

Accepted by:

Chairman, Daphne Utilities



APPROVED MINUTES

Utilities Board Meeting

Council Chambers, Daphne City Hall ♦ March 27, 2019 ♦ 5:00 p.m.

I. Call to Order

The regular March 2019 Board meeting for the Utilities Board of the City of Daphne was held on March 27, 2019 at 5:01 p.m. in the Council Chambers at Daphne City Hall and called to order by Chairman Randy Fry, proceeded by the Roll Call:

II. Roll Call

Members Present:

Randy Fry, Chairman
Billy Mayhand, Vice Chairman
Selena Vaughn, Secretary/Treasurer
Mayor Dane Haygood, Board Member – arrived at 5:02
Robin LeJeune, Board Member

Members Absent:

Others Present:

Jerry Speegle – Board Attorney
Danny Lyndall – General Manager
Bobby Purvis – Operations Manager
Drew Klumpp – Administrative Services Manager
Teresa Logiotatos – Finance Manager
Samantha Coppels – Communications Manager
Lori May-Wilson – Executive Assistant
Melinda Immel – Volkert & Associates
Ray Moore – HMR
Mr. Andy Ruten – Galloway, Wettermark, Rutens, LLC

Others Absent:

Joe Asarisi – Asarisi & Associates

III. Pledge of Allegiance

The Chairman led the Board and meeting attendees in the Pledge of Allegiance.

IV. Approval of Minutes

A. Utilities Board Meeting Minutes February 27, 2019

MOTION by Robin LeJeune to accept the submitted February 27, 2019, Daphne Utility Board meeting minutes; **Seconded** by Billy Mayhand.

AYE: Haygood, Mayhand, Vaughn, LeJeune

NAY:

ABSENT:

ABSTAIN: Fry

MOTION CARRIED

V. OLD BUSINESS –

A. Requisition R41L-021219 for Windscape Lift Station Improvements

Danny Lyndall notified the Board that this item was moved to Old Business from last month's agenda but that it was not ready to call for board action at this time. He advised that it would remain on the agenda for next month.

VI. NEW BUSINESS –

A. Proposed Administrative Fees Increase (Board Action: Resolution)

Danny Lyndall noted that this item was presented to the Board last month and was presented once again with the Board's input included. Mayor Haygood inquired as to the verbiage regarding "Re-read/Meter Testing Fee – Fee after the 1st occurrence". He noted that previous discussion at the last Board meeting had this applicable to at least two other Service Types as well so as not to discourage customers about safety issues for fear of being charged for the call out.

After a more detailed discussion, it was decided to modify as follows: change 24 months to 12 months on the Re-read/Meter Testing Fee; add No Fee for the 1st occurrence on the General Service Call within the first 24 months; no fee for the 1st occurrence for a Leak Check or Pilot Light.

The modified Resolution would be presented for approval at the April board meeting.

B. Approval of Revisions to Daphne Utilities Employee Handbook of Rules, Policies and Procedures (Board Action: MOTION)

Danny Lyndall explained that the submitted recommended changes to the Employee Handbook have been discussed and reviewed by staff management, HR representative, and legal before being presented tonight for the Board's approval.

MOTION by Selena Vaughn for the Board to approve the revisions to the Daphne Utilities Employees Handbook; Seconded by Mayor Dane Haygood.

AYE: Fry, Haygood, LeJeune, Mayhand, Vaughn

NAY:

ABSENT:

ABSTAIN:

MOTION CARRIED

C. Volkert – Recommendation for Bid Award for: Lake Forest Aeration Improvement Project (Board Action: MOTION)

Danny Lyndall gave a presentation to explain the work this bid recommendation involved and Volkert's Melinda Immel answered questions from the Board, giving further details including budget and CIP information.

MOTION by Mayor Dane Haygood for the Board to award Lake Forest Aeration Basin Improvements, Volkert Project #408218, in the amount of \$248,050.00 to J & P Construction Company Inc. for the total base bid and Schedule 1; Seconded by Selena Vaughn.

AYE: Fry, Haygood, LeJeune, Mayhand, Vaughn

NAY:

ABSENT:

ABSTAIN:

MOTION CARRIED

D. Capacity Fees for Daphne Sports Complex

Danny Lyndall addressed the Board reminding the members of recent emails regarding this matter. He clarified the use of capacity fees and how they are calculated. Mr. Lyndall advised the Board that he recently met with the Daphne City Council at a work session to discuss trading the capacity fees due to Daphne Utilities for the right of way permit fees Daphne Utilities pays to the City. He indicated that this arrangement seemed to be received favorably by the Daphne City Council and he anticipated an agreement to be forwarded to Daphne Utilities following the last Council meeting. He noted that instead of receiving this agreement, he received a letter from the City Clerk's office stating the Council voted to request Daphne Utilities to waive all fees related to the City's new sports complex. He noted that the purpose for this agenda item is to discuss and determine this request of capacity fee waiver from the City of Daphne.

