

GRAND HAVEN BOARD OF LIGHT AND POWER  
MINUTES  
AUGUST 3, 2022

A special meeting of the Grand Haven Board of Light and Power was held on Wednesday, August 3, 2022 at the Board's office located at 1700 Eaton Drive in Grand Haven, Michigan and electronically via live Zoom Meeting.

The meeting was called to order at 4:00 p.m. by Chairperson Kieft.

Present were Directors Crum, Hendrick, Westbrook, Witherell, and Kieft.

Also present were David Walters, General Manager, Renee Molyneux, Administrative Services Manager and Secretary to the Board, and Rob Shelley, Distribution & Engineering Manager.

Director Witherell, supported by Director Crum, moved to approve the meeting agenda. The motion was unanimously approved.

Public Comment Period – Jeffrey Miller, 1120 S. Harbor Drive, read in a prepared statement that he is opposed to the Resolution the Board is considering at tonight's meeting. He doesn't feel the meeting is being held in an open and transparent manner due to having a 24-hour advance notice during the week of the Coast Guard Festival. He asked the Board to vote no on the proposed Resolution.

John Naser, 1450 S. Ferry, said the BLP is a department of the city, and the City Council has the final say on ~~all~~ major BLP actions. He disapproves of the Board moving forward with tonight's Resolution and does not agree that the BLP would need to raise rates (if it paid for the city's portion of environmental remediation on Harbor Island).

Mac Davis, 209 S Third, stated he is concerned about a movement opposed to a democratic process, and he feels the BLP is not following a democratic process with the proposed Resolution. He asked the Board to reconsider moving forward with the Resolution.

Field Reichardt, 1053 Ohio Avenue, asked to have the camera focus on public speakers. He feels the city should draft an amendment to the Charter to dissolve the Board.

Ryan Cummins, 551 Gidley, stated that on March 7, 2022, the city rejected the BLP's recommendation to Council to enhance its approved legal services of Varnum to include employment and labor practices and further, the Council amended their agenda at the beginning of that meeting to allow Council to take action to remove its former approval of Varnum's legal services to the Board completely and require the Board to use the city attorney for all legal matters.

Ron Bultje, 113 Lafayette Avenue, current city attorney, cited Section 7.6(e) of the Charter, which he interprets to mean the city attorney is the Board's attorney, and Section 7.6(g), which states, upon request, an assistant attorney may be appointed. Council's action at their March 7, 2022 meeting required the Board to use Bultje for all legal matters. He stated what is being considered tonight is an action reserved by City Council and proceeding with approval will be a violation of the Charter. According to Section 2.7, violations of the Charter may be punishable with a fine of \$500 or imprisonment and/or possible removal from office. Bultje asked the Board to not take this action and stated, if they did, it would not turn out well for the Board.

Paul Peppin, 212 Sherman Ave., submitted an emailed written statement prior to the meeting. He extended his appreciation to BLP employees, who provide excellent, reliable service

GRAND HAVEN BOARD OF LIGHT AND POWER  
MINUTES  
AUGUST 3, 2022

to our community and rapid restoration efforts whenever infrequent power outages occur. He said he had the opportunity to read the prepared comments from Jeffrey Miller and John Naser before this meeting and he shares their concerns regarding the Resolution the Board is considering at tonight's meeting. He feels a discussion should be held with City Council prior to acting and urged tabling action.

No formal action taken.

22-12A Director Witherell, supported by Director Westbrook, moved to approve the Resolution of the Grand Haven Board of Light & Power's Commitment to the Continued Environmental Remediation and Redevelopment of the Former Sims Power Plant Site on Harbor and Appointment of Varnum as Special Legal Counsel for Utility Matters:

**RESOLUTION OF THE GRAND HAVEN BOARD OF LIGHT AND POWER'S  
COMMITMENT TO THE CONTINUED ENVIRONMENTAL REMEDIATION AND  
REDEVELOPEMENT OF THE FORMER SIMS POWER PLANT SITE ON HARBOR  
ISLAND AND APPOINTMENT OF VARNUM AS SPECIAL LEGAL COUNSEL  
FOR UTILITY MATTERS**

