

WASHINGTON SUBURBAN SANITARY COMMISSION

MINUTES OF THE COMMISSION MEETING

**Wednesday, September 23, 2009
Laurel, Maryland**

Chair Gene W. Counihan called the meeting to order at 8:38 a.m. in the Auditorium at 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 Joyce Starks, Commissioners Antonio L. Jones, Adrienne A. Mandel, and Roscoe M. Moore, Jr. were present at the meeting. Also, present were General Manager Jerry Johnson, Corporate Secretary Charlett Bundy and General Counsel, Jerry Blask.

AGENDA APPROVAL

Vice Chair Starks moved to approve the agenda. Commissioner Moore seconded the motion. The motion carried with three affirmative votes. Commissioner Moore abstained in order to balance the voting due to the absence of Commissioner Prem Agarwal. Commissioner Mandel arrived after the vote was taken.

Chair Counihan asked Commissioner Jones to lead the pledge of allegiance.

WELCOME OF NEW GENERAL MANAGER AND COMMISSIONER

Chair Counihan extended well wishes to Antonio L. Jones, the newest Commissioner appointed from Prince George's County. Mr. Jones thanked Mr. Counihan for his remarks and stated he hopes to become a productive member of the Commissioner.

Chair Counihan then welcomed Jerry N. Johnson who started as WSSC General Manager/Chief Executive Officer on September 8, 2009. Mr. Counihan presented Mr. Johnson with a welcome gift of a wooden replica of WSSC's award winning sewer cover design. Mr. Johnson thanked the commissioners and noted he appreciated the appointment to the trusted position of leadership and looked forward to working with the dedicated staff of WSSC.

WSSC Retirees.

No retirees were present to be recognized but retirement of the following employees was announced during the meeting: John E. Barrass, Senior Electrical and Mechanical Technician retired with 18 years of service; Robert M. Samuels, Electrical/Mechanical Specialist I, retired with 20 years and 5 months of service; Todd Strayer, Systems Construction Inspector II, retired with 23 years and 8 months of service and Don H. Thompson, Electrical and Mechanical Technician retired with 29 years of service.

EMPLOYEE EXCELLENCE

This month's video featured the employees of the Corporate Asset Management Office.

MINUTES

Commissioner Mandel moved to approve the minutes for August 19, 2009. Vice Chair Starks seconded the motion. The motion carried with four affirmative votes. In the spirit of cooperation, Commissioner Moore abstained due to Commissioner Prem Agarwal being absent and because majority vote had not been determined.

COMMISSIONERS' COMMENTS

Vice Chair Starks stated that Commissioner Agarwal was absent because of an important emergency and he certainly wanted to thank staff for the hard work that they put into the package and he did not want to hold up the meeting in dealing with votes, etc. She noted that the Prince George's Commissioners had decided on their committee recommendations. Commissioner Jones agreed to serve on the Personnel/Governance Committee of the Commission, Commissioner Agarwal agreed to serve on the Bi-County Committee of the Commission and she agreed serve on the WSSC Employees' Retirement Board of Trustees. Chair Counihan accepted the recommendations and officially made those recommendations his appointments to the respective committees.

Chair Counihan announced that he had drafted a response to a letter from Delegate Alicia Braveboy's office dated August 4, 2009 and apologized for the delay in responding. He provided a copy of the letter to Commissioners and then noted that the letter did not represent the view of the Commission but the views of the Chair and his fellow Montgomery County Commissioners; the Deputy General Manager, Teresa Daniell; General Counsel Jerry Blask; and SLMBE Director, Towanda Livingston. He invited the Prince George's County Commissioners to decide whether to join in a response to the letter by September 24, 2009. Vice Chair Starks noted that the letter had a header of August 26, 2009. She further stated that since the draft was prepared at least on or about that date, the Montgomery County Commissioners (i.e., Gene Counihan, Adrienne Mandel and Roscoe Moore), Deputy General Manager Teresa Daniell, General Manager Jerry Johnson and SLMBE Director Towanda Livingston had from August 26, 2009 to review and comment on the letter. Vice Chair Starks further stated the one day notice given to Prince George's County Commissioners was "too short and unfair" given that the Commissioners would be in the commission meeting all day and would have no time to review the draft. She also noted that a letter to Herman Taylor of Montgomery County had been sent without input from the Prince George's County Commissioners. Commissioner Mandel stated she would like to review the draft in more detail before she would sign it. Commissioner Jones asked for at least 48 hours to decide his response which would be by close of business on Friday, September 26, 2009. Chair Counihan stated he was embarrassed

that the response to Delegate Braveboy's letter had been delayed almost six weeks but agreed he would wait and date the letter September 28, 2009 and mail on that date. Commissioner Moore asked that the letter be delayed a day to give staff time to prepare the final draft for mailing. Chair Counihan agreed that the letter would be dated and mailed on September 29, 2009.

