



RSWA BOARD OF DIRECTORS
Minutes of Regular Meeting
September 22, 2009

A regular meeting of the Rivanna Solid Waste Authority (RSWA) Board of Directors was held on Tuesday, September 22, 2009 at 2:00 p.m. in the lower level Board Room of the Albemarle County Service Authority, 168 Spotnap Road, Charlottesville, Virginia.

Board Members Present: Dr. David Brown, Mr. Kenneth Boyd, Mr. Michael Gaffney - Presiding, Mr. Mark Graham, Ms. Judith Mueller, and Mr. Robert Tucker.

Board Member Absent: Mr. Gary O'Connell.

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

Also Present: Mr. Jeff Greer - RSWA Citizens Advisory Committee Chairman, Mr. Kurt Krueger – RSWA Counsel, 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 Tuesday, September 22, 2009 at 2:00 p.m., and he noted that a quorum was present.

2.0 Minutes of the Previous Meeting

Mr. Tucker moved that the Board of Directors vote to approve the minutes of the regular meeting of the Board held on Tuesday, August 25, 2009, seconded by Mr. Boyd. The motion was approved by a 6 – 0 vote. Mr. O'Connell was absent from the vote.

3.0 Executive Director's Report

No report this month.

4.0 Items from the Public

Ms. Betty Mooney, who resides at 201 Sunset Avenue, Charlottesville, VA, commented that she was in attendance today to discuss her concerns about the lawsuit being initiated by RSWA against Mr. van der Linde. She then expressed her concerns about the cost of this lawsuit to the ratepayers of the City of Charlottesville and hoped that the elected officials on the RSWA Board would “look out” for the ratepayers. She particularly noted Mr. Boyd’s recent announcement about running for Congress on a “platform of fiscal conservatism.” Ms. Mooney believed that “upping this lawsuit to a RICO suit is going to cost probably \$20 million - maybe more - to the ratepayers.” She did not “see the point” of this lawsuit because of the service she felt that Mr. van der Linde is providing to this community. She next asked the Board members who had read the articles in *The Hook* written by Mr. Dave McNair if they disagreed with any of the information contained in those articles about the lawsuit. Ms. Mooney believed that the articles

were presented in an “accurate manner” and claimed that she has not heard anyone “dispute” the information. She further alleged that “there is no reason under the sun that this Board should be in the middle of this lawsuit” because of the service that Mr. van der Linde was providing for this community. Ms. Mooney next stated that it appeared “to many of us like you’re trying to shut him down because your Solid Waste Authority is going under and losing money, and he is getting new equipment to handle more waste and the haulers are going to him because it’s more economical.” She agreed that there had been “a lot of confusion with BFI with all these fees and whether they asked people where they were from ...” but she believed that it was not Mr. van der Linde’s “fault.” Ms. Mooney then claimed that the individuals that were involved in that matter at that time, specifically Dr. Richard Collins and Mr. Kevin Lynch, “felt all along that this whole fee idea was ridiculous and maybe not even legal.” Ms. Mooney further commented that she did not “see where there’s a case,” and asked that one of the Board members provide an explanation “to the taxpayers and the ratepayers of the City and the County why you are doing this and what is the case and where’s the evidence and is *The Hook* wrong. Is what they’re reporting inaccurate or is it accurate?” Ms. Mooney concluded her comments by stating that “we deserve an explanation because it’s our money.”

Mr. Gaffney thanked Ms. Mooney for her comments, and since there were not other members of the public in attendance who wanted to provide comments, Mr. Gaffney closed the public comment portion of the meeting.

Prior to moving on to the Consent Agenda, Mr. Boyd asked Mr. Krueger if he was in a position at this time as RSWA Counsel to address some of Ms. Mooney’s questions. In response Mr. Krueger stated that “as we have briefed the Board, we disagree with a number of the allegations made by *The Hook* and its characterization of the lawsuit, but it is a lawsuit and we want to maintain the attorney-client privilege. We believe we have a meritorious claim to collect Service Contribution Fees that are lawfully owed to the Authority and that’s why we are pursuing this suit. I don’t know that we want to make much comment beyond that.”

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**
- 5e) Revised Guidelines for Public Comments at Board of Directors Meetings**

Mr. Graham moved that the Board of Directors vote to approve Items 5a), b), c), d), and e) of the Consent Agenda, seconded by Mr. Tucker. The motion was approved by a 6 – 0 vote. Mr. O’Connell was absent from the vote.

6.0 Other Business

In regards to **Item 6a), Business and Financial Plan**, Mr. Frederick stated that two months ago the Board asked RSWA staff to begin pursuing the possibility of developing a business and financial plan “around the concept of a future operation of an improved transfer station at the Ivy

site.” Since that time, RSWA staff has had individual conversations with some of the Board members to better understand their expectations for the scope of this study. Lengthy discussions have also taken place with the Authority’s Strategic Plan consultant, Gershman Brickner and Bratton (GGB). The results of those discussions were outlined in the Board report and included five basic provisions that would be covered in the plan’s scope of work, which GGB determined would require a \$36,000 fee for this level of effort.

