

**GREATER NEW BEDFORD REGIONAL REFUSE MANAGEMENT DISTRICT**

Minutes - September 5, 2018

The Greater New Bedford Regional Refuse Management District Committee held a publicly posted meeting on **Tuesday, September 5, 2018 at 8:00 AM** at the Dartmouth Town Hall, Room 315, 400 Slocum Road, Dartmouth, MA.

**District Committee Members in attendance:** John Beauregard, Chairperson; Daniel Patten, Christine LeBlanc, Ken Blanchard.

Nathalie Dias, Vice-Chairperson; arrived at 8:13 a.m.

**Also present:** Scott Alfonse, Executive Director; Leonor Ferreira, Secretary; Attorney Matthew J. Thomas, District Counsel.

**1. Call to order**

The meeting was called to order at 8:03 AM.

**2. Salute to the Flag**

All in attendance stood to salute the flag.

**Mr. Beauregard read the notice advising the Board that the meeting may be recorded by audio and/or video.**

**3. Legal notices**

Legal notices have been posted in New Bedford and Dartmouth.

**4. Warrant Reports and Ratification (August 14, 2018)**

**Motion to ratify the August 14, 2018 made by Ms. LeBlanc, seconded by Mr. Patten. Vote 4-0.**

Mr. Blanchard questioned the Homemaide and MMAAA charges on the August 14, 2018 warrant. Mr. Alfonse noted that the Homemaide charges were for District office monthly cleaning services, and MMAAA charges were for an annual accounting subscription for the District Accountant.

**5. Approval of Minutes (July 31, 2018 – Open session and Executive Session)**

**Motion to approve the July 31, 2018 regular session and executive session minutes made by Mr. Patten, seconded by Ms. LeBlanc. Vote 4-0.**

Mr. Blanchard noted a correction on the last page of the regular session. Mr. Worden's name is to be deleted from the roll call vote.

**6. New Business**

*a. Update on Outside Customers (commercial and municipal)*

**Motion to receive an update on outside commercial and municipal customer accounts made by Mr. Patten, seconded by Ms. LeBlanc. Vote 4-0.**

Mr. Alfonse noted that one customer has been informed in writing that it has until September 21, 2018 to bring its account into current standing. The District will move on with negotiations to have a contract in place by January 1, 2019. The customer is working diligently to bring account to a current status. Mr. Alfonse described the status of the account. Ms. LeBlanc and Mr. Beauregard noted the significant balance, and stated that the District should not accept it as the normal balance of the account.

Mr. Alfonse described the status of a second overdue customer account.

The District Accountant and Mr. Alfonse have recently discussed using the aging report to develop a list of overdue customers whose disposal rights would be suspended until payment is made.

Attorney Thomas noted that when new contracts are redone it should be clear that rights to dispose will be suspended if account is over 60 days. He also talked about eliminating the 60 day terms. Mr. Beauregard noted that the Board values the long-term customers. He questioned the amount due to the District after a Chapter 11 filing by a District customer.

Mr. Beauregard questioned what would occur if a customer filed for bankruptcy. Attorney Thomas noted that everything the customer paid for the past 60 days would get pulled back as a preference claim. The District argue against this.

Mr. Blanchard asked if instead of suspending the customer's privileges if the District could require customer to pay prior to disposal. Attorney Thomas stated that in order to have customer on a C.O.D. status, customer would have to get current on their balance.

Vice-chair Dias arrived at 8:13 a.m.

Ms. LeBlanc asked how the District could get the customer balance down to 30 days. Attorney Thomas noted that unless customer gets under 60 days, and maintains under 60 days for the entire period negotiations, the District is unable to negotiate a contract. The alternative would be for the customer to sign a promissory note to the District for the past amount due with an interest percentage rate.

Mr. Beauregard asked if it would be a loan, and Attorney Thomas noted that it would be an unsecured loan.

Mr. Blanchard noted that it would uncollateralized.

