

Newark Watershed Conservation and Development Corporation

Minutes of the Special Meeting of the Board of Trustees

Thursday, June 13, 2013

Opening of Meeting

Called to order: 3:11 P.M.

Introductions/Roll Call

Participants:

- Hon. James Zazzali, Trustee
- Hon. Dorthea Wefing, Trustee
- Dr. Clement Price, Trustee
- William Merritt, Trustee
- Oscar James, II, Trustee
- Hon. James Coleman, Trustee (via teleconference)

Counsel:

- Christopher M. Hartwyk, Esq.
- Samuel Cornish, Esq.
- Matthew Baker, Esq.
- Edward Schroll, Esq.
- Jodi Luciani, Esq.
- Eugene Kim, Esq.
- Joshua Mann, Esq. – Attorney of Trustee Oscar James
- Patrick McGovern, Esq.

Members of the Public:

- Walter Frye, CPA – NWCDC CFO and financial consultant
- Joseph Beckmeyer – NWCDC consultant engineer (entered the meeting after consideration of Resolution 01-024)

Minutes

All board members present acknowledged the receipt of draft minutes from the previous special meeting, conducted via teleconference on June 10, 2013. Trustee Zazzali noted that, instead of being designated to direct counsel between Board meetings, he understood his role to be more of a liaison, and would like to change the minutes to so reflect.

Motion to Approve the Minutes, as revised by Tr. Zazzali:

Moved by _____ Trustee Coleman _____ Second by _____ Trustee Price _____

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
The Hon. Cory A. Booker, Mayor			X
The Hon. James Zazzali	X		
The Hon. Dorothea Wefing	X		
The Hon. James Coleman	X		
Dr. Clement Price	X		
Oscar James, II	X		
William T. Merritt	X		

Action taken _____ Motion Passed _____

Reorganization and Appointments

The Board discussed the appointment of Board officers, and opened the floor for nominations. Mr. Hartwyk noted that the appointment of a Vice Chairperson is not required by statute, but appointments for Board Chairperson, Board Secretary, and Board Treasurer are required. Trustee James asked if the Bylaws require Mayor Booker to be the Board Chair; Mr. Cornish responded that the old Bylaws may have, but the current Bylaws do not.

Resolution No. 01-024 to Appoint a Board Chairperson

Trustee Wefing nominated Trustee Zazzali to be the Chairperson of the Board. There were no other nominations.

Motion to Approve Trustee Zazzali as the Chairperson of the Board:

Moved by Trustee Wefing Second by Trustees Coleman and Price

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
The Hon. Cory A. Booker, Mayor			X
The Hon. James Zazzali	X		
The Hon. Dorothea Wefing	X		
The Hon. James Coleman	X		
Dr. Clement Price	X		
Oscar James, II	X		
William T. Merritt	X		

Action taken _____ Motion Approved _____

Chairperson Zazzali thanked all who were participating in the meeting, and opened the floor for nominations for the position of Board Secretary. Mr. Hartwyk noted that the Board Secretary will receive administrative support from GBGW.

Resolution No. 01-026 to Appoint a Board Secretary

Chairperson Zazzali nominates Trustee Price to be the Secretary of the Board. There are no other nominations.

Motion to Approve Trustee Price as the Secretary of the Board:

Moved by Trustee Zazzali Second by Trustee James

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
The Hon. Cory A. Booker, Mayor			X
The Hon. James Zazzali	X		
The Hon. Dorothea Wefing	X		
The Hon. James Coleman	X		
Dr. Clement Price	X		
Oscar James, II	X		
William T. Merritt	X		

Action taken Motion Approved

Trustee Merritt inquired into the relationship between the position of Board Secretary and check signatory; Chairperson Zazzali stated that having different people in each role may be beneficial to the Corporation. Chairperson Zazzali opened the floor to nominations for the position of Board Treasurer.

Resolution No. 01-027 to Appoint a Board Treasurer

Chairperson Zazzali nominates Trustee Wefing to be the Treasurer of the Board. There are no other nominations.

Motion to Approve Trustee Wefing as the Treasurer of the Board:

Moved by Trustee Zazzali Second by Trustees Merritt and James

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
The Hon. Cory A. Booker, Mayor			X
The Hon. James Zazzali	X		
The Hon. Dorothea Wefing	X		
The Hon. James Coleman	X		
Dr. Clement Price	X		
Oscar James, II	X		
William T. Merritt	X		

Action taken Motion Approved

Mr. Hartwyk again noted that the position of Vice Chairperson is not required to be filled. The Board discussed the benefits of having a Vice Chairperson. Chairperson Zazzali opened the floor to nominations for the position of Vice Chairperson.

