

MINUTES OF THE SPECIAL MEETING OF
THE BOARD OF DIRECTORS OF
GREEN MOUNTAIN WATER AND SANITATION DISTRICT

July 27, 2021

A Special Meeting of the Board of Directors (the “Board”) of the Green Mountain Water and Sanitation District, (the “District”) was held at 6:00 p.m. on Tuesday, July 27, 2021.

This document is an edited version of the audio recording of the District Board meeting. The audio recording shall be the official record of the District Board meeting proceedings. Such audio recording is available on the District’s website.

Attendance: A special meeting of the District was scheduled in compliance with the laws of the State of Colorado, with the following directors in attendance:

Adrienne L. Hanagan, President – Virtual Attendance
Jeff A. Baker, Vice President
Alex Plotkin, Secretary
Karen Morgan, Treasurer
Rhonda Peters, Director – Virtual Attendance

Also present were:

Greg Kropkowski, District Manager
Sam R. McKay,
Jesse Davenport,
Austyn Pantano,
Dillon Woods, Coaty Marchant Woods P.C.
Alex Carlson, Centennial Consulting Group

Angie Baker
Brenda Bronson
Richard Bennett
Christopher Arlen
John Mohatt
Mike B.
Kathe Odenweller
Imara
John’s Ipad
Joshua Comden
Kathleen
Linnea Hauser
Mary Ellen
Lynn Judson

Wendy Shrader
Trotsky
Unknown
Thomas Quinn
Jjblk
Denise Luepschen
Phone number ending 0866
Phone Number Ending 1558

Call to Order / Declaration of Quorum: Director Baker, noting the presence of a quorum and upon request from Director Hanagan to note her as present and arriving shortly, called to order the Special Meeting of the Board of the Green Mountain Water and Sanitation District at 6:00 p.m.

Reading of the Agenda Director Baker read the agenda to the Board.

Directors & Disclosure Matters: None.

Approval of/Deletions from the Agenda: None.

Public Comment: Michael Yost stated that he was in attendance to listen to the meeting as he is interested in running for one of the positions available through the recall election.

Linnea Hauser expressed her appreciation for the recent civility of the Board and commended the addition of day-to-day counsel.

Brenda Bronson asked the Directors not replace Ms. Timmons as counsel for litigation matters. She recalled statements from Director Baker that described he was in support of Ms. Timmons remaining as counsel. She mentioned a statement by Director Plotkin that confirmed Mr. Woods would not replace Ms. Timmins as representation for litigation matters. She expressed that if the Directors voted in favor of the change in counsel, she would hold the Directors personally liable. Furthermore, she noted that Director Morgan changed her candidate webpage from thanking Ms. Timmins for her victory to removing the reference to Ms. Timmins entirely.

Joshua Comden described some concern for the length of time the discussion lasted with the Engineer's report at the last meeting.

Lynn Judson expressed support for Ms. Timmins and expressed her desire for the Board to support her.

Imara noted her concern about replacing Ms. Timmins as District Counsel for litigation matters. Additionally, she described that the Board previously had a desire to retain Ms. Timmins and wondered what had changed. Furthermore, she reiterated that it is irresponsible to fire representation that has been successful in the middle of ongoing litigation. She noted her concern about the ongoing special meetings and the added legal expenses associated with these meetings.

Christopher Arlen thanked the Board for acting politely and with decorum at the most recent meetings. He also thanked them for their consistency in making yet another decision regarding legal representation that was not made in good faith.

Deborah Romero stated that she agreed with much of what had been said by other members of the public. She added that the Board previously reiterated their desire to retain Ms. Timmins and now seemed to be changing their position. She requested that Mr. Woods keep the best interest of the District in mind when giving legal advice. She noted that Ms. Timmins should not be fired for her success in court to date. She read a few awards Ms. Timmins has received overtime. Ms. Romero reiterated that the legal and other expenses associated with constant meetings should not continue. She urged the meeting be adjourned.

