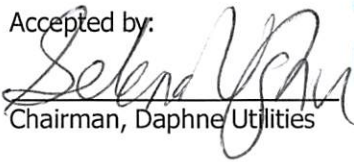


Accepted by:


Chairman, Daphne Utilities



APPROVED MINUTES

Utilities Board Meeting

Council Chambers, Daphne City Hall ♦ November 30, 2022 ♦ 5:00 p.m.

I. Call to Order

The regular November 2022 Board meeting for the Utilities Board of the City of Daphne was held on November 30, 2022, in the Council Chambers at Daphne City Hall and called to order at 5:00 p.m. by Chairwoman Selena Vaughn, followed by the Roll Call:

II. Roll Call

Members Present: Selena Vaughn, Chairwoman
Tim Patton, Vice Chairman
Billy Mayhand, Secretary/Treasurer
Mayor Robin LeJeune, Board Member
Councilman Joel Coleman, Board Member

Members Absent:

Others Present: Jerry Speegle – Board Attorney
Scott Polk – General Manager
Bobby Purvis – Operations Manager
Teresa Logiotatos – Finance Manager
Drew Klumpp – Administrative Services Manager
Samantha Coppels – Communications Manager
Lori Wilson – Executive Assistant

Others Absent: Lexus Carlee – Finance Specialist

III. Pledge of Allegiance

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

IV. Approval of Minutes

Utilities Board Meeting Minutes October 26, 2022

The Chairwoman requested any additions, corrections, or deletions for the submitted minutes of the October 2022 Daphne Utilities Board meeting.

With no additions, deletions, or corrections, the Chairwoman declared that the submitted October 26th, 2022 minutes would stand approved.

V. OLD BUSINESS - Items in Abeyance:

Recommendation for Bid Award for: GOMESA – Windscape L.S. Force Main Extension
(Volkert Project No. 408252 DU GL 1835 **(Board Action – MOTION)** ~~To accommodate for bidder participation, the bid date was postponed to Tuesday, October 25th; therefore, the bid tabulation and recommendation will be delayed and distributed as soon as it is available.~~ **TABLED FOR A LATER DATE**

VI. NEW BUSINESS –

A. Authorization for Sale of Trucks, Equipment and Miscellaneous items on GovDeals (Board Action: MOTION)

Buyer Marinda Turner informed the Board that the items submitted for surplus have been used beyond repair value and have also been budgeted for replacement Mr. Bobby Purvis answered questions from Board members regarding equipment replacement.

MOTION by Tim Patton to declare these two items [Ditch Witch RT45 and Truck 08-05 2008 Ford F250] as surplus property and sell them as noted [on GovDeals.com]; Motion was Seconded by Mayor Robin LeJeune.

AYE: Coleman, LeJeune, Mayhand, Patton, Vaughn NAY: ABSENT: ABSTAIN: **MOTION CARRIED**

B. Emergency Declaration for pump failure at Well #12

Marinda Turner explained that the submitted declaration along with subsequent Alabama State Code documentation was presented to the Board to be included in the minutes because the repair was an emergency and was not announced for bid due to the urgency of affecting public health.

MOTION by Tim Patton to declare the urgent repair of the pump failure at Well #12 an emergency under the competitive bid law; Motion was Seconded by Mayor Robin LeJeune.

General Manager Scott Polk answered questions from the Board pertaining to: Well #12 location – behind the Central Services Facilities; and the selection of the contractor – Griner Drilling Service is typically the “on-call” response for any pumping or electrical issues and was prepared to handle additional emergencies with this repair. Furthermore, Mr. Jerry Speegle referred to the submitted letter as the factual basis for declaring this situation an emergency repair.

MOTION by Tim Patton to declare the urgent repair of the pump failure at Well #12 an emergency under the competitive bid law; Motion was Seconded by Mayor Robin LeJeune.

AYE: Coleman, LeJeune, Mayhand, Patton, Vaughn NAY: ABSENT: ABSTAIN: **MOTION CARRIED**

C. Tap Fees related to Tonsmeire Summer Oaks Development

Mayor Robin LeJeune addressed the members recalling this issue that had been unresolved for quite some time and suggested coming to a resolution on this subject. He recollected the facts involved 63 sewer tap fees that Tonsmeire and the Summer Oaks Development felt they were still owed from years ago from performing some sewer work however, there is not a written record about this except for a sense that something was done and something was possibly owed. Mayor LeJeune stated that he felt there was enough information for the Board

to at least make a good-faith offer of about 25 [sewer] tap fees, for which he suggested to make a Motion to allow them up to 25 tap fees related to the Summer Oaks Development indicating a timeframe for these fees to be used, such as five years for this type of development, for Tonsmeire to decide to develop or not and at that time, the offer of the 25 tap fees be waived at that point. He reiterated making a Motion of granting 25 [sewer] tap fees to the Tonsmeire Summer Oaks Development in a five-year window.

