



BOARD OF COMMISSIONERS OF THE COUNTY OF ALLEN

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NELSON PETERS LINDA K. BLOOM THERESE BROWN

MINUTES

**Commissioners' Special Meeting
5:30 p.m., Wednesday, March 18, 2015
Council Chambers Courtroom – Citizens Square**

Commissioners Present: Nelson Peters, Therese Brown and Linda Bloom

Commissioner Peters stated this is a continuance of where we left off several weeks back. This hearing was for greater Cedar Creek and Platter Parkway and was advertised to begin at 5:30. He stated that because much of the information has been pretty much the same we are going to take them together. He stated the comments that are made for one can pretty well be made for the other. We are not reconvening the public testimony portion of the hearing because the additional information that was reviewed was not relevant enough to make a determination as governed by the Indiana Codes that we talked about several weeks back. That is Indiana Code 13-26-11-10. Part of the code that we deal with allows for three options at the end of the hearing. It allows us to sustain the ordinance establishing the rates and charges. It allows us to sustain the petition that you all have filed. Or it allows us to make any other ruling appropriate in the matter. One of the issues with all of this legislation is that it compels us to do so based on a determination as to whether or not the rates that have been proposed are just and equitable. The statute goes on to define just and equitable in a couple of ways. It says -

Just and Equitable Rates and Charges are those that -

- Produce sufficient revenue to pay all expenses incident to the operation of the works, including maintenance cost, operating charges, upkeep, repairs and interest charges on bonds or other obligations and,
- Produce sufficient revenue to provide the sinking fund for the liquidation of bonds or other evidence of indebtedness and reserves against default in the payment of interest and principal of bonds and,
- Produce sufficient revenue to provide adequate money to be used as working capital as well as money for making improvements, additions, extensions and replacements.

So if we find that the rates being proposed are just and equitable under those terms, then we really have no alternative but to uphold the ordinance as it has been proposed. If there is a finding of no in those cases then we have got the option to reject that or come up with some other alternative. The statute goes on to say one more thing which is kind of interesting but this is what confounds us with so many of these statutes. It goes on to say – rates and charges that are too low to meet the financial requirements described in subsection A, which is what I just read to you, are unlawful.

We had the opportunity and we appreciate the opportunity that you have given us to do a little bit more due diligence and to look into ways that we might mitigate the issue. Ways that we might deal with the issue more fairly or come up with some other alternatives. A couple of observations we want to make is the law, as just explained to you, is very constraining and it doesn't give much latitude in how we can vote. The other part of the statute that I think there is a level of discomfort is that we can only make a ruling on the service areas that have come before us in petition. One of the things that typically happens if you make rulings on two services areas that have come before us is it creates, one way or another, a greater inequity, a lesser inequity with the other 31 service areas that are out there. So it becomes a little

bit confounding. Some of the due diligence that we were able to do was to look at all 33 service areas. When we listened to the testimony several weeks back, we heard some say that they thought blended rates might be more appropriate and that if everybody was paying something more along the same lines, then it would be fair and equitable. That is kind of what we heard from you. We heard others say, well wait a minute. We've already paid our capital costs off and it wouldn't be particularly fair and equitable if you lump us in with everybody. So we did have the opportunity to look at a couple of things. What would happen district wide if we looked at all of the rates and we said OK, we are not even going to worry about capital. Forget those who have paid capital. We are just going to make everybody even. It's an interesting picture. I think that from what we looked at the rates came to somewhere around \$100 per household. We then looked at the fact that some had said well we've already paid for our capital, so don't figure that into the equation. And, as you can imagine, for those who had paid their capital, their rates were a lot lower than the number just mentioned. But what happens now when you look at this type of thing you look at somebody like Hoagland right now, who has already paid their capital, and under either circumstance in order to accommodate the type of thinking just described, their rates went through the roof. They increased \$40 to \$60 a month. The reason I'm saying this is this - No matter what you do in these types of situations, if you stick your finger into this hole in the dike, you spring a leak over here. It is really tough anyway that you look at it.