Kathe Odenweller acknowledged that she agreed with several of the other constituents' comments. She asked why Ms. Timmins was not here for the decision and noted that in the past it has seemed the Board blames whomever is not in attendance.

Director Baker closed the public hearing at 6:27 pm.

Director's Matters

Director Baker introduced the agenda item and opened the floor to discussion.

- a. Consideration of/Approval of/Disapproval of retaining new legal counsel for litigation purposes.

Director Morgan asked generally if others felt it was a good idea to make a change now. She described that a new phase of the litigation has begun and that the Board has discussed changes in the past and that it seemed like a reasonable opportunity to make a change.

Director Baker acknowledged that the public in attendance are against the change. He explained his position. Ultimately, he was uncomfortable about a unilateral decision made to settle the case instead of opening the discussion to the public. He reminded those in attendance that he was an original supporter of Ms. Timmins.

Furthermore, he stated that if the decision to settle had been made the positive decision from the courts would not have been possible. He did not feel the public and others had the opportunity to hear about all options. He described some of the unprofessional behavior that occurred at past meetings and that he had worked outside of meetings to try and correct and smooth out the issues. He described that he has not received updates from Ms. Timmins for some time and was concerned that she was not in attendance at the most recent meeting to update the Board.

Director Plotkin explained that his concerns began over a year ago. He described concern about items that he had sent to Ms. Timmins that were disregarded that he felt would have been helpful/important to the case. He noted some previous inappropriate behavior by the public that he wished should have been handled by counsel. He acknowledged that the numerous meetings held throughout the last year were a result of the ongoing litigation and settlement discussions. He described being personally attacked by an opposing attorney with no support from Ms. Timmins.

Adrienne Hanagan joined the meeting at 6:42 p.m.

He further explained that another concern with Ms. Timmins was her continued comments about the Districts strong case but felt she moved quickly toward a settlement that contradicted a strong case. Furthermore, he felt insulted by the public questioning the number of meetings because they were advised to do so by existing counsel. He reiterated Director Baker's point that the positive ruling of the court would have never occurred if the Directors agreed to settle. He described lack of responses from Ms. Timmins and the inability to work together with some of the current Directors.

Director Hanagan described an email that she received from a constituent that she had engaged in settlement discussions with Andrew Mandel. She stated that she had met with him, and no such discussion took place. She exclaimed that Director Baker was not a part of these discussions.

Director Plotkin discussed the options that were available to the Board but that the decision to engage in litigation was pushed forward. He believed that Director Morgan and Director Baker were both in support of holding public meetings to get public opinion about how to move forward.

Director Peters mentioned a question asked by Director Baker regarding why such excessive legal fees were racked up if the District was moving toward a settlement. She noted that in her

experience a settlement is not often offered until shortly before trial.

Director Hanagan mentioned that she discussed inclusion at the March 30, 2021, meeting. She cited that the Board would have needed Big Sky Metropolitan District to have to agree to inclusion and that it was unlikely they would have been willing to do so.

The Directors generally discussed the reasons why the inclusion was not desired by Big Sky or GMWSD due to excessive costs. They collectively recalled whether GMWSD pays for infrastructure within Metropolitan Districts or if it is covered by the Development group. They generally agreed that GMWSD would not have been on the hook to cover the cost of infrastructure.

Director Hanagan asked if there was an estimate of how much it would cost to bring a new attorney up to speed on the existing litigation? She noted that the expense could be excessive (up to \$300,000), that there are 4 pending cases, and that if a settlement is required, the change would not have been in the financial best interest of the District.

Director Baker asked Director Hanagan to explain the data behind her cost estimate of \$300,000 to change attorneys. He described that Mr. Gessler has been brought up to speed throughout the case.

Director Hanagan clarified that Director Baker's desire was to engage Mr. Gessler at \$500 an hour and Mr. Woods would remain as Title 32 representation.

