

Dave Fauber

From: Bob Panek [bob.panek@capecharles.org]
Sent: Tuesday, January 08, 2008 3:57 PM
To: 'Joe Vaccaro'; 'Tom Bonadeo'; 'Paul Skolnick'; dave.fauber@capecharles.org
Subject: Annexation Agreement
Attachments: W&WWTP ExpansionChanges.doc; W&WWTP ExpansionREV.doc; W&WW2.xls;
W&WW2EXCL.xls

Gentlemen,

Attached for your review are several documents and spreadsheets that support a revised formulation of the suggested Baymark payment to the Town for increased water and wastewater plant capacity under the Annexation Agreement. The first document explains several changes that have been incorporated since the November 19, 2007 version you last saw.

This revision reflects most of the items addressed by the Baymark representatives in the meeting with Joe and me in December. Two significant items I have not incorporated:

1. Baymark asserted that we included \$2M in the new connection fee to fix problems with the current plant. I can't find any evidence of this, and it really doesn't matter since our current estimate to build the new plants far exceeds the capital cost utilized as the basis for the new connection fee.
2. Baymark asserted that they have no responsibility for development of new sources of water supply under the Annexation Agreement. Our attorney believes that this is not supported by the Agreement and ancillary documentation. Additionally, if this is true why did Baymark drill and dedicate to the Town two new wells?

Please let me know if you see any serious flaws. I'd like to transmit this to Baymark next Monday so we can continue negotiations.

Thanks,

Bob

1/13/2008

January 8, 2008

Town of Cape Charles
Water and Wastewater Plant Expansion

1. Current Capacity.

WTP permitted at 360K gpd; can be expanded to 500K gpd (connecting the 2 new wells, multi-shift operation).

WWTP permitted at 250K gpd; must be replaced to meet environmental standards.

2. Demand.

Peak demand projected to increase from 1,215 ERCs in 2007 to 5,647 in 2026.

Current Peak Demand - WTP about 230K gpd
WWTP about 170K gpd

Projected Peak Demand - WTP about 1.4M to 1.5M gpd
WWTP about 1.0M to 1.1M gpd (75% of WTP)

Current WTP and WWTP capacities will be reached about 2009 and 2011, respectively.

Equivalent Residential Connection (ERC) estimated at 250 gpd at peak; average is about half of that.

WTP capacity must be planned to meet peak demand. WWTP capacity is planned to meet average demand (system design accommodates peaking).

3. Shares of Demand Growth.

Demand is projected to increase from 1,993 ERCs in 2010 (midway between current capacities of WTP and WWTP) to 5,647, a difference of 3,654.

Baymark portion of the growth from 2010 is an increase from 737 to 3,484, a difference of 2,747. This represents 75% of projected growth. Excluding the Marina Villages portion of Baycreek (376 ERCs not associated with the property annexed into Town), results in an adjusted Baymark share of about 68%.

4. Planned Expansion.

Phase I

WTP – Add 500K gpd, for a total of 1.0M gpd; meets demand to about 2016.

WWTP – Replace with 500K gpd; meets demand to about 2021.

Phase II

Planning must continue for additional incremental expansions; 500K gpd for WTP and 250K gpd for WWTP.

5. Current Cost Estimates.

Phase I

WTP Phase I - \$10M; planning & engineering (\$1M) and construction (\$9M), includes expansion on existing site, additional storage, 2 more wells and connections

WWTP Phase I - \$30M; planning & engineering (\$4.7M) and construction (\$25.3M), includes replacement plant (new technology) on existing site, headworks for debris removal (none at existing plant), new outfall to handle increased effluent flow. DEQ preliminary approval for a 90% grant for costs related to nutrient removal; S&W estimates that it will cover about 50% of total costs, leaving about \$15M to be financed.

Total WTP & WWTP for Phase I - \$25M

Phase II

WTP Phase II - \$13.2M (\$11M escalated 20% to 2016); includes land acquisition, plant, storage, wells and connections.

