

**Rivergrove Water District
Board of Commissioners Special Meeting
Monday, October 25, 2021, 4:00 P.M.**

A special meeting of the Board of Commissioners was held this day via remote teleconference at 17661 Pilkington Road. Chair Roth presided over the meeting and other attendees included: Commissioners Johnson, Patterson, and Howell, and General Manager Janine Casey. Commissioner Magura attended via telephone.

1. Call to Order: Commissioner Roth called the October 25th 2021 Special Meeting to order at 4:02 p.m.

2. Opening Remarks: Present are all of the Commissioners are virtually or I should say by phone for Commissioner Magura. All the rest of us are on camera. We also have, as our guests, Steve Shropshire, from Jordan Ramis, and Joseph Carlisle, from Buckley Law. This meeting has been called and it is an open meeting to anyone who chooses to participate. At this point I don't really want (inaudible) but it is open. We are here to deal with the matter of whether or not the Rivergrove Board of Commissioners wishes to censure Commissioner Patterson and we are going to start with Commissioner censure procedures from Steve Shropshire so, Steve it is yours.

3. Censure Procedures:

Steve Shropshire: Thank you. Good to see several of you again and for those of you I haven't met before, nice to meet you. I apologize for the way I am dressed. I'm just back in the door from a site visited up on Mt. Hood so I'm a little casually dressed today so we'll let him carry the lawyer dress for both of us. So, Chair Roth asked me to frame the meeting just a little bit here. We only have a half hour and so for that purpose this is the equivalent to what we lawyers like to call a show cause hearing which is essentially is there reason to proceed to a consideration of the merits of the matter and it's not a good clean bright line, but my best advice to you today is we're here not to consider what evidence were necessarily or to get into the evidence or the arguments but simply to understand what evidence is before the Board as of today and whether that by itself merits proceeding with (inaudible) consideration of matters at hand. So, that would be at a future meeting, you would have a marginally time set aside and at that meeting anyone who is interested in censure would present evidence again and/or more information and Commissioner Patterson would get an opportunity to (inaudible) present to the defense in opposition (inaudible). As I said, today is really about just deciding whether there is enough evidence in the record to proceed (inaudible). That is a professional matter Mr. Carlisle is questioning the authority of the Water District Board to communicate censure and I guess what I have him offer you there is that he is grappling with the censure is not a process specifically authorized by the Special District statue generally or the Water District statute

specifically. However, in Oregon the Special District is essentially governed by what we call the Dillion Rule or Dillion's Rule and what that says is if a local government unit has not been specifically delegated power by legislature, the government nonetheless still exercise powers that aren't necessarily or fairly declined where (inaudible). So, in acting statute for Water Districts, Chapter 264 of Oregon's statues, it's a very broad grant of power where basically says that Water Districts can do all other acts and things that may be requisite, necessary, or convenient to carrying out the objects of the District. So, I would posit it to you that that certainly includes looking at behavior of its own governing body and trying to set up appropriate rules and processes by which that interaction and conduct would be managed. So, the censure process from my perspective, while not expressively authorized by statute, is nonetheless something that I think is reasonably applied by Dillion's Rule in this circumstance. So that said, I want to say just a little bit here to try to help you frame this up a little bit perhaps. I will say that this is the Board's process. I am simply here to offer some guidelines and thoughts and am here to answer any questions you may have, but when I think about this, I think you really need to think about sort of 3 different things: number 1: has the Board member in question violated the law; number 2: has the Board member in question violated District policy; and number 3: has the Board member in question violated the Oath of Office, which frankly wraps the first 2 into the question. In terms of how to do that today, I would suggest you then that you need to think about is there sufficient evidence in the record as it now exists to proceed to a consideration of the merits of the matter. So again, no guidelines, you need to sort of consider the quality and the weight of what is on the record right now. Is the evidence credible? Is it reliable? What's the nature of the evidence? Is it writing? Is it personal accounts? Was it created concurrently as it occurred, so in real time, or has it been created after the fact? And then, as you think about that, part of the record certainly is a very detailed letter that Mr. Carlisle submitted on Commissioner Patterson's behalf. So, you need to consider as well the countervailing viewpoint and the fact that evidence can be viewed from different perspectives and on various (inaudible) and what information you may have before you. When you initially issued the letter of intent to censure, you invited Commissioner Patterson or her representative to respond and that's exactly what Mr. Carlisle has done. It is entirely appropriate to consider what he has presented you in terms of countervailing arguments and/or evidence as to what has taken place. I've become aware that there was a letter of support apparently that was written by a former employee and was distributed to you all. My advice to you at this point is to disregard that letter, it would be appropriate at the subsequent stage if you should decide to proceed to a consideration of the merits, but at this point, evidence of that nature was outside of the record at the time you considered the notice of intent and Commissioner Patterson's initial response. So that letter of support should be disregarded at this time, but it would certainly be fair game and could be considered at a later time. Finally, a couple practical considerations that I would suggest to you. This will be a

