BOARD MEETING

Pursuant to notice by publication, the Board Meeting of the Ben Davis Conservancy

District (“District”) was held on Thursday, May 12, 2022, at the District Maintenance

Office, located at 703 S. Tibbs Avenue, Indianapolis, Indiana. Those in attendance: Fred

Buckingham, Chairman; Beverly Matthews, Vice Chair; Jeff Wood, Director; Angela Wirth, Secretary Finance Officer; Jennifer Hess, Counsel for the District; Micah Sarabyn, Project

Coordinator; Jim Frazell and Dee Revnyak of Triad Associates, Inc., Steve Brock, Therber Brock Associates, LLC.

 Freeholder’s in attendance were: Deeana & Donald Robinson, Audrey Strecker, Gregory Broz, Christopher & Jennifer Smith, Greg Poland, Catherine Petty, Greg & Mary Huber, J. Kent Corbin, Fyzal Ohab, Virgil Tharp, Paul Hord, Jeff Collier, Holly Benedict, Kenneth Winkler, and a resident who did not wish to provide their name. Also in attendance were Russ McQuaid (Fox 59 News) Brad Bentley (IMPD), Amelia Pack Harvey (Indy Star), Dan Considine & Lauren Toppen (CEG) Karen Campbell (WTHR News) Jared Evans (City County Councilor). Ms. Hess and Ms. Wirth mentioned to those in attendance that handouts and Exhibits were available for review on the foyer table.

The meeting was called to order at 9:20 a.m. by Fred Buckingham, Chairman, who stated that the reason most people were in attendance today was to ask questions about the proposed wastewater treatment plant (WWTP) project and to obtain answers about any concerns regarding information that has been published and disseminated recently and to make a determination whether to accept or reject the offer from CEG to purchase the Ben Davis Conservancy District for $10 Million Dollars or $15 Million Dollars to be paid over fifteen years in the form of a credit to former BDCD customers. Mr. Buckingham introduced himself along with the District Board members in addition to Ms. Hess, the District attorney, and representatives from Triad Associates, Engineering Consultants, and Therber Brock, the Financial Advisor. The Board has requested legal, engineering, and financial experts make recommendations to the Board regarding the CEG offer and wanted to hear public input regarding the same.

Mr. Brock asked if he could speak first and asked those in attendance to provide reasons for their attendance and to state any concerns or comments so the Board and Consultants could assure that all were addressed. Questions/Inquiries were made from Audrey Strecker, Heatherwood HOA president, who asked to read a letter from the residents of their subdivision citing their wish to continue to be served by the BDCD and not Citizens Energy Group (CEG). Mr. Greg Broz then spoke and stated he is an engineer who works with utilities and would not be in favor of a CEG acquisition because it would not be in the best interests of the residents of the District. Mr. Virgil of Lynhurst Baptist Church also spoke in opposition of a CEG takeover and noted that he feels it would have a negatively financial impact on the church and future development plans that the church is pursuing. Two of the freeholders inquired about the cost and how long the project would take to complete. Another freeholder did not clearly understand the CEG letter they received about buying the District and requested clarification on why it was sent. Another resident wanted to know if the District had financial assistance or payment options for the residents who are having a difficult time paying their bills. After all initial comments were made by the audience, Mr. Brock stated that the questions were all good and requested that representatives from Triad Associates begin with their presentation.

Ms. Revnyak, began by providing a history of the District which has been in existence since 1949. It was noted that it was formed as a means of providing wastewater service to the area due to failing septic systems. She commented that many may not know that the District has been operating successfully for over 64 years and is managed and owned by the freeholders who are among the nearly 6,000 owners of property within the District boundary. The Board members, as well as much of the staff, all live or own property in the area.

Ms. Revnyak then provided a background into the project planning which began over 5 years ago. Several studies were conducted on alternatives, options, and costs. All reports indicated that the least costly option for the District’s property owners was to build and operate their own treatment plant. The CEG offer was then discussed, and it was noted that the CEG calculations included inaccurate figures for current costs, customers, volume etc. which resulted in a fictitiously lower rate that CEG could actually provide.