Director Morgan stated that she desired litigation counsel that would represent the Board as a whole and not only a few members of the Board. She reiterated Mr. Gessler's familiarity with the matters at hand.

Director Baker asked Director Hanagan if she is comfortable not receiving updates regarding the Big Sky litigation from Ms. Timmins. Director Hanagan responded that at times Director Baker did not treat Ms. Timmins professionally and that she likely feels unwelcome.

Director Baker reiterated that his position is a lack of confidence in Ms. Timmins. Director Plotkin agreed with Director Baker.

Director Peters asked Mr. Woods if he was still of the opinion that changing attorneys was inadvisable.

He explained that he believed it would be wise to retain the same counsel for litigation. Mr. Woods continued that the request for the appeal to be dismissed filed by Ms. Timmins was all that had occurred recently.

Director Peters asked the Board what is gained by making a change? Director Plotkin responded that he was disappointed that Director Peters had not listened to the multiple concerns he raised about Ms. Timmins throughout the meeting.

Director Peters noted the Board was considering mediation and was disappointed that it did not come to fruition for this discussion. She requested the Directors wait to decide until the recall election is completed.

The Board discussed why the request for mediation failed.

Mr. Kropkowski explained that there was a time frame associated with the timing of mediation. He believed that Director Baker and Director Plotkin were amenable to mediation. He noted that a possible mediator was willing to work pro-bono and that Director Hanagan had expressed concerns about the impartiality of the proposed mediator. The other mediator presented by Mr. Kropkowski would have charged a fee.

Director Baker asked Mr. Woods what he would do if he lost confidence in his attorney? Mr. Woods responded that outside of financial reasons he believes that it is the second most common reason for an attorney to be fired.

Director Hanagan described an example of Mr. Gessler charging other districts large sums of money. She asked the Board members if they have had any contact with Mr. Gessler since he left as Co-Counsel? Director Plotkin mentioned he discussed with Mr. Gessler about the open meetings lawsuit.

Director Morgan noted that her talking to Mr. Gessler was already discussed at a previous meeting. She described concern over the lack of communication from Ms. Timmins recently.

Director Peters asked Director Baker about why he is not confident in Ms. Timmins? She further asked if it was purely personal or professional? She stated that in her review of the case she believed Ms. Timmins was well prepared and had a strong position. She

acknowledged that certain personalities do not pair well but if that is the only issue then the Board should stay the course.

Director Hanagan stated that she has confidence in Ms. Timmins. She acknowledged concern of losing the case and was very pleased with Ms. Timmins ability to reach a verdict in the best interest of the District. She reiterated concerns over Mr. Gessler's billing practices and that the Board was not advised when he was running for the Chair of the Republican Party.

Director Baker reiterated his previous support of Ms. Timmins. He lost confidence in Ms. Timmins around March of 2021. He expressed concern about Ms. Timmins billing practices as it related to failure to receive a bill last month and lack of communication. He reiterated his concern involving the push towards settlement by Ms. Timmins and lack of communication of other options to the public.

Director Baker **MOVED** to retain Mr. Gessler as District Counsel for Big Sky litigation matters.

Director Hanagan described comments from Mr. Gessler that advised the Board not to move away from Ms. Timmins. She also mentioned that the Board needs to submit an RFP to consider qualified candidates for litigation counsel.

Mr. Woods read from the Districts Bylaws. He noted that the Board had hired his firm through an RFP process but did not believe an RFP was required.

Director Peters asked about the contract amount that is allowable to be approved without an RFP. Mr. Woods commented that this restriction only applies to construction and procurement contracts, not services.

The Board took a break at 8:01 p.m.

Director Hanagan reconvened the Board at 8:12 p.m. She expressed her concern about an ethics violation with Mr. Gessler that could affect the District. She also noted that none of the members of the public in attendance supported the change.

