

## **BOROUGH OF HIGHLAND PARK**

### **WATER & SEWER WORKSHOP**

**SEPTEMBER 24, 2019 – 7:00 PM**

IN ATTENDANCE: Mayor; Council Members; Borough Administrator; Deputy Borough Clerk; Chief Financial Officer Greg Fehrenbach, Government Management Advisors. Council Members Fine and George were absent.

Borough Administrator Jover introduced Mr. Fehrenbach who will present the Water and Sewer Utility Management Alternative.

Mr. Fehrenbach said that he has had 33 years of experience managing municipalities and counties, he has been responsible for overseeing the operation of water and sewer utilities and for the last 15 years he has been the principal of Government Management Advisors (GMA). In late spring the governing body through the Administrator was seeking some advice in terms of their opportunities to be able to proceed with their responsibilities with the water and sewer utilities. Water and sewer utilities are small business that the municipality operates, paid for by the rate payers, not to be funded by property taxes; generally utilities are supposed to be self-liquidated so they operating off of the revenues that are generated by the users of those utilities. The utilities in Highland Park have a little over 3,300 connections for both water and sewer, and that makes it a relatively small operation with the same responsibilities as a large system. He worked closely with the Borough Administration, the Public Works Department and the licensed operators in order to put together a package of facts that are important to understand, and talked about the statutory context within the Governing body has an opportunity to be able to take actions. The report deals with those two pieces and talks about what the potential outcomes might be of each of those alternatives. The first concern is that the system is very old; the records go back to 1864 on elements of this utility. There are a number of increasing concerns about water and sewer functions by private utilities and public utilities, it should be known that a lot of this began back in the 70's with the EPA and the water quality act of 1974 but in New Jersey it has become particularly of concern where they legislature recently adopted something called the water quality accountability act. That act sets forth a set of standards that the Mayor and Council are personally responsible for to ensure that the quality of the water being dispersed and the sewage being collected and disposed of are taking place properly. He indicated that you did not want to be behind the curve on this, fines, and imputative damages so it is necessary that actions be taken to ensure that this small utility are going to be in compliance with the Water Quality Accountability Act, and EPA regulations. The municipality in good faith is pursuing the improvement of various things, such as, interconnections with other utilities, if you were unable to supply sufficient water that you have the ability to get it from another source. The Borough has a number of interconnects, however those have not been exercised in the manner in which they should have been and that has to be a relatively high priority.

Mayor Brill Mittler said that the Council has a better understanding of the liability that personally everyone on the Council has to ensure that we are complying within the requirements of the NJDEP. These things have gone on in the past and have not been addressed by previous administrations we must address these issues now. We all have to recognize that these issues have to be addressed and as we go through each of the slides it is important that the Council understand what has to be done to meet the requirements of the NJDEP and the Water Quality Accountability Act.

Ms. Foster-Dublin asked when the Water Quality Accountability Act adopted. Mr. Fehrenbach said that act was adopted in October 2017. There was a small period of time for people to come up to speed on it, between the Borough Administrator and the Licensed Operator they are pursuing what those requirements are. This includes the identification, location and exercise of valves and fire hydrants, preparation of an asset management plan, which will be elementary at this point because there is a good deal of data that still needs to be acquired.

Mr. Fehrenbach said at the beginning of the process he put together a series of questions that he thought he would be able to get answers to from the Public Works Department in a relatively short period of time, it turned out after 3 weeks he had about 25-30% of the answers and then we had to go to the Licensed Operator, then to the Municipal Engineer, and there are still questions that were raised back in May that he does not have answers to. That is because this is a small system, the people who have responsibility for this, have responsibility for buildings and grounds, responsibilities to streets, snow plowing, leaf collection, sanitation, solid waste, recycling and you put all of that together there are a lot of responsibilities that department has. That is driving him towards a specific recommendation.

Mayor Brill Mittler said that because of the lack of serious management of that utility, a lot has fallen on the Borough Administrator and that takes her away from doing her job. Mr. Fehrenbach agreed.

