

# **MINUTES OF TWSD BOARD OF DIRECTORS REGULAR SATURDAY SESSION MAY 15TH, 2010**

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

## **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: Joe Mainello said on item #7 we were unable to resolve it and there are a few areas we will have to go back and revise so he wanted it deleted from the agenda. Burt Rubinowitz said the Water Rate, Water Rules and Rights and Web Site Committees had not met and should be removed. Dr. Moore said the Golf Course Committee had not met and also should be removed.

Motion: Burt Rubinowitz. "Approve the agenda with the items removed as discussed".

Second: Joe Mainello.

Discussion: None.

Vote: Unanimously approved.

## **Minutes of 4-17-10:**

Intro: None.

Motion: Burt Rubinowitz. "Suspend reading of the minutes and approve as submitted".

Second: Joe Mainello.

Discussion: None.

Vote: Unanimously approved.

**Treasurer's Report:** Joe Mainello said he would be giving the bank balances as of the latest statements.

Western Bank checking	\$21,401.85
Western Bank savings	\$2,757.54
First National Bank	\$37,938.96
Compass Bank	\$ 8.00 (Dr. Moore said we will soon be transferring \$2500.00 into this account to avoid monthly service charges.)
Otero FCU	\$4,072.77
Otero FCU Money Market	\$2819.68 (Interest earned \$23.60)

Chairman Schug said that as soon as we get 09 and 10 entered into quick books pro we will be able to give some real good treasurer reports and have a lot better visibility then we've had lately.

## **Manager's Report:**

Dr. Moore said we are still holding our own. We have not had a major community wide outage since Dec 2008. We have water in both lakes over here and we've been working some issues with the springs and we plan on going up there next week and cleaning out some collection points. We are waiting for approval from the state on operational approval of the water filtration system which will allow us to bring it on line. I have had reports from the water operators of water flow of from 280 to 350 gallons a minute and the engineers are confident we could double or triple that output. Cleanup of the existing collection points will definitely improve the flow, we don't know how much exactly. My goal is to have at least 600 gallons a minute coming out of that pipe which should put us in a good position. We continue to hold off doing any road grading and road maintenance because of our lack of funds. On the maintenance side we have instructed the maintenance people to deal with only two issues; safety issues and maintenance for water related equipment.

After looking back at the 08/09 budget and revenues received during the July through October time period, I have said we can have a part time individual to make sure the greens are watered because they could cost \$50,000 to \$60,000 to rebuild. Without objection from the board, I have decided to let one of the office personal to go to the pro shop part time to collect monies and report them to quick books. We do have merchandise left over from last year and our goal is to sell that at a discounted price to get some cash up front for the pro shop now. Our plan is to also use some of that money to do some minimal restocking of merchandise and to help justify the salary of the person from the office who goes over there. We make every effort to make minimal expenditures from the general fund which continues to be in poor shape.

As far as the financial side of the district goes, I was directed by the board to tell Accounting and Consulting Group that the board would not consider that contract unless there was specific justification from the state auditors office for doing so. I spoke with Tenanco Baranko, who is the director of the contract division for the state auditors, he told me the only way they would approve something is if it was clear they were doing something above and beyond the scope of the contract they signed. It is our opinion they are still within the scope, and it is this general manager's position they should just buckle down. It had been at least a month since we handed over all the information we needed to hand over to them and they've been dragging their feet on an exit interview. So we've been turning up the heat at both the state auditors office and on them. I asked them again this week when we are going to schedule an exit interview and they sent an email saying they were going to get on that this week. I plan to stay on this on a daily basis as the state auditors office is extremely unhappy with Timberon and Accounting and Consulting Group and this is putting us in a bad position.

We expect a general fund check which should carry us through until June but the months of July though November are historically very lean months for general fund revenues. I will be sending you a copy Monday or Tuesday next week of a request for a formal audience with the representatives on the FEMA work. I want to go over the numbers with them because it looks like the project will cost far more then what their asking. I can't tell you an exact dollar amount but I will in writing. They have been very cooperative in the past and I expect to be getting with them in the next week or so. The weather seems to be cooperating now and we can sit down and have a serious discussion.

Yesterday I had a conversation with Matt Sealey about the swimming pool and he told me the contractor had not requested an inspection to inspect the pool and remove the red tag. That was very disconcerting news and I will be asking in writing to both the contractor and the county for a meeting with the state pool specialist from the environmental department and construction industries inspector out here post haste and let's get this resolved. I hear from the county and locally that this person has contacted that person and then I finally get in touch with Matt Sealey he says he has not been contacted. He said the last time he was contacted was to renew the construction permit.

