



ACME TOWNSHIP
INFRASTRUCTURE CITIZENS ADVISORY COMMITTEE
Wednesday, August 3, 2005, 3:00 p.m.
Acme Township Hall
6042 Acme Road, Williamsburg MI 49690

Meeting called to Order at 3:15 p.m.

Members present: M. Lewis (Chair), T. Bergklint, P. Brink, B. Beall, S. Feringa, B. Henry, J. Maitland, J. Stinson, H. VanSumeren

Members excused: L. LaSusa

- A. Approval of 06-27-05 and 07-28-05 Advisory Committee Meeting Minutes:** Lewis noted one correction from Brian Thurston to the minutes of the July 28 minutes, which was detailed e-mail received from Mr. Thurston.

Motion by Maitland, support by Brink to approve the minutes as amended. Motion carried unanimously.

- B. Limited Public Comment:** None offered.

- C. Discussion Items:** Lewis indicated that this afternoon he will be seeking input which the Board can use to evaluate the potential defeasement of the sewer bonds for the phase 2 upgrade and provision of water to the proposed Windward Ridge development at their upcoming August 9 meeting.

- 1. Water Systems:** As indicated by the July 28 minutes, the Tribe has withdrawn consideration of a bulk water sale to the township from the table for the time being. The Tribe still intends to supply water to the proposed Windward Ridge development, and DEQ and EPA have provided feedback. At the present time it has been determined that the Tribe may serve its own properties or off-site properties with water service as long as the mains remain in their ownership. The issue of potential franchise agreements being required depends to some extent on the placement of easements. If the township develops water infrastructure at a later date, there is question over whether it could acquire/use existing private infrastructure later. Feringa noted that if the Tribe provides a master meter between the water system and the development as a whole, the development past the meter point would fall under DEQ jurisdiction rather than EPA, while if there is no master meter and the Tribe provides water directly to each individual dwelling unit, the entire system would remain under the EPAs purview. Lewis noted that the township's Special Use Permits require that the applicant be willing to turn over their private public water system to the township at the township's request.

Today the township received a letter from the Tribe indicating that the Tribal Council voted to provide water service to Windward Ridge. Feringa indicated that there will not be a master meter between the tribal infrastructure and the development; each house will receive an individual meter and be served and billed directly by the Tribe. Under this scenario and according to the e-mail from Mr. Thurston, the Tribe will own all of the water lines within the development. It appears that new private public

water system would be created, but an existing system over which the township currently has no jurisdiction would be expanded, and the portion of the SUP document requiring the applicant to be willing to turn over operation of the system may not apply.

Maitland believes that eventually there will be an agreement reached between the township and the tribe, and it would be in the township's best interests to recommend that the Board grant approval to Windward Ridge based on the water system as planned and encourage similar future situations. He qualified his statement by saying that as a party with an interest in LochenHeath, his development may be interested in a similar arrangement in the future. Maitland does not believe that the township can ultimately make money by operating a water utility, but could only hope to recover construction, operating and maintenance costs. Lewis concurred that recommending that Windward Ridge be approved as proposed seems prudent.

Brink can accept this type of position by the township as regards water but is concerned that this could set a precedent regarding sanitary service. The Tribe may consider redirecting flows to their Turtle Creek facility and/or offering service to non-tribal entities. The township is already struggling to hook up enough users to meet current system financial commitments. He noted that Ron Olson from the EDC was asked if he would be willing to sign a letter about the Tribe's future intentions regarding sanitary service and he was not. Feringa stated that the Tribe is currently less willing to consider sales of sanitary service because they want to ensure they have sufficient capacity for their future needs. Brink suggested that a component of any recommendation to approve Tribal water provision to the development specifically state that the advisory is not making a similar recommendation regarding sanitary service now or in the future. Beall concurred, and Maitland again expressed an impression that the township and Tribe will be able to work cooperatively regarding infrastructure in the future. Perhaps it will prove less costly in the future for the township to purchase capacity from the Tribe and send flows along a shorter route to their facility rather than to the current regional facility in Traverse City through East Bay or to a potential future new facility on Hoch Road.

Feringa believes that making the township's feelings well-known to the Tribal Council can only be beneficial. The creation of an infrastructure master plan is the first step to future cooperation. The committee read the August 2 letter and July 27 motion provided by the Tribe to POW Investments indicating that the intent to provide water exists.

