

MINUTES OF TWSD BOARD OF DIRECTORS REGULAR SATURDAY SESSION ON JANUARY 16, 2010 10:00AM

Present 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:

Intro: Burt Rubinowitz stated the bylaws say the Oath of Office, item #2, must be administered just before adjournment and he recommended it be moved. He also thought pending litigation should be moved to executive session. Chairman Schug said item #3, Nominate and Elect Officers, would have to be postponed until next meeting. He asked if anyone had a problem with administering the oath at the beginning of the meeting. Virgil Beagles replied yes. Chairman Schug said we will move #2 to the bottom of the list and elect officers at the next meeting and items #5 and 6 would be moved to executive session. Motion: Burt Rubinowitz. "Move item #2 to the last place and move items 5 & 6 to executive session.

Second: Joe Mainello.

Discussion: Virgil Beagles said the open meetings act requires you to be very specific as to what you are going to do in executive session these items are on the open agenda and that is where he wanted them to stay. Burt Rubinowitz said there said there was no pending actions for either of these items and the executive session allows for pending litigation which these are. Virgil Beagles said any objections should have been raised when we set the agenda last Tuesday night. Chairman Schug said he knew of no decisions for those cases and he did not know what Mr. Beagles intended to talk about on those cases. Virgil Beagles said you'll find out. Chairman Schug said we should have found out on Tuesday night. Virgil Beagles said nobody objected when I put them on the agenda. Chairman Schug said these items belong under directors remarks. Virgil Beagles said we will vote on them or not when they come up. Dr. Moore made a point of order that for executive session you must at least put down the name of the lawsuits to be discussed.

Vote: Chairman Schug asked the board to vote only on the movement of items 5 & 6 to executive session. The vote was all nay. He requested another motion to change the agenda as noted in the intro.

Motion: Joe Mainello. "Accept the agenda accept that item #2 be moved to the end of the agenda and postpone election of officers be deleted".

Second: Burt Rubinowitz.

Discussion: Virgil Beagles objected to item #8 being on the agenda because it was not proposed during Tuesday nights working session and previously it had been stated that only emergencies could be added after the working session. Chairman Schug said it had been an oversight and believed it belonged on the agenda. Chairman Schug stated he thought it was appropriate for this item to be on the agenda and he called for further discussion, for which there was none, so he called the vote.

Vote: All voted aye except Virgil Beagles who voted nay.

Minutes of 12-10-09:

Motion: Burt Rubinowitz: "Dispense with the reading and approve the minutes".

Second: Joe Mainello.

Discussion: None.

Vote: All voted aye.

12-15-09

Motion: Joe Mainello. "Dispense with the reading and approve the minutes".

Second: Burt Rubinowitz.

Discussion: None.

Vote: All voted aye.

12-19-10

Motion: Burt Rubinowitz. "Dispense with the reading and approve the minutes".

Second: Joe Mainello.

Discussion: None.

Vote: All voted aye.

1-2-10

Motion: Burt Rubinowitz. "Dispense with the reading and approve the minutes".

Second: Joe Mainello.

Discussion: None.

Vote: All voted aye.

1-11-10

Motion: Joe Mainello. "Dispense with the reading and approve the minutes".

Second: Burt Rubinowitz.

Discussion: None.

Vote: All voted aye.

Treasurer's Report: Joe Mainello we are still not at the point of reconciliation but we are very close so we will do the same as last month and give out the balances for each account.

Western Bank Checking: \$53,553.60 (Main account)

Western Bank Savings: \$22,745.86 (Grant reimbursements)

First National Bank \$11,720.77 (Standby Charges)

Otero County FCU \$16,059.38 (General Fund Reserve)

Compass Bank \$48.89 (Water Fund Reserve)

Dr. Moore said we have received a partial grant reimbursement of \$60,000 that's going to go against some grant payments we are going to have and we also have an additional \$35,000 we received with an additional \$40,000 in reimbursement requests for standby fees in water capital projects. Virgil Beagles said it sounded like there was about \$135,000 going back into standby fees. Dr. Moore said it was \$133,000 but that some of that money will come back out again for things like the membrane filter but in the end we will have that \$133,000 in our accounts. Virgil Beagles asked what our outstanding bills were. Dr. Moore said we are approximately \$100,000 behind in payments due. Virgil Beagles asked how much of that was past due 90 days or more and Dr. Moore said about 75 or 80% were.

