

AT A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE JAMES CITY SERVICE AUTHORITY, JAMES CITY COUNTY, VIRGINIA, HELD ON THE 26TH DAY OF OCTOBER 2004, AT 7:17 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Jay T. Harrison, Sr., Chairman
John J. McGlennon, Vice Chairman
M. Anderson Bradshaw
Bruce C. Goodson
Michael J. Brown

Sanford B. Wanner, Secretary
Leo P. Rogers, County Attorney
Larry M. Foster, General Manager

B. PRESENTATION

1. Wellington Neighborhood Water Use Issue

Larry Foster, General Manager, made a presentation to the Board on water use/rate issues raised by citizens of the Wellington subdivision at the meeting of the James City County Board of Supervisors on October 12, 2004. Mr. Foster stated that eight years ago the James City Service Authority (JCSA) Board of Directors set an increasing rate system to encourage water conservation and reduce peak demands on the water system. A study by the EPA revealed that the water use rate system has accomplished what the Directors desired.

Mr. Foster provided an overview of the JCSA water use rates for residential and commercial customers, stated that the residential first-tier rate was set to assist lower-income households that typically consume less water, the second tier was set as the range for the average household, and the third tier was set to encourage conservation and reduce peaks in the water demands; the commercial rates are set at a flat rate of \$2.70 per 1,000 gallons, the residential customers are assessed fees according to the three-tier rate system, and provided an overview of the typical water usage of residential customers and the associated costs for that use.

Mr. Foster stated that four water meters from the Wellington subdivision were calibrated, all four were within American Water Works Standards, and all four registered accurately during the calibration; and six Wellington subdivision water meters were validated by the sub-meter readings. Mr. Foster also stated that the water meters can handle 16 to 20 gallons per minute.

Mr. Foster provided a location overview of the approximately 13 percent of JCSA residential customers that exceeded 30,000 gallons in July, August, and September of 2004, approximately 13 percent. Mr. Foster commented that of the 75 Wellington subdivision homes, 37 customers exceeded 30,000 gallons during the same period, and provided an overview of water consumption of other similar subdivisions in various stages of overall development.

Mr. Foster provided an overview of the recommended irrigation guidelines of the Virginia Cooperative Extension Office and how that recommendation could negatively impact the water system should all or even 25 percent of the customers follow those guidelines.

Mr. Brown commented that in 2002, a very dry year, 25 percent of the residential customers exceeded the third-tier benchmark level and that resulted in a lot of stress on the JCSA water system.

Mr. Foster stated that the original covenants recorded for the Wellington subdivision prohibits the installation of automatic irrigation systems. Mr. Foster stated that the developer came back with a new proposal for the covenants for the installation of drip irrigation systems covering no more than 30 percent of the parcel, except within the Virginia Department of Motor Vehicles Right-of-Ways where pop-up heads would be permitted. Mr. Foster stated that staff agreed to only 30 percent irrigation of the lot size in the hopes of encouraging use of drought-resistant plants and mulch to reduce the irrigation demands in support of water conservation efforts.

Mr. Foster stated that approximately 50 percent of the currently developed Wellington subdivision lots have irrigation systems, they are all pop-up heads, and the systems appears to cover more than 30 percent of the parcel.

Mr. Foster stated that staff discovered today that the second covenant amendment permitting drip irrigation in the Wellington subdivision had not been recorded.

Mr. Harrison inquired if the original covenant is binding on Wellington because the amendment has not been recorded.

Mr. Foster stated that is correct.

Mr. Harrison stated that the original covenant does not permit irrigation and recalls that in 2000 the Board wanted to prevent outdoor watering in the Wellington and Colonial Heritage by irrigation systems using JCSA water and encouraged the subdivisions to use water retention ponds as an irrigation water supply.

Mr. Rogers stated that the County was a party to the initial covenants, the JCSA Water Conservation Coordinator brought forward an amendment to the Wellington subdivision covenants to allow permit drip irrigation and it was approved by the Board. As staff went through JCSA records, it was determined that the covenant amendment had not been recorded in the Clerk's Office.

Mr. Rogers stated that the Board has committed to support drip irrigation in the Wellington subdivision and needs to get the amendment to the covenants recorded so it will be effective between all the property owners.

Mr. Goodson inquired that when the citizens purchased their homes, what covenants did they know of.

Mr. Rogers stated that the recorded covenants indicate that irrigation is not allowed.

Mr. Harrison inquired how to proceed.

Mr. Foster stated that the Homeowners Association (HOA) is responsible for enforcing the covenants, and that the HOA is still in control of the developer.

