

**CITY OF LEWES
BOARD OF PUBLIC WORKS
Regular Meeting Minutes
May 22, 2019**

The Wednesday, May 22, 2019 regular meeting of the Lewes Board of Public Works was held at 12:00 Noon in the Lewes BPW Upstairs Meeting Room, 107 Franklin Avenue, Lewes, Delaware.

1. WELCOME, CALL MEETING TO ORDER AND PLEDGE OF ALLEGIANCE

President Lee called the meeting to order at 12:00 Noon and led the Pledge of Allegiance. A moment of silence was observed.

2. ROLL CALL

Board Members Present:

D. Preston Lee, P.E.
Jack Leshner
A. Thomas Owen
Robert J. Kennedy, III
Thomas Panetta

Ex-Officio Members Present:

Vice Mayor Fred Beaufait for Mayor Becker
Darrin Gordon, General Manager
Michael Hoffman, Legal Counsel

Others Present:

Austin Calaman, Assistant General Manager
Kristina Keller, BPW
Lewes City Manager Ann Marie Townshend
City Councilwoman Bonnie Osler
Jackie Doherty, Recording Secretary

3. REVISIONS AND/OR DELETIONS TO THE AGENDA

President Lee stated because Mr. Hoffman has been delayed, Agenda Item #12 will be moved to after Agenda Item #15.

4. CONSENT AGENDA

- a) Receive the White Marsh Environmental Systems, Inc. Report**
- b) Receive Vice President Report**
- c) Receive Secretary Report, approval of minutes dated April 24, 2019**
- d) Receive Treasurer Report**
- e) Receive Assistant Treasurer Report**

ACTION: *Mr. Leshner made a motion to approve the consent agenda with the April 24, 2019 minutes as amended; Mr. Owen seconded the motion, which passed unanimously.*

5. Receive the President’s Report

President Lee stated he had no report for today.

6. Receive the General Manager’s Report

Mr. Panetta questioned the power outage that occurred on Sunday, May 19th in some of the restaurants on Second Street. There is a concern that no information was made available on the website or emails sent.

Mr. Gordon stated there were five meters out on Second Street with service restored in 45 minutes. One reason there was no information available or emails sent was it happened on a weekend and the service was restored so quickly. A Staff meeting will be scheduled shortly, and this issue will be reviewed. There was an outage today in two homes on Rodney Avenue caused by a squirrel.

7. ELECTION OF DIRECTORS OF THE BOARD AND THE APPOINTMENT OF PRINCIPALS TO THE DIVISIONS (D. Preston Lee, P.E. President)

ACTION: *Mr. Owen made a motion to nominate D. Preston Lee for President, A. Thomas Owen for Vice President, Robert J. Kennedy for Secretary, Jack Leshner for Treasurer, and Thomas Panetta for Assistant Treasurer; Mr. Panetta seconded the motion. With no other nominations, the motion passed unanimously.*

President Lee stated principals to the divisions would remain the same.

PRESENTATIONS

None

OLD BUSINESS

8. Policy on impact fees implementation—deliverable June meeting

Mr. Gordon stated Mr. Hoffman made a request at the meeting in April for the policy to be reviewed at the June meeting. There were no objections.

9. By-laws workshop scheduled for June 26, 2019 at 3:00 P.M.

Mr. Kennedy stated the changes requested at the first workshop meeting have been completed for review at the meeting in June.

10. Open forum/general discussion for the 2019-2023 Capital Budget acceptance with full edits from review. INFORMATION/DISCUSSION/ACTION (D. Gordon)

Mr. Gordon reviewed the plans for projects needed in water line mains and sewer lines located in DelDOT roads requiring a proposal to increase the 5-year sewer budget to \$2.13M. State funds may be available for lead removal.

Mr. Panetta questioned why ‘budget with borrowing’ is stated.

Mr. Gordon will check the budget listed for January 31st to answer Mr. Panetta’s question.

ACTION: *Mr. Panetta made a motion to approve the Capital Budget as submitted; Mr. Leshar seconded the motion, which passed unanimously.*

NEW BUSINESS

11. Open forum/general discussion accepting the professional services contract of NISC for the BPW Business Management System. (D. Gordon, A. Calaman)

Mr. Gordon provided the proposal from NISC to replace Blue Ocean stating the cost to begin is \$129,000 with an expiration date of July 20, 2019.

