



APPROVED Meeting Minutes

2016 Nashua Region Solid Waste Management District Meeting

September 1, 2016

Attendees:

Sally Hyland	City of Nashua	Jim Solinas	Town of Brookline
Steve Doumas	Town of Merrimack	Joan P. Cudworth	Town of Hollis
Tom Bayrd	Town of Hollis	Jill Longval	NRPC

I. Call to Order

The meeting was called to order at 10:04 am by Hyland.

II. Approval of June 2, 2016 Draft Meeting Minutes

Hyland referred to the draft minutes of June 2, 2016 and asked for comment or if accurate, a motion to approve. ***Cudworth motioned to approve the minutes of June 2, 2016 with a second from Solinas. All were in favor.***

III. Update on August 6 and August 27 Collection Events

Longval informed the group that there were 276 vehicles representing 308 households at the August 6 HHW collection in Nashua. This is in line with the 2015 attendance of 309 households, 2014 totals of 310 households, and 2013 totals of 313 households. Although she did not yet have actual data on volumes of waste from Veolia for the event, Longval believed that the total volume of waste brought to the August 6 event was very high. This was confirmed by Hyland. Longval then informed the group that the August 27 collection event in Pelham was a success, with 172 vehicles representing 201 households attending. Of those households, 102 were from Pelham. She noted that the first Milford satellite event had 219 households and the 2016 Milford event had 170 households, so attendance at the Pelham event was certainly comparable. Longval also thanked Stan Walczak for his hard work in preparing for and promoting the event.

IV. Review of FY 2016 Final Financials

At the June 2, 2016 meeting, the end of FY16 financials that were presented included estimates for May 2016 and June 2016 since the books had not been closed as of the meeting. Longval presented a final Balance Sheet, Capital Reserve Fund summary, and Profit & Loss statement to the group with actual figures for May and June 2016. On the Balance Sheet, Longval noted that the \$50,419 Accounts Receivable line item reflected the FY16 DES grant reimbursement, which was received after June 30, 2016. On the Capital Reserve Fund summary, Longval noted the \$1,672 transfer of user fees after the June 2 collection event. She also pointed out the \$450 payment to

Maple Leaf, which reflected the completion of the storage facility door repair contract, and the \$7,123.40 payment to Maple Leaf for the storage facility painting contract. Longval noted that while the \$7,123.40 had originally been budgeted in FY17, the work was completed before the end of June and therefore was paid out of the FY16 budget. Finally, in the Profit & Loss statement, Longval highlighted the \$21,817.90 Maintenance line item, which she said reflected the storage facility door repair and painting work.

V. Revision to FY 2017 Budget

Longval informed the group that the painting line item of \$7,123.40 should be \$0 since the work was completed sooner than anticipated in FY16. As such, the Capital Reserve line item should also be \$0 in FY17 since there are no anticipated repairs to be made in the coming year. Longval was unable to show the revised budget to the group on the screen since the projector could not connect to the computer. Hyland asked that the updated budget be sent electronically to the members.

VI. Discussion of Solid Waste District Agreements

Longval reminded the group that the idea of developing bylaws for the District was first suggested at the June 21, 2012 bi-annual NRSWMD meeting. Only 2 members showed up to this meeting and there was concern about whether the FY2013 budget could be approved by only 2 members. Without bylaws to govern the District there were no rules to establish a quorum or voting procedures. NRPC developed and first presented draft bylaws at the December 11, 2012 District meeting. The District discussed and made revisions to the draft bylaws at the June 11, 2013 and December 17, 2013 meetings. NRPC presented revised draft bylaws at the June 18, 2014 District meeting. The District approved having an attorney review the document at that meeting, but did not allocate any funds for it. An attorney for the City of Nashua offered to review them for free, but was ultimately unable to do so. At the December 9, 2014 meeting, the District approved up to \$3,500 for a legal review and suggested using Attorney Bernie Waugh. NRPC contacted Attorney Waugh on February 9, 2015 and he provided his legal opinion on June 19, 2015. In his 2015 legal opinion, which Longval provided copies of to the group, Waugh informed the group that although what they had presented to him was titled "Bylaws," they read more like District Agreements. He went on to say "I am assuming that there was already, some years ago, a vote to create the District, and I am also assuming (without adequate information or knowing for sure) that that vote was lawful under the laws existing at that time. But if there was never any District Agreement voted upon, then it is my opinion that the adoption of this Agreement will require approval of all local legislative bodies (town meeting or council vote), as set forth in RSA 53-B:6 (as amended in 2013) – the same procedure as if the District were first being created. In my view, the only way to avoid such a procedure would be if the District had already adopted an Agreement, and that Agreement contained an amendment procedure which was less stringent than RSA 53-B:6."

