

**MINUTES OF A MEETING OF THE  
DuPAGE WATER COMMISSION  
HELD ON THURSDAY JANUARY 13, 2011  
600 E. BUTTERFIELD ROAD  
ELMHURST, ILLINOIS**

The meeting was called to order by Chairman Zay at 7:00 P.M.

Commissioners in attendance: L. Crawford, T. Cullerton, R. Furstenau, C. Janc, D. Loftus, W. Murphy, J. Pruyn, D. Russo, F. Saverino, M. Scheck, P. Suess, J. B. Webb, and J. Zay

Commissioners Absent: None

Also in attendance: T. McGhee, R. Skiba, M. Crowley, C. Johnson, J. Nesbitt, R. C. Bostick, J. Schori, M. Weed, E. Kazmierczak, and F. Frelka

**ORGANIZATIONAL MATTERS**

Chairman Zay introduced the Honorable Kenneth Popejoy to administer the Oaths of Office. The Commissioners took their respective Oaths of Office in unison, followed by Chairman Zay.

The County Appointed Commissioners and the Municipal Appointed Commissioners, respectively, determined by lot their terms of office as follows:

| Municipal Appointed Commissioners |          |   | County Appointed Commissioners |          |   |
|-----------------------------------|----------|---|--------------------------------|----------|---|
| Commissioner                      | District | Term<br>(# of years<br>beginning<br>1/1/11) | Commissioner                   | District | Term<br>(# of years<br>beginning<br>1/1/11) |
| Jeffrey J. Pruyn                  | 1        | 4   | Christopher Janc               | 1        | 4   |
| Thomas Cullerton                  | 2        | 6   | Daniel J. Loftus               | 2        | 2   |
| William F. Murphy                 | 3        | 4   | Michael R. Scheck              | 3        | 2   |
| Philip J. Suess                   | 4        | 2   | J. Bradley Webb                | 4        | 4   |
| Richard R. Furstenau              | 5        | 6   | Laura Crawford                 | 5        | 6   |
| Frank Saverino, Sr.               | 6        | 2   | David Russo                    | 6        | 6   |

Commissioner Murphy moved to approve the appointment of James F. Zay as Chairperson of the DuPage Water Commission. Seconded by Commissioner Furstenau and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

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Commissioner Saverino moved to appoint Commissioner Murphy to serve as Vice-Chairman of the DuPage Water Commission for a term expiring April 30, 2012, or until his successor is duly appointed and confirmed. Seconded by Commissioner Furstenau and unanimously approved by a Voice Vote of the Municipal Appointed Commissioners.

All Municipal Appointed Commissioners voted aye. Motion carried.

### **PUBLIC COMMENT**

None

### **APPROVAL OF MINUTES**

Commissioner Suess moved to approve the Minutes of the December 9, 2010 Special Committee of the Whole Meeting of the DuPage Water Commission. Seconded by Commissioner Furstenau and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Suess moved to approve the Minutes of the December 9, 2010 Regular Meeting of the DuPage Water Commission. Seconded by Commissioner Pruyn and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Saverino moved to approve the Executive Session Minutes of the December 9, 2010 Regular Meeting of the DuPage Water Commission. Seconded by Commissioner Furstenau and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

### **TREASURER'S REPORT**

Former Financial Administrator Skiba presented the December 2010 Treasurer's Report, which consisted of three pages designated Reports A, B, and C, and the Financial Report.

With respect to the Financial Report, Former Financial Administrator Skiba began by reviewing the highlights listed on page 1. Former Financial Administrator Skiba then referred to page 3—Summary of Specific Account Requirement Compliance and Summary of Net Assets—and noted that the Operations and Maintenance Account was fully funded, with the Operations and Maintenance Reserve Account and the Depreciation Account over funded. Former Financial Administrator Skiba advised that it was critical for the Board to monitor compliance with the account requirements, explaining the source of the requirements and how they were calculated.

