

Somerset Borough Council/Municipal Authority Meeting
August 20, 2009 – 7:00 p.m.

The meeting was called to order by Borough Council Vice-President, Ruby Miller, and Municipal Authority Chairman, William Kuhlman.

Present: Ruby Miller, Fred Rosemeyer, Council Members. William Kuhlman, Clyde Mostoller. Ralph Friedhofer, Joe Egly, Municipal Authority Members. William Meyer, Mayor; John Dirienzo, Borough Solicitor; Michele Enos, Assistant to the Borough Manager; Eric Critchfield, Consulting Engineer; Ben Vinzani, Jr., Borough Manager; William Barbin, Jefferson Township Solicitor, Melanie Peters, Jefferson Township Secretary, Bruce Barron, Jefferson Township Supervisor, and Jerry Hostetler, Jefferson Township Engineer

Meeting opened with recitation of the Pledge to the Flag.

A detailed discussion was held, as follows:

Solicitor Dirienzo:

A letter was received from the D.E.P. concerning our Water Allocation Permit Application. A joint meeting of the Council and Authority was held to discuss our potential arrangement. We need to decide whether or not we will have a formal arrangement, and what the arrangement will be.

One reason is the D.E.P. letter requests us to describe what our service area is going to be. If we end up doing something with Jefferson that would expand the service area, we would need to include this in the information that we present to them.

The second reason is that if we have an arrangement, we will ask Jefferson to be our partner, and assist us. The question we need to talk about is if we can be partners, and under what terms.

First question that comes to mind is, we know what the County has offered in the letter; if the County relented, would they still be partners with us. We should address the second question, that is, if Jefferson decided to become partners with us regardless of what the County does, what would our arrangement be.

One possibility, we being the supplier would have been a win-win option for all but it has been rejected. Therefore we now need to discuss what other possible way can we partner in this. A possible buy-in was mentioned, coupled with a rate-based user fee for consumption, starting with a 50,000 gallon initial purchase and if necessary, a way of expanding.

Another thought was that it would be good if Somerset Borough and the Municipal Authority serviced the Jefferson Township project. The third option is creating a Joint Authority. They are not saying they want equal representation, but a member of the Authority then they are not in anybody else's category for selling water, they become our customers.

Discussion ensued, covering questions such as who the customers might be; who to sell to, and charges.

Solicitor Dirienzo said when someone comes to us to buy into the system; they pay a tap fee then a user rate. We are obligated to Somerset Township that their user rate will be no greater than what we charge our other customers. When we charge our customers in the Borough this raises the tap fee issue. If the Township bought into the plant as a lump sum (option 2), we could still be the supplier.

It was pointed out that the people in Jefferson Township would still pay a tap fee; they would pay a buy-in to the plant in lieu of a tap fee.

Attorney Barbin stated that the Borough's Engineer would determine the value of the plant. He suggested looking at taking more than the 50,000 gallons since they intend to use more and more.

Regarding funds availability, the R.U.S. will allow buying into the physical capacity of a sewer plant or water system, as a legitimate cost. Mr. Critchfield said he looked at the idea of a joint venture buy-in, from the Act 57 calculations and what he felt the value of the Bakersville water treatment plant was, then divided this with building and mechanical equipment and estimated the building at a useful life of 80 years and mechanical equipment at 30 years. He also included the Shaffer Run well field. This provides backup for the alternate source of water.

In answer to question regarding Jefferson's percentage use of our plant, Mr. Critchfield said he came up with \$209,459.00. Jefferson Township agreed that this sounds reasonable. Mr. Dirienzo said it would set the mechanism for future buying and as part of this arrangement the consumption charge would essentially be a reimbursement back to the Borough, from the operation plant.

In answer to question from Mrs. Miller on whether two municipalities can legally be put together, Solicitor Dirienzo explained that joint authorities can exist but if we were to turn this into a joint authority we would both need to pass amending ordinances, etc. The Borough Municipal Authority had representation from Jefferson Township and Somerset Township for years.

In discussion it was mentioned that if we do not want to make the joint Authority formal, we could expand the Authority Board, creating partners. The new Authority would need to fit in to the current debt picture and the old Authority always had bonds out.

