

**MINUTES** of the **MEETING** of the **ERIE COUNTY WATER AUTHORITY** held in the office, 295 Main Street, Room 350, Buffalo, New York, on the 29<sup>th</sup> day of November 2018.

**PRESENT:** Jerome D. Schad, Chairman  
Mark S. Carney, Vice Chairman  
E. Thomas Jones, Treasurer  
Terrence D. McCracken, Secretary to the Authority  
Robert J. Lichtenthal, Jr. Deputy Director  
Russell J. Stoll, Executive Engineer  
Margaret A. Murphy, Attorney  
John J. Mogavero, Chemist/Chief WTPO  
Joseph T. Burns, Deputy Administrative Director  
Karen A. Prendergast, Comptroller  
Daniel J. NeMoyer, Director of Human Resources  
Sabrina Figler, Director of Water Quality  
Steven V. D'Amico, Business Office Manager

**ATTENDEES:** Brian Gould  
Sean Hopkins  
John Wabick  
Bruce Hoover

**CALL TO ORDER AT 9:30 A.M.**

**PLEDGE TO THE FLAG**

**I. - ROLL CALL**

Commissioner Jones asked for a moment of silence for former Executive Director Robert Mendez.

**II. - READING OF MINUTES**

Motion by Mr. Carney seconded by Mr. Jones and carried to waive the reading of the Minutes of the Meeting held on Thursday, November 15, 2018.

**DISCUSSION**

None

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

**III. - APPROVAL OF MINUTES**

Motion by Mr. Carney seconded by Mr. Jones and carried to approve the Minutes of the Meeting held on Thursday, November 15, 2018.

**DISCUSSION**

None

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

**IV. – REPORTS**

**SECRETARY**

No Report

**LEGAL**

No Report

**FISCAL**

1. October 2018 Investment Report

Mr. Lichtenthal distributed and reviewed the October 2018 Investment Report. He noted, there continues to be an uptick in interest rates. The Authority continues to do a bit better than anticipated in the budget for investment returns and will continue to monitor the activities of the Federal Reserve, as well as rumors of rate increases.

2. Monthly Financial Report – October 2018

Steven D’Amico distributed and reviewed the October 2018 Monthly Financial report relative to operating revenue, investment income, operating expense and net income. Starting in the New Year, Commissioner Carney asked Mr. D’Amico to prepare a report in terms comparing actual expenditures with budgeted expenditures so the Board could look to see if actual expenditures are on track with budget progression. Mr. D’Amico agreed to provide such a monthly report.

## **OPERATIONS**

### 1. Procedure for Emergency Declarations

Russell Stoll distributed and reviewed a staff memo regarding the procedure for emergency declarations. Mr. Stoll stated his department follows the procedures in the ECWA Central Purchasing Guidelines (Section IV). He further stated they would like to continue to follow these procedures until the Board directs such changes to be made. In the meantime, they will plug any holes relating to emergency repairs and contracts. He wanted to bring this matter to the Board to solicit its input.

There was an extended discussion on whether the Board would or should give verbal guidance to in response the Engineer Stoll. Ms. Murphy indicated that Authority is currently using industry forms, which need further review to ensure compliance with the Authority's procurement policy, procedure and guidelines. Ms. Murphy agreed with Commissioner Jones that those industry forms can and should be amended or supplemented by the Authority. The Board concluded that the handling emergency declarations are governed by current procedures that are currently under review with the intent to revise them. No action was taken and the Board will await a future date for a report on recommended changes in the Board's procedures relating to emergency declaration.

## **HUMAN RESOURCES**

No Report

## **AUDIT COMMITTEE**

No Report

## **GOVERNANCE COMMITTEE**

No Report

## **FINANCE COMMITTEE**

No Report

## **ETHICS BOARD**

No Report

**V. COMMUNICATIONS AND BILLS**

**ITEM 1 - CREATION AND/OR AMENDMENT OF MASTER PURCHASE ORDERS**

Motion by Mr. Carney seconded by Mr. Jones

**DISCUSSION**

None

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

**ITEM 2 - MASTER PURCHASE ORDER RELEASES, PURCHASE ORDERS AND PURCHASE ORDER AMENDMENTS**

Motion by Mr. Carney seconded by Mr. Jones

**DISCUSSION**

None

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

**ITEM 3 – FOIL REQUEST FROM BEN REKER – RECEIVED AND FILED**

**ITEM 4 – FOIL REQUEST FROM MARK CERRONE, INC. – RECEIVED AND FILED**

**ITEM 5 – FOIL REQUEST FROM KANDEY CO. – RECEIVED AND FILED**

**ITEM 6 – FOIL REQUEST FROM WEST HERR– RECEIVED AND FILED**

**ITEM 7 – LETTER FROM WEST HERR – RECEIVED AND FILED**

**ITEM 8 – NYCM INSURANCE NOTICE OF CLAIM – RECEIVED AND FILED**

## **VI. PERSONS ADDRESSING THE AUTHORITY**

The Chair offered persons desiring to address the Commissioners on any Water Authority subject the opportunity to speak.

