The special meeting of the Steelton Borough Council was called to order by President, Jeffery Wright at 6:05 pm on Thursday, June 23, 2011, with the pledge of allegiance, followed by a moment of silence.

| In Attendance: | Absent: |
|---|---|
| Hon. Thomas Acri | Hon. Mary Jo Szada |
| Hon. Jeffrey Wright | Kathy I. Sosnowski, Executive Asst. |
| Hon. Steve Shaver | |
| Hon. Michael Albert | |
| Hon. Maria Marcinko | |
| Hon. Dennis Heefner | |
| Hon. Raymond Spencer | |
| Douglas Brown, Manager | |
| David Wion, Solicitor | |
| Michael Musser, Consultant | |

Mr. Wright recognized noted that this is a special meeting of Borough Council that was publicly advertised. Mr. Wright further commented that the purpose of the meeting was to address issues before Council that needed further review with Mr. Wion present.

**EXECUTIVE SESSION HELD BETWEEN MEETINGS:**

Mr. Wright commented that we did not need to address this since no executive sessions were held between meetings.

**PUBLIC COMMENT:**

Mr. Wright offered the opportunity for public comment on agenda items only. There were no requests for public comment.

**UNFINISHED BUSINESS:**

**PRESENTATION OF FINAL SANITARY SEWER RATE STUDY AND RECOMMENDATION BY HERBERT, ROWLAND, AND GRUBIC RELATED TO SEWER RATE INCREASE AND RESTRUCTURING**

Mr. Wright introduced Adrienne Vicari P.E. and Matthew Cichy, P.E. from Herbert, Rowland and Grubic, Inc. to present the Final Sewer Rate Study and present their recommendation of Option A as the most viable option for sewer rate restructuring and increase.

Mr. Heefner began the presentation by offering a synopsis of the background of the sewer rate study, his work with HRG as the Councilperson spearheading the rate study, and what they are trying to accomplish with the sewer rate restructuring and increase. He then went over the new rate classes and how they differ from current rates.

Mr. Heefner stated that the new sewer rate structure and increase will allow the borough to adequately meet current expenses, establish a capital fund to address infrastructure needs instead of borrowing, and plan for capital improvements over multiple years.

Mr. Heefner stated that he preferred to minimize the impact of the rate increase on the elderly and residents by focusing the sewer rate increase more on commercial businesses.

Adrienne Vicari was introduced by Mr. Heefner and proceeded to explain the sewer rate study presented to Council. Ms. Vicari stated that HRG went through the borough's sewer fund actual expenses from 2008 to present, while also projecting expenses through 2015, including increased debt service, capital needs, and inflationary increases in operational expenses. Ms. Vicari noted that the last sewer increase was in 2009 and the borough has been able to avoid a rate increase by deferring and refinancing debt service payments. However, according to Ms. Vicari, the borough cannot further defer debt service payments and must raise rates immediately to meet 2011 expenses, as well as the projected operational and capital expenses. Ms. Vicari then reviewed table A1, outlining sewer fund expenses, noting increases of 3 to 5 percent in operational expense categories from 2008 to 2011. Using these expenses, HRG projected sewer expenses through 2015. Ms. Vicari pointed out that debt service payments are the most important piece of our expenses in coming years. She then went through the series of General Obligation notes and the corresponding debt service owed. She noted that debt service will see a dramatic increase from $123,000 in 2011 to $464,000 in 2012.

Ms. Vicari then outlined the capital improvements needs for the borough's sewer system, noting that the construction of the current collection and conveyance system occurred in 1959. She further noted that, although periodic upgrades have been made to portions of the system, several comprehensive projects over the next five years are recommended due to the overall age and state of the system. Ms. Vicari worked with Joe Conjar, Director of Public Works, to assess future capital needs and stressed the current condition of the system requires significant attention.

