

Open Work Session
To Discuss Airport Water Main City/County Agreement
January 21, 2020

Mr. Dallas Baker, Director of Public Works for Wicomico County, Ms. Amanda Pollack, Director of Infrastructure and Development for the City of Salisbury, and Ms. Katherine McAllister, P.E. with George, Miles and Buhr, LLC, came before Council. Mr. Baker said, as Council knows, they have been working towards extending water out to the Airport. He said currently it is terminated right around Wor-Wic Community College, so they are going to take it down Walston Switch Road to Airport Road, and into the Airport complex. He said the wells in that area are old and going bad, and there are some issues there with water pressure. He said, with proposed expansions of the Airport, drone hangars, and the County trying to revitalize the business part, this is a critical part of that infrastructure to lure more businesses into the Airport area. He said, in addition to the technical side GMB has been working on as far as the design, they have also been working with Ms. Pollack and the City to develop the agreement of how the water will be run. He explained, basically, the County is going to build it and then hand it off to the City to run the water. He said it is their system, and they have the expertise so if there is a water main break in the middle of the night, they can go out and fix it. He said part of the water main will also include a chlorine booster station because it is such a long run, and they have the experts at the water treatment plant to run that who know how much chlorine to feed into their system, so it just kind of all makes sense. He said, on the County side, they are working towards funding for the design and construction, and then the City is being nice enough to run it for them, and this agreement dictates the terms.

Mr. Holloway said it will be going down Walston Switch Road, and he knows the mobile home park has had issues. He then asked if there are plans on hooking into that, to which Mr. Baker responded, no, the condition of the funding is such that no tie-ins are allowed, but they are putting in fire hydrants. Ms. McAllister said, yes, they are putting in fire hydrants for safety reasons, but it is a dedicated line.

Mr. Dodd said Mr. Baker mentioned failing wells. He then asked if he is talking about wells that belong to constituents, to which Mr. Baker responded, he is talking about wells at the Airport. Mr. Dodd said Mr. Baker said there will be no tie-in with the mobile home park, so he is assuming no tie-in with anybody, to which Mr. Baker responded, correct, it is dedicated to the Airport usage.

Mr. McCain said, getting back to Mr. Holloway's question about the mobile home park, does this create opportunity in the future if something needs to be done, to which Ms. McAllister responded, they would have to go through the full process of a water and sewer plan amendment and Planning and Zoning approvals before MDE would ever approve any type of connection. Ms. Pollack said, in the State's eyes, this is what is called a denied access line. She explained, when they allow a line like this, they are trying to not encourage growth in the area. She said, if there is a health emergency at the mobile home park, she is sure they would be willing to entertain that, but, as Ms. McAllister said, they would have to go through the whole process, so it is not a local decision, but a State of Maryland decision. Mr. McCain said his question was more technical, but physically it could be done if needed, to which Ms. McAllister responded, yes, capacity wise. Mr. McCain said from a capacity standpoint it could be done, but today they are just talking about getting water to the Airport, and he understands that. Ms. McAllister said as far as the 12-inch size capacity, yes, but as far as storage, obviously, that would have to be looked at.

Mr. Davis asked, if the County put package plants there for those residents, could the County then take over and supply the water to the Airport, to which Mr. Baker responded, no. He explained, at that point the County would be hooked up to the City system, and they are not trying to take over the City system.

He said it is possible for the County as part of the water-sewer master plan to look at a package plant to serve that area for sewer, but once it is connected to the City's water supply, it is being produced by their park wells and paleo wells, they are treating it and storing it, so the County would not want to start muddying the waters by sticking their fingers in the City's pipes. Ms. Pollack clarified, the Airport is already served with sewer from the City, but has never had water, to which Mr. Baker responded, that is correct. Ms. McAllister said in 2013 GMB actually did a feasibility study on this project, and looked at the alternatives for the County putting in their own deeper wells that would not have the issues they are having now. She said the biggest cost is storage because they have to have the fire hydrant fire flow, so that cost ended up being fairly higher than the cost of extending the City services.

Mr. Holloway said, back in the 1970s or 1980s they ran that sewer pipe down Mt. Hermon Road, and the big discussion was why they did not put water in at that time. He said they had the trench dug and they just would have needed two pipes instead of one, but they did not do it.

