

**WASHINGTON SUBURBAN SANITARY COMMISSION**

**MINUTES OF THE COMMISSION MEETING**

**Wednesday, October 19, 2011  
Laurel, Maryland**

Chair Roscoe M. Moore, Jr. called the meeting to order at 9:01 a.m. in the Auditorium of the Richard G. Hovevar Building, 14501 Sweitzer Lane, Laurel, MD 20707, with due notice having been given to all members of the Commission and the public. Vice Chair Chris Lawson, Commissioners Adrienne A. Mandel, Antonio L. Jones, Gene W. Counihan and Melanie Hartwig-Davis were present at the meeting. Also, present were General Manager Jerry Johnson, Corporate Secretary Charlett Bundy, and General Counsel Jerry Blask.

**PLEDGE OF ALLEGIANCE**

Chair Moore asked Commissioner Hartwig-Davis, to lead the pledge of allegiance.

**AGENDA APPROVAL**

Vice Chair Lawson moved to approve the agenda for the WSSC Commission public meeting for Wednesday October 21, 2011 with the addition of an item on the organization chart presented by the General Manager. Commissioner Hartwig-Davis seconded the motion. The vote was called by Chair Moore and the motion carried with six affirmative votes.

**MINUTES**

Commissioner Mandel moved to approve the open session minutes of the September 21, 2011 Commission meetings. Commissioner Hartwig-Davis seconded the motion. The motion carried with six affirmative votes.

**WSSC RETIREES**

For the month of October, only one employee retired: Mr. Samuel S. Pak, a Collection Technician III, in the Wastewater Collections System Group/Lyttons ville. Mr. Baker announced that Mr. Pak retired with ten years and one month of service.

**COMMUNICATIONS**

This month Commissioners watched a replay of a news segment from Washington D.C.'s TV Channel 9 about the failure of large "big box" retail stores to order inspections after their sub-contractors installed gas appliances sold to customers in the WSSC water district. There was evidence the inspection requirement, a county law, was violated in approximately 100 homes across the water district. Communications reported 16-20 calls per day after WSSC issued a press release on the subject.

**MEDIA COMMENTS**

There were no comments from the media.

**COMMISSIONERS COMMENTS**

Commissioner Hartwig-Davis reported on her recent trip to the U.S. Greenbuild Conference held in Toronto last month. Some of the topics in the work sessions included: sustainable building practices; decentralized waste water use systems; and waste water source for renewable energy. She noted that as the sustainable building practices become more widely used, WSSC will need to reinvent its role in water sales.

Commissioner Counihan reported on the proposed changes in the legislation authorizing the flush tax noting that the current proposal addresses only storm water which would not benefit WSSC. He discussed the need to have a coordinated effort across the water district and with the appropriate federal offices to ensure that changes to the flush tax benefit WSSC.

Commissioner Mandel extended congratulations to Maxene Bardwell, Internal Audit Manager, for completing training that qualify Ms. Bardwell as an instructor in auditing matters.

**PUBLIC COMMENTS**

Members of the WSSC Citizens Advisory Board (CAB) spoke about proposed changes to the Dispute Resolving Board, a board that is part of their organization. Mr. Albert Nunez, CAB President, indicated a final draft of CAB's response to an audit prepared by WSSC's Internal Audit department, would be forthcoming after a straw poll by CAB indicated near unanimous consent to present the CAB response to WSSC's audit department.

Mr. Nunez suggested that the audit was "flawed" and that the CAB report would expose the flaws.

Mr. Vincent Berg provided an overview of the case load of CAB and the DRB, noting that the Commissioners' decision to remove the high bill adjustment policy two years ago did not result in fewer requests for refunds but caused such requests to increase from 10-20 a month to 50-70 a month. He requested that Commissioners re-open the Internal Audit Department's audit of CAB; review the GM/CEO's decisions to reorganize the DRB; and lastly to improve communications by promoting collaborative relations between the DRB, CAB and the Commission.

Mr. Morris Nunes, a CAB member opined on the reason the high bill cases were so difficult to resolve. Mr. Nunes stated WSSC has "no forensic ability" to prove or disprove high bills and that when meter readers do not read the meters the delays result in unusually high bills. He promoted a more customer-friendly approach to resolving these types of billing disputes.

