

# MINUTES OF THE TWSD BOARD OF DIRECTORS

## SATURDAY REGULAR MEETING ON JUNE 20TH, 2009 - 10:00AM

Present for the meeting were: Chairman Arden Schug, Vice Chairman Burt Rubinowitz, Treasurer Joe Mainello, Virgil Beagles, Pete Bowidowicz and General Manager Dr. Martin Moore.

### **Pledge of Allegiance**

### **Salute to New Mexico Flag**

*"I salute the flag of the state of New Mexico, the Zia symbol of perfect friendship among united cultures."*

### **Approval of Agenda**

Motion – Joe Mainello “Approve the Agenda”

Second – Burt Rubinowitz. Unanimously approved.

Minutes of 16 May 2009, 9 Jun 2009 – Secretary Charlie Ross read the minutes and annotated corrections as noted by the board.

Motion – Joe Mainello “Approve the minutes with corrections noted”.

Second - Burt Rubinowitz. Unanimously approved.

Treasurer's Report – Joe Mainello explained we are a dual entity with the general (101) fund and water (505) fund. Using the report on the back of the agenda he gave a brief explanation of the receipts and expenses for each line item in each area. He briefly went over the funds available in each bank account. Virgil Beagles asked which account had the FEMA monies and how much do we have. Dr. Moore said we have approximately \$117,000 of our money we have put in the FEMA project and we are getting with state Homeland Security for reimbursement and that is all the FEMA money we have. We have submitted a request for them to release it to us. Virgil Beagles pointed out that this should be shown in an accounts receivable line. Dr. Moore agreed and will include that line in future reports. Arden Schug noted metered water expenses were higher than normal. Dr. Moore said there were two reasons for that. One he planned to cover later when discussing attorney's fees. The other was they were making sure funds were expended so we could do reimbursements for grants for water projects. Virgil Beagles said it appeared attorney's fees had been paid with standby fees. Dr. Moore assured him that was not the case.

Manager's Report – Dr. Moore provided a written report (included with these minutes) which he would cover the highlights of and he had a couple of items to add. He requested the public report any problems with the after hours emergency call in line or with getting things done and they will get it corrected. During lake cleanup behind the lodge, significant amounts of bentonite was found and we're having the soil tested and evaluated in preparation for stimulus money as a shovel ready project. The forest service came through with some replacement trout for those lost during the fire due to loss from helicopter water bucket work and he wanted to publically thank them for that. He also wished to thank the board and Hubert Quintana of the South East NM Economic Development District for helping with our requests for approximately 1.1 million in economic stimulus funds for capital projects in the community. We've been sprucing up the area for the Fourth of July celebration. Not in the written report is our situation with attorneys. We have 4 firms we are dealing with who we have paid \$141,512.80 and a current accounts payable of \$22,000. He gave the name of each firm the amount each was paid. All but \$3124.21 and approximately \$10,000 for general services have expended in relationship to litigation. Virgil Beagles wanted to thank Dr. Moore and Burt Rubinowitz for all the work they did in trying to secure funds for us.

### **Old Business:**

#### **1. Status of DTI Utility Fees**

Statement – Virgil Beagles said he thought Dr. Moore had told him that since 2007 he had not been able to determine exactly how much DTI owed. Dr. Moore agreed. Virgil Beagles stated that the terms of the lease should have been followed to the letter and under the lease they should have paid all the propane bill. Chairman Schug asked if he had a motion to make.

Motion – Virgil Beagles “Discuss the lease at DTI”.

Second – No second.

Discussion – Virgil Beagles said we have spent \$163,000 in attorney fees and nobody on this board wants to follow the lease agreed to by previous boards and that's why we're in court again.

#### **2. Second Reading of the Bylaws Committee Recommendations for Revisions, Amendments and Changes to the Bylaws**

Statement – Burt Rubinowitz said the committee had met and determined that the changes mentioned, mostly in the form of language, were not significant enough to warrant changing the bylaws as amended and they could be addressed at a later meeting of the committee. He said he could present the briefing as done at the last meeting if anyone on the board would so desire. No board member said they wanted to have them reread. He then asked the audience if they would like them reread. Dwayne Beagles commented the section

stating a candidate should submit a resume should be removed. Chairman Schug requested he submit that in writing to the committee. Burt Rubinowitz commented that should does not make it a requirement and that shall would. He requested the committee address it at a future meeting and not delay this current process. Chairman Schug asked if HB337 also necessitated some additional changes to the bylaws. Burt Rubinowitz said originally HB337 would have gone into effect on July 7<sup>th</sup> but the legislature actually has it taking effect as of yesterday, June 19<sup>th</sup>. The committee had not addressed HB337 as it affected the bylaws and said it could do that and resubmit the revision if that is what the board wanted. Chairman Schug stated he thought that would be better and Joe Mainello agreed and additionally requested that Dwayne Beagles also include any logic in his written request to the committee.

