

**Lake in the Hills Sanitary District
Board of Trustees Executive Meeting Minutes
February 18, 2021**

Roll Call

The Board went into executive session at 7:10pm. Roll call was answered by President Eric Hansen, Trustee Cheryl Kehoe and Trustee Jessica Reed. Also present were District Manager Tamara Mueller, Assistant District Manager Mike Nelson, Attorney Melissa Wolf of Storino, Ramello & Durkin and District Treasurer/Clerk Karen Thompson.

Executive Session:

Attorney Wolf provided detail regarding the findings that litigation is probable or imminent in this case. These findings are as follows:

There was a termination of employee Ross Nelson on January 21st. On February 9th the District received a letter directed to the Board President from an attorney representing Ross Nelson. This was a letter demanding severance and some other conditions under potential threat of litigation of the matter. These findings support the discussion in closed session.

Attorney Wolf provided some background regarding her legal analysis of the demand and the viability of Mr. Nelson's claims. Former employee Nelson believes that he was being retaliated against and was being treated unfairly for his participation in the investigation of the former District Manager. He believes that is why he was fired. As a result, he alleges certain whistleblower protections. From a technical standpoint, Attorney Wolf does not believe that this scenario would apply for whistleblower protections.

From the substantive side, there are several things that are problematic with regard to his allegations of retaliation and unfairness. First, there was never negative employment action around the time of his involvement in the investigation. In fact, the District took measures to ensure that he was never retaliated against. Additionally, when he was disciplined for wrong doing after the former District Manager left, the District was very measured in their disciplinary response. This was done to ensure that he couldn't make the allegation that he was being treated unfairly for exposing wrongdoing of the former District Manager. Secondly, he was actually treated favorably during the investigative process as he was given a hefty raise and additional job responsibilities. This is illustrative of the fact that there was no negative treatment even though it was known by the Board that he was involved in the investigation and in disclosing information about the former District Manager.

Attorney Wolf pointed out that it was only after a series of Mr. Nelson's own misconduct, including warnings about this particular behavior, that the Board terminated his employment. Mr. Nelson was an at-will employee, however, his actions rose to a level of just cause for termination. The allegation that he was treated unfairly is very frivolous and the evidence shows that the Board did not treat those involved unfairly.

Mr. Nelson's demand is to settle at 23 weeks of pay to avoid litigation. This would amount to approximately \$34,000.00. The Board needs to consider this, however, the attorney does not recommend settling in these types of cases where wrongful conduct is blatant. This would set a bad precedent.

Attorney Wolf further added that the District's insurance carrier has been contacted regarding coverage for litigation. There is some dispute between the insurance company that the District had last year when

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Mr. Nelson was given a written warning and the company that the District has this year when Mr. Nelson was terminated. Attorney Wolf believes that there is insurance coverage of up to \$1 million dollars with a \$1,000 deductible.

Trustee Kehoe wanted additional information regarding Mr. Nelson's allegation that other employees received preferential treatment. District Manager provided some detail on what she thinks that Mr. Nelson may be referring to. These were three small incidents of property damage, however, the employees or contractors involved were not under suspicion of being under the influence; instead these were issues with new employee inexperience.

Mr. Nelson is also claiming that the District is protesting his unemployment claim and did not do that with the former District Manager. Attorney Wolf indicated that the basis of the unemployment claim was not protested; instead only the end of employment date was corrected as Mr. Nelson indicated his last day was January 11th, however, he was still on paid leave thru January 22nd. Additionally, he received pay for his accrued unpaid vacation time.

The consensus of the Board is to not settle. Attorney Wolf will respond to the demand letter accordingly. She will also continue to work with the insurance companies regarding who would cover any claims related to a possible law suit.

Adjournment:

There being no further business to bring before the Board, President Hansen made a motion that we adjourn executive session and reconvene the regular meeting. Motion was seconded by Trustee Kehoe. The motion passed after a roll call vote with President Hansen and Trustees Kehoe and Reed voting aye.

The executive session meeting was adjourned at 7:37pm.

Respectfully Submitted,



Karen Thompson,
District Clerk

APPROVED this 17th day of March, 2022.



Board President