

LITTLE ROCK SANITARY SEWER COMMITTEE
Minutes of the Meeting Held
October 21, 2009

The Little Rock Sanitary Sewer Committee met at 4:00 p.m., Wednesday, October 21, 2009, in the conference room of Little Rock Wastewater. Those attending included:

Little Rock Sanitary Sewer Committee

Cynthia C. Miller, Chair
Ken Griffey, Vice Chair
Marilyn K. Perryman, Secretary

Little Rock Wastewater

Reggie A. Corbitt, P.E., CEO
James A. Barham, Manager of Finance
Howell Anderson, P.E., Manager of Engineering Services
Stanley Miller, Manager of Operations
Mack M. Vought, Manager of Maintenance & Construction
Don F. Hamilton, General Counsel

Others attending included Vince Hotho of Garver Engineers, Mr. and Mrs. Mark Hoffman and children of 5312 "C" Street, Little Rock, Arkansas, B. J. Walker of the Rose Law Firm, Jordan Johnson of Cranford Johnson Robinson Wood, and support staff from Administration and Community Relations, Engineering Services, and Environmental Assessment Division.

The meeting was called to order by Ms. Miller, and on motion duly made and seconded, the Minutes of the September 16, 2009, meeting were approved as written.

Ms. Miller then asked for public comment. The only comment card submitted was by Mark Hoffman, who was scheduled to speak to the Sewer Committee on the property damage claim at his residence. Mr. Hoffman was then recognized and addressed the committee after distributing material for their review. He thanked the Sewer Committee and Mr. Corbitt for their consideration and the work that had been devoted to their claim.

Mr. Hoffman said they had occupied the residence for about fifteen years and for about thirteen years had no problem. About two years ago Wastewater worked in the alley behind their house and since that time they have had water leaking into a building used as a playroom. They contacted Wastewater when they first noticed the problem and were told the asphalt contractor would be contacted, after which they were told that paving material of about one inch thickness was placed in the alley. He said after the work was done his wife noticed that the water running off the alley was flowing onto his property which it had not done in the past. He called attention to photographs in the material distributed showing the water damage and mold that had occurred, which they feel is the direct result of the repaving of the alley as the repaving might have changed the elevation. He also said that a neighbor who had an apartment a few houses up from his property had commented that they no longer had a drainage problem in an apartment located behind their residence. Mr. Hoffman said that he was asking that Little Rock Wastewater help them by correcting the drainage problem and put the property back into a usable condition as the children could no longer use the back yard or play room. He called attention to affidavits obtained from former residents stating that the problem did not exist until the alley was repaved after the sewer construction. He said that he had met with Mr. Corbitt and staff and was told that the problem was not the fault of Little Rock Wastewater.

Mr. Griffey asked about mold accumulation on the walls and why it was allowed to get to the condition revealed in the photographs. Mr. Hoffman said that the mold had grown so quickly they were not sure what to do and it was not until they saw the change in the direction of the water flowing down the alley from a neighbor who was washing his car that they realized the correlation. He said, once they saw this, they contacted Wastewater and had no idea it was going to take this long to resolve the problem. Mr. Hoffman said there is so much mold accumulated on the walls and in the carpet the building will have to be torn down and replaced. Mr. Griffey commented that his next door neighbor had recently asked permission to allow equipment to come into his driveway to correct a drainage problem by installing a French drain. He said that she was incurring this problem at her residence for the first time. Mr. Griffey said that he was very impressed by the work done next door to him and asked Mr. Hoffman whether he was sure that the height of the alley was changed during the paving. Mr. Hoffman said that new paving material was placed over the old which he thought would have to change the elevation. He reiterated that not until the work was done in the alley had they had a problem with drainage.

Ms. Perryman said that she had lived in Leawood for eighteen years and on three different occasions the yard above her garage had to be dug out because erosion had caused water to come into her garage, and it appeared to her that, if the area between the alley and the building in question was lowered, the drainage would be better. Mr. Hoffman said the room is about 49 years old and to his knowledge there had never before been a problem, so he was sure if someone had gone behind Ms. Perryman's house in Leawood she would question whether whatever was done had affected her property. Mr. Hoffman said that he had not gone to the expense of an engineering study as the problem to him seemed simple because the work was done in the alley, the

problem only occurred after work was done, and he felt they were due compensation. He stressed that they would not be before the Sewer Committee asking for damages if they did not honestly feel it was the fault of the Utility.

