

November 13, 2023
121 Evergreen Rd
New Egypt, NJ 08533

The Plumsted Township Committee Special Meeting Workshop for the I-Bank new requirement for requisitions of the Renewal and Replacement Fund of November 13, 2023 was called to order by Mayor Bowen.

STATEMENT: "This meeting is being held in compliance with the Open Public Meetings Act." It was presented for publication to the Asbury Park Press and posted on the Bulletin Board.

THOSE OFFICIALS PRESENT:

COMMITTEEMAN CUOZZO COMMITTEEMAN GRILLETTO COMMITTEEMAN HAMMERSTONE
DEPUTY MAYOR MARINARI MAYOR BOWEN CFO GOWER CLERK WITHAM PIO DRUCKER
ATTORNEY CIPRIANI

Deputy Mayor Marinari is excused. Bond Counsel Matthew Jessup attended via phone.

Mayor Bowen asked everyone to rise for the flag salute followed by a moment of silence.

Bowen said there is one item on the agenda this evening. It is an update on final financing of the loans regarding the wastewater treatment system and a requirement that NJIB is making before December 21, 2023. That is why it needs to be done by special meeting. Bowen introduced Bond Counsel Jessup.

Jessup said there is a resolution before the committee that authorizes two specific amendments to the township's bond indenture, which is the legal document that authorizes the issuance of the bonds to the I-Bank in connection with the wastewater treatment plant and sewer collection system. The township originally entered into the bond indenture in 2021. The amount was about \$9.74 million, which is interest-free and about \$12.345 million which is interest-bearing. That was the June 2021 bond issue. Those bonds are issued pursuant to indenture of trust, which is a large contract effectively between the township and bondholders, the bondholders being I-Bank and NJDEP. Now that the township is getting ready to close the second bond issue, the 2023 bond issue, currently in the amount of \$6.1 million, the I-Bank has come back to the township in connection with that closing and asked the township to make two changes to that indenture of trust.

The first, which is the easier one...there is a section 707 in the indenture that already requires the township...on February 1st of each year...to provide the I-Bank with an annual report. Neil Grossman prepares this report and it gets submitted to the I-Bank. The idea is that the I-Bank wanted ongoing updates as to how the project was progressing. We first did this in 2019, right when construction was just getting underway. They wanted to be able to monitor progress because with progress at Lennar comes PILOTS that are used to pay debt service on the bonds. In connection with the 2023 closing, they have asked that the annual report, now going forward, also include the amount of any withdrawals from the renewal and replacement fund, which is a reserve fund held under the indenture by the bank for capital improvements of the system. Basically, smaller capital improvements that are not worthy of a bond issue, ex. \$100,000 pump, \$50,000 valve, etc. Those types of things that inevitably will be required over time. There is a fund set aside with cash to pay for those things on an on-going basis. That is the R&R fund. The bank...the bond trustee...is not allowed to withdraw money out of the renewal and replacement fund and send it to the township or the MUA to make those improvements unless they are for repairing or replacing capital improvements. There are a couple things that the I-Bank requested that the township add into the annual report that is already being provided to them on an annual basis. None of which seem onerous or difficult. This resolution would amend the trust indenture to add those couple R&R details into the annual fund going forward. Jessup asked if there are any questions.

Cuozzo asked if this resolution is exactly the same as the previous document with amendments that were mentioned by Jessup. Jessup said the document that is being amended is a 70 page document. This resolution, in Section 4 now replaces in its entirety Section 7.07 of that large document to include the language in the middle that he just read, almost verbatim, starting halfway through the fifth line, where it talks about the amount of any withdrawals taken from the renewal and replacement fund during the prior fiscal year, use of the withdrawn funds from the renewal and replacement fund in the prior fiscal year, along with a confirmation that the withdrawn funds were utilized for repair and replacement of capital improvements as required by Section 4.09 hereof. Everything else in Section 7.07 is in the existing indenture document that the township signed in 2021. This resolution would amend that so that the indenture now includes those additional lines. That information would then be included in Grossman's annual report on or before every February 1st.