Mr. Calaman stated NISC gave an on-site presentation to address BPW concerns regarding integration of the system and how to eliminate six vendors from reviewing the billing process and customer portal for the credit card payment process.

Mr. Calaman reviewed the following:

- BPW logo with smart meters similar to cooperatives in the use of apps; the apps can be designed to have any information requested;
- Addition of the mosaic feature;
- Remittance checks scanned; NISC will handle all billings and postage; there may be a slight change in the style of the bills;
- Host protection from natural disaster;
- Costs will all be reduced including credit card fees, licensing fees, and time saved by IT Staff will improve efficiency.

Concerns and questions discussed included:

- Cyber security and concerns for the safety of the electric, water, and wastewater plant;
- Change will take about one year, and Blue Ocean will continue to be paid during this time;
- Mr. Calaman will check into Ransomware;
- Data to be transferred by automatic extraction; Mr. Leshar is working with Mr. Calaman on the accounting software to be sure there are no lapses and that everything is transferred; auditors will also do a review;
- Important to test modules first; Board member function to send confidential information; all information stored in cloud can be located in a remote location without additional hardware.

ACTION: *Mr. Owen made a motion to accept the NISC contract; Mr. Kennedy seconded the motion, which passed unanimously.*

**13. Open forum/general discussion Nationwide/UBS defined benefits review.
INFORMATION/DISCUSSION/ACTION (D. Gordon)**

Mr. Gordon stated the three BPW accounts include: 1) Fulton Bank operating account; 2) Reserve Fund managed by UBS based on the Board's policy; 3) Defined benefits account used to pay benefits to retired employees and dividends to some current employees.

Mr. Gordon gave a review of how \$1.9M was transferred from Great West, who was managing the defined benefits account but was discontinuing business, to Nationwide with UBS managing the account. It was decided that the funds would be transferred in portions to prevent a 20% loss. Sections of the 109-page UBS managing report for the first year were provided for review. The report lists all the funds where the \$1.9M is invested and how these funds performed for the year.

Mr. Gordon stated UBS has requested permission to transfer money from three of the investment accounts that are not doing well.

**14. Open forum/general discussion for the creation of a defined management/investment policy.
INFORMATION/DISCUSSION/ACTION (D. Gordon)**

Mr. Gordon stated Leland Bishop, who wrote the UBS managing report, will be creating a Board policy for the BPW defined benefits account similar to the Reserve Fund policy. The new policy will be received today and will be an agenda item for review at the June meeting.

**15. Open forum/general discussion for the use of BPW communications to benefit non-profits.
INFORMATION/DISCUSSION/ACTION (D. Gordon)**

Mr. Gordon provided a copy of the flyer (this flyer contains a request for donations) that Go Fourth Lewes requested be included in the BPW billing statements.

Discussion of concerns included:

- The BPW Charter and Resolution state there is only one non-profit donation given each year and this is to the Lewes Fire Department;
- The number of requests to BPW for donations from other non-profit organizations; allow only those that are of a general interest to the City;
- Now BPW is converting to the new IT system; future electronic billings will reduce the number of bills that are mailed;
- BPW customer communications should only pertain to utility-related issues; keep the BPW and City responsibilities separate except for emergency issues;
- Consult with Mr. Hoffman regarding developing a policy that may allow information to be included from the City regarding emergencies or issues of general interest.

ACTION: *Mr. Leshner made a motion to deny the request for use of BPW communications to benefit non-profits; Mr. Kennedy seconded the motion, which passed unanimously.*

12. Open forum/general discussion for consideration of waiver of pre-annexation agreement and the requirement to connect to BPW water and sewer for property Tax Parcel 335-8.00-9.00, New Road and Captains Circle. INFORMATION/DISCUSSION/ACTION (D. Gordon)

Mr. Gordon stated a petition was received from Mr. Peter requesting, through his attorney, that the pre-annexation agreement and the requirement to connect to all utilities be waived. Plan for water supply includes an onsite well run by a geothermal heat pump system with the electric purchased from BPW and sewage disposal using the onsite septic system.

Mr. Peter spoke about his plans for utilities on the property when he was informed that he would need to sign the pre-annexation agreement and purchase all utilities from BPW, which he was not told during the buying process for the lot.

