

## **Open Work Session**

### **Deed of Easement to Delmarva Power & Light Company for Property Located on the East Side of Walston Switch Road**

**December 3, 2019**

Mr. Weston Young, Assistant Director of Administration, and Mr. Dallas Baker, Director of Public Works, came before Council. Mr. Young said he will turn this over to Mr. Baker, as this is a Public Works request, and periodically they have requests from Delmarva Power (DPL) for easements. Mr. Baker explained, DPL has some existing equipment on Walston Switch Road between Route 50 and Old Ocean City Road, and they are looking to expand that just a little bit so they can get their equipment in and out easier. He said he believes right now it is set up as, basically, a straight in and out, and they are looking for more of a U-shaped driveway. He said they are also going to revise some of the drainage ditch that goes through there to help with some flooding issues along that railroad track area.

Mr. Holloway said this is in his District, so he went there and did a walk around. He said this needs to be done because it is a heavily traveled road, and it takes a long time for some of those trucks trying to get in. He said he does not know if there have been any accidents, but there is an opportunity there when the trucks have the roads blocked. He said he is not sure just exactly what they are going to do as far as drainage, to which Mr. Baker responded, there are a couple pipes going in, and with the new driveway they will have a pipe along Walston Switch, but then also they are going to clean up some drainage that runs along that easement. Mr. Holloway asked if there is any chance of them being able to put in a drive-off access like they do in new developments, to which Mr. Baker responded, no. He said, from his understanding, it is just a U-shaped driveway, to which Mr. Holloway responded, that will be a big help.

Mr. Cannon asked if Mr. Taylor has any recommendations regarding the deed, to which Mr. Taylor responded, yes, for two different areas. He said first is what he would call boilerplate type protective provisions for the County, but there are three of them in the Briefing Book, and they are protective. He said there is an indemnity provision so that if something happens where the County became involved in court or a claim, there is indemnification. He said there is a disclaimer that there are not any warranties by the County, and there is also a provision that the County can continue to use the area and grant other easements or licenses on it. He said he thinks those things would be unobjectionable as far as DPL is concerned because, if they are using someone else's property, they ought to be prepared to indemnify them if something untoward happens.

Mr. Taylor said this mentions drainage improvements, and he understands that was just discussed to some extent, but he thinks that ought to be particularized in the document as to exactly what those drainage improvements are going to be, and what property is going to be drained to and from. He said DPL has a station adjacent to this property, he believes, but he does not know whether it is intended to drain from that onto the County's property, or just what, but whatever it is, he thinks it ought to be specified. He said, again, he does not think this is unreasonable, and he thinks this would be very ordinary if they were granting an easement on their property to somebody else. Mr. Baker said, just to clarify, they have a full set of site plans, grading plans, and erosion sediment control plans, but they just do not typically show that level of detail on an easement document. He said it usually just shows the general dimensions of where the easement takes place, but they do have a full set of plans that are available for Council or the public to view the improvements. Mr. Dodd asked if Mr. Baker has anything in writing about the drainage, to which Mr. Baker responded, yes, it is all in the site plans.

Mr. Holloway said this is very close to the area where they have the Beaver Run tax ditch where they have had all the problems. He then asked if the water drains that way, or to another branch because there are two ways it can go. He said it can either go down that road to the Beaver Dam ditch, or it can go to the south and access the Beaver Dam ditch. He then asked which way the water goes because they do not need any increase in water going to the north, to which Mr. Baker responded, they are not altering the drainage path. He said, off the top of his head, he cannot tell him if it goes south or north, and he would have to look at the drawings, but he knows they are not altering the path. He said, from what he understands, there was a crushed pipe, basically, from Delmarva Power accessing in and out of there. He said Mr. Lee Outen, Roads Supervisor, has been out to the site, and is aware of some of the drainage problems. He said, when they initially did some early work, they tried to clean the site up, but inadvertently piled up some material that was blocking flow, so this will be removing that material, and also replacing the crushed pipe. He said, because they are adding what the State considers impervious area with the gravel driveway, there has to be a small stormwater pond associated with it as well. Mr. Holloway asked, if they improve the drainage of that particular piece, will that increase the flow to the north where they have the problems, thus creating another problem, to which Mr. Baker responded, he would have to go back and see if it drains to the north or not. Mr. Young said, if it has a stormwater structure as part of it, typically, for State regulations, they have to discharge equal to existing conditions, so it is usually sized to capture, but in some cases they have to treat existing untreated impervious. He said, if they have no stormwater out there now, which is likely, they may have had to oversize it. Mr. Baker said, when the plans come in, especially for the drainage issues, he will have Mr. Outen look it over because he is really familiar with these drainage areas, and he will ask him to take a look at the plans with the engineers. He said Mr. Outen can let him know if he thinks they need to do anything, and the engineers can incorporate Mr. Outen's suggestions. Mr. Holloway said his thought was that this might be an opportunity to improve something there where they have had issues in the past.