Mr. Spencer returned to the debt service category of expenses, asking if we can retire the 2003 General Obligation Note if interest rates lower as a way to reduce the debt service burden. Mr. Musser stated that refinancing of the 2003 General Obligation note is not reflected in the study and that the borough could capture savings from refinancing this GOB. Mr. Spencer noted that the study therefore reflects the worst case scenario and we may not have as much of an expense related to this GOB if the markets are favorable. Timing of debt service payments were then discussed. It was noted that we can revisit how much we increase sewer rates if debt service obligations in the future are lower than expected. Ms. Vicari reminded council, however, that regardless of the budgetary picture in future years, to meet the expenses and balance the budget this year, we would need to increase rates to the level recommended in the study.

Ms. Vicari then returned to capital needs, noting that in addition to previous capital needs outlined, the borough has manholes that have outlasted their recommended lifespan of 40 years and also needs to update around 60 percent of distribution lines. Mr. Musser asked if the 2006 bond issue was used for upgrading part of the lines and noted we updated our pump houses in the mid-1990's. Ms. Vicari said she has looked at our existing debt service and what each borrowing went towards. She further noted Mr. Conjar has recommended upgrading at least 50 percent of the sewer lines in the next five years as well as updating pump stations, including the pumps and some mechanical equipment—Ms. Vicari estimates these costs to be around $250,000. Ms. Vicari assumes that capital improvements projects like this will not begin this year, but would begin one to two years from now. Mr. Heefner then reviewed the new types of pumps that they would like to have installed in the pump stations.

The last capital improvement Ms. Vicari summarized was Phase II of the East End Sewer Separation project. She estimates that this will cost around $4.5 million. Ms. Vicari assumed in Option A of the study that we will NOT proceed with Phase II of the East End Sewer Separation Project. However, in Option C, this cost is calculated, leading to higher rate increases. She then presented Table A2, which outlines costs and how they impact future rates, and noted that after speaking with borough staff about the desire to minimize future debt service, she assumed all future capital costs would be funded directly by rate revenues.

Ms. Vicari proceeded to review current expenses, as well as the 3 year average of revenues. She noted that there will be a deficit of over $300,000 in 2011 if the borough keeps its existing rates and rate structure. This deficit grows significantly over the next five years if current rates are maintained. Ms. Vicari recommends considering a rate increase now in order to avoid a deficit at the end of 2011, recommending the increase be implemented for the last two quarters of 2011 in order to balance the sewer budget this year.

Ms. Vicari then reviewed the current rate structure which incorporates a minimum usage charge for use of up to 5,000 gallons of usage. She noted that this form of volumetric charge is outdated. More recently, municipalities have switched to a service fee structure, charging a flat fee for the administrative costs of providing sewer. After reviewing current administrative costs for sewer, HRG concluded that an accurate service fee would be around $19. However, they decided to start with a more modest service charge of $15 and slowly increase it to $20 by 2014. The reason for a reduced service charge is to make the hit of an increase softer on residents and low-end commercial users.

Ms. Vicari than reviewed the various customer classes the borough serves: residential, commercial, industrial, and institutional. HRG took these customer classes and estimated what it costs the borough to serve each customer class, as each class produces different strengths of waste into the borough system. According to Ms. Vicari, HRG looked at the number of customers in each class, volume of flow from each class, and strength of waste. Council then reviewed a chart outlining the breakdown of expenses related to customer classes. According to the study, 79 percent of expenses go towards serving residential customers. An additional 9.6 percent are related to servicing commercial users with the remainder going towards industrial and institutional users. Mr. Shaver questioned how we can determine the strength of waste and, therefore, the expense to convey the waste relative to a user class. Mr. Cichy answered that the chemicals/grease buildup that can be seen at the pump station clear wells can be mainly attributed to industrial/commercial users.

Ms. Vicari reviewed expense ratios related to classes and took council through Table 4 of the study which breaks down expenses related to customer classes. HRG took the expense ratios and applied them to the borough's expense projections through 2015. Using this ratio, Ms. Vicari was able to estimate what each customer class's fair share of expenses should be. She used these ratios to determine the rates relative to residential, commercial, industrial, and institutional classes. Ms. Vicari then reviewed the rates determined for each class, as well as the $15.00 flat service fee for all classes and the estimated payments for average users. According to Ms. Vicari, the average residential user uses 12, 461 gallons per quarter. If we restructure our sewer rates to what is seen in Option A of the rate study, the average user would see a bill of $161 per quarter. However, if we opted to keep the existing rate structure and simply raise rates to levels adequate to meet expenses, it would actually lead to a 85.2 percent increase for the average user, leading to an average bill of $194.00. Implementing the new rate structure as proposed in the study, the average user would see less of an increase.