Mr. Anthony Aquino, also a CAB member spoke on the need for CAB to rebut what he characterized as "errors" in the audit report of the DRB; allow CAB to provide input on policies; and to "make things better" through improved communication.

#### **GENERAL MANAGER'S OFFICE**

**Monthly Report.** Mr. Johnson led his report with the statement the budget is on target with no adjustments needed in either expenses or revenue. Staff shortages and training issues continue to contribute to performance in the call center that is less than desirable. In the coming months Mr. Johnson will provide Commissioners with the results of the fluoride tracer study. WSSC is monitoring the new requirements for incinerators from the U.S. Environmental Protection Agency and is working with national organizations who have appealed the new standards.

The delay in the tunnel construction (due to rock composition and the breakdown of the boring machine, Ms. Colleen) has been determined: The anticipated completion date will now be moved six months from the original completion date of June 2013 to December 2013. There have been delays in contracts due to

staffing concerns but this is temporary. Fall contracts have been moved to late winter for approval.

Mr. Johnson reported that he met with both CAB and the DRB and deferred the review of the policies and procedures to allow input from these volunteer boards. A cover story in the September 2011 Trenchless Technology Magazine features Chief Engineer Gary Gumm's discussion about WSSC's use of trenchless technology to repair/replace its aging infrastructure. Commissioners were promised a copy of the article.

WSSC was awarded the 2W<sup>3</sup> Silver Award in the category of innovation experimental and productivity from the International Academy for Visual Arts. The award also mentions WSSC's web site and web marketing for the WSSC cell phone application.

Nearly 600 persons attended the annual camp fire and watershed fair held at Howard Duckett Dam on October 15<sup>th</sup>. Mr. Johnson noted that Commissioner Hartwig-Davis, her husband and two sons also attended.

Mr. Johnson joined Lieutenant Governor Anthony Brown and Prince George's County Executive Rushern Baker at the kick off of the 2011 Minority Business Enterprise University Conference sponsored by the Governor's Office of Minority Affairs. Mr. Johnson was the keynote speaker at the 2011 Stimulus Contract and Opportunities Fair, an event sponsored by Prince George's County Delegates Aisha Braveboy and Michael Vaughn; Prince George's County Council Chairwoman Ingrid Turner; and a representative from the Prince George's County Executive's Office. Presenters and exhibitors included the Maryland Department of Transportation, PEPCO, NASA, Washington/Maryland Area Transit Authority, U.S. Office of Housing and Urban Development and the Maryland-National Capitol Park and Planning Commission.

WSSC was named by the Job Corps as one of the best workplace learning sites. In the last week of the United Way campaign, WSSC's employees have been very generous Mr. Johnson noted by reaching 76% of the \$65,000.00 goal.

Lastly, Mr. Johnson advised that WSSC received the Platinum Award for Utility Excellence from the Association of Metropolitan Water Agencies. WSSC was one of nine agencies so recognized. In accepting the award, Mr. Johnson acknowledged all WSSC employees,

customers and the Commissioners for their contributions that led to the recognition in this award. He said it is a high honor to be recognized by one's peers.

Ms. Sheila Cohen presented highlights of the 2011 Fiscal Year-end Financial Report. Total operating fund revenues were at \$596.7 million, \$23.3 million less than budgeted; net operating fund expenses were \$559.2 million, \$9.3 million less than budgeted, more than offsetting the lower revenues. Water production was greater than budgeted but the revenues were \$18.4 million less than budgeted. Ms. Cohen noted that revenue depends not just on quantity sold but the average of the quantity sold given WSSC's 16-step rate structure. The general bond debt service suffered a loss with WSSC realizing a \$1.1 million loss, some \$2.6 million below the budgeted amount. This loss was attributed to lower interest rates, a condition of the current recessed economy. Cumulative work years were less than budgeted with the employee population numbering 1528 at the end of the fiscal year.

