

SPECIAL MEETING, BOARD OF SANITARY DISTRICT COMMISSIONERS
TUESDAY, JULY 6, 2010 – 5:00 P.M. – 1100 E. EIGHTH STREET

The meeting was called to order at 5:10 p.m. in the Board Room of the Administration Building, 1100 E. Eighth Street, by the President of the Board, J. Jeffrey Jones, Ph.D.

Commissioners present for the meeting were J. Jeffrey Jones, Ph.D., Judith A. Paul, Boyd W. Phelps, Linda G. Simmons and Ronald J. Strauss.

Staff Members present for the meeting were:

Alan J. Walus, General Manager

Tina M. Tabisz, Administrative Assistant

William J. Nelson, Jr., Legal Counsel

Also present for the meeting were:

Ron Meer, Third Ward Councilman

Anne Howard, 2000 Welnetz Road, Trail Creek

Karen Hayman, 1928 Welnetz Road, Trail Creek

Sharon Carnes, 314 Kenwood Place

Larry Silvestri, 314 Kenwood Place

Morene Meer, 400 Black Oak Drive, Tail Creek

Donald Mayer, 400 Black Oak Drive, Trail Creek

Michael Kerestury, 106 Lady Lane

Al Austin, Michigan City

David Bernethy 309 E. Ninth Street

Ron Miller, WEFM Radio Station

Matt Field, News-Dispatch

Rick Richards, ALCO TV

Dr. Jones advised that there is one item on the agenda tonight and which is discussion related to pending or potential litigation. Dr. Jones explained that, in this case, that specifically involves the engagement of additional legal counsel for the District.

Dr. Jones explained that the Board is faced with a couple of different issues; one being Environmental Protection Agency and any other matter that may come out of this. The Board has learned, through their due diligence, is that this is very specialized law. Additionally, the District's current legal counsel, Attorney Nelson, has advised the Board to seek specialized legal assistance in this case.

Therefore, at this time, Dr. Jones entertained a motion to retain Plews, Shadley, Racher & Braun, a law firm out of Indianapolis and South Bend, with a focus almost entirely on environmental law to represent the District.

Mr. Phelps made such a motion – seconded by Ms. Paul.

Ms. Simmons stated that, in lieu of the recommendation, she has some concerns explaining that she would like to have the motion tabled until such time as the Board is able to look at the possibility of retaining one law firm that could take care of both matters instead of having two law firms so as to minimize the possible costs.

Ms. Simmons explained that she would like to see if there is an opportunity to possibly come back by the end of the week with some other names that could be recommended in an effort to cut costs from two attorneys to one.

Mr. Strauss asked if this would require a second. Dr. Jones stated that it does, however he would like to explain a couple of things.

Dr. Jones explained that there is a not a motion to engage two attorneys at this point in time. He believes that there is a singular motion at this point in time.

Dr. Jones stated that, although he understands and respects Ms. Simmons' point, these are being taken one at a time.

Dr. Jones stated, however, if Ms. Simmons' motion to table stands, he would ask two things: if the motion to table would be indefinite or if there would be a date on it because it is necessary; then he would ask for a motion on tabling the matter, reminding the Board that a motion to table is non-debatable. Discussion will end at that point in time and there will be a vote on the motion to table.

Dr. Jones then asked Ms. Simmons to explain her motion with reference to a time limit.

Ms. Simmons stated that she believes that it would be due diligence, in the next 24 hours, in an attempt to look at several other firms explaining that she has a couple of names that she would like to submit and that the Board should be able to get back together Friday, July 9th, at 5:00 p.m.

Dr. Jones asked if there would be sufficient 48-hours' notice for the meeting. Attorney Nelson indicated that there is sufficient time.

Dr. Jones then reiterated that Ms. Simmons would like to table the motion until Friday, July 9th, at 5:00 p.m. Ms. Simmons agreed.

Dr. Jones then asked for a second.

Mr. Strauss seconded the motion.

The motion was defeated 2 – 3 with Ms. Simmons and Mr. Strauss voting in favor of the motion and Dr. Jones, Ms. Paul and Mr. Phelps voting against the motion.

Dr. Jones then referred back to the first motion asking if there was any further discussion regarding the engagement of Plews, Shadley, Racher & Braun as the environmental law firm.

Attorney Nelson wanted to clarify that there are two unique issues involved here. One is the EPA Office and its investigators and the other aspect is the U.S. Attorney's Office.

Attorney Nelson explained that this is the basis that he has recommended that the Board consider two separate law firms because those two separate areas do have very unique and distinct characteristics of legal representation involved.

Attorney Nelson further explained that there are actually some potential areas that they need to be separate as opposed to the same due to the unique nature of the representation, if necessary: Again, one with the U.S. Attorney's Office and one with the EPA's Office.

Attorney Nelson explained that both of those matters have the potential for additional litigation with the District. As a result, they will be separate pieces of litigation if one or both of them were to be pursued by the U.S. Attorney's Office and/or through the EPA.

Additionally, as a result of that, again, with those different potentials for litigation, there are different levels of expertise or levels of practice levels and skills involved. That is the basis for Attorney Nelson's recommendation that there be two different firms engaged.

Attorney Nelson advised that, in his conversations with the law firms that are going to be discussed, both of those law firms have made it very clear to him that neither one could do both matters. There has to be a distinct representation.

Attorney Nelson advised that, even if the Board were, at some point not to hire these firms, he believes that the Board would find that any other firms that would have discussions or this conversation would tell the District the same thing; not one firm could handle both of those separate matters.

Attorney Nelson hoped that his explanation helped clarify the matter for the Board.

Dr. Jones asked if there was any discussion from the Board. There was none.

The motion carried 3 – 2 with Dr. Jones, Ms. Paul and Mr. Phelps voting in favor of the motion and Ms. Simmons and Mr. Strauss voting against the motion.

Dr. Jones then entertained a motion to engage the law firm of Gray & Friend, out of Fort Wayne, Indiana, to represent the District primarily with the matters regarding the U.S. Attorney's Office.

Ms. Paul made such a motion – seconded by Mr. Phelps.

There being no discussion or comment on the matter, motion carried 3 – 2 with Dr. Jones, Ms. Paul and Mr. Phelps voting in favor of the motion and Ms. Simmons and Mr. Strauss voting against the motion.

Dr. Jones stated that the District has engaged Plews, Shadley, Racher & Braun and Gray & Friend to represent the District in our matters with the U.S. Attorney's Office and the EPA.

Dr. Jones then called for a motion to adjourn.

Mr. Phelps made a motion for adjournment – seconded by Ms. Paul. No question or comment on the matter. Motion carried 5 – 0 in favor.

The meeting then adjourned.

/ Ronald J. Strauss /
Ronald J. Strauss, Secretary