

## STATE APPEAL BOARD

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| In Re: | City of Waverly, Iowa<br>Budget Appeal<br>FY 2010 | )<br>)<br>) | Order<br><br>May 15, 2009 |
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**BEFORE STATE TREASURER, MICHAEL L. FITZGERALD; STATE AUDITOR, DAVID A. VAUDT; AND THE DIRECTOR OF THE DEPARTMENT OF MANAGEMENT, CHARLES J. KROGMEIER:**

A hearing on the above captioned matter was held pursuant to the provisions of Chapters 24 and 384 of the Code of Iowa on April 10, 2009. The hearing was before a panel consisting of Stephen Ford, City Budget Director and presiding officer, Department of Management; Luke Donahe, Investment Officer, Office of the State Treasurer; and K. David Voy, Manager, Office of the State Auditor.

Richard J. Crayne, City Administrator, and others represented the City and the spokesperson for the petitioners was Diane Turnball representing Waverly Citizens United, Inc.

Upon consideration of the specific objections raised by the petitioners, the testimony presented to the hearing panel at the public hearing, the additional information submitted subsequent to the hearing and after a public meeting to consider the matter, the State Appeal Board has voted to sustain the FY 2010 budget as filed.

### PROCEDURAL HISTORY

The FY 2010 City of Waverly proposed budget summary was published on February 19, 2009 in the Waverly Democrat. The required public hearing was held and the budget was adopted on March 9, 2009.

A petition protesting the certified FY 2010 City of Waverly budget was filed with the Bremer County Auditor on March 25, 2009, and was received by the State Appeal Board on March 26, 2009.

The petition documents states, in part: 1) The water utility rate increased 5%, the sewer utility rate increased 5% and the solid waste increased rates \$.25/sticker and \$.25/dumpster. 2) The overall 2.25% wage increase for non-union employees, the filling of two vacant police officer positions and the associated costs of training, travel, equipment and uniforms and the creation of a Reserve Police Officer Program given the severe economic crisis. 3) Transfers from the Waverly Light & Power to City Funds as follows: \$75,000 to the Recreation Fund, \$284,652 into the Capital Improvement Fund, \$44,700 to Economic Development Department, \$25,000 to the Waverly Health Center and \$120,000 payment to Wartburg Wellness Center. 4) The use of Local Option Sales Tax (LOST) funds for seal coating and storm sewer work.

## DISCUSSION

The petitioners and representatives of the City provided various written summaries, exhibits and verbal commentary in support of their positions. A summary of the public hearing and information provided on this matter is as follows:

### PETITIONERS

At the budget appeal public hearing, Diane Turnball represented the petitioners. In her presentation, she provided certain comments with regard to the Waverly budget, summarized as follows:

1. There should be a pay freeze for all non-union employees, not filling of two vacant police officer positions and the creation of a reserve police officer program.
2. There should be a freeze on all travel and training for City staff and Council for the next year.
3. There should be a freeze on the purchase of all office equipment, vehicles, tools and other equipment.
4. There should be a freeze on all capital improvement projects not flood related.
5. All revenues collected from LOST should be directed to drainage and flood improvements.
6. Waverly Light & Power operates its finances in such a manner to have a surplus of almost \$550,000 transferred to the City. If the transfers were not made, Waverly Light & Power would not need to increase electric rates 3%. These transfers should be removed from the budget and the rate increase should be eliminated with credits given to rate payers for the increases they have already paid.
7. The City's budget includes a 5% rate increase in both the Water and Sewer Funds and includes transfers out from both funds for the construction of a new public works facility.
8. We have always been told the inflatable dam project would have no costs to taxpayers. However, the budget includes bond sale proceeds of \$555,975.

