

RWSA BOARD OF DIRECTORS
Minutes of Special Meeting
December 17, 2009

A special meeting of the Rivanna Water & Sewer Authority (RWSA) Board of Directors was held on Thursday, December 17, 2009 at 4:22 p.m., in the lower level Board Room of the Albemarle County Service Authority, 168 Spotnap Road, Charlottesville, Virginia.

Board Members Present: Mr. Gary Fern, Ms. Holly Edwards, Mr. Michael Gaffney, Ms. Judith Mueller, Mr. Gary O'Connell, Ms. Sally Thomas, and Mr. Robert Tucker.

Authority Staff Present: Ms. Tamara Ambler, Mr. Tom Frederick, Mr. Chuck Kent, Ms. Mary Knowles, Ms. Michelle Simpson, Ms. Jennifer Whitaker, Dr. Robert Wichser, and Mr. Lonnie Wood.

Also Present: Mr. Kurt Krueger – RWSA Attorney, Mr. Federico Maisch - Principal with Greeley and Hansen, members of the public, and media representatives.

1.0 Call To Order

The special meeting of the RWSA Board of Directors was called to order by Mr. Gaffney on Thursday, December 17, 2009 at 4:22 p.m., and he noted that a quorum was present.

2.0 Items from the Public

Ms. Dede Smith, who resides at 2652 Jefferson Park Circle, Charlottesville, VA, asked that as the Authority “proceeds with the Meadow Creek Interceptor project - particularly when you start talking about funding it and financing it - that you be very clear all the time - and I particularly ask our City representatives here - what the cost share allocation will be between the City and the County ... in dollars and in cost share allocation - how equitable as an estimate.”

Ms. Betty Mooney, who resides at 201 Sunset Avenue, Charlottesville, VA, next commented that she felt everyone was “aware that this is the time when everybody’s budget is getting cut, and certainly the people who are in City Council and the Board of Supervisors know that.” All the businesses that Ms. Mooney knew “are cutting their budgets; they’re laying off staff; they’re telling their staff [that] the salaries are being reduced - they’re furloughing people.” She then claimed that “this Authority and the Solid Waste Authority have the top-dollar lawyers in the state of Virginia, and I’m asking - and I will put this in the form of a Freedom of Information Request - for an accounting for all of 2009 of all legal expenses that were incurred by this Authority - by this Board and the Solid Waste Board - I’m asking this for the public because everywhere I go they ask me, ‘Why are we paying over \$500 an hour when there are so many excellent lawyers in Charlottesville that could represent these boards?’” Ms. Mooney next alleged that “everybody else’s budgets are getting cut ... look at what you’re going through Mr. Tucker ... it must not be fun. Look at what you’re going through Ms. Edwards.” Ms. Mooney felt that “we have got to take care of the citizens’ money and that I think is what the

Board does ... the public wants to see this and so I'm asking for this as a Freedom of Information request - all legal counsel expenses for 2009 - and I think I'd like the Board to look at this at their next meeting ... see if you can find a way to spend less money on legal expenses." She then asked the Board if they "realize that the people who are out in the field repairing pipes - we know from a FOIA - are getting \$14 to \$20 an hour." Ms. Mooney felt they were "being paid a pittance." She then alleged that that "Mr. Frederick is very careful not to overpay any of them, and they're the ones that are keeping the system going and yet we're paying lawyers over \$500 an hour." She next claimed that she had "asked so many people what they pay their lawyers - and these are top business people in town - and I can't find anyone, unless they're using McGuireWoods." Ms. Mooney then asked that the Board "please take care of the citizens' money ..."

Ms. Mooney next commented that she appreciated Ms. Edwards reading poems at City Council and RWSA Board meetings to "try to calm us all down and get us all to make peace, and I think it is an important thing that we need to do in the community." She also felt that "we need people to tell the truth, and I have to say that I think Mr. Frederick is probably an excellent engineer. He is probably so good at so many things. Mr. Fern has decided to leave this organization, and I think he was always wonderful to deal with. I thank him. He was so courteous and always brought forth information. I wish him all the best. But I have to say that I also wish Mr. Frederick would go back to engineering because I think a lot of problems we're having on all the boards and for all these people in the public hearing is because Mr. Frederick isn't this kind of administrator; he's an engineer." She further claimed that he didn't go to these people and say, 'we're going to put a pipe through and try to work with them.' No, a lawyer sent a letter." Ms. Mooney then alleged that she received "telephone calls saying, 'what's going on; I got a letter from a lawyer.'" She believed that he "wouldn't be having these problems" if there had been a meeting with the neighbors instead. She next claimed that she did "have a message because I'm the truth teller, I guess, for the community, and this is the message (she held up a sign that said 'Frederick Must Go')." Ms. Mooney further believed that "Mr. Frederick would do himself a service - he will be happier, we will be happier, all of these boards will get along much better, the citizens of this community will not be shocked by a letter from a lawyer, [and] they will have an administrator who approaches them ... I'm sure he's great at being an engineer, and I hope he finds a job where's he's good and that we all can have a little more peace in our community."

Mr. Neil Williamson, who represents the Free Enterprise Forum, next commented that "I must rise to a bit of a challenge in so much that this body conducted what I thought was at the time an exhaustive public process with regard to the Community Water Supply, and I felt that that process was very inclusive to the point that there were members of the community that were sick of public meetings and really wanted a decision. That process was put forth by this Board and by Tom Frederick." He further stated that "I applaud the professionalism of Tom Frederick, and I applaud the public process that brought forth and permitted an approved Community Water Supply [Plan]."