However, Ms. Vicari noted that while the new rate structure would mitigate increases for the average residential user, the new structure does pose substantial increases for other customer classes, including commercial, institutional, and industrial users. Ms. Vicari referred to a table outlining the proposed quarterly rates for these customer classes. Mr. Wion asked Ms. Vicari if there is a breakdown of how many users are in the institutional, commercial, and industrial class. Ms. Vicari referred to Table C2, but noted that she did not obtain a breakdown of the class customers. Mr. Heefner noted that during the course of his work on the study, he obtained such a document from Michelle and could have borough staff provide the breakdown to Council members.

Mr. Wion questioned what standard we use to define each customer class, and how we define a class as "institutional". Mr. Heefner stated that institutional users include churches, schools, and community buildings and during the course of preparing the study, he noted that there were many more churches than he thought in the institutional class. Ms. Vicari recommended cleaning up the list of customer classes before implementing the rate increase. Mr. Brown and Ms. Powell will work to clean up the customer class list and Mr. Wion will reach out to Adrienne Vicari to work on defining each customer class in preparation of the resolution or ordinance implementing the rate restructuring and increase.

Ms. Vicari then discussed outstanding delinquencies and noted that tightening up our collection procedures and implementing stronger enforcement standards would lead to greater collection of revenues and help strengthen the sewer fund. Mr. Acri asked if the borough can turn off the water line if a resident does not pay sewer. Mr. Shaver stated that there is probably a direct correlation between sewer and water on a bill, end thus enforcement for non-payment. Mr. Musser said that the Borough will always have the ability to shut someone off for non-payment, regardless of whether the delinquency is related to the water or sewer portion of the bill. Mr. Acri stated that in the last few months, we have seen a spike in people complaining about their sewer bill. Ms. Marcinko asked when the last water increase occurred. Mr. Acri answered that earlier this year we increased water rates for the rest of the year, but that the majority of recent complaints have been related to sewer. Ms. Marcinko then asked for clarification about the relationship between sewer and water rates, and how the increase impacts this. Mr. Acri clarified that the increase would only be seen in the sewer portion of the bill. Mr. Musser expanded that the average user will see around a $57 increase that will be reflected on their bill only on the sewer portion. He also noted that our new residential sewer rates will be in line with surrounding municipalities. Mr. Cichy further clarified that, according to Pennvest's formula that determines affordable sewer rates, our proposed increased rates for residential customers is within the "affordable" category (or 1% - 2% of median household income). Ms. Vicari then offered a comparison to Harrisburg's sewer rates, and noted that we are in line with Harrisburg's rate. Mr. Cichy offered further comparisons to surrounding municipalities, demonstrating that by raising rates, Steelton will be consistent with the average rates of surrounding communities. Examples included: Lemoyne Borough with an average rate of $174 per quarter this year and East Hanover with a rate of $177 per quarter. Mr. Shaver noted that this example is a tell tale sign of what has led us to this point—that we have not updated sewer rates consistent with surrounding communities and have not gradually raised rates to meet expenses, hence our projected deficit at the end of the year. Mr. Musser stated that this was something that we knew had to be done, and was something that was discussed during the 2011 budget. Mr. Shaver stated that we need to use HRG's study as a living document that we can plug numbers into every year to ensure we are accurately projected sewer revenue needs. Mr. Heefner commented that through this study the borough "really cleaned our house up".

Ms. Marcinko expressed concern that, while we are tightening up our sewer rates to better reflect our expenses, there are elderly and people on fixed incomes that simply cannot pay for any sewer increase. Mr. Heefner said he worked with HRG to structure a sewer rate increase that seniors and those on fixed incomes were not heavily impacted. Ms. Marcinko responded that she is still concerned about the impact on those who cannot pay.