The financial situation and interruption in day to day operations is such that I will be preparing and recommending to the board a receivership proposal for your consideration. I am working out details with the state as far as what they can and cannot do. I will either be on the phone or meeting with officials from the state Department of Finance and Administration and possibly with the Drinking Water Bureau operational side. I will be getting back with you and letting you know what details we are putting together and let you know that up front. I have grave concerns that this district needs to move forward, stabilize and get back on it's feet.

Chairman Schug said last meeting we had directed you to apply for the CDBG colonias grants. Dr. Moore said he had not done that yet but will get right on it.

Burt Rubinowitz asked if without the red tag being removed that work could not be done to make the pool ready to be used this summer. Dr. Moore said that would be correct and if you do you face possible penalties or fines and the possibility the inspector will ask the work be torn out. The contractor must ask for an inspection to remove the red tag. The county is responsible for insuring this gets done and I have received assurances this is going to get done but it hasn't yet.

Joe Mainello said the 06/07 and 07/08 audits have been finalized, is that correct? Dr. Moore said the 06/07 is ready for exit interview and they have not asked me for any paper work on the 07/08 for over a month and we have provided them our entire financial files and they have no excuse for not being done. Joe Mainello asked if they had said anything or had just let it hang fire. Dr. Moore agreed they have let it hang fire. Joe Mainello asked if that was because they wanted more money

for the 08/09? Dr. Moore said they have not stated that but at least twice they have surfaced a request for additional funds and they sent me a copy in an email they sent to the state auditors office on that so they have moved forward.

Joe Mainello asked what would be the advantage to the district of being run by a receivership. Dr. Moore said it would depend upon the agreed upon structure between the Timberon board and the state agencies. The ideal situation is that the state of New Mexico had a firm handle and control on what was going. Their main concern is on the financial condition of the district and financial reporting of the district. The main concern of the Drinking Water Bureau is the operation of the water system and that it continue to operate on a sound basis. The structure would have to contain a quote unquote, time out period, where the parties agree to back off and let the receiver and state agencies do their work and get the district back on a sound financial and reporting basis. The most striking advantage would be the ability to focus, with a small staff, on the matters at hand, which is managing this district in a manner to get it back to where it needs to be and get improvements done in infrastructure without constant fear and hang over of litigation. But it would have to be structured so the parties would agree to that. Joe Mainello said that in a board scenario you have to wait for decisions to be made. Dr. Moore said that would be the other issue that would have to be resolved, there would have to be a willingness on the part of the state to allow day to day operations to move forward with an accounting for the finances and transactions. There are ways to set it up right, but if you set it up where they approve every single penny that is spent. On the flip side of that is the state will probably want to see, if there is a little bit of latitude there, they would want to feel they are right, we will do something with a little bit of latitude for them in day to day operations, but major decisions go through us and and if you step out of line on your day to day stuff, your in big trouble. There would have to be some give and take on both sides. Joe Mainello said the reporting procedures would be put in place before any decision is being made. Dr. Moore said they would have to be in in such a way that we could continue our day to day operations and there is a strict transaction by transaction accounting that takes place. Joe Mainello said the only interaction between the receiver and his discharge of duties would be whoever or whatever entity has been placed in charge of the receiver. Dr. Moore said you have to have an accountable overseer who has to be above board and outside the politics of the district and able to control. Chairman Schug said there was another possibility and that was to become a mutual domestic water system. Dr. Moore said that is a possibility but even then you are going to want a receivership transition period. This district has gone from being a private water system to a property owners association to a water and sanitation district so it has a history of change and there is flexibility in the law to do what you're suggesting. Chairman Schug said for the people in the audience a mutual domestic water district only manages the water and everything else is done by the county.

### **Old Business:**

1. Letters to state agencies concerning financial condition of the district

Intro: Dr. Moore said he had requested this item be put on the agenda due to increasing confusions and dissatisfaction with communications with state agencies across the board. This needs to be submitted in writing and be clear and concise, in other words, transparent. We need to tell them this district is in bad financial condition and the fact this district has stayed open past November of 2008 is nothing short of a miracle. It can't keep going this way because it is not fair to the board, state agencies we are reporting to and the citizens of this community. We want to lay it out for them. We have already talked to the state Board of Finance about potential revenue sources and there has been testimony about what this board is trying to do about raising potential revenue sources. We need answers from the state whether it's on elections or whether this board can charge certain types of fees and we need to be able to move forward in a clear and frank discussion of this. If things keep going this way you are either going to be in the hands of the DFA or the state Drinking Water Bureau and I have spoken to officials from both departments all the way up to the legal counsels. They acknowledge their legal rights and abilities and they are very concerned about their tight financial condition. Obviously they would like to see this place solve it's problems and I think we should be very clear about our problems, I have an outline put together with discussions about each individual fund which includes the arguments and controversies considering the use of those funds. It

will ask for clarification and what abilities they have to help the district so we can fix this. We will admit if we have faltered or fallen short but we will also say in fairness we have been good in this area, such as shoe stringing our water system so people don't run out of water. We recommend you approve this and send it to any agency that has or may have been involved in this district in the past concerning it's financial situation.

