



February 22, 2019

Commissioner Liz McDonald
Commissioner William Warren
Commissioner Mary Ellen Mahoney
Commissioner Albert Glascock
Commissioner Keith Veler

Charles Town Building Commission
101 East Washington Street
Charles Town WV, 25414

Dear Charles Town Building Commissioners:

In coming weeks, you may be asked to again consider the \$16 million bond issuance to finance and construct a new industrial sewer line across Jefferson County. Many facts about this project have come to light since last August, but many questions remain, and we're grateful for the opportunity to summarize key issues for your consideration.

As you know, the Building Commission is an independent government body, and as public officials you have the right and obligation to decide your own path on the sewer bond. Indeed, West Virginia State Law 6B-1-2 declares, "Independence and impartiality of public officials and public employees are essential for the maintenance of the confidence of our citizens in the operation of a democratic government. The decisions and actions of public officials and public employees must be made free from undue influence, favoritism or threat, **at every level of government.**" (*emphasis added*)

We know each of you takes this responsibility seriously and will vote your conscience about what is in the best interests of the Building Commission, the Charles Town sewer system, and the community at large. No matter your view on heavy industrial development in Jefferson County, we urge you to carve out time to engage with the public, and independent legal counsel, to fully consider the following issues before scheduling a vote.

Not a Sewer Vote, A Land Use Vote

The sewer bond is an extraordinary measure. The state's explicit goal in subsidizing this project is to create a 1,000 acre industrial park in Jefferson County. This goes far beyond serving Rockwood, the proposed heavy industrial facility next to North Jefferson Elementary

School. That's why, in part, the proposed sewer line would be roughly eight times larger than the capacity needed for Rockwool.

Thus, this is not a sewer financing vote, but a vote to redefine Jefferson County by enabling land uses that are contrary to the comprehensive plans for Charles Town, Ranson, and Jefferson County.

Most of the groundwork for this broader plan was laid in secret and executed to limit public input. Your vote on the sewer bond is one of the few opportunities for a public say on Rockwool and industrialization of the county.

Should Charles Town support infrastructure projects that ignore our community's Comprehensive Plans?

Why the Building Commission?

As you know, the Building Commission isn't normally in the business of financing, building, owning, and leasing out industrial sewer lines. The project structure you are considering was created by state officials "Without discussion or approval", according to Samme L. Gee, an attorney with Jackson Kelly PLLC, the Bond Counsel for the WV Infrastructure and Jobs Development Council. She wrote in an email to the IJDC on October 10, 2018 :

"I asked on the call how the revenues from that flow would be factored in the pay back. Jane pushed back on that question and Hoy said they would look at it and get back with a proposal. IJDC at the request of the Development Office approved a loan/bonds to the City of Charles Town. Without discussion or approval, John took them down the Building Commission route."

What did she mean by "Without discussion or approval"? Why wasn't the Building Commission or the Charles Town City Council involved in these discussions?

The Building Commission is Becoming a Utility

The Charles Town Building Commission is a separate legal entity from CTUB, and intends to own the sewer line. As such the Building Commission needs to obtain a Certificate of Necessity from the Public Service Commission. West Virginia's 2015 utility deregulation, which would provide an exemption from this requirement, applies to CTUB, not the Building Commission.

Building Commissioners should discuss these issues with independent legal counsel and the Public Service Commission.

What is the Building Commission's Financial Risk?

The claim that these bonds are "free money" from the state is false, because with this vote you are pledging Building Commission assets as security.

What, exactly, are the different default scenarios and what is the scope of risk for the Building Commission and Charles Town as whole?

CTUB's Project Revenue Forecasts are Fiction

By Charles Town Utility Board (CTUB) and state rule, sewers are extended only to serve actual existing customers. But with state financing, CTUB wants to create a large sewer system to serve users who don't exist.

In fact, on January 21, CTUB provided the City Council with a map and forecasts for their sewer line that rely on land uses that are currently prohibited by law. For example the Miller Property is zoned rural and is in the County, so Ranson cannot rezone it, but CTUB is claiming the property will generate 97,916 gallons of waste per day.

Even worse, CTUB's "Jetts Farm" is actually part of Gap View Farm, a 320 acre property on the National Registry of Historic Places. The farm is also in conservation easement through the Farmland Protection Program, and will never produce 37,500 gallons per day of waste that CTUB claims in its projection.

A copy of CTUB's map is enclosed for your review.

