

From: Bob Panek [bob.panek@capecharles.org]
 Sent: Wednesday, December 03, 2008 4:22 PM
 To: 'Dora Sullivan'; 'Chris Bannon'; 'Bruce Evans'; 'John W. Burdiss'; 'Larry Veber'; 'Joe Vaccaro'
 Cc: 'Heather Arcos'; Dave.Fauber@CapeCharles.org; 'Paul Skolnick'; 'Town Clerk'
 Subject: Executive Session

Mayor and Council Members,

I wanted to follow up with you on the major points made by Mr. Foster at the Executive Session last Monday:

1. WWTP capacity (500K vs. 250K) vs. potential growth - Paraphrasing, "I've been here 7 years and built only 300 units. A 250K plant might last another 14 years." That would be 2022.

The updated growth projections completed October 2008 indicate that a 250K plant will reach capacity in 2013, two years after the new plant comes on line. Bay Creek projects adding 400 ERCs during that period (40% of projected growth). If no other ERCs were added anywhere else in Cape Charles (South Port, Harbor Development Group, Landmark, etc. all fall on their face), Bay Creek projects to add 300 more ERCs over the following three years. Thus, Bay Creek's latest projections alone will bring a 250K plant to capacity in 2016. These projections were personally approved by Mr. Foster. I've conveyed this information to Oral Lambert in an effort to ensure that there is a common understanding of the data. He seemed a little surprised, but indicated that he would bring it to Mr. Foster's attention.

2. Bay Creek's obligation to financially participate under the Annexation Agreement - "The Annexation Agreement requires Bay Creek, as assigns to Brown & Root, to pay the cost of expanding the plant once the plant reaches design capacity." (Emphasis added).

That is not how the Annexation Agreement is written. Here is the direct quote, "Brown & Root agrees to pay the cost of the physical expansion of the Town's sewer and water treatment systems i.e. collection, distribution and treatment, to accommodate the additional treatment demands of the Brown & Root Property beyond the limits of the Town's current permitted capacities." (Emphasis added). Clearly, there is no firm "trigger" of "... once the plant reaches design capacity..." as maintained by Bay Creek. We have consistently stated that we must expend effort and resources sufficiently in advance of when the new plant must be operational. Admittedly, the timing and planned capacity of the new WWTP is complicated by the new environmental regulations and existing 500K discharge permit. That is why we discounted the Bay Creek share by 50%. I believe our interpretation is much more reasonable than that of Bay Creek.

Additionally, their argument that they are not responsible for sharing the "soft costs" associated with expansion of capacity based on the phrase "physical expansion" in the Annexation Agreement is patently absurd. Planning, design and engineering are integral components of expanding capacity. They would be incurred even if we bid out the job on a turn-key "design-build" basis. Further, Mr. Foster stated that he did not pay the \$42K bill we rendered since it included "water source, planning, engineering, legal and administrative fees". This is not accurate. It only included engineering fees.

3. Cost estimate for the new WWTP - Mr. Foster presented many arguments why the cost estimate contained in the Preliminary Engineering Report may be high.

As I previously indicated, the differences between our new plant and Onancock's upgrade are many. Stearns & Wheeler have analyzed it and accounted for all but \$400K

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- not bad for an engineering estimate vs. a contract bid. I can provide you their detailed analysis if desired. In any case, we are working to bring down the cost estimate through the Value Engineering process, as well as some additional options for the Council's consideration (January meeting). We won't have a firm estimate until we decide what we want, advertise it and receive contract bids. We have previously told Bay Creek that we would be willing to adjust costs as we go along if they opted not to accept the one-time payment offer.

In summary, all of the points made by Mr. Foster last Monday have been repeatedly addressed over the last year in meetings and correspondence.

Please let me know if you wish any additional information.

Thanks,

Bob

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