MOTION by Mayor Robin LeJeune to grant 25 [sewer] tap fees to the Tonsmeire Summer Oaks Development in a five-year window; Motion was Seconded by Tim Patton for further discussion.

Mayor LeJeune stated his discussion point was that while there is no written record of the request, there were some statements made on both sides acknowledging this topic leading him to move this forward for the Board to make a decision on this subject.

Chairwoman Vaughn requested information from Mr. Larry Chason regarding the timeframe of the fees in question. Mr. Chason recalled this occurred in the mid-1980's whereby approximately one mile of the sewer infrastructure was installed and explained that back then, it was common for people to extend service lines in exchange for taps in the future. He clarified that the records Tonsmeire had relating to this issue were lost in a flood (of an office building) and the City wouldn't have had the records because they did not perform the work. He answered the question as to why the delay all these years in coming forward regarding this issue was the fact that Tonsmeire was not developing in that area at that time but had an overall plan that had been approved some time ago, and also clarified that there was originally 130 taps and an email that was received from Daphne Utilities [prior to their building being flooded] indicated that 50% of the taps had been used leaving a total of 64 taps remaining.

Chairwoman Vaughn reiterated that there is no record of this agreement and asked how this number of taps was determined, to which Mr. Chason replied that when the question is asked about how many [sewer] taps we had, they already knew the answer, as had been discussed in the past and there would have been a correlation between the cost of extending the line and the number of taps. Mayor LeJeune noted that he factored the suggested number of 25 tap fees now compared to the cost and value of the tap fees so many years ago. Chairwoman Vaughn questioned the actual number of tap fees Mr. Tonsmeire is requesting. Mr. Chason confirmed that number would be 30.

Councilman Coleman asked if the request is tied to the approved units on a master plan. Mr. Chason explained that the process is very different now, stating that now approval is given for a certain amount and expires within a given timeframe whereas when this verbal agreement took place, there was no expiration; he further commented that he surmised that it had more to do with the cost of extending the [sewer] line and the value of the taps than it did with how many units he had. Councilman Coleman clarified that in that case, 31 tap fee waivers would be needed and questioned if 31 is needed and granted then the 64 would be irrelevant and cancelled. Mr. Chason acknowledged that the Board is familiar with Mr. Tonsmeire and that he understands this situation and would look at this as a compromise. Councilman Coleman admitted that he knows the players involved and has respect for them, but as a Board member reviewing this situation, there is no documentation and does not want to set a precedent; with that explanation, he proposed making a motion to amend the motion on the floor to [reflect] 31 and conclude this issue.

MOTION by Councilman Joel Coleman to amend the Motion on the floor to 31.

Chairwoman Vaughn asked what the value of 31 [sewer] tap fee waivers would be; Finance Manager Teresa Logiotatos answered \$86,800. Mr. Polk responded to the Chairwoman's question that typically a subdivision developer installs the infrastructure and we inspect it before accepting it into our system.

Chairwoman Vaughn articulated her respect for Mr. Chason and Mr. Tonsmeire and their contribution to the Daphne community; she emphasized that her responsibility and frugality as a member of the Utility Board to the Daphne community drives her decisions on issues that come before the Board, as well as the advice of our legal counsel regarding giving anything away.

Councilman Coleman remarked that he would add to his motion the reasoning is that 64 [taps] is what is being argued, and 50% of that would be a compromise.

Mr. Tim Patton requested from legal if there are any claims for future tap fees of which we are not aware that we will not fulfill. Mr. Speegle recalled a couple of previous legal utility cases involving extensive documentation of arrangements with different people but did not recall any document that evidences an agreement to waive any tap fees then for this development.

Chairwoman Vaughn noted that it appears this situation is more than just a motion and a second and would need to be a written agreement with the several details, as previously mentioned, before the Board could consider making a motion and voting.

Mr. Speegle commented that if a motion was preferred, it could be approved with stipulated factors such as: a certain number of sewer tap fees, restriction of time frame, restriction to this development to single-family residences, to this only owner – not assignable, subject to approval of a final draft of an agreement, noting the Board could give parameters if they prefer to approve a settlement of this with those factors that would allow him to draft a settlement agreement.

Councilman Coleman stated he would amend his amended motion to those 5 factors as previously outlined and centered on allowing the preparation of the document that includes those conditions.

