

EAST WINDSOR MUNICIPAL UTILITIES AUTHORITY
Minutes of Regular Meeting
Thursday, August 18, 2011

The regular monthly meeting of the East Windsor Municipal Utilities Authority was held on Thursday, August 18, 2011 at the Administration Building on Wiltshire Drive and called to order by Chairperson Moore at 8:00 p.m..

The following Members were present:

Linda L. Moore
Leonard J. Millner
Marc Platizky
Marc Lippman
Steven Kurs
William Lawler
Michael Shifman

Absent: None

Also present:

Edwin Schmierer, Esq., of Mason Griffin & Pierson
James Farry, of Harch Mott MacDonald
Ronald Christ, Finance Officer
Richard Brand, Executive Director
Clark Wolverton, Wastewater Superintendent
Skip Lovejoy, Water Superintendent
Dolores Borosko, Board Secretary

Chairperson Moore requested that the Public Notice be read. The Board Secretary read the statement announcing that the notice and agenda of this meeting were mailed to the Windsor Hights Herald, Trenton Times and Trentonian on August 12, 2011. An agenda was posted on the official bulletin board of the Authority and delivered to the Township Clerk for posting on the bulletin board at the East Windsor Township Municipal complex on August 12, 2011. Chairperson Moore then asked for a roll call after which she asked if any Member had an objection to holding this meeting as advertised. No one objected.

Chairperson Moore asked if any member of the audience wanted to speak on a topic not on tonight's agenda. Hearing no one, Chairperson Moore moved to the first item on the agenda a discussion of approval and adoption of a Memorializing Resolution for Change Order(s) 1-5 for Contract 2008 Wastewater Pollution Control Improvements. There was a brief discussion during which Mr. Millner suggested some changes in wording which the Members agreed to and a motion to adopt the amended resolution was made by Mr. Lippman, seconded by Mr. Millner and unanimously carried.

Resolution

WHEREAS, the East Windsor Municipal Utilities Authority (hereinafter referred to as "Authority") has entered into a Contract for construction services, materials, supplies or equipment as referenced hereinbelow; and

WHEREAS, it has been determined that a Change Order(s) is required to said Contract, and WHEREAS, pursuant to *N.J.A.C. 5:30-11.3* each said Change Order(s) has been reviewed by the Authority's Executive Director and Consulting Engineer when it was found to be necessary and both recommend the authorization of said Change Order(s); and

WHEREAS, pursuant to *N.J.A.C. 5:30-11.3(a)(11)* the Authority's Finance Officer has certified the availability of funds for each said Change Order(s); and

WHEREAS, each said Change Order(s) has been discussed by the Authority at a public meeting and following said discussion authorized by vote by said Authority.

NOW, THEREFORE, BE IT RESOLVED by the East Windsor Municipal Utilities Authority as follows:

1. The Authority hereby authorizes by this written Resolution the Change Order(s) attached: Contract 2008-1, Change Orders 1 through 5.
2. A certified copy of this Resolution shall be filed by the Authority Secretary with the applicable Contract and the Authority is hereby authorized to execute the above approved Change Order(s).

A motion to adopt the Memorializing Resolution for Change Order(s) 1-2 for Contract 2009 Wastewater Pollution Control Improvements was made by Mr. Milner with the same suggested changes as in the previous resolution for Change Order(s) 1-5 in Contract 2008. The motion was seconded by Mr. Lippman and unanimously carried.

Resolution

WHEREAS, the East Windsor Municipal Utilities Authority (hereinafter referred to as "Authority") has entered into a Contract for construction services, materials, supplies or equipment as referenced hereinbelow; and

WHEREAS, it has been determined that a Change Order(s) is required to said Contract; and
WHEREAS, pursuant to *N.J.A.C. 5:30-11.3* each said Change Order(s) has been reviewed by the Authority's Executive Director and Consulting Engineer when it was found to be necessary and both recommend the authorization of said Change Order(s); and

WHEREAS, pursuant to *N.J.A.C. 5:30-11.3(a)(1)* the Authority's Finance Officer has certified the availability of funds for each said Change Order(s); and
WHEREAS, each said Change Order(s) has been discussed by the Authority at a public meeting and following said discussion authorized by vote by said Authority.