Mr. Harrison requested verification that the County is a partner in that.

Mr. Rogers affirmed that.

Mr. Foster stated that the Board referred the issue to the Water Conservation Committee. The first meeting of that Committee will be on October 27 and Wellington subdivision representatives have been invited to that meeting. The Water Conservation Committee will come back to the Board with any recommendations.

Mr. McGlennon inquired how the covenants could be disclosed to the homeowners yet disregarded and also encouraged by the developer to install sod and therefore need to water the sod.

Mr. Foster stated that residents of Wellington will be speaking to the Board and may be able to provide insight into the developer's role.

C. PUBLIC COMMENT

1. Mr. Tom Haywood, 3936 Penzance Place, made a presentation to the Board, stated concern about the low benchmark for the third tier, stated that he did research and spoke with the Water Conservation Coordinator and presented his findings on the water consumption rates for residential customers per quarter, stated concern that the numbers indicate that an average family of three will consistently broach into the third-tier rate, and commented on the disadvantages of wells for irrigation.

2. Mr. Vincent Clifton, 8404 Attleborough Way, requested information regarding the Outdoor Water Use Ordinance exemption policy.

Mr. Foster stated that an exemption from the Outdoor Water Use restrictions is applicable to the use of water, not an exemption of water fees; it is available for the initial 60-day establishment of new lawns, and is in effect between May 1 through September 30.

3. Mr. Edmond Brown, 8400 Down Patrick Way, stated that he is a new resident and JCSA customer, that he was not made aware of rules and regulations governing service, suggested that the County use Newport News water if there is such a water shortage in James City County, and stated that the water utility rate unreasonable.

4. Mr. George Safka, 3905 Leicester South, stated concern that the covenant is limited to drip irrigation and not pop-up irrigation systems.

Mr. Goodson stated that the covenants on record do not permit any irrigation systems.

Mr. Safka inquired if the amendment to the covenants that staff is going to record limits irrigation systems to drip only and what is to be done about all the pop-ups installed.

Mr. Goodson stated that the covenants are a part of the Deed and recommended citizens check with their realtors and closing attorneys.

Mr. Safka inquired if he will have to remove the \$3,500 pop up irrigation system.

Mr. Goodon recommended he check with his realtor.

Mr. Brown requested clarification on his belief that it is not the practice of the County to enforce neighborhood covenants, that responsibility resides with the Homeowners Association and citizens can approach the HOA to seek relieve in civil court matters.

Mr. Rogers stated that is the general rule, however, in Wellington the County is a property owner and also a party to the Declaration of Covenants. When the developer began to develop the property there were questions raised about the proffers and as part of its settlement the Board entered into a Declaration of Covenants with Wellington where Wellington identified how it would construct the development. The Public Use Site was conveyed to the County. As a property owner, the County has a right to enforce the covenants just like the HOA does.

Mr. McGlennon inquired in this particular case where covenants reflect preference of developer and it translates into the homeowners. The County has a significant public policy interest in this particular instance of water conservation and the Board does not want to have the HOA disregard the covenants in this instance.

Mr. McGlennon stated concern that the HOA is being operated by the developer and not by the people living there. He also stated concern that a homeowner purchases from the developer and does not have a clear understanding of the covenants that drip-irrigation is the only acceptable irrigation and it may only cover 30 percent of the lot.

Mr. Harrison stated that he shares the same concerns.

Mr. McGlennon requested that staff ensure the developer discloses and enforces the covenants, and find out if the developer is going to mitigate this situation.

Mr. Rogers stated that generally the County relies on the HOA to enforce covenants. This particular case is unique and if the HOA is not going to enforce the covenants, the County for the reasons stated in the Declaration, could step forward and have the ability to enforce the covenants.

5. Mr. Bobby Brady, 3977 Penzance Place, concurred with citizens' comments that the tiered water system needs to be addressed, stated concern that staff is not responsive to his voiced concerns and recommendations, provided an overview of his recent water bill to previous water bills, suggested that the original meter is not reading accurately as a temporary meter registered water flow at two-thirds the rate of the other meter, and requested staff reply to his letters.

Mr. Goodson inquired if Mr. Brady has a sub-meter.

Mr. Brady stated that he has the original water meter put in by the developer.

Mr. Foster stated that after calibration, if it is determined that a meter is reading accurately, it is put back into place.

Mr. Foster clarified the figures provided by the Water Conservation Coordinator to Mr. Haywood.

