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**MONTGOMERY-OTSEGO-SCHOHARIE SOLID WASTE MANAGEMENT
AUTHORITY
SPECIAL BOARD MEETING #4**

DATE: April 12, 2007

LOCATION: Howes Cave Administrative Complex

Members Present

Joan Bent
Martha Clarvoe
Meredith McNeil
David Parker
Olga Podmajersky
William Strevy
Edward Wesnofske

Members Absent

Daniel Baker

Others Present

Gilbert Chichester
Carol Hawkins
Robin Loske
Glenn Packard
Jason Cooper
Chris Chale, MOSA Attorney
Psalm Wyckoff - Otsego Co.
Shane Walters - Mont. Co.
Vito Greco - Amsterdam
Linda Kellett - The Recorder
Ed Munger - Gazette

1. Opening

Chairman Wesnofske opened the meeting at 10:15 a.m.

2. Adoption of Agenda

Martha Clarvoe motioned, seconded by Joan Bent, to adopt the Agenda. The agenda was unanimously approved on voice call.

3. Privilege of Floor

Chairman Wesnofske offered privilege of the floor.

Shane Walters, Chairman of the Montgomery County Solid Waste Committee, took the floor and stated that he has attended the last several Authority Board meetings and felt that the Authority Board was acting in good faith at its last meeting by allocating funds to be disbursed to the Villages through the Counties. He stated that he no longer has good faith in the Authority after reading Resolution Number 7 that is on the Agenda. In his opinion MOSA is back to where it was four months ago.

4. **Minutes of Prior Meeting**

Olga Podmajersky motioned to accept the minutes of the prior meeting of February 22nd as written. William Strevy seconded the motion. The minutes were unanimously approved on voice call.

Olga Podmajersky motioned to accept the minutes of the prior meeting of March 22nd as written. William Strevy seconded the motion. Ms. Chale, the Authority's General Counsel, suggested that the Board defer action on accepting the minutes until later in the meeting. Ms Podmajersky stated that she could not understand why the minutes should be deferred. Ms. Chale explained that she would like to go into attorney consultation with the Board before the Board adopts the minutes. There was confusion but no objection was made to defer the minutes until later in the meeting.

5. **Reports**

Chairman's Report

Chairman Wesnofske reported that he had met with the Authority's counsel, the Treasurer and the Executive Director for about three and half hours relative to providing some answers to issues that have been raised regarding the motion made at the last Board meeting to pay the participating counties \$1 per ton for their 2006 tonnage. Because of that discussion proposed Resolution Number 7 is on the Agenda. Before acting on the Resolution there will be a closed meeting with the Authority's Counsel.

Mr. Strevy asked why other members were not invited to the meeting. Mr. Wesnofske responded that he wanted to talk to the Treasurer, Counsel and the Executive Director to discuss other courses of action that might be available.

Mr. Strevy stated that he would have appreciated an invitation to the meeting because he wondered for a week why the Treasurer would not sign the check, which the Board had approved at its last meeting.

Mr. Wesnofske responded that his email to the members indicated some of the events.

Executive Director's Report

Mr. Chichester reported on the following:

2006 Audit--

The 2006 Audit has been completed and will be presented to the Board in the near future.

Greshman, Brickner & Bratton--

The GBB activities continue to unfold. They will be in Schoharie County on April 23rd, in Montgomery County on April 24th and in Otsego County on April 26th.

Financial Report--

Since the Board is meeting earlier than normal all reconciliations are not complete. As soon as all the information can be finalized the monthly Financial Report will be sent out.

5. **New Business**

Resolution Number 7 Authorizing Refund of a Portion of 2006 Subsidies for Solid Waste Tonnage Delivered by Montgomery, Otsego and Schoharie Counties} Sponsored by Martha Clarvoe - Seconded by Edward Wesnofske

The Resolution authorizes payment to the Counties for their subsidy overage payment. Montgomery County would receive \$67,089, Otsego County would receive \$41,288 and Schoharie County would receive \$43,452. The Resolution also rescinds the motion made at the March 22nd meeting to pay \$1 per ton to the Counties for their 2006 waste tonnage.

