

Thomas Stone
Chairman

Janine L. Burke
Executive Director



Scott Avedisian
Mayor

Warwick Sewer Authority
125 Arthur W. Devine Boulevard
Warwick, RI 02886
Voice: (401) 739-4949 • Fax: (401) 739-1414
T.D.D. (401) 739-9150

Board Meeting Minutes

February 26, 2009, 5:30 p.m.
WSA Conference Room
125 Arthur W. Devine Boulevard
Warwick, RI 02886

| Board Members in Attendance: | Guests: |
|---|--|
| Thomas Stone, Chairman | Robert Nero, Pawtuxet River Authority |
| Aaron Guckian, Secretary | Jim Boyd, CRMC Policy Analyst |
| Steven Sylven, P.E. | Mr. John Shepherd, 56 Killey Avenue |
| Fred Sullivan | |
| Gary Jarvis | |
| | |
| Staff Present: | |
| Janine L. Burke, Executive Director | Jodi Bourque, Legal Counsel |
| Joel Burke, Superintendent | Steve Zubiago, Legal Counsel |
| Lynn F. Owens, Administrative Coordinator | John E. Martin, Billing Services Manager |

1. **Call to Order** At 5:30 p.m., Chairman Stone called this meeting to order.
2. **Approval of Minutes**
 - a. Approval of minutes from regular meeting held January 22, 2009.

Mr. Sullivan moved approval of the minutes. Mr. Sylven seconded the motion. Chairman Stone, Messrs. Sylven, Sullivan and Jarvis voted in favor of the motion. Mr. Guckian not available for vote. Motion approved.

3. **Director's Report**

Director Burke introduced Mr. Robert Nero, chairman of the Pawtuxet River Authority (PRA). Mr. Nero presented WSA with a check to reimburse monies WSA supplied to PRA for the construction of a canoe launching ramp in the Pontiac village area. In 2000, WSA partnered with PRA on the project, donating \$2,000 to pursue a design of the canoe launching area. PRA was gifted a fifty-acre tract of land at the intersection of Knight Street and Pontiac Avenue, and received a grant from the Rhode Island Trails Advisory Committee to construct the canoe ramp on the site. WSA "loaned" PRA the funding to build the ramp prior to the grant funds being disbursed. Mr. Nero thanked the WSA for its assistance with the project.

Warwick Sewer Authority Board Meeting Minutes

5:30 p.m., February 26, 2009

WSA Offices 125 Arthur W. Devine Boulevard, Warwick, RI

a. Financial Report

Director Burke's financial report included summaries of revenues and expenses for Fund 80 (Sewer operations, maintenance and administration) and Fund 81 (Pretreatment operations, maintenance and administration) as of January 31, 2009, as well as General Obligation Bond and State Revolving Fund loan balances.

Director Burke reported that the Rhode Island League of Cities and Towns' new five-year contract for electricity (effective January 1st) has resulted in bills this past month that are 40% higher than previous months which is equivalent to the rate increase negotiated for the next five (5) years. Director Burke said staff estimates that this will result in WSA's electricity budget being overspent by \$140,000 this fiscal year.

Director Burke reported that the Rhode Island Department of Environmental Management (RIDEM) extended the stay of phosphorous limits associated with our new permit but not the limit for nitrogen.

b. Administrative Schedule

Director Burke stated since our last Board meeting, she has met with Council President Bruce Place, Councilman Ray Gallucci and Councilman Steve Colantuono to discuss sewer construction. In her discussions with Councilman Gallucci, he asked about sewerage O'Donnell Hill, which would flow to West Warwick's treatment facility. Director Burke mentioned that WSA has reserve capacity at the West Warwick plant (provided for in the Warwick/West Warwick intermunicipal agreement). She reported that the project area was designed by Garofalo during the East Natick sewer project (1995). Director Burke said if there are no objections, she will do the preliminary leg work with West Warwick to see if they would accept the flow. She said funding for the project would have to be identified prior to moving forward.