After the award to Mr. Johnson, Commissioner Mandel said on behalf of the thoughts and feelings of her fellow commissioners, she recognized two people who maintained the outstanding reputation of WSSC in their high standards, quality of service and attention to employees, vendors and others in the WSSC community: Ms. Teresa Daniell, former Interim General Manager and Mr. Rudy Chow, former Interim Deputy General Manager. Ms. Daniell and Mr. Chow received a standing ovation.

PUBLIC COMMENTS

Mr. Hiram Tanner of the Board of the Chesapeake Water and Environment Association (CWEA) presented the Association's Abel Wolman Award to Jerry Johnson, WSSC General Manager/CEO for his outstanding contributions to the field of environmental service and water quality. Mr. Tanner was accompanied by several board members: Jon Doane; Sam Amad; Angie Essner; and Paresh Sanshavi. Since 1992, CWEA has bestowed this honor only five times. Upon presentation of the CWEA plaque, Mr. Johnson acknowledged the CWEA for ensuring that those working in environmental science "stay on top of their game and do the very best that they can for the environment."

Chair Counihan remarked about WSSC's commitment to environmental stewardship and that WSSC is proud to have its newest leader recognized for achievements in this area.

GENERAL MANAGER'S OFFICE

Monthly Report. Mr. Johnson acknowledged his two week tenure had gotten underway and the time had been enlightening and exciting and that he had met some great people within the organization. The completed bond sale on September 22, 2009 was highlighted as what he characterized as "staff's phenomenal job to ensure a very successful bond sale." Mr. Traber was asked to provide Commissioners details of the sale.

Mr. Johnson advised Commissioners he had testified before the U.S. House of Representatives Subcommittee on Water Resources and Environment on September 22, 2009. His testimony was well-received. He noted two Maryland representatives attended the hearing: Congresswoman Edwards and Congressman Cummings.

Mr. Traber noted that WSSC had received an AAA rating due to WSSC's sound financial position and strong fiscal policies. Wachovia Bank bought the tax-exempt Build America bonds which should net WSSC 2.84%.

Internal Audit Office

Monthly Activity Report. Mr. Dana Whiting filled in for Ms. Bardwell who was away at a training conference. Mr. Whiting provided Commissioners with the highlights of the department's monthly audit activities.

Commissioners' Items

Commissioner Mandel moved to approve the Bylaw revisions that are reflected in the Redline version of the Bylaws as presented in the meeting packet of September 23, 2009. The motion did not receive a second before Commissioner Mandel withdrew the motion and made another one.

Commissioner Mandel moved that the Commission adopt the WSSC Revised Bylaws as agreed to and indicated in the Recap of Changes of the August 16 [sic], 2009 meeting. Commissioner Jones seconded the motion. Vice Chair Starks noted that Commissioner Agarwal was absent and had not provided any of his comments so she asked that the motion be delayed until Commissioner Agarwal could participate in the vote. Commissioner Mandel asked the chair to accept a special order of the motion to the October meeting. Vice Chair Starks seconded the motion to special order the vote on the changes. The motion carried with four affirmative votes. Commissioner Moore abstained in order to balance the voting due to the absence of Commissioner Prem Agarwal.

ACTION ITEMS

No speakers appeared at the CIP hearing in Montgomery County but some elected officials did attend. There were no speakers at the CIP hearing in Prince George's County but several elected delegates, senators and their staff attended the CIP hearing. One piece of correspondence was received by WSSC staff and it did not address the CIP report. Changes since the public hearing document were published included the addition of a new project: The Potomac Water Filtration Plant, Stage II disinfection by-products rule implementation and scheduling changes in trunk sewer reconstruction program that deferred some costs scheduled for fiscal year 2011 (approximately \$170 million) to later years. Commissioner Mandel moved that the Commission approve Transmittal of FYs 2011 - 2016 Capital Improvements Program to Prince George's and Montgomery counties. Vice Chair Starks seconded the motion. The motion carried with four affirmative votes. Commissioner

Moore abstained in order to balance the voting due to the absence of Commissioner Prem Agarwal.

