

**EXECUTIVE COMMITTEE MEETING
FRIDAY, NOVEMBER 14, 2008
ADVISORY BOARD OFFICE
8:30 A.M.**

Minutes Approved at the January 9, 2009 Meeting

Present: John Sullivan, BOSTON; Ed Sullivan, CANTON; Bill Hadley, LEXINGTON; Katherine Haynes Dunphy, MILTON; Lou Taverna, NEWTON; Carol Antonelli, SOMERVILLE; Walter Woods, WELLESLEY; Zig Peret, WILBRAHAM.

Also in attendance, John Carroll, Andrew Pappastergion and Joseph Foti, MWRA BOARD OF DIRECTORS; Joseph Favaloro, Cornelia Potter, Matthew Romero and Mary Ann McClellan, MWRA ADVISORY BOARD STAFF.

I. Approval of the October 10, 2008 Minutes of the Executive Committee

Chairman Katherine Haynes Dunphy called the meeting to order at 8:35 a.m. A Motion was made **TO APPROVE THE OCTOBER 10, 2008 MINUTES OF THE EXECUTIVE COMMITTEE**. It was seconded and passed by unanimous vote.

II. Update: Odor Control Facility for the North Dorchester Bay CSO Facilities Project

MWRA Advisory Board Executive Director Joseph Favaloro stated that one of the components of the North Dorchester Bay CSO Facilities is a relatively small (less than 3,000 square feet) odor control facility, which is scheduled to be built on state land that closely abuts a developer, Corcoran Jennison Companies, located at the Bayside Exposition Center.

Since 1997, there has been discussion on the odor control facility, which has included all of the state processes, public hearings, environmental impact reports and supplemental environmental impact reviews, as well as other documentation related to the project.

The new convention center that is in Boston is now competing with the World Trade Center and Bayside Expo for gated shows, causing Corcoran and Jennison Companies to reexamine the Bayside Expo location. Mr. Corcoran has developed and submitted a preliminary plan to redevelop that site into luxury condominiums and specialty boutique/mall like stores, contingent upon the market coming back and credit being available. An odor control facility abutting this site, which perhaps two years ago wasn't a big deal, is now a problem to the developer. From his point of view, having an odor control facility that you can see rather than one you can't see might be of some concern.

Mr. Corcoran, his attorneys and engineers have met with the Authority on numerous occasions and on an ongoing basis. He has asked the Authority to put this facility underground. The Authority, because of court dates, is about ready to go out for construction. By 2011, all of these facilities must be in operation. The Authority's estimate of

the additional cost to design the facility again and then place it underground is in the vicinity of \$3 million. The Advisory Board believes Corcoran Jennison should pay 100% of these costs. The MWRA Board of Directors, at this juncture, is willing to compromise on a 50/50 split; Mr. Corcoran has said he is not willing to pay anything.

Mr. Corcoran has hired his own engineers to come up with a counter design; his engineers state that the Authority's original design is flawed and will cause significant turmoil to the neighborhood and that their design would cost significantly less (\$1.5 million). Mr. Corcoran is willing to foot the design and legal costs and give that design to the Authority.

Further, he has also countered that if some of his requirements for the City of Boston are eliminated, be it through the MEPA process or through connections to the MWRA, the Authority can have that money as well.

In the interim, Senator Hart, who is the State Senator for this district, has been adamant and vocal on some of his concerns; Congressman Lynch has also been active and they want to find a resolution. Mr. Favaloro stated that he has met with Congressman Lynch and Senator Hart, as well as with Mr. Corcoran, and all were intense meetings.

The Board, at this time, has determined that the Authority should take whatever steps are necessary to go to final design and put the construction package out on the street for the above ground facility.

