

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: PUBLIC WORKS - SOLID WASTE & RECYCLING

DATE: AUGUST 12, 2009

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COMMITTEE MEMBERS PRESENT:

SUPERVISORS BELDEN  
BENTLEY  
TESSIER  
STEC  
MERLINO  
CHAMPAGNE  
TAYLOR  
GOODSPEED  
PITKIN

OTHERS PRESENT:

WILLIAM LAMY, SUPERINTENDENT OF PUBLIC WORKS  
FREDERICK MONROE, CHAIRMAN OF THE BOARD  
PAUL DUSEK, COUNTY ATTORNEY  
HAL PAYNE, COMMISSIONER OF ADMINISTRATIVE & FISCAL SERVICES  
JOAN SADY, CLERK OF THE BOARD  
NICOLE LIVINGSTON, DEPUTY CLERK OF THE BOARD  
SUPERVISORS STRAINER  
THOMAS  
REPRESENTING R.S. LYNCH & COMPANY:  
STEVE LYNCH, PRESIDENT  
REPRESENTING GERHARDT LLC AND ENVIRONMENTAL CAPITAL LLC:  
HANS ARNOLD, PRESIDENT OF GERHARDT LLC  
REPRESENTING STANTEC CONSULTING SERVICES, INC.:  
R. MARK DEMPFF, SENIOR PRINCIPAL  
PETER NIELSEN, PROJECT ENGINEER  
LUANN MEYER, SOLID WASTE PLANNING  
REPRESENTING BARTON & LOGUIDICE, P.C.:  
KEVIN VOORHEES  
THOM RANDALL, *THE ADIRONDACK JOURNAL*  
AMANDA ALLEN, SR. LEGISLATIVE OFFICE SPECIALIST

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Mr. Belden called the meeting of the Public Works Committee to order at 1:00 p.m.

The purpose of the meeting, Mr. Belden announced, was to re-interview the four consultants that had previously been interviewed in response to an RFP (request for proposal) released for the development of a Solid Waste Management Plan and for end of term negotiations with Wheelabrator. Paul Dusek, County Attorney, explained that earlier in the year the Solid Waste Task Force had interviewed respondents to the RFP. He further explained that because the interviews had been held some time ago, and the entire Committee had not been involved, he felt it was appropriate for the offers to be re-presented to the Committee members as they were now more focused on the matter and were prepared to make a decision for the future of the project. Mr. Dusek said that he had contacted the four respondents that had provided the most reasonable offers and those were the firms that would make presentations to the Committee. He noted that Steve Lynch, President of R.S. Lynch & Company, would be the first presenter and he asked that Mr. Lynch contain his presentation to less than 30 minutes and refrain from providing the cost associated with his offer until the Committee entered into executive session in the interest of maintaining a competitive environment for the four firms being interviewed.

Mr. Lynch began by thanking the Committee for inviting him back for a second interview. He distributed information outlining both his personal experience and that of his firm, as well as a listing of current and recent projects being completed for other agencies and municipalities. Mr. Lynch reviewed the information provided for the Committee's benefit, a copy of which is on file with the minutes. During his presentation, Mr. Lynch referred to Legislative Flow Control which he explained would involve Warren County passing a law that would make it illegal for anyone to send their trash to any site except for facilities designed, financed and built by Warren County.

He said that he did not feel this was a realistic option for Warren County, but it was important to understand what Flow Control was and for it to be addressed briefly in the County's Solid Waste Management Plan.

As Mr. Lynch was prepared to present the financial implications of his proposal, motion was made by Mr. Champagne, seconded by Mr. Pitkin and carried unanimously to enter into executive session to discuss matters leading to the hiring of a particular corporation pursuant to Section 105(f) of the Public Officers Law.

Executive session was held from 1:21 p.m. to 1:34 p.m.

