

The Lincoln County Board of Commissioners met in regular session on **Thursday, March 14, 2019**, at **6:00pm** in the courtroom. Those present were Chairman Walker T. Norman; Commissioner Brian Henderson, District One; Commissioner Larry Collins, District Two; Commissioner Cooper Cliatt, District Three; Commissioner H. Lamar Wade, District Four; Mrs. Penny Arnett, Finance Director; Mr. Ben Jackson, County Attorney and Ms. Sherry E. McKellar, County Clerk.

1.

Call Meeting to Order

Chairman Norman called the meeting to order.

2.

Invocation

Mr. Ben Dawkins of Martins Crossroads CH Church opened the meeting with prayer.

3.

Pledge of Allegiance to the Flag

Following the invocation Commissioner Collins lead the Pledge of Allegiance to the Flag.

4.

Approval of Minutes

On a motion by Commissioner Collins, seconded by Commissioner Cliatt, the Board approved the minutes as presented.

At this time Chairman Norman read a Thank You card from Commissioner Collins thanking the Board for the flowers, thoughts and prayers during the loss of his daughter Heather in Arkansas.

5.

Approval of Agenda

On a motion by Commissioner Henderson, seconded by Commissioner Collins, the Board approved the agenda as presented.

6.

Departmental Reports

A. Office of Emergency Services Department

Director Broom presented his monthly report. OES responded to 149 calls and the average response time was 8.7 minutes. E-Bill Gross billing for February was \$54,390 with total revenues of \$30,149. Director Broom attended the Emergency Managers event at the capital on February 22 and the EMGA/GEMA Area 1 meeting/training in Jefferson, GA.

B. Recreation Department

Director Glaze was attending events at the Recreation Department. He had previously submitted his monthly report. Little League season will begin April 15 with 200 kids participating on 17 teams.

C. Finance Department

Director Arnett presented her monthly report and stated the 2019/20 Budget process will begin soon.

D. Public Works Department

Director Seymour presented his monthly reports. Public Works serviced 2,077 water/sewer customers; installed three (3) service connections; repaired four (4) leaks on system; continued

maintenance on hydrants, valves and meters; preformed locates for utilities; and maintaining Savannah Bay water system and Pointe Shores water system. They issued three (3) new and 11 renewal business licenses; issued 46 building permits and performed 122 building inspections, 17 on-site evaluations; seven (7) plan reviews; 22 solid waste activity; eight (8) code violations site visits and issued seven (7) notices of violation and one (1) citation.

7.

Chairman's Comments

In February of 2018 Lincoln County filed an injunction against the City of Lincoln to prohibit the City from disconnecting service to the Saddlebrook Subdivision, after that the City included the water and wastewater agreement to the law suit and later included the service delivery area to the suit which really is not a part of the original suit.

On March 4, 2019 Judge Overstreet filed his order in Lincoln County Superior Court. His order gives both the county and the city clarity even though it was not what we wanted in the water dispute entirety. On the water agreement part of the suit the County disputed the accounting section which the County and City are joint producers of water for the County and City water department. In the late 1990's and early 2000's Lincoln County received grants and loans from USDA of approximately two million dollars to fund the update of the water plant which under the agreement gave the County half the capacity of the water which is around two million gallons a day that the plant is capable of producing. Both the County and City pay a prorated share of operations and maintenance costs for the joint use facility, based on each party's actual water consumption. Of which the County used last year 54.5% of the produced water.

In relevant part the water sales agreement states "The City will establish a special account (separate from all other city accounts) for the purpose of determining the Operation & Maintenance cost of the joint use facility. This account will be audited by the City's accounting firm and a copy of such audit will be provided to the County."

The County asked that the City open a new account at the bank that would be separate from the City's water account and both County and City pay their respective water bill and City deposit it in a new joint use facility account and all bills be paid from that account. The Court ruled the City maintain a separate ledger and account number for the purpose of determining and apportioning the operation & maintenance cost of the joint use facility, although the City does not maintain a separate bank account to pay and track the operation & maintenance cost. The court finds that this arrangement by the City meets the City's contractual requirement under the water agreement and denies the County's assertion that a separate bank account is required. But the court added should the County request information related to this account; the City shall provide same within 10 business days. Even though we didn't get separate bank accounts we will be in a position to get monthly reports on accounts receivable and disbursements.