Dr. Liz Palmer, who resides in Albemarle County, next commented that she would "completely agree with everything that Mr. Williamson said." She further stated that she "was here for all those public meetings and have been to many, many public meetings over the last couple of years until the point where I was one of the people that said, 'Why on earth are we having more public meetings.'" She next noted that public meetings have been held on all important

infrastructure improvements that have been needed, such as the Meadow Creek Interceptor project. Dr. Palmer then commented that she felt certain that the “City does lots of meetings for their citizens, as the ACSA does for all our projects, and I think that this community does an excellent job - the Public Works Department of the City, the ACSA, and the RWSA - at providing public information when requested and providing situations for public hearings.” Dr. Palmer next commented that “as somebody who has actually asked for a full-time public relations person to do all the interim work in-between all the public meetings,” she has heard from many of the Board members on the ACSA that “we have to be very, very, very careful with ratepayers’ money and that we would not like to pay another full-time employee for that kind of service.” She felt that would be the “only way you’re going to get around having somebody there all the time to go out and answer every question as it comes in, in that kind of a fashion.” Dr. Palmer next stated that she felt “Mr. Frederick has done an excellent job in having seen previous directors and the way they have communicated with the public. I just can’t say enough good things about him, and I want to thank him for everything that he has done to inform the public. He has been extremely accessible when questions are asked.”

Mr. Bob Fenwick, who resides at 901 East Jefferson Street, Charlottesville, VA, next commented that Mr. Williamson was correct about having “exhaustive hearings about the Water Plan,” but he felt that “from day one the dam was the default position.” He further claimed that because of the cost estimates “dredging never really was on the radar as being a viable alternative.” He then stated that “to this day I don’t believe we have firm cost figures on what the dam and the pipeline projects will cost.” Mr. Fenwick next commented that “I spoke in front of City Council and I showed them my proposal about dredging.” He stated further he did not show his proposal to this Board “because it was wintertime and my grass died,” but the information can be viewed at www.rivannadam.com. He felt the proposal “gets the conversation open about the value of dredging [the] Rivanna Reservoir, which no matter what option the public and this Board agrees on, will have to be done at some time anyway.” Mr. Fenwick next claimed that “you do not build a dam and then fail to dredge.”

As there were no further comments from the public, Mr. Gaffney closed this portion of the meeting.

Responses to Public Comments

Mr. Gaffney stated that he would be “more than pleased to say that I don’t think this community could have a better administrator than Tom Frederick for the Rivanna Authorities over the last five years. He has done a tremendous job of taking on some pretty challenging tasks and doing it with grace and with the utmost concern for all of the citizens. I would like to thank Tom for that.”

Mr. Tucker next moved that the Board of Directors offer a vote of confidence to Mr. Tom Frederick at this time, seconded by Ms. Thomas. The motion was approved by a 7 - 0 vote.

3.0 Business Meeting

In regards to **Item 3a), Public Hearing on Proposed Easement Condemnations for Meadow Creek Interceptor Project**, Mr. Krueger advised that it would be appropriate to first brief the Board on the actions being proposed today by RWSA. He further recommended that after the briefing, the Board offer a motion and second for the resolutions that the Board would be

requested to adopt concerning the proposed easement condemnations for the Meadow Creek Interceptor project. The Public Hearing would then be conducted prior to the Board's vote on the resolutions so that the community would know exactly the issues on which they would be providing comments. Mr. Krueger then distributed a packet of information to each of the Board members, which included the proposed resolutions to approve the condemnations for each of the five properties. Attached to those resolutions were plats from each property that is being proposed to be condemned. Also included in that packet were copies of the letters that were sent to each of the five property owners. Mr. Krueger noted that "contrary to what Ms. Mooney said about these property owners being first contacted by lawyers, they have in fact not gotten any lawyer letters. They've gotten numerous contacts from both Authority staff and [the Authority's] consultant staff to try to negotiate a take amount with each of these owners, and when these take amounts were refused, they were sent a letter by Rivanna saying, 'this is our final offer.'" Mr. Krueger further stated that after "several months of negotiating in good faith with five different property owners to obtain easements over those properties for completion of certain segments of the Meadow Creek Sanitary Sewer Upgrade Design project, [the Authority] was unable to reach a negotiated easement take with them. The Authority made bona fide offers to each of those property owners to purchase the easements for just compensation that was based on an independent appraisal done by an appraisal firm. Each property owner, except for the property that's owned by a fellow named Mr. Edmonds, rejected [the Authority's] good faith offer. Mr. Edmonds actually accepted [the Authority's] offer, but in the title search that was done after Mr. Edmonds accepted [the Authority's] offer, [it was] discovered that there were certain liens that would have preempted [the Authority's] easement and [the Authority] was unable to get in touch with Mr. Edmonds after numerous attempts in order to make the arrangement to have those lien holders paid the compensation amount, which would have to happen in order for an easement to take priority over those liens." Mr. Krueger next commented that "in order for [the Authority] to timely complete the Meadow Creek Interceptor project, [the Authority] believes it is in the best interest of the Authority to condemn these five parcels."

Mr. Krueger then noted that "it would be appropriate at this point to read the tax map numbers, the property owners, the offer amount, and the parcels," but he noted that "there is a separate resolution - they are identical in terms of wording - to condemn the easement on each of these [parcels]."

Mr. Krueger then read the resolution as follows:

WHEREAS, the acquisition of certain easements is required to complete the Meadow Creek Sanitary Sewer Upgrade Design Project (the "Project");

WHEREAS, the Project replaces the existing Meadow Creek Sewer Interceptor, which is a public necessity due to the age and limited capacity of the existing pipeline;

WHEREAS, the acquired easement interests in the affected real property will be put to public use for the provision of sanitary sewer service to the residents of the City of Charlottesville and Albemarle County, Virginia;

WHEREAS, the Rivanna Water and Sewer Authority (the "Authority") has negotiated in good faith for several months with the property owners affected by the

Project to obtain easements and has successfully negotiated easements with most of such property owners;

WHEREAS, the Authority has made a bona fide offer to purchase for just compensation the easement described below and shown on the attached plat (the “Easement”), and the owner of the property named below (the “Property Owner”) has refused to accept the Authority’s good faith offer to purchase the Easement;

WHEREAS, the Authority believe that the offer amount listed below (the “Offer Amount”) constitutes just compensation for the acquisition of the Easement; and

WHEREAS, in an effort to timely and efficiently complete the Project, the staff of the Rivanna Water and Sewer Authority has advised the Board of Directors that it is in the best interest of Authority to immediately institute condemnation proceedings to acquire the Easement for the Offer Amount by depositing such amount and filing a certificate of take in the Circuit Court for the City of Charlottesville, Virginia (the “Condemnation Proceedings”).