Mr. Favaloro stated that when he met with Mr. Corcoran, Charlie Manning was also in attendance. Mr. Manning's job is to stir the political waters and press so it may signal a change in the approach that Corcoran is going to take. They may say in the press that the MWRA is stopping development in Boston. Mr. Corcoran believes strongly that the MWRA's willingness to split the cost is an indication that his design is a better design. Mr. Pappastergion said for the sake of full disclosure, when the Board took that vote to authorize the negotiation up to 50%, there were no other alternate designs on the table at that point.

Mr. Favaloro noted that Congressman Lynch has said that he will find the money through the federal budget to pick up whatever additional costs would occur to keep the Authority and Mr. Corcoran harmless.

Walter Woods expressed his hope that the Board holds the line and keeps the cost away from the ratepayers.

Lou Taverna asked if there are some simple architectural landscaping features that could be added to the site to hide or shield the odor control facility. Mr. Favaloro said the Authority tries its best to camouflage the purpose of the structure. Mr. Taverna asked if that would satisfy Mr. Corcoran. Mr. Favaloro said no; it is designed as a brick building and is only 2,900 square feet. When all is said and done, he will be marketing million dollar condos and when someone asks what that nice little brick building is, the answer will be it is an odor control facility.

Mr. Favaloro stated that he has written a letter that would go out if needed to intensify the pressure on the parties.

Joe Foti noted that this goes back several meetings and Corcoran has had several opportunities to contact or come back with a counter offer and hasn't done so. The first vote that was taken to say the Authority would pick up half had a deadline attached to it and he did not come to the table. At the following meeting, the same thing happened and that came and went. Then the Board was notified that the \$200,000 he already spent was enough and he is also saying that the MWRA is taking money from Boston's I/I Program.

Chairman Dunphy said the original location for this facility was down on the Reserved Channel near the other end of the tunnel; the neighbors objected to that, which was about nine years ago. It was moved to the other end, which, frankly, looks like an industrial or commercial area. It is right next to a busy intersection. It seemed to be the right location. Mr. Corcoran received all the notices of meetings, his people have attended; they have known it is going to be an odor control facility for a very long time. This is a last minute change in their plans and the ratepayers should not pay for a change in plans by someone who is in the business of development; it is not like it is a group of people who didn't know what was going on.

John Carroll said I agree with most of what Joe said except regarding a strategy. These are very difficult issues for the Board to wrestle with. The Board took a position a couple of months ago to go to 50% if Corcoran would go 50%; he has never come close to matching that offer. The Board authorized the Executive Director to authorize Fay, Spofford and Thorndike to go to 100% design for an above ground facility. I don't think it is wise to send this letter out. The Board has made a reasonable offer in a difficult situation.

Joe Foti stated that he agreed that the Board will not go more than 50%, however, I don't think the MWRA should pay a dime for it; I conceded to 50% because legal fees could add up. Mr. Carroll said none of us feel we should do it but it is a compromise.

Mr. Woods asked why the MWRA should pay anything. Mr. Carroll said if Corcoran had raised the issue in the first place, it probably would have been put underground so that \$3 million would have been spent anyway. In the beginning, it would have been a non issue.

Chairman Dunphy said re-design costs are now at \$655,000; that could have been an avoided cost.

Mr. Woods said the Board should not pay anything more than they anticipated. To compromise and spend the ratepayers' money would be ludicrous.

Mr. Foti said you are right but if we fight it and lose, we will end up paying legal fees plus the cost of the whole project anyway.

John Carroll said it was a very difficult decision for the Board to make. Corcoran has never come close to meeting the 50% and will likely never agree to the 50%.

Ed Sullivan noted that even if the facility is placed underground, something would still need to be above ground to get rid of the odor. Mr. Pappastergion said there would be stacks above ground. Mr. Favaloro said they plan to make the stacks look like trees. Mr. Pappastergion said short of outside funding to fund the whole thing, Corcoran is not going to come up with anything close to 50%. The Board has voted to go to final design on the above ground facility

and doesn't plan to spend the money to put the facility underground; sending the letter is not the answer.

