

**MINUTES OF A MEETING OF THE
DU PAGE WATER COMMISSION
HELD ON WEDNESDAY, APRIL 7, 2004
600 E. BUTTERFIELD ROAD
ELMHURST, ILLINOIS**

The meeting was called to order by Chairman Vondra at 7:30 P.M.

Commissioners in attendance: R. Benson, E. Chaplin, T. Feltes, R. Ferraro, L. Hartwig, G. Mathews, W. Mueller, W. Murphy, A. Poole, J. Vrdolyak, G. Wilcox, D. Zeilenga and M. Vondra

Commissioners absent: None

Also in attendance: Treasurer R. Thorn, M. Crowley, R. Martin, E. Kazmierczak, R. Skiba, B. Slowinski, W. Green (Alvord Burdick & Howson) and R. Shea (Alvord, Burdick & Howson)

Commissioner Wilcox moved to open the Hearing Regarding the Management Budget Ordinance for the Fiscal Year Commencing May 1, 2004 and Ending April 30, 2005.
Seconded by Commissioner Chaplin and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Gary Webster, Glen Ellyn City Manager, made the following comments regarding the proposed management budget:

- The most recent five-year financial plan of the DuPage Water Commission was issued in early January of this year. It projected spending over \$75 million for capital projects, eliminating the water-rate stabilization reserve, and reducing unrestricted and emergency cash reserves to \$21 million within three years.
- The financial plan projections include several significant assumptions:
 - Little or no expense with the C-Factor issue;
 - No funding identified for issues involving the Lexington Pump Station;
 - No change in the sales tax allocation to the Commission.
- In addition, the five-year financial plan has apparently not been updated to include the TIB-1 Transmission Main Project approved last year with an approximate \$5 million cost overrun. Also, the five-year plan does not reflect the nearly \$3 million of increased costs contained in the budget amendment issued Friday, April 2, 2004, or the discussed \$650,000 capacity study.

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- The proposed May 1 budget includes more than \$19 million for construction projects on page 13. These projects really commit the Commission to about \$45 million of construction costs for TW-3 and the reservoir projects. The Commission should defer these two projects. The need and value of the TW-3 project and the additional reservoir should be fully and completely reviewed to determine whether they are absolutely necessary and worth the \$45 million expense. Furthermore, the Commission should carefully recalculate and update the five year financial plan.

Joe Breinig, Carol Stream Village Manager, made the following comments regarding the proposed management budget:

- With respect to the services of the financial consultant included in the budget and draft Resolution R-17-04, Mr. Breinig inquired as to the selection process used in obtaining the services, the basis of the fee amount, and, given the open-ended nature of the services to be provided under the contract, the amount of the contract.
- With respect to the \$2,735,000 in engineering services included in the budget, Mr. Breinig inquired as to the selection process that was or will be used in obtaining the services. Mr. Breinig suggested the Board consider using a competitive selection process and also questioned whether the state statute that outlines the process to be used for the selection of engineers has been followed by the Commission.
- With respect to draft Resolution R-18-04, Mr. Breinig inquired whether \$2.6 or \$6,989,756 was the current estimate of the Commission's unfunded pension liability, as the copy of draft Resolution R-18-04 that he received showed \$6,989,756 but, according to other staff reports, the correct amount is \$2.6 million.
- In addition, Mr. Breinig also questioned the rationale for staff's recommendation to fully fund the currently unfunded prior service pension liability by year-end as well as the 7.5% return assumption. Mr. Breinig noted the assumption may be flawed because the 7.5% is only realized after member and annuitant reserves are satisfied.

John Perry, Woodridge Village Administrator, made the following comments regarding the proposed management budget:

- Mr. Perry echoed Mr. Webster's comments with respect to the Five Year Improvement Plan (CIP) that has not been adopted/updated; specifically, the following:
 - The \$5 million overage on the bid price for Contract TIB-1 is not "properly" reflected in the CIP and, thus, also not properly reflected in the budget.