NOW, THEREFORE, be it:

RESOLVED, that the Board finds that a bona fide effort has been made to purchase the following Easement for just compensation from the Property Owner, and that the Property Owner has refused to accept the Authority’s good faith offer;

Tax Map Parcel Number: 48A-41.11

Property Owner: Megan A. Sacco

Offer Amount: \$104.00

Easement Type: Permanent

Tax Map Parcel Number: 48A-41.12

Property Owner: Bernard L. Seward, Jr.

Offer Amount: \$2,872.00

Easement Type: Permanent

Tax Map Parcel Number: 48A-41.14

Property Owner: Kathleen Sicard and Michael Kildoo

Offer Amount: \$5,694.00

Easement Type: Permanent

Tax Map Parcel Number: 48A-41.15

Property Owner: Robert C. Harllee and Joyce R. Harllee

Offer Amount: \$2,392.00

Easement Type: Permanent

Tax Map Parcel Number: 43B-032
Property Owner: Randy Lane Edmonds
Offer Amount: \$600.00

(Mr. Krueger noted that this amount “was not based on an appraisal because [Mr. Edmonds] had accepted the offer amount, as based on the land assessment records.”)

Easement Types: Permanent and Temporary

RESOLVED, that the Board finds that the Offer Amount represents just compensation for the acquisition of the Easement;

RESOLVED, that the Board finds that it is in the best interest of the Authority to immediately institute the Condemnation Proceedings to acquire the Easement;

RESOLVED, that Thomas L. Frederick as Executive Director of the Authority (the “Executive Director”), is authorized to execute in the name of the Authority, to acknowledge where required, and to deliver to the parties entitled thereto, the certificates, notices and other instruments and documents required by the condemnation Proceedings; and

RESOLVED, that the Executive Director is authorized to take such further actions in the name and on behalf of the Authority, including without limitation, the preparation, execution, acknowledgment and delivery of such additional agreements, instruments, documents and certificates under the Condemnation Proceedings and the transactions contemplated therein, as the Executive Director may deem necessary or appropriate to carry out the intended purposes of the foregoing resolutions.

After the reading of the resolution, Mr. Krueger asked that a Board member offer up a motion to approve the resolution that is identical to each of the five listed properties, and after the motion is seconded, open up the Public Hearing for public comments.

Mr. Fern moved that the Board of Directors vote to approve the five resolutions to condemn the five properties as listed above, seconded by Ms. Mueller.

Mr. Gaffney then opened the Public Hearing on the Proposed Condemnations of Easement for the Meadow Creek Interceptor Project at 4:42 p.m.

Ms. Kathleen Sicard Kildoo, owner of the 107 Locust Lane Court, Charlottesville, VA property, commented that she was one of the four homeowners on Locust Lane Court in attendance at today’s meeting. She then stated that after looking at the meeting agenda as well as the letter that was sent in September, their first comment is - “We haven’t received your offer. We never made any refusal letter or any indication of refusal.” She felt that the “chart was a little misleading in that the timing is not explained, but as we understood it, when the appraisal came back to us in September with the final offer on it and a request to contact KDR - who is the right-of-way representative, which we did in October - that we would be continuing to negotiate.

Based on Mr. Seward's conversation with the KDR representative, we expected to hear back from counsel for RWSA." Ms. Kildoo next commented that the homeowners had not heard anything until they received the notice last week about today's hearing "for your consideration on whether to institute proceeding for the condemnation." She next claimed that the homeowners are "continuing to negotiate and we want to negotiate. We'd like to avoid condemnation proceedings."

Ms. Kildoo next commented that when the homeowners received the "first opening offer of January 2009 from the Authority, one of the things we were told was to calculate our compensation amount and to send it to them in writing." She next stated that the homeowners "looked at" and discussed the January offer and "came back with two detailed letters in February - one talking about the proposed legal language itself in the agreement; the other one [sent] two weeks later talking about what we felt to be just compensation for the easement and the resultant damage to the remainder of our property." Ms. Kildoo noted that their second letter was sent on February 25, 2009, and they received a letter from Mr. Frederick on February 27, 2009 that said, "due to the disparaging amounts, we are going to authorize an appraisal." She next claimed that "this process started with no promise of an independent appraisal, so we were just operating under the assumption that the Authority would not get an appraisal." Ms. Kildoo next stated that she believed that the homeowners "received the appraisal and the counter offer on September 15, 2009." She noted that in that "seven-month interim, [the homeowners] had no contact with the Authority." After the appraisals were received, the homeowners discussed the matter as they have done so since this process was initiated "based on the identity of our concerns and our interests ... as a team ... our properties are all right next to each other." As discussed previously, Ms. Kildoo stated that her neighbor spoke to the KDR representative, who the neighbor alleged "essentially said "... There's nothing I can do; we're going to send it to the lawyers." Based on that statement, the homeowners "were waiting to continue the negotiations with counsel for the Authority," and she claimed this was the "position that we're in right now."

Ms. Kildoo next addressed the homeowners' concerns with some of the substance in the agreements, such as what the Authority considers to be "an existing easement that [they felt] doesn't authorize the Authority to go in and put in a 42-inch line" and that "the appraisal takes a position that there's going to be absolutely no damage to the remainder of our property - no diminution in value."

Ms. Kildoo then commented that "rather than talk about specifics - since you are considering whether to institute condemnation proceedings - at this point we would say, 'It's a surprise to us that we've refused your offer because we have sent nothing in writing nor have we said to any of your representatives that we refuse your offer. We stand ready, willing, and able to continue negotiations so we can come to a fair resolution of the issue.'"

