

**MINUTES OF A SPECIAL MEETING OF THE
DuPAGE WATER COMMISSION
HELD ON WEDNESDAY, DECEMBER 2, 2009
600 E. BUTTERFIELD ROAD
ELMHURST, ILLINOIS**

The meeting was called to order by Chairman Rathje at 7:02 P.M.

Commissioners in attendance: T. Bennington (arrived at 7:11 P.M.), E. Chaplin, W. Maio, G. Mathews, W. Mueller, A. Poole, F. Saverino, D. Zeilenga, and L. Rathje

Commissioners Absent: T. Elliott, L. Hartwig, W. Murphy, and J. Zay

Also in attendance: R. Martin, M. Crowley, C. Johnson, R. Skiba, J. Nesbitt, F. Frelka, and E. Kazmierczak

Chairman Rathje explained the reason for calling a Special Board meeting was to discuss short term financing but, before that discussion began, Chairman Rathje opened the floor for public comment.

PUBLIC COMMENT

Bill Wrobel, Downers Grove, expressed his concerns with the Commission's current financial situation, stating that the Commission should have seen the situation coming.

Commissioner Bennington arrived at 7:11 P.M.

Before Commissioner Zeilenga began his report on short term financing options, Chairman Rathje noted that he would be abstaining from any discussion and/or vote related to Northern Trust Bank due to his stock ownership of less than 1% in the publicly traded company. Commissioner Zeilenga noted that his cousin works for West Suburban Bank, but, after discussing the matter with the Staff Attorney, the personal relationship does not constitute a disqualifying conflict of interest.

Commissioner Zeilenga reported that he and General Manager Martin met with representatives from West Suburban Bank and Northern Trust Bank regarding a short term financing need, noting they were impressed with both banks and that both banks could meet the Commission's needs in the timeframe required. Commissioner Zeilenga then referred to a revised DPWC Loan-LOC Summary that was distributed at the meeting, noting the comparisons were fairly similar. Commissioner Zeilenga explained that it is in the best interest of the Commission to secure short term financing by December 31st in order to retain the greatest flexibility and urged the Board to move forward by authorizing staff to proceed with the negotiations of a \$30MM short term loan for a one year period with West Suburban Bank first, and Northern Trust Bank, if need be.

In response to Chairman Rathje's question, General Manager Martin explained that Bank of American was only interested in longer term financing of five years or more.

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Commissioner Chaplin expressed her concerns with borrowing any funds at the present time, considering the Board has not been informed of the actual dollar amount of the Commission's outstanding obligations. Commissioner Zeilenga stated that based upon his review of the data, the Commission's financial situation could be summarized as follows:

- \$40MM in construction payments will be needed between December 1, 2009, and May 1, 2010
- \$13MM will be needed for the final, March 1, 2011, payment on the General Obligation Bonds, which amount needs to be reserved and set aside by January/February 2010 in order to abate the next property tax levy
- \$10MM - \$20MM in unrestricted reserves has been depleted

Commissioner Maio confirmed with Commissioner Zeilenga that West Suburban Bank was offering a fixed rate loan, Northern Trust was offering a variable rate loan, and Commissioner Zeilenga's sense of the matter was that West Suburban Bank, being a smaller bank, would be able to formally approve and extend the financing more quickly than Northern Trust Bank with its more structured approval process.

Commissioner Maio asked if there was any advantage to splitting the total amount of the short term loan between West Suburban Bank and Northern Trust Bank. Commissioner Zeilenga suggested proceeding with West Suburban Bank first and using Northern Trust Bank if more short term financing is needed. Commissioner Zeilenga noted that both banks were ready to proceed with the \$30MM short term loan so the Board could very well split the total amount of the loan between the two banks, or, if West Suburban Bank handles the initial \$30MM short term loan, then the Commission could use Northern Trust Bank for a second short term loan in 2010 in the event the Commission determines to defer bonding until 2011.

Commissioner Chaplin again expressed her concerns with borrowing money and asked if the Commission currently has on hand the \$13MM needed to abate the 2010 property tax levy. Commissioner Zeilenga stated that at the present time, the Commission does not have the funds on hand to abate the 2010 property tax levy, noting the critical nature of securing the short term loan by December 31st.

Commissioner Mathews requested that staff provide at the next meeting a breakdown of the Commission's significant contractual obligations. Commissioner Bennington agreed with Commissioner Mathews, but requested the information be provided in advance of the regular December meeting and that the information include:

- Vendor names
- Contract project

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- Amount paid to date
- Remaining work to be completed
- Monies owed and payment schedule
- If construction work can be slowed

After Commissioner Bennington noted that he would not be participating in the discussion regarding selection of a lender in order to avoid a possible or perceived conflict of interest because his firm has Northern Trust as a client, Commissioner Bennington stated the Commission's only priorities should be: (1) payment for water from the City of Chicago and (2) payroll.

