

**RESOLUTION NO. 467**

**RESOLUTION OF INTENT TO APPROVE  
ANNEXATION OF THE INDUSTRIALLY ZONED PROPERTY LOCATED NORTH  
OF GRANT ROAD IN THE PANGBORN AIRPORT AREA  
AND CONFIRMATION OF THE THRESHOLD  
DETERMINATION OF NON-SIGNIFICANCE**

WHEREAS, the Board of Commissioners received and accepted a legally sufficient annexation petition submitted by five property owners and general area described by:

- Mr. Jack Snyder –President, C & O Nursery
- Mr. Leonard Battermann – Battermann Properties, Managing Partner
- Mr. Harry Stuchell – Stuchell Enterprises inc. & Fo Five Inc.
- Mr. & Mrs. William Burriss
- Mr. Doug Pauly – Northern Fruit

Portions of Sections 9 & 10 , Township 22 North, Range 21 East, W.M., Douglas County, Washington, generally described as commercial property lying North of Grant Road and described as follows:

The Pangborn Industrial Area Annexation is generally located within the south half of Sections 9 and 10 in Township 22 North, Range 21 East, W.M., Douglas County Washington. Specifically this area is described as follows:; that area located inside of the Pangborn Industrial Service Area boundary as described in the adopted 1996 Greater East Wenatchee Area Urban Area Plan lying northerly of Grant Road and easterly of Union Avenue; which consist of properties included in the Northern Fruit Rezone No. R3-93, Battermann Rezone R6-91 and C&O Nursery Rezone No. R9-93.

WHEREAS, the Board of Commissioners are satisfied that such annexation petition complies with the requirements of law and, therefore, have determined to entertain the petition by setting a public hearing date and causing proper notice to be published regarding the hearing; and

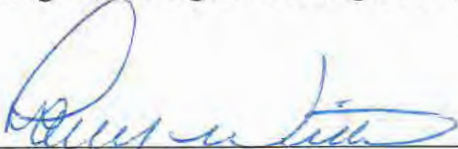
WHEREAS, the Board of Commissioners, held a duly notified Public Hearing on April 16, 1998, at 3:00 p.m., at the District Office, located at 692 Eastmont Avenue, East Wenatchee, Washington, and took all public testimony offered regarding the proposed annexation and threshold determination of non-significance.

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of East Wenatchee Water District of Douglas County, Washington, as follows:

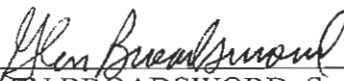
1. East Wenatchee Water District hereby approves and concurs with the annexation petition submitted by the above referenced property owners, for the above-described property subject to review by both the Douglas County Boundary Review Board and the Douglas County Commission in due course.

2. East Wenatchee Water District hereby confirms the threshold determination of non-significance for the annexation of the above-describe property subject to review by both the Douglas County Boundary Review Board and the Douglas County Commission in due course.

ADOPTED, this 16<sup>th</sup> day of April, 1998, by the Board of Commissioners of the East Wenatchee Water District, Douglas County, Washington, at a regular meeting thereof.

  
\_\_\_\_\_  
LARRY WITTE, President

ATTEST:

  
\_\_\_\_\_  
GLEN BROADSWORD, Secretary



MICHAEL A. ARCH

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BRANCH OFFICES  
MOSES LAKE  
CHELAN  
OMAK

May 28, 1998

**VIA FAX AND REGULAR MAIL**

Greg Brizendine, General Manager  
East Wenatchee Water District  
P.O. Box 7190  
E. Wenatchee, WA. 98802-7190

**Re: Commissioner Per Diem Pay Increase (Status)**

Dear Greg:

As per your request, and in connection with the proposed Resolution which you expect the Board to consider at its meeting on May 28, 1998, we have reviewed the Amendments to RCW § 57.12.010 under ESSB 6174 which changes the rate of pay for each commissioner from \$50.00 per day to \$70.00 per day with an annual cap of \$6,720.00 all to be effective at July 1, 1998 as follows:

Article 30, section 1 and Article 11, section 8 of the State Constitution permit midterm increases in compensation for the commissioners who "do not fix their own compensation", but prohibit midterm increases for those who do.

Unfortunately, the Courts and State Attorney General have adopted diametrically opposite view points on the application of these provisions of the State Constitution to the Per Diem Compensation Formula under consideration. In *Public Hospital District v. State*, 24 Wn.App. 363 (1979), the Court upheld over Constitutional objections a Resolution which changed the annual cap for Public Hospital District commissioners under RCW § 70.44.050 from \$600.00 to \$1,200.00. In reaching this conclusion, the Court stated at page 367: "The commissioners did not "fix their own compensation" within the contemplation of Washington Constitution Article 30 section 1 and there was no Constitutional bar to midterm adjustments of their maximum allowable yearly compensation as established by the legislature". The Court noted, however, that the legislature had not changed the \$25.00 maximum daily compensation rate for these commissioners and, therefore, the Constitutionality of a midterm increase to take any such increase into consideration was not before it.

The State Attorney General has consistently opined that any form of midterm remuneration from the public treasury for a public officers is unconstitutional. See e.g. AGO 1983 No. 6 and AGO 1988 No. 27. The Attorney General distinguished the

Greg Brizendine  
East Wenatchee Water District  
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Court's ruling in the Public Hospital District No. 1 of King County case, supra, by stating in AGO 1983 No. 6: "This 1975 Amendment did not authorized the commissioners of a Public Hospital District to do anything by way of changing the rate of their compensation; i.e., \$25.00 per day. ..The Amendment merely made it possible for the commissioners, by putting in more days of work each year, to receive a greater amount of annual compensation than before. ..It was, in turn, on that basis that the Court rejected the contention that a constitutionally restricted mid-term pay raise was nevertheless present."

Greg, the presence of adverse secondary authority from the Attorney General on this issue renders it impossible for us to unequivocally rule out the possibility that the Board's resolution adopting the 1998 per diem pay changes will not be challenged on Constitutional grounds in future district audits. In such event, we would expect the auditor to seek reimbursement from each commissioner for that portion of the per diem compensation paid in excess of the current ceiling amount of \$50.00 per day until such time as each commissioner is re-elected (assuming the Board adopts a per diem pay compensation which is prospective in application only).

It would be helpful for us to obtain the legislative history and any additional information on these issues in connection with ESSB 6174 for the Board considers formal adoption of this resolution. It seems to me that we have sufficient time between now and the July 1, 1998 effective date of the legislation to pursue these issues a bit further before the Board acts.

Similarly, it might be of assistance to seek information on this issue from the State Association through Commissioner McCourt or otherwise (we are sure legal staffs have been working on the Constitutional questions).

Please give me a call to discuss this matter prior to the Board meeting on the 28<sup>th</sup> if possible.

Sincerely,

FOREMAN, ARCH, DODGE,  
VOLYN & ZIMMERMAN, P.S.



Michael A. Arch  
Dictated but not read