



Minutes

**YPSILANTI COMMUNITY UTILITIES AUTHORITY
BOARD OF COMMISSIONERS MEETING
Tuesday, August 28, 2007 – 4:00 p.m.
YCUA Administration Building
2777 State Road
Ypsilanti, MI 48198-9112**

Members Present: Larry J. Doe, Mark Namatevs, and Gregory A. Peoples.

Members Absent: J. Ray Scott and Deedra Climer Bass.

1. **CALL TO ORDER:** Doe called the meeting to order at 4:05 p.m.
2. **MINUTES OF THE PREVIOUS MEETINGS:** Motion by Namatevs to receive and file the minutes of the July 24, 2007 meeting. Support by Peoples. In favor: All. Opposed: None. (Motion carried.)
3. **NEW BUSINESS:**
 - A. **Request to Approve – Fiscal Year 2007 - 2008 Budget Correction -**
Larry R. Thomas

Mr. Thomas directed the Board’s attention to the budget for fiscal year 2007 – 2008. He advised them that the budget was passed at the last meeting however, subsequently, three errors have been discovered that have been corrected in this version of the budget. Mr. Thomas also explained that he would appreciate the Board approving these corrections and passing the budget in this version. He pointed out that the three errors do not significantly change the “bottom line” of the budget.

Mr. Thomas explained that the first correction is with the water rate. He further advised that the previous version calculated water revenue based on a 5.1% increase rather than 5.14%. Mr. Thomas stated that that correction increases revenue by about \$4,500.

He acknowledged that the second correction is in the revenue line item for industrial pretreatment charges. Mr. Thomas confirmed that the number in the approved budget is greater than can be expected by about \$176,000. He explained that the number used in the first version of the budget was from the previous year.

Mr. Thomas pointed out that the third correction is the total sewage flow anticipated from the City of Ypsilanti in the new fiscal year. He also stated that the incorrect percentage of inflow and infiltration was used to estimate the flow, thereby underestimating the amount of sewage being transported from the city. Mr. Thomas advised them that this number is used to determine the allocation of expenses between the city and township divisions of the Authority as well as in the rate calculations for wastewater rates for our contract communities.

He indicated that the total effect of these three changes decreases the cash available for capital acquisition in the City Division by about \$300,000 and increases the cash available for capital acquisition in the Township Division by about \$60,000.

Mr. Thomas also explained that, although the changes made to the budget are not overly significant, the numbers in the budget are used to calculate rates and allocation factors for expense allocations. He pointed out that it is prudent to have the best numbers available in the final version of the budget. Mr. Thomas explained the Finance Committee has not met to discuss these corrections.

Mr. Thomas recommended approval of the Fiscal Year 2007 - 2008 Budget Correction as presented.

Mr. Namatevs inquired as to what effect these changes will have on the City numbers and whether the fact that the infiltration factor being too low could be problematic. Mr. Thomas responded that there is no significant impact. Mr. Namatevs inquired as to whether City figures have been improving historically due to the infrastructure upgrades being done. Mr. Thomas responded that one would think so but, in reality, they have not seen significant improvements. He advised that YCUA recently moved up the planned monitoring of a main interceptor that is the potential source of a large leak under the river and, if the Authority finds a major source of inflow or infiltration there, it can take corrective action.

Mr. Namatevs inquired as to whether it is a priority to find the source. Mr. Thomas responded that it is a priority, particularly from an environmental standpoint, and that, each year, YCUA does a sanitary sewer evaluation study to look for these issues. He indicated that the city evaluation was moved up to current fiscal year and that it will tell if there is a large inflow at some point in that sewer.

