

**MINUTES OF A SPECIAL MEETING OF THE  
DuPAGE WATER COMMISSION  
HELD ON THURSDAY, APRIL 8, 2010  
600 E. BUTTERFIELD ROAD  
ELMHURST, ILLINOIS**

The meeting was called to order by Chairman Pro Tem L. Hartwig at 6:09 P.M.

Commissioners in attendance: T. Bennington, E. Chaplin (until 6:40 P.M.), T. Elliott, L. Hartwig, G. Mathews, W. Murphy, A. Poole, J. Zay, and D. Zeilenga

Commissioners Absent: W. Maio, W. Mueller, F. Saverino, and L. Rathje

Also in attendance: T. McGhee, R. Skiba, M. Crowley, and C. Johnson

Due to the absences of both Chairman Rathje and Vice Chairman Mueller, Commissioner Murphy moved to appoint Commissioner Hartwig Chairman Pro Tem for the April 8<sup>th</sup> Special Commission Meeting. Seconded by Commissioner Mathews and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Bennington noted that Commissioner Maio's absence was due to a death in the family.

After Acting General Manager McGhee mentioned that a few audience members were asking for an opportunity to make Public Comments even though the item was not listed on the Agenda, Commissioner Murphy moved to open the floor to Public Comment limiting each speaker to 5 minutes. Seconded by Commissioner Elliott and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

**PUBLIC COMMENTS**

Martha Sobie, Glen Ellyn, Illinois, read a prepared statement by DuPage United expressing concern with the Commission's financial condition, noting that DuPage United was in full support of the Commission becoming a department of the County of DuPage.

Mary Hason, Glen Ellyn, Illinois, read a prepared statement by DuPage United expressing concern with former General Manager Martin's severance package, noting it was unreasonable to reward the very person that helped create the Commission's current financial condition.

**RESOLUTION NO. R-14-10**

Commissioner Murphy moved to adopt Resolution No. R-14-10: A Resolution Approving and Authorizing the Execution of a Separation Agreement and General Release. Seconded by Commissioner Zeilenga.

## Minutes of the 4/8/10 Special Meeting

Commissioner Zay asked for an explanation as to why there was no prior mention of both the General Manager and the Staff Attorney having employment contracts with the Commission.

With regard to the approval of the employee service contracts, Commissioner Murphy shared his recollection that at the regular Commission meeting of May 13, 2004, many Commissioners were absent, but those Commissioners present did vote unanimously to approve Former General Manager Martin's employment contract which was negotiated through Former Chairman Vondra.

Commissioner Zeilenga added that he remembered that following the retirement of Former General Manager Holzwart, the Commission hired the services of the Par Group to conduct an executive search for a General Manager. Commissioner Zeilenga stated that many candidates were found through the search firm, but that the Board voted to appoint Robert Martin for the position. Commissioner Zeilenga added that he didn't think it was uncommon for senior level management to have employment contracts.

Commissioner Elliott questioned whether the original employment contract with Former General Manager Martin was for a term of 1-2 years. Commissioner Zeilenga responded that initially the contract was for a 1-year term to be reevaluated and voted upon at the appropriate time. Chairman Pro Tem Hartwig added that even though Former General Manager Martin's employment was changed to an open-ended term, the contract expressly provided that it was terminable at will by the Chairman, with the advice and consent of the Board, in accordance with the Commission's By-Laws.

Commissioner Zay asked about the Commission's policy on the accrual of unused vacation time. Staff Attorney Crowley advised that the Commission's policy on the accrual of unused vacation time under the personnel manual was two times the annual allotment.

Commissioner Mathews noted his confusion by stating that the Board had talked about the terms, including vacation payout, and directed Chairman Rathje to discuss the conditions with Mr. Martin in accordance with the discussion in Executive Session. After Commissioner Elliott stated that at the time the Board discussed the vacation payout, it was not known that Former General Manager Martin had accrued vacation time in excess of that allowed, Commissioner Murphy amended his motion, with the consent of the second, to limit the compensation for unused vacation time to the 320 hours allowed by Commission policy and Former General Manager Martin's employment contract.