Chairman Wesnofske stated that since the Resolution pertains to the legitimacy of the acts of providing payment to the Counties it would be appropriate to move into an attorney-client session with the Authority's Counsel.

Ed Munger, of the Gazette newspaper, took the floor and stated that he is required by his superiors to ask why the Board would be going into a closed session. Ms. Chale stated, to be clear, that the Board is not going into an executive session but is going into a private session to consult with their Attorney, which is permissible under the Open Meetings Law. Ms. Chale stated that the Board would not be conducting a discussion. The Board would be receiving advise from their attorney.

Mr. Munger went on record to state that the Board is in a meeting right now and would be leaving the meeting and closing it to the public, which he felt did not comply with the Open Meetings Law.

At 10:30 a.m. Chairman Wesnofske stated that the Board would move into the conference room to receive advise from its legal counsel.

At 10:55 a.m. Chairman Wesnofske called the meeting back to order.

Mr. Strevy motioned, seconded by Olga Podmajersky, to amend Resolution Number 7 by deleting the fifth and sixth "Resolved" clauses, which read as follows:

"Resolved, henceforth it shall be Authority policy for all future unbudgeted revenues from all waste delivered under the Service Agreement to be first applied to the capital

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needs of the authority and thereafter to be used for planning services and/or future tip fee stabilization, and be it further”

“**Resolved**, that this resolution rescinds the motion adopted at the March 22, 2007 meeting of this Governing Board to pay \$1 per ton to the Participating Counties from the Rate Stabilization Fund.”

Chairman Wesnofske stated that the question would be divided and each “Resolved” clause would be discussed and acted upon individually.

Mr. Strevy stated that his motion was to delete both “Resolved” clauses. Mr. Wesnofske stated that as Chairman he is dividing the question. He felt that the debate would involve two different issues and should be acted on one at a time.

Ms. Podmajersky stated that the first “Resolved” is not necessary and should be removed from the resolution.

Mr. Wesnofske agreed that a lot of it is current policy. He stated that the question that is not there relates to the tip fee stabilization. It indicates basically that instead of refunding subsidies, which essentially requires higher tip fees in the subsequent years, the policy would be to use surplus revenues to stabilize or minimize the increase of the tip fee down the road and would be a policy addition.

Ms. Podmajersky stated that there is not a policy to refund the subsidy overage every year. She stated that it is done by resolution every year.

Ms. Clarvoe stated that the Counties do expect the refund every year and the “Resolved” clause would be a warning to the Counties that they might not get a refund. She also felt that the Authority has not looked at alternatives on how to reduce the waste along with other conservation measurers. In her mind this restates what the Authority’s focus should be.

Mr. Strevy stated that when the Board was discussing the 2007 Budget and the tip fee there was reluctance from the Board to draw down any funds from the Rate Stabilization Fund. He indicated that he did not want to put more money into the Rate Stabilization Fund that would not get used.

On roll call vote the motion to delete the fifth “Resolved” clause was defeated with three members (Parker, Podmajersky, Strevy) voting “aye” and four members (Bent, Clarvoe, McNeil, Wesnofske) voting “nay” and one member (Baker) “absent”.

Chairman Wesnofske asked if there was any discussion on the sixth “Resolved” clause.

Mr. Strevy asked why the motion described in the sixth “Resolved” needed to be rescinded. He stated that the motion was passed and the Board took action but the Treasurer refused to sign the check.

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Chairman Wesnofske explained that the basis for rescinding the motion was on the written advice of the Authority's Counsel, which was distributed at the last meeting. Counsel indicated that it was a purposeless payment for dispensing funds and is beyond the powers of the Authority. For any payments to be made it would need to be done under the powers of the Authority in compliance with the Public Authorities Law.