Motion: Burt Rubinowitz. "Authorize the general manger to draft letters to any appropriate agency who may be involved in the financial condition of the district".

Second: Joe Mainello.

Discussion: None.

Vote: All voted aye.

## 2. Third reading of the bylaws referred back to committee

Intro: Burt Rubinowitz said of the 43 amendments submitted, all but 3 were approved as submitted. The 3 remaining were numbers 30, 32 and 33. Amendment #30 had been amended on April 17<sup>th</sup> but was sent back to committee and the consideration was whether or not the results should be publicly posted and submitted to the secretary of the board. The amendment had already been passed with the new language and the committee wanted to look at that again and decided they didn't want to recommend any additional changes. So no action needs to be taken on that item. Number 32 addressed 10.03 and was basically the same issue but the committee did want to change the language from posting the election proclamation sometime in November to not later than 60 days prior to the election.

Motion: Burt Rubinowitz. "Adopt the amended form (#32) to include the language; not later than 60 days prior to the biennial election".

Second: Joe Mainello.

Discussion: None.

Vote: Unanimously approved.

Intro: Burt Rubinowitz said #33, which is bylaw 10.04, we considered this in committee and the problem we found with the language found in the bylaw "not later than 30 days prior to the election nominations may be filed" and the secretary had determined that is an inadequate number of days and the recommendation to the board is at least 40 or as much as 45 days should replace the 30 days. Also we recommend elimination of the phrase "nominations may be filed with the secretary of the board" and replacing it with "nominations may be filed". Another change concerned the declaration of candidacy which already had a statement which declared the candidate was already a qualified elector which was redundant. We are recommending the removal of the qualified elector affidavit. Additionally, in order to provide separation in time for the filing of declaration for the write-in candidate versus a person who wishes their name to appear on the ballot, we recommend the language be changed to read "the election resolution shall establish the last day for a nominees name to appear on the ballot shall be seven days prior to the last day of filing". This one is not ready for a vote and I'd like to take this one back to the committee and if you'll give us direction to make those recommended changes we will go ahead and do that and incorporate it into the language and bring it before the board at the next meeting. Chairman Schug said you might want to make it clear and include the words "including write-in candidates" about the seven days so there is no assuming or anything and that there can be write-in candidates. Burt Rubinowitz said he would take that to the committee.

Motion: None.

Second: None.

Discussion: None.

Vote: None.

## **New Business:**

### 3. Authorize General Manager to sign for insurance

Intro: Dr. Moore said the workers comp insurance company we have has audited their coverages with us and the company, First Comp, has decided they do not want to cover us for workers comp for heavy equipment operators. We asked our insurance agent to find another company. This new company wants formal approval from this board to approve my signing for this insurance. That is the reason this is on the agenda so I can be able to sign these documents.

Motion: Joe Mainello. "Authorize the General Manager to sign the appropriate paper work for the workers comp insurance".

Second: Burt Rubinowitz.

Discussion: Chairman Schug asked if this would require a copy of the minutes and Dr. Moore said it would require a draft copy of the minutes. Chairman Schug asked Secretary Ross to take care of this. Dr. Moore said time was of the essence and would need this by Monday, at least an excerpt of this portion of the minutes.

Vote: Unanimously approved.

4. Letter of support for TDC's efforts to raise funds for the swimming pool maintenance

Intro: Chairman Schug read a letter from TDC to be endorsed by the board.

Motion: Burt Rubinowitz. "Endorse the letter from TDC".

Second: Joe Mainello.

Discussion: Dr. Moore said the office had heard concerns about how the district would use the money from TDC and he was recommending we add a statement that TWSD pledges to use all donations for operation and maintenance of the pool. Chairman Schug said we will set up a different line item in our accounting system. Dr. Moore said that is what that says. Chairman Schug requested Secretary Ross include that statement in the letter and he agreed to do so. Burt Rubinowitz asked if we wanted to include that in this endorsement item or the next item concerning accepting grants. Dr. Moore said he felt it should be included in both. Chairman Schug this should help people feel better about making donations.

