

**MINUTES OF A MEETING OF THE  
DuPAGE WATER COMMISSION  
HELD ON THURSDAY, OCTOBER 8, 2009  
600 E. BUTTERFIELD ROAD  
ELMHURST, ILLINOIS**

The meeting was called to order by Chairman S. Louis Rathje at 7:35 P.M.

Commissioners in attendance: E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Mueller, W. Murphy, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Commissioners Absent: T. Bennington and W. Maio

Also in attendance: Treasurer R. Thorn, R. Martin, M. Crowley, C. Johnson, T. McGhee, R. C. Bostick, J. Schori, E. Kazmierczak, and F. Frelka

**PUBLIC COMMENTS**

None

**APPROVAL OF MINUTES**

Commissioner Mathews moved to approve the Minutes of the September 10, 2009 Regular Meeting of the DuPage Water Commission. Seconded by Commissioner Hartwig and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Chaplin moved to approve the Executive Session Minutes of the September 10, 2009 Regular Meeting of the DuPage Water Commission. Seconded by Commissioner Zay and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

**TREASURER'S REPORT**

Treasurer Thorn presented the Treasurer's Report for the month of September 2009 which showed receipts of \$8,138,034.00 and disbursements of \$9,102,403.00.

Commissioner Hartwig moved to accept the September 2009 Treasurer's Report. Seconded by Commissioner Zay and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

**COMMITTEE REPORTS**

**Administration Committee – Reported by Commissioner Murphy**

Commissioner Murphy reported that the Administration Committee reviewed all items listed on the Administration Committee agenda and, specifically, the request from

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Brookfield-North Riverside Water Commission for possible water service. Commissioner Murphy also reported that it was the consensus of the Administration Committee to include the Brookfield-North Riverside Water Commission's request in the hydraulic analysis that is currently being conducted, and in the financial, legal, and policy analyses that will be conducted, with respect to the issue of providing water outside of the Commission's territorial limits.

In response to Commissioner Murphy's inquiry at the September Committee meeting concerning the end result or final product of the Regional Water Supply Planning Group and whether that end result or final product might impact the Commission's decision-making process or policy determinations with respect to extraterritorial water service, Chairman Rathje and General Manager Martin both noted that the Regional Water Supply Planning Group is in the process of reviewing its final draft of a regional water plan for the 11-county planning areas of northeastern Illinois which is scheduled to be available on October 27<sup>th</sup>. General Manager Martin stated that a copy of the draft will be mailed to all Commissioners, Mayors, and City/Village Managers for their prompt review and comment as the Regional Water Supply Planning Group will be taking a January 25, 2010, final vote on the Plan.

### **Engineering & Construction Committee – Reported by Commissioner Mueller**

Commissioner Mueller reported that the Engineering & Construction Committee reviewed all items listed on the Engineering & Construction Committee agenda and requested that a full explanation of Resolution No. R-54-09 be provided for the entire Board.

With regard to Resolution No. R-54-09, Pipeline Supervisor Kazmierczak explained that the Commission invited sealed bids for the construction of Corrosion Protection and Control for the South Transmission Main but due to the lack of contractors specializing in various aspects of the project, only one bid out of the six contractors that purchased plans was received. Pipeline Supervisor Kazmierczak further explained that although the engineer's estimate was considerable lower than that of the sole bidder, the higher bid was due to the following factors:

- Weather conditions
- The 120-270 foot depth of the vertical columns to be drilled
- Drilling near a petroleum gas line which requires special training
- Potential soil conditions including rock or rock formations

Pipeline Supervisor Kazmierczak added that if the contractor did not run into problems during the drilling process, then he could negotiate a credit. Commissioner Murphy asked for staff's recommendation. General Manager Martin noted that the problem has been ongoing for several years and he is therefore anxious to get the project completed due to the corrosion involved and the need to protect the pipeline. After various Commissioners questioned the ability to renegotiate price after the contract was awarded, Commissioner Mueller recommended that Resolution R-54-09 be removed

from the Majority Omnibus Vote Agenda for separate consideration at the appropriate time.

### **Finance Committee – Reported by Commissioner Mathews**

Commissioner Mathews reported that the Finance Committee did not have a quorum but that those Commissioners present did review and recommend for approval all items listed on the Finance Committee Agenda. Commissioner Mathews specifically noted two items for the Board: (1) the insurance renewal analysis shows that the Commission is obtaining the same coverage for a decrease in premiums and fees; and (2) the Annual Audit Report for the Fiscal Year Ending April 30, 2009, should be deferred to the November meeting in an effort to give the Commission's temporary on-staff financial consultant time to analyze the data and make any necessary changes.

