

Meeting Minutes for 10/26/16

A Special Meeting (Closed Session) of the Board of Directors of the Kensington Police Protection and Community Services District was held Wednesday, October 26, 2016, at 6:00 P.M., at the Community Center, 59 Arlington Ave., Kensington, California. The Board continued its Special Meeting, in Open Session.

ATTENDEES

<u>Elected Members</u>	<u>Speakers/Presenters</u>
Len Welsh, President	Adam Benson
Rachelle Sherris-Watt, Vice President	Linda Lipscomb
Chuck Toombs, Director	Celia Concus
Patricia Gillette, Director (arrived 6:36 P.M.)	Leonard Schwartzburd
Vanessa Cordova, Director (by phone)	Mabry Benson
	Jim Watt
	David Spath
	David Bergen
<u>Staff Members</u>	John Gaccione
Interim GM/COP Kevin Hart	Marilyn Stollon
Lynn Wolter, District Administrator	
<u>Press</u>	
Rick Radin	

President Welsh called the meeting to order at 6:10 P.M. President Welsh, Vice President Sherris-Watt, Director Toombs, and Interim GM/COP Hart were present. Director Gillette participated in the closed session by phone and Director Cordova participated in both the Closed and Open Sessions by phone.

PUBLIC COMMENTS

A member of the public thanked IGM/COP Hart, said he had walked into a difficult situation and extended him best wishes and said he listened but didn't always respond as quickly as he would have wished.

The Board entered into Closed Session at 6:13 P.M.

1. Public Employee performance (Government Code section 54957(b)) Title: Interim General Manager/Chief of Police. Transition briefing from IGM/COP Hart.

The Board returned to Open Session at 7:18 P.M.

Director Gillette asked if President Welsh could inform the public about where Director Cordova was. President Welsh responded that she was in Italy. Director Gillette asked when Director Cordova planned to return to California. Director Cordova responded that she would do so when a physician

cleared her to fly. President Welsh added that he thought she was still suffering from a medical issue and said he was sorry she was still unable to travel.

President Welsh reported that the Board had just come out of Closed Session for a transition briefing and that there was nothing to report.

IGM/COP Hart said he had an announcement: there were technical issues preventing the meeting from being video recorded, but the meeting was being audio-recorded and minutes were being taken.

2. The Board discussed adopting Resolution 2016-14 “Approving Interim Appointment of Mr. Kevin Kyle to Interim General Manager/Chief of Police, Pursuant to Government Code Section 21221 (h).”

President Welsh announced that there were two items on the agenda. With respect to Item 2, he said he had hoped to use the meeting to enter into an agreement with Kevin Kyle, a candidate for the position of Interim General Manager/Chief of Police following IGM/COP Hart’s October 31st retirement, but found out at the last minute that the Board couldn’t make a decision involving compensation at a Special Meeting because of legislation passed a few years earlier. He explained that this meeting would be in preparation for a discussion that would take place at the District’s next regular meeting on November 10th. He said that, for consideration, there were a resolution and Kevin Kyle’s resume. President Welsh said that Mr. Kyle had been one of the three finalists when the Board had selected IGM/COP Hart.

President Welsh said the Board would be considering a resolution that had been redone to remove salary information. But, he said the Board could still go as far as approving the resolution, which would get the Board set to take the next step. He asked Adam Benson to provide an explanation about some of the complexities involved with hiring Mr. Kyle, a retired annuitant.

Director Gillette indicated there was a problem with Section 1(c) of the resolution: Only the Board of Directors was exploring whether it would be operationally efficient and cost effective to separate the General Manager/Chief of Police position. She said that the words “The subcommittee and Board of Directors are...” should be amended to read, “The Board of Directors is...” President Welsh explained that the subcommittee had presented its findings, and its work was done.

