

Shorewood Forest Utilities
425 Utility Drive
Valparaiso, IN 46385

Second Meeting to Address CTA Expansion Questions

President, Greg Colton
Vice President, Dan Clark
Treasurer, Jerry Hanas
Secretary, Ken Buczek
Director, Terry Atherton

January 19, 2017

NOTE: All minutes are summarized to give the community the essential information of what has taken place at meetings and what votes were taken. Board discussions and public comments are not presented verbatim.

President Colton called the meeting to order at 7:05 p.m. Directors Greg Colton, Dan Clark, Ken Buczek, and Terry Atherton were present. Director Gerald Hanas was absent. Plant operations manager Forest Ash was present along with 60 members of the Utility.

Mr. Colton stated that the meeting was being held pursuant to a notice that was sent out via email by the Shorewood Forest Property Owners Association. The purpose of the meeting is to answer any questions Shorewood Forest residents might have about the proposed CTA expansion.

Mr. Colton gave a brief introduction of the Utility Board members and Utility Manager:

- Terry Atherton, Director, has lived in Shorewood Forest for ten years. Terry served on the Board for eight years, and was President for seven of those years. He is a professional engineer, and the former Director of Utilities for the City of Fort Wayne's sewer and storm water divisions. He served as the manager of the Northwest District of Indiana American Water Co., and most recently was in charge of Chesterton Utilities, until his retirement.
- Ken Buczek, Secretary, has lived in Arbor Lakes for two years and joined the Board in 2015. He is a licensed engineer, and spent 35 years in the utility business, followed by five years as a consulting engineer for water and wastewater systems. He is now retired.
- Jerry Hanas, Treasurer, has lived in Shorewood for three years and joined the Board in 2013. His background includes managing large construction projects for the railroads. He recently retired from his role as General Manager of the South Shore Railroad. Jerry was unable to attend the meeting this evening.
- Dan Clark, Vice-President, has lived in Shorewood Forest for a year and a half and joined the Board a few months ago. Dan is an engineer for a petroleum company and works with underground pipeline systems.
- Greg Colton, President, has lived in Shorewood Forest for twelve years and joined the Board in 2013. He is an attorney and has 19 years of utility experience, at NIPSCO as in-house regulatory counsel, and with the Indiana Utility Regulatory Commission.
- Forest Ash is the Manager of the Utility, and is a Class III Wastewater Certified Operator. Forest has worked for the Utility for 19 years

Mr. Colton welcomed and acknowledged three of the Shorewood POA Board members who were present, and thanked them for their attendance.

Mr. Colton explained that this second meeting to discuss the proposed CTA expansion is being held at the request of the Shorewood Forest POA. On January 5, 2017, Mr. Colton, Mr. Buczek, and Mr. Ash met with four of the members of the POA Board to answer their questions about the proposed expansion. The meeting lasted about an hour, and the POA asked if the Utility Board would be willing to have a second meeting to discuss the proposed CTA expansion, which the POA would announce via email. This was fine with the Utility Board. The Shorewood POA then sent the following announcement to residents of the subdivision:

“The POA Board took the opportunity to meet with members of the Utility Board to discuss the proposed utility expansion. These Boards are independent and the POA Board wanted to understand the impacts for Shorewood residents.

While an expansion may benefit the Utility, it comes with the risk of Shorewood losing voting control, which would not be in Shorewood's best interest.

The POA Board believes that residents should attend the next Utility meeting at the clubhouse on **January 19th at 7:00 PM**. At this meeting, residents will have an opportunity to ask questions and make suggestions in order to make an educated decision as to whether or not to support the expansion.

Thank you,

SFPOA Board of Directors “

Mr. Colton said he welcomed the opportunity to discuss the proposed CTA expansion with his fellow Shorewood residents this evening. Before getting started, however, he wanted to address three statements in the POA’s email that he considered to be inaccurate.

First, the statement “**an expansion may benefit the Utility**” is inaccurate because there is no uncertainty at all about a benefit for the Utility. The Utility will ultimately receive \$600,000 in cash (as explained later below) by virtue of an expansion of the CTA, and will further benefit from an additional bump in annual revenues as new customers are added. Second, the statement “**comes with the risk of Shorewood losing voting control**” is inaccurate because even after the proposed new subdivision is fully built out, and after the other smaller subdivisions have been fully integrated into the Utility (both of which are many years in the future), Shorewood Forest subdivision will still have 58% of the votes of the membership. Third, the statement “**which would not be in Shorewood’s best interest**” is inaccurate because it presumes that a Board comprised of non-Shorewood directors would somehow disfavor Shorewood residents. To the contrary, it does not matter in the slightest where a Board member lives. All Board members have an obligation to operate the utility in compliance with IDEM requirements, to ensure that the bondholders are paid, and to operate the Utility in a reasonably prudent manner. Thus, even if every single Board member lived outside of Shorewood Forest, there would still be a duty to fix leaking sewer lines, maintain the treatment plant in good working order, and manage the Utility’s finances prudently.

