



Office of the Mayor City of Warren

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RECEIVED
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Mayor

2018 JAN 29 AM 11:31
Emilio Cantalamessa
Director of Service-Safety

TRUMBULL COUNTY
COMMISSIONERS

C.C. Randy Smith
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January 25, 2018

The Honorable Frank S. Fuda
The Honorable Mauro Cantalamessa
The Honorable Daniel E. Polivka
Board of Commissioners of Trumbull County
Trumbull County Administration Building
160 High Street NW, 5th Floor
Warren, Ohio 44481

Re: Sewer Agreement between Warren and Trumbull County to provide service to Lordstown and Warren-Champion Subdistricts

Gentlemen:

As you are certainly aware by now, a meeting had been scheduled (and confirmed) for 9:00 a.m., January 11 for our respective representatives to continue the negotiations regarding the terms of a new sewer agreement. Present at the meeting site were myself, key personnel from our Water Pollution Control Department ("WPCD"), our City Attorney and Deputy City Attorney, and our outside environmental counsel, who had driven up from Columbus to attend the meeting. However, to our complete surprise, no one from Trumbull County showed up. A telephone call to your legal counsel to inquire about the County's unannounced failure to appear revealed that the County did not intend to continue discussing the matter directly with the City. Instead, without consulting with me or, to my knowledge, anyone at the City, the County apparently unilaterally decided that the matter would be mediated by a third party. I have spoken to that individual, and he was as surprised as the City that he was expected (by the County) to act as a mediator. He indicated to me that he is not interested in the role. Equally, the City is not interested in having this matter mediated. It is a matter that the parties need to resolve between themselves.

To that end, and as I do not know the extent to which you have been informed about the procedural and substantive issues surrounding the sewer agreement, let me provide a recap.

The most recent agreement for the referenced sewer subdistricts was entered into between the City and the County on January 1, 1997, and expired on December 31, 2017. On January 20, 2017, our WPCD arranged a meeting with the County Sanitary Engineer's Office to begin the process of negotiating a new agreement. On March 7, the City sent a draft revised contract to the County. On March 10, the interim County Sanitary Engineer replied that the County had received the City's draft proposal, and planned to evaluate and respond to it.

When no further communication was received from the County, the Director of the WPCD sent a letter to the County Sanitary Engineer on November 14 stating that finalizing a new agreement was time critical because the old agreement was scheduled to expire in a month and a half and that, in the absence of a new agreement, the City would have no choice but to charge the County the same rate it charges any other customer outside of Warren. (That rate is currently \$4.89/100 cubic feet; the City's current inside rate is \$3.48/100 cf.) To attempt to expedite a resolution, the City indicated it could meet on any of several dates in late November.

On November 22, Mr. James Brutz from the County Prosecutor's Office emailed our outside environmental counsel (Mr. Stephen Samuels), and they worked out a date (December 14) that was suitable for the key representatives of both parties to meet to discuss the new contract. On December 11, Mr. Samuels emailed a draft sewer agreement to Mr. Brutz. On December 14, the City and the County met to discuss it.

The draft agreement is eleven pages long and, as is typical of sewer agreements, addresses myriad aspects of the operation and maintenance of the City's and County's wastewater collection systems. The three items of most interest to both parties were the billing structure, the user fees, and the provisions dealing with infiltration and inflow (I&I) to the County sewers.

The previous billing structure was extraordinarily (and unnecessarily) complicated and, as explained below, unfair to the City. The proposed new billing structure is far simpler, and consistent with the overwhelming majority of sewer agreements in use in Ohio: the County would pay a specified rate for each 1,000 gallons of flow it sent to the City for treatment.

As regards rates, the City stated that it would no longer subsidize the County at the expense of its own ratepayers. The rates charged the County under the 1997 agreement were less than thirty percent (30%) of the rates City users were paying.

However, understanding that an abrupt increase in rates might be problematic for the County, the City offered a gradual scale-up: 50% of inside rates in 2018; 75% of inside rates in 2019; 100% of inside rates in 2020; and 125% of inside rates in 2021 and thereafter. It must be emphasized here that the final proposed rate structure, much less the offer to gradually impose it, is quite generous. Most typically, host communities charge their satellite communities approximately 150% (or more) of their inside rate. See, *e.g. Hudson v. Akron*, 2017-Ohio-7590 (9th District, 2017).

Studies conducted by the County have revealed that the amount of I&I entering its collection system in Champion (and no doubt in Lordstown also) is horrendous. In part, this is due to the age of the collection system; but the dearth of spending on maintenance and capital improvements over (at least) the past decade is also a substantial cause. The excess I&I causes a substantial increase in flow from the County to the City sewers and its wastewater treatment plant. This, in turn, imposes a significant economic burden on the City because the City's cost to handle and treat this excess flow exceeds the increased user fees that the City would collect from the County for the extra flow. The way that the City proposed to address this problem in the agreement is by imposing a surcharge for excess I&I to encourage the County to seriously address the issue.

These three issues, and others, were discussed by our respective legal counsel and technical representatives at the December 14 meeting; and each side agreed to provide additional information to the

other so that more detailed proposals could be developed and the negotiations could proceed smoothly. (This was summarized in emails from Mr. Samuels to Mr. Brutz dated December 15 and December 22.) The City timely provided the County all the deliverables that it promised. To date, the County has not reciprocated in any way.

The only communication of any note we have received from the County was a December 21 email from Mr. Brutz (to Mr. Samuels) asking that the City confirm its offer to extend the existing sewer agreement for 60 days to allow the parties to complete their negotiations over the new agreement. On December 29, Mr. Samuels emailed Mr. Brutz a proposed sewer agreement extension. To date, the City has not received a response to this either.

Our legal counsel informs me that the law is very clear that host communities, such as the City of Warren, are not legally obligated to provide sewer service to extra-territorial customers. *Fairway Manor, Inc. v. Board of Com'rs of Summit Co.*, 36 Ohio St.3d 85 (1988). The law is equally clear that the courts will not second-guess the terms and conditions that host communities establish for the use of such services by satellite communities or other outside users. *Bakies v. Perrysburg*, 108 Ohio St.3d 361 (2004); *Hudson v. Akron, supra*.

Obviously, the City is not going to suddenly terminate sewer service to the people living in Lordstown or Warren-Champion sewer districts just because their elected representatives are unwilling to negotiate. However, neither is Warren going to continue to have City residents subsidize Trumbull County. We do not wish to take this step, but the County's non-responsiveness leaves us with few choices. In the absence of an agreement, effective with its February invoice (for January service), the City will charge Trumbull County the sewer rates that our ordinances require for out-of-city users, that being \$4.89/100 cf. I urge you to direct your representatives to return to the bargaining table in the interests of achieving a mutually agreeable resolution to this extremely important matter.

Sincerely,



William D. Franklin
Mayor