

MUNICIPAL REVIEW COMMITTEE, INC.

BOARD OF DIRECTORS

A quarterly meeting of the Board of Directors of Municipal Review Committee, Inc. was held on Wednesday, January 25, 2017 at 9:00 a.m. at the Town of Orono Municipal Building, 59 Main Street, Orono, Maine. In attendance were the following:

Directors:

Sophie Wilson, Orono
James Guerra, Mid-Coast Solid Waste Corp.
Catherine Conlow, Bangor
Chip Reeves, Bar Harbor
Karen Fussell, Brewer
Tony Smith, Town of Mount Desert
Susan Lessard, Town of Bucksport

Staff:

Greg Lounder, MRC Executive Director

Consultants:

George Aronson, CRMC
Daniel G. McKay, Eaton Peabody
Denis St. Peter, CES, Inc.
Jessamine Pottle, CES, Inc.
Travis Noyes, CES, Inc.

Guests:

Craig Stuart-Paul, Fiberight

Jennifer Baroletti kept the minutes of the meeting and Chairman Reeves presided.

President Reeves convened the meeting at 9:02 a.m.

EXECUTIVE SESSION

A motion was made, and duly seconded, at 9:02 a.m. to adjourn the meeting to executive session pursuant to 1 M.R.S.A. §405(6)(E) for discussion with legal counsel concerning legal rights and duties regarding existing agreements for the purchase of real estate. Whereupon, it was unanimously:

VOTED: That the meeting is adjourned to executive session.

At 10:08 a.m., the executive session ended and after a brief break, the regular meeting reconvened at 10:14 a.m.

ELECTION OF OFFICERS

The first order of business to come before the Board was the election of officers to serve on behalf of the MRC for the ensuing year. Nominations for President, Vice President, Treasurer and Clerk were made, following which, upon a motion made and duly seconded to approve the slate of officers nominated, it was unanimously:

VOTED: That the following individuals are elected to the offices set forth opposite their respective names, each to serve in that capacity until his/her successor has been duly elected and qualified or until his/her earlier resignation or removal from office:

President:	Chip Reeves
Vice President:	James Guerra
Treasurer:	Sophie Wilson
Clerk:	Greg Louder

COMMITTEE MEMBER APPOINTMENTS

The Board next nominated individuals to serve on the Finance and Insurance, Waste Flow Management, Communications and PERC Oversight Committees for the ensuing year. Following nominations, a motion was made and duly seconded to accept the nominees as presented. Whereupon, it was unanimously:

VOTED: That the 2017 MRC Committee appointments are as follows:

Finance & Insurance
Committee:

Karen Fussell
Chip Reeves
Sophie Wilson (Chair)

Mike Roy
Catherine Conlow
Susan Lessard

Waste Flow Management
Committee:

Ken Fletcher
Mike Roy
Tony Smith

Chip Reeves
James Guerra

Communications
Committee:

James Guerra
Cathy Conlow
Tony Smith

Karen Fussell
Susan Lessard

PERC Oversight Committee:

Greg Louder

APPROVAL OF MINUTES

The Board then considered approval of the minutes of the October 26, 2016 quarterly meeting of the Board of Directors, the December 14, 2016 special meeting of the Board of Directors, and the December 14, 2016 Annual Meeting of Members. There being no changes to the draft minutes as presented, upon motion made and duly seconded, with new Board Member Susan Lessard and Sophie Wilson abstaining, it was unanimously:

VOTED: That the minutes of each of the October 26, 2016 quarterly meeting of the Board of Directors, the December 14, 2016 special meeting of the Board of Directors, and the December 14, 2016 Annual Meeting of Members hereby are approved in the forms presented to the Board at this meeting.

