



Board of Director's
Meeting Minutes
of the
Resilience Authority of Annapolis and Anne Arundel County, Inc.
October 25, 2022

The meeting was held in person at 44 Calvert Street, Room 161 in Annapolis, MD 21401
#001-22

Board Members Present

Jamie Benoit
Nathan Betnum
Veronique Bugnion
Emily Clifton
Mariah Davis
Vincent O. Leggett
Jared Littmann
Mike Sewell
Teresa Sutherland (*Chair*)

Resilience Authority Staff Present

Dan Nees, Interim Director
Joanne Throwe, Throwe Environmental, LLC

Opening Activities

County Executive Pittman and Mayor Gavin Buckley welcomed and thanked the Board Members for committing their time to establishing the Resilience Authority, the purpose of which is to undertake and support resilience infrastructure projects in Anne Arundel County and the City of Annapolis. The Board members were then sworn in by the Clerk of the Circuit Court of Anne Arundel County.

Opening Remarks

Dan Nees welcomed everyone and recognized the new chair, Teresa Sutherland, who was appointed by the Anne Arundel County Executive on October 13, 2022 to lead this Board. Teresa began the meeting with introductions.

Teresa turned the meeting over of Dan Nees, who gave an overview about the background, proposed structure, and priority areas of focus for the Resilience Authority. Dan discussed the steps that led up to the creation of the Resilience Authority, the role of Throwe Environmental,

the role and expectation of Board members, staffing and support of Authority, the role of the Advisory Committee, and an update of activities completed to date.

Dan discussed that he is the interim Director of the Authority and, with the help of Throwe Environmental, has been hired to support the creation of the Resilience Authority until the Authority can hire a permanent director. Dan explained the contract with Throwe Environmental runs through December 31, 2022. The primary deliverable for the Resilience Authority will be a strategic plan due by the end of 2022.

Question from Mr. Benoit: Has a search been started for an Executive Director?

Response from Mr. Nees: Yes, a search was done in early 2022 but did not result in a hire.

The goal is to facilitate investments in projects and programs that protect and support climate resilience and mitigation efforts within Anne Arundel County and the City of Annapolis. That's the purpose of this institution. The challenge the City and County will face to do this through government will be too difficult and needed a separate financing institution.

The Authority's guiding principles are as follows:

- **Efficiency:** This is our number 1 metric how well the institution is working otherwise it need not exist. It has to have capacity to get money into projects more efficiently and effectively. Every dollar invested achieve the maximum result possible.
- **Scale:** Institution must achieve scale in its investments and its project.
- **Expedience:** We are running out of time and must move forward.
- **Fairness and equity:** This institution must represent the entire community and invest in projects that benefit entire community.
- **Collaboration:** This is a joint authority between County and City so must be collaborative in nature.

There were no comments or concerns expressed from the Board about these five guiding principles being set for the Authority.

Mr. Nees outlined the Resilience Authority's core functions as follows:

- **Launch project portfolio and action plan:** Develop and maintain a portfolio of projects on the ground and capital projects to invest in and support.
- **Generate and receive revenues:** Revenues to support those projects.
- **Finance and manage projects:** Implementing cash flow, management systems, and financing to implement those projects to reduce costs and create efficiencies. The Authority is not meant to generate a project, but invest in projects.

Mr. Nees outlined that the Authority's project portfolio must do the following things:

- **Focus on capital projects:** We are focusing on capital projects and not funding or financing programs that are within City or County government but facilitate those

projects. Outreach, for example, is not part of the Authority's mission. It is infrastructure-based projects for the Authority.

- **Protect essential assets and/or asset classes:** Project portfolio must zero in on assets most threatened and most important to community, the list of which is for this Board to decide in partnership with County and City.
- **Protect threatened geographies and communities:** This is about getting to the communities we are trying to protect.

Question from Mr. Betnum: To what extent do you foresee public- versus privately-owned infrastructure.

Response from Mr. Nees: Ideally, the Authority would do both, but the criteria that the institution puts in place as to when it should do both is what needs to be determined. It is difficult for the public sector to engage in financing capacity in private infrastructure but the Authority can actually engage easier than County or City can. Example, flood prone properties. So, it will engage in both, but there will be a set of criteria for when Authority should engage.

