

**MINUTES OF A SPECIAL MEETING OF THE
DuPAGE WATER COMMISSION
HELD ON THURSDAY, DECEMBER 17, 2009
600 E. BUTTERFIELD ROAD
ELMHURST, ILLINOIS**

The meeting was called to order by Chairman S. Louis Rathje at 7:00 P.M.

Commissioners in attendance: E. Chaplin, T. Elliott, W. Maio, G. Mathews, W. Mueller (arrived at 7:02 P.M.), A. Poole, F. Saverino, J. Zay, D. Zeilenga, and L. Rathje

Commissioners Absent: T. Bennington, L. Hartwig, and W. Murphy

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

Commissioner Mueller arrived at 7:02 P.M.

TREASURER'S REPORT

Commissioner Elliott moved to remove from the table acceptance of the November 2009 Treasurer's Report. Seconded by Commissioner Saverino and unanimously approved by a Voice Vote.

All vote aye. Motion carried.

After Commissioner Zay asked Former Financial Administrator Skiba how confident he was in the Treasurer's Report as presented and Former Financial Administrator Skiba reassured the Board that the Treasurer's Report, as presented, was accurate and tied to both the ending balance and total fund balance, Commissioner Zay moved to accept the November 2009 Treasurer's Report. Seconded by Commissioner Poole and unanimously approved by a Voice Vote.

All vote aye. Motion carried.

SHORT TERM FINANCING

As requested by Chairman Rathje, Commissioner Zeilenga explained the options relating to allocating the not-to-exceed \$30,000,000 in Debt Certificates authorized by Ordinance No. O-14-09 between taxable and tax-exempt. Commissioner Zeilenga noted the interest rate for a tax-exempt debt certificate would be 0.5% per annum and the proceeds could only be used to pay for construction and related services except for reimbursements under the 60-day look back period discussed at the meeting of December 10, 2009. Commissioner Zeilenga also noted that, pursuant to recent discussions with Bond Counsel, proceeds from a tax-exempt debt certificate should not be used for Lexington Pumping Station improvements in light of the cost-sharing arrangement that the Commission has with the City of Chicago regarding those improvements. With respect to a taxable debt certificate, Commissioner Zeilenga noted the interest rate would be 1.25% per annum and the proceeds could be used for water purchases in addition to all construction and related services.

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Commissioner Zeilenga recommended issuing the entire \$30,000,000 in debt certificates authorized by Ordinance No. O-14-09 as taxable in order to provide the Commission with the greatest flexibility. Commissioner Zeilenga explained that with the full \$30MM in financing, together with cash on hand and the Commission's other revenues, including sales taxes, \$13,000,000 could be set aside to abate the property tax by February 2010, \$8,000,000 could be used for operations and emergency purposes, and the rest could be used towards paying construction invoices that are 31 days or greater, which should cover the Commission until April 30, 2010, and the next scheduled rate increase. Commissioner Zeilenga finally noted that funds from the \$30,000,000 Debt Certificate should be made available within a week.

After Commissioner Chaplin confirmed with the General Manager that all construction contractors would be treated equally regarding payments, Commissioner Zay expressed concerns with outstanding invoices from construction contractors, noting that he received a phone call from JJ Henderson advising that they had not been paid since August and were owed more than \$3MM, with only approximately \$700,000 listed on the December 17th construction accounts payable for Board approval.

Former Financial Administrator Skiba noted that on the December 17th construction accounts payable is a list of the construction projects and outstanding contractor's invoices that have been reviewed by staff and recommended for approval by the Board, including a payment to JJ Henderson. General Manager Martin and Former Financial Administrator Skiba also noted that, in accordance with the terms set forth in each construction contract, the Commission has 45 days following approval of each contractor's payment documentation, including amounts requested and the lien waivers and sworn statements submitted by the contractors and their subcontractors and suppliers, to make payments.

Commissioner Zay then questioned the amounts previously reported in October as being needed for construction and, specifically, the \$6,000,000 that was needed in December and another \$2,000,000 in January, which equated to \$8,000,000, and now staff was reporting a \$13,000,000 figure which is almost double. Former Financial Administrator Skiba noted the differences were really a timing issue, contractor's working ahead of schedule and the like, but that since the end of September, the total construction amount the Commission has been discussing has been \$40,000,000, \$3,000,000 of which was paid in October, \$10,000,000 of which will be paid after May 1, 2010, and the remaining \$27,000,000 is to be paid from now up through April 30, 2010.

Commissioner Chaplin questioned how the contractors could be working ahead of the contract schedule. Former Financial Administrator Skiba advised that the contracts merely establish starting and ending dates, but that the rate of progress was up to the contractors.

