

Newark Watershed Conservation and Development Corporation

Minutes of the Regular Meeting of the Board of Trustees

Wednesday, March 19, 2014

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
- Edwin H. Stier, Esq., Trustee
- William T. Merritt, Trustee
- Hon. Augusto Amador, Municipal Council Member
- Ernesto Butcher, Interim Executive Director (via teleconference)

Counsel:

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

Members of the Public:

- Sarab Thapar – Hardin, Kundla, McKeon & Poletto, Counsel to the City of Newark
- William Chappel – Newark Water Group
- Guy Sterling – Newark Water Group
- Zemin Zhang – Newark Water Group
- Miles Zhang – Newark Water Group
-

Approval of the Public Session Minutes

Motion to Approve the Public Session Minutes of the February 26, 2014, Board Meeting:

Moved by Trustee Wefing Second by Trustee Merritt

| Vote: | <u>Yes</u> | <u>No</u> | <u>Abstain</u> | <u>Absent</u> |
|-------------------------------|-------------------|------------------|-----------------------|----------------------|
| The Hon. Cory A. Booker | | | | 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 _____

Appointment of Councilman Amador to the Board

Chairperson Zazzali noted that the Newark Municipal Council (the “Council”) has designated Council Member Augusto Amador to serve as a representative on the Board of Trustees (the “Board”) of the Newark Watershed Conservation and Development Corporation (“NWCDC”), and that, pursuant to Article IV, Section 3 of the Bylaws, Chairperson Zazzali would entertain the nomination of Council Member Amador to a vacant trusteeship.

Chairperson Zazzali stated that, once approved, Councilman Amador may be appointed to the Board by resolution approved by a majority of the Trustees in office, and that this trusteeship carries with it all of the rights, obligations, and duties, including fiduciary duties to the NWCDC, that are imposed or provided by state and federal law.

Resolution No. 01-076 Nominating and Appointing Newark Municipal Council Member Augusto Amador to the Board of the Newark Watershed Conservation and Development Corporation

Motion to Approve Resolution No. 01-076 Nominating and Appointing Newark Municipal Council Member Augusto Amador to the Board of the Newark Watershed Conservation and Development Corporation:

Moved by _____ Trustee Stier _____ Second by _____ Trustee Merritt _____

| Vote: | <u>Yes</u> | <u>No</u> | <u>Abstain</u> | <u>Absent</u> |
|-------------------------------|-------------------|------------------|-----------------------|----------------------|
| The Hon. Cory A. Booker | | | | 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 _____

Report of the Interim Executive Director

Accounting Services – Mr. Butcher advised that Donohue, Gironda & Doria (“Donohue”), the firm selected by the Board to provide accounting services, continues to prepare Form 1099s. He advised that three former NWCDC vendors, one of which is no longer in business, have not provided information necessary for the NWCDC to prepare a Form 1099, but that Form 1099s have been filed for all other vendors with whom the NWCDC worked in 2013. Mr. Butcher further advised that Donohue has had difficulty reconciling the NWCDC’s accounts for 2013, but that he would provide the Board with an additional update on the subject at a later date.

Discussion

Chairperson Zazzali advised that the Board has received a letter from Genova Burns Giantomasi Webster LLC (“GBGW”) expressing its intent to withdraw as the NWCDC’s counsel. He further advised that, because there are matters that would have to be performed by another law firm in any event, GBGW believes the NWCDC will be better served by retaining one, new law firm to perform all functions. Chairperson Zazzali noted that the Board appreciates GBGW’s candor and its unselfish decision, fully agrees and accepts the firm’s withdrawal, and sincerely appreciates GBGW’s services and competence in bringing the Board to this place in meeting its mission.

Public Comment

Chairperson Zazzali opened the meeting to public comment.

Guy Sterling commented on the relationship between the NWCDC and the City of Newark (the “City”) and its citizens. He advised that he has been deeply involved in the NWCDC’s affairs, and thanked the Board for the time and energy it has devoted to dissolving the NWCDC, especially in light of the allegations in the report from the Office of the State Comptroller (the “Comptroller”). Mr. Sterling further commented on what he views as mistakes and miscalculations by the Board. He stated, among other things, his belief that the Board has erred by not viewing the citizens of the City as partners in the dissolution process, and by not providing sufficient explanations of its actions, which has engendered skepticism and distrust among the City’s citizens. He noted that his comments were advanced in the spirit of good will and cooperation, and asked that the Board do its part to help dissolve the NWCDC as quickly, efficiently, and inexpensively as possible, with as much disclosure as possible, and that the City and its citizens have dealt with the NWCDC’s problems for a long time, and will ultimately bear the cost of its dissolution.

William Chappel commented that the trustees have acknowledged their fiduciary duties to the NWCDC, but that the trustees also owe fiduciary duties to the City’s taxpayers and have had enough time to weigh the costs of legal fees against any potential outstanding claims against former NWCDC agents. Mr. Chappel further commented that, if the Board has additional evidence of wrongdoing, it should turn that evidence over to the proper authorities.

Miles Zhang commented that the City’s limited resources should be spent on its citizens and not on the NWCDC’s lawyers and former employees. He noted that the City deserves a clean and functioning water department.

Zemin Zhang noted that his comments were drafted prior to this meeting. He commented that the Newark Water Group suggested certain of the current provisional trustees to the Court, believing that they would be accountable to no one but the City and its citizens. He further commented that GBGW should not serve as counsel to the NWCDC.