Mr. Patten asked if there was any dialogue on a tonnage decrease. Mr. Alfonse stated that there hasn't been any discussion on the terms. Negotiations begin in October, and contracts need to be finalized by the end of December.

Mr. Beauregard questioned what would happen if customer does not become current on their account. Ms. LeBlanc replied that the District would not negotiate, and there wouldn't be a contract after December 2018.

Mr. Alfonse noted that the contract provides a significant stream of revenue for the District, and the District cannot forego the revenue. The District would have to find other customers to make up the revenue.

Attorney Thomas noted that past contracts were written without tipping limits on them. The District may want to limit waste from outside of New Bedford and Dartmouth to reduce their tipping fee, without needlessly using up landfill capacity. The District should have a conversation on setting limits on how much non New Bedford and Dartmouth solid waste the District should be accepting, and allocate that to contracts.

Mr. Blanchard noted the UMass Dartmouth College of Engineering paragraph on the Director's report, and asked if it could be included in that audit. Mr. Blanchard noted that the city and the town may be willing to pay a higher tipping fee to extend the life of the landfill. He also noted that the city and the town should be part of the conversation.

Attorney Thomas said that the District must acquire a balance of how much waste it will need to bring in on an annual basis from commercial entities. Would the Board, at some point, want to continue with other private haulers, or move toward other municipalities to up that difference? Those are policy decisions the Board will have to make.

Mr. Alfonse noted that every Fall the District completes its reconciliation. When the audit is completed the District knows how much is available for deposits to reserves from the prior fiscal year. Those funds are earmarked to certain reserve accounts. He noted that the District must acquire a balance of how much waste it will need to bring in to sustain its operation and reserve balances.

Attorney Thomas noted that the District also needs to protect its reserve funds. The difference between the District and other municipalities is that the District has a limited life.

Mr. Alfonse noted that there is a cost associated with disposal of future solid waste, and this would have to be part of the conversation also.

Attorney Thomas stated that the language on the Crapo Hill organic documents state that long after the landfill closes, New Bedford and Dartmouth could send their solid waste through a transfer station at the District to a third party. He also noted that the District could handle a portion of that volume through the anaerobic digester facility.

Mr. Patten noted that the Board has previously discussed that the pension funding schedule for the city and the town would drop by millions of dollars in the next several years. Dartmouth would drop into 10 years from now, and New Bedford would drop after that. He suggested that the District strive to maintain landfill capacity until both municipalities have funded their unfunded pension liabilities.

Committee members discussed the complexity of the issue.

Mr. Alfonse stated that the plan is to get customers current. Customers will receive advance notice.

**Mr. Blanchard made a motion that the Board authorize Scott Alfonse, Executive Director, to take action as of November 1, 2018 to restrict trash for anyone that is not current, seconded by Ms. LeBlanc. Vote 5-0.**

Towns of Oak Bluffs / Tisbury

Mr. Alfonse noted that he and Attorney Thomas met with representatives of the towns of Oak Bluffs and Tisbury. Oak Bluffs highway department does its own collection with its DPW. Tisbury contract's with Bruno's Rolloff to collect trash in Tisbury.

Mr. Alfonse noted that the contract between Bruno's Rolloff and the towns for operation of the transfer station requires Bruno's to deliver all solid waste collected at the transfer station to the Crapo Hill landfill. There is a conflict with the contract between the District and the towns, and the contract between the towns and Bruno's Rolloff. The District's preference is to limit the tonnage to that allowable under the contract between the District and the towns. At the last meeting there was discussion of a separate rate for commercial trash from the towns. The tonnage data provided by Tisbury, which was distributed at the last District Committee meeting, did not include a small amount of tonnage which comes from Tisbury local drop-off center. It's a very insignificant amount. The town's representatives agreed that there's waste coming into Crapo Hill that is not deliverable under the contract. They agreed to meet with the hauler to see what other disposal options might be available.

Mr. Beauregard questioned if the towns were aware of it, or if they were surprised by the information. Mr. Alfonse noted that certain parties were surprised by the information.