**WHEREAS** the members of the Board of Light and Power, like those on the City Council, are City Officers, similarly committed to the betterment of the community and the representation of the citizens who elected them both (City Charter Section 4.1 (a)); and

**WHEREAS** the Board of Light and Power also performs a local electric utility regulatory function answerable to all approximately 14,700 residential, commercial, and industrial customers within the City of Grand Haven, Ferrysburg, and three surrounding townships; and

**WHEREAS**, unlike members of any boards and commissions of the City and administrative officers appointed by, under the authority of, and accountable to City Council (City Charter Section 4.1 (b), Section 7.14 and Section 7.20), the members of the Board of Light and Power have broader powers and authority of their own, and are assigned a unique charge, distinctive roles, responsibilities, and obligations to conduct the affairs of the city owned electric utility, subject only to the "general direction of the Council," which is not as clearly defined in the Charter as some have recently suggested (City Charter Chapter 14); and

**WHEREAS**, while the electric utility facilities and services constitute a department of the city government, this department, unlike others within the City's Administrative Service, is under the control and direction of the Board of Light and Power, City Officers themselves, and its administrative agent (City Charter Chapter 14), as opposed to the administrative structure of the City, except the city electric utility, under the more direct control of City Council, its administrative agent, and the boards and commissions of the city (City Charter Chapter 7); and

**WHEREAS**, the Board of Light and Power appoints its own administrative agent, exercises full control over its funds, makes contracts concerning the electric utility, has its own purchasing policies, can acquire and dispose of property in the name of the City for its purposes, is not subject to the same budget procedures as other departments, boards, and commissions, of the City, and possesses the full power and authority to set electric rates (City Charter Chapter 14); and

GRAND HAVEN BOARD OF LIGHT AND POWER  
MINUTES  
AUGUST 3, 2022

**WHEREAS**, electric utility funds, including electric utility operating revenues, bond proceeds, and electric utility reserve funds, are additionally restricted by Charter and ordinance, and may only (1) defray the cost of operating the utility, (2) be used for the defined Project for which the bonds were issued, or (3) be utilized for the purpose for which the reserve funds were established (City Charter Chapter 14); and

**WHEREAS**, the Board of Light and Power desires, before moving forward further on the former Sims site environmental remediation, to establish a clear and mutual written agreement and understanding of the Board's governing roles, responsibilities, and funding obligations, and those of City Council and the Administrative Service of the City, with respect to the joint environmental remediation and redevelopment project of the former Sims Power Plant site between the Board of Light and Power, City Council, and other departments and administrative officers of the City. The project is no longer exclusively an electric utility project, as determined appropriate by City Council, although some elements and components of it continue to serve an electric utility purpose, and the project is now being directed by other appointed City administrative officers, under the direction of Council.

**WHEREAS**, the City Attorney has recently opined that the City Council and the Board of Light and Power may enter into an intragovernmental agreement for this purpose; and

**THEREFORE, IT IS RESOVED** that the Board of Light and Power shall not approve further funding of the Sims site environmental remediation activities which are not directly under contract with the Board, or approve the use of electric operating revenues, electric utility revenue bond proceeds, or electric utility reserve funds for such purpose until a written agreement is drafted and approved by both the Board and the City Council to better define and clarify the roles, responsibilities, and funding obligations for the jointly governed project now led and controlled directly by the City Council and other appointed administrative officers of the City, and limited, if any, review and approval by the Board or involvement by BLP staff; and

**BE IT FURTHER RESOLVED** that the Board of Light and Power approves and appoints of Varnum as its special legal counsel for utility matters, as it has served in this fashion for over 25 years until February 2022. Varnum will then serve as an agent of the Board and will work with the City Attorney to negotiate and mediate such written agreement between the Board and City Council. The Board will not proceed in development of the written intragovernmental agreement with City Council without legal representation, and until Varnum's reinstatement by the Board is approved by City Council, which approval has historically been granted as a routine matter with due consideration of the Board's approval and recommendation.