Upon reconvening, Mr. Champagne noted that Mr. Lynch was currently involved with the financial aspects of the Hartford Landfill operation. He advised that Hal Payne, Commissioner of Administrative & Fiscal Services, had prepared documentation indicating that the potential 2009 deficit for the Landfill was somewhat less than initially anticipated and he asked Mr. Lynch to speak on the matter. Mr. Lynch replied that he would prefer to refrain from providing any information with respect to the deficit until he had the opportunity to review the information Mr. Payne had prepared. He advised that he would contact Mr. Payne to discuss the matter further, following which he would provide his opinion on the anticipated deficit figure.

Mr. Belden thanked Mr. Lynch for his presentation and Mr. Lynch left the meeting at 1:36 p.m.

Hans Arnold, President of Gerhardt LLC, entered the meeting at 1:37 p.m.

Mr. Arnold introduced himself to the Committee and thanked them for inviting him for a second interview. He noted that the proposal offered to the County was a joint collaboration between himself and Richard McCarthy, President of Environmental Capital LLC. Mr. Arnold stated that Mr. McCarthy intended to participate in the meeting via telephone; however, when Mr. Arnold attempted to contact Mr. McCarthy, he was unavailable. Mr. Arnold said that he would continue with his presentation and try to make contact with Mr. McCarthy again later in the meeting.

Mr. Arnold began by noting that although Gerhardt LLC was a newly created consulting firm and he had little consulting experience, he had a considerable background in the solid waste arena having been involved in the business for the past 30 years, 20 of which he had spent as Executive Director of the Oneida/Herkimer Solid Waste Authority serving the greater Utica, NY area. During his career as Executive Director, he said that he had negotiated waste management contracts with several high level, nationally known corporations that equated to \$10 to \$12 million per year in terms of transfer and disposal services when Oneida/Herkimer relied on exporting their waste out of that particular region and into areas in western New York and Pennsylvania. Mr. Arnold added that during this time he had also worked with some of the largest trucking and waste management companies to negotiate these contracts. He said that while negotiating the transfer of waste to outside sources, he had also been instrumental in citing, permitting, constructing and opening a 1,000 ton per day regional landfill facility for Oneida and Herkimer Counties which opened in 2006. Mr. Arnold stated that he had prepared the Solid Waste Management Plan for the facility operated by Oneida and Herkimer Counties and had accepted contracts to prepare a Plan for Otsego County and a Plan update for Otsego County. He said that he held experience not only in writing Solid Waste Management Plans, but in applying and implementing them as well.

In addition to his other qualifications, Mr. Arnold said that he had been invited to join the New York State Solid Waste Advisory Group for re-drawing the State's Solid Waste Management Plan. He explained that the Solid Waste Advisory Group was a 25-member panel that had been formed approximately 18 months ago and consisted of members from both the public and private sector who provided advice to NYSDEC (New York State Department

of Environmental Conservation) respective to revision of the State's Solid Waste Management Plan. In light of his experience with the Solid Waste Advisory Group, Mr. Arnold said he strongly suggested that the County delay in preparing a Solid Waste Management Plan, at least on the policy portion, until the State revisions were complete as he felt that NYSDEC intended to demand that the State's Policy be followed.

Mr. Arnold re-emphasized his negotiating experience and said that this would be key to Warren County in considering their options for negotiations with Wheelabrator for end of term arrangements for the solid waste facility. He apprised that he was the sole employee of his firm and had assembled a high caliber team, including Mr. McCarthy, to provide the services sought by the County in developing the Solid Waste Management Plan. Mr. Arnold stated that he preferred to refrain from providing any information with respect to the financial experience associated with the proposal as Mr. McCarthy was the expert in that area, but noted that Mr. McCarthy's firm had worked with the County in the past and was a very well respected and highly regarded firm.