## CITY OF WAVERLY RESPONSE

At the budget appeal public hearing, Richard Crayne, City Administrator, represented the City of Waverly. In his presentation, he provided certain comments with regard to the Waverly budget, summarized as follows:

1. The 5% water and sewer rate increases are necessary to meet the service demands of each enterprise, including the payment of services and commodities, personnel, capital costs, transfers and debt service. The City of Waverly considers this a legislative matter of local government. The solid waste sticker fee will rise from \$1.25 to \$1.50 and was last increased in 1992. The budget reflects the estimated resources derived from the rates proposed for adoption to become effective for FY 2010.
2. The overall increase of non-union employees is 2.25%. The union employees under a collective bargaining agreement will be receiving an approximately 4% wage increase as required in the third year of a three year agreement. The Council has previously enacted budgets each year with an inflationary increase near the same percentage increase as union employees.
3. There is a certain amount of required training in various departments throughout the City. Certain Continuing Education Units (CEU) requirements must be met to maintain certifications and there is mandatory safety training throughout the City.
4. The City is not hiring personnel to fill two new positions on the Waverly Police Department but rather filling existing positions which were budgeted in FY 2009. The FY 2010 budget includes \$5,800 for a Reserve Officer Program which includes equipment and required training for two individuals.
5. Waverly Light and Power has an adopted policy in accordance the Code of Iowa Section 437A.8 to transfer funds to the City of Waverly at a set amount as spelled out by the Board of Trustees Resolution. None of these transfers are new policy but continue the policies of Waverly Light and Power.
6. The use of LOST funds for seal coating street improvement, other street reconstruction work and for storm sewer work or drainage are uses as set out in the LOST ballot language.
7. The FY 2010 adopted budget reflects a reduction in tax dollars levied of .29% and a reduced tax levy of 2.99% from the previous year.

## FINDINGS OF FACT

1. The City of Waverly, subject to various state laws and administrative rules, shall prepare and adopt a budget, certify taxes and propose budgeted expenditures. The City met those requirements.
2. Iowa Code Section 384.19 provides persons who are affected by a city budget, expenditure or levy, or by any item thereof, may appeal by filing a written protest with the county auditor "specifying their objections to the budget or any part of it." The protest must be signed by registered voters equal in number to one-fourth of one percent of the votes for governor in the last general election. The petitioners met this requirement.
3. Iowa Code Section 384.19 "Written Protest" states: "The state appeal board shall proceed to consider the protest in accordance with the same provision that protests to budgets of municipalities are considered under Chapter 24". Pursuant to Iowa Code Sections 24.28 and 24.29, a hearing was scheduled and conducted by designees of the State Appeal Board.
4. Iowa Code Section 24.28 states "At all hearings, the burden shall be upon the objectors with reference to any proposed item in the budget which was included in the budget of the previous year and which the objectors propose should be reduced or excluded; but the burden shall be upon the certifying board or the levying board, as the case may be, to show that any new item in the budget, or any increase in any item in the budget, is necessary, reasonable, and in the interest of the public welfare. "
5. Iowa Administrative Code Section 543-5.7 (8), "Hearing", provides "The appeal board shall exclude evidence which is irrelevant, immaterial or unduly repetitious."
6. Iowa Code Section 24.30 states in part "It shall be the duty of the state board to review and finally pass upon all proposed budget expenditures, tax levies and tax assessments from which appeal is taken and it shall have power and authority to approve, disapprove, or reduce all such proposed budgets, expenditures, and tax levies so submitted...".
7. Total budgeted FY 2010 expenditures of \$23,039,247, including governmental capital projects of \$14,346,941, increased from budgeted FY 2009 expenditures of \$15,552,793, including a capital project of \$3,672,674. Total budgeted FY 2010 expenditures, excluding capital projects, of \$12,017,938 increased from total budgeted FY 2009 expenditures, excluding capital projects, of \$11,850,119.
8. The FY 2010 budgeted expenditures for public safety of \$1,694,759 decreased from FY 2009 budgeted expenditures of \$1,700,699.