Mr. Fehrenbach said that the contract with Middlesex Water provides for essentially 5 hours a week from a Licensed Operator but what the municipality has been receiving has been generally in excess of those 5 hours because it takes more time on part of the Licensed Operator to be able to carry out the responsibilities of that position but in addition because of some of the weaknesses within the staffing and the equipment within the Borough, Middlesex Water has been coming in as the Licensed Operator to provide assistance to the 2 people currently staffed dedicated to this utility.

Mr. Fehrenbach said 15-20 years ago what was considered to be the responsibilities of running the systems, the criteria for judging whether that work was being done well or not is very different from what the criteria is today. When it is said that there is a need for specialized managed operations, we mean it is more than saying to someone on staff take responsibility for this because there are now the Water Quality Accountability Act and controls on sanitary sewage that are much more difficult to comply with and processes require a more specialized knowledge such as someone with an engineering license, and engineering degrees.

Mr. Fehrenbach explained the relevant facts:

- Purchase of water makes up 346% of 2019 Budget
- Sewage treatment makes up 30% of 2019 Budget
- Debt service is 10.8% of the budget with no contribution to the Capital Improvement Fund
- Personnel and operating costs of the system is 24.6%
- Revenues are tight in the utility with little to no projected surplus
- Infrastructure improvements have not been made in at least 12 years.

Mr. Fehrenbach further explained the statutory alternatives for utility management available:

- Operate the utility as a typical municipal function with enhancements
- Enter into a privatized state with a private entity whereby the Borough's water and sewer utility is totally turned over for a period of 20-40 years
- Fully privatize by selling the utility
- Engage a licensed contract operator to be responsible for all management of operations and implementation of capital improvements, but retain all financial responsibilities including billing and collections, rate setting and operating and capital budget decision making. These people are difficult to find in the public sector and the cost is considerable.

Option A: Operate the Utility as a typical municipal function:

- Borough would need to either hire or contract for a full-time fully licensed operator to: direct day to day operations, take the lead on capital programming and implementation, handle all state and federal regulatory compliance requirements, supervise, oversee and manage Borough utility staff

- These persons are hard to find in the public sector and the cost is considerable
- Due to the added work occasioned by greater regulations of utility operations, at least one additional staff person to the two currently employed dedicated to utilities would be needed
- The Borough would need to retain providers for specialized services, ie: TV lines, line repairs, that requires equipment, skills that the internal persons don't necessarily have
- \$300,000 minimum added cost over current cost

Option B: Privatize via Long-Term Contract (NJSA 58:26-1 et seq.)

- Borough maintains ownership of the Utility, but enters into a 20-40 year contract with a private company to be responsible for the entire utility's operation, financing and decision making.
- The statutory process for this approach is quite cumbersome
- The approach typically would include turning over the entire utility to the private concern to operate including financial and capital investment decisions
- The long length of the contract is typically necessary for the company to recoup their expenses and profit over the long term

Mr. Fehrenbach used Bayonne as an example, the Borough enters into a contract with a private operator, transfer everything over to a third party, the successful bidder or negotiating party contract, in this case Suez, the agreement was Suez would take responsibility for upgrading the entire system, operating and managing it, the authority to set rates, identify the capital improvements that were needed, when they would be done, scheduled when they would be done and allocate a certain amount of money to the capital improvements, and would pay a concession fee or franchise fee to the municipality to use for whatever purposes they wanted. Sometimes those monies are used for underwriting the property tax. He used Perth Amboy as another example: 1998 Perth Amboy enter into a similar arrangement what they did with the money was, incurred \$86 million in debt of that \$86 million they paid off existing debt that the utility had, provided \$16 million for capital improvements, provided a fund to cover annual repairs estimated at about \$500,000 a year, they took \$28.5 million dollars and put it to a franchise fee that was used to underwrite the property tax for eight years. Perth Amboy residents will not pay the debt on that \$28.5 million until 2034. It is a 20-40 year contract because the successful negotiator needs that long in order to generate the money to take care of what they are doing up front. What you are not sure is happening at the end of that period is what was the condition of the infrastructure at the end of that period, have you been able to in the contract language, protect yourself. Mr. Fehrenbach said that the municipality would hire a law firm who specializes in this type of work and there is about four or five in the State of New Jersey who have done this for various jurisdictions.

