PARKING AUTHORITY MINUTES

April 24, 2002

PRESENT: Urban Mulvehill, Chairman; Stephen Bentkover; Troy Jellerette; Amy Jimenez

OTHERS: Ed Schmidt, Assistant to the Mayor

ABSENT: Larry Bentley

STAFF: Kathryn Hebert, Public Works Department
Ed Musante, Director, Redevelopment Agency
Jack Miller, Finance Director
Jack Burritt, Redevelopment Agency
Diane Jacobson, Corporation Counsel
Martin Overton, Public Works Department

CALL TO ORDER

Mr. Mulvehill called the meeting to order at 8:00 p.m.

APPROVAL OF MINUTES FROM APRIL 10, 2002

The following correction was made to the minutes:

Page 1, Under Staff: Add the name "**Martin Overton**".

**** MR. BENTKOVER MOVED APPROVAL OF THE MINUTES AS CORRECTED.**
**** MOTION PASSED BY VOICE WITH THREE (3) IN FAVOR (MESSRS. MULVEHILL, BENTKOVER AND JELLERETTE) AND ONE ABSTENTION (MS. JIMENEZ).**

DISCUSSION - ESTABLISH PROCEDURE TO RETAIN LEGAL COUNSEL AND AUDITOR FOR THE PARKING AUTHORITY

RFQ Process Every 2-3 Years

Mr. Mulvehill stated Mr. Schmidt had advised him that the Authority did not have a budget yet but when it did he recommended that they had an auditor separate from the City auditor. He went on to state that when issues arose that Corporation Counsel could not handle it might also be advisable for the Authority to have its own attorney. Mr. Miller questioned why there had to be a separate auditor and urged that the auditor be the same as the one for the City so that everything would be with one component. Mr. Mulvehill remarked that there would be one auditor but a separate assignment and Mr. Miller agreed that the audit would be independent but performed by the same auditor. Mr. Schmidt concurred and then cited examples of other Authorities that had their own legal counsel. He added that the Chair of those Authorities would refer to that legal counsel for advice.

Mr. Miller reiterated that the same auditor was needed otherwise the cost for this service might be duplicated. Ms. Jimenez asked if the Maritime Aquarium and the Board of Education had the same auditor as the City and Mr. Miller replied that they did. Except for NEON, Mr. Miller could not think of any other instance where an entity did not have the same auditor as the City. Ms. Jimenez asked that the issue of an independent auditor and legal counsel be investigated through obtaining a response from other Authorities and from Corporation Counsel.

Mr. Mulvehill commented that since this Authority was in its infancy it might be possible for Corporation Counsel to arrange for legal counsel to be available without actually incurring expenses. He added that if and when Corporation Counsel felt that they could not represent both the City and the Authority they would then advise that it was time to hire independent counsel.

Attorney Jacobson arrived at 8:20 p.m.

Mr. Schmidt remarked that Corporation Counsel could start the process now and then would advise the Authority on how the process would occur. Mr. Mulvehill informed Attorney Jacobson of the discussion that was just held regarding the Authority having separate legal counsel and a separate auditor. Attorney Jacobson stated that a prior discussion she already had on this issue centered on the need for separation or independent legal advice. She noted that the decision had not been based on the workload of Corporation Counsel because their office would still be representing the City on these issues. She stressed that what was critical was that the Authority have independent counsel when contracts and service agreements were being negotiated because this third party would be looking out for the Authority's best interest.

Mr. Mulvehill stated that while he understood that the Authority was a separate entity the overall feeling was that this was being run for the City. In view of that fact he questioned the need for separate legal counsel. Attorney Jacobson explained that the need stemmed from the fact that there would be two parties involved in the lease, the City being the lessor and the Authority being the lessee. She explained that although it would not be run separately the independent representation would serve to establish the terms and conditions when the Authority took control. She added that the same thinking applied to bond counsel. Attorney Jacobson remarked that the only other issue her office contemplated the need for separate representation was when the Authority was being set up. She noted that after that process was over the Authority would come under the insurance coverage of the City and therefore Corporation Counsel would represent them. She summarized that it was the City's policy, the City's liability and the City's representation.

Mr. Schmidt surmised that the need for legal services might ebb and flow and there might be times when there would be no need for the Authority to access their own counsel. Mr. Mulvehill stated that if the Authority was going to have its own counsel his first question would be what would the Authority's interests be that were separate and apart from the City's. He also asked what interests the City would be trying to protect on its own. He asked if this strategy was to give the appearance of the City and the Authority being separate or if there were separate interests because Corporation Counsel already represented the City.

