

South Suburban Joint Action Water Agency

Minutes of August 29, 2013 Regular Meeting

A public notice and agenda for the August 29, 2013 regular meeting of the South Suburban Joint Action Water Agency was posted in the Markham City Hall on Tuesday, August 27, 2013.

The regular meeting held in the city council chambers in Markham, Illinois was called to order by agency vice chairman Denson at 3:30 pm. Vice chairman Denson informed the directors agency secretary Ward was absent and requested action to appoint agency counsel Stillman acting secretary for the meeting.

A motion and second offered by Directors Kitching and Bilotto to appoint Micheal Stillman acting secretary for the meeting was approved 6 aye/0 nay/0 abstain/1 absent by roll call vote.

Acting secretary Stillman conducted an attendance roll call and determined directors Howard, Denson, Kellogg, Bilotto, Killelea, Kitching and a legal quorum present.

Also in attendance: Michael Stillman, agency counsel; Brett Postl, agency program manager; Agency Alternate Director Kevin Michaels; Dave Schutter, Public Funding, Inc.; and Dan Donahue, Odelson & Sterk.

Agenda Item 4 - Secretary Ward was absent.

Agenda Item 5 - Approval of Minutes

5a) A motion and second offered by Directors Kitching and Howard to accept the agency executive session meeting minutes of June 27, 2013 was approved 5 aye/0 nay/1 abstain/1 absent by roll call vote.

5b) A motion and second offered by Directors Kitching and Bilotto to accept the agency executive session meeting minutes of July 2, 2013 was approved 5 aye/0 nay/1 abstain/1 absent by roll call vote.

5c) Action on the agency regular meeting minutes of July 25, 2013 was deferred to the next agency meeting.

5d) A motion and second offered by Directors Kitching and Bilotto to accept the agency executive session meeting minutes of July 25, 2013 was approved 5 aye/0 nay/1 abstain/1 absent by roll call vote.

Agenda Item 6 - Vice Chairman Denson offered no report.

Agenda Item 7 - Agency Counsel Report

7a) Counsel Stillman referred the directors to a booklet he prepared which included the agency's current bylaws in standard and amendments in bolded font. Stillman informed the directors he is proposing amendments to the agency bylaws based on his own observations and recommendations and suggestions from directors. Stillman noted the bylaw amendments are presented in the form of a first reading for review and discussion by the directors. By current agency bylaw rule, bylaw amendments must be published for 30 day prior to any action. Stillman stated unless a majority of the directors objected, the amendments would be an item for action at the next regular meeting.

Stillman described the amendments and summarized their purpose or intent: (1) an amendment to permit director meeting attendance by telecommunication, (2) an amendment to permit telecommunication meeting attendance to count towards a meeting quorum, (3) discourage inter-agency competition for non-member municipal customers. (4) require agency vendors to disclose to the agency in writing any professional service agreements between the vendor and an agency member municipality.

Director Killelea requested Stillman discuss the specific differences between electronic attendance and physical meeting attendance as they relate to meeting quorums and the law.

Stillman stated Illinois State Statutes permit meeting attendance and quorum by telecommunication. The bylaw amendment was drafted to allow the agency assemble a quorum and conduct official business with fewer directors than required under the physical quorum rules. The amendment if adopted, is an option the agency may use to conduct a meeting.

Killelea inquired how many directors need be physical present to legally conduct a meeting?

Stillman answered at a minimum an agency chairperson and secretary would need be physically present to call the meeting to order and maintain an official record of the meeting.

Director Kellogg suggested a bylaw amendment permitting proxy or telephone votes of an agency meeting should be taken under advisement due to the sensitivity of the votes. Kellogg suggested the directors take a strong look at the decision to be on solid legal ground.

Stillman restated his recommendation to adopt the four proposed bylaw amendments but stated the agency directors are free to accept or reject any or all of the proposed amendments.