Mr. Cannon said the area to be served is noted as the Airport. He then asked if it is also the industrial park near the Airport that is being served as well, and is that something necessary to be noted, to which Ms. McAllister responded, they are all part of the same parcel. She said the business park on Citation Drive is actually part of the same parcel as the Airport, so they will all be part of that parcel. Mr. McCain asked, what about the parcel to the west, to which Mr. Strausburg, responding from the audience, said no. Mr. Cannon asked how hard it would be for them to hook up to that because he always thought that was such a waste to have that property sitting there like that, and then when he heard this was coming he thought it was a great opportunity. He then asked how hard it would be on the State level for that industrial park to gain access once this is put in, to which Mr. Baker responded, they would have to discuss that with the State. He said that really is growth, and that is what they are trying to deny with this, but the Health Department with the mobile home parks and such is a little bit of a lower hanging fruit. Mr. Cannon said, in light of economic development, etc. he thought maybe it would be a great opportunity. Mr. Strausburg then came to the podium and said the other issue they would have to address with that is something they are discussing right now with Ms. Pollack and the Administration, and that is, in the City's Code, extension of water service requires a pre-annexation agreement, so if they extended it to a private parcel, that could constitute a pipe extension annexation, so that really complicates the issue as well. Mr. Cannon said, in reading Section B about this, the State allows it, so, from the terminology how this is phrased, he thought they were going to accept the pipe extension, so he was thinking if the State implies they might possibly approve annexation by the City, then they were by the same sense approving a pipe annexation, to which Mr. Strausburg responded, that really becomes an issue for the City and the County. He said that would really be a local decision, and he prefers to develop the Airport Commerce Park before they create competition across Airport Road.

Mr. Holloway said he knows he is going to get a lot of questions about this. He then asked if what Mr. Strausburg is saying, for example, is if Kilbirnie or the mobile home park wanted to hook up to this water system, that would give the City the right to annex them, to which Mr. Strausburg responded, he would defer to Ms. Pollack, but that is his understanding. Ms. Pollack said the City's Code currently reads that to receive water or sewer service they have to either sign a pre-annexation if they are not adjacent to City limits, or be annexed if they are adjacent to City limits. She said right now the mobile home park, Kilbirnie, or the Airport for that matter, would just have to sign a pre-annexation agreement because they are not adjacent to current City limits. She clarified, the City is not pursuing annexing down Walston Switch Road at this time because that is really not in their growth area of either short-term or long-term growth. She said at this point it would just be a pre-annexation agreement, which, essentially, states, if the City limits come that far, they would be required to annex because they have water and

sewer service. Mr. Holloway asked if what Ms. Pollack is saying is that, if at some point in time the City annexes up to the Airport, the City could annex the Airport, to which Ms. McAllister responded, yes, that is the way the Code is written. Mr. Holloway said he did not think they could annex County property, to which Mr. Strausburg responded, that is being discussed as they speak. He clarified, that particular agreement, the pre-annexation agreement, is being discussed as they speak.

Mr. Dodd said District 3 is his District with the Airport, and all around there, and District 5 runs into there, and he and Mr. Holloway both have heard from a lot of constituents who are concerned about being annexed into the City. He then asked, if they have to sign a pre-annexation agreement, how long before they become City taxpayers, to which Ms. Pollack responded, that would really only be if they petitioned the City for water and sewer service. She clarified, the City really is not at this point going out and trying to annex those properties, so that would be if they have a lot of failing septic, or something like that, and they feel like that is their only option, but knowing the County is going through a County masterplan, they may have other things to look at for sewer service. Mr. Dodd said they already know there are failing septic systems in that area where the pipe is going to be laid, and some failing water systems. Ms. Pollack said, again, if they picture where the mobile home park is, the City limits end up closer to Wor-Wic Community College, so it is not desirable for the City to annex all that property to get down to the mobile home park at this time. Mr. Baker said he will point out that someone cannot be annexed unless they request it, to which Mr. McCain added, citizens have to request to be annexed, and the City cannot just annex. Mr. Dodd asked, what about signing the pre-annexation agreement, to which Mr. Baker responded, signing that agreement is agreeing they want to be annexed. Mr. Dodd asked, if they need water and/or sewer, would they be forced to take the City's since it is the closest source, to which Ms. Pollack responded, they could only be forced if they were in City limits and that tied in. She said, because the State called this a denied access line, the Health Department could not force them to tie in because, again, from a State level, they are saying they are not allowing anybody else to tie in, so they cannot be forced at this time. Mr. Dodd said there are still going to be a lot of questions.