process that will, if you move forward, will continue to require the commitment of time, resources, and intention to pursue a formal consideration, so you will need to balance that as part of your decision-making process. Think about whether there are practical options for reaching a similar outcome of what this process might give you. You are currently scheduled for a Board training in the very near future. Something like that may get you to a similar outcome. Finally, Mr. Carlisle has at least implied, if not threatened, legal action could be impending against the District and/or individual Commissioners. I don't think he probably levies that threat or implication lightly. You are of course immune in the course of your official duties for lawsuit. He has suggested perhaps that if you are acting on censure that's outside the scope of your official duties and abilities, so that you would be exposed to a potential suit on a personal level. We're not here today to argue about that, but you need to be aware that that has been included in his letter and I would be happy to answer any questions you might have about that. I suspect that could be something that's weighing on your minds. So, again, today's procedure is intentionally limited in its scope and each of you will have the opportunity to speak to the matter certainly and my suggestion is again, keep those comments limited to really a consideration of is there cause to proceed as opposed to getting into the merits of the details of what we have before us. With that, Commissioner Chair Roth, I will turn it back to you.

Commissioner Roth: Alright, thank you very much. Next, we have Commissioner Patterson allotted 5 minutes to comment. This is not to present your case, but simply to raise any comments you have, and I will go ahead and start the timer and I've set for 5 minutes so, it is started. Commissioner Patterson.

4. Comments:

Commissioner Patterson: Okay, my attorney, Joseph Carlisle, will be speaking.

Joseph Carlisle: Thank you. I'm Joe Carlisle and here I represent Commissioner Patterson. I appreciate your time this afternoon. I will defer to the letter that you all have received and it's in the Board packet, for a great deal of the substance of Commissioner Patterson's perspective and position factually and legally. I want to highlight some things that I think are important at this procedural stage of this matter and I'll do my best to stick to the procedural aspects and not so much the substance. To me, the biggest issue is the fact that the Water District lacks authority to censure a Commissioner because no such power exists in the enabling statutes for water districts or special districts. There is no administrative rule that provides such power. And this is important because the Water District is a creation of statutes and thus is limited to the power granted by the legislature. And the legislature presumes to know how to grant power, specific powers, and needed is done so with in other such contexts such as granting the Oregon Supreme Court the power to censure judges and the Board of Accountancy to censure CPAs and the Board of Nursing to censure nurses. By contrast, the legislature gave the Water District no