Option C – Privatize via sale of the System

- The end result would be similar to the manner residents receive electricity and natural gas for their homes
- The sale would then place the operation of the water and sewer utility under the purview of the State Board of Public Utilities and would in all likelihood be subsumed into the private water utilities regional operation
- The Problem: insufficient data currently to value the Utility at its highest value, the Borough would in all likelihood be shortchanged as bidders would need to err conservatively on the valuation of the system

Mr. Fehrenbach said that the Borough has an asset that is not fully understood, that if you decide to dispose of that asset you want to ensure you get the best possible price for that asset and he does not feel that the Borough right now has the ability to do that.

Option D – Contract out operations and management services (recommended)

- Borough retains ownership of the water and sewer utility as well as all financial, budgeting, billing and customer service responsibilities
- Specialized skills are needed to manage and operate the utility would be put out for an RFP process to qualified operators for a period not to exceed 10 years and makes it the most desirable for the two parties to operate
- The contract would draw a bright line between company and Borough responsibilities, for example in the area of capital improvements the contract would set forth that the company is responsible to provide an assessment of the utilities infrastructure within some reasonable period of time (90-180 days) that the company has the responsibility to make recommendations and rank ordering of those recommendations to the governing body to consider and act upon. It is the governing body's responsibility to determine what projects are going to be scheduled and when as well as the funding. If the company does not make a recommendation for an improvement, it is their responsibility for having not made that recommendation, if the project is not funded or authorized it's the responsibility of the governing body for not doing it. The management of the finances continues to be a municipal responsibility. You have an opportunity for transparency, for public dialogue to take place regarding changes in those rates.
- Economies of scale would be achieved by obtaining more complete services from a larger specialized operator and competition would increase the opportunity to achieve the lowest possible cost. (3300-4000 water and sewer connections).

Mr. Fehrenbach said that on a fast track, the process could be completed in about 6-8 months, it would be necessary to hire an experienced law firm to assist in the process and the total cost of preparing the request for proposals (RFP) and form of contract, bidding and awarding the contract would cost the Borough about \$60,000 - \$90,000.00 which is about half the cost of the other privatization processes. Over the course of a 10 year contract, taking into account operational efficiencies to be achieved ie: reduction in lost water, the potential reduction in the amount of water that has to be purchased as a result of the infrastructure improvements, the change in flows, the interconnections; the estimated cost of a contract operator would be substantially similar to the cost of an enhanced in-house management model. The contract operator would report directly to the Borough Administrator just as a department head would. The next step would be the governing body coming to a consensus on preferred alternative, staff to secure professionals necessary to implement preferred alternative.

Mayor Brill Mittler said that something needs to be done and doing nothing is not an opinion. The water system needs to be protected and ensure that we have the correct amount of water for our residents. Mr. Fehrenbach said that the Borough has a responsibility to make sure that they are providing that continuous provision of water; everyone depends on water, residents and businesses alike.

Mr. Hale said that he understands that both option a and b. Mr. Fehrenbach said that there is a big difference in what happens when you have governmental employees versus private sector employees, you are hiring an independent contract under option b, under option a you are hiring employees and you have an in-house management responsibility, you are off loading the management responsibility to a private company under the independent contractor option.

Mr. Fehrenbach said that it is conceivable that this could be done with another municipality that is doing this, so it will not be limited to private companies but could be done as a shared service. In any event you have to define what the contract is going to be because you can't enter into the shared services agreement with defining the terms and conditions. The statute is very clear in terms of all the things that have to be defined and this process in the recommended option can be with a private entity or a public entity.

Ms. Kim-Chohan asked under option d, the Borough would still manage the rate setting, for the time line of 10 years, would they tell the Borough the recommendations up front because the Borough would need to budget appropriately for that; and at the end of the 10 years could the Borough take back the system. Mr. Fehrenbach said the company; public sector or whomever you contract with would have the responsibility in a period of time set by the Borough to produce and an evaluation and assessment of the utility to identify the strengths and weaknesses you then have a capital budgeting process you go through every year, on an annual basis that company would have to supply the Borough with a new capital improvement program, change priorities and make those recommendations and the Borough will have to make decisions on what will be funded and what is the impact on the debt towards utility and how much are you going to have to raise. The process should be spread out over an 18-24 month period; it should not attempt to be truncated to a 6-8 month period. He said when you are coming to the end of the contract, you want to ensure that when you reach the beginning of the eighth year you're talking about how you are going to proceed at the end of the contract, what do you want to achieve and that public process takes a while.