At that the time of Attorney Waugh's 2015 legal review, NRPC and District members were uncertain whether District Agreements existed. NRPC contacted Nelson Ordway, Executive Secretary DES Solid Waste Management Bureau, as well as the Attorney General's office. Neither one had any records of the District's formation. After an extensive search, NRPC was able to locate the following documents:

- [District Agreements](#) for Amherst, Brookline, Hollis, Merrimack, Milford, Mont Vernon, Nashua, Windham dating to 1983. There is no indication that they were “lawfully” voted upon and there are notes in the margins that indicate the signatories were not in full agreement with the language.
- Letter for Hudson (10/28/83) from NH Dept. of Health and Welfare stating it had been assigned to NRSWMD because it hadn’t voluntarily joined a district.
- [Letter for Pelham](#) (11/28/95) from Pelham BOS “confirming the Town of Pelham’s permanent plans to participate in the upcoming Household Hazardous Waste collections, sponsored by the Nashua Solid Waste District.”
- Nothing from Litchfield—based on other NRSWMD documents we know they joined somewhere between 6/30/98 and 4/1/00.

NRPC presented these findings to the District at the December 9, 2015 meeting. The District instructed NRPC to proceed with developing updated agreements and asked that they be reviewed by the District and Attorney Waugh.

Given the uncertainty about the District’s formation, NRPC contacted Attorney Waugh in 2016 to determine how to proceed with updating the District Agreements. NRPC provided Attorney Waugh with copies of the Agreements described above and asked the following questions:

- What is the District’s current legal status?
 - Are the 1983 District Agreements for Amherst, Brookline, Hollis, Merrimack, Milford, Mont Vernon, Nashua, and Windham legally binding?
 - What is Hudson’s legal status in the District given that the only documentation we have is a letter from the NH Dept. of Health and Welfare dated 10/28/83 stating it had been assigned to NRSWMD because it hadn’t voluntarily joined a district?
 - What is Pelham’s legal status in the District given that the only documentation we have is a letter from the Pelham Board of Selectmen dated 11/28/95 “confirming the Town of Pelham’s permanent plans to participate in the upcoming Household Hazardous Waste collections, sponsored by the Nashua Solid Waste District.”
 - What is Litchfield’s legal status given that we have no documentation of their intent to join the District?
- How should the District proceed?
 - Can the 1983 District Agreements for Amherst, Brookline, Hollis, Merrimack, Milford, Mont Vernon, Nashua, and Windham be updated based on the amendment procedures outlines in Section 8?
 - Would Hudson, Pelham, and Litchfield need to begin the process as if they had never been part of the District?
 - If the District is not currently on firm legal ground, would it make sense to dissolve it and begin again?
- How do you dissolve a District that never legally existed, if that is the case?

Longval then provided Attorney Waugh’s complete 2016 legal review to District members and summarized Waugh’s key findings, including:

- The District is not a validly formed Solid Waste Management District under RSA 53-B.

- The District is only an informal “cooperative agreement” under RSA 49-M:19.
- The Planning District provision under RSA 149-M:18-20 under which the “District” was original formed no longer exists. Furthermore, it was never intended to create a Solid Waste Management District under RSA 53-B.
- It is highly legally doubtful that its actions would be held to be in any way binding on any member municipality.
- Under the current informal agreement:
 - Towns can withdraw at any time without penalty.
 - Any town can refuse at any time to contribute its share of the budget if the local voters (or council) refuse to appropriate the money.
 - The authority of the district to own property is questionable.
 - The authority of the district over the regulation and control of any solid waste facility is legally questionable.
 - Towns that did not sign the 1983 District Agreements (Hudson, Pelham, Litchfield) are as legitimate as any other members in this informal cooperative agreement.
- In order to form a valid 53-B District there must be a vote by each legislative body (town meeting or council) to adopt new district agreements.

After providing this overview, Longval opened the discussion up to members. There was further discussion about the history of the District as well as other potential options for moving forward. Members agreed that the following steps should be taken to move forward:

- NRPC staff will outline the pros & cons of bringing the HHW program under NRPC vs forming a valid 53-B District, including liability and financial implications.
- NRPC staff will send out full meeting packets to all members who were not present at this meeting.
- NRPC’s Director, Tim Roache, will discuss the possibility of bringing the HHW program under NRPC at the Sept. 2016 NRPC Executive Committee meeting.
- The Solid Waste District as well as other key decision makers in each municipality will meet on October 6, 2016 at 10:00AM to discuss options for moving forward. NRPC’s Director, Tim Roache, will call each municipal representative to personally invite them to the meeting and provide an overview of the District’s current status.
- An additional meeting will be held in November 2016 if needed. Attorney Waugh will be invited to attend.

VII. Additional Business

Longval reminded the group that the final two collection events of calendar year 2016 are Saturday October 1 and Saturday November 5, from 8:00AM-noon in Nashua. Cudworth informed the group that Hollis is hosting a DES training for transfer station operators on October 12. Registration is required through NH DES. Longval will send a link to the group if they wish to participate.

Motion to adjourn came from Cudworth and seconded by Doumas. The meeting ended at 11:50am.