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Commissioner Suess then asked for an explanation of the “negative” unrestricted net assets. Former Financial Administrator Skiba explained that it related to the allocation of the bulk of the Commission’s short-term debt as an operating expense rather than a capital cost and was akin to a credit card balance that exceeds the amount available in your checking account.

With respect to Report A of the Treasurer’s Report, Former Financial Administrator Skiba noted the positive cash flow, adding that the report covered operating cash flows only. Commissioner Suess highlighted the approximate \$2.1 million in total net operating cash. Commissioner Furstenau commented that if the sales tax receipts were eliminated, as they will be in 2016, operating cash flows would still be negative.

With respect to Report B of the Treasurer’s Report, Former Financial Administrator Skiba explained that Report B was prepared on a cash basis as opposed to an accounting basis. Former Financial Administrator Skiba also apologized for the small print, but explained that the report was developed by former Treasurer/Commissioner Zeilenga for a month to month comparison. Chairman Zay suggested changing the report to reflect only the most recent three months. Commissioner Furstenau later requested that no data be eliminated from the report until such time as the new Treasurer had a chance to determine the utility of the data.

After assuring the Commissioners that the 2011 general obligation account was fully funded for the final payment due March 1, 2011, Former Financial Administrator Skiba noted that Report C of the Treasurer’s Report was the “traditional” Treasurer’s Report which was prepared on an accounting basis. Former Financial Administrator Skiba also noted that Reports A and C reconciled with each other.

Commissioner Furstenau moved to accept the December 2010 Treasurer’s Report.  
Seconded by Commissioner Saverino and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

### **COMMITTEE REPORTS**

#### **Administration Committee**

Meeting Canceled

#### **Engineering & Construction Committee**

Meeting Canceled

#### **Finance Committee**

Meeting Canceled

## **CHAIRMAN'S REPORT**

Chairman Zay began by thanking everyone for attending the meeting and for their support. Chairman Zay noted that the Commission was under new direction with a lot of work ahead for everyone involved. Chairman Zay added that over the next couple of months, the Board would need to focus on several priorities and, specifically, selecting a qualified General Manager and Financial Administrator, conducting a water rate study to better analyze water rates, and developing a financial plan to pay down the two debt certificates.

With respect to the selection of a General Manager, it was the consensus of the Commissioners to re-interview the prior Board's three most favorably ranked candidates for the General Manager position in advance of the February 10, 2010 regular meeting, so that the Board could determine whether it needed to renew the search process.

Chairman Zay also noted that a Treasurer needed to be appointed and offered the appointment of James W. Rasins for confirmation by the Board, noting that Mr. Rasins had a strong financial background and could help to continue moving the Commission in a positive direction.

Chairman Zay concluded his opening remarks by thanking staff for their hard work and dedication, noting teamwork plays an important role in the Commission's continued success.

## **Committee Appointments**

After Chairman Zay advised that, in addition to the appointments he made in his January 6, 2011 memorandum, he was also appointing Commissioners Janc and Russo to serve on the Finance Committee, Commissioner Murphy moved to confirm Chairman Zay's appointments of Commissioners to serve on the Committees, as Chair or otherwise, as set forth in Chairman Zay's memorandum dated January 6, 2011, as amended to add Commissioners Janc and Russo to the Finance Committee. Seconded by Commissioner Furstenau and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

## **Treasurer Appointment**

After Commissioner Furstenau confirmed that the Treasurer would be an officer but not an employee of the Commission, Commissioner Saverino moved to confirm Chairman Zay's appointment of James W. Rasins to serve as the Treasurer of the DuPage Water Commission, subject to the advice and consent of the DuPage County Board. Seconded by Commissioner Furstenau and unanimously approved by a Roll Call Vote:

Ayes: L. Crawford, T. Cullerton, R. Furstenau, C. Janc, D. Loftus, W. Murphy, J. Pruyn, D. Russo, F. Saverino, M. Scheck, P. Suess, J. B. Webb, and J. Zay