Mr. Foster apologized to Mr. Brady and stated that he would contact him and follow up on his subsequent inquiries.

6. Mr. Joseph Beck, 3929 Penzance Place, stated that he was informed that irrigation was not initially permitted, however, the Wellington subdivision model home had an irrigation system in it and the rest of the subdivision soon followed, commented that his water bill is higher than his electric bill, stated that he understands the Board's desire to conserve water, however, extreme conservation efforts such as the benchmark for the third tier is unreasonable.

7. Ms. Derryn Webster, 8436 Ashington Way, commented that when she purchased her home she was informed that irrigation systems were not permitted and she tried unsuccessfully to seed a lawn, the

model unit on the corner got an irrigation system and she was told that the HOA had gotten the covenants amended and irrigation systems were permitted, however, they were not told only drip irrigation systems are acceptable; stated that she presumed approval of the type of irrigation system when a permit was obtained to install the system. Ms. Webster stated concern that her water usage jumped approximately 55 thousand gallons with the installation of the irrigation system.

8. Mr. Ty Elliott, 8401 Tynemouth Way, requested clarification on Board actions to resolve the concerns of the JCSA residential customers in the Wellington subdivision, commented that Mr. Foster's presentation is a good start and there needs to be clarification on the background on the setting of the tier levels and rates, commented on the advantages and disadvantages of private wells for irrigation, and stated that both sides of the Wellington water issue can take steps to mitigate the situation, and requested information on what steps the Board and staff will do to mitigate the situation and what can citizens expect.

Mr. Goodson inquired what rationale the Board used in setting the tier water-usage rates.

Mr. Foster stated that the adjustments to the rates were made while maintaining a revenue-neutral adjustment focusing on the encouragement of water conservation and reducing peak demands.

Mr. Goodson inquired if an adjustment to one tier would have an impact on the rates or levels of the other tiers.

Mr. Foster stated that a certain level of revenue has to be met and adjustments to a tier would impact the other tiers.

Mr. Goodson inquired if the tiered water-usage rate system, as a part of the water conservation program for the County, was used in the application and subsequent approval for a ground water desalinization plant permit.

Mr. Foster stated the permit for the groundwater desalinization plant includes a Water Conservation Plan to encourage water conservation.

The Board and staff briefly discussed the permit for the groundwater desalinization plant and the philosophical intent for water conservation. The Board also discussed the need for a Public Hearing should the Board wish to make an adjustment of the three-tier water system, inability to adjust rates retroactively, what would be required to adjust rates mid-year, inability to adjust rates for specific customers or group of customers,

Mr. Rogers stated that the rate structure must have a reasonable relationship to a legitimate governmental objective, which the Board has with the three-tier rate structure and cannot apply that tier-rate structure in a manner that is not uniform across the board for all property owners; a waiver of the tier structure for those that get a waiver for outdoor watering is not valid because one would invalidate the other.

Mr. Goodson inquired if a credit can be provided.

Mr. Rogers stated that the rate structure must be applied in a manner that is uniform across the board for all owners, unless the JCSA can find fault such as a mistake made or the water was not used.

Mr. Goodson inquired if JCSA has found any fault with any excessive bills.

Mr. Foster stated that an unknown leak has not been found and therefore adjustment to fees cannot be made.

Mr. Goodson inquired if there are any restrictions in the installation and use of private wells.

Staff stated that there are no restrictions on the installation and use of private wells for irrigation, however, there are restrictions on the installation and use of private wells when public water is available.

Mr. McGlennon stated that he strongly supports the County's water conservation efforts, commented that most of the County can function within the confines of those efforts. He also stated concern about the anomaly within the Wellington subdivision, and there may be an issue with the responsibility of the developer in its failure to communicate those requirements and enforcement of those covenants. He further stated that the Board is expecting response and recommendations of the Water Conservation Committee, and inquired when the Board may expect a reaction to the situation.

Mr. Foster stated that he anticipates bringing something back by the second meeting in November.

Mr. McGlennon requested staff take steps to ensure that the HOA informs new residents of the Wellington subdivision of the policies of the County and JCSA.

Mr. Harrison inquired what steps the County can take as a participant in the enforcement of covenants against the developer for the improper installation of irrigation systems beyond 30 percent of the lot.

Mr. Rogers stated that his comments on this matter are restricted to what the County can do. The County has enforcement powers under the covenant that runs with the land the County owns in the Wellington subdivision and can enforce the covenants against the HOA or anyone who installs the system. Mr. Rogers commented that any action against the developer would have to come from one or more of the Wellington subdivision owners.

