



RIVANNA SOLID WASTE AUTHORITY

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RSWA BOARD OF DIRECTORS Minutes of Regular Meeting December 17, 2007

A regular meeting of the Rivanna Solid Waste Authority (RSWA) Board of Directors was held on Monday, December 17, 2007 at 2:30 p.m. in the Conference Room, Administration Building, 695 Moores Creek Lane, Charlottesville, Virginia.

Board Members Present: Mr. Michael Gaffney - Presiding, Mr. Mark Graham, Ms. Judith Mueller, Mr. Gary O'Connell, and Mr. Robert Tucker.

Authority Staff Present: Mr. Bruce Edmonds, Mr. Tom Frederick, Ms. Mary Knowles, Ms. Jennifer Whitaker, Dr. Robert Wichser, and Mr. Lonnie Wood.

Also Present: Mr. Robert Huff – Principal with Robinson, Farmer, Cox Associates, Mr. Kurt Krueger - RSWA Attorney, members of the public, and media representatives.

1.0 Call to Order

The regular meeting of the RSWA Board of Directors was called to order by Mr. Gaffney on Monday, December 17, 2007 at 2:30 p.m., and he noted that a quorum was present.

2.0 Minutes of the Previous Meeting

Mr. Graham moved that the Board of Directors vote to approve the minutes of the regular Board meeting held on Monday, November 26, 2007, seconded by Mr. Tucker. The motion was approved by a 5 – 0 vote.

3.0 Executive Director's Report

Mr. Frederick noted that the Local Government Support Agreement, which has been approved by both the Charlottesville City Council and the Albemarle County Board of Supervisors, is on today's agenda under Other Business. He was grateful for the efforts by everyone sitting at the Board table today to try to resolve this particular issue and to move the process forward. This Agreement will provide the Authority with some financial support until 2010, and RSWA through its diligent efforts during the strategic planning process currently underway will try to find mechanisms for both services and funding support beyond that date.

Mr. Frederick next report on a matter related to the Strategic Plan. A citizen survey was now available on the Strategic Plan website. He encouraged all citizens interested in this issue to complete the survey and also encouraged the media to make this survey known to its readership across the spectrum.

4.0 Items from the Public

There were no items from the public.

Prior to moving on to the Consent Agenda, Mr. Gaffney recognized Mr. Krueger, RSWA Attorney. Mr. Krueger stated that it was appropriate that the Board go into a closed meeting at this time so that he could provide some advice of counsel prior to a discussion of Other Business items listed on today's agenda.

8.0 Closed Meeting

The Closed Meeting segment of the meeting was moved to this point in the agenda.

Mr. Tucker made the following motion, which was seconded by Ms. Mueller:

RESOLVED that the Board of Directors of the Rivanna Solid Waste Authority enter into a closed meeting for consultation with legal counsel pertaining to potential litigation and for consultation with legal counsel regarding specific legal matters requiring the provision of advice by counsel as permitted by Section 2.2-3711.A.7 of the Code of Virginia.

The motion was approved by a 5 – 0 vote, and the RSWA Board of Directors went into a closed meeting at 2:35 p.m.

ATTENDEES: Mr. Gaffney, Mr. Graham, Ms. Mueller, Mr. O'Connell, Mr. Tucker, Mr. Krueger, and Mr. Frederick.

9.0 Resumption of Open Meeting

The RSWA Board of Directors meeting reconvened at 2:58 p.m.

Mr. Tucker made the following motion, which was seconded by Ms. Mueller:

WHEREAS, the Rivanna Solid Waste Authority has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712.D of the Code of Virginia requires a certification by the Rivanna Solid Waste Authority that such closed meeting was conducted in conformity with Virginia Law;

NOW, THEREFORE, BE IT RESOLVED that the Rivanna Solid Waste Authority hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification resolution applies, (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Rivanna Solid Waste Authority.