Mr. Bernard Seward, owner of the 112 Locust Lane Court, Charlottesville, VA property who currently resides in Northern Virginia, next commented that he would be addressing "more or less the same points" as just discussed by Ms. Kildoo. He stated that he was not "fully prepared" to respond since he only received a "three business day's notice of this meeting," as he has been "overseas" and arrived home last night. He first reiterated Ms. Kildoo's comment that "from a procedural perspective, we have not rejected [the Authority's] offer and added that the letter sent to them did not set a deadline for responding to the Authority's offer." When he spoke to the KDR representative on October 22, 2009, he claimed he was told that the homeowners would be

hearing from the Authority's lawyer and that KDR were "unable to discuss our counter offers with us." Secondly, Mr. Seward then claimed that "contrary to the statement made earlier, other than the letter from Mr. Frederick, I have not had any direct contact with the Board. All I've had is contact with KDR ... so we want to be able to talk directly to someone from the Board, preferably attorneys."

Mr. Seward concluded his remarks by stating that he had the same "substantive" issues as Ms. Kildoo, as he felt the "appraisal did not take into account the diminution of value to my entire house when chopping down the trees in the backyard." Another issue of concern for him dealt with "anywhere from five to eight 100-foot mature trees that are going to be taken." Mr. Seward next claimed that the homeowners "dispute what at least has been told to us about your view of the easement." He then stated that "our view of the easement is that you have no right to replace the existing sewer line under the existing easement, so therefore what we are negotiating about is an entirely new easement." Mr. Seward felt that "under that issue, we think you should pay for the taking of our trees, both from the standpoint of replacement and if we start new."

Ms. Megan Sacco, owner of the 110 Locust Lane Court, Charlottesville, VA property, next commented that "rather than reiterating what my neighbors have just said - because as Ms. Kildoo mentioned - we have been working as a cohesive unit on this and this is the way that we have been communicating with KDR and the times we have had meetings with Mr. Frederick and the other engineers. She then reiterated that "we do want to work with you, but we want to have some direct communication." Ms. Sacco next commented that "as a real estate broker, I have some opinion on the value of property and the loss of value of property and I would like to speak to that, but I don't think this is the forum to do so." She then asked for the "opportunity to actually negotiate with you and realize that we have not refused. I have not put anything in writing throughout this whole period, and this has been a two year plus period with many, many months in-between conversations, so we have been waiting to hear back from you."

Ms. Dede Smith, who resides at 2652 Jefferson Park Circle, Charlottesville, VA, next commented that "this may be a moot point because I would really hope that you all won't vote on this, given the information that you all just [received] ... but if I could have a clarification - and I mean no harm and I'd like to thank Ms. Thomas for her time on the Board ... clarification as to voting rights given your position, Ms. Thomas, who I think is no longer on the Board of Supervisors ... if there would be a vote."

Mr. Tucker informed Ms. Smith that Ms. Thomas' term on the Board of Supervisors does not end "until 11:59 p.m. on December 31, [2009]." Ms. Smith thanked Mr. Tucker for his response and reiterated her hope that the Board would defer its vote on this item to allow the City residents the opportunity to further discuss this issue.

As there were no other members of the public in attendance at the meeting who wished to speak at this time, Mr. Gaffney closed the Public Hearing on the proposed condemnations of easements for the Meadow Creek Interceptor Project at 4:51 p.m.

Mr. O'Connell inquired when the easements would need to be acquired in order to begin construction of this project. Mr. Frederick stated that an item included on today's agenda is the awarding of construction contracts based on the number of "favorable" bids. If the Board takes favorable action today, the Authority could have the contracts executed within a three to four-

week period of time, at which time the contractor would be given a Notice to Proceed. The easements would however need to be in place in order to allow the contractor access to those properties.

Mr. O'Connell next asked if the "ultimate alternative is to file condemnation in court where the court would determine the value, then the contractor could start work." Mr. Frederick affirmatively replied and added that today's request is "to grant the right to file for condemnation." Mr. Frederick further noted that as mentioned in the Board report, if there is a property owner who has not taken full advantage of the opportunities to discuss this matter with the Authority previously but wishes to do so at this time, staff would be "more than happy" to schedule those conversations. However, the Authority was not recommending at this time that "action be deferred" until those conversations can occur, but is requesting that at today's meeting the Board authorize the Executive Director to move forward with the condemnation proceedings. Board approval would allow the Authority to "file" but does not prevent the easement issues from being "settled without having to be heard by the court."

Mr. Krueger next informed the Board about the condemnation process. He stated that the Board's approval of the five resolutions will authorize Mr. Frederick to file condemnations proceedings but that court action will not start until Mr. Frederick actually files the papers. He noted that there would be "a period of time if the [Authority] chose that Mr. Frederick could talk to the [property owners] more." Mr. Krueger also pointed out that "if Mr. Frederick files the 'Certificates of Take' with the court, the owners of the property at that point have every right to go into court and say, 'the amount that you have tendered to the court for the Certificate of Take is too low; I think it should be higher,' and present whatever evidence they want to the court to change that value. The court will make a determination as to whether we in fact have paid a just compensation for easement or not." Mr. Krueger then summarized that "if it's an issue of money, our filing of the 'Certificate of Take' does not remove the right of the property owners to argue to the court that our numbers [are] wrong."

Ms. Thomas then commented that she had asked Mr. Frederick to share again the information that he provided at the last meeting about "how many private parcels had their easements agreed to," and Mr. Frederick indicated that agreement had been reached on "54" easements, which is "96% of the length of the pipeline." Ms. Thomas felt it was important to note that "most of the landowners found this process to be something that they agreed to." Ms. Thomas believed that at the last meeting, Ms. Edwards requested the "rest of the story" as it related to the easement issue, and this was the information that was provided by Mr. Frederick that would address Ms. Edwards' question.