There was discussion about whether or not each new similar circumstance would require review by the Infrastructure Advisory as part of the SUP approval process. Corpe stated a belief that this would not be required unless there is a substantial change in position from the EPA/DEQ or circumstance of provision (if individual units are not to be metered by the Tribe.) Lewis expressed concern that any proposal for sanitary sewers not provided through the township be discussed by the Advisory, and brought up the issue of reviewing Tribal water main construction materials. The Tribe uses different standards: PVC pipe rather than cast iron as preferred by the DPW.

Motion by Maitland, support by Brink to recommend to the Board of Trustees that they grant SUP approval to Windward Ridge based on the indication from

the Tribe that they will provide individually-metered water service through an extension of Tribal water mains to privately-owned leads connected to each dwelling unit, and recommending that the Board of Trustees send a letter to the Tribe indicating that this decision is not meant to serve as a precedent for future transactions relative to sanitary sewer.

Beall asked if it is common for there to be competing water utilities in communities. He is concerned that if the township wishes to bond for creation of water infrastructure in the future, the presence of a competitor in the market might inhibit the ability to bond. Feringa believes that completing the infrastructure master plan and entering into a bulk water sales agreement would be critical first steps before bonding for infrastructure for this reason. Lewis also noted that in many cases a municipality can compel landowners to hook into new infrastructure in their areas within a certain period of time and under certain conditions, which guarantees a market for the service.

Beall asked if it could be considered a conflict of interest for Maitland to make the motion, since he may wish to obtain similar service for his development in the future. Maitland recognized that he has an interest and said he would remove himself from the consideration if desired; however, he serves on a number of State boards and noted that this is an advisory rather than decision-making body so there should be no difficulty.

Motion carried unanimously.

2. **Sewer Systems/ Potential Defeasement of Sewer Bond for Acme Sewer Upgrade Phase 2:** At the July 28 meeting, Tribal representatives stated that they have been evaluating their properties and their future plans are in flux. It is unknown if they will need all of their existing Turtle Creek treatment plant capacity, and it does not seem financially advisable for them to disconnect the Resort from the regional system and connect to their facility at this time. Feringa stated that the Tribe does not plan to redirect sanitary flows in the near future. A few weeks ago the Tribe made a public statement that they do not intend to move their Casino operation to the Resort, which was a factor in this decision. This decision could be revisited if the township/DPW reach a different conclusion than currently exists regarding whether or not the Tribe can sell benefits back to the system. Currently DPW policy does not allow for this. One question is whether they would be purchased back at the initial sales cost, which would generate in the neighborhood of \$700,000, or current benefit sales rates of \$4,200, or some other figure.

Lewis drew a basic schematic of the current sanitary infrastructure along the west side of US 31, using solid lines for gravity mains and dashed lines for forcemains and showing the location of 3 lift stations. Proposed sewer upgrade phase 2 would upgrade lift station #2 and install new forcemain linking station #2 to station #1 parallel to existing gravity lines, in which capacity would be freed. Best estimates are that 325 more benefits/about 5 years is the remaining capacity in the gravity lines near the intersection of US 31 and M-72 if phase 2 is not performed based on the projected buildout timeline for LochenHeath. The costs for this phase are approximately \$1.1 million.

If this portion of the bond is defeased, cash flow would be freed up in the township's Sewer Fund. The earliest call date on the bonds is in 2012, so for now the unspent funds would be set aside to provide for a partial call at the earliest opportunity. There are two potential defeasement scenarios; one in which all of phase 2 is scrapped and one in which the engineering for the improvements is completed but the plans are "put on a shelf" for future use by future developers as their projects create the need.

Brink asked how the projection that the 325 benefits would be used up within 5 years was reached. The projection recognizes that portions of the Resort are served by this segment of the system, as is LochenHeath and undeveloped lots and unserved lots that may wish to connect in the future on Deepwater Point. Brink asked what the critical question is, if a need for the improvements within 5 years is demonstrated. Lewis responded that the issue is largely cash flow to the township. Also, if a regional infrastructure plan is done for the region, perhaps a different way to route flows will be suggested that would make the improvements, if performed, obsolete. If flows were rerouted to Turtle Creek there would also be an impact, and this is currently a variable. Perhaps upgrades of pumps would be needed, but not installation of forcemains.

VanSumeren asked what the downside to defeasement would be. Lewis replied that as the township grows the improvements would be needed, and it would take time to complete design, obtain easements and approvals (at least a year) prior to construction (perhaps another year) before improvements could be used if the project must be re-started from scratch. This effectively reduces the window of time before the issue comes up again to 3 years. Brink asked if permit extensions can be received; Lewis believes that they can. Bob Forsman, Gourdie Fraser, noted that costs could increase over time and permit/construction requirements can change.