MOTION by Councilman Joel Coleman to amend his amended motion to those 5 factors as previously outlined and centered on allowing the preparation of the document that includes those conditions; Motion was Seconded by Mayor Robin LeJeune.

Mr. Chason stated that he could not speak for Mr. Tonsmeire but of the 5 factors Mr. Speegle mentioned, 4 of those would not be a problem but one that might be an issue is that he, with Mr. Tonsmeire being older than himself in this day and age, is not sure that Mr. Tonsmeire would be the developer even though the project and concept are his and it would not go forward without Mr. Tonsmeire's approval but it may not be Mr. Tonsmeire that would actually

pull the permit. Councilman Coleman noted that he really did not have an issue with that if the time period is stated. Mr. Chason agreed that the 5 years was fair.

Mayor LeJeune also agreed provided he [Mr. Tonsmeire] still owned the property. Chairwoman Vaughn clarified that the transfer of property title is what was implied as not assignable. Mr. Speegle pointed out, under that scenario for it to be assignable, he would assign or sell the property to someone else who would then develop it therefore getting the benefit of this deal, is what the proposal is and as was pointed out, it's \$87,000 worth of sewer fees, not water. Councilman Coleman stated that he was fine with that. Mr. Speegle noted that it would still be collected. Mayor LeJeune agreed and noted that he had seconded the amendment.

Mr. Tim Patton noted that there are 62 lots that are part of the plan and asked if there is plan to do all of those lots or [just] what is approved here. Mr. Chason stated that he is taking one issue at a time, but that the 62 lots on the plat was approved.

Mr. Speegle noted that if the Board is looking to collect capacity fees on water as part of defraying this cost and giving some kind of economic benefit plus the benefit of 61 houses using Daphne Utilities' services, he suggested adding verbiage to grant 1 waiver for every 2 houses built to ensure that there is a build-out and collect water capacity fees for the whole 61.

Mr. Chason was unsure of this suggestion, not being certain of who may own or be in charge the project; however, he stated the 31 would be satisfactory. Mr. Patton clarified that it would be a tap per home than a lot, to which Mr. Chason confirmed.

Mr. Speegle remarked that the Board could possibly, in their deliberations, assume that this project is going to be sold, and in devising it consider that Mr. Tonsmeire intends to sell it to a developer and that this is part of the deal, noting that this is what it sounds as if they are planning.

Mayor LeJeune disagreed and stated that they agreed that Mr. Tonsmeire would be the owner of the property but that it might be developed by someone else; he continued that he understood that if Mr. Tonsmeire were to sell the property, this would be void. Mr. Speegle stated that this is not what he understood the gentlemen to be saying. Councilman Coleman clarified his understanding that if the property were to be sold, these 31 sewer tap fees would run with the sale of the property to a period of 5 years. Mr. Speegle noted that he was trying to clarify because he was hearing different comments, to which Mayor LeJeune commented that was why he asked if he [Mr. Tonsmeire] was going to be the owner of the property.

Mr. Chason responded that it reverts back to that there is no documentation of this arrangement but, as previously established, this was a common practice and in his [Mr. Tonsmeire] mind he paid for 130 and he immediately used 60 of them and there appears to be no record of this, leaving him a credit which he is now willing to reduce that total obligation for exactly the point the Mayor made, understanding today the tap fees have increased to \$2800 [per sewer residential tap fee] whereas in the past the fees were less. Mr. Chason stated that Mr. Tonsmeire began this inquiry because he paid for the taps and made an arrangement.

Mr. Speegle pointed out that the problem is that Mr. Tonsmeire made a deal with a different corporation who sold assets and this company [Daphne Utilities] agreed to accept certain liabilities and in that agreement, this arrangement was not one of those liabilities; in essence, the deal he [Mr. Tonsmeier] made was with the Lake Forest Water and Sewer and not with Daphne Utilities. He continued stating that when Daphne Utilities bought, they did not buy the corporation; they bought certain assets and assumed certain liabilities and existing contracts and we were unable to find where this was one that was assumed; he clarified this as the legal

issue. Mr. Speegle noted his comments were made due to hearing different people stating different things about whether this was assignable to someone other than Mr. Tonsmeire and if he sold the property, is it terminated or not and the Board should decide if this is one of the terms to be considered.

Councilman Coleman stated if the Board is against it, then deny his motion; however, his motion was to have it transferrable up to a period of five years; Mayor LeJeune agreed he was also hearing two different things and was still okay with the motion as long as the term limit remained applicable.