Resolution No. 01-025 to Appoint a Board Vice-Chairperson

Chairperson Zazzali nominates Trustee Price to be the Vice-Chairperson of the Board. There are no other nominations.

Motion to Approve Trustee Price as the Vice-Chairperson of the Board:

Moved by Trustee Zazzali Second by Trustees James and Merritt

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
The Hon. Cory A. Booker, Mayor			X
The Hon. James Zazzali	X		
The Hon. Dorothea Wefing	X		
The Hon. James Coleman	X		
Dr. Clement Price	X		
Oscar James, II	X		
William T. Merritt	X		

Action taken Motion Approved

Report of Walter Frye regarding NWCDC Finances

Walter Frye, CPA, reported to the Board regarding the financial position of the NWCDC, and distributed documents to the Board supporting his report. Mr. Frye stated that the NWCDC has total assets of \$1,763,871, comprised of \$1,073,415 in cash-on-hand, and \$690,456 in accounts receivable from the City of Newark for the month of May. Regarding the NWCDC’s liabilities, Mr. Frye provided a list of outstanding bills totaling \$399,342, representing bills that had not been paid over the prior two months, but excluding debt related to financed or leased vehicles and equipment. A portion of the \$399,342 is comprised of legal fees for the lawyers of current and former officers, Board members, and contractors.

Mr. Frye then discussed debt related to vehicles possessed by the NWCDC. Mr. Hartwyk noted that the City of Newark is willing to accept the four vehicles that the NWCDC purchased, and on which the NWCDC owes \$78,345 in total payments; but the City is not willing to accept the leased vehicles, on which the NWCDC owes \$42,964 in total. Chairperson Zazzali suggests that the Board defer action on payment of the vehicles under lease, pending receipt of a summary of additional costs prepared by GBGW.

Mr. Frye next discussed debt related to leased equipment, totaling \$72,030, and including leased equipment used for water treatment. Mr. Hartwyk noted that only the water treatment equipment is certain to be transferred to the City, and that the City will provide the Corporation with an inventory of items in the NWCDC’s possession that the City wants to have transferred.

Mr. Frye stated that, in total, vehicle and equipment debt accounts for \$193,339 in additional debt for the NWCDC.

Mr. Frye also reported on the Defined Benefit pension plan (the “DB Plan”) stating that, according to the broker, as of December 2012 the DB Plan was underfunded by \$633,000. Mr. Hartwyk noted that the Board’s prior dissolution plan had been based, in part, on calculations that did not account for the dissolution of the plan, and the attendant acceleration of plan withdrawals. Trustee Wefing inquired whether the DB Plan can continue under the authority of the City. Mr. Hartwyk suggested that the Board wait to hear from Patrick McGovern, Esq., who will address concerns about the DB Plan and the 403(b) Plan later in the meeting. Trustee James added that he and Trustee Merritt were concerned about payment of the pension insurance premiums, and about the additional year of DB Plan benefits that must be paid by the Company once an employee works 1,000 hours in a year. Chairperson Zazzali inquired about Employment Retirement Income Security Act (“ERISA”) compliance; Mr. Hartwyk stated that, though ERISA has been complied with so far, Board action will be required to maintain compliance.

Mr. Frye also noted that the PBGC premiums for 2012 and 2013 have not been paid, and that, though the annual premium is estimated to be \$7,000, the computation must be accurate because the plan administrator will have to sign a declaration. Mr. Hartwyk suggested the Board return to this topic at the end of the meeting.

Next, Mr. Frye addressed accrued vacation and sick time payments that may be due to employees. He stated that such liabilities for the NWCDC will total \$109,811 for all employees. Trustee James and Chairperson Zazzali inquired regarding notice of dissolution given to employees who are not being transferred to the City. Mr. Hartwyk stated that GBGW had provided notice to such employees, as approved previously by the Board, stating that certain employees have been offered jobs by the City, and that others who have not received offers from the City will be contacted regarding the terms of their separation from employment. Mr. Hartwyk also noted that employees who have been offered jobs by the City, but who have chosen to retire will also be eligible for certain benefits. Mr. Hartwyk added, however, that ultimate resolution of this issue will require input from the City, as the City provides the NWCDC with most of its funding. Mr. Frye stated that former NWCDC employees who now work for the City have asked whether they are entitled to severance, vacation, and sick-day payments. Mr. Hartwyk notes that the Board deserves the opportunity to discuss that concern.