WWTP Phase II - \$15.1M; 50% of Phase I (250K vs. 500K gpd), discounted 25% for non-recurring planning and engineering, escalated by 34% to 2021; after probable grants about \$7.5M remains to be financed.

Total WTP & WWTP for Phase II - \$20.7M

6. New Facility Fee.

The new residential connection charge is \$10,047. This consists of a \$1,728 connection fee and an \$8,319 facility fee. The facility fee is associated with the capital costs of providing the necessary system capacity.

The facility fee of \$8,319 was based on a present value analysis of the revenue stream from 2007 to 2035 that is needed to finance \$22.2M of capital costs over the same period, or \$18M on a present value basis. Of the \$22.2M, \$17.8M was

associated with building the two new Phase I plants (2007-2011), and \$4.4 million with continuing capital improvements to the plants (5% every five years). The revenue stream was based on projected connections over the period and totals \$32.2M, or \$18M on a present value basis. The spread sheets containing the original present value analysis are attached.

Clearly, the \$17.8M of construction costs included in the present value analysis for the new facility fee is associated with only the Phase I plants. The current estimate for these plants is about \$25M (net of grants). The increase from the original estimate is principally associated with additional wells, additional storage and refinement of the wastewater plant analysis.

The estimate for both Phase I and II construction is about \$45.7M (net of grants). With continuing capital improvements, the total estimate would be about \$53.5M through 2035, significantly more than the \$22.2M of capital costs which formed the basis of the new facility fee.

7. Cost Sharing.

Based on the 68% share of demand growth, Baymark's share of nominal total capital costs (\$53.5M) would be about \$36.4M.

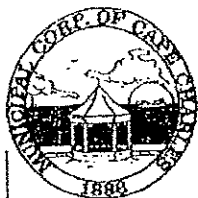
The present value of the total capital costs is \$38.9M. A 68% share is \$26.5M.

However, this must be further adjusted because the new Phase I WWTP will be built to a capacity of 500K gpd, versus the 250K gpd capacity of the current plant. Baymark should not share in the first 250K replacement capacity. After discounting the capital cost of WWTP Phase I by 50%, the adjusted present value of the total capital cost is \$31.7M. A 68% share is \$21.6M.

The present value of capital costs used in calculation of the new facility fee was \$18.0M. A 68% share is \$12.2M. Crediting this against the \$21.6M, above, leaves \$9.4M as Baymark's remaining portion.

Thus, \$18.0M would be generated from the new facility fee and \$9.4M from Baymark's payment, for a total of \$27.4M.

The facility fee for non-Baymark properties and Marina Villages would need to be increased further to generate the remaining \$11.5M for a total of \$38.9M.



Municipal Corp. of Cape Charles

March 6, 2008

Mr. Steven R. Bennett
Construction Manager
Bay Creek Resort and Club
1 Club House Way
Cape Charles, VA 23310

Steve
Dear ~~Mr.~~ Bennett,

As has been conveyed verbally by Town staff, the Mayor and Council have authorized a proposal to settle Baymark's financial obligations related to water and wastewater capacity expansion under the Annexation Agreement. Either of the following two options is acceptable to the Town:

1. A payment of \$21.1 million, coupled with a new residential connection charge of \$1,728 (removes the \$8,319 facility fee).
2. A payment of \$8.9 million, coupled with the current residential connection charge of \$10,047. The connection charge would be subject to future adjustment as necessary.

In either case, a settlement agreement must be concluded and payment made by June 30, 2008.

This settlement is applicable to the Baymark property subject to the Annexation Agreement (excludes Marina Villages) and is based on the data that we have previously provided and discussed in detail.

Please let me know how Baymark wishes to proceed.

Sincerely, .