Sean Hopkins of Hopkins, Sorgi & Ramanowki, and Bruce Hoover, in-house counsel, appeared on behalf of West Herr to address Agenda Item 7, pertaining to an existing 12-inch waterline connection on Auto Place Road in the Town of Clarence. Mr. Hopkins gave a history of the ownership of the road.

On August 2, 2018, the matter was brought to the Board. The Board recommended West Herr obtain a 10-year maintenance bond before the Authority would agree to take over ownership and responsibility for 12-inch water line. Mr. Hopkins reported that West Herr can only obtain a 3 or 5-year bond. Mr. Hopkins stated that if the Authority would accept such a bond, it could help resolve this matter and allow a means for West Herr to obtain this fire protection connection.

Commissioner Jones sought clarification as whether Auto Place was a private or public road. Mr. Hopkins confirmed it is a private road. Mr. Hopkins further advised that in 1999 Clarence was granted an easement to extend that water line.

Commissioner Carney confirmed with Mr. Hopkins that Auto Place is not a public road. Commissioner Jones, however, stated “but there is an easement.” Bruce Hoover than clarified that the easement was for the end of the road, but there is no easement along running with the waterline.

Ms. Murphy advised that since this is a private road, Clarence has no authority under Town Law § 198 to take over a waterline on a private road with no residential dwellings. In 2000 the Town transferred everything it owned, but it could not turn over what it could not own. Ms. Murphy advised that Legal Department will work with West Herr to resolve this matter. Ms. Murphy indicated that once there is a resolution it will be submitted to the Board for approval.

## **VII. - UNFINISHED BUSINESS**

**T-12           TERMINATION OF PROFESSIONAL SERVICES CONTRACT WITH  
HARTER SECREST & EMERY LLP (ITEM NO. 4 8/2/18)**

**T-17           \_\_\_\_\_ – APPOINTMENT AS EXECUTIVE DIRECTOR  
(ITEM NO. 22 11/1/18)**

**VIII. - NEW BUSINESS**

**ITEM 9 - AWARD OF CONTRACT TO MOLLENBERG-BETZ, INC. FOR THE FURNISHING, DELIVERING AND INSTALLING OF ONE (1) TWO-STAGE BASIC COMPRESSOR FOR VAN DE WATER SLUDGE PLANT, PROJECT NO. 201800212 - \$18,900.00**

Motion by Mr. Carney seconded by Mr. Schad

**DISCUSSION**

None

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

**ITEM 10 - AWARD OF CONTRACT TO SOUTHTOWN SUPPLY, INC. FOR THE FURNISHING AND DELIVERING OF VARIOUS WOOD PRODUCTS TO THE ERIE COUNTY WATER AUTHORITY FOR ONE YEAR FROM NOVEMBER 1, 2018 TO OCTOBER 31, 2019, PROJECT NO. 201800199 - \$26,732.50**

Motion by Mr. Carney seconded by Mr. Schad

**DISCUSSION**

None

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

**ITEM 11 - AWARD OF CONTRACT TO LOCK CITY SUPPLY, INC. FOR THE FURNISHING AND DELIVERING OF BUTTERFLY VALVES, FLANGE ADAPTERS, AND DUCTILE IRON PIPE FOR ERIE COUNTY WATER AUTHORITY BROADWAY PUMP STATION, PROJECT NO. 201800182-\$12,822.00**

Motion by Mr. Carney seconded by Mr. Schad

**DISCUSSION**

None

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

**ITEM 12 - APPROVAL OF CHANGE ORDER NO. 1 OF NEW FRONTIER EXCAVATION & PAVING, INC. FOR CONTRACT NO. EA-011, WATER SYSTEM IMPROVEMENTS IN THE TOWN OF AMHERST AND CITY OF TONAWANDA, NEW YORK, PROJECT NO. 201700087, CONTRACT NO. 18-11-03**

Motion by Mr. Carney seconded by Mr. Schad

**DISCUSSION**

Commissioner Carney confirmed the record that this change order was only to extend the time of the contract.