Vote: Unanimously approved.

Amended Motion: Burt Rubinowitz. "Include the statement that: The TWSD further pledges to use all donations received for the repair, operation and maintenance of the pool".

Second: Joe Mainello.

Discussion: None.

Vote: Unanimously approved.

5. Approve accepting grants and acting as fiscal agent for the swimming pool maintenance and life guards

Intro: Chairman Schug said he thought some people in the community were going to write some grants requesting funds and want the district to act as fiscal agent. Dr. Moore said he recommended that the board approve each individual grant as it's received so you can review each grant on it's merit and add "The grants be dedicated to the repair, operation and maintenance of the pool". Chairman Schug said he thought it might be superfluous to add that statement. Dr. Moore said some grants say you can skim 5 or 10% off the top and this will say we are dedicated to seeing that the pool runs. Burt Rubinowitz wanted to be assured that wording it this way doesn't preclude private donations from other sources which was confirmed by Dr. Moore. Dr. Moore said this was a good time to mention state budgeting procedure which says, when you receive a grant from any party or a donation typically you will have an approved budget in place and in order to view expended funds from those the board has to adopt a budget amendment resolution which is then forwarded to the state, approved by the state and at that point your budget is altered and you have an amended budget and you have legal authority from the state. Doing it this way will get this board on track. We will then have on the agenda an item to accept a grant and an item to adopt a budget amendment resolution. He also recommended adding the phrase "on the condition that each grant or donation is individually approved and dedicated to the repair, operation or maintenance of the pool".

Motion: Joe Mainello. "Approve accepting grants and acting as fiscal agent for the swimming pool operations, maintenance and life guards on the condition that each grant or donation is individually approved and dedicated to the repair, operation or maintenance of the pool".

Second: Burt Rubinowitz.

Discussion: BF Adams said that TDC may be expecting an administrative fee for writing the grants. Dr. Moore said that if that is a concern then another item at a later date should be put on the agenda to discuss a memorandum of understanding between TWSD and TDC for a fee structure concerning the writing of grants that would stand outside this motion. Chairman Schug said he heard of this for big grants such as tree thinning but he thought they were donating their services for this one and he didn't want to delay this.

Vote: All voted aye.

6. Certify Jan 12<sup>th</sup> election

Intro: Secretary Ross said he had been told by Manuel Vildasol of the Secretary of State's office that as they read the statute all elections in Timberon were special elections and the governing material for the election was the bylaws. In their opinion, the bylaws were a charter so that any challenge to them was a tort case and had to be settled in the district court. Chairman Schug said we can certify the election and it will probably go to court, or we can hold a new election and no guarantee that one won't go to court.

Motion: Burt Rubinowitz. "Certify the Jan 12<sup>th</sup> election".

Second: Joe Mainello.

Discussion: Burt Rubinowitz said he new there were people who were concerned their vote had been disenfranchised because the candidate they voted for declared after the declaration date. To resolve this, not later than June 15<sup>th</sup> we arrange a meeting with the county clerks office and with the candidates or their designated representative, and anyone else allowed by state law, recount the ballots and present the results to the secretary of the board who would then present them to the board of directors for tally and declare the results of the election. This would probably not change the results of the election but I don't know that and nobody else does and by doing a tally of the actual votes this would clear this up and then we could meet and declare the results. This would be a tally which includes the write-in votes, the official returns are in, but this could help us make a decision as to whether there might be a change in what the results would be and it would better inform the board on what the actual vote was. It would also allow the candidates to observe the counting and tally. Dewayne Beagles said he's just counting the tally and it is here already. Chairman Schug said he also wants to count the ones that were set aside. DeWayne Beagles said it shows none set aside, there are none set aside according to your deal (he holds up a copy of the election results tally sheet) here. Whoever, was on the election committee or the secretary did not turn in any. Chairman Schug said they were turned in and are at the county clerks office. Joe Mainello asked if 82 was the total number of votes received as shown on the results for each. Secretary Ross said that was the total number received that were declared legal votes by the two election boards and the other ballots were sealed and placed in the ballot box and held for 45 days and it is now about 120 days and the integrity of them is what it is. A discussion of how the election was held and whether it conformed to state law was had. Joe Mainello said we are trying to make this equitable and we will probably end up in court even if we have a new election. Chairman Schug asked Dewayne Beagles if we did as Burt wants to do are we still going to court. DeWayne Beagles said the problem we have is, how do we know those ballots are still there and they were never counted. I agree with Mr. Secretary, every legitimate vote was counted. Eva Dysart said the votes on this paper were the ones that went through the balloting machine. Dewayne Beagles said it should have had ballots not accepted. The board has already voted not to certify this election and there should be a new election. Chairman Schug said what we said we were going to do is go to the Secretary of State and get a ruling and we got one and it doesn't do anything. We are trying to settle this in the most equitable way for everyone so we can move forward. There are 82 people here who are being disenfranchised because there vote isn't being counted. DeWayne Beagles said he just wanted his vote to count. When asked what he would do, DeWayne Beagles said he would have a new election and run it straight up and if a write-in vote comes in it's counted and it wasn't his decision of when write-ins would have to declare. He also said he disagreed with the time frames for write-ins in the amended bylaws. Chairman Schug said we may as well certify the election because there is no way to satisfy him. Linda Lea said having the recount of the ballots would be helpful if we went to court. Burt Rubinowitz said he had seen a letter from the Beagles lawyer asking the ballots be preserved and asked if it had been sent to the county clerk to which DeWayne Beagles replied I don't know. He said if that letter did go to the county clerk the ballots should be preserved. Chairman Schug directed the secretary to contact the county clerk to find out if the ballots had been preserved. Bill Gideon said he was told when he turned in his declaration it was too late and he accepted that and he really doesn't want to be at a recounting of the ballots.

