NEENAH-MENASHA SEWERAGE COMMISSION

Closed Session
Tuesday September 22, 2009

Motion made by Commissioner D. Youngquist, seconded by Commissioner R, Zielinski to convene into closed session under Section 19.85(1)(g) and 19.85(1)(e) of the Wisconsin Statutes to confer with legal counsel concerning strategy to be adopted by the NMSC with respect to their joint defense with the Cities of Neenah and Menasha in connection with potential liability arising from the Lower Fox River/Green Bay Natural Resource Damage Assessment, Lower Fox River and Green Bay remediation issues, and related potential litigation and to discuss strategies for negotiations with representatives of the United States of America and the State of Wisconsin on compromise settlement of potential CERCLA liability, indemnification, contribution protection and municipal entities infrastructure concerns with respect to the Lower Fox River/Green Bay.

The Closed Session was called to order by Commission President W. Zelinski at 9:05 a.m.

Present: Commissioners R. Zielinski, G. Falck, K. Bauer, W. Helein, D. Youngquist, W. Zelinski; Manager Much, Attorney Gunz, Accountant Voigt.

Also Present: Paul Much (MCO); Attorney Brandt (Menasha); Attorney Godzlewski (Neenah); Attorney Thiel (NMSC).

Fox River/PCB Issue – Attorney Gunz reported on the insurance company movement in this issue. Payments have been received from Bituminous Insurance Company; payments are expected soon from General Casualty; and, Employers has agreed to go back to June 2008 in covering legal costs. Approximately $450,000 - $470,000 has been received. General Casualty originally sued the Commission saying there was no coverage but has since agreed to dismiss the lawsuit with a tolling agreement. $40,000 was spent to have an expert come in to reconstruct from records who the insurance carriers were for the Commission in the 1950's to 1980's. Davis & Kuelthau will now bill the insurance companies directly. Hartford Insurance has not yet agreed to participate in the costs and it is felt they may be proposing a lump sum settlement. Litigation is scheduled to start December 1; it may be moved back to January. Once the litigation starts, the attorney bills will become enormous. Commissioner R. Zielinski questioned who devised the formula as to what amounts do the insurance companies pay? It is believed that some type of cost sharing agreement has been reached between the insurance companies. They have agreed to pay 100% of the bills.

Motion made by Commissioner R. Zielinski, seconded by Commissioner D. Youngquist to adjourn the closed session and return in regular open session. Motion carried unanimously. The Commission returned to Regular open session at 9:18 am.

President

Katherine L. Bauer
Secretary

NEENAH-MENASHA SEWERAGE COMMISSION

Closed Session
Tuesday August 25, 2009

Motion made by Commissioner T. Hamblin, seconded by Commissioner W. Helein to convene into closed session under Section 19.85(1)(g) and 19.85(1)(e) of the Wisconsin Statutes to confer with legal counsel concerning strategy to be adopted by the NMSC with respect to their joint defense with the Cities of Neenah and Menasha in connection with potential liability arising from the Lower Fox River/Green Bay Natural Resource Damage Assessment, Lower Fox River and Green Bay remediation issues, and related potential litigation and to discuss strategies for negotiations with representatives of the United States of America and the State of Wisconsin on compromise settlement of potential CERCLA liability, indemnification, contribution protection and municipal entities infrastructure concerns with respect to the Lower Fox River/Green Bay AND under Section 19.85(1)(e) of the Wisconsin Statutes to confer with legal counsel for the purpose of deliberating the Town of Neenah Sanitary District capital prepayment. Motion carried unanimously. Meeting entered into closed session at 9:42 am.

The Closed Session was called to order by Commission President W. Zelinski at 9:42 am.

Present: Commissioners R. Zielinski, T. Hamblin, G. Falck, K. Bauer, W. Helein, D. Youngquist, W. Zelinski; Manager Much, Attorney Gunz, Accountant Voigt.

Also Present: Paul Much (MCO).

Fox River/PCB Issue – Attorney Gunz reported there is some movement from the seven insurance carriers that provided coverage from 1951 – 1984. There is the movement of looking towards contributing to the defense costs. So far there are roughly 6 million documents; a paralegal firm has been hired to summarize the documents; there are still issues regarding the lost insurance policies; they would be helpful to the Cities of Neenah and Menasha. December 1 is the start of the trial; this will be phase 1 of 4 phases. The discovery portion of the lawsuit is almost done. Davis & Kuelthau has sent out a proposal as to why we should not be involved in the lawsuit. We are trying to meet face-to-face with Spector in Washington D.C. The trial will be held in Milwaukee due to the large amount of attorneys involved and having a room large enough for everyone. We are looking for a settlement option in the next several months. Commissioner G. Falck questioned how this involves the Towns. The Towns were not a part of the Sewerage Commission at the time of the PCB issues. Commissioner T. Hamblin questioned about having a potential settlement with the DNR. They are looking at entities such as the Sewerage Commission that will be here in perpetuity for river monitoring. This could be problematic for NMSC and Appleton. It will depend on what they want in in-kind service to be performed. So far the working relationships with the Neenah and Menasha attorneys have been very good. There is nothing in a concrete form for a settlement. Commission President W. Zielinski questioned if Attorney Gunz will be dissolving himself of everything related to this action when he retires. Attorney Gunz will not, he will continue to make himself available.

Town of Neenah Capital Prepayment Issue – Attorney Gunz reported they met with the Town about a month ago. He indicated he kept out of the issue until now because he was heavily involved in the development of the resolution in 1984. Attorney Gunz reported on the history – The final actual costs of the project were not to be known for several months. In the 1970's the City of Neenah borrowed money for the purpose of payment of the plant project originally planned in the 1970's. The Ordinance/Contract was drafted specifically indicating the City of

Neenah could prepay their costs for the project. In calculating the prepayment splits, Neenah, Menasha, and the Town of Menasha had flow and loading data. There was no loading data for the Town of Neenah and Waverly Sanitary District. The Town of Neenah attorney interpreted Sanitary District law that if a Town Sanitary District had debt, they could not be annexed. This was in part the reason for the Town of Neenah wanting to prepay the capital costs of the project. The City of Neenah did not want to prepay due to the risk of fluctuations in loadings between the communities. Attorney Gunz furthered reviewed the history of what brought this issue to an ordinance. Attorney Gunz indicated he feels the Commission made the correct decision. The Commission further discussed the issue. Commissioner D. Youngquist suggested that out of fairness, should the NMSC possibly consider offering ½ of the amount to be paid back to the Town of Neenah over 2 – 3 years? Attorney Gunz reported he feels the NMSC is correct on legal grounds, though he does feel the Town of Neenah has some merit in its request – the issue of keeping track and reporting the difference on the financial statements. It was questioned if the NMSC should wait and see what happens or should the NMSC propose a settlement. Attorney Gunz reported the Commission does not need to take any further action beyond what they have done already; it's a political issue. Further discussion ensued on the issue of offering a settlement option. After discussion, motion made by Commissioner D. Youngquist, seconded by Commissioner G. Falck that the four municipalities that would owe to make an offer to the Town of Neenah to pay them ½ of the amount over a three year period with no interest. Voting aye: Commissioners G. Falck, D. Youngquist, K. Bauer. Voting nay: Commissioners W. Helein, R. Zielinski, T. Hamblin. Motion tied. President W. Zelinski voting nay – Motion failed.

Motion made by Commissioner R. Zielinski, seconded by Commissioner D. Youngquist to adjourn the closed session and return in regular open session. Motion carried unanimously. The Commission returned to Regular open session at 11:00 am.

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President

Katherine L. Bauer
Secretary