

EAST SHORE CONSERVANCY DISTRICT
REGULAR MEETING – SEPTEMBER 25TH, 2020

CALL TO ORDER: Mr. Steck called the meeting to order at 1:04 p.m., announcing that the agenda had been posted in accordance to the Indiana Open Door Law and that a quorum was present.

PRESENT: Chairman Fritz Steck, Peter Cleveland, Whitney Johnson, Board Secretary Brian Welch, Vice Chair and Treasurer James Bremner. Also present was Attorney Alan Hux of Taft Law and Operations Manager Kathy Clark acting as deputy secretary to the Board.

MINUTES: Brian Welch asked if everyone had reviewed the minutes and asked for a motion to approve the minutes of the September 11th regular meeting and the September 11th public hearing.

Pete Cleveland stated that he wanted his beliefs included in the minutes regarding the assessing of the exceptional benefit assessment and how it is to be applied. He restated those beliefs, and Jim Bremner then reiterated his beliefs on the subject. Changes to the 9/11 regular meeting minutes were as follows below:

The District Plan section, page 4 of 9/11 minutes – Added after sentence 7: *Cleveland stated in regards to the exceptional benefit, that he believes the assessment based on a uniform per freehold calculation is inequitable and should be based on an assessed value. He also stated that the District Plan needs to include the core economic terms. Bremner then stated that the calculation per freehold assessment is an accepted method of assessing the benefit and was used in the South-West Lake Maxinkuckee Conservancy District. Bremner also stated that he believes the assessment on an appraised value basis is inequitable. Further discussion ensued. There was also a debate about putting the core economic terms in the plan.*

The Rates & Charges subcommittee section, page 1 of 9/11 minutes – Added the words “*should*” and “*annual*” in second paragraph, sentence three and “*service*” also in second paragraph, sentence three.

The amended minutes of 9/11/2020 were then approved by a motion made by Bremner which was seconded by Cleveland. Motion passed unanimously.

The public hearing minutes from 9/11/2020 were then passed as written by a motion from Welch and a second by Cleveland. Motion passed unanimously.

OLD BUSINESS: Welch began by explaining that after a discussion took place at the previous meeting about the **District Plan**, some corrections were red-lined and put into the plan and then the red-line version was sent out to the Board. Bremner reiterated that per statute, the plan should explain the physical nature of the District, list the problems facing the District, the works of improvement needed, the location of the improvements (as-builts might be able to be included), the benefits of the improvements, and it might also include things such as the Krohn and Hux engagement letters if the a majority of the Board wants to attach those.

Welch then asked Cleveland if he had any additional changes to the red-line district plan document and Cleveland replied in the affirmative. Bremner said that the discussion needs to take place today so that

the District Plan can be moved forward. Cleveland cited page 14 (*13 on secretary's document*), section 6.01 and section 7a, (*pages 13 and 14 on secretary's document*).

The first point was the amount of \$2,685,000 noted within section 6.10. After much discussion mostly between Bremner and Cleveland, Welch read the following summary of the proposed changes from his notes: Paragraph one Section 6.10 - "The estimated cost of implementing the District Plan includes the purchase of treatment capacity from the Town of Culver and the cost of the recently constructed line to the Town of Culver, the average of the two appraisals of the old line along East Shore Drive and East Shore Lane, and the other assets owned by East Shore Corp, all estimated at a not-to-exceed \$2,612,025. This estimate is set forth on Exhibit 7." Bremner went on to suggest that the entire 12.67 acres of land might be transferred at zero cost to the District. He also confirmed that it had been remediated and that the County was sending a letter and yellow tag for confirmation of that fact. He also indicated that expenses such as legal, accounting and other similar expenses would be included as well.

The second point noted within Article 7, section a. – sentence four "special benefit taxes in year one or longer if necessary, exceptional benefit assessments for capital costs to be levied..."

Hux explained that the District Plan needs to be passed by the Board, then it will be sent to the Department of Natural Resources Commission who will review it to ensure it meets their rules. The DNR will then file District Plan with the Marshall County Court. The Court will set a date for a public hearing and notice of the hearing date will be published in both the Pilot News and the Culver Citizen newspapers at least 21 days prior to that hearing date. Hux went on to say that this plan is an outline and estimate only, because the Board doesn't yet know what the soft costs from the State Revolving Fund (SRF) may be.

Fritz Steck, Chair, said the Board seemed to want to table the plan for today, edit it, review it, and then post it on the website. It will be included on the agenda for October 10th also. The Board agreed.