Motion by Peoples to approve the Fiscal Year 2007 - 2008 Budget Correction as presented. Support by Namatevs. In favor: All. Opposed: None. (Motion carried)

B. Request to Approve – WWTP Improvements Reserve Funding Level for Fiscal Year 2007 – 2008- Larry R. Thomas

Mr. Thomas advised the Board that YCUA's wastewater contracts with WTUA and other contract communities call for the funding of a WWTP improvement reserve fund. He indicated that annually, the Board can set the amount that will be allocated to this fund. Mr. Thomas also explained that he recommends that the fund allocation for fiscal year 2007 – 2008 be \$200,000. He pointed out that action by the Board to set this allocation removes any doubt as to the level of funding. Mr. Thomas explained that this allocation is included in the budget figures.

Mr. Thomas recommended approval of the \$200,000 allocation to the WWTP improvement reserve fund for fiscal year 2007 – 2008.

Motion by Namatevs to approve the \$200,000 allocation to the WWTP improvement reserve fund for fiscal year 2007 – 2008. Support by Peoples. In favor: All. Opposed: None. (Motion carried)

C. Request to Approve – Purchase of Four Inch Trailer Mounted Pump -
T. Michael Jessee

Mr. Jessee advised the Board that staff solicited bids for the purchase of a four-inch emergency bypass pump according to the YCUA purchasing policy. He indicated that the emergency pump is used to bypass lift stations when they become inoperable due to electrical or mechanical failure. Mr. Jessee also explained that five bids were received but one bid did not meet specifications. He pointed out that four bids were received from acceptable suppliers and the low bid was from Mersino Pump in the amount of \$18,602.39 for the pump and trailer package. Mr. Jessee explained that this pump was budgeted in the current fiscal year budget. He further advised that, historically, YCUA has used submersible pumps and that this is a global pump manufactured by Mersino. Mr. Jessee stated that there is no difference in quality between the Mersino and the Thompson pumps.

Mr. Namatevs inquired as to why he recommends purchasing one four-inch and one six-inch pump instead of two of the larger pumps. Mr. Jessee responded that the item in 3.D is on a larger trailer and is too large to be efficient in certain circumstances.

Mr. Jessee recommended approval of the purchase of the four-inch emergency bypass trailer-mounted pump from Mersino Pump in the amount of \$18,602.39.

Motion by Peoples to approve the purchase of the four-inch emergency bypass trailer-mounted pump from Mersino Pump in the amount of \$18,602.39. Support by Namatevs. In favor: All. Opposed: None. (Motion carried)

D. Request to Approve – Purchase of Six Inch Trailer Mounted Pump -
T. Michael Jessee

Mr. Jessee advised the Board that staff solicited bids for the purchase of a six-inch emergency bypass pump according to the YCUA purchasing policy. He indicated that the emergency pump is used to bypass lift stations when they become inoperable due to electrical or mechanical failure. Mr. Jessee also explained that four bids were received from acceptable suppliers and the low bid was from Mersino Pump in the amount of \$22,912.99 for the pump and trailer package. He pointed out that this pump was budgeted in the current fiscal year budget.

Mr. Jessee recommended approval of the purchase of the six-inch emergency bypass trailer-mounted pump from Mersino Pump in the amount of \$22,912.99.

Motion by Namatevs to approve the purchase of the six-inch emergency bypass trailer-mounted pump from Mersino Pump in the amount of \$22,912.99. Support by Peoples. In favor: All. Opposed: None. (Motion carried)

E. Request to Approve – Budget Amendment for the Installation of EMU Double-Check Valves - T. Michael Jessee

Mr. Jessee reminded the Board that, in July of 2006, staff requested their authorization to enter into a contract with C.I. Contracting for the installation of two double-check valves on water mains entering the EMU campus. He indicated that the check valves are to ensure that the EMU private water system is not used to transport water to other YCUA customers. Mr. Jessee also explained that this is done to comply with MDEQ requirements.

He pointed out that, for the past year, YCUA has tried unsuccessfully to acquire easements from EMU for this project as the university has felt that the water mains belong to YCUA even though they have always done maintenance to the mains. Mr. Jessee explained that he participated in two meetings last fall and two more in the spring and also met with the new Associate Vice President for Facilities, John Donegan, who was receptive to the idea that EMU can eliminate some backflow prevention devices. He further advised that Mr. Donegan has agreed to try to get the easement request on their September Board of Regents meeting.