Lastly, Triad presented the pros and cons of accepting CEG’s offer. The positive aspect was elimination of responsibility for maintenance and operation of the wastewater system. The cons were many and included a discussion on the high compensation of CEG’s executives (which is paid for by ratepayers) , Rate Riders (Environmental Compliance Plan Recovery Mechanism, System Integrity Adjustment, Distribution System Improvements, Septic System Elimination Program, Low Income Assistance Charges) that can be attached to CEG’s bills, history of the City’s and now CEG’s treatment of the District and it customers, the IURC Litigation that the the District had to be filed against CEG in order to prevent a 900% immediate increase in treatment fees, and the loss of control over future rate increases. The property has been purchased, the plant design is complete, firm bids have been obtained, and the bond rates have been received.

Ms. Hess next presented her recommendation. She referred to a handout containing Exhibits A – I. She noted that CEG promised to provide “affordable” sewer service to residents, but provided no legal basis or factual comparisons with other similarity sized utilities that their service is “affordable” . Ms. Hess noted that the offer provided no proof that CEG can provide lower cost than BDCD rates. She explained that the BDCD area was provided a subsidy under when sewage disposal services were provided by the City of Indianapolis, but when CEG acquired the City of Indianapolis Sewage System, CEG fought under IURC Case No. 44685 S-1 to take that subsidy away and testified that they believed BDCD and other satellite customers should pay full wholesale rates (See Ex. A)[[1]](#footnote-1). Next Ms. Hess pointed to Exhibit B, where the full wholesale rate today is $3.26 per 1000 gallons. She then turned to Exhibit C where the “regular” rates for ratepayers are a minimum of $47 a month. She notes that CEG purports the average customer bill would be $53 a month, however, in the actual offer provided, they estimate that 30% of BDCD residents would be over $67 a month. She noted that CEG has not provided any water data to support these assumptions so they cannot be verified.

Ms. Hess then asked those in attendance to look at Exhibit D which contains her own sewer bill for a family of three with bills at $73.78, $86.37, $89.86, $137.17, $140.82 per month. She expressed concerns regarding the ability of residents to budget when bill varies so wildly. She then noted that the $22 per month CEG is promising with the $15 Million Offer is not a “Discount,” but rather a credit. She also believes that the credit is overstated. If we have 5611 EDU’s in the District, the credit would be $14.85 a month, not the $22 promised.

Ms. Hess noted that if the $10 Million dollar offer was accepted, there would be a logistical and fairness problem with distribution. Would the person who just moved from the district after a lifetime of paying AV Taxes in the District, would they be entitled to something and would someone who just moved in get the same amount as someone who has lived here for many many years? She noted that there is no way to treat everyone fairly.

Ms. Hess expressed concerned over CEG holding freeholder money for 15 Years (where CEG is proposing to hold 15M of Freeholder monies to be “credited” to freeholders over 15 years). The offer provided no assurances for safekeeping of funds and she noted that she cannot recommend that you allow any entity to hold freeholder funds for 15 years.

Ms. Hess also noted that CEG has promised “assistance with home repairs to reduce water use and monthly bills” and assistance through LICAP (Low income customer assistance program). However, those programs are “subject to available funds”. She noted that she was unable to analyze availability of these funds as CEG failed to timely file the report with IURC regarding LICAP (see attached Ex. E). Further, when Ms. Hess attempted to see how to apply for LICAP, she was directed to the State EAP program which notes to be a onetime assistance program. She noted that it was unclear to her if this would be ongoing assistance or one-time assistance. However, despite good intentions, there is no guarantee of fund availability.

Ms. Hess next expressed concern that CEG has refused to guarantee they will not increase rates. She noted that CEG can add rate riders to Customer rates to pay for environmental projects (see Ex. F). She noted that there is a history of CEG acquiring a utility and then raising rates. This happened when CEG acquired the City of Indianapolis Sewage Works and this happened when CEG acquired Westfield where CEG requested a 25.4% increase and were permitted a 9.2% increase (see Ex. G).

She noted that the BDCD is accessible to freeholders. The Freeholders here today because the Board meetings are open and accessible as well as the office. She noted that she answered numerous emails yesterday from freeholders because we are small and accessible and will continue to be accessible.

She further noted that CEG promised system upgrades to customers in the unsolicited letter sent to freeholders. This was not in the Offer letter to CEG and without being part of the agreement, CEG would have no contractual obligation to upgrade the system. That being said, the system is already in good repair due to the continued annual maintenance.

 As to pricing, Ms. Hess noted that CEG has not provided any basis for their estimate of the Value of the District and that she believed the offer is too low in light of the facilities offered. BDCD has made annual infrastructure improvements and CEG has provided no basis for accounting for those in the offer. She noted to the Board that if they sell at a low purchase price, they are breaching their duty to their freeholders. She noted that the Westfield sewer and water utility was purchased for over 90 M. She noted that CEG did not include an appraisal of the District. From this perspective, she noted that the Board does not have sufficient information to accept either offer.