Mr. Dirienzo questioned how we would adjust the bond picture by expanding the Authority because Somerset Borough is the guarantor of the bonds under the insurance. Mrs. Miller asked if it wouldn't be easier to become a joint Authority if the bonds would be already signed by a Jefferson member. Mr. Dirienzo said we cannot appoint people not living in the Borough as Authority board members. We could, without changing the single Authority, expand the number of people on the board. The assurances that we give each other are better set up as contract rather than having a minority membership on the Board, who could get outvoted anyhow.

It was mentioned that concerning Option 2, we could have one person being privy to the plans, debates, etc. Mr. Dirienzo advised that assurances are better established by contract. Our next step, once we have a deal signed, the deal will need to have conditions because we then have to be sure that we combine together to the D.E.P. and get the permit. We need an arrangement between us that Jefferson cannot bail out and we can't bail out. If our permit gets chopped, we would intend to litigate this kind of issue. He said questions about our wells are being asked in the letter. We need to look at the permit again to see if we missed anything.

When the status of the allocation permit was questioned, the D.E.P. wanted to look at the Shaffer Run wells and the only thing the letter asked for was for use trends for the last three years, but it is alleged that they can re-open the permits at any time, for the wells. The wells were never a part of the allocation permit, and were permitted by D.E.P. We built infrastructure on that area.

Mr. Dirienzo said he will not attend the September 17th meeting, in order to avoid having attorneys there; he would rather have them discussing the substantive issues of the permit, not agreeing to have anything changed on the well permits.

Mr. Critchfield said he understands that D.E.P. has not said anything on the Coxes Creek water treatment plant yet and asked if we could sell them water out of the plant. Mr. Dirienzo said he believes that in order to get water from Coxes Creek to Jefferson, we would have to reverse the flow on the line. Mr. Critchfield said there is no hydraulic reason why the water cannot go east to west as well as west to east. Mr. Dirienzo said he must be careful in allowing a client to commit to something in a contract making a promise they may not be able to keep.

In answer to Mr. Mostoller's question, he said we looked at our agreement with the County, which provides for the 900,000 we will pay \$2.25 per thousand as a user

rate, and every five years they can increase the rate, but the rate increase cannot be more than five percent. It states we have the opportunity to buy more than the 900,000 but the rates are not limited or described for anything in excess of the 900,000. If by reason of what D.E.P. does, we cannot use water out there, we intend to make the argument that we do not know what the County would charge for anything over and above the 900,000 because it is not spelled out in the Agreement

Mr. Vinzani said we do not have to purchase the 950,000 – we can give them 50,000 from our 900,000 and it is not his intent to purchase more than 900,000 from the County.

Mr. Dirienzo said we must have something that addresses the issue that the circumstance is that our permit for that water source has essentially expired in 2002 and we have been continuing to operate that plant, but if someone asks about our permit, all we have to show is an old permit that expired, for a new permit application that is pending. We have the wells; the permit that we are applying for is not a permit to operate the plant but a permit to draw water from the creek. If we couldn't draw water from the creek we can still run the plant but it would be fed by Shaffer Run.

A detailed discussion ensued, regarding demand, guarantees, and sources. They covered water amounts needed, time periods, capacities of wells, plant maintenance and talked about the deal being conditioned upon the permit.

Mr. Vinzani said we will draft an answer – Mr. Dirienzo said the actual answers depend on whether we get an agreement.

Mrs. Miller mentioned that if for some reason the Que would not be able to get water to us, they have no backup plan. They need more tanks along the system.

What is needed is a promise from Jefferson Township and their Municipal Authority that as long as Somerset Borough is capable of giving an additional flow in the future, under whatever formula we agree to, that we agree that all water in Jefferson Township will come from Somerset Borough. This is part of what the Agreement has to be so that we can say we have all of Jefferson Township, assuming we come up with all details and treat each other reasonably.

Regarding future usage, Bakersville is anticipated going to 42,000 and Hidden Valley to 360,000 with Paradise Springs going to 200,000 so it could go to a peak of 600,000 gallons.