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Nays: None

Absent: None

### **Meeting Schedule**

Chairman Zay advised that he would like to change the regular meeting schedule to allow staff the time needed to prepare a single, complete Board packet, eliminating the need for supplemental packets on a regular basis. After Chairman Zay noted a schedule conflict in February and suggested that the revised meeting schedule begin in March, Commissioner Furstenau moved to change the regular Commission and Committee meeting schedule from the second Thursday of each month to the third Thursday of each month, starting in March 2011, with the regular Board meeting to begin at 7:30 p.m., the Administration Committee to begin at 7:00 P.M., the Engineering and Construction Committee to begin at 6:30 P.M., and the Finance Committee to begin at 6:00 P.M. prior to the regular Board meetings. Seconded by Commissioner Loftus and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

### **MAJORITY OMNIBUS VOTE AGENDA**

Commissioner Pruyn moved to adopt Ordinance No. O-1-11: An Ordinance Transferring Appropriations Within Certain Funds for the Fiscal Year Commencing May 1, 2010 and Ending April 30, 2011. Seconded by Commissioner Murphy.

Former Financial Administrator Skiba explained that the main reason for the transfer was because of the recent bond rating downgrades made by Moody's Investors Service which resulted in the automatic increase in the interest rate that had to be paid under the terms and conditions of the \$40MM Certificate of Debt issued to Northern Trust Bank. In response to questions from the Commissioners, Staff Attorney Crowley added that even though the \$40MM Certificate of Debt did not contain an automatic interest adjustment mechanism should the Commission's bond ratings be raised, the \$40MM Certificate of Debt was a short-term obligation coming due May 1, 2011.

After Commissioner Suess questioned whether, and Former Financial Administrator confirmed that, the decrease of \$244,000 in the contingency line item was to balance to the appropriation transfer, the motion was unanimously approved by a Roll Call Vote:

Ayes: L. Crawford, T. Cullerton, R. Furstenau, C. Janc, D. Loftus, W. Murphy, J. Pruyn, D. Russo, F. Saverino, M. Scheck, P. Suess, J. B. Webb, and J. Zay

Nays: None

Absent: None

**SUPER/SPECIAL MAJORITY OMNIBUS VOTE AGENDA**

Commissioner Murphy moved to adopt Resolution No. R-1-10: A Resolution Approving and Ratifying Certain Contract PSD-7/08 Change Orders at the January 13, 2011, DuPage Water Commission Meeting. Seconded by Commissioner Furstenau.

Acting General Manager McGhee explained the following changes included in the proposed Contract PSD-7/08 Change Order: 1) Consolidation of HVAC control cabinets including engineering, I/O boards, conduit and wire (\$7,871.00); 2) Installation of addressable smoke detectors in air handlers AHU-1 and AHU-2 and in supply fan SF-1 (\$6,118.00); and 3) Installation of additional data cabling to connect electric power analyzers to the DWC SCADA control cabinet (\$3,059.00).

Commissioner Suess asked how many more change orders were expected and when the project would be completed. Facilities Construction Supervisor/Safety Coordinator Bostick replied that there were approximately four open requests for change orders and that the project had been scheduled for completion on December 31<sup>st</sup> but because an environmental issue with the fuel system of the portable generator that is to be shared between the DuPage Pumping Station and the Lexington Pumping Station was recently discovered, the portable generator needed to be modified and then retested at both pumping stations before the project could be closed out.

With no further discussion, the motion was unanimously approved by a Roll Call Vote:

Ayes: L. Crawford, T. Cullerton, R. Furstenau, C. Janc, D. Loftus, W. Murphy, J. Pruyne, D. Russo, F. Saverino, M. Scheck, P. Suess, J. B. Webb, and J. Zay

Nays: None

Absent: None

**OLD BUSINESS**

**Downers Grove Contaminated Well Loan**

Chairman Zay asked Acting General Manager McGhee to report on the status of the Contaminated Well Water Loan to the Village of Downers Grove. Acting General Manager McGhee advised that the Village was still in default under the loan but that David Fieldman, the Downers Grove Village Manager, had recently advised Acting General Manager McGhee that the Village was continuing negotiations to fund the Village's payment obligations under the loan through contributions from the parties responsible or potentially responsible for the contamination in the affected areas under the Contaminated Well Program (PRPs).

