

ESSEX COUNTY
IMPROVEMENT AUTHORITY
ESSEX COUNTY, NEW JERSEY

SPECIAL BOARD MEETING : TRANSCRIPT OF RECORDED
: PROCEEDINGS
:
:

27 Wright Way
Fairfield, New Jersey

Friday, May 27, 2016
Commencing at 11:30 a.m.

M E M B E R S P R E S E N T:

COMMISSIONER MARK S. DUNEC, (Via telephone)
COMMISSIONER CLIFFORD ROSS, (Via telephone)
COMMISSIONER CARLA A. STANZIALE, (Via telephone)
COMMISSIONER JACQUELINE YUSTEIN, (Via telephone)
COMMISSIONER RONALD J. BROWN, Vice Chairman,
(Via telephone)
COMMISSIONER STEVEN H. KLINGHOFFER, Chairman,
(Via telephone)

M E M B E R S A B S E N T:

COMMISSIONER GERARD M. SPIESBACH

A L S O P R E S E N T:

STEVEN C. ROTHER, Executive Director, (Via telephone)
LUCY SAPINSKI, Director of Operations
JAMES O'TOOLE, ESQ., Special Counsel,
(Arrived, via telephone, at 11:36 a.m.)

I N D E X

| | | |
|----|---------------------------|-------------|
| 1 | | |
| 2 | | <u>PAGE</u> |
| 3 | SUNSHINE NOTICE | 3 |
| 4 | ROLL CALL | 3 |
| 5 | PUBLIC COMMENTS | 7 |
| 6 | <u>RESOLUTIONS</u> | |
| 7 | Resolution No. 16-163 | 4, 7 |
| 8 | Motion to adjourn meeting | |
| 9 | Resolution No. 16-20 | 14 |
| 10 | | |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
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1 CHAIRMAN KLINGHOFFER: Notice was duly
2 given by regular mail and facsimile to the Essex
3 County Executive, the Essex County Clerk, the
4 Clerk of the Board of Chosen Freeholders,
5 Freeholder President Timberlake, the News Editor
6 of The Herald News, the News Editor of The
7 Star-Ledger, and notice was posted on the
8 bulletin board in the Office of the Essex County
9 Improvement Authority stating the time, date, and
10 location and purpose of this Special Meeting at
11 which formal action may be taken on the items
12 listed on the agenda.

13

14 **ROLL CALL:**

15

16 MS. SAPINSKI: Commissioner Brown?

17 CHAIRMAN KLINGHOFFER: Roll call.

18 MS. SAPINSKI: Commissioner Brown?

19 VICE CHAIRMAN BROWN: Here.

20 MS. SAPINSKI: Commissioner Dunec?

21 COMMISSIONER DUNEC: Here.

22 MS. SAPINSKI: Commissioner Stanziale?

23 COMMISSIONER STANZIALE: Here.

24 MS. SAPINSKI: Commissioner Ross?

25 COMMISSIONER ROSS: Here.

1 MS. SAPINSKI: Chairman Klinghoffer?

2 CHAIRMAN KLINGHOFFER: Here.

3 MS. SAPINSKI: Commissioner Yustein?

4 COMMISSIONER YUSTEIN: Here.

5 MS. SAPINSKI: Oh. Okay.

6

7 (Whereupon, the Board discussed the
8 following item:

9 **RESOLUTION**

10 1. RESOLUTION NO. 16-163 - RESOLUTION
11 AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THE
12 RELEASE AND SETTLEMENT AGREEMENT IN THE MATTER OF
13 CELANESE LTD v. ESSEX COUNTY IMPROVEMENT
14 AUTHORITY, DOCKET #ESX-C-19-04 AND TAKE ALL
15 NECESSARY STEPS TO EFFECTUATE SAME.)

16

17 CHAIRMAN KLINGHOFFER: Okay.

18 We have a single item on this agenda and
19 that's to approve a settlement on the Celanese
20 Litigation.

21 Would someone like to move it?

22 VICE CHAIRMAN BROWN: I'll move it.

23 COMMISSIONER STANZIALE: Oh, I -- I have a
24 question.

25 CHAIRMAN KLINGHOFFER: Oh, --

1 MS. DILLON: I'm sorry; who's the mover
2 please?

3 MS. SAPINSKI: She has a question.

4 COMMISSIONER STANZIALE: Pardon me?

5 VICE CHAIRPERSON BROWN: There's a question
6 to the floor.

7 CHAIRMAN KLINGHOFFER: Well, hold on.
8 Wait, let's -- let's wait a moment on moving it.

9 Is that Carla that had a question?

10 COMMISSIONER STANZIALE: Yes, it is. Yes,
11 yes.

12 CHAIRMAN KLINGHOFFER: Okay, go ahead.

13 COMMISSIONER STANZIALE: So, in reading --
14 in reading this, you know, my -- my concern was
15 only that the release to the past obligations
16 could be void in the event of breach of future
17 obligations. And my hope would have been that it
18 would have been bifurcated.