Chairwoman Vaughn voiced her hesitancy with making it transferrable because the Board is attempting to make good on a deal that Daphne Utilities was not part of on behalf of Mr. Tonsmeire and if he's going to be able to transfer this deal with someone, she expressed this as problematic for her and suggested the 5-year, non-transferrable factor.

Mayor LeJeune pointed out that there was an amended motion on the floor first that will need to be voted on and if voted down, it can then be brought back up as a different amended motion but since there is a second on this amended motion, it requires voting first.

Mr. Speegle announced that as he understands Robert's Rules, when the Mayor made the motion, if someone wants to amend it, they can make that request of the Mayor who would allow it or disallow the amendment and if the Mayor allows it, then it needs to be seconded but the Mayor could not second his own motion.

Mr. Tim Patton seconded the amended motion.

MOTION by Councilman Joel Coleman to amend his amended motion to those 5 factors as previously outlined and centered on allowing the preparation of the document that includes those conditions; Amended Motion was Seconded by Mr. Tim Patton.

Mayor LeJeune stated he would make the formal, referring to 31 sewer taps, not water, for a duration of 5 years starting construction within 5 years, it is assignable, and it is based on 31 living units. Mr. Patton asked if he meant payable within 5 years, instead of starting construction; Mayor LeJeune asked for clarification from him. Mr. Patton explained that the tap fees should be paid within 5 years instead of starting construction because construction can begin and not really come in and pay the tap fees until later, so it should be payable in 5 years; Mayor LeJeune agreed.

A discussion took place to clarify the details of a proposed agreement; Mr. Speegle recapped for clarity that it should be payable in 5 years meaning, payment is to be received within the 5 years, but asked if payments are not received on those within 5 years, then it expires.

Mr. Scott Polk explained that before the City issues a building permit, they require all capacity fees to be paid. Mr. Speegle proposed to put some wording in it if it's approved.

Mr. Speegle then asked for interpretation of a living unit, whether it is considered a single-family-residential, an apartment, or duplex. A discussion took place to consider this issue.

Mr. Billy Mayhand commented that he'd been listening to this discussion ongoing for several months and he is of the opinion that Daphne Utilities is not responsible because when the agreement with Lake Forest was signed, this project was not included in it. He stated that this concerns about \$86,000 of taxpayers' money, basically giving it away without the legal proof that Daphne Utilities owes it, not saying Lake Forest didn't owe it, but questioned if Daphne Utilities owes it.

Chairwoman Vaughn asked for any other comments.

Mayor LeJeune commented that it's not "taxpayer money" because Daphne Utilities is a private business and not run by the City, so it would be rate payers, stating that he just wanted to make the clarification that this is a private company and not a public entity like the City. Mr. Speegle corrected that this is a public corporation according to the statute, not a private company as it does not have private shareholders and it is a public corporation created under the statutes of the State of Alabama, just for clarification.

Chairwoman Vaughn called for a vote:

MOTION by Councilman Joel Coleman to amend his amended motion to those 5 factors as previously outlined and clarified and based on to allow the preparation of the document that includes those conditions; Motion was Seconded by Tim Patton.

AYE: Coleman, LeJeune, Patton

NAY: Mayhand, Vaughn

ABSENT:

ABSTAIN:

MOTION CARRIED

VII. BOARD ATTORNEY'S REPORT

Mr. Jerry Speegle announced some changes [to the agreement for the Animal Shelter property] to make as he understood with the placement of our easement on City property and he is working with Patrick Dungan, once finalized the City will then approve the granting of that and grant that to Daphne Utilities. He noted that Daphne Utilities had already approved the transfer of property to be finalized, the City is approved through ordinance and the deed can be prepared at the same time as the ordinance.

VIII. FINANCIAL REPORT

Finance Manager Teresa Logiotatos reviewed for the Board the financials for the first month in the 22/23 fiscal year: the revenue, expenses, net income and budgeted end-of-year income, noting that this is the first financials of the implemented rate increases; graphs, income statement, cash flow statement and the check history report.

IX. GENERAL MANAGER'S REPORT

A. GM Report

General Manager Scott Polk updated the Board on: the production water well at Diamante; continuing work on Well #15 to become the primary well for the Olde Town Treatment Plant replacing Well #13 which will go to standby; bids for the GOMESA grant project to extend the force main along North Main Street came in too high, will rebid in the coming months to try to attract more bidders and/or reasonable bids; doors delivered for the admin office remodel, awaiting cabinetry and countertops; preconstruction meeting for the Grit Removal System project to discuss timeline unpredictability due to delivery of equipment; Culture Club initiated

as part of the 5-year strategic plan aimed at employees input about the organization; sufficient nominations received to be voted for the Best of Baldwin in the “best utility” and “best place to work” categories, voting as closed and awaiting results.