Vote: Vice Chairman Rubinowitz voted nay and Joe Mainello abstained.

Motion: Burt Rubinowitz. "Not later than June 1, 2010 the secretary of the board shall determine if the ballots have been preserved, and if so, shall arrange a meeting with the Otero County Clerk and get with candidates or their designated representatives and those permitted to be present by state law for the purpose of observing and tallying all ballots submitted at the January 12<sup>th</sup> election, the results of the election shall be presented to the secretary of the board who shall present them to the board of directors. After receiving the tally from the secretary of the board, the board shall meet within three days for the purpose of canvassing and declaring the results of the election".

Second: Joe Mainello

Discussion: None.

Vote: Unanimously approved.

7. Present 2009/2010 draft budget (Not Done)

Intro:

Motion:

Second:

Discussion:

Vote:

#### **Committees:**

Swimming Pool Committee: None.

Budget Committee: Joe Mainello said we came up with a list of needs which we gave to the general manager. We hope to have the 09/10 budget ready for the next meeting.

By-Laws Committee: Burt Rubinowitz said the bylaws committee had nothing to add after the presentation.

#### **Directors Remarks:**

Joe Mainello said it had been two years since the judge was kind enough to place me on this board. He thanked everyone for attending. He said we really want to let everyone know that we really try to run this district so we do continue to have the services needed, water, roads etc... that make it enjoyable to live in such a wonderful community. He said he was totally amazed the district is still going considering what was happening 2 years ago when he got on the board.

Chairman Schug said we have a fire hydrant. It was a cooperation between the fire department and TWSD. We are also putting in a line to provide proper supply of water to T17. Dr. Moore commented that was up Pounds Road. He wanted to thank Shantell for her hard work on the swimming pool. He thanked everyone for coming.

#### **Burt Rubinowitz made a point of order to reconsider item #6 Certify the Jan 12<sup>th</sup> Election**

Second: Joe Mainello.

Vote: Unanimously approved.

Motion: Burt Rubinowitz. "Rescind all acts or statements by the board regarding the January election since January 15<sup>th</sup> up until we passed the previous motion regarding this issue".

Second: Joe Mainello.

Discussion: There were two or three motions previously enacted by this board that may prevent this board from either holding a new election or declaring the results of the election. We had several votes we took in the past which have not occurred and I want to rescind them so we can move on to the motion we passed today.

Vote: Unanimously approved.

**Agenda Request:** None.

**Executive Session:** Address communications from attorney Drew Cloutier in Beagles vs TWSD (D-1215-CV-200500329)

Motion: Joe Mainello. "Go into executive session".

Second: Burt Rubinowitz.

Vote: Chairman Schug – aye. Vice Chairman Rubinowitz – aye. Treasurer Mainello – aye.

Motion: Burt Rubinowitz. "Come out of executive session".

Second: Joe Mainello

Vote: Chairman Schug – aye. Vice Chairman Rubinowitz – aye. Treasurer Mainello – aye.

Motion: Joe Mainello. "Do not pursue a mediated settlement in the water rate adjustment hearing".

Second: Burt Rubinowitz.

Vote: Unanimously approved.

**Unscheduled Citizens Communications:** None.

Motion to Adjourn at 2:00pm by Burt Rubinowitz and seconded by Joe Mainello. All voted aye.

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

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