

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

DECEMBER 10, 2009

The regular meeting of the Board of Directors of the Bethlehem Authority was held on December 10, 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
Vaughn Gower, Treasurer
James Broughal, Esq., Solicitor
John Filipos, CPA, Controller
Stephen Repasch, Executive Director
Sandra Reppert, Administrative Assistant
Daniel Meixell, Special Officer

APPROVAL OF MINUTES

Chairman Jobes presented the minutes from the regular meeting held November 12, 2009 as circulated. Mr. Tallarico moved to approve those minutes. Mr. Gower seconded. Motion passed unanimously.

RECOGNITION OF VISITORS / COURTESY OF THE FLOOR

Chairman Jobes recognized the following visitors:

- Mr. Bud Cook, The Nature Conservancy
- Mr. Gene Auman, City of Bethlehem Deputy Controller
- Mr. Stephen Antalics, Bethlehem resident
- Mr. Neal Kern, Bethlehem Authority Consulting Engineer
- Mr. Don Oaks, Bethlehem Authority Consulting Forester
- Mr. Jeff Andrews, City of Bethlehem Superintendent of Water Supply and Treatment
- Mr. Dave Brong, City of Bethlehem Director of Water and Sewer Resources
- Mr. Terry Faul, Esq., from the firm of King, Spry, Herman, Freund and Faul
- Bethlehem Press

(It is noted Richard Master entered the meeting at 3:35 PM)

REPORT OF THE CHAIRMAN

Financial Plan. Chairman Jobs reported that yesterday, the Finance Committee of City Council, after much discussion, passed the City's financial plan. It will be read into the record at the December 22 Council meeting. Since the City's plan involves his employer for funding the line of credit (LOC), he has abstained from discussions due to potential conflict and asked those Board members who have been involved to comment.

Mr. Gower said there was a lot of discussion, questions, appreciation for the need for the capital investments that the LOC will help fund, and appreciation for the amount of principal on the bonds that will be repaid in the next five years, despite adding the LOC. (If the entire line is drawn by the end of the fifth year, there would be ~\$8 million of additional debt, but regular debt service payments on the bonds in those five years would still be reduced by ~\$20 million) There were questions about repaying principal on the LOC, but it was not the majority's opinion to do so. The refinancing of the 1998 bonds was discussed and recommended by the Finance Committee to be adopted. There was a question raised about the method for taking the savings from the refinancing and spreading it out over a longer period of time. The Authority needs to think about the requirements for approving the 1998 bonds refinancing and needs to take formal action, and according to Mr. Broughal, the Board absolutely needs to take action to authorize the refinancing, preferably today. He reiterated that the 1998 bond refinancing has two important components:

- To help the City's budget, the total savings should be explicitly used in the first two years, rather than using ~\$25,000.00 a year over a long period of time.
- The net present value of the saving has to be at least 3% of the debt refinanced (currently it is 5%).

Mr. Master said much work has been done in cooperation between the City and the Authority. We should formally endorse the plan, even though the Authority has no responsibility in securing the major element of the plan, which is the LOC. The questions asked by the Finance Committee and City Council about the LOC issues were to the point, were answered and accepted, and there seemed to be an endorsement of the plan. However at the end of the meeting, Councilman Leeson, Chairman of the Committee, objected that one, there is no repayment of principal on the LOC until 2014 and two, the savings from refinancing the 1998 Bonds should not be taken all in the near term year but over time. Mr. Master said that Mr. Leeson's objections are problematic because they come at the 11th hour after all the analysis and planning by financial advisors, Authority and Administration staff and Board members and the Mayor is complete. The Finance Committee was solicited to participate in the deliberations and did not .

Mr. Gower added the work has been done by experts asked to evaluate, discuss and understand all the alternatives, including us and the City. It is pretty presumptuous of Mr. Leeson that he knows better than a group of experts who spent a lot of time on this issue.