 Ms. Hess noted that she did not believe that either offer was in the best interests of the Freeholders of the District based on the information available to her. Despite the prior response of the Board to the CEG acquisition offer, CEG will not agree to not charge cost of acquisition back to ratepayers- a protection for BDCD freeholders that she would absolutely recommend that the Board require whether CEG or someone else acquires the District. She noted that she also had concerns regarding CEG executive compensation. CEG were making 73% more than other municipal utility executives when a compensation study was performed. This was based on the CEO making about 800K. He now makes 1.5M (See Ex. H and Exhibit I). She also noted that one of the assets of the BDCD is the 900 S. Tibbs property. CEG has not made any commitments on what to do with that property. Given the restrictive covenants, it cannot be used for residential or certain commercial uses. That being said, the property is valuable. My fear is that CEG would sell the property to the highest bidder which may include further heavy industrial use which is not desired by anyone in the community. Ms. Hess concluded that she recommends that the Board decline the offer from CEG.

Mr. Steve Brock, stated the project began at a cost of approximately $15,000,000.00 but following Covid – 19 and the rising cost of products, transportation and labor, it was now estimated to cost $24,000,000.00 but the District only asked for $22,000,000.00 of financing authority from the Marion County Circuit Court, with funds on hand in the amount of $2,000,000.00 and the land already having been purchased. Mr. Brock stated the plant will be financed with Bonds and that the monies to repay these bonds will come from user fees user fees currently being collected. These user fees are currently being used to pay the increased cost of processing that CEG charges to the District. Mr. Brock explained, the District is a “collection system” and the CEG treatment expense is out of control and at a rate increase of $26 to 37% the monies being charged to the District by CEG are a big deal.

Mr. Brock discussed the reasons for the District to reject the CEG offer. The first being that the CEG letter was flawed, incorrect and overstated their intent. The second being that CEG offer was not a fair value offer – but an original cost offer to the District. This means that the District assets are worth more than CEG is offering to pay for them. The District is owned by the freeholders whereas Citizens is a “Public Trust” However, not all of CEG’s divisions are operated as a public trust. Citizens has 3 divisions, including its recently acquired Westfield Division, that it is operating as an Investor Owned Utility (IOU). IOU’s are regulated differently and overall have higher rates and charges than publicly owned utilities (like BDCD)

Mr. Brock also stated that the CEG offer is not a purchase offer – because CEG would bill back the purchase price to the BDCD customers in future rates. Mr. Brock stated that the CEG offer is essentially an offer by CEG to have BDCD donate its utility to CEG in return for a loan that the interest and principal on would have to be paid back by the BDCD customers. This would result in the BDCD customers having greatly increased costs if CEG took over the BDCD. Mr. Brock also explained that if CEG acquired the BDCD utility that it would be operated differently and the customer experience under CEG would be different than it is under BDCD. Mr. Brock gave an example where the IURC had investigated CEG over their complaints concerning customer service issues from CEG’s current customers. Mr. Brock also stated that CEG had been investigated by the IURC over CEG’s excessive executive compensation. Mr. Brock also addressed a question from the audience concerning who approves the BDCD budget. Mr. Brock said that the BDCD budgets are reviewed, approved and established through the Indiana Department of Local Government Finance, just like all utilities owned by cities and towns in Indiana and that the BDCD financial records are audited by the Indiana State Board of accounts for both compliance with State rules and procedures and for financial accuracy.

Jared Evans, one of the City-County Councilors for this area commented that he has been aware of this project for some time and the District representatives have shown that their goal is to save the residents money by building the WWTP.

After all comments were received and all questions answered, Board Member Jeff Wood made a motion to take a vote on the second offer for the District from CEG to purchase the District’s assets. Jeff Wood made the motion to decline the offer of acquisition from CEG. Board Member Beverly Matthews seconded the motion. Chairman Fred Buckingham also voted to decline the offer. RESOLVED, with all Board Members in agreement, the offer of CEG to acquire the Ben Davis Conservancy District was declined.

The Board meeting broke for lunch at 11:45 a.m.



1. All references to Exhibits A-I are in reference to the packet Ms. Hess prepared for the Meeting and distributed to all those in attendance. [↑](#footnote-ref-1)