

***Harry D. Jones***

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***252 S. Sierra Vista Lane  
Payson, AZ 85541  
Home (928) 474-2876  
Cell (928) 595-1111  
Fax (928) 474-2876***

August 17, 2011

The Board of Directors  
Whispering Pines Fire District  
10603 N. Houston Mesa Road  
Payson, AZ 85541

Gentlemen:

This is to notify you and the Board of Supervisors that I am resigning as a member of the Board of Directors of the Whispering Pines Fire District effective at the end of the District Board Meeting held at 5:00 p.m. on August 17, 2011.

Harry D. Jones, Chairman

A handwritten signature in blue ink that reads "Harry D. Jones". The signature is written in a cursive style with a large, stylized "H" and "J".

***Harry D. Jones***

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August 17, 2011

The Board of Directors  
Whispering Pines Fire District  
10603 N. Houston Mesa Road  
Payson, AZ 85541

Gentlemen:

This is to notify you that the property at Lot 83 at 153 Belluzzi created by a minor land division is no longer a point of discussion for a possible open market sale to the Whispering Pines Fire Department. Also, any past conversations or documents related to a possible transaction for use of that property are as of 9:00 p.m. tonight null and void.

Harry D. Jones, Property Owner



Nancy L. Jones, Property Owner



**Whispering Pines Fire District  
Minutes of the Special Board Meeting held September 29<sup>th</sup>, 2011**

A Special Called public meeting of the Whispering Pines Fire District was convened on September 29<sup>th</sup>, 2011 at the Whispering Pines Fire Station 71, 10603 Houston Mesa Road, Whispering Pines.

- I. Call to Order: Bob Hull called the meeting to order at 6:00 PM
- II. Pledge of Allegiance: - Bob led the Pledge of Allegiance
- III. Roll Call/Declare a Quorum: present were – Joseph Brown, member, Fred Washburn, Treasurer, and Bob Hull, moderator/clerk in the absence of a chairperson. Absent was Al Kendall. A quorum was declared.
- IV. Introduction of appointee applicant(s) – Bob introduced Cheryl Essary and asked if she wished to address the members. She provided a letter describing her personal information and qualifications, and spoke briefly of her desire to serve on the Board.
- V. Vote to go to executive session pursuant to A. R. S. § 38.431.03(A)(1) for discussion re: -
  - A. **Appointment of a replacement to the Board to fill the position vacated by Harry Jones** – Bob called for a motion to adjourn to executive session. Joseph moved to go into executive session. Fred stated “no”. Bob asked Fred and Joseph if they felt the discussion could remain in regular session. They stated yes. Motion failed for lack of a second.
- VI. Vote to return to regular session – N/A
- VII. Items for discussion and possible action:
  - A. **Appointment of a replacement to the Board to fill the position vacated by Harry Jones** – The applicants are Bob Johnson from Bonita Creek, Chris Oberg from Rim Trail, and Cheryl Essary from Whispering Pines. Fred stated he had sponsored Bob Johnson, having known him for many years, and felt he was well qualified. Bob stated he hoped the Board would take into consideration the need for a balance of representation amongst the communities. Ballots were cast, and by a majority vote of two to one, appointed Chris Oberg to the vacant seat. Bob thanked the other applicants for their participation, stating he would arrange for Mr. Oberg to take the oath of office, and provide him with the by-laws and open meeting law booklet.
  - B. **Discontinuance of the legal services of Mr. Whittington and the firm of Boyle, Pecharich, Cline, Whittington and Stallings, PLLC** – At the September 19, 2011 business meeting, Harry Jones requested this item be placed on the agenda for this meeting. He also provided the members with a letter which cited the following reasons for the Board to consider:
    - Mr. Whittington was not willing to step forward and issue an opinion to the Board relevant to a conflict of interest issue, as requested in writing by a Board motion. Then when he asked for the authority to go to the County Attorney with the same request , again Whittington failed to follow the directions given to him by the Board in terms of seeking an opinion (as to the correct process) from the County Attorney.
    - Mr. Whittington opined to the Board and indicated to the County Attorney that a conflict of interest must be declared in writing, not just verbally and in the official minutes of the Board. This legal reading of the statute was simply incorrect.
    - Mr. Whittington failed to advocate for the Board in how to solve its problem of no fire station sites being available in Rim Trail.

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- In the process of giving advice to the Board, Mr. Whittington has twice failed to properly interpret A.R.S. 38-431.03(A)(1) indicating it does not apply to Board members. Therefore, on both occasions he has improperly opined to the Board and Mr. Jones, resulting in the Board being denied the right to hear Jones' and the Board's possible concern about potential sanctions and/or resignation of Mr. Jones. These improper opinions have caused Mr. Jones to resign without the Board hearing his side of the story (NOT to advocate the sale of his property, as improperly presumed by Mr. Whittington).
- Mr. Whittington disclosed communications between the Joneses and him to the rest of the Board, making it look to the County Attorney like Jones, not Whittington, had started an e-mail series that is being viewed by the County Attorney as an Open Meeting Law violation.
- Mr. Whittington has not timely, or not supplied at all, significant information related to what he or his associates communicated verbally or in writing to the County Attorney or the Arizona Attorney General.
- Mr. Whittington has not provided the Board any meaningful responses to the positions taken by the Jones' attorney where that attorney has disputed (a) the correctness of Whittington's legal advice given to the Board, (b) the accuracy of Whittington's facts given to the County Attorney, and (c) the fact that Mr. Whittington, in communicating confidential information of Mr. Jones to the County Attorney that has prosecutorial authority, has violated the attorney/client privileges of Mr. Jones, a Board member that under appropriate statutes, asked Whittington for legal advice in order to avoid a potential conflict of interest.

