

**CHARTER TOWNSHIP OF LYON
BOARD OF TRUSTEES
SPECIAL MEETING MINUTES
FEBRUARY 13, 2007**

Approved as submitted March 5, 2007.

DATE: February 13, 2007
TIME: 4:30 PM
PLACE: 58000 Grand River

1. **Call to Order:** Supervisor Young called the meeting to order at 4:41 PM.

2. **Pledge of Allegiance**

3. **Roll Call:** Present: Lannie Young, Supervisor
Patricia Carcone, Treasurer
Pamela Johnson, Clerk
John Hicks, Trustee
Daniel Cash, Trustee
Brent Hemker, Trustee
Chriss Roberts, Trustee

Also Present: Matthew Quinn, Township Attorney
Philip Seymour, Township Attorney
Chris Olson, Township Superintendent
Loren Crandell, Township Engineer

Guests: 5

4. **CALL TO THE PUBLIC** NONE

5. **APPROVAL OF AGENDA**

Ms. Carcone motioned to approve the agenda as submitted. Mr. Hicks supported the motion.

Voice Vote: Ayes: All
Nays: None

Motion approved.

6. **Earth Tech Wastewater Treatment Plant Operations Contract**

Dave Dupuis, Earth Tech, distributed a hand out showing the capital improvements to the Board, which he reviewed and briefly discussed. He explained what the issues are, what the remedies are and what Earth Tech recommends. He briefly discussed the Aquarobics proposal and indicated that they do not yet have an all inclusive proposal.

Mr. Dupuis stated that he felt that last week's tour of the facility was very educational and that it helped them explain to the Board why they are struggling with some of the challenges and also

why these upgrades are needed.

Mr. Hicks questioned why this is happening now. He stated that the plant has been working fairly well for the past five years. Mr. Dupuis responded that he is not sure that he would agree with this. He stated that if you look back at the compliance history they would see that since the plant started up they have exceeded their discharge permit, typically two or three times a month. He stated that for many years Earth Tech has treated the symptoms of the causes, but are now finding out now that they need to make modifications.

Mr. Hemker stated that when you look at the numbers and analyze this, there were long stretches of periods where the plant was in compliance. He questioned if operator change has attributed to some of the compliance problems. Mr. Dupuis noted that the current operator has been there about seven months. He noted that they certainly have had their struggles over the past few years with retaining good help. He noted that some of the problems may be attributed to the operator, but would sincerely doubt this. He stated that all of the operators that they have hired for this facility have been certified.

Loren Crandell, Township Engineer, stated that he was not able to attend the meeting this morning but John Solowczuk and Tina Vaglica did attend and filled him in on the discussions, which he briefly summarized for the Board. He indicated that the plant is almost ten years old and could use some modification.

Mr. Crandell noted that the current Earth Tech contract expires on February 18, 2007 and that at the last Board meeting the Board approved a proposal to extend the contract for sixty days. He stated that Earth Tech was not aware that the Board was possibly planning on going out for an RFP and they planned on investing a lot of money into the plant over the next sixty days, which they did not want to eat. He stated this is what prompted Earth Tech to revise their sixty-day proposal so that they could recoup the \$45,000. He noted that some of it is lab equipment that the Township would keep. He felt that there has been some miscommunication between the two parties.

Mr. Young stated that as far as Board action is concerned, they have already extended the contract. He stated that in addition to the sixty days, which was approved at the last meeting, it sounds like the action that the Board would take tonight is to approve the \$45,000 requested.

Mr. Quinn stated that their position is that Earth Tech made an offer of contract with language proposed, Amendment III and Amendment IV. He stated that these were offered to the Board who listened to the presentation from Earth Tech. The Board accepted the offers and approved the two extensions, which the Supervisor signed. He stated that the first payment under these two extensions are due March 1, 2007. He stated that from a legal standpoint there was an offer of contract, acceptance of contract and therefore, that contract for the sixty day extension is valid. Mr. Crandell noted that this was without the \$45,000. Mr. Quinn stated that whatever was part of the motion is valid. He noted that within the two amendments there was no reference to any exhibits or anything.

Mr. Crandell briefly reviewed some options that the Board has with regard to the contract. He stated that he has no doubts that Earth Tech is totally capable of running the plant. He stated that they have had discussions and did not feel that the non-compliance is totally the fault of the operator.

Mr. Crandell stated that he is very reluctant with the idea of letting Earth Tech's contract lapse on the February 18th and bringing in another contractor to run the plant. He stated that they did have discussions with John Dowson of Highland Treatment, who has indicated that he could come in and run the plant in the interim. He stated that after talking with Mr. Dowson, he is not as uncomfortable with this idea as he was.

Mr. Crandell briefly discussed the non-compliance issues at the treatment plant.

John Solowczuk, Giffels-Webster, discussed suggestions they made to Earth Tech for better performance of the pumps and blowers. It was noted that Earth Tech has implemented some of the suggestions.

Mr. Dupuis stated that he would be very concerned with the cost and effectiveness of putting in bypass lines and paying for something with a lot of kilowatt hours. He stated that the electricity costs would be very large. He felt that by installing a frequency drive it would offer a more stable influent being passed through.

Mr. Young stated that at the last meeting the Board approved to extend Earth Tech's contract for sixty days. He briefly discussed what the \$45,000 that Earth Tech has asked for includes.