Mr. Alfonse questioned if the District should enter into a separate contract for the excess tonnage that is being delivered to the landfill at current rate than what the District has offered the town of Tisbury and Oak Bluffs, or should the District exclude it from its deliverable tonnage.

Ms. LeBlanc stated that the District should accept 8,000 tons yearly, and any excess the District would charge a commercial rate. Attorney Thomas stated that the contract does not have a tonnage limit with the District. It has an estimated upper limit yearly tonnage.

Mr. Patten asked what the total tonnage was brought in yearly. Mr. Alfonse noted that it was usually around 14,000 tons per year. Every year it has increased by approximately 2,000 tons.

Ms. LeBlanc questioned why the District couldn't charge the contract tipping fee for 8,000 tons, and the gate rate for anything over 8,000 tons. Attorney Thomas noted that the District does not have a contract with the hauler, it has a contract with the towns to accept their municipal solid waste hauled by the town's hauler. The towns are sending in non-municipal solid waste included with municipal waste. There isn't a contract to accept the non-municipal solid waste from the town or the hauler. Absent a contract to accept the non-municipal solid waste, the towns should be charged gate rate.

Mr. Blanchard asked what was considered non-municipal solid waste. Attorney Thomas noted that the way the contract is written, it is residential waste collected at curbside, or at the transfer station. Mr. Alfonse said that municipal solid waste is residential solid waste collected by the community or its contractor from its residents. He noted that the term municipal solid waste or MSW in the solid waste industry means any kind of solid waste. Ms. LeBlanc noted that it's non-commercial waste. Mr. Blanchard noted that the terms should be clarified.

Mr. Patten noted that another customer is delivering excess tonnage but is not current on their account. He stated that there is also discussion of whether the District would prefer to have municipal customers instead of private hauler customers. Regardless of how much the tonnage is the towns pay for it, and then they get reimbursed by the hauler. He noted that the towns pay the District not the hauler. The municipality is paying the District on time, and the District is looking for more of those customers.

Attorney Thomas stated that the excess tonnage is not allowed pursuant to the contract between the District and the towns. To protect the contract, the District should restrict the tonnage hauled in to the landfill to that allowed under the contract.

Mr. Blanchard stated that the language in the contract can be easily fixed. He said that negotiations can be clarified. Mr. Blanchard said that the District may want to move to accept Tisbury and Oak Bluffs tonnage, who pay on time, and cut back on customers who don't pay on time.

Mr. Alfonse noted that some commercial haulers serves multiple businesses in the city and Town of Dartmouth. Those haulers would have to find other disposal options which could be more costly to them. Whereas, the District would be taking in solid waste from commercial entities outside of New Bedford and Dartmouth. Mr. Alfonse cautioned that this may not be well received publicly.

Mr. Beauregard stated that the goal was to get customers current on their account, and not to eliminate the customer.

Ms. LeBlanc said that regardless of public perception, the District would be getting paid on time by the municipalities, and this does not happen with commercial haulers.

Mr. Beauregard asked if there was a motion required on the Towns of Oak Bluffs / Tisbury tonnage discussion. Mr. Alfonse asked if the Board had any interest entering into a contract with Bruno's or Tisbury for excess solid waste that's coming in to the landfill, or if the Board was looking into cut it out.

Mr. Beauregard stated that due to the comprehensive discussion, the Executive Director should consider a special session meeting for this item, or the item be put on the next agenda which should be kept very light.

*b. Landfill Closure / Post Closure Trusts*

**Motion to discuss the creation of Landfill Closure and Post Closure Trusts made by Mr. Blanchard, seconded by Ms. LeBlanc. Vote 5-0.**

Mr. Alfonse noted that in review of the District financial reserves and the mechanisms under which they were established, it was determined that the 1995 "Resolution Establishing Closure and Post Closure Reserves" by the District and MassDEP may not sufficiently protect the District's closure and post closure reserves. Establishing the fund as a "trust" helps protect the closure and post closure reserves in the event of litigation. The template provided by MassDEP requires a financial institution to serve as the trustee of the trust. He noted that Attorney Thomas reviewed the document, and made some modifications. The District's proposed trust requires the Treasurer (Daniel Patten) to serve as the Trustee. The District plans on seeking MassDEP's approval on the revised template before the Board finalizes the trusts.