Grilletto asked about the R&R funds. Grossman had always outlined the funded debt plus the R&R fund in his report and schedules of annual debt. Is the fund going to be included what the township has used in the R&R fund or the total kept aside by the township in the R&R fund? Jessup said that the township's report already, prior to tonight's proposed amendment, already tells the I-Bank how much money is on deposit in the renewal and replacement fund. That is not changing. How the R&R fund is being funded, the amount put into the R&R fund every year, and the fact that the township reports to the I-Bank how much is in the R&R fund annually...none of that is being impacted by the proposed amendment. All of that is already required. The only thing that is being done in this amendment is that in Grossman's annual report, the township will add how much has been withdrawn from the R&R fund, if any, during the prior fiscal year and what it was spent on. Each fiscal year closes on December 31st. Grossman's annual report is issued prior to February 1st as of December 31st.

Cuozzo asked CFO Gower if she understood the changes that are being made. Gower said the changes are to the back end of the R&R fund. Deposits are still being made like normal. The I-Bank now wants the other side...at the end, where the money is requisitioned out, to be different. She will not be doing that. The MUA will be doing that. This is an amendment that the I-Bank wants to increase the report...it is just a very simple change on the report...what has come in...what has come out. Nothing has come out yet. It probably won't for another year or two. They are asking the township to include how much is being spent in the prior twelve month period. Jessup said this is not an operational change. It is simply a reporting requirement.

Bowen asked if there were any other questions. There were none. Bowen asked Jessup to move on to the second amendment.

Jessup said in Section 3 of the resolution proposes an amendment to the same bond indenture. Right now, the indenture says that the township can withdraw money from the renewal and replacement fund to make capital improvements. The I-Bank is effectively insisting that as the operator of the system and the one who knows what improvements need to be made to operate and maintain the system, the Plumsted MUA be the entity that is allowed to withdraw funds from the renewal and replacement fund and use them for capital improvements. The third sentence of Section 4.09 effectively takes the ability of the township to withdraw funds and make capital improvements to the system and transfer that authority to the MUA to withdraw funds specifically out of the R&R fund only and specifically for capital improvements to the system. That is how Section 3 amends the indenture. It changes the party that is authorized to make withdrawals and to spend money on capital improvements.

Grilletto asked if the MUA has any responsibility to the township as far the authority they have to use those funds...does the township have any watchdog eyes on their funds and what they are using it for or to offer any guidance to them. Are there any precautions to tell them what they are using it for or can they just say we need this to do this and that is it?

Jessup said that funds out of the R&R fund can only be used on capital improvements. He realizes that is still a very largely-defined world. But they cannot withdraw funds from the R&R fund and use it to pay operating expenses or pay salaries or pay for some other component of the system. It has to be for a

capital improvement. Grilletto asked who would be the watchdog...would it be DEP or someone from the I-Bank? How would that work?

Jessup said that when the MUA submits a requisition to the trustee for the funds, they would be certifying that the work is R&R eligible and that it is not being used for some other purpose. As for further watchdog, one of the things the I-Bank is building into the township's loan agreement in connection with this closing is a requirement that the township and the MUA enter into an operating agreement for operation of the system. Because right now, the township owns the system and is effectively hiring and engaging the MUA to act as operator of the system. Jessup said that as far as they are aware in conversations with the township, there is no agreement that governs that operation or might add in exactly what Grilletto is talking about, i.e. a report to the township of proposed capital improvements over the course of the next year...or a report of capital improvements undertaken and completed in the prior year. The trust indenture already requires that a consulting engineer do an evaluation of the system once every five years and determine what improvements should be made. The township may want in the operating agreement what is often seen in traditional municipal utility authority deals, is the consulting engineer to do a system evaluation once a year...or maybe once a year after five years, since the township's system is brand new. The point is the township could have a third-party engineer evaluate the system every year, or periodically, and say these are the improvements that we independently suggest be made by the township. That can be the basis for the expenditures that are made by the PMUA using the R&R funds.

What the I-Bank had made clear is that what they did not want the two governing bodies to ultimately be fighting or disputing whether or not a capital improvement needs to be made when the MUA, in their view, is the entity responsible for the systems and is in the best position to know whether that system needs improvement. There are things to Grilletto's point that can be addressed and should be addressed in an operating agreement between the township and the MUA. That is not specifically referenced here because it is not related to the indenture.