Mr. Favaloro said at this point, there would be no reason to send the letter. The letter is on the agenda for the Executive Committee to provide staff with whatever guidance it feels makes the most sense.

Mr. Favaloro said that he is convinced that Corcoran's strategy has changed and that there will be an elevation in the political rhetoric. In the next week, the story may be that the labor unions decree that the Authority is stopping the necessary development of a blighted area. Mr. Carroll said then the Board is in a very strong position because it can say we have offered to share the cost with Mr. Corcoran.

After much discussion, a motion was made **THAT EXECUTIVE COMMITTEE MEMBERS WILL BE CANVASSED OR A SPECIAL MEETING CALLED IN THE EVENT THAT SOME ACTION MAY NEED TO BE TAKEN ON THIS TOPIC. NO ACTION WILL BE TAKEN UNLESS IT HAS BEEN FULLY VETTED THROUGH THE GOVERNING BODY OF THE ADVISORY BOARD.** It was seconded and passed by unanimous vote.

Chairman Dunphy said we appreciate that the Board has gone ahead with the design of the above ground facility. How long will the redesign take before it will be ready to go out for bid? Mr. Pappastergion said they are at 90% now; it will likely be ready for bid by January.

III. Preview: 2008 Water and Sewer Retail Rate Survey

MWRA Advisory Board Senior Policy and Finance Analyst Matthew Romero gave a preview on the *2008 Water and Sewer Retail Rate Survey*. Staff is still finalizing the numbers so information provided is still technically temporary. Over the summer, staff put together a focus group to discuss the methods used to report the information in the retail rate survey; in particular, the discussion of the usage of the 120 hundred cubic feet (HCF) standard for calculating the rates and presenting them in the survey itself.

A two-pronged approach was taken. Prior to the focus group meeting, staff sent a member to member inquiry through the Authority to the American Water Works Association (AWWA) and received back about 15 responses nationwide that indicated how they reported their water and sewer rates. While it varied from region to region, the most common denominator was that once they had decided upon a method (and many do use the 120 HCF) they tended to stick with it because it would make historical comparisons quite difficult if they were to change the method mid-stream.

The focus group consisted of Advisory Board staff, John Sullivan, Jay Fink, Michael Hornbrook and Leo Norton. After much discussion, the group determined that it would make no sense to change the reporting from the 120 HCF because of historical comparisons but also decided to give additional prominence to Appendix C of the document, which takes the numbers that the communities submit to the Department of Environmental Protection (DEP) for their water usage and calculates the rate similar to the 120 HCF.

A newly formatted questionnaire was developed this year to make things easier for respondents. The questionnaire included multiple choice options, which encouraged additional responses. Some questions were removed and others were added. Staff found that people were much more responsive to the new format, receiving an 80% response rate

within one week of the deadline. As a result, staff also received better and additional data that will be included in the final document.

Looking back at last year's survey, MWRA final assessments increased 4.5% in FY08. The average MWRA community household charge ranged from \$725 to \$1,070. Last year, after receiving feedback from the Executive Committee, staff decided to begin including a range using what the Authority uses as its typical usage of 61,000 gallons up to the 90,000 gallons that the Advisory Board uses to reflect the dollar range. The average MWRA community retail rate increase was 6.3% last year and in a ten-year capture from 1997 to 2007 retail rates have increased 65% (based on 120 HCF).

In FY09, MWRA final assessments increased 4.45%. The average MWRA community household charge ranging from 61,000 to 90,000 gallons is \$766 to \$1,130. The average MWRA community retail rate increase was 5.6%. This year staff has noticed that more communities than typical had either reduced rates or kept increases in the 1% to 2% range. From the ten-year capture from 1998 to 2008, retail rates have increased 68% representing a \$456 increase.

To capture actual capital needs for MWRA communities, staff received 51 responses identifying needs between \$575 million to \$1.1 billion; what they will actually spend is \$190 million to \$330 million. If you take the highest amount of projected capital spending (\$330 million) and apply it to even the lowball estimate of \$575 million, only 57% of the actual needs would be met.