President Welsh asked Adam Benson to explain through what process the Board needed to go, what documents needed to be signed, and what documents would be needed for the next meeting. Mr. Benson noted that the language cited by Director Gillette was also in the staff report. He said this had been his mistake, and he apologized for it. Mr. Benson said that CalPERS had a number of strict rules when it came to hiring someone who had retired within the CalPERS system. He said that one of the biggest requirements was that, if an agency hired someone, that person would be limited to working 960 hours during the fiscal year. He said the District could have a contract with a retired annuitant covering multiple years, but it would be limited to one contract; thus the draft resolution, out of an abundance of caution, would go from November 11, 2016, which would be the earliest start date after adoption of the resolution at the next Regular Meeting, through December 31, 2017. He said this would give the District six months for the remainder of the current fiscal year plus six months in the next fiscal year, if needed. He said that one of the other major requirements of hiring a retired annuitant was that an agency would have to actively recruit to fill the position on a permanent basis. He explained that, what had been done since the District had been notified of IGM/COP Hart’s retirement was to post a new job description and job announcement on the District’s website on October 21st. He said that, although it had been posted for a short period of time, the posting was a requirement for the Board to be able to hire a retired annuitant. He added that Kevin Kyle had been retired since 2012; so the 180-day waiting period that might otherwise apply wouldn’t in his case. Mr. Benson explained that the resolution set forth the requirements but contained no reference to compensation for the reasons set forth by President Welsh earlier and that the rule was that an agency could not pay a retired annuitant any benefit: There would be no pension benefits, paid time off, or healthcare benefits. He explained that all they could receive was an hourly rate that’s not less than the minimum or more than the maximum of the approved pay schedule. He added that, out of an abundance of caution and to ensure compliance with

requirements, this would be tied to the current IGM/COP's salary. Mr. Benson explained that an ongoing compliance issue was that the District would need to be in active recruitment, accept resumes, and look for a full-time permanent replacement. He noted this could take some time. President Welsh explained that it was unknown what the District's ultimate decision might be about what the position might look like.

Director Gillette noted that this would give the Board maximum flexibility to determine what the position would look like going forward. She said that, as the Board looked at splitting the position, it would be able to consider the District's financial resources. Mr. Benson responded that, part of the rationale of including the language about bifurcation in the staff report and the resolution was to note that it was still a consideration. He said that, looking for someone on a permanent full-time basis, not knowing what might be in store, could be problematic. Thus, he said that having a retired annuitant eligible to fill in would be beneficial and that there would be no obligation to keep Kevin Kyle or anyone else who might be in the position. Director Gillette noted that, if the new Board were to decide in December or January it wanted to split the position and had the money to do so, it could. She said the proposed process would ensure an orderly transition.

President Welsh said that a dialog with the community would be needed and that the Board needed to ensure the information developed by the Ad Hoc Committee was "pushed out." He said he wanted to make sure the community understood what the decision to split the position would mean. He said that, at the next meeting, the Board would be looking at a proposed contract and the Board would need to adopt a pay schedule.

Mr. Benson said the Board would need to re-adopt the resolution as written for this evening to include the compensation elements. He explained that CalPERS required agencies to publish and make publicly available a salary schedule for all employees who were part of the CalPERS system, showing the minimum and maximum and, in the case of the officers, the steps. He explained that the Board had traditionally handled this through the posting of the District's MOU with the officers. But, he said, the Board really didn't have the appropriate documentation for the GM/COP position – there had just been the current contract that stipulated the salary, which had been placed on the District's website. He explained that this was an element of housekeeping and that it should be done annually or any time there was a compensation change in the officers' MOU. He also noted that, if the Board were to bifurcate the GM/COP position, a new salary schedule would need to be posted.

President Welsh solicited public comments.

Leonard Schwartzburd said that, because the election would be on November 8th and the next Board meeting would be November 10th, he wanted to know who would be on the Board for the November 10th meeting. Director Gillette responded that her term wouldn't end until December. Dr. Schwartzburd said that there had been precedent set by Chuck Toombs, when he had been president and Director Gillette had defeated Ms. Kosel, and Ms. Kosel had asked to retain her seat until the next Board meeting, and Director Toombs had ruled against it. Director Toombs responded that this was wrong: He hadn't done that at all. He added that he didn't know where Dr. Schwartzburd gotten this. Director Toombs said Dr. Schwartzburd was accusing him of denying Ms. Kosel a chair, but, in fact, Ms. Kosel hadn't come to the meeting after she'd lost the election. He reiterated that he had not denied her a chair. Dr. Schwartzburd responded that he had. Director Toombs said this was nonsense.