Attorney Jacobson stated that she did not see this as an adversarial venture or conflict. She explained that the Authority would be operating as an independent body so it would need a third party to oversee and protect its interests. She further explained that the Authority's interests would be different from the City's and therefore would need someone to approach things from a different perspective.

Mr. Mulvehill remarked that if a list were to be made of various interests it would be difficult to identify which were the interests of the City and which were the interests of the Authority. He said that he felt this situation was not much different from a corporation and their subsidiary or a husband and wife who would have one advisor until a true conflict arose.

Mr. Bentkover asked what liability the Authority might have that was separate and apart from the City of Norwalk. Ms. Jimenez asked whose bonds would be issued and Mr. Mulvehill replied that they would be Authority bonds. Mr. Miller responded that they would be City issued revenue bonds and that the City would have to pledge backfill for any operating revenue deficiencies. Mr. Miller commented that whether it was for appearance sake or whether there had to be legal representation reviewing an agreement, there needed to be someone independent from the City serving over the Authority to review the contract agreement.

Mr. Miller asked if there was a Parking Association and Mr. Overton replied that there was. Mr. Overton said that it was the National Parking Association and he felt they could provide the Authority with information regarding agreements. He added that it was an organization that the Authority should join. He commented that he felt that independent counsel would have knowledge and experience from dealing with other parking authorities and could offer a wealth of information. Mr. Overton stated that he felt the Authority might need an attorney independent of the City and that the resources could very well come through the Parking Association.

Mr. Mulvehill stated that he agreed that there might be situations when the Authority would need specialized knowledge. Mr. Miller pointed out that the Maritime Aquarium Authority had spun out on its own from the City and had its own legal counsel. Ms.

Jimenez stated that she was quite comfortable with that and added that it made good sense. She went on to state that whether counsel was highly utilized or not she believed that the Authority would have interests that were separate from the City. She explained that if at some point the Authority and the City had different interests it would not do the Authority well to be represented by Corporation Counsel because that would not be looking out for the Authority's best interest. She asked that there be some feedback within the next month from other parking authorities regarding their legal counsel around the State and commented that they needed to know more about the Parking Association. She explained that in this way they could have a more informed discussion with regard to whether or not this was a prudent measure to take. She remarked that at this point she was not certain that they had enough basis for their feelings on the subject.

Mr. Mulvehill stated that there would be no problem in getting additional facts and moving forward. Mr. Schmidt pointed out that independent counsel would not be retained because of a possible conflict of interest but because of the mere fact that the Authority was a separate entity and as such needed its own legal counsel. He remarked that the Authority might proceed for days, weeks, months, even years where it did not use its own attorney. He noted that all the RFQ process did was arrange for the Authority to position an attorney on an as needed basis. He stated that if the Authority decided that it did not need to access its own attorney that would be fine but there needed to be one available and ready just in case. He reiterated that it was not the conflict that triggered the need for an independent attorney but the fact that the Authority was a separate entity.

Mr. Mulvehill stated that a feasibility study would be presented tonight. He then said if the Authority had the capability of having its own lawyer he really did not have a clue when that attorney should be accessed. He added unless there was a potential conflict with the City, which there never should be one.

Mr. Schmidt stated that this was a quasi-public Authority and even the Hartford Economic Development Authority would process an RFP and arrange for attorneys to be approved to represent them. He explained that the attorneys would be hired to represent the Authority and their services may or may not be accessed over the course of the year. He added that during the course of the year only 3 out of the 12 attorneys retained might be given work and the other 9 were not requested because their services were not needed.

Mr. Mulvehill stated that he did not have a problem identifying the lawyers but he still felt they were adrift on when something should be given to the independent lawyers and when it should be referred to Corporation Counsel. He added that he did not want to pass everything over to both sets of attorneys. Mr. Schmidt stated that he was certain that the Authority's attorney would inform them when they should utilize the services of Corporation Counsel. He went on to state that just because they retained independent counsel did not mean that the attorneys had to scrutinize everything the Authority did.

Mr. Mulvehill commented that common sense should certainly prevail in these instances but he felt that attorneys should not be telling the Authority when they needed a lawyer. He stated that the Corporation Counsel should be able to identify that and although they were independent they were also close and he felt that in most instances they should be consulted.

Ms. Jimenez stated that she felt it would be helpful to have the names of people that also served on other parking authorities throughout the State and the Members of this Authority could make some telephone calls to inquire what instances had occurred and what their practices were. She pointed out that they were not inventing this from the ground up and they should ask questions of those resources. She added that they were all brand new to this Authority and they needed the opinions of others from existing authorities.