After Commissioner Bennington confirmed with the Staff Attorney that eliminating Subsection 3.c. of the Separation Agreement and General Release attached as Exhibit 1 to Resolution No. R-14-10 would eliminate any compensation for unused vacation time that was accrued in excess of the maximum allowed by Commission policy and Former General Manager Martin's employment contract, Commissioner Bennington asked whether there were any other differences between the Separation Agreement and General Release attached as Exhibit 1 to Resolution No. R-14-10 and the

## Minutes of the 4/8/10 Special Meeting

termination provisions of Former General Manager Martin's employment contract. Staff Attorney Crowley noted there were some differences in terms of insurance.

With regards to conferences, Commissioner Zay asked if the Commission paid for Mr. Martin to attend the 2010 AWWA Conference held in March in Springfield, Illinois. Acting General Manager McGhee replied that both he and Mr. Martin attended the AWWA Conference and all costs were paid by the individuals involved and not the Commission.

After Commissioner Bennington asked if Mr. Martin had returned the Commission vehicle, credit card, etc., and Acting General Manager McGhee confirmed that everything had been collected, the amended motion to adopt Resolution No. R-14-10: A Resolution Approving and Authorizing the Execution of a Separation Agreement and General Release with Subsection 3.c. of the Separation Agreement and General Release attached as Exhibit 1 to Resolution No. R-14-10 eliminated in its entirety was unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, L. Hartwig, G. Mathews, W. Murphy, A. Poole, J. Zay, and D. Zeilenga

Nays: None

Absent: W. Maio, W. Mueller, F. Saverino, and L. Rathje

Commissioner Chaplin left the meeting at 6:40 P.M.

### **EXECUTIVE SERVICE CORPS CONTRACT AND INTERIM GENERAL MANAGER**

With respect to the next agenda items, which were interrelated, Commissioner Zay objected to the hiring of an Interim General Manager noting that the prior staffing problems have been eliminated and that he was confident with the way current staff is handling the Commission's day-to-day functions.

Chairman Pro Tem Hartwig asked Staff Attorney Crowley if the Board could go into Executive Session to discuss the matter in more detail. Staff Attorney Crowley replied that the Board could go into Executive Session to discuss retaining an Interim General Manager as a temporary Commission employee, but that if the position was intended to be filled by an independent contractor, then that would not be an appropriate topic for Executive Session.

Commissioner Bennington noted that before the Board decides on anything further, staff needed to explain Agenda Item X, the "Personnel Compensation Adjustment." At which point, Chairman Pro Tem Hartwig changed the order of business at the meeting to hold an Executive Session to discuss matters relating to personnel.

## Minutes of the 4/8/10 Special Meeting

### **EXECUTIVE SESSION**

Commissioner Murphy moved to go into Executive Session to discuss matters related to personnel pursuant to 5 ILCS 120/2(c)(1) and (2). Seconded by Commissioner Bennington and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, T. Elliott, L. Hartwig, G. Mathews, W. Murphy, A. Poole, J. Zay, and D. Zeilenga

Nays: None

Absent: E. Chaplin, W. Maio, W. Mueller, F. Saverino, and L. Rathje

The Board went into Executive Session at 6:45 P.M.

Staff left the Executive Session at 7:05 P.M., and Acting General Manager McGhee, Staff Attorney Crowley, and Former Financial Administrator Skiba returned to Executive Session at 7:30 P.M.

Commissioner Poole moved to come out of Executive Session at 7:50 P.M. Seconded by Commissioner Murphy and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

In accordance with the discussion in Executive Session, Chairman Pro Tem Hartwig stated that the Board decided to continue with Terry McGhee as Acting General Manager instead of retaining an Interim General Manager and, thus, there was no need to retain the services of Executive Service Corp.

### **RESOLUTION NO. R-15-10**

Commissioner Zay moved to adopt Resolution No. R-15-10: A Resolution Approving, Ratifying, and Accepting the Appointment of Commissioner Zeilenga as Treasurer of the Commission for No Additional Compensation. Seconded by Commissioner Poole.

Chairman Pro Tem Hartwig reminded the Board of the urgency to appoint a Treasurer and that because Commissioner Zeilenga had been working with staff on the financial situation, it would make sense to appoint Commissioner Zeilenga as the Commission's Treasurer. Commissioner Zay agreed with Chairman Pro Tem Hartwig, noting that Commissioner Zeilenga was well qualified and would be serving as a part-time Treasurer until one can be appointed full-time. Commissioner Elliott echoed Commissioner Zay's comments and thanked Commissioner Zeilenga for his hard work.