Commissioner Maio questioned why JJ Henderson hadn't been paid since August. General Manager Martin noted that a \$1.3MM payment for the contractor's work in August was sent out on October 6th, and that payment for the contractor's work in

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September, invoiced in October, was on the December 17th construction accounts payable for approval. Commissioner Zeilenga also noted that approximately \$2.5MM in additional payments to JJ Henderson was noted on the “anticipated” payment schedule, with General Manager Martin and Facilities Construction Supervisor Bostick noting that JJ Henderson had not submitted pay requests for the amount of work they advised Commissioner Zay was owing.

Commissioner Maio asked what happens if the Board approves the accounts payable and the loan from West Suburban Bank falls through. Commissioner Zeilenga noted that any approval of the accounts payable will be subject to receipt of the \$30,000,000 loan.

Commissioner Zay questioned the recharacterization of the \$3,000,000 in construction payments made in October as being paid out of the depreciation account. Former Financial Administrator Skiba explained that this recharacterization was allowable under the water revenue bond ordinance and was done to provide access to sales tax funding for the property tax abatement. Former Financial Administrator Skiba advised that he believed that this recharacterization was in accordance with the Board’s desire to abate the property tax and that he had worked with Commissioner Zeilenga on this matter. Former Financial Administrator Skiba then offered to reverse the recharacterization if the Board so chose. Commissioner Zeilenga stated that he had not approved nor recommended the initial recharacterization nor was he recommending it be reversed and, therefore, no action was taken by the Board.

Commissioner Mueller stated that there were a lot of numbers floating around and questioned whether the JJ Henderson inquiry was referred to staff. Commissioner Zay responded that, according to JJ Henderson, they had already spoken to the General Manager who advised that he could not commit to making any disbursements prior to Board approval and that the General Manager’s statement had been made before the Board directed staff to hold all disbursements for Board approval.

Commissioner Poole questioned why Divane was listed for a payment of \$3.2MM yet a representative from Divane previously advised the Board that they had provided work amounting to \$5MM. General Manager Martin advised that under the Divane contract, payments are made only when certain defined milestones have been achieved.

Commissioner Mueller left the meeting at 7:30 P.M. to avoid a possible or perceived conflict of interest because he maintains certain bank accounts with West Suburban Bank.

Commissioner Zeilenga moved to direct the Chairman and the General Manager to cause to be issued and sold to West Suburban Bank \$30,000,000 Debt Certificates, Series 2009, consisting of a \$30,000,000 Taxable Debt Certificate, Series 2009, in accordance with the terms and conditions set forth in Ordinance No. O-14-09. Seconded by Commissioner Maio.

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Commissioner Zay confirmed that the original interest rate was locked in even though the offer acceptance deadline of Friday, December 11th by 3:30 P.M. was not met. Commissioner Zeilenga noted the General Manager was concerned with proceeding because the Board indicated at the December 10, 2009, meeting that it was going to hold a special meeting on December 17, 2009, to discuss the total amount to be borrowed under Ordinance No. O-14-09 and the split between tax-exempt and taxable debt.

Commissioner Zay then questioned why the Staff Attorney had not advised the Board that it needed to determine the total amount to be borrowed under Ordinance No. O-14-09 and the split between tax-exempt and taxable debt by the acceptance deadline. Staff Attorney Crowley responded that, even though the deadline was included in Ordinance No. O-14-09, she did not highlight the December 11 deadline as she did with the December 21 closing deadline, because the offer was structured so that it could be accepted without committing the Commission to a specific dollar amount or to any particular split between tax-exempt and taxable. The Staff Attorney also noted that the offer was still in effect after the December 11 deadline had passed because it had not been withdrawn by the bank before the acceptance was signed and delivered on Monday, December 14.

Commissioner Zay then asked again why the offer had not been accepted by the deadline. General Manager Martin advised that he decided to err on the side of caution and discuss the acceptance with Commissioner Zeilenga first.

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

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

Nays: None

Absent: T. Bennington, L. Hartwig, W. Mueller, and W. Murphy

Commissioner Mueller returned to the meeting at 7:40 P.M.

Commissioner Zay moved to ratify the motion to engage the services of Speer Financial, Inc. as Financial Advisor in connection with the short-term financing in the amount not to exceed \$5,000.00 without Board approval. Seconded by Commissioner Elliott.

Commissioner Zay questioned why the Board was being asked to ratify an engagement that the Board approved at the special meeting of December 2nd. General Manager Martin responded that he was asking the Board to ratify the engagement because of Commissioner Zeilenga's comments at the regular meeting of December 10th regarding not paying Speer Financial, Inc. for services rendered. Commissioner Zeilenga reiterated his previous comments that he questioned the role Speer Financial had in

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relation to arranging the financing from West Suburban Bank, noting that he had made several requests for Speer Financial to contact him and no contact was ever made. To address Commissioner Zeilenga's concern regarding the role Speer Financial had in relation to arranging the financing from West Suburban Bank, Commissioner Zay requested a breakdown of the services provided by Speer Financial.