9. The FY 2010 budgeted expenditures for business type activities of \$3,325,632 increased from FY 2009 budgeted expenditures of \$3,096,636, primarily due to the increase in the airport expenditures.
10. The FY 2010 budgeted transfers from the business type activities proprietary fund of \$475,321 decreased from FY 2009 budgeted transfers from the business type activities proprietary fund of \$1,084,179.
11. In *State v. City of Altoona*, 274 N.W.2d 366, 368 (Iowa 1979), the Court held that in enacting the utility rate provisions of Iowa Code Section 386.84, the Legislature not only empowered the municipality to fix rates but also provided that the procedures set forth in Iowa Code Section 386.84 should control with the right of judicial review. The language suggests an appeal from a municipal utility rate would occur in the form of a judicial review action in district court.
12. In *State v. City of Iowa City*, 490 N.W.2d 825, 829 (Iowa 1992), the Court further expanded on the power of municipal utilities to set rates, noting that the Iowa Code only codifies one limitation; namely, that the rates not be discriminatory under Iowa Code Section 388.6. The Court held other common law limitations and rules apply and approvingly quoted the following:

The rate charged by a municipal utility must be fair, reasonable, just, uniform, and nondiscriminatory, and the same rules in regard to the reasonableness of private utility companies apply. Judicial review may usually be had as to the reasonableness of the rates, but the court may not engage in ratemaking since this is a legislative function.
13. Iowa Attorney General's Opinion No. 86-11-1 dated November 10, 1986 states a utility board may not spend utility revenues for City purposes not related to operation of the utility but may transfer surplus revenues to other City funds as provided in Iowa Code Section 384.89. City boards, other than the City Council, do not have home rule authority to act outside their statutory field of operation.
14. Waverly Light and Power budgeted transfers of \$960,349 during calendar year 2009. All transfers are made to the City of Waverly as permitted by Iowa Code Sections 384.89 and 437A.8. The City makes contractual payments of \$120,000 to the Wartburg–Waverly Wellness Center (year 2 of 15) and \$25,000 to the Waverly Health Center (year 5 of 5).
15. The LOST ballot dated January 21, 2003 requires LOST revenues to be used 100% for enforcement and public safety projects, including acquisition of equipment and construction of capital improvements; for drainage and flood control improvements; and for street, alley and parking improvements and related infrastructure.
16. The City of Waverly's adopted budget includes cash and accrual financial information.

## **CONCLUSIONS OF LAW**

The State Appeal Board has jurisdiction over the parties and the subject matter of this appeal, pursuant to Iowa Code sections 24.28 and 384.19.

## **BASIS FOR DECISION**

Iowa Code Section 24.28 states in part, "At all hearings, the burden shall be upon the objectors with reference to any proposed item in the budget which was included in the previous year and which the objectors propose should be reduced or excluded...". The Code continues: "...the burden shall be upon the certifying board or the levying board, as the case may be, to show any new item in the budget, or any increase in any item in the budget, is necessary, reasonable, and in the interest of the public welfare. The petitioners did not adequately satisfy this requirement to justify a change in the FY 2010 budget. The City did adequately satisfy the increases in the FY 2010 budget.

The budget appeal process established under state law provides for the State Appeal Board to review and rule upon proposed budgets, expenditures and tax levies. A portion of the petitioners' concerns involved their disagreement with specific decisions made by the City and not with identifiable budgetary effects of those decisions.

The State Appeal Board lacks the authority to adjudicate complaints regarding a municipal utility's rates.

## **ORDER**

Based on the information provided by the parties involved and the Iowa Code, the State Appeal Board sustains the FY 2010 Budget of the City of Waverly as adopted.

The City of Waverly budget forms contain both cash and accrual financial information. The state budget forms should use the same basis of accounting as the Annual Financial Report submitted to the Auditor of State. The reports should consistently utilize the same basis of accounting throughout the forms.

STATE APPEAL BOARD

David A. Vaudt

David A. Vaudt  
Chairperson

Michael L. Fitzgerald

Michael L. Fitzgerald  
Vice Chairperson

Charles J. Krogmeier

Charles J. Krogmeier  
Member

5/28/9

Date