Mr. Master continued on to say Mr. Leeson's objections are counter to the objectives of the Plan and fail to recognize the serious structural imbalance in the Water System between revenues and expenses from the massive debt service cost (55% of revenue). The Plan's objective is to provide liquidity in the near term which will enable the system to function with deficit and to be maintained until year 2014. In year 2014, the bulk of the system debt can be refinanced, without IRS penalty and it is anticipated that a restructuring at that time will reduce annual debt service payments substantially. Unless there is additional room in the City's budgets, what will be required if Leeson's suggestions and requirements are, in fact, approved by Council is that the City taxpayers are going to have to subsidize the Water System.

There is not sufficient liquidity to maintain and operate the system if these additional burdens are imposed by Council. The Authority is a financial authority and it is in our interest to see that the system is financially stable, operates correctly, and has the resources to operate. If the City does use General Fund monies to subsidize the system and does require a tax increase to get those monies, financially it would be a neutral result. But, it would be the first time that City taxpayers would be subsidizing a regional water system, and it is not necessary or right to require. We need to articulate very strongly that the Authority is in favor of the City's plan as worked out.

Mr. Tallarico added it's important to note the plan was worked out in conjunction with and under the advisement of the City's and the Authority's financial advisors.

Chairman Jobses stated this entire situation has been addressed over the past few years. The Board has reached a consensus that, out of all the options looked at, the City's plan will work through 2014, with the ability to refinance more debt at that time.

Chairman Jobses moved to authorize the refinancing of the Bethlehem Authority's 1998 Bonds under the advice of our Financial Advisor, with a minimum net present value savings of 3% and the proceeds of which would be utilized in the first two years. Mr. Gower seconded. Mr. Tallarico and Mr. Master voted aye. Motion passed.

According to Mr. Repasch, this will be further scrutinized and discussed at the December 15 final City budget hearing and will be brought to full Council on December 22 for the first reading into the record. Mr. Auman added the Finance Committee has asked for information by the 15th to discuss before the budget hearing.

Mr. Master moved that the Bethlehem Authority strongly endorse the City's financial plan, as written and as presented to the Finance Committee of City Council by the City's Financial Advisor, Concord, and supported by the members of the Bethlehem Authority and its Financial Advisor, Stephen Goldfield from PRAG, recognizing that there are other plans that may require a tax increase or City General Fund support, but that the budget presented to the Bethlehem Authority by the City Administration for both water capital and operations seem to be bare-bones and what is minimally required to run the Water System for the foreseeable future. Mr. Tallarico seconded. Mr. Gower voted aye. Chairman Jobses abstained from voting due to potential conflict, since the City envisions using Lafayette Ambassador Bank as part of the financial plan. Motion passed.

Chairman Jobses appreciates all the time and effort everyone has spent on this issue. He is hoping the Board can focus on ways of obtaining additional revenues outside of PUC context.

REPORT OF THE EXECUTIVE DIRECTOR

Driveway Construction Proposal. The next forest stand scheduled for a timber sale is Stand 50. In order to gain access, there needs to be improvements to the driveway and logging roads. Proposals were received from three contractors, and the lowest proposal of \$7,200.00 was from Don Zacharias Excavating Co. of Kunkletown. The work involves installing two 15-inch culvert pipes, each 20 feet in length and back-filled with appropriate aggregate, and there is some stream crossing work into Stand 50 as well. Mr. Repasch recommends that the Board approve this proposal. A 50% down payment is required and the \$3,600.00 is on the current resolution. He would like to get this work done before year end because:

- (1) Zacharias is a reputable contractor and the contract is a very good price.
- (2) When the new Tunkhannock supervisors take over next year, they may make things difficult for the Authority (in conducting its watershed/forestry activities).

Officer Meixell was questioned about Mr. Zacharias, and his response was Mr. Zacharias has lived in the area for 50 years, he knows him and he does very good work.

Mr. Gower moved to accept the proposal for \$7,200.00 for the driveway construction as presented. Mr. Master seconded. Mr. Tallarico and Chairman Jobes voted aye. Motion passed.