19 I mean I -- it's not going to change my
20 vote but I -- I just want you to talk about that.

21 MR. ROTHER: Well, you know, if -- if --
22 that's -- that's a question that really should be
23 put to Jim O'Toole.

24 Lucy, --

25 MS. SAPINSKI: Okay, I will have Jim

1 O'Toole call in.

2 MR. ROTHER: Ask him to dial in.

3 (Whereupon, there is a pause in the
4 proceedings.)

5 VICE CHAIRMAN BROWN: While we're waiting
6 Commissioner, I apologize, I really didn't hear
7 the question.

8 COMMISSIONER STANZIALE: My question was --
9 it was really more of just raising an issue that
10 I wanted to -- and we'll hear more about from Jim
11 O'Toole.

12 I don't expect that it would have been
13 changed but the release as to past obligations is
14 void in the event of a breach of future
15 obligations for indemnification.

16 And my hope would have been that that would
17 have been bifurcated.

18 Now, you know, I -- I'm sure that that was
19 discussed but I just wanted just to hear a little
20 bit about it.

21 VICE CHAIRMAN BROWN: All right, thank you,
22 I understand the question.

23 MR. ROTHER: While we're waiting, are
24 there any other questions?

25 VICE CHAIRMAN BROWN: No.

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PUBLIC COMMENT:

CHAIRMAN KLINGHOFFER: While we're waiting, are there any members of the public that want to be heard?

Hearing none.

No public comment.

MR. ROTHER: My wife's sitting next to me -- my wife's sitting next to me raising her hand.

Okay?

(Whereupon, there was a pause in the proceedings.)

MS. SAPINSKI: He didn't call in?

MS. DILLON: No.

(Whereupon, the Board discussed and took action on the following item:

RESOLUTION

1. RESOLUTION NO. 16-163 - RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THE RELEASE AND SETTLEMENT AGREEMENT IN THE MATTER OF CELANESE LTD v. ESSEX COUNTY IMPROVEMENT AUTHORITY, DOCKET #ESX-C-19-04 AND TAKE ALL NECESSARY STEPS TO EFFECTUATE SAME.)

1
2 COMMISSIONER STANZIALE: I know everyone
3 wanted to make this quick, so apologies for the
4 lay-up.

5 CHAIRMAN KLINGHOFFER: No, --

6 (Whereupon, there were multiple speakers.)

7 MR. ROTHER: No, no. No, no.

8 CHAIRMAN KLINGHOFFER: -- no, apologies.

9 A VOICE: It's a good --

10 CHAIRMAN KLINGHOFFER: Good question.

11 COMMISSIONER STANZIALE: I know.

12 MR. ROTHER: That's the reason why --

13 CHAIRMAN KLINGHOFFER: That's --

14 (indiscernible).

15 MR. ROTHER: That's the reason why we held
16 this up for settlement --

17 COMMISSIONER STANZIALE: No, --

18 MR. ROTHER: -- (indiscernible).

19 COMMISSIONER STANZIALE: -- I know that.
20 Of course.

21 (Whereupon, there was a pause in the
22 proceedings.)

23 CHAIRMAN KLINGHOFFER: Lucy?

24 MS. SAPINSKI: Yes?

25 He's --

1 CHAIRMAN KLINGHOFFER: Were you able to
2 reach him?

3 MS. SAPINSKI: Yes. He's calling in.

4 CHAIRMAN KLINGHOFFER: Oh, good. Okay.

5 (Whereupon, there was a pause in the
6 proceedings.)

7
8 (Whereupon, James O'Toole, Esquire, Special
9 Counsel, joined the meeting, via telephone, at
10 11:36 a.m.)

11

12 MR. O'TOOLE: Morning everyone; Jim
13 O'Toole.

14 CHAIRMAN KLINGHOFFER: Good morning, Jim.

15 MR. O'TOOLE: Morning.

16 CHAIRMAN KLINGHOFFER: Commissioner
17 Stanziale has a question.

18 Why -- Carla, why don't you repeat it.

19 COMMISSIONER STANZIALE: Yes. Hi, Jim.

20 MR. O'TOOLE: Morning.

21 COMMISSIONER STANZIALE: So, my question
22 related to the release. And it was just quick.

23 You know, the -- the release as to past
24 obligations is void, as I read it, in the event
25 of a breach of future indemnification

1 obligations.