B. Operations Report

Mr. Bobby Purvis briefed the Board on: two sso's - one at Yancy Branch involving heavy rains and the other at Spanish Fort involving rags; successful natural gas installation for the 2 generators at 2 of our water plants; the contractor is nearing completion of the second phase of natural gas at Diamanté.

Samantha Coppels shared with the Board a new wastewater treatment video

Mr. Bobby Purvis updated his submitted report involving Well #12's shut down, a leak at the WRF in the existing concrete, moving forward on the rehabs on lift stations and the new employee hired for the natural gas department.

C. Engineering & Consulting Reports – nothing further was added to the submitted reports.

X. BOARD ACTION – Previously addressed.

Lori Wilson announced: the upcoming board meeting schedule for the year, noting that the next meeting will take place on January 25 and the February meeting will be pushed back to March 1; the 2023 Daphne Utilities recognized holidays; and a last reminder of the upcoming Alabama Rural Water Decisionmaker training invitation deadline.

XI. PUBLIC PARTICIPATION – Chairwoman Vaughn invited any public participants at 6:04pm to address the Board and with no participants, closed Public Participation at 6:04pm.

XII. BOARD COMMENTS –

Councilman Joel Coleman had no comment.

Mr. Billy Mayhand had no comment.

Mr. Tim Patton wished everyone a merry Christmas.

Mayor LeJeune expressed excitement and appreciation for the continued Daphne Utilities participation in the City upcoming events and wished everyone a merry Christmas

Mr. Billy Mayhand clarified his response to the earlier vote.

XIII. ADJOURNMENT

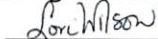
With no further discussions, the Chairwoman called for adjournment at 6:06pm.

MOTION by Billy Mayhand to adjourn; Motion was Seconded by Tim Patton.

AYE: Coleman, LeJeune, Mayhand, Patton, Vaughn **NAY:** **ABSENT:** **ABSTAIN:** **MOTION CARRIED**

The meeting adjourned at 6:06pm.

Preceding minutes submitted to the Daphne Utilities Board by:



Lori Wilson, Executive Assistant, Daphne Utilities

Mr. Speegle recapped for clarity: payable in 5 years meaning, payment is to be received within the 5 years, if payments are not received on those within 5 years, it expires?

Mayor: would it be an application for the sewer tap fee, how does that work

Scott: before the City issues a building permit they require all capacity fees be paid

Speegle: I'll put some wording in it if it's approved.

Vaughn: Tim had seconded the amendment.

Speegle: Is a living unit a SFR, an apartment, duplex?

Mayor, I think we're giving it a little bit of broadness, they're calling it a living unit, some might be SF, some might be a duplex.

Speegle: apartment? A 30-unit apartment complex?

Coleman: the planning department is going to have to approve whatever, I agree, I think it's a living unit

Mayor: the planning commission will have to approve what that is

Scott: the value of the tap fees change based on the size of that tap.

Speegle: apartment complex is a different animal for us than SFR

Mayor: I think we have a value here \$86,800 SF.

Coleman: you could say up to a limit of that amount

Speegle: I might suggest it be single family or duplex, how are those treated Scott

Scott: it depends on if the meter is assigned to each individual living address or if its assigned to the building as a whole, some buildings actually have 1 meter servicing 2 units,

Coleman: however that's why you say living units, they're using 1

Scott: if the living unit is defined as a single family

Patton: that's why I would say 31 single family units

Scott: a duplex would typically have 2 water taps 2 sewer taps

Mayor: I think when we're talking about a living unit, we're talking about a duplex that's 2 on that, a tap for each one.

Coleman: if it's a 12-unit apartment complex, that's 12 living units

Scott: that's what we're trying to clarify.

Billy Mayhand: I've been listening to this discussion for several months now and I am of the opinion that DU is not responsible because Lake Forest when we signed the agreement, that was not included in it. So we're talking about \$86,000 of taxpayers' money, basically, saying we're going to give away without the legal proof that Daphne Utilities owes it, I'm not saying Lake Forest didn't owe, but do we owe it. And that's my take on it.

Vaughn: any other comments

Mayor: I will say one thing to that, it's not "taxpayer money" because we are private business, we are not run by the City, so it would be rate payers, I just want to make the clarification that this is a private company and not a public entity like the City.

Speegle: I would have to correct you, this is a public corporation according to the statute, this is not a private company, it does not have private shareholders it is a public corporate created under the statutes of the State of Alabama, just for clarification