Mr. Frederick next reported that he had further conversations with Mr. Gershman about the potential outcome of such a study, which could provide a “snapshot” of current market conditions and also provide rates for private material recovery facilities (MRFs) and private landfills in comparison to the Central Virginia area. The study could also “define a very efficient operation and maintenance program” and the costs associated with a new transfer station based on the current economy. The study will not be able to fully define the outside risks associated with the operation of the facility that are beyond the control of the RSWA, the County, or the City, which was a concern expressed during some of his discussions with individual Board members.

Mr. Frederick then offered that Mr. Gershman could be available to the Board members during the meeting through a teleconference to answer any questions and provide a briefing on the scope of the business plan.

Mr. Frederick next stated that RSWA staff is requesting some discussion and direction from the Board concerning whether to undertake this study or some type of modification of this study in order to meet the Board’s objectives related to the study’s fee and scope. He felt that a discussion about objectives would be particularly helpful related to the risks that cannot “really be quantified” in such a study.

Mr. Frederick then addressed the fifth provision in the report that discussed the “administrative cost allocation of the Authority.” He stated that the Authority’s budget is set up on a functional basis. Although the administration staff are part of the administrative cost center, work is performed in varying degrees in areas related to the transfer station, remediation, and overseeing the McIntire operation and other free services provided to the public. If RSWA moved toward dividing its operations into either “self-supporting” or “fee-based from government services,” the Authority’s entire budget and cost allocations would need to be re-designed, which will require some effort. Part of the \$36,000 fee would include a review and recommendations for that re-design process.

Mr. Frederick next commented that if the Board was interested in talking to Mr. Gershman today, Mr. Gershman indicated that he would be willing to discuss a smaller scope and fee, which would probably provide less detail concerning cost allocation and market analysis. Mr. Frederick then invited discussion from the Board concerning this item.

Mr. Boyd stated that based on previous discussions on this matter and the study’s inability to really assess the risk, he was rethinking this particular approach. He was interested to hear what the other Board members felt about the possibility of privatizing the transfer station operation instead of developing a business plan that would be based on RSWA’s continued operation of that facility. Mr. Boyd also commented that he felt privatization would necessitate the County taking some action related to ordinances that would ensure a certain recycling level. He has

discussed this issue with the County Board of Supervisors who expressed interested in pursuing this option. He then asked for the other members' thoughts about issuing a Request for Proposals (RFP) to ascertain the interest of private companies to assume the operation of the transfer station instead of developing a business plan.

Ms. Mueller next asked if those policy decisions would need to be made "upfront" so that the bidders would be knowledgeable about issues such as "flow control." Mr. Boyd replied affirmatively and added he felt the policy decisions would be based more on increasing the level of recycling than solely for privatization purposes. Ms. Mueller then commented that she felt the "key" to generating interest from private companies would be to quantify the amount of material that would be handled by the facility.

Mr. Graham then stated that he had similar questions and thoughts about this matter. He commented that in order to implement "flow control" the transfer station would need to be an Authority facility instead of a private facility. Dr. Brown next asked Mr. Graham to define the term "flow control." Mr. Graham stated that "flow control" ordinances adopted by a City and/or County would specify that all haulers in those localities would be required to bring the waste material to a specified facility, ensuring markets for potential investors. Mr. Graham further suggested that a facility might be owned by RSWA but constructed and operated by some private entity.

Mr. Tucker next commented that whether or not a decision is made to move forward with privatization, he felt the issuance of an RFP would provide useful information as to the current market conditions for that type of transfer station operation.

Dr. Brown then stated that "currently the City is basically prohibited from sending waste to Ivy" and inquired if plans to prioritize the Ivy facility would involve City waste. Mr. Boyd responded that in order for the transfer station to become self-sustaining the tonnage figures would need to increase, which was the reason for the recommendation to modernize the facility. He believed that currently the transfer station is limited to accepting 150 tons a day. Mr. Boyd added that he was a "free market type guy," and he felt it made "sense" for people to take their trash to the most conveniently located facility. Dr. Brown then asked Mr. Boyd to clarify if his reference about an ordinance related to the County versus being a City issue. Mr. Boyd replied affirmatively and added that he was more interested in increasing the County's level of recycling than dictating where people took their trash, which he felt "coincided" with upgrading the facility to accept recyclable materials.

Mr. Gaffney next asked Mr. Krueger to address Mr. Graham's previous statement that "flow control" could only be implemented if the transfer station was an "Authority-owned process." Mr. Krueger replied that Mr. Graham had "correctly characterized" the Virginia law about this matter. Localities can adopt "flow control" ordinances that dictate where the citizens in those jurisdictions can take their trash, but those ordinances need to specify a "government-owned" or "authority-owned" facility. The courts have not upheld ordinances that dictate trash to be taken to a privately-owned facility. He further commented that he felt there would be a difference in the bids received from an RFP that included a "flow control" ordinance versus one that did not quantify the volume of material generated by a facility. As pointed out by Mr. Graham, there was also a "hybrid" option whereby the "Authority could own and operate the facility but subcontract that operation to a private entity."