Mr. Peter reviewed the process he followed including:

- DNREC stated well permit would be allowed; told by the Public Service Commission (PSC) that there were recent septic system permits issued and wells drilled recently for properties on New Road;
- PSC stated he was permitted under State statute to have access to drinking water based on the location of the property and separation between the water main and where the house is to be built;
- Estimate from Caswell was \$50,000 for the water and sewer connection to BPW across the road; sewer main located on the property would require the connection of pipe for \$25,000;
- Spoke to Mayor Becker regarding advantages of being annexed into the City, and after his discussion, decided there were no advantages to annexation;
- Issue of 'Property Ownership Rights'; hired attorney Tim Willard who advised Mr. Peter that he has the right to have a water well if it is 200' away from the water main; plans were for the house to be built set back;
- Issue of pre-annexation requirement for a single-family home property vs. a major subdivision.

Mr. Peter stated his request today is for the pre-annexation agreement to be waived, to purchase electric and sewer from BPW, but to supply his own drinking water from a geothermal well.

Mr. Hoffman stated there are two issues before the Board for the waiver request:

1. Connection to BPW electric and sewer, but not to water.
2. Obligation to sign the pre-annexation agreement.

Mr. Hoffman reviewed the BPW Charter that states the authority of BPW to require utility connection. Also, Resolution #13-004 was reviewed regarding a pre-annexation agreement requirement for properties outside municipal limits of the City, but within BPW service area, requesting utilities.

Mr. Hoffman questioned Mr. Peter if the PSC was aware of the BPW Charter and their authority to require BPW water connection when he spoke with them.

Mr. Peter stated he was told that, in their opinion, the State statute (Title 7-DNREC Regulations and Statutes) would be the governing document.

Mr. Hoffman stated he has spoken with Mr. Willard in reference to the DNREC Administrative Regulations and the fact that the BPW Charter is an Act of the General Assembly. They do have a disagreement on the supremacy of applicable authority. This issue is regarding Mr. Peter's request for the geothermal well instead of BPW water connection.

Discussion of questions and concerns included:

- Two wells will be drilled with one for water supply and one for water return; DNREC does not require the drinking water well and geothermal supply well to be separate;
- The 200' requirement is to the foundation; BPW estimate is \$4,200 to cross the road and have the water line into the home including a 2" line under New Road; this does not include the service line; standard septic system;
- Costs to drill the geothermal well 60' to 80' and the drinking water well to 150'; difference in commercial prices for going across or under State roads; documentation of the cost estimates to be provided to the Board;
- Staff concerns regarding water quality of the wells due to saltwater intrusion with this property being next to the Great Marsh and Delaware Bay.

Mr. Hoffman read the three reasons DNREC may withhold a permit, according to their Administrative Regulations that govern issuance of permits, into the record with #3 referencing the public distribution line being within 200' of the structure.

Mr. Beaufait stated his concern is that the property is surrounded by the City limits but still considered in the County. The residents will be able to take advantage of all City streets and conveniences. Most cities require the property be in the city to receive utilities and granting these waivers will set a precedent. The City should be part of this decision. There is also a concern that this is considered an island in the City.

Mr. Peter stated he would provide documentation from DNREC of water wells and septic systems installed last year in BPW service areas.

Mr. Hoffman read Section 4.12.2 of the BPW Charter regarding the authority of the Board to mandate water connection in the municipal limits and service areas outside the City. Staff is concerned that the well without connection may pose a risk to the water system and recommends the Board exercise the authority and require connection.

Mr. Hoffman stated this is where Mr. Willard disagrees and because this issue needs further discussion and research, he would recommend the request regarding water connection be tabled. Documentation of cost estimates and well and septic installations last year are needed for review.

Mr. Gordon stated he will obtain BPW work estimates from East Coast Underground. Documentation from DNREC regarding the requirements for the depth of the two wells is also needed.

Edith Cross, owner of the property, stated this delay is causing a hardship for her and she was never notified about the BPW issues.

Mr. Beaufait stated he met with Mrs. Cross in the past to try and encourage her to have the property annexed and she refused. Discussion of BPW issues were not needed at that time.