Lewis directed attention to the letter from the bond counsel, Axe & Ecklund, dated 07/28/05. This letter indicates that if bond proceeds are not spent on the project for which they were intended within 2 years of the bond issuance date, there is potential that the IRS can determine that the township has engaged in arbitrage: borrowing money for a public purpose and holding it to earn interest income. If this is found to be the case, the bond could lose its tax-exempt status and the ability to and rates at which the township and county could issue future bonds could be jeopardized. Looking in her records, Corpe believes the bond issuance date was August 1, 2003, so the township is already 2 days past the 2-year deadline.

There was discussion about the concept that defeasement might transfer the cost of infrastructure construction from the township now to developers as it is needed (as called for by the Master Plan) later. This would be the concept behind the option whereby the township would fund creation of the engineering plans and make them available to developers to construct as needed by their projects. Maitland objected to this approach, indicating that the idea behind hook-up charges and usage fees is to spread costs for infrastructure equally between all users of the system and that requiring the developer to construct improvements places the entire cost burden on a small subset of properties, and which would be compounded by subsequent charges for hook-in and/or usage.

Maitland observed that systems are generally constructed to handle peak flows, and that other options for solutions to sewage flow bottlenecks would be to create a

storage tank at lift station #2 to capture peak flows, releasing them through to station #1 at off-peak hours, utilizing existing capacity more efficiently.

Maitland believes that it might be prudent to recommend that construction of phase 2 not proceed at this time. The township truly does have a sewer fund cash flow difficulty. The need does not appear to exist for another 5 years, and within the near future an infrastructure master plan can be created and the township will have a clearer picture of development trends. He would want to see recognition by the Board that the need will exist and a commitment to determining how to meet it.

Beall believes that short-term interest rates in the near future will equal or exceed bond coupon rates. Recently they have been lower than the coupon rates. He believes that in the recent environment it would be hard to make a case that the township has sought to benefit from arbitrage. He thinks that “short-term pain” is preferable to longer-term issues.

Lewis believes that the outcome of infrastructure master planning in cooperation with the Tribe and DPW may lead to different conclusions about the type of improvements required. Discussion about storage and pumping at non-peak times could be fruitful, as could discussion about the equivalency of residential and business usage rates (such as one standard hotel room being equivalent to about half a household usage). Brink summarized that there seems to be growing consensus that defeasance at this time would be beneficial. Maitland stated that it appears the township can afford to make a decision within 2-3 years and still meet the need, and that there is some flexibility. He reiterated that he would appreciate receiving understanding from the Board that there will be a capacity issue in the future and their commitment to address this need in a timely fashion.

Motion by Brink, support by Stinson to recommend Option #1, full defeasement of the bond issue relative to funds for proposed Phase 2 Sewer Improvement due to cash flow needs, rising short-term interest rates, uncertainty about future needs for the sanitary system and whether the most appropriate design can be created at this time, conditioned upon ongoing monitoring by the Board and their commitment to participation in regional master planning to determine future needs and preparation to meet them. Motion carried unanimously.

3. **Master Planning with the DPW:** If the township would like to be part of a region-wide study by the DPW regarding water and/or sewer needs, it must indicate this to the DPW. One issue would be the level of cost to the township, which presumably would be pro-rated to each municipality involved based on percentage of system usage. Lewis believes such a study would produce a schematic for potential future location of main lines, but does not believe that the full scope of the study can be determined until the level of participation is known. He posed the question of whether or not the township should participate in such a study, and noted that there are several private public water systems in the township that are DEQ regulated and with which the township is or may become involved.

Feringa believes that a master plan is the first step in the process. Maitland agrees that looking at the question is a good idea, although knowing the potential costs before making a commitment is essential. Garfield and East Bay Townships already have water systems, and there is the potential for Acme to be served through East

Bay. Blair has a water system as well. If Acme is to have a village center of some sort, it makes sense that there would be a water system in place. Stinson believes that at some point the township will need to perform such a study, and that it would perhaps be as well to join a regional study rather than going it alone.

Motion by Brink, support by Maitland to recommend that the Board of Trustees join into a regional water infrastructure study through the DPW, contingent upon costs to the township. Motion carried unanimously.

- D. Public Comment/Other Business:** The advisory expressed eagerness to remain involved in water and sanitary infrastructure master planning, as well as working with non-motorized trails and roads.

Meeting adjourned at 5:03 p.m.