

PROCEEDINGS OF THE CENTRAL BROWN COUNTY WATER AUTHORITY

Pursuant to §19.84 Wis. Stats, a regular meeting of the **Central Brown County Water Authority** Board of Directors was held on Wednesday, May 27, 2020 at the Town of Ledgeview Community Center, 3700 Dickenson Road, De Pere, WI, and via video conference. Note that in light of public health concerns regarding COVID-19, this was a telephone/video conference meeting for Board members. Members of the public were offered the opportunity to either hear the meeting broadcast live at the location noted above or to contact the Water Authority to obtain telephone access to the meeting.

Present: Bellevue – Diane Wessel (via video conference)
De Pere – Larry Delo (via video conference)
Howard – Goeff Farr (via video conference)
Lawrence – Patrick Wetzel (via video conference)
Ledgeview – Sarah Burdette

Excused: Allouez

Also Present: Mike Wiercinski
Carolyn Pierquette
Nic Sparacio, General Manager
Gary Rosenbeck, McMahon Assoc. (via video conference)

The meeting was called to order at 3:10 p.m. by President Sarah Burdette of Ledgeview.

Roll Call:

Roll Call was taken as recorded above.

Approval of the Agenda:

1. Approve agenda
Motion made by De Pere, seconded by Bellevue to approve the agenda.
MOTION UNANIMOUSLY APPROVED

Approval of Minutes:

2. April 22, 2020 regular meeting
Motion made by Bellevue, seconded by Lawrence to approve the minutes of the regular meeting of April 22, 2020.
MOTION UNANIMOUSLY APPROVED

Geoff Farr joined the meeting at this time.

Correspondence:

3. Letter from Sen. Cowles regarding funding opportunities
General Manager Sparacio stated that local utilities would have received this same letter, but he wanted to ensure that the Board members are also aware of the additional funding

opportunities for lead service replacements. The letter outlines the increased funding through the Wisconsin Department of Natural Resources and improved flexibility for communities eligible to receive these funds.

Public Comment:

4. None

Appearances:

5. Claim by Erma Wiercinski for damages to sewer lateral in the City of De Pere Mike Wiercinski, Erma's son, and Carolyn Pierquette, Erma's daughter, are present representing Erma Wiercinski. Burdette explained that this agenda item provides an opportunity for Erma Wiercinski's representatives to share any additional information or feedback to the Board in this matter. The Board will then hold further discussion under the related administrative actions portion of the agenda. Burdette opened the floor.

Mike Wiercinski questioned how his mother, the property owner, would be liable for the damages to her sewer lateral.

Larry Delo asked for staff to explain the basis for the recommendation by the Water Authority's insurance provider, EMC, to deny the claim. Sparacio responded that EMC reviewed the claim and based its denial on two Wisconsin Statutes. EMC noted that the Water Authority could also rely on these same two statutes to deny the claim. First, there is a 7-year statute of limitations on claims for real estate damage related to a utility construction project. This would have expired in 2014. And second, discretionary immunity is provided for all claims made against municipalities and utilities.

Wiercinski responded that it is not known exactly when the break in the sewer lateral occurred. His mother lives alone and uses very little water. He further stated that the contractor provided a letter with additional comments related to the claim. Burdette explained that this letter was provided just before the meeting, so it is not included in the meeting materials. The details of that letter can be discussed by the Board in the next agenda item. Wiercinski then asked for consideration to be given for his mother's age and limited financial resources.

Geoff Farr asked why the lateral repairs were so costly. The invoice is much higher than a normal lateral repair. Wiercinski explained that the sewer main was on the other side of the street. The work took two days as they could not close the whole street down. Carolyn Pierquette added that the repair could not be made with a sleeve, since the damage was so severe. A greater length of pipe had to be replaced than expected, and it had to be done in two parts as a temporary repair and a permanent repair.

Delo asked whether the Water Authority had paid any claims in the past after the seven-year period had expired. Sparacio responded, no. This is the first claim the Water Authority has received after 2014 (seven years after construction was completed). The last claim against the Water Authority was in 2011. There were no further comments, so Burdette closed this agenda item.

Administrative Actions & Reports:

6. Claim by Erma Wiercinski for damages to sewer lateral in the City of De Pere Burdette requested a summary of the staff report and recommendation. Sparacio presented the report noting the claim details, the results of field observations (for a portion of the repair work), the insurance determination, the legal review, and the history of other claims in the same vicinity. There are multiple factors in addition to the presence of the Water Authority trench that have likely impacted this sewer lateral over time. While the recommendation from both a legal and insurance standpoint is to deny the claim, the Board does have the authority to respond differently. The two past claims in this same area were paid by the contractor in one case, and by the Water Authority's insurance provider in another case. The past claim paid by the Water Authority's insurance was paid at 50% of the claim amount. Sparacio outlined the Board's options at this point which include affirming the denial by EMC, awarding for damages in full, or awarding for damages in part.

