

**MINUTES OF A SPECIAL COMMITTEE OF THE WHOLE
MEETING OF THE DuPAGE WATER COMMISSION
HELD ON THURSDAY, SEPTEMBER 20, 2012
600 E. BUTTERFIELD ROAD
ELMHURST, ILLINOIS**

The meeting was called to order by Chairman Zay at 7:05 P.M.

Commissioners in attendance: L. Crawford, R. Furstenau, C. Janc, D. Loftus, W. Murphy, J. Pruyn, D. Russo, F. Saverino, M. Scheck, P. Suess, J. B. Webb, and J. Zay

Commissioners Absent: T. Cullerton

Also in attendance: J. Spatz, C. Johnson, C. Peterson, T. McGhee, J. Rodriguez, J. Schori, F. Frelka, E. Kazmierczak, S. Lux of Baker Tilly and R. Jones of Gorski and Good, LLP

Discussion of By-Laws

Chairman Zay apologized for being absent at the August 16th Board meeting and asked Commissioner Crawford to present the Commission's By-Laws. Commissioner Crawford began her report by stating that there were three items listed, Ordinance No. O-10-12, Resolution No. R-34-12 and Resolution No. R-35-12, for discussion and Board consideration. Chairman Crawford stated that the Commission's By-Laws and related resolutions have been discussed for the past six months with copies provided at each of the meetings for Board members to review. Chairman Crawford then opened up the floor to the Board members for their questions and/or concerns.

Chairman Zay showed his appreciation for presenting the Ordinance as one complete document with all amendments incorporated into the Ordinance accordingly.

Referring to Page 2, Section 3: Term. Commissioner Saverino asked for clarification regarding the section that states... "*Commissioners shall serve a term of six years*". Chairman Zay explained that all the Commissioners initial appointments on January 1, 2011 included staggered terms to avoid the terms of all Board members expiring all on the same date, but going forward when a Commissioner is reappointed, he or she would then serve a six year term.

Referring to Page 4, Section 2: Chairman. Subsection a. Appointment. Commissioner Suess pointed out that the appointment of the Treasurer and Commissioners requires a majority affirmative vote and questioned why the same language was not reflected regarding the Chairman's appointment. General Manager Spatz noted that the language was a legal change which was consistent with the language from the State Statute.

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Referring to Page 4, Section 2: Chairman. Subsection b. Powers and Duties. Commissioner Suess read the section which states, ...*"and all duties incident to the office of the Chairman of the Commission"* and questioned in what situation would the Chairman act alone that would not be at the direction of the Board. Chairman Zay responded by saying there would not be anything that he could act on without the consent of at least seven members. Commissioner Suess disagreed saying there have been prior incidences where the Chairman has acted without discussion or direction from the Board. To which Chairman Zay asked for an example. Commissioner Suess referred to a couple of newspaper articles over the past several weeks regarding the accountability report that was received from the City of Chicago and stated that there was never any knowledge of the Commission receiving that report nor that there was a problem with the report. Chairman Zay stated that the Commission came up with a list of requested items that they wanted to see in the Chicago report and Chairman Zay and General Manager Spatz met with all the Commission's customers on behalf of the mayors and managers who asked that the Commission take the lead role. The Commission received the Accountability Report from the City of Chicago on August 31st and passed it along to the Commissioners. Commissioner Suess stated that the report had not been distributed until after the article appeared in the newspaper.

Commissioner Russo shared that there is an operational role that the Chairman takes in terms of the Commission's day to day activities and stated that he thought that the Board had already made the decision to have the City provide the Commission with a detailed account as to how the funds are being used in order to justify the water rate increase and since the City did not provide that information than the Chairman needed to act on behalf of the Commission based on those discussions. Commissioner Suess stated that he did not disagree that the City's report that was received was inadequate and that the Chairman acted, but more that he had to read about the issue in the newspaper before the Board members were first alerted.