such power even though it could have if it wanted to do so. Likewise, there is no such power contained in the Water District bylaws and policies and I think that is really important. To Steve's point earlier, even if the Dillion Rule did apply, it would give the authority to create rules and procedures for that and this entity, as far as I can see from the policies that are in the Board packet for consideration today, has not provided for any such power to censure or to discipline a Commissioner and I think that that is really important. It lacks authority both at its own level and at the legislature level to censure. Therefore, any efforts to censure Commissioner Patterson at this point would be without authority and therefore void. Although I don't like to threaten litigation and Commissioner Patterson would prefer to avoid litigation, the fact is that if the Commission were to proceed with censure at this point, especially where there is serious question, I would say no question that there is no authority to censure, she would likely end up needing to pursue litigation in order to overturn any such action and that would be unfortunate because it would be a waste of the District's resources, especially since there is a training session with the SDAO, which I believe is scheduled for Thursday which Commissioner Patterson believes is a better, more appropriate way to approach and address these issues and discuss and come to a resolution and the training is a much better way to deal with it. It is also important to note that there are serious evidentiary and due process issues at stake. It has recently come to my attention that the recording for the meeting, District meeting on June 28, 2021 was destroyed after the minutes were prepared and that's a violation of records law and Board policy to destroy those audio recordings that are supposed to be retained for 2 years by Board policy and 1 year by records law. And that is a serious concern as the minutes for that June 28th meeting don't reflect anything that is raised in Commissioner Roth's Notice of Intent to Censure letter. So, I feel like that is a lack of evidentiary support. Certainly, actual written documentation at the time would be the most persuasive, but more than anything, there is also an issue with the destruction of that recording because I think that that creates due process issues and deprives Commissioner Patterson of the ability to have the best evidence to defend herself. So, to be clear, we're not trying to raise any issue about violations of law and policy to threaten anyone, that is an issue that can be resolved by training and education and if there were concerns about Commissioner Patterson actions, I think the same concerns would be applicable with respect to public records law and that is something to work together to resolve and not to create an adversarial process. It is also important to note that all the evidence that I have seen or that have been presented and I use that term loosely, it seems to be more in the line of hearsay, unsworn hearsay, and level hearsay, and that is, at least in the court of law, lacks credibility and admissibility and I think that the Commission should require more before taking such extreme action as censure. And finally, as I understand it, I may be running short on time and I promise I'll follow-up, as I understand it, the way the landlord's representative complained about at least a Rivergrove Fire District Commissioner and as you know Commissioner Patterson also serves on the Lake Grove Fire District, and certainly

there is no dispute that the Water District can't censure a Commissioner from a different Commission or Board so, Commissioner Patterson certainly has the ability to act on her own behalf in a private capacity as well as a Commissioner for the Fire District. Let me just ask that the Commission not move forward with the censure process and instead focus on training through the SDAO and further communication among everybody and allow this matter to resolve in a way that doesn't use more District resources. Thank you for your consideration and extra time.

5. Board Comments:

Commissioner Roth: Thank you. Next, we will go to Board comments, and we have again, 5 minutes allocated for that. I will start the timer and then whichever Board member chooses to start the conversation, that will be great. So, the time starts now. Commissioners, who would like to speak?

Janine Casey: Chair Roth, there is 8 minutes.

Commissioner Magura: I guess I'll go ahead and speak.

Commissioner Roth: Okay Larry, go ahead.

Commissioner Magura: I think we are losing track of a couple things that are relevant to this proceeding. Number one, this is not a court of law, we're a water district and the evidentiary rules that summed to us are really irrelevant to how we operate as a water district. Number two, to put this in a broader context, I don't want to speak disrespectfully of Sherry Patterson but she has been a classic loose cannon as long as I've been a member of this Board, always interjecting issues that are of no relevance or concern to the proceedings of the Board, is a dam upstream the Tualatin River more than likely to break and cause damage to us? Is there a new pending legislation, we have changed the density of the population within our Water District, are we going to respond to it? This has just taken time and then her admitted conversation with our District engineer. She has no grounds for doing this. She has a long-established pattern of jumping out and doing whatever she damn well pleases whether it is inconsistent with our bylaws or not. I am quite frustrated by it, and I know my colleagues on the Board are as well. And so, that's also in the background of why we decided to issue a censure to her in this matter. I've had my say.

Commissioner Roth: Thank you, next Commissioner.

