

# MINUTES OF TWSD BOARD OF DIRECTORS REGULAR SATURDAY MEETING 19 JUNE, 2010

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**

Motion: Joe Mainello. "Approve the agenda as presented and written".

Second: Burt Rubinowitz.

Discussion: None

Vote: Unanimously approved.

## **Minutes of 5-11-10, 5-15-10 and 5-21-10**

Motion: Burt Rubinowitz. "Dispense with the reading of the minutes and accept them as presented accept for a typographical error on the 5-15-10 minutes, item #6, buy should be by".

Second: Joe Mainello.

Vote: Approved by all.

**Treasurer's Report:** Postponed until Dr. Moore arrives.

**Manager's Report:** Postponed until Dr. Moore arrives.

## **Old Business:**

### **1. Certify the Returns of the January 12<sup>th</sup> Election**

Intro: Burt Rubinowitz made a presentation using the projector and his computer. He said he had asked Joe and Kris Wheeler to be present in case there were questions about the election since they were Election Judges. Secretary Ross will also be answering some questions as Chief Elections Officer. He showed the part of the Water and Sanitation District Act that describes the duties of the board concerning elections, NMSA 1978 73-21-14 and read "Not later than thirty days before any election pursuant to Subsection A or B of this section, nominations may be filed with the secretary of the board, and, if a nominee does not withdraw the nominee's name before the first publication of the notice of election, the name shall be placed on the ballot. The board shall provide for holding such election and shall appoint judges to conduct it. The secretary of the district shall give notice of election by publication and shall arrange such other details in connection with the election as the board may direct. If within ninety days prior to a board election, the district publishes materials that describe the qualifications, experience and accomplishments of incumbents, equal space shall be made available without charge for similar information provided by opponents seeking a position on the board. The returns of the election shall be certified to and shall be canvassed and declared by the board. The candidate receiving the most votes shall be elected. Any new member of the board shall qualify in the same manner as members of the first board qualify." He asked Secretary Ross if to the best of his knowledge if the procedures in 73-21-14 were followed. Secretary Ross replied "To the best of my knowledge, yes". Burt Rubinowitz asked "And you were the person who set up the details of the election?". Secretary Ross replied "Yes I was". He then showed a copy of the Election Proclamation and said there had been an earlier version with the board positions shown wrong. Burt Rubinowitz asked Secretary Ross "Under 1.D., it states, All candidates must declare the one position they wish to run for at the time of declaration of candidacy., is that correct?" Secretary Ross replied "Correct". He then asked Secretary Ross, "Number 2 states, All declarations of candidacy shall be filed with the Secretary of the Board of Directors of TWSD before 5:00PM Tuesday, November 24, 2009, is that correct?" Secretary Ross replied "Correct." Burt Rubinowitz said, "My next question is how many people filed before the deadline stated in the election proclamation?" Secretary Ross replied "Three people declared there candidacy prior to the deadline of 5pm on November 24<sup>th</sup>." Burt Rubinowitz asked "Were they for different positions?" Secretary Ross said "They were all for different positions". Burt Rubinowitz asked "So there were only three declarations for three different positions and did any of them request their name not appear on the ballot?" Secretary Ross said "They did not." Burt Rubinowitz said "All three candidates, who declared by the deadline, all there names appeared on the ballot, is that correct?" Secretary Ross replied "Correct." He then asked, "Are

you familiar with the Gonzales decision in Gonzales vs The Middle Rio Grande Conservancy District"? Secretary Ross replied "On a general basis, yes". Burt Rubinowitz said "In the Gonzales decision, the board may not deny write in candidates. Is that how you recall that?" Secretary Ross replied "As I understand it, as a basic tenet, yes". He went on to say "So there were no candidates who requested to be write in candidates and when you submitted the list of the candidates to be printed on the ballot there were no write in candidates and three candidates only, one for each position". Secretary Ross replied "That is correct". Burt Rubinowitz said "That being the case, I move to declare there were three candidates on the ballot, one for each of the positions, and there was no declared write in candidate, and that we declare the results of the election, and dispense with the canvassing of the election because there were only three candidates, there were only three positions. All legitimate votes cast could only be for the three candidates and there is no reason to look at the ballots or canvass the election.

Motion: None per item #1 Intro.

