

BAY COUNTY APPORTIONMENT COMMISSION

JULY 24, 2001

THE BAY COUNTY APPORTIONMENT COMMISSION MET ON TUESDAY, JULY 24, 2001, IN THE FOURTH FLOOR COMMISSION CHAMBERS OF THE BAY COUNTY BUILDING. THE MEETING WAS CALLED TO ORDER BY CHAIRMAN JOSEPH K. SHEERAN AT 4:05 P.M. WITH THE FOLLOWING MEMBERS AND GUESTS PRESENT.

ROLL CALL: PROSECUTING ATTORNEY JOSEPH K. SHEERAN, CHAIRMAN
COUNTY CLERK LINDA L. TOBER, SECRETARY
TREASURER JEANETTE E. NEITZEL
DEMOCRATIC PARTY CHAIRMAN TONY PAWELSKI
REPUBLICAN PARTY CHAIRMAN MAX D. HOLMAN

ALSO PRESENT: LORAINA A. URBANCIK, SECRETARY TO THE COUNTY CLERK
MARTHA P. FITZHUGH, CORPORATION COUNSEL
MICHAEL F. HALSTEAD, COUNTY COMMISSIONER
JANET SANTOS, BANGOR TOWNSHIP CLERK
ATTORNEY PETER C. JENSEN,
JENSEN, GILBERT, SMITH & BORRELLO, P.C.
CYNTHIA A. LUCZAK, DEPUTY COUNTY CLERK

MINUTES

COUNTY TREASURER NEITZEL HAD SOME QUESTIONS AFTER REVIEWING THE MINUTES FROM THE JULY 24, 2001, MEETING. THE CHAIRMAN INTERRUPTED HER TO DISCUSS THOSE QUESTIONS DURING THE BUSINESS PORTION OF THE MEETING, AND HE CALLED FOR A MOTION TO APPROVE THE MINUTES AT THIS POINT. MR. HOLMAN MOVED TO APPROVE THE APPORTIONMENT COMMISSION PROCEEDINGS AS PRESENTED FROM THE MEETING HELD JULY 13, 2001. IT WAS SUPPORTED BY MR. PAWELSKI AND PASSED BY VOICE VOTE, 5 YEAS, 0 NAYS.

PUBLIC INPUT

CHAIRMAN SHEERAN OFFERED TO ACCEPT COMMENTS OF MEMBERS OF THE PUBLIC WISHING TO ADDRESS THE BOARD WITH THEIR CONCERNS.

COUNTY COMMISSIONER MICHAEL F. HALSTEAD ASKED WHERE MINUTES OF THE APPORTIONMENT MEETINGS WERE AVAILABLE, AND THE COUNTY CLERK RESPONDED THAT THEY WERE ON FILE IN HER OFFICE. COMM. HALSTEAD QUESTIONED THE NEED TO HIRE COUNSEL TO DEFEND THE APPORTIONMENT PLAN AND WONDERED WHY, IF THE PLAN HAD NO FLAWS, IT WAS NOT LEFT TO THE COURT OF APPEALS TO DETERMINE WHETHER THE ADOPTED PLAN OR THE PLAN SUBMITTED BY MR. OSTRANDER WOULD BETTER SERVE THE PEOPLE OF BAY COUNTY. HE QUESTIONED CORPORATION COUNSEL'S INSISTENCE ON

HIRING COUNSEL, NOT RECALLING A NEED FOR COUNSEL IN THE PAST. COMM. HALSTEAD POINTED OUT THAT THE COUNTY CLERK HAD STATED THAT THE ADOPTED PLAN WOULD SAVE TAXPAYER DOLLARS AT ELECTION TIME, WHEREAS HIRING AN ATTORNEY TO DEFEND WILL NOW SPEND EXTRA TAXPAYER DOLLARS.

THERE WERE NO OTHER MEMBERS OF THE PUBLIC WISHING TO ADDRESS THE BOARD.

BUSINESS

COUNTY TREASURER NEITZEL HAD QUESTIONS ABOUT THE STEPS INVOLVED IN THE APPEAL PROCESS AND WHETHER THE HIRING OF AN ATTORNEY WAS NECESSARY SO EARLY IN THE CASE. IT WAS EXPLAINED THAT AN ANSWER IS REQUIRED TO BE FILED 21 DAYS AFTER FILING OF THE PETITION, WHICH DOES NOT LEAVE MUCH TIME. IF NO ANSWER IS FILED, BAY COUNTY WOULD HAVE NO INPUT TO THE OUTCOME OF THE CASE. IT WAS ALSO EXPLAINED THAT, DURING THE LAST APPORTIONMENT PROCEEDINGS TEN YEARS AGO, AN APPEAL WAS FILED WHICH WAS DEFENDED BY ATTORNEY PATRICK O. DUGGAN FROM THE OFFICE OF CORPORATION COUNSEL. MR. HOLMAN POINTED OUT ALSO THAT THE PETITION MAY HAVE INACCURACIES WHICH SHOULD BE ADDRESSED IN AN ANSWER.