Mr. Favaloro said the last item on the agenda for today is how to be in the best possible position for the economic stimulus bill if it comes. Staff knows what the Authority's ready-to-go projects are; working with Mr. Sullivan and Marian Orfeo at the Authority, the Advisory Board staff wants to work to get communities in the best spot possible to get at that \$190 million to \$330 million number so that they will be ready to go in the event there will be some type of water/sewer grant program coming out of the economic stimulus bill.

Mr. Romero stated that Jay Fink had requested that the Advisory Board include a question on the survey ascertaining how communities are recovering their stormwater costs. Of the 60 MWRA communities, 50 responses were received; 30 are recovering their stormwater costs through the DPW budget (General Fund), ten are recovering through their water and sewer rates and the remaining ten were a mixture of people that checked off not applicable, other, or multiple boxes. Lou Taverna asked if there should have been a bullet for stormwater fee; Mr. Romero said there were bullets for special assessment and other. Some people did check off other. Staff may revise the choices for next year because some people may have mistaken special assessment for that.

Another question on the survey asked if communities are seeing budget shortfalls. Of the 60 member communities, 49 responses were received; 24 communities (or 40%) in FY2007 said they were experiencing revenue shortfalls. All of their assessments are being set at one level of consumption and consumption continues to go further and further down. Member communities are paying out for their assessments but are not bringing in the revenue at the same level at which they were originally budgeted at. Mr. Favaloro said 40% is a troubling number.

IV. Action Item: 2009/2010 Advisory Board Legislative Package

Mr. Favalaro stated that staff did a PowerPoint presentation at the Executive Committee and Advisory Board meetings last month on the Advisory Board's Legislative Package. The only thing to add to that discussion is that staff has developed an *Act to Expand the Septic Tax Credit*. The septic tax credit allows anyone in the Commonwealth that replaces their septic system to get up to \$7,500 in tax credit over five years; it is not debated from year to year, it is right in the tax code. Staff would like to amend the septic tax credit to also include a tax credit up to 20% of the debt service portion of an owner-occupied homeowner's retail sewer bill. It is a whole new approach, separate from DSA.

Staff met with Caucus Chairman Ron Mariano and he thinks the *Act to Expand the Septic Tax Credit* is a good approach and has offered his support. He believes that it is the right approach to get the subject on the table although he does not believe we would get 20% because this is in perpetuity as opposed to a septic tax credit which has a finite life of five years. Chairman Mariano would also like to sponsor the *Water Resources Funding Act*, the tax on bottled water. He likes these two items because they offer a new approach to secure funding.

A Motion was made to **APPROVE THE 2009/2010 ADVISORY BOARD LEGISLATIVE PACKAGE**. It was seconded and passed by unanimous vote.

V. Update: Authority's Proposed Cuts to the FY09 Current Expense Budget

Mr. Favalaro said last month the Advisory Board had a discussion relating to potential approaches to address the \$15 million loss of Debt Service Assistance for FY09 (in reality \$11.25 million that needed to be made up).

The Authority staff has put together some ideas that were brought forward to the Board of Directors this past Wednesday. It is fair to say there will be a formal amendment process that will more than likely be triggered next month at the MWRA Board of Directors meeting where they will formally vote to transmit the amendment to the budget to the Advisory Board for comment and review for which Advisory Board staff has 30 days.

The budget that was approved by the Authority in June assumed statewide DSA of \$15 million so assessments went out with the assumption that the Authority was going to get \$11.25 million. In July, the Legislature increased DSA to \$20 million and then overrode the Governor's veto, which then would have made the MWRA's piece of DSA \$15 million. The communities never received the difference of the value between \$11.25 million and \$15 million (\$3.75 million) in their assessments.

The major difference between the Advisory Board's and the MWRA's ideas is that the Authority staff feels strongly that they want to continue making additional payments to the pension liability.