Mr. Alfonse noted that the District is required by law to have a closure reserve for closure of landfill cells that have been constructed, and post closure reserve that covers monitoring and maintenance of the landfill for 30 years after closure. The District recognizes that post closure monitoring and maintenance will likely be required after year 30, the District is not currently required by law to have a fund for it. As a limited life entity, the District should fund these future costs.

It is important to accumulate closure costs over several years. The District included in its FY2019 budget \$300,000 for deposit to a reserve for closure of cells not yet created. These funds were

budgeted for this purpose in the FY2019 budget, but the fund has not yet been established. It is recommended that the District vote to establish a Closure Reserve (for cells not yet constructed).

Once the trust documents are finalized the Board can approve the trust documents and that will be one of the forth trusts that will be created.

Mr. Blanchard asked if the title was closure and post closure, or just closure. Mr. Alfonse said it was only closure. A separate trust fund has been established for post closure.

Mr. Patten questioned if the funds would move from Closure Reserve (for cells not yet constructed), to Closure Reserve. Mr. Alfonse said yes, once the Board made that change.

Mr. Beauregard noted the phrase on the last paragraph "These funds were budgeted for this purpose in the FY2019 budget, but the fund has not yet been established" and questioned if the funds would be inactive if it isn't transferred. Mr. Alfonse stated that funds that have been allocated in the budget to be deposited into reserves are usually transferred after the fiscal year begins. There was never a vote to establish the fund, only to fund the reserve.

**Ms. LeBlanc made the motion to establish a Closure Reserve (for cells not yet constructed), seconded by Mr. Blanchard. Vote 5-0.**

Mr. Blanchard noted that the Board should be notified once MassDEP approves the District Treasurer to serve as the Trustee.

#### *c. Revised District Investment Policy*

**Motion to discuss revisions to the District's Investment Policy made by Ms. LeBlanc, seconded by Mr. Blanchard. Vote 5-0.**

Mr. Alfonse noted that the District's investment policy was based on a template provided by the District's financial advisor, Bartholomew & Associates, Inc. The document was somewhat generic to municipalities, and didn't capture the types of reserves held by the District. Mr. Alfonse, Mr. Patten and Attorney Thomas have discussed the need for a revised policy that describes the reserves currently held by the District.

Attorney Thomas stated that the current Investment Policy is based on a model from a Government Finance Officers Association, and also from two polices the District had. Attorney Thomas described each section of the Revised District Investment Policy.:

Attorney Thomas discussed some specifics in Section **VI. Safekeeping and Custody**, section 3. He noted that the District may not currently have a dual authorization for wire transfers.

Mr. Alfonse noted the Treasurer and the Assistant Treasurer are only authorized to make wire transfers from a District account to another District account only. Mr. Patten noted that the only institutions transfers are made to or from is BayCoast Bank and/or Bartholomew & Associates, Inc.

Mr. Thomas continued his description of Section **VII. Suitable and Authorized Investments**.

On Page 8, *Item 2, (Trust Funds and Stabilization Funds and Long-term Reserve)* he noted that the list will be updated based on today's vote of the Closure Reserve (for cells not yet constructed).

Mr. Alfonse noted that Attorney Thomas recommended in the document that a Trust Fund be

established for Future Solid Waste Management Reserve Fund, and the Environmental Contingency Trust Fund. Attorney Thomas said that this should be established to protect the funds in the event any legal claims are brought against the District.

Mr. Blanchard questioned why the District wouldn't protect all of its funds. Attorney Thomas said that the District is protecting its high value reserves.