Ms. Vicari then outlined the $15 service fee and how it will apply to apartment buildings. She assumed in the study that each apartment unit would be charged a separate $15 service fee, while the whole building would be charged a volumetric charge. The landlord would receive service charges for each unit, while having a volumetric charge for the whole apartment building. Mr. Heefner gave an example that, for 83 apartments, there would be 83 separate service fees, thus leading to more revenue. However, he cautioned that borough staff would have to stay on top of keeping track of tenants administratively. He noted that we have been lax on tracking delinquencies and posting fees/penalties in the past and would need to tighten up administrative procedures. Mr. Musser noted that the more Mr. Brown gets his feet under him as Borough Manager, the tighter administration will be.

A question was raised as to what would happen with vacant apartments. Mr. Musser explained that the $15 service fee is a standby fee and, therefore, will be paid weather the apartment is occupied or not.

Ms. Vicari proceeded to discuss an additional billing category for in home occupations. There are 9 in home businesses registered in the borough. Mr. Heefner noted that there are more than 9, but only 9 in home occupations have come through the Planning Commission and are documented. Mr. Wion suggested that we find home occupations that are not registered and make them qualify as home occupations. Mr. Musser said the home occupation category could be challenged because there are many home occupations in the borough that aren't documented and, therefore, will not be charged as a home occupation. This will potentially lead to the identified home occupations to challenge the categorization. Mr. Wion stated that, if someone in a home occupation category brings up another home that should be in the category, the borough can simply inquire about that home and have them properly identified as a home-occupation through the planning process. He also said that home-occupation has a certain definition of activities connected to it. Ms. Vicari suggested discussing the home-occupation category further, and that it is not a huge category, constituting only around $5,000 of the overall projected revenue. Mr. Heefner then outlined his reasoning for creating a separate home occupation category.

Ms. Vicari then presented HRG's recommendation to proceed with Option A of the sewer rate study because it allows us to generate the revenue to meet expenses for 2011 and 2012. If Option A is decided upon, it is recommended to revisit income/expenses in 2013 and consider an additional increase if needed.

After outlining the recommended option, Ms. Vicari offered alternative options that would allow a smaller increase in rates for 2011, but would require steps to minimize expenses. Under Option B, the rate increase is lesser, but would require the elimination of management fees and deferring the repayment of the East End Sewer Separation Pennvest Loan. Option B further requires the Borough to pursue Swatara Township for not only operational costs, but also ask for additional reimbursement for debt service. Ms. Vicari's justification for this is that the sewer conveyance system was financed solely by the borough and was constructed to specifications that accommodate the extra flow conveyed from Swatara Township. If the borough were to ask for this additional debt service reimbursement, it would result in an extra $46,000 per year. Ms. Vicari then reviewed Table B2 of the study with council. Council instructed Mr. Brown to further look into this issue with Swatara, but it was noted that Mr. Brown and Mr. Heefner have already met with Swatara and they have been very cooperative in updating the expenses calculated into the reimbursement for operation and management expenses. Mr. Brown and staff are looking into the debt service payment separately.

Ms. Vicari then reiterated that, regardless of which option we choose, the borough has a $300,000 deficit looming at the end of 2011 if rates are not increased. Mr. Shaver then commented that, unfortunately, we do not have an option but to raise rates as outlined in Option A.

Mr. Spencer responded that we do have a choice, as we can reduce expenses as outlined in Option B. It would be painful, but we could work towards it. Mr. Spencer then inquired about the feasibility of reducing administrative costs, as well as deferring the PennVest payment. Mr. Cichy replied that this is doable. Mr. Spencer then asked if the recovery of debt service and capital expenses from Swatara is feasible.

Ms. Vicari proceeded to outline the Swatara/Steelton conveyance agreement from 1975. This agreement outlines that Steelton Borough would bill Swatara quarterly for operational and maintenance expenses. As part of the study, Ms. Vicari broke down sewer fund expenses to determine if each category is related to operation, conveyance, collection, treatment, service, administrative, and other costs. HRG then determined that our overall conveyance costs are $370,000. All expenses did NOT account for debt service, as Swatara does not currently pay for debt service and the agreement is vague in this category. With the new expenses broken down, Ms. Vicari then reviewed what Swatara Township has actually paid the borough in 2010 as opposed to what Swatara should have been paying based on actual expenses related to conveyance of their waste. Ms. Vicari determined that the borough should have charged $83,000 in 2010 for collection and conveyance of Swatara's waste, roughly $20,000 more than what we actually collected.