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

**ITEM 13 - APPROVAL OF CHANGE ORDER NO. 1 OF 716 SITE CONTRACTING, INC. FOR CONTRACT NO. CH-009, WATER SYSTEM IMPROVEMENTS IN THE TOWNS OF CHEEKTOWAGA, HAMBURG AND WEST SENECA, VILLAGE OF BLASDELL AND CITY OF LACKAWANNA, NEW YORK, PROJECT NO. 201700091, CONTRACT NO. 18-18-04**

Motion by Mr. Carney seconded by Mr. Schad

**DISCUSSION**

Chairman Carney Note extension of time only.

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

**ITEM 14 - APPROVAL OF CHANGE ORDER NO. 2 OF FREDERICK MACHINE REPAIR, INC. FOR MACHINING AND FABRICATION SERVICES FOR THE REPAIR OF VARIOUS ERIE COUNTY WATER AUTHORITY EQUIPMENT FROM AUGUST 1, 2017 TO JULY 31, 2018, PROJECT NO. 201700071, CONTRACT NO. 17-09-06 - \$200,000.00**

Motion by Mr. Carney seconded by Mr. Schad

**DISCUSSION**

Commissioner Jones noted that this change order is three months after the fact and wanted confirmation the change order related to the Sturgeon Point 42-inch break. Mr. Stoll advised this change order resulted from Sturgeon Point break, as well as other related breaks. He noted that this is a unit price contract, needing a transfer of funds to pay for the work incurred by the Authority.

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

**ITEM 15 - RATIFICATION OF THE INSTALLATION OF HYDRANTS AND VALVES AND RETIREMENT OF EXISTING HYDRANTS AND VALVES - VARIOUS LOCATIONS**

Motion by Mr. Carney seconded by Mr. Schad

**DISCUSSION**

None

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None



**ITEM 16 - AUTHORIZATION TO GRANT LEAK ALLOWANCE REQUEST - \$693.85**

Motion by Mr. Carney seconded by Mr. Schad

**DISCUSSION**

None

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

**ITEM 17 – SABRINA FIGLER - LEAVE OF ABSENCE**

Motion by Mr. Carney seconded by Mr. Schad

**DISCUSSION**

Commissioner Jones stated that, to the extent it is necessary, he will be voting to approve this item. He agrees that, as good managers, we should be looking internally for good people to promote because it is good for morale and creates a good incentive to workers. He stated that he had no doubts this person is a highly qualified, long-time employee who merits promotion, but he does have question when this Board approved the promotion of this person.

Chairman Schad responded that the Board has delegated to two members of the Senior Staff the responsibility for hiring, except for some of the exempt positions, like Executive Engineer and the Attorney.

Commissioner Jones questioned the number of hires made in the past four months and why none of them have come to the Board for approval. Secretary McCracken stated maybe four to five. Commissioner Jones then asked how many of those appointments were put on the Board's agenda. The Secretary stated none. Commissioner Jones responded, "We have a problem, no wonder the public has the perception of this organization that it does."

Commissioner Jones said the hiring practices probably started when the organization was first founded, and predates anyone on this Board. He asserted that the public perceives these practices as "secretive hiring," which County legislators have called a corrupt practice.

Commissioner Jones stated this has nothing to do with Ms. Figler's promotion or leave of absence, observing the Authority is lucky to have her working here. He expressed that this goes to the heart of the problem of the Board's responsibility as managers.

Commissioner Jones asserted that these hires should hit the Board agenda and although he trusts the senior staff to vet applicants, the Board needs to make these hires.

Commissioner Carney disagreed and Commissioner Jones asserted that the current practice is the antithesis of transparency in government and that every town board in the state hires town employees “if they can do it, we can do it.”

Commissioner Jones then said the ABO found as the Authority’s biggest problem the Board not making its own independent judgment in such matters. Commissioner Carney disagreed and stated that the ABO finding had nothing to do with individual staff hires.

Commissioner Carney disagreed with Commissioner Jones’ view as to their obligations and scope of their oath of office.

Ms. Murphy advised that Commissioners they have the authority to set the hiring policy. She further stated there is nothing in Public Authorities Law requiring the Board of Commissioners to hire every person within the Authority. She pointed out nothing is done in secret. Positions are publicly posted on the Authority’s website; appointments for positions in the classified civil service are reported to the Erie County Personnel Office, which acts as the local Civil Service Commission. Additionally, the Board authorized and adopted the hiring practices by resolution. In her view, the Authority’s current hiring practices violate no federal or state laws, including the Authority’s enabling statute, the Public Authorities Law, or the Civil Service Law.

