

Somerset Borough Council/Municipal Authority Meeting

August 10, 2009 – 7:00 p.m.

The meeting was called to order by Council Vice-President, Ruby Miller, and Municipal Authority Chairman, William Kuhlman.

Present

Council Members: Peggy Shaffer, Fred Rosemeyer, Hank Parke, Ruby Miller. Ben Vinzani, Jr., Ph.D., Borough Manager; Michele Enos, Assistant to the Borough Manager; Brett Peters, Director of Finance; William Meyer, Mayor; George Svirsko, Director of Public Works; John Dirienzo, Borough Solicitor; Brad Stinebiser, and Steve Sesack, Consulting Engineers. Authority Members: Bill Kuhlman, Joe Egly, Ralph Friedhofer, Clyde Mostoller, Hank Parke.

Meeting opened with recitation of the Pledge to the Flag.

Mr. Vinzani informed the members that this meeting is the result of a letter received from Attorney Rullo, regarding the water supply situation in Jefferson Township.

Mr. Dirienzo said the letter is addressed to Mr. Vinzani but he has not officially received it. We became aware of it because EADS received a copy on August 10, 2009, concerning the DEP Water Allocation Permit.

He said we have decisions to be made as to what we want to see done. Attorney Barbin, special solicitor for Jefferson Township, assured him that Jefferson still wants to make a deal with Somerset Borough, and that they are not happy with the County's position since the County is going to keep them from being in the water supply business for their people in Jefferson Township. The last suggestion made at the Authority meeting was that we go on record as renewing our interest to do business with Jefferson Township. Our offer stands, although it appears that the County has an interest in building another water line to serve them.

A problem with the last offer is that the County was going to be the seller of the water to Jefferson Township and we were simply going to be the facilitator, even though the water was likely going to come from the Borough's water facility. The Borough would have been compensated for the fee, offered to be 15 percent of whatever the County rate was, so Jefferson Township would get its water from some place else, hooked into the Somerset system. Based upon the meter reading, Jefferson would pay Somerset County \$2.25 per thousand, pay us 15 percent of this, and the same meter reading would be deducted from our meter reading at the State Hospital for water coming into our tanks, but we would never be paying less than our 900,000 plus whatever the Jefferson meter reading would show.

With the County saying “no” to that arrangement, another arrangement made with Jefferson might have to take a different form. Mr. Barbin suggested that we produce a lump sum for them to buy in to the production facility, which would entitle them to a certain capacity. They would then pay us a rate for owing them charges and the rate would probably be coincidental with the same rate that they were otherwise going to pay. We would have to come up with a number of what the buy-in would be, with an agreement about ownership and control, etc.

He was asked why we cannot sell directly to Jefferson at a different rate from our other customers. We are under contract with Somerset Township that they will never pay more than our other customers pay. Becoming a direct seller to Jefferson at a reduced rate may subject us to a claim by the Township. This could have a significant impact on our water revenues since much of our water system revenue comes from Township customers.

In answer to the question of whether we would make enough money to reduce Somerset Township’s cost if we sold to the Buncher group, the Solicitor explained that at 54 cents per hundred, they would line this up against the \$2.25 per thousand from the County and would likely choose to go with the County. From Attorney Rullo’s letter, it appears that what the County wants is for Jefferson to not enter into the water business; instead have the County install Somerset Township as the water provider in Jefferson Township.

Mr. Mostoller mentioned about our offer placed in the newspaper. Miss Shaffer asked how Council can make this succeed, since it will add an economic base here. Mr. Dirienzo said he sees this as not necessarily promoting or discouraging development, but that the issue is, how the water will get there. He said he sees three things that this group needs to address. One, the Rullo circumstance, and what this does to our arrangements with Jefferson Township. First is to have an exchange of letters-of-intent with Jefferson Township. The D.E.P. will want to see our service area map. The service area map will be slightly different if we supply water or not, and we need to determine what our range of opportunities are with Jefferson.

Secondly, we need to get this information in and be in touch with D.E.P. since they are talking about looking at our wells. He said he and Mr. Critchfield discussed a permit adjustment but he did not have a chance to research it. He said the Shaffer Run wells have nothing to do with our water allocation permit from Laurel Hill Creek. This was brought up at the Jefferson town hall meeting about the Cooper Springs water permit.