Commissioner Johnson: Well, I'll say just a couple of things. Today is about whether or not there is enough to go forward. We're not going to decide whether we're going to censure or not and so my experience in 40+ years of government, is it's always better to make sure you

can get all the evidence into the record before you make any decisions. If we go forward, even if I vote to go forward, I'm not sure how I am going to vote in the end in terms of a decision after we hear all of the evidence. I was really taken by what Steve had to say about the practical side of this thing. I mean, in a sense, Commissioner Patterson has already been censured. She understands that this Commission, that our District, has issues with any individual going out and even appearing to represent the whole District as an individual. That is already out there. The argument about training is a good one and that we can learn some more about that. I've had all sorts of ethical training in my career in government and I'm not so sure about the recording element that Commissioner Patterson's attorney brings up. I've been members of many boards, many commissions, staffed many boards and many commissions, and ultimately what I have understood in a lot of cases is that once recordings are used as a tool to do the minutes, the minutes are actually approved are the written minutes not the recorded minutes and so I would like to know more about that. I do know of aspects under public law where recordings are required to be kept and I also know those where they're not required to be kept so, I would like to know more about that. I'm really leaning towards going forward with this, but I'm not sure how I will ultimately vote in terms of an ultimate decision.

Commissioner Roth: Thank you very much, any more Commissioners that wish to speak?

Commissioner Patterson: Grant did you want to say anything?

Commissioner Howell: Yeah, I'll speak briefly. This was kind of presented right as I came on the Commission. It was not something I had a lot of context or background news so, my perspective on it is completely limited to the evidence that has been provided since I took office if you will. One of my concerns is the lack of dated communication issues that has occurred with this. There's a lot of testimonies that have been provided to me, but a lot of these documents haven't been dated, they aren't recorded conversations or anything like that, and that's a little concerning to me should the Board choose to move forward with it. I work in an industry where I deal with state regulation and complaints and managing the presumption of recording when these things happen is very important and in terms of the validity of the evidence so, that is just one of my concerns with this should we choose to move forward.

Commissioner Roth: Okay, thank you.

Commissioner Patterson: I would like to make a comment.

Commissioner Roth: Okay.

Commissioner Patterson: Okay. I was, frankly, blown out of the water, getting a censure. It seems so very over reactive when I was asking for the engineer's report on a commissioner building. It represented about a \$60,000 commitment on our part and knowing that there had

been damage with the water etc., I thought it was prudent to look at the engineering report. And repeatedly, Janine Casey, I knew she had a copy of the report.

Commissioner Roth: Sherry, we're getting into areas that are not appropriate.

Commissioner Patterson: And I'm just saying that the information that initiated this censure is problematically. I was trying to be diligent and conscientious and so..

Commissioner Roth: You're getting into areas we were asked not to. You are offering a defense on an explanation. That is not what this is all about.

Commissioner Patterson: Alright. I am waiting to hear for the next part.

Commissioner Roth: I would assume that I am the only one left unless anybody else wants to add another comment. We have got 2 minutes left. Actually, we had 8 minutes and not 5. I'm inclined to say we need to consider the process further and I, like Jim, am not decided how I would vote. I want a chance for all of us to sit down with all of the information and everyone will need to have that with them and be prepared to have a discussion and then make a decision. We can do that at a November meeting and that would be my preference. Does anybody else have any other comments?

6. Intent to Censure:

Commissioner Magura: Do you need a motion then?

Commissioner Roth: Yes. We are at the point where we have to decide whether or not to pursue the intent to censure and a motion would be in order.

Commissioner Magura: I move that we proceed to a full consideration of censure of Commissioner Patterson at the time to be determined by Chair Roth.

Commissioner Johnson: Can I ask Larry if he would maybe reword his motion, something to the effect there is sufficient evidence to proceed with considering censure?

Commissioner Magura: Oh, indeed, yes. Should I restate it then?

Commissioner Johnson: Yes.

