

Borough of Somerset Municipal Authority Meeting

August 26th, 2024 – 6:30 p.m. (In-Person) Borough Council Room

1. Meeting Called to Order: – Ben Flower

2. Roll Call:

a. **Authority Board Members present:** *Ben Flower, Ruby Miller (via telephone), Lee Hoffman, Jeff Shaffer and Terry Jerin.*

b. **Also present:** *Municipal Authority Manager, Jessica Sizemore; Borough Manager, Michele Enos; Director of Finance, Brett Peters; Administrative Assistant, Roger Bailey; Solicitors, James Cascio & Allyson Lonas and Consulting Engineers, Tom Reilly & Jake Bolby.*

c. **Public Attendance:** Eric Critchfield.

3. Approval of Agenda

A. **Approval of Agenda** – Review and approval of the Agenda for August 28th, 2024 Meeting, including an amendment with a public comment from Eric Critchfield.

a. **Motion to approve agenda with amendment:**

Mr. Hoffman moved, Mr. Jerin seconded.

Motion Unanimously Carried

B. **Executive Session** – None.

4. Approval of Minutes of Previous Meeting(s):

A. **Approval of Meeting Minutes** – Review and approval of the Meeting Minutes from July 29th, 2024 Municipal Authority Board Meeting.

a. **Motion to approve the Municipal Authority Board Meeting Minutes from July 29th, 2024:**

Mr. Shaffer moved, Mr. Flower seconded.

Motion Unanimously Carried

5. Opening of Bids:

A. **None.**

6. General Public Comments:

A. Eric Critchfield –

Mr. Critchfield stated that he resided on the corner of Harrison Avenue & Garrett Street. As a result, when the waterline construction went through the south side of his property to Garrett Street, he and his wife signed an Easement Agreement granting temporary easement to the Authority for the purpose of construction. In return, the Easement verbiage said that the yard would be restored to the condition that existed prior to construction.

Mr. Critchfield explained his concerns with the restoration to his property that was done by the Contractor. He also mentioned that he sent a letter with his concerns to Mrs. Sizemore in July stating that he felt his lot had not been restored to the condition prior to construction. He said that he did not formally hear anything back until, within the last 2 weeks, Mr. Bailey hand carried a flyer stating that the Borough was going to do some mowing. Mr. Critchfield noted that he hadn't mowed the site because he didn't want the Borough to think he accepted the restoration. He then decided then to mow it himself, and then waited.

Mr. Critchfield reiterated that, according to his opinion, his property has not been restored to the condition that existed prior to the construction. He asked whether anyone at the Borough had inspected his and other properties, and decided to date, whether they agree that the restoration complies, or doesn't comply, with what is required of the Contractor. He added that several of his neighbors are not satisfied with the restoration that has occurred in their neighborhood.

Mrs. Sizemore stated that the lawn restoration will be completed per the project specifications. There is a punch list of items that still need to be addressed, and Mr. Critchfield's property is on that punch list. She said that, unfortunately, this is a common situation where the grass wasn't growing on a lot of restoration due to the timing and the dry summer.

Mr. Bolby stated that the current condition is not acceptable to the Borough and is still on the punch list. He noted that they are still holding over \$300,000.00 against the Contractor until Mr. Critchfield's and all the outstanding items on the punch list for that Contract are taken care of.

Mr. Bolby said that the Borough is not pleased with some of the restoration techniques that the Contractor has attempted to use. Having no rain has not helped with grass growth. They are accepting restoration only on lawns that are in good condition.

Mr. Bolby noted that the area in which Mr. Critchfield lives has been less successful in reestablishing good lawn growth. There are a lot of bare spots, so the Contractor has been directed to go back and fix those. He said that across the board, these areas have only marginally improved.

Mr. Bolby stated that they are going to continue to remind the Contractor that a substantial amount of money is being withheld from them until they perform what they are

contractually obligated to perform. The Contractor will continually be pressed to make corrections until the Borough is satisfied.

It was brought out that there are several restoration issues all over the Borough.