CONSIDERATION OF YEAR END FINANCIAL STATEMENTS & BILLS PAYABLE AS OF DECEMBER 31, 2016

Sophie Wilson presented year-end financial statements and bills payable totaling \$495,337.40. Greg Louder reported that the auditors will be on site for the annual audit on January 30, 2017, so he has worked carefully with vendors to receive year-end expenses in time to incorporate into the year-end profit and loss statement. Ms. Wilson noted that the Operating Budget Stabilization Fund (“OBSF”) ended the year with a market value of approximately One Hundred Ninety-two Thousand Dollars (\$192,000) and the Tip Fee Stabilization Fund (“TFSF”) ended the year with a total value of approximately Twenty-six Million One Hundred Sixty-six Thousand Dollars (\$26,166,000).

Ms. Wilson noted that the bills payable include a sizeable payment to Sargent Corp. for construction expenses to date at the Fiberight site. At the time the Board authorized the transfer from the TFSF, the Board also authorized Ms. Wilson to pay, with Chairman Reeves approval, construction costs as they become due in conjunction with the budget for the Fiberight project. After a brief discussion, and upon motion duly made and seconded, it was unanimously:

VOTED: That bills payable of \$495,337.40 as presented to the Board at this meeting hereby are approved for payment.

CONSIDERATION OF 2017 MRC OPERATING BUDGET

Greg Lounder presented the 2017 Operating Budget, noting a few minor edits have been made since Ms. Wilson presented the draft budget to the members at the recent annual meeting. Specifically, the previous draft listed the amount of One Hundred Fifty Thousand Dollars (\$150,000) for engineering, design and permitting. That amount has been corrected to One Hundred Fifteen Thousand Dollars (\$115,000) and the difference of Thirty-five Thousand Dollars (\$35,000) has been added to the line item for Post 2018 Planning Contingency. Mr. Lounder reported that the consent payment in the amount of Six Hundred Thousand Dollars (\$600,000) has been deposited. Mr. Lounder noted that he has not received any member feedback for the Operating Budget or the Capital Asset Management Budget following the recent annual meeting.

Ms. Wilson presented the Operating Budget, noting that it is the same as the version presented at the annual meeting. Ms. Wilson called the Board's attention to the line item for Wages & Salary, noting that the Board has not yet performed Greg Lounder's annual evaluation, but that his health insurance benefit is changing. Ms. Wilson will work with Mr. Lounder and present the final plan for the revised health insurance benefit to the Finance Committee for review. After discussion, and upon motion duly made and seconded, it was unanimously:

VOTED: That the 2017 MRC Operating Budget as presented to the Board at this meeting hereby is adopted.

FIRST QUARTER 2017 TIPPING FEE CALCULATION

George Aronson presented the tipping fee calculation for the first quarter. The proposed tipping fee is \$79.20 per ton. The total tonnage delivered by charter municipalities during 2016 was down nine-tenths of a percent (0.9%) from 2015, but still represents approximately fifty-five percent (55%) of the total tons delivered to Penobscot Energy Recovery Co. (“PERC”). There were no exceedences during the quarter and PERC complied with the performance standards so no adjustment to the tip fee is necessary. He recommended that PERC’s calculation be accepted. After discussion, and upon motion duly made and seconded, it was unanimously:

VOTED: That the First Quarter 2017 tipping fee calculated by PERC in the amount of \$79.20 per ton hereby is accepted.

PERC FACILITY OPERATIONS REPORT

Hank Lang, Plant Manager of PERC, presented the PERC Facility Operations Report. He reported that due to problems with the grates in the boilers, scheduled rebuilds were performed sooner than anticipated. The B boiler was taken down in early January for the annual outage and the A boiler is scheduled to be taken down in early February, at which time the south wall will be replaced. Deliveries for 2016 totaled 310,444 tons. Electrical production in November was low at 75%, but increased to 89% in December. Electrical production for the year was calculated at 86.67%. Truck waiting times have been low and commercial haulers have reported they are pleased with the changes. The only instance in which truck waiting times are an issue is when several tractor trailer trucks arrive at the plant at the same time.