Question from Mr. Benoit: Will we get our own procurement apparatus?

Response from Mr. Nees: The details need to be worked out based on tax status. It should have its own procurement system and not rely on the County's system. We have to figure out Standard Operating Procedures first.

Question from Mr. Leggett: What role does the public play in our work or any role?

Response from Mr. Nees: We will talk about where that fits in our decision-making.

Mr. Nees described the types of projects and project categories that the Authority can support are as follows:

- **Infrastructure Resilience:** Public infrastructure resilience primarily looking at nature-based solutions like flood mitigation techniques on road systems.
- **Shoreline Protection:** This is a uniquely susceptible community and this is important to the county
- **Structural Resilience:** This is a very important part of the category for the Authority. This is building and infrastructure. This is the place and when we can make structures more resilient.
- **Energy Resilience:** Board needs to make a decision on what exactly this means for the Authority. Opportunity for helping county meet carbon mitigation goals.
- **Emergency Response and Risk Management:** Treating this more as investment opportunity rather than just a cost number that's in the budget when a disaster hits. We are working with Government Finance Officers Association to think through this.

There is currently a Request for Qualifications/Information (RFQ/I) open now that will help support the further development of these project categories.

Question from Ms. Clifton: What is the status on Annapolis and Anne Arundel County on what the grey infrastructure is like?

Response from Mr. Nees: The County is very sophisticated in terms of their public infrastructure. We think County and City would be well-served if Plan 2040 were rearticulated into a climate resilience action strategy. Similar to what we are doing with RFQ. Plan is so comprehensive but it takes navigating to find the information. In terms of implementation, the area of greatest need is on energy resilience side. The infrastructure is so new and more work still needs to be done on shoreline protection area. That is where we may see the most need.

Question from Mr. Benoit: What is demand signal you are seeing for matching dollars? We are a brand-new organization, which of the buckets will have the most funding?

Response from Mr. Nees: Unclear.

Question from Ms. Sutherland: Where is the City with the infrastructure plan and also with the County. Is that complete and will it drive our decisions?

Response from Mr. Nees: It's a kickstart to driving the decision. RFQ/I is the next phase of that. RFQ/I will hopefully lead to RFP. This is building on that process.

Comment from Mr. Leggett: There is a program called "Katrina on the Chesapeake" and what came on tv's is Katrina and displacement. With many of the limited resources on community, so when I hear "resilience." when we articulate big bullet items, we need to consider the community.

Response from Mr. Nees: There is concern that it not look negative but rather the opportunity that resilience creates in a community and what we could do regarding social and economic issues, etc. is significant. The message we send is that you can do something about it and there is an opportunity for change.

Question from Ms. Bugnion: How will Board tackle the hard questions in the sense that first 3 bullets are climate adaptation and fourth is climate mitigation? How are we going to create a set of metrics that don't have existing financing mechanisms, like Green Banks who finance mitigation but how do we push envelope on the rest of it?

Response from Mr. Nees: We are pushing the envelope by addressing where there are opportunities for revenue and monies to flow. Some projects can be bundled together to create an opportunity for investment that aren't always there. That's thinking very differently on how this institution can invest.

Mr. Nees described the four areas of revenues for the Resilience Authority are as follows:

- **Grant Funding:** There are many upcoming opportunities for grants.
- **Enterprise revenues:** Unclear what service but possible.
- **Program and investment revenue:** The organization could own assets that create revenue. An example is it could own an energy system or community solar or a building that is leased at market rates. This has the most risk associated with it.
- **County and/or City transfers:** County can transfer funding and they move money into Authority.

The Authority cannot assess taxes nor can it have the power of eminent domain but it can assess fees for services. It can't compel people by law to pay the fees. You can put fees in place for services and we can receive monies from anywhere else.

