

SEWER COMMITTEE INTERIM REPORT TO DLWID BOARD

INTRODUCTION

One of the main priorities of the Devils Lake Water Improvement District is to “[r]educe nutrient loading to Devils Lake from onsite septic systems by supporting extension of a cost effective sewer around the watershed by a means which does not enable detrimental development”. The City of Lincoln City took the first significant step toward this goal by commissioning and funding the “DRAFT Devils Lake Sewer System Pre—Design Report” completed in July of 2015. By 2016, the city had authorized and completed construction of a low pressure sewer system for a 60 home/homesite area on the west side of Devils Lake.

For the fiscal year 2017 – 18, the District budgeted \$30,000 for the sewer project in the M&S Section of the Improvement Fund. More specifically it is listed under Projects-Sewer Systems and is identified as “Sewer Connect Grants and Septic Rebates.” In its description the funds are to be used by the District to promote septic inspection and potential sewer hookups by funding a program that will provide rebates to qualifying homeowners. Committee members are of the opinion that it would be in the purview of the DLWID board to redirect some of these funds towards needed studies and, perhaps, professional assistance since we must approve and finance the system before or at least as a part of funding connections.

The DLWID Sewer Committee was established in April 2016 for the purposes of providing information relevant to the extension of sewer around Devils Lake to stakeholders and seeking relevant input from stakeholders; determining the level of stakeholder support for extension of sewer around Devils Lake; reviewing legal options and requirements for extension of sewer around Devils Lake; and reporting its findings to the DLWID Board of Directors. This interim report of the Sewer Committee provides information relevant to the purposes described above, as follows:

INTERIM REPORT

1. Information relevant to the extension of sewer around Devils Lake:

A. City Participation. Committee members unanimously felt that the first step of the committee should be to determine the City's view of its role and participation in the sewer project. Meetings were held between committee members and the city manager, city engineer, and the public works director. Representative David Gomberg also attended one of our meetings.

The City Manager Ron Chandler (hereafter "CM") stated that the only path he could envision for the city to be the sole agency to establish the sewer system without creation of another entity would be annexation. He said he would not be in favor of using the water service "consents" to force annexation of the project area without substantial support by the residents. The CM also said that one of several negative factors for annexation was that the low pressure system proposed by the PACE report would not have the capacity to service much more than the existing homes and would allow for little new development in the area, thereby limiting the potential tax base in the sewer project area. In addition, available water infrastructure limits development because the City will only permit the 85 existing lots with existing mainline taps to connect to water. Also, current City ordinances limit both water and sewer connections to one connection serving one residential dwelling for each lot in existence as of 1980. The CM said that, although he had not studied the issue, there was a substantial question whether the cost of providing services to the area would exceed the amount of property taxes generated by annexation, especially given the factors mentioned above.

For all of these reasons, extension of sewer around the lake is very unlikely to lead to annexation or to enable any substantial increase in development. The CM said he knew of no discussion or interest on the part of city council members or city staff relating to annexation of the north and east sides of the lake.

The CM said he felt that a special district should be formed outside the city that would have the primary responsibility to move forward with construction, financing, and operation of the system, and that the city's role would be to accept the sewage at the boundary of the new district and to treat it. The public works director and city engineer confirmed that the wastewater treatment plant was presently sized to accept any amount of sewage that could reasonably be expected to be generated from the project area.

The CM and department heads said that the city would be available for consultation regarding district formation and financing, bonding, construction, and

operation issues and would consider a contract with the new district for maintenance and repair of the system much like its agreement to be responsible for maintenance and repairs in the Voyage – Lake LID.

B. Community Outreach; Constituent Communication and Participation. The committee recognizes that our most important stakeholders are the property owners within the proposed sewer project area. To begin the process of providing this information to these constituents, the committee developed and sent out, with Board approval, a letter dated June 23, 2017 to introduce the topic and the basic problem to be solved, and to initiate the project with a message that constituent input was most important and to provide an immediate opportunity for input from those affected.

The letter contained a card with a simple survey to which approximately 20% of the recipients responded. This was considered a fairly good response rate for this type of survey. The committee would characterize the overall response to the letter and survey as mildly positive, but the more important point was initiation of communication with stakeholders and encouragement of stakeholder input.

The committee also prepared an “Overview” of the project that describes, in general terms, the Devils Lake water quality problem and the low pressure sewer system proposed by the PACE report. The “overview” also introduces the possible entities for administration of the sewer project and control of the system after construction, a “ballpark” estimate of costs with comparison to replacement of existing septic systems, and the assurance that the project cannot and will not go forward without majority support of affected property owners. The “Overview” can be viewed at www.dlwid.org by clicking on “Projects”.