Commissioner Bennington inquired whether West Suburban Bank had received the Commission's financial statement. Commission Zeilenga responded that he had spoken to West Suburban Bank and they were fully advised as to the Commission's financial situation. Commissioner Bennington also inquired whether the short term financing would be collateralized and whether the short term financing would violate any existing Commission contract or the Revenue Bond ordinance. Staff Attorney Crowley responded that the short term financing would be unsecured and would not violate any existing Commission contract or the Revenue Bond ordinance.

In response to Commissioner Bennington's further inquiry, Commissioner Zeilenga noted that based upon his review of the last couple of weeks, it was Commissioner Zeilenga's opinion that there are certain cash flow problems that need to be addressed immediately and, specifically, the fact that more money is going out than revenue coming in. Commissioner Zeilenga further noted that \$30MM would be needed and, possibly, more.

After Commissioner Maio reminded staff that he had previously requested a report showing an evaluation of current projects, including an analysis of the Commission's right to reduce the scope of and/or terminate or suspend existing contracts and a breakdown of what the engineering repercussions would be if the projects were altered, eliminated, or suspended, General Manager Martin responded that he had previously advised the Board that the requested information would be provided in January. Commissioner Maio then requested that the information be provided as soon as possible and before the regular December meeting.

Commissioner Maio then inquired whether maintaining a personal IRA with Northern Trust Bank would constitute a disqualifying conflict of interest, and Staff Attorney Crowley replied that simply maintaining bank accounts with a proposed lender, without a financial interest in the loan or the bank, would not constitute a disqualifying conflict of interest. Commissioner Mueller nevertheless noted that he would not be participating in any discussion or vote on the short term financing to avoid a possible or perceived

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conflict of interest because he maintains certain bank accounts with West Suburban Bank.

Due to the number of absent Commissioners, Commissioner Bennington suggesting deferring the matter to the regular December meeting. Commissioner Mathews responded that the Board would only be authorizing bank negotiations at this meeting, with the actual financing to be approved by the Board at a later date.

Commissioner Zeilenga moved to authorize General Manager Martin, Staff Attorney Crowley, and himself to negotiate a not-to-exceed \$30MM one year debt certificate with West Suburban Bank and/or Northern Trust Bank for recommendation to the Board. Seconded by Commissioner Maio.

After Commissioner Bennington left the meeting to avoid a possible or perceived conflict of interest because his firm has Northern Trust as a client, Commissioner Zeilenga as the movant, and Commissioner Maio, as the seconder, agreed to withdraw the pending motion (and second). After which, Commissioner Zeilenga moved to authorize General Manager Martin, Staff Attorney Crowley, and himself to negotiate a not-to-exceed \$30MM one year debt certificate with various banks for recommendation to the Board. Seconded by Commissioner Saverino and approved by a Roll Call Vote:

Ayes: W. Maio, G. Mathews, A. Poole, F. Saverino, and D. Zeilenga

Nays: E. Chaplin

Absent: T. Bennington, T. Elliott, L. Hartwig, W. Murphy, and J. Zay

Abstain: W. Mueller and L. Rathje

Commissioner Mathews moved to authorize the General Manager to spend up to \$20,000.00 to retain the services of Speer Financial, Inc. to assist in the negotiations with various banks on the proposed short-term financing. Seconded by Commissioner Mueller.

Commissioner Zeilenga stated that he would only support retaining a financial advisor if the not-to-exceed cap was in the three to four thousand dollar range. Commissioner Chaplin asked how Speer Financial, Inc. was selected, and Staff Attorney Crowley replied that Speer Financial, Inc. was recommended by the Bond Counsel on several of the Commission's bond issues as well as by the Commission's former (and now retired) independent financial advisor on several of the Commission's bond issues.

Commissioner Mathews as the movant, and Commissioner Mueller, as the seconder, agreed to withdraw the pending motion (and second).

Commissioner Maio questioned the need for a financial advisor at the present time and asked whether the Commission would be better served by waiting to hire a financial advisor until a bond issue was being considered. Commissioner Zeilenga stated that he

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was not sure if the services of a financial advisor would be needed for the short term loan, but would definitely be needed for a bond issue. Staff Attorney Crowley advised that hiring a financial advisor would protect the Commission by having an independent party with experience in the industry advise the Board as to the fairness of the transaction, in addition to assisting the Board in structuring the loan between taxable, tax-exempt, and bank qualified tax exempt debt.

Commissioner Mathews moved to authorize the General Manager to retain the services of Speer Financial, Inc. to act as a financial advisor on an as needed basis and at a cost not-to-exceed \$5,000.00 without further Board approval. Seconded by Commissioner Saverino.

Commissioner Bennington requested that Commissioner Mathews amend his motion to include a requirement that the financial advisor be directed by, and report to, Commissioner Zeilenga. Commissioner Mathews questioned the need for such an amendment, at which point Commissioner Bennington moved to amend Commissioner Mathews' motion to add the following clause to the end of the motion: “, the financial advisor to be directed by and report to Commissioner Zeilenga.” Seconded by Commissioner Maio.