After Staff Attorney Crowley reminded the Board that a financial advisor's certificate is required by Ordinance No. O-14-09 in order to sell the debt certificate, and that it would be difficult to obtain another financial advisor to provide the required certification in time to close the transaction on December 21, 2009, Commissioner Zeilenga withdrew his objection to paying for the services provided by Speer Financial, and Commissioner Zay as the movant, and Commissioner Elliott, as the seconder, agreed to withdraw the pending motion (and second).

Commissioner Saverino moved to ratify the use of Sikich LLP for accounting services pursuant to their proposal dated November 25, 2009. Seconded by Commissioner Zay.

Commissioner Zay asked how Sikich LLP was selected. Former Financial Administrator Skiba replied that Sikich LLP is a firm known to Former Financial Administrator Skiba and has extensive experience in the field of governmental auditing. Commissioner Maio asked how many other firms were interviewed and whether it was important to obtain these accounting services at the present time. Former Financial Administrator Skiba replied that no other firms were interviewed, but the higher level, semi-executive services provided by Sikich LLP to date, including sophisticated analyses, were important to have, in addition to the more routine accounting services of Account Temps personnel, in order to handle the Commission's day-to-day financial activities and allow Former Financial Administrator Skiba to direct more of his attention towards higher level management functions such as the debt certificate financing and the ongoing forensic audit.

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

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

Nays: None

Absent: T. Bennington, L. Hartwig, and W. Murphy

With regards to continuing to retain the services of former Financial Administrator Skiba, General Manager Martin explained that currently, Mr. Skiba is receiving an Illinois Municipal Retirement Fund pension and, therefore, is only allowed to work for the Commission in a job that is not expected to require more than 600 hours of service in any given year, starting with the first day of employment, or else he risks his pension. Former Financial Administrator Skiba noted that, at present, he only had approximately

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233 of working hours remaining under the 600-hour limit, and, in order to continue helping the Commission navigate through its current financial situation, Former Financial Administrator Skiba was proposing to work directly for Robert Half Management Resources as a consultant who would, in turn, be assigned to the Commission.

Commissioner Poole moved to contract accounting services with Robert Half Management Resources in accordance with their proposal. Seconded by Commissioner Chaplin and unanimously approved by a Roll Call Vote:

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

Nays: None

Absent: T. Bennington, L. Hartwig, and W. Murphy

In response to Commissioner Zay's question concerning whether Former Financial Administrator Skiba saw light at the end of the tunnel, Former Financial Administrator Skiba enthusiastically stated that he did see the light, noting that approving the \$30,000,000 Debt Certificate was a huge step in the right direction and hiring a new Financial Administrator would be another positive step.

Commissioner Mueller asked what the status was of hiring a new Financial Administrator. Commissioner Zeilenga noted that resumes have been collected and suggested having the Finance Committee help with the process. Commissioner Zeilenga also requested that the current job description for the Financial Administrator position be provided to the Finance Committee for review and potential modifications specifically geared towards obtaining a more senior level person with experience in governmental accounting and/or with a different reporting structure.

In response to Commissioner Mueller's inquiring concerning the timing for hiring a new Financial Administrator, Commissioner Zeilenga thought it would not be immediate, noting that the Commission has secured the services of Former Financial Administrator Skiba who is as good or better than any Financial Administrator out there, and that even if the Commission were to hire a new Financial Administrator, then Commissioner Zeilenga would still want to retain the services of Former Financial Administrator Skiba. Commissioner Mueller responded that it would be helpful if staff provided the Board with a list of all the various financial personnel working for the Commission, their areas of responsibility, and who they report to.

Commissioner Zay noted that the current By-Laws state that most of the financial burden rests upon the General Manager and suggested adjusting that as well.

ACCOUNTS PAYABLE

Commissioner Zeilenga moved to approve the Accounts Payable in the amount of \$6,271,048.49, subject to submission of all contractually required documentation and to receipt of the \$30,000,000 short-term loan from West Suburban Bank, for construction invoices that have been received. Seconded by Commissioner Elliott and unanimously approved by a Roll Call Vote:

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

Nays: None

Absent: T. Bennington, L. Hartwig, and W. Murphy

Commissioner Zeilenga moved to approve the Accounts Payable in the amount of \$940,173.98, subject to submission of all contractually required documentation, for invoices that have been received except construction invoices. Seconded by Commissioner Poole and unanimously approved by a Roll Call Vote:

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

Nays: None

Absent: T. Bennington, L. Hartwig, and W. Murphy

Commissioner Zeilenga moved to approve the Accounts Payable in the amount of \$581,971.37, subject to submission of all contractually required documentation, for invoices that have not yet been received, but have been estimated. Seconded by Commissioner Elliott.