2 MR. O'TOOLE: Um-hum.

3 COMMISSIONER STANZIALE: And I guess I -- I
4 was hoping that that was something that could
5 have been bifurcated. And I don't -- you know, I
6 just wanted to raise it and hope that you could
7 just shed a little bit of light on why it's that
8 way.

9 MR. O'TOOLE: That was a -- that was a --
10 the final sort of negotiation that went on about
11 to close it out.

12 So they were concerned that to the extent
13 that if there's -- if -- if there's a -- if we
14 fail to pay, for example, if we fail to honor the
15 indemnity going forward, if we fail to defend,
16 that ab initio they could take the release and --
17 and put it aside.

18 They -- I think the -- the short answer is
19 they're -- that would arguably open up an avenue
20 for them to reassert claims for unpaid past
21 costs. But the -- the reality is is that we will
22 have paid virtually all of the -- our occurred
23 past. We are incurring our own costs going
24 forward and have been doing so since January of
25 last year.

1 COMMISSIONER STANZIALE: Um-hum.

2 MR. O'TOOLE: So the only -- so, to your
3 point, the risk is -- is as follows:

4 All of the past cost claims in settlement
5 have been based on what's called an interim
6 allocation between us -- I mean the -- Celanese
7 and the CPG, the Group.

8 At some point in time -- and it may not be
9 soon, there will be a final allocation. And a
10 final allocation may differ and may differ
11 significantly between what was assessed on an
12 interim basis versus what would be assessed on a
13 final basis.

14 COMMISSIONER STANZIALE: Um-hum.

15 MR. O'TOOLE: Right? Put that off.

16 If, however, we for whatever reason don't
17 honor our obligations, it is conceivable,
18 although highly unlikely from my perspective that
19 we -- we would not honor them but, nonetheless,
20 conceivable that we upon a final allocation they
21 could make -- try to make a claim -- if we had
22 not honored our obligations otherwise, they could
23 try to make a claim that there's a difference
24 between what they -- what they calculated the
25 past costs were versus what they could be

1 calculating the past cost if you use a new
2 percentage.

3 So, --

4 COMMISSIONER STANZIALE: Okay.

5 MR. O'TOOLE: -- a simple -- a simple -- a
6 simple way of looking at this, if for example on
7 the interim basis the past cost and -- and
8 percentage share that was based on .5 percent but
9 ultimately in a final allocation our percentage
10 goes to one percent, then obviously they would
11 try to make some argument that, you know, the
12 past cost numbers should be readjusted in some
13 fashion.

14 Likewise I mean from -- you know, it would
15 be -- we would -- we would -- if they open that
16 door up and it went the other way, we would argue
17 that there would be savings that we should get
18 the benefit of.

19 COMMISSIONER STANZIALE: Right.

20 MR. O'TOOLE: So, I agree with you that it
21 -- it creates a bit of an obstacle to a pure walk
22 away on past but I don't believe that at the end
23 of the day it's going to matter.

24 COMMISSIONER STANZIALE: Okay, perfect. I
25 completely understand.

1 Thank you.

2 MR. O'TOOLE: Thank you for asking that
3 question; it was a good one.

4 COMMISSIONER STANZIALE: Thanks.

5 CHAIRMAN KLINGHOFFER: Any other questions?
6 If not, do we have a motion?

7 VICE CHAIRMAN BROWN: I moved it already.

8 MS. SAPINSKI: Commissioner --
9 Is this --

10 CHAIRMAN KLINGHOFFER: Okay, is there a
11 second?

12 MS. SAPINSKI: Is this Commissioner Brown?

13 COMMISSIONER STANZIALE: I'll second.

14 VICE CHAIRMAN BROWN: Yes.

15 MS. SAPINSKI: Oh, Commissioner Ross (sic).
16 And who's going to --

17 COMMISSIONER STANZIALE: Commissioner
18 Stanziale will second.

19 MS. SAPINSKI: Thank you.

20 MS. SAPINSKI: Commissioner Brown?

21 VICE CHAIRMAN BROWN: Yes.

22 MS. SAPINSKI: Commissioner Dunec?

23 COMMISSIONER DUNEC: Yes.

24 MS. SAPINSKI: Commissioner Ross?

25 COMMISSIONER ROSS: Yes.

1 MS. SAPINSKI: Commissioner Stanziale?

2 COMMISSIONER STANZIALE: Yes.

3 MS. SAPINSKI: Commissioner Yustein?

4 COMMISSIONER YUSTEIN: Yes.

5 MS. SAPINSKI: Chairman Klinghoffer?

6 CHAIRMAN KLINGHOFFER: Yes.

7 Jim, good luck.

8 Thank you very much.

9 A VOICE: Congratulations.

10 COMMISSIONER STANZIALE: Thank you, Jim.

11 CHAIRMAN KLINGHOFFER: Appreciate it.

12 MR. O'TOOLE: You've just concluded 12

13 years of litigation.