There was a discussion about drafting an operating agreement between the township and the MUA. Cuzzo said the MUA does not do what they are supposed to do, and there is no accountability. He said went to 18 meetings before he saw even a semblance of a budget. Grilletto asked if the township should have an agreement drawn up by counsel for the protection of the township. Jessup said yes because the I-Bank is effectively making it a post-closing condition of this loan that the township enter into an operating agreement with the MUA.

From Jessup's perspective, it is a great idea for the township to have an agreement, period. The I-Bank is insisting that the township and the MUA have an agreement. The township should be trying to close out and approve an operating agreement between the township and the MUA in the next two to three months for the operation of the system. Among other things, some level of accountability can be addressed for capital improvements, obligations regarding budgets...when they are due...when they need to be reviewed by the township...when they have to be approved by the MUA...etc. Jessup thinks that an operating agreement is important and is sort of being mandated by the I-Bank.

Bowen asked if putting the two amendments together is transferring oversight of the R&R fund to the I-Bank since they are going to want a line-by-line expense report each year. Jessup said the ability to withdraw funds is being transferred from the township to the MUA and how the money was spent is being reported by the township to the I-Bank. The I-Bank is going to see how the money was spent. They do not have a veto right, but he suspects if they think something is off, they may turn around and want to have a conversation about it, without any formal legal ability under the documents. At the same time, the MUA is going to be the one making those withdrawals, so subject to whatever guardrails the township tries to put into the operating agreement, subject to the always overriding guardrail of the township created the MUA, so the township can dissolve the MUA at any time, which is really the township's check and balance on making sure they do the right thing.

Cuozzo asked how the township has made it this far without an operating agreement. Gower said the operating part is for operation of the plant, which is owned by the township. It is now fully operational and is something that she and Brian talked about prior to the I-Bank requiring it. It will only be beneficial. There is a lot that needs to be put into it, even with payments being taken in by the finance office that go to the MUA. It will, hopefully, be a comprehensive agreement.

Cuozzo asked if Jessup has a suggestion as to who should take the lead on the agreement. Jessup said that is up to the township committee.

Cuozzo asked when decisions have to be made. Bowen said the resolution needs to be approved by the 21st. Jessup said the resolution does not speak to the post-closing obligation to enter into an operating agreement. That is likely going to be on or about February 1, 2024. He suggests that within the next couple of weeks, the township should know who is going to take the lead and move forward.

Bowen asked if Jessup needs the resolution tonight. Jessup said tonight's resolution does not speak to the operating agreement. It simply speaks to the two issues that were talked about earlier; increasing the reporting requirement to include reporting on spending R&R funds and transferring the ability to withdraw funds from the R&R funds to the MUA specifically for capital improvement purposes. As Gower mentioned, no one is anticipating a withdrawal for quite some time in light of the fact that the township has, effectively, a brand new system. This resolution, which only addresses those two things, needs to be completed by the 21st, per the I-Bank because they are getting ready to sell their bonds in the first week of December and they want to know that the township has satisfied this obligation so that they will include the township's \$6 million+ in that bond sale. The completion of the negotiation and approval and execution of an operating agreement between the township and the MUA can come with time over the next couple months.

Bowen said that Brian Brach may have access to a template for an operating agreement because of his other work. The township will reach out to him as a starting point. Bowen asked if there were any other questions for Jessup regarding the resolution. There was concern among committee members about voting on a resolution that no one has had a chance to read fully. Bowen asked Jessup to go through the resolution before the vote.

Jessup said the resolution begins with four pages of recitals, about three plus pages of which the committee has seen before in prior resolutions, authorizing the original trust indenture, the original construction note program, etc. It is effectively a narrative history going back to 2017 of the financing of the wastewater treatment plant and sewer collection system. They would like to continue to provide that history. They think it is important, legally, to provide the foundation for what is being done in every circumstance. They think it is important to allow anybody who is, at some point, reading this to recall the history of where this came from so it does not feel like it is something coming from out of the blue. It is in fact on page 4 where you start to see the current history and what they are trying to do today.