Director Woods following his review of Board resolutions describing powers given to the District Manager for expenditure purposes, stated that he did not believe that these resolutions had bearing on a requirement for an RFP nor did the Bylaws or other

statutory requirements. Mr. Woods commented that he would not recommend the Board enter into any agreement for counsel that he did not review prior.

Director Morgan asked Mr. Woods about being co-counsel for litigation matters. Mr. Woods stated that he would be able to enter his appearance on all outstanding litigation matters.

Director Morgan described concerns regarding the behavior of Ms. Timmins toward staff and other episodes of behavior that she believed should not have been tolerated by the Board.

Director Morgan seconded the motion.

Due to a modification in the motion following discussion, Mr. Woods advised that Director Baker withdraw his motion.

Director Baker withdrew his motion.

Director Baker **MOVED** to remove Ms. Timmons as Big Sky litigation counsel, retain Mr. Gessler as Big Sky litigation counsel and authorize Mr. Woods to enter his appearance in each case.

Director Morgan seconded.

Director Hanagan requested a super majority for this vote. She quoted Robert's Rules of Order regarding cutting off a debate. Director Baker noted that he did not cut off the debate.

Director Hanagan noted that the Agenda did not include reference to Mr. Gessler and refused a vote.

Mr. Woods advised that the Board await a proposal from Mr. Gessler prior to voting on his replacement of Ms. Timmins.

Director Peters asked if anyone had spoken to Mr. Gessler about his willingness to represent the Board. Director Plotkin stated that Mr. Gessler is aware and willing to represent the Board.

Director Peters asked if the Board would abide by Mr. Woods recommendation that no formal action be taken to retain new counsel until he has the opportunity to review the terms of engagement. He offered to reach out to firms for proposals.

Director Baker withdrew his motion.

Director Morgan **MOVED** for Mr. Woods to enter his appearance into all pending litigation matters for the purposes of reviewing files and updating the Board accordingly. Director Baker seconded.

Mr. Woods discussed case-law and the reasonableness of Director Hanagan denying the Boards ability to vote due to lack of notice. Mr. Woods believed the Board had provided sufficient notice to allow the Board to vote on this motion.

Director Peters clarified that Mr. Woods appearance would only be for informational purposes. Mr. Woods clarified that his intent was not to review years of on-going litigation. He simply requested to be able to be kept abreast of any future and on-going litigation matters.

Director Peters asked if there would be other motions following the motion on the table. Director Plotkin responded that this motion had been thoroughly discussed.

Director Hanagan requested a super-majority vote based on the failure to answer Director Peters question. Mr. Woods read the Bylaws to the Board regarding this request. He stated that he did not believe the section of the Bylaws referenced applied to the current motion. He acknowledged he was not asked but expressed that he was not keen on being litigation counsel nor was aware of any Director's desire to have his firm become litigation counsel. He reiterated his advice to the Board to retain Ms. Timmins as current counsel.

Director Baker reiterated his reasoning for replacing Ms. Timmins based on Mr. Gessler's previous involvement.

Director Peters described the reasons why Ms. Timmins no longer needed Mr. Gessler on the case.

Director Hanagan called for a vote. **The motion Passed 3-1** with an abstention from Director Peters.

Director Morgan noted that the hybrid structure should be re-considered at a future meeting.

Director Morgan **MOVED** that the board acquire a proposal from Mr. Gessler.

Director Peters stated she was opposed to retaining new counsel according to Mr. Woods recommendation. Director Hanagan

agreed with her position and discussed the previous role Mr. Henderson had in prior issues.

Director Baker seconded. **The motion passed 3-2.**

The Board asked that Mr. Woods request the proposal from Mr. Gessler.

Another meeting will be scheduled when the proposal is provided by Mr. Gessler.

Other Business

None

Adjourn:

Director Baker moved to adjourn the meeting. Director Plotkin seconded the Motion. The Motion passed by unanimous consent, and the meeting was adjourned at 9:28 p.m.



Alex Plotkin, Secretary