However, Ms. Vicari noted that, contrary to the 1975 agreement, the Borough itself has not been keeping track of the expenses that should be charged to Swatara. Rather, in recent years Swatara has actually been the agent calculating the expenses. Swatara has been receiving a copy of Steelton's budget and has been using Steelton's water usage record to determine what they think they owe the borough. However, according to Ms. Vicari, Swatara does not have updated line items to accurately reflect present day expenses. Ms. Vicari and HRG recommend the borough return to the original administrative setup outlined in the 1975 agreement, with the borough calculating expenses and billing Swatara. At the end of the year, the borough and Swatara will reconcile actual costs as opposed to what was paid to the borough. Ms. Vicari then reviewed the meeting she, Mr. Heefner, Mr. Brown, and Mr. Shaver had with Swatara regarding this issue. She reported that Swatara was very receptive to updating the process. Mr. Brown noted that he is in regular contact with the Manager of the Swatara Sewer Authority and they are working together to transition the process over to Steelton Borough as the collector. Mr. Spencer then asked why we have not asked Swatara Township to also pay a share of our debt service, and have only asked them to cover O&M expenses. Ms. Vicari stated that the agreement specifically outlines operation and maintenance costs, but is very vague concerning debt service and does not address future debt service after the 1975 agreement.

Mr. Shaver noted that we may have to revise the agreement. Mr. Spencer said we should not have to, because it is already addressed in the original agreement. Ms. Vicari suggested we consult our solicitor. At this point, Mr. Wion made it specifically clear that he cannot represent or give legal advice to either side on this issue, due to the fact that he is Swatara Township's solicitor as well.

Ms. Vicari said that theoretically, the concept that Swatara should pay for expenses related to the upgrades of Steelton's system to accommodate their waste is reasonable and logical. Mr. Spencer agreed.

Mr. Shaver then stated that we approached Swatara about only the O&M costs because he believes the debt service for capital expenses related to the system should be covered in a new agreement. Mr. Spencer respectfully disagreed and stated that a rate increase is the easy way out. He believes that, while we may currently have lower rates than most surrounding municipalities, we should remain that way to attract business. Mr. Spencer stated that the only way to do this is to pursue the expense reduction measures in Option B vigorously until it either works or fails, and cut expenses as much as possible while pursuing Swatara Township for not only O&M costs, but also debt service costs. He interprets that three out of five of the cost reducing measures in Option B are very doable and should be pursued. Mr. Heefner responded that we can go back in the future budgets and adjust rates depending on what our revenue and costs savings performances are.

Mr. Acri then asked how easy administratively it will be to transition to having the borough bill Swatara. Mr. Brown noted that Swatara has been very cooperative and that, while there will be a learning curve, we will have to figure out the billing process. Mr. Shaver further expanded on the question of why we only pursued Swatara for operational and maintenance expenses at this point. According to Mr. Shaver, we cannot go back to Swatara and ask them to cover debt service related to capital expenditures from the past. Ms. Vicari noted that part of her study involved pulling apart debt service to determine what is attributed to collection and conveyance of Swatara's waste.

Ms. Marcinko raised a concern about who the borough would seek counsel with in the event that they would like to renegotiate the 1975 agreement, since Solicitor Wion must remove himself from the process. Council then discussed alternative counsel in the case they would like to renegotiate the agreement. Mr. Heefner asked Council to keep in mind that, no matter what the decision is regarding a renegotiated agreement, the borough must raise sewer rates by August 1, 2011.

Mr. Shaver then recommended that we go with Option A for the next two years while pursuing cost-cutting strategies and talking with Swatara Township about incorporating future debt service payments. However, we cannot ask someone to pay for debt from the past that we have already incurred.

Ms. Vicari then revisited identified strategies to reduce costs and summarized the borough's options, with the conclusion that it would be prudent to pursue these options over the next few years. Mr. Spencer noted that even if we can enact portions of the identified cost-cutting measures, we will reduce the burden to raise rates additionally and, therefore, should pursue any expense cutting that we can.