Mitchell Moore, a member of the Sewer Committee, created a preliminary project plan for public project development of the sewer project. This project plan generally outlines the steps of project inception, organization and development; financing; and design, construction, completion, startup, and operation. The purpose of this preliminary project plan was to provide the committee with an idea of the scope of work to bring the project to completion, and determine which tasks would require assistance from others, including professionals. It remains for the committee and/or the board to make at least a preliminary determination of dependencies for the tasks, duration, and suggestions regarding assignment to

responsible parties. This project plan, although general in nature, complements the “Overview” and should perhaps be linked to the DLWID website as well.

The committee then organized and hosted two Low Pressure Sewer Workshops on July 29 and August 26, 2017 at which the nitrogen – phosphorus problem and related problems (poor soils, age of tanks and drain fields, impact of poor water quality on property values), proposed solutions (the aeration project, low pressure sewer), and related issues (comparison of cost of sewer vs. septic going forward, sewer project development and funding, impact of low pressure sewer on future development, role of the City of Lincoln City). These workshops were very lightly attended by affected property owners. Representatives of E – One, the manufacturer of the pump likely to be specified for the system, also attended and explained the operation of the pump system. Those who did attend asked questions about costs and financing, possible timing requirements for hook up, decommissioning of existing systems, owner versus contractor installation responsibilities, the operation of the systems, and options for service and repair.

C. Additional Information Gathering

In an attempt to gather as much pertinent information as possible related to the potential extension of sewer to the east side of Devils Lake committee members have reached out to government and financial entities to learn as much as possible about the provision of sewer services. Committee members have had several face to face and teleconference meetings with representatives of different departments of State government.

We have met with Business Oregon whose representatives have made several suggestions related to financing and interim grant possibilities for this project. These opened further discussion with the Governor's office and the Department of Environmental Quality, and these discussions continue to this day.

Committee members and one DLWID board member attended an Oregon Water and Wastewater Funding and Resource Workshop in March, 2017. A committee member also attended a Sustainable Management of Rural And Small Wastewater Systems course in August 2017. Both sessions were sponsored by the Rural Community Assistance Corporation.

We have also had conversations with CoBank and the Rural Utilities Service, both major suppliers of debt to rural wastewater treatment systems. We have also had discussions with the United States Department of Agriculture Rural Development Department related to their Business and Industry Loan Guarantee program designed to bolster the availability of private credit by guaranteeing loans for rural businesses, including public bodies.

(Feel free to add things...)

2. Legal Options and Requirements For Extension of Sewer: The available legal frameworks for extension of sewer are 1) formation of a sanitary district; 2) formation of a sanitary authority; 3) creation of a local improvement district; or 4) annexation of the sewer project area to the City of Lincoln City.

The first three options require some form of consent of the majority of landowners within the project area by either election or approval of a petition after public hearing. Annexation also requires consent of the property owners in the area because the boundaries of the project area are not surrounded by the city. However, the city has required those who obtain water service from the city to consent to future annexation if the city deems future annexation to be necessary. It is believed that those consents have already been obtained from a majority of the property owners in the area of the proposed project; however, as discussed above, for several reasons the city much prefers the formation of a special district and does not presently consider annexation to be an option for extending sewer to the east and north sides of Devils Lake. Therefore, the sewer committee has been operating on the assumption that extension of sewer will only be achieved if supported by a majority of the property owners in the project area through one of the first three vehicles specified above.

Generally, whatever vehicle is selected for implementation of the sewer system, a funding plan will have to be developed to finance the acquisition of capital construction and essential equipment, and to fund the ongoing expenses of operation, maintenance, and replacement of depreciating assets. Being a new district, our options for a funding plan will be relatively simple and straightforward. Since the new district would have no reserves, the financing of the

initial buildout of the system would likely be accomplished through bonding or direct borrowing.

There are several types of bonds and the choice of the appropriate bonding mechanism is influenced by issuance costs, interest rates, whether or not voter approval is required and the resulting taxing authority of the district, authorization limits as a percentage of real market value of district property, whether the particular bonding mechanism is subject to Measure 5 and Measure 50 limitations, etc. Interim financing may be required pending final, long-term funding for the total project cost. Direct borrowing, including government loan programs (think USDA Rural Development), must also be investigated.

It is critical to assemble a financing team, including recognized and experienced bond counsel, to navigate the process of securing sufficient, economical and the best legally available financing for the project. This should be done fairly early in the process, especially if the petition for formation includes a permanent rate limit for operating taxes for the proposed district; or if the petition for formation includes a separate tax for bonded indebtedness for capital construction. In either case, those questions must be presented to the voters *when the election on the question of formation of the district is held*. There is more discussion of this requirement below.

