



DuPage Water Commission

MEMORANDUM

TO: Chairman Rathje & Commissioners

FROM: Robert L. Martin, P.E.
General Manager

A handwritten signature in black ink, appearing to read "R. Martin", is written over the printed name of Robert L. Martin.

DATE: February 10, 2009

SUBJECT: Supplemental Board Information

Attached is supplemental board information:

1. Revised February 12, 2009 Commission Agenda including amended recommended motion for Item B under Old Business
2. Copy of Memorandum dated October 2, 2009 from Ed Kazmierczak, Pipeline Supervisor, regarding 75th and Washington Street
3. Memorandum dated February 10, 2009 from Robert Martin, General Manager, regarding 75th and Washington Streets



DuPage Water Commission

600 E. Butterfield Road, Elmhurst, IL 60126-4642
(630)834-0100 Fax: (630)834-0120

REVISED AGENDA

DUPAGE WATER COMMISSION
THURSDAY, FEBRUARY 12, 2009
7:30 P.M.

600 EAST BUTTERFIELD ROAD
ELMHURST, IL 60126

- I. Call to Order and Pledge of Allegiance
- II. Roll Call
(Majority of the Commissioners then in office—minimum 7)
- III. Public Comments (limited to 5 minutes per person)
- IV. Approval of Minutes
 - A. Regular Meeting of January 8, 2009
(Concurrence of a Majority of those Commissioners Present, provided there is a quorum—minimum 4)

RECOMMENDED MOTION: To approve the Minutes of the January 8, 2009 Regular Meeting of the DuPage Water Commission (Voice Vote).

- B. Executive Session of January 8, 2009
(Concurrence of a Majority of those Commissioners Present, provided there is a quorum—minimum 4)

RECOMMENDED MOTION: To approve the Executive Session Minutes of the January 8, 2009 Regular Meeting of the DuPage Water Commission (Voice Vote).

- V. Treasurer's Report – January 2009
(Concurrence of a Majority of those Commissioners Present, provided there is a quorum—minimum 4)

RECOMMENDED MOTION: To accept the January 2009 Treasurer's Report (Voice Vote).

VI. Committee Reports

A. Committee of the Whole

1. Report of 2/12/09 Committee of the Whole
2. Actions on Items Listed on 2/12/09 Committee of the Whole Agenda

B. Administration Committee

- No meeting scheduled

C. Engineering & Construction Committee

- No meeting scheduled

D. Finance Committee

- No meeting scheduled

VII. Chairman's Report

VIII. Omnibus Vote Requiring Majority Vote

- A. Ordinance No. O-1-09: An Ordinance of the DuPage Water Commission, Counties of DuPage, Cook and Will, Illinois, Abating the 2008 Tax Levy for the \$93,970,000 General Obligation Water Refunding Bonds, Series 2001, of the Commission

(Concurrence of a Majority of the Appointed Commissioners—7)

- B. Resolution No. R-8-09: A Resolution Awarding a Contract for Janitorial Services

(Concurrence of a Majority of the Appointed Commissioners—7)

- C. Resolution No. R-9-08: A Resolution Approving and Authorizing the Execution of a Contract between the DuPage Water Commission and CLS Group, Inc. for Document Management System Consulting Services

(Concurrence of a Majority of the Appointed Commissioners—7)

RECOMMENDED MOTION: To adopt the items listed on the Majority Omnibus Vote Agenda in a single group pursuant to the Omnibus Vote Procedures (Roll Call).

IX. Omnibus Vote Requiring Super-Majority or Special Majority Vote

- A. Resolution No. R-4-09: A Resolution Approving and Ratifying Certain Task Orders under a Master Contract with AECOM USA, Inc. at the February 12, 2009, DuPage Water Commission Meeting

(Affirmative Majority of the Appointed Commissioners, containing the votes of at least 1/3 of the County Appointed Commissioners and 40% of the Municipal Appointed Commissioners—3 County + 3 Muni+1=7)

- B. Resolution No. R-5-09: A Resolution Approving and Ratifying Certain Task Orders Under a Master Contract with EN Engineering, LLC at the February 12, 2009, DuPage Water Commission Meeting

(Affirmative Majority of the Appointed Commissioners, containing the votes of at least 1/3 of the County Appointed Commissioners and 40% of the Municipal Appointed Commissioners—3 County + 3 Muni+1=7)