Staff believes that this is not just an FY09 problem; it is a problem that will linger into FY10 and well beyond. The solutions or plan put forward for FY09 is the foundation for moving through the impacts which will be felt in FY10 and FY11. It is unlikely that DSA will return in the near future.

Reductions are good because they are real and they cut the bottom line. Favorable trends are not real cuts. Assuming that interest rates are going to stay at a certain level in this

volatile market, and using those assumptions to balance the FY09 deficit, may not be the best approach because it is unknown if they will carry forward in FY10. Finding a real cut will not only help in FY09, it will help beyond. The Authority gets to its number using a combination of favorable trends and reductions. The Advisory Board is going to push for more reductions, while hoping for the favorable trends that could provide a surplus at the end of this fiscal year, which then could be used to offset the increases in FY10.

Instead of purchasing vehicles out of its operating budget, the Authority is purchasing vehicles out of its current revenue for capital; that is not making a real cut, it is just shifting it. It may be in violation of the MWRA's stated policy on what those funds can be used for.

VI. Action Item: Revised FY09 Advisory Board Budget

Mr. Favaloro said staff decided to review the Advisory Board's budget to try to give a little bit back to the Authority, making some additional cuts that total a little over \$7,000. Principally it comes from the Wages & Salaries line item along with tweaks to other line items.

Mr. Favaloro stated that he would not be taking a salary increase as part of the FY09 discussion if a favorable review is given and that he has some concepts and ideas to minimize the increase for the FY10 budget as well.

Mr. Woods asked if WSCAC and WAC will be doing the same. Mr. Favaloro said they are autonomous agencies but he has suggested that they do the same.

A Motion was made **TO APPROVE REVISIONS TO THE FY09 MWRA ADVISORY BOARD BUDGET**. It was seconded and passed by unanimous vote.

VII. Potential for an "Infrastructure" Component to an Economic Stimulus Package

Mr. Favaloro stated that he took a moment out of the Water and Sewer Survey discussion to address this item. Congressman Lynch has said that he believes the overall economic stimulus bill is going to be around \$300 billion. There isn't a desire, politically or otherwise, to get the whole \$300 billion between now and when President-Elect Obama takes office, but there was some discussion that perhaps \$100 billion could be released specifically for infrastructure.

Infrastructure is bridges, roads, water, sewer and railroads. If it's one-third going to water and sewer, how can we best position ourselves to get as much of that as quickly as we can.

VIII. Impacts Due to a Fire at the MWRA's Residuals Processing Plant Located in Quincy

Mr. Favaloro said that the New England Fertilizer Company (NEFCo), which operates the pelletizing facility for the MWRA, had a fire in some of its duct work. NEFCo has stopped the production of pellets, forcing the Authority to move sludge cake by truck (18 trucks per day), which has to be transported to the City of Quincy.

The fire was in a 750-foot stainless steel section of duct work. To clean and replace that section of duct work will cost about \$500,000. The fire has forced the Authority to push the pelletizing plant forward on its critical path on the preventative maintenance list.

In the short term, it will take between now and December to get that duct work replaced and the rest of the duct work cleaned out. In the interim, all of the product will be moved by truck.

Additionally, the Quincy Fire Department has insisted that a fire suppression system be installed, which will take some time to design and install. The question is whether the plant will be allowed to go back to producing pellets and get back to a steady state while the suppression system is designed and installed. The costs belong to NEFCo. A long-term shutdown is not expected.

IX. Approval of the Advisory Board Agenda for November 20, 2008

A Motion was made **TO APPROVE THE ADVISORY BOARD AGENDA FOR THE NOVEMBER 20, 2008 MEETING.** It was seconded and passed by unanimous vote.

X. Adjournment

A Motion was made **TO ADJOURN THE MEETING AT 10:05 A.M.** It was seconded and passed by unanimous vote.

Respectfully submitted,

Edward Sullivan, Secretary