

AT A MEETING OF THE MIDDLESEX WATER AUTHORITY HELD IN THE
BOARD ROOM OF THE HISTORIC COURTHOUSE AT 6:00 P.M. ON
WEDNESDAY, NOVEMBER 17, 2021:

Present: Greg Chambers, Chair
Lud Kimbrough
Janet Riggs, Vice Chair
James Michael Reed, Treasurer
Carlton S. Revere, Secretary

Matt Walker, Executive Director
Heather Lewis, Authority Attorney
Betty Muncy, Staff Secretary

CALL TO ORDER

The meeting was called to order by the Chairman, Greg Chambers, at 6:00 p.m.

PUBLIC COMMENT

Mr. Chambers opened the meeting for public comment.

John Quilter, President of the Urbanna Harbour Homeowner's Association, stated that he and others were present to receive an update on the possibility of the Authority running waterlines to connect to their system. Their development includes many homes and 129 boat slips and people that are anxious to connect.

Susan Armentrout, on behalf of Hazel Laughton, President of the Urbanna Harbour Yacht Club, the largest client of the Association's water system, was also present.

John Phelps, resident of Urbanna Harbour, spoke in support of using some of the federal American Recoveries Plan Act (ARPA) monies that are slated for local infrastructure projects to connect the Urbanna Harbour development to the MWA system.

MINUTES

The motion to approve the minutes from the September 15, 2021, meeting was made by Mr. Reed, seconded by Mrs. Riggs and carried unanimously.

EXPENSES

The motion to approve disbursements number 3126-3172, totaling \$3,612,653.65 was made by Mrs. Riggs, seconded by Mr. Kimbrough and carried unanimously.

BUDGET SUPPLEMENTS & TRANSFER

The motion to approve the following budget supplements was made by Mr. Revere, seconded by Mr. Reed and carried unanimously:

BS FY 2022-08	3-021-024040-0001 and 3-1-041050-1101 (\$2,302,530.92)	4-21-099010-0045 and 4-1-099010-0042 \$2,302,530.92
Appropriating USDA Funds received in September to fund Requisition #10 for August pay applications and reimbursements.		
BS FY 2022-09	3-021-024040-0001 and 3-1-041050-1101 (\$1,203,099.63)	4-21-099010-0045 and 4-1-099010-0042 \$1,203,099.63
Appropriating USDA Funds received in October to fund Requisition #11 for September pay applications and reimbursements.		

EASEMENT ACQUISITION

Mrs. Lewis noted, with no objection, that she would need a Closed Session of the Authority near the end of the meeting, with no action following, for consultation with legal counsel to discuss pending condemnation cases.

Mrs. Lewis reported that positive progress has been made regarding easement acquisition. Initially there were 80 properties and roads that were slated for condemnation, and that number is down to 50. Settlement has been reached with all known owners of the private roads that were needed; there are still unknown owners of roads that are proceeding through the condemnation process. Mrs. Lewis requested retroactive approval, to October 1, in the hiring of an outside law firm, Briglia Hundley, to assist with condemnation proceedings. Mrs. Lewis credits the firm with successful acquisition of several of the easements. The first hearing will be on November 22; the next on January 24. The motion to approve the hiring of additional counsel to assist with easement acquisitions, retroactive to October 1, was made by Mr. Revere, seconded by Mrs. Riggs and carried unanimously. Of the remaining 50 easements needed, 32 are known property owners and 18 are unknown road owners.

PROJECT UPDATE

Charlie Beam, Project Manager with Bowman Consulting, presented updates on each construction phase. The Phase 1A contractor has submitted his substantial completion statement; a walk-through has been conducted and punch list generated. The Department of Health, (VDH), will be coming in the next few weeks for their inspection and to issue an operations permit. The Phase 1B and 2 contractor is working on his punch list for the MWA and VDOT and flushing lines to Grey's Point. The Phase 3A contractor will have all his 12" pipe in the ground by mid-December and will begin testing and flushing. After the first of the year, they will drop back and begin their tie-ins.

