

Newark Watershed Conservation and Development Corporation

Minutes of the Special Meeting of the Board of Trustees

Wednesday, October 9, 2013

Opening of Meeting

Called to order: 3:21 P.M.

Introductions/Roll Call

Participants:

- Hon. James R. Zazzali, Trustee
- Hon. Dorothea O’C. Wefing, Trustee
- Dr. Clement A. Price, Trustee
- Edwin H. Stier, Esq., Trustee
- William T. Merritt, Trustee (via teleconference)
- Ernesto Butcher, Executive Director

Counsel:

- Samuel Scott Cornish, Esq.
- Matthew Baker, Esq. (Recording Secretary)

Members of the Public:

- Guy Sterling – Newark Water Group
- Brendan O’Flaherty – Newark Water Group
- Walter Bryant – Office of Councilwoman Mildred Crump
- Cassandra Dock
- Sarab Thapar, Esq. – Hardin, Kundla, McKeon & Poletto, PA (Counsel for the City of Newark)
- Walter Elliott - journalist¹

Public Comment

Chairperson Zazzali opened the meeting of the Board of Trustees (the “Board”) of the Newark Watershed Conservation and Development Corporation (the “NWCDC” or the “Corporation”) to public comment.

Mr. Flaherty discussed certain aspects of the history of the NWCDC. Among other things, he noted that the Board’s action to change the NWCDC’s Certificate of Incorporation (the “Charter”) and Bylaws (collectively, the “governing documents”) in 2012 is currently the subject of litigation. He also stated his beliefs regarding certain distinctions or differences between the pre-2012 and post-2012 Bylaws, including distinctions related to the stated general purpose of the NWCDC, the distribution and liquidation of assets upon dissolution, the

¹ Mr. Elliott arrived at 4:52 P.M.

composition of the Board and the way in which trustees are appointed, the disposition of the NWCDC’s annual net revenues, the location of the NWCDC’s offices, and the place for the Mayor of the City of Newark (the “City”) on the Board. Mr. Flaherty commented that, in light of the NWCDC’s desire to have a cooperative relationship with the Newark Municipal Council (the “City Council”) and the next Mayor of the City, in his opinion, continuing to operate under the 2012 Bylaws may not be prudent.

Trustee Stier asked Mr. Flaherty what the relevance of his comments was, given the advanced status of the NWCDC’s transition of responsibilities to the City. Mr. Flaherty comments and response included his opinion that it may not be a good idea to fill the Board’s vacant trusteeship without the advice and consent of the City Council, and that such an action would be a tacit endorsement of the NWCDC’s attempt to separate itself from the City in 2012.

Ms. Dock expressed concern over the monetary assets of the NWCDC, and asked, among other things, how many Board meetings have been held since the appointment of the provisional trustees, how much Genova Burns Giantomasi Webster LLC (“GBGW”) bills the NWCDC per Board meeting, and how many Board meetings will be necessary to dissolve the NWCDC. Mr. Cornish advised that all recent Board meeting minutes are available on the NWCDC’s website, but that the Board was not in a position to answer Ms. Dock’s other questions. Mr. Flaherty noted that money spent by the NWCDC represents NWCDC assets that will not be returned to the City. Mr. Cornish offered to speak with her after the close of the meeting.

Approval of the Public Session Minutes

Motion to Approve the Public Session Minutes of the October 1, 2013 Board Meeting:

Moved by Trustee Wefing Second by Trustee Price

| Vote: | <u>Yes</u> | <u>No</u> | <u>Abstain</u> | <u>Absent</u> |
|--------------------------------|-------------------|------------------|-----------------------|----------------------|
| The Hon. Cory A. Booker, Mayor | | | | X |
| The Hon. James R. Zazzali | X | | | |
| The Hon. Dorothea O’C. Wefing | X | | | |
| Dr. Clement A. Price | X | | | |
| Edwin H. Stier, Esq. | X | | | |
| William T. Merritt | X | | | |

Action taken Motion Passed

Report of the Interim Executive Director

Pension Consulting – Mr. Butcher advised that Altigro Pension Services, Inc. (“Altigro”) has been working on distributing funds from the NWCDC’s 403(b) pension plan (the “403(b) Plan”), and has submitted a 403(b) Plan termination letter to Nationwide Mutual Insurance Co. (“Nationwide”), who is the custodian of 403(b) Plan assets. Mr. Butcher advised that Altigro also has submitted a letter to Nationwide that enlarges the period within which 403(b) Plan distributions can be made from 30 to 120 days, and has filed the 403(b) Plan’s annual report with the IRS. Mr. Butcher also noted that Nationwide has requested a 10-day

hiatus in 403(b) Plan distributions, potentially because of the number of distributions already made.