**There being no further discussion Mr. Gaffney called for a roll call vote:
Ms. Mueller – Aye, Mr. O'Connell – Aye, Mr. Gaffney – Aye, Mr. Tucker – Aye, and
Mr. Graham – Aye.**

5.0 Consent Agenda

Mr. Gaffney asked if there were any items that the Board members would like to pull for discussion from the Consent Agenda.

- 5a) Staff Report on Finance**
- 5b) Staff Report on Ivy Material Utilization Center**
- 5c) Staff Report on Recycling Operations**
- 5d) Staff Report on Ivy Landfill Environmental Status**

Mr. Tucker moved that the Board of Directors vote to approve Items 5a), b), c), and d) of the Consent Agenda, seconded by Mr. O'Connell. The motion was approved by a 5 – 0 vote.

6.0 Other Business

In regards to **Item 6a), Local Government Support Agreement with City of Charlottesville and County of Albemarle**, Mr. Frederick reported that a copy of the agreement that was approved by the Albemarle County Board of Supervisors and Charlottesville City Council is included in the Board packet. This Agreement is a culmination of negotiations that have taken place for several years.

Mr. Frederick then provided brief background information for members of the public who might not be familiar with this issue. Albemarle County and the City of Charlottesville have two separate methods for the provision of waste collection within their jurisdictions, which is typical of the differences in how solid waste services are offered to urban and rural areas across the country. The agreement that created RSWA fully recognized those differences. Until 1998, RSWA was directly providing the service of landfilling the wastes, except those being recycled or reused, through its own Ivy Landfill facility. At the time the Ivy Landfill was closed to municipal solid waste, it was necessary for RSWA to find ways to contract with private sector companies who provided privately-operated, permitted and approved landfills in Virginia. RSWA contracted with the company now known as Waste Management for transportation and disposal of waste from the Ivy Transfer Station,, a facility built on the Ivy landfill site to receive wastes from haulers and citizens in the community, and compact the wastes into truck trailers for efficient transport to the Waste Management landfill. RSWA also contracted with what was then called BFI to allow RSWA customers to use BFI's Zion Crossroads Transfer Station. BFI and Waste Management wanted advantages for their private collection services bundled together in the disposal agreement that was essential for the Authority, and the negotiated landfill disposal agreements with those companies created a situation where the fees for BFI and Waste Management were different from the fees that RSWA could charge to other haulers. This fee structure later raised concerns in this community about the differences in the way customers within the City and customers within the County were handled.

Mr. Frederick next reported that the major provisions in the final agreement are summarized on page 2 of his memorandum as follows:

- The City will pay to RSWA the balance of the funds that have been withheld since 2001 in the amount of about \$1.6 million within 30 days of approval of the agreement. Interest

and penalties that have been charged by RSWA against those withheld funds will be waived. There are no restrictions on how this Board or Authority uses those funds.

- The City will pay to the Authority all current tipping fees including the “Service Contribution Fee” through June 2008. Effective July 1, 2008, the City and commercial businesses in the City will be able to seek services in the same way that private individuals in the County can obtain services.
- Tipping fee increases by RSWA for the next three years cannot exceed a specified CPI index.
- RSWA is to account for the split in the origin of wastes for which a Service Contribution Fee is paid based on declarations of origin made at the transfer stations by the driver of each load. RSWA is not obligated to try to prove if the driver’s information is correct, but the Authority is obligated to obtain that information. Each fiscal year through June 2010 RSWA will reconcile or “true-up” to allow the actual Service Contribution Fees paid in the City and the County to match the split in population between those two entities as established by the Weldon Cooper Center. The agreement establishes the split for the current fiscal year as 70% County and 30% City and will be adjusted from that point forward.
- The manner of handling funds in this agreement runs through June 30, 2010, at which time the terms of this agreement expire.
- Any remaining budget deficits beyond what is paid through Service Contribution Fees to RSWA is to be split on a basis of population between the City and the County.
- RSWA is asked to set a goal to complete implementation of the Strategic Plan by June 30, 2010.
- The new agreement supersedes the 1990 RSWA Organizational Agreement among the City, County, and RSWA that established the Authority to the extent of conflict between the two agreements.