CONSENT CALENDAR

Commissioner Mandel moved that the Commission adopt the Consent calendar as printed in the meeting agenda for September 23, 2009 which consists of the following items:

Contract BR/CR4059A05, Water/Sewer Reconstruction, Aspen Hill Park to Metra Industries for \$1,815,950.00;

Contract BR/CR4764B08, Water/Sewer Reconstruction, University Park II, to Metra Industries for \$1,068,187.00; and

Contract AC5034A09, Area Water and Sewer House Connection to City Contractors, Inc., for \$1,223,650.00.

Commissioner Jones seconded the motion. The motion carried with four affirmative votes. Commissioner Moore abstained in order to balance the voting due to the absence of Commissioner Prem Agarwal.

DISCUSSION/BRIEFING ITEMS

Engineering and Construction

Contract BP2938D00, Change Order 3. This change order is part of a long-term project that was designed to provide water to certain residents of Laytonsville due to water contamination in the ground water. After the briefing, Commissioners delayed the vote to the afternoon session.

Contract BR/CR4760A08. Mr. Gumm advised Commissioners that this contract for water main replacement in College Park Woods was ripe for voting as the bids were due to expire before the October Commission meeting. Commissioner Mandel then moved to award the contract to Taylor Utilities for \$1,181,707. Commissioner Jones seconded the motion. The motion carried with four affirmative votes. Commissioner Moore abstained in order to balance the voting due to the absence of Commissioner Prem Agarwal.

Finance Office

A. Resolution 2010-1835. This resolution is the result of staffing changes in the general manager's office. Commissioner Mandel moved to adopt Resolution 2010-1835 authorization for certain financial functions and certifying signatures due to staffing changes. Commissioner Jones seconded the motion. The motion carried with four affirmative votes. Commissioner Moore abstained in order to balance the voting due to the absence of Commissioner Prem Agarwal.

B. Resolution 2010-1836. Commissioner Mandel moved to adopt Resolution 2010-1836 authorizing the general manager and chief engineer to execute and file grant and loan applications with the Environmental Protection Agency or the Maryland Department of the Environment. Vice Chair Starks seconded the motion. The motion carried with four affirmative votes. Commissioner Moore abstained in order to balance the voting due to the absence of Commissioner Prem Agarwal.

C. Bond Refunding Plan. Based on an analysis from the public advisory consultant suggests refunding the March 2005 bonds would result in a debt service savings of approximately \$3 million and a net present value savings of approximately 3.8%, Commissioner Mandel moved that the commission approve the bond refunding plan as stated in the September 23, 2009 commission meeting packet. Commissioner Jones seconded the motion. The motion carried with four affirmative votes. Commissioner Moore abstained in order to balance the voting due to the absence of Commissioner Prem Agarwal.

Customer Care

Contracts 68-4436 C and E - Emergency Repairs to the Rockville 48-inch PCCP. Mr. Rudy Chow, Customer Care Team Chief advised Commissioners of ongoing emergency repairs needed to the Rockville 48-inch, pre-stressed concrete cylinder pipe. Chair Counihan confirmed that the pipe is actually not in the City of Rockville but just north of the city. Vice Chair Starks moved to approve emergency repairs to the Rockville 48-inch PCCP Contracts 68-4436 C and E to service Montgomery County for the amount of the engineer's estimate. Commissioner Jones seconded the motion. The motion carried with four affirmative votes. Commissioner Moore abstained in order to balance the voting due to the absence of Commissioner Prem Agarwal.

OCTOBER PROPOSALS FOR AWARD

Engineering & Construction

Contract PM0014A08. This Water Distribution System Modeling and Planning Basic Ordering Agreement was presented to Commissioners because it has an upset limit of \$1 million. Malcolm Pirnie, Inc. was selected for this project.

System Extension Permit (SEP) Refund Standard Procedure.

Developers seeking refunds for projects not being built will be subject to the terms of this new SEP.

Cross Connection Control Standard Procedure. A video presentation by WSSC Chief Plumbing Inspector Tom Buckley on what WSSC does to protect the water system from contamination by back flow provided Commissioners an overview of how this critical procedure impacts clean water operations.

Customer Care

Contract C14851C08. This sewer lining and rehabilitation project in Anacostia will be funded by a \$4 million grant from state Stimulus Funds and monitored by the Maryland Department of the Environment and will be up for award next month.

DEPARTMENT BRIEFINGS

Finance

Schedule for 2010 Front Foot Benefit Charges and House Connection Rates will be presented at a public hearing on November 18, 2009 at 2:30 pm and also on that date, Commissioners will have a work session to receive preliminary calculations for the rates that become effective January 1, 2010.