Mr. Fehrenbach said that the step that the governing body took in the right direction for this utility was the adoption of the amended capital program, that capital program will probably take a couple of years for implementation given the best of circumstances. You will need to understand what is out there and he explained that first just to be able to deal with debt service for these new bond ordinances you need a little over an 8% increase and he is recommending that as soon as possible you do a 10% rate increase so you generate some money in 2019 to assist you in 2020 because you're going to have some costs that you have not anticipated. He and the Borough Administrator along with staff are attempting to put together a strategy to deal with the 180-200 customer owned meters and enforce the current municipal ordinance regarding that. They have developed a strategy, begun a process, and it could be by next week there will be some letters going out and begin the process. He said that is the first step in achieving some efficiencies so as you go further down the line you don't have to do rate increases as large as they might have been.

Mr. Fehrenbach said that the first step is for a consensus to be achieved by the governing body as to how you want to proceed, once that decision is made, if it is option b, c, or d you then have to decide to out for an RFP for legal services.

Mayor Brill Mittler open the meeting for public comment.

Matt Smith, organizer with Food and Water Watch, asked about the decision not to delineate public partnerships or regionalization from going out to bid for a private operator and manager of the system. Is there in the RFP, is that the opportunity to go and assess the ability of the Borough to meet the needs it has through a partnership with another public water system. Mr. Fehrenbach said that the Borough has to define what services they are looking for and the development of the contract form under alternative option d can be used for both private or a public entity that would be able to service the municipality as an independent contractor in the later it would be a shared services agreement or the former it would be an independent contractor.

Mayor Brill Mittler asked Mr. Smith if he thought municipalities were better off going with other municipalities or private organizations. Mr. Smith said that with every single water utility public and private in Middlesex, Highland Park which is a publicly operated and managed system has the fewest water violations in the County on systems serving greater than 5,000 residents. The next six lowest number of violated system are also all publicly owned, operated and managed and they include Old Bridge, East Brunswick, Milltown, and South Brunswick, and he feels that Highland Park is doing something right today and while there are certainly additional requirements under the Water Quality Accountability Act he is not so sure going to a private company is the best alternative. He said that he is a little concerned that the Attorney's in this business are skewed towards private companies and that is what he has observed. He said that his other concern would be laying off public workers, and not just from a stand point that these workers are

relying on the Borough for employment and feeding their families but also if the Borough would do that all in house knowledge and expertise in the system is lost and at the end of the 10 year agreement, assuming it was done with a private operator, the option to go back to a fully publicly managed and operated system is actually is more difficult because you don't have the in-house knowledge and in fact his observation is that often times that is really the interest in the private companies and they see it as a clear precursor to ultimately an outright privatization. He said the other thing to consider, New Brunswick is at the bottom of the list in terms of water violations and they actually went out to American Water in the middle of a corruption scandal with their own water utility and in the first two months of the contract they had 11 violations, and it wasn't the private operator but the city who was still liable for paying.

Tina Weishaus, 43 North 5<sup>th</sup> Avenue, asked if we could just contract with Edison as a neighbor to Highland Park. Ms. Jover said that they were on track with an idea for the long term contract version and retaining ownership at the end of that long period, they have to rebuild their department now, and she would be reluctant to pile Highland Park on top of them figuring themselves out.

Mr. Smith asked if the Borough has seen law firms that do a better job of creating an RFP that is inclusive to municipalities, because often times these RFP usually only turn up one response maybe two so you're not exactly in a competitive bidding scenario. Mr. Fehrenbach said that they did not have to go through the competitive contracting process in order to do a shared service, so if that was something that there was interest in that would be essentially be the first pursuit but recognize that depending on the size, there is going to be some jurisdiction by the office of the state comptroller, there may be some jurisdiction by the NJDEP so they have to be involved. He said that there are many other issues within the shared service arrangement, one tends to be if township x is going to be the lead agency and the contract agency is going to be the Borough when there is an emergency who are they going to give their attention to or will the Borough received equal attention. You don't really experience that when dealing with a private company that has a contractual obligation.