### **CHAIRMAN'S REPORT**

Chairman Rathje reminded the Board of two upcoming events: (1) the Water Conservation breakfast being held on Tuesday, November 17<sup>th</sup> at BoBak's Signature Room and; (2) the Commissioner's Holiday party being held on Friday, December 18<sup>th</sup> at the Club House and encouraged all Commissioners to attend both events.

### **MAJORITY OMNIBUS VOTE AGENDA**

Commissioner Chaplin requested that Resolution Nos. R-54-09 and R-60-09 be removed from the Omnibus Vote Agenda for separate consideration.

Commissioner Mueller moved to adopt the items listed on the revised Majority Omnibus Vote Agenda in a single group pursuant to the Omnibus Vote Procedures. Seconded by Commissioner Zay and unanimously approved by a Roll Call Vote:

#### **Majority Omnibus Vote**

Ayes: E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Mueller, W. Murphy, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: T. Bennington and W. Maio

Item 1: Resolution No. R-62-09: A Resolution Authorizing and Ratifying the Disposal of Certain Personal Property Owned by the DuPage Water Commission—"Majority Omnibus Vote"

Item 2: Resolution No. R-63-09: A Resolution Releasing Certain Executive Session Meeting Minutes at the October 8, 2009, DuPage Water Commission—"Majority Omnibus Vote"

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Commissioner Chaplin moved to approve Resolution No. R-54-09: A Resolution Awarding a Contract for the Construction of Corrosion Protection and Control for the South Transmission Main (Contract TS-8/09). Seconded by Commissioner Hartwig.

Based upon the discussion during the report of the Engineering & Construction Committee, Commissioner Chaplin advised that she was reluctant to proceed with the award. Commissioner Zeilenga commented that there did not appear to be a need to proceed immediately in light of the fact that the problem had been ongoing for several years. After Commissioner Hartwig suggested Pipeline Supervisor Kazmierczak attempt to negotiate pricing terms designed to protect both parties, Commissioner Hartwig moved to table the motion to approve Resolution No. R-54-09: A Resolution Awarding a Contract for the Construction of Corrosion Protection and Control for the South Transmission Main (Contract TS-8/09) to the November meeting. Seconded by Commissioner Chaplin and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Hartwig moved to approve Resolution No. R-60-09: A Resolution Approving and Ratifying Certain Task Orders Under a Master Contract with Peters & Associates, Inc. at the October 8, 2009, DuPage Water Commission Meeting. Seconded by Commissioner Zay.

Commissioner Chaplin noted her perception that the General Manager has a conflict of interest in using the services of Peters & Associates and that if the approximately \$30,000.00 spent for such services were provided for a single project, then the staff should have requested sealed proposals for the work or each phase of the work. General Manager Martin explained that the Commission has a computer technician on staff, but not a degreed computer programmer, and that with the current economic situation, he had decided to hold off hiring additional personnel until next fiscal year. General Manager Martin further explained that the services of Peters & Associates are requested on an as needed, for different projects, but if the Board prefers, staff can seek proposals from other computer consulting firms.

Before the vote was called, Commissioner Zay commended staff for keeping the Board informed on all consulting services done by Peters & Associates, noting General Manager Martin has always been upfront with all consulting tasks and fees relating to Peters & Associates. Commissioner Murphy asked if the Commission were to hire a full-time degreed computer programmer, would the services of Peters and Associates still be needed. General Manager Martin stated that although the consulting fees would decrease significantly, there still may be an occasional need for their services considering Peters & Associates installed the system.

Commissioner Chaplin stated that if the Board feels there is no conflict of interest to the Commission, then why is the General Manager bringing to the Board what is clearly well within his spending authority. After Chairman Rathje stated that it was his direction to

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General Manager Martin to bring all Peters & Associates consulting projects before the Board for approval, the motion was approved by a Roll Call Vote:

Ayes: T. Elliott, L. Hartwig, G. Mathews, W. Mueller, W. Murphy, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: E. Chaplin

Absent: T. Bennington and W. Maio

### **SUPER/SPECIAL MAJORITY OMNIBUS VOTE AGENDA**

Commissioner Zay moved to adopt the items listed on the revised Super/Special Majority Omnibus Vote Agenda in a single group pursuant to the Omnibus Vote Procedures. Seconded by Commissioner Mathews and unanimously approved by a Roll Call Vote:

#### **Super/Special Majority Omnibus Vote**

Ayes: E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Murphy, W. Mueller, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: T. Bennington and W. Maio

Item 1: Resolution No. R-56-09: A Resolution Approving and Ratifying Certain Contract Change Orders at the October 8, 2009, DuPage Water Commission Meeting—"Super/Special Majority Omnibus Vote"