Mr. Griffey asked Mr. Vought to describe the asphalt work that was done, the condition of the retaining wall, debris build-up, and the work that was done in the alley. Mr. Vought said there was an existing asphalt alley and a cut was made close to the center of the alley. The line was replaced with the same size line and in the same location after which the asphalt was overlaid but did not extend to the edge of the existing asphalt. He called attention to maps showing the elevation and slope of the land and said that the slope runs down past the Hoffmans' structure, and that is where the water would naturally drain. Ms. Miller asked about the location of the retaining wall and Mr. Vought said it is behind the structure in question and appeared to have been there for a very long time. Mr. Griffey asked if that meant that the builder had put the wall there to avoid drainage problems, and Mr. Vought said that the foundation of the slab of the building is actually lower than the ground behind the building and the retaining wall is there to restrict drainage. Mr. Hoffman said he believed the retaining wall was put there to stabilize the ground rather than to restrict water flow and there is a space between the building and the retaining wall but he doesn't think it has anything to do with water flow. Ms. Perryman asked whether the space between the wall and the building was kept free of debris and observed that it appears that some of the wall is missing. Mr. Hoffman said there might be a piece or two of the retaining wall missing but he had never had an occasion to go back there and did not think debris buildup contributed to the problem.

Mr. Griffey said he has children and a game room also and knew how valuable this space is to a family, so he understood how important this is to the Hoffmans. However, he saw no compelling evidence to indicate that anything done by LRW had caused the problem. He said there is no proof of what occurred before the work was done compared to what is occurring now, that would compel him to say that this is an open and shut case. Mr. Hoffman said he understood what Mr. Griffey was saying, but they have affidavits from someone whose grandparents had lived in the house for many years without this problem. Mr. Griffey said that he thought the fact that the problem occurred after the sewer work was done was circumstantial and that neither party could prove that the work done by Wastewater did or did not cause the problem.

Ms. Miller said she did not see a difference in the grade at all so she did not think that Wastewater changed the way the water would flow, but she saw the pictures and sympathized with the Hoffmans' situation. Mr. Hoffman said he wasn't saying that the elevation of the pavement had changed, but that the flow of water had changed and that a neighbor who formerly had a water problem no longer did.

Ms. Perryman said that this somewhat reminded her of a problem she had with a former residence and that to her this appeared to be a maintenance issue. She said the former resident had kept leaves raked from a drainage ditch and because she did not do so one year she had a flooding problem with water seeping into the house and

ruining carpet, etc. Mr. Hoffman said that if they had a problem before, or the problem had occurred a year or so after the work was done, he might agree, but this problem started occurring almost immediately after the work was finished. Mrs. Hoffman said her mother had lived in the building for a short time until her house was completed and there was no problem during that time, but within a month after the completion of work by Wastewater the structure stayed wet all the time. Mr. Griffey asked if the game room is still in the same condition or if the Hoffmans had instigated a mold eradication process and Mr. Hoffman said that eradication is not possible.

Ms. Miller suggested that, having heard from Mr. and Mrs. Hoffman, the Sewer Committee take the matter under advisement and asked if there were any other questions. Mr. Griffey said he noticed that the Hoffmans had included some supporting rulings and asked if Mr. Hamilton had reviewed them. Mr. Hamilton responded by saying these were basically the same cases that the Harrison/King litigation cited. He commented that, coincidentally, Mr. Walker also represented Harrison/King. He said this matter was dismissed in August by summary judgment and observed that one of the arguments in that case was that, in addition to damage by sewer backup, LRW also diverted the drainage, which LRW disputed. He said there is no expert engineering opinion in either case and he believes this case is parallel to the Harrison/King case. He stressed that both rulings cited were sewage backup cases and did not involve diverting water flow. He said there is no valid evidence that Wastewater caused the diverted flow the Hoffmans are claiming, and Mr. Hamilton mentioned the record rainfall during February, 2008, as well as the summer of 2009, saying that he thought that had to be considered a contributing factor. Mr. Hoffman again pointed out that this was an ongoing problem beginning in 2007 and not just during heavy rainfall events.

Ms. Miller asked if Mr. Walker had any remarks and Mr. Walker said that he thought there were some questions over the issue of the continuing trespass or water flow and whether Wastewater contributed to that. He said the reason the Hoffmans were there is because they do not want to file a lawsuit and preferred to address the Sewer Committee in an appeal for assistance.