Mr. Jessee stated that, in the meantime, YCUA needs to move forward because MDEQ does not want the Authority to utilize EMU pipe work to distribute flow from one side of the city to another. He acknowledged that MDEQ has not yet mandated this but is strongly recommending it.

Mr. Jessee confirmed that this item is contingent upon not being able to obtain easements from EMU. He explained that YCUA presently has an easement for one water main on the EMU campus that runs up Forest Avenue up to Washtenaw, which the university also continues to maintain.

Mr. Jessee pointed out that Authority staff has requested from C.I. Contracting the cost to install these check valves within the road right-of-way on Huron River Drive. He further advised that this will require the vaults containing these check valves to be under the pavement of Huron River Drive.

Mr. Jessee stated that C.I. Contracting stated that the increase in cost would be \$29,901. He acknowledged that the original approved project cost was \$100,000. Mr. Jessee confirmed that it is the opinion of staff that the \$29,901 is a reasonable cost for moving the point of installation to under the pavement on Huron River Drive. He explained that this project is budgeted for the current fiscal year.

Mr. Jessee recommended approval of the change in the EMU double-check valve contract with C.I. Contracting in the amount of \$29,901, bringing the total budget for the project to \$129,901.

Mr. Peoples commented that he would do what he could to move the matter forward to a mutually satisfactory conclusion.

Motion by Namatevs to approve the change in the EMU double-check valve contract with C.I. Contracting in the amount of \$29,901, bringing the total budget for the project to \$129,901. Support by Peoples. In favor: All. Opposed: None. (Motion carried)

F. Fund Balance Report - Larry R. Thomas

Mr. Thomas directed the Board's attention to the Fund Balance 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.

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

Mr. Thomas directed the Board's attention to the Financial Report – Authority Net Assets Report for July. 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. 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.

I. Attorney's Report – Thomas E. Daniels

Mr. Daniels advised the Board that he has four items upon which to report for this month.

He indicated that the first item is a status report on the C.A. Hull litigation resulting from the piercing of the sewer main during the construction of the sound wall on I-94. Mr. Daniels reminded the Board that the last report indicating that YCUA was waiting before launching into pretrial discovery for C.A. Hull's attorney's response and verbal statement to him as to whether they were going to commit to settlement negotiation. He pointed out that opposing counsel conferred with his client, who took a stubborn position, claiming that the sewer main was damaged prior to their arrival and that they had no liability for that reason. Mr. Daniels explained that they also claimed that the bills from Superior Excavating to repair the sewer were excessive. He further advised that this response prompted YCUA to move forward with pretrial discovery and, since that time, he has met with all key witnesses from YCUA who were onsite that day.

Mr. Daniels stated that this was followed up with acquisition of additional documents. He acknowledged that the result of the witness interviews is that the claim of the sewer being damaged is not one that the Authority gives any credence to whatsoever. Mr. Daniels confirmed that, had there been any prior damage to the main, there would have been manholes backing up and holding sewage upstream and there would have been homes backing up eventually in that area. He explained that there also would have been evidence on the ground. Mr. Daniels pointed out that he is presently developing witness and exhibit lists and other information to support YCUA's position in trial.

Mr. Daniels reminded the Board that Bioclimatic is the company that installed the air ionization odor control equipment, which is not functioning properly. He indicated that YCUA recently terminated that contract and demanded that Bioclimatic provide the Authority some kind of response by August 17th as to what their position was on return of the equipment and corrective measures. Mr. Daniels also explained that a response was received on August 21st, which was a very confrontational response alleging a variety of things. He pointed out that their allegations include a claim that the test results that YCUA provided to them have been skewed and inaccurately interpreted, that the conditions that they were forced to contend with were not accurately represented in the contract, that the contract had a provision requiring acceptance or rejection of the equipment within 150 days and that YCUA accepted it on January 14, 2006, that they will not accept return of the equipment at this point, that they are owed extras under the contract, and they will not do any more work until their demands have been met.