Ms. Jacobson distributed the RFQ for Bond and General Legal Services. She stated that she would supply the Members with another one for an auditor. Mr. Mulvehill advised the Members that they should study these documents. Ms. Jacobson reviewed the documents with the Members and noted that one firm could handle all their needs.

A discussion ensued regarding the issue of retaining separate bond counsel. Mr. Mulvehill remarked that he felt one area where it was pretty clear that independent counsel was needed was in bond issuance. He added that Corporation Counsel could be the non-bond lawyer who would review the engagement of bond counsel.

Ms. Jimenez stated that she felt the Members needed to review the feasibility study and come back to this issue for discussion at the next meeting. She added that the RFQ's should be reviewed and the Members should give their feedback to Ms. Jacobson.

Mr. Mulvehill asked Mr. Miller to arrange for the auditors to submit a bid to perform the work for the Authority and then he could report back to the Members. Mr. Miller advised that the auditors would come in the next fiscal year probably a little earlier than January 2003. He explained that the Authority would start maintaining records. He further explained that a budget had to be set up for the Authority and the Members would have to adopt it. He said that the auditors would then come in and review the Authority's minutes, look at their structure and their financial transactions and then render an opinion. Mr. Miller noted that he would pretty much direct how everything was set up so the auditors would not be going into much depth.

Mr. Mulvehill stated that the Members would table any further discussion on these issues and he directed the Members to the feasibility study.

DISCUSSION - MARITIME GARAGE

Feasibility Study

Report from VHB/Preliminary Findings

Mr. Cranshaw introduced himself and explained that he was making the presentation this evening for the Project Manager, Steve O'Neil. He distributed the financial analysis of the feasibility study to the Members and stated that the objective of the study was to demonstrate the financial strength behind the bonds. He explained that the study laid out what revenue would be generated by the bonds and the expenses that would incur. He added that it also indicated whether or not the bonds could cover the debt service.

A discussion was held about the Aquarium Parking Garage with regard to hours of operation, permits and the potential first year revenue. Key assumptions were discussed and Ms. Jimenez pointed out that projection wise it was a negative picture that would turn into a positive one. Mr. Miller added that there would be $3 million dollars in added tax revenue and the garage would be self-sufficient. Mr. Cranshaw remarked that the parking system was an infrastructure for supporting the City.

The estimated expenses and related key assumptions were then discussed. Mr. Cranshaw remarked that there was an extraordinary maintenance cost which equaled 5% of the gross revenue.

Mr. Cranshaw reviewed the Debt Service of the Aquarium Parking Garage and related key assumptions with the Members. The operations of the garage were discussed which included the possible need for additional staff coverage at peak times. State of the art mechanical equipment was mentioned and the possible need for central cashiering. Security was also mentioned. Mr. Schmidt asked that the staff speak with Desmond Associates to pass the information on to them that the Authority was interested in using a swiping system because it would probably have an impact on the budget. He added that the designers needed to know this and if Mr. Cranshaw had known this he would have based his figures on that mechanism. He said that they would still need a person on site in case there was a problem.

Mr. Cranshaw pointed out to the Members that there was nothing that could be done to prevent the revenue bond issue from requiring the backing of the City. He said that to sell revenue bonds solely on the garage with no guarantee from the City would require a $200,000 surplus in the first year of operation. He noted that the other parking facilities did not help at all in backing up the revenue bond.

Mr. Cranshaw stated that although the Members might find the analysis summary pretty bleak it really wasn't. He went on to state that overall it was a great thing to do. However, he cautioned the Members that the numbers looked tough and they would have to think harder as they moved forward but they would not have any problem getting started. He explained that the numbers were a little above average because they would be operating 7 days a week. He also explained that the permit costs were a little low from what was needed to operate the parking garage but overall it looked good.

Mr. Cranshaw reviewed the Financial History with the Members. Mr. Schmidt asked that an additional column be added to this report to include the projected revenue for 2004-2005. Mr. Jellerette asked if there was a formula that would show where people would park if the meter prices were raised. Mr. Cranshaw replied that this study looked solely at the revenue behind selling the bonds. He noted that this report was geared to people buying bonds and it was not meant to be an enhancement of all the revenue the Authority might find someday. He did point out however that there was a lot of opportunity here because the fee structure had not changed much.

Mr. Bentkover noted that 225 permits were already pre-sold and there was a demand already for parking. He said that there was a built up existing demand for parking whereas so many other cities building garages hoped people would come. Mr. Cranshaw remarked that this would always be an attractive garage. Mr. Mulvehill stated that the analysis that the Members had was a draft revision and the final version would be coming shortly.