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- The purchase of Lexington that Mr. Perry heard mentioned is not included in the CIP and, thus, not included in the budget.
- The capacity study that has been discussed by the Commission is not included in the CIP budget and, thus, is not included in the budget.
- Mr. Perry commended the Commission for retaining Ms. Crowley as staff attorney to retain institutional memory regarding legal services, but Mr. Perry suggested the Board re-evaluate its position on hiring outside legal counsel, noting current year budget/appropriation overruns in legal services, and specifically:
 - The Commission budgeted \$312,000 for General Counsel services in 03/04 but had to make a transfer of appropriations in order to pay \$168,000 to Greenberg Traurig as special counsel.
- For 04/05, Mr. Perry noted that even though the Commission hired a staff attorney to reduce the cost of legal services, it has budgeted \$135,000 for Greenberg Traurig under an arrangement where the Commission pays \$10,000 per month for no legal services, and budgeted for the services of three other special counsels.

Commissioner Hartwig made a motion to close the Hearing Regarding the Management Budget Ordinance for the Fiscal Year Commencing May 1, 2004 and Ending April 30, 2005. Seconded by Commissioner Benson and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

PUBLIC COMMENTS – No public comments

Commissioner Chaplin moved to approve the Minutes of the March 11, 2004 regular meeting of the DuPage Water Commission. Seconded by Commissioner Wilcox and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Chaplin moved to approve the Minutes of the March 11, 2004 special meeting of the DuPage Water Commission. Seconded by Commissioner Ferraro and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Ferraro moved to approve the Minutes of the March 25, 2004 special meeting of the DuPage Water Commission. Seconded by Commissioner Chaplin and unanimously approved by a Voice Vote.

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All voted aye. Motion carried.

Commissioner Chaplin moved to approve the Executive Session Minutes of the March 11, 2004 meeting of the DuPage Water Commission. Seconded by Commissioner Wilcox and approved by a Voice Vote.

All voted aye except Commissioner Murphy who passed. Motion carried.

Commissioner Chaplin moved to approve the First Regular Executive Session Minutes of the March 11, 2004 meeting of the DuPage Water Commission. Seconded by Commissioner Wilcox and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Chaplin moved to approve the Second Regular Executive Session Minutes of the March 11, 2004 meeting of the DuPage Water Commission. Seconded by Commissioner Wilcox and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Chaplin moved to approve the Executive Session Minutes of the March 25, 2004 special meeting of the DuPage Water Commission. Seconded by Commissioner Wilcox and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Treasurer Thorn presented the Treasurer's Report. The Treasurer's Report for the month of March 2004 showed receipts of \$6,426,522.41, disbursements of \$14,839,010.82 and a cash and investment balance of \$186,932,731.35.

Commissioner Feltes moved to accept the March 2004 Treasurer's Report. Seconded by Commissioner Benson and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

COMMITTEE REPORTS

Administration Committee – Report by Commissioner Hartwig

The Administration Committee reviewed Ordinance No. O-11-04: An Ordinance Amending the By-Laws of the DuPage Water Commission (Amending Article XI), the ordinance that was on first reading. The Staff Attorney noted the ordinance would adopt regulations restricting the political activities of the Commission's officers and employees and the solicitation and acceptance of gifts from certain prohibited sources in a manner no less restrictive than that required by the newly-adopted State Officials and Employees Ethics Act. The Staff Attorney highlighted the key provisions of the

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ordinance and the differences between the ordinance and the model ordinance prepared by the Illinois Attorney General's Office.

The Administration Committee also requested, if time permits at the May meeting, that the Staff Attorney present a 30 minute primer on the ethical obligations of the Commissioners and perhaps the Open Meetings Act.

Commissioner Chaplin moved to go into Executive Session to discuss matters related to personnel matters pursuant to 5 ILCS 120/2(c)(1). Seconded by Commissioner Hartwig and unanimously approved by a Roll Call Vote:

Ayes: R. Benson, E. Chaplin, T. Feltes, R. Ferraro, L. Hartwig, G. Mathews, W. Mueller, W. Murphy, A. Poole, J. Vrdolyak, G. Wilcox, D. Zeilenga and M. Vondra

Nays: None

Absent: None

The Commission went into Executive Session at 8:06 P.M.