**BE IT FURTHER RESOLVED** that the primary purpose and intent of these resolutions is to promote and facilitate productive dialog and discussion between the Board and City Council and legal representation of both governing bodies, with the goal of reaching a mutual understanding and agreement on a fair, equitable and reasonable allocation of the costs and other responsibilities associated with the environmental remediation of the Sims Power Plant site on Harbor Island, consistent with the requirements and parameters of the City Charter, bond finance covenants, applicable law and regulatory requirements.

GRAND HAVEN BOARD OF LIGHT AND POWER  
MINUTES  
AUGUST 3, 2022

Grand Haven City Charter:

[https://library.municode.com/mi/grand\\_haven/codes/code\\_of\\_ordinances?nodeId=PTICH](https://library.municode.com/mi/grand_haven/codes/code_of_ordinances?nodeId=PTICH)

Chairperson Kieft provided the Board ten-minutes to review the Resolution so they may prepare their questions and comments.

Director Hendrick asked who prepared the Resolution and if an attorney assisted in that process.

The General Manager stated he drafted the Resolution, which was reviewed by Varnum as the Resolution considers their reinstatement. After then being asked, Walters stated no payment was made to Varnum for this review and no invoice for such services is expected.

Directors Crum and Witherell stated they had no further questions or concerns regarding the Resolution.

Director Westbrook said the key points should not be considered controversial, which include moving forward on dialogue with City Council and reappointing Varnum as BLP's special council to work with the city attorney on drafting the intragovernmental agreement. Westbrook stated he does not know what the fear is for the BLP to have its own representation.

The General Manager said the Board, through this Resolution, is approving Varnum as the BLP's attorney for utility matters, which has been done historically, and if approved tonight, this decision will again be brought to City Council at their August 15, 2022 meeting for their consideration, as has been done historically. This is the process the Board and Council have used for at least the last 25-30 years.

Ron Bultje said he does not see where the Board is asking for or recommending City Council approval of the Board's approval and appointment of Varnum within the Resolution.

The General Manager explained his understanding is the Board approves and appoints, then brings that decision to City Council for their approval. If Council does not approve, then Varnum is not approved by City Council, and the BLP will then not proceed without the representation it believes appropriate with the proposed discussions with Council toward reaching a written agreement, as it is stating in its Resolution. The General Manager sees no crime or Charter violation in the Board approving the proposed Resolution. The Board is simply asking City Council to reconsider Council's earlier action in February, where they denied the Board's request for special counsel it determined most appropriate and necessary to conduct the affairs of the utility. The Board continues in this determination, particularly in light of the need to develop and negotiate the proposed written intragovernmental agreement.

Director Witherell stated he does not agree with City Attorney Ron Bultje. We need outside legal help to walk us through this process of developing a written agreement. Witherell stated he is in total support of doing so. He does not believe the BLP should rely solely on the city attorney in the development of the written agreement or for all other utility matters. This has not been the Board's historical practice. Many recent utility concerns brought to the city have been ignored. The meeting the Board would have liked to have with Council will end up the same. He does not agree with the new interpretations of the Charter, nor did Scott Smith, former city attorney, agree with some of Bultje's current interpretations.

GRAND HAVEN BOARD OF LIGHT AND POWER  
MINUTES  
AUGUST 3, 2022

While Director Hendrick desired additional discussion of the Resolution, there was no support to do so from the Board. Chairman Kieft then closed discussion and called for the vote.

In a roll call vote of the Board, those in favor: Directors Crum, Westbrook, Witherell and Kieft; those absent: none; those opposed: Director Hendrick. Motion passed.

22-12B Other Business – Director Westbrook, supported by Director Crum, moved to direct staff to bring the Board’s action to approve and appoint Varnum as special legal counsel, as contained in the approved Resolution, to City Council for their consideration at their August 15, 2022 meeting.

In a roll call vote of the Board, those in favor: Directors Crum, Westbrook, Witherell and Kieft; those absent: none; those opposed: Director Hendrick. Motion passed.

At 4:43 p.m. by motion of Director Witherell, supported by Director Westbrook, the August 3, 2022 Special Board Meeting was adjourned.

Respectfully submitted,

Renee Molyneux  
Secretary to the Board

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