4. Chairman's Report

Chairman Stone expressed concern that WSA budgeted for 1000 new connections, but currently has only 525 new connections. He said that he had lunch with Council President Place and discussed WSA's plans to use the billboard money to encourage sewer connections. He pointed out that the Sewer Tie-In Loan Fund (STILF) is in the works and may help people connect to the available common sewer line.

Mr. Guckian arrived at 5:34 p.m.

5. Construction Division Project Update Report, February 2009

WSA will solicit construction bids for the Governor Francis Farms Phase II sewer project in next week's Providence Journal.

6. Action Items

a. Resolution for RIDEM Certificate of Approval: i. Governor Francis Farms III (construction)

Mr. Sullivan made a motion authorizing staff to obtain a certificate of approval for construction of the Governor Francis Farms III sewer project. Mr. Sylven seconded the motion. Chairman Stone, Messrs. Guckian, Sylven, Sullivan and Jarvis voted in favor of the motion. Motion approved.

b. Miscellaneous Contracts i. RFP #2009-175 Legal Services (Continued from 12-11-08 meeting)

In November 2008, the Warwick Sewer Authority solicited Requests for Proposals (RFP) for Legal Services. On December 22, 2008, Board members conducted interviews with lead attorneys from four responsive firms offering legal services at the lowest lump sum yearly fee. In addition, the City Solicitor's office offered to provide legal services to the WSA.

The Warwick Sewer Authority sought an advisory opinion from the R.I. Supreme Court, Ethics Advisory Panel, on whether the City of Warwick Law Department, acting through a designated assistant solicitor, could represent the Sewer Authority and other officers, departments and agencies of the City without violation of the Rules of Professional Conduct, and whether the Law Department could represent the Sewer Authority in a hypothetical situation where the Sewer Authority was in an adversarial position with the Mayor and/or City Council without violation of the Rules of Professional Conduct.

On February 17, 2009, the Ethics Advisory Panel responded to WSA's request, declining "...to render an advisory opinion in response to your request pursuant to Rule 2(g) of The Rules of the Ethic Advisory Panel because an opinion would require resolution of questions concerning substantive law outside the area of legal ethics and discipline; and Rule 2(b) because the request concerns a hypothetical situation that does not arise from a present factual situation."

Following substantial discussion amongst Board members and Director Burke, the following motions were made:

Mr. Guckian made a motion to conduct the RFP process again, out of concern that the City Solicitor's office offered their services after the RFP process closed. No second to the motion was made.

Mr. Sullivan made a motion to select the City Solicitor's office to provide legal services to WSA due to the cost factor. Mr. Jarvis seconded the motion. Messrs. Sullivan and Jarvis voted in favor of the motion. Chairman Stone, Messrs. Guckian and Sylven voted against the motion. Motion fails.

Mr. Sylven made a motion to retain the services of Nixon Peabody LLP, based on the value of continuity of service and Nixon Peabody's knowledge of WSA's operation, making it the most qualified firm. Mr. Guckian seconded the motion. Chairman Stone, Messrs. Guckian and Sylven voted in favor of the motion. Messrs. Sullivan and Jarvis voted against the motion. Motion passes. Nixon Peabody LLP will be retained as WSA legal counsel.

ii. Request for Proposals: Emergency Pumping Services

(Continued from 1-22-09 meeting)

Tabled to next meeting, 3-17-09.

iii. Fire Alarm Testing Contract – Simplex Grinnell

Superintendent Burke asked that the existing draw-down purchase order for quarterly fire alarm testing and system repairs be increased by \$10,000.00 to cover anticipated expenses through the end of this fiscal year (6-30-09).

Mr. Guckian moved approval. Mr. Jarvis seconded the motion. Chairman Stone, Messrs. Guckian, Sylven, Sullivan and Jarvis voted in favor of the motion. Motion approved.