Commissioner Suess suggested that the Village submit, in writing, the current status of its negotiations with the PRPs, along with quarterly status updates, so that the Commission could be assured that the Village was negotiating along the terms

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preliminarily discussed at a meeting involving representatives from the Village, representatives of certain PRPs, Commissioners Elliott, Zay, and Furstenau, Acting General Manager McGhee, and Staff Attorney Crowley, and discussed with the Board at the December 2010 meeting. Commissioner Furstenau agreed with Commissioner Suess, and suggested that the status reports also include written confirmation of the Village's intent to pay \$X on X date.

Commissioner Pruyn asked if the Village was current on the interest portion of the loan. Acting General Manager McGhee replied that the Village was current on interest but in default with respect to the August 2010 principal payment.

Commissioner Murphy agreed with Commissioners Suess' and Furstenau's suggestions of obtaining a written status report and confirmation of intent from the Village before any action is taken by the Board. Commissioner Murphy also noted for the new Board members that at the December 9, 2010 Board meeting, Former Commissioner Tim Elliott distributed a two-page document which summarized, among other things, the discussions at the meeting with the Village and the PRPs and asked staff to provide a copy of that document to the new Board members. Commissioner Murphy then read from the second page of that document and, specifically, bullet point number 4, which summarized the Village's preliminary proposal as follows:

The DWC would permit Downers Grove to continue to pay interest on the full loan amount through June 30, 2011. On that date, Downers Grove would make a lump sum payment to the Water Commission in the amount of \$4.363 million (plus any accrued interest from August 15, 2010 through June 30, 2011 in full satisfaction of the amount due under the Loan Agreement).

In an effort to bring the new Board members up to speed, Chairman Zay asked Acting General Manager McGhee to provide a brief summary of the genesis of the Downers Grove Contaminated Well Loan. Acting General Manager McGhee explained that in 2002 it was discovered that a section of unincorporated Downers Grove tested positive for containments in their groundwater and, as such, the Commission entered into an intergovernmental agreement with the Village of Downers Grove to lend \$4.788 million to the Village to help construct the improvements needed to deliver Lake Michigan water to the residents in the affected areas.

Chairman Zay also noted that he had received an email from Mr. Fieldman requesting confirmation from the new Board that it was willing to consider the Village's preliminary proposal as discussed at the meeting with the Village and the PRPs. It was the preliminary consensus of the Commissioners that they would be willing to accept the Village's proposal so long as the Village was negotiating with the PRPs on the terms discussed in Former Commissioner Elliott's bullet point number 4 and those negotiations progressed.

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Commissioner Russo asked if the loan agreement needed to be amended in the interim. Staff Attorney Crowley advised that any amendment to the loan agreement would require the approval of the Commission's 23 Charter Customers under what is called the "Enabling Agreement" and pursuant to which the loan agreement with the Village was entered into. Staff Attorney Crowley also advised that the best position for the Commission to be in was to simply forgo taking any action to enforce the loan agreement with the Village for so long as the Board believed the Village was negotiating in good faith and the negotiations progressed.

Commissioner Furstenau moved to direct the Chairman to send a letter to the Village of Downers Grove requesting written confirmation that the Village is negotiating with the PRPs upon such terms as will enable the Village to pay to the Commission the sum of \$4.363 million (plus any accrued interest from August 15, 2010 through June 30, 2011 final payment), requesting quarterly updates on the status of those negotiations, and confirming the preliminary consensus of the new Board to accept such a lump sum payment in full satisfaction under the loan agreement. Seconded by Commissioner Loftus and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