- C. Resolution No. R-6-09: A Resolution Approving a First Amendment to Task Order No. 6 Under the Master Contract with EN Engineering, LLC

(Affirmative Majority of the Appointed Commissioners, containing the votes of at least 1/3 of the County Appointed Commissioners and 40% of the Municipal Appointed Commissioners—3 County + 3 Muni+1=7)

- D. Resolution No. R-7-09: A Resolution Approving and Ratifying Certain Contract Change Orders at the February 12, 2009, DuPage Water Commission Meeting

(Affirmative Majority of the Appointed Commissioners, containing the votes of at least 1/3 of the County Appointed Commissioners and 40% of the Municipal Appointed Commissioners—3 County + 3 Muni+1=7)

RECOMMENDED MOTION: To adopt the item listed on the Super/Special Majority Omnibus Vote Agenda in a single group pursuant to the Omnibus Vote Procedures (Roll Call).

X. Old Business

- A. Request by City of Naperville to Supplement Cost of Relocation of Transmission Main at 75th Street and Washington Avenue
- B. DuPage Pump Station Security Fence

(Concurrence of a Majority of the Appointed Commissioners—7)

RECOMMENDED MOTION: To direct staff to obtain proposals for the modifications to the DuPage Pump Station Security Fence based upon the General Manager's memorandum dated February 6, 2009 (Voice Vote).

XI. New Business

- A. Tentative Draft Fiscal Year 2009-2010 Budget

(Concurrence of a Majority of those Commissioners Present, provided there is a quorum—minimum 4)

RECOMMENDED MOTION: To direct staff to distribute the Tentative Draft Management Budget for Fiscal Year 2009 – 2010 as (presented) (revised) to the Commission's customer utilities (Voice Vote).

B. Presentation on Conservation Program

XII. Accounts Payable

(Affirmative Majority of the Appointed Commissioners, containing the votes of at least 1/3 of the County Appointed Commissioners and 40% of the Municipal Appointed Commissioners—3 County + 3 Muni+1=7)

RECOMMENDED MOTION: To approve the Accounts Payable in the amount of \$97,166.05 subject to submission of all contractually required documentation (Roll Call).

XIII. Executive Session

(Concurrence of a Majority of those Commissioners Present, provided there is a quorum—minimum 4)

RECOMMENDED MOTION: To go into Executive Session to discuss security procedures pursuant to 5 ILCS 120/2(c)(8), to discuss matters related to personnel pursuant to 5 ILCS 120/2(c)(1) and (2), to discuss acquisition of real estate pursuant to 5 ILCS 120/2(c)(5), and/or to discuss pending, probable, or imminent litigation pursuant to 5 ILCS 120/2(c)(11) (Roll Call).

RECOMMENDED MOTION: To come out of Executive Session (Voice Vote).

XIV. Adjournment

(Concurrence of a Majority of those Commissioners Present, provided there is a quorum—minimum 4)



DuPage Water Commission

MEMORANDUM

TO: Robert Martin
General Manager

FROM: Ed Kazmierczak *EK*
Pipeline Supervisor

DATE: October 2, 2008

SUBJECT: 75th and Washington Street
Naperville

ISSUE:

The City of Naperville and the County of DuPage have been working in partnership on a project designed to improve the flow of both vehicular and pedestrian traffic at the intersection of 75th Street and Washington Street in the City of Naperville. Parts of the improvements include widening and reconstruction of the existing roadways and bridge structure, construction of a new drainage system, construction of an underground pedestrian tunnel, and retaining wall construction.

The DuPage Water Commission maintains a 30" diameter steel watermain extending throughout the entire length of the 75th Street limits of improvements. Several valve vaults and cathodic protection test stations are also located at various points within the project area.

It has been determined that relocation of approximately 500 L.F. of the Commission's 30" main will be necessary in order to avoid a conflict with the proposed pedestrian tunnel. The City of Naperville has offered to reimburse the Commission in an amount equal to 55% of the cost of construction that the City estimates to be between \$150,000.00 and \$300,000.00

RECOMMENDATION:

Under a pure cost analysis, the Commission should accept the City of Naperville's offer. According to the Staff Attorney, the Commission would spend a minimum of \$100,000 litigating whether the Commission is required by law to relocate its facilities at its own cost, and the litigation would probably require overturning a recent appellate court decision that was arguably decided the wrong way.