The contractor has finished getting across Wilton Creek Road. Mr. Walker noted that on some areas of Wilton Creek Road, you cannot tell that work has been done. Phase 3A will also be tested and flushed in sections. Phase 3B has had some difficulty getting materials but is still working on interior piping; the pump skid is temporarily set. Jack and bores at General Puller Highway are complete and ready for the connection to be made. The Phase 4 contractor is pushing to get his force main in and is flushing and testing in sections on General Puller Highway. Some testing and flushing has been completed and new pavement installed. They anticipate having all their pipe in the ground by the first of the year, and then dropping back and to do smaller runs.

The entire project is running 3-4 months ahead of schedule. Mr. Walker commended Mr. Beam for his coordination on the project.

UNFINISHED/NEW BUSINESS

Urbanna Harbour

Mr. Walker noted that he and Mr. Chambers had been working with Urbanna Harbour Association on the possibility of connecting their system to the MWA system. The Association is looking at having to make some hard decisions regarding their current system and upgrades that are needed. A preliminary cost estimate for connecting the two systems was upwards of \$600,000. The County has a committee that is overseeing requests for using ARPA monies and a funding request presented to the Committee, did not rank high on the proposed approval list; the Board of Supervisors concurred with the report of the Committee, so it is doubtful that it will receive any funding from that source.

Mr. Walker noted, however, that the State is receiving its own source of ARPA funding that will be passed through the Department of Health and Department of Environmental Quality (DEQ) in the form of the Clean Water Revolving Loan Fund and other grant opportunities. More information should be provided in advance of the Governor's Instructure Committee meeting in March. Board of Supervisors and Water Authority members are encouraged to attend this meeting.

Mr. Walker recommended holding on to the Subscriber Agreements and uncashed deposit checks of the property owners until the Authority has an opportunity to apply for funding from the State's infrastructure programs. Urbanna Harbour is not the only community that has expressed interest in connecting to the system. Mr. Chambers noted that he was very disappointed in the estimate received from the engineering firm, which were more than double his very preliminary estimate, and added that the Authority needs to find a source of inexpensive money before expanding the system.

Mr. Kimbrough asked if there was a specific date by which the Association or Authority needed to act. Mr. Phelps gave no date, but noted that as their usage expands, the system will be looked at differently by the DEQ. Their pumps and controls are original to the 1998 system and have been told that the controls have to be replaced entirely. Outages can take multiple days to be looked at or repaired. An original estimate to just

update pumps and controls was around \$90,000, which probably has increased at least 30% since first obtained. This doesn't consider costs involved in replacing the wells, which could be in the cost range of several hundred thousand dollars.

By-Laws Amendment:

Mrs. Lewis reminded the Authority of the proposal to amend Article VII, Section 5, #3, Approval of Minutes, to now be Approval of Consent Agenda, which will include approval of the following: minutes of previous meeting(s), expenses, budget amendments and standard easements. Notice of the proposed change was included in the Authority's July 21, 2021, meeting packet. It was noted that any item that a member wished to discuss and/or vote on separately could be removed from the consent agenda at the meeting. The motion to adopt the amendment as proposed was made by Mr. Revere, seconded by Mr. Kimbrough and carried unanimously.

Easement Acquisition:

Mrs. Lewis requested that the Authority give retroactive acceptance and authorization to the Chairman to sign permanent easements for the following properties and privately owned roads: Tax Map 41-47-82, 41-47-83, 41-47-84 and 40-50-A, Melvin Ave., Riverside Drive, Stingray Lane, Edmunds, Cross Rip Section B, Fourth Street Section B and N Chesapeake Blvd Section B. The motion to grant retroactive authorization and acceptance of the easements to the Chairman was made by Mr. Kimbrough, seconded by Mr. Reed and carried unanimously.

Easement Agreement with Atlantic Broadband:

Mrs. Lewis recommended that the Authority not sign the easement agreement as requested by Atlantic Broadband; Mr. Walker recommended tabling action. According to Mr. Walker, the document presented by Atlantic Broadband was in response to the Authority sending them a copy of an easement agreement with Dominion Energy that had been approved. The Atlantic Broadband document is not in a format that Mrs. Lewis would recommend for approval.