### **Retain Financial Services Provider**

Acting General Manager McGhee reported that at the 2010 October Board meeting, staff was directed to formally solicit outsourcing proposals from reputable accounting firms and, of the seven proposals solicited, four proposals had been received, copies of which had been provided to Former Chairman Rathje, Former Treasurer/Commissioner Zeilenga, Former Finance Committee Chairman Zay, and Commissioner Murphy for review. Acting General Manager McGhee also noted that based upon staff's review of the various firm qualifications, together with the separately sealed cost information that had been provided to the full Board as requested at the November meeting, Crowe Horwath remained the staff's most favored firm in terms of both cost (\$19,500/month) and qualifications, with Baker Tilly (\$23,872/month) next in line. Acting General Manager McGhee concluded his remarks by noting that based upon the Commission's current cost to retain three independent financial consultants, in addition to the employment of one full time account clerk, it would be more cost efficient to outsource the financial department.

Commissioners Murphy and Suess suggested placing the item on the February Finance Committee Agenda for a detailed review and recommendation. After Chairman Zay thanked Former Financial Administrator Skiba for his help throughout the Commission's financial shortfall, he then noted that having a Treasurer involved in the Commission's day-to-day finances should help ease the financial workload.



## **NEW BUSINESS**

Commissioner Furstenau referred to his memorandum regarding the relocation of a Commission watermain at the intersection of 75<sup>th</sup> and Washington Street in the City of Naperville, noting that he would like the Board to reconsider the prior Board's decision to refuse to pay for the cost of the relocation. Commissioner Furstenau also requested that the item be placed on the February Agenda for potential action, adding that the City Mayor and City Manager would be present to address any questions or concerns that the Board might have.

Commissioner Murphy responded that he could support Commissioner Furstenau's request to discuss the matter but noted that the dispute centered on whether the Washington Street bicycle underpass was a County highway improvement and whether the Commission was legally obligated to relocate the main at its own cost to make way for that improvement. Commissioner Murphy also noted that the prior Board had deliberated the matter thoroughly, as reflected in numerous meeting minutes, and that the prior Board's deliberations included several staff memos, all of which Commissioner Murphy requested that staff provide to the new Board well in advance of the February meeting.

Commissioner Loftus then suggested having the item placed on the February Engineering & Construction Committee Agenda for a detailed review and recommendation.

## **Continuing Disclosure Material Event Notices**

After Staff Attorney Crowley explained that the Commission is required to file Material Event Notices for both the Commission's revenue and general obligation bonds as a result of the ratings downgrades made by Moody's Investors Service, Commissioner Murphy moved to direct staff to file the Continuing Disclosure Material Event Notices as presented. Seconded by Commissioner Furstenau.

After Commissioner Cullerton noted a typo on page 3 of the Moody's Investors Service report under Key Statistics and, specifically, that the number of people served should be identified as 900,000 (and not 9000,000), the motion was unanimously approved by a Voice Vote.

All vote aye. Motion carried.

## **ACCOUNTS PAYABLE**

Commissioner Pruyn moved to approve both Accounts Payable in the combined amount of \$5,197,972.08, subject to submission of all contractually required documentation, for invoices that have been received and for invoices that have not yet been received but have been estimated. Seconded by Commissioner Saverino and unanimously approved by a Roll Call Vote:

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Ayes: L. Crawford, T. Cullerton, R. Furstenau, C. Janc, D. Loftus, W. Murphy, J. Pruyn, D. Russo, F. Saverino, M. Scheck, P. Suess, J. B. Webb, and J. Zay

Nays: None

Absent: None

Acting General Manager McGhee then asked whether the Board would prefer to have both the estimated and the actual Accounts Payable consolidated into a single motion on future agendas. After some discussion, it was the consensus of the Commissioners that the motions could be consolidated if staff preferred so long as the two different dollar amounts were included.

### **EXECUTIVE SESSION**

None

Commissioner Murphy moved to adjourn the meeting at 8:20 P.M. Seconded by Commissioner Pruyn and unanimously approved by a Voice Vote.

All voted aye. Motion carried.