Joe

Joe Vaccaro
Town Manager



Municipal Corp. of Cape Charles

March 27, 2008

Mr. Steven R. Bennett
Construction Manager
Bay Creek Resort and Club
1 Club House Way
Cape Charles, VA 23310

Steve
Dear Mr. Bennett:

This is in reply to your letter of March 14, 2008 responding to the Town's proposal to settle the financial obligations related to water and wastewater capacity expansion under the Annexation Agreement. As you requested, the following additional information should clarify the derivation of the numbers:

- The \$8.9 million is a refinement of the \$9.4 million figure contained in the January 8, 2008 position paper. This is based on revising the NPV calculation to match the current build-out projection of 2026, vice 2032, thus removing additional periodic plant recapitalization estimates beyond the growth period. You had requested this revision in your position paper of January 29, 2008 and, as had been discussed, we agreed that this was a logical adjustment.
- The \$21.1 million is simply the Baymark share of the gross NPV calculation, as adjusted above, before crediting the Baymark share of the facility fee collections to yield the \$8.9 million. The equivalent value is \$21.6 million in the January 8, 2008 position paper.
- We provided the two options to allow you to consider what might be a better business decision. As noted in our March 6, 2008 letter, the \$21.1 million payment would eliminate the facility fee component of the connection charge for Baymark property subject to the Annexation Agreement. The \$8.9 million payment would keep the current connection charge in place, subject to future adjustment. While the first option had not been specifically discussed, the figure is inherent in the calculations we had previously reviewed with you (as discussed above).

We do not agree with several of the statements in your letter but do not believe it productive to address each and every one. Please do not misconstrue our silence as agreement with your statements. We had thought an agreement had been reached on the methodology at our last meeting, although we were not in agreement on the inputs to the

formula (demand, cost and schedule). In fact, your position paper of January 29, 2008 states, "The methodology explained in this paper is reasonable." Our view is that it is highly unlikely that we would ever completely agree on all aspects and values until the projects are completed. We do, however, believe that the estimate is reasonable given what we now know. We would prefer to settle this now so that we can avoid expending time and effort on continual reevaluation and proceed with the capacity expansion on a more firm financial footing. You question whether the Annexation Agreement provides for advance payment by Baymark. Regardless, the reduced amount calculated in the proposal is based on such an advance payment. If a settlement is not reached Baymark's liability will be greater. In particular we note that if a settlement is not achieved the Town will seek the full amount of \$21.1 million (or such greater amount as is actually incurred by the Town) without credit for any facility fees. The Town regards the credit for the facility fees as a very significant concession in an effort to reach a settlement.

This should provide the additional information needed to further evaluate the two options. I am hopeful that a specific offer will be forthcoming in response to the Town's proposal. Please let me know if you would like to meet in person to discuss any aspect of this matter. As in the case of our prior communications this letter is written for settlement purposes only and subject to approval by the Town Council.

Sincerely,

Joe

Joe Vaccaro
Town Manager

cc: Mayor Dora Sullivan
Cape Charles Town Council Members
Assistant Town Manager Heather Arcos
Paul Skolnick, Town Treasurer



Municipal Corp. of Cape Charles

June 12, 2008

Mr. Steven R. Bennett
Construction Manager
Bay Creek Resort and Club
1 Club House Way
Cape Charles, VA 23310

~~Steve~~
Dear Mr. Bennett,

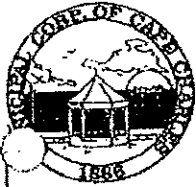
I wanted to follow-up on our meeting today to discuss the payment options associated with water and wastewater capacity expansion under the Annexation Agreement. I trust it was useful in ensuring a full understanding of both the derivation of the numbers and the implications of the two advance payment options versus payment as costs are incurred by the Town. Please let me know if any additional clarification is needed. As discussed, we look forward to a specific Baymark proposal on the advance payment options the Town had previously offered in our letters of March 6 and March 27, 2008.

Sincerely,

Joe

Joe Vaccaro
Town Manager

Municipal Building • 2 Plum Street • Cape Charles, Virginia 23310
(757) 331-3259 Fax (757) 331-4820



Municipal Corp. of Cape Charles

Pend
File

July 11, 2008

Mr. Richard S. Foster
Owner
Bay Creek Resort & Club
1 Club House Way
Cape Charles, VA 23310

Dear ^{Dickie} Mr. Foster,

Thank you for the letter of July 3, 2008, in which you outlined concerns about demand, schedule and cost estimates related to the proposed advance payment to settle the obligations related to sewer and water treatment expansion under the Annexation Agreement. These are similar to the points we have explored with your representatives over the past several months and that we reviewed in our June 12, 2008 meeting. As discussed, there can't be absolute certainty at this time but we believe the advance payment options offered by the Town fairly balanced risk between both parties.