The third thing, if preferred, is to gather a group and talk to the commissioners. Discussion consisted of questions concerning the well drilling permit and the

difference between ground water and surface water. Mr. Dirienzo explained that Shaffer Run is a tributary to Laurel Hill Creek, and one issue raised in the Cooper Springs case was that the data showed that when they pumped the well, the spring was affected at the hatchery, therefore pumping out of a well can diminish spring water generation. The same rationale could be translated to our circumstance with the wells. He informed them that we settled an incident when we drilled the wells, and drilled new water supply wells for several residents.

Water from our wells goes to the plant, is treated and mixed with Laurel Hill water. This would be the connection DEP would have to make. At this point the letter is a request for information and we can expect them to be making decisions such as giving us the permit that we applied for, and applying conditions to the permit such as dredging, etc. Dredging can be very difficult mechanically to accomplish and the Fish Commission and Trout Unlimited would probably be upset. This could be a condition of a permit.

Discussion followed – a suggestion was made to inform the media of the commissioners spending 6 million dollars for this project. The letter states that they see no problem in getting grants if taking less water out of Laurel Hill. The Solicitor pointed out that in the letter they expanded the potential use to its maximum and are talking about water for Seven Springs as well as Bakersville and Hidden Valley, a huge quantity that we can't provide. They discussed size and directions of pipelines. Mr. Mostoller said he feels this is the only time we will get a chance to expand our water system.

Mr. Sesack, the Engineer pointed out the tank locations and pump stations, routing areas, line sizes and pressures. He said they did a hydraulic analysis from the Hickory Hill tanks back to the Bakersville area. This system could float off the Hickory Hill tanks towards Bakersville, which would then have in excess of 115 pounds of pressure plus adequate fire protection. The state hospital tanks are at elevation of 2,530 feet and the Hickory Hill tanks are at 2,330 feet; they ran an analysis and we can get 2 mgd back to the Hickory Hill tanks.

The Solicitor said we need to get a letter to Attorney Rullo. Arguing down the lack of a chokepoint or the perception of a chokepoint when there isn't any is not good because it does nothing to protect our plant and wells, because if our existing system can backflow all the water needed through the existing mechanism without a choke point the argument becomes, 'why not have it all fed by the Que water.'

Mr. Vinzani said we have been very diligent over the past 20 years in creating a redundancy in our water system. We have the Coxes Creek plant, Shaffer Run wells and our main plant. We can go to another system in case of a break in a certain area, and we need to keep it this way.

Mr. Rosemeyer said he is concerned about what might be going on behind the scene with D.E.P. A suggestion was made to invite all present at this meeting, plus the news media and County Commissioners to discuss this. The Solicitor said this is one of the three things that need to be done, to firm up the decisions of what our arrangement with Jefferson should be. Jefferson stated that they want to go with the last deal, but we cannot since it made the County the seller and we were merely the facilitator. This is a three-party deal, requiring three signatures.

Mr. Mostoller stated that people do not know what is happening and his concern is that they will soon be controlling all of the Que water because it is not being sold by anyone else around here. Mr. Vinzani said he will respond within 30 days since their letter was addressed to him, assisted by the Solicitor and Engineer. The Authority and Council will receive copies. Mr. Dirienzo pointed out that the Borough is engaged as Manager for the Authority, so the permit application was probably submitted in the name of the Authority by the Borough, as Manager of the Authority.

An email received in November contained comments on the Aquatic Study, stating there would be a draft permit which did not get issued in 2006. A comment we received was that they wanted an aquatic study to determine whether or not our withdrawal water from Laurel Hill Creek was causing damage. A proposed study was prepared at the time and they were asked to send it to D.E.P. for their approval. All we received were comments forwarded from their biologist, who stated that a study would be difficult. The study was never completed; instead they said they would get a draft permit which never arrived.

A big point on the Aquatic Study was that D.E.P. wanted an upstream and downstream comparison, and Mr. Deitz said he does not agree with this approach. We would have to get firm direction on this kind of issue.