Based upon the information available prior to this meeting, Sparacio is recommending partial compensation for damages at 25% of the claim and conditioned upon the claimant first executing the liability Release. This recommendation is specific to this case only and is based on the following conclusions:

- 1) The onsite investigation found that apparent damage was attributable, at least in part, by settling of the water main trench; and
- 2) There is a history of similar claims in the immediate vicinity; however,
- 3) The length of time that has passed since construction allows for other factors to have also impacted the sewer lateral and contributed to the damage; and
- 4) Past claims were paid by liability insurance, not by using rate-payer funds.

He further stated that these conclusions are his basis for making a different determination than that of EMC and for recommending compensation at a lower level than awarded for past claims where the Statute of Repose did not apply.

Burdette asked whether the information provided in the letter from Joski Construction either supports or conflicts with the observations made by MPU. Sparacio responded that he believes the Joski letter is describing settling of the support under the sewer lateral. This could have been caused by a lack of compaction in the water main trench backfill or by a leak in the sewer lateral that undermined the pipe. Either way, this would have removed support from under the pipe causing it to bend. The letter also describes the reasons for the higher than normal charges including the second day of work and the need to provide a greater length of pipe replacement.

Farr asked whether the Board's decision in this matter would create a precedent for future claims. Sparacio noted that the advice from Attorney Kobza noted that we must consider any precedent we may be setting and that we do not know how many other potential claims could arise of this nature. In order to avoid setting any blanket precedent, he recommends that the record be clear as to the justification for any decision made, and that it specifies the unique characteristics of this situation. Burdette asked how close the other two claims were in proximity to this area. Sparacio responded that the other two claims were about 400 feet to the east in the same block of Grant Street.

Delo added that in his experience, there is no requirement that a precedent be set with claims decisions. In the City of De Pere, there has been a wide variety of responses to claims over the years. On a very limited basis, the Common Council has compensated for claims that are past the seven-year period, if it was a unique situation and substantiated. The vast majority have been denied. Discussion continued as to whether the Board should adopt a planned phasing-out of any type of award for damage claims as we are well past the seven-year limitation. There was a consensus that this would restrict future Boards, and each case should be evaluated on its own characteristics.

Delo continued that he supports the staff recommendation. While the onsite investigation was not conclusive, there is the history of similar claims nearby. We cannot be sure of the cause for the damage with the amount of the time that has passed. Burdette agreed that the Board should consider that the onsite investigation found at least some likely connection to the water main trench and provide partial compensation. Patrick Wetzel stated that he agrees with these conclusions as well.

Motion made by De Pere, seconded by Howard, based on the unique characteristics of this case, to compensate for damages at 25% of the claim amount on the condition that the claimant first execute the liability Release.

MOTION UNANIMOUSLY APPROVED

Sparacio stated that he will send correspondence to the claimant with the results of this decision. Wiercinski and Pierquette thanked the Board and left the meeting at this time.

7. 2019 Audit Report

Sparacio provided an overview of the 2019 Audit reports. He stated that 2019 was another clean audit, and the process has been greatly improved over previous audits. He noted key metrics showing the continued financial strength of the Water Authority including Net Position and Net Investment in Capital Assets. He reviewed the cash position of the Water Authority noting audited balances for year-end cash and investment and unrestricted cash. He then highlighted the changes to the communications report including the future trends and recommendations. Due to a recent change in accounting standards, the water purchase agreement with Manitowoc Public Utilities will have to be evaluated to determine whether it must now be considered an asset lease. Baker Tilly has a tool to assist with this.

Delo stated that he appreciates the improvement in timeline and audit results. Burdette added that she was contacted by the Baker Tilly partner that led the audit, Andrea Jansen. Ms. Jansen was pleased with the process and outcomes and received all the information she requested of the Water Authority. Sparacio is requesting approval of the 2019 Audit Report as well as authorization to sign the Management Representations Letter.

Motion made by Lawrence, seconded by Bellevue to approve the 2019 Audit Report and to authorize signing the Management Representations Letter as drafted.

MOTION UNANIMOUSLY APPROVED

8. Financial report

Sparacio presented the April financial statements. Budget and financials are tracking as expected. He noted that the May 1st loan and bond payments were made at the end of April.

Motion made by De Pere, seconded by Lawrence to approve the financial report.

MOTION UNANIMOUSLY APPROVED

9. Bill payment list

Sparacio stated that the May bill payment list has no changes from that provided in the meeting materials. He is requesting approval.