Commissioner Chaplin moved to come out of Executive Session at 8:30 P.M. Seconded by Commissioner Wilcox and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Benson moved to take a five minute recess. Seconded by Commissioner Chaplin and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Chairman Vondra noted that the Financial Administrator tendered his resignation and had requested that his last day be April 15, 2004, per the conditions of Resolution No. R-29-03. Chairman Vondra also noted that, even though the Board previously indicated that it was not necessary to extend the proposed retirement date as allowed by Resolution No. R-29-03, it was the consensus of the Commissioners that the April 15th date needs to be extended in accordance with the Resolution.

Commissioner Feltes moved to exercise the Commission's right to extend the April 15, 2004, retirement date requested by Mr. Skiba, to July 16, 2004, pursuant to Resolution No. R-29-03. Seconded by Commissioner Chaplin and unanimously approved by a Roll Call Vote:

Ayes: R. Benson, E. Chaplin, T. Feltes, R. Ferraro, L. Hartwig, G. Mathews, W. Mueller, W. Murphy, A. Poole, J. Vrdolyak, G. Wilcox, D. Zeilenga and M. Vondra

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Nays: None

Absent: None

Engineering Committee – Report by Commissioner Wilcox

The Engineering Committee reviewed the change orders in the amount \$223,017.97 and recommended approval of Resolution R-19-04 during the Omnibus Vote Agenda.

The Acting General Manager informed the Commissioners that Change Order No. 42 would eliminate a metal-seated valve on Contract TW-2 that repeatedly failed to pass the contractually required testing procedures and performance standards. It was noted the metal-seated valve would be replaced with a spool piece in the short term and that a replacement rubber-seated valve would be installed at a later date. The Acting General Manager also informed the Commissioners that he desired to replace a leaking metal-seated valve on Contract TSW-3 with a rubber-seated valve, and that negotiations with the Contract TSW-3 contractor were close to final.

Commissioner Benson made a motion to authorize the Acting General Manager to issue a change order, for ratification at the May Commission meeting, directing the Contract TSW-3 contractor to replace the metal-seated valve with a rubber-seated valve for a credit in amount acceptable to the Acting General Manager. Seconded by Commissioner Chaplin and unanimously approved by a Roll Call Vote:

Ayes: R. Benson, E. Chaplin, T. Feltes, R. Ferraro, L. Hartwig, G. Mathews, W. Mueller, W. Murphy, A. Poole, J. Vrdolyak, G. Wilcox, D. Zeilenga and M. Vondra

Nays: None

Absent: None

The Engineering Committee also reviewed Resolutions R-15-04 and R-16-04 and recommended approval during the Omnibus Vote Agenda.

Finance Committee – Report by Commissioner Poole

The Finance Committee reviewed the March financial statements and the accounts payable and recommended their approval. The Committee also reviewed and recommended approval of Ordinance Nos. O-7-04 through O-10-04 and Resolution Nos. R-13-04, R-14-04, and R-18-04.

Chairman's Report

Chairman Vondra distributed a copy of the April 5, 2004 Crain's Chicago Business article entitled "DuPage water fight soaks GOP leaders," after which discussion ensued.

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Discussion then ensued concerning the need to maintain confidential the matters discussed in Executive Session and, particularly, an article that appeared in the March 13, 2004 Daily Herald entitled "Water pipeline expansion creates rift with members." Commissioner Mathews requested it be noted that he understands the confidential nature of matters discussed in Executive Session and that he has not disclosed to the press or anyone else the matters that were discussed in Executive Session. Chairman Vondra responded by noting he did not intend to imply that Commissioner Mathews had violated the confidentiality of Executive Session.

Chairman Vondra concluded his report by noting he was unable to discuss committee assignments with some of the new Commissioners and that he would make his committee assignments for approval at the next meeting.