Linda Lipscomb asked Mr. Benson if the time at which the Directors take office was statutorily determined. Mr. Benson responded that he wasn't an attorney and so wasn't certain but added that he could look into this and provide that answer later. President Welsh said the Board would comply with the law. Ms. Lipscomb said her recollection was that new Directors took office in December. President Welsh said there might be some complication this December because of some notification indicating that certification could be delayed.

IGM/COP Hart noted that government code regarding elections required the registrar of voters to certify an election no later than 28 days after an election. He added that the new Board would be sworn in at

the first meeting in December. President Welsh said he had received a memo from the County Registrar, Joe Canciamilla, that indicated that the election wouldn't be certified until December 13th, that this might affected the swearing-in date, and that he would determine the correct information.

Mabry Benson said there was an error in the resolution: the first paragraph said the termination date would be November 1, 2017, and later in the resolution, it said the termination date would be December 31, 2017. President Welsh responded that the termination date would be December 31, 2017. She said she was disappointed that it had taken so long to get to dealing with a replacement for IGM/COP Hart. She said that, on October 1, President Welsh had indicated that bifurcation would be on the next agenda. She said there had been discussion of Vice President Sherris-Watt's continuity plan. She noted that, instead, the Board had spent time on low-priority items. She said this meeting had come with a one-day notice and asked for better advance planning.

Jim Watt said Adam Benson had already addressed some of his concerns. Mr. Watt said that the resolution's Item h stated that CalPERS rules were that "the compensation paid to retired annuitant cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties." He said the CalPERS website stated that this salary needed to be an hourly pay rate that would be within the salary schedule for the position. He noted that the hourly pay rate would be based upon IGM/COP Hart's current salary of \$145,000 annually and said that, based on a 40-hour workweek, this would equal an hourly pay rate of \$70. He said that, if Kevin Kyle were to receive the same annual pay but worked 30 or fewer hours per week, which would be required because of the 960 hour per fiscal year requirement, then Mr. Kyle would receive \$101 per hour, for the eight months remaining in the current fiscal year. He noted that, due to the restriction on the number of hours Mr. Kyle could work in a fiscal year, his salary would need to be adjusted downwards to comply with CalPERS. Mr. Watt said he also wanted to point out that CalPERS was very specific about keeping records because the 960 hours could not be violated and that both the employee and the employer needed to ensure compliance. Mr. Watt said that, assuming Mr. Kyle would accept the position of GM/COP, he wanted to refer the Board to the Ad Hoc Committee's work on bifurcation, which included the recommendation that, if a part-time General Manager were to be hired, the Board would need to establish clear goals and direction and operation staff would need to be empowered to make decisions when the GM was not available.

Mr. Benson responded that the restriction would be 960 hours over the course of the fiscal year. He noted that, if Mr. Kyle were to take time off and not work for two weeks, there would be no hours worked or paid for then. He said that the 25 to 30 hours was really an average and that the hourly rate would apply only to hours worked and would never be above the \$70 amount. He added that, if, at the end of the fiscal year, the Board still hadn't found a replacement and Mr. Kyle was nearing his limit of 960 hours, the Board would have to ask him to work fewer hours or find someone new to replace him.

Leonard Schwartzburd read his comments about bifurcation. He said that bifurcating the position of GM/COP was essential for the health of Kensington, both financially and culturally. He said that, at the prior Board meeting and in light of IGM/COP Harts resignation, there had been a push from citizens to implement a bifurcated structure now. But, he said he opposed doing this because a reactive process would have a lower chance of a good outcome than a considered one would. He said he didn't trust the "Old Guard" to do the bifurcation, and he didn't think that Director Toombs and David Spath were correct in concluding that the District couldn't afford to do this. He said he didn't think the community could afford not to split the position. He said the Board was hiring one of the runners-up from when IGM/COP Hart had been hired, which he said would be a problem because the "Old Guard" would be choosing. He said he hoped that, after November 8th, the "Old Guard" would no longer be in power and that the KPPCSD needed to come up with a plan to begin the search and hiring process within the next four months. A copy of Dr. Schwartzburd's comments is included in the December 8, 2016 Board Packet, under correspondence.