Mr. Dusek noted that Mr. Arnold had some involvement with a flow control lawsuit in the past and he asked Mr. Arnold to expound on this issue. Mr. Arnold explained that the Oneida/Herkimer Solid Waste Authority had been the target of a lawsuit in 1995 stating that their system was identical to the one used in Clarkstown, NY, which had also been the target of a lawsuit, and that the flow control policy and Local Solid Waste Management Plan should be found unconstitutional because it violated the Dormant Commerce Clause. He said the lawsuit began in the Federal District Court in 1995 and a decision was not made until 2000 at which time the Court had upheld the lawsuit in stating that the system was identical to the one used in Clarkstown and was therefore unconstitutional. Mr. Arnold stated that they had immediately filed an appeal and the case was carried through the various Courts until it reached the United States Supreme Court in 2006. He added that on April 30, 2007 a decision was reached by the Supreme Court upholding the flow control system used by the Oneida/Herkimer Solid Waste Authority, thereby deeming the system to be constitutional. Mr. Arnold advised that although the lawsuit process had been very unpleasant, a precedent had been set to which other Counties across the Country could refer when developing their Solid Waste Management Plans and in distinguishing the ways in which flow control could be used in public systems.

As Mr. Arnold was prepared to present the financial implications of his proposal, motion was made by Mr. Pitkin, seconded by Mr. Goodspeed and carried unanimously to enter into executive session to discuss matters leading to the hiring of a particular corporation pursuant to Section 105(f) of the Public Officers Law.

Executive session was held from 1:54 p.m to 2:07 p.m.

Upon reconvening, Mr. Belden noted that Mr. Arnold had been able to reach Mr. McCarthy via telephone while the Committee was in closed session. Mr. Goodspeed asked Mr. McCarthy to highlight some of the financial experience of his firm, Environmental Capital LLC. Mr. McCarthy apprised that he had worked as a consultant and financial advisor in the solid waste business, as well as an investment banker, for the past 25 years. He said that his firm had worked as the financial advisors to Warren County in 2003 regarding a bond issue and provided a fair amount of general obligation work for other entities on a State-wide basis. Mr. McCarthy apprised that Environmental Capital LLC had worked with Municipalities across the State of New York to develop seven authorities, four of which were solid waste authorities developed for Counties seeking a manner in which to deliver trash services more efficiently. He added that his firm had also been responsible for all of the financial analysis required in creating these authorities.

Mr. Belden thanked Messrs. Arnold and McCarthy for their presentation and Mr. Arnold left the meeting at 2:12 p.m.

R. Mark Dempf, Senior Principal; Peter Neilsen, Project Manager, and Luann Meyer, Solid Waste Planning, all of Stantec Consulting Services Inc., entered the meeting at 2:13 p.m.

Mr. Dempf introduced himself and his associates and thanked the Committee for the second opportunity to present their proposal. Ms. Meyer distributed information pertaining to the experience of Stantec Consulting Services, Inc., as well as outlining their proposal, a copy of which is on file with the minutes. Mr. Dempf noted that Mr. Neilson and Ms. Meyer would serve as the two principal consultants for development of the County's Solid Waste Management Plan and he asked them to provide a brief accounting of their professional background.

Mr. Neilson advised that he was a Project Engineer for Stantec Consulting Services, Inc. who had dealt with all aspects of solid waste programs and would bring a broad background of understanding to the project. He apprised that he had worked with other Counties on similar projects and had served as lead engineer for the development of a Solid Waste Management Plan for four Counties in the Finger Lakes area. Mr. Neilson stated that he understood the situation the County faced and could provide perspective for their past experiences, as well as direction for the future.

Ms. Meyer said that she served as Project Manager for solid waste projects and had performed permitting work for a number of large expansion projects, as well as the annual reporting and planning aspects. She apprised that she was the Technical Program Coordinator for the New York Federation Solid Waste Association's Annual Conference and through this designation she had experienced a considerable amount of interaction with municipal and private sector participants.

Mr. Neilson briefly reviewed the work outlined in the proposal provided by Stantec Consulting Services, Inc. as reflected in the documentation distributed by Ms. Meyer.

As the Stantec representatives were prepared to present the financial implications of their proposal, motion was made by Mr. Merlino, seconded by Mr. Pitkin and carried unanimously to enter into executive session to discuss matters leading to the hiring of a particular corporation pursuant to Section 105(f) of the Public Officers Law.