OMNIBUS VOTE AGENDA

Commissioner Murphy requested that Ordinance No. O-8-04 be removed from the Omnibus Vote Agenda for separate consideration.

Commissioner Benson moved to adopt the items listed on the revised Majority Omnibus Vote Agenda in a single group pursuant to the Omnibus Vote Procedures. Seconded by Commissioner Chaplin and approved by a Roll Call Vote:

Majority Omnibus Vote

Ayes: R. Benson, E. Chaplin, T. Feltes, R. Ferraro, L. Hartwig, G. Mathews, W. Murphy, A. Poole, J. Vrdolyak, G. Wilcox, D. Zeilenga and M. Vondra

Nays: W. Mueller

Absent: None

Item 1. Ordinance O-7-04: Transfer of Appropriations Ordinance for the Fiscal Year Commencing May 1, 2003 and Ending April 30, 2004 – "Majority Omnibus Vote"

Item 2. Resolution R-13-04: A Resolution Directing the Transfer of Certain Excess Account Balances to the General Account of the Water Fund – "Majority Omnibus Vote"

Item 3. Resolution R-14-04: A Resolution Establishing the Policy of the DuPage Water Commission with Respect to Fund Balances and Construction and Rate Stabilization Reserves for the Fiscal Year Ending April 30, 2004 – "Majority Omnibus Vote"

Item 4. Resolution R-16-04: A Resolution Authorizing the Execution of an Intergovernmental Agreement between the DuPage Water Commission and

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the Village of Villa Park Concerning Watermain Replacement Work in the Village of Villa Park – “Majority Omnibus Vote”

- Item 5. Resolution R-18-04: A Resolution Amending Resolution No. R-16-03, being “A Resolution Implementing Certain Employee Benefit Changes” – “Majority Omnibus Vote”

Commissioner Chaplin moved to approve Ordinance No. O-8-04: An Ordinance Approving and Adopting an Annual Management Budget for the Fiscal Year Commencing May 1, 2004 and Ending April 30, 2005. Seconded by Commissioner Wilcox.

Commissioner Murphy noted a number of comments were raised during the budget hearing and he expected staff to respond. Commissioner Murphy also noted that even though he would be voting in favor of the budget his vote should not be construed as endorsing any of the construction projects that formed the basis of the budget. After the Staff Attorney clarified that adoption of the budget would not authorize the commencement of any particular construction project nor the prepayment of the Commission’s unfunded prior service pension liability, Ordinance No. O-8-04 was approved by a Roll Call Vote:

Ayes: R. Benson, E. Chaplin, T. Feltes, R. Ferraro, L. Hartwig, G. Mathews, W. Murphy, A. Poole, J. Vrdolyak, G. Wilcox, D. Zeilenga and M. Vondra

Nays: W. Mueller

Absent: None

Commissioner Wilcox moved to remove from the Super/Special Majority Omnibus Vote Agenda and table Resolution No. R-17-04: A Resolution Approving and Authorizing the Execution of a Consulting Agreement with McBeath & Fates PC. Seconded by Commissioner Chaplin and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Wilcox moved to adopt the items listed on the revised Super/Special Majority Omnibus Vote Agenda in a single group pursuant to the Omnibus Vote Procedures. Seconded by Commissioner Feltes and approved by a Roll Call Vote:

Super/Special Majority Omnibus Vote

Ayes: R. Benson, E. Chaplin, T. Feltes, R. Ferraro, L. Hartwig, G. Mathews, W. Murphy, A. Poole, J. Vrdolyak, G. Wilcox, D. Zeilenga and M. Vondra

