**BINGEN CITY COUNCIL MINUTES**

**April 11, 2023**

**Meeting Via Teleconference and In-Person**

The meeting was called to order by Mayor Pro Tempore Joseph O’Sullivan at 7:00 p.m.

Council members present: Phil Jones, Ryan O’Connor, Izzy Schroder, and Brittany Spratt. Staff present: City Administrator Krista Loney, City Attorney Christopher R Lanz

Audience Present: Sandi Dickey, Lori Kreps

**Dickey Farms Leak Appeal Hearing**

Dickey Farms requested an appeal hearing that was heard by Council at the April 4, 2023 meeting. Council requested time to review the math and the hearing was continued to this evening. Mayor Pro Tempore opened the hearing at 7:02 p.m. by asking if there were any conflicts of interest for council to not be able to make a ruling. None of the Councilors stated that they had a conflict.

Administrator Loney reviewed the packet that council was given including the meeting agenda, a memo about appeal continuation, leak adjustment calculations from Lori Kreps that were provided at the April 4, 2023 meeting, leak adjustment calculations with changes made by Loney in purple, monthly utility totals from Springbrook 8/2019-5/2020 with units billed highlights and $9,595. Also included were a ledger-size spreadsheet, a memo from Administrator Loney on behalf of Mayor Kiewit with her thoughts. Key point: does the appeal meet criteria? Yes, because there aren’t criteria. Section I-3 of the Leak Adjustment policy states that leaks not repaired within seven days are ineligible for forgiveness. Forgiveness is outside leak adjustment policy and would set precedent.

Lori Kreps emailed spreadsheets to Administrator Loney at 6:34 p.m. These spreadsheets were forwarded to Councilor Schroder who was attending remotely and printed on grey paper for those in the room.

Lori Kreps stated that Dickey Farms has been paying their utility bills all along. In November 2019 Lori Kreps was advised by Stan Dickey and their attorney to pay a percentage of the amount being billed. Kreps created a projection of what Dickey Farms felt was a fair bill based on past utilization and paid that amount toward the utility bill. Kreps presented the spreadsheets that she created and stated that when Dickey Farms paid the $12,245.76 in November 2022 Krista spoke with the Mayor and said that the bill needed to be paid and that a leak adjustment would be discussed. Kreps stated that when Loney presented the calculations she included the leak.

When Lori Kreps completed review of her spreadsheets, Administrator Loney began to walk through the City’s spreadsheets. She began with a statement that regardless of who owns the line, the water is either created or bought by the City of Bingen. Dickey Farms was aware of the leak and didn’t touch it for 9 months. She stated that what they are asking for is essentially free water from 8/2019-11/2022. Their figure does not take into account water utilization or sewer overages. They can say that they feel that they overpaid, our meters tell us what they should pay. All of Bingen pays for water. Loney stated that she understands that Dickey Farms feels they overpaid, but the rules are the rules and the facts are the facts.

Councilor O’Connor asked how we have individual reads if we were billing off the master meter. Loney answered that we have the July 2019 reads and November 2022 reads. The time in between was billed on the master meter.

Councilor O’Connor asked is the difference between the total that was charged includes the leak. Loney answered essentially yes. The Dickey Farms numbers do not account for what leaked out of the pipe.

Loney explained that sewer overage fees are based on water utilization. They are charged on commercial properties only and the rate is $22 per half equivalent residential unit (ERU) once the water utilization goes over 8500 gallons.

Loney explained that the biggest piece of the disputed utilization is accounted for by the leak (88.9%). If the Council were to go with the figure that Dickey Farms is requesting, a precedent would be set for all citizens in Bingen to ask for all the fees they have paid for water back for the last 38 months.

Lori Kreps stated that the November 23 letter stated that sewer utilization forgiveness of $9595 can be offered because the water went into the ground, not into the sewer. Historical utilization showed that before the leak Dickey Farms did not have sewer overage charges.

Councilor O’Connor asked about water base, utilization, sewer base, sewer utilization and what can be forgiven under a leak adjustment. Loney stated that sewer utilization is what Mayor Kiewit offered and cited a recent example of a leak at Zepher. Councilor O’Connor clarified that what can be adjusted is water utilization and sewer utilization, not base fees.

Sandi Dickey asked if the Zepher situation also had a dispute over who owned the line. Loney said no and stated that whether the line is Dickey’s or the City’s, the water was either produced for purchased from White Salmon. Sandi clarified that there is still a dispute over who is responsible for it, and Loney clarified that the dispute is who is responsible for the line, not who is responsible for the water. The city provides water, it’s a service, and everyone in the room pays for city water.

Mayor Pro Tempore O’Sullivan clarified that because there is a dispute over who owns the line, the responsibility of the water at the break is what is being disputed. Sandi Dickey agreed to that and stated that she didn’t know the whole scenario. Dickey stated that she was on city council during the other break on SR-14 when it was poo-poo’d by the previous city administrator as runoff from Dickey flowers when it could have been taken care of and looked at. Mayor Pro Tempore refocused the group.

