

# **MINUTES OF TWSD BOARD OF DIRECTORS SATURDAY REGULAR MEETING OCTOBER 17, 2009, 10:00AM**

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

## **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 agenda as written".

Second: Burt Rubinowitz.

Discussion: Virgil Beagles said he felt item #2 scheduled for the executive session should be done in open session. Chairman Schug said the state auditors had said everything in that meeting had been done in closed session but the report of the meeting could be done in open session and scheduled it under new business.

Motion withdrawn: Joe Mainello.

Second withdrawn: Burt Rubinowitz.

Motion: Joe Mainello. "Approve agenda with item #2 of the executive session moved to new business".

Second: Virgil Beagles. All voted aye.

Discussion: Chairman Schug said they had planned to go into executive session first but no one had showed up to present their offer for the Master Plan Engineering Services RFP so the executive session would be done last. Virgil Beagles said the request for RFP had asked the presenters to discuss price which is in violation of New Mexico law. Dr. Moore said he basically agreed with Virgil Beagles unless the presenters wanted to volunteer price or submit a sealed bid that was okay except price could not be used to make a decision on which offer to accept. Virgil Beagles stated the applicants had only been given 3 days notice to come and present their offer to the board.

**Motion:** Virgil Beagles. "Postpone discussion of the Master Plan Engineering Services RFP and re-invite the two applicants to present their offer with sufficient notice to prepare and plan their presentation without price being a consideration".

**Second:** Burt Rubinowitz. All voted aye.

**Discussion:** None.

## **Minutes of 9-08-09, 9-19-09 and 10-14-09**

**Motion:** Burt Rubinowitz. "Approve the minutes of 9-08-09"

**Second:** Joe Mainello. All voted aye except Virgil Beagles who abstained.

**Discussion:** None.

**Motion:** Burt Rubinowitz. "Approve the minutes of 9-14-09 with corrections".

**Second:** Joe Mainello. All voted aye.

**Discussion:** None on this motion, but Secretary Charlie Ross explained he did not have the minutes for 10-14-09 available for this meeting but they would be for the next meeting.

**Treasurer's Report:** Joe Mainello said there would not be a report because the reconciliation of the books had not been completed yet.

**Manager's Report:** Dr. Moore said the written report would be posted on the web site and would be available at the lodge to anyone requesting a written copy. State homeland security is going to send us a check for \$109,000 plus so we can pay some bills and work on some roads we need to finish that were not under contract from 2006. The meeting concerning the audit will be discussed later in more detail but the 06/07 and 07/08 audits are back on track. There have been no major or drawn out outages. We have a plan from our certified water operator to deal with the high pressure on main street until we can do pipe replacement. We will

bring in and install a pressure regulating valve and at the other end a drop off or flush point to bleed air out to help control the high pressure and it should be in place by the next meeting. The pile of bentonite is gone because we have put it in the lake and are going to put in some water to test it soon. If it doesn't work we will be back at it next spring. The swimming pool has drawn the attention of the state environmental department who have the same basic concerns as CID about the work being done before the final plaster coating goes down. We have gotten with county purchasing about the contractors permits and compliance issues to see if we can iron out this jurisdictional problem. At this point we are waiting for the state inspector to come in and sign off on the work completed so far. We've been doing some basic maintenance on the roads. We have been working diligently with the state on the emergency funding resolution to keep the district going and to provide critically needed services. If we don't receive funding we will have to layoff some non-union and maybe union employees. Virgil Beagles requested the names and position of each employee and Dr. Moore gave him this information. A discussion was had about some employee qualifications and equipment status.

## **Old Business:**

### **1. Update on Reconciliation**

**Intro:** Dr. Moore said Sharon has requested some documents from the state and he was working to get them. She has also been organizing documents the auditors will be asking for at no charge to us. The 07/08 documents she has put together are available for you to look at. Debbie Palmer has been working hard to fulfill public information requests and gathering documents for the auditors. We are missing about a half dozen pink check copies and are finding them misfiled with other documents. We will, in November, send a request to the board that only limited individuals have access to these files and start a process to record who removes documents to help prevent this from recurring. The 08/09 reconciliation is almost finished and we are just waiting for some documents to complete it.

**Motion:** None

**Second:** None

**Discussion:** None

## **New Business:**

### **2. Authorize Attorney Search (Employee Search)**

**Intro:** None

**Motion:** Burt Rubinowitz. "Direct the General Manager to approve the hiring and begin the search for a full time staff attorney".

**Second:** Joe Mainello.

**Discussion:** Virgil Beagles asked what are we going to pay him and with what. Dr. Moore said we have 5 different attorneys from 3 law firms we deal with and attorney bills we currently owe are in excess of \$70,000. We estimate we could pay as high as \$225,000 this fiscal year and we estimate a staff attorney would cost approximately \$130,000. Chairman Schug said this is only an authorization to go out and find out what this might cost and what may be available. Virgil Beagles said the motion allowed the GM to hire the attorney. Burt Rubinowitz said his investigation had found that an attorney could be hired for around a total of around \$90,000. Virgil Beagles requested the status of the reimbursement of attorney fees by insurance previously directed by the board. Dr. Moore said he would get back to the board with a report. A discussion was had about how to collect the insurance money.