Motion – None.

Second – None.

Discussion – None.

3. Chairman and General Manager to Present Water Rate Study and Asset Management Plan to the New Mexico Board of Finance on 23 June 2009

Statement –

Motion – Joe Mainello “Appoint the Chairman and General Manager to Present Water Rate Study and Asset Management Plan to the New Mexico Board of Finance on 23 June 2009”.

Second – Pete Bowidowicz. Virgil Beagles abstained, all others voted aye.

Discussion – Virgil Beagles asked if the briefing in Santa Fe was open or closed and who requested we give this. Dr. Moore said it was an open meeting chaired by the Lt. Governor and Olivia Jackson had requested he and the Chairman give the briefing. Chairman Schug said that when we went up to request money for the audit they requested we give this briefing no later than June. At the request of the Secretary this item was tabled till later in the meeting.

4. Audit Update

Statement – Dr. Moore said the group doing the audit has asked us to fill out some questionnaires and have assigned a staff person to coordinate with us. They are within a few days of getting us the audit plan and I will then have it available for you. The audit plan must be approved by the state and that is where we stand as of now. As a for instance, the questionnaire we just filled out had to do with Information Technology (IT) security and there were some questions I could not answer. This is just an example of the kind of things they asking about. They also handed us a 30 or 40 page questionnaire on things such as the payroll, accounts payable, purchasing ect... they are literally going step by step in detail and this is an indicator of how in-depth they are going to look at us. This should be very revealing. We can expect they will give us a list of deficiencies that will also go to the state and they will request we correct them. There should be a short time to do this for the 06/07 and 07/08 budgets before they will be in to do the 08/09 in August/September. Virgil Beagles asked how they could start when we haven't done the reconciliation. Dr. Moore said they were not concerned with the reconciliation; they want to see the state of our books. The accounting firm that was going to do the reconciliation had informed us they were divesting themselves and said we would have to get another firm to do it. Virgil Beagles said he made contact with another firm and a lady from Cloudcroft should contact us about doing the reconciliation.

Motion – None.

Second – None.

Discussion – None.

5. Union Negotiations Update

Statement – Dr. Moore provided a copy of the collective bargaining agreement and a list of everyone under contract and what they have been up to this date this year. Also we have provided a list of all employees and the types of pay they have received. As of June 30<sup>th</sup> there will no longer be contracted clerk staff. I will be getting with the board and discussing staffing and what we can live with or without and adjusting accordingly. The 4 temporary field personnel are indeed temporary and are involved with specific grants projects and prepping for stimulus funds. We anticipate only having one temp left at the golf course after the end of July. June 29<sup>th</sup> and 30<sup>th</sup> have been tentatively scheduled with Robin Gould and a district employee representative for sit down negotiations. A discussion was had about specific positions and wages under the collective bargaining agreement. Dr. Moore stated it is recommended as a minimum that at least one board member and the general manager attend negotiations but it is not open to the public. Results of the negotiations would be presented to the public afterwards. These are preliminary negotiations and the results will be given to board members for review and

comment and a closed session may be needed to finalize. Virgil Beagles asked which employees are union members and Dr. Moore explained the status of each employee.

Motion – None.

Second – None.

Discussion – None.

6. Update on Insurance Reimbursement of Attorney Fees

Statement – Dr. Moore said the insurance agency wanted a line by line justification. Virgil Beagles observed that the billing statement could be provided to them. A discussion of the detail and clarity of previous billing statements was had.

Motion – Virgil Beagles “Provide a copy of billing statement for all lawsuits and litigation to the insurance agency and then clarify any questions they may have”.

Second – Burt Rubinowitz. All board members approved.

Discussion – Joe Mainello asked about the time frame being considered. Dr. Moore said for the time we had coverage and that would go back as far as 01 and 02.

Chairman Schug gave the presentation of the Water Rate Study and Asset Management Plan as it would be presented to the New Mexico Board of Finance (Item #3).

**New Business:**

7. General Manager’s Employment Contract – Executive Session May be Required

Statement – This item was conducted at the end of this meeting.