Mr. Frye then discussed payments made from the NWCDC’s operating and payroll accounts after April 1, 2013, and stated that they were a fair representation of April and May bills. Mr. Frye also stated that he has copies of vehicle-related contracts and leases, but for most other bills he has invoices but not contracts. The Board discussed the NWCDC’s payment of real estate taxes.

Discussion Items

Check Signatories – Chairperson Zazzali noted that Trustee Wefing had previously agreed to be one of two signatories on all checks made payable by the NWCDC, and volunteers to be the second signatory. Mr. Hartwyk noted that this will require a resolution changing the

signatories, and changing the Corporation’s fiscal policies and procedures. Trustee Merritt noted that changing bank information will also require changing passwords to certain online accounts.

Employee Health Benefits – Mr. Hartwyk requested a Board member or committee to work with GBGW regarding health care issues affecting all NWCDC employees. Mr. Cornish noted that the Corporation has been charged its June health insurance premium for all employees, but that the Corporation may be able to pare down its obligations under that policy for the months of June and July. Trustee Wefing inquired about the NWCDC’s financial responsibility for temporary health insurance coverage for employees being transferred to the City; Mr. Hartwyk suggested that this is in the Board’s discretion, but that Board agreement that the NWCDC should pare down its obligations is sufficient direction for GBGW. Mr. Frye noted that former NWCDC Executive Director Linda Watkins-Brashear’s (“Brashear’s”) employment agreement has a 6-month temporary health insurance reimbursement clause, triggered by her termination. Trustee Coleman inquired whether Brashear’s termination was with cause; Mr. Hartwyk stated that the termination was likely without cause. Mr. Cornish made the Board aware that the NWCDC must provide notice to all employees of health insurance termination by the end of the month, pursuant to COBRA.

Vehicles and Equipment – Mr. Hartwyk described Resolution No. 01-033 to the Board.

Resolution No. 01-033 to Authorize Payment of Amount Owed Relative to the Four Financed Vehicles of the NWCDC

Motion to Approve Resolution No. 01-033:

Moved by Trustee Zazzali Second by Trustee Price

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
The Hon. Cory A. Booker, Mayor			X
The Hon. James Zazzali	X		
The Hon. Dorothea Wefing	X		
The Hon. James Coleman	X		
Dr. Clement Price	X		
Oscar James, II	X		
William T. Merritt	X		

Action taken Motion Approved

Mr. Hartwyk described Resolution No. 01-035 to the Board.

Resolution No. 01-035 to Authorize the Return of the Four Leased Vehicles

Motion to Approve Resolution No. 01-035:

Moved by Trustee Price Second by Trustee Merritt

Mr. Hartwyk suggested that the Board defer consideration of contracts for Walter Frye, CPA, and for GBGW. He also confirmed with Joseph Beckmeyer, an NWCDC consultant engineer, that Mr. Beckmeyer holds one of the licenses necessary for continued compliance with Department of Environmental Protection regulations. Mr. Hartwyk suggested that, subject to the GBGW’s approval as to form, and the Chairperson’s agreement as to terms, Mr. Beckmeyer’s contract be extended for 60 days, with an option to extend for a second 60-day period.

Resolution No. 01-038 to Extend Joseph Beckmeyer’s Contract by 60 Days with an Additional 60-day Option

Motion to Approve Resolution No. 01-038:

Moved by Trustee Merritt Second by Trustee Wefing

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
The Hon. Cory A. Booker, Mayor			X
The Hon. James Zazzali	X		
The Hon. Dorothea Wefing	X		
The Hon. James Coleman		X	
Dr. Clement Price	X		
Oscar James, II	X		
William T. Merritt	X		

Action taken Motion Passed

Pension and Retirement Accounts and Plans – Mr. McGovern described earlier efforts to terminate both the DB and 403(b) plans, and stated that GBGW is ready to re-start the process of terminating both plans by sending necessary notices to the employee participants of both plans. He noted that the 403(b) plan should be terminated first, because there is less complexity; termination of the DB Plan will require the NWCDC to seek approval from the Internal Revenue Service. Mr. McGovern noted the issues related to the underfunding of the DB Plan, the premium payable to the PBGC, the question of whether to allow immediate withdrawals, and Mr. Gebauer’s recommendation to invest the 403(b) Plan assets in a better investment vehicle. Mr. McGovern also noted that the termination process can start now, even though the future of certain employees is uncertain, because the process takes 60 days; certainty about those employees’ futures would be beneficial, but is not indispensable. The Board discussed whether and how employees might be able to roll-over their plans, and whether termination of both plans would be consistent with collective bargaining agreements.¹

Trustee Merritt inquired about employees who want a 403(b) Plan distribution now. Mr. McGovern stated that he saw no reason to further prohibit such distributions for those who are eligible. He also noted that, though no employee had yet worked more than 1000 hours that year, which would have made them eligible for an enhanced DB Plan benefit and would have exacerbated the underfunded status of that plan, some employees were close to the 1000-hour

¹ Trustee James left the meeting at this point.

threshold, and might pass it before their employment was terminated. Mr. McGovern, therefore, recommended that employees be transferred to the City, or transitioned from employment, as quickly as possible, provided it fits within the business of the Corporation and is consistent with the plan of dissolution, and is not driven solely by benefits-related issues. He also recommends the adoption of resolutions terminating the DB and 403(b) Plans.