Lori Kreps stated that the responsibility between the meter and the house is the individuals responsibility and Dickey Farms was paying. Because one person [DR O’Hara] wasn’t paying their bills, they were changed from individual meters to the master meter all of the sudden. Dickey Farms paid under protest then due to City threat to shutoff water. She stated that they paid in good faith all along and they didn’t’ ask to go to one meter, they wanted them separate. Sandi Dickey stated that they have always been good stewards.

Councilor O’Connor asked for clarification about what can be forgiven and Loney stated that water utilization and sewer overage can be forgiven. Loney gave a recent example of leak forgiveness and stated that utilization can be adjusted by comparing present utilization to the same time period one year prior. Loney walked through the leak adjustment policy and stated that Mayor Kiewit waived section A when she put together the leak adjustment offer [of $9,595]. Mayor Kiewit waived the receipt requirement.

Lori Kreps stated that she found the paper of the agreement between Mayor Betty Barnes and Dickey Farms that Dickey Farms agreed to fix the leak. Administrator Loney asked for a copy.

Sandi Dickey stated that they wanted to fix it, it needed to be fixed, and there had been a lot of back and forth about who was going to fix the line, who was responsible for the line, etc.

Mayor Kiewit waived the portion of the leak adjustment policy that stated leak adjustment would be for a one-month period. Section G, Mayor Kiewit waived the $5,000 upper limit of leak adjustment. Mayor Kiewit waived section I, 3 that states that leaks not repaired within seven days do not qualify for forgiveness.

Loney stated that the City has been working in good faith and explained the current ERU charges.

Sandi Dickey asked what would happen if there is a leak today in the same spot. Loney stated that hopefully Dickey Farms would come to the city, all could agree that fixing the line doesn’t imply ownership, and that it would get repaired so that we don’t lose the water.

Sandi Dickey stated that everybody knew about the leak and when she would run into [former Mayor] Betty [Barnes] in the store they would argue over who owns the line. Mayor Pro Tempore O’Sullivan told the group that all should tread carefully. Sandi Dickey stated that it is not just Dickey Farms’ fault that it went past the seven days, it’s the City’s fault, too because nobody was taking responsibility.

Mayor Pro Tempore O’Sullivan asked if they don’t see the City’s offer of $9,595…and Sandi Dickey replied that she is just saying that back then, the city had an onus [to be a part of the fix]. O’Sullivan asked if that was a $9,595 onus. Lori Kreps stated that she strongly believes that Jan knew there was a leak there, that DR was late on his bill, and that’s why they were switched to a single meter. Kreps reiterated that they were paying in good faith, they were paying the single meter bills, and right about the time there was a leak, DR wasn’t paying, they got two water stoppage letters and went to a single meter.

Mayor Pro Tempore O’Sullivan asked if Lori Kreps thought that the City was using DR O’Hara’s nonpayment as an excuse. Loney stated that there are copies of the shutoff notices somewhere.

Councilor Schroder stated that there doesn’t seem to be a discrepancy in the numbers, and Loney agreed.

Councilor Jones stated that the City did pay for the water, to get it from White Salmon, and some we produced ourselves. That’s an important point that the water has to be paid for.

Mayor Pro Tempore O’Sullivan stated that the City forgiving the sewer is extending an olive branch but doesn’t answer the central question of who owns the line. Administrator Loney stated that tonight’s hearing is not about the central question, that is being handled by attorneys.

Councilor O’Connor feels like the main question is who owns the line. Administrator Loney restated that this is not the question tonight.

City Attorney Chris Lanz provided some guidance for the discussion. He stated that Council can make any decision they wish, it must be in writing. There are no qualifications to get the appeal to council. Timeliness is an issue here. If council were to rule in Dickey’s favor, a precedent will be set dating back to November 2019. Mayor Kiewit made concessions to come to something that’s accepted. It wasn’t, and now we are being shown that there is somehow overpayment made. Keep in mind that once this decision is made, there will be precedent set.

Mayor Pro Tempore O’Sullivan asked Lanz if the City runs the same risk of setting precedence if the use the Mayor’s proposal [of $9,595]. Lanz responded in the negative because the offer was based in what can be enumerated by sewer overage.

Councilor Spratt stated that she understands the $9,595 and asked about precedence, stating that this is a special circumstance. She asked why Dickey Farms didn’t accept the $9,595 when it was offered.

Lori Kreps stated that they were paying on individual meters and then all the sudden they went to master meter for all 6 properties on the line, including DR O’Hara. They aren’t responsible for DR O’Hara.