CHARTER MUNICIPALITY ASSET MANAGEMENT REPORT – CUSTODY ACCOUNT, TIP FEE & OPERATING BUDGET STABILIZATION FUNDS, 1ST QUARTER CASH DISTRIBUTION, SETTLEMENT AGREEMENT IMPLEMENTATION (CASH FLOWS, COMPLIANCE WITH PUBLICITY TERMS, PLAN FOR EXERCISE OF PUT OPTION)

George Aronson presented the Charter Municipality Asset Management Report. As of January 1st, there was \$454,455.57 in the Custody Account, \$26,610,656.10 in the Tip Fee Stabilization Fund , and \$192,918.49 in the Operating Budget Stabilization Account. The cash distribution for the quarter is \$658,519.01. Mr. Aronson noted that the balance in the Custody Account includes the \$600,000 Consent Payment received in accordance with the recent USAE settlement. Mr. Aronson also noted that there is sufficient cash flow to make the quarterly distribution, and no transfer from the Tip Fee Stabilization Account will be necessary this quarter. After discussion, upon motion duly made and seconded, it was unanimously:

VOTED: That the recommended cash distribution for the quarter of \$658,519.01 hereby is approved.

Ms. Wilson noted her appreciation of the additional information and the new format of the Asset Management Report.

ADMINISTRATIVE REPORT – WASTE DELIVERY TRENDS, UPCOMING LEGISLATIVE SESSION, STATUS OF PERC COURT APPEAL OF MRC/FIBERIGHT FACILITY DEP LICENSE APPROVALS, STATUS OF RECEIPT OF MUNICIPAL ATTORNEY CERTIFICATES REGARDING LOCAL APPROVAL OF MUNICIPAL JOINDER AGREEMENTS

Greg Lounder reported that as a group, waste deliveries from Charter Municipalities have declined, particularly in the Downeast region. It was noted that communities are contractually obligated to deliver MSW to PERC until the end of the term, and a general discussion ensued regarding ways to encourage compliance.

Mr. Lounder presented bill titles pertaining to solid waste that have been submitted for the upcoming legislative session, noting that it is difficult to determine the content of bills based on the

title alone, but that he will continue to monitor the bills closely as they are printed. The MRC and Fiberight will be making a joint presentation to legislators on January 26, 2017 at 7 a.m. at the Hilton in Augusta, Maine. Karen Fussell, Susan Lessard and Greg Lounder will attend on behalf of the MRC and Craig Stuart-Paul will attend on behalf of Fiberight. An important meeting with the Committee on Environmental and Natural Resources (“ENR”) will follow the presentation.

Dan McKay provided an update regarding the PERC appeal, noting that the briefing is complete and the Appellant’s reply brief is due by February 3, 2017. Subsequently, the judge will decide whether or not to hold oral argument. If so, we would expect that to take place in late February, however the timeframe is not within our control. Following any oral argument, we are hopeful that a decision would be forthcoming in March. There is a twenty-one (21) day period after the decision is rendered during which a party can file an appeal with the Law Court.

Mr. Lounder reported that the vast majority of members have submitted their municipal attorney certificates, and others are working diligently to provide the requested paperwork. A handful of towns have stated that they are not going to provide the requested paperwork. A general discussion ensued and it was agreed that Mr. Lounder would follow up with those towns and report back to the Board.

STATUS OF RESERVE FUNDS UNDER THE JOINDER AGREEMENT

George Aronson explained that when the Joinder Agreement was originally sent out, the facility was expected to receive One Hundred Eighty Thousand (180,000) tons of MSW per year. The project has been downsized due to the fact that the number of Departing Municipalities has been larger than originally anticipated, and the amount of funds from the TPSF expected to be paid out to Departing Municipalities is approximately Eleven to Twelve Million Dollars (\$11-12,000,000), well in excess of what was originally projected. Taking into account the Five Million Dollars

(\$5,000,000) anticipated to be expended for infrastructure and site development, once the Departing Municipalities have been paid the remaining funds in the TFSF are now expected to be insufficient to fully fund all reserve accounts contemplated in the Joinder Agreements. A general discussion ensued regarding how to address the gap. It was noted that some reserve amounts are stated as "up to" figures, and the full amount stated ultimately may not be required. It also was noted that there is a provision in the Joinder Agreement for the MRC Board to create other reserve funds as needed, and Mr. Aronson advised that it is likely that the Board will need to take action on this item at a future meeting. It was noted that the Communications Committee will need to explain this process to the membership prior to any Board action.