Chairperson Zazzali requested that Trustee Stier respond on the Board’s behalf. Trustee Stier noted that he agrees that it would have been better for the Board to have a dialogue with the

City's concerned citizens about the Board's plans and activities. He advised that the discussions of the Board in executive session were not appropriate to be divulged to the public, and that the Board will try to have a more open dialogue with concerned citizens in the future. He further advised that he disagreed with the criticism of the Interim Executive Director, and that Mr. Butcher was integral in transitioning NWCDC operations to the City and in other matters. He also advised that the Board, in light of the NWCDC's circumstances, must devote time and care to tasks that would otherwise be routine, such as finding an investment advisor for the Defined Benefit Plan funds, or completing an annual audit.

Trustee Stier further advised that the Board has made progress in dissolving the NWCDC. He further advised that the Board takes its investigatory responsibility very seriously, and that potential claims related to financial mismanagement need to be pursued. He advised that the Board wants to hold the potentially responsible parties accountable, but that the Board will have to do that in the most cost-effective way. Trustee Stier also noted that there was a change in administration when the provisional trustees were appointed to the Board, and that GBGW is withdrawing because it believes the NWCDC would be better served by retaining one, new law firm to provide all legal services to the NWCDC.

Trustee Wefing advised that she agrees with Trustee Stier, and noted that the NWCDC's dissolution has involved incredibly complicated issues, including employment and pension issues, that could not be fully disclosed to the public.

Trustee Merritt agreed with Trustees Stier and Wefing. He noted, among other things, that he was part of the NWCDC's prior Board and could have walked away from the NWCDC, but that he took part in the process by which the provisional trustees were appointed.

Trustee Amador advised that the Board's work has to be based on public trust, and that he remembered skepticism regarding the initiation of the Comptroller's investigation. He noted that his objection to GBGW was based on public perception of GBGW's involvement, but that he was pleased with the GBGW's decision to withdraw, and that he is ready to move forward.

Chairperson Zazzali advised that the main reason the provisional trustees agreed to serve was their commitment to the City and its people. He noted that the provisional trustees, the Interim Executive Director, and GBGW, are cognizant of their fiduciary duties and obligations. Chairperson Zazzali noted that the Board has overseen the transition of operations to the City, numerous pension issues, the litigation with the City, the Comptroller's investigation, dissolution issues, transparency and corporate governance issues, issues with the Municipal Council and Board representation, and other issues. He advised that confidentiality is required for many of those issues. He noted that the Board solicited public comment at every meeting, but that the Board and the Newark Water Group could speak about the prospect of more informal discussions going forward.

Executive Session

Chairperson Zazzali entertained a motion to enter Executive Session.

Motion to Enter Executive Session:

Moved by Trustee Stier Second by Trustee Wefing

| Vote: | <u>Yes</u> | <u>No</u> | <u>Abstain</u> | <u>Absent</u> |
|-------------------------------|-------------------|------------------|-----------------------|----------------------|
| The Hon. Cory A. Booker | | | | 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 | | | |
| The Hon. Augusto Amador | X | | | |

Action taken Motion Passed

The Board entered Executive Session at 4:19 P.M.¹ Chairperson Zazzali noted that the Board will reconvene in Public Session after concluding its matters in Executive Session.

Motion to Exit Executive Session and Reconvene in Public Session:

Moved by Trustee Wefing Second by Trustee Merritt

| Vote: | <u>Yes</u> | <u>No</u> | <u>Abstain</u> | <u>Absent</u> |
|-------------------------------|-------------------|------------------|-----------------------|----------------------|
| The Hon. Cory A. Booker | | | | 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 | | | |
| The Hon. Augusto Amador | X | | | |

Action taken Motion Passed

The Board exited Executive Session and reconvened in Public Session at 4:58 P.M.²

RFQ for Legal Counsel

Resolution No. 01-077 Authorizing the Issuance of a Request for Qualifications for General Legal Services

Chairperson Zazzali noted that an RFQ will be issued by the Interim Executive Director inviting proposals from firms to provide general legal services to the NWCDC, and that GBGW will continue as counsel during the pendency of the RFQ, but will not be involved in the preparation of the RFQ. Chairperson Zazzali entertained a motion to authorize the Interim Executive Director to issue an RFQ for general legal services in order to retain legal counsel to

¹ Members of the public left the meeting as the Board entered Executive Session.
² Members of the public re-entered the meeting as the Board reconvened in Public Session.

represent the interest of, and provide legal assistance to, the NWCDC, the Board, and the provisional trustees.

Motion to Approve Resolution No. 01-077 Authorizing the Issuance of a Request for Qualifications for General Legal Services:

Moved by Trustee Stier Second by Trustee Wefing

| Vote: | <u>Yes</u> | <u>No</u> | <u>Abstain</u> | <u>Absent</u> |
|-------------------------------|-------------------|------------------|-----------------------|----------------------|
| The Hon. Cory A. Booker | | | | 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 | | | |
| The Hon. Augusto Amador | X | | | |

Action taken Motion Passed and Resolution Approved

Meeting Schedule

The Board advised that its next meeting is scheduled for March 26, 2014, at the NWCDC’s offices at One Gateway Center, 26th Floor, Newark, New Jersey 07102.

Adjournment

Motion to Adjourn the Meeting:

Moved by Trustee Wefing Second by Trustee Stier

| Vote: | <u>Yes</u> | <u>No</u> | <u>Abstain</u> | <u>Absent</u> |
|-------------------------------|-------------------|------------------|-----------------------|----------------------|
| The Hon. Cory A. Booker | | | | 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 | | | |
| The Hon. Augusto Amador | X | | | |

Action taken Motion Passed and Meeting Adjourned

The meeting was adjourned at 5:01 P.M.