I am encouraged that you are open to the costs that Bay Creek representatives previously had suggested not be included in the Bay Creek share. It is our view that these costs are an integral part of expanding our sewer and water treatment systems:

Relative to demand projections, we based these on known development plans for major parcels and actual water consumption. We have made measurable progress on reducing consumption over the past several months through a variety of measures. We will reevaluate demand projections after each summer season and when other events warrant, such as new development plans.

I agree that a cost comparison with the Onancock plant is difficult because of the many differences between the projects. The efforts by Webster Investors in regard to a potential regional plant should provide us a better benchmark. As I'm sure you are aware, the Town is working closely with them under a Memorandum of Understanding and we have shared our Preliminary Engineering Report, including the cost estimates, with them. However, while we should have the modeling results soon, we will not have firm cost estimates for a regional plant until a formal proposal is submitted under the Virginia Public-Private Education Facilities and Infrastructure Act process.

We are certainly open to future discussions to forge an advance payment settlement that is mutually acceptable to the Town and Bay Creek as additional information becomes available. In the interim, as we have not reached agreement on an advance payment by the date authorized by Town Council, we will commence billing for the Bay Creek share as costs are incurred. This approach will provide certainty for both schedule and cost.

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As discussed above, we plan to periodically reevaluate demand projections. We will make any resulting adjustments to Bay Creek's 68% share (34% for WWTP1) at that time and either refund any overpayments or issue a supplemental bill for any underpayments. Should we reach agreement on an advance payment settlement in the future, we will credit payments made by Bay Creek.

Please let me know if you need any additional information at any time.

Sincerely,



Joe Vaccaro
Town Manager

August 11, 2008

Community Group Inc.
4534 Bonney Road
Virginia Beach, VA 23462

Re: Bay Creek at Cape Charles

 Subject: Marina Village East

Gentlemen,

As an owner of a number of single family lots and two homes in the Marina Village East section of Bay Creek, I am concerned about the lack of effort on your part to repair and/or complete some basic community standards. I believe the example for these basic standards are exhibited in Bay Creek-South (the golf community). Specifically, please note the following:

1. No landscaping or irrigation system at the main entrance on Route 184
2. No signage at the Route 184 and Fig Street entrances
3. Four (4) non-working lights on the Gate House on Route 184
4. All lights non-working on the entrance columns on Route 184
5. Bahama Road street light not working at south entrance
6. Bahama Road street light not working at west entrance
7. Bahama Road - pot holes in road way
8. Charlestowne Drive - missing stop sign
9. Charlestowne Drive - 2 street lights are not working
10. Bridgeton Drive - 3 street lights are not working
11. Bridgeton Drive - pot holes in roadway
12. Bridgeton Drive - fiber optic cable trenches not filled
13. Waters Edge Drive - all streets lights are not working
14. Four (4) non-working lights at entrance on Fig Street
15. No fountains in lakes
16. Lake perimeter not maintained (weeds)
17. Many previously planted street trees have died (lack of water), cut-off and not replaced
18. Non-working lights and missing light on mail pavilion
19. No irrigation system in HOA areas
20. Street lighting not installed on Fig Street
21. Street paving not completed

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galloway1@verizon.net

EXHIBIT

tabbies

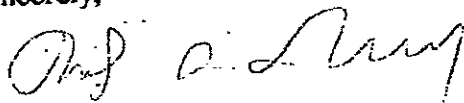
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Community Group
August 11, 2008
Page Two

- 22. No landscaping or irrigation system at traffic circle
- 23. Security gates not installed on Fig Street and Route 184 entrances

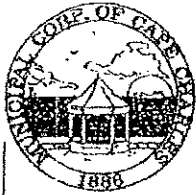
Please provide me with a schedule for correcting the above items. It is my desire to occupy one of my houses in Marina Village East, however I am concerned about safety as well as the impact the listed items are having on the value of my property.