Discussion continued the restoration issues all over the Borough, and how the timeframe for doing any restoration is rapidly closing for this year.

Mr. Critchfield asked, "What is the established time, or date, for completion of the contract".

Mr. Bolby answered by saying that the Contractor has passed the substantial completion date. He added that their mechanism, at this point, in addition to holding retainage, is also to pose liquidated damages to incentivize them to finish the work.

Mr. Bolby added that the Contractor is owed a list of all the final punch list items that they need to take care of. He said that the Engineers haven't talked to Borough Staff about setting a deadline to complete the work this growing season but expressed that this is very important to make sure the restoration is completed per the contract. Within reason, that would be sometime within the next 2 weeks or so.

Mr. Bolby said that the Contractor made it through their major item schedule. They would only have the punch list items that remain, that we now need to give them, to develop a schedule for compliance. More punch-list items are still coming in from the Inspector and Borough Staff to add to that list. Mr. Bolby expressed that if the punch list doesn't include all the things, we should give the Contractor short-order direction to take care of vegetation within the next 2 weeks, or otherwise, the Borough will need to act.

He added that there are multiple incentives for the Contractor to follow through on the requests of the Municipal Authority that they are contracted with.

Mr. Reilly added that this typical with projects like this. He said that there is not a single project where you don't have this fight about restoration. He noted that it doesn't make it easier for the homeowners or the Engineers but said that the Contractor will eventually do it and get it done. He expressed that this project is no different from any other project, whether in the Borough or anywhere else.

Mr. Reilly also mentioned that not having rain has not helped the restoration situation, but the restoration will get there because it always does. He added that this is the struggle on the last 1% of the job.

7. Payment of Bills/Requisitions:

A. None

8. Policy Agenda:

A. Old Business:

a. Water and Wastewater Rules & Regulations – Continuing review and updates.

B. New Business:

a. Manager's Report – Update on Operations.

Mrs. Sizemore reiterated that if anyone in the public is complaining about restoration, please let the person complaining know to bring it to the attention of Borough Management so it can be added onto the punch list and addressed.

Mrs. Sizemore also mentioned that she would like to attend the Pennsylvania Municipal Authority Association Annual Conference again this year. She said that it was a great way to meet other individuals in the industry, and she received a lot of great information and up to date changes that affects how we operate. She added that if anyone else on the Board is interested in attending, please let her know and she will get them signed up.

b. Engineer's Report – Update on Status of Projects for Water, Sewer and Stormwater.

Mr. Bolby presented the Updates to the Engineer's Report.

WATER:

1) Water System Capital Improvement Projects:

Mr. Bolby said that the Water Project is in the “punch list” phase for Contract #1.

For Contracts #2 & #3, we are doing start-ups on various pieces of equipment that have been installed. There has been a few hurdles to overcome, but this week a lot of equipment will be started up and “tweaks” made.

Mr. Bolby mentioned that it is slowly coming together on the Water Treatment Plant side. The tank is up, and we have applied for the Operations Permit for that. He added that he doesn't expect to close those Contracts out for a few months. Everything will be placed online, and then we will get Operations Permits from DEP around September/October 2024, and then demolition work will happen. Both of those Contracts have been extended out to December anyway, because we were waiting on equipment to be manufactured and delivered.

Mr. Bolby noted that on the Administrative side, Payment Applications and Pay Requests continue to be processed making sure people get paid, and the Borough gets the money to pay the people.

SEWER:

1) Assessment, Repair, and Abatement Plan (Hydraulic Overload):

Mr. Bolby said that we are still waiting for DEP to review the Permits that we have submitted to them for the first 2 phases of the Collection System. Once we hear back from

DEP, then we can respond to their comments or move forward to an Application. We are still looking at early 2025 for funding acquisition and application proceedings.

GENERAL:

1) Center Ave. Sidewalk:

Mr. Bolby noted that all the underground Authority items are taken care of at this point, and the surface is being finished up.