Saddlebrook Subdivision Dispute

The County disputed the cost that the City charges the County at the Saddlebrook meter. The City is charging the County retail price on the water rates for this metering point. The County presently has four metering points which we pay wholesale rates for three of the four current meters. The Counties position was we spent two million dollars to give us up to a million gallons of water a day which we currently only use approximately 180 gallons a day that we bought our usage and pay a prorated share of the maintenance & operations of the cost to operate this plant we should not have to pay a retail price for our own water. The court ruled that "The parties dispute the proper charge for water which is provided to a county meter for the Saddlebrook Subdivision in the unincorporated portion of Lincoln County. It is undisputed that the water which services the subdivision passes through the City's infrastructure prior to arriving to the County's Saddlebrook subdivision meter. The court finds that the water

agreement does not set the price which the City may charge for this water. Instead the court finds that the City may charge the County for water at this metering point in the same manner that it charges its other retail customers. The court denies the County's claim that it was overcharged for this fee and holds that the water agreement does not by itself determine the water rates which the City may charge the county for producing water to the Saddlebrook Subdivision meter." To me this is indeed the most damaging of the misinterpretation of the water agreement, because the western distribution lines are also connected thru the City's infrastructure are water lines and the County pays wholesale rates.

Operation & Maintenance Cost Estimate Dispute

"The Water Agreement provides in section 6(c) as follows: operations & maintenance costs of joint use facilities will be apportioned to the City of Lincoln and Lincoln County at the same unit cost per thousand gallons of water using the following method: ... (3) at the beginning of each fiscal year the unit O & M charge shall be based upon a good faith estimate of O & M cost prepared by the engineer and submitted for review and comment from each party. At the end of each fiscal year, the actual O & M cost will be determined by audit and any overpayment will be credited or invoiced to Lincoln County in accordance with the audit cost."

Evidence was presented to show that these estimates are not always provided to the county prior to the City's setting of a new rate. However, the evidence also established that when the County had raised concerns in the recent past, the rate was adjusted retrospectively and prospectively. Thus, whether there was a breach of this process or not, there is no damage shown and there is no recovery for the County. The parties were advised at the hearing of their legal duties under the water agreement and advised again to adhere to their duties thereunder.

Sewer Agreement

Scope of the Agreement. Under the Sewer Agreement, the City agreed to accept raw, untreated sewage generated in the Blackjack Community from the County under the following conditions (among others): (a) that the initial capacity provided from the City to the County would be 45,000 gallons per day (or else an overage charge is applied); and (b) the service area would be limited to 140 customers shown on a map attached as an exhibit to that Agreement. The contract is ambiguous, however, in what the actual scope of the Sewer Agreement covers. The Sewer Agreement contains a map ("Exhibit 'C'") which contains various parcels within the unincorporated portion of Lincoln County. The map includes 140 lots with squares and triangles marked on them ("Marked Lots") which denote lots occupied by low- or moderate-income residents at or before the map was drawn up in 2006.

The parties disagree as to the interpretation of the contract. The City contends that the Sewer Agreement states that the contract references "the" 140 customers, and therefore it must mean that the County is limited specifically to those 140 Marked Lots. The County, by contrast, points to the section of the Sewer Agreement that references the map as describing "the service area" covered by the contract, and asserts that that language allows the County to connect any 140 customers or lots located on Exhibit C.

Both parties presented evidence as to their interpretation of the scope of the agreement, providing conflicting evidence. The Court finds that the main intent of the Sewer Agreement was to address the gallons of sewage to be generated from the uses within the area depicted on the Exhibit "C" map and was not intended to limit service to just the Marked Lots. There was disputed evidence as to the original intent of the agreement which precluded the grant of summary judgment. Therefore, the Court issues its ruling on the record and its interpretation of the contract and finds that the County is entitled under the Sewer Agreement to connect up to 140 customers whose lots are shown on the Exhibit "C" map attached to the

contract and are not limited to the Marked Lots. However, the Court further finds that the County breached the Sewer Agreement by failing to notify the City before hooking new customers to the sewer system, so that the City could object if the use proposed for such a lot would create incompatible or unsuitable waste. The Court does not find that any monetary damages have been shown from the failure to give such notice.

