

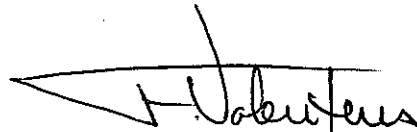
REPORT NO. 142 of the
ENVIRONMENT, TRANSPORTATION & PUBLIC SAFETY
STANDING COMMITTEE
of its meeting held May 22, 2013

Present: **Councillor J. Gignac**
 Councillor A. Halberstadt
 Councillor R. Jones
 Councillor H. Payne
 Councillor F. Valentinis, Chair


That the following recommendations of the Environment, Transportation and Public Safety Standing Committee **BE APPROVED:**

Moved by Councillor Halberstadt, seconded by Councillor Payne,
THAT the minutes of the Essex-Windsor Solid Waste Authority meetings held February 5, 2013 **BE RECEIVED** for information.
Carried.

Clerk's Note: The minutes of the Essex-Windsor Solid Waste Authority meetings held February 5, 2013 are attached as background information.

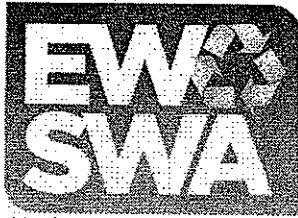


CHAIRPERSON



DEPUTY CLERK

NOTIFICATION:				
Name	Address	Email Address	Telephone	FAX



E12013

Essex-Windsor Solid Waste Authority

360 Fairview Ave. West, Suite 211 Essex, ON N8M 3G4
ph: 519-776-6441 f: 519-776-6370
tf: 1-800-563-3377 / tty: 1-877-624-4832
email: ask@ewswa.org / web: www.ewswa.org

April 17, 2013

file: EW 2012 - Laserfiche

City of Windsor
Attention: Ms. Valerie Critchley, Clerk
350 City Hall Square West, Room 203,
Windsor ON,
N9A 6S1

CITY OF WINDSOR
COUNCIL SERVICES

APR 22 2013

RECEIVED
Communication

Dear Ms. Critchley,

RE: MINUTES OF THE ESSEX-WINDSOR SOLID WASTE AUTHORITY BOARD MEETING

Section 4, paragraph (h) of the Agreement dated May 18, 1994 between the County of Essex and the City of Windsor pertaining to the creation of the Essex-Windsor Solid Waste Authority requires that the minutes of the Authority meetings be circulated in a timely manner to all members of the Authority, and members of City and County Council. In accordance with this provision of the Agreement, please find enclosed a copy of the minutes of the February 5, 2013 meeting for circulation to your Council members.

Please advise us of any action taken by your Council, or questions that might have arisen as a result of the circulation of these minutes.

Sincerely,

Eli Maodus
General Manager

CITY OF WINDSOR
COUNCIL SERVICES

APR 23 2013

RECEIVED

Encl.

MINUTES
ESSEX-WINDSOR SOLID WASTE AUTHORITY

Essex County Civic and Education Centre
Meeting Room C
Tuesday February 5, 2013
4:30 PM

Attendance:

EWSWA Board Members:	Tom Bain	County of Essex
	Ron McDermott	County of Essex
	Wayne Hurst	County of Essex
	Cheryl Hardcastle	County of Essex
	Ed Sleiman	City of Windsor
	Alan Halberstadt	City of Windsor
	Bill Marra	City of Windsor
	Drew Dilkens (2013 Vice Chair)	City of Windsor

Absent:	Ed Francis	City of Windsor
	Ken Antaya (2013 Chair)	County of Essex

EWSWA Staff:

- Eli Maodus, General Manager
- Michelle Bishop, Manager of Finance and Administration
- Cameron Wright, Manager of Waste Diversion
- Ralph Reiser, Manager of Waste Disposal
- Katherine Hebert, Executive Secretary

County of Essex Staff: Mary Brennan, Clerk / Director of Council Services

City of Windsor Staff:

- Anne Marie Albidone, Manager of Environmental Services
- Mark Spizzirri, Financial Planning Administrator
- Mario Sonogo, City Engineer

Others in Attendance:

- Christine Riley, Bondy, Riley, Koski
- Hilary Payne, City of Windsor
- Andrea Rivest, Delegation

1. CALL TO ORDER

Drew Dilkens, the outgoing Chair called the meeting to order at 4:35 PM.