Mr. Bolby said that the pavement was separately bid, but the paving strategy was changed a little bit. It included Columbia Gas, the Water Project and the Center Avenue Project. It took all those funds and then added in other CDBG money. It had to be re-bid in order to use the CDBG money for the paving. Everything got thrown into one contract and bid, then all 3 active projects received some portion of that paving.

Michael Facchiano was the successful low bidder for the paving, the restoration Contractor for Columbia Gas. They will be paving Main Street & Patriot Street in early September. They are waiting on a Permit to be released to do the work. So more paving is going to happen, and more streets will look better throughout the Borough.

c. Request for Estoppel Certificate – This is relating to the Lease and Indemnification Agreement (Hickory Hill Radio) dated January 15, 2024.

Mrs. Sizemore said that Mark Matthews is selling the towers, and K2 is interested in purchasing them. However, after our Solicitors looked at the Estoppel Certificate, there is some concern on their end, our end, and there are a few questions we have for K2.

Mrs. Sizemore said that she has reached out to K2, and we are in the middle of going back and forth with them. By the next Municipal Authority Meeting, there will be more information for the Authority to review.

Solicitor Cascio said that we understood that the transaction was made before the Operator's Agreement. He said that if there is going to be some change, then there should be some consideration for that. This changes things a little bit so we are going to sort it out.

Solicitor Lonas added that once we have the answers to some of the questions that Mrs. Sizemore forwarded to K2, we will be able to make a more informed decision on how we want to proceed with everything.

d. Stormwater Discussion – Update on the Study and Rate Structure progress.

Mrs. Sizemore said that the Municipal Authorities intention is to create a fund, and a rate structure, to the Borough residents to be able to appropriately fund the much needed maintenance and upgrades to the stormwater infrastructure.

Information regarding the history of the stormwater infrastructure was reviewed for new Board Member Terry Jerin in order for him to get an understanding of the current undertaking of the Authority.

e. Sewer System Improvement Project – Municipal Road Restoration and funding.

Mrs. Sizemore noted that the Municipal road paving, the mill and overlay outside of the trench, cannot be included under the PennVEST funding. Therefore, any Municipal paving has to be budgeted outside of that PennVEST project.

Mr. Bolby said that they would pay for what is on top of the trench, but nothing beyond that. He said that the current Borough Ordinance stipulates restoration that would require a typical project to go through and do that mill and overlay that would be outside of the trench.

Mrs. Sizemore stated that with the direction the Authority has gone, in wanting the systems side laterals to be testable, means we are digging up at each connection point, which requires digging up all the roads. Mrs. Sizemore suggested including Council in the decision of doing this or seeing if there could be some collaboration. She also noted that there is an option of the Authority reconsidering the direction of providing a testable system side lateral. She said that Management needs some direction or thought on how to move forward along with collaboration with the Borough Council.

Mr. Bolby said that for the State Routes mill & overlay is eligible to go into the loan. The distinction is that on a Municipal street, where it falls outside the trench, they are not allowing you to use PennVEST funding. You would have to find an alternative source which is either through rates, asking the Borough to do a different program, extending it out over a longer period of time, or joint efforts. But doing testable would require excavation. Not doing testable would lead to bigger infrastructure and bigger assumptions.

Mrs. Sizemore noted that we specifically did not pave, or mill & overlay, every street down at the project area for the waterline because we knew the sewer project was coming up and there will be additional disturbances.

The Authority discussed the Borough Ordinance relating to paving restoration after a project, and the decision that will have to be made on testable or non-testable sewer laterals.

f. Facility Reports for July – *Provided on the portal for informational purposes.*

g. July 2024 Financial Report & Monthly Transactions – *Provided on the portal for informational purposes.*

h. Kukurin Contracting, Inc. Pay Application No. 17 – Acknowledgement of approval of Pay Application No. 17 in the amount of \$799,397.33.

9. Adjournment

A. Adjournment

a. **Motion to adjourn.**

Mr. Hoffman moved to adjourn, seconded by Mr. Jerin.

Motion Unanimously Carried
7:21 p.m.

B. Next Meeting

a. September 23rd, 2024 at 6:30 p.m.

Jessica Sizemore, Municipal Authority Manager