Ms. Carcone stated that Earth Tech made the Township an offer, which they responded to. She asked Mr. Dupuis what Earth Tech was doing. Mr. Dupuis responded that they made the Township a fair offer with the anticipation that the only reason that they were offered an extension is because the Township and Giffels-Webster needed to take a look at their proposal for the concerns with the non-compliance recommendations and the capital improvements. He stated that there was never any conversation that this had the potential to go to bid. He stated that they would have never submitted a proposal for a five year contract, if this were the case.

There was brief discussion with regard to when the proposals were submitted and when the Board first saw them in relation to the date of the current contract expiration.

Ms. Carcone stated that the Township wouldn't even be considering going out for bid except that the new proposal submitted by Earth Tech for the next five years had an increase of 90%, in addition to \$80,000 for upgrades to the plant. She noted that not once has the Board ever said "no" to Earth Tech for anything that they have asked for to better run the plant.

Mr. Hicks questioned what Earth Tech did prior to assembling the lab. Mr. Dupuis responded that they sub-contracted it out to their Wixom facility.

Mr. Young noted that it was mentioned that Earth Tech would be willing to go with a two year contract. Mr. Dupuis indicated that they would entertain the idea. Mr. Young questioned how much of the \$45,000 would go away if they approved a two year extension. Mr. Dupuis responded that none of it would go away, it would be built into the two year lump sum. They were originally spreading it out over the five year contract. He noted that this is not the time or the place to have negotiations regarding a two year contract.

Mr. Roberts asked Mr. Dupuis if he is under the opinion that Earth Tech is not under contract at this time. Randy Moore, Vice President, Earth Tech, stated that their position right now is that their contract expires February 18, 2007.

Mr. Roberts stated that he is having a real hard time swallowing the price of the lab equipment and asked if anyone else on the Board is having the same problem. Ms. Carcone stated that she is having a problem with the whole proposal.

There was further discussion with regard to the Board approved 60 day extension of the contract. Mr. Moore, again, stated that their position is that on February 18, 2007 their contract is terminated. He stated that in order for them to continue on as operators of the plant, they would need to have what has been submitted.

Mr. Young stated that he does not want to extend the contract for sixty days and pay \$45,000. He stated that to him that would not be a good bang for the buck based on what he knows. He

stated that it sounds like if they extended the contract for sixty days without paying the \$45,000, that there is a disagreement legally. He stated that this leaves the Board with two choices: (1) that they let the contract terminate on February 18, 2007 and have someone come in and run it in the interim and while that person is running it, the Township can put together a RFP; (2) that they extend the contract for possibly two years because it will allow Earth Tech to do what they said that they can do. He noted that the final figures would need to be worked out.

Mr. Hemker stated that the contract has a 90% increase and the Board is supposed to be working for the public as to what is in their best interest, they have to find out what is best for the public. He stated that nobody on the Board knows what is a good price for this type of service without going out for bid, which he felt was absolutely necessary. He noted that they have some large capital costs coming up and that they cannot be offsetting what they charge the residents by even more. He stated that he would consider extending the contract for 60 days.

Mr. Cash stated that he would consider the two options that Mr. Young referred to earlier.

Ms. Carcone felt that Earth Tech was not being loyal or that they were not taking care of the Township. She stated that she has seen the Miss Dig certificates sitting in the outbox for months with nobody from Earth Tech coming in to get them. She stated that she still has not gotten the service request forms on a regular basis. She stated that she feels that they should go out for bid. She stated that she is very disappointed. She also stated that 25 days out of compliance without the Township even knowing about it is totally unacceptable.

Ms. Johnson stated that there are a lot of different arguments here. She stated that she would like to see the Township go out for bid, but would also like to see Earth Tech extend their contract for sixty days. She stated that they are a public service and are accountable to the public and to raise rates, they better be able to justify it.

Mr. Hicks stated that at this point there is only one option, to go out to bid.

Mr. Roberts stated that he felt that they should go out for bid. He stated that it would be nice if Earth Tech would stay for another sixty days, but he couldn't agree to the extra \$45,000.

Mr. Quinn stated that the Board has already approved the sixty day extension based upon the contract terms offered to them at the February 5, 2007 meeting. He stated that if the Board intends to make a motion different than that, the first motion should be reconsidered and then they can make a new motion for something else. He stated that the consensus of the Board is that they want to go out for bid.

Mr. Quinn stated that if the Board leaves it with the original motion extending the contract for sixty days, and Earth Tech's position is that the sixty day extension is not going to be honored, then the action that the Township would be forced to take on February 18, 2007 is get a court to approve a temporary restraining order. The temporary restraining order would order Earth Tech to continue to maintain operation of the plant because of the health, safety and welfare of the 445 residents that are connected to the system. He explained the process of seeking a temporary restraining order. He noted that once a judge hears that the dilemma is regarding \$45,000 he will ask both parties to step aside to see if they can resolve the issue. He stated that the Board can adjourn the meeting for a period of time to discuss this with Earth Tech and then come back. He stated that if the Board is adamant and not willing to pay the money, then they should make a motion to that effect.

Mr. Young stated that he would not want to see litigation over this. He stated that he doesn't want to spend the money or the time to go through the process of litigation. He asked Earth Tech if the Township were to have another operator come in because they can't meet the demands of the \$45,000, how would the transition work. Mr. Dupuis stated that the interim operator could come