MR. PAWELSKI EXPRESSED THAT HE WAS UNCOMFORTABLE HIRING AN ATTORNEY TO DEFEND A PLAN FOR WHICH HE VOTED AGAINST.

MS. NEITZEL HAD THOUGHT THAT THE PETITION WOULD BE FILED WITH THE APPEALS COURT AND THAT, IF THE COURT HAD A QUESTION OR IF THE COURT DETERMINED THAT THE PLAN WAS CHALLENGED, AN ATTORNEY WOULD THEN BE HIRED.

CHAIRMAN SHEERAN SUMMARIZED THAT, AT THE PREVIOUS MEETING DURING WHICH MS. NETIZEL WAS ABSENT, THE COMMISSION HEARD FROM CORPORATION COUNSEL AS TO HER VIEW OF THE APPROPRIATE ACTION TO TAKE IN DEFENDING THE COMMISSION'S POSITION. MR. SHEERAN NOTED THAT HE AND MR. PAWELSKI HAD VOTED AGAINST THE ADOPTED PLAN.

CORPORATION COUNSEL SUMMARIZED THAT PLAN NO. 3 WAS ADOPTED ON JUNE 6, 2001, BY A 3-2 VOTE. THE COUNTY CLERK THEN FILED THAT PLAN WITH THE MICHIGAN STATE BUREAU OF ELECTIONS. MS. FITZHUGH WENT ON TO EXPLAIN THAT THE TREASURER, THE COUNTY CLERK, AND THE PROSECUTOR TOOK AN OATH OF OFFICE. AS PART OF THAT OATH, THEY ARE REQUIRED TO UPHOLD THE LAW WHICH, IN THIS CASE, IS A VALID AND EFFECTIVE STATUTORY APPORTIONMENT PLAN WHICH HAS BEEN FILED WITH THE STATE OF MICHIGAN. SHE DISCUSSED THE POSSIBILITY OF A QUO WARRANTO ACTION BEING FILED, PARTICULARLY AGAINST THE ELECTED OFFICIALS, IF THEY FAIL TO DEFEND THE APPORTIONMENT PLAN.

CORPORATION COUNSEL EXPLAINED THAT THE USUAL PROCEDURE WOULD BE TO FILE AN ANSWER, UNLESS THE COMMISSION WISHED TO DEFAULT. RECOGNIZING THAT THE DECISION TO ANSWER WAS UP TO THE COMMISSION AND ANTICIPATING THAT THE COMMISSION WOULD CHOOSE TO FILE AN ANSWER, MS. FITZHUGH HAD CONTACTED

ATTORNEY PETE JENSEN OF JENSEN, GILBERT, SMITH & BORRELLO, P.C., IN SAGINAW, WHO HAD OBTAINED A 21-DAY EXTENSION OF TIME IN WHICH TO FILE AN ANSWER, WHICH WOULD MAKE THE ANSWER DUE FRIDAY, AUGUST 17, 2001. MS. FITZHUGH SUGGESTED THAT THE COMMISSION GO INTO CLOSED SESSION TO DISCUSS STRATEGY IN DEFENSE OF THE APPORTIONMENT PLAN IF IT WAS THE COMMISSION'S WISH TO ANSWER THE PETITION.

CHAIRMAN SHEERAN EXPLAINED THAT, AT THE PREVIOUS MEETING, MS. FITZHUGH, AS COUNSEL FOR THE APPORTIONMENT COMMISSION, GAVE THE OPINION THAT SHE WOULD SERVE AS COUNSEL TO THE COMMISSION IN DEFENDING THE LAWSUIT WITHOUT ANY FURTHER ACTION BY THE COMMISSION. AS PART OF HER DUTIES, SHE WOULD CONTRACT WITH AN OUTSIDE ATTORNEY IF NECESSARY.

MS. FITZHUGH COMMENTED THAT, FROM AN ATTORNEY'S VIEWPOINT, IT WOULD BE UNUSUAL NOT TO FILE AN ANSWER TO A PETITION. SHE ALSO NOTED THAT MR. JENSEN HAD INDICATED THAT THE COURT OF APPEALS MIGHT ORDER AN ANSWER. MS. FITZHUGH NOTED THAT MR. JENSEN WAS IN ATTENDANCE TO DISCUSS STRATEGY WITH THE COMMISSION DURING CLOSED SESSION IF SO DESIRED.