Sincerely,



Paul A. Galloway
President

Cc: Mr. Dick Foster
Mr. Bobby Jarmin
Mr. Brook Parker
Mr. Bobby Thomas



Municipal Corp. of Cape Charles

September 12, 2008

Mr. Richard S. Foster
Owner
Bay Creek Resort & Club
1 Club House Way
Cape Charles, VA 23310

Dear Mr. Foster,

This is in reply to your letter of August 18, 2008, in which you offer several reasons why you believe you cannot pay the July 31, 2008 invoice for the Bay Creek share of design fees for the new Wastewater Treatment Plant or any future design related invoices. The points contained in your letter are addressed below:

1. You state, "The Annexation Agreement calls for Bay Creek to participate in the funding of the expansion of the Water Treatment Plant (WTP) when demand exceeds the plant's permitted capacity. This has not occurred."

This is not an accurate interpretation of the Annexation Agreement which states that, "Brown & Root agrees to pay the cost of the physical expansion of the Town's sewer and water treatment systems, i.e. collection, distribution and treatment, to accommodate the additional treatment demands of the Brown & Root Property beyond the limits of the Town's current permitted capacities." Clearly, the language does not support your position. We are incurring costs on the time line necessary to provide additional capacity. Moreover, the July 31, 2008 invoice is only for design costs of the Wastewater Treatment Plant (WWTP). No design costs have been incurred for expansion of the WTP capacity, and we have repeatedly indicated to Bay Creek representatives that we would not do so until demand projections necessitated that we start that process.

2. You make the same argument in relation to the WWTP and also state, "The Town is replacing the plant (and expanding it at the same time) because of regulatory requirements, not because of capacity issues, so it is unclear to me why Bay Creek is expected to fund this now at a greater share than anyone else."

We certainly recognize that the schedule for replacement of the WWTP is primarily dictated by regulatory requirements as opposed to capacity expansion. That is why we have discounted the Bay Creek share by half (34% vs. 68%), in recognition that the first 250,000 of the 500,000 gallons per day capacity of the new WWTP represents

replacement of existing capacity. This has previously been conveyed to Bay Creek representatives and in my letter of July 11, 2008.

3. You state, "There are other successors and assigns that do not appear to be held to the same standards to which Bay Creek is being held."

We recognize that there may be additional development on portions of the former Brown & Root property and we will engage with the owners as plans mature. In any case, this does not affect Bay Creek's obligations under the Annexation Agreement. As stated in my July 11, 2008 letter, we will reevaluate and adjust the Bay Creek share as demand projections and other development plans evolve.

4. You state, "There are other properties in Town that are in various stages of development as well. All of these properties will contribute additional water and wastewater users. I've seen no indication that the Town is considering additional billing for these properties."

Other than the one proposed development discussed above, these are not located on the former Brown & Root property. While demand estimates for all planned developments have been included in our projections, they have no obligation to make payments beyond established connection charges as they are not subject to the Annexation Agreement.

5. You state, "Bay Creek has not agreed that water source, planning, engineering, legal and administrative fees are part of the "physical expansion" of the plant as described in the Annexation Agreement."

We recognize your position but fundamentally disagree. These costs are integral to the physical expansion of the water and wastewater systems.

6. You state, "Bay Creek has spent \$330,000 for the installation of the two new Town wells. The Town is getting ready to bring these wells on-line, but no consideration for our expenditure has been given."