**Amend the Motion:** Burt Rubinowitz. "Direct the General Manager to consider the hiring of and begin the search for a full time staff attorney".

**Second:** Joe Mainello.

**Discussion:** Bill Gideon said this should be done as an RFP.

**Motion withdrawn:** Burt Rubinowitz.

**Second withdrawn:** Joe Mainello.

**Motion:** Burt Rubinowitz. "Direct the General Manager to issue an RFP for the hiring of a full time staff attorney".

**Second:** Joe Mainello. All voted aye except Virgil Beagles who voted nay.

**Discussion:** Joe Mainello wanted to state the attorney would work for the board and not the general manger to which Dr. Moore stated he agreed.

**3. RFP for Accounting Services (Continued Account Reporting and Reconciliation Services Only)**

**Intro:** Dr. Moore said we are going to run out of money for account reconciliation and we need to look at that and we need someone to do our books when the reconciliation is over.

**Motion:** Joe Mainello "Put out an RFP for account reporting and reconciliation".

**Second:** Burt Rubinowitz. All voted aye except Virgil Beagles who voted nay.

**Discussion:** Virgil Beagles asked how we would pay for this position. Chairman Schug stated there is a requirement that this work be done. Virgil Beagles said the current employees should be doing this. Chairman Schug said the past problems with the books were because we didn't have someone outside the community to do our books and stand above local politics. Dr. Moore said he felt we currently do not have the employees on staff with the qualifications to do the reporting and reconciliations as required by the state. We need someone to continue on after the current reconciliation of the books is completed. Chairman Schug said reconciliation should be done on a monthly basis and it hasn't been for a couple of years and we do not have the people here now to do that. A discussion of the scope of duties and time needed for this position was had.

**4. Approve Line Extension Request**

**Intro:** Chairman Schug said Allen Lackman on Deer Lane had requested an extension of service of 875 feet at a cost of \$7735. Dr. Moore said the full cost would be borne by the property owner.

**Motion:** Burt Rubinowitz. "Approve the line extension request".

**Second:** Virgil Beagles. All voted aye.

**Discussion:** Dr. Moore explained this would be at no cost to the district and would add one lot to the standby rolls which would be exempt for 10 years. Water pressure would be improved in the area also.

**5. Add Burt Rubinowitz to the Presentation List**

**Intro:** Dr. Moore said he felt the agenda item was not specific enough and Burt Rubinowitz should be added to the resolution as a presenter.

**Motion:** None

**Second:** None

**Discussion:** None

**6. Founders Day Proclamation**

**Intro:** Burt Rubinowitz read the proclamation.

**Motion:** Virgil Beagles. "Approve the Founders Day Proclamation".

**Second:** Joe Mainello. All voted aye.

**Discussion:** None.

**7. Report on the Meeting Between the General Manager, Office of the State Auditor, and Accounting and Consulting Group**

**Intro:** Dr. Moore said the crux of the meeting was, how do we make sure any issues related to fraud and mismanagement are dealt with that might arise out of the audits. The auditing firm said they wanted an additional \$16,000 to cover these issues in a special forensic audit. It was determined that most of the information needing to be investigated would be discoverable during the fiscal year audits covered in the contract. The assistant state auditor said they would look at the forensic audit issue get back with us. The auditors agreed they would continue with the audit. We explained our desire that they fulfill to the fullest extent the terms and conditions of the contract. Any criminal issues they discover will be in that fiscal year report and be sent to us, the state auditors and the attorney general's office. The 06/07 audit will be done on the reconciled books Sharon Northcott is working on and the succeeding audits depend upon that being completed. In the Monday meeting he will have with Sharon, he will emphasize he wants any suspicious transactions flagged for review. The FEMA contract especially has come under scrutiny and will be thoroughly reviewed. The auditors stressed they would not discuss the audits publicly, only in closed session. He told them we are very concerned about getting to the bottom of any issue of concern raised by the board or the public and we need to have the facts and the truth laid bare. Virgil Beagles said we should

send a letter to the auditors asking them to use "due professional care" in the conduct of the audit. Dr. Moore agreed that would be a good idea and that if the state auditor says they want a separate forensic audit done, he doesn't want Accounting and Consulting Group to do it.

**Motion:** Virgil Beagles. "Have the Chairman send a letter to Accounting and Consulting Group stating we expect them to use due professional care in the conduct of the audits".

**Second:** Joe Mainello. All voted aye.

**Discussion:** Virgil Beagles said this will put them on notice and put additional requirements on them to give us the cleanest audit possible. He read from a letter from the state auditors that we had been given "agency at risk" designation which is the second highest level they have. Dr. Moore said we have until the first or second week of November to respond with a first progress update and then must send regular reports after that. The "agency at risk" designation would be lifted after we complete the 08/09 audit.

#### **Committees:**

**Swimming Pool Committee:** See Manager's report.

**Budget Committee:** Joe Mainello said we have been meeting but we are still waiting for the reconciliation and so there is no report.