7b) Counsel Stillman referred the directors attention to a work book he prepared to restart the process of adopting a Women and Minority Business Enterprise policy for the agency. Stillman explained the process was begun by the directors last fall, is a work in progress and requested the directors appoint a committee of two to work with him to prepare a policy for adoption by the agency.

Vice Chairman Denson volunteered himself and requested Director Bilotto to join him to prepare a policy for presentation to the agency. Bilotto accepted Denson's request.

Director Kellogg stated Women and Minority Business Enterprise policies are extremely important to him with respect to the actual numbers and equations and he would like to see the actual percentages relative to the minority set aside. Kellogg requested an articulating session with the Denson Bilotto committee.

Denson agreed to include Kellogg in the committee's work sessions but noted in compliance with the state open meeting act only two directors at a time may meet to discuss agency business and subsequently requested Bilotto allow Kellogg to take his place on the committee. Bilotto agreed to Denson's request.

Counsel Stillman noted to satisfy the requirements of future agency water revenue bonds, water supply agreements between the agency and agency members will be required. Stillman stated he and program manager Postl had developed a draft agreement and the agency professionals would like to meet with the directors and discuss the draft during the month of September.

Kellogg asked Stillman if there were timelines related to the agency member water supply agreements?

Stillman responded he knew of no set timeline; but, in order for the agency to market water revenue bonds member water supply agreements must be in place. Stillman added if the agency expects to market revenue bonds this year the agreements must be in place in 60 to 90 days. Stillman stated the agency would not expect its members to execute a water supply agreement until the agency has a water source agreement in place; but cautioned, water supply agreements are complex documents which require considerable time to move from draft form to adoption by the agency to adoption by the municipal member. Stillman empathized the need for the agency to work on water supply agreements with its members and water source agreement with Hammond concurrently.

Kellogg asked why the agency was considering bylaw amendments and water supply agreements without an executed water source agreement.

Stillman explained the interest in amending the agency bylaw is to permit to agency to benefit from changes in state law which permit greater flexibility in the conduct of meetings.

Kellogg analogized action on amendments of bylaws before action on a water supply agreement was putting the cart before the horse. Kellogg insisted timelines be adopted for action on bylaw amendments and a minority business policy so the directors may speak more intelligently to their constituents and city councils.

Denson asked Kellogg if his request was to put the bylaw amendments, water supply agreements and minority business policy on hold until the agency has secured a water source agreement. Kellogg responded yes. Denson solicited the opinion of other directors.

Killelea stated earlier in the year the agency lost a meeting and wasted a month when it was unable to assemble a quorum and he was of the opinion a bylaw amendment to allow telecommunication participation in agency meeting was important. Killelea stated he agreed with Stillman adopting the amendment does not interfere with the ongoing work of the agency.

Denson inquired if Kellogg's concern was a final water source agreement may warrant additional amendments to the agency bylaws and was position to wait and do all amendments at the same time. Kellogg agreed with Denson's evaluation.

Bilotto stated the agency bylaws have no correlation with the agency water source or water supply agreements the agency bylaws relate to how the agency conducts itself.

Denson inquired if the bylaws determine who the agency could sell water to and other business items.

Stillman and several directors expressed the opinion Denson's understanding of the purpose of the bylaws was incorrect.

Kellogg stated, based on Bilotto's theory the agency bylaws have no correlation with agency water source or water supply agreements and the agency bylaws relate to how the agency conducts its business, Bilotto should not be opposed to tabling action on the amendments.

Bilotto restated his opinion the agency bylaws have no correlation with the agency water source or water supply agreements and the agency bylaws relate to how the agency

conducts its business. Bilotto added contractual agreement between the agency and its members and others have nothing to do with the agency bylaws or bylaw amendments.

Kellogg stated he was very familiar with bylaws specifically speaking having over 25 years more than 40, 10 and over 35 years in the education field and was concerned the agency was amending bylaws without a water source agreement. Kellogg stated he had never heard of such a thing and requested the directors put the bylaw amendments on hold until the agency secures a water source agreement.