Manager's Report:

A. Introduction

The purpose of this report is to update the Board of Directors and the public on work performed by TWSD staff and volunteers.

B. Progress Summary: Accomplishments

Accomplishments in this reporting period include:

- New Mexico Environment Department reimbursed TWSD \$60,000 +/- for part of the water membrane filter cost.
- Approximately \$35,000 in additional grant reimbursement requests has been reviewed for payment, \$40,000 worth is pending review, and \$62,000 worth is being prepared for submittal.
- The Timberon pool renovation grant agreement has been mailed to the Otero County for signature and all water project grant agreements are still valid.
- It has now been 388 days since the last community wide water outage.

C. Professional Activities:

Water

- Water lines on Washita and other areas have experienced winter freeze. Only one home has been

impacted, and the District has placed a temporary small tank near the home to make sure that they have water until the main line can be thawed.

- A large portion of the new spring water membrane filtration system plumbing parts and supplies has arrived, and we are waiting for Drinking Water Bureau final approval to construct and hook up the new filter. That approval is anticipated the end of February.
- The Carissa Springs collection system construction plans approval is being finalized, and will be submitted in two (2) weeks for review and approval by the State.

Recreation

The golf course is closed for the winter.

The fishing lakes are icy, and the trout in the lakes still look healthy.

The swimming pool re-surfacing project awaits New Mexico Environmental Department clearance for final work. My goal is to complete environmental approvals by the end of April.

Roads

- TWSD performed snow removal work.
- TWSD heavy equipment is being serviced and repaired as needed in preparation for FEMA road work. Specifically, the transmission has been replaced on the main dump truck, the muffler has been replaced on the

Solid Waste

Nothing new to report.

Maintenance

As reported last month, a “courtesy” health and safety inspection has been conducted by New Mexico Occupational Health and Safety (OSHA) on TWSD equipment, land, and structures. A number of improvements are required. Major issues we have already started addressing include, but are not limited to:

Constructing a proper containment area around gas and diesel tanks. This will be done when the ground thaws and the mud dries.

Installing a roll cage on the front end loader that meets industrial safety requirements. An OSHA compliant roll cage has been purchased.

Re-wiring the maintenance barn and tank #2 pump house.

Cleaning up around propane and water tanks.

Installing eye wash stations in the maintenance barn and the water treatment plant. An eye wash station

has been installed in the water treatment plant.

Administration

TWSD has interviewed for two heavy equipment operators to assist with FEMA work. These will be paid

for with FEMA grant reimbursement funds.

The office will continue to be closed to the public on Fridays. If you need to make a payment on Fridays,

please drop them in the payment slot.

TWSD financial transactions have been entered and reconciled for receipts in fiscal year 2006/2007.

Entry and reconciliation of payments is underway with expected completion on January 21st. The records for the 2007/2008 and 2008/2009 audit have been prepared, with the exception of the finalized trial balance and general ledgers which await reconciled ending balance numbers for 2006/2007.

The 2006/2007 audit is expected to resume February 1, 2010.

The 2007/2008 audit is expected to begin no later than February 28, 2010.

Lawsuits continue to create financial difficulties and use significant staff time that hampers day to day management of the District.

Old Business:

1. Canvass Election Returns and Declare Results.

Intro: Secretary Ross read the results of the election. Burt Rubinowitz received 82 votes, Pete Bowidowicz received 76 votes and Joe Mainello received 77 votes. Virgil Beagles asked where were the write-in candidates. Chairman Schug stated there were no write-in candidates as they all declared to late. Virgil Beagles asked Dr. Moore if he had given the board a copy of the supreme court ruling. Dr. Moore said he believed it was part of the packet given to the board by him.

Motion: Joe Mainello. "Canvass the Election Returns and accept the results". Second by Burt Rubinowitz.