#### **Internal Audit Office**

**Monthly Activity Report.** Ms. Bardwell advised that her report covered the period September 5 through October 7<sup>th</sup> and includes the Fiscal Year 2011 year-end wrap up. She referred Commissioners to the Human Resources Regulatory Compliance Audit, Phase I which was distributed to Commissioners. The Blue Plains audit is complete, awaiting recommended adjustments from DC Water and Sewer Authority. The Whistleblower Hotline became active after a soft launch with a few cases already in progress. The hard launch will take place in late October. Ms. Bardwell will provide an overview of her travel in the next month's report to Commissioners.

**Board of Ethics.** The Board reviewed open and closed items. Ten new WSSC hires received Ethics training. The WSSC Code of Conduct has been completed.

**DEPARTMENT BRIEFINGS****Engineering & Construction**

**Construction Contracts.** Mr. Gumm provided information on four contracts: BM4396A06 for the Bright Seat Pressure Reducing Valve Vault; BE2938C00 for the Laytonsville Water Storage Facility; PM5248A11 for the Broad Creek Environmentally Sensitive Area IDIQ; and CI5181A11 for Piscataway Roads IDIQ. Following the briefing, Commissioners requested the removal of Contract BE2938C00 from the consent calendar so they could receive legal advice regarding the lack of minority sub-contracting requirements.

**CONSENT CALENDAR**

Commissioner Counihan moved that the Commission approve Resolution 2012-1940 that adopts the Consent Calendar for the October 19, 2011 Consent Calendar containing the following items:

BM4396A06 for the Bright Seat Pressure Reducing Valve Vault to W.F. Wilson & Sons, Inc. for \$1,162,262.00;  
PM5248A11 for the Broad Creek Environmentally Sensitive Area (Indefinite Delivery Indefinite Quantity) to Reynolds Inliner, for an upset limit of \$30,000,000.00; and  
CI5181A11 for Piscataway Roads (Indefinite Delivery Indefinite Quantity) to Inland Waters Pollution Control Inc. for a contract upset limit of \$20,000,000.00.

Commissioner Mandel seconded the motion. The motion carried with six affirmative votes.

**Finance****Retirement Group**

**Resolution 2012-1941.** Mr. Baker requested approval of this resolution that appoints two employees to the WSSC Employees' Retirement Board of Trustees. Commissioner Jones moved to approve Resolution 2012-1941 that appoints Mr. Ajay Gupta and reappoints Mr. Dave Russell as employee representatives on the WSSC Employees' Retirement Board of Trustees. Vice Chair Lawson seconded the motion. The motion carried with six affirmative votes.

**BRIEFING AND ACTION ITEMS****Engineering & Construction**

Mr. Johnson presented Commissioners with a request from The Peterson Company for a waiver to expand the sewer capacity at a property known as Salubria Center. The request was for a capacity change to 23,382 gallons per day for a retail development. It would involve the transfer of capacity from an adjacent property with no net gain of gallons per day. Commissioners requested to receive legal advice on the legality of the waiver and tabled further discussion on the matter until after lunch.

**Production**

Mr. Jay Price, Acting Chief of Production briefed Commissioners on the impacts of Hurricane Irene (August) and Tropical Storm Lee (September) on WSSC operations and facilities. He presented some compelling photographs of the amount of rainfall especially on the facilities in Prince George's County which received the most rainfall because both storm events stalled over that county.

**Strategic Systems Management Office**

Ms. Crystal Knight-Lee provided Commissioners with an overview of the outcome of Fiscal Year 2011's strategic projects.

Commissioner Hartwig-Davis then moved to close the meeting pursuant to Maryland State Government Article 10, Subtitle 5, Section 10-508(a)(13) to approve the September 21, 2011 Closed Session Minutes; Section 10-508(A)(7) to obtain legal advice on a waiver request pursuant to Standard Procedure ENG 09-02 and on contract requirements in contract BE2938C00; and Section 10-508(a)(1) to discuss a personnel matter related to direct reports. Commissioner Jones seconded the motion. The motion carried with six affirmative votes. At 12:40, Chair declared the meeting was closed and Commissioners moved from the auditorium to the Commissioners' Conference Room.

**CLOSED SESSION****COMMISSIONERS' CONFERENCE ROOM**

At 1:10 p.m. Chair Moore reconvened the meeting in closed session in the Commissioners' Conference Room.