Mr. Griffey said that he did not think it was fair to the Hoffmans to drag this matter out an additional thirty days, and thought that the Committee should make a decision whether it is pro or con. Ms. Perryman said in examining the photographs, she can't get past the fact that the foundation of the building is below ground level and the water would naturally drain there. Ms. Miller said that she honestly did not believe the problem was the fault of Little Rock Wastewater, but she was looking at the Hoffman children and her heart was with them, so she would like to help them if a way could be discovered.

Mr. Griffey asked Mr. Corbitt what the Hoffmans were asking for and Mr. Corbitt replied that they were asking that something be done to divert water from their property and were also asking for \$19,000 in assistance in rebuilding the structure.

Ms. Miller asked for the other Sewer Committee members' thoughts, and Mr. Griffey said that he could find no evidence that this was LRW's fault. Ms. Perryman agreed, saying that the breaches in the retaining wall, the debris filling the space between the wall and the structure, and the foundation of the structure being so far below ground seemed to be the contributing factors.

Mr. Griffey then moved, seconded by Ms. Perryman, and approved unanimously, that the property damage claim submitted by Mr. and Mrs. Hoffman be rejected, to include changing the grade of the alley and/or financial assistance for replacement of the structure.

Mr. Walker asked to retain the right, should the Hoffmans choose to obtain an expert opinion, to present this matter to the Sewer Committee again at a future date. Ms. Miller said that they could certainly do so. Mr. and Mrs. Hoffman and children and Mr. Walker were then excused from the meeting.

After discussion and upon motion duly made and seconded, the Sewer Committee then unanimously approved the following Investment Work Order:

<u>Location</u>	<u>Amount</u>
Woodland Ridge Outfall Pump Station Elimination	\$269,200.00

Mack Vought reported there was one non-capacity overflow during the month of September, which was caused by grease, and the year to date total is now 25. He reported 9% of maintenance time spent on Preventive Maintenance, 85% on proactive, and only 5% of time spent on reactive maintenance. He stated that there were 53 capacity or wet weather overflows, and there had been 88 in September of 2008, so he thought the retention basin is having a very positive effect on SSO's. Mr. Griffey asked whether the information in the maintenance monthly goals reports is used in preparing the next year's budget and Mr. Vought replied that it is, and that the information is also used in reassigning crews. He mentioned that the weather had prevented some of the work that is normally performed during this time of year, affecting some of the goals reports, but that crew members assigned to a task such as right of way might be working on different crews, but they were working.

Jim Barham then presented the financial report for the month of September, 2009. After review, and upon motion duly made and seconded, the financial reports were approved by the Sewer Committee, including the payment of Operations & Maintenance expenditures in the amount of \$1,893,105. Net income for the month is \$345,177, and net income year to date is \$1,077,832.

Mr. Barham reported that the budget subcommittee presentation would be made at 10:00 a.m., Wednesday, October 28th, and invited the Sewer Committee to attend. It was decided that the press would be notified so that there be no problem should two or more committee members attend the meeting. Mr. Barham said the budget format had

been changed to reflect more goals and objectives. He also reported that the bond issue went before the City Board the previous night, the public hearing for the bond issue was held with no comments; the City Board approved the resolution for the bond issue, and read it for the first and second time. Mr. Barham said that he expects to receive an A-1 rating for the bonds, which is the same as the previous bond issues. Mr. Barham reported a new business in the port area, Sage Foods, and their first month's surcharge is \$40,000. Mr. Griffey asked if there was an objection to the surcharge and Mr. Corbitt said it is a rice parboiling manufacturer and he was not aware of any objection. He asked Stan Suel who said that the firm checked various locations before locating the plant in Little Rock, and it appears that they are satisfied to have the capacity and volume needed for their operation.

Mr. Barham said that Mountain Pure installed the recommended flow meter in August, and it has been in operation for about a month and a half. The meter will be monitored for ten months after which their surcharges will be adjusted accordingly.

Stan Miller reported there were no NPDES permit violations for the month of September despite the tremendous amount of rainfall. He said some biosolids were applied to farmland but the rain had limited the application of biosolids. He reported all major equipment back in service and construction has begun on the disinfection upgrade at the Fourche Creek Treatment Plant.