NOW, THEREFORE, BE IT RESOLVED by the East Windsor Municipal Utilities Authority as follows:

1. The Authority hereby authorizes by this written Resolution the Change Order(s) attached: Contract 2009-1, Change Orders 1 and 2.
2. A certified copy of this Resolution shall be filed by the Authority Secretary with the applicable Contract and the Authority is hereby authorized to execute the above approved Change Order(s).

Mr. Brand informed the Members that back in 2006 the Authority entered into an Agreement with Edinburgh Road, LLC to provide sanitary sewer and water service to the SciPark

complex. In 2009 the agreement was amended to provide that Edinburg Road, LLC would begin to make payments to the Authority to reserve capacity for their Unbuilt units within SciPark. The units for which capacity was being reserved were for laboratory and research. There is currently no market for this space. Edinburg Road, LLC, therefore, has requested the right to suspend their quarterly reservation payments. No refund of previously paid dollars is sought. Mr. Schmierer stated he had prepared a Resolution authorizing the Second Amendment to the Agreement. A motion was made by Mr. Platizky, seconded by Mr. Millner and unanimously carried.

Resolution

WHEREAS, the East Windsor Municipal Utilities Authority (hereinafter referred to as "Authority") has entered into a Capacity Allocation and Developer's On-Tract and Off-Tract Agreement with Edinburg Road, LLC to provide sanitary sewer and water service to Block 5, Lot 5, East Windsor Township Tax Map; and

WHEREAS, Edinburg Road, LLC in 2009 commenced payment to reserve capacity for the Unbuilt Units within their Development; and

WHEREAS, Edinburg Road, LLC requests a further Amendment to the Capacity Allocation and Developer's Agreement to permit the suspension of said payments through December 31, 2011.

NOW, THEREFORE, BE IT RESOLVED by the East Windsor Municipal Utilities Authority as follows:

1. The Chairperson and Secretary of the East Windsor Municipal Utilities Authority are hereby authorized and directed to execute a Second Amendment to Capacity Allocation and Developer's On-Tract and Off-Tract Agreement with Edinburg Road, LLC for the above-referenced property. The Amendment hereby authorized is on file with the Authority's Secretary and may be inspected during regular office hours.
2. A certified true copy of this Resolution shall be furnished upon its adoption to Edinburg Road, LLC, c/o Stephen A. Santola, Esq., Woodmont Properties, LLC, One Main Street, Chatham, New Jersey 07928-2426.

Mr. Brand stated that Brooktree Swim Club, LLC entered into an agreement with Alliance Homes to facilitate the construction by Alliance Homes of "Brooktree Estates." In September 2010, the Authority entered into an agreement with both Brooktree and Alliance to provide sanitary sewer and water service. Alliance has now withdrawn as Developer and Brooktree wishes to assume all of the Alliance obligations including the payment of off-tract improvements as well as sewer and water connection fees for the proposed Development. Mr. Schmierer has prepared a resolution and Amendment to the Capacity Allocation and Developer's Agreement for Board approval. A motion to approve was made by Mr. Millner, seconded by Mr. Platizky and unanimously carried.

Resolution

WHEREAS, the East Windsor Municipal Utilities Authority (hereinafter referred to as "Authority") entered in on September 16, 2010 a Capacity Allocation and Developer's On-Tract and Off-Tract Agreement with the Brooktree Swim Club, LLC and Alliance Homes for the construction

of residential homes known as "Brooktree Estates"; and

WHEREAS, Alliance Homes has withdrawn from the project as Developer and Brooktree Swim Club, LLC wishes to assume all of the rights and responsibilities under the aforesaid Agreement.