Mr. Shaver then asked about using the H20 funding to pay down the East End Sewer Separation Penn Vest Loan. Ms. Vicari outlined how Penn Vest would most likely keep monthly debt service payments the same and just shorten the term of loan repayment. Therefore, we would not decrease immediate expenses by applying the H20 grant to the Penn Vest loan.

Mr. Spencer again reiterated that the Borough must exhaust all avenues of cost-cutting and revenue recovery to mitigate rate increases. He noted that the average of an 86 percent increase is personally frightening to him. Mr. Acri further noted that an 86 percent increase will lead to even greater delinquencies. Mr. Musser corrected Council that the 86 percent increase is the "across the board" number, while the average residential user will see an increase of 53 percent. Ms. Vicari expanded that the rate restructuring and increase was designed to have a lighter impact on residential users. Mr. Heefner seconded this. Mr. Spencer retorted that commercial and industrial users, on the contrary, are going to see a significant spike in rates, which is detrimental to economic development.

Mr. Brown then asked Mr. Cichy to clarify how the new industrial and commercial rates would compare to surrounding municipalities, especially since the borough is trying to attract business. Mr. Cichy replied that surrounding municipalities, with the exception of Swatara, have a standard rate across the board. Swatara Township's average commercial user would pay $155 per quarter. Steelton's increased rate for the average commercial user would be $498.

Ms. Marcinko proceeded to outline the appealing parts of Option B, mainly that it would be a less significant increase. However, she did recognize that there are many variables that would have to be addressed if the borough proceeds with Option B, including renegotiating the conveyance agreement with Swatara, in order to make Option B work. Ms. Marcinko said she would not feel comfortable relying on addressing these variables as of now. Ms. Vicari reiterated that under Option B, she did not assume that we would be able to work out debt service payments with Swatara.

Mr. Spencer then asked how revenue is trending for the first half of 2011. Mr. Brown noted that while revenues are slightly over what has been project, they are not enough to cover the looming $300,000 deficit at the end of the year. Mr. Spencer stated that even if we cannot do everything the study outlines to reduce expenses, even doing what we can is a good policy.

Mr. Heefner then asked if we are able to accept credit card payments for sewer bills at this point in order to cut down on deficiencies. Mr. Heefner noted that credit card payments will provide another option of payment for those at risk of having a delinquent account. Mr. Brown noted that while staff are working towards setting up a credit card acceptance system, they will not have one in place by August, 2011.

Mr. Spencer stated that we have to go with one of the options, but he would rather see a phased in rate increase, not the 53 percent increase in Option A. Mr. Musser clarified that he meant Option B. Mr. Spencer confirmed this. Mr. Musser then reiterated that we may go back and reevaluate rates once we see how our expenses/revenues are under the new system.

Ms. Marcinko asked if we were prepared administratively to overhaul the billing structure. Mr. Brown responded that Ms. Powell had talked with Edmunds, our billing software provider, and we will not have a problem implementing the new system.

Mr. Shaver made a motion to proceed with Option B reflected in the August billing. Mr. Wion clarified that it should be stated as a motion to proceed with the rates that are outlined in Option B. Mr. Cichy brought to Council's attention that under Option B, there would be a rate increase in 2011, 2012, and 2013, while the rate increase in Option A remains the same for 2011 and 2012. Mr. Shaver restated his motion to "follow the guidelines established in Option B from the study dated June 20, 2011 from HRG with the rates and categories that are established for Option B and spelled out in the document". Mr. Wion asked where the table is that shows rates for Option B. Ms. Vicari clarified where to find the Option B rates and re-reviewed rates in Option B in greater details.

Mr. Acri and Mr. Heefner brought up concerns about the mandatory administrative cost eliminations required to make Option B work. Mr. Musser noted that to immediately address the 2011 and 2012 budgets, Option A would be the best route.

Mr. Musser asked Mr. Wion when we would need to adopt the resolution implementing the new sewer rates. Mr. Wion stated that he would have to discuss the categories of users with Ms. Vicari, as the borough does not have clear definitions for each user class, before drafting a resolution or ordinance.