Amendment of Resolution – Cross Rip Road

Mrs. Lewis presented a resolution to amend a portion of the Authority's resolution adopted on April 22, 2020, to acquire a portion of Cross Rip Road for permanent easement. In the original resolution, the amount of take was given by Bowman Consulting as 6,724 square feet; the correct amount of the take is 10,278 square feet. The motion to adopt the following resolution to correct this error was made by Mrs. Riggs, seconded by Mr. Kimbrough and carried unanimously:

At a meeting of the Middlesex County Water Authority held on November 17, 2021, at 6:00 p.m.: On a motion duly made by Mrs. Riggs and seconded by Mr. Kimbrough the following Resolution was adopted by the following vote:

Greg R. Chambers	aye
Janet Riggs	aye
Carlton Revere	aye
James Reed	aye
Lud Kimbrough	aye

A RESOLUTION TO AMEND A PORTION OF THE RESOLUTION ADOPTED BY THE MIDDLESEX WATER AUTHORITY ON APRIL 22, 2020, AUTHORIZING THE CONDEMNATION AND EXERCISE OF QUICK-TAKE POWERS TO ACQUIRE A PERMANENT EASEMENT FOR A PRIVATE ROAD KNOWN AS CROSS RIP ROAD

WHEREAS, on April 22, 2020, the Middlesex Water Authority adopted a Resolution authorizing the condemnation and exercise of quick-take powers to acquire permanent easements for certain private roads identified as critical parts of the Authority’s Eastern Middlesex County Regional Water System (“Project”); and

WHEREAS, within the April 22, 2020, Resolution, approximately 6,724 square feet of Cross Rip Road was identified as necessary to the Project for which a permanent easement was needed to install and maintain the proposed water system; and

WHEREAS, the April 22, 2020, Resolution declared its intent to use its condemnation and quick-take powers to take a portion of Cross Rip Road; and

WHEREAS, the Authority’s consultant, Bowman Consulting, established the fair market value of \$25.00, for approximately 6,724 square feet of Cross Rip Road, which has been deposited with the Clerk of Middlesex County Circuit Court; and

WHEREAS, the Authority’s consultant, Bowman Consulting, failed to advise the Authority of the correct square footage that is needed for the permanent easement necessary on Cross Rip Road, which is approximately 10,278 square feet, at the time of the April 22, 2020, Resolution was adopted; and

WHEREAS, the Authority needs to correct this clerical error by amending its Resolution adopted April 22, 2020 to amend the square footage for Cross Rip Road from 6, 724 S.F. to 10, 278 S.F.; and

WHEREAS, the Authority's consultant, Bowman Consulting, has established the fair market value of \$25.00, for approximately 10,278 square feet of Cross Rip Road; and

WHEREAS, the Authority has been unable to acquire the necessary easement across Cross Rip Road.

NOW, THEREFORE, BE IT RESOLVED by the Middlesex Water Authority this 17th day of November 2021, that the Authority hereby does find that public necessity remains for the Authority's ownership of the permanent easement identified Cross Rip Road; and

BE IT FURTHER RESOLVED that the Authority revises the portion of its April 22, 2020, Resolution authorizing the filing of Certificate of Take of the property known as Cross Rip Road, 10, 278 square feet.

A Copy Teste:

Greg Chambers, Chairman of the
Middlesex Water Authority

Connection Transfer Request:

Consideration was given to a request from Mr. and Mrs. Paul Longest, who own Tax Map Parcels 40-139 and 40-140, to move their water connection from lot 140 to lot 139. They have submitted the required paperwork and fees to revoke their previous connection on Lot 140 and subscribe at Lot 139. There is no impact to the Authority. The motion to grant the request was made by Mr. Revere, seconded by Mr. Reed and carried unanimously.