Mr. Taylor said he thinks the issue regarding the drainage could probably be handled by simply referring to the plans in the document that the drainage will be in accordance with whoever prepared them, and it could probably be a simple sentence. Mr. Dodd asked Mr. Taylor if he is okay with Mr. Baker's statement, or does he want to see the plans himself, to which Mr. Taylor responded, he probably cannot tell much more about them than anybody else in the room, although he has looked at those kinds of plans before, but he is going on their expertise. He clarified, he is simply saying he thinks the document should limit it to that so it is not open-ended. Mr. Young said, in a situation where they might want to add a pipe or increase the size of a pipe, that is going to deviate from the plan. He clarified, if they get specific, which they are not usually specific in these documents, they will have to come back before Council so they can improve the drainage out there. He said he thinks they are fine as it is, and this is the standard easement. He said they have many of these with Delmarva Power, and they are fairly consistent, so it would deviate from existing easements the County has with Delmarva Power. Mr. Dodd said he can understand where Mr. Holloway is going with that because they do get a lot of flooding out there, to which Mr. Young responded, and that goes back to where Mr. Baker works with Mr. Outen and their engineers to see what the impacts are. He said, if there is existing flooding to an area, they do not want any development, even something small like a driveway expansion, to cause additional flooding, so that is something they are cognizant about. Mr. Taylor said he really does not think there would be any problem if it said substantially in accordance with the plans the way he just explained it, and if they have to move a pipe two feet or something, he does not think that would be a problem. He said he thinks the chance of this coming back before Council would be pretty remote, and if it did, so what? He said they would then address it, to which Mr. Young responded, it would be a deviation of the approved plans.

Mr. Holloway clarified, what he was getting at is that he knows the way that tax ditch runs because he used to hunt that property, and he grew up around there. He said, if the water runs to the north from this piece of property to the tax ditch, it is going to increase flooding problems where they have that tax ditch across from Walston Switch Road. He said, if the water runs south from this piece of property to the ditch, they are fine, and there are no problems with increasing the water flow. Mr. Young said, if it has stormwater management where it did not have stormwater management before, it is capturing flow coming from that, so even if it drains to the north, less water should be draining to the north if it is designed appropriately, to which Mr. Holloway responded, unless they have a ten-year flood like they have had before. He said he thinks it is probably pretty simple to look at, to which Mr. Baker responded, it really is, and he can go back and look, but, again, they are not deviating from the existing flow. He clarified, if it drained to the north originally, it is still draining in that direction, and water flows where it wants to flow. He said, if it wanted to flow north to begin with, that is the way it flows, but if they want to start sending it to the south they would probably have to regrade the swale next to the road to get the grade to make it go in that direction. He said, again, this is just simply an easement. Mr. Holloway said he will drive back out there again and look at it. Mr. McCain said that Mr. Baker already stated this is not going to alter the flow, to which Mr. Baker responded, correct, and the problem with the existing drainage on the site was that there were obstructions. He said, with the construction and improvements Delmarva Power is proposing, they specifically made them clean it up so it would not hamper the flow any more. Mr. Holloway asked Mr. Young for his permission to talk with Mr. Outen about this because he knows they have been restricted in some cases from talking to employees, but he will give Mr. Outen a call if that is okay, to which Mr. Young responded, sure.

Mr. Cannon said, in reference to Mr. Taylor's recommendations, Mr. Young made the comment that it was deviating from the norm, but he wonders if maybe it would be improving on what they have. He said a lot of times they keep repeating the same documents over and over again, but certainly someone is going to come up with a better way to maybe change that mousetrap, to which Mr. Young responded, he does not know if the proposed changes have been run by Delmarva Power because they would have to consider that. Mr. Cannon said he thought this was just a matter of airing on the side of caution, to which Mr. Taylor responded, he would be very surprised if DPL had an upset stomach about this.

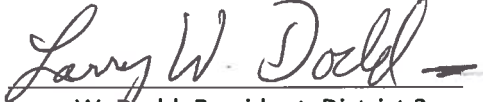
Mr. Taylor said he would like to add that, in the materials he has, he actually cut them down somewhat, and it is fairly typical when somebody is using property for an easement to require them to have insurance to protect them, but this is DPL, and he figured they have insurance, so he tried to not gild the lily, but put in stuff that he thinks is very basic and essential. Mr. McCain said he does not want to add these to this Legislation and vote on it tonight without running this by Delmarva Power. Mr. Cannon asked Mr. Young if he has what Mr. Baker shared with them tonight, to which Mr. Young responded, yes, it was with the Brief Book, but his biggest concern is getting specific with drainage improvements. He explained, if they have to change the size of a pipe to improve flow, or expand the size of the stormwater pond that is there to capture more flow, they will have to get approval for an easement modification. Mr. Holloway said he understands their reluctance to want to do this, but in some cases this might be the chance to improve the problem out there. He said there might not even be a problem, but they know they have had problems in that area. There was no further discussion.

*Signatures on next page*

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Larry W. Dodd, President, District 3

  
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John T. Cannon, Vice President, At-Large

  
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Ernest F. Davis, District 1

  
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Nicole Acle, District 2

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Josh Hastings, District 4

  
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Joe Holloway, District 5

  
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William R. McCain, At-Large

  
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Laura Hurley, Council Administrator