Mr. Gaffney next asked Mr. Frederick to provide a chronology of all the communications that were sent to the property owners and the process undertaken by the Authority and KDR in attaining the easements. Mr. Frederick stated that the easement acquisition process actually started on parcels about the time the Authority held a public meeting at Charlottesville High School in September 2008. Since that time, the Authority has been "actively talking with all the property owners on the route for probably close to a year." He noted that "there have been periods of time where [the Authority] listened to public comments, such as the desire for a public landscaping plan after the construction," as well as issues related to burying the pipe instead of laying the pipe above ground for "aesthetic reasons." Concerning four of the five issues being addressed today, the Authority has "spent additional design fees and it will represent additional

construction costs to bury the pipe further in the ground to prevent part of it being above ground.” The Authority has in some cases even moved the pipeline “further away from the homes to the extent possible without being in the stream itself.” Mr. Frederick further stated that there have been “several attempts to accommodate throughout the project where [the Authority] can and still follow all the mandatory requirements.” The Authority’s consultant, KDR, is the “primary agent, but there have been occasions when they have brought issues to [the Authority’s] attention,” which has resulted in the Authority’s direct involvement to address those issues. KDR maintains a “log” that lists all their contacts with every property owner, which consisted of multiple contacts in every case and “many opportunities for negotiation.” The Authority is “sensitive to the issue that we want to resolve as many of these items amicably as possible” and remains sensitive to resolving the five issues presented today. This project addresses a “serious public improvement that needs to be made,” and the Authority has been requested on a “number of occasions already” to delay this project. He felt that at some point a decision needs to be made to move forward with this project, as it is a “necessary public improvement, it’s needed for the protection of the environment, it’s needed for the future” and involves “40% of the entire County and City community ...” Mr. Frederick re-emphasized that “even if the decision is made today to go forward, if there are issues that we need to communicate on, we can still do that.”

Mr. Gaffney next asked about the scheduling of the court date after Mr. Frederick files the “Certificate of Take.” Mr. Krueger responded that it would be up to the property owners to initiate the court hearing; the Authority would not file that paperwork. He further explained that after “Mr. Frederick files a ‘Certificate of Take’ and tenders the money into the court, ‘the easement is granted at that point. The property owner then has a choice to go in court and say, ‘I’ll take that money,’ and they can take the money. Or they can go into court and file pleadings to initiate the process for the court to determine the fair market value of the property if they disagree with the amount that [the Authority] has tendered.”

Mr. Gaffney then inquired if after Mr. Frederick files the paperwork, the negotiation process between the homeowners and the Authority would end. Mr. Krueger replied that Mr. Gaffney’s statement was correct, but added that if the homeowners “filed a pleading, [the Authority] could still negotiate before the court determines the fair market value ... the easement is effective upon the filing of the ‘Certificate of Take.’” Mr. Krueger next commented that Board adoption of the five resolutions would authorize Mr. Frederick to file those documents with the court, but he would not necessarily have to immediately take that action. Mr. Gaffney next asked if the Board could authorize Mr. Frederick to file the “Certificate of Take” but wait two weeks in order to allow time for further negotiation with the homeowners. Mr. Tucker then commented that he understood the Authority could continue to negotiate until the time the residents took this matter to court. Mr. Krueger explained that “if the resident initiated the action to have the court determine the value and [the Authority] wanted to negotiate further, [the Authority] could do that.” Mr. O’Connell next suggested amending the wording of the resolutions that states “... that it is in the best interest of the Authority to immediately institute condemnation proceedings ...” allow some period of time if there was a “willingness” by the homeowners to “settle at a reasonable amount than for any one of us to go to court, but if ultimately, we need to move forward to institute condemnations to get the easements to do the construction ... that be in place so the Executive Director would have that authority.” Mr. O’Connell then inquired if he understood correctly that “if we instituted the condemnation, it’s through the court process that the negotiations continue. Mr. Fern next commented that he understood that the negotiations

could continue even after Mr. Frederick files the "Certificate of Take" with the court. He also did not "hear" any of the three homeowners who spoke today state that they accepted the offer, but he also felt that the homeowners wanted to continue to negotiate. Mr. Fern then stated that when you consider "what is being taken ... and what is being given back ... because in all three cases the sewer line is either being taken off their property - [the Authority] just needs a little piece for permanent [easement] - or it might remain on their property, but being removed farther away from their home." Mr. Fern also felt that the "appraisals are not out of line," based on the information provided by the Authority and his experience with these matters.

Mr. Gaffney then asked for clarification purposes if Mr. Frederick's filing of the "Certificate of Take" would give the Authority the "right to build the sewer line." Mr. Krueger confirmed that the Authority obtains the easement at that time. Mr. O'Connell next questioned if any "value is set at that point." Mr. Krueger replied that "no value is set by the court at that point."

Mr. Gaffney next inquired if the Authority would need to have the easement in place when the contractor begins his work on the project. Mr. O'Connell then commented that he felt there would be at least a 30-day period before construction would begin. Mr. Frederick next stated that he it could be a shorter period of time, but "it generally takes about three weeks to execute the contracts. He further suggested that "if the Board were to extend that period beyond about three weeks ... there was the potential that you are delaying the construction of the project.

Mr. Gaffney then inquired if the Board wanted to ask Mr. Frederick to file the "Certificate of Take no earlier than three weeks from today," which would be on January 15, 2010.

Mr. O'Connell next commented that as the homeowners indicated today, this additional time would allow for further negotiations. Mr. Krueger then advised that in order to provide Mr. Frederick "with some clarity because we recognize as part of the process of doing this that although we've had [homeowners] say that they haven't refused the offer, not responding is tantamount to a refusal or delay the [process] ... If we want to give Mr. Frederick this deadline, we would want him to have the power to do it even if none of these [homeowners] contacted him or refused to contact him or didn't talk to him ... or didn't come to an agreement."