Howell Anderson mentioned that Contract I of the Fourche Creek upgrade had begun and the disinfection process of this facility would be completely redone. The bid was scheduled for November 10 on Contract II, secondary clarifier, and the bid results will be presented at the November meeting. Mr. Anderson reported three pipeline contracts are currently under construction for the overflow mitigation. The Allsop Park project is nearing completion. The Barton project is underway and the contractors were able to do quite a bit of work despite the weather.

Mr. Anderson reported that Little Rock Wastewater issued Carson & Associates a conditional approval and received bid documents which were sent to Natural Resources. A letter was received from Natural Resources just prior to the Sewer Committee meeting concurring with the Sewer Committee's decision and approving the award of the contract to Carson & Associates. Building and Utility Contractors forwarded a bid protest letter to which Mr. Hamilton responded that their protest was untimely since it was due within seven days and was not received prior to that expiration date. On motion by Mr. Griffey, seconded by Ms. Perryman, the Sewer Committee voted unanimously to deny the protest as being untimely and instructed Mr. Corbitt to prepare a letter notifying Building and Utility Contractors that their protest was denied.

Mr. Anderson said that maintenance personnel noticed an indentation between the taxiway and terminal at the airport. The problem was determined to be infiltration into the manhole. LRW procured the services of a contractor who inserted grout to stabilize the area at a cost of approximately \$18,000.

Ms. Miller called on Don Hamilton to give his report on pending legal matters and Mr. Hamilton then referred the members of the Sewer Committee to his report stating that he would be glad to answer any questions about the report, but he would only mention a few of the matters, consisting of the Harrison/King litigation over the sewer backup and the 2000 Beechwood house damage claim by the attorneys for Quentin Smith.

As to the Harrison/King litigation, Mr. Hamilton stated that although the complaint against Little Rock Wastewater had been dismissed by order dated August 27, 2009, he was still trying to collect the attorneys fees owed by virtue of the indemnification claim by Little Rock Wastewater, and that the sum of \$5,913 had been collected and there is still due the sums of \$4,937.10 as reimbursement of the fees paid to the Cross law firm and those fees attributable to Arkansas Municipal League, which he had computed to be \$20,620, according to the premiums paid in 2009 on the Arkansas Municipal League defense program for that period for which the attorneys rendered services in the litigation. So far, he had not heard back from America First Insurance Company but that he anticipated getting a reply to his demand for payment soon. If not, he would follow up, and there is still pending Little Rock Wastewater's third party complaint in the litigation to recover that amount.

As to the claim for the house damage at 2000 Beechwood, he stated that the City never responded to plaintiff's demand letter to Mayor Stodola requesting compensation from the city on August 7, 2009. Aside from estimates for inspections as to possible relocation cost of the culvert and sewer line, there had been no further action. However, a conference is scheduled on October 22nd, with Mayor Stodola, Bruce Moore, and counsel, including the opposing counsel, to discuss this matter further, and that he would report back to the Sewer Committee and staff on the outcome of that meeting.

There were no questions to Mr. Hamilton, and he stated that his report was completed.

Reggie Corbitt reported that the Utility has a contract for treatment of wastewater from the city of Shannon Hills, and he received a letter that the city had installed its own treatment facility and wished to terminate the contract, which was originally intended to be in effect until 2010. Mr. Hamilton asked for a motion to authorize Mr. Corbitt to execute any documents relating to termination of the Shannon Hills contract, and upon motion duly made and seconded, the Sewer Committee voted unanimously to authorize Mr. Corbitt to execute said documents.

Mr. Corbitt invited any of the Sewer Committee members who are interested to attend the draft budget presentation on the 28th. Ms. Miller stated that she had attended the previous year and it is an excellent way to become familiar with the utility operations.

Mr. Griffey commented that he had been contacted by friends in the realty community about the matter of the private service line inspection and repair which is part of the Raffelis study and recommendation. He asked whether having the Rate Advisory Committee review their concerns was feasible and Mr. Corbitt said he thought it would

be a good idea for them to do so and he also thought it would be helpful for the RAC committee to review and rank the various recommendations.

Mr. Griffey asked whether the Sewer Committee is at a place to consider whether to hire in-house counsel or opt to use outside legal firms. Mr. Barham said that those considerations are a part of the budget deliberations and Ms. Miller said she would like to see the numbers before making that decision. Mr. Barham said that the cost is shown in salaries in the current budget, but if the decision is made to use outside counsel, the figures would be charged to contract services.

There being no other business, and on motion duly made and seconded, the meeting was adjourned.

Respectfully submitted,

Marilyn K. Perryman, Secretary