**ATTENDEES:** Chair Dr. Roscoe Moore; Vice Chair Lawson; Commissioners Adrienne A. Mandel, Antonio Jones, and Melanie Hartwig-Davis. General Manager Jerry Johnson, General Counsel Jerry Blask, Corporate Secretary Charlett Bundy, Johnny Hemphill, Chief of Staff, Gary Gumm, Chief Engineer.

Commissioners received legal advice on the option to deny the waiver request pursuant to Standard Procedure ENG 09-02. No votes on these matters were taken during closed session although General Counsel provided legal guidance on the language of the motion to be presented in open session.

**Attendees:** Ms. Cathy Martin, Acquisition Director, Ms. Towanda Livingston, SLMBE Director, Mr. Mike Turner, SLMBE Unit Coordinator, joined the meeting to discuss Contract BE2938C00.

**Contract BE2938C00.** Commissioners were given legal advice regarding the award of contract BE2938C00. Following the advice, Mr. Gumm, Ms. Martin, Ms. Livingston, and Mr. Turner left the closed session.

**Closed Session Minutes.** Vice Chair Lawson moved to approve the closed session minutes for September 21, 2011. Commissioner Counihan seconded the motion. Commissioner Mandel requested the insertion of a word on page 3. The vote was then taken and the motion carried with six affirmative votes.

After this vote was taken, at 2:55 p.m., Mr. Johnson, Ms. Bundy and Mr. Blask left the closed session.

**Personnel Matter.** Commissioners held discussions regarding a personnel matter related to direct reports and voted to take personnel action consistent with employment contractual obligations.

Commissioner Mandel moved to end the closed session. Commissioner Hartwig-Davis seconded the motion. The closed session ended at 3:40 p.m.



**OPEN SESSION****COMMISSIONERS' CONFERENCE ROOM****Waiver for Standard Procedure ENG 09-02.** Commissioners

discussed their decision to grant the waiver and announced the conditions of the waiver. Commissioner Counihan made the following motion:

I move to approve a limited waiver of Standard Procedure ENG 09-02 in response to the October 17<sup>th</sup> letter from James Soltesz of Loiederman Soltesz Associates, Inc. on behalf of the Peterson Company in connection with the Salubria Center and Potomac Business Park subject to the following conditions:

- 1) accuracy of the unique facts and conditions written in the letter including but not limited to the representations that the Peterson Company owns both a site known as the Salubria Center and a proximate site known as the Potomac Business Park;
- 2) the effective date of this waiver is for a period of 24 months from the date of approval during which time to sustain this waiver the Peterson Company must apply for and receive a WSSC plumbing inspection for a building at the Salubria Center site and precludes any development or building on the site known as Potomac Business Park until the upgrades to the Broad Creek Waste Water Pumping System Augmentation Project (WSSC Capital Improvements Project S-43.02) are complete; and
- 3) the increase on the site known as the Salubria Center is limited to 23,382 gallons/day.

Vice Chair Lawson seconded the motion. Counsel for The Peterson Company, Andre Gingles, requested reconsideration of item 3 in the motion. He stated that there would be a Wal-Mart constructed at the Potomac Business Park site and a fire station housing firefighters needing some use of the remaining gallons/day listed in the permit. He requested time to consult with his client to ascertain whether 7,000 or 3,000 gallons per day would be sufficient for the Potomac Business Park project. The time was granted and while he was out of the meeting, Chair Moore proceeded with other business.

**Engineering & Construction****Contract BE238C00.** Commissioner Jones moved to approve

Contract BE238C00 for construction of an elevated water storage tank in Laytonsville to Landmark Structures I, L.P. for \$192,830.00. Commissioner Mandel seconded the motion. The motion carried with six affirmative votes.

**General Manager's Office**

**Update on Revision to Design Manual.** Mr. Johnson reported to Commissioners that the revisions to the design manual, regarding set back limits will be handled in committee. A group that had been formed to discuss the matter was being reconvened to accommodate input from several groups. He reviewed the schedule of proposed meetings.

**Commission Office****Sub-Committee Reports:**

a. Governance/Personnel - Commissioner Hartwig-Davis noted that the Governance Policy continues to undergo revisions and that she would present a draft to Commissioners at the November Commission meeting with a schedule for adopting the various chapters of the policy.