We are part of a pilot project with the Government Finance Officers Association (GFOA) in partnership with Sorensen Institute at University of Utah Business School to look at public assets and see if there are opportunities to generate revenues off of those assets. There are five communities in the pilot along with the Resilience Authority that include Atlanta, GA; Chattanooga, TN; Cleveland, OH; Harris County, TX; and Lancaster, CA. First step is to see the assessment and the second step is to see what you can do with these assets. It's called Urban Wealth Funds in Europe and this is new to our country so we will see what comes of this pilot and what information they have for us to consider for the Resilience Authority.

Question from Ms. Bugnion: If we are quasi-nonprofit, is the Director a paid position?

Response from Mr. Nees: There is a certain amount of money for the Authority and it's up to the Board to decide how that money is spent. The county or city can give one time funding in the future as could any other entity. Our intention is to have this as a paid position and that's part of the strategic plan. We are keeping it as lean as possible and now we are using office with County.

Mr. Nees described the types of financing systems for the Resilience Authority are as follows:

- **Revenue bonds**
- **Public-private partnerships**
- **Performance-based financing**
- **Project financing**

Question from Mr. Littmann: Can the organization take in donations?

Response from Mr. Nees: It could but probably wouldn't as the time it takes to generate to donations often exceeds the donations assuming it is set up as a 501(c)(3).

Question from Ms. Sutherland: Have we already applied to be a 501(c)(3)?

Response from Mr. Nees: Not yet. We need to understand what the corporate structure is. This is a big issue that must be addressed by the Board, meaning what is this thing and the corporate structure and set up quickly.

Question from Ms. Bugnion: Assuming any bonds issue would be backed by the County?

Response from Mr. Nees: No, they would have to be revenue bonds backed by some revenue streams. If backed by County, there would be no need for authority. County could say we are dedicating this revenue stream to Authority. It all goes back to revenue flows.

Question from Mr. Littmann: Do we have liability insurance?

Response from Mr. Nees: We will have to get it soon. After tonight, we will need a lawyer to help us with the governance structure issue. We were ready to file for 501(c)(3) but County lawyer didn't think this is a 501(c)(3). There are many financing institutions that set up 501(c)(3) to get financing done. Our mission is to serve and protect community, which fits within the 501(c)(3) designation. It must have autonomy on procurement system, where revenue is from, and autonomy to finance as it sees fit to get projects on the ground. If it's taking direction on any of this from the County or City, then it loses its capacity.

Comment from Ms. Sutherland: There are other 501(c)'s that aren't 501(c)(3), so it's possible it may fall under one of those. Like the Anne Arundel Economic Development is a 501(c)(3) but unsure about Tipton Airport Authority. You can be a not-for-profit corporation without being a charitable organization.

Response from Mr. Nees: Explaining what a 501(c)(12) is can be hard to do and that includes grant funding. If there is any ambiguity about the structure, it won't get funded.

Comment from Mr. Betnum: One of the purposes that a 501(c)(3) can have is to lessen the burden of government.

Comment from Mr. Leggett: The perception that this organization that is high powered takes away funding from smaller groups, that will need to be managed.

Response from Mr. Nees: That's why we won't fund programs and we won't be competing against smaller non-profits.

Response from Ms. Clifton: Looking at the project portfolio, there wouldn't be too much conflict with some of the organizations going for money.

Response from Mr. Nees: Could we consider in the future having a public event that lets the community know who we are and what we do to address any concerns? We can let them know we are here to facilitate and not compete.

Audit Discussion

State enabling legislations as well as County and City ordinance requires Authority to have an annual audit done by January 1st. So by then ,report must go to State, County irrespective of what our fiscal year is. We are a corporation formed by the County and City government and County Executive appoints majority of this Board and appoints Director who serves at the pleasure of the County Executive. It is therefore highly likely that we are therefore a component unit of County government. That means our audited financial statements go into the County financial statements. The County's financial statements have to be done by December 31 or sooner to feed into theirs. This means we are on an extremely tight timeline.

Teresa would like to work with Dan and call County Comptroller to make a determination by County management regarding whether we are a component unit with the understanding that the outside auditors will still have to agree with that.