Mr. Frederick then reported that staff is recommending that the Local Government Support Agreement be adopted by RSWA with voting to be conducted as recommended by the Authority’s attorney. He then turned the meeting over to Mr. Kurt Krueger.

Mr. Krueger next reminded the Board members of their obligations under the State and Local Government Conflict of Interest Act, which is enacted in the Virginia Code under Section 2.2-3100. The Act requires each officer or employee of any state or local governmental or advisory agency, which includes any member of the Board of Directors of this Authority, who has a personal interest in a transaction, to disqualify himself from participating in the transaction if the transaction has application solely to the property or a business or a governmental agency in which he has a personal interest. He further advised that the fact that a Board member is employed by the City or the County and makes more than \$10,000 a year as such employee causes the Board member to have a personal interest in the transaction under the Act. The agreement the Board is about to consider is an agreement between the Authority and certain of the Board members’ employers and therefore appears that there is a conflict of interest under the Act. In order to abide by the Act, these Board members would have to declare the conflict, state the reasons for the conflict, and not participate in the discussion of or voting on the transaction.

Ms. Mueller next made the following statement for the public records: "I am disqualifying myself from participation in this transaction and request that this fact be recorded in the appropriate public records for a period of five years. I am employed as the Director of Public Works of the City of Charlottesville with a salary over \$10,000 annually and the City may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the above described proposed action of the Rivanna Solid Waste Authority."

Mr. O'Connell next made the following statement for the public records: "I am disqualifying myself from participating in this transaction and request that this fact be recorded in the appropriate public records for a period of five years. I am employed as the City Manager of the City of Charlottesville with a salary over \$10,000 annually and the City may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the above described proposed action of the Rivanna Solid Waste Authority."

Mr. Tucker next made the following statement for the public records: "I am disqualifying myself from participating in this transaction and request that this fact be recorded in the appropriate public records for a period of five years. I am employed as the County Executive of Albemarle County with a salary over \$10,000 annually and the County may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the above described proposed action of the Rivanna Solid Waste Authority."

Mr. Graham next made the following statement for the public records: "I am disqualifying myself from participating in this transaction and request that this fact be recorded in the appropriate public records for a period of five years. I am employed as the Director of Community Development of Albemarle County with a salary over \$10,000 annually and the County may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the above described proposed action of the Rivanna Solid Waste Authority."

As there was no further discussion, Mr. Gaffney moved that the Board of Directors authorize the Executive Director to execute the attached Local Government Support Agreement on behalf of the Rivanna Solid Waste Authority, seconded by Mr. Gaffney. The motion was approved by a 1 – 0 vote. Ms. Mueller, Mr. O'Connell, Mr. Tucker, and Mr. Graham recused themselves from the vote.

[Copies of the Transactional Disclosure Statements required by Section 2.2-3115(E) of the Act signed by Ms. Mueller and Messrs. O'Connell, Tucker and Graham are attached to these minutes]

In regards to **Item 6b), Authorization to Exercise Options to Extend Waste Disposal Contracts with Allied Waste Industries Inc. and Waste Management Inc.**, Mr. Frederick referenced the two contracts that he previously discussed in **Item 6a)**. The contracts with Waste Management Inc. and Allied Waste Industries Inc., formerly known as BFI, went into effect in 1998, which allowed RSWA to have waste transported and disposed in private landfills. Each of those agreements provide terms that are in effect for ten years concerning pricing information on transportation and disposal of solid waste as well as a CPI index that allows those terms to change with the economic climate. Both of those agreements expire on June 30, 2008, but in both cases the agreements allow RSWA the exclusive right to extend the terms of the agreements in two different actions up to five years each. The Waste Management Inc. contract states that in

order to invoke that sole right RSWA must give Waste Management Inc. a 180-day notice, which meant that the notice needed to be served by January 2, 2008. The Allied Waste Inc. contract does not include the 180 days written notice requirement.