II. Compensation Committee. Commissioner Counihan reported that the Compensation Committee was scheduled to meet the following week to discuss the question of the necessity of changes to WSSC's authorizing statute regarding Commissioners' salaries.

b. Bi-County Infrastructure Funding. Commissioner Jones advised of the October 7<sup>th</sup> meeting results. The consultant addressed affordability and debt financing, indentified options for financing support for infrastructure renewal and provided an in-depth analysis as the basis for recommendations. WSSC was compared on a scale with other AAA bond-rated utilities. A final report and recommendations will be issued at the end of the year.

c. Pension. Vice Chair Lawson advised that the WSSC Employee's Retirement Plan Trust amount was at \$628.5 million. Since June of 2011, the Plan has lost \$38.2 million. Domestic and international equities were at 52% of the Plan's invested assets; domestic fixed assets were at 31%; global funds were at 14.9%; and real estate was at 3%. As of August, 2011 no rebalancing was required. The Trustees agreed to interview five or six global fund managers at the suggestion of the consultant to replace the current global fund manager whose management has resulted in continual declining returns. Standard & Poor lowered the credit rating for the U.S. The Federal Reserve Bank pledged to keep interest rates at record lows through 2013.

**Waiver Request Item Resumed**

When Mr. Gingles returned, he advised Commissioners the project for the Potomac Business Park would require 7,000 gallons per day. Commissioner Hartwig-Davis expressed concern that in the auditorium Ms. Carla Reid, Deputy Chief Administrator to Prince George's County Executive Rushern Baker indicated the Salubria project would provide an unparalleled retail shopping experience including some very unique stores that had not been seen in the area but that Mr. Gingles had indicated a Wal-Mart would be developed. Vice Chair Lawson also expressed concern. Commissioner Mandel noted that the county governments strongly support the endeavor at Salubria because there is a benefit to both counties and is a regional approach to economic development. Mr. Gingles noted it would be the first Tanger Outlet in an urban area. He said some recycled materials would be used in the building. After this discussion, Commissioner Counihan amended the motion to read as follows:

I move to approve a limited waiver of Standard Procedure ENG 09-02 in response to the October 17<sup>th</sup> letter from James Soltesz of Loiederman Soltesz Associates, Inc. on behalf of the Peterson Company in connection with the Salubria Center and Potomac Business Park subject to the following conditions:

- 1) accuracy of the unique facts and conditions written in the letter including but not limited to the representations that the Peterson Company owns both a site known as the Salubria Center and a proximate site known as the Potomac Business Park;
- 2) the effective date of this waiver is for a period of 24 months from the date of approval during which time to sustain this waiver the Peterson Company must apply for and receive a WSSC plumbing inspection for a building at the Salubria Center site and precludes any development or building on the site known as Potomac Business Park in excess of 7,307 gallons/day until the upgrades to the Broad Creek Waste Water Pumping System Augmentation Project (WSSC Capital Improvements Project S-43.02) are complete; and
- 3) the increase on the site known as the Salubria Center is limited to 23,382 gallons/day.

Vice Chair Lawson accepted the amendments and affirmed his second of the motion. When Chair Moore called for the vote, the motion carried with six affirmative votes.

**Intergovernmental Relations**

Mr. Wineland advised Commissioners the legislative proposals that had been reviewed in the previous two Commission

meetings had been placed with the legislative reference department for review. Commissioners Mandel and Hartwig-Davis requested notice of opportunities for Commissioners to help with legislative proposals.

Corporate Secretary's Report. Ms. Bundy provided information about her month's activities. She presented Commissioners with a copy of the budget for the Commissioner Appreciation Luncheon held September 21, 2011. She was asked to add a footnote indicating the food expenditure was actually half the amount shown as the other half represented the standard monthly cost of lunch.

#### **Adjournment**

At 5:03 p.m. Commissioner Hartwig-Davis moved to adjourn the meeting. Commissioner Mandel seconded the motion. The motion carried with six affirmative votes. At 5:04 p.m. Chair Moore declared the meeting was adjourned.

Respectfully submitted,

\_\_\_\_//signed//\_\_\_\_\_  
Charlett Bundy  
Corporate Secretary