Before asking for questions from those in attendance, Mr. Colton gave some background on the proposed CTA expansion. Mr. Colton explained that according to an engineering study

commissioned by the Board, the Utility's treatment plant can handle an additional 716 homes and still be within its NPEDES permit capacity. At present, the Utility has unused capacity of roughly 45% of its rated capacity. Expanding the Utility's CTA (Certificate of Territorial Authority) and providing service to the 262 homes in that new territory will not cause the Utility to exceed its rated capacity, nor will it require the Utility to add any additional treatment capacity.

Expanding the Utility's CTA will result in the payment to the Utility of over \$600,000 in cash which can be used for improvements to the Utility's treatment plant. The Utility's rules require the developer Mr. Blum to pay a capacity fee of \$2,000 for each of the roughly 200 new lots in the proposed Arbor Lakes South subdivision. In addition, as homes are completed, a tap-in fee of \$1,000 must also be paid before utility service will be provided. These additional funds will be very useful in upgrading the Utility's treatment plant to meet state requirements. The Indiana Department of Environmental Management (IDEM) requires every sewer utility to have back-up, redundant facilities for each step in the treatment process. At present, the Utility has difficulty in satisfying this requirement, because our existing backup aeration tanks are old and require replacement. The Board has engaged an engineering firm to design a new concrete aeration tank as a backup for our existing concrete aeration tank. The expected construction cost is around \$1.5 million. The \$600,000 from the proposed CTA expansion can provide significant funds toward covering this cost. If the CTA is not expanded, the Board will need to look to the existing membership to obtain all of the funds necessary for the new concrete aeration tank.

There is another significant cost that is expected to grow in the coming years. Shorewood Forest subdivision has approximately 13 miles of gravity sewer pipe, and approximately 60 percent of that pipe is clay tile. The clay pipe is old, and portions of it are in need of repair throughout the subdivision. The Utility televises its lines to find where the problem areas are, and then either repairs or replaces the faulty pipe. The sewer lines in the newer subdivisions are primarily made of PVC pipe, which has a much longer life and should require minimal repair costs for many years to come. Thus, the majority of the cost of repairing the Utility's existing collection mains will most likely be within Shorewood Forest. From an existing Utility customer's perspective, it would be preferable to spread this cost over 1,500 customers instead of 1,000.

Mr. Colton said you will never hear anyone from this Board say that rates will never be increased as a result of the proposed CTA expansion. What we are trying to do is defer a rate increase to a later date, or mitigate the magnitude of any increase. Costs do go up every year, and the Utility has not had a rate increase since April of 2005.

Arbor Lakes South. Don Blum, the developer of the proposed Arbor Lakes South subdivision, explained his plans to the membership. Mr. Blum explained that he previously developed the Arbor Lakes subdivision on the north side of 100 North. He has since purchased land on the south side of the street where he plans to build Arbor Lakes South. Mr. Blum explained that Porter County prefers that he connect the new subdivision to a sanitary sewer system, but if he is not able to do so, the County would allow him to install septic systems. Mr. Blum pointed out that if he had to install septic systems, the drainage from the leach fields would drain back to Lake Louise, because the subdivision is in the Lake Louise watershed. The proposed subdivision encompasses 154.8 acres, and if he is permitted to connect to the Utility Mr. Blum stated he would build 208 homes. If he has to use septic fields instead, he would build approximately 130 homes.

Mr. Colton clarified that all costs of the proposed expansion of the Utility's CTA will be paid for by the developer, Mr. Blum; there will be no cost to the Utility. If the membership votes in favor of expanding the CTA, the developer will pay the cost of engaging an attorney for seeking approval from the IURC. If the IURC approves the CTA expansion, the developer will then incur all costs necessary to build a system of collection mains throughout the Arbor Lakes South subdivision, a lift station, and the cost of extending mains to the Utility's existing system. All of those facilities, when completed, will be contributed to the Utility. In addition, the developer will have to pay a capacity fee of \$2,000 for each home that will be served by the Utility. Once a home is ready to connect to the Utility's system, a \$1,000 tap-in fee is also required. Thus, each home in Arbor Lakes South subdivision would be required to pay \$3,000 in cash in order to receive service from the Utility, for a grand total of more than \$600,000. When asked by Mr. Colton, Mr. Blum stated that on average, the total contribution to the Utility attributable to each homeowner in the new subdivision will be roughly \$9,100, consisting of the \$2,000 capacity fee, \$1,000 tap-in fee, and \$7,100 in infrastructure (mains and lift station) that will be contributed to the Utility.