2. BOARD COMPOSITION

A) Election of a Chair and Vice-Chair for 2013

Mr. Dilkens called for nominations of a Board Chair from among the County representatives.

Tom Bain nominated Ken Antaya for Board Chair. He noted that although Mr. Antaya was absent he had previously expressed a desire to hold the position. Mr. Dilkens called for a vote in favour of Mr. Antaya as Chair for 2013.

--CARRIED UNANIMOUSLY
1-2013

The Vice Chair will be held by a City of Windsor representative for 2013.

Wayne Hurst nominated Drew Dilkens for Vice Chair and Mr. Dilkens agreed to stand.

Ron McDermott nominated Alan Halberstadt for Vice Chair and Mr. Halberstadt agreed to stand.

The General Manager and Executive Secretary distributed ballots to the Board Members, then collected the ballots. The votes were tabulated and the majority of votes were in favour of Drew Dilkens as Vice Chair.

--CARRIED
2-2013

The General Manager declared Drew Dilkens as Vice Chair and Ken Antaya as Chair for 2013

Mr. Dilkens assumed the Chair for the meeting in the absence of Mr. Antaya.

3. DECLARATION OF PECUNIARY INTEREST

There were no declarations of pecuniary interest.

4. APPROVAL OF MINUTES

A) EWSWA Board Meeting – December 4, 2012

Moved by Wayne Hurst

Seconded by Alan Halberstadt

THAT the Minutes of the EWSWA Board Meeting of December 4, 2012 be adopted.

--CARRIED UNANIMOUSLY
3-2013

5. IN-CAMERA MINUTES

Moved by Ron McDermott

Seconded by Tom Bain

THAT the In-Camera Minutes of the EWSWA Board Meeting of December 4, 2012 be adopted.

--CARRIED UNANIMOUSLY

4-2013

9. DELEGATION**A) Andrea Rivest RE Correspondence Received January 7, 2013 - Landfill #3 Clay Capping Project**

The Vice Chair noted that there is a delegation present and that it would be preferred if they could address the Board prior to reviewing the related reports.

Moved by Wayne Hurst

Seconded by Tom Bain

That the order of business be changed to permit Item 9A, Delegation Andrea Rivest to address the Board prior to the related reports under Item 6. Business Arising from the Minutes.

--CARRIED UNANIMOUSLY

5-2013

Puce Rd. residents Andrea Rivest and Monte Schooley approached to address the Board.

Ms. Rivest spoke to her January 7, 2013 letter discussing the agenda reports relating to Landfill #3. In particular, she was stating her opposition to the recommended changes relating to Technical Review Committee composition and the Terms of Reference proposed to the Board. She expressed concern that the recommendations to appoint members to the TRC and to adopt a Terms of Reference for the TRC was premature. Additionally she stated that the Authority, according to the Ministry of the Environment was in violation of the Environmental Compliance Approval as it has not kept in the budget the \$25,000 that it was mandated to have aside for claims under the ECA. This was discussed at a meeting with the Ministry of the Environment on the morning of December 4, 2012.

Mr. Halberstadt identified some references to the MOE during the presentation, and raised the question as to whether the Authority was under a violation and who was the Ministry representative that confirmed this violation or if that was opinion of the delegation?

Ms. Rivest explained that at the meeting on December 4, 2012 she met with Teri Gilbert and Doug McDougall of the Ministry of the Environment. There was discussion with regard to the conditions of the Environmental Compliance Approval. At that meeting it was stated that with regard to the \$25,000 fund that was to be in place for the purpose of No Fault Compensation Claims the Authority COULD be considered in non-compliance, but since there was a period of inactivity, there would be some allowance to determine the process in mitigating the current complaints and moving forward.