Ms. Thomas then inquired where the January 15, 2010 date would be placed in the resolutions. Mr. Krueger responded that the last "WHEREAS clause of each resolution says, 'interest of the Authority to immediately institute condemnation proceedings ...' - if a Board member would want to offer a modification to each of these resolutions to say, 'to institute condemnation proceedings not later than January 15, 2010.'" After further discussion about the wording of the modification to each resolution, the Board agreed to say, "on or about January 15, 2010. As it was then pointed out that January 15, 2010 was a holiday, so there was agreement to change the date to "January 14, 2010."

Mr. Fern amended his motion to state in each of the five resolutions "to institute condemnation proceedings on or about January 14, 2010" and to remove the word "immediately" from that clause.

Prior to the vote, Ms. Edwards voiced her concerns about "condemnation of land" ... which brings up the history of Vinegar Hill and the mistrust and the miscommunication and actually the reality of our history as it related to that ... I just want to make sure that we get it right. I do understand that there is a great need for this. I understand the public necessity. I understand the long-term health implications, but as I listen to the public - not so much concern about money ... I want to make sure that we're giving our property owners an adequate opportunity to

communicate well their concerns, and I'd like to make sure that they're not leaving here with the feeling that the horses have already left the barn and there's not a way that they'll have an opportunity to speak their truth and their part of the story. The memo says that 'staff will remain open for further discussion with these property owners that may lead to a settlement,' so ... as we move forward with that, I want to make sure that we honor our word in doing just that - but that both parties come to a good settlement because we do need to move forward with this."

Ms. Edwards then inquired about what would be the "worst possible case scenario if the construction did have to be moved back further than the date projected. Mr. Frederick replied that as previously mentioned, "there was a need recognized several years ago for the project. It's based largely on environmental grounds. It's also based on the future of the community, but principally on the green grounds ... that we are allowed to operate a system where our old assets are properly renewed, they're properly sized, so that we carry out our environmental responsibilities of being able to contain the flow within the pipeline and not in the environment where it's doing harm." This is a "significant" issue for the Authority, as well as for the Department of Environmental Quality and the Environmental Protection Agency. For those reasons he felt there was "a clear need established for this project." Mr. Frederick further stated that the Authority has been working on this project for about three years and has accommodated requested delays. Staff has had multiple contacts with the property owners but acknowledge that the property owners in attendance at today's meeting have not agreed with the appraised value of their property and their counter offers are "substantially different" than the Authority's offer. He felt that the Board needed to decide "at what point have we done enough and at what point does the public interest to move forward exceed continuing to have continued multiple contacts on top of contacts that have already been addressed." Mr. Frederick wanted to "take issue in a fair and respectful way with some comments made earlier that suggested very limited contact." The Authority does work with an agent, but staff also gets directly involved when needed. He then referred to a comment by one of the homeowners that "recognized a period where there was limited contact," which he explained was due to the Authority's redesign of the contract "to accommodate the [homeowners'] concerns, resulting in change to landscape plans and either burying or moving the pipeline further away from the houses than originally designed. Mr. Frederick felt that it "speaks for itself that [the Authority] has made effort to negotiate fairly for the project." The Authority had a "dual responsibility - one is to make fair offers and negotiate in good faith. Another responsibility is to our ratepayers - that we don't accept every offer that any property owner gives us, but that we tie it to what is fair market value." He next commented that it was "a balancing act" to try to "weigh" both of those responsibilities.

Mr. O'Connell next commented about the savings that the Authority realized with the bids currently received for this project and how the "timing" of the estimated start of construction "versus an actual contract" could impact the project cost. Mr. Frederick replied the "bids that were received that are on the table now were extremely favorable," which he felt was a "product of the current market." The bid amounts were around 51% or 52% of the engineer's estimate, so by "moving forward now there is the potential for this community to bring this project well under the budget that was established for this project." If there were a delay and the project is re-bid, there is the risk that the markets could change and the cost for the project could substantially increase.

Ms. Thomas next clarified that she felt Ms. Edwards was asking in her previous question about the difficulties that would result by further delaying the project. Mr. Frederick replied that if the

project is “delayed too long, [the Authority] could lose the bids.” He added that the “contractor is allowed after a certain period of time to withdraw his bid.”

As there were no further questions or discussion, Ms. Mueller seconded the revised motion made by Mr. Fern concerning the Board of Directors adopting the five resolutions as amended at today’s meeting.

VOTE:

AYES: Ms. Mueller, Mr. O’Connell, Ms. Edwards, Mr. Gaffney, Ms. Thomas, Mr. Tucker, and Mr. Fern

NAY: None

ABSENT DURING THE VOTE: None

ABSENT DURING THE MEETING: None

After the vote, Mr. Frederick informed the property owners that the contact person at the Authority on the easement process is Ms. Michelle Simpson, who was in attendance and could provide her contact information to those interested persons before they left the meeting.

In regards to **Item 3c), Meadow Creek Interceptor Award of Construction Contract and Construction Management Services**, Mr. Frederick stated that the Authority received bids in early November 2009, and there was “excellent participation” from contractors, which reflected a “very favorable construction market.” As mentioned earlier in the meeting, the bid prices “are close to half of what [the Authority’s] engineer had estimated” for the project cost. He further stated that it was not “unusual for a deviation between a contractor’s price and an engineer’s estimate” to occur, but he felt the amount of the “deviation” was “pretty substantial.” The total amount for Contract A and Contract B is \$10,837,900. Contract A involves the Schenks Branch Interceptor work, but the “bulk of the project is for the Meadow Creek Interceptor.” RWSA has a pending state revolving loan with DEQ to fund the construction, which could provide a “very favorable below market interest rate” and will be addressed next as a reimbursement agenda item on the agenda following this discussion. Metra Industries, Inc., located in New Jersey, was the low bidder. After a thorough review of references and results of previous projects, it was determined that Metra Industries, Inc. is a “responsive bidder and worthy of staff’s recommendation of award” at today’s meeting.