Resolution No. 01-030 to Terminate the Defined Benefit Pension Plan

Motion to Approve Resolution No. 01-030:

Moved by Trustee Merritt Second by Trustee Coleman

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
The Hon. Cory A. Booker, Mayor			X
The Hon. James Zazzali	X		
The Hon. Dorothea Wefing	X		
The Hon. James Coleman	X		
Dr. Clement Price	X		
Oscar James, II			X
William T. Merritt	X		

Action taken Resolution Approved

Resolution No. 01-032 to Terminate the 403(B) Pension Plan

Motion to Approve Resolution No. 01-032:

Moved by Trustee Merritt Second by Trustee Coleman

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
The Hon. Cory A. Booker, Mayor			X
The Hon. James Zazzali	X		
The Hon. Dorothea Wefing	X		
The Hon. James Coleman	X		
Dr. Clement Price	X		
Oscar James, II			X
William T. Merritt	X		

Action taken Resolution Approved

Transferring Operations and Assets to the City

Mr. Hartwyk stated that he has spoken with the City’s Business Administrator, and that the City will provide a list of items it wants transferred, and will meet with GBGW and possibly Mr. Frye to discuss dissolution-related funding obligations. Trustee Coleman inquired about the

NWCDC assets that the City doesn't want. Mr. Hartwyk advised the Board that, because the NWCDC merely manages City property in trust, upon the NWCDC's dissolution, all assets that the NWCDC doesn't return to the lessor will be returned to the City.

Ongoing Activities of NWCDC

Mr. Hartwyk advised the Board that the City's Business Administrator would accept any decision the Board makes with regard to hiring an interim Executive Director, and has suggested certain people – not city employees – who were contacted previously regarding service as provisional trustees. Trustee Price asked if the interim Executive Director would be eligible for that permanent position; Mr. Hartwyk noted that, upon dissolution, the then-former NWCDC will be run by the City, and that this position would entail a monthly stipend, no pension, and likely around 20-28 hours per week. Trustee Price inquired about liability, and about the current political climate. Mr. Hartwyk advised that such a position brought only the normal liabilities that attend the hiring of a corporate officer, and that the Board should take into account the political climate, but that the City and the Superior Court will likely support whatever decision the Board makes. Chairperson Zazzali and Mr. Hartwyk agreed that hiring an interim Executive Director should occur sooner rather than later, both to ensure the quality of the candidate, and to reduce the amount that GBGW would have to charge for administrative and management functions. Mr. Hartwyk proposed to open a separate flat-fee monthly arrangement for such functions, until the hiring of an interim Executive Director, and to adjust other billings accordingly, as GBGW has already done.

Ratification

Mr. Hartwyk advised the Board on the document retention and preservations efforts that GBGW undertook on the NWCDC's behalf, in response to the Comptroller's investigation. He stated that the Comptroller was grateful for our efforts, which cost \$34,000, but which were performed in the wake of knowledge that certain computer assets had been destroyed or lost. Mr. Hartwyk also noted that GBGW engaged a forensic fraud examiner to test certain financial documents after discovering certain irregularities, and that GBGW had to pay certain insurance premiums for policies that were set to lapse on May 31, 2013.

Resolution No. 01-036 to Ratify the Actions of GBGW During the Period of Board Inoperability

Motion to Approve Resolution No. 01-036:

Moved by Trustee Zazzali Second by Trustee Price

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
The Hon. Cory A. Booker, Mayor			X
The Hon. James Zazzali	X		
The Hon. Dorothea Wefing	X		
The Hon. James Coleman	X		

Dr. Clement Price	X	
Oscar James, II		X
William T. Merritt	X	

Action taken Resolution Approved

Mr. Mann requested, on behalf of Trustee James, that certain actions taken by Trustees James and Merritt during the period of Board inoperability be ratified at the next Board meeting. Mr. Hartwyk agreed to compile a list of actions taken by Trustees James and Merritt during the period of Board inoperability in advance of next meeting.