Mr. Halberstadt further questioned the statement regarding the Authority Administration's "attempt to skew the process" pertaining to the Terms of Reference proposed to the Board in the report. Was this communicated by the Ministry of the Environment?

Ms. Rivest clarified that all of the statements in her presentation were her opinion and the opinion of the Puce Road Action Committee (PAC) group and not that of the MOE.

The General Manager further clarified that when he, Andrea Rivest, Lakeshore Councillor Dan Diemer and Authority Waste Disposal Manager Ralph Reiser met with the MOE in December there was no mention of the Authority being in non-compliance nor has there been any communication to that regard since that meeting. What was asked of the Authority was that the MOE be provided with a procedure as to how the Authority would implement Conditions 34 and 35 of the ECA (which there are reports pertaining to these matters attached to this agenda today). The Board at its December meeting instructed Administration to make recommendations with regard to striking the Technical Review Committee (TRC) and the Board would then consider those recommendations. When consulting the Windsor MOE office for this process, they advised they would not deal with the matter of changes to the ECA language. Authority Administration was advised to submit an application to the MOE Approvals Branch for the amendments requested by the Board. These items are before the Board in the above-mentioned reports.

Mr. Halberstadt confirmed that since the original TRC ceased to exist back in the 1990s when Landfill closed, the MOE has permitted a grace period to allow Administration and the Board time to arrange for the new TRC makeup. The Authority is not in violation of the ECA Conditions.

The General Manager agreed and confirmed Mr. Halberstadt's statement. Administration, in compliance with the resolution of this Board in December, has prepared some recommendations for the Board to consider with regard to the TRC composition and the preferred procedure to be followed by the TRC. Administration is not asking that the Board impose the Terms of Reference on the TRC, but that the Board request that the TRC consider adopting the Terms of Reference, once they are

established. All of this is dependent on MOE approval of the amendments proposed in the reports. It would ultimately be up to the TRC once established to set the Terms of Reference. With regard to multiple claims for compensation from the same parties, Christine Riley was asked to clarify this issue.

Ms. Riley noted that in legal terms there is a principal "*res judicata*" meaning "*already been decided*". When applied, once a decision on a particular issue has been made, the same body shall not deal with that same issue repeatedly. Loss of Enjoyment in this case, could be considered under that same principal. The TRC may decide that multiple claims from the same property will not be heard under that legal principal.

The Vice Chair questioned item 6 of the report found under Agenda Item 6(A) on page 12 of the agenda, pertaining to an appeal process. Is it the intent of that recommendation that the Board be the appeal body for the items turned down by the TRC?

Ms. Riley noted that there is no rule at this time, this is a new item for consideration by the Board. There was no appeal for the TRC rejections in previous years.

Mr. Halberstadt questioned the weight of the votes proposed for the TRC. He expressed concern that since Windsor pays 92% of the cost of perpetual care then they should be fairly represented in the voting weight. If there are 2 votes for Windsor under the proposed amendment then tie votes could take place at TRC meetings. What would happen then?

The General Manager noted that under status quo there are 5 members on the TRC including the MOE who typically doesn't vote. This composition could lead to tie votes. If the proposed amendment is approved where Tecumseh would be added to the TRC, then there would be 6 members, with the MOE not voting, there would be an odd number of votes if everyone is present.

Mr. Halberstadt suggested that Windsor should have a second member on the TRC.

Mr. Sonogo addressed the issue of the second vote for Windsor, as proposed.

Ms. Hardcastle questioned why Tecumseh would have been left off the list in the first place. She questioned the members who had been familiar with the decision at the time the issue was decided.

Mr. Bain noted that it was not only Tecumseh that was left off the list. There were many other municipalities using Landfill #3, e.g. Rochester, Belle River, Tilbury North, Tilbury West etc. none of these were included at the time as members on the TRC.