Second:

Discussion:

Vote:

## 2. Canvass the Returns of the January 12<sup>th</sup> Election

Intro:

Motion: None per item #1 Intro.

Second:

Discussion:

Vote:

## 3. Declare the Results of the January 12<sup>th</sup> Election

Intro: See Item #1 Intro.

Motion: Burt Rubinowitz. "Declare the three candidates, Burt Rubinowitz for Position One received the most votes, Pete Bowidowicz for Position Two received the most votes and Joe Mainello for Position Four received the most votes".

Second: Joe Mainello.

Discussion: DeWayne Beagles and Burt Rubinowitz had a discussion about the deadline for declaring the results of the election. DeWayne Beagles claimed NMSA 73-21-30 required the results to be declared within 5 days of the election. Burt Rubinowitz said that NMSA 73-21-30 addressed bonds and that NMSA 73-21-14 and the bylaws addressed elections of board members and they had no deadline for declaring the results. He also said the Secretary of State's office had told Secretary Ross that all district elections were special elections and were governed by the bylaws. Pete Bowidowicz said he agreed with DeWayne Beagles. Chairman Schug said he felt the Secretary of State's office had been the cause of the delay because they did not provide guidance in a timely manner and after finally receiving their opinion the board was justified in continuing the process of declaring the election. Virgil Beagles said having a new election with a write in candidate spot on the ballot would solve any threat of litigation. Chairman Schug said that every time we have had an election since the law was changed to allow people who don't live here to vote, it has ended in a lawsuit and if we have another election it won't be any different.

Vote: Roll call vote: Chairman Schug – Aye, Burt Rubinowitz – Aye, Joe Mainello – Aye, Pete Bowidowicz – Nay, Virgil Beagles – Nay.

## 4. 2<sup>nd</sup> Reading of the Bylaws

Intro: Burt Rubinowitz said article 10.4 of the bylaws had been referred back to committee for clarification. He read the new language which details how candidates shall declare and establishes deadlines for declaring for board elections.

Motion: Burt Rubinowitz. "Adopt amended bylaw 10.4 as presented."

Second: Joe Mainello.

Discussion: None.

Vote: Motion approved. Virgil Beagles and Pete Bowidowicz abstained.

## 5. Disposition of Letters to the Manuel Lujan Agency

Intro: Dr. Moore said he had nothing new on this. Virgil Beagles said we needed to get more forceful on getting a response from the Manuel Lujan Agency. Dr. Moore agreed and said Mr. Beagles suggestion that we get the State Insurance Commission involved was a good idea and he would follow up on that Monday morning. Pete Bowidowicz asked if the parent company had been notified and Dr. Moore said they (Travelers Insurance) had been copied on the letter to the Manuel Lujan Agency. Pete Bowidowicz suggested we write the Travelers Insurance company directly and copy the State Insurance Commission. Virgil Beagles asked Dr. Moore if he had complied with the request from the Manuel Lujan Agency to provide the invoices and Dr. Moore said he thinks he did but that it was a long time ago. Dr. Moore said he would get the invoices and copies of documents he sent out and provide them to the board.

Motion: Virgil Beagles. "Send a letter with all the invoices to the Manuel Lujan Agency, Travelers Insurance and the State Insurance Commission prior to 1 July 2010."

Second: Pete Bowidowicz.

Discussion: The deadline date was discussed and added to the motion.

Vote: Unanimously approved.

6. Status of Letter Sent to State Agencies, Legislative Committees and Personages

Intro: Dr. Moore said we have no response from these different agencies of which the original was sent to the PRC and copies sent to the Department of Finance, State Auditor's office, Co-Chairs of the House/Senate Finance Committees, Legislators who represent this district and the Attorney General's office. Virgil Beagles said he wanted to know what the agencies, the Water Bureau and the DFA, said that he spent two days in Santa Fe meeting with. Dr. Moore said it would be covered in the manager's report.

Motion: None.

Second: None.

Discussion: None.

Vote: None.