Reservoir Maintenance Contract. The City is beginning to phase in maintenance and management work on the reservoir tanks that are sorely in need of upgrading and rehabilitation. In July, the Authority entered into a contract with Utility Service Co. for the 5MG tank on Hecktown Road because the City cannot enter into long-term contracts. The money comes from the BRIF, and ultimately, all the tanks will be placed under this type of agreement. Mr. Repasch presented a maintenance contract with Utility Service Co. for the 0.5MG tank on South Mountain. This tank is not in as bad condition as the Hecktown Road tank, but is under violation by the DEP due to lack of maintenance. The contract totals \$418,675 for five years for cleaning, repainting and upgrading the tank. The contract was reviewed by Mr. Broughal and the necessary changes were agreed upon and made. This was circulated to the Board via email and he is recommending that the Board approve this contract.

Dave Brong added that the industry employs these types of maintenance companies, as they can help avoid the significant expense of complete system failure. The South Mountain tank is the second of five or six above-ground tanks scheduled for maintenance over the next ten years.

Chairman Jobes said this is the appropriate way to address these types of capital issues. He moved to approve the maintenance contract with Utility Service Co. for the 0.5MG South Mountain tank as presented. Mr. Master seconded. Mr. Gower and Mr. Tallarico voted aye. Motion passed.

TNC Working Woodlands Program Non-Disclosure Agreement. Mr. Repasch, Mr. Gower and Mr. Broughal met with Bud Cook and other representatives from The Nature Conservancy (TNC) on November 13 about the relatively new Working Woodlands Program. Before entering into the next phase of discussions, the Authority must enter into a Non-Disclosure Agreement (NDA) with TNC and its partner, Blue Source. It is a standard mutual confidentiality agreement where proprietary and other sensitive information is not to be disclosed by the parties. The agreement was reviewed by Mr. Broughal and also circulated to the Board via email. Mr. Gower moved to approve signing the agreement.

Mr. Dave McGuire, from the Sierra Club, queried at what point will other interested parties or the public be informed about this program. Mr. Repasch responded the program was made public last week through a press release from Blue Source and TNC. Mr. Broughal added that the Authority has only had conversations with TNC. Once the NDA is executed and processed, the Authority will most likely receive some type of proposal which will become public knowledge.

Chairman Jobes would like Bud Cook to offer more information about the program since this is the first time it is being discussed publicly. Mr. Cook said the Working Woodlands Program helps private woodland (forest) owners get third party certification that their forest is being maintained sustainably. The financial benefits of the certification are forest carbon offset payments and a premium price in the market for forest products. There is a higher return on forest products that are produced in Forest Stewardship

Council (FSC) certified forests. FSC is the third party certifier and the only one that meets the standards for World Bank financing.

Mr. Master said many retailers require manufactures to utilize FSC certified products, and it would be very good for the Authority to have this certification. He seconded the motion to approve signing the agreement. Mr. Tallarico and Chairman Jobses voted aye. Motion passed.

Chairman Jobses said the Authority will continue to investigate this as an alternative revenue source.

Wind Energy Developer Evaluation. Mr. Repasch informed the Board he met with Broadlands and Delsea Energy, and then with Broadlands and Iberdrola Renewables USA. Broadlands was contracted to evaluate the Delsea and Iberdrola proposals for wind energy projects. The meetings were very productive as far as information gathering. Broadlands is expected to have a report to the Authority for evaluation before Christmas. The report will be circulated to the Board so that perhaps an agreement might be reached in January as to which direction to take.

Mr. Dave McGuire queried if the environmental history of either of these potential firms is being made a part of the Broadlands evaluation. Mr. Repasch responded yes, Broadlands is evaluating every aspect of each company's abilities and past history.

Mr. Master queried if the Sierra Club has any information that they would like included in the evaluations? Mr. McGuire said they are aware of a firm that did a wind project installation in the Frackville area, and there supposedly were areas of significant deforestation that was well-above the average required to install wind turbines. After the most recent article in The Morning Call (by Nicole), the Sierra Club received many phone calls. The Sierra Club's response to the calls is they are participating and providing input to the Authority on this matter. Also, the Kittatiny Ridge flyway of raptors is going to be a big issue. The Sierra Club favors wind power and is supportive at this time, but the siting is of major importance.