Mr. Alfonse said that if the reason to establish a trust fund is due to its value, there are other reserves that have a higher value than Environmental Contingency. Attorney Thomas noted that the Environmental Contingency fund has to outlive the life of the landfill, therefore it does not have to be included. After the landfill is capped and there is an environmental concern the fund needs to be available to help at that point in time with the issue.

Mr. Blanchard questioned if the Board should establish criteria for establishing Trust Funds.

Mr. Patten noted that if a certain party wanted to prosecute the District, and they took away every dollar that they could, what needs to remain is what is necessary for the future. We need to close, build, and have reserves established to maintain in the future. That was the main criteria. Reserve for future contamination is necessary for future years.

Attorney Thomas will have a draft available for the Board on the next meeting.

Attorney Thomas continued with reviewing the Revised District Investment Policy.

Mr. Blanchard questioned if the auditors were required to review and approve the Investment Policy as part of the external audit. Mr. Alfonse stated that the auditors have a permanent file on all District policies. This policy would be added to it.

Mr. Blanchard questioned how the District chooses who the investment advisor is, and how often is it reviewed. Mr. Alfonse noted that the District had the same investment advisor since it had funds to invest. He noted that Mr. Patten has recommended that the District research if there are other investment options. Bartholomew & Associates, Inc. were selected in the 1990s based on their experience providing similar services to other municipalities. Mr. Patten noted that Bartholomew & Associates, Inc. serve the majority of municipalities in Massachusetts.

Mr. Alfonse noted that there should be some transparency in how the firm is compensated by the District. Bartholomew charges a percentage rate based on the total value of the portfolio. However, there are likely other commissions that the firm may receive from managing the funds.

Mr. Blanchard questioned if the Investment Policy should include language that the Board shall review the Investment Advisor's contract. Attorney Thomas noted that it's listed on page 5, item E. of the Revised District Investment Policy. Mr. Blanchard asked if the language should be more specific and note that it should be reviewed every 5 years. He asked if Mr. Patten had any input. Mr. Patten stated that Attorney Thomas should add the language noting that the contract with the investment provider shall be kept at 5 years.

Ms. LeBlanc and Mr. Beauregard asked about the contract with the investment advisor. Attorney Thomas stated that there is a contract with Bartholomew & Associates, Inc.

Mr. Alfonse noted that an agreement by the previous Chairperson, Rosemary Tierney, was signed. The agreement restricts the accounts into which District funds can be transferred. Mr. Alfonse said he will review those documents.

Attorney Thomas noted that the Investment Policy will be updated with the requested information to add "annual review of the performance of the Investment Advisor", and the "the contract be capped to 5 years" will be added to the policy.

**Mr. Blanchard made a motion to table the item until the next meeting after changes are made, seconded by Ms. LeBlanc. Vote 5-0.**

*d. Other Post-Employment Benefits (OPEB) update and discussion*

**Motion to discuss the District's OPEB liability calculations made by Mr. Patten, seconded by Ms. LeBlanc. Vote 5-0.**

Mr. Alfonse noted that the District is required to calculate the liability for post-employment benefits for retired employees. District employees will likely retire from the District, and the District will be responsible for its portion of employee health insurance after retirement. It is likely that retired District employees may outlive the District's ability to generate revenue. It is important that the District adequately calculate and fund its OPEB liability.

Mr. Alfonse noted that because the District has so few employees it is not required the use of an actuarial to calculate OPEB liability. The District uses the same computer programs every year to calculate liability. Mr. Alfonse noted that a slight variation in inputs can result in significant changes in accrued liability. The Board should consider contracting with an actuary to perform a full evaluation. The District has long sought to insulate its member communities from any future liability. The District inputs data such as number of plan participants, ages, discount rate for investments, etc. The program returns a value. The District was 100% funded FY2018.