Ms. Chale stated that the relevant issue is that the original motion called for \$117,000 to be paid to the Counties while Resolution Number 7, as drafted, calls for \$151,829 to be refunded to the Counties. She stated that the only relevance to the last "Resolved" clause is whether the Authority means to pay both amounts or just the one amount.

Mr. Parker asked Shane Walters how rescinding the motion would impact the Montgomery County villages. Mr. Waters responded that they are totally different issues. He indicated that the Counties expect the subsidy overage refund payment and the villages expected to be reimbursed by the County with the \$1 per ton that the Authority passed at its last meeting. At this point, some of the villages are probably already running out of funds.

Mr. Strevy stated that in reference to the GAT subsidy overage, Montgomery County budgeted to receive these funds and is still waiting to receive the funds to make their budget whole. If the Resolution is adopted with the last "Resolved" clause deleted and only the subsidy overage is paid to County it would be like the County writing a check from its own general fund to refund the municipalities.

Mr. Parker asked if the Authority reduced its tipping fee at the end May if it would be too late to help the municipalities.

Ms. Chale understood that it is up to the Counties to decided what to do with their subsidy refund. They do not have to reimburse the municipalities with it.

Mr. Strevy stated that reducing the tip fee would help more with the 2007-2008 years. The municipalities are concerned with the 2006-2007 years.

Ms. Bent stated that she sat through the discussions relative to the three proposals. The Board members were aware of the problems that the municipalities were going through. She felt that with all the projects that the Authority needs to accomplish that it could not finance all three proposals. The one that was passed was the smaller amount, which in the long run was not legal. By passing this Resolution it is a way to get money out to the Counties. The tip fee can be discussed at a future meeting.

Ms. Podmajersky stated that there is no problem with money. There is money set aside for MBIA but it can be used for capital improvements or anything else.

Mr. Wesnofske stated that he is asking the Finance Committee to add a Capital Budget in association with the annual Operating Budget preparation to its agenda list. This will help to figure out the sufficiency of the Authority's reserves in light of all of its needs.

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Mr. Strevy stated that the Board should not forget that the money that was originally approved at the March 22nd meeting was money gained from the catastrophic event that took place in the tri-county area in June of 2006. He stated that it was unfortunate that MOSA needs to better its position as a result of a catastrophic event that happened in the tri-county area. He felt that the humanitarian thing to do would be to return some of the revenue generated from that catastrophic event back to counties where the event occurred. But instead the Authority is thinking about constructing another building or buying another piece of equipment.

Ms. Bent pointed out that the Authority is not a social services agency. The scope of the Authority is to handle solid waste for the Counties.

Mr. Wesnofske stated that in respect to Resolution Number 7, he had indicated to the Treasurer that he would vote against it. He felt that the Resolution stretches a legal rubber band regarding the policy of returning money generated by user fees for solid waste into general revenue funds of the Counties. He used Otsego County as example by stating that the subsidy is generated on the basis of a user fee, which comes from the residents, hospitals, schools and nonprofit organizations in the County. That money is turned back into general revenues of Counties who are suppose to be using sales and property taxes. Meanwhile, the nonprofit organizations are exempt. He felt that it is a mild form of money laundering in a public sector. He stated that this is not the kind of the thing the Authority should be engaged in. This would be recalculating funds in a way that is not intended by a Public Authority.

Mr. Wesnofske stated that in light of Mr. Baker's absence he would vote in favor of the Resolution so that the money could get back to counties and the Authority could be done with the issue once and for all.

Mr. McNeil stated that the whole matter has been a legal issue from the start. Resolution Number 7 has a dollar value of \$151,829. The previous motion had a dollar value that was considerably lower. He stated that the reimbursement proposed in Resolution Number 7 is funds that were generated by excess garbage deliveries from the Counties. It has been returned in the past and the Authority's Counsel states that it is legal to reimburse these funds. The Resolution enables the Authority to give back the money in a rapid fashion and the Counties can reimburse the municipalities as they see fit. He felt that in light of the situation this is a remedy to what appeared to be an illegal act on the part of the Board.