Mr. Tallarico said not only is Broadlands doing their study, but once the Authority makes a decision, all applicable environmental studies will be done. There is a long period of time till any turbines are erected.

Mr. Gower added the Authority needs to be comfortable with the process a developer follows to take care of the issues that could arise, their ability to do a good job and to know what a good job is environmentally.

Chairman Jobses said the Authority will do its due diligence but proceed with caution. There will be more discussion at the next meeting.

Agricultural Easement. The agriculture easement issue for the land in Tunkhannock Township the Authority leases to a local farmer has been discussed off and on over the last several years. If the Authority entered into a long- term easement agreement, there is a substantial revenue source to keep the land in the easement. The issue to not enter into the easement has always been the State's language in the agreement. Mr. Repasch said he and Mr. Broughal recently found out through conversations with the State Department of Agriculture, that the State's easement agreement language can't be changed because it's part of an act, which is legislative.

Mr. Broughal said that in the past, his only objection was the easement agreement had to state the Authority can continue to utilize its property for the production of water and for the transportation of that water to its customers. He thought this was simple. But again, the easement is statutory and therefore needs an act of congress to be changed. The Department of Agriculture then said the Authority has eminent domain, so there shouldn't be any problem. But the problem is Act 43 (agriculture security law), Section 913 (limitations on certain governmental actions). More specifically, in order to condemn an agriculture easement, the Authority would have to proceed through the Agricultural Lands Condemnation Approval Board, every governing body (county, township) that the property is a part of, and County and Agricultural Security Area Advisory Committees. He believes what he thought as a way to get around the easement does not appear to be viable. The Authority would still be faced with the issue that the easement may prevent the Authority's production of water, and he would find it difficult to recommend agreeing to it.

The agricultural lands are located in Tunkhannock Township, the primary watershed, and the easement specifically identifies the lands. If the easement is pursued, those same lands would be used to plant the native grasses. At one time, it was thought there would be a dam constructed, but it is safe to say it is highly unlikely a dam or retention area would be constructed with the racetrack there now. Also, in the past, there was talk of putting wells in the middle watershed to pump water to the intake, but the middle watershed is not near these agricultural fields in question. Mr. Broughal suggests asking the City to investigate the likelihood that now or in the future there will be the need to erect structures on these lands for the generation of water (the easement allows underground pipelines but not above-ground structures). If the City has no intentions on doing so, they should provide a report to the Authority stating they have no objection to the easement and recommend moving forward. City Council would have to approve the easement. Then the Authority Board can seriously consider the legal implications of proceeding, then decide to proceed or not.

Mr. Terry Faul queried if the lands are in the area of Delsea Energy's proposal. Mr. Broughal responded no, they are not. These lands are actively farmed.

Mr. Dave McGuire would like the Board to keep the Sierra Club informed, as the club has a long history of dealing with the City on these matters. In the past, when necessary, the club has brought significant public input and support to City Council, and hopes this issue follows the positive decisions the Board has made in the past.

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

Income and Expense Projection for the 4th Quarter 2009:

- Cash on Hand at December 1 - \$391,670 in various accounts
- Revenues Receivable – \$186,335 for the 4th Quarter.
- Total Projected Professional, Administrative and Police Expenses – \$119,815 overall for the 4th Quarter.
- Total Projected Cash on Hand at the end of the 4th Quarter – \$420,260.

Expense Budget Comparative for the 11 months ended November 30:

- Professional Services – \$164,998, 111% of budget. Again it's due to the work of the Financial Advisor on the financial plan and Lehman Brothers issue this past year. Chairman Jobs asked if PRAG's billing were current. Mr. Repasch said the latest invoice received to be paid is September's. The Chairman would like PRAG to submit current invoices so that they can be paid by year's end.
- Security and Property Expenses – \$15,170, 44% of budget.
- Administrative Expenses – \$193,948, 83% of budget.
- Overall – \$374,117, 90% of budget, very slightly below a linear budget of 91.7%. Given all the work that was done this year, Chairman Jobs appreciates everyone's efforts on holding the budget.