The Board inquired if a permit is required for the installation of an irrigation system on private property and if the JCSA is made aware of installations of irrigation systems.

Staff stated that a permit is not required for the installation of an irrigation system on private property and the JCSA is not always made aware of irrigation system installations; nor is it general practice for the JCSA field staff to be aware of the specifics contained in the covenants of subdivisions.

The Board inquired if the Geographic Information System (GIS) system could be utilized by the JCSA to identify lots that that have covenants with the County as a party.

Mr. Foster stated that is something that could be incorporated into the JCSA computer system.

Mr. McGlennon inquired if the future developments will have HOAs that will enforce covenants concerning water conservation and is that a good mechanism to enforce water conservation through.

Mr. Foster stated that it will be a while before such developments get to the point were staff can make that determination.

Mr. Bradshaw inquired if the Wellington subdivision covenants prohibit the installation of irrigation wells.

Mr. Rogers stated that the Wellington subdivision covenants do no restrict the installation of irrigation wells.

Mr. Foster stated that staff researched the news media notifications of the water-use rate system and noted that the last run was in mid-June, stated that citizens have provided good suggestions for notification to new residents of the JCSA rules and regulations, and from those suggestions staff has developed a new account information packet that has basic information regarding the rules and regulations that will be left on the doors or mailboxes of new accounts.

Mr. McGlennon requested a reply to the citizen's comment that Newport News has an unlimited water supply, and commented that such a statement does not account for the efforts of Newport News to develop a reservoir to meet its water needs.

Mr. Foster stated that Newport News does not have an unlimited supply of potable water and they are facing an anticipated water supply shortage in 2011 or 2012.

9. Mr. Richard Costello, Water Conservation Committee Chairman, stated that a special meeting has been called for October 27 and the regular meeting of the Committee will be held on November 18. The Committee anticipates some recommendations may be presented, and stated that the question of permits for the installation of irrigation systems will be researched.

D. PUBLIC HEARING

1. Amendment to the Regulations Governing Utility Service – Utility Inspection Fees

Mr. Larry M. Foster, General Manger of the James City Service Authority, presented a change to the James City Service Authority Regulations Governing Utility Service to change when utility inspection fees are collected from developers in the County to coincide with an amendment to Section 19-15 (2) of the County Subdivision Ordinance.

Mr. Foster stated the proposed amendment allows the JCSA to issue the Certificate to Construct at a different phase of the development process rather than at the time of land-disturbing permit, as many of the development's land disturbance can commence weeks or months before the need for utility plans arise.

Mr. Foster requested the Board adopt the resolution following a Public Hearing on the proposal.

Mr. Brown inquired if any other action is being recommended with this proposal other than to make the process easier for applicants by separating the two approval processes and changing when the Certificate to Construct is issued.

Mr. Foster stated that there are no changes to the amount of the inspection fees.

Mr. Harrison opened the Public Hearing.

As no one wished to speak to this matter, Mr. Harrison closed the Public Hearing.

Mr. McGlennon made a motion to adopt the resolutions.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Goodson, Brown, McGlennon (5).
NAY: (0).

RESOLUTION

AMENDMENT TO THE REGULATIONS GOVERNING UTILITY SERVICE -

UTILITY INSPECTION FEES

WHEREAS, the Board of Directors of the James City Service Authority (JCSA) conducted a Public Hearing on October 26, 2004, to receive public comment on a proposed amendment to the Regulations Governing Utility Service changing the time for assessing utility inspection fees from the issuance of a land disturbance permit to when the JCSA issues a certificate to construct.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the James City Service Authority, James City County, Virginia, hereby adopts the proposed amendment to Section 32, Clause K, of the Regulations Governing Utility Service changing the time the utility inspection fee is due, which would become effective immediately, if adopted.

BE IT FURTHER RESOLVED, that the complete proposed amendment be made a part of this resolution.

Attachment:

SECTION 32. GENERAL RATE POLICY AND RATE SCHEDULE

K. Inspection Fee for Water and Sewer Lines. There shall be a fee for the inspection of public water and sewer installations. Such fee shall be \$1.43 per foot for every foot of water main and sewer main constructed and shall be submitted at the time of filing an application for a ~~land disturbance permit certificate to construct~~.

The purpose of this change is to defray the cost incurred to make the actual inspection of the water and sewer lines.

Mr. Harrison recessed the Board at 8:41 p.m.

Mr. Harrison reconvened the Board at 9:06 p.m.

E. CONSENT CALENDAR

Mr. McGlennon made a motion to adopt the items on the Consent Calendar including the amended minutes.