Small Local Minority Business Enterprise Office

Disparity Study. Commissioners were briefed on the activities in the SLMBE office relative to procuring and conducting an updated disparity study. The 2010 study will identify market conditions that will serve as the construct for producing a SLMBE Program that will address market utilization and availability for sheltered market programs that conform to prevailing laws. Commissioners had been given an opportunity to comment but Commissioner Starks questioned why they had not been given an opportunity to review and comment on the request for proposal (RFP) for a disparity study. She noted that the Commissioners are supervisors of the SLMBE Director on policy matters and should have been consulted before the RFP was published.

Draft of the Fiscal Year 2009 Legislative Report. Commissioners were requested to have comments on the draft by the next Committee meeting. Ms. Livingston advised that the statutory September 15th deadline is difficult to meet because WSSC's fiscal year ends on June 30th of the year leaving six weeks to complete the legislative report and seek Commissioners' approval at an August commission meeting. Commissioner Mandel suggested that the pattern of missing the September 15th deadline for valid reasons should be addressed by pursuing a legislative amendment to Article 29 so that the statutory deadline for filing the SLMBE Legislative Report could be moved to later than September 15th.

Intergovernmental Relations Office

Proposed Legislative Changes. Mr. Wineland reported on the legislative proposals impacting WSSC for the upcoming legislative session. Sponsorship of legislation for WSSC alternates between

Montgomery and Prince George's County. In even years, Montgomery County House Delegation Chair sponsors WSSC legislation. The deadline is October 8, 2009. Two proposals have been submitted so far. One proposal calls for deleting a significant number of passages in Article 29 that relate to WSSC human resources functions that have become obsolete. Another proposal deals with WSSC's practice of placing door hangars on residences to alert citizens. Statutory authorization is sought to give WSSC permission to enter private property to place the door hangars in order to avoid such action constituting trespass on private property.

Additional Commissioner Comments

Vice Chair Starks presented a certificate of appreciation to Roscoe Wade and Paul Coverstone for their work as respectively, Acting Logistics Director and Acting Director of the Information Technology Department.

At 1:09 p.m. the auditorium session ended and the lunch recess began.

AFTERNOON SESSION

At 2:20 p.m. Commissioners resumed the meeting in the Commissioners' Conference Room.

Contracts 68-4436 for Emergency Repairs to the Rockville 48-inch PCCP. Jerry Johnson, General Manager/CEO stated early publication of the engineer's estimate would have impacted the bidding on Phase II of this contract in a way that would have caused WSSC to lose money but in fact the bidding resulted in a \$500,000 cost savings to WSSC despite the low engineer's estimate.

Contract BP2938D00, Change Order 3. Mr. Gumm provided a copy of the Memorandum of Understanding and contract that created the obligation for WSSC to complete the installation of water service to certain Laytonsville residents. Commissioner Mandel moved to approve Change Order 3 to Contract BP2938D00 increasing the contract price by \$164,859.25 and extending the contract time to March. Commissioner Jones seconded the motion. The motion carried with four affirmative votes. Commissioner Moore abstained in order to balance the voting due to the absence of Commissioner Prem Agarwal.

Personnel/Governance Committee

The Committee has not had a formal meeting as the Prince George's County Commissioner had not been assigned. Therefore, the following items were not reported on:

- Procedures for Paying Legal Fees of Commissioners
- Document Control Procedure
- Procedure for Commissioners' Response Under the WSSC Communications Policy

- Procedure for Commissioners' Management of EEO Complaints Against the General Manager.

With regards to the last item, Commissioners stated the correct identification is: "Procedure for Filing a Grievance Against a Direct Report to Commissioners."

Amended Minutes for April 19, 2008.

Corporate Secretary Bundy asked Commissioners to approve an amendment to the April 19, 2009 minutes because of an editing error on page 8 of those minutes. Commissioner Moore stated that former Commissioner Juanita Miller raised objections to the minutes for April 19, 2008 at a previous commission meeting. Vice Chair Starks requested a complete set of the minutes. The item was tabled until the October meeting so that Commissioners could revisit the issue.

Commissioners' Items

A. Committee Reports

- Governance/Personnel - Credit Card Approval.
Commissioners agreed to have the Internal Audit Manager approve the on-line credit card statement of the corporate secretary.
- Bi-County. Primary responsibility of the committee is to identify unfunded infrastructure needs and propose how WSSC can raise revenue to address the needs in less than a 100-year cycle. A first meeting has yet to be scheduled.
- Pension. As the pension board did not meet in August, this committee had nothing to report. Commissioners requested a formal briefing on the employees' retirement plan.