Mr. Alfonse noted that several years ago Massachusetts passed a law which required public employers to share in the employers' costs of providing health insurance to retired employees. The District began calculating its OPEB liability based on that law. However, in 2016 the law was repealed. When the District recalculated its OPEB liability changing a few inputs (including the number of participants which the District may be responsible for), it reported that the District had a surplus of 2,490.18. The fluctuations in unfunded accrued actuarial liabilities are troubling. This issue could be brought up during audit time. Reliance on a model that may not capture the District's uniqueness as a limited life entity could result in underfunding or overfunding the liability. Mr. Alfonse noted that this discrepancy may not be realized until it's too late in the life of the District to fund any shortfall.

Mr. Alfonse recommended that the District consider contracting with an actuary to perform a comprehensive actuarial evaluation of the District's OPEB liabilities.

**Motion to consider contracting with an actuary to perform a comprehensive actuarial evaluation of District's OPEB liabilities made by Ms. LeBlanc, seconded by Mrs. Dias. Vote 5-0.**

*e. Director's Report*

**Motion to receive the Executive Director's report made by Mr. Patten, seconded by Mr. Blanchard. Vote 5-0.**

Odors

Mr. Beauregard asked about the odor complaints. Mr. Alfonse noted that the Operations Manager brings an instrument which monitors the H2S levels in the area. It is believed that the combination of the elevation (currently above tree line), the lack of barrier (trees, berm) between this cell and the residences, and the increased potential for odor from trash during warmer months, result in an unobstructed pathway for fugitive odors when the wind is out of the east.

Mr. Beauregard questioned if those residents complained in the past. Mr. Alfonse noted that they don't complain often. Residents have been patient. Most of the odor complaints occur during normal operation hours.

The District is looking into using a mister fan currently owned by the District to deploy a deodorizer when winds are blowing in the direction of those residents.

#### UMass Dartmouth College of Engineering

Mr. Beauregard noted that he liked the collaboration between UMass Dartmouth College of Engineering and Brown and Caldwell's engineering. Each year, fourth year students in the civil engineering program to be required to complete a two-semester civil engineering project.

Ms. LeBlanc noted that policy group located at Chase Rd., Dartmouth works more with the business aspects of the project.

#### FY 2018 Audit

Mr. Alfonse noted that audit is ongoing.

*f. Items which could not have been reasonably anticipated 48 hours in advance.*

None

#### **7. Set Date for Next Meeting**

Mr. Alfonse noted that by November 30, 2018 the reconciliation has to be certified, and by January 21, 2019 the budget has to be finalized.

Mr. Alfonse noted that in the past the Personnel Subcommittee reviews the Personnel budget for the next fiscal year's budget, and the Budget Subcommittee reviews the rest of the budget.

Mr. Alfonse questioned if the District Committee prefer to continue with the subcommittees or have the entire budget presented to the Board. Larry Worden and Rosemary Tierney were the Personnel Subcommittee, new members need to be appointed. Mr. Beauregard and Mr. Patten are Budget Subcommittee members. Also, there is an appointment to fill Rosemary Tierney that went before the City Council Appointments and Briefings but there hasn't been any confirmation.

Mr. Patten asked who the member was, and Mr. Alfonse noted that it was Kate Towers. He has reached out to Ms. Towers and offered a tour of the landfill.

The next meeting will be scheduled for October 18, 2018 at 8:00 am.

#### **8. Executive Session –(pursuant to G.L. c30A Section 21(a)(6) since discussion in an open meeting may have a detrimental effect on the negotiating position of the District and to**

**reconvene in open session).**

**Motion to go into Executive Session pursuant to G.L. c30A Section 21(a)(6) since discussion in an open meeting may have a detrimental effect on the negotiating position of the District and not return to open session. Motion made by Mr. Patten, seconded by Ms. LeBlanc.**

Roll Call Vote:

**John Beauregard – yes**

**Nathalie Dias – yes**

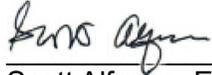
**Daniel Patten – yes**

**Christine LeBlanc – yes**

**Ken Blanchard – yes**

The meeting moved to Executive session at 9:17 AM.

Approved by vote of District Committee on Thursday, October 18, 2018.



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Scott Alfonse, Executive Director