A. Sanitary District. The first of the three entities for consideration is a sanitary district. A sanitary district may be formed for the purpose of constructing and operating a sewer system based on a petition for formation which must be filed with the “County board” (i.e. County commissioners).

The powers of a sanitary district are specified by statute and include the powers to construct, operate and maintain sewage collection and disposal systems; make contracts necessary or proper in the exercise of any powers of the district; issue bonds and determine the rate of levy of taxes necessary to make principal and interest payments on the bonds and to support district activities; fix sewer charges and assessments on the property directly benefited; lay sewer lines in any public street or road in the county and, for this purpose, to make all necessary excavations, subject to the consent of the County and conditions imposed by the County; and to compel all residents and property owners in the district to connect

their houses to an adjacent sewer line (and the Oregon DEQ may have mandatory connection requirements for properties fronting the new sewer line).

Before circulating a petition for formation of a sanitary district for signatures, the petitioner must 1) file with the County Clerk a prospective petition that includes a description of the boundaries of the territory proposed to be included in the district; and 2) complete an economic feasibility statement for the proposed district that includes a proposed first-year line item operating budget and projected third-year line item operating budget that demonstrate the economic feasibility of the new district.

The petition for formation may include a proposed permanent property tax rate limit, expressed in dollars per thousand dollars of assessed value, for operating taxes sufficient to support the services and functions described in the economic feasibility statement. Once a permanent rate limit is established, it cannot be changed by any action of the district or its patrons, and can only be *lowered* by the Oregon legislature, not increased. A sanitary district may ask voters for temporary taxing authority (up to five years for operations and 10 years for capital construction). This is known as a “local option” tax.

The petition for formation must be signed by not less than 15% of the voters, or 100 voters registered in the proposed district, whichever is the greater; **or** 15 owners of land or the owners of 10% of the acreage in the proposed district, whichever is the greater number of property owner signers.

If the petition for formation includes a permanent rate limit for operating taxes for the proposed district, the county must hold an election in the next May or November for which the filing deadline can be met, and the ballot title must clearly indicate that the question being proposed is: (A) whether the proposed district shall be formed; and (B) whether the permanent rate limit specified in the ballot title shall be adopted as the maximum rate for operating taxes for the district.

If the petition for formation includes a separate tax for repayment of bonded indebtedness for capital construction, the county shall hold an election on the question of incurring the bonded indebtedness when the election on the question of formation of the district is held. Authorization requires a simple majority vote in any May or November election or a “double majority” (simple majority plus +50% turnout) vote in a March or September election. The ballot measure must clearly

state that the bonded indebtedness may be approved only if electors approve formation of the district. Members of the district board (three or five) will also be elected at this time.

The sanitary district board may enact ordinances providing for either service charges or assessments, or any combination of service charges or assessments, for the purpose of financing construction, operation and/or maintenance of the system.

Property owners have an opportunity to remonstrate against any proposed improvements before the improvements are made regardless of the method of payment and, if two thirds or more file written remonstrances, the board shall sustain the remonstrances and no further proceedings in the matter of proposed improvements shall be had for a period of six months.

One common method of financing a sewer system is to sell general obligation bonds to raise the funds necessary for the cost of design, engineering, and construction of the system, with the bonds being repaid by a levy of tax on the properties *directly benefited*¹; and to levy a monthly service charge for the cost of operation and maintenance of the system.

A general obligation bond issue is, essentially, a loan from investors to the sanitary district for which repayment is guaranteed by the taxing authority of the district. The cost of issuance for general obligation bonds are generally lower than other types of bonds and the interest rates on general obligation bonds are generally the lowest available because interest payments are tax-free to the investors and the district's authority to levy tax sufficient to repay the bonds is exempt from Measure 5 and Measure 50 limitations. Sanitary districts also enjoy an extremely high limitation on general obligation bond debt (13% of the real market value of the property in the sanitary district) but, of course, that bond debt can only be increased with the voter approval.

None of these "advantages" mean that property owners will pay more the sewer system or sewer service; general obligation bonds may only be used for capital costs, which include design and construction of the backbone and, if property owner hookup is included in the original buildout, the cost of laterals,

¹ Oregon law generally prohibits levy of assessments for improvements on any property other than the property "directly benefited". "Directly benefited" likely means only properties actually connecting to the sewer system and that any assessment on properties outside of the sewer project area would probably be invalid.

pumps, decommissioning of septic tanks, and all other facilities required for the system, but not operation and maintenance.