The Court therefore Orders that the County is entitled to connect up to 140 customers whose lots (whether marked or not) are shown on the Exhibit "C" contract map under the Sewer Agreement. With regard to customers who are residential and/or produce non-industrial waste, the County is required to provide the City with prior notice of the connection. With regard to customers producing industrial waste, the County is required to provide notice and obtain permission from the City prior to connection; however, such permission should not be unreasonably withheld by the City and should occur within a reasonable time from the County's request.

Whether the Sewer Agreement is Voidable. The City sought to declare the Agreement outlines the charges to be assessed by the City to the County for service in the Blackjack Community under the Agreement. The charges assessed to the County has two components: a unit charge and a capacity fee. Section 6(d) of the Agreement provides "should modifications to the Wastewater Treatment Plant be required due to regulatory changes or other unforeseen expenditures, the City of Lincolnton reserves the right to increase fees." The Court finds that the City's increase of the capacity fee was dues to regulatory changes and unforeseen expenditures and therefore are properly charged. The County's claim to the contrary is denied.

The City's Motion to Lift Sanctions

Both parties stated on the record that discussions on reaching a new SDS Agreement are ongoing. The Court finds that the parties are working together in good faith on the issue, and that a mutual but limited lifting of the sanctions is appropriate under the circumstances. The Court therefore ORDERS that the sanctions under O.C.G.A. § 36-70-27 be lifted and held in abeyance for both parties for a period of thirty (30) days from the filing of this Order. If the parties have not agreed upon a new service delivery strategy agreement at the expiration of that thirty (30) day period, the sanctions authorized by O.C.G.A. § 36-70-27 are automatically reinstated by this Court pursuant to its authority under O.C.G.A. § 36-70-25.1.

Conclusion

The foregoing is so ORDERED by the Court. The Clerk is hereby DIRECTED to serve a copy of this Order upon the Department of Community Affairs, 60 Executive Park South N.E., Atlanta, Georgia 30329, and by facsimile or e-mail giving notice that such sanctions have been ordered held in abeyance.

8.

City/County Consolidation Comments

Commissioner Cliatt asked to table this item indefinitely.

9.

Georgia Forestry Commission Cooperative Agreement

On a motion by Commissioner Wade, seconded by Commissioner Collins, the Board voted unanimously to pay the Georgia Forestry Commission \$8,158 for state emergency wildfire suppression support and service.

10.

Alcohol Ordinance Change – Brew Pub

Chairman Norman stated that he is removing this from the agenda as it needs to be for a Micro-Brewery and not a Brew Pub.

11.

Annexation of Former OES Building

On a motion by Commissioner Collins, seconded by Commissioner Henderson, the Board voted unanimously to authorize the Chairman and the Clerk to sign the resolution to re-name the Former Office of Emergency Services Building to be known as "Courthouse Annex B" Building.

12.

Interim Financing for Montego Point Water System Expansion

On a motion by Commissioner Wade, seconded by Commissioner Cliatt, the Board voted unanimously to authorize funding out of the General Fund account to cover interim financing on the Montego Point Water Expansion. This funding will be reimbursed back to the General Fund once received from the USDA Grant.

13.

SDS Funding

On a motion by Commissioner Cliatt, seconded by Commissioner Collins, the Board voted unanimously to authorize funding out of the General Fund account to reimburse the Water Fund for monies spent on SDS.

14.

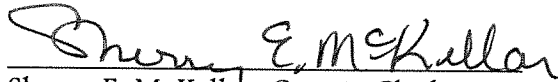
Adjourn

On a motion by Commissioner Henderson, seconded by Commissioner Wade, the meeting was adjourned at 6:41pm.



Walker T. Norman, Chairman

Attest:



Sherry E. McKellar, County Clerk