Mr. Colton then opened the floor for comments from those in attendance.

Odor Concern. Glenn Vician, a member of the Utility, spoke about a subdivision in Florida that expanded its sewer plant and now the sewer plant has a smell that is so pungent the residents cannot go outside their homes to enjoy their yards. He believes there needs to be an engineering study that will tell the Shorewood residents what the impact on the sewer plant will be if the expansion is approved. He noted that once all homes have been built in the proposed expansion area, the treatment plant will be handling 50% more sewage than at present.

Mr. Atherton stated that we have done engineering studies, we have a master plan, we have complied with IDEM orders, and we have taken care of all of the problems that have come up. What you are doing is crying fire in a crowded theater. He said because our new microscreens remove 30% of solids at the front end of the treatment process, we will not have to treat 50% more sewage. In addition, our plant is designed to handle 450,000 thousand gallons a day, and we are presently treating an average of only 180,000 gallons a day. Even with the proposed new customers we will still be well below the Utility's treatment capacity. Mr. Colton added that we don't need to do any more engineering studies because IDEM has already done them for us. Before this plant was ever built, Shorewood Forest had to submit plans to IDEM for their approval. IDEM understands treatment plants, and if they thought the plant would smell, they would never have allowed it to be built in the first place.

Mr. Colton asked the audience if they have ever smelled the plant. No one spoke up. Mr. Colton then asked Forest Ash, who has been with the Utility for 19 years, if he knew of any incidents when the Utility gave off bad smells. Mr. Ash had laryngitis and could not speak, but after the meeting said there were only two incidents in 19 years when residents complained of a bad smell. One time was when a toxin somehow got into the plant and killed all of the aerobic bacteria. Once the bacteria were restored in a couple of days, the smell disappeared. The second incident was due to human error in operating the plant. The error was corrected and the smell quickly went away.

Runoff. John Vittoe, a member of the Utility, observed that the ravine on Devon Road has had mud in it since the development of the first Arbor Lakes subdivision. Mr. Blum responded that the water you see running in the ravine is from the property on the south side of 100 North. When Mr. Blum developed the original Arbor Lakes subdivision, Porter County

made him install a retention pond that reduced the run-off that came from the original vacant lots.

Existing Subdivisions. Mr. Vittoe asked if it is economical to serve existing subdivisions like Summerhill or Stonegate where homes have already been built with septic systems? Mr. Colton noted it would be expensive for those homeowners to pay for the extension of the Utility's mains, because it costs roughly \$100 per foot. In addition, because septic systems require larger lot sizes, the cost of extending a main throughout those subdivisions would be higher than it would cost in a subdivision that was designed to receive sewage treatment service. The residents of Summerhill and Stonegate will need to coordinate when they switch from septic to Utility service so that the cost of extending mains can be shared among themselves. Mr. Colton stated he did not think those homeowners would be taking service from the Utility anytime soon. He added that one of the reasons these smaller existing subdivisions are being included in the CTA expansion is because it costs \$30,000 to hire an attorney in order to get IURC approval of a change in the Utility's CTA. So it makes sense to allow these smaller subdivisions to "piggyback" on the developer's CTA expansion request.

Capacity Fees. Mr. Vittoe asked if we should be charging the developer a capacity fee that's higher than \$2,000 per lot? Mr. Colton replied that while the Utility was still under the jurisdiction of the Indiana Utility Regulatory Commission, the IURC approved a capacity fee of \$1,300. When the Board opted out of the IURC's jurisdiction in 2005, we raised the capacity fee to \$2,000. Mr. Colton explained there are different ways to look at the reasonableness of a capacity fee. One way is to ask the question, "What should it cost for someone to 'buy into' a sewer plant that already exists?" For example, based on book value, our Utility has "equity" of roughly \$3.3 million, which when divided by the number of existing customers results in a figure of roughly \$3,300 of "equity" per customer. For the proposed Arbor Lakes South subdivision, Mr. Blum indicated previously that the infrastructure being contributed to the Utility, plus the capacity and tap-in fees, will total around \$9,100 per home. Mr. Colton asked Mr. Blum for his position on paying a higher capacity fee. Mr. Blum said he made his plans and submitted them to the Board based on the rules that exist at the present time. If capacity fees were to suddenly change, he would just put in well and septic.