Commissioner Mathews asked for the rationale of appointing one person to oversee the decisions of the financial advisor. Commissioner Bennington explained that the situation is moving at a very fast pace, there needs to be one captain of the ship, and Commissioner Zeilenga is the most familiar with the Commission's current financial situation, has been working almost daily on the matter with staff, and would make sure everything is coordinated and communicated appropriately.

After Commissioner Mathews confirmed with Commissioner Zeilenga that he would be willing to act in the capacity suggested by Commissioner Bennington, and Chairman Rathje stated his view that even though Commissioner Zeilenga has been extremely helpful to staff, the chain of command should remain with the General Manager, the motion to amend Commissioner Mathews' motion was approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, W. Maio, G. Mathews, A. Poole, and D. Zeilenga

Nays: W. Mueller, F. Saverino, and L. Rathje

Absent: T. Elliott, L. Hartwig, W. Murphy, and J. Zay

At which point, the amended motion to authorize the General Manager to retain the services of Speer Financial, Inc. to act as a financial advisor on an as needed basis and at a cost not-to-exceed \$5,000.00 without further Board approval, the financial advisor to be directed by and report to Commissioner Zeilenga was unanimously approved by a Roll Call Vote:

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

Nays: None

Absent: T. Elliott, L. Hartwig, W. Murphy, and J. Zay

Commissioner Mathews moved to retain the services of Chapman and Cutler LLP as Bond Counsel for the proposed short-term financing at a cost not-to-exceed \$19,500.00. Seconded by Commissioner Saverino.

Commissioner Bennington asked if Jenner & Block could act as bond counsel for the short-term loan. Staff Attorney Crowley noted that Jenner & Block's engagement letter specifically excluded bond counsel services, that she was not aware that Jenner & Block had a public finance practice, and that there was no question that Chapman and Cutler is a "nationally recognized bond counsel" and the opinion of a nationally recognized bond counsel is generally required for any tax exempt debt issuance.

Commissioner Chaplin asked if Chapman and Cutler submitted a breakdown of their services and how they arrived at a total cost of \$19,500.00. Staff Attorney Crowley stated that an engagement letter will be provided detailing the scope of services but that the fixed fee of \$19,500.00 includes structuring assistance for the short-term loan and advice on use of proceeds in order to meet tax exemption requirements, in addition to document preparation and generalized consulting on issues related to the Commission's outstanding general obligation and revenue bonds.

Commissioner Mathews as the movant, and Commissioner Saverino, as the seconder, agreed to withdraw the pending motion (and second). As a result of which, Commissioner Mathews moved to retain the services of Chapman and Cutler LLP as Bond Counsel in connection with the proposed short-term financing, on a \$19,500.00 fixed fee basis as outlined by Counsel. Seconded by Commissioner Saverino and approved by a Roll Call Vote:

Ayes: T. Bennington, W. Maio, G. Mathews, W. Mueller, A. Poole, F. Saverino, D. Zeilenga, and L. Rathje

Nays: E. Chaplin

Absent: T. Elliott, L. Hartwig, W. Murphy, and J. Zay

General Manager Martin suggested deferring both Ordinance No. O-14-09 and the hiring of Financial Administrator to the regular December Board meeting.

Commissioner Bennington requested that a discussion of the water rate and its components be placed on the December Agenda. General Manager Martin advised that due to the time and data collection involved in connection with the forensic audit, staff may not be able to immediately address Commissioner Bennington's request,

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noting, for example, that the Board packet would most likely be delayed until the following week. Chairman Rathje then referred Commissioner Bennington to the various displays in the meeting room identifying and describing the water rate and its components and relationship to the cost of water, which General Manager Martin explained.

Commissioner Chaplin asked that a discussion of hiring an Ethics Officer be placed on the Agenda for the regular December meeting of the Administration Committee or the Board.

Commissioner Maio reported that he had received a copy of a letter that Commission staff sent to a contractor on November 17th and asked staff to explain the changes being made to the payment submittal process, noting he was told that the contractor was told that the changes were being required by the Board. Staff Attorney Crowley stated that it was the responsibility of the Financial Administrator to review all payment requests for verification of compliance with contract requirements but that recently it was discovered that contract requirements regarding sworn statements and lien waivers were not being adhered to. As a result, staff sent the letter to remind the contractor to submit all contractually required payment documentation and that full compliance would be expected in the future. Neither the Staff Attorney nor the General Manager were aware of any staff statement to the effect that the Board had implemented a change.

EXECUTIVE SESSION

None

Before the meeting was adjourned, Commissioner Bennington noted that he will be calling an Executive Session at the December meeting to discuss matters relating to litigation and personnel and requested that an attorney from Jenner & Block LLP be present for the discussion.

Commissioner Chaplin moved to adjourn the meeting at 8:23 P.M. Seconded by Commissioner Saverino and unanimously approved by a Voice Vote.

All voted aye. Motion carried.