We have to eventually respond, in writing. Under our current proposal, Jefferson would be the water supplier, but it would be with County water. The County is saying they are not going to sell you water so there must be a Plan B. One possibility is to consider selling a capacity from the system to Jefferson. They pay a fee toward our O&M and we don't charge a rate because they bought into the plant. We need to adjust this. Mr. Dirienzo confirmed that we cannot sell Jefferson water unless we sell it at 54 cents/100. Mr. Mostoller said he would like an article in the newspaper showing our deal and asking them about their deal.

The Solicitor stated that the original deal that we and Jefferson would make is for Bakersville water, with an opportunity to expand if necessary. They would form their own authority and we could do an upfront capacity contribution entitling them to a certain number of gpd maximum, without paying for the water, but paying us something for the O&M. Mr. Mostoller asked about limits of water from the Que. A

discussion ensued, with questions and answers relating to review of our agreement with Somerset Township, permit time periods and amount owed on our plant (four years remaining). Mr. Vinzani said our agreement states that as long as there is a debt service, they pay a cost to us if they remove any customers.

Mrs. Miller said she is concerned that as long as we owe money on the plant, the Township could say they will buy it all from the County. Mr. Meyer said the letter states that the commissioners still have no problem in getting grant money to build the pipeline around us. Mr. Mostoller said we need to have a contract with Jefferson Township to give them all the water they want. Mr. Peters said our bonds will be retired in 2013, and we have scheduled payments. The County has their own bond payments to make and basically we are competing for sales since the way to make the bond payments is to generate revenue.

Mr. Dirienzo said the third option is to talk to these people and advise that, while the public is entitled to know, restrain from making this look provoking in the newspaper, which might not help in solving this problem. He referred to their letter which states, 'we are not going to do that deal because we think there may be a choke point that would prevent those people from having a backup to your system'. This can be the reason to not become involved in the original deal.

Mr. Mostoller recommended meeting with Jefferson Township to make sure they are supporting everything we want to do - Mr. Dirienzo pointed out that the County has refused to be the participant, therefore it will have to take some other form. He suggested having a committee consisting of the Chair from each body plus one member, to make it more workable. The deal that we proposed had a critical third party, the County, and the letter says the County will not do this deal therefore a deal with Jefferson Township has to be done another way.

Questions consisted of whether we could meet with the Jefferson Township Supervisor's and what the County's source of funding is instead of just saying it will be a grant, which should become public information when an application is made. They should be meeting publicly, in accordance with the Sunshine Act.

The Solicitor said we need to have a joint meeting, which he is not encouraging or discouraging, but we want to see about a Plan B since Plan A can't work because the County won't sign it, according to their attorney's letter.

The Manager asked to summarize what we need to do. A meeting should be scheduled with Jefferson, to get a commitment from them. He said Attorney Barbin suggested Plan B, stating they had in mind funding for their internal distribution system, the Rural Utility Service, a federal agency. When he suggested this contribution toward the output, he had planned on taking money that would come

from the R.U.S., either by grant, loan or both, and diverting it to a payment to us as a capacity arrangement. The user rate would not then be a user rate for consumed water, it would be a rate based upon the operation and maintenance on a consumed water basis. This would be to attempt to circumvent his fear of having to charge Somerset Township less than 54 cents per hundred, placing our entire water system in jeopardy.

There should be a joint meeting, advertised, not just an administrative meeting. We must each go with the Sunshine law. Of the three things mentioned, the only thing we are not doing now is talking with the County Commissioners. We will work on the deal with Jefferson Township and set the meeting, consisting of our Authority, Council, their Township Supervisors, and then prepare a response to the D.E.P. It was suggested to include talking points on the meeting agenda.

Mr. Dirienzo said we might consider how we make another arrangement that does not require the County's approval or participation, which appears to be the arrangement we need to work for with Jefferson.

The Manager pointed out that there is no quorum on Council this evening.

Mrs. Miller declared the Council meeting adjourned, at 8:35 p.m.

Mr. Egly moved to adjourn the Municipal Authority portion of the meeting – motion seconded by Mr. Friedhofer – motion carried, 8:35 p.m.

Benedict G. Vinzani, Jr., Ph.D.
Somerset Borough Manager-Secretary
Municipal Authority Secretary