Mayor Haygood commented, providing background on the relationship between Daphne Utilities and the City of Daphne as well as various relationships of similar municipalities and utilities and how capacity fees were addressed. He explained aspects of the project including the City's determination of the sizes of the lines, the service territory, and household equivalents comparisons of North Baldwin Utilities and Daphne Utilities. Mayor Haygood expressed concern about the legal information received from the attorneys, noting contradictory opinions, and stated that the attorney for the City of Daphne, Mr. Patrick Dungan with Adams and Reese, was present to address the Board with research he had conducted into the matter. Mayor Haygood concluded that the Board should be looking at ways for Daphne Utilities and the City of Daphne to help each other, pointing out the City of Daphne's sewer project benefitting the community.

Mr. LeJeune remarked that the Daphne City Council's viewpoint has not researched in depth as Mayor Haygood has regarding fee calculations or what the Utilities is requesting. He stated that the Council did request that those fees be waived in order to have a good faith working relationship with each other and to move the project forward.

Mr. Lyndall commented that the meter was delivered to the project as soon as he was advised that the facility was ready to go on-line without slowing the project down. He noted that Daphne Utilities continually supports the City of Daphne in any way possible. Mr. Lyndall advised that these fees are necessary to ensure the capacity is in place in our pipes and our water and sewer treatment facilities to meet the demands. He gave a historical reminder that the sewers installed by the City were originally planned to be paid for by the PILOT fees the Utilities paid that to go into a capital improvement fund to pay for sewers which Daphne Utilities had been paying since the 90's and currently pays over \$30,000 a month to the City for these types of projects. He stressed that Daphne Utilities does help the City of Daphne in many ways.

Mr. Billy Mayhand inquired as to why the Council did not accept the proposal of trading the right-of-way permit fees for these capacity fees. Mr. LeJeune responded that the Council found nothing wrong with the proposal but favored that the Utilities Board would work with the City and waive the fees outright.

Chairman Fry offered his view of this issue of Mr. Mayhand's question in that it is not going to cost the City of Daphne a penny because the offer Mr. Lyndall presented at the Council work session to offset the right-of-way permit fees for the capacity fees but noted that this would impact the City's financial statement and there are different ways to approach it. Chairman Fry pointed out that he had not seen anything from the City or bond attorney that refutes or gives more clarification on the information that has already been provided to us. He also noted the impact this would have on the Utilities' financials. Mayor Haygood offered Mr. Dungan from Adams and Reese to address the Board.

Mr. Patrick Dungan with Adams and Reese addressed the Board regarding the information Mr. Speegle provided, acknowledging several colleagues who reviewed the information and explained why their understanding disagreed from Mr. Speegle's opinion. Mr. Speegle clarified his findings and recommended the Board request its own AG opinion.

MOTION by Mayor Dane Haygood that we [Daphne Utilities] immediately install both meters as only one has been installed and it is causing difficulty for the City, and that the capacity fees be waived subject to an AG opinion upon the request of the City of Daphne as long as they okay that it is legal for the Utilities Board to waive those fees and if in the unlikely event the AG says it is not legal, then the City will either pay those fees or find some way to disconnect the service within a reasonable period of time.

Mr. Speegle stated that the request for an AG opinion should come from the Utilities Board to be protected. Mayor Haygood expressed his apprehension about who and how the request is written. Mr. Speegle declared that he is readily available and willing to work with Daphne City Attorney Jay Ross in preparing a request to the AG.

Seconded by Robin LeJeune.

Mr. LeJeune requested Jay Ross work with Mr. Speegle to develop an inquiry beneficial of both the City and Daphne Utilities.

A discussion arose to clarify that the Motion was not for the Utility Board to get an AG opinion.

Mr. Billy Mayhand commented that he was reluctant to use funds from the Utility for this project, expressing his concern for the Utilities revenue to be used for their infrastructure projects; he inquired as well if the Utilities had been involved in the planning of the sports complex. Mayor Haygood responded that the Utilities was involved in the dialog and planning of the sports complex and noted that the capacity fees should have been incorporated into the project budget. Mayor Haygood also remarked about the issue of who would provide services since the entrance of the complex was in the Park City Water Authority service territory and that the City had already paid Park City Water Authority connection fees for the first phase of the project. He asked to have a roll call vote:

<i>Roll Call Vote:</i>	<u><i>AYE</i></u>	<u><i>NAY</i></u>
	<i>Mayor Dane Haygood</i>	<i>Randy Fry</i>
	<i>Robin LeJeune</i>	<i>Billy Mayhand</i>
		<i>Selena Vaughn</i>

MOTION FAILED

MOTION by Mayor Dane Haygood for Daphne Utilities' counsel along with the City's Counsel to request an AG opinion along with an opinion from the Utilities' bond trustees on the ability to waive capacity fees; Seconded by Robin LeJeune.