14 Congratulations.

15

16 **ADJOURNMENT:**

17

18 CHAIRMAN KLINGHOFFER: Do we have a motion

19 to adjourn?

20 VICE CHAIRMAN BROWN: Move it.

21 MS. SAPINSKI: Is this Commissioner Brown?

22 COMMISSIONER YUSTEIN: Thank you.

23 MR. O'TOOLE: Bye-bye.

24 A VOICE: Second.

25 COMMISSIONER YUSTEIN: Bye-bye.

1 COMMISSIONER DUNEC: Yes.

2

3 (Whereupon, James O'Toole, Special Counsel,
4 left the meeting at 11:41 a.m.)

5

6 (Whereupon, Commissioner Ross left the
7 meeting at 11:41 a.m.)

8

9 CHAIRMAN KLINGHOFFER: Lucy, do you have
10 the mover and the second?

11 MS. SAPINSKI: No idea. Nope.

12 CHAIRMAN KLINGHOFFER: Neither do I.

13 MS. SAPINSKI: No.

14 COMMISSIONER STANZIALE: All right, well
15 I'm -- I'm still on. I don't know --

16 MS. SAPINSKI: Okay.

17 COMMISSIONER STANZIALE: -- (indiscernible)
18 -- on anymore.

19 MS. SAPINSKI: Carla, so you're going to be
20 the second.

21 And first one --

22 COMMISSIONER STANZIALE: Sure. Yes. I'll
23 -- I'll second.

24 MS. SAPINSKI: I think it was Commissioner
25 Ross again.

1 VICE CHAIRMAN BROWN: That was me, Ron
2 Brown, that moved it.

3 MS. SAPINSKI: Oh, Commissioner Brown.
4 Okay.

5 Thank you.

6 Commissioner Brown, did you move the motion
7 of -- the motion -- the Resolution? Or that was
8 Commissioner Ross?

9 VICE CHAIRMAN BROWN: Yes.

10 MS. DILLON: What?

11 MS. SAPINSKI: Yes, you moved --

12 CHAIRMAN KLINHOFFER: Commissioner Brown
13 moved both. He moved both.

14 COMMISSIONER STANZIALE: He moved the
15 Resolution and the adjournment.

16 MS. SAPINSKI: Okay, --

17 VICE CHAIRMAN BROWN: Right.

18 MS. SAPINSKI: -- both of you. Okay.

19 Thank you.

20 CHAIRMAN KLINGHOFFER: We just need a vote
21 on the adjournment, Lucy.

22 MS. DILLON: All in favor.

23 MS. SAPINSKI: Okay.

24 All --

25 COMMISSIONER YUSTEIN: I'll move it.

1 MS. SAPINSKI: Then that's Commissioner --

2 CHAIRMAN KLINGHOFFER: We -- we have a

3 mover and second. We just got wait for Lucy so

4 she could do a roll call.

5 COMMISSIONER STANZIALE: Just need a roll

6 call.

7 MS. SAPINSKI: Commissioner Brown?

8 VICE CHAIRMAN BROWN: Yes.

9 MS. SAPINSKI: Commissioner Dunec?

10 COMMISSIONER DUNEC: Yes.

11 MS. SAPINSKI: Commissioner Ross?

12 I think we lost him before.

13 Commissioner Stanziale?

14 COMMISSIONER STANZIALE: Yes.

15 MS. SAPINSKI: Commissioner Yustein?

16 COMMISSIONER YUSTEIN: Yes.

17 MS. SAPINSKI: Chairman Klinghoffer?

18 CHAIRMAN KLINGHOFFER: Yes.

19 MS. SAPINSKI: Okay.

20 CHAIRMAN KLINGHOFFER: Have a good weekend

21 everybody.

22 Thank you.

23 VICE CHAIRMAN BROWN: Have a good weekend.

24 Thanks, Lucy.

25 MS. SAPINSKI: Thank you.

1 COMMISSIONER DUNEC: Bye-bye.

2 CHAIRMAN KLINGHOFFER: All right, thank you

3 Lucy.

4 Bye-bye.

5

6 (Whereupon, the proceedings were concluded

7 at 11:42 a.m., Resolution No. 16-20.)

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1 STATE OF NEW JERSEY :

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3 COUNTY OF ESSEX :

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5 I, Karen A. Marino, assigned transcriber,
6 do hereby affirm that the foregoing is a true and
7 accurate transcript of the SPECIAL BOARD MEETING
8 of the ESSEX COUNTY IMPROVEMENT AUTHORITY heard
9 on Friday, May 27, 2016 and digitally recorded.

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25 Monitored and Proofread by: Deborah Dillon