Commissioner Murphy understood the concerns and noted that although Board members do appreciate receiving information timely that he also felt that Chairman Zay's actions were consistent with prior discussions made by the Board as it related to the City of Chicago matter. Commissioner Murphy stated that the Chairman had performing appropriately with the duties of the office by reaffirming a previous commitment and previous conclusion reached by the Board in that the Commission needs substantial financial information from the City of Chicago and noted that he felt that the Chairman acted appropriately.

Discussion of the Ethics Ordinance

Chairman Zay reiterated that the By-Laws have been discussed for months as it had been on many agendas with the black line comparisons of both the old version versus the new version of the ethics included in the Board packets. Chairman Zay reminded members of when discussions first began by referring to past meeting minutes in which By-Law/Ethics Officer discussions took place: January 14, 2010 - Administration Committee first recommended the concept of having an independent ethics officer just

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as DuPage County retains an independent ethics officer and February 10, 2011-Administration Committee Chairman Zay had requested the Committee conduct a comprehensive review of the Commission's By-Laws for recommendation of needed changes, etc.

Referring to Section 2-400.7 Application of Ordinance. Commissioner Furstenau read the section and asked if the Commission falls under a "county appointed agency" noting that he felt that the language needed to be changed due to the Commission being only a partial county appointed agency.

General Manager Spatz clarified by referring to Section 2-401 Definitions. The section under County-appointed agency states "...where a majority of the members of such board or commission are authorized to be appointed by the Chairman of the DuPage County Board".

After Commissioner Suess questioned and General Manager Spatz clarified that the Commission is an independent agency, Commissioner Suess then asked, in the context of the County of DuPage, is there any other Commission entity under the jurisdiction of the County that is an independent government agency. General Manager Spatz replied yes, the Airport Authority was similarly created by State Statute. Commissioner Suess continued noting that there is a basic policy issue in that the Commission is going down the path of adopting the County's ordinance when in fact the Commission also has the ability to adopt its own ethics ordinance independent of the County and that there has never been any discussion of Board direction on one approach or the other. Commissioner Suess agreed that the Administration Committee had been working on it for months, but that this had been the first time that the Ordinance had been put forth to discuss by the full Board. General Manager Spatz disagreed and referred back to March 2012 when Crowe Horwath came out with their report which stated that the ethics policy needed to be updated and that the Commission should be more in line with the County. At the March Board meeting, General Manager Spatz stated that he had reported to the Board that he would like to hire legal counsel to review the County's ordinance and that it was at that meeting that Commissioner Tom Cullerton had recommended Village of Lombard Trustee Peter Breen be contacted of assistance. On April 6th, General Manager Spatz stated that he met with Mr. Breen to discuss some of the concerns involving an independent ethics officer, enforcement, etc. At the April Board meeting, General Manager Spatz stated that he had reported that staff was meeting with Tom Cuculich to find out about the County's ordinance and what options the Commission would have. In the meeting with Mr. Cuculich, General Manager Spatz stated that Mr. Cuculich asked if the Commission could hold off on their ethics policy because the County would be offering other government entities an opportunity to opt into theirs which was also reported at the April Board meeting. Commissioner Suess stated the there had been no discussion or direction by the Board whether the Commission should create their own ethics policy or whether to opt into the County's policy.

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At this point, Chairman Zay asked for a consensus of the Board members as to whether or not they would like to move forward with adopting Ordinance No. O-10-12 as written or if the Board would like to recreate it from scratch.

Commissioner Furstenau stated that he did not think that there was any member ready to drop the Ordinance, but rather discuss what was in the Ordinance in more detail for possible modifications. Commissioner Furstenau further stated that he does not attend the Administration Committee and does not see everything that the Administration Committee does and therefore the Board needs to have a fair hearing on this matter. Commissioner Furstenau noted that he attended the Board meeting expecting to approve the ordinance with a couple of modifications.