7. Consider Proposal for the Establishment of a Receivership

Intro: Dr. Moore said he met with the State Department of Finance attorney, their Deputy Director, the head of budgeting over local government, our budgeting analyst and their representative who analyzes taxes and fees. In the meeting, we discussed the issue of receivership and structuring and they would be willing to look at a proposal from us on how that would work. We discussed their concerns on the budget side and their staff handling everything directly. We also talked about various agencies and their relationship as concerned with procurement, purchasing, rate setting and the role of the courts. We talked about taxation and revenue and the State Auditors office and their rolls and responsibilities. What came out of that basically, is an agreement in which they asked for three things; a copy of the court ruling from the early 1990s that established the district; the Valentine ruling because of the ruling on the tax revenue side because it muddies the water because in their view you have two contradictory laws and they are not anywhere near a decision on what goes where and that trying to impose additional tax would be very problematic; a draft proposal on how it would be structured. He said he would draft a proposal and take it to the board but needed some direction from the board before he could do that. One idea is to have a person here on the ground that they liked and could work with. They would also want some type of committee made up from various agencies that have managerial jurisdiction and responsibility for oversight in Timberon. This person would report to that committee on a regular basis and there would have to be stronger oversight and approval mechanisms for things like major purchases and our day to day things like the fixing of the pipes with more regular type reporting than there is now. We talked about not micromanaging things, like not having to call Santa Fe before you fix a water leak, and making sure that major managerial and financial things are discussed before they occur. The discussion took about an hour and 45 minutes and I'm trying to boil it down for you and so those are the key components of our discussion. There is some type of a Pre-Hearing Conference with the state Public Regulation Commission and there are some issues and discussions that we had and will need to continue to have but I did not get to sit down personally with the PRC to talk. We know they want to discuss the receivership issue and you'll see when we get to the managers report and the cash balances that we are skimming the edge of the cliff and the state recognizes that and would like to help us get back on our feet. They agree that some kind of managerial oversight is necessary. If the court could set it up and all the parties would agree to it and the state agencies could all agree what their roll is. We are not in a very strong position but we are in some what of a position to talk about what we need to do to make sure the day to day management of the district continues. It was a very difficult discussion with DFA, we talked about the huge disparity between revenues and expenses and how we get ourselves back on the right track here. They did tell me we are not the only local government body in this boat, but we are certainly one of the worst. My recommendation is to have your General Manager prepare a proposal to be submitted to the state agencies for their review and evaluation.

Motion: Burt Rubinowitz. "Direct the general manager to work with relevant agencies and prepare a draft proposal for receivership to be considered at the next regular meeting or earlier if it is ready prior to that time."

Second: Joe Mainello.

Discussion: Virgil Beagles said we only have \$33,000 in the bank and we're discussing going bankrupt and we are already bankrupt and do we owe Accounting Group and Consultants money? Dr. Moore said he thinks we owe them approximately \$12,000 and we'll owe them another \$13,000 when they start 08/09. Virgil Beagles said we owe more than we have in the bank and how are we going to pay the workers. Joe Mainello asked Virgil Beagles if his statement meant that receivership was necessary. Virgil Beagles agreed it did. Joe Mainello said that a receiver could do that but a manager could not. Virgil Beagles said he can't touch this money that belongs to Accounting Group those are designated state funds for the audit so we have only \$21,000, not \$33,000. Dr. Moore said the payroll is about \$9,000 every two weeks in answer to Virgil Beagles

question. He also said we have a commitment from the state to process a payment for about \$20,000 to replenish our standby charge account and I have to be in Las Cruces Monday morning with paperwork to get an additional \$70,000 for the standby water account. We'll be able to due basic water operations and repairs but we still have some bills to pay. We have to pay about \$16,000 to finish out the payments on the filtration system and we still have some repairs to make to the collection system. Joe Mainello stated we are getting far afield of the motion, and he thought that receivership means disbanding the board and handing over management of the district to a third party. Dr. Moore agreed that basically that's correct, the managing third party becomes the State of New Mexico under an agent appointed in Timberon and they requested that I consider doing the on the ground agent roll for the receivership. I told them I'd think about it. Joe Mainello asked what the advantage was to having a receiver versus the make up we have now. Dr. Moore said the responsibility for conduct of this district falls on the shoulders of the court and the State of New Mexico. Joe Mainello asked if there was an advantage as far as the ability to spend money, the dispersement of money now received by the receiver for the district which is now tax money and water dues. So now is it one big pot and monies coming in are for roads and maintaining the water system and everything because now the receiver operates differently? Burt Rubinowitz said the motion was made so that the manager could get with the relevant agencies and answer the questions you and the public have. He also said he thought this had not been done enough times for anyone to know exactly what situation this would create and that's why I used the language draft a proposal to be considered by the board. What they come back with may or may not be acceptable to this board and no one has a really clear idea of what that relationship would entail and that's why I would like to see something brought together by the relevant agencies and Dr. Moore and look at it. Dr. Moore said there is a sense of urgency at the state agencies and we could be talking about a matter of days instead of weeks. The State of New Mexico does not relish the idea of taking over a broken local government, however they do see the need to see the ship, from a financial or whatever stand point you look from, righted. They do recognize progress of some things on the ground such as avoiding community wide outages and those kind of things but they are aware of financial problems here and across the state they are watching what is happening here and others may be taking a strong look at taking the same direction we are. The history of Timberon is ingrained in just about every state officials minds in the State of New Mexico.