Mr. Cannon asked if there was a pre-annexation agreement between the City and County on the Airport, to which Ms. Pollack responded, there was not. She explained, when sewer was run to the Airport, it predated that part of the Code, and Council is probably aware there are Urban Service Districts, but that is no longer an option in the City Code. She said that was changed a couple decades ago to say annexation of pre-annexation, but back when the Airport received sewer service, it was under an Urban Service District. Mr. Cannon asked whether the County is signing a pre-annexation agreement with this extension, to which Ms. Pollack responded, they are in the process of negotiating that. She clarified, that is not part of the agreement that is in front of Council because that agreement is really to deal with operation and maintenance of it, but, per the City's Code, it is requiring the pre-annexation agreement.

Mr. Taylor said he has an observation, and maybe a possible suggestion. He said he noticed in the agreement that when the Airport hooks in, there will be City charges, which he thinks are the capacity and facilities charges, and will have to be paid by the County or the tenant at the Airport. He said, for anything that will have to be paid, his experience with the City goes back beyond five or six years, and does not include the current Administration, but at that time they found the City tried to use that as a cash cow, and it is based to some extent on their consumption volume. He said he will not get into the details of that, but just points out that there is going to be that cost, and there could at least be some dispute. He said on their disputes they were able to show their water consumption was much less than the table the City was showing based on water meter readings, and they were able to get some relief, but that can be a fairly substantial charge, particularly the capacity charge. He said he would think that since the County is building the line out, the facility charge should not be too great because it is being

paid for by the County. He said it has been awhile, and he forgets how that formula works, but he just remembers it was a lot of numbers after the dollar sign. Ms. Pollack said there are two different fees, and the facility fees are fees when someone else has put in a system, and then someone is tying into it. She said Choptank ran the water main across Walston Switch Road and down to where this tie-in point is, so Choptank would be owed a facility fee just for that piece of the water main they put in. She said she does not have all of those exact numbers, but it is based on their actual cost where anyone else who uses that line pays a share of that line since they installed it. She said capacity fees are based on how much water they are going to use, and the current capacity fee for the City is \$3,500, but that is both water and sewer. She said she thinks the water portion is about \$1,500, but, essentially, that is based on their projected water use. She said there was a policy in the past beyond five years ago where they used to use a table the State had for water use, and it was a gross over estimate of water use. She said the current practice, and what they have been doing for years, is they will allow the applicant to present data on how they are obtaining that water use. She said, if they have a similar facility somewhere else, and if there is some reason why they think the water use is going to be a certain amount, they will base the capacity fee off of that. She said the Code gives them the ability to reevaluate their actual water use in two years after full occupancy, whether it be up or down. She said, for example, car washes may say they are going to reuse a lot of the water, so their capacity fee should be really low, so they will look after two years and see how much water they are actually using and adjust. She said they have tried to base this much more off of a realistic level of water use than what was done in the past. She said a lot of these facilities in the industrial park are probably just going to be office space and large hangars, so they would be relatively low water users, and probably just restrooms for employees. Mr. Taylor asked if the numbers Ms. Pollack just mentioned for capacity are per EDU, to which Ms. Pollack responded, yes. Mr. Taylor said it is going to be more than that then because, obviously, it is going to be more than one EDU.

Mr. Cannon said he thinks there should be a continued discussion on this pre-annexation agreement if it exists, and he certainly would expect it to be part of this agreement here, to which Mr. Baker responded, again, this is the operation and maintenance of the line, and they are trying to separate the two issues. He clarified, this is just the ability of the technical side, such as who is going to go out and fix the main in the middle of the night when it busts, as opposed to annexation and pre-annexation. Mr. Cannon said maybe he should phrase his comments differently. He clarified, he assumes a pre-annexation agreement is going to have to go through this Council, and is going to have to be approved before this agreement gets approved. He said Council is going to have to know where they are in the long-term plan before they approve this type of agreement. Mr. Dodd said he knows Mr. Baker is trying to keep it separate, but it sounds like pre-annexation is inevitable, to which Mr. Baker responded, he cannot speak to whether or not it would come before Council, but he would think it would. Mr. Cannon said he does not know either, but he would think it would. He said, again, he thinks this may be premature until they come to some resolution on pre-annexation, and find some area where they might agree on a pre-annexation, but he does not know. Mr. Hastings asked if it is helpful for the City and County to have this approved ahead of time in order for their own planning or their own next steps, to which Mr. Baker responded, he thinks it is. Mr. Holloway said it kind of sounds like putting the cart before the horse. Mr. Dodd said it sounds like they have a lot of discussion ahead of them.