Nays: W. Mueller

Absent: None

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- Item 1. Ordinance O-9-04: An Ordinance Establishing a Rate for Operation and Maintenance Costs for the Fiscal Year Commencing May 1, 2004 and Ending April 30, 2005 – “Super/Special Majority Omnibus Vote”
- Item 2. Ordinance O-10-04: An Ordinance Establishing Fixed Costs to be Payable by Each Contract Customer for the Fiscal Year Commencing May 1, 2004 and Ending April 30, 2005 – “Super/Special Majority Omnibus Vote”
- Item 3. Resolution R-15-04: A Resolution Approving and Ratifying Certain Work Authorization Order(s) Under Quick Response Contract QR-6/02 at the April 7, 2004 DuPage Water Commission Meeting – “Super/Special Majority Omnibus Vote”
- Item 4. Resolution R-19-04: A Resolution Approving Certain Contract Change Orders at the April 7, 2004 DuPage Water Commission Meeting – “Super/Special Majority Omnibus Vote”

NEW BUSINESS

Commissioner Chaplin moved to suspend the purchasing procedures of the Commission's By-Laws and approve Purchase Order No. 8027 in the amount of \$15,627.83 to Danka Office Imaging. Seconded by Commissioner Feltes and unanimously approved by a Roll Call Vote:

Ayes: R. Benson, E. Chaplin, T. Feltes, R. Ferraro, L. Hartwig, G. Mathews, W. Mueller, W. Murphy, A. Poole, J. Vrdolyak, G. Wilcox, D. Zeilenga and M. Vondra

Nays: None

Absent: None

Commissioners Poole and Wilcox reported on their meeting regarding the capacity study and interfund borrowing.

Chairman Vondra noted that Ordinance No. O-11-04: “An Ordinance Amending the By-Laws of the DuPage Water Commission (Amending Article XI)” was on first reading.

ACCOUNTS PAYABLE

Commissioner Poole moved to approve the Accounts Payable in the amount of \$3,967,694.94 subject to submission of all contractually required documentation. Seconded by Commissioner Ferraro and approved by a Roll Call Vote:

Ayes: R. Benson, E. Chaplin, T. Feltes, R. Ferraro, L. Hartwig, G. Mathews, W. Mueller, A. Poole, J. Vrdolyak, G. Wilcox, D. Zeilenga and M. Vondra

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Nays: W. Murphy

Absent: None

Commissioner Murphy noted he was voting against the Accounts Payable because of the Greenberg Traurig legal services invoice.

PUBLIC COMMENTS – No comments

Commissioner Ferraro moved to take a five minute recess and then go into Executive Session to discuss matters related to personnel pursuant to 5 ILCS 120/2(c)(1). Seconded by Commissioner Wilcox and unanimously approved by a Roll Call Vote:

Ayes: R. Benson, E. Chaplin, T. Feltes, R. Ferraro, L. Hartwig, G. Mathews, W. Mueller, W. Murphy, A. Poole, J. Vrdolyak, G. Wilcox, D. Zeilenga and M. Vondra

Nays: None

Absent: None

The Commission went into Executive Session at 9:40 P.M.

Commissioner Mueller moved to come out of Executive Session at 11:26 P.M. Seconded by Commissioner Chaplin and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Mathews moved to appoint Robert Martin as General Manager subject to negotiation of a satisfactory employment contract, including level of compensation and term. Seconded by Commissioner Ferraro and unanimously approved by a Roll Call Vote:

Ayes: R. Benson, E. Chaplin, T. Feltes, R. Ferraro, L. Hartwig, G. Mathews, W. Mueller, W. Murphy, A. Poole, J. Vrdolyak, G. Wilcox, D. Zeilenga and M. Vondra

Nays: None

Absent: None

Commissioner Wilcox moved to retain the services of Moss and Bloomberg to assist the Chairman in negotiating the employment contract with the General Manager. Seconded by Commissioner Murphy and unanimously approved by a Roll Call Vote:

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Ayes: R. Benson, E. Chaplin, T. Feltes, R. Ferraro, L. Hartwig, G. Mathews, W. Mueller, W. Murphy, A. Poole, J. Vrdolyak, G. Wilcox, D. Zeilenga and M. Vondra

Nays: None

Absent: None

Commissioner Mueller moved to adjourn the meeting at 11:35 P.M. Seconded by Commissioner Ferraro and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

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