After Commissioner Zeilenga expressed his appreciation for the Board's comments, noting he would be happy to serve as both a Commissioner and the Treasurer, the motion was approved by a Roll Call Vote:

## Minutes of the 4/8/10 Special Meeting

Ayes: T. Bennington, T. Elliott, L. Hartwig, G. Mathews, W. Murphy, A. Poole, and J. Zay

Nays: None

Abstain: D. Zeilenga

Absent: E. Chaplin, W. Maio, W. Mueller, F. Saverino, and L. Rathje

### **RETAIN DISCLOSURE COUNSEL**

Commissioner Elliott moved to retain the services of Freeborn & Peters LLP as Disclosure Counsel at a blended rate of \$350.00 per hour with a cap of \$20,000.00. Seconded by Commissioner Zay and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, T. Elliott, L. Hartwig, G. Mathews, W. Murphy, A. Poole, J. Zay, and D. Zeilenga

Nays: None

Absent: E. Chaplin, W. Maio, W. Mueller, F. Saverino, and L. Rathje

Commissioner Zay asked about the status of the Annual Audit Report for Fiscal Year 2009. Acting General Manager McGhee advised that McGladrey and Pullen indicated they would be willing to complete the 2009 audit and suggested that because the Commission was late in starting its Fiscal Year 2010 audit, the Board should consider retaining the services of McGladrey and Pullen for one more year.

Commissioner Zay respectfully disagreed with Acting General Manager McGhee's suggestion, stating that the Commission needs a new set of eyes and that McGladrey and Pullen can finish the audit for 2009, but then staff needs to seek proposals for future auditing services.

### **RECOMMENDATIONS FROM AD HOC COMMITTEE**

Commissioner Murphy stated that at the March 25<sup>th</sup> special meeting of the Board, Chairman Rathje assigned Commissioners Maio, Mathews and Murphy to serve as an Ad Hoc Committee to review the various recommendations prepared by Jenner & Block in the forensic audit report. Commissioner Murphy distributed a handout identifying structural and procedural recommendations, including Ad Hoc Committee recommendations, for the Board to review and discuss as a whole at the next scheduled meeting. Commissioner Murphy then directed the Board to the last page of the handout, entitled "Other Special Committee Recommendations," which listed milestone target dates for the search process for both the General Manager and the Financial Administrator positions, and requested that staff provide to the Board the current job descriptions and salary for each position, as well as the recruitment profiles and professional announcements that the Commission used when the Commission last

## Minutes of the 4/8/10 Special Meeting

searched for replacements in these positions. Commissioner Murphy concluded his report by reiterating the crucial need for proceeding with the search for a Financial Administrator as it is a full-time position and the current temporary assistance cannot continue at the required full time pace and by noting that a finance director in DuPage County would be retiring in the near future and could possibly offer assistance until a full-time selection is made.

Chairman Pro Tem Hartwig suggested that the Board review the Ad Hoc Committee recommendations and prepare for assignment of responsibilities at the next scheduled Board meeting.

Commissioner Zeilenga agreed that the initial review of the recommendations of Jenner & Block should be the responsibility of the Board, but suggested hiring a qualified outside consultant to review the procedures and make recommendations to all parties for a more objective assessment.

Commissioner Zay understood Commissioner Zeilenga's suggestion, but noted his hesitation with hiring any outside help stating that staff should be reviewing the recommendations from Jenner & Block and the Ad Hoc Committee and offer their opinions and suggestions.

Chairman Pro Tem Hartwig suggested it would be helpful to prepare a bullet point chronology of events that led to the Commission's current financial situation. Staff Attorney Crowley replied that the Commission's Financial Advisor had already started preparing such a chronology.

### **PERSONNEL COMPENSATION ADJUSTMENT**

In accordance with the discussion in Executive Session, Chairman Pro Tem Hartwig stated that the Board was not taking any action at the present time.

Before the meeting was adjourned, it was the consensus of the Board members present to cancel all Committee meetings for the April 15<sup>th</sup> Board meeting and hold one regular Commission meeting to begin at 6:00 P.M.

Commissioner Elliott moved to adjourn the meeting at 8:30 P.M. Seconded by Commissioner Mathews and unanimously approved by a Voice Vote.

All voted aye. Motion carried.