In the short-term, this is our only option in this short timeframe. Either way, we need an audit done by December 31. Teresa's hope is to use the outside audit firm the county has already obtained. We can possibly piggy-back onto that contract.

A motion was put forth to have Dan and Teresa work with County Management to see if we can retain outside audit firm that the County has retained to get our audit done as soon as possible. The motioned was seconded by Mr. Littmann and Mr. Benoit. All were in favor of this motion and none opposed.

There was another motion allowing Dan and Teresa to hire auditors with a not-to-exceed amount of \$25,000? The motioned was seconded by Mr. Littmann and Mr. Benoit. All were in favor of this motion and none opposed.

Question from Mr. Benoit: Are we going to be a committee of the whole or are we going to form committees of the board, especially because of the audit?

Response from Mr. Nees: For the near future, we must remain a committee. We need to have officers, etc. Any decision we make must be a decision of the Board. We should address this after we have officers.

Question from Mr. Nees: Is there a problem with the Board voting electronically?

Response from Ms. Sutherland: Yes, there may be as we may be subject to the Open Meetings Act and subject to the Public Information Act. We therefore need a lawyer to address this question.

Review, Discussion of By-Laws

Joanne Throwe provided a brief overview of the draft by-laws that were included in the folder for each Board Member. The current by-laws were used to file the articles of incorporation that

currently govern the Resilience Authority but they need to be updated to reflect the new Board's revisions.

Joanne outlined several sections in the draft by-laws that should be reviewed so that we can get any changes approved by the next Board meeting. We are looking for any omissions, areas that need to be reviewed by an attorney, etc.

Comment from Mr. Benoit: As a corporate entity as opposed to a government entity, we have the ability in our by-laws to govern information rights in terms of our deliberations. We should be thinking about how we conduct our meetings that is compliant but also protects some of our corporate deliberations as opposed to our public deliberations, such as decision-making around certain things. Information rights are not currently in the by-laws. How does public get their information rights met and who pays for it? These can be expensive to us if we get into trouble. Let's think it out ten years in terms of our meetings. Rules of meeting conduct should be in the by-laws. Example: public only gets to speak at the end of meeting or only speak at once a year or questions in writing. Think 20 years down the road and anticipate issues and plan ahead.

Question from Mr. Leggett: How do we protect work products, and can we conceal as work products?

Response from Ms. Sutherland: We need a motion to retain a lawyer to look at by-laws. There are exceptions to Maryland Public Information Act but we don't know what they are. Therefore, do we have a motion to retain legal advice for all of the areas we need guidance on that include corporate structure, by-laws, Maryland Public Information Act and Open Meetings Act?

Mr. Benoit approved of the motion, and it was seconded by Mr. Benoit. All members were in favor; none opposed.

Question from Mr. Littmann: What is your plan to go about finding legal counsel?

Response from Mr. Nees: We think it would be helpful to find legal counsel from outside the County. (Others on the Board agreed with that idea). Dan is seeking guidance from a large firm in Washington DC for names.

Question from Ms. Sutherland: Are there attorneys who we can retain potentially as bond counsel and also do the other things we need done?

Response from Mr. Benoit: Bond counsel is very different from this, but we are a ways away from needing a bond lawyer.

Comment from Mr. Betnum: You could have the same firm doing both.

Comment from Mr. Benoit: We can work an executive session in a limited number of circumstances and we should protect our ability to do that and should be in our by-laws.

Comment from Mr. Nees: This puts some motivation for us to get officers in place to allow that to happen. Having the committees helps with this as they don't have to have public participation. Mr. Benoit: Whoever is going to be our secretary, as this is an art and a science. Drafting minutes and having a document keeper is important.

Question from Ms. Sutherland: Do you want us to come back to the Board with the name of the attorney who has been vetted and approved or does Dan and Teresa make a decision?

General response from all Board members: There isn't enough time to bring names back to the Board. All approved Dan and Teresa can choose legal counsel.

Comment from Mr. Littmann: I've worked with the Northeast MD Waste Disposal and they had different attorneys for bond counsel.

