researched the broader spectrum of utilities such as DTE and that he knows everyone has seen these rates increase dramatically in recent years. He stated that other utilities pass on their cost increases without hesitation and yet YCUA continues to grapple with the concept of doing what any other utility company would not question doing. Mr. Scott also advised that this must not enter into the political realm but remain simply a business decision. He stated that the times are such that this matter must be dealt with in a very deliberate, businesslike manner. He expressed his appreciation for Mr. Morris's comments.

Mr. Morris also indicated that it is also unfortunate that consumers in the United States tend to take their services for granted and that everyone must make an effort to be more fiscally responsible in their utility usage. Ms. Bass concurred and indicated that she thinks future generations will not have the same expectation of entitlement and will be better stewards of environmental resources.

Mr. Morris also commented that he wished to bring to the Board's attention, relative to the agenda item requesting a review of fees for special services, that not all of those requests come from residents but rather from businesses that tend to take advantage of the fact that YCUA does not charge for special services. Mr. Namatevs interjected that other utility companies charge a fee just to flip a switch and that it is important to analyze the true cost of these specific services in order to cover those costs. Mr. Morris added that these fees are important so that the Authority does not have to continue to dip into reserves or forego capital improvements projects in order to continue to provide services to its customers.

8. **ADJOURNMENT:** Motion by Peoples to adjourn the meeting at 10:21 a.m. Support by Namatevs. In favor: All. Opposed: None. (Motion carried)



Respectfully submitted,

MARK NAMATEVS, Vice Chair