**By-Laws Committee:** No report.

**Water Rate Committee:** Chairman Schug said we have a proposal we are going to go forward with which has an increase in the water base rate of \$10.00 and a progressive curve rate for water usage. Water standby fees will be increased to \$56.70 and that is the same percentage rate increase as the metered water rate. After 2 months a 6% interest charge on unpaid metered water and standby charges will be assessed. There will be a \$10 late charge with a 2 week grace period. To help the financially disadvantaged there will be a voluntary donation program the proceeds of which will be evenly distributed amongst those who can prove they are on Liheap. One third of the standby fees will supplement the water system operation and maintenance. This will leave \$166,320 for capital improvements, it will add \$83,160 for operation and maintenance of the water system. That gives us a fixed income for 620 meters of \$205,900. The variable income for water usage is estimated to be \$85,236 and by O&M transfer into water of \$83,160, the total water system income would be \$374,296. The total budget was \$367,797. Back due standby fees would be added to the standby capital improvement reserve. This will get the water enterprise fund as close to solvent as we can estimate at this time. He explained how he had used a compounded interest rate of 3% on the \$17.40 over a 15 year time period, that equaled \$27.11 and the standby fee of \$36 done the same way equals \$56.09. That's where we are going and a public hearing will be held soon.

**Golf Course Committee:** No report.

**Website Committee:** Burt Rubinowitz said we had some problems and resolved them with the host. The site is up and running.

**Water Rules and Rights Committee:** No report.

**Agenda Request:** Barbara Jordan was unable to attend for her agenda request. Chairman Schug asked that people who have problems with their water bill, please allow the staff to help them before bringing a problem before the board. Dr. Moore gave out his cell phone number and asked that anyone call him if they felt he would be able to help them solve a problem if he wasn't in Timberson at the time.

#### **Executive Session:**

**At 12:53pm Motion:** Joe Mainello. "Go into executive session".

**Second:** Burt Rubinowitz.

**Discussion:** Dr. Moore made a point of order that the motion should specify what would be discussed in executive session.

**Motion withdrawn:** Joe Mainello.

**Second withdrawn:** Burt Rubinowitz.

**At 12:54pm Motion:** Joe Mainello. "Go into executive session and discuss the following:

1. Valentine Case
2. FEMA Case
3. Gambel Federal Election Case
4. Glenda Gentry Election Case".

**Second:** Burt Rubinowitz. There was a roll call vote and all voted aye except Virgil Beagles who abstained.

**Discussion:** Virgil Beagles objected saying you could not go into executive session unless the attorney was either present or on the phone. A recess was called while Dr. Moore went and got a copy of the open meetings act. At 1:08pm Dr. Moore read from a list of exceptions for open meetings from the attorney general's office

which stated written communications from an attorney could be used during a closed meeting. Virgil Beagles withdrew his objection.

**Closed session started at 1:11pm.**

**At 3:04pm Motion:** Joe Mainello. "Come out of executive session and return to open session".

**Second:** Burt Rubinowitz. All voted aye.

**Discussion:** Chairman Schug stated they had only discussed those items listed in the motion to go into executive session and we agreed to move forward to resolve all outstanding cases and everything else is attorney client privilege. Bill Gideon stated you could not make decisions in closed session and gave an example and said there was a letter in the files to this effect. Chairman Schug said that is on certain items, others you can. Virgil Beagles asked how they could use public funds to bring a counter suit against him to have him removed from the board and you cannot use public funds to remove a board member. Joe Mainello said we have a prime example of why we need to have an attorney on staff. He also said they would be counter suing to have the board members pay the attorney fees for trying to have him removed from the board. A discussion was had on the past use of standby fees and no agreement could be achieved. Dr. Moore read from the open meetings act that it isn't clear on whether you must have a vote when coming out of closed session. An example given of another case says that if there is no attorney client privilege then a vote should take place after the meeting. He stated that in his experience when he was with the county that when deciding to seek summary judgment in a case that should be done in the open meeting but any strategy concerning that decision would be covered by attorney client privilege. Chairman Schug said we would have to be very careful about the wording of any motion so as not to jeopardize our relationship with our attorney. Dr. Moore recommended that some kind of motion be made referencing filing for summary judgment in the Glenda Gentry case.

**Motion:** Joe Mainello. "File for summary judgment in the Glenda Gentry lawsuit".

**Second:** Burt Rubinowitz. All voted aye.

**Discussion:** None.

**Directors Remarks: None**

**Unscheduled Citizens Communications:** Bill Gideon said we all watched the board of directors in 2007 come in and destroy TWSD. We all saw what they did. What they did is flat malfeasance. What's happening is this board is looking to some taxpayers and saying let's pay some bills. We are paying \$10,000 to a lady to fix our books which they destroyed. They violated the union contract costing us \$35,000. Why aren't we going after that money? That's the people who destroyed this place and cost us the money and we need to go after them. Joe Mainello replied the forensic audit should bring out this information and the reconciliation is being paid by a grant.

Meeting Adjourned at 3:49pm.

Minutes submitted by Secretary Charlie Ross\_\_\_\_\_Date

Approved by Chairman Arden Schug\_\_\_\_\_Date