Is CTUB also providing state lenders with fantastical revenue forecasts to support the bond? What legal obligation does the Building Commission have to provide state lending authorities and bond investors with realistic revenue forecasts?

The Building Commission should insist on a sewer plan that is accurate and based on legal land uses.

CTUB Is Knowingly Providing Inaccurate Information to Environmental Regulators

Project engineering and recent official communications from Rockwool to CTUB reveal that Rockwool's expected phase one industrial waste flows will be around three times greater than the proposed limit in CTUB's sanitary sewer permit application. This application is currently pending at the WV Department of Environmental Protection (DEP).

It is unethical and contrary to DEP guidelines for CTUB to knowingly submit inaccurate information to the DEP and to refuse to update it. In fact, CTUB may even be violating their fiduciary responsibility.

If Rockwool exceeds the permitted limit, CTUB, not Rockwool, faces penalty from the DEP,

Additionally, what happens if the DEP denies the second, larger permit modification next year, after the system is already built? Ratepayers, not the state, bear the risk of paying for any improvements needed because CTUB is failing to correctly permit the project before construction.

The Building Commission should demand that CTUB submit an accurate industrial waste permit to the DEP before it considers the bond.

CTUB is Already Over Capacity And Dumping Raw Sewage in the Shenandoah River

Recent City Council meetings revealed that CTUB is dumping raw sewage on the ground near two pumping stations and directly piping it into the Shenandoah River. This is outrageous and unacceptable. There were two spills- one for 10 days and one for 11 days in 2018-- and 8 months last year where peak flow exceeded the system capacity of 1.75 million gallons a day, The average peak flow last year was 2.4 million gallons per day, more than 37% over capacity. Yet instead of fixing current capacity problems, CTUB is pushing a massive new expansion.

CTUB is just hoping their capacity issues go away. In a letter to WV DEP CTUB wrote: "CTUB further asserts that it expects future rainfall conditions to return to normal, and the likelihood will be that collection system flows will return to normal." But CTUB does not have the meteorological expertise to know what the climatic situation will be next month, let alone months and years into the future.

How will CTUB handle new waste flows from Rockwool and other industrial sites? Does CTUB's overflow plan for the new line rely on piping untreated industrial waste into the environment?

What are the Other Options?

CTUB has described an array of options for building this line. The Building Commission should ask CTUB for a complete review of all construction options, including the possibility of state financing for just existing customers, as well as the scenario of Rockwool financing its own sewer line.

Evidence of Irregular Accounting

Building Commission action on the sewer bond must comply with broad sets of state utility law, state procurement law, and and state and federal securities law.

A similar and related plan for state financing for Rockwool's water line collapsed recently after the discovery of irregular project procurement and the mass resignation of officials at the Jefferson County Development Authority (JCDA).

There are some unusual elements to the sewer project that merit investigation. Steptoe and Johnson failed to disclose \$1 million in spending by Ranson to the Charles Town City Council during the sewer system merger negotiations and, unusually, funded the spending with a BB&T line of credit. That spending is now being rolled into the bond you are considering.

Regarding this spending, on October 5, 2017 Ranson City Manager Andy Blake had an email exchange with John Reisenweber, then the Executive Director of the JCDA:

Blake: *"One of [the State Auditor's] employees doesn't think City has power to take line of credit."*

Reisenweber: *"The Auditor is a good friend. I can call him."*

Will the state withdraw the loan if a future investigation or litigation reveals this spending, or any part of this project, wasn't in compliance with state financing or purchasing regulations? Did the City of Ranson act within its legal power and is this debt actually the responsibility of Charles Town?

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In conclusion, this is obviously a momentous vote and we thank you for your service. Please know our entire community supports your right and duty to consider these issues in full. There is no rush and we need to get this right.

Indeed, too much of the Rockwool project was advanced-- by design-- without full review and public input. State Senator John Unger has declared, "There's no way Rockwool's air-quality permits should have been approved without a public meeting being held in our community. If the citizens' voices had been heard, I believe these permits would not have been approved at all."

And the Jefferson County Board of Education is now challenging Rockwool's tax abatement scheme. The Superintendent of schools wrote to Rockwool this month and said "...the JCBOE will therefore pursue, and all legal, ethical courses of action to oppose the enactment of the Payment in Lieu of Taxes Agreement."

In turn, we strongly urge the Building Commission to fully review the sewer bond on behalf of Charles Town residents, sewer system ratepayers, and the greater good for everyone in our community.

Thank you in advance for your diligence.

Sincerely,

Leigh Smith
President of the Board
Jefferson County Vision