Operation and maintenance would likely be funded by monthly service charges which the sanitary district has the authority to establish. The monthly service charge must be based, initially, on the economic feasibility study described above and, thereafter, as the district's reasonable maintenance and operation expenses dictate. It is possible to fund the payments on general obligation bonds from sewer charges, but that would not seem to be necessary and would entail additional costs.

Assessment and collection of property taxes shall be made by the County along with assessment and collection of other property taxes by the County; the sanitary district board may contract with the City to collect the service charges with the City's water bills and to pay the City the reasonable cost of such collection services.

It should be noted that complete buildout of the system at its inception may provide economies of scale and may very well entail the lowest cost per property owner as well as having the most immediate and significant positive impact on property values. This would also eliminate a serious problem for "early adopter" user fees. If few people are required to hook up at the outset, those who do may face substantial user fees until more property owners hook up to the system. This problem may be reduced or eliminated by discounts or subsidies for early hookup, but it bears mentioning that both reduction of cost and equality of cost may be best served by complete buildout and hookup by all property owners at startup of the system.

B. Local Improvement District. At one of the meetings with the city, the city manager confirmed that the scale of this project would be too big for the City (or the County) to utilize the LID model. One problem is the upfront cost of design and construction. The Voyage-Lake LID was funded from a DEQ loan to the City that the city is repaying with collection of the assessments from property owners. However, a loan for this new sewer project, if such a loan could be obtained at all, would be much larger and borrowing in the form of GO bonds may well be less expensive for the reasons stated above. More importantly, there is no provision in the law for the management and operation of an LID by a Board of Directors or other separate managers. The management of an LID must be undertaken by the

public body creating the LID – in this case, that would be Lincoln County. The County has not indicated any interest in managing the sewer project and/or operating the new sewer system.

At our meetings with City officials, they did mention that they would seriously consider undertaking the formation of LIDs in presently unsewered pockets on the west side of the lake if the City had the clear indications of support within any of these areas. Any such a City-sponsored LID would mean a much easier formation process than the Voyage-Lake LID.

C. Sanitary Authority. A sanitary “authority” is apparently a vehicle for solving sewage disposal problems in areas of the state requiring the cooperation and integrated effort and support of unincorporated and unincorporated areas. It may include dissolution of an older district whose population has outgrown its infrastructure and requires a new, larger entity. It may also include combination water and sanitary districts. A sanitary authority appears to be appropriate to coordinate sewage disposal efforts and systems that already exist and should be combined, or that will be extended and will require cooperation between between two or more existing governmental entities, for instance, an existing sanitary district and a city or county or, perhaps, between a city and county.

Even if the present project could be viewed as an extension of an existing system, which seems questionable, Lincoln County would have to take the lead as the “governing body” to either form a sanitary authority in combination with the city to have access to and utilize the city’s wastewater treatment plant, or take the lead in forming a sanitary district as described above. However, the election, financing, construction, and operation requirements would be virtually the same as for formation of a new sanitary district. Formation of a sanitary authority does not seem to provide any advantage over the formation of a sanitary district for the project area, especially given Lincoln City’s indications of willingness to cooperate with the sanitary district to accomplish its purposes.

The proposed sewer project area is entirely outside the City of Lincoln City and its entire area would comprise a new sanitary district. It would not include any incorporated area or any other sanitary district. Formation of a sanitary authority seems to add an unnecessary level of complication that can be avoided with the formation of a new sanitary district.

In our meetings with the city manager, he advised that the city and county attorneys were jointly working on a memo describing the features and attributes of, and comparisons of a sanitary district, a local improvement district, and a sanitary authority. To our knowledge, that memo has not been forthcoming.

Possible Additional Project Features. The committee has also discussed needs beyond the sewer, such as a bike path, that should be investigated for incorporation into the project and that might make the project more attractive to stakeholders and/or might be vehicles for attracting grant funds or other public agency funds.

Paving of roads in Neotsu and other portions of the project area may be desirable and may provide additional motivation for a favorable vote on formation and financing of the sewer project.

Next Steps:

- Estimate capital costs of construction and acquisition and installation of essential equipment
- Estimate costs of operation, maintenance, and repair
- Analyze and determine preferred funding tools and mechanisms
- Plan informational and promotional messaging to and from stakeholders throughout the process

This is a broad, general list of required actions. They can be broken into many parts, as evidenced by the Devils Lake Sewer Project plan, but retaining focus on these broader categories should help us not get “lost in the weeds”. Accomplishing the first three will definitely require professional assistance, and good messaging might greatly benefit from professional input. A substantial portion of legal assistance may be built into retention of good bond counsel, but additional legal assistance may also be necessary.

