

**CITY OF LEWES
BOARD OF PUBLIC WORKS
Regular Meeting Minutes
June 26, 2019**

The Wednesday, June 26, 2019 regular meeting of the Lewes Board of Public Works was held at 4:00 P.M. in Lewes City Hall, 114 E. Third Street, Lewes, Delaware.

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

ACTION: *Mr. Owen made a motion to return to regular session from the executive session held at 3:00 P.M.; Mr. Kennedy seconded the motion, which passed unanimously.*

President Lee called the meeting to order at 4:00 P.M. 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:

Theodore Becker, Mayor
Darrin Gordon, General Manager
Michael Hoffman, Legal Counsel

Others Present:

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

3. REVISIONS AND/OR DELETIONS TO THE AGENDA

None

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 May 22, 2019**
- d) **Receive Treasurer Report**
- e) **Receive Assistant Treasurer Report**

ACTION: *Mr. Panetta made a motion to approve the consent agenda as presented; 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 Report

Mr. Gordon stated he had no report for today.

Mr. Kennedy asked for an update on the installation of the odor control equipment at Lift Station #4.

Mr. Calaman reported the equipment is scheduled to be delivered on Friday, June 28th. The equipment will be installed, BPW Staff will receive training, and the hope is for it to be running by July 4th.

OLD BUSINESS

7. Open forum/general discussion of proposed Defined Benefits Management Policy. INFORMATION/DISCUSSION (D. Gordon)

Mr. Gordon reviewed the Defined Benefits Plan stating the balance is approximately \$2M with BPW contributing about \$180,000 to \$200,000 per year. Nationwide has requested a written investment policy statement and has sent a sample policy created by Leland Bishop. One of the suggestions was to form an investment committee. Mr. Owen stated outside third parties may be asked to be part of the committee.

Mr. Gordon asked that the Board review the sample policy for changes. This will be an agenda item to be considered for adoption, with all suggested changes included, at the meeting in July.

Mr. Hoffman will also review the sample policy for discussion in July.

8. 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. Peter stated he was here for a continuation of the last meeting and to answer questions from the Board.

Mr. Peter reported:

- He spoke to DNREC and was informed there are no restrictions regarding the drinking water well and geothermal supply well to be separate or for well depth requirements. DNREC also stated domestic water well permits were issued last year and this year for properties located within the two-mile CPCN area; approval would not set a precedent.
- The Delaware Geological Service stated there should be no problems with saltwater infiltration unless he was located at the edge of the marsh or bay.

- Spoke with Ralph Durstein, attorney for DNREC regulations at the Department of Justice, regarding Charter vs. DNREC regulations, supremacy issue, and if this would set a precedent; Mr. Durstein stated there is no case law in Delaware where a resident would not be permitted to have a drinking water well where they wanted with the only issue being septic system vs. public treatment system; ‘Rule of Reason’ would apply; the judge would consider the DNREC regulations and provisions in the Charter when deciding if Mr. Peter has the right to have a drinking water well; the advice from Mr. Durstein was provided as a public servant and not as legal counsel.

Mr. Peter stated he has purchased the property since the last BPW meeting. His request is to have a drinking well with sewer and electric provided by BPW. It would be an economic hardship for him to have BPW provide the water line since he already has the well.

Mr. Panetta asked for the Board to be provided with clarification from DNREC regarding the permits issued for wells in the last two years within the two-mile CPCN radius or were these located within the City boundaries.

Mr. Owen stated there was concern about the thermal heating system for the house being discharged into the well and going into the drinking water.

Mr. Hoffman stated he will speak with Mr. Durstein about the supremacy issue. The question is if the Charter gives BPW the authority to require the water line vs. DNREC regulations. Also, it would be helpful to the Board to see documentation from DNREC stating there are no restrictions regarding the depth of wells.

President Lee stated on Monday, June 24, 2019, Mayor and City Council adopted a resolution directing, among other things, that this Board require a signed pre-annexation agreement as a prerequisite to providing utility services. For multiple reasons, I disagree that the City has authority to adopt the subject resolution and the Board should reject its application. The City’s resolution is particularly troublesome in light of the concerns raised by the applicant regarding the enforceability of a pre-annexation condition to providing utility services. In light of these circumstances, it would be prudent for these issues to be resolved before the Board considered the applicant’s request for a waiver of the pre-annexation condition.

ACTION: *Mr. Owen made a motion stating the Board concurs with the statement read by President Lee concerning the City’s resolution, and, further moves that we table consideration of Agenda Item #8 to allow the opportunity to resolve the referenced issues before considering the applicant’s waiver request; Mr. Panetta seconded the motion, which passed unanimously.*

**9. Open forum/general discussion for the utility services to Admirals Chase.
INFORMATION/DISCUSSION/ACTION (D. Preston Lee, P.E.)**

Mr. Gordon stated he provided Mayor Becker with the signed pre-annexation agreement for Admirals Chase two weeks ago. This is a development of 26 homes on Gills Neck Road, not contiguous with the City, with a request for water services only.

