

Board of Municipal Utilities
Meeting Minutes
October 18, 2022
201 Miller Road
Avon Lake, Ohio

Call to Order – Roll Call

The meeting was called to order at 6:53 PM following the Work Session. The meeting was held in-person using web-based video conferencing technology and streamed live over Facebook.

Present: Mr. Abram, Mr. Dzwonczyk, Mr. Rickey, Mr. Rush, and Mrs. Schnabel.

Also present: CUE Munro, CUO Yuronich, Facilities & Asset Manager Kimevski, and Attorney Khawam of Mansour Gavin.

Approve Minutes

Mr. Dzwonczyk presented the Minutes of the October 4, 2022 regular meeting. With no additional changes, additions or corrections noted, he ordered that the minutes stand and be distributed as presented.

Public Speakers

None.

Correspondence

None.

Expenditures

Following review of expenses dated October 18, 2022, for funds and amounts as follows, Mr. Abram moved, Mr. Rickey seconded, to approve the expenditures of September 19 through October 13, 2022:

Water Fund 701	\$	340,045.08
Wastewater Fund 721	\$	308,053.80
MOR ETL1 Fund 703	\$	181,164.53
MOR ETL2 Fund 762	\$	374,820.57
LORCO Fund 749	\$	11,913.54
Water Construction Fund 704	\$	172,940.31
Wastewater Construction Fund 724	\$	3,842.25

Ayes (per voice vote): Abram, Dzwonczyk, Rickey, Rush, and Schnabel.

Nays: None

Motion carried.

Legal Services

Mr. Munro informed the Board that the current not-to-exceed amount approved by the Board for legal services on the Aqua Marine-Kopf litigation is \$190,000. Due to the defendant filing appeals in the case, the not-to-exceed amount will need to be increased to cover additional legal expenses. Mr. Munro said that he discussed the budget with Mansour Gavin representatives and the new recommended not-to-exceed amount should be increased to \$250,000. This represents an additional \$60,000 to cover the appeals process.

Mr. Dzwonczyk said that Avon Lake Regional Water had won a judgement in May against Kopf Construction and asked Mr. Munro to explain why the additional legal services were necessary. Mr. Munro confirmed that the Board of Municipal Utilities and Avon Lake Regional Water was awarded a Motion for Summary Judgement in the case. He said that the defendant, Kopf Construction, filed an appeal to the decision rendered by Judge Miraldi of the Lorain County Court of Common Pleas.

Mr. Dzwonczyk asked if this litigation was due to the payment of fees that all developers pay for connecting into the water and sewer system. Mr. Munro said that the basis of the lawsuit surrounded the non-payment of Trunk Sanitary Sewer Fees by Kopf Construction for development at the former Aqua Marine resort on Miller Road. Historically the Board of Municipal Utilities has the authority to determine what land is developed and undeveloped when applying Trunk Sanitary Sewer Fees.

Mr. Dzwonczyk said that the Lorain County Court of Common Pleas granted the Motion for Summary Judgement and he asked if this meant the court ruled in the Board's favor based on the facts of the case. Mr. Munro affirmed that the court ruled in the Board's favor and that Kopf was ordered to pay the outstanding fees owed. The additional money that is being requested for legal services is for Mansour Gavin to appropriately defend the appeals that Kopf has filed in regard to the decision handed down by the court.

Mrs. Schnabel moved, Mr. Dzwonczyk seconded, to authorize the CUE to execute a Letter of Engagement with Mansour Gavin for legal services related to the Kopf – Aqua Marine litigation that amends the not-to-exceed budget amount to \$250,000.

Ayes (per voice vote): Abram, Dzwonczyk, Rickey, Rush, and Schnabel.

Nays: None

Motion carried.

Ohio AWWA Water Utility Council

Mr. Munro informed the Board that he was recently nominated to serve on the Executive Committee as the Vice Chairman of the Ohio section of the American Water Works Association Water Utility Council. Mr. Munro said that he has accepted this nomination and is looking forward to serving in this important role, while also advancing the interests of water utilities in the state of Ohio.

Project Updates

ETL Design Services: Mr. Yuronich said that the permit application for the U.S. Army Corps of Engineers has been submitted for review. The review process will take approximately six weeks before a permit can be issued. Staff is awaiting the draft legal descriptions from Bramhall Engineering. Once those are received, the Engineering Services Manager will review them for accuracy.

WFP Improvements: Mr. Yuronich said that staff is still awaiting receipt of the comments from the Ohio EPA. Upon further inquiry as to what is causing the delay, staff was informed that comments have been completed but are awaiting final approval by the lead engineer.

2022 Water Line Bundle Project: Mr. Yuronich said the base and intermediate layer of asphalt for the western half of Coveland is scheduled for October 18, 2022 dependent on weather conditions. Reseeding of grass at two locations on Avon Point will be addressed during the week of October 17, 2022. The driveway apron restoration for the elementary school on Redwood was completed on October 14, 2022 to coincide with school not being in session. Waterline work on Vinewood is complete and water service tie-ins will take place after the successful completion of bacteria testing.

Additional Storage Building: Mr. Yuronich said that Kendera continues with site work for the new building. Excavation for the foundation and the installation of the rebar will commence the week of October 17, 2022. Conditional approval on the slab and foundation permit has been received by the Building Department and staff is coordinating with Bramhall and Bluescope to ensure all Ohio building requirements for special inspections are addressed in the plans.

CUE Report

No report.

Miscellaneous & Member Reports

Mr. Dzwonczyk reported that he participated in a mediation meeting on Tuesday October 18, 2022 with representatives from Mansour Gavin and Mr. Munro regarding the Kopf – Aqua Marine litigation.

Public Speakers

None.

Executive Session

Mr. Rush moved, and Mr. Abram seconded, to meet in executive session as allowed by ORC §121.22(G)(1), (G)(2), (G)(3), and (G)(4) to discuss personnel matters, the purchase and/or sale of property, pending legal matters, and collective bargaining matters and to include the CUE, the CUO, the Facilities & Asset Manager, and a representative from Mansour Gavin.

Ayes (per roll-call vote): Abram, Dzwonczyk, Rickey, Rush, and Schnabel.

Nays: None

Motion carried.

The Board reconvened at 8:56 PM.

Adjourn

As there was no further business, Mr. Rush moved to adjourn, and Mr. Abram seconded. The meeting adjourned at 8:56 PM.

Ayes (per voice vote): Abram, Dzwonczyk, Rickey, Rush, and Schnabel

Nays: None

Motion carried.

Approved November 1, 2022.

John Dzwonczyk, Chairman

Robert Munro, Clerk