Jessup went through the resolution paragraph by paragraph and answered questions from committee members. Cuozzo questioned why the I-Bank is giving more access to money to the MUA when they have had such difficulty with their own numbers. Jessup said that this is a fight he fought for days with the I-Bank to the point without any discussion with their executive director which he requested, they made a line in the sand a condition of closing. Their view is in the most simplistic form, the MUA is the operator with the knowledge and experience to run the system. If they didn't have that knowledge and experience, we would have them as an operator. They know the system best, when it needs an improvement and the I-Bank does not want any political, public relations, any outside factors impacting whether or not a capital improvement that the knowledgeable operator has determined is necessary from happening.

Cuozzo said it is what it is, we weren't here to build it. He has spoken to people currently operating it and it's built with design flaws and needs a lot of improvements currently because of the low capacity. The design flaw is not inhibiting the functionality of the system but as capacity increases, the tanks will not be able to be leveled because of a pipe and pump design flaw in the system. What he's saying is there is

already stuff at risk and it's already pretty political; the I-Bank is right about that. Grilletto said they are presuming the MUA is not political and knows what they are doing but that's not the case.

Jessup said ordinarily, an MUA is the owner of its system. Cuzzo said if they were completely independent financially, he wouldn't have any of these questions. They aren't. Grilletto said they have problems too.

Jessup said our MUA structurally is no different from any other in its board makeup, how we appoint members, who they are, etc. The difference is that our MUA doesn't own the system that it is running. The MUA is making improvements to its system. And that's important to bond holders because ordinarily, it is the MUA's revenues that are pledged to pay debt service on bonds. In this case, there are two unique factors. One, the MUA doesn't own the system, the Township does. And two, the MUA's revenues from users are not paying debt service on the bonds issued to fund the construction of the system but rather it is the township PILOT revenue. Ordinarily, there is not a concern about outside factors over what an MUA needs to do. Board members are appointed and have their terms. Any municipality can dissolve their MUA and inherit the system and the revenues, the expenses, the debt, etc.

In this case, it's a little bit of a hybrid system, Jessup appreciates the I-Bank's view regarding the knowledge of the MUA over the system. Maybe the operating agreement should consist of an engineer review of the system to make recommendations, maybe every couple of years or every year. The township cannot approve the R&R expenditures because that's what the I-Bank is saying they don't want. What we can do, is see what a consulting engineer is recommending every year and if every year none of those improvements get made, and other improvements get made the engineer is telling you don't need to be made, then there may be an issue. The township and MUA board would need to have a discussion. If improvements are improvements on the list of a third party outside consulting engineer, then that's one way of providing comfort as to how the MUA is operating and making decisions.

Grilletto asked if we want another meeting or move forward. There has been a motion and second to approve, then there would be a vote.

ON MOTION OF COMMITTEEMAN GRILLETTO, SECONDED BY MAYOR BOWEN, RESOLUTION NO. 2023-299 – AUTHORIZING AMENDMENTS TO THE INDENTURE OF TRUST BY AND BETWEEN THE TOWNSHIP AND TD BANK, NATIONAL ASSOCIATION, IN CONNECTION WITH THE TOWNSHIP'S PARTICIPATION IN THE NEW JERSEY INFRASTRUCTURE BANK'S WATER BANK FINANCING PROGRAM, AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH WAS APPROVED. ROLL CALL VOTE: ALL AYES WITH COMMITTEEMAN CUOZZO ABSTAINING. Cuzzo abstained because he would like to hear Deputy Mayor Marinari's opinion on it and he doesn't like voting on something he received the day of the meeting.

Bowen asked for comments from the committee or professionals; there were none. Bowen asked if there was any public comment; there was none.

ON MOTION OF COMMITTEEMAN GRILLETTO, SECONDED BY COMMITTEEMAN HAMMERSTONE, THE NOVEMBER 13, 2023 SPECIAL MEETING WAS ADJOURNED. VOICE VOTE: ALL AYES.

Respectfully Submitted,



Jennifer Witham, RMC, CMR
Municipal Clerk

**Please- be advised that these minutes are adopted pursuant to the Open Public Meetings Act N.J.S.A. 10:4-14. They are not intended to be a verbatim record of the meeting. There is a verbatim recording of the meeting a copy of which may be requested through the Plumsted Township Clerk's Office.*