Comment from Mr. Benoit: When lawyers who are clearing conflicts, making sure they don't represent any interest in what's going on here like developers or companies who would have something to gain by the Authority, etc. We should ask the question about whether lawyers represent other someone who may have an interest in the Authority.

All board members were in favor of allowing the Chair and the Director hire legal counsel.

Other general comments from the Board members about the by-laws pertained to handling vacancies on Board and concerns about missing a meeting and feeling like you will be taken off the Board because of the tight requirement. These will need to be addressed when reviewing the by-laws before the next Board meeting in December. For example, if we meet quarterly and you miss one meeting, you are no longer able to stay on the Board. It is in County ordinance 31.21 so that's difficult to change. If there are committees, then that attendance would go towards meeting the requirements.

The code says the appointing authority "may" remove a member and that doesn't mean it will happen. Other concern was that all the Board Members will end at the same time, leaving a vacuum in institutional knowledge on the board. Ms. Sutherland mentioned that we can always recommend to the County that they amend the code as long to allow for staggered terms.

Question from Mr. Betnum: It says a Board Member can be removed for cause. Is it a cause if the member is against something a new County Executive suggests?

Comment from Mr. Benoit: The code defines cause elsewhere for personnel matters like fraud, serious crime, etc. We can define it in our by-laws but it's not defined in County codes so if the County Executive is terminating you for cause, it is unclear whether our by-laws will protect us. The City bill has some slightly different language. We should look at County code and see if this structure works for us. Mr. Benoit: I'm sure personnel code defines code and we can reference that. We need a lawyer to look at both the City and County code.

Ms. Throwe described that there is an Advisory Committee for the Authority. We have already had a full meeting with the County/City Advisory Committee. The bill states that certain agency heads are on the Advisory Committee but there is nothing preventing us from having more on our committee to support our work.

Ms. Sutherland described that the City bill and the County bill are slightly different and we don't know exactly how to align them both right now. The County had their bills and the City amended it so they are not exactly the same language. The City bill is slightly different, mostly there is a "shall" verses a "may." The City code says "these positions shall be advisors..."

Regarding the need for a Chief Financial Officer (CFO) appointment, the discussion followed that this should be brought up at the next meeting also saying that we need a Director before we proceed with hiring a CFO.

Question from Mr. Leggett: Many Boards have a hard time getting a scribe or secretary. Can we consider hiring and engaging a scribe for each meeting instead of relying on volunteers?

Other general comments from the Board members were asking whether an Advisory Committee member would be a fit scribe and whether we should have a scribe that is experienced and skilled in taking notes, dedicated, etc.

Comment from Mr. Benoit: A Board should have president, treasurer, and secretary and ordinarily it would be someone from staff. We could have someone be a recording secretary and a board member secretary.

Comment from Mr. Leggett: I move that we pass a motion to task the leadership to contract a recording secretary to support the Board's work.

A vote was taken and all Board members were in favor.

Regarding signing checks and notes, there should be two people with check writing authority on the accounts, we need someone else on the bank. There is already a bank account set up for the Board.

There was a motion on the floor by Mr. Littmann that allowed the Chair to have check-writing authority up to \$25,000 with the request that any signed contracts be brought back to the Board. Mr. Leggett second the motion. A vote showed all in favor and none opposed to this motion.

Question from Mr. Benoit: According to the Public Meetings Act, can we act by unanimous consent? Further describing that when a corporation can act in lieu of a formal meeting for example if something is time sensitive.

Response from Ms. Sutherland: We should ask this of the attorney. If we are subject to the Maryland Information Act, we may not be able to do this by email or video. The attorney will address all of this.

The Board said they were comfortable using Google Docs to share and edit documents. It is what the County uses so everyone agreed with Google Docs. Joanne will share the draft by-laws and SOP documents with a request that everyone get their edits into Google Docs or email to Joanne by December 1st. It was also mentioned that we should try to keep all of our documents in a safe place that can be shared and cataloged for future use. We want to ensure that future Board Members don't need to start over.

The Board agreed that the next Board meeting should be mid-December and preferably in-person rather than virtual.

The Board meeting was adjourned by the Chair 7:45pm.

End of minutes.