

**MINUTES OF THE REGULAR MEETING
OF THE BOARD OF DIRECTORS
OF THE BETHLEHEM AUTHORITY**

NOVEMBER 12, 2009

The regular meeting of the Board of Directors of the Bethlehem Authority was held on November 12, 2009 in Conference Room B504, 10 E. Church Street, Bethlehem, PA. The meeting was called to order at 3:30 PM by Chairman Mark Jobes, with the following in attendance:

John Tallarico, Vice Chairman
Richard Master, Secretary
Vaughn Gower, Treasurer
James Broughal, Esq., Solicitor
Stephen Repasch, Executive Director
Sandra Reppert, Administrative Assistant
Daniel Meixell, Special Officer

Chairman Jobes said he must leave the meeting at 4:20 PM, at which time the meeting will be turned over to Mr. Tallarico.

APPROVAL OF MINUTES

Chairman Jobes presented the minutes from the regular meeting held October 8, 2009 as circulated. Mr. Gower moved to approve those minutes. Mr. Tallarico seconded. Motion passed unanimously.

RECOGNITION OF VISITORS / COURTESY OF THE FLOOR

Chairman Jobes recognized:

- Mr. Jeff Andrews, City of Bethlehem
- Mr. Gene Auman, Deputy Controller, City of Bethlehem
- Mr. Bud Cook, The Nature Conservancy
- Mr. Ron Madison, Bethlehem resident
- Mr. Dave McGuire, LV Sierra Club. Mr. McGuire queried if the agenda items will be re-arranged due to the executive session. Chairman Jobes responded the plan is to follow the agenda as presented. Mr. McGuire will wait until the appropriate segment in the meeting to comment.
- Mr. Stephen Antalics, Bethlehem resident
- Mr. Don Oaks, Bethlehem Authority Consulting Forester
- Mr. Dave Brong, City of Bethlehem
- Mr. Dave DiGiacinto, Bethlehem City Councilman-Elect and former Bethlehem Authority member.

REPORT OF THE CHAIRMAN

Financial Planning Effort – Update. Chairman Jobes reported that a lot of time and effort has been spent on trying to develop a long-term plan. The City and its financial advisor, Concord, have come up with an approach to borrow through a line of credit for funding capital expenditures through 2014. At that time it is hoped the market and interest rates will be available and reasonable to refinance and restructure the debt. This approach should enable the City to make capital improvements to the water system that are very much needed. The plan has not yet been finalized, but he feels this Board will support it, as everyone has been involved in numerous meetings at one point or another. From a financial standpoint, there is still an imbalance. The water system currently is not paying for itself, due in part because half of the expenses are debt service from rebuilding the dam, and in past experiences, the City hasn't been able to get rate increases from the PUC sufficient enough to help fund that expense. We will continue to look at alternatives to address the operating issues.

Board Commentary:

- Mr. Master said there is a lot of work being done. Some on the Board have looked for more fundamental changes, but they have repercussions as far as oversight by PUC and separating the water system from the City's control (we will continue to investigate ways that the City can have control over its heritage assets (lands)). Unlike other Lehigh Valley water systems, the City cannot set its own rates. The PUC doesn't consider the expense-revenue relationship as the principal issue when setting rates. In the past, the PUC has not been generous enough to enable the City to cover all the expenses and a reasonable amount of long-term maintenance and repairs. This will continue to be addressed by the Board and its professionals. On the other hand, the system has paid substantial debt service and has reduced debt over the past years. It is anticipated to refinance and restructure a large component of the debt in 2014 which should enable the system to become self-sustaining. The plan the City has presented is a suitable plan for the next four years. He feels the consensus of the Board is to accept the City's plan.
- Chairman Jobes said another major issue is some expenditures of the water system are rising more rapidly than PUC increases, such as pension and health care costs. It is easy to see how things become imbalanced. A lot of modeling has been done and a lot of time spent on ideas and alternative ideas.
- Mr. Tallarico said it's not right to always look to the consumer to make up for shortfalls through water rate increases. However, according to Mr. Repasch, the City's rates are on the lower side of the middle compared to the other water suppliers in the region whose rates have risen significantly over the last five to ten years. The PUC won't allow the City significant rate increases.
- Mr. Brong cautioned that when comparing water rates in the region, it must be kept in mind that the City's rate includes capital recovery. The other suppliers' rates do not include capital recovery – they get capital recovery through tapping fees, so it is not an “apples to apples” comparison.
- Mr. Gower said there is a lot of uncertainty and a lot of time involved to achieve a financially sustainable system. There is no one thing that can be focused on. It's about keeping all options and possibilities open.