REPORT OF THE CONTROLLER

Mr. Filipos' report for the month ended November 30, as circulated and filed, was accepted without comment. As November usually has a lot of transactions, he pointed out the following:

- A payment of ~157,000.00 was made to Lehman Brothers on the outstanding interest owed to them, plus a current payment of ~\$15,000.00.
- ~\$4.5 million debt service was paid for the 1998 and 2004 Bonds.
- ~\$582,000.00 was received from the City for the Landfill payment due December 1 (which has been paid but is not reflected in this report).

Resolution 310 – Approval of Professional and Administrative Expenses. Chairman Jobs presented Resolution 310, as circulated and filed, to the Board for approval. The total amount is \$77,318.43 and consists of the following:

- Requisition 299 - City's water capital invoice totaling \$28,537.17.
- Professional and Administrative expenses totaling \$48,781.26.

Mr. Master moved to approve Resolution 310 as presented. Mr. Gower seconded. Motion passed unanimously.

Chairman Jobs noted that the BRIF balance entering 2010 is ~\$3.5 million.

REPORT OF THE SOLICITOR

Mr. Broughal had nothing additional to report.

REPORT OF THE CONSULTING ENGINEER

Mr. Neal Kern, the Consulting Engineer from Barry Isett, reported that the annual report is 50% complete. All the inspections have been done and he is waiting for the City's final budget information. Also, he is progressing on the design of the valve replacement project and has been resolving issues at some of the pump stations. The bid package is targeted to be ready by spring.

REPORT OF BETHLEHEM AUTHORITY SPECIAL POLICE

Officer Meixell's report, as circulated and filed, was accepted. He said it has been very busy in the watershed this past month. An unusual encounter in the middle of the woods was the discovery of two large tractors and a golf cart. The State Police did not want to handle this matter, and although it has now been resolved, he cannot elaborate. He is still waiting to hear from the Philadelphia police about the stolen boat on our property.

WATER REPORT

The Water Report for the month of November 2009, as circulated and filed, indicates the reservoirs are at 99.95% capacity.

CITY OF BETHLEHEM DIRECTOR OF WATER AND SEWER RESOURCES

Mr. Brong reported the following on the Water Fund as of November 30:

- The debt service payment made in November accounts for ~30% of the yearly expense budget. This large expense used a vast majority of the cash in the Water Fund.
- Revenues are ~\$1.1 million behind plan, an indicator of the economy
- Invoicings are ~\$500,000.00 behind plan, an indicator of the business
- Expenses are ~\$1.8 million behind plan
- Net income is ~\$600,000.00 ahead of plan to date
- ~\$500,000.00 is the expected balance in the Water Fund at the end of the year.
- The City provided a letter to the Authority stating the 5% coverage payment due on the November debt service will be made by December 23. These monies are deposited into the BRIF.

OTHER BUSINESS

Chairman Jobes said he will reach out to each Board member to discuss officership or any other matters, including suggestions for a fifth Board member, before the Reorganization meeting in January.

COURTESY OF THE FLOOR

Mr. Gene Auman commented that despite Mr. Leeson's comments at the end of the Finance Committee meeting, it might be a good idea for the Authority to send Council President Donchez a memo indicating how and what the Authority voted on at its Board meeting today, and that the Authority hopes City Council supports the same. Chairman Jobes concurred it is a good idea and asked Mr. Repasch to draft the memo.

NEXT MEETING DATE

The next meetings are the reorganization and regular meetings, scheduled for January 14, 2010 at 3:30PM. Please advise of any conflicts.

ADJOURNMENT

There being no further business, Mr. Master moved to adjourn the meeting. Mr. Gower seconded. Motion passed unanimously and the meeting adjourned at 4:40 PM.

Richard L. Master, Secretary