NOW, THEREFORE, BE IT RESOLVED by the East Windsor Municipal Utilities Authority as follows:

1. The Chairperson and Secretary of the East Windsor Municipal Utilities Authority are hereby authorized and directed to enter into an Amendment to the Capacity Allocation and Developer's On-Tract and Off-Tract Agreement dated September 16, 2010 with Brooktree Swim Club, LLC and Alliance Homes. The Amendment hereby authorized is on file with the Authority's Secretary and may be inspected during regular office hours.

2. A certified true copy of this Resolution shall be furnished upon its adoption to Brooktree Swim Club, LLC, 31 Newbury Road, Howell, New Jersey 07731 and Alliance Homes, 897 Route 130, East Windsor, New Jersey 08520.

Mr. Brand updated the Members on the improvements/switch to a Comcast fiber optic line by informing them that Comcast had installed the lines to the administration building.

During a discussion of the Solar Photovoltaic Generation Project at Well 7, Well 8 and Millstone Road Wastewater Treatment Plant Mr. Brand stated that the Authority would have to issue an RFP for Engineering services for Construction Management for the project under the Fair and Open Process. The engineer would have to prepare documents to complete the requirements for the NJEIT Loan Program on or before October 1, 2011. The RFP would be issued immediately for acceptance September 1 and a Special Telephone Conference meeting on September 9 to authorize the engineering firm to perform the work required to file the Letter of Intent and the Planning documents for the NJEIT loan program. A motion to issue the RFP for engineering services related to the solar project was made by Mr. Milner, seconded by Mr. Lippman and unanimously approved.

A motion was made by Mr. Kirs, seconded by Mr. Platizky to schedule a Special Telephone Conference meeting of the Board on September 9, 2011 to review committees' recommendations and appoint the engineers to prepare documents for NJEIT Loan for the solar project. The motion was unanimously carried.

Mr. Milner made a motion to adopt a resolution drafted by Mr. Schmierer declaring the Authority's intent to reimburse expenditures related to the solar project from the proceeds of debt obligations. The motion was seconded by Mr. Lippman and unanimously approved.

Resolution

WHEREAS, East Windsor Municipal Utilities Authority (the "Authority") intends to acquire, construct, renovate and/or install the environmental infrastructure project more fully described in Exhibit A attached hereto (the "Project");

WHEREAS, the Authority intends to finance the Project with debt obligations of the Authority (the "Project Debt Obligations") but may pay for certain costs of the Project (the "Project Costs") prior to the issuance of the Project Debt Obligations with funds of the Authority that are not borrowed funds;

WHEREAS, the Authority reasonably anticipates that obligations, the interest on which is excluded from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), will be issued by either (i) the Authority or (ii) the New Jersey Environmental Infrastructure Trust (the "Issuer") to finance the Project on a long-term basis by making a loan to the Authority with the proceeds of the Issuer's obligations (in either case, the "Project Bonds"); and

WHEREAS, the Authority desires to preserve its right to treat an allocation of proceeds of the Project Debt Obligations to the reimbursement of Project Costs paid prior to the issuance of the Project Debt Obligations as an expenditure for such Project Costs to be reimbursed for purposes of Sections 103 and 141 through 150, inclusive, of the Code.

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Authority as follows:

Section 1. The Authority reasonably expects to reimburse its expenditure of Project Costs paid prior to the issuance of the Project Debt Obligations with proceeds of its Project Debt Obligations.

Section 2. This resolution is intended to be and hereby is a declaration of the Authority's official intent to reimburse the expenditure of Project Costs paid prior to the issuance of the Project Debt Obligations with the proceeds of a borrowing to be incurred by the Authority, in accordance with Treasury Regulations §150-2.

Section 3. The maximum principal amount of the Project Debt Obligations expected to be issued to finance the Project is \$14,000,000.

Section 4. The Project Costs to be reimbursed with the proceeds of the Project Debt Obligations will be "capital expenditures" in accordance with the meaning of Section 150 of the Code.

