

UTILITY BOARD

November 19, 2018

6:24 P.M.

The City of Lawrenceburg Utility Board meeting was called to order by President Kelly Mollaun, Clerk-Treasurer Richard Richardson read roll call. Present were Board members Tony Abbott, Randy Abner, Mel Davis, Paul Seymour JR and Aaron Cook, Utility Director Olin Clawson, City Attorney Del Weldon, Mayor Kelly Mollaun, and Clerk-Treasurer Richard Richardson.

ANNOUNCEMENTS

USB Attorney Del Weldon passed around the history of the Utility Service Board document from the Legal Dept. The document outlined the role of everyone involved in the Utility Service Board and how the Utility Service Board should operate moving forward. It referred to the Indiana Code 8-1.5-3-3, 8-1.5-3-4, and 8-1.5-3-5. It referenced local code 32.085, 32.086, 32.087, and 32.088. The relationship of the Board formation was discussed from the inception in 1996 under Mayor Gabbard to the modifications that took place under Mayor Tremain in 2002. Attorney Weldon advised that the moving of the Utility Service Board meetings next month to a new night and time would allow for more transparency and more time to be spent on various issues.

After the presentation Aaron asked if the Board could hire an attorney without his approval. Del advised that the Board could hire an attorney whenever it wants. He went on to state that the City Law Dept. is appointed by the Mayor and that Dept. is in charge of all the legal affairs of the City. When a Board needs to have a specific legal opinion from a different attorney they work with the Legal Dept. to hire that attorney. The Board or Utility Director can make that request. Director Clawson stated that there was an Ordinance stating that the Board would need approval from the City Attorney to hire a separate attorney.

Director Clawson read the meeting minutes from the previous meeting and stated that Paul Seymour Jr. had made a motion for the Board to hire its own attorney. Director Clawson stated that he was paraphrasing, but that Del stated that the Utility Director has statutory authority to use personal services to hire his own attorney. It was advised that Del stated at the previous meeting that Greg Niebarger has been used and can continue to be used. Attorney Del Weldon advised that we can hire Greg Niebarger, or any attorney, but it has to be done through a process. Del advised that no attorney can be hired to generally represent the City, but they can be hired for specific issues. Director Clawson went on to advise that the intent of that questioning from the last meeting was for the Utility Board to hire its own attorney and take on its own bills. Aaron asked why the Mayor handles union issues. Del advised that the Utility Director makes employment decisions and the Mayor typically handles grievances because of the Union Contract. The State Statute gives Olin authority to handle employment matters.

Del went on to say the Board can hire an attorney if they so choose to. Paul Seymour Jr. advised that there was plenty of work for the Mayor and Del to be doing and that the Utility Dept. should

separate. Paul advised that the Utility Dept. was going in the right direction and they should separate and let Olin run it. Del advised that we are separating the meetings, but that the Utility is still a department of the City. Del stated that he is duty bound to oversee the legal matters of the City, the Clerk-Treasurer has a financial duty by law, and the Mayor still needs to preside over the meeting. Board member Aaron Cook conjectured that we'd be paying double attorney fees. Aaron asked if Del goes to the Redevelopment meetings. Del advised that he did go to those meetings. Del advised that we only use a different attorney for special matters when needed. Aaron advised that he misunderstood from the last meeting. He asked why we would move the meeting to another night then; he stated that he can take all the time we need to discuss issues.

Board member Mel Davis advised that it makes sense to have Greg there and be able to answer Utility specific questions. He advised that it would drag out issues if we don't have answers on the spot. Del stated that the Board needs a legal representative separate from the Utility Director. Board member Tony Abbott asked what Mr. Niebarger was there for. Del advised that Mr. Niebarger was originally hired in conjunction with Mayor Dennis Carr. Mel Davis motioned to Mr. Niebarger as the Utility Board attorney. Del asked what that meant; how many hours would be worked and how much the rate would be. Mel advised how many hours necessary and whatever the rate is. Aaron Cook then stated that he would need to know the rate that would be charged before he could vote on that. Mr. Niebarger went to the podium and stated that his rate has been discounted to \$425. The normal rate would be \$490. Mr. Niebarger advised that, he thought, Del gave permission for the Board to have Bingham Greenbaum Doll LLP.

Board member Tony Abbott asked how much Mr. Niebarger charges for travel time. Niebarger advised that he doesn't always charge travel, but when he does it is at a discounted rate. He stated that it takes him 2 hours to get here and 2 hours to get home, but he only charges 2 hours of travel time when he charges it. Tony asked what Del's rate was and Del responded that his rate was \$200 per hour. Tony advised that it was his opinion that they use Del as the Board attorney and use Mr. Niebarger only when needed. Board member Aaron Cook advised that he wants to vote on this issue on another night when he has more time to review it. Utility Director Olin Clawson advised that he is smart enough to utilize Del when needed, but knows when to call Greg Niebarger on more specific issues. He relayed an event in which AEP was at suit with the Utility, and because of Mr. Niebarger's excellence he was able to win the suit and an award of \$400,000.

Board member Tony Abbott asked why we need to change what we are doing if Olin only uses Greg for specialized matters. Board member Paul Seymour Jr. stated that you take politics and what has been going on in the press out of the situation and advised that this could be a positive thing for the administration. Board member Abbott advised that Utilities was set up the way it was because of a court issue in which a Special Master was implanted to run the City. Olin advised that it could be changed through a referendum. Greg Niebarger advised that as long as the Board has permission from the Board attorney they can hire their own attorney. Board member Paul Seymour Jr. attempted to form a motion. After several variations of what the motion could or would be the motion was formed. The motion presented to the board was to allow the USB to engage Mr. Niebarger to serve as Utility attorney and allow the Utility Director to determine if Greg Niebarger should be present at a meeting.

Motion: Paul Seymour Jr.

Second: Mel Davis

Roll Call Vote: Tony Abbott: Nay, Aaron Cook: Nay, Mel Davis: Yes, Randy Abner: Yes, Paul Seymour Jr.: Yes.

Motion carried 4-1.

Approval of minutes from the previous meeting.

Motion: Tony Abbott

Second: Aaron Cook

Motion carried.

COMMITTEE REPORTS

1. Utility Director Olin Clawson advised that there were a few outages in the area due to trees needing trimmed after the ice storm. Board member Mel Davis was agreeance with Olin and advised that if Duke took time to do tree trimming they'd be able to save themselves from outages.

NEW BUSINESS

None.

OLD BUSINESS

1. Aaron Cook asked about the owning blocking an easement that the Utility cleared. This event took place at the Waterview apartments. Olin advised that, as a Utility, certain rights were granted to the Utility to be able to service their systems. Aaron asked what would happen if the owner blocked the way again. Olin advised that it is typical for them to walk in if they can't drive, but they can only go so far on foot. Del Weldon advised that Fire or CPD could take action in emergency situations and when it comes to electric it could be an emergency situation. Mel Davis advised that, to his knowledge, there was a written agreement about the access. Tony asked that the agreement be sent to the owner's attorney. Olin advised that there may be an agreement and he would do so.

MOTION TO APPROVE CLAIMS

Motion: Aaron Cook

Second: Mel Davis

Motion carried.

MOTION TO ADJOURN

Motion: Randy Abner

Second: Tony Abbott

Motion carried.