Commissioner Crawford provided clarification on the ethics ordinance noting that the Administration Committee had reviewed it and had discussed the requested amendments with the General Manager. All amendments were then discussed at the board meetings which have been incorporated into the Ordinance with a recommendation from the Administration Committee to move forward. Commissioner Murphy concurred with Commissioner Crawford and added that not only does the Administration Committee recommend the Ordinance, but thinks it's an excellent move in the right direction. Commissioner Murphy continued by stating that the ordinance provides some consistency in government. Plus, it brings an appearance of a good government with one of the key advantages being the independence of an Ethics Officer that would have no day to day role at the Commission and likewise with the Investigator General.

Commissioner Loftus stated that even though he is not a member of the Administration Committee he feels that he has been part of the Administration meetings because staff has provided the minutes of all meetings which gives members an opportunity to review and ask questions as they are presented. Commissioner Loftus then questioned the argument that this item had not had sufficient opportunities for comments or changes as he believed that there had.

Commissioner Furstenau stated that he liked the ordinance as it covers a lot of ground, but had a couple questions and referred to Page 5 Section 2-402 Gift Ban and Political Contribution Limit. Commissioner Furstenau noted that the section allows for political donations of up to \$1,000 per calendar year or \$4,000 per term and anyone that does business with the Commission would also be allowed to make a political contribution which he disagreed with and suggested that the political contribution limit be reduced from \$1,000 to zero.

Commissioner Russo referred to the case of Buckley v. Valeo stating that you cannot simply ban all dollars amounts regarding political contributions as it violates the First Amendment.

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Chairman Zay stated that personally he would not be swayed whether he received a contribution or not and that people have the right to free speech and to donate however they want. Chairman Zay stated that labor unions donate all over the country and have contracts with different unions, different commissions, counties, etc.

Commissioner Suess agreed with Commissioner Furstenau and added that he would feel comfortable with anything less than \$1,000 possibly \$250; stating that it is important that the Commission sends a serious message. Commissioner Loftus felt that the Commission was already sending a strong message as the ethics policy being considered was more restrictive compared to other places and therefore was very comfortable with the language as it was written.

Commissioner Janc understood the argument regarding making contributions only to gain access, but stated that if a business, not knowing what type of project opportunities would be coming up, goes ahead and makes a political contribution and then realizes after the fact that they could be excluded from doing business for that year because a donation had been made could in turn force those entities from making any future donation for fear of potentially losing out on a project, adding that \$1,000 seemed reasonable.

Commissioner Pruyn stated that he was in favor of passing the Ordinance as it was written and suggested that the Administration Committee review the contribution limit to evaluate and determine if a further adjustment needed to be made. Commissioner Pruyn then referred to Section 2.406 Training and pointed out that he understood that the initial ethics training needed to be completed within six months after the adoption of the Ordinance, but questioned how often training needed to be conducted thereafter. General Manager Spatz stated that the refresher ethics training program had not been defined, but it is usually on an annual basis.

With regards to adding Board meeting agenda items, Commissioner Suess stated that although there were ways to request that an item be added to the agenda either through the Chairman, Committee Chair and/or the General Manager, there still should be a defined process.

General Manager Spatz clarified by noting that the Board meeting agendas are emailed, a couple days prior to the Board packet being sent out, to the Chairman and all Committee Chairs for review with staff being very receptive to any agenda modification requests. General Manager Spatz cautioned about the possibility that a single Commissioner could add an extensive list of items to be added to any agenda and stated that some concurrence with other Commissioners should be needed. Discussion ensued as to the number of Commissioners needed for concurrence as to adding an agenda item.

Commissioner Webb left the meeting at 7:50 PM.

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Due to a couple concerns regarding potential amendments to the By-Laws, Chairman Zay suggested removing Ordinance O-10-12 from the regular Commission Agenda to allow Commissioners the opportunity to submit, in writing, their suggested amendments to the Administration Committee for review. At which point both Commissioner's Suess and Furstenau stated that they were not opposed to the proposed By-Laws, but felt a couple modifications were needed.

Commissioner Webb returned to the meeting at 8:05 PM.