Mr. Hoffman stated the Board is applying policies that have been in place since 2013 with the addition of Resolution #13-004. The Board cannot make a decision without all documentation being provided. The first letter received from Mr. Willard was dated May 15, 2019.

Realtor Kathy Engel stated the problem with the water issue being tabled is the contract for purchase of the lot expires at the end of May.

Mr. Gordon noted that Mr. Peter's request was on the agenda for March and April but postponed at his request.

ACTION: *Mr. Panetta made a motion to table and defer the request until the applicant provides additional pricing information on the cost for the water service and construction information on the depth of the well; Mr. Kennedy seconded the motion, which passed unanimously.*

ACTION: *Mr. Kennedy made a motion to approve the waiver that requires the applicant to sign the pre-annexation agreement and allowing BPW to provide electric and sewer; Mr. Owen seconded the motion.*

Mr. Hoffman stated removal of the pre-annexation agreement will apply to all utilities and not only electric and sewer. The two requests from Mr. Peter need to be considered as separate issues. The pre-annexation agreement would prohibit the applicant from connecting to any BPW services. The water issue is separate.

Mr. Panetta stated he is opposed to the waiver for the pre-annexation agreement because it will set a precedent. The waiver will create an island in the City for the residents to receive all the City's services. The policy that has been in place since 2013 should be enforced.

Mr. Kennedy stated he feels Resolution #13-004 is unenforceable, discriminatory between customer classes, and needs to be rescinded. The waiver is appropriate and should be granted. Utility services should not be withheld from property owners who do not want to annex into the City.

Mr. Owen agreed with Mr. Kennedy stating the resolution was created by BPW and not the City or State.

Mr. Beaufait stated the difference of opinion with Mayor and City Council needs to be discussed to work together for an agreement to benefit the BPW and the City. The BPW decision needs the support and cooperation of the City.

Mr. Hoffman recommended the Board recess for executive session.

ACTION: *Mr. Kennedy made a motion to recess to executive session for advice of Counsel; Mr. Panetta seconded the motion, which passed unanimously.*

ACTION: *Mr. Owen made a motion to return to general session; Mr. Kennedy seconded the motion, which passed unanimously.*

Mr. Kennedy stated he would withdraw his previous motion. Mr. Owen withdrew his second to the motion.

ACTION: *Mr. Panetta made a motion to table and defer the request to waive the pre-annexation agreement until further advice from Counsel; Mr. Leshner seconded the motion, which passed unanimously.*

Mr. Beaufait requested that Mr. Hoffman consult with City Solicitor Glenn Mandalas.

Mr. Peter requested a geological study to determine the quality of the City's water supply for residential properties.

Mr. Hoffman stated this request will be directed to Staff.

Mr. Peter stated he feels this is a gross disservice by the Board in not having a decision today. The reason he did not appear before the Board until now is he needed additional time for research. He requested a special meeting to discuss the requests in order to continue the contractual decision with Mrs. Cross.

Mr. Hoffman stated President Lee has the authority to schedule a special meeting if all the information needed is received in time for the seven-day notice requirement.

16. MEETINGS ATTENDED BY BOARD MEMBERS OR STAFF

Mr. Owen reported he attended the Lewes Planning Commission meeting.

Mr. Panetta reported he attended the New Road Master Plan meeting; Mayor and City Council; Lewes Planning Commission; Hazardous Waste Collection Day; conference calls with DNREC and FEMA regarding the 500-year floodplain.

President Lee reported he attended the Mayor and City Council meeting; met with Mayor Becker, Ms. Townshend, and Mr. Gordon; Hazardous Waste Collection Day; Front Street Project inspection; Highland Acres and Mariners Retreat progress meeting; hearing at Legislative Hall.

17. CALL TO THE PUBLIC

None

18. CALL TO THE PRESS

None

19. EXECUTIVE SESSION

ACTION: *Mr. Owen made a motion to adjourn to executive session; Mr. Leshar seconded the motion, which passed unanimously.*

20. RETURN TO OPEN SESSION

21. OPEN FORUM/GENERAL DISCUSSION AND/OR ACTION ON ANY ITEM FROM THE EXECUTIVE SESSION.

22. ADJOURNMENT

The meeting adjourned at 3:00 P.M.

Respectfully submitted,
Jackie Doherty, Recording Secretary
Lewes Board of Public Works