Mr. Weston Young, Assistant Director of Administration, then came to the podium and said the importance of this agreement is in regards to the operating of the line. He said, if they cannot come to an agreement, which they have not gone in front of the City Council yet, they may not get water. He said, if the City will not agree to maintain the system, or the County is going to have to put forward a plan of maintaining the line, the question is who would they contract with to do the middle of the night water main break, or who would they contract with to run the chlorine booster plant, and then

coordinate with the City, so they may need some sort of anti-backwash item put in to keep their water from going back to the City in case they do not operate the chlorine plant correct. He said he totally agrees that the pre-annexation is an agreement, and the terms of that agreement are yet to be fully negotiated, but the importance of this agreement is for operations. He said the County owns it until they pay off the loan, so it is very similar to Morris Mill in Fruitland where the County owns the distribution line, but what they got with grant money, such as the water tower, they turned over to Fruitland as soon as all parties accepted it. He said, with the line that goes out to 300-some homes, the County owns that, but, when that is fully paid off, it will then be fully transferred to the City of Fruitland. He said it is the same model here. He said, what they are proposing in this agreement is that the County will own the line until they have paid it off, and then they give it to the City, and the City will maintain the line, and if they cannot agree to that, then they may have to look at other serious options to complete this project.

Mr. Baker said, from the technical side, this agreement will affect the design. He said whether the City is going to own it or whether the County owns it, they have to go back and revise the design. He clarified, whether or not the pre-annexation agreement is signed or not is not going to affect how this gets built because how it is operated and maintained will affect how it gets built. Mr. Holloway asked if any action will be taken as far as any construction or anything like that, to which Mr. Young responded, the City has agreed to provide water, but on what terms, part of those terms being the operations, and part being the current City Code and their need for pre-annexation agreement, is being negotiated right now.

Mr. Holloway said it was said they are within two weeks of starting the project, to which Ms. McAllister responded, from a technical design standpoint, it was always designed for City of Salisbury standards. She said there are a couple items the City has reviewed that they need to look at in more detail and talk to a contractor about, but she would say on the bulk of the items it is designed for City of Salisbury standards. Mr. Holloway said that was not his question. He clarified, his question was when are they going to start construction, and it was said within a couple weeks, to which Ms. McAllister responded, they were awarded the contract January 6, so it is up to them to name otherwise. Mr. Holloway said they have made arrangements to start this project, but Council has not approved any of the agreements yet. Mr. Strausburg said they cannot and will not start construction of the line until they resolve the pre-annexation agreement, it is that simple. He said they have a vendor, and they have an acceptable bid, but they cannot actually mobilize and start construction until such time as they have resolved this pre-annexation agreement. He said they certainly as a County cannot agree to the annexation of the Airport, and that is being negotiated as they speak. Mr. Holloway said he understands what Mr. Strausburg is saying, but he also understands what Ms. McAllister said that it could start within a couple of weeks, and they need to get on the same page. He said Council has not approved anything, yet they are hearing it could start in two weeks, to which Mr. Strausburg responded, Council approved the appropriation to build the line. Mr. Holloway clarified, Council has not approved what is on the table today, and they have not approved the pre-annexation agreement, to which Mr. Strausburg responded, correct, but it would seem to him that Council requests Administration to keep Council advised of major project progress, and that is what they are doing here. He said they are telling Council what their arrangement will be with the City with regard to the operation of this line when it is built. He said they would be full speed ahead on this if they had a pre-annexation agreement, and they would have it all here for Council today, but that is a stumbling point at this point in time. He said, to Mr. Young's point, if they cannot come to an agreement on a pre-annexation agreement, they are not going to run water to the Airport.

Mr. Dodd asked if they have discussed a Plan B if they do not come to an agreement, to which Mr. Strausburg responded, Plan B is what they have been operating on for years where there is no water at the Airport, and they would have to find an alternative means of providing water to the Airport. He said,