Commissioner Suess stated that he was in favor of the By-Law Ordinance, but felt it was reasonable to do something different regarding the contribution limit along with adding a process for a Commissioner to have the ability to add an agenda item. Commissioner Suess stressed that he felt rushed in that the item was on the agenda for Board consideration and referred to the September 20th Board meeting in which there were no objections, from the Commissioners present, to hold any action until the October Board meeting. Chairman Zay replied that the Board has not been rushed through the process as the Board had been discussing the topic for months. Chairman Zay stated that back in March of 2012 one of the items listed on the Crowe Horwath Report was that the Commission needed to update their Ethics Policy. Chairman Zay continued by stating that the purpose of scheduling a Committee of the Whole meeting was to discuss the items in more detail, noting that he did not feel the Board was being rushed as Commissioner Crawford had been reporting out on this topic for the last six months and that the Administration Committee recommended moving forward.

Chairman Zay reminded members that when he was appointed Chairman, in 2011, he purposely staggered the Committee meeting starts times to allow all Commissioners to be able to attend all Committee meetings.

Commissioner Furstenau shared his appreciation with everything that Chairman Zay has done and expressed that he was in favor of the Ordinance, but not in favor of waiving the First Reading.

General Manager Spatz reminded the Board members that the By-Laws were initially introduced with minor changes and included in every Board packet for months. Commissioner Russo agreed with General Manager Spatz noting that the information had been available since March 2012 and that any modifications should have been submitted well in advance of the September meeting as everyone had more than enough time to review and comment.

Commissioner Suess clarified that he was not opposed to the ethics ordinance, but more frustrated with the process as it was discussed at the August meeting to hold a discussion at the September Board meeting and then take action at the October Board meeting. Commissioner Suess noted that he took advantage of a workshop that General Manager Spatz had offered which gave him a chance to discuss his concerns, noting that he was prepared to support the Ordinance, but thought there were areas that needed to be tweaked.

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Commissioner Suess referred to the Intergovernmental Agreement Shared Ethics Officer Sections 5.1 Indemnification and 5.2 Covenant Not to Sue and asked legal counsel what exposure would the Commission have as it relates to both sections.

Robin Jones of Gorski and Good began by stating that her partner Gerry Gorski had reviewed the Ordinance and Intergovernmental Agreement and was comfortable with it as written and that the reason the County would be indemnified is because they would only be involved in making recommendations. To which Commissioner Suess raised his concern stating that the County would be indemnified, but that the Commission would have no defense. Ms. Jones agreed and noted that the County is simply offering their services and in return asking for protection.

General Manager Spatz explained that the County's role is to make a recommendation and then it would be up to the Commission to make the final decision so the Commission would always be at risk for a potential lawsuit. General Manager Spatz compared the Intergovernmental Agreement to what the Commission currently has in place which is the General Manager as the Ethics Officer; noting he was not a full time ethics officer nor an attorney, but stressed that by using the services of the County the Commission would have more of an expert. Either way the Commission would still be at risk, but at least the Commission would have someone with experience to provide assistance.

Commissioner Suess asked and General Manager Spatz stated that after discussions with the Commission's legal counsel if the Commission were to remove the Indemnification section, DuPage County would not sign it as they have already made two modifications for the Commission.

Commissioner Murphy noted that he felt the discussion had been heard with the Commissioners in support of the Ordinance and that the Ordinance along with two other related Resolutions are listed for Board consideration. Commissioner Murphy reviewed a couple options with one being to defer any action until the October meeting to allow for the Administration Committee to further review for any additional changes and another option would be to take action, but stressed the importance of having an ordinance that all Commissioners support for consideration and approval with the understanding that the Administration Committee would be more than happy to go back and look at the various suggested modifications.

With no further discussion, Commissioner Murphy moved to adjourn the meeting at 8:15 P.M. Seconded by Commissioner Russo and unanimously approved by a Voice Vote.

All voted aye. Motion carried.