Stillman stated state law requires the agency to adopt bylaws and the suggested amendments were merely intended to make the agency meetings more efficient.

Kellogg stated the directors had a fiduciary responsibility to first secure a water source agreement and then could look at bylaw amendments.

Director Kitching stated he was not opposed to acting on agency bylaw amendments and believed the agency was very close to finalizing a water source agreement. Kitching said bylaw amendments are a normal course of business and agreed with Bilotto if nothing else consider the amendment which permits telecommunication participation in meetings so the agency would not be short a physical quorum and a have to cancel a meeting.

Killelea noted action on the bylaw amendments was not required at this time so there would be no need to table consideration.

Stillman agreed and recited the current bylaw rule bylaw amendments must be posted for review for 30 days before action can be taken.

Kitching stated he agreed with Kellogg's contention nothing is more important than the agency securing a water source agreement. Denson concurred with Kitching.

Stillman updated the directors on the progress of the negotiations with the City of Hammond on a water source agreement. The negotiation teams have agreed on several points and are working toward settling remaining issues. Stillman stated he exchanged working drafts of an agreement with Hammond attorneys and is optimistic the agency will have an agreement within 30-60 days.

Stillman advised the directors Postl has corrected and updated information on the agency website and he has instructed Postl include additional items of information on the website in the future.

Agenda Item 8 - Treasurer Report

Stillman recommended reading and action on the agency treasurer's report be postponed until after the agency executive session due to matters related to potential litigation.

Agenda Item 9 - Financial Advisor Report

Dave Schutter offered no report.

Agenda Item 10 - Program Manager Report

Postl reported nothing new. Postl stated he is waiting for the confidence level of the directors in securing a water source agreement to rise to the point he can move forward on the work on the preliminary engineering and feasibility study. Postl added he has contacted the engineers under agency contract and they too are waiting to go forward.

Director Howard asked a question and Postl answered the directors halted the preliminary engineering and feasibility study some months ago until their confidence level in securing a water source agreement improved.

Bilotto asked if the terms and conditions of the engineering firms agreements with the agency will still hold in light of the delay in the preliminary engineering and feasibility study.

Postl responded in his opinion it is academic to discuss the monetary or time effects of the delay on the engineering agreements until such time as he can tell them to restart their work. Postl said if the cost has gone up the vendors will tell us at that time and the agency can decide to accept the increases or solicit other firms for the remainder of the work.

Agenda Item 11 - Public Comments

Ron Young of Blue Island for and Nell McClendon of Calumet Park expressed personal views and opinions of the agency, agency finances and project for 10:35 and 5:00 minutes respectively. Tim Wright an attorney with the firm of xxxxxxxxxxxxxxxxxxxx introduced himself and his firm as an experienced in W/MBE policies and offered pro bono services of the firm to the agency in development of their policy.

Director Bilotto stated he and all the agency directors appreciate the public's interest and comments and although the directors do not engage in question and answer sessions with the public during the agency meeting citizens comments and questions are seriously considered and comments are taken to heart.

Agenda Item 12 - Executive Session

Vice Chairman Denson requested directors move to executive session to discuss matters related to real estate, employees and litigation

A motion and second offered by Director's Bilotto and Kitching to recess to executive session was approved 6 aye/0 nay/0 abstain/1 absent by roll call vote.

The meeting was recessed to executive session at 4:15 pm and reconvened at 4:57 pm.

A motion and second offered by Director's Bilotto and Kitching to reconvene the regular meeting was approved 6 aye/0 nay/0 abstain/1 absent by voice vote.

Agency Counsel Stillman recommended in the absence of the agency treasurer the agency defer the treasurer's report and defer action on the approval of monthly payments of agency financial obligations to the next regular meeting of the agency.

A motion and second offered by Directors Howard and Kitching to adjourn was approved 6 aye/0 nay/0 abstain/1 absent by voice vote.

Meeting was adjourned at 5:03 pm.

The next regularly scheduled meeting of the agency is Thursday, September 26, 2013