

**CITY OF TRUTH OR CONSEQUENCES
IMPACT FEE ADVISORY BOARD
MONDAY, JUNE 19, 2017**

REGULAR MEETING

Regular meeting of the Impact Fee Advisory Board of the City of Truth or Consequences, New Mexico to be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico, on Monday, June 19, 2017 at 5:00 P.M.

INTRODUCTION:

PRESENT:

George Szigeti, Chairman
Jeff Dornbusch, Vice-Chairman
Ron Pacourek, Member
Gil Avelar, Member
Randy Ashbaugh, Member
Sid Bryan, Member

ALSO PRESENT:

Juan Fuentes, City Manager
John Appel, City Attorney
Renee L. Cantin, City Clerk
Robbie Travis, Building Inspector
Melissa Torres, Finance Director
Andy Alvarez, Sanitation Director
Jesus Salayandia, Water/Wastewater Admin. Director
Bo Easley, Electric Division Director
Arnie Castaneda, Water/Wastewater Department Supervisor
Traci Burnette, Grant Project Coordinator
Ruby Otero-Vallejos, Water/Wastewater Admin. Assistant
Tammy Gardner, Electric Division Admin. Assistant
Sonya Williams, Utility Office Manager
Angela A. Torres, Deputy City Clerk

APPROVAL OF AGENDA:

Member Pacourek moved approval of the agenda.

Vice Chairman Dornbusch seconded the motion. Motion carried unanimously.

COMMENTS FROM THE PUBLIC:

Klaus Whittern - During the last PUAB meeting, the members asked for information regarding this Board and that information was not provided. Mr. Whittern insisted that information be submitted in a timely matter which would be no later than the Thursday prior to the meeting. He also believes that the information provided to the Board for this meeting is out of context.

NEW BUSINESS:

Discussion/Action: Consideration to approve reimbursement request – Arnie Castaneda, Water/Wastewater Division Supervisor:

Chairman Szigeti- Informed the Board that Ashbaugh Construction has a lawsuit against the City of Truth or Consequences in regard to Impact Fees. He feels that this puts the Board in a rather precarious position, as Mr. Ashbaugh is part of the Impact Fee Advisory Board. It seems to him that Mr. Ashbaugh has a substantial conflict of interest which would put the city in a very bad position if Mr. Ashbaugh continued to participate in discussions related to Impact Fees since this lawsuit basically addresses everything that the city does with Impact Fees.

City Attorney John Appel – Yes that statement is correct. Mr. Ashbaugh is a member of this Board and the signatory for his company that has pending litigation against the City. City Attorney Appel recommends that Mr. Ashbaugh step down from his position at this time, while this particular item is being discussed and he should not participate either in discussion, or in a decision on this pending item.

Member Ashbaugh – Would like to discuss the information brought forth, but will recuse himself from voting on this information.

City Attorney John Appel –Mr. Ashbaugh does not need to recuse himself. However, he does recommend that he do so.

With that being said, Arnie Castaneda, Water/Wastewater Supervisor reviewed the following presentation with the Board.

Wastewater upgrades Phase 1:

- New Belt Filter Press
- New Aerators
- New Ultraviolet system
- SCADA System upgrades
- Laboratory Upgrades

- Administration Building Rehab
- TOTAL IMPROVEMENTS
- \$3.5 MILLION plus \$900, in city matching funds.
- Project is close to completion. Should close-out by the end of June 2017.

Wastewater upgrades phase 2a:

- Excavate and construct two new 55 ft. diameter clarifiers
- New splitter box for flow control to new units
- Equip new clarifiers with required gear
- Installation of new PVC C-900 lines for RAS/WAS and valves.
- The lowest bid came in from Smith Co. in the amount of \$1,888,670.35
- At the recommendation of the Smith Engineering, the project was awarded to Smith Co., the low bidder.
- However, due to a mathematical error on Smith Engineering's spreadsheet the bid exceeded the available amount for Phase 2A by \$335,237.89
- According to records, the City currently has \$302,868.00 in Impact Fee funds that qualify for reimbursement back towards the Wastewater Budget.
- The Wastewater Budget fronted the funds to pay for the projects listed in the next slide. However, only the projects highlighted in green qualify for reimbursement.