Commissioner Carney suggested that if Commissioner Jones proposes a change, he needs to do so with notice, and he is open to look at, debate it, and review it, if the item is placed on the Board’s agenda in December.

Chairman Schad expressed the view the Authority’s hiring procedures are open, effective and compliant and the issue needs to be reviewed and discussed at a future board meeting.

Both Chairman Schad and Commissioner Carney agreed to take this issue up at the next meeting. Chairman Schad added the ABO never reviewed or examined the Authority’s general hiring practices. Commissioner Carney concurred and observed the ABO only questioned how the Board hired its former executive director. Commissioner Jones stated the ABO only scratched the surface.

Commissioner Jones also stated that two months ago, he asked for the policy regarding the granting of leave of absences. Dan NeMoyer stated he will address that issue at a future board meeting once he is prepared to address this issue with information as to past practices. In the meantime, Mr. NeMoyer asked if the Board could at least recognize that Ms. Figler has been sitting here during this heated discussion, and if it could recognize that she is and will continue to be a valued Authority employee. All Commissioners agreed Ms. Figler is an exceptional candidate for this promotional position.

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

**ITEM 18 - AUTHORIZATION TO ADOPT AN APPRENTICESHIP POLICY**

Motion by Mr. Carney seconded by Mr. Schad

**DISCUSSION**

Commissioner Jones questioned whether this item was out of order and said that a copy of the NYS Statute was on the ECWA website but not the Resolution. Commissioner Carney asked for confirmation that the resolution had been properly posted. Ms. Murphy checked the website and confirmed the resolution had been and is posted.

Chairman Schad stated he wanted to bring back this policy, that it had been the Authority's policy in the past and that a prior Board had eliminated it. In his view, this is a sound public policy that helps with our local economy and skilled workforce.

Commissioner Jones disagreed. He would like the Board to request a fiscal impact study.- In Commissioner Jones' view, this program will add to the cost of contracts, and hurt small businesses.

Commissioner Carney questioned how a fiscal impact study could be made available without commissioning a study to be done, which he believes would be a waste of time and money for the Authority. He believes that the Authority needs to insure it gets qualified contractors and one way is to have an apprenticeship program. Commissioner Carney disagrees that this program would hurt small business. He stated he represents some non-union, small mom and pops operations that have apprenticeship programs to keep up with the trade.

Commissioner Jones stated that the issue is one of an apprenticeship had been a political football. One side takes over and it approves policy, the next time another side takes over, it gets rid of the policy.

Commissioner Carney stated that prior to joining the board he had reviewed prior, approved budgets and did not see any difference. He also added that he did not see Republicans spending any less money than when Democrats were in control.

Chairman Schad agreed and stated he never observed any fiscal savings once the program was eliminated and added this policy is the right thing to do. He sees this as a good policy to be adopted by the Authority.

**VOTE**

Ayes: Two; Commrs. Schad and Carney

Noes: One; Commissioner Jones

**ITEM 19 - AUTHORIZATION TO AMEND THE ERIE COUNTY WATER AUTHORITY'S TARIFF**

Motion by Mr. Carney seconded by Mr. Jones

**DISCUSSION**

None

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

**ITEM 20 – ACKNOWLEDGEMENT AND ACCEPTANCE OF A NEW YORK STATE WATER INFRASTRUCTURE IMPROVEMENT ACT GRANT FOR THE PROJECT IDENTIFIED AS CONTRACT NO. W-030, 36-INCH TRANSMISSION MAIN REPLACEMENT PROJECT**

Motion by Mr. Carney seconded by Mr. Jones

**DISCUSSION**

None

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

**ITEM 21 - SERVICE CONNECTION WORK ORDER LIST**

Motion by Mr. Carney seconded by Mr. Schad

**DISCUSSION**

None

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

**IV. - ADJOURNMENT**

11/29/18

Motion by Mr. Carney seconded by Mr. Jones carried that the meeting adjourns at 10:44 a.m.

**DISCUSSION**

None

**VOTE**

Ayes: Three; Commrs. Schad, Carney and Jones

Noes: None

A handwritten signature in black ink, appearing to read "T. D. McCracken", written in a cursive style.

Terrence D. McCracken  
Secretary to the Authority

SLZ