Mr. Dirienzo said the only condition is their ability to get funding for it and our condition to go beyond that is the availability. He said the D.E.P. viewed our phone contact with them to set up a meeting as a sufficient response to the letter. We do

need to develop a response and send it to them ahead of time. We need to say what the expected service area is, describing the service as all of Jefferson Township. We need to work out the Intermunicipal Agreement and have it signed so it can be shown. We can meet prior to the September meeting.

Mr. Egly said he is inclined to agree with what was mentioned regarding giving the Manager and Solicitor approval to prepare an agreement on the basis of us providing the 50,000 with all things attached, plus the 15%, etc., so they can get moving on the request for a grant and we can move on the permit.

Mr. Egly then moved to proceed and have the Borough Manager and Solicitor, in conjunction with Jefferson Township, move on the Agreement and authorize the Municipal Authority to execute it and to recommend that Borough Council do the same— motion seconded by Mr. Mostoller.

Unanimously Carried.

Mr. Vinzani said Council will act on this at its Monday meeting.

Mr. Critchfield said he would like to make sure that an earlier discussion is formally dead concerning the notion of Jefferson Township and Somerset Borough having an agreement where they would propose to purchase Que water through the Borough system. He said he would like to make sure they go on record confirming this.

Mr. Dirienzo said the choke point and water from Laurel Hill seem to be the reason for not doing the deal. A reply would seem to be that we address the two points by saying there is no choke point; mechanically we investigated this and we have been doing water from Laurel Hill for 50 plus years.

It was stated that we should ask the County to provide Jefferson Township 100,000 gallons through Somerset Borough at the Somerset Borough tap and ask if they are ready to guarantee this. If they say yes, we can continue with the original plan.

A commitment that the County will provide water for the availability of Jefferson Township, and the two issues raised as problems should be addressed in a letter to the County.

It was suggested to write the letter from the point in time to when everyone was in agreement and ask if they are willing to do this. Having this in writing would be valuable regarding the original deal, and then ask for the agenda when they will be considering this.

Mr. Dirienzo said he would like to briefly and succinctly tell them why their first denial was wrong, ask for reconsideration by the Authority and the Commissioners if necessary, and that we want to know when this will be considered.

Mr. Vinzani said we already authorized what we did a few minutes ago, and Council will consider it at its Monday meeting.

Mr. Critchfield said the agreement spells out who you communicate with and it would go to exactly the people in the Agreement. The bodies that you have an agreement with are the Somerset County General Authority, not the Somerset County Commissioners.

Mr. Dirienzo said it is a joint venture, just call it an agreement. An ordinance does not have to be used to adopt it.

Payment Requests

Mr. Friedhofer asked if the projects under the Water Construction Fund payments are complete. The project is complete, final payment has been made. One item with the contractor concerns some re-seeding under the one-year guarantee that was done which has nothing to do with the contract. The issue is being addressed.

Mr. Friedhofer then moved to pay the following, seconded by Mr. Egly:

WATER CONSTRUCTION FUND REQUISITION NO. 154

<u>Item No.</u>	<u>Payee</u>	<u>Amount</u>	<u>Purpose</u>
656	The EADS Group, Inc.	\$ 666.62	Shaffer Street WL Loop Inv. #40865
		<u>Total: \$666.62</u>	

Unanimously Carried.

Regarding the Sewer Surplus Fund, Mr. Critchfield said the Sludge Lagoon Cleaning Project is completed.

Mr. Friedhofer moved to pay the following, seconded by Mr. Egly.

SEWER SURPLUS FUND REQUISITION NO. 176

554	Lone Pine Construction, Inc.	\$78,805.54	Pay Estimate #7 Bakersville WWTP
555	Lone Pine Construction, Inc.	\$14,034.26	Pay Estimate #8 - Final Bakersville WWTP

556 The EADS Group, Inc.

\$ 125.00

Invoice #40846, Retainer

Total: \$92,964.80

Unanimously Carried.

Adjournment

The Borough Council meeting was declared adjourned, 8:35 p.m.

Mr. Egly moved to adjourn the Municipal Authority meeting, 8:35 p.m. – motion seconded by Mr. Mostoller.

Motion carried.

Benedict G. Vinzani, Jr., Ph.D.
Somerset Borough Manager/Secretary
Somerset Borough Municipal Auth. Secretary