Item 2: Resolution No. R-57-09: A Resolution Amending Resolution No. R-13-09, being "A Resolution Approving a First Amendment to Task Order No. 24 Under the Master Contract with AECOM USA, Inc."—"Super/Special Majority Omnibus Vote"

Item 3: Resolution No. R-58-09: A Resolution Amending Resolution No. R-14-09, being "A Resolution Approving a First Amendment to Task Order No. 25 Under the Master Contract with AECOM USA, Inc."—"Super/Special Majority Omnibus Vote"

Item 4: Resolution No. R-59-09: A Resolution Approving and Authorizing the Execution of a Sixth Amendment to the Contract for Design of Concrete Reservoirs and Other Improvements at the DuPage Pump Station—"Super/Special Majority Omnibus Vote"

Item 5: Resolution No. R-61-09: A Resolution Approving and Authorizing the Quit Claim of a Temporary Construction Easement to the City of Chicago for

the Reconstruction of the South Laramie Avenue Viaduct—"Super/Special Majority Omnibus Vote"

### **OLD BUSINESS**

Commissioner Murphy moved to approve Resolution No. R-64-09: A Resolution Approving and Authorizing the Execution of an Agreement between the DuPage Water Commission and the City of Naperville Regarding Contract TS-7/09 Relocation Work with the "FULL REIMBURSEMENT OPTION" of the Intergovernmental Agreement Regarding Contract TS-7/09 Relocation Work attached as Exhibit 1 to the Resolution. Seconded by Commissioner Zay.

After Staff Attorney Crowley explained the option, Commissioner Zay withdrew his second, and the motion failed for lack of a second.

Commissioner Mathews asked if the 55%/45% cost share was still being considered. General Manager Martin stated that the City of Naperville had withdrawn the 55%/45% cost share.

Commissioner Poole requested from Chairman Rathje to allow City Manager Doug Krieger with the City of Naperville to further explain the City's position on the matter. After Chairman Rathje allowed the special request, Mr. Krieger explained that the 55%/45% cost share had not been officially rescinded and that the City of Naperville has no intention of suing the Commission in an effort to recoup costs, but that the City of Naperville will take appropriate action to do what is in the best interest of its customers.

Commissioner Hartwig moved to approve Resolution No. R-64-09: A Resolution Approving and Authorizing the Execution of an Agreement between the DuPage Water Commission and the City of Naperville Regarding Contract TS-7/09 Relocation Work with the "PAYMENT UNDER PROTEST OPTION" of the Intergovernmental Agreement Regarding Contract TS-7/09 Relocation Work attached as Exhibit 1 to the Resolution. Seconded by Commissioner Zay.

Commissioner Murphy reminded the Board that the pedestrian underpass was originally a City of Naperville project and never a County improvement and thus state law would not require the Commission to relocate its pipeline. Commissioner Murphy then referred to Staff Attorney Crowley's February 10<sup>th</sup> letter specifically regarding the Fourth Amendment to the intergovernmental agreement between the City of Naperville and the County of DuPage which states that the City and the County agree to construct the underpass as part of the intersection improvement project for the purpose of accommodating pedestrians and bicyclists. Commissioner Murphy questioned the County's lack of financial responsibility for the construction of the underpass as well as after the underpass had been completed. Commissioner Murphy further noted that the cost of any future repairs/upkeep of the underpass would be the City of Naperville's and questioned why the County wouldn't be sharing future costs if the underpass is to be

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considered a County improvement. In referring to a letter dated November 25<sup>th</sup> 2008 from County Board Chairman Schillerstrom, Commissioner Murphy quoted sections of that letter which state that the City of Naperville is paying for the entire cost of the underpass and the City of Naperville is responsible for funding the design and construction as well as for the maintenance of the pedestrian tunnel. With that being said, Commissioner Murphy again questioned how the underpass could ever be considered a County improvement and therefore suggested not discussing the matter any further and advised that he is not in favor of moving forward.

Commissioner Poole stated that just because the City of Naperville is taking the lead did not mean the project was not a joint project. Commissioner Poole added that the project is necessary from a safety standpoint and noted that in the legal opinion prepared by Staff Attorney Crowley it states that if challenged in a court of law the Commission would lose.

Commissioner Mathews corrected Commissioner Poole, noting that nowhere in Staff Attorney Crowley's legal opinion did it state the Commission would lose if taken to court. Commissioner Mathews then noted he is in favor of moving forward with the project for purposes of helping other members.

Commissioner Hartwig reiterated that he agrees with Commissioner Murphy in that the underpass is solely the City of Naperville's, but added that if the Commission decides to share the costs, then maybe a policy should be established to set a precedent for future projects.