Chairman Jobes concluded there has been talk about alternative sources of revenue (native grasses, agricultural easements) so rates may not have to increase. The City's plan is an agreeable solution through 2014. At the December meeting, it is anticipated the plan will be finalized and the Board will know all the particulars and vote to recommend and accept the plan.

REPORT OF THE EXECUTIVE DIRECTOR

Lehman Bros. Payment - Action. Mr. Repasch provided an update on the Lehman Brothers (Lehman) bankruptcy. As previously reported, Lehman filed for bankruptcy in September, 2008 and the Authority has a swap with Lehman in the Emmaus Bond pool. In November, 2008 Lehman owed the Authority under the swap, but they did not pay it since they were in bankruptcy. From December, 2008 till now, the Authority has owed Lehman under the swap, and that money has been escrowed in a separate BRIF account so it would be available to pay Lehman if ordered to do so. Recently, the bankruptcy court has issued a ruling that requires the Authority to pay Lehman for the entire period November 1, 2008 through October 1, 2009.

Lehman presented the Authority with the past due invoices and also charged over 14% interest on the past due amount. Since the Board felt that rate was excessive, our financial advisor, Steve Goldfield (PRAG) was asked to negotiate with Lehman. An interest rate of 3.9%, which is the same rate on the notional amount of the swap, was agreed to be a fair rate to charge on the past due invoices. Therefore, Mr. Repasch would like the Board to approve the payment of the past due invoices totaling \$153,868.16 plus interest to date totaling \$2,782.02. Mr. Broughal added he strongly advises paying the amount agreed upon as well.

Mr. Gower said that the bankruptcy judge has ordered **all** creditors to settle with Lehman. The Authority is not being asked to pay something it didn't bargain for. However, what happens when the swap flips and Lehman owes the Authority is in question going forward. The good thing is this swap expires in a few years.

Mr. Master said the action the Authority took was on the advice of our professionals. Unfortunately, the bankruptcy judge considered this swap still in effect. He agrees the best thing to do is pay Lehman so there are no repercussions. He moved to approve the payment of \$156,650.18 to Lehman Brothers, which represents the amount due under the swap agreement for the period November 1, 2008 to October 1, 2009 as discussed. Mr. Gower seconded. Motion passed unanimously.

Mr. Repasch mentioned that PRAG questioned Lehman about terminating the swap. Lehman came back with an amount of ~\$320,000.00. PRAG advised the cost was too high and does not recommend terminating at this time. They advise to pay the monthly invoices as they come due.

Fencing Contract Ratification. Mr. Repasch presented the fencing contract with Forest Regeneration Services (FRS) for ratification. This contract was circulated to the Board by email for approval. FRS has been contracted in the past for fencing projects (timbered forest stands) in the watershed. This contract is for fencing Stand 40 and Stand 62 in Long Pond.

Mr. Master moved to ratify the fencing contract with Forest Regeneration Services to fence Stand 40 and Stand 62. Mr. Gower seconded. Motion passed unanimously.

2010 Authority Operating Budget. Mr. Repasch presented the proposed 2010 Bethlehem Authority Operating Budget to the Board. It totals \$400,090.00, of which \$343,190.00 will be received from the City and the remainder will be received through lease rentals and investment interest. He highlighted the following:

- The expense budget is 4.4% lower than the 2009 expense budget and approximately 2.2% higher than projected expenses for 2009.
- The budget includes a 3.3% increase in salaries which is consistent with the increases budgeted for City personnel.
- An approximate 9% increase is budgeted for health insurance. It should be noted that the City's health insurance costs are increasing by more than 21%.
- Costs associated with the Forestry Program, and specifically consulting fees, are reduced by 42%. This is related to a change in the implementation strategy for the management of our watershed silviculture operations.
- The overall contribution from the City for the Authority's Operating Budget is decreasing by 2.9% over the 2009 budget. This is the fourth consecutive year that we've reduced these costs to the City.
- Professional fees to consultants to evaluate the potential transition from a Financing Authority to an Operating Authority will be drawn from Authority operating reserves.