In an effort to reduce labor charges associated with repairs to the fire alarm system, the Superintendent has asked Kent County Electrical Services to submit a proposal for licensed electrician services to address any deficiencies in the system. The proposal will be presented to the Board when received.

iv. Sludge Disposal Contract – Veolia Cranston

Mr. Sylven asked for clarification on WSA's annual cost for sludge disposal. Superintendent Burke explained that WSA has two contracts for thickened sludge disposal, one with Synagro Northeast, and this contract with Veolia Cranston. WSA also has a contract for disposal of grit screenings at the Central Landfill (Rhode Island Resource Recovery Corporation). Superintendent Burke reported that the total cost of all sludge disposal is approximately \$850,000.00 per year.

Mr. Sylven moved approval. Mr. Sullivan seconded the motion. Chairman Stone, Messrs. Guckian, Sylven, Sullivan and Jarvis voted in favor of the motion. Motion approved.

7. Miscellaneous Request for Consideration

a. Staff recommendation for exception to Regulation No. 53 On-Site Grant Funds: Plat 339 Lot 448

Mr. John Shepherd, 56 Killey Avenue, Warwick, in attendance.

Warwick Sewer Authority Board Meeting Minutes

5:30 p.m., February 26, 2009

WSA Offices 125 Arthur W. Devine Boulevard, Warwick, RI

Billing Services Manager John Martin stated Mr. Shepherd has applied for the \$2,000 on-site grant, despite the fact that his property is located within the Facilities Plan. Mr. Shepherd's property is land locked; sewer access is not available to his property. His on-site system is failing and needs to be replaced. Mr. Martin stated Mr. Shepherd's sewer assessment has been deferred until he can gain access to the lateral in the street.

Mr. Shepherd stated he has made numerous attempts to gain permission from his neighbor to use the existing right of way (driveway) to extend the sewer line to his property. The neighbor refuses to grant Mr. Shepherd access to the driveway for a sewer line. Mr. Sullivan suggested the WSA force the issue, identify this matter as a health hazard and order the neighbor to allow Mr. Shepherd to use the right of way to connect. He feels the state law is very clear that the Mayor can declare this a health hazard and order it be done.

Solicitor Bourque stated she doesn't think WSA has ever used the enabling legislation in cases like this to force an abutting property owner to allow a neighboring property owner access to the sewer line through private property. WSA has taken land for sewer projects that benefit the general public, but has not used enabling legislation to argue on behalf of a private citizen.

Director Burke asked legal counsel to look into WSA's legal authority to pursue an easement with the abutting property owner. This matter is tabled to the next meeting.

8. Consent Agenda – Correspondence

- a. PAL Summary Report on Tidewater Drive archaeological survey (12-08)
- b. Strawberry Field Road II informational meeting summary (1-27-09)
- c. Technical review agreement between WSA and CDM (1-28-09)
- d. RIDEM letter on RIPDES Permit Stay Request Final Decision (1-28-09)
- e. USEPA press release on WSA recognized for excellence (1-28-09)
- f. WSA financial report to City Council (1-29-09)
- g. WSA quarterly report to CRMC on MSCP (1-30-09)
- h. WSA 2008 CMOM Program Implementation Annual Report to USEPA (1-30-09)
- i. WSA to WFD on Emergency and Rescue Service (2-4-09)
- j. WSA to Finance Department on Lamar annual payment (2-4-09)
- k. Recorded warranty deed on WSA purchase of Anglesea pump station (2-6-09)
- l. Narragansett Bay Commission Sustainable Energy Management Mtg. (2-9-09)
- m. John V. Paterra v. Sewer Board of Review, City of Warwick (2-12-09)
- n. WSA to RIDEM on Request for Submittal Extension (2-18-09)

Mr. Sylven voted to accept the consent agenda. Mr. Guckian seconded the motion. Chairman Stone, Messrs. Guckian, Sylven, Sullivan and Jarvis voted in favor of the motion. Motion approved.