On the other hand, under a fairness analysis, the Commission should reject the City of Naperville's offer and require the City of Naperville to reimburse the Commission, in its entirety, for the actual costs involved in the design and construction of relocated Commission facilities necessary due to a conflict with the construction of the proposed pedestrian tunnel. I offer the following reasons for this recommendation:

1. The DuPage Water Commission has designed and constructed 162 miles of pipeline. During the design stage of these contracts, the Commission made every effort to locate, identify, and avoid potential utility conflicts with both public and private utilities.
2. Whenever design alternates could not eliminate a conflict with an existing public utility the Commission, *at its sole and considerable expense and in compliance with the owners construction standards*, relocated the facility in question.
3. To my knowledge, the Commission has never requested reimbursement from a public utility for creating, for the benefit of our construction, the relocation of underground facilities. Now the Commission finds itself in the position of having to relocate for the benefit of a public body, and we are being asked to cover a portion of the costs.
4. Should the Commission agree to absorb some or all of the costs associated with this work, we will have established a precedent that, in the long term, may prove extremely expensive.

BACKGROUND:

- April 12, 2005-----A meeting was held with representatives from the City of Naperville, T.Y. Lin International, (the project engineers for the City), the DuPage Water Commission, and Alvord, Burdick, and Howson (the Commission's engineers). The purpose of this meeting was to discuss potential conflicts between existing Commission facilities and a pedestrian underpass being proposed for the intersection of 75th and Washington Streets. At the meeting, the City presented two alignment options for the proposed tunnel crossing at Washington Street. One alignment option, a 78 degree skew angle crossing of Washington Street, would not require relocation of Commission facilities. While the other alternate, a 90 degree crossing of Washington Street, would require the Commission to relocate certain facilities to some extent. As the project was in a conceptual design stage at this time, no decision regarding which design alternate would be chosen was neither expressed nor implied.
- April 13, 2005 to February 5, 2008-----No further discussion regarding the project takes place between the Commission and the City or its project engineers.
- February 6, 2008-----The Commission receives notice from the City's project engineers of a utility coordination meeting scheduled to take place at the Naperville Municipal center on February 8, 2008. In addition to the notice one incomplete set of plans was transmitted with the request that the Commission reviews those plans and be ready to discuss potential conflicts at the February 8th meeting. Staff reviewed the plans on February 6, 2008 and discovers numerous conflicts.
- February 8, 2008-----Based on the plans submitted for review, the City is advised that numerous, and significant, conflicts exist. The City is also advised that relocation design of Commission facilities could not begin until final plans were

received. Representatives of the City stated that final plans would be sent out via email, during the week of February 18, 2008.

- March 6, 2008-----Commission receives final plans.
- March 13, 2008-----The Board approves R-8-08 authorizing the execution of Task Order #21 to Consoer Townsend Envirodyne Engineers, Inc., (CTE), to begin "Evaluation of Remedial Measures to Eliminate Potential Conflicts with Commission Facilities-----75th and Washington Streets, Naperville."
- March 14, 2008-----Final plans submitted to CTE.
- On April 17, 2008-----CTE provides the Commission with the preliminary evaluation report required under Task Order #21
- May 14 2008-----A meeting is held with the City to discuss the recommended relocation alternate proposed in the April 17th CTE report. A copy of this report was left with the City as a courtesy and also to avoid additional conflicts with the City's remaining design work. At this meeting, the City states that they will not reimburse the Commission for any costs associated with the relocation of Commission facilities. It is agreed that the next meeting will take place once the City has had the opportunity to review the Commission's proposed recommended relocation alternate
- June 19, 2008-----A meeting was held to discuss engineering concerns related to the Commission's preferred relocation alternate as proposed on May 14th. While the discussion is centered primarily on technical issues, the City now indicates a willingness to participate, to some degree, in financial reimbursement to the Commission. The meeting also results in the decision to instruct the attorneys for the City and Commission to begin work on crafting an IGA, and an acknowledgement that the City will send the Commission the latest plan revisions as soon as they are available.
- July 7, 2008----- Revised drawings are received and are forwarded to CTE
- August 13, 2008----- A meeting with the City of Naperville and CTE was held. All but two engineering issues have been resolved. The two remaining issues are: receiving permission from the County of DuPage to relocate a section of the Commission's main under a portion of the proposed 75th Street pavement, and direction from the County regarding their requirements for the abandonment of existing structures. The city of Naperville states they will contact the County of DuPage regarding these issues. Assuming the county grants permission for this work, and after receipt of the final plans, CTE will provide a preliminary cost estimate to the City of Naperville. The Commission again states that preparation of plans and specifications for the relocation of Commission facilities will not begin until an IGA is in place.