Administrator Loney asked if Kreps is stating that because they were put on a master meter, they believe all their water for 3 years and 3 months should be free. Kreps responded no, they aren’t responsible for [the water that flows through] the master meter. Kreps stated that they were paying by what went through individual meters.

Mayor Pro Tempore stated that this is a matter of perspective.

Lori Kreps stated that she believes that Dickey Farms was switched primarily because of DR nonpayment, and if you look back DR was not paying his bills long before that. All of the sudden it’s going to a master meter. That leak started about that time. Talked to the City, they could have fixed it too. Everybody wanted it fixed. Dickeys took the initiative to do it first.

Mayor Pro Tempore thanked Dickey Farms for fixing the line and stated that this makes no assumption of ownership. O’Sullivan asked the group how they feel about voting on this. Lanz stated that he can call for a vote whenever the body feels that it has the information it needs, but we need to make a decision today to be within the 30 day timeline.

Councilor Spratt asked how much water was purchased from White Salmon and how much the City produced. Loney went to the vault to produce accounts payable records for August 2019 to May 2020.

Administrator Loney returned from the vault and looked through the old accounts payable documents. Water purchased from White Salmon was 4,983,000 in July of 2019. Record review was taking too long so Councilor Spratt asked what the ratio of produced to purchased water is for Bingen. Loney stated that it is between 60 and 85% of water is purchased from White Salmon depending on time of year.

Mayor Pro Tempore stated that the $17,000 is an assignment of the water lost in the leak. Loney demonstrated water utilization and sewer utilization and the high dollar amounts were caused by the leak.

Sandi stated that there was no utilization in the last few months of 2022. The meter was read by the city and didn’t show utilization.

Councilor Jones asked about EUs and Loney clarified the ERU charges of $22 per half ERUs. He inquired if the base fee includes any ERUs, and Loney clarified that it doesn’t include anything.

Councilor O’Connor asked if what’s at dispute is $17000 of water that went into the ground, and that is correct. Loney added that 88.9% of the water utilization amount is the leak. O’Connor asked if Dickey Farms would have used the $19000 figure if there hadn’t been a leak, but there was. Loney stated that this is water and sewer base, that’s what they would have paid or slightly more.

Loney shared a map that David Spratt drew to help understand how the meter spins. There were several months at the end of 2022 where the master meter reading is flat. Loney stated that if 88.9% of the water could be attributed to the leak, utilization would be 10.1% of the master meter read plus individual meters.

Councilor O’Connor inquired about the first read and if it represented all water that went through the meter, and Loney clarified that the read he is referencing is water that went through the individual meters, and then they were switched to a master meter. Loney stated that the total used was the difference between November 2022 and August 2019.

Councilor O’Connor asked if these individual meters were spinning while the master meter was spinning. Individual reads should add up to master meter read.

Councilor O’Connor stated that he is circling back to the idea had there not been a leak, the $1900-ish would be the total owed. He added that the $37,159 and the $17,000 is the cost of the additional water. Lori Kreps stated that $37,159 is what they paid to Bingen.

Councilor O’Connor asked if the $37,159 is what Dickey Farms paid based on the usage from the master meter. Loney clarified that the amount is what Dickey Farms paid based on what they believe they owed based on historical usage data. O’Connor followed up with a question on what Dickey Farms should be charged ($38,631), we could say $38631 minus $19222 is the value of water. Councilor Spratt asked if the sewer overage should be included.

Loney stated that the easiest way to look at this $17,237.63 Dickey Farms feels that they overpaid is because they do not feel that they should be financially responsible for the leak or for the associated sewer utilization. They feel that they have overpaid by that amount and that’s what they want back.

Mayor Pro Tempore Joseph O’Sullivan stated that Mayor Kiewit made an adjustment. Administrator Loney clarified that Mayor Kiewit made an offer of $9,595 of the $12,245 that was paid under protest. Lori Kreps stated that the $12,245 was based on a spreadsheet that Krista provided.

Mayor Pro Tempore O’Sullivan stated that this is a tough decision. Councilor O’Connor stated that the dispute over who owns the water line is at the core of this. Loney stated that this is a completely separate issue and they have to be kept separate for tonight’s hearing.

Councilor O’Connor stated that he is comfortable with the $9,595 that Mayor Kiewit initially offered. Councilor Jones thinks a middle ground would be a split and suggested that the money for water and money for sewer is about equal, essentially Mayor Kiewit’s offer. Councilor Schroder agrees with that figure, stated that anything more is outside policy and would need to go through attorneys.

Mayor Pro Tempore called for a vote. Councilor O’Connor made a motion to uphold the Mayor’s offer of compromise of $9,595 representing the sewer overage. Councilor Jones seconded the motion and it carried.

Mayor Pro Tempore closed the hearing at 8:22 p.m. He thanked the group for their attendance.

**Adjournment**

Mayor Pro Tempore O’Sullivan adjourned the meeting at 8:22 p.m.