CLOSED SESSION

COUNTY TREASURER NEITZEL MOVED GO INTO CLOSED SESSION PURSUANT TO MCLA 15.268, SECTION 8(e), TO CONSULT WITH ATTORNEY PETER C. JENSEN REGARDING TRIAL AND/OR SETTLEMENT STRATEGY IN CONNECTION WITH SPECIFIC PENDING LITIGATION WHEN AN OPEN MEETING WOULD HAVE A DETRIMENTAL FINANCIAL EFFECT ON THE LITIGATING AND/OR SETTLEMENT POSITION OF BAY COUNTY. IT WAS SUPPORTED BY COUNTY CLERK TOBER AND PASSED BY ROLL CALL VOTE:

4 YEAS: HOLMAN, NEITZEL, PAWELSKI, AND TOBER
1 NAY: SHEERAN

COUNTY CLERK TOBER MOVED GO BACK TO REGULAR ORDER OF BUSINESS FOLLOWING CLOSED SESSION. IT WAS SUPPORTED BY MR. HOLMAN AND PASSED BY VOICE VOTE, 5 YEAS, 0 NAYS.

LEGAL FEES

MR. JENSEN QUOTED A FEE OF \$120.00 PER HOUR AND DID NOT ANTICIPATE THE CASE TAKING MORE THAN 20 HOURS. HE STATED THAT HE WOULD COME BACK TO THE COMMISSION IF CIRCUMSTANCES CAME UP REQUIRING MORE THAN 20 HOURS FOR THE CASE. COUNTY TREASURER NEITZEL MOVED TO PUT A CAP ON THE LEGAL FEES OF 20 HOURS AT A RATE OF \$120.00 PER HOUR FOR A TOTAL OF \$2,400.00 AND THAT ANY ADDITIONAL COSTS WERE TO COME BEFORE THE COMMISSION FOR APPROVAL. IT WAS SUPPORTED BY CHAIRMAN SHEERAN.

THE QUESTION WAS ASKED WHETHER THE MOTION ALSO INCLUDED THE HIRING OF MR. JENSEN. THE CHAIRMAN RESPONDED THAT CONTRACTING WITH AN OUTSIDE ATTORNEY

FALLS UNDER THE DUTIES OF CORPORATION COUNSEL AND DOES NOT REQUIRE ACTION BY THE COMMISSION. UPON FURTHER THOUGHT, THE CHAIRMAN STATED THAT LEGAL FEES SHOULD BE WITHIN THE DISCRETION OF CORPORATION COUNSEL. MS. FITZHUGH STATED THAT SHE WOULD REFLECT THE DETAILS OF THIS DISCUSSION IN HER RETENTION LETTER TO MR. JENSEN. THE MOTION TO PUT A CAP ON LEGAL FEES WAS WITHDRAWN.

MS. FITZHUGH NOTED THAT THE DISCUSSION DURING CLOSED SESSION WAS IN REGARD TO STRATEGY IN THE CASE AND DID NOT REQUIRE ANY ACTION BY THE COMMISSION DURING OPEN SESSION.

THE CHAIRMAN NOTED THAT COMMISSION MEMBERS HAD EXPRESSED AN INTEREST IN BEING ADVISED OF THE PROGRESS OF THE CASE. IT WAS DECIDED THAT MR. JENSEN COULD COMMUNICATE IN WRITING TO COMMISSION MEMBERS UNDER THE ATTORNEY-CLIENT PRIVILEGE AND THAT, IF ANY COMMISSION MEMBER DESIRES TO HAVE A MEETING, THEY SHOULD CONTACT THE CHAIRMAN, WHO WOULD CALL A MEETING.

IT WAS ALSO DECIDED THAT MINUTES OF THIS MEETING WOULD BE DISTRIBUTED TO COMMISSION MEMBERS, AND THEY SHOULD CONTACT THE CHAIRMAN IF THEY HAD ANY OBJECTIONS TO THE MINUTES AS PREPARED.

THE CHAIRMAN NOTED THAT, IF THE PETITION IS DENIED, THERE WOULD BE NO FURTHER ACTION REQUIRED BY THE COMMISSION. IF THE APPORTIONMENT PLAN WAS SENT BACK FOR ACTION BY THE COMMISSION, THEN MORE MEETINGS WOULD BE REQUIRED.

RECESS/ADJOURNMENT

MR. PAWELSKI MOVED TO ADJOURN THE MEETING. IT WAS SUPPORTED BY COUNTY CLERK TOBER AND PASSED BY VOICE VOTE, 5 YEAS, 0 NAYS. THE MEETING CONCLUDED AT 4:50 P.M.

JOSEPH K. SHEERAN, PROSECUTOR
CHAIRMAN

LINDA L. TOBER, COUNTY CLERK
SECRETARY

JEANETTE E. NEITZEL, TREASURER
MEMBER

TONY PAWELSKI
DEMOCRATIC PARTY CHAIRMAN
MEMBER

MAX D. HOLMAN
REPUBLIC PARTY CHAIRMAN
MEMBER