Mr. Shaver then made a motion to "instruct staff to take administrative steps that are required, by ordinance or resolution, to increase the sewer rates for the Borough of Steelton pursuant to the guidelines and rates established in Option A for residential, commercial, industrial, and institutional users as established in HRG's report dated June 20, 2011". Motion seconded by Mr. Heefner. Approved unanimously.

Mr. Shaver then made a motion to "instruct staff to contact Mark Stewart, Esq. to represent the Borough of Steelton with regards to sewer matters. Motion Seconded by Mr. Spencer. Approved unanimously.

Following the vote, Mr. Wright turned the meeting over to Vice President Shaver and was excused.

**REMAINING ISSUES FOR EAST END SEWER SEPARATION PROJECT; CONTRACTOR APPLICATION FOR PAYMENT #8; PRESENTATION OF WORK CHANGE DIRECTIVE 12; APPROVAL OF PENNVEST PAYMENT APPLICATION #8**

Mr. Shaver proceeded to discuss Contractor's Application for Payment Number 8 and re-considering the initial vote at the previous Council meeting to withhold an amount equal to the costs of paving. The reasoning for this initial decision was due to continuing concerns over the quality of paving under the project. Mr. Shaver noted that he revisited the East End and noted that most of his concerns are with Route 230, while the rest of the work looked acceptable as per the contract. Mr. Shaver then specified that the paving amount to be withheld should equal the costs charged for the paving of Route 230 (approximately $90,000), and not the costs of paving the entire East End. Mr. Cichy explained that there is a retainage in the contract that will already be withheld until all outstanding issues are resolved, including fixing the paving on Route 230.

Ms. Marcinko clarified her statements at the previous council meeting concerning East End paving, stating that she is not a paving expert and had concerns with the patching on the East End. She recognized that the patchwork was not the result of poor paving, but that it was the result of what the contract called for. She also noted that the contract was agreed upon before she was on Council. Ms. Marcinko then asked if withholding an additional $90,000 on top of the retainage would have negative consequences for the Borough. She further asked why Council would withhold an additional $90,000. Mr. Shaver reiterated that the reason is to ensure that Route 230 is paved correctly before paying the contractor. Mr. Cichy recognized that there are issues with Route 230.

Ms. Marcinko stated that the paving company, at a recent East End Sewer Separation Project job meeting, had promised to make sure the paving of Route 230 was done correctly. Mr. Cichy noted that PennDOT has to approve paving and that the contractor has a bond that guarantees the work on a PennDOT road for at least two years.

Mr. Wion reminded Council that the contractor has certification standards to meet through PennDOT, that the contractor has a bond to insure their work to PennDOT standards, and that if they do not meet these standards, they must either correct the work themselves or the bonding company must do so. This is not the same thing as saying that if a contractor has completed a certain amount of work within a contract, they do not get paid. Mr. Wion further stated that we cannot hold back a payment that is due if there is another security in the contract, such as a bond, that covers instance where a certification is not met. There is no basis to do so in this instance, unless there is a contract stipulation that the engineer and PennDOT must certify the work before the contractor can receive payment under the specified application.

Mr. Cichy noted that in the in the payment application there is a certification that states that the engineer must sign off on the amount requested in the payment application, and in this instance HRG did sign off on the portion of work being charged for. Mr. Wion stated that means the contractor is entitled to payment for that work. He then asked HRG to clarify that there is indeed a bond that the contractor has to fix anything that does not pass PennDOT inspection. Mr. Cichy responded that there is a retainage set up in the amount of $149,000 that is being held until all items are addressed, including PennDOT certification of Route 230. He further stated that they specifically held enough in retainage to cover repaving of Route 230. Mr. Wion then asked if there is a need, then, to even make a motion for Council to withhold payment if HRG is already doing so.