Mr. Halberstadt questioned the delegation's reference to the \$25,000 fund and the top up requirement of same.

The General Manager clarified that there is no cap amount for all claims as a whole, thus the amount provided by the MOE is simply a budget line item and since it is a condition that it be topped up, the amount is mainly arbitrary.

Mr. Halberstadt questioned as far as the budget is concerned it is a \$25,000 line item until the end of the project or is it forever?

The General Manager indicated that the fund would remain in the budget for the duration of the project.

Mr. Halberstadt questioned the claims period and what defined "a year".

The General Manager noted that it was not really defined formally, but the claims period could start in May of 2012 and end in 2014 when the clay hauling and placing is concluded. Claims can be made at any time, retroactively if necessary.

Mr. Halberstadt confirmed that the TRC under these recommendations and the Conditions could administer and pay out for claims as they see fit, up to any figure.

Mr. McDermott questioned how many houses were in the 2km area around Landfill #3.

The General Manager confirmed that the TRC would consider as many claims as are made, and that there are in excess of 200 properties within the 2km zone, not all of which have residences on them.

Ms. Hardcastle questioned item #5 of the proposed Terms of Reference, whether once the TRC establishes their Terms of Reference, will they be mandated to seek Board approval on these before administering claims?

The General Manager clarified that once established the TRC will decide their Terms of Reference and they are clear to proceed without further Board approval.

The Vice Chair noted that item #6 of the proposed Terms of Reference is recommending that all denied claims have the option of coming before this Board for appeal. This could be a political conflict and it is his opinion that the TRC decision should be final and no appeal body should be in place, especially this Board.

Ms. Riley noted that the Board may wish to add or remove any of the recommendations listed in the report. These are simply items for the Board to consider, these are not final until the Board makes the recommendation to that regard. Administration brought forth recommendations at the Board's request from the December resolution, but it remains to the Board for deciding.

Moved by Ed Sleiman

No Secunder - Discussion

THAT the Board approve the 7 recommendations as found on page 13 of the agenda package except that item #6 of the Terms of Reference (found on page 12) should be deleted. Item #6 proposed that the Board act as an appeal body for claims rejected by the TRC.

--NO VOTE TAKEN

Discussion related to the motion:

The Vice Chair noted that the two reports listed as Agenda Items 6(A) and 6(B) have a bit of crossover and both should be reviewed before the Board passes a resolution.

Mr. Halberstadt noted that he could only support a second Windsor member, not a second vote for Windsor's representation, on the TRC.

Mr. Bain noted that if that second member is added then a strike out of the second vote option needs to be removed from Item #2 of the proposed Terms of Reference.

Mr. Marra noted that the second report which speaks to the composition itself should be first considered. This report is under 6(B) of the agenda package.

Ms. Riley noted that in the Terms of Reference it is recommended that the TRC follow Bourinots Rules of Order, under which a tie vote is considered lost.

The Vice Chair asked the Board to turn to item 6(B) Report on Landfill #3 Environmental Compliance Approval Amendment RE Technical Review Committee Composition.

The Vice Chair read the recommendation from the report:

THAT the Board approve having administration make an application to the Ministry of the Environment to amend Condition #34 of the Landfill #3 Environmental Compliance Approval (ECA) as it pertains to the representative composition of the Technical Review Committee (TRC) as follows:

Composition of the TRC per 1990 ECA

1. EWSWA
2. Ministry of the Environment (MOE)
3. Township of Maidstone
4. Maidstone Against Dumping (MAD)
5. City of Windsor

Recommended TRC composition pending MOE approval

1. EWSWA
2. Ministry of the Environment (MOE)
3. Town of Lakeshore
4. Residents' Representative (to be appointed by Lakeshore)
5. City of Windsor
6. Town of Tecumseh

The Vice Chair asked for the Board to consider the recommendation.