REPORT ON STATUS OF FIBERIGHT PROGRESS TO FINANCIAL CLOSE

Craig Stuart-Paul of Fiberight reported on the status of project financing. A final list of items needed for financial close has been prepared and all parties are pointing toward a closing date on or about April 1, 2017. Mr. Aronson noted that financing entities will likely require some revision to the existing Master Waste Supply Agreement and the Site Lease. The need for this revision has been contemplated from the outset. Mr. Aronson will provide the Board with a summary of proposed amendments for the Board's consideration, and it was agreed that the notice of board meeting should include a summary of the proposed changes so that members are aware.

Mr. Aronson noted that approval requirements for the decision by Equity Charter Municipalities as to whether or not to exercise the PERC put option by December will vary for each town, and they should start that process now. It was agreed that Mr. Aronson will work with Dan McKay to develop a template warrant and explanatory letter explaining the put option and the potential consequences if it is not exercised.

REPORT ON STATUS OF REACHING AGREEMENT WITH THE HAMPDEN WATER DISTRICT WITH REGARD TO A MAIN EXTENSION TO SERVE THE MRC/FIBERIGHT FACILITY AND OTHER FUTURE SYSTEM USERS

The MRC continues to work diligently with the Hampden Water District (HWD) on a fair apportionment of project costs for the proposed water main extension. Angus Jennings, the Town Manager of Hampden, has facilitated meetings with landowners and contractors. Travis Noyes of CES, Inc. has been very helpful with the process. A meeting with the HWD is scheduled for Friday, and HWD has requested in advance of the meeting that the MRC provide the total infrastructure development costs to date, the proposed site lease between the MRC and Fiberight, the MRC's views on both the cost apportionment related to the pump station upgrade, and the value of the MRC's waiver of its cost recovery rights under Chapter 65. The HWD has expressed interest in the MRC waiving or assigning that right, however the Board agreed that it is difficult to consider waiving or assigning the MRC's cost recovery rights when the amount is unknown.

REPORT ON INTERIM ACCESS ROAD AND PARTIAL UTILITY CONSTRUCTION PHASE I AND DISCUSSION ON THE STATUS OF MOVING FORWARD WITH ACCESS ROAD AND UTILITY CONSTRUCTION COMPLETION PHASE II

Angus Jennings, Town Manager of Hampden reported that Fiberight is looking to obtain a building permit before the road is constructed. Generally, in order for a building permit to issue, the building site must have access to a public way. Since the building permit is to issue before the access road is accepted as a public way, a plan is being developed which would involve providing the required frontage along Coldbrook Road. The Town of Hampden is generally supportive of this approach. Details remain to be worked out.

Mr. Jennings also reported that the HWD Board voted last week that the water main route will be up Coldbrook Road which is a higher cost than the route originally budgeted. The Town Council is open to some fair apportionment of the added cost, including some level of contribution

from the Town. The HWD meets later in the week and it is hoped that it also will work toward a fair resolution of the cost apportionment issue.

The Board took a lunch break at 12:28 p.m.

At 1:08 p.m., the board reconvened.

EXECUTIVE SESSION

A motion was made, and duly seconded, at 1:08 p.m. to adjourn the meeting to executive session pursuant to 1 M.R.S.A. §405(6)(E) for discussion with legal counsel concerning legal rights and duties regarding existing agreements for the purchase of real estate. Whereupon, it was unanimously:

VOTED: That the meeting is adjourned to executive session.

At 2:02 p.m., the executive session ended and the regular meeting reconvened.

There being no further business to come before the Board, the meeting adjourned at 2:02 p.m.

Respectively submitted,



Jennifer S. Baroletti

Dated: April 26, 2017