Request to Withdraw Connection:

Consideration was given to a request from Mr. Leonard Leslie, to cancel one of the two (2) water connections purchased for vacant lots, one open and one wooded, on Hidden Glade Lane. Both lots have the same Tax Map number, 41-68-2, and are separated by lot 41-68-2A. The open lot has a pre-existing drainfield; the wooded lot is at the corner of Hidden Glade and Piney Point Rd. Mr. Leslie stated in his conversation with Mrs. Muncy that he did not believe the wooded lot would ever be developed and there would be no need for a connection. As a side note, Mr. Leslie purchased a third connection at his residence on Honeysuckle Lane.

Mr. Chambers noted that the entire financial position for operation of the system is based on having a certain number of connections and he would be scared to death to start a precedent of releasing customers. Mrs. Riggs noted that the policy has been established that subscribers will not be released from their Subscriber Agreement. If the

customer refuses to pay their remaining connection fee or monthly fee, then it becomes a legal matter handled through the Court system.

The motion to deny the request was made by Mrs. Riggs, seconded by Mr. Revere and carried unanimously.

Policies and Procedures:

Mr. Walker introduced Robert Finch, who has been hired as the Operator for the water system. Mr. Finch's wife, Carole, is handling the billing. Mr. Finch and Mr. Walker have been working on a policy document of Rates, Rules and Regulations for Water Service. The document has not been reviewed by legal counsel but could be adopted at this meeting to have something in place in the event that operations start before the next meeting; any additional changes necessary could be made at the December meeting.

Mrs. Muncy questioned whether there were provisions in the policy to address contractors who wished to remove water from a hydrant. Mr. Finch said that that was something that would need to be addressed, both from a metering standpoint and a backflow prevention standpoint. Mr. Walker said that this might be something that could be added for next month. Mr. Finch suggested possibly designating specific hydrants for this purpose and attaching a backflow device; he will also work on drafting a provision for this.

Mrs. Riggs suggested removing the option of charging a late fee, as it should not be a discretionary item. A late fee would be charged after the 20th day of non-payment. Mr. Revere noted that in Section D4, the depth of an owner's service pipe should be less and whatever the plumbing code is. A three-foot dept as proposed would be difficult to obtain in parts of the County. Rather than listing a specific depth, perhaps the language could be changed to "applicable Code for the State of Virginia".

The motion to adopt the policy as amended, with additional changes to be brought to the Authority in December, was made by Mr. Revere, seconded by Mr. Kimbrough and carried unanimously.

The motion to also adopt the Water Bill Abatement Policy (leak abatement) was made by Mr. Revere, seconded by Mrs. Riggs and carried unanimously.

Memorandum of Understanding with Middlesex County

Mr. Walker reported that he had negotiated an agreement with Kathy Thrift, Treasurer for Middlesex County, to share a position. For the Authority, the person would be an administrative support/accounts payable/receivable clerk. The position would be funded by the County, with the Authority responsible for reimbursing 50% of the salary and benefits incurred. The cost for this position for the remainder of this fiscal year is \$30,287, \$15,143.50 to be MWA funded. The cost is already in the Authority's budget for this year.

This position would be going into an overall staffing plan that Mr. Chambers noted he would like to discuss further in December. Both he and Mr. Walker feel that the Authority can get by with part time “employees” for the time-being. Mrs. Riggs questioned why the position needed to be a County employee versus a direct hire by the Water Authority. Mr. Walker stated that it has been the Authority’s position previously to not have direct employees and all the other personnel administration requirements that goes with being an employer, much as has been the case for the agreement between the County and the Economic Development Authority. Mrs. Riggs said that that has not been a good experience.

The motion to approve the Memorandum of Understanding was made by Mr. Revere, seconded by Mr. Reed and carried by a roll call vote of 3 in favor (Revere, Reed, Chambers), 1 opposed (Riggs), and 1 abstention (Kimbrough).

Middlesex Foundation – Bay Aging Request

Mr. Walker presented a request from Joshua Gemerek, Bay Aging, the agency that has just taken over the workforce housing project from the Middlesex Foundation. Mr. Gemerek has requested additional time for paying the balance of the connection fee for the Foundation’s two connections, while the transfer of project control is being completed. Mr. Walker recommended approval of the request.

There are several other subscribers in this same phase that are also late on paying the remaining balance. They will be contacted to attempt collection before the end of the year.