Staff Attorney Crowley commented that even though the County has a statute, the Commission also has a statute, which expressly states that the Commission is exercising an exclusive state power and that the statute is a limitation on the powers of both municipalities and counties. Staff Attorney Crowley cited, as an example, the Commission's exemption from the County's zoning authority. Staff Attorney Crowley concluded her remarks by noting that the Commission was formed and exists as a regional entity spanning three counties with the right, among others, to construct its water mains along, upon, under and across any highway, street, alley or public ground in the state, including highways within a municipality, without payment of a fee and as a proper use of highways.

Commissioner Zay advised that if the Commission refuses to move its pipe, then he will recommend to the County that the County sue the Commission.

Commissioner Saverino questioned the partnership between the City of Naperville and the County of DuPage when the underpass was never mentioned in the beginning stages of the project and therefore feels it's an afterthought. Commissioner Saverino stated that he would not like to see this issue go to court, but questioned how much money the County of DuPage actually fronted for the underpass part of the project.

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Commissioner Elliott stated that the issue has been discussed in great detail many times and stated that the project needs to move forward and therefore would be in favor of the City of Naperville paying 100% reserving the right to recoup costs at a later date.

Commissioner Hartwig moved to call the question on the motion to approve Resolution No. R-64-09. Seconded by Commissioner Murphy and unanimously approved by a Voice Vote:

All voted aye. Motion carried.

Commissioner Hartwig's motion to approve Resolution No. R-64-09: A Resolution Approving and Authorizing the Execution of an Agreement between the DuPage Water Commission and the City of Naperville Regarding Contract TS-7/09 Relocation Work with the "PAYMENT UNDER PROTEST OPTION" of the Intergovernmental Agreement Regarding Contract TS-7/09 Relocation Work attached as Exhibit 1 to the Resolution was approved by a Roll Call Vote:

Ayes: E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Mueller, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: W. Murphy

Abstain: A. Poole

Absent: T. Bennington and W. Maio

Commissioner Mathews moved to approve Resolution No. R-55-09: A Resolution Awarding a Contract for the Construction of the 30-Inch Diameter Water Main Relocation—75<sup>th</sup> and Washington Streets (Contract TS-7/09) to D. E. Thompson Excavating Co. in the base bid amount of \$418,991.50, subject to the conditions stated in the Resolution. Seconded by Commissioner Zay and approved by a Roll Call Vote:

Ayes: E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Mueller, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: W. Murphy

Abstain: A. Poole

Absent: T. Bennington and W. Maio

**NEW BUSINESS**

Commissioner Murphy moved to table to the November meeting approval of the draft Audit Report for the Fiscal Year ending April 30, 2009. Seconded by Commissioner Mueller and unanimously approved by a Voice Vote:



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All voted aye. Motion carried.

Commissioner Zay moved to purchase property and liability insurance coverage in accordance with the September 28, 2009, Insurance Proposal prepared by Arthur J. Gallagher Risk Management Services, Inc., for a total premium of \$480,023. Seconded by Commissioner Saverino and unanimously approved by a Roll Call Vote:

Ayes: E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Murphy, W. Mueller, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: T. Bennington and W. Maio

Commissioner Mueller moved to approve and accept the Commonwealth Edison Customer Work Agreement Memorandum dated September 22, 2009 and remit the requested construction deposit payment in the amount of \$596,000.00. Seconded by Commissioner Mathews and unanimously approved by a Roll Call Vote:

Ayes: E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Murphy, W. Mueller, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: T. Bennington and W. Maio

Before moving onto the next Agenda item, Commissioner Chaplin wanted to make two points: (1) acknowledge receipt of a letter dated September 21, 2009 from Manusos General Contracting Inc. regarding reconsideration of the Bid Award for the DuPage County Meter/Pressure Adjusting Stations 9A and 9B; and (2) consideration into hiring an outside Ethics Officer.

**ACCOUNTS PAYABLE**

Commissioner Hartwig moved to approve the Accounts Payable in the amount of \$30,805.21 subject to submission of all contractually required documentation. Seconded by Commissioner Mathews and unanimously approved by a Roll Call Vote:

Ayes: E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Murphy, W. Mueller, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: T. Bennington and W. Maio

**EXECUTIVE SESSION**

Commissioner Murphy moved to go into Executive Session to discuss matters related to personnel pursuant to 5 ILCS 120/2(c)(1) and (2). Seconded by Commissioner Hartwig and unanimously approved by a Roll Call Vote:

Ayes: E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Murphy, W. Mueller, A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: T. Bennington and W. Maio

The Board went into Executive Session at 8:55 P.M.

Commissioner Hartwig moved to come out of Executive Session at 9:08 P.M. Seconded by Commissioner Elliott and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Hartwig moved to adjourn the meeting at 9:09 P.M. Seconded by Commissioner ??? and unanimously approved by a Voice Vote.

All voted aye. Motion carried.