9. **New Business:** Director Burke reported that she recently attended a conference at the Narragansett Bay Commission (NBC) to discuss "sustainable energy management" amongst wastewater treatment facilities. Director Burke said NBC

Warwick Sewer Authority Board Meeting Minutes

5:30 p.m., February 26, 2009

WSA Offices 125 Arthur W. Devine Boulevard, Warwick, RI

received grant funds to provide free energy audits to facilities, to benchmark usage and target areas where reduction in energy usage is possible, and to examine sustainable renewable energy sources.

Chairman Stone stated Mr. Don Fleck, formerly of E-Smart, is now with Senjiva Energy, and is marketing a new power conditioning product that is guaranteed to reduce our electric bills by 8% (\$50,000.00 investment required). Director Burke said she will meet with Mr. Fleck, although she has told him of her concerns about the product.

10. Old Business

- a. Buttonwoods Fire District sewer assessment/deferment (7-24-08) No action.
- b. Facilities Plan Review (9-11-08) No action.

11. Discussion Items

- a. Economic Stimulus Package

Director Burke stated she will report to the Board as soon as she receives word on the distribution of economic stimulus funds.

- b. Mandatory Sewer Connection Program: review of draft regulation

Director Burke stated she has been working with legal counsel to draft a WSA Mandatory Sewer Connection Program regulation that includes enforcement measures. She said legal counsel has determined that our enabling legislation does not give us the authority to order connections other than in situations of public health and safety. Attorney Zubiago stated what we decided to do was to draft a change to the enabling legislation with specific language saying WSA has the authority to order people to connect, not just for public health and safety reasons. He stated we need to be on firm legal ground when we order people to connect.

Director Burke stated what we would suggest (as an amendment to the enabling legislation) is, if connection is not made within one year from connection order, the property owner would be billed as if they were connected, which is essentially the same as a connect capable fee.

Jim Boyd, CRMC policy analyst, stated he has been working on a status report for the Greenwich Bay Special Area Management Plan (SAMP). He pointed out that while Warwick has the second largest population in the state, only 52% of the population is connected to sewers. Surrounding communities have a much better connection rate. Mr. Boyd stated in 2000, when CRMC made mandatory connections a provision of the Conimicut North sewer project, it knew that WSA had the authority to order connections, in the interest of public health and safety. He stated it was CRMC's assumption that public health and safety was also tied in to the closure of shellfish grounds and bathing beach closures, those are public health issues. Mr. Boyd stated it is all of the on-site systems in

Warwick Sewer Authority Board Meeting Minutes

5:30 p.m., February 26, 2009

WSA Offices 125 Arthur W. Devine Boulevard, Warwick, RI

Greenwich Bay, as well as other factors, that are contributing to fecal contamination in Greenwich Bay. In the Greenwich Bay watershed alone, there are still 2,000 properties that have sewers available that have not yet connected.

Director Burke stated she has asked Senator William Walaska and Representative Frank Ferri to sponsor a bill to change WSA enabling legislation to allow mandatory connections in situations other than public health and safety. Board members were provided with a draft of the proposed changes to the enabling legislation. Director Burke stated City Council members and Warwick senators and representatives will be advised of WSA's efforts once finalized.

c. Sewer Tie In Loan Fund: No action.

d. Drainlayer Licensing

Director Burke sent an email to Board members on February 19, 2009 regarding procedures and requirements for approval of drainlayer licenses. She researched the enabling legislation and consulted with legal counsel and found no requirement that these licenses be approved by the Board. In addition, there are numerous WSA regulations covering licensing and specific requirements for drainlayers. Director Burke suggested licenses be issued internally, with approval of drainlayers' licenses becoming the responsibility of the Executive Director, based on staff review and recommendation. She stated she will share the approvals with the Board on the consent agenda.

The Board expressed no objection to this change in procedure.

12. Adjournment

Mr. Guckian moved to adjourn this meeting. Mr. Sylven seconded the motion. Chairman Stone, Messrs. Guckian, Sylven, Sullivan and Jarvis voted in favor of the motion. Motion approved.

At 7:23 p.m. this meeting ended.

Aaron Guckian, Secretary

Date of Approval