Mr. Smith said that the Borough has qualified personnel and a well-functioning system and the least violated in the County and under this model you would be changing that and losing in-house expertise likely. Ms. Jover said it is her intention to continue with the current staff.

Mr. Smith said that he feels the diligence around exploring a public, private partnerships could be explored before or during a process to find a law firm that could go out to bid and that would be their recommendation and he would be happy to email the administrator with list of operators in the County that have the better track records of service. He said that he is not sure that Trenton example is the best one to highlight the lack of qualified professionals in the State and that there was a State imposed hiring freeze so on one hand the State was saying to step up and address these issues and then on the other hand oh you have a hiring freeze and you can't hire qualified staff. Mr. Fehrenbach said that there was no limitation on the ability to hire people in the water and sewer utility because it was separate from the municipal budget, the water utility was turning over \$6.5 million dollars a year to the current fund and the sewer utility was kicking over \$1.5 million to their current fund, they were living off the profits that were being made in the two utilities, yet they were not filling the positions because they could not find anyone.

Matt Hersh, 333 Felton Avenue asked how the value of the Borough's water system assessed. Mr. Fehrenbach said that in the Borough's case you are dealing with a water distribution system and your dealing with a sewage collection and disposal system, its primarily going to be a valuation of piping, hydrants, valves, pumping stations, meter picks, meters owned by the municipality as opposed to customer owned, and what is the remaining life in those names and distribution system, not the laterals they are owned by and responsibility of the property owner, someone goes through the mapping, and measure the length and size, what is the condition of those lines, what is the amount of work that will need to be done, when will they have to be

replaced, what will be the intending cost, excavation, etc. and maintaining service throughout the process. That is what is difficult about coming up with a valuation, it's the condition of what is currently there. A firm would need to hire a firm that would come in and do that assessment, there should be no relationship between whomever is employed by the Borough do that assessment and anyone who may be bidding on that. In the event the municipality, over a period of time makes improvements to the water distribution system and the sewage collection system, those improvements will make it clear as to where we stand, what is the probable life of remainder of the system, what is a knowledgeable 6 year capital improvement programs. At that time you will have a better handle on it to decide if you were going to out and sell the system.

Mr. Hersh asked if there were examples of contracts that put a sunset of the private ownership such as 15 years, and in 15 years we will be taking back our system. Mr. Fehrenbach said that all contracts have a term, at the end of the 10 year contract that we talking about here, it's returned to the municipality and the only one that is not returned to the municipality is the sale of the system.

Diane Reh, 68 Donaldson Street said that she is concerned about the two employees that we have and she would hope that there would be some way they could be re-assigned or rolled into some other operation. The idea of the memory is very important and the 10% increase is not going to be a lot for her \$100 water bill but the Housing Authority which is on a tight budget and their budget is already set a 10% increase for their \$30,000 water bill is going to be a real hardship and will need to grab money from somewhere else to pay it. She asked if there was a way to help and let them have a time payment because they are operating on the budget that they have already approved. Mayor Brill Mittler said that not only the Housing Authority but others as well, and we are concerned and this is something that they will be dealing with in the very near future. Ms. Reh said that she appreciated that, thanked them for having this meeting and indicated that they were in a tough spot.

Robert Fullagher, VP of Middlesex Water Company said as the licensed professional operator of the Borough he thanked them. Middlesex Water Company investor owned, private utility has serviced as a helpful and collaborative and local partner with the Borough for several years. Our service levels and rates are determined by limited short term contract that was negotiated in good faith between the Borough and our company. As a utility of water in business for over 122 years, Middlesex County Water Company counsels the Borough with respect to the true nature of its infrastructure challenges and the feasible solutions to address them, they at Middlesex believe that legal, environmental and regulatory compliance and sound asset management are the corner stone of current utility management whether public or private with over a century in water management business we stand ready to serve the residents of Highland Park as a trusted local resource. He thanked them for the opportunity to comment.

Mayor Brill Mittler said that whenever the Borough has issues, Middlesex Water has always been there to advise and step in and she thanked them.

On motion made by Councilwoman Welkovits, seconded by Councilman Hale, and carried by affirmative voice vote, the meeting was adjourned at 9:18 PM.

Respectfully submitted,

Jennifer Santiago, Deputy Clerk