as Ms. McAllister mentioned, those alternative means are far more expensive than utilizing an existing utility. Mr. Cannon said he would think that when Council approves the funding in the budget, the annexation and this agreement here are completely separate, to which Mr. Strausburg responded, this absolutely has to come back to Council. Mr. Cannon said approving the funding does not automatically approve the agreement, to which Mr. Strausburg responded, absolutely, and they would not start the project without those approvals. He said they would physically be able to start the project, and they have always wanted to start the project in the spring to speed up the completion and development of the Airport, but there is a monkey wrench here. He said they would like to deal with this agreement today so Council is comfortable with the ownership and operation of the line, and then they have to come back to Council with the pre-annexation agreement with the language in that pre-annexation agreement, and the language that existed on the last draft he saw was not acceptable. Mr. Cannon said he would say that in order for Council being asked their opinion on whether or not they are in favor of this or not would be, as part of this agreement, there has to be a clause in there that specifically states based on the approval of the pre-annexation or waiver of a pre-annexation. He said he thinks they have to put that qualifier in there ahead of time before anyone on Council is going to agree to this because, in his opinion, it all revolves around that annexation agreement. He said he would not want Council to get ahead of themselves and approve this agreement, to which Mr. Strausburg responded, they did not anticipate Council approving it today, this was simply a Work Session to bring Council up to speed with where they are. Mr. McCain said this is going to have to come back to Council anyhow, to which Mr. Cannon responded, that is what he is saying. He clarified, when it comes back, in order to expedite this before the pre-annexation or waiver of it, it should state in this document that they recognize the fact there is a waiver of a pre-annexation agreement, or that the pre-annexation agreement has been made. He said it could be incorporated in this document, to which Mr. Strausburg responded, he would have to read through both agreements and have the attorneys read through it who can give them guidance on that. He said, from a practical standpoint, Mr. Cannon is exactly right that they are inextricably linked.

Mrs. Acle asked if this needs to be approved by Council today to move forward, to which Mr. McCain responded, no, it is just a Work Session. Mr. Baker said this is just informing Council where they are with the agreement, and now they have received Council's comments and understand them.

Mr. Dodd said he agrees with Mr. Cannon that there is a lot of concern, and he has a lot of constituents who are concerned. He said a lot of people move because they do not want to live in the City and pay dual taxes, water, and sewer, so Council is going to hear a lot more, at least he is, and he thinks other Councilmembers will. Mr. Baker said what he will leave Council with is they cannot be annexed unless they request it, so no one is suddenly going to find themselves waking up one morning with City taxes.

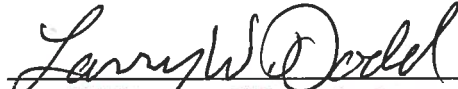
Mr. Cannon said he believes they are getting way ahead of themselves. He then asked if in the pre-annexation agreement there is discussion on considering a pilot program as part of this whole annexation, to which Mr. Strausburg responded, he does not believe so. He said this is simply something the City Code requires before extending out of town water service, and there is one particular line in the pre-annexation agreement that he could not in good conscious recommend the County accept.

Mr. Taylor said there is one other matter he thinks is more due diligence than criticism of the agreement. He said he noticed in the agreement that the County would be giving easements along Walston Switch and another road, and, if those are not deeded roads, meaning the County has fee interest in the roadbeds, there could be an issue. He said there was a case decided in Annapolis about a month ago involving County roads in Somerset County and the giving of County easements of those roads, which he thinks went pretty much for the adjoining landowners. He said he thinks he sent that to

Mrs. Hurley with the suggestion she send it on to the Executive Branch, but it is at least worth looking at. He said it depends, to some extent, on whether the County Road is in what is considered a rural area or an urban area, and Walston Switch, to him, is maybe a little bit in the gray area. He said, in any event, he thinks it is a due diligence matter, and is worth looking at because, if it is beyond a certain pale, the County does not have the requisite interest in the roadbed to give easements in it. He said it is a complicated matter, and this opinion explains it and makes it somewhat more complicated.

Mr. Hastings said overall this is a good project, and the intent to get water to the Airport is a positive thing, and it is great they have a partner like the City who is there to take on things that he does not think the County should be taking on, or do not have the capacity to do so. He said they are talking about a denied access line, and it is not going to spur growth in areas they do not want it. He said, overall, he is glad they have this partnership, and he is glad there is an open conversation, and they have good people working on it, so he is sure they will come up with a good result in the end.

Mr. Dodd thanked them for their presentation, and said Council looks forward to hearing back from them. There was no further discussion.



Larry W. Dodd, President, District 3



John T. Cannon, Vice President, At-Large



Ernest F. Davis, District 1

Nicole Acle, District 2



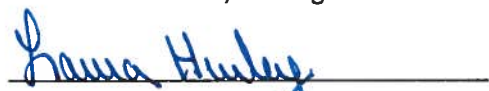
Josh Hastings, District 4



Joe Holloway, District 5



William R. McCain, At-Large



Laura Hurley, Council Administrator