- August 19, 2008-----The County of DuPage grants permission allowing the Commission to relocate to under the proposed 75th Street pavement. However, no mention of abandonment requirements is made.
- September 9, 2008-----The City transmits Final plans to CTE.
- September 11, 2008-----Jim Holzapfel calls to discuss the project with General Manager Martin. Mr. Holzapfel states that the County of DuPage could request that the Commission relocate their main at 100% of their cost, but Naperville doesn't think it should be done this way. Naperville is paying 55% of the cost of the project and the County is paying 45% of the cost of the project. Naperville is proposing paying 55% of the relocation cost and the Commission paying 45% of the cost of the project. Naperville estimates the cost of the work to be between \$150,000 to \$300,000. General Manager Martin tells Mr. Holzapfel that this matter will be discussed with the board in October.
- September 17, 2008-----CTE transmits estimated costs for design and construction to DWC.
- September 18, 2008-----DWC forwards CTE's preliminary cost estimate to the City of Naperville.
- September 19, 2008-----The project is bid at the September 19, 2008 Illinois Department of Transportation letting.



DuPage Water Commission

MEMORANDUM

TO: Chairman Rathje and Commissioners

FROM: Robert L. Martin, P.E. 
General Manager

DATE: February 10, 2009

SUBJECT: Request by City of Naperville to Supplement Cost of Relocation of
Transmission Main at 75th Street and Washington Street

The City of Naperville ("Naperville") has been the lead agency with the County of DuPage ("DuPage") on a project designed to improve the flow of both vehicular and pedestrian traffic at the intersection of 75th Street and Washington Street in the City of Naperville. Parts of the improvements include widening and reconstruction of the existing roadways and bridge structure, construction of a new drainage system, construction of an underground pedestrian tunnel, and retaining wall construction.

The Commission maintains a 30" diameter steel watermain extending throughout the entire length of the 75th Street limits of improvements. It has been determined that relocation of approximately 500 lineal feet of the Commission's 30" main will be necessary in order to avoid a conflict with ramps to the proposed pedestrian tunnel under Washington Street being paid for by Naperville.

The Commission received a copy of a letter from the County of DuPage, Division of Transportation, dated November 4, 2008, from Naperville giving the Commission a 90 day notice to relocate the Commission's 30 inch watermain as part of this project per 605 ILCS 5/9-113. The Commission in meetings with Naperville and DuPage has agreed that the relocation of the main is not necessary until November 2009. The Commission requested that the DuPage Department of Transportation withdraw the letter requiring the relocation of the Commission's main within 90 days. DuPage requested a response on the schedule and timeline the Commission will follow to ensure all watermain relocation work is complete by November 1, 2009. After receipt of the response DuPage would make a determination as to the appropriate time extension that will be allowed.

The City of Naperville (e-mail from James Holzapfel dated October 29, 2008) has proposed a cost share arrangement to relocate the watermain with the City paying approximately 55.5% and the Commission paying approximately 44.5% of

the cost. The estimated cost to the Commission would be \$162,000. The Commission has submitted 70% design drawings to Naperville for their review on December 16, 2008. To date the Commission has not received any comments.

The following are the issues the Commission needs to consider:

First in Time; First in Right In cases of right-of-way conflicts with municipal facilities, the Commission and the municipalities have always followed a "first in time; first in right" philosophy regarding relocation costs such that, if new Commission facilities required the relocation of pre-existing municipal facilities, the Commission would pick up the cost and vice versa. This was the policy the Commission and the municipalities used in the construction of its facilities.

Cost of the Pedestrian Tunnel The relocation of the Commission's 30 inch main is required because of the installation of the pedestrian tunnel which design and construction is being paid solely by Naperville with no contribution by the County of DuPage.

Precedence Setting The Commission would be setting new precedence by agreeing to fund the relocation of its watermain. There could be long term financial implications because other municipalities could use this method of funding their improvements.

Because this issue will ultimately involve a construction project over \$100,000, this matter will require a super-majority affirmative vote of the commissioners including three county appointed commissioners and three municipal appointed commissioners.