Section 5. No reimbursement allocation will employ an "abusive arbitrage device" under Treasury Regulations §1.148-10 to avoid the arbitrage restrictions or to avoid the restrictions under Sections 142 through 147, inclusive, of the Code. The proceeds of the Project Bonds used to reimburse the Authority for Project Costs, or funds corresponding to such amounts, will not be used in a manner that results in the creation of "replacement proceeds", including "sinking funds", "pledged funds" or funds subject to a "negative pledge" (as such terms are defined in Treasury Regulations §1.148-1), of the Project Debt Obligations or another issue of debt obligations of the Authority, other than amounts deposited into a "bona fide debt service fund" (as defined in Treasury Regulations §1.148-1).

Section 6. All reimbursement allocations will occur not later than 18 months after the later of (i) the date the expenditure from a source other than the Project Debt Obligations is paid, or (ii) the date the Project is "placed in service" (within the meaning of Treasury Regulations §1.150-2) or abandoned, but in no event more than 3 years after the expenditure is paid.

Section 7. This resolution shall take effect immediately.

EXHIBIT A PROJECT

This project consists of the acquisition, construction and installation of solar panel/solar array structures on land owned by the Authority, and all work and expense ancillary, incidental and related thereto, in order to provide for the generation of energy and consequent reduction in energy costs for the benefit of the Authority.

Mr. Brand updated the Board on progress on American Way apartment complex water meter replacement. Mr. Brand stated that a meeting has been scheduled for August 30, 2011 to test lines and identify un-metered buildings.

During General Discussion/Topics from Board Members Mr. Millner mentioned that he noticed a hose attached to a hydrant on the corner of Dutch Neck and Oak Creek Road by Brooktree Swim Club and questioned if the Authority was aware of someone using this line. Mr. Brand responded that the line was being used by McGraw Hill for work being performed on their solar field.

Mr. Brand informed the Board that there was another main break in Twin Rivers area on Jamestown Road and the problem out there is that the lines are corroded due to the acidic nature of the soil in that area.

Mr. Lawler stated that he would like to bring up a project for future discussion which is the relocation of the administration building. Mr. Lawler thought that the subject should be given consideration by the Board since the building lies in a flood zone.

Mr. Brand asked the Members if they had taken notice that the majority of our fire hydrants had been painted. Mr. Platizky stated that it had been mentioned at a meeting in Twin Rivers. Mr. Brand stated the project was one of several given to the summer help and that they had done a very good job.

Mr. Kurs made a motion to approve Operating bills in the amount of \$225,614.00 and payrolls in the amount \$58,245.02 and \$60,345.34; NJEIT Clean Water Loan Construction Fund Requisition #29 - \$354,282.82; NJEIT Drinking Water Loan Construction Fund Requisition #28 - \$395,159.69 and the ARRA Millstone Road Water Pollution Control Misc. Improvement Requisition #18 - \$28,285.46, seconded by Mr. Lippman and unanimously approved.

The Operating Report was approved on a motion made by Mr. Kurs, seconded by Mr. Lippman and unanimously carried.

Chairperson Moore requested a motion on the Development Report and Mr. Kurs made a motion to accept, seconded by Mr. Lippman and unanimously approved.

A motion was made by Mr. Platizky to approve the Finance Officer's report, seconded by Mr. Millner and unanimously carried. Mr. Christ gave each of the Members a copy of the 2011/2012 Budget to review for discussion at September meeting.

The Attorney's Report for July was approved on a motion made by Mr. Kurs, seconded by Mr. Lippman and unanimously carried.

The Engineer's Report was approved on a motion made by Mr. Platizky, seconded by Mr. Lippman and unanimously carried.

A motion to approve the minutes of the June 16, 2011 Regular Board Meeting with a correction for the spelling of the attorneys' name was made by Mr. Lippman, seconded by Mr. Millner and unanimously carried.

There being no further items for discussion the meeting was adjourned.

Respectfully,


Marc Platizky, Secretary