Mr. Shaver asked why HRG's representative on site signed off on work that was not done correctly. Mr. Heefner reiterated this question. Mr. Shaver raised a specific concern that construction engineers had signed off on the Route 230 work when there were obvious issues. Ms. Marcinko stated that representatives from BF Brown had committed to fixing deficiencies at a previous construction progress meeting, but they wanted to wait until PennDOT dictated what work needs to be corrected before digging into the road again. Ms. Marcinko asked what the HRG engineer we have hired to make sure Route 230 is paved correctly thinks. Mr. Cichy and Mr. Heefner both stated that HRG's inspector "flunked" the original work on Route 230. Mr. Shaver then stated that, although there are some issues, since everyone signed off on the work, Council is responsible for paying the amount. Mr. Heefner proceeded to outline additional paving issues in the East End aside from Route 230, including draining issues.

Mr. Cichy stated that the borough's Public Works Director has regularly been on the job site in the East End and has expressed approval of the paving work that has been done. Mr. Shaver then entertained a motion to pay Contractor Application for Payment Number 8 in the amount of $292,081.10. Ms. Marcinko made the motion, Mr. Spencer seconded. Motion approved 3 to 1 with Mr. Heefner dissenting.

Mr. Cichy assured the Borough that they will not incur additional costs if the BF Brown must repave portions of Route 230 to PennDOT specs.

Mr. Shaver brought up Work Change Directive 14 to remove landscaping from the East End Sewer Separation Project Contract in order to expedite work and completion of the project within the contract period prescribed in the contract. Mr. Shaver asked it this applied to the additional landscaping only, or if it included the landscaping work within the scope of the original contract. Mr. Heefner replied that this work change directive applied to all original and additional landscaping.

Mr. Musser clarified that if the work change directive were approved, it would remove landscaping that was part of a right of way agreement with Durabond. Mr. Wion then stated that the borough cannot remove the original landscaping from the contract if it was agreed to in the right of way agreement. Mr. Shaver seconded this.

Mr. Wion stated that the contract cannot be changed. Mr. Heefner replied that the contractor does not want to do the landscaping and that the design of landscaping in the contract will not produce effective buffering. Mr. Cichy noted that the contract with the borough and Joao and Bradley allows for changes in the scope of work. Mr. Shaver clarified that the concern is not the contract with J&B, but violating the right of way agreement with Durabond. Mr. Cichy then asked that we delete landscaping from the contract with the understanding that the work will be done at a later date, pursuant to the right of way agreement. Ms. Marcinko asked why, if we have the money now to pay for the landscaping in our PennVest loan, why not do the work now? She further asked what will happen to the PennVest funding if we do not use it now.  Ms. Vicari responded that PennVest will amortize the loan based on what was actually spent at closing, with the unspent money returned at closing.

Mr. Wion brought up another concern about bidding out the landscaping work to another contractor.  Mr. Heefner stated that the landscaping portion of the project was not bid out.

Mr. Musser then asked Mr. Heefner where they would get the money to pay for landscaping if it is removed from the East End Sewer Separation Project contract and, therefore, not covered by the PennVest loan.  Mr. Wion suggested that instead of removing landscaping from the contract, the borough should extend the contract in order to have PennVest funding to cover it.  Mr. Musser agreed and stated that if the borough were to remove the landscaping from the contract and close the East End Sewer Separation Project, they would not be able to go back and recover the PennVest funding not spent at the time of closing.  Mr. Cichy noted that HRG recommends waiting until the fall until planting.  Mr. Musser asked why the borough doesn't simply extend the contract.  Otherwise, they would lose the PennVest funding and default on the right of way agreement.

Mr. Shaver recommended that we motion to extend the contract and discuss modifying the design of tree placement when we resume landscaping activities in the fall.  Ms. Marcinko asked what the cost to the borough would be for an extension of the contract. Mr. Cichy replied that there should not be an additional cost.

Mr. Shaver then tabled Work Change Directive 14.

Mr. Cichy then reintroduced PennVest Payment Request 12 for Council approval in the amount of $317,745.12.  Ms. Marcinko made a motion to approve, Mr. Spencer seconded, motion was approved unanimously.

Mr. Shaver then opened the floor for audience participation.

There being no audience participation and no further business before Council, Mr. Shaver entertained a motion to adjourn.  Mr. Spencer motioned to adjourn, seconded by Ms. Marcinko.  Motion to adjourn approved unanimously.

Council adjourned at 9:30 pm.