Bay Aging is awaiting confirmation from the Virginia Housing grant administration that the connection fee would be a reimbursable expense and once that is received, they will pay the fee. Mr. Walker noted that it would expect that to be received by the end of the year. Mr. Kimbrough stated that he had recently spoken with a representative of the Virginia Housing, who stated that they are very supportive of this project.

The motion to extend the deadline for receipt of the Foundation’s connection fees until the end of December was made by Mr. Kimbrough, seconded by Mrs. Riggs and carried unanimously.

PUBLIC COMMENT

Due to an anticipated lengthy Closed Session discussion, the public comment period was moved ahead. There is action anticipated from one of the closed meeting items. It was also noted that a meeting would be held on December 15, 2021, at 6:00 p.m.

The public comment section was opened. Tammy Putney was following up on questions he had submitted by email to the Chairman. Mr. Chambers stated that he had received the questions and would be contacting Mr. Putney the next day with responses.

CLOSED SESSION

The motion to convene for a Closed Meeting pursuant to Virginia Code Section 2.2-3711(A)(8), consultation with legal counsel employed by the Middlesex Water Authority regarding the specific legal matter of its contract with Bowman Consulting, and Virginia Code Section 2.2-3711(A)(7), for consultation with legal counsel regarding the pending condemnation suits before the Middlesex County Circuit Court to include, but not be limited to matters of Middlesex Water Authority vs.: Batley and Fary; Baylor; Brandenburg; Cheatdom; King; Johnston; Powell; Daniel; Bryant; and Selby was made by Mr. Kimbrough, seconded by Mr. Reed and carried unanimously.

OPEN SESSION

Upon reconvening in its Open Meeting, the following motion was made by Mrs. Riggs, seconded by Mr. Reed and carried unanimously:

“To the best of the Authority members knowledge, only public business matters lawfully exempted by the motion by which the closed session was called were considered or discussed in the closed session.”

AMENDMENT TO ENGINEERING AGREEMENT

Mrs. Lewis introduced Spencer Francis, Vice President of Bowman, who has presented a request to amend the current engineering agreement. Bowman is asking for a change order to the agreement in the amount of \$217,000.00, a fixed fee, that is to take them to the conclusion of the construction project. Mrs. Lewis stated that she believed the amendment should also include the requirement for detailed, itemized billing statements each month, to reflect what is actually being done on the project. Mrs. Lewis noted that the agreement would also require approval by the USDA, and the effective date would need to be completed. Mr. Francis stated that they would be happy to provide the detailed invoicing, as they have provided on occasion in the past. Mrs. Lewis noted that that requirement would be added to the amendment.

Mrs. Riggs requested additional information from Mr. Francis as to why this amendment is being requested; how did it get to this point. Mr. Francis stated that early on it was acknowledged that the project would need much more manpower to keep all the moving parts in check, including project management; bid packages increasing from 4 to 6, along with contracts; and additional easement services. Some of these evolved over time since the establishment of the original contract. Mr. Chambers noted that in hindsight, easement services, when a line needed to be relocated, should have been a separate task and not included in the base contract.

Mr. Kimbrough has been reminded of the fact that the original project was estimated at \$12 - \$14 million, that five days before bids were due was re-estimated to \$19 million and the bids came in at \$25 million. Mr. Francis noted that the original estimate did not reflect the ending scope of the project, including price increases.

Mrs. Lewis reminded the Authority that this is still contingent on USDA review and approval. In addition, with the Authority's concurrence, Mrs. Lewis made it abundantly clear that even though it states that this would go through the end of construction, that this would be the last change order received from Bowman for engineering services. Mr. Francis stated that this was understood.

The motion to accept Amendment #6, with the addition of the requirement for detailed, itemized billing, in the amount of \$217,000.00 was made by Mr. Revere, seconded by Mr. Reed, and carried unanimously by a roll call vote.

ADJOURN

There being no further business, the motion to adjourn until December 15, 2021, was made by motion of Mr. Revere, seconded by Mr. Kimbrough, and carried unanimously.

Greg Chambers, Chair