Impact Fees Reimbursement:

- Mr. Castaneda reviewed a listing of the Impact Fee Reimbursements.

Preliminary Opinion of Probable Cost:

- Wastewater Treatment Plant Upgrade Project
- Total Construction \$9,399,170.00
- Water System Upgrade Project
- Total Construction \$859,694.00
- At this time we are asking the Board to approve the reimbursement of the maximum allowable amount up to \$302,868.00 from the Impact Fee Fund to the Wastewater Budget.

Vice-Chairman Dornbusch – Asked questions about the mathematical error of \$335,000 on the Smith Engineering spread sheet, and why the city had to front the money in order to get this project completed. Why was the error not paid for by Smith Engineering?

Water/Wastewater Supervisor Arnie Castaneda- The city asked that question. However, Smith Engineering was not willing to come up with that amount of money to cover what was in the negative. They looked into it legally, and there wasn't anything binding that would make Smith Engineering pay for that \$335,000.

Chairman Szigeti – Where did the error appear? Was it in the calculation in the funds available, or in the cost?

Water/Wastewater Supervisor Arnie Castaneda – It was due to the budget that came up two or three years ago. Once the project was up for approval, two or three years had passed and costs for that project increased.

Grants Projects Coordinator Burnette – The way the PER was written back in 2014, when it was time to bid out for phase 2a, the cost had increased. So in essence, when they were re-doing their cost within their spread sheet, that's when their error occurred.

Member Ashbaugh – They should check to see if they have error in omissions insurance. He recommends that the city make a claim.

City Manager Fuentes- We are dealing with two different issues here. One issue is in regards to the issue of the discrepancy in the funding that has already been looked at by legal, but that's a whole separate issue. The fact of the matter is, as Arnie presented, there is a list of projects that do qualify under the Impact Fees, and that's what is before you for reimbursement. And the other matter has already been reported to legal, and has been reviewed.

Chairman Szigeti - I agree. It falls more under the purview of the Public Utility Advisory Board rather than the Impact Fee Advisory Board.

Grants Projects Coordinator Burnette – Please keep in mind that the funding we received does have a deadline. We have to move forward on the project the expend funds within a certain time frame or we will lose those funds.

Chairman Szigeti- Asked if anyone has any issues with the items brought forth for reimbursement.

Member Ashbaugh – He has a complete issue with everything on the list. Neither he, nor any of the members have any meeting minutes nor do they know what the Capital Outlay Plan says. Nobody on this Board was here when that was discussed.

Chairman Szigeti – Mr. Ashbaugh you are not recognized at this point. Please...

Member Pacourek –He thought that items for the SCADA System upgrade did not fall under Impact fees.

Member Ashbaugh – We need to review the 2006 or 2007 Capital Expenditure Plan that the city has. We have to follow the Capital Outlay Plan by exact, to be in compliance with the New Mexico Development Fee Act. He would like to read and study the New Mexico Development Fee Act to see what is authorized to be expended. This Board cannot expend one penny, unless it complies with the CEP, and it has to be done by a professional, in a timely matter.

Member Ashbaugh requested that a copy of the Capital Outlay Plan be sent to him.

City Manager Fuentes - Mr. Chairman, allowing Mr. Ashbaugh who has a clear conflict of interest, to continue to make comments, and influence the Board, or suggest any information... again there is pending litigation that Mr. Ashbaugh has filed, and our legal counsel has recommended to the Board that he recuse himself for discussion under this item. Clearly he is not doing that, and in essence, he is basically trying to influence the Board.

Vice Chairman Dornbusch - It is apparent to him of Mr. Ashbaugh's denial that anything on this list is applicable, with maybe the exception of the upgrade to the SCADA System, but the SCADA System

upgrade includes the new filter press building, which is not an upgrade, it is an addition to the improvement of the project. So by Mr. Ashbaugh voicing his disconcert for this, tells him that Mr. Ashbaugh has a conflict of interest, and he does not want to here anymore from him.

City Attorney Appel- The upgrade to the SCADA System was to bring in parts of the system that needed to be monitored.

Member Pacourek – Under Section 5-8-5 it states that upgrades updating expansions or replacing capital Improvements... that's not a payable item.