Motion –

Second –

Discussion -

8. Authorize Retention of Engineering Services for New Tanks

Statement – Dr. Moore said we have an opportunity to get some tanks to replace our tanks which have been rated from good to poor, especially tank 2, which is our main tank. There are 2 phases, those things that don’t require the tank to be drained and those that do. We still meet DWB standards for consumption. A big issue is getting another tank up to the tank 2 site to replace it. We also need to do minor adjustments to the site #1 and #4 tanks. There is a \$50,000 limit on engineering surfaces and we are bumping right up against that. With Livingston and Assoc. We are currently at about 46 or 47 thousand which will take care of the tanks, ponds and the springs projects. We recommend that you authorize us to get the engineering done so we can get these projects shovel ready. This will be paid for with grant money.

Motion – Virgil Beagles “Authorize the retention of engineering services for the tanks, ponds and springs updates and upgrades to C E & I not to exceed \$50,000”.

Second – Joe Mainello. All voted aye.

Discussion – Chairman Schug expressed concern that this action might not fit in with the master plan. A discussion of previous engineering plans and what needs to be done was had ending in agreement that tank 2 needed to be refurbished.

9. Resolution to Decide Jurisdiction by Public Regulation Commission or District Court

Statement – Chairman Schug explained that new law, HB337 allowed us to place ourselves under the jurisdiction of either the Public Regulatory Commission or the District Court and he believed we needed a resolution deciding which way Timbron should go.

Motion – Pete Bowidowicz “TWSD be under jurisdiction of the Public Regulatory Commission”

Second – Burt Rubinowitz. Virgil Beagles voted aye, all others voted nay. The motion did not pass.

Discussion – Virgil Beagles said the PRC had previously bent over backwards to help us when we sought a rate increase and HB337 does not eliminate all the documentation needed to get a rate increase and we will have to do it all out of Timbron’s pocket if we don’t have the PRC to help us. Chairman Schug said he felt the PRC did nothing to help us prepare the documents. The PRC said at the pre-hearing that since we had already submitted the paper work they couldn’t help us. Virgil Beagles said the district Court will require basically the same paper work to justify a rate increase. Chairman Schug said he didn’t know if they would need all the same paper work for the District Court. He also felt we were not treated very well by the PRC. Virgil Beagles said he thought the District Court might be worse. Joe Mainello said he did not have a fond memory of the pre-hearing and that our next hearing would have been eight months later and that they would have helped us if we had asked earlier. The PRC also said we would need all kinds of professionals and even an attorney to represent us at the meeting. So he did not feel as Virgil Beagles that they were helpful and that we already had a good track record with the

District Court. But he did not feel comfortable voting either way until he could better understand the advantages and disadvantages with each. Burt Rubinowitz said he has spent the last few days studying HB337 and he had found many inconsistencies and irregularities, it is not a well written piece of legislation. He said he is not very familiar with the PRC and so he has the same feelings about this as Joe Mainello. Chairman Schug read from HB337 the specific section they were discussing. This is so much simpler than the PRC's requirements which he spelled out for the board and the public. We have done the PRC way and it is laborious, time consuming and expensive and this seems much more streamlined. Ron White from the audience said he had been told by Sandy Jones of the PRC that the PRC would probably be at the court providing documentation to the court. He said he had also talked to Judge Counts secretary and they said Judge Counts would not even consider a rate increase without all the documentation from either the PRC or us and the water district would be responsible all costs associated with going under the district court. Chairman Schug said that is not what he had heard from someone at the PRC. He also answered Sandy Edgerton's question as to what the district court would use to make a decision. There was further discussion about the procedures under each way of doing a rate increase. Burt Rubinowitz stated HB337 does not sever our current relationship with the PRC but then it wants us to make a decision on jurisdiction. Chairman Schug said he had talked to Steve Schwepke of the PRC and he said if you do not vote to stay with the PRC you are under the district court. DeWayne Beagles said he thought they should have to notify every Timbeon property owner about a rate increase. There was much further discussion about notification and PRC requirements. Virgil Beagles said that this is a special interest bill that was pushed quickly through and its constitutionality will have to be decided in court. Burt Rubinowitz said 2 provisions, one about the proponents and opponents and the other about tax paying elector. After the vote, Dr. Moore asked the board if they wanted staff to get the information they can about this and brief the board. Chairman Schug said that sounded good and members of the board could help in making phone calls and getting that information.

