



## CLIFTON PARK WATER AUTHORITY

### BOARD MEETING MINUTES

DECEMBER 8, 2015

Those present at the Clifton Park Water Authority board meeting were: Mr. Helmut Gerstenberger, Chairman; Mr. John Ryan, Vice Chairman; Mr. George Peterson, Treasurer; Mr. Peter Taubkin, Secretary; and Mr. William Butler, board member (left meeting early at 8:30pm). Also present: Mr. Donald Austin Jr., Administrator; Mr. Walter Schlesier Jr, Superintendent; Mr. Neil Weiner, Attorney; and Mr. Edwin Vopelak, CT Male Associates.

Mr. Gerstenberger called the meeting to order at 7:04pm.

#### PRIVILEGE OF THE FLOOR

No members of the public present.

#### OLD BUSINESS

##### BSP CELL TOWER LEASE CONSULTING AGREEMENT

Mr. Ryan recused himself from the conversation. Mr. Weiner sent a letter to BSP with the questions regarding the language and terms of the contract. The following summarizes Mr. Weiner's concerns and the corresponding responses/explanations from BSP:

1. BSP proposes a 5-year term and provides that the Agreement cannot be terminated for any reason, absent a breach. BSP believes that once a value is established for the site, the client could choose to negotiate the lease themselves using the value they developed for the site. They are service providers whose fee is a success fee based model which is reflective of the level of success they achieve. The reason for the 5-year term is that they believe the value they establish for the site will hold true for a maximum of 5-years.
2. BSP are consultants on cell antenna leases, and do not function as legal counsel for their clients. They have built their business model to assemble the lease clauses that they know have been agreed to by the major carriers in the past and that provide the client with the best combination of economic benefits and control of the site. The client's counsel would use these terms as a starting point for the lease agreement.
3. BSP is entitled to receive compensation even if CPWA receives an offer to buy out the revenue stream derived from the lease. In such an event, BSP believes the economic benefit to the client would be based on the favorable lease terms that they negotiated, and therefore it would be appropriate that any remaining fee due to BSP be accelerated to be paid in a lump sum at the time of the assignment or sale.
4. If CPWA cancels a lease and no longer has that revenue stream, BSP should recognize that it should not receive compensation and/or some proportionate compensation. Should BSP negotiate a lease on behalf of CPWA and CPWA agrees to the terms therein with the revenue streams projected, then BSP has performed their services and should receive full payment of their fees.

5. If rent payments are not paid, BSP disclaims responsibility. Mr. Weiner is not sure BSP should receive compensation if the tenant has breached its obligations. BSP stated they earn fees on rents paid or guaranteed to be paid.

Based on the above items the board still would like further clarification. Mr. Austin, Mr. Gerstenberger, and Mr. Weiner will set up a conference call with BSP to discuss the contract language for more clarification.

#### **CT MALE ENGINEERING CONTRACT**

A **motion** was made by Mr. Gerstenberger to move into executive session at 8:15pm to discuss the CT Male engineering contract and the NYS Office of the Comptroller's report (new business agenda item); seconded by Mr. Ryan. The **motion** carried 5-0.

A **motion** was made by Mr. Gerstenberger to move out of executive session at 9:24pm; seconded by Mr. Ryan. The **motion** carried 4-0, 1 absent.

#### **KUHL – HOCKEY HUT EASEMENT ISSUE**

Mr. Taubkin contacted Mr. Kuhl to discuss the easement issue. Mr. Austin then had several conversations with Mr. Kuhl regarding his efforts to get Ms. Hoffman to sign the easement. Since Ms. Hoffman had the easement for several months and had, in the past, verbally agreed to sign it, Mr. Austin sent Mr. Schlesier to her office to ask her if she could sign it and give it to him directly. She agreed to do so, but could not find the easement in her office. Mr. Schlesier will be bringing the easement to Ms. Hoffman tomorrow morning for her to sign.

#### **FIVE-YEAR CAPITAL IMPROVEMENT PLAN**

Mr. Vopelak provided the Board with a report of 2016 capital projects for improved system operations. The following projects reported are listed below in order of priority:

1. Water Storage Tank Inspections
2. Demolition of Abandoned Water Supply Facilities and Mains
3. Rexford Water District Sub-Metering
4. Barney Road Tank Rehabilitation
5. Clean Vischer Ferry Preserve Raw Water Main
6. Oakwood Blvd Well Upgrades
7. Nott Road Water Main
8. Future SCWA Interconnect Capacity Upgrade
9. Droms Road Water Main

Projects 1-7 should be considered within the next five years. Projects 8-9 are future projects that may be necessary if growth occurs in the CPWA system. The improvements reviewed include transmission improvements to enable more source of supply to be available to the system; to provide water transmission improvements in parts of the system; to improve the flow of water to neighborhood or commercial areas in the event of main breaks; and for maintenance to existing infrastructure. The report includes a description of each project, a cost estimate and figures showing the location of each capital improvement. The Board will review the report for more discussion at next month's meeting.

Mr. Austin provided the Board with a report of operational capacities for all of the CPWA sources. This report was required by the NYS Department of Health for any new projects that comes before them for review. When an engineer or developer submits plans for any modifications to the any water system they are required to provide this information with their

plans. The NYSDOH wants the water system to be able to meet the maximum days output with the largest source out of service. Mr. Austin reported the CPWA system, as it stands right now, can't do that.

#### NEW BUSINESS

##### DCG REQUEST FOR EXCEPTION FROM MALL AGREEMENT CLAUSE RELATING TO DIRECT BILLING OF NATIONAL OR REGIONAL TENANTS

DCG Development is requesting a revised ruling from the Board regarding separate water meters for national and regional restaurant tenants. According to the terms of the CPWA's agreement with DCG at the Mall, a tenant needs to have at least 15 locations to be considered a "national or regional tenant", and the leased space at the Mall needs to be at least 5,000 square feet. Tenants meeting that criteria can be separately metered and billed by the CPWA. All others must be supplied through the Mall's master meters which are billed to DCG. They have some new national and regional tenants that are planning to move into locations that are 1,500 to 3,000 square feet. They are requesting that the CPWA directly meter and bill these tenants. Mr. Austin sent them a letter asking for clarification of their request but has not heard back from them at this time.

##### NYS COMPTROLLER'S DRAFT AUDIT REPORT

This item was discussed in executive session.

#### OTHER BUSINESS

##### APPROVE MINUTES OF NOVEMBER 9, 2015

A **motion** was made by Mr. Taubkin to approve the minutes of November 9, 2015; seconded by Mr. Ryan. The **motion** carried 4-0, 1 absent.

Mr. Gerstenberger reminded everyone that the Authority's annual Christmas luncheon will be Friday, December 18<sup>th</sup> at 12:30pm.

The next scheduled board meeting is Tuesday, January 12, 2016 at 7pm.

A **motion** was made by Mr. Gerstenberger to adjourn the meeting at 9:36pm; seconded by Mr. Ryan. The **motion** carried 4-0, 1 absent.

Respectfully submitted,

*Sheri Collins*

Recording Secretary

cc: CPWA Board of Directors

Neil Weiner