Dilution of ownership. Mr. Schafer, a member of the Utility, commented that we are looking to add another 300 or more homes to the Utility. Every time we add another home we dilute the ownership of the Utility. As of right now the ownership of the Utility has been diluted by about 20 or 25%. Because the Utility operates under the nonprofit statute 501(C)(12), the Utility is not allowed to generate more than 15% of its gross income from non-member sources, or we would lose our nonprofit status. Mr. Schafer suggested that if we were to forfeit our nonprofit status then we would not have to dilute our ownership, because new homes would become simply customers and not members. Mr. Atherton responded that if we became a for-profit organization we would have to pay back bonds which were issued as tax-exempt bonds. Where are we going to come up with \$3 million dollars? Mr. Colton noted that if the Utility lost its nonprofit status, it would have to pay taxes at a corporate rate of around 30%. While we are presently able to accumulate excess annual revenues on a tax free basis for use in future capital projects, that would no longer be possible. In addition, the Utility would have to raise its rates just to cover the taxes.

Mr. Colton flatly denied that any dilution in ownership would result from the proposed CTA expansion. In fact he said the opposite is true. If the Utility were sold in the near future for \$3 million, the IRS states that 501(C)(12) nonprofit corporation must distribute proceeds of the

sale not among just the *current* members, but among all *past* members as well, in proportion to the amount each member has paid to the Utility in the form of rates. The IRS's formula means that new customers from Arbor Lakes South, who will have each contributed roughly \$9,100 worth of cash and infrastructure to the Utility, will see very little of that value coming back to them. Long-time members of the Utility will be entitled to a much higher proportion of that value. It's a windfall for the existing, long-time members at the expense of the newest members.

Other comments. Mr. Dubovich, a member of the Utility, stated that even after the proposed CTA expansion, members from Shorewood Forest subdivision will still have the majority of the votes. He said he trusted the people on the Board – there are engineers, along with an attorney. These are all competent people that volunteer their time. They are residents and I feel they are looking out for our best interest. The letter that was sent out by the POA Board said that the CTA expansion might be good for the Utility but not for the members. Well, we are the members. If it is good for the Utility then it is good for us. Bottom line if we do not approve of the proposed CTA expansion we will have to expect a rate increase, and it will not be a small increase. At the Special Meeting in December the engineer from McMahan Associates was here and he did an excellent job explaining that we have plenty of available capacity to handle the proposed increase in customers.

Another member of the Utility summarized what he heard at the meeting this evening: the last time the Utility raised its rates was 11 years ago; we had clay pipe 11 years ago and it is now beginning to fail; and we had steel aeration tanks 11 years ago which are no longer in good condition and need to be replaced. He did not blame the current Board for things that he felt should have been addressed 11 years ago, and he understood that the Board is now trying to rectify things that should have been addressed earlier. He expects that in a year or two the Utility may have to raise rates to compensate for the maintenance that should have been done all along, that should have been part of the development all along. He then asked, what long-term plans are there to ensure we do not encounter the same problems? How can we avoid a situation where, 10 years from now, we again have to bring more people into the Utility to help cover costs? Mr. Colton disagreed with the member's statement that past Utility Boards were not doing necessary maintenance, and Mr. Atherton pointed out that 11 years ago a bond was issued (and rates were raised) specifically to address the need to replace an old steel tank with a concrete tank, which is still in service. Looking forward, Mr. Colton said the Utility has over the past few years accumulated around \$1.3 million in capital reserves which need to be carefully allocated between the treatment plant and the collection system. We plan to put in a second aeration tank, when we have enough funds, but we also need to keep an eye on our collection system. We televise our collection system every seven years and repair or replace as the need arises. The member stated that he was impressed with this Board, not that they have all the answers but they do have a plan, and he thought that we do need to expand the Utility's CTA.

Bob Band, a member of the Utility, commended the Board for their time, and their diligence in overseeing the continuing operation of the treatment plant. His concern is that in recent years, Board members had to be appointed because no one would run for the Board. He noted there is an election coming up this Spring with three Board seats up for election.

Mr. Colton asked if there were any further comments or questions. There were none. The meeting was adjourned at 8:45 pm.

Respectfully Submitted,

Greg Colton
President;
Shorewood Forest Utilities, Inc.