Mr. Boyd then questioned if a private entity would assume the risk of the operation or would the Authority still assume the risk of failure if the "hybrid" option was selected. He added that it was not his intention of "displacing our own employees" no matter what approach is pursued.

Mr. Krueger replied that he was not sure that he had "the exact answer to your question. At some point in that continuum of assuming the risk and how you structure it, it might be deemed by a court in terms of enforceability as 'it's just the private entity operating it.' You might own it, but for all intents and purposes the indices of ownership are the private entity in terms of profit and risk and therefore we're not going to uphold the flow control for it. I think it depends on how far along that continuum you might go."

Mr. Graham next inquired if an RFP could be issued that included two options, one with "flow control" and one without "flow control." Mr. Krueger responded that "from a procurement law standpoint, you could." Mr. Boyd then commented that he was not sure how many people would be responsive to the no "flow control" option. Mr. Graham added that he felt including that option could provide a better assessment as to the risk being assumed by moving forward without "flow control."

Mr. Boyd then asked for the Board's input as to whether they felt this "shift in direction" from the development of a business plan should be further pursued. Dr. Brown next commented that he has been "a little skeptical" of what could be accomplished with the business plan "given the current market. He was "attracted to the idea of what can be offered privately ..." rather than spending \$30,000 on a limited business plan. Dr. Brown further felt that the goals should be clearly "announced," such as increasing the recycling efforts in the County and maintaining some of the services currently being offered by the Authority, including Household Hazardous Waste and Amnesty Days. Mr. Boyd next stated that he felt the acceptance of single-stream recyclable material could be incorporated into an RFP, as well as the provision of special collections at either a cost to the City and the County or "rolled into their pricing." Dr. Brown further suggested that a "side discussion" could be held between the City and the County on how to cooperatively provide "those services originally without necessarily having to go through a third party."

Mr. Tucker next suggested that RSWA staff develop a draft RFP with the assistance of Ms. Mueller, Mr. Graham, and possibly Mr. Krueger, which would be reviewed by the Board at next month's meeting or sooner if necessary. Mr. Tucker felt that further refinements would be needed to the document in order to address any reservations that Dr. Brown and other Board members might have about exploring the option of private-sector involvement in the transfer station operation. Dr. Brown then commented that he wanted to ensure his understanding about the City's role in this process in terms of how trash collection is currently being handled by the County and the City.

Ms. Mueller then stated that currently the Local Government Support Agreement in place is open-ended and presents budgeting difficulties for both the City and the County. She felt the understanding at the time the agreement was executed was that it would be in effect for a limited time period. The agreement expires on June 30, 2010, and she did not anticipate that this issue would be resolved by that time. While the Memorandum of Understanding (MOU) is in place to cover remediation costs at the Ivy site, her goal would be to reach a decision as to the Authority's future as soon as reasonably possible so that the Local Government Agreement does not remain open-ended and thereby facilitates the budget processes for the City and the County. Mr. Boyd

next stated that he felt the original intent was to have the transfer station become self-sustaining either through fees that the County and City charge or through the private sector. He felt there was a market for this type of business and was hopeful that it could become profitable under an arrangement with a private firm, which would lessen the financial burden of both the City and the County of having to supplement the Authority's operations. Mr. Boyd added that he believed Ms. Mueller was correct that this matter would not be resolved by the time the Local Government Support agreement expires on June 30, 2010 and that an extension of that agreement would need to be addressed at some point.

Ms. Mueller next requested that the Board authorize the expenditure of \$2,000 to assist RSWA with the development of this RFP. She added that due to the number of issues that Mr. Frederick currently needs to address and the limited number of RSWA staff that can assist with this project, she felt that it would be a good use of these funds in order to develop the RFP in an expedient manner. Mr. Gaffney was in agreement with Ms. Mueller's request and commented that he felt it was a better use of funds than spending \$36,000 for a business plan. Mr. Tucker also voiced his support for both the development of the RFP and the additional \$2,000 to assist with its development.

It was the consensus of the Board that RSWA staff, with the assistance of Mr. Graham and Ms. Mueller, develop a draft RFP to address how private firms could propose operations at the Ivy Transfer Station, which would be reviewed at the next Board meeting or sooner if available. The Board also authorized the expenditure of \$2,000 to assist in this RFP development process.

Ms. Mueller then asked Mr. Frederick if the Board had provided staff with enough guidance on this matter, and Mr. Frederick replied affirmatively.

7.0 Other Items from Board/Staff not on Agenda

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

8.0 Closed Meeting

There was no need for a closed meeting.

9.0 Adjournment

There being no further business, Mr. Boyd moved the meeting be adjourned, seconded by Mr. Tucker. All members voted aye, and the meeting was adjourned at 2:25 p.m.

Respectfully submitted,

Mr. Robert Tucker
Acting Secretary