Future Meetings

Mr. Hartwyk noted that it is difficult to call special meetings, due to the Open Public Meetings Act, and that agreement on a meeting schedule can help ensure documents get distributed to Board members on time. Chairperson Zazzali suggested meeting in person every two weeks, with a conference call in alternate weeks; Trustee Wefing suggested more frequent meetings may be necessary. Mr. Hartwyk suggested weekly meetings for the next five weeks, after which the Board can reevaluate the schedule, and Chairperson Zazzali agreed.

Remaining Agenda Items

Pension Plan Trustee and Administrator – Mr. Hartwyk explained that Trustee Merritt had requested to be removed as Plan Trustee and Administrator of the DB and 403(b) Plan. Chairperson Zazzali noted his gratefulness for Trustee Merritt’s service. Mr. Hartwyk suggested that all calls regarding the notices required to be signed by the Plan Administrator can be routed directly to Mr. McGovern at GBGW. Trustee Merritt rescinded his request to be removed as the Plan Trustee and Administrator for both plans.

Resolution No. 01-029 to Appoint and Authorize Board Trustee Merritt to Act as Plan Trustee and Plan Administrator of the Defined Benefit Plan

Motion to Approve Resolution No. 01-029:

Moved by Trustee Zazzali Second by Trustee Wefing

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
The Hon. Cory A. Booker, Mayor			X
The Hon. James Zazzali	X		
The Hon. Dorothea Wefing	X		
The Hon. James Coleman	X		
Dr. Clement Price	X		
Oscar James, II			X
William T. Merritt	X		

Action taken Resolution Approved

Resolution No. 01-031 to Appoint and Authorize Board Trustee Merritt to Act as Plan Trustee and Plan Administrator of the Defined Benefit Plan

Motion to Approve Resolution No. 01-031:

Moved by Trustee Zazzali Second by Trustee Wefing

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
The Hon. Cory A. Booker, Mayor			X
The Hon. James Zazzali	X		
The Hon. Dorothea Wefing	X		
The Hon. James Coleman	X		
Dr. Clement Price	X		
Oscar James, II			X
William T. Merritt	X		

Action taken Resolution Approved

Cancellation of Ongoing Unnecessary Services – Mr. Hartwyk explained that, as services and assets are transferred to the City, certain ongoing services and contracts will become superfluous, and GBGW is seeking a general authorization to cancel those unnecessary contracts.

Resolution No. 01-039 to Authorize the Cancellation of Ongoing Unnecessary Services and Contracts

Motion to Approve Resolution No. 01-039:

Moved by Trustee Merritt Second by Trustee Price

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
The Hon. Cory A. Booker, Mayor			X
The Hon. James Zazzali	X		
The Hon. Dorothea Wefing	X		
The Hon. James Coleman	X		
Dr. Clement Price	X		
Oscar James, II			X
William T. Merritt	X		

Action taken Motion Passed

Executive Session

Mr. Hartwyk suggested that the Board enter Executive Session.

Motion to Enter Executive Session:

Moved by Trustee Merritt Second by Trustee Wefing

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
The Hon. Cory A. Booker, Mayor			X
The Hon. James Zazzali	X		
The Hon. Dorothea Wefing	X		
The Hon. James Coleman	X		
Dr. Clement Price	X		
Oscar James, II			X
William T. Merritt	X		

Action taken Motion Passed

The Board entered Executive Session at 4:52 P.M. to discuss ongoing litigation, future anticipated litigation, personnel matters, and contractual matters.² The Board may reconvene in Public Session at the conclusion of Executive Session to take further action.

Motion to Exit Executive Session:

Moved by Trustee Wefing Second by Trustee Merritt

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
The Hon. Cory A. Booker, Mayor			X
The Hon. James Zazzali	X		
The Hon. Dorothea Wefing	X		
The Hon. James Coleman	X		
Dr. Clement Price			X
Oscar James, II			X
William T. Merritt	X		

Action taken Motion Passed

The Board exited Executive Session at 5:43 P.M.

Motion to Reconvene in Public Session:

Moved by Trustee Coleman Second by Trustee Wefing

Vote:	<u>Yes</u>	<u>No</u>	<u>Absent/ Not Present</u>
-------	------------	-----------	--------------------------------

² Messrs. Frye and Mann left the meeting as the Board entered Executive Session. Trustee Price left the meeting during the Executive Session.

The Hon. Dorothea Wefing	X	
The Hon. James Coleman	X	
Dr. Clement Price		X
Oscar James, II		X
William T. Merritt	X	

Action taken Meeting Adjourned

The meeting was adjourned at 5:46 P.M.