Executive session was held from 2:28 p.m. to 2:38 p.m.

Upon reconvening, Mr. Belden thanked the representatives of Stantec Consulting Services, Inc. for their presentation and Ms. Meyer and Messrs. Dempf and Nielsen left the meeting at 2:39 a.m.

Kevin Voorhees of Barton & Loguidice, P.C. entered the meeting at 2:39 p.m.

Mr. Voorhees introduced himself and distributed a document briefly outlining the experience and qualifications of Barton & Loguidice, P.C. which he reviewed for the Committee's benefit; *a copy of the document is on file with the minutes.*

Referring to Item 6 on the summary distributed by Mr. Voorhees, Mr. Champagne questioned if the waste-to-energy facility his firm had been involved in developing in Oswego County was generating a positive cash flow. Mr. Voorhees replied that the facility had initially required financial support from Oswego County that had continued until they instituted Legislative Flow Control which subsequently generated profits for the County.

If granted the contract to develop the Solid Waste Management Plan, Mr. Voorhees said that his firm's first objective would be to determine the direction in which the County preferred to proceed, as in whether they desired

to remain in the solid waste business or not. Mr. Champagne questioned how they would be able to make a decision without knowing all of the cost factors involved and Mr. Voorhees replied that as the County's consultant, his firm would identify all of the options available to the County, as well as the cost implications, and they would schedule as many meetings as necessary to thoroughly review all of the options in order to make a decision in the best interest of the County. He added that one of the main issues for discussion would be whether or not the County actually required an updated Solid Waste Management Plan. Mr. Voorhees apprised that an updated Plan was required only when seeking a NYSDEC permit for expanding a solid waste facility or constructing a new one; he added that if the County had no plans to do either, an updated Plan was not necessary.

Mr. Champagne stated that as per meetings held with NYSDEC officials, the County was responsible for developing an updated Solid Waste Management Plan dictating solid waste and recycling procedures which would eventually require NYSDEC approval. Mr. Voorhees replied that there were NYSDEC officials who would have them believe that an updated Plan was required; however, he noted, there were higher ranking officials who recognized that NYSDEC regulations required an updated Plan only in cases when seeking NYSDEC permits. He noted that the Committee's decision as to whether or not the Solid Waste Management Plan should be updated would have a considerable impact on the contract costs.

Mr. Dusek asked how these NYSDEC regulations applied to town transfer stations and Mr. Voorhees advised that as long as these sites were not seeking to expand or build new waste facilities, an updated Plan was not required.

Discussion ensued.

As Mr. Voorhees was prepared to present the financial implications of his proposal, motion was made by Mr. Stec, seconded by Mr. Pitkin and carried unanimously to enter into executive session to discuss matters leading to the hiring of a particular corporation pursuant to Section 105(f) of the Public Officers Law.

Executive session was held from 2:57 p.m. to 3:29 p.m.

Upon reconvening, motion was made by Mr. Pitkin, seconded by Mr. Stec and carried by majority vote, with Mr. Goodspeed opposing, to contract with R.S. Lynch & Company to provide an updated Solid Waste Management Plan and end of term negotiations with Wheelabrator, contingent upon contact with NYSDEC and confirmation that an updated Plan is required, and the necessary resolution was authorized for the August 21<sup>st</sup> Board meeting.

It was the consensus of the Committee that if it was determined that an updated Solid Waste Management Plan was required only in the case of expanding or constructing solid waste facilities as noted by Mr. Voorhees, the matter would have to be revisited to amend the terms of the contract to dis-include an update to the Plan, consequently reducing the contract costs.

As there was no further business to come before the Public Works Committee, on motion made by Mr. Champagne and seconded by Mr. Stec, Mr. Belden adjourned the meeting at 3:31 p.m.

Respectfully submitted,  
Amanda Allen, Sr. Legislative Office Specialist