Chairman Jobes said that proposed budget was circulated to the Board by email. He feels a good job has been done at minimizing and controlling the expenses that can be controlled. He queried the salary increases and if they are automatic versus performance review. Mr. Broughal responded all the Board is doing is approving a budgetary amount. The Board sets the salaries at its reorganization meeting in January.

Mr. Master moved to approve the Authority's Proposed 2010 Operating Budget. Mr. Gower seconded. Motion passed unanimously.

T-Mobile Lease (Executive Session). At 4:00 PM, the Board entered into an Executive Session to discuss a legal matter regarding the Authority's lease with T-Mobile. The Executive Session adjourned at 4:10 PM and the regular meeting resumed.

Resolution 309 – Approval of Professional and Administrative Expenses. Ms. Reppert presented Resolution 309, as circulated and filed, to the Board for approval. The total amount is \$52,843.25 and consists of the following:

- Requisition 298 - City's water capital invoice totaling \$22,327.27.
- Professional and Administrative expenses totaling \$30,515.98.

Mr. Master moved to approve Resolution 309 as presented. Mr. Gower seconded. Motion passed unanimously.

Working Woodlands Program. Mr. Repasch reported that he, Mr. Broughal and Mr. Gower are meeting with The Nature Conservancy tomorrow to discuss the benefits of the Working Woodlands program to the Authority. He will provide more details about the program at the December meeting.

Native Grasses as Bio-Fuel. Mr. Repasch attended a Lehigh River Watershed conference in October, and the PA Department of Agriculture gave a presentation on the use of native grasses as bio-fuels. The presentation detailed the advantages to landowners and farmers if these grasses are planted and harvested. There are approximately 300 acres in Long Pond under an agricultural lease with a farmer worth \$2,700.00 per year to the Authority. If the farmer plants native grasses for bio-fuel, the Authority could yield ~\$60,000.00 per year, conservatively. Mr. Repasch would like a consensus of the Board to

further investigate this potential. Also, a representative from the PA Department of Agriculture is willing to give a presentation on this topic to the Authority. The Board is agreeable to this.

Agricultural Easement. In the past, the Authority tried working with Monroe County for agricultural easements on farmland in Tunkhannock Township that the Authority currently leases. The land had been appraised and the easement values at that time totaled \$1.9 million. The priority use of the Authority's land is for the production of water. The easement did not allow the Authority to construct water facilities, except for a pipeline, and the Authority felt that the lack of certain language in the easement deed was not appropriate.

Mr. Repasch and Mr. Broughal spoke with Doug Wolfgang from the Department of Agriculture last week. Mr. Broughal went on to say Mr. Wolfgang was told the language in the easement must say that there will be absolutely no restrictions on the Authority's ability to produce potable water to transport to its customers. This is needed because it's the Authority's business. Mr. Broughal received a reply today, in which Mr. Wolfgang said Act 43 does not allow for this type of language. Mr. Repasch added they will be contacting an attorney who is the special assistant to the Secretary of Agriculture and is apparently aware of this situation.

Mr. Master said it is not known that this land would even be used for water facilities, but there should be some restrictions on the use of pesticides and chemicals used in farming the land. Mr. Broughal added the Authority must be absolutely sure since the agricultural easement restricts the use of the property except for agricultural purposes. Controlling the use of pesticides and chemicals would be drafted into the land lease with the farmer.

Mr. Repasch said if the planting of native grasses materializes, the agriculture fields being discussed are the fields that would be utilized. Native grasses require less fertilizing than what is presently farmed, and they are better for erosion control and containment of run-off. The Authority needs to exhaust all avenues, as long as the Board is agreeable to it.

Fourth Quarter 2009 Income/Expense Projection and Expense Budget Comparative.