Mr. Frederick then reported that “coupled in this same report” is a recommendation that through the Authority’s existing contract with Greeley and Hansen that [the Authority] execute Work Authorizations for Construction Management Services to be paid on a time and materials basis up to \$1,848,200. RWSA staff spent a considerable amount of time with Greeley and Hansen and their sub-consultant, Jacobs Engineering, on a responsive proposal that would be needed to ensure that the quality of the contractor’s work is “fair” and the contractor “at all times abides by the conditions in [the Authority’s] plans and specifications with respect to easement boundaries, methods of construction, tight scheduling, responsiveness to property owners’ concerns, and attendance at neighborhood meetings.” The Authority attempted to “package” the project in a manner that would be most responsive to the adjacent property owners, and these “expectations”

will be enforced through staff monitoring on-site beginning with the early stages and throughout the project.

Mr. Frederick next commented that the Authority felt that it had a “good quality team” proposed for this project, with a “very experienced construction manager with Jacobs Engineering actually leading the field team,” which will also include a “very experienced pipeline inspector.”

Mr. Frederick then stated that RWSA staff was recommending that the Board authorize the Executive Director to award a construction contract to Metra Industries, Inc., and also authorize the execution of a Work Authorization with Greeley and Hansen for Construction and Inspection Services.

Ms. Mueller moved that the Board of Directors vote to authorize the Executive Director to award a construction contract to Metra Industries, Inc. in the amount of \$10,837,900 for Contract A and Contract B for the Meadow Creek Interceptor project items, including a 10% contingency for this work as deemed necessary by the Executive Director.

Ms. Mueller further moved that the Board of Directors vote to authorize the Executive Director to execute Work Authorizations through a contract that the Authority has with Greeley and Hansen for Construction Administration and Inspection Services related to the Meadow Creek Interceptor project in an amount of \$1,848,200, including a 10% contingency for this work as deemed necessary by the Executive Director.

Mr. Fern seconded both of the above motions.

Ms. Edwards next referred to the statement in the report that read the “...re-vegetation plan which is under final design and will be bid as a separate contract by Williamsburg Environmental Group” and inquired if there would be a way to encourage local business. Mr. Frederick affirmatively replied.

Ms. Thomas then inquired about the size of the construction project team. Mr. Frederick replied that there will be three individuals, which will include “two experienced pipeline inspectors and one construction manager.” Ms. Thomas further questioned that depending upon the number of people who would be working on this project if there would be a way to hire local people for this work. Mr. Frederick replied that he believed that the way the law is written that the Authority would be required to solicit bids and award contracts based on the “lowest responsible bidder and price is really the controlling item in the award.” The Authority was “not in the position where it could mandate how the contractor hires people.” However, the Authority “was certainly in a position and wants to exercise the position of strongly encouraging the local work group to be included.” Mr. Tucker next commented that most contractors would be hiring sub-contractors, which is usual from the local workforce. Mr. Frederick then stated that the “pallet” that was developed for the landscaping work consisted of all “native plant material, which encourages local production. From his experience, the contractors for landscaping that are likely to have an advantage in terms of providing pricing are more local.”

Ms. Edwards then asked if the Authority had heard whether the State Water Control Board had approved funding for this project at their December 14, 2009 meeting. Mr. Frederick asked Dr. Wichser had any information about whether the funding was approved, and Dr. Wichser confirmed approval had been given by the State Water Control Board.

Ms. Edwards next commented that she had hoped to get as many local businesses hired for this project from this area or even from the Commonwealth of Virginia and inquired about the location of the offices for Greeley and Hansen and Jacobs Engineering. Mr. Frederick replied that both of those firms have a “presence and offices in Virginia.” He then asked Mr. Federico Maisch from Greeley and Hansen, who was in attendance at today’s meeting if he could address Ms. Edwards’ question. Mr. Maisch stated that his firm has had a presence in Central Virginia since the 1950s, with an office in Richmond, Virginia since 1954. In addition to their Richmond location, they also have offices in Norfolk, Virginia and Northern Virginia. Mr. Frederick then asked Mr. Maisch to also address Ms. Edwards’ question about the office locations for Jacobs Engineering. Mr. Maisch stated that Jacobs Engineering also has a presence in Northern Virginia and in Richmond, Virginia. Jacobs Engineering has been working with Greeley and Hansen for over 15 years. He has personally worked closely with Jacobs Engineering on large pipeline projects in Richmond, Virginia, and the firm is currently providing sub-contract work for Greeley and Hansen for projects in Northern Virginia. Mr. Maisch categorized Greeley and Hansen’s working relationship with Jacobs Engineering as being their longest, well established, “harmonious” and successful over the past 15 years.

As there were no further questions for discussion, the Board of Directors approved the motions concerning Item 3c, Meadow Creek Interceptor Award of Construction Contract and Engineering Construction Services by a 7 - 0 vote.

In regards to **Item 3d, Reimbursement Resolution & State Revolving Loan Fund**, Mr. Wood stated that the Authority has applied for state revolving loan funds in the past for projects that were close to the construction phase. The Authority intends to fund 10% or possibly more of the projects with cash with the remainder being funded by the state revolving loan money. He noted that portions of the project are not eligible for loan funds, such as the easement acquisition work. The Authority applied for this loan in June 2009 for \$30 million, which was the estimated cost for the project at that time. Board approval of the attached Reimbursement Resolution states the Board’s intent to issue tax-free debt to fund the project and “preserves [the Authority’s] right to “reimburse itself for funds already used to fund the design and preliminary work performed and any construction costs between now and the time of the actual debt proceeds being available.”

Mr. O’Connell inquired why Mr. Wood selected the \$30 million figure for the loan application. Mr. Wood stated that he believed the original estimate for those projects was \$30 million. Mr. Wood suggested that keeping the amount at \$30 million could help with funding issues that are occurring on the ENR project because the state is not going to fully fund the agreed amount in the WQIF grant. It may be a “long-shot,” but the Authority may see if any of the funds in the \$30 million application could be used for the ENR project now that it is not fully funded. The Authority will have a better idea as to the loan amount as it gets closer to the loan’s execution.