We recognize the installation of these two wells and in fact have given consideration to their value. As you indicated, we are preparing to bring these wells on line and estimate that it will cost \$250,000 for the necessary pumping and piping. So, the estimate of total costs associated with making this additional water available to the treatment plant is \$580,000. The Bay Creek share would be \$394,400 (68% of \$580,000) an amount exceeding the cost of the two wells. As we do not yet have the actual costs of connection and have not started the design process for expanding the WTP, we felt that the Bay Creek share of this project was "close enough". This has previously been conveyed to

Bay Creek representatives but, if this is not satisfactory to you, we can recalculate after we have the actual cost of connecting the wells and either bill or credit Bay Creek for the variance from 68%. In that regard, we have repeatedly requested documentation to support the \$330,000 expenditure but it has not been provided.

7. The additional data concerning collection of facility fees has been provided by separate correspondence as it is a FOIA request.
8. Relative to cooperation, you make several statements concerning our contract task order with Stearns & Wheeler regarding provisions for Bay Creek participation in meetings and discussions. You state, "The Town has continually excluded Bay Creek from any of these contract provisions or any decision making discussions related to water or wastewater." You also indicate that you have been in favor of effluent reuse in the Bay Creek lake system for many years, and that this is another example of cooperative participation that would be of benefit to both parties.

The contract task order is an agreement between the Town and Stearns & Wheeler. The scope of the order is adjustable as we proceed with the project. In fact, the sentence you have quoted is contained in a section of the task order entitled "Recommended Plan". That aside, Bay Creek participated in the Project Chartering Meeting and has been provided copies of all Technical Memoranda produced under the task order. Relative to effluent reuse in the lake system, we are well aware that you have long been in favor of that concept. However, that has been contingent on not being required to post warning signs on the property. In our last meeting we thought you had expressed unconditional acceptance of effluent reuse. That led to our recent initiative to start the documentation necessary for a reuse plan acceptable to DEQ. In the response to Bob Panek's email, Oral Lambert made it clear that it was still your position that warning signs were unacceptable. Stearns & Wheeler recently confirmed that this still is a DEQ requirement. We are sorry if we misunderstood your statement in our last meeting, but at least we have confirmed that the level of cooperation being offered by Bay Creek on this issue is not quite sufficient given state regulations. This is indeed unfortunate for a variety of reasons, including environmental stewardship.

9. You state, "The Regional WWTP modeling studies appear to have been completed and they indicate that a WWTP of twice the capacity of the Phase I plant in Cape Charles (1 MGD vs. 0.5 MGD) can be built and maintained for approximately the same price being proposed by Cape Charles."

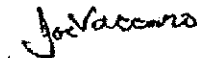
The Town has consistently expressed support for a regional solution if it is economically advantageous. We have also heard that the modeling studies have been completed but

have not yet seen the results. As indicated in my July 11, 2008 letter, we will not have firm cost estimates for a regional plant until a formal proposal is submitted for evaluation under the PPEA process. In any case, the work to produce the WWTP Preliminary Engineering Report, for which Bay Creek has been billed 34%, would be largely applicable to a plant at a regional site.

Although we have previously covered these points in several meetings with Bay Creek representatives and in correspondence, I hope the above will provide you sufficient information to favorably reconsider payment. So that there are no surprises, we are about to enter the comprehensive design process for the new WWTP and we will be submitting additional bills to Bay Creek as costs are incurred.

Moreover, we are very disappointed that you have still neither accepted one of the alternative proposals offered by the Town nor provided your own meaningful proposal. Instead, you have simply criticized the Town's efforts and continue to offer reasons to postpone any payment. Given this state of affairs, we appear to be heading towards litigation and perhaps downsizing the planned Wastewater Treatment Plant due to funding challenges. This will cost us all more in the long run. To avoid these eventualities, I would like to at least reach agreement that payment of these invoices would be credited against a future advance payment settlement that we would continue to work toward, as outlined in my letter of July 11, 2008.

Sincerely,



Joe Vaccaro
Town Manager

Cc:
Mayor and Members of Council



Municipal Corp. of Cape Charles

December 2, 2008

Mr. Richard S. Foster
Owner
Bay Creek Resort & Club
1 Club House Way
Cape Charles, VA 23310

Dear Mr. Foster,

Thank you for the input you provided concerning the Annexation Agreement issue at the Council Executive Session last evening. We were hoping for a more constructive response as indicated in our letter of September 12, 2008. Unfortunately, there does not appear to be any movement on the fundamental issues.