Mr. Jellerette asked what the cost had been for the analysis and Mr. Miller replied that it was $27,000. Mr. Mulvehill advised that it was a necessary document to process the bonds as well as it also gave helpful information.

Status Construction/Timeline

Timeline for the Sale of Bonds

Construction Manager GMP Contract

Construction Administrator

Mr. Musante stated that there was no update on the above items at this time.

DISCUSSION - PUBLIC OFFICIAL INSURANCE

Attorney Jacobson stated that the new carrier for the City was effective July 1st and that the coverage with St. Paul Insurance would end on June 30th. Mr. Miller advised the Members that the City would cover the Authority prior to that time and he would send the Authority a letter to that affect. Mr. Mulvehill stated that a document from the City should also be sent to the Authority regarding the hold harmless clause for the first $500,000. He noted that the City was self-insured for this portion of coverage. Mr. Miller replied that he would send something to the Authority stating that it was covered. Mr. Mulvehill asked that the letter state that the City would indemnify and hold the Authority harmless. Ms. Jacobson said that Mr. Miller would put that in a letter and she would add that the City would provide the coverage at no expense to the Authority. Mr. Miller remarked that he would put the risk cost in the budget.

DISCUSSION - SERVICE AGREEMENT

Budget and Accounting for Parking Authority (Finance Department)

Leasehold Interest in Parking Facilities (Law Department)

Assignment of Contracts

Auditing

Risk Management Plan

Ms. Hebert stated that she and Attorney Jacobson were still working on the service agreement. Mr. Schmidt asked that a 1st draft be presented at the next meeting and he noted that additional input from the Members would be taken at that time.

DISCUSSION - RATE STRUCTURE OPTIONS

Mr. Schmidt stated that he had nothing to bring to the Authority on this item yet. He noted that additional input was required and this could possibly be discussed at the next meeting.

Ms. Jimenez stated that the Members would need to review the information the weekend before the next meeting. She went on to state that if they discussed the rate structure at the next meeting and voted on it at the following meeting then they would have a budget in July. Ms. Hebert replied that there would be a suggested rate structure to review and Ms. Jimenez noted that the Authority would need to have a fee structure to review for the Maritime Garage.

Ms. Jimenez stated that this was a fairly big contract coming up regarding vendor collections, enforcement, tickets and permits. Ms. Jacobson stated that the City would amend the contract and distribute it to the Members. She noted that the City would not assign the Authority the contracts and the Authority would simply state that the City holds the Agreement. Mr. Schmidt stated that they needed to address the service agreement first. Mr. Miller remarked that he would not want to see the Authority inherit a long-term contract.

A discussion ensued regarding the current service agreement in place and the fact that the City would not issue an agreement with a term longer than one year. Mr. Schmidt asked the staff to work on some options for the service agreement so they could be reviewed at the next meeting. Ms. Jimenez stated that two things would run concurrently - the first was the language by which the Authority would operate (the service agreement) and the second was the operation budget issues to be addressed immediately because the income stream was vital to the existence of the Parking Authority.

Mr. Mulvehill asked for the status of the contract renewal with NetTech Solutions and Ms. Hebert replied that she was recommending a one-year amendment to the current agreement to the Common Council given that the department had to continue to operate at this time. Mr. Miller agreed that he would also only recommend a one-term contract at this time. Mr. Mulvehill asked if the Authority would be inheriting other contracts. Ms. Hebert replied that the other contract terms had not yet expired and some still had three more years, but that these contracts would be covered under the umbrella of the service agreement.

Mr. Mulvehill asked Ms. Jimenez to work on reviewing the upcoming contract drafts. He asked if any of the other Members would like to work with Ms. Jimenez. Mr. Jellerette and Mr. Bentkover stated that they would. Ms. Hebert stated that she would send the members the same back up documentation that would be sent to the Common Council.

DESCRIPTION OF THE CITY OF NORWALK'S PARKING SYSTEM AND OPERATION

Presentation by Bill Grumman, Director of Public Works and Staff Schedule Tour of Existing Facilities

This item had been postponed.

Discussion for Next Meeting, May 22, 2002, 8:00 p.m., Room 231

It was determined that this was meeting date was fine with the Members.

ACTION ON ANY DISCUSSION ITEMS LISTED HEREIN

No actions were taken at this time.

ADJOURNMENT

**** MS. JIMENEZ MOVED APPROVAL TO ADJOURN.**
**** MOTION PASSED UNANIMOUSLY BY VOICE VOTE.**

The meeting adjourned at 10:50 p.m.

Respectfully submitted,

Ann Marie DeLuca
Telesco Secretarial Services