Mr. O’Connell moved that the Board of Directors vote to approve the following Resolution of Official Intent to Reimburse Expenditures with Proceeds of a Borrowing be approved at up to \$30 million, seconded by Ms. Mueller:

**RESOLUTION OF OFFICIAL INTENT TO REIMBURSE
EXPENDITURES WITH PROCEEDS OF A BORROWING**

WHEREAS, Rivanna Water and Sewer Authority (the “Borrower”) intends to acquire, construct and equip improvements to its water and sewer system, including Meadow Creek Interceptor replacement and a portion of Schenks Branch Sewer replacement, (the “Project”); and

WHEREAS, plans for the Project have advanced and the Borrower expects to advance its own funds to pay expenditures related to the Project (the “Expenditures”) prior to incurring indebtedness and to receive reimbursement for such Expenditures from proceeds of tax-exempt bonds or taxable debt, or both;

BE IT RESOLVED BY THE RIVANNA WATER AND SEWER AUTHORITY:

1. The Borrower intends to utilize the proceeds of tax-exempt bonds (the “Bonds”) or to incur other debt, in an amount not currently expected to exceed \$30,000,000 to pay the costs of the Project.

2. The Borrower intends that the proceeds of the Bonds be used to reimburse the Borrower for Expenditures with respect to the Project made on or after the date that is no more than 60 days prior to the date hereof. The Borrower reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Bonds or other debt.

3. Each Expenditure was or will be, unless otherwise approved by bond counsel, either (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditure), (b) a cost of issuance with respect to the Bonds, (c) a nonrecurring item that is not customarily payable from current revenues, or (d) a grant to a party that is not related to or an agent of the Borrower so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the Borrower.

4. The Borrower intends to make a reimbursement allocation, which is a written allocation by the Borrower that evidences the Borrower’s use of proceeds of the Bonds to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The Borrower recognizes that exceptions are available for certain “preliminary expenditures,” costs of issuance, certain de minimis amounts, expenditures by “small issuers” (based on the year of issuance and not the year of expenditure) and expenditures for construction of at least five years.

5. The Borrower intends that the adoption of this resolution confirms the “official intent” within the meaning of Treasury Regulations Section 1.150-2 promulgated under the Internal Revenue Code of 1986, as amended.

6. This resolution shall take effect immediately upon its passage.

Adopted December ____, 2009.

VOTE:

AYES: Ms. Mueller, Mr. O'Connell, Ms. Edwards, Mr. Gaffney, Ms. Thomas, Mr. Tucker, and Mr. Fern

NAY: None

ABSENT DURING THE VOTE: None

ABSENT DURING THE MEETING: None

In regards to **Item 3e), Resolution of Appreciation for Sally H. Thomas**, Mr. Gaffney read into the record the following Resolution of Appreciation for Sally H. Thomas:

**RIVANNA WATER & SEWER AUTHORITY
BOARD OF DIRECTORS**

Resolution of Appreciation for Sally H. Thomas

WHEREAS, the Rivanna Water & Sewer Authority Board of Directors wishes to express its sincere appreciation to Sally H. Thomas for her service on the Board during 2009; and

WHEREAS, Ms. Thomas is well known and respected for her leadership in promoting the sustainable management of the community's water resources; and

WHEREAS, the Rivanna Water & Sewer Authority Board of Directors is most grateful for the professional and personal contributions Ms. Thomas has provided to the Rivanna Water & Sewer Authority and to the community; and

NOW, THEREFORE, BE IT RESOLVED that the Rivanna Water & Sewer Authority Board of Directors recognizes, thanks, and commends Ms. Thomas for her distinguished service, efforts, and achievements as a member of the Rivanna Water & Sewer Authority Board of Directors, and presents this Resolution as a token of esteem, with its best wishes in her retirement.

BE IT FURTHER RESOLVED that this Resolution be entered upon the permanent Minutes of the Rivanna Water & Sewer Authority.

Michael Gaffney, Chairman
Robert W. Tucker, Jr., Secretary-Treasurer
Holly Edwards
Gary W. Fern
Judith M. Mueller
Gary B. O'Connell

Ms. Thomas commented after the vote that her experience on the Board has been a “pleasure” and “it’s been interesting on this side of the table after all those years on that side.” She further stated that she was reminded today of one of her resolutions “when I moved from that side to this side was to always speak loud enough so everyone could hear me and I think I failed in that resolution.” She added that she felt everyone should keep that resolution in mind. Ms. Thomas then thanked the Board for their Resolution of Appreciation.

Mr. Tucker moved that the Board of Directors vote to adopt the above Resolution and further moved that the Resolution be entered upon the permanent Minutes of the Rivanna Water & Sewer Authority, seconded by Mr. Fern.

VOTE:

AYES: Ms. Mueller, Mr. O’Connell, Ms. Edwards, Mr. Gaffney, Mr. Tucker, and Mr. Fern

NAY: None

ABSTAINED: Ms. Thomas

ABSENT DURING THE VOTE: None

ABSENT DURING THE MEETING: None

8.0 Other Items from Board/Staff not on the Agenda

Ms. Thomas stated that she had attended two meeting today “dealing with the Nutrient Loading of the Chesapeake Bay that is going to be determined in broad figures by EPA and then in more specific amounts by the Commonwealth of Virginia.” She felt “it was very clear that if the non-point sources of pollution to the Chesapeake Bay are allowed to get what EPA would call ‘out of control,’ then everyone is going to look to the point sources,” and it would be to the “benefit” of RWSA and other water and sewer authorities to help control the non-point sources “whenever possible, such as with Rivanna’s Watershed staff. Otherwise, she felt it would “come home to roost on the point sources because they are so easy to point to.”

10.0 Adjournment

There being no further business, Mr. Tucker moved that the meeting be adjourned, seconded by Ms. Mueller. All members present voted aye, and the meeting was adjourned at 5:29 p.m.

Respectfully submitted,

Mr. Robert W. Tucker, Jr.
Secretary-Treasurer