Discussion: Virgil Beagles asked Secretary Ross if he had received a copy of the supreme court ruling. Secretary Ross said he had not. Virgil Beagles gave a copy of a document, which was labeled Court of Appeals of New Mexico Hector Gonzales and Frank Benavidez v. Middle Rio Grande Conservancy District, to the Secretary which he read out loud. There was a discussion as to whether the write-in candidates who declared a week before the election should have been allowed to receive votes during the election. Virgil Beagles and his brother, DeWayne, stated that the write-ins should have been counted and sited the previously mentioned document as justification. Chairman Schug, Secretary Ross and others stated the write-ins did not declare in time to have a write-in spot put on the ballot. Joe Mainello wanted to know why we could not count the write-ins. Chairman Schug stated it would set a dangerous precedent. Virgil Beagles said we know these announced results were not the only votes that came in and they should have been counted. Chairman Schug stated a write-in candidate must declare early enough to be on the ballot so the election could not be stolen by someone orchestrating a last minute write-in campaign. Dewayne Beagles claimed the board had been forewarned of a possible write-in campaign at December's meeting by BF Adams who had asked a general question about write-in candidates. Joe Mainello said he felt voting either way on this was a minefield. Burt Rubinowitz asked Secretary Ross if any write-in candidates had declared within the time limits proscribed under the bylaws, the Water and Sanitation District Act, New Mexico statute or the Constitution of the state of New Mexico, to the best of your knowledge. Secretary Ross replied no there were not.

Vote: Arden Schug and Burt Rubinowitz voted aye.
Virgil Beagles and Pete Bowidowicz voted nay.
Joe Mainello abstained.
The motion was not approved.

Discussion: Joe Mainello said he had abstained because he felt having a new election would cost the district less money than having this go into litigation. The new minister for the church, Frank Hodnett, said the most asked question he has had is for him to pray for unity in the community and this item has highlighted this. He said everyone should be thinking of what is best for this community and we all need to pull together and put our personal agendas aside. Chairman Schug asked Virgil Beagles if we went to the Secretary of State and got a ruling on the legality of what happen during this election, would you accept it.

Motion: Virgil Beagles. "Secretary Ross and I go to the Secretary of State on the 19th day of this month and present everything we've got and let her make a determination. No Second.

Discussion: Chairman Schug said we could send Secretary Ross to see the Secretary of State with all the election materials and ask them to make a decision. Virgil Beagles stated he would not accept anything he (Secretary Ross) brings back without me being present, period.

2. Administer Oath of Office to Elected Board Members (Not Done)

Intro:

Motion:

Discussion:

Vote:

3. Nominate and Elect Officers (Not Done)

Intro:

Motion:

Discussion:

Vote:

4. Discuss Timberon Development Council (TDC) Community Action Plan (CAP)

Intro: Chairman Schug stated there would be no decision made this morning on the TDC CAP because any changes would first have to be approved by the TDC members.

Motion: Pete Bowidowicz. "Listen to Rick Merrick's presentation on the CAP". Seconded by Virgil Beagles.

Discussion: Rick Merrick said he appreciated the chance to listen to the boards concerns and issues about the CAP. Virgil Beagles said he felt that on page 10, paragraph I., that potential grants concerning water related issues was a TWSD function and should be removed. Also where it says filing for colonias he wanted it to say in conjunction with us (TWSD). Joe Mainello said he would like to see a statement or the appointment of an individual to liaison or coordinate with TWSD. Rick Merrick agreed saying it would help stop doubling of effort and any projects TDC attempts has the boards full blessing. Burt Rubinowitz said the phrase "outlined as planning actions" on the signature page should be removed as he could not find any in the document. Rick Merrick asked if the statement right below that concerning the fire department would be better. Burt Rubinowitz agreed.

Vote: All voted aye.

Motion: Virgil Beagles. "Approve the document with the changes we discussed". Seconded by Joe Mainello.

Discussion: It was decided that the Chairman should be signing the document instead of the General Manager.

Vote: All voted aye.

5. Valentine Court Case

Intro: None.

Motion: Virgil Beagles. "Discuss the Valentine case". Seconded by Pete Bowidowicz.