Income and Expense Projection for the 4th Quarter 2009:

- Cash on Hand at November 1 - \$411,830 in various accounts
- Revenues Receivable – \$186,185 for the 4th Quarter.
- Total Cash on Hand – \$539,925 at the end of the 4th Quarter.
- Total Projected Professional, Administrative and Police Expenses – \$116,405 overall for the 4th Quarter.
- Total Projected Cash on Hand at the end of the 4th Quarter – \$423,520.

Expense Budget Comparative for the 10 months ended October 30:

- Professional Services – \$157,702, 106% of budget. Financial advisory fees are the bulk of the professional services overage.
- Security and Property Expenses – \$14,047, 41% of budget.
- Administrative Expenses – \$177,386, 76% of budget.
- Overall – \$349,135, 84% of budget and on track if budget was linear.

At this point, Chairman Jobes excused himself and turned the meeting over to Mr. Tallarico.

REPORT OF THE CONTROLLER

Mr. Filipos' report for the month ended October 31, as circulated and filed, was accepted without comment. In his absence, Ms. Reppert noted the Hirko debt service payment of \$771,961.25 was made on October 1.

REPORT OF THE SOLICITOR

Nothing to report.

REPORT OF THE CONSULTING ENGINEER

Mr. Repasch commented on Neal Kern's report, which was circulated and filed. Mr. Kern has been working on the annual report and has a half day of inspections remaining. He is also developing the specifications and design of the valve repair and replacement (grant) project, which should be ready to review with the City in the next few weeks.

REPORT OF BETHLEHEM AUTHORITY SPECIAL POLICE

Officer Meixell's report, as circulated and filed, was accepted. A stolen boat from Philadelphia was discovered on Authority property. He is waiting for the Philadelphia police to get back to him about it. Also, hunting has increased this past month over previous years.

WATER REPORT

The Water Report for the month of October 2009, as circulated and filed, indicates the reservoirs are at 99% capacity. Mr. Brong informed the Board that the level of the Penn Forest reservoir has been lowered one to two feet in order to check on an issue at the spillway.

CITY OF BETHLEHEM DIRECTOR OF WATER AND SEWER RESOURCES

Mr. Brong reported the following on the Water Fund as of October 31:

- Receipts total \$14.4 million against invoicings of \$15 million, and invoicings are ~\$0.5 million behind plan due to the cool and wet summer.
- Residential consumption was down ~1% from plan.
- Industrial water consumption was down ~33%, and largely due to the economy.
- Expenses are considerably below plan to date.
- Net income to date is \$3.8 million against plan of \$3.4 million.
- Cash in the Water Fund at October 31 was \$4.8 million and on track to make the November 15 debt service payment.

PUC Territory Expansion. The City's settlement agreement to expand its water service territory to include the Mill Creek development in Bethlehem Township, which is adjacent to the City's current territory, was approved by Easton Suburban Water Authority. There is a petition to the PUC that supports this agreement, and there will be no litigation involved with the PUC. At full build out, this expansion is anticipated to generate ~\$225,000.00 per year in revenue.

OTHER BUSINESS

Regarding Officer Meixell's report, Mr. Repasch said we lost some proponents of the Authority in Tunkhannock Township since the municipal election. The newly elected supervisors may not be as amenable toward the Authority (one of them had written a letter to the local State Senator saying the Authority is making millions of dollars in timbering and the township feels they should receive some of the money).

COURTESY OF THE FLOOR

Mr. Antalics queried the following:

- Has there been any discussion about or drilling of the Marcellus shale on Authority property?
Mr. Repasch responded no, the State has not discovered any of the shale this far east or south yet.
- The Cabot (Oil and Gas) Corp. is being heavily fined for water contamination. Has anyone looked into the possibility that it could affect Bethlehem's water quality downstream? Mr. Cook responded the alleged contamination is in the Susquehanna River basin, not the Delaware.

Mr. Tallarico mentioned a New York Times article reported the City of New York is very concerned about the Marcellus shale in its watershed. The form of extraction is very toxic.

NEXT MEETING DATE

The next regular meeting is scheduled for December 10, 2009 at 3:30PM.

ADJOURNMENT

There being no further business, Mr. Tallarico moved to adjourn the meeting. Mr. Gower seconded. Motion passed unanimously and the meeting adjourned at 4:30 PM.

Richard L. Master, Secretary