Motion made by De Pere, seconded by Howard to approve the bill payment list.

MOTION UNANIMOUSLY APPROVED

Technical Committee Recommendations:

10. Approval of a proposal from Preferred Controls for Finished Water Pump Station logic and hardware

Sparacio reported that this item is related to the Finished Water Pump Station optimization study. This has been in the works since the completion of the Central Storage facilities and is finally ready to proceed. He noted that the estimated cost is slightly over budget, but still fits within the 2020 Capital Improvement Program. The Technical Committee reviewed this proposal at its May meeting and is recommending approval.

Motion made by Lawrence, seconded by De Pere to approve the proposal from Preferred Controls for Finished Water Pump Station logic and hardware.

MOTION UNANIMOUSLY APPROVED

11. Conditional approval of a proposal for 2020 Chlorine System Modifications

Sparacio explained the need for this project, the main elements of the project, and the evolving dynamics around the varying chlorination needs between members. He then explained the cost-sharing proposal for this project. He believes there is justification for using Water Authority funds for a portion of this project, and these expenses fit within the 2020 Capital Improvement Program. He described the process used to select a new vendor for chlorine analyzers. The new instruments are expected to result in reduced life-cycle costs for this equipment. The Technical Committee has reviewed the current recommendation for this project, and Allouez, De Pere, and Lawrence are supportive of the cost-sharing plans that apply to them as outlined in the written report.

Sparacio is recommending approval of the chlorine system modifications project under the following conditions supported by the Technical Committee:

- a. The Water Authority will manage an overall project contract for all the related work and fund all costs initially with ultimate cost responsibilities as detailed in the following.
- b. Water Authority funds will pay for the purchase and installation of one replacement analyzer at each connection station (eight total).
- c. The Water Authority will bill no sooner than the first quarter of 2021 Allouez, De Pere, and Lawrence accordingly for all the related costs (i.e., labor, materials, and engineering support) of their additional post-chlorination analyzers, related sample line piping, chlorine solenoids, and other necessary system modifications.

Motion made by De Pere, seconded by Lawrence to approve the 2020 Chlorine System Modifications project as presented.

MOTION UNANIMOUSLY APPROVED

12. McMahan Task Order for 2020 Chlorine System Modifications

Sparacio stated that he requested this Task Order from McMahan after the May 12th Technical Committee meeting, because it is necessary to keep the Chlorine System Modifications project moving forward in a timely manner. He did provide the Task Order to the Committee members over email, and he has heard back from a majority of them. With a couple clarifications to the scope of work, all the Committee members who have had a chance to review the Task Order are recommending approval. Therefore, Sparacio is also recommending approval. Burdette asked whether the amount for this Task Order was included in the cost breakdown provided under the previous agenda item. Sparacio responded that it is covered under the amount listed as Engineering and Contingency.

Motion made by Howard, seconded by Lawrence to approve McMahan Task Order 7 for Chlorine Control and Monitoring System Improvements.

MOTION UNANIMOUSLY APPROVED

Project Update and Status Reports:

13. Engineer's report

Rosenbeck provided updates on several engineering efforts. Pile driving work on the CTH R bridge reconstruction project is complete, and there were no issues with vibration reaching the transmission main. The Technical Committee discussion of the Lake Michigan shoreline erosion issue has resulted in a two-phase approach, which has continued to develop in more detail. We continue to work with the US Army Corp of Engineers on some technical assistance toward this end. We see additional shoreline erosion with each easterly storm. Work continues on developing a specification to help guide construction projects to properly handle excavations near the Water Authority transmission main.

14. Manager's Report

Sparacio provided a summary of items he worked on for the past month and his plans for the month ahead. There are no issues or concerns to report at this time. He noted that he will be considering options for future meetings of the Water Authority with respect to public health concerns. If we are able to start moving back to some in-person meetings, he will ensure that options are still provided for members to join digitally so that varying local policies and personal needs can be met.

Old Business

15. None

New Business:

16. Oath of Office for Water Authority Board Directors and Alternates

Sparacio reported that the Water Authority attorney came across some information that triggered her to review whether our Board members have ever taken an oath of office. She provided a memo to the Board recommending that we have each Board Director and

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Alternate complete the oath of office and for the documents to be kept on file. As any new Directors or Alternates are assigned to the Board, they should complete the oath of office at that time. Burdette asked if there were any questions about the oath of office, and there were none. Sparacio is requesting that each Board Director and Alternate provide their completed oath of office prior to the June Board meeting.

Next Meeting:

The next meeting is scheduled for June 24th, 2020.

Adjourn:

Motion made to adjourn at 4:05 p.m.

MOTION UNANIMOUSLY APPROVED

Respectfully submitted,
Nicolas Sparacio