Vote: Unanimously approved.

At this time, Burt Rubinowitz made a motion that the General Manager give his report because he wanted to give a presentation on NMSA 73-21-19 and he wanted to hear the report prior to his presentation.

**Manager's Report:** Dr. Moore said we have one or two working fire hydrants in town. Fishing is good and despite Pete Bowidowicz having to work double or triple shifts, he has remained in contact with our folks and the golf course is open and going. Very little work is being done on the roads due to lack of funds. Another item discussed with DFA was defaults and deficiencies, which means the district is not meeting it's obligations to one or more parties. We currently owe approximately \$75,000 to attorneys of which one firm is owed \$58,000 and they have sent a letter saying they are going to cut off representation if we don't pay them. At the golf course we had some carry over monies and we're able to limp along with cost cutting measures being implemented. On the water side, we bring in approximately \$14,000 a month in metered water fees and we are getting 2 to 5,000 dollars a month in standby water charges. We are getting about \$4,000 in taxes and we are paying our employees first as they are our best asset and we are letting other bills go unless they are absolutely necessary. Stockage level on spare parts is low although we try to have enough parts on hand for new installs as that means future revenue. I tried vigorously to get the auditors here today but they couldn't be here and are still scheduled for Wednesday. We have been sending copies of our correspondence to Accounting and Consulting Group to the State Auditors office to keep them aware of what's going on as they promised in April they would be ready for an exit conference in 2 to 4 weeks. They will do 06/07 and 07/08 at the exit conference and they should have findings for the board and we will ask for sanctions against Accounting and Consulting Group since it's taken way too long. Virgil Beagles interjected that the contract also included 08/09 and when will that be done. Dr. Moore said he agreed but the State Auditors office wanted it done separately and he didn't know why. Virgil Beagles said he had not seen any response from the State Auditors office about the additional money they were asking for when they were suppose to also do 08/09 in the original contract to which Dr. Moore agreed. He asked Dr. Moore how much we owed them. Dr. Moore said they had sent bills for all but about 10% of 06/07 and 07/08 and there is about \$12,000 or \$13,000 we told them they won't receive until we get an exit conference. With that payment they will have received \$26,000. The audit will then go to the State Auditors and they will let us know when they deem it complete and we cannot release any findings or anything until they deem it complete. I am definitely not pleased with the way they have conducted this audit and I would have no problem writing a letter to the State Auditors office requesting sanctions against this group. Virgil Beagles said he would like to hear a motion that we don't give them another dime until they do the 08/09 audit to which Dr. Moore said he agreed. Burt Rubinowitz said he thought they already had voted on a motion to that effect. Chairman Schug said he thought it was to not pay them any extra money. Dr. Moore

said he thought that as GM he could exercise discretion and not pay them. Chairman Schug said we should take this up with them on Wednesday. Bill Gideon asked if the exit conference was an open meeting and Dr. Moore said it was not because the findings were not to be disclosed until the State Auditors office gives the OK. Burt Rubinowitz said he thought there was a 10 day waiting period before discussing anything about the exit conference in public, which Dr. Moore agreed with and he said we were admonished by the State Auditors in that meeting up in Albuquerque that unless they advertised a closed session they could not meet with a quorum of the board. Chairman Schug said we want to have quorum present at the exit conference instead of just two members present. Dr. Moore said it seems as though we will be sanctioned whether we do or do not comply. Bill Gideon said the Civil Division of the Attorney General's office give legal opinions