Discussion: Virgil Beagles said his side went to the mediation in El Paso with the intention of mediating this thing and first thing Mr. Sanchez claimed there was an on-going counter claim against the Beagles and he instructed the board to come back and say they wanted \$100,000 from us, which wasn't going to work. A special master was appointed and found in our favor on all points. He also said attorneys were giving TWSD bad advice and the district is going to spend another \$20 or 30 thousand on a case it can't win. The board needs to decide how not to waste that money on this case when it goes to court on the 9th, 10th or 11th in Las Cruces. He said the district may end up paying \$50 a day for not providing records 5 years ago which could cost up to \$175,000 and it could have been settled 2 or 3 years ago for \$60,000 and that a 5 day trial could cost \$40 or 50 dollars. He also wanted to know who gave Mr. Sanchez the authority to refute the special masters decisions. Pete Bowidowicz said new testament teachings said a christian should not sue and wanted to know what Virgil Beagles motivation in this case was. Virgil Beagles said he thought no one on the board had read the complete history of this case which had started with a voting rights issue and I sued for my right to vote. There was further discussion of some of the elements of the case. Pete Bowidowicz again said he felt Virgil Beagles behavior was unchristian like. Chairman Schug called for order and suspended further discussions that were off topic. Burt Rubinowitz made a point of order that a motion was on the floor and he called the previous question. Virgil Beagles reiterated that he was trying to see if he could stop the district from wasting money by going to court. Chairman Schug said they would have to call a special/closed meeting and discuss this with a lawyer. Dr. Moore said he would set that up if the board chooses to give him that direction. Chairman Schug said please do.

Vote: It was decided it had already been discussed and they went to the next item.

6. Voting Rights Case

Intro: Virgil Beagles said he understood our attorneys were going to get together and decide something and he wanted to know when that would happen. Chairman Schug said we were going to get together and come up with a resolution on it, can we set a date?. Virgil Beagles said it was suppose to be the attorneys. Chairman Schug said your attorney sent us a thing and we okay-ed it and within 24 hours you and DeWayne threw it out. Dr. Moore said our attorney has emailed us that he is talking with Mr. Beauvais and it looks like we're ready to get a meeting date, have our discussions, and wrap this up.

Motion: Burt Rubinowitz. "Have the General Manager set up a date for the meeting". Seconded by Joe Mainello.

Discussion: None.

Vote: All voted aye.

7. Set Date with Bill Gideon for Mediation

Intro: Dr. Moore said it should be negotiate instead of mediate with Mr. Gideon.

Motion: Virgil Beagles. "Make an offer to Bill Gideon to settle". Seconded by Burt Rubinowitz.

Discussion: There was a discussion of the motion to set aside the default motion in the case with Virgil Beagles claiming the board did not have a legal leg to stand on. Burt Rubinowitz said he understood the negotiation was to be done without attorneys present. Virgil Beagles said that no, it was to make an offer to settle with Mr. Gideon. Burt Rubinowitz said he withdraw his second of the motion. There was no second to the original motion.

Motion: Burt Rubinowitz. "Set a date, without attorneys present, to negotiate with Mr. Gideon".

Seconded by Joe Mainello.

Discussion: Bill Gideon said he is very willing to meet with the board but he first felt an offer should be made and then we can negotiate. Chairman Schug said we can do that at the start of the negotiation. Bill Gideon said that's fine. Joe Mainello said the lawsuit already had some figures in it and that could be the starting point and then we can discuss other issues such as attorneys fees and whatever else. Chairman Schug consulted Mr. Gideon as to what would be a mutually agreeable date. Mr Gideon said just about anytime is fine. Virgil Beagles said that it should be very soon as the only reason the default judgment had not been heard is because the judges have been recusing themselves like popcorn. It was agreed to have the meeting on Thursday at 6:00pm.

Vote: All voted aye.

8. Approve Amended Resolution 09/10-001 District Court Jurisdiction

Intro: Chairman Schug said we voted the other day to amend it to put in "the boards intention to adjust rates, tolls, fees or charges".

Motion: Burt Rubinowitz. "Approve the amendment to the Resolution". Seconded by Joe Mainello.

Discussion: Virgil Beagles asked how many protests have been received on the proposed rate increase. Chairman Schug said he didn't know as he had not checked with the court. Virgil Beagles asked Dr. Moore if he had received any. Dr. Moore said approximately a dozen.

Vote: All voted aye except Virgil Beagles who voted nay.

New Business:

9. Review and Approve Resolution for 2006 Grants

Intro: Chairman Schug this is to put Dr. Moores name on those grants.

Motion: Virgil Beagles. "Read the Resolution". Seconded by Burt Rubinowitz.