We will continue to take your views into consideration as we move forward on this matter.

Sincerely,

Dora Sullivan
Mayor

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Dave Fauber

From: Bob Panek [bob.panek@capecharles.org]
 Sent: Wednesday, December 03, 2008 4:22 PM
 To: 'Dora Sullivan'; 'Chris Bannon'; 'Bruce Evans'; 'John W. Burdiss'; 'Larry Veber'; 'Joe Vaccaro'
 Cc: 'Heather Arcos'; Dave.Fauber@CapeCharles.org; 'Paul Skolnick'; 'Town Clerk'
 Subject: Executive Session

Mayor and Council Members,

I wanted to follow up with you on the major points made by Mr. Foster at the Executive Session last Monday:

1. WWTP capacity (500K vs. 250K) vs. potential growth - Paraphrasing, "I've been here 7 years and built only 300 units. A 250K plant might last another 14 years." That would be 2022.

The updated growth projections completed October 2008 indicate that a 250K plant will reach capacity in 2013, two years after the new plant comes on line. Bay Creek projects adding 400 ERCs during that period (40% of projected growth). If no other ERCs were added anywhere else in Cape Charles (South Port, Harbor Development Group, Landmark, etc. all fall on their face), Bay Creek projects to add 300 more ERCs over the following three years. Thus, Bay Creek's latest projections alone will bring a 250K plant to capacity in 2016. These projections were personally approved by Mr. Foster. I've conveyed this information to Oral Lambert in an effort to ensure that there is a common understanding of the data. He seemed a little surprised, but indicated that he would bring it to Mr. Foster's attention.

2. Bay Creek's obligation to financially participate under the Annexation Agreement - "The Annexation Agreement requires Bay Creek, as assigns to Brown & Root, to pay the cost of expanding the plant once the plant reaches design capacity." (Emphasis added).

That is not how the Annexation Agreement is written. Here is the direct quote, "Brown & Root agrees to pay the cost of the physical expansion of the Town's sewer and water treatment systems i.e. collection, distribution and treatment, to accommodate the additional treatment demands of the Brown & Root Property beyond the limits of the Town's current permitted capacities." (Emphasis added). Clearly, there is no firm "trigger" of "... once the plant reaches design capacity..." as maintained by Bay Creek. We have consistently stated that we must expend effort and resources sufficiently in advance of when the new plant must be operational. Admittedly, the timing and planned capacity of the new WWTP is complicated by the new environmental regulations and existing 500K discharge permit. That is why we discounted the Bay Creek share by 50%. I believe our interpretation is much more reasonable than that of Bay Creek.

Additionally, their argument that they are not responsible for sharing the "soft costs" associated with expansion of capacity based on the phrase "physical expansion" in the Annexation Agreement is patently absurd. Planning, design and engineering are integral components of expanding capacity. They would be incurred even if we bid out the job on a turn-key "design-build" basis. Further, Mr. Foster stated that he did not pay the \$42K bill we rendered since it included "water source, planning, engineering, legal and administrative fees". This is not accurate. It only included engineering fees.

3. Cost estimate for the new WWTP - Mr. Foster presented many arguments why the cost estimate contained in the Preliminary Engineering Report may be high.

As I previously indicated, the differences between our new plant and Onancock's upgrade are many. Stearns & Wheeler have analyzed it and accounted for all but \$400K

12/4/2008

- not bad for an engineering estimate vs. a contract bid. I can provide you their detailed analysis if desired. In any case, we are working to bring down the cost estimate through the Value Engineering process, as well as some additional options for the Council's consideration (January meeting). We won't have a firm estimate until we decide what we want, advertise it and receive contract bids. We have previously told Bay Creek that we would be willing to adjust costs as we go along if they opted not to accept the one-time payment offer.

In summary, all of the points made by Mr. Foster last Monday have been repeatedly addressed over the last year in meetings and correspondence.

Please let me know if you wish any additional information.

Thanks,

Bob