Mr. Daniels explained that, since this response was received, Christman Company, primarily through John Herrygers, has taken the lead over the past week in responding in writing to these items and providing to him with proof that their claims cannot be sustained. He further advised that Christman Company has demanded a face-to-face meeting with the head of Bioclimatic and their engineers and has suggested that counsel be involved. Mr. Daniels stated that Bioclimatic agreed to the meeting, although a date has not been set, but that they did not want attorneys present. He acknowledged that Mr. Herrygers agreed provided counsel could confer outside the meeting. Mr. Daniels confirmed that Bioclimatic provided him with their attorney's information and that Mr. Daniels contacted him last Friday. He explained that opposing counsel has yet to respond but that he will follow up with him the next day.

Mr. Daniels pointed out that he is unsure as to the purpose of the attorney discussions other than to declare our position again and respond to them on the 150-day provision claim that they have. He also stated that he is presently looking for some additional information on the claim the odor was somehow misrepresented to them prior to the contract. Mr. Daniels advised them that a major issue in the Bioclimatic matter is the idea that, when YCUA entered into the agreement with them, the contract was signed by a company known at that time as Meade Westvaco Air Systems, whose contracts and responsibilities have now been assigned to Bioclimatic. He indicated that one of the general partners of the LLC originally contracted was Meade Westvaco and that YCUA has written a letter to both entities telling them that the Authority considers Meade Westvaco responsible under the contract.

Mr. Daniels also explained that Meade Westvaco has not responded to that letter but that, about that time, they sent a letter to John Herrygers indicating their position that they are not involved and asking that no more correspondence be sent to them. He pointed out that he is presently gathering all of the documents relative to Meade Westvaco and has prepared a timeline that was submitted to Tetra Tech last week asking for their comments with all of the pertinent documents that they are aware of in a chronological fashion. Mr. Daniels explained that he has also asked Tetra Tech and YCUA representatives to prepare written summaries regarding the representations made by Meade Westvaco when YCUA entered into the contract in the beginning. He further advised that the assessment is that this will lead to a 50% chance of litigation involving both Meade Westvaco and Bioclimatic.

Mr. Daniels stated that YCUA did not have any prior knowledge that Meade Westvaco was transferring the Authority's contract to Bioclimatic and that YCUA found out about it when it happened. He acknowledged that there is no provision in the contract that says they cannot transfer the

contract without the Authority's approval. Mr. Daniels confirmed that under most circumstances, that sort of protection would be included in a contract of this magnitude and that it is provided for in both common and statutory law in Michigan that a member of an LLC does have the right to withdraw from the LLC without fulfilling all of the LLC's obligations. He explained that there is a fair amount of evidence in the documents and the presentations made by Meade Westvaco when they were selling themselves to YCUA that lead without any question to project engineers understanding that Meade Westvaco was involved in the contract and committed to seeing it through to the end.

Mr. Daniels pointed out that Tom Allbaugh and Joh Kang have told him via telephone that they will prepare a report that summarizes their specific conversations with Meade Westvaco representatives relative to the same. He also stated that YCUA management has made it clear to him, Tetra Tech, and the Christman Company that they want this matter to proceed as quickly as possible without further delay. Mr. Daniels advised them that this has been expressed to Steve Zitten, who was resistant at first to scheduling negotiations but has since agreed to come back to the YCUA facility for a meeting.