Fred stated that he felt that this issue was not about anything Mr. Whittington had done, but was instead centered around warnings from him concerning possible conflict of interest, which Fred believed Harry was trying to circumvent by raising discussions of the sale of his property, and that Harry should have not used Mr. Whittington for legal advice, but should have gotten his own lawyer. Bob pointed out that Harry had statutory right to utilize Board counsel when it concerned possible conflict of interest. Joseph stated that as an unpaid, voluntary member of the Board, we should be provided access to legal counsel on this type of problem.

Bob stated he had requested from Mr. Whittington copies of all documents and e-mails relating to communications between Mr. Whittington and his staff, and Mr. Jones, Mr. Jones' counsel, the County Attorney and his staff, and the Arizona Attorney General (if any), related to the Rim Trail property, and the issues which subsequently arose. Bob stated that what he received, and provided to the other board members, was missing documents/notes related to verbal conversations that may have transpired, if any. He further stated that what the documents showed was that Mr. Whittington initiated the Open Meeting Law violation in his response to Mr. Jones on February 15, 2011, which was also sent to the rest of the Board, and that other documents, including the County Attorney's opinion showed that Mr. Whittington had provided client confidential information to the County Attorney which appears to have prejudiced that opinion.

Bob pointed out that in a letter sent to the Board dated August 19, 2011 by Mr. Whittington, he stated he had informed Mr. Jones' lawyer that he did not concur with their interpretation of A.R.S 38-431.03(A)(1), allowing for Board members

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(Public Officers, as clearly defined in A.R.S. 38-101(3)) to participate in discussions relative to discipline or resignation, in an executive session called pursuant to that statute. He provided a copy of the statute that clearly includes Public Officers in the wording. Bob stated that this mis-interpretation of those statutes by Mr. Whittington led the Board to believe they would be in violation of Open Meeting Law if they held the (A)(1) session, and as a result, denied Mr. Jones the right to a hearing on discipline/resignation concerns. Joseph asked if Bob would read the entire question Mr. Whittington was given to present to the County Attorney, because he felt that Mr. Whittington had not done what the Board had explicitly asked. Bob read the motion. Bob stated that as to the matter of the County Attorney sending out a letter to numerous fire districts, Mr. Whittington was not to blame. The County Attorney took it upon himself to do this prior to any response to us. Bob Seiler ask to address the Board as a member of the Rim Trail community, and not as a staff member. He stated that he has been involved with the five to six year futile process of trying to provide Rim Trail with adequate fire, rescue and medical response capabilities, and is extremely dissatisfied with Mr. Whittington's actions. Bob made a motion to discontinue the legal services of Mr. Whittington and the firm of Boyle, Pecharich, Cline, Whittington and Stallings, PLLC. Joseph seconded the motion. Motion passed by a majority vote, with ayes from Bob Hull and Joseph Brown. Fred Washburn abstained.

- C. **Request that the Gila County Attorney retract the opinion issued 5-23-11, and immediately communicate to all local fire departments and other parties, including the Gila County Recorder, that the 5-23-11 opinion sent to the may be withdrawn** – Bob stated that this was the second agenda item requested by Harry Jones at the September 19<sup>th</sup> meeting. Bob stated he felt this item should be discussed is due to the nature of the information used by the County Attorney to draft his conclusions as stated in the final opinion, and the unexplained dissemination of that information in letters distributed to an unknown number of fire districts/departments prior to providing us with a final draft opinion. Fred asked if we planned to use legal counsel to present this request to the County Attorney. Bob stated that the Board itself could draft a resolution outlining the purpose of the request, and include the pertinent documents with it. Fred opined that it would probably be futile to try to sway the County Attorney on our own. Bob made a motion to table this item and place it on the agenda for the next regular meeting to allow more of the Board members to discuss and possibly decide the issue. Fred seconded the motion. Motion carried unanimously.

VI. Call for Adjournment – Bob moved to adjourn. Fred seconded. Meeting adjourned at 7:10 PM.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Whispering Pines Fire District

By \_\_\_\_\_

LOYALTY OATH OF OFFICE

STATE OF ARIZONA )

: SS.

COUNTY OF GILA )

I, hereby do solemnly swear that I, CHRISTOPHER R. OSBERG,

will support the Constitution of the United States and the Constitution and Laws of the State of Arizona; that I will bear true faith and allegiance to the same and defend them against all enemies whatsoever, foreign and domestic, and that I will faithfully and impartially discharge the duties of Governing Board Member, for the WHISPERING PINES FIRE district, so help me God.

[Handwritten Signature]  
Signature

Subscribed and sworn to before me this 3 day of October, 2011

[Handwritten Signature]  
Notary Public

My Commission Expires:

October 8, 2012