Chairman Fry restated that we have a motion and a second to have our Counsel work with the City's Counsel requesting an opinion from the AG as well as our bond trustees on what we can and can't do regarding waiving capacity fees, tap fees or whatever they are to be called for the City of Daphne Sports Complex.

Comments from Robin LeJeune questioned the need to be specific on this for this sports complex or would the AG opinion be generalized for any tap fees for the City of Daphne.

Mr. Speegle answered as his assumption would be for the Sports Complex but that once an opinion was received, it would be broad enough to cover other instances with what would be waiving fees for the City.

<i>Roll Call Vote:</i>	<u><i>AYE</i></u>	<u><i>NAY</i></u>
	<i>Randy Fry</i>	<i>Selena Vaughn</i>
	<i>Billy Mayhand</i>	
	<i>Mayor Dane Haygood</i>	
	<i>Robin LeJeune</i>	

MOTION CARRIED

E. Approve Settlement Agreement (Board Action: MOTION)

Answering Chairman Fry's inquiry, Mr. Speegle advised that this agenda item would be discussed in Executive Session at the end and possibly vote on afterward.

VII. BOARD ATTORNEY'S REPORT

Mr. Speegle had nothing to add to the submitted report.

VIII. FINANCIAL REPORT

Teresa Logiotatos highlighted for the Board the capacity fees and savings account, revenue, expenses and budget projections, days of cash on hand graph, bond rates, and funding probability, Statement of Cash Flows report, and the Check History report. She also answered questions from Board members.

IX. GENERAL MANAGER'S REPORT

A. GM Report

Danny Lyndall began his review by clarifying the annual MWPP (Municipal Water Pollution Prevention) report and advising the Board that the required resolution will be presented for approval. He then apprised the Board of the Utilities' collaboration with the Alabama Coastal Foundation in a public education outreach campaign and the utility public forum that the Baldwin County Commission is forming for May 16th. Mr. Lyndall closed his portion to request a utility board work session or retreat in the coming months. He asked the Board's preference, whether it be a day or half day.

B. Operations Report

Bobby Purvis had nothing further to add to his report.

C. Engineering & Consulting Reports

Melinda Immel with Volkert had nothing further to add to her report.

Ray Moore with HMR had nothing further to add to his report.

Joe Asarisi with Asarisi & Associates was not in attendance.

- X. **PUBLIC PARTICIPATION** – the Chairman invited participants to address the Board at 6:34pm; with no participants, the Chairman closed Public Participation at 6:34pm.
- XI. **BOARD ACTION** – Previously addressed under New Business
- XII. **EXECUTIVE SESSION** – 6:40pm. Mr. Jerry Speegle certified the request for Executive Session to discuss legal ramifications and legal options for pending litigation for an approximate timeframe of 20 minutes.

MOTION by Selena Vaughn for the Board to convene for Executive Session; Seconded by Billy Mayhand.

AYE: Fry, Mayhand, Vaughn, Haygood, LeJeune

NAY:

ABSENT:

ABSTAIN:

MOTION CARRIED

E. Approve Settlement Agreement (Board Action: MOTION)

Executive Session reconvened at 7:00pm

MOTION by Robin LeJeune for the Utility Board to allow the attorneys to enter into a settlement agreement for DoL not to exceed \$17,000.00 and to authorize the Chairman to execute the documents on behalf of this Utility Board; Seconded by Billy Mayhand.

AYE: Fry, Mayhand, Vaughn, Haygood, LeJeune

NAY:

ABSENT:

ABSTAIN:

MOTION CARRIED

- XIII. **BOARD COMMENTS** – Chairman Fry thanked the attendees for staying and asked for a timeframe for Mr. Speegle's office to work with the City's attorney for a draft for the AG opinion. He noted regardless of the result, there would be a way to work fairly with the City.

XIV. ADJOURNMENT

MOTION by Selena Vaughn to adjourn the meeting.

The meeting adjourned at 7:02pm.

Preceding minutes submitted to the Daphne Utilities Board by:



Lori Wilson, Executive Assistant, Daphne Utilities