Auditing – Mr. Butcher advised that Wiss & Co. (“Wiss”) has received almost all of the documents it previously requested, and is ready to assign personnel and begin work as soon as possible. a , and is was the only bidder that submitted a response. Mr. Butcher explained that he is ready to submit Wiss’ engagement letter to the Board, but that he advised Wiss to wait to begin work until he can give them a definitive start date.

Investment Advisor – Mr. Butcher noted that the RFQ for investment advising services related to the Defined Benefit pension plan (the “DB Plan”) is due on Monday and that he has received a number of inquiries about the potential contract from both potential respondents and trade publications.

Office Lease – Mr. Butcher advised that the NWCDC’s three-month lease at One Gateway Center is due to end at the end of this month, and that the leasing company has offered to renew the NWCDC’s lease for two of the three offices the NWCDC currently occupies. Mr. Butcher noted that the monthly rent under such a renewal would increase by 7% per office, but that the monthly rent per office would increase by 10% under a month-to-month lease, and would increase additionally each month.

Insurance Matters

Directors and Officers (“D&O”) Insurance – Mr. Cornish advised that GBGW received a response from the Corporation’s D&O insurer, RSUI, Inc. (“RSUI”), who denied the NWCDC’s request to increase its D&O insurance coverage. Mr. Cornish noted that the denial was due to an increase in claims-related activity, and that the NWCDC’s insurance broker is looking into other carriers but is not optimistic.

Executive Session

Chairperson Zazzali noted that the Board will enter Executive Session to discuss severance and other personnel matters, contractual matters, pending and potential litigation, and government investigations, and that the minutes of the Executive Session will remain confidential until the end of the litigation and investigation, or until such time as the Board determines the need for confidentiality no longer exists. Chairperson Zazzali entertained a motion to enter Executive Session.

Motion to Enter Executive Session:

Moved by Trustee Wefing Second by Trustee Price

| Vote: | <u>Yes</u> | <u>No</u> | <u>Abstain</u> | <u>Absent</u> |
|--------------------------------|-------------------|------------------|-----------------------|----------------------|
| The Hon. Cory A. Booker, Mayor | | | | X |
| The Hon. James R. Zazzali | X | | | |
| The Hon. Dorothea O’C. Wefing | X | | | |

Mr. Cornish advised that the Board is continuing to evaluate options regarding how to address the vacant trusteeship, and intends to await the outcome of the October 16, 2013, election in order to discern how the results of that election will affect the composition of the Board. Mr. Cornish noted that this is a continuous process, and that the Board will revisit this issue at its next meeting.

Resolutions

Resolution No. 01-068 Authorizing the Interim Executive Director to Renew the Corporation’s Current Lease for Purposes of an Administrative Office

Mr. Baker advised that this resolution would authorize Mr. Butcher to sign the renewal agreement provided by Regus PLC for continued use of office space at One Gateway Center in Newark, New Jersey.

Motion to Approve Resolution No. 01-068:

Moved by Trustee Wefing Second by Trustee Price

| <u>Vote:</u> | <u>Yes</u> | <u>No</u> | <u>Abstain</u> | <u>Absent</u> |
|--------------------------------|-------------------|------------------|-----------------------|----------------------|
| The Hon. Cory A. Booker, Mayor | | | | X |
| The Hon. James R. Zazzali | X | | | |
| The Hon. Dorothea O’C. Wefing | X | | | |
| Dr. Clement A. Price | X | | | |
| Edwin H. Stier, Esq. | X | | | |
| William T. Merritt | X | | | |

Action taken Motion Passed and Resolution Approved

Meeting Schedule

Chairperson Zazzali advised that the Board will next meet on October 23, 2013, and that public notice will be provided should circumstances require the Board to meet before that date.

Adjournment

Motion to Adjourn the Meeting:

Moved by Trustee Stier Second by Trustee Wefing

| <u>Vote:</u> | <u>Yes</u> | <u>No</u> | <u>Abstain</u> | <u>Absent</u> |
|--------------------------------|-------------------|------------------|-----------------------|----------------------|
| The Hon. Cory A. Booker, Mayor | | | | X |
| The Hon. James R. Zazzali | | | | X |
| The Hon. Dorothea O’C. Wefing | X | | | |
| Dr. Clement A. Price | X | | | |
| Edwin H. Stier, Esq. | X | | | |

William T. Merritt

X

Action taken _____ Motion Passed and Meeting Adjourned _____

The meeting was adjourned at 4:57 P.M.