NEW BUSINESS: Certain freeholders presented a list of resolutions pertaining to access to the minutes and other materials considered by the Board. A copy of that original document can be found on the ESC website in its entirety. The Board considered the resolutions included in the memo and resolved to modify them and take the following steps to improve access:

1. Notice of meetings will be posted as required by statute, and on East Shore Corp's website until such time as the District has its own website, a minimum of three days prior to each meeting date, such notice to include the meeting agenda.
2. The Board will use its best efforts to post draft minutes to the website within 14 days of a meeting. Final Board minutes will be posted to the website within three business days after they are approved by the Board and any corrections are made.
3. The public has the right to record the meetings. The District, in the future, might record its meetings, and if so, they will make them available to the public on the website.
4. If approved by the State of Indiana, meetings might be made available via a technology such as Zoom, Outlook's Team Meetings, or other technological applications that permit remote access to freeholders.
5. Information that is presented at the Board meetings, such as final draft plans, power point presentations and other presentation materials shall be posted to the website within 3 business

days after the Board meetings. Copies of power point presentations may be available at Board meetings.

BOARD ISSUES NOT ON THE AGENDA: Board member Whitney Johnson asked about the number of 130 users found on some documents. She reported that there seems to be some confusion among a few freeholders of where that number came from or how it was developed. Hux explained by using an example:

- If Mr. and Mrs. Jones owned one tract of land with a home, and Mr. Jones owned another tract with a home by himself, that would constitute two freeholds and two assessments.
- Johnson asked about her own family's lake home, saying that there are five named owners, but two contiguous parcels of land, with the home on just one. Hux replied that would constitute one freehold.
- Johnson then asked if because they owned two parcels (one vacant, one with the home), both would be assessed a special benefit assessment. Hux agreed.
- Julia Baxter, then asked from her seat in the audience if two parcels, titled (exactly) the same, each with a home, would be considered two freeholds. Hux stated that, yes, but for voting purposes it would be considered just one freeholder. For assessment purposes it would be two, because it has two service connections and two distinct and saleable lots.

Bremner next questioned the Board about the next step on setting a purchase price for the assets so that negotiations could begin within the next two weeks. Welch stated that East Shore Corp is required to submit a price to all its members and get a super majority (*clarified later to be a simple majority vote*) to determine acceptance of the final price. Clark asked Mr. Welch if that means a price will be submitted to the entire ESC membership and Welch replied that there is a history of the ESC Board members reaching an agreement subject to approval by ESC full membership.

Bremner reported to the Board that he had heard that SRF funds at 2% have been agreed to but that allocation remains a question with Indiana Finance Authority. There will be a sixty-day period for the freeholders to make a choice to use the 2% funds over twenty years or to pay cash up front. Johnson asked if there was a disadvantage to paying it off upfront. Bremner stated it was the bond funds that can't be paid off early for the first ten years. If for whatever reason, possibly the sale of a property, the Board agrees to allow early payoff of individual shares of the bond funds, they would need to pay interest on those funds for the life of the bond along with the bond payment share and those funds, once collected by the District, would need to be kept in a bond escrow account or as a separate line item for financial reporting purposes.

PUBLIC COMMENTS: Dave Steinhilber asked what the due date he has to hook up by is. Welch stated that right now there is no definitive date. Welch went on to say that a possible final date for hookup might be moved from a one-year time frame to a three-year time frame.

Someone from the audience then asked about the Appraisal Report to be used in calculating any exceptional benefit assessment. Hux explained that once the Appraisal Report is completed, and the Board has accepted the amount of value attributable to the sewer, the report is submitted to the Court. Then everybody who is listed in the report will be notified by the Court that its being reviewed and they will be given time to submit comments to the Court.

Steck then called on Sally Peacock from the audience. She stated that she is glad the system is now hooked up to the Town. She believes that since "you" know what the construction costs are, couldn't someone provide an idea of what the EBA assessment might be? Bremner said that he wouldn't be held to these numbers but feels it might fall in the \$11,000 to \$15,000 range. Peacock said she thinks that is high. She favors an assessment based on property values. She also says she wants to see more time for off-lake freeholders to be hooked up due to their financial pressures. If "we" were really trying to get costs down, "we" should at least take out the cost of the original system from the equation.

Julia Baxter asked Clark what South-West's EBA was. Clark told her it was \$15,000 and then dropped to \$7,500 because of unanticipated money from an EPA grant which is no longer available. Baxter repeated questions asked earlier by others, says she feels the EBA isn't fair and equitable and that some of those costs should be moved to the SBA. She then said she'd heard that members of East Shore Corp might get a credit back. Peacock said she thinks it has already been factored in the lesser cost. Baxter thinks the original 100 members should get money back and she wanted that on the record. Baxter also asked if anyone went to the Governor to see if there was a way to get forgiveness. Welch said that contact had been made with the Indiana Finance Authority, and the final answer seemed to be that no debt forgiveness would be available. He did reconfirm that the District should receive the two percent funding. Baxter then asked that she be put on record as saying she supports an assessment based on the value of each property. A bigger house you receive more benefit. Last, Linda Hippenhammer said she also believes the more equitable assessment would be based on assessed value. Steck thanked the audience for their comments.

Welch moved for adjournment at 4:18 p.m., Bremner seconded. Motion passed unanimously.

Brian Welch, Board Secretary
East Shore Conservancy District