Having said all of that, we are prepared to make some recommendations. I'll just go over them right now before we look at the findings of fact. To the sewer district, we strongly recommend that in the next 3 to 5 years they work towards a complete blended rate of all rate payers within the sewer district so that we, you, none of us find ourselves in this position again. Additionally, we are working with members of the general assembly to take care of a couple of the issues that were described before. One is to allow us the authority to actually deal with some of the concerns outside of just looking at the findings of fact. Allow us perhaps to take a recommendation back to the sewer district based on other tenants outside of that particular finding of fact. The second thing we are working on with the legislature is something that basically says if one service area petitions, then it ought to be good for all service areas. So it gives us the opportunity that if Platter Parkway or if greater Cedar Creek individually petition and come to us then it gives us the opportunity to look at the entire sewer district and not just one service area or the other. So it allows us to create some equity that doesn't exist at this particular point. There has been a lot of thought that has gone into this.

Commissioner Brown stated one other point by virtue of the statute and the way that it is laid out and the constraints that we have, this is under Indiana Code. We would like to see a more balanced approach of what just and equitable is and that is the effect on the end user. That being what is a fair and appropriate rate increase relative to whatever other criteria may be there. So for some of you, what that percentage may mean to meeting any of your other debt obligations or any other things out there that would be helpful not to lean totally towards a district, the sewer district or whatever the entity is that is applying for a rate increase. But something that is going to balance the picture of those that are affected to those that are in need of maintaining the systems that they are charged with needing to take care of by virtue of our local statute or what we are able to enforce or create under Indiana Code. I wanted to make sure that we threw that out there. We are, as Commissioner Peters stated, we are working with our state local delegation to figure out a germane place somewhere in state statute to at least hopefully get some language in here because these constraints are also the same constraints that will be for the court. It's again kind of mute that as we go through this process the same rules apply and the same outcome will more than likely be the case.

Commissioner Bloom stated that with the systems the way they are now, she knows one district that have their own lagoons and their own processing. She asked if that was a possibility in other areas to lower the cost. If the district increases in size, does that mean that all of the existing homeowners rates would increase? What happens with the people that are connected now when their equipment or their systems

start to fail and they have to have new parts, etc.? If it were at a different rate or a different way of paying, would that include all of the district or just the district concerned?

Commissioner Brown stated her concern in Linda's asking the district directly those questions and that it puts us in a position of having to open a public hearing.

Commissioner Bloom stated she is doing it because she is trying to give a level of comfort she guesses because there are 33 different areas. She stated that when she gets increases in city utilities, she hates it but she just pays them. Sometimes she doesn't understand why rates are going up. But when you've all been on this, some longer than others, is there a fair and equitable way. She stated she thinks what we have come up with is the best we can do. She stated she agrees with what the other two Commissioners have suggested.

Commissioner Peters stated he thinks there are ways to deal with this in the future to mitigate all of the issues that we have seen out of these two hearings.

The Commissioners then discussed Findings of Fact -

- Did the Allen County Regional Water and Sewer District board adopt a new rate ordinance by a majority vote? The Commissioners agreed that it was sufficient to meet the standard.
- Did the Allen County Regional Water and Sewer District board follow procedure outlined in the statute in adopting said ordinance? The Commissioners agreed that it was sufficient to meet the standard.
- Was there a board notice mailed out that the district adopted the ordinance increasing the rates and charges and explaining the rate-payers rights under IC 13-26-11-15? The Commissioners agreed that it was sufficient to meet the standard.
- Are the increased rates established by the ordinance just and equitable rates and charges according to the standards set forth in IC 13-26-11-9 by providing sufficient revenues to pay expenses incident to the operation of the works, including maintenance cost, operating charges, upkeep, repairs and interest charges on both bonds or other obligations. The Commissioners agreed that it was sufficient to meet the standard.
- To provide the sinking fund for the liquidation of bonds or other evidence of indebtedness and reserves against default in the payment of interest and principal of bonds. The Commissioners agreed that it was sufficient to meet the standard.
- To provide adequate money to be used as working capital as well as money for making improvements, additions, extensions and replacements. The Commissioners agreed that it was sufficient to meet the standard.

Commissioner Peters stated that that being the case he would accept a motion on one of three options.

- 1) To sustain the ordinance establishing the rates and charges, or
- 2) To sustain the petition, or
- 3) Anything else that is on your mind

Commissioner Brown told Commissioner Peters that she thought he did a very well thought out and thorough explanation of the constraints that we have within state statute and that she very reluctantly made a motion to sustain the ordinance establishing the rates and charges as presented.

Commissioner Bloom seconded the motion.

Commissioner Brown stated that she looks forward to further conversation with our state delegation to make sure that we have the ability to represent our constituent base in a more fair and just manner. Both Commissioner Peters and Commissioner Bloom stated they absolutely agree with that.

Motion carried 3-0.

There being no further business, the meeting was adjourned.

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