Commissioner Zay asked for an explanation regarding the proposed \$24,071.67 payment to Seeco Construction Services. General Manager Martin explained it was for materials testing services that the Commission performs instead of the contractors on various construction projects in order to ensure the accuracy and quality of the test results. Commissioner Chaplin asked for an explanation regarding the proposed \$12,268.00 payment to QuestMark. Manager of Water Operations McGhee explained that it was for an epoxy coating on a concrete floor of one of the new buildings in the back of the pumping station.

There being no further questions, the motion was unanimously approved by a Roll Call Vote:

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

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Nays: None

Absent: T. Bennington, L. Hartwig, and W. Murphy

With respect to the next Agenda item regarding Custody of Verbatim Records, Commissioner Maio asked if the recommended motion in the Request for Board Action on this item could be changed to add at the end of the motion the phrase “until rescinded or reversed.” There being no objection from anyone present, Commissioner Elliott moved to suspend the verbatim records procedures of the Commission’s By-Laws with respect to the verbatim record of the December 10, 2009, closed meeting of the Board of Commissioners until rescinded or reversed. Seconded by Commissioner Saverino and unanimously approved by a Roll Call Vote:

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

Nays: None

Absent: T. Bennington, L. Hartwig, and W. Murphy

Commissioner Poole then referred back to the Treasurer’s Report and, specifically, the \$22.4MM shortfall. Former Financial Administrator Skiba explained that the shortfall was attributable to the Commission’s low water rates and over commitment of sales tax receipts for construction. Commissioner Poole then asked what construction projects were approved after April 30, 2009. Former Financial Administrator Skiba stated that all current construction projects were approved prior to April 30, 2009.

Commissioner Zay noted that the Commission is only guilty of keeping the water rates too low and asked when Crowe Horwath will be done with their forensic audit.

Commissioner Elliott noted that he spoke with Chris Gair of Jenner & Block and Mr. Gair stated that the forensic audit should be completed sometime in January. Commissioner Elliott cautioned, however, that completion of the audit depends upon the scope of the work and mentioned that Jenner & Block still needed to conduct internal interviews and review the documents collected by the accounting team. Commissioner Elliott concluded his remarks by suggesting Mr. Gair be invited to attend the next Board meeting to provide a progress report.

Commissioner Poole questioned whether the three previous water rate increases implemented by the City of Chicago had been passed through to Commission customers. General Manager Martin replied that the first two were passed through, with the third increase to be passed through May 1, 2010.

Commissioner Saverino questioned why Chicago’s rate increases were not immediately passed through to Commission customers. General Manager Martin explained that the City of Chicago usually informs the Commission just prior to January 1 whether or not there will be a water rate increase and, should that happen, the Commission adjusts its

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water rates accordingly to cover the lost cost during the 4-month interim (January – April) until the Commission’s own water rate increase goes into effect.

Commissioner Mueller noted that the Board should stick with the issue at hand and discuss possible water rate increases at the appropriate time.

Commissioner Chaplin stated that questions regarding the depletion in the sales tax revenue began in June and if those questions hadn’t been ignored, or a truthful answer received, the financial difficulties might have been stemmed.

Commissioner Zeilenga stated that in his opinion, the Commission’s financial situation was not solely based upon the water rates being too low but, rather, the various construction projects and the 2007 rebate also played a role.

After Commissioner Mueller stated that the Board should make its decisions based solely upon the facts and not what is reported in the media, Commissioner Zay moved to go into Executive Session, after a ten minute recess, to discuss matters related to personnel pursuant to 5 ILCS 120/2(c)(1) and (2). Seconded by Commissioner Elliott and unanimously approved by a Roll Call Vote:

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

Nays: W. Mueller

Absent: T. Bennington, L. Hartwig, and Murphy

The Board went into Executive Session at 8:35 P.M.

Commissioner Mueller moved to come out of Executive Session at 9:20 P.M. Seconded by Commissioner Poole and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Before the meeting adjourned, Commissioner Saverino requested that the Finance Committee proceed with the process of hiring a new Financial Administrator and, as a result, Commissioner Zeilenga requested that the current job description for the position be emailed to the Committee members and the item be included on the January Finance Committee Agenda.

After numerous Commissioners expressed their appreciation for all of Commissioner Zeilenga’s efforts, Commissioner Maio moved to adjourn the meeting at 9:25 P.M. Seconded by Commissioner Saverino and unanimously approved by a Voice Vote.

All voted aye. Motion carried.