Commissioner Magura: Alright then. Cancel my initial motion and it is replaced with this: based on the evidentiary record and our understanding of the facts, we believe there is sufficient evidence to proceed with the censure of (~~Chair~~ – Edited) Commissioner Patterson at a time to be determined by our Chair Roth. Commissioner Patterson by Chair Roth. How's that?

Commissioner Roth: Okay, is there a second to that?

Steve Shropshire: Chair Roth, I'd offer a slight variation on that which is not necessarily to proceed to censure but rather to proceed to consider censure.

Commissioner Johnson: Exactly, I would second that motion, not yours Larry.

Commissioner Magura: I stand corrected.

Commissioner Roth: Okay, so we're going to vote on considering

Commissioner Magura: (Inaudible) I'm sitting in paradise out here.

Commissioner Roth: As we're sitting in the rain.

Commissioner Johnson: I second the motion too that finds that there is sufficient evidence to proceed with an evaluation of whether or not we take the action as considered, I would second that motion.

Commissioner Roth: Okay, is anyone opposed to this?

Commissioner Patterson: I'm opposed.

Commissioner Roth: Okay, and anyone in favor of the motion?

Commissioner Howell: I'm actually voting in opposition to this.

Commissioner Roth: Okay, Commissioner Magura?

Commissioner Magura: Yes

Commissioner Roth: Commissioner Johnson?

Commissioner Johnson: Yes

Commissioner Roth: and I would vote yes. So, we have a vote of 3 in favor and 2 opposed so, the motion will carry, and we will gather all of the evidence that we have so far and put that together and then we will proceed to a meeting in November. If you will all please let Janine know what days you are available in November so we can put this together and have it taken care of.

Commissioner Magura: I have one quick question for Steve Shropshire.

Commissioner Roth: Sure.

Commissioner Magura: Steve, since the motion concerns a member of the commission, can that member of the commission vote? Also, isn't that kind of a conflict of interest?

Steve Shropshire: It is in this case Larry although given the outcome of the vote I'm not sure that particularly

Commissioner Magura: Germane?

Steve Shropshire: In this case, Commissioner Patterson probably should have abstained from the vote, but nonetheless, the vote has passed either way.

Joseph Carlisle: This is Joe Carlisle, based on my research I disagree with that, and I can certainly have a conversation with your counsel about it, but Commissioner Patterson has a right to vote and there is certainly no Board policy that would prohibit her from doing so.

Commissioner Roth: Okay

Steve Shropshire: Larry I would say given that, as I said, the practical outcome is irrelevant and the same either way so at this point I would say it is not an issue worth worrying about.

Commissioner Magura: I'm just an old civil engineer but I've hung out with a lot of attorneys and that is what was behind that.

Commissioner Roth: Okay, well so the motion passed.

7. Public Comment:

Chair Roth: Public comment, there are no public present as far as I can see. Janine, is there public present?

Janine Casey: No ma'am, no one.

8. Adjournment:

Commissioner Roth: In that case, it is now 4:32 and we are now adjourned.

Steve Shropshire: Chair Roth, can you take that back for a moment?

Chair Roth: Sure, okay we're not adjourned.

Steve Shropshire: Sorry, what I would suggest is that we commit to getting together this week to outline a process and timeline for how we will take evidence and then that way Commissioner Patterson and Mr. Carlisle will have transparency on how that process will work and also how to provide the commission with any evidence that they choose to submit. We can talk further about, that would be my suggestions, that we outline some procedure here on how this is going to proceed.

Chair Roth: Alright, I think that makes sense. So, we will get with you Steve and figure out a date that works for you as well.

Steve Shropshire: Very good.

Joseph Carlisle: I would just ask that I can get a copy of the recording of today's meeting please.

Chair Roth: Okay.

Commissioner Patterson: And I also request a copy please.

Chair Roth: Okay, anyone else want a copy? Alright, those two copies will then be forwarded to Commissioner Patterson and her attorney, Mr. Carlisle. So, now we will adjourn. Thank you all for attending.



James W. Johnson, Secretary

12/21/2021
Date



Christine K. Roth, Chair

12-21-2021
Date