10. Notification of General Manager Meeting with Department of Finance and Accounting and Homeland Security

Statement – Dr. Moore said he had been invited to answer questions about the 08/09 budget which they want answered before they will consider approving that budget. We have already answered some of their questions but they want us there to answer some more. The meeting with Homeland Security is to discuss monies we feel are owed us by FEMA. Virgil Beagles asked that this kind of information be included in the manager's report and he would like to know what the questions were. Dr. Moore commented "That's fair enough". He said he would add a paragraph on budgetary and financial matters.

Motion – None.

Second – None.

Discussion – None.

11. Proposal to Hire Lobbyist to Help with Tank Packages

Statement – Virgil Beagles said Hubert Quintana said he felt we would really help ourselves if we could get into the governor's office and give a presentation and this would most easily be done with the aid of a lobbyist. He recommended Butch Mackey and Associates and a limit of \$5000.

Motion – Virgil Beagles "Hire Butch Mackey and Associates for up to \$5000 to help us get \$1.1 million in stimulus money".

Second – Joe Mainello. Virgil Beagles, Pete Bowidowicz and Joe Mainello voted aye. Arden Schug and Burt Rubinowitz abstained.

Discussion – Virgil Beagles explained how the processed worked and why we should do it. Dr. Moore said that if the board decided to do this the money was available.

12. Payment of FOI Judgment on the FEMA Case

Statement – Dr. Moore said Judge Reynolds ordered the payment in the public records act issue and attorney's fees of approx. \$9100 in the matter of the 2008 FEMA case.

Motion – Pete Bowidowicz "Make payment of the FOI judgement as ordered by Judge Reynolds in the FEMA case".

Second – Joe Mainello. Virgil Beagles abstained all others voted aye.

Discussion – None.

13. Swimming Pool Skimmers

Statement – Dr. Moore stated he had gone out to the pool with the DWB inspector and the pool could not be opened without new skimmers with a total cost of \$11,800 as quoted by the company already doing work on the pool. We cannot afford that but could do a \$4000 down payment and monthly installments and he wanted to

approach them about doing this. A discussion was had about details of the contract, the procedure, the cost and how to go about getting this done.

Motion – Virgil Beagles “Use volunteers or TWSD labor to dig up the skimmers and determine what needs to be done”.

Second – Joe Mainello.

Discussion – Bill Curtis observed that the contract should have been written to include the skimmers at he thought one the original main problems with the pool was the skimmers. Virgil Beagles said he thought the contractor should have been required to bring the pool to code in the contract. Burt Rubinowitz and Bill Curtis expressed concern that damage to the pool would be done without a licensed contractor.

Original Motion Withdrawn.

Motion – Virgil Beagles “Have the Construction Industry Division determine if the contractor is obligated to the fix the skimmers and bring the pool up to code”.

Second – Pete Bowidowicz. Unanimously approved.

Discussion – None.

#### **Committees:**

Swimming Pool Committee – Covered in last agenda item.

Budget Committee – Joe Mainello said we will continue to work with the GM and get our budget squared away.

By-Laws Committee – Covered during agenda item #2.

Water Rate Committee – Chairman Schug said they are about 85 to 90 percent complete and continuing to work.

Golf Course Committee – Pete Bowidowicz said grass is growing all greens and #9 green is probably the thickest and #1 is probably the most innovative way of growing grass. There have been some comments but he is getting guidance from a USGA golf superintendant. All tee boxes and fairway has been aerated. We are trying to be austere financially. We found 32 bags of fertilizer and they were applied at a cost savings of about \$6000. We have Timberon hats, shirts and logoed golf balls. My goal is to have the course ready for the end of July tournament.

Website Committee – Burt Rubinowitz said we are short at least 2 members and requested volunteers.

**Directors Remarks:** None.

**Agenda Request:** None.

#### **Unscheduled Citizens Communications:**

BF Adams gave an update on the Fourth of July celebration: A rumor saying vendors have to have their own insurance is untrue. We have about 20 vendors. Food vendors need a food permit. We may have Indian group up here with a possibility of up to 280 people in that group. Please volunteer to help us.

#### **Executive Session:**

2:28pm Joe Mainello motioned “Go into executive session for Item #7 General Manager’s Employment Contract”.

Seconded by Pete Bowidowicz. Unanimously approved.

3:20pm Returned from executive session.

Motion: Joe Mainello. “Award General Employment Contract”.

Second: Virgil Beagles. Unanimously approved.

Meeting adjourned at 3:25pm.

Submitted by Secretary Charlie Ross

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Date

Approved by Chairman Arden Schug

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Date