B. Corporate Secretary's Report. Ms. Bundy gave a summary of her activities for the month.

EXECUTIVE SESSION

Commissioner Mandel moved to close the meeting pursuant to Subtitle 5 of Title 10 of the State Government Article, Maryland Code:

Section 10-508(a) (13) to approve closed session minutes for August 19, 2009; Section 10-508(a)14 to discuss contents of a bid/proposal related to Contracts 68-4436 for Emergency Repairs to the Rockville 48-inch PCCP; Section 10-508(a) (7) and (8) to discuss legal advice, representation issues and consult with General Counsel on: the WSSC MBE Program; the legal cases: Sillers/Cartwright, Phillips and Bowen; an issue that arose from a refund hearing decision involving Sterling Condominium; and Section 10-508(a) (1) to a discuss personnel matter related to merit review of a direct report. Commissioner Jones seconded the motion. The motion carried with four affirmative votes. Commissioner Moore abstained in order to balance the voting due to the absence of Commissioner Prem Agarwal.

At 3:19 p.m. the meeting was declared closed.

ATTENDEES: Chair Gene Counihan, Vice Chair Joyce Starks, Commissioners Adrienne Mandel, Antonio L. Jones and Roscoe Moore, Jr.; General Manager Jerry Johnson, Deputy General Manager Teresa Daniell, General Counsel Jerry Blask and Corporate Secretary Charlett Bundy were present. Mr. Blask, Ms. Daniell and Mr. Johnson left for the discussion on the direct report's salary. Tom Traber joined the meeting for the discussion of the direct report.

A discussion on the financial results of a direct report's employment reviews for 2008 and 2009 was held. Commissioners approved a modification of the personnel action notice regarding the employee's payments for performance review and other payments as required in the employment contract.

Ms. Daniel, Mr. Blask, Mr. Russell Beers and Ms. Vicki Webb then joined the meeting (3:45 p.m.) to discuss legal advice regarding certain matters related to the Sillers, Cartwright, Phillips, and Bowen, et al., v. WSSC lawsuits.

Legal advice was provided on the Sillers, Cartwright and Phillips matter by Mr. Beers. At 4:08 Attorney Beers left the conference room.

Towanda Livingston joined the meeting at 4:00 p.m. and Attorney Franklin Lee joined the meeting by telephone at 4:28 p.m. to add his legal advice to that provided by Mr. Blask regarding the structuring of an MBE Program at WSSC that would meet legal sufficiency. He left the phone at 5:23 p.m. The discussion continued on the WSSC SLMBE Program and the legal advice Mr. Lee had provided regarding the legal sufficiency of various proposals for instituting a new SLMBE program.

Chair Counihan deferred the discussion on the Bowen matter until the October meeting. Commissioners then discussed the Sterling Condominium refund hearing. A motion was made to alter the hearing decision in the Sterling Condominium refund hearing: Commissioner Moore moved to reconsider the decision by which Commissioners ordered a credit to Sterling Condominium as the result of a quorum refund

hearing. Vice Chair Starks seconded the motion. The motion carried with three affirmative votes. Commissioner Mandel and Jones abstained because they were not present at the refund hearing.

Then Commissioner Moore moved to authorize the general manager to issue a refund to Sterling Condominium and to send additional instructions to the WSSC billing department. Commissioner Jones seconded the motion. Three affirmative votes caused the motion to carry. Commissioner Mandel abstained because she was not familiar with the matter. Vice Chair Starks was temporarily out of the room when the vote was taken. Attorney Webb then left the meeting at 5:51 p.m.

Vice Chair Starks then discussed the need for a standard procedure to determine how general counsel should represent the decisions of WSSC commissioners. The discussion included details of a closed session vote from November 14, 2007 to illustrate the need for the procedure.

Commissioners neither discussed nor voted on the August 19, 2009 minutes.

Commissioner Mandel then moved to end the executive session and resume the open session. Commissioner Moore seconded the motion. The carried with five affirmative votes. At 6:06 p.m. the meeting was declared open.

OPEN SESSION RESUMED

Adjournment

With no other business to be addressed at this meeting, Commissioner Mandel moved to adjourn the meeting, her last meeting. Commissioner Moore seconded the motion. The motion carried with six affirmative votes: At 6:06 p.m. Chair Counihan declared the meeting was adjourned.

Respectfully submitted,

_____/signed/_____
Charlett Bundy, Esq.
Corporate Secretary