Discussion: The resolution was read by Secretary Ross. Dr. Moore said that there were 2 grants that should be referenced by this resolution, 06-10-22 and 06-11-72.

Vote: All voted aye.

Motion: Virgil Beagles. "Change it to include both grants". Seconded by Burt Rubinowitz.

Vote: All voted aye.

Committees:

Swimming Pool Committee: Virgil Beagles said someone needs to call the state building inspector because some work has been done and it needs to be inspected. Dr. Moore said he would call the county and tell them forthwith to have the inspector up here. Virgil Beagles said CID had red tagged it and they need to inspect before it's covered up and more work done. Dr. Moore agreed but said that the county had that responsibility. He said he met with Sam Anaha at the grants section of GSA and they said they had mailed out the renewal of the grant agreement to the county and that was on Wednesday.

Budget Committee: Joe Mainello said Sharon Northcott has provided us with the 08 and 09 income and expenses and Mr. Dysart has combined that in a spreadsheet so we can have everything visible. We plan on discussing next Thursday these items and then using them so we can somehow come up with a working budget. Dr. Moore said it is the intention of our office to inform the budget committee to give you a mid-term financial report and then give a presentation on the first six months of this year.

By-Laws Committee: Burt Rubinowitz said he had talked to the chairman and they will have a meeting in the very near future. BF Adams asked if the committee was going to address election issues. Burt Rubinowitz said that is one of our intentions.

Water Rate Committee: Chairman Schug said we had our public meeting and we are waiting to see if we have protests at the district court and we will see how it goes from there. Dr. Moore said our office is keeping on file any protest type documents and letters of receipt are being sent out. Virgil Beagles asked why didn't he send them to the district court. Chairman Schug said the Water and Sanitation Act says the protestor must file with the district court. Virgil Beagles said the district is suppose to provide a protest form and we haven't done that. Dr. Moore said that we are keeping protests filed on any form in our files. DeWayne Beagles said he thought their was a law that you were suppose to forward them to the agency they are suppose to go to. Virgil Beagles said since the board has been put on notice, why not forward them instead of picking a fight. It is the responsibility of the district to provide a standard protest form. Chairman Schug said no one protested at the public hearing and that is what the district court must use to decide if there is a protest. DeWayne Beagles said there were no protest forms available at the public hearing. Chairman Schug said a time had been allotted at the public hearing for anyone to present protests.

Golf Course Committee: Pete Bowidowicz said it is closed.

Website Committee: None.

Water Rules and Rights Committee: None.

Motion: Burt Rubinowitz. "Reconsider item #1 on the agenda". Seconded by Pete Bowidowicz.

Motion: Burt Rubinowitz. "Refer the results of the election and any materials needed to make a determination to either the Attorney General or Secretary of State, whichever is appropriate".

Seconded by Pete Bowidowicz.

Discussion: Dr. Moore said that even though the motion to approve the election had not been approved it had also not been denied and the clock is ticking. You have 10 days to have an up or down vote on the election. Pete Bowidowicz said he felt violated because his name was not spelled correctly on the ballot and we need to have another election. Joe Mainello said he felt there was no way this could be seen and decided by Santa Fe in a couple of days. There was some further discussion on having another election or not and whether a decision by either the AG or SofS would be acceptable. In the end it was thought there was not enough time left to validate this election but that guidance for the next election would be achieved.

Vote: All voted aye.

Directors Remarks:

Burt Rubinowitz wanted to thank Danelle Ross for all the work she did to get the internet up to the new speed.

Joe Mainello thanked everyone for showing up. He also thanked for all people who voted in the election. He also thanked the pastor for his remarks.

Pete Bowidowicz thanked the pastor for coming.

Virgil Beagles said the election between he and Glenda Gentry had a lot more people show up.

Chairman Schug thanked everyone for coming.

Agenda Request: Pete Bowidowicz said the contract for the golf pro shop needed to be added. Dr. Moore said he would be getting the RFP out.

Executive Session: None.

Unscheduled Citizens Communications:

Karin Mainello said she hoped that in the next election the write-in candidates use some common sense and get their names in on time.

Meeting Adjourned at 1:06pm.

Minutes submitted by Secretary Charlie Ross_____

Date

Approved by Chairman Arden Schug_____Date