Mr. Frederick further stated that the terms of these contracts are very favorable under today's market, and RSWA sees no advantage of obtaining a new agreement in the open market. Further, provisions in the Local Government Support Agreement just adopted by the Board require RSWA to extend these two agreements for an additional five-year term.

Mr. Frederick next reported that RSWA staff is recommending today that the Board authorize the Executive Director to exercise the Authority's option to extend each of these agreements for an additional five-year term each expiring June 30, 2013, reserving the right in 2012 to add another five-year extension to those two contracts. Since the strategic planning process currently underway might lead to other ways of delivering service beyond that date, the Authority feels that it should keep its options open and not make a commitment to a second five-year extension at this time.

Mr. Tucker moved that the Board of Directors authorize the Executive Director to serve notice to Allied Waste Industries Inc. and Waste Management Inc. to exercise RSWA's option to extend these two waste disposal agreements for an additional five-year term each expiring June 30, 2013, seconded by Mr. O'Connell. The motion was approved by a 5 – 0 vote.

In regards to **Item 6c), Write-off of City Late Fees**, Mr. Frederick stated that one of the terms of the Local Government Support Agreement just adopted by this Board requires that the late penalties and interest charges imposed and accrued by RSWA against the Service Contribution Fees withheld by the City since September 2001 be waived. This action would execute that portion of the agreement just adopted by the Board.

Mr. Krueger next reminded the employees of the City who sit on this Board that since this action would write-off the late fees the City owed on its Service Contribution Fees, their obligations under the State and Local Government Conflict of Interest Act would be guided by the same analysis he gave for the State and Local Government Support Agreement in terms of disqualification by declaring the conflicts, stating the reasons for the conflicts, requesting that the declaration be recorded in the appropriate public records for five years, and not participating in the discussion of or voting on the transaction.

Ms. Mueller next made the following statement for the public records: "I am disqualifying myself from participation in this transaction and request that this fact be recorded in the appropriate public records for a period of five years. I am employed as the Director of Public Works of the City of Charlottesville with a salary over \$10,000 annually and the City may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the above described proposed action of the Rivanna Solid Waste Authority."

Mr. O'Connell next made the following statement for the public records: "I am disqualifying myself from participating in this transaction and request that this fact be recorded in the appropriate public records for a period of five years. I am employed as the City Manager of the City of Charlottesville with a salary over \$10,000 annually and the City may realize a reasonably

foreseeable direct or indirect benefit or detriment as a result of the above described proposed action of the Rivanna Solid Waste Authority.”

As there was no further discussion, Mr. Tucker moved that as referenced in Section 1 of the Local Government Support Agreement, the City and County had agreed that the late fees and interest are to be forgiven and due to the material affect of this amount to the FY 2007 and the FY 2008 financial statements, the Board of Directors vote to approve that the specific amount to be written-off at \$1,610,678.

Mr. Tucker further moved that as referenced in Section 1 of the Local Government Support Agreement, the Board of Directors vote to give approval to RSWA staff to no longer charge or accrue late fees on these accounts related to the withheld Service Contribution Fees from December 1, 2007, forward until the payment is received from the City for the withheld balances provided payment conforms to the terms of the agreement.

Mr. Graham seconded both motions, and the motions were approved by a 3 – 0 vote of the Board of Directors. Ms. Mueller and Mr. O’Connell recused themselves from the vote.

[Copies of the Transactional Disclosure Statements required by Section 2.2-3115(E) of the Act signed by Ms. Mueller and Messrs. O’Connell, Tucker and Graham are attached to these minutes]

7.0 Other Items from Board/Staff not on Agenda

There were no other items from Board or staff not on the agenda.

8.0 Closed Meeting

There was no need for another closed meeting at this point in the agenda.

9.0 Adjournment

There being no further business, Mr. Graham moved the meeting be adjourned, seconded by Mr. Tucker. All members voted aye, and the meeting was adjourned at 3:15 p.m.

Respectfully submitted,

Mr. Gary O’Connell
Secretary - Treasurer