NEW BUSINESS

10. Open forum/general discussion for consideration of providing credit protection services to customers whose information was compromised. INFORMATION/DISCUSSION/ACTION (D. Gordon)

Mr. Gordon reported that three weeks ago BPW was informed the customer information system had been hacked; this is currently being investigated by the FBI Secret Service and the insurance carrier's forensic firm; communication was halted and the system copied with these copies given to the FBI; BPW has hired a local firm, DFDR, to investigate; it is believed access was through passwords that Blue Ocean had not refreshed in years; Blue Ocean has refused to respond to our requests; additional information should be available later today.

Mr. Gordon stated a limited number of credit cards (about 1,000) were compromised belonging to customers who have recurring payments, and this was reported to the State Attorney General. The next step is to consider offering these customers credit protection by LifeLock. When contacted, most stated they currently have protection through their bank with 90% not making any changes to their card numbers.

Mr. Gordon estimates about 166 customers will take the plan and recommends offering the minimum plan to those whose cards were compromised. This will be the LifeLock per-person plan for a period of 12 months with a cost to BPW of about \$7,000. Depending on the investigation results, Blue Ocean may be required to reimburse BPW for these costs.

Mr. Owen stated he agrees with Mr. Gordon that the plan should be offered. Flyers could be sent with bills to provide all customers with the information.

ACTION: *Mr. Owen made a motion to offer the LifeLock minimum plan, for a period of 12 months to be paid by BPW, to those customers whose credit cards were compromised; Mr. Panetta seconded the motion, which passed unanimously.*

11. Open forum/general discussion of proposed Resolution 19-003 to define the collection of Impact Fees. INFORMATION/DISCUSSION/ACTION (D. Gordon)

Mr. Hoffman stated the purpose of the draft resolution is to document a policy and approach for a waiver from the obligation to pay impact fees at the time utilities are installed.

ACTION: *Mr. Panetta made a motion to have Resolution 19-003 read into the record by title only for consideration and adoption by the Board; Mr. Owen seconded the motion, which passed unanimously.*

Mr. Hoffman read Resolution 19-003 into the record.

ACTION: *Mr. Panetta made a motion to accept Resolution 19-003 as submitted; Mr. Owen seconded the motion, which passed unanimously.*

12. Open forum/general discussion for the BPW Bylaws.

INFORMATION/DISCUSSION/ACTION (R. Kennedy, A. Thomas Owen)

Mr. Kennedy stated he and Mr. Owen have completed the requested changes with the final draft being submitted today for adoption by the Board.

Mr. Hoffman stated his comments have also been revised.

Mr. Leshner requested a change to Section 3.1 to state the General Manager be considered the Chief Executive Officer.

ACTION: *Mr. Owen made a motion to adopt the Bylaws as written with the addition to Section 3.1 stating the General Manager be considered the Chief Executive Officer; Mr. Kennedy seconded the motion, which passed unanimously.*

13. MEETINGS ATTENDED BY BOARD MEMBERS OR STAFF. Discussions of meeting and lessons learned from the APPA Conference.

Mr. Panetta spoke about the highlights of the APPA meeting including:

- Regulatory update; changes in EPA regulations for hazardous air pollution; increased efficiency of heat pumps; utilities in the year 2029;
- Power for electric vehicles; battery storage; incident in North Carolina in April regarding an explosion possibly from batteries; future impact from lithium batteries.

Mr. Kennedy spoke about the APPA meeting including:

- Microsoft Study stating the human attention span is 8 seconds;
- Renewable vs. carbon free; consumer demand; importing energy;
- Advance modular reactors; Excel goal to be 85% carbon free by 2030 and 100% by 2050; will rely on wind, solar, and nuclear energy with the help of new technology; reserve obligation; robots and artificial intelligence; use of algorithms to obtain consumer information;
- The need to check policies to protect the privacy of customers.

Mr. Owen discussed the following regarding the APPA meeting:

- Cyber hacking; company in Missouri reported 100,000 to 500,000 attacks per day;
- Solar energy; carbon footprint;
- Hydroelectric considered renewable energy.

President Lee spoke about the APPA meeting:

- Problems with finding new employees; diversity;
- 24-hour renewables; residential solar; metering; smart meter system;
- Governance 101 and Board vs. Staff responsibilities;
- Conflict of interest and code of conduct policies; whistleblowers; confidentiality;
- Distributed energy, smart grids.

14. BOARD OR STAFF REQUESTS FOR AGENDA ITEM (S)

None

15. CALL TO THE PUBLIC

None

16. CALL TO THE PRESS

None

17. EXECUTIVE SESSION

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

18. RETURN TO OPEN SESSION

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

20. ADJOURNMENT

The next meeting is scheduled for Wednesday, July 31st at 4:00 P.M.

The meeting adjourned at 5:30 P.M.

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