The motion passed by a unanimous voice vote.

- 1. Minutes
 - a. July 27, 2004, Work Session
 - b. August 10, 2004, Regular Meeting

F. BOARD CONSIDERATIONS

Mr. Michael D. Vergakis, Chief Engineer, James City Service Authority, presented a resolution awarding the Contract for Engineering Service for the design of Water Storage Facilities to Gannett Fleming Inc., for the design of two elevated water storage facilities to meet the growing demands on the system and provide adequate storage and system pressures.

Mr. Brown inquired where is the site for the water storage tower.

Staff stated that the site where the balloon test for the tower occurred is where the facility will be located.

Mr. Bradshaw made a motion to adopt the amended resolution.

The motion passed by unanimous voice vote.

RESOLUTION

**AWARD OF CONTRACT - ENGINEERING SERVICES FOR DESIGN OF
WATER STORAGE FACILITIES**

WHEREAS, the staff of the James City Service Authority has determined the need to build two elevated water storage tanks and remove three small existing tanks which are not located at the optimum level to support the water system; and

WHEREAS, proposals to provide engineering services were requested from qualified firms, with seven firms responding and interviewed by a selection team; and

WHEREAS, the selection team chose and recommends Gannett Fleming Inc., as the most capable firm of those submitting proposals to provide the engineering services associated with the project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the James City Service Authority, James City County, Virginia, authorizes the James City Service Authority to enter into a contract with Gannett Fleming Inc., in the amount of \$349,111 for the provision of engineering design service associated with building two elevated water tanks and associated water system improvements.

2. Easement Agreement - Lift Station 5-1/deCamp

Mr. Danny Poe, Chief Engineer for Wastewater, James City Service Authority (JCSA), presented a resolution authorizing the JCSA General Manager to sign an agreement and the appropriate documents to transfer Lift Station 5-1 property located on Neck-O-Land Road to the deCamps in exchange for a gravity sewer easement over their property.

Mr. Poe stated that an evaluation of one of the air-ejector style lift stations (Lift Station 5-1) confirmed that a gravity sewer extension to the downstream station in the Powhatan Shores neighborhood would be more economical than rehabilitating the station and would eliminate the need for Lift Station 5-1. The most feasible alignment for a gravity sewer extension is along the boundaries of the deCamp property and staff has negotiated terms for an agreement to allow the construction of a gravity sewer main with

permanent and temporary construction easements on their property in exchange for the transfer of ownership of the Lift Station 5-1 property to the decamps.

Mr. Poe stated that the net savings of extending the gravity sewer main and eliminating Lift Station 5-1 versus rehabilitating and maintaining Lift Station 5-1 is approximately \$67,000.

Mr. Poe recommended approval of the resolution.

Mr. Goodson inquired how many connections are anticipated for this line.

Mr. Poe stated that two connections are anticipated.

Mr. Goodson inquired if additional connections are anticipated.

Mr. Poe stated that a subdivision may occur.

Mr. Goodson inquired how many acres is the parcel.

Mr. Poe stated there is 15 acres.

Mr. McGlennon made a motion to adopt the resolution.

The motion passed by unanimous voice vote.

RESOLUTION

EASEMENT AGREEMENT - LIFT STATION 5-1/DECAMP

WHEREAS, the James City Service Authority provided in its Capital Improvement Program for the rehabilitation of Lift Station 5-1 located on Neck-O-Land Road; later it was determined that the construction of a gravity line rerouting sewer to a nearby pump station was more economical, eliminating the long-term costs and liability of operating the sewer pump station; and

WHEREAS, the proposed gravity sewer line will cross private property owned by Philip D., Trustee, and Virginia deCamp requiring an easement on the property; and

WHEREAS, the deCamps have agreed to provide the easement in exchange for the property on which Lift Station 5-1 is located and the waiver of the two local connection fees for future structures on their property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the James City Service Authority, James City County, Virginia, authorizes the General Manager to sign the agreement and appropriate documents associated with transferring the Lift Station 5-1 property to the deCamps in exchange for the necessary easement to construct a gravity sewer line, rerouting wastewater flows to a nearby lift station allowing Lift Station 1-5 to be eliminated.

G. BOARD REQUESTS AND DIRECTIVES - None

H. ADJOURNMENT

Mr. Brown made a motion to adjourn.

The motion passed by a unanimous voice vote.

At 9:16 p.m., Mr. Harrison adjourned the Board.

Sanford B. Wanner
Secretary to the Board

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