Mr. Namatevs inquired as to the status of the new odor control system. Mr. Jessee responded that YCUA staff is currently adding VX-456 to the sludge, which helps to treat some of the odors, and an outdoor aerosol system is in operation that is intended to mask the odors. He stated that the Authority Biofilter pilot project has been delivered and it may be in operation as early as the next week. Larry R. Thomas interjected that YCUA is no longer reliant on the air ionization system because the only place the system seemed to have any positive effect at all was in the press room. Mr. Jessee concurred, indicating that most of the units are currently off as more odors were experienced when they were in operation. He stated that chemicals are currently being fed to the primary storage tanks and the operational processes inside the sludge building and that this will continue for the foreseeable future.

Mr. Daniels advised the Board that the MetroPCS lease of the Shadford Tower began on August 6, 2007. He indicated that the Clearwire Internet lease will not go forward because they have given notice that, for the time being, they are backing out.

Mr. Daniels advised the Board that staff met with IDI on August 20th and that, by the end of the day, a very lengthy agenda had been completed and settlement offers were exchanged. He indicated that the settlement offers were a bit more than \$300,000 apart. Mr. Daniels also explained that the meeting was concluded with an agreement to consider the respective positions and that YCUA staff now has a recommendation to the Board relative to one additional offer that can potentially be made to IDI at this

time. He pointed out that it is appropriate to offer more to settle the matter while, at the same time, characterizing it as a final offer. Mr. Daniels explained that if IDI accepts the offer, arbitration can be avoided. He further advised a closed session of the Board is needed to discuss the matter in greater detail, including the costs involved if the offer is rejected and the matter goes to arbitration.

Mr. Daniels stated that it is also not wise to have in open session a Board discussion on a response to IDI at this time. He acknowledged that the goal of a closed session meeting will be to provide the Board with a very specific assessment of YCUA's strengths and weaknesses if the matter goes to arbitration. Mr. Daniels confirmed that to discuss this publicly would put the Authority and The Christman Company at a disadvantage. He explained that the matter will require at least an hour to discuss thoroughly.

Larry J. Doe suggested that a special meeting be scheduled for late next week. Thomas E. Daniels explained that the meeting will start in open session and a two-thirds vote of the Board is required to move into a closed session.

Mr. Namatevs inquired as to the status of the labor issue discussed at the last closed session meeting. Gwyn Belcher responded that there has been no communication received whatsoever on the matter.

Informational only; no motion from the Board required.

S. Director's Report - Larry R. Thomas

Mr. Thomas advised the Board that he received a card from Ed and Beth Koryzno thanking the YCUA Board for the dinner at Gandy Dancer.

He indicated that YCUA staff is considering moving toward a paperless agenda for its Board meetings. Mr. Thomas also explained that they have been putting together some cost comparisons. He pointed out that staff is interested in the Board's thoughts on moving toward a paperless agenda. Mr. Thomas explained that management has recommended the use of CD-Rs for the Board packet materials.

Mr. Namatevs commented that a paperless agenda would be wonderful and would save a lot of trees. He suggested that .PDF file transfers would be ideal. Mr. Namatevs also suggested that flash drives would be a more environmentally sound alternative to CD-Rs as the latter would still generate waste. He stated that this move is timely as most of his business communication is already electronic. Mr. Namatevs indicated that the sooner the move can be made, the better. Gregory A. Peoples concurred and indicated that he has worked with paperless agendas in the past.

Informational only; no motion from the Board required.

4. OLD BUSINESS:

There was no old business for the month.

5. OTHER BUSINESS:

There was no other business for the month.

- 6. STATEMENTS AND CHECKS:** Motion by Namatevs to pay the bills in the amount of \$4,594,195.10 with an addendum of \$99,305.64. Support by Peoples. In favor: All. Opposed: None. (Motion carried.) Larry R. Thomas interjected that the cash requirements were high this month because of bond payments that are due October 1st.

7. PUBLIC COMMENTS:

There were no public comments for the month.

- 8. ADJOURNMENT:** Motion by Peoples to adjourn the meeting at 4:58 p.m. Support by Namatevs. In favor: All. Opposed: None. (Motion carried)

Respectfully submitted,



MARK NAMATEVS, Secretary/Treasurer