Ms. Podmajersky stated that she did not understand why the other motion would be illegal and reimbursing the subsidy money would be legal.

Mr. Wesnofske responded that if you know something is not legitimate and you go ahead and do it anyway it presents a problem for maintaining creditable, trust and accountability for a public entity. The Authority should not be reckless in the way it stretches things. Mr. Wesnofske indicated that Mr. Strevy was willing to take a risk but stated that he is no longer willing to take a risk.

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Mr. Strevy stated that Mr. Wesnofske is assuming that the Comptroller's Office would come back at the Authority and say something is wrong.

Mr. Parker stated that if there is an audit and the Authority gets caught what is the worst that can happen.

Mr. Strevy stated that if the Board wants to run from the situation then let them run. He felt that things were getting better on the MOSA Board, but clearly it does not appear to be that way. Mr. Strevy indicated that the Treasurer is not accountable to the Attorney but to the Board. When the Board passed the motion he should have acted on it. But instead he waited for another opinion and did not do anything. Mr. Strevy pointed out that the Board appoints the Treasurer and he would call for his resignation but knew he would not get the support.

Mr. Wesnofske stated that there was plenty evidence induced that the Authority was going to far and he regrets having voted in favor of the motion. He had stated at the meeting that he thought that it was a purposeless motion and found it suspect because of it. He indicated that he thought the Authority should pay in relationship to solid waste purpose. Even in spite of that he still voted in favor of the resolution. But after more input it was clear that the Authority was doing more than it was empowered to do and the Authority has to comply with legal requirements.

Mr. Strevy stated that Resolution Number 7 is good except that the two "Resolved" clauses have been attached which changes the whole concept of the Resolution. He indicated that he would not be held hostage and would not support the Resolution as long as the two "Resolved" clauses remained as part of the Resolution. He stated he would deal with his county.

Mr. Wesnofske pointed out that the County's responsibility is to deliver 100 percent of the waste not just the GAT waste.

Ms. Clarvoe stated that she voted against the original motion because she feels that it is not the Authority's responsibility to bale out villages that are that tight. The flood expenses where covered by FEMA.

Ms. Podmajersky stated that the flood material has been backed out and has nothing to do with the matter.

Ms. Clarvoe stated that she did not feel it was MOSA's responsibility to bale out the villages from financial difficulties.

Ms. Podmajersky stated that MOSA did not tell the municipalities prior to putting together their budgets that MOSA's tip fee was going up to \$99/ton.

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Ms. Clarvoe stated that more than half of the municipalities did not fill out and return the form that MOSA sent them.

On roll call vote the motion to delete the sixth "Resolved" clause was defeated with three members (Parker, Podmajersky, Strevy) voting "aye" and four members (Bent, Clarvoe, McNeil, Wesnofske) voting "nay" and one member (Baker) "absent".

On roll call vote Resolution Number 7 was defeated with four members (Bent, Clarvoe, McNeil, Wesnofske) voting "aye", three members (Parker, Podmajersky, Strevy) voting "nay" and one member (Baker) "absent".

6. Other Business

Meetings

Chairman Wesnofske stated that he has asked the Committees to look at certain issues, which might require working with staff and possibly some other agencies and will take some time. Therefore, he did not see the need for a Board meeting on April 26th.

The next Board Meeting was scheduled for May 24th at 10:00 a.m.

Deferred Minutes of March 22, 2007

William Strevy motioned to accept the deferred minutes of the March 22nd as written. Olga Podmajersky seconded the motion. The minutes were unanimously approved on voice call.

9. Closing

William Strevy motioned to adjourn the meeting. Olga Podmajersky seconded the motion, which was unanimously approved on voice call.

The meeting adjourned at 11:40 a.m.

Respectfully Submitted,

Robin Loske
Confidential Secretary