Mr. Halberstadt proposed an amendment to Mr. Sleiman's original motion to reflect Windsor having 2 members on the TRC.

Moved by Bill Marra

Seconded by Ed Sleiman

1. That the Authority request that the Town of Lakeshore appoint a representative to the TRC.
2. That the Authority request that the City of Windsor appoint their representative(s) to the TRC.
3. That the Authority appoint a representative to the TRC.
4. That administration from the Authority attend TRC meetings as a resource and to take minutes of the meetings.
5. That the Authority request the TRC to consider implementing the six items described under the Term of Reference as follows:

Proposed Terms of Reference for the TRC:

- I. *The TRC shall elect a chairperson whose role will be to schedule meetings and to chair those meetings. The chair shall have the same voting rights as do the other members.*
- II. *The TRC will follow Bourinot's Rules of Order, the same rules used for EWSWA meetings.*

- III. *The TRC is to arrange a tour of the haul route and landfill site to become familiar with the properties in the area and the distances involved.*
- IV. *The TRC will accept multiple claims for review from a claimant suffering "damage to property" under (b) of the list of adverse effects as defined by the Environmental Protection Act since this type of adverse effect could take many forms. For example a dump truck hauling clay to the landfill site may strike and damage a mailbox at a particular property. Another time a truck may project a stone and damage a car in the driveway of the same property. The property owner would submit two separate claims and the TRC would receive those for review.*
- V. *The TRC will receive a submission only one time per property whose occupant(s) claim "loss of enjoyment of normal use of property" under (g) of the list of adverse effects. Claims from more than one individual from the same property will not be accepted. If the TRC approves or rejects such a claim for a particular property during the term of the project then no other claim citing (g) will be accepted from that property.*
- VI. *Condition #35 states that the maximum amount of a single claim shall be \$5,000. If a claimant submits a claim for the maximum amount and should the committee agree that the claimant has suffered an adverse effect this does not necessarily mean that the committee will decide to pay the full amount of the claim. The committee may decide to pay a lower amount. Each claim is to be examined on its own merits. Two different claimants who may claim for an adverse effect under (g) loss of enjoyment of normal use of property and have established an adverse effect may not receive the same amount due to varying circumstances.*

And, Pending Ministry of the Environment Approval:

6. That the Authority request that the Town of Lakeshore appoint a Residents' representative and an alternate in the event of a conflict being declared by the primary representative.
7. That the Authority request that the Town of Tecumseh appoint a representative to the TRC.
8. That the City of Windsor be represented by 2 seats on the TRC.

--CARRIED UNANIMOUSLY
6-2013

NOTE: *The preceding resolution serves as the Board's direction regarding Agenda Items 6(A) and 6(B).*

The Vice Chair questioned Mr. Schooley, also present at the delegations table if he had anything to discuss.

Mr. Schooley responded that he did not.

6. BUSINESS ARISING FROM THE MINUTES**A) Condition #35 of the Environmental Compliance Approval for Landfill #3 RE Compensation and Technical Review Committee**

This item was considered above, under the discussion related to Agenda Item 9(A).

B) Landfill #3 Environmental Compliance Approval Amendment RE Technical Review Committee (TRC) Composition

This item was considered above, under the discussion related to Agenda Item 9(A).

7. CORRESPONDENCE

There were no correspondence items to consider.

8. WASTE DISPOSAL ISSUES**A) Award of the Contract for the Supply of a Four Wheel Drive Front End Loader and Seven Year Service Contract for Use at Transfer Station #2 in Kingsville**

Moved by Bill Marra

Seconded by Ed Sleiman

1. That the price of \$330,957 excluding tax, submitted by Toromont Cat for the 930K Wheel Loader complete with a 7 year service contract be accepted by the Authority.
2. That the Authority accept the trade in price quote for the surplus 966F wheel loader.
3. That the Chair and General Manager be authorized to enter into an agreement for the purchase of the Cat 930K wheel loader, options and maintenance agreement for the 930K wheel loader.