David Spath said he wanted to confirm something Mr. Benson had said, with respect to how retired annuitants are paid. He said he, himself, was a retired annuitant working on a limited time basis. He said he had to track his time on an hourly basis, and his salary was based on an hourly rate. He said

that, with regard to the comments just made about the bifurcation of the GM/COP position and the statement that he had said it would be too costly to do this, he had never said that. He said that, the position statement he'd put out in the prior month's Outlook said that he thought it would be good to look at possible bifurcation. He said it might be possible to look at both positions outside of CalPERS. He said a police protection district on the peninsula was already doing this: A retired CalPERS lieutenant from the San Francisco Police Department was serving as the chief but receiving only a salary – no benefits. He concluded by saying he took issue with someone claiming he'd said something he hadn't.

Mabry Benson asked whether the work could be completed, if Mr. Kyle were to work only 25 – 30 hours per week. She said, if not, this would support the notion of a part-time GM.

Marilyn Stollon questioned the hasty hiring, just two weeks before the election, initiated by the majority Board. She said the two Directors had not been fully apprised of these plans, and the meeting had been posted with not much notice. She said the process was coming to a conclusion without much advertising, sourcing, or thorough review of candidates. She asked why the majority Board was operating in crisis mode. She said that, if the Board was going to deliberate about this, it should include all five Board members – not just the three. Director Toombs asked who had told her that only three Directors had been involved in the decision. He said he had been participating in the process with all five Board members for at least a month. Ms. Stollon responded that this had been her impression, based on what she had read. Director Toombs asked where she had read this. She said it was based on what she had read in the Board's agenda material. Director Toombs responded that she should look more closely: The entire Board had been involved in the decision. He said that she was suggesting that three of the Directors were ramrodding this down the throats of the electorate and that this wasn't true. He reiterated that the entire Board had been participating in this decision – ever since it had been apprised of IGM/COP Hart's departure. Ms. Stollon said the public had not been apprised. President Welsh responded that her saying that the whole Board hadn't participated was not true. Director Gillette responded that, once again, Ms. Stollon was accusing Directors of things that were not true and were made out of whole cloth. She added that she hoped that Vice President Sherris-Watt and Director Cordova would speak up and indicate that they had been included in every single discussion. Director Cordova said she had received notice of this meeting 40 minutes before the general public had, so she didn't consider that to have been inclusive. President Welsh responded that she had received notice of the meeting when the Board had last discussed when it would next meet: There had been two possible dates – the prior Saturday and this evening. He reiterated that she had been part of that discussion. Vice President Sherris-Watt said that Director Cordova hadn't been part of the prior meeting. Ms. Stollon said that, regardless, the public had not been informed. She asked what governing body gave people 24-hour notice, mid-week, and said it was another emergency meeting. Director Toombs reiterated that the entire Board had been part of the process and the decisions made so far.

IGM/COP Hart clarified that this was not an emergency. President Welsh noted that the Board had needed to meet quickly because it had learned, on September 1st, that IGM/COP Hart would be leaving on October 31st. He said that, at a previous meeting, there had been a Closed Session, and the Board had reported out that it had met with Kevin Kyle and that the interview had gone well. So, he said the public knew then that the Board had been considering Mr. Kyle. Director Gillette said she hadn't learned about IGM/COP Hart's retirement until the Board's September Board meeting. President Welsh asked when IGM/COP Hart had first told the Board he would be retiring. Vice President Sherris-Watt said she hadn't known about IGM/COP Hart's retirement on September 1st. Director Gillette reiterated that the Board had learned about this at its September meeting and said that Vice President Sherris-Watt had known about this at that September Board meeting, with which Vice President Sherris-Watt agreed. President Welsh said the Board was just trying to take care of the District's business.

John Gaccione said this was another hastily called Special Meeting. He said he understood the District needed to have a General Manager; but the Board was seeking to fill the position with another GM/COP, as it had done in the past, and which was the choice of the Board majority. He said the Board majority wanted to offer the candidate a one-year contract: This would saddle the community with a

failed plan, and he asked if this made sense to anyone. He said the Ad Hoc Committee had much information about why having a combined position was a bad idea and asked why the Board majority wasn't acting on these findings. He asked why IGM/COP Hart was resigning, if an exit interview would be conducted, if such an interview would be made available to the public, and why the Board majority was in such a rush to hire a replacement Chief of Police and not a General Manager. He said that the document posted 24 hours earlier was a draft and that this pointed to a hastily called meeting, which spoke to the job the Board was doing. He added that "candidate Dave" had said that the minority of residents who came to every meeting was creating the discontent in the community. He addressed David Spath and said that, since he was a thoughtful candidate, he might want to take the opportunity to offer an apology.