City Attorney Appel – There is a section that refers to upgrades to the status, which in this case was the new parts of the SCADA system, to handle additions to the sewer plant. That's why it is allowed because it is part of the actual increase capacity, not just the original system.

Chairman Szigeti – As everyone remembers, at the last PUAB meeting where they were discussing scheduling this meeting, he asked that the Board be provided the data pertaining to the Impact Fee laws, and the Impact Fee collections, which they did not receive. Whether this is a time sensitive issue, or not, the members of this Board have not had the time to review and understand this data, as evidence by Member Pacourek's confusion over this issue. He is having a little bit of difficulty justifying whether or not he is ready to make a decision on this item, or if the other members feel the same way. He knows that Member Ashbaugh is familiar with all of this, but it is unclear as to the other members of the Board, especially Board Member Bryan who recently was appointed to this Board. He asked the Board if they are prepared to discuss and vote on this issue at this time.

George Szigeti, Chairman – Stated no

Jeff Dornbusch, Vice-Chairman – Ste no

Ron Pacourek, Member – Voted no

Gil Avelar, Member – Voted no

Randy Ashbaugh, Member - Abstained

Sid Bryan, Member – Voted no

Member Pacourek – Requested that the Capital Improvement Plan be provided to the Board members.

Chairman Szigeti – He would like to request the audit that was carried out on the Impact Fee Board. No one has seen that either. He thinks for the integrity of the individuals on this Board, he does not feel they can proceed until they have seen that information, and had time to adjust it, and act upon it. Right now all they have is a figure of \$302,000 that was presented to them, and they have no idea where that figure came from. He personally would like to see the documentation behind that.

Water/Wastewater Supervisor Arnie Castaneda - He would like to pass along some information. The FY is about to end, and they have a new FY coming up. Right now they are down one pump in one of their lift stations which is about \$8,000. Well equipment at the Wastewater Treatment Plant is corroded and

the cost to replace that is \$5,000 each. They have equipment throughout the system, for whatever reason has been neglected, is old, and needs to be replaced. So from this point of view they are asking for this refund, I guess you could say to fix these ongoing problems. Right now he is at the point where some of this information is coming from Jesus and he is trying to compile this, and they haven't even started the new FY, and he

knows that they are already in the red. So it might not be a time sensitive issue from the project point of view, but from operations, we are stepping on a thin line because of some of the equipment that might go down, and we have no money to replace it, and then what are they going to do.

City Attorney Appel – He thinks staff will be able to provide the Board with more of the backup documentation for some of these particular items. They thoroughly went through each that was given to them and basically crossed off those items that they felt did not fit within the Capital Improvements. The \$302, 000 was the remainder of what was left. The capital items that fit within the scope of the present Capital Improvements Plan were actually expended.

Chairman Szigeti- Asked if the balance in the Capital Improvements fund could be used for these expenses. Do we have anyone here who could tell us whether the \$302,000 can be covered by the money in the Impact Fee fund? But again, since this item has already been tabled they can provide all of that information at the next meeting.

City Manager Fuentes- Believes the majority of that fund will be covered.

Member Pacourek- Asked when they will be receiving information for this item.

City Manager Fuentes – The information will be sent out in a timely manner.

Chairman Szigeti – As soon as possible would be great.

Chairman George Szigeti moved to table this until item until Tuesday July 11th at 9:00 am.

Vice Chairman Dornbusch seconded the motion.

George Szigeti, Chairman – Voted aye

Jeff Dornbusch, Vice-Chairman – Voted aye

Ron Pacourek, Member – Voted aye

Gil Avelar, Member – Voted aye

Randy Ashbaugh, Member - Abstained

Sid Bryan, Member – Voted aye

Motion carried.

COMMENTS FROM THE BOARD:

There were no additional comments from the Board.

COMMENTS FROM STAFF:

There were no additional comments from Staff.

ADJOURNMENT:

There being no further business to come before the Impact Fee Advisory Board, George Szigeti, Chairman, declared the meeting adjourned.

APPROVAL:

PASSED AND APPROVED this 11th day of July, 2017, on a motion duly made by Jeff Dornbusch, seconded by Ron Faldurek, and carried.


George Szigeti, Chairman
Impact Fee Advisory Board