--CARRIED UNANIMOUSLY
7-2013

B) Landfill #3 Clay Project Funding Request from the Province of Ontario

Moved by Ron McDermott

Seconded by Tom Bain

THAT the report pertaining to Landfill #3 Clay Project Funding be received for information purposes.

--CARRIED UNANIMOUSLY
8-2013

10. **WASTE DIVERSION ISSUES**

A) Progress Report – Multi-Unit Residential Recycling in Essex-Windsor

Moved by Bill Marra

Seconded by Ed Sleiman

THAT the report pertaining to Multi-Res Recycling be received for information purposes.

--CARRIED UNANIMOUSLY
9-2013

Mr. Halberstadt questioned whether the Authority has to continue soliciting participation in the program for that small percentage of non-participants or is the Ministry looking after those cases?

The Manager of Waste Diversion indicated that the Ministry would be looking after the outstanding cases.

11. **FINANCE AND ADMINISTRATION**

A) Status Report RE 2013 Budget Approval

Moved by Tom Bain

Seconded by Cheryl Hardcastle

That the status report pertaining to the 2013 EWSWA Budget be received for information purposes.

--CARRIED UNANIMOUSLY
10-2013

B) Summary of Legal Invoices

Moved by Wayne Hurst

Seconded by Ron McDermott

THAT the invoices noted in the report dated February 5, 2013 be paid in full.

--CARRIED UNANIMOUSLY
11-2013

C) 2013 Proposed Meeting Schedule

Moved by Alan Halberstadt
Seconded by Ron McDermott
THAT the proposed dates for the 2013 EWSWA Board Meetings be adopted.

--CARRIED UNANIMOUSLY
12-2013

12. **ANY OTHER BUSINESS**

No other business was raised.

13. **BY-LAWS**

A) By-Law 1-2013 – Being a By-Law to Confirm the Proceedings of the Board of the Essex-Windsor Solid Waste Authority

Moved by Bill Marra
Seconded by Ed Sleiman
THAT By-Law 1-2013 - Being a By-Law to confirm the proceedings of the Board of the Essex-Windsor Solid Waste Authority be given three readings and be adopted this 5th day of February 2013

--CARRIED UNANIMOUSLY
13-2013

B) By-Law 2-2013 – Being a By-Law to Authorize the execution of an agreement between the EWSWA and Toromont Cat

Moved by Bill Marra
Seconded by Ed Sleiman
THAT By-Law 2-2013 - Being a By-Law to Authorize the execution of an agreement between the EWSWA and Toromont Cat be given three readings and be adopted this 5th day of February 2013

--CARRIED UNANIMOUSLY
14-2013

14. NEXT MEETING

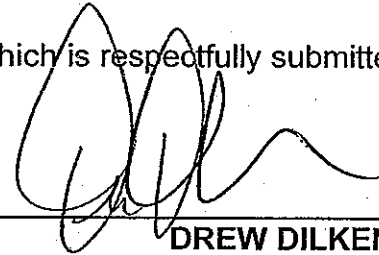
TUESDAY MARCH 5, 2013 – 4:30 PM - ESSEX COUNTY CIVIC AND EDUCATION CENTRE, 360 FAIRVIEW AVE. W. ESSEX, MEETING ROOM C

14. ADJOURNMENT

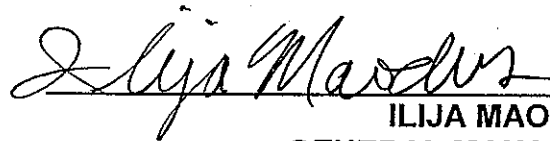
Moved by Ron McDermott
Seconded by Wayne Hurst
THAT the meeting be adjourned at 5:40 PM.

--CARRIED UNANIMOUSLY
15-2013

All of which is respectfully submitted.



DREW DILKENS
VICE CHAIR



ILJA MAODUS
GENERAL MANAGER