Director Gillette responded that she wanted to correct a few of the things Mr. Gaccione had said. She said it was amazing that Mr. Gaccione could say the things he had. She noted that the IGM/COP position was not a one-year position: It was an at-will position, and it always had been an at-will position. Director Gillette said that the Board majority had done nothing to rush this through. She said this had been a decision of all five members of the Board – in fact Vice President Sherris-Watt had drafted the job description for Mr. Kyle. She said all members of the Board had been participating equally in the discussions and decisions. She said that it was a lie and was offensive for Mr. Gaccione to accuse the Board of trying to push something through. She added that she was going off the Board happily because she was tired of listening to people like him and Marilyn Stollon who accused members of the Board of acting unethically and unprofessionally: It was inappropriate and annoying. She noted that this was not consistent with the community's core values. She said she didn't think this small minority of people, that got up and spoke at every meeting, represented the views of the community. She said these people outright lied, based on assumptions. She concluded by saying thank you for the comments. Mr. Gaccione responded by asking if she was done and by saying he stood by his comments. He said he had read all this, that he took offense to what Director Gillette had said and that he wasn't lying. He added that some of what he saw going on at the meeting was disrespectful.

Director Cordova said she had a question. She said that there was the assertion that there had been unanimous action on the dais but that this wasn't her recollection. She asked for a hand count from the Closed Session of who put the item forward for today and said she would be a "no." President Welsh responded that no one had said it had been unanimous, rather everyone had been involved in the discussion and the decision making process. He said that Vice President Sherris-Watt had helped get the Board to this point – she had drafted the job description, and she and Director Gillette had driven this forward.

David Bergen said that, in two weeks, this would become a lame duck board. He asked why, under these circumstances, there was a rush to hire an IGM/COP. He said that, although Kevin Kyle had been his choice when the Board interviewed eighteen months ago, he was still a policeman: He was not a GM, even though he has some business background. He added that he thought Mr. Kyle lived in Santa Clara and that this was a long distance away. He said he understood that IGM/COP Hart had indicated a willingness to stay on, if needed, which he thought was a nice thing to do. He said that he thought the Board should go to a temp agency to hire a GM and that the community had been waiting a long time for this. He said that the new Board might have to start out by firing someone. He said he didn't think one could hire a GM/COP anymore because the attorney general had determined this was unlawful. He concluded by thanking Director Cordova for joining the meeting. President Welsh responded that IGM/COP Hart couldn't stay on beyond October 31st, that he wasn't going to let the community be without somebody to act as the steward, and that having someone in this position would assure a smoother transition for the new Board.

Vice President Sherris Watt said that she wanted to thank Adam Benson and that the process had been more arduous than had been anticipated. She apologized for the fact that the job description had taken a long time to establish. She noted a couple of things about Mr. Kyle: He had removed himself from the application process the prior year, so she didn't want any comparisons between IGM/COP Hart and Mr. Kyle – to either man's detriment. She said that they were two different men, that the Board had selected IGM/COP Hart unanimously, and that Mr. Kyle had removed himself from the earlier process. She said

that she'd had the pleasure of interviewing Mr. Kyle three times in the past year and that he was a great candidate for Kensington. She noted that, for the community, this seemed like a rapid process and that most people weren't feeling very informed. She said it would be her recommendation that the Board table this interim appointment, at least until the next regular meeting, and that the Board hire a GM through Public Management Group (PMG). She said that she'd had several conversations with attorney Jon Holtzman and that this arrangement would provide the Board with flexibility. She clarified that she was not against hiring Mr. Kyle: It would give the Board more time with him if it held off until November or December. She said that she wanted to table this until November's Regular Meeting, when the Board could discuss Mr. Kyle's salary. She said Sergeant Hull could be the supervisor of the police department, and the Board could bring in someone from the PMG.

Director Gillette asked Mr. Benson to clarify that the Board needed to approve the resolution that night for Mr. Kyle's peace of mind and to ensure that things were done properly. Mr. Benson responded that Mr. Kyle had hoped to move forward with things so that he could have time with IGM/COP Hart before he left to ensure a smooth transition. He said the Board wouldn't have to adopt the resolution this evening in order to adopt it on November 10th: That resolution would include all the same information plus the compensation piece and would need to be sent to CalPERS.

MOTION: Director Gillette moved, and President Welsh seconded, that the Board adopt Resolution 2016-14, with the amendments that had been discussed.

Motion passed: 3 – 2.

AYES: Welsh, Gillette, Toombs NOES: Sherris-Watt, Cordova ABSENT:

President Welsh said the Board would discuss this matter further on November 10th.

3. The Board discussed adopting Resolution 2016-16 "Approving Appointment of Ms. Amara Morrison to General Counsel."

Director Gillette provided the background on this item. She said the Board had interviewed quite a few different law firms to replace Public Law Group (PLG), including some sole practitioners and some firms. She said that Amara Morrison was with the well-respected law firm Wendel, Rosen, Black and Dean, LLP, a full-service firm much like Public Law Group. She explained that a full service firm could provide legal help for things like the Community Center and personnel matters and that this firm provided help for a lot of public entities. She said that Ms. Morrison was highly qualified: She had worked as a City Attorney in Livermore and in Walnut Creek. She added that she thought Ms. Morrison would be a good fit for the Board. She said that one of the issues discussed by the Board had been whether it should hire a sole practitioner or a full-service firm and that most of the Directors were of the opinion that it made more sense to hire a full-service firm because then the Board wouldn't have to pay every time it had some kind of special question, and because a full-service firm would have associates who could do some of the needed research. She explained that a sole practitioner would have only him/herself and this person would have to go to an outside source when expertise was needed – advice for which the District would be billed. She said the resolution set forth the person the District would be hiring. She said the rate would be higher than the rate the District had been paying PLG. She said the Board had spoken with Ms. Morrison about ensuring there were processes in place to limit the amount of time Directors could spend on outside counsel and to ensure that, if the District got close to the monthly limit of hours cited in the contract, the firm would notify the Board. She said that the contract allowed for a certain number of hours at a reduced rate, which, if the District were to go over, the hourly rate would be higher. She noted that this would provide economic incentive for the Board not to overuse legal counsel. Director Gillette said that the Board had asked if Ms. Morrison would offer a lower rate for attending Board meetings and that Ms. Morrison had agreed to this for the first three hours. She concluded that everyone had liked Ms. Morrison and that she would provide the kind of advice the District needed. She said it would be up to the next Board to institute a limit on the number

of hours and to ensure that Directors went to legal counsel only for actual legal issues – not with gripes or complaints. She concluded by saying that this would be needed to control legal costs.

President Welsh noted that, with this resolution, it would be up to Vice President Sherris-Watt and Director Gillette to complete negotiations with the law firm that would result in a contract. Vice President Sherris-Watt said that she had not actively worked on this and that she hadn't known it was going to be on the agenda until the day before. Director Gillette said that the Board had discussed what she would be asking from Ms. Morrison. Vice President Sherris-Watt concurred and said that, before she made her Board comments, she wanted to hear public comments.

Mabry Benson asked if this would be an at-will situation and said that Ms. Morrison's experience seemed to be almost all in land use, not in public sector work. She asked if Ms. Morrison would be able to handle the District's type of work, or if she would farm out the District's work. She added that she hoped this was a contract that could be cancelled at any time. Director Gillette responded that the Board could fire the law firm at any time, and that the law firm could fire the Board at any time – as had been the case twice so far. Director Gillette noted that a friend of Jim Watt's had recommended the law firm and that Ms. Morrison's background wasn't limited to land use: It included years spent as a city attorney in Livermore and Walnut Creek. President Welsh added that Ms. Morrison's municipal work spanned from 1989 to 2015.

Linda Lipscomb said that she wanted to compliment the Board, that Wendel Rosen was a very fine firm, and that Ms. Morrison had worked as a city attorney for Walnut Creek and for Livermore.

President Welsh, referring to Ms. Morrison's curriculum vitae, said that she had worked as a deputy city attorney, an assistant city attorney, and a senior assistant city attorney between the years 1989 and 2015.

Leonard Schwartzburd asked how much time had elapsed between former GM/COP Harman leaving and IGM/COP Hart starting with the District and for how long Sergeant Hull had run the department. President Welsh responded that what had happened at that time was that IGM/COP Hart had come in right after GM/COP Harman had left: he had come in as GM because he couldn't be sworn in until he had passed his background check, which had taken four or five weeks. He said that, during the time that IGM/COP Hart had been the GM, Sergeant Hull had been the acting chief but had been relying quite a bit on IGM/COP Hart. Dr. Schwartzburd responded that there wasn't a crisis.

Vice President Sherris-Watt asked if any Board member had a conflict of interest or a connection with the law firm. Director Toombs responded that he knew two partners, Rick Waxman and Tracy Green, that they had been friends for a long time, but that this didn't disqualify him, as he received no money from the firm. Director Gillette added that Mr. Waxman was a resident. Dr. Schwartzburd noted that Mr. Waxman had endorsed Director Toombs. Director Toombs responded that this didn't disqualify him from making the recommendation to hire the firm: He wasn't taking money from the firm. He added that he intended to act in a way that was in the District's best interests. Dr. Schwartzburd responded that he didn't think this seemed appropriate.

Vice President Sherris-Watt said that PLG had left the Board, as of July 15th, and that she hadn't realized this would be on the agenda until yesterday. She questioned why the Board needed to make a decision on general counsel at this moment and said that the new Board should decide this. She noted that, despite the discount, the firm's rate was very high. She said she had spoken to other practitioners – though not firms – who were more in line with about \$180 per hour. She noted that Wendel Rosen's general hourly rate would be \$395 per hour; that, for the initial service periods each month, the hourly rate would be \$325 per hour; and that, for attending a three-hour meeting, the fee would be \$300 per hour.

Director Gillette said that the person who had suggested a \$180 per hour fee was a sole practitioner who would have to go out for every kind of special information needed. She said that, with respect to PLG and why this change was necessary, PLG had told the Board it would no longer serve as the Board's attorneys as of July but had continued to provide service as a favor. She said that getting PLG to

respond had become more and more difficult. She explained that the firm had left because of the tone of emails from some Board members and that firm didn't want to represent the Board anymore. She said the Board could not be without legal representation, and it would be good governance to hire a firm. She noted that the new Board could change firms.

President Welsh said it would make the new Board's job more difficult if it had no legal counsel.

Marilyn Stollon said that she had looked at Ms. Morrison's LinkedIn "bio" and it indicated that Ms. Morrison was primarily a land use attorney and worked with the private sector. She said she had some concerns because IGM/COP Hart had said there were going to be some charges against an officer coming up. She noted that IGM/COP Hart had said this was unrelated to Officer Ramos – there would be other charges. She asked how helpful a land use attorney would be for litigation and other legal issues coming up. She said she understood that Officer Barrow was supposed to appeal and that people didn't know what was going to happen with Officer Ramos. She said that legal fees would be \$200,000 this year – more than had been budgeted. Director Gillette responded that she didn't think Ms. Morrison was a land use attorney, though in her current firm she was working in that field. She added that Ms. Morrison worked with a full-service firm and that, if more specialized service was needed, the firms' appropriate group – personnel, governance, land use – would deal with it at the negotiated rate. She said this would be the advantage of a full-service firm. She reiterated that, with a sole practitioner, that person would have to go out to another firm if the District had something, such as a personnel issue, and then the District would have to pay that firm's regular rate.

MOTION: Director Gillette moved, and Director Toombs seconded, that the Board adopt Resolution 2016-16 as proposed.
Motion passed: 3 – 2.

AYES: Welsh, Gillette, Toombs NOES: Sherris-Watt, Cordova ABSENT:

MOTION: Director Gillette moved, and President Welsh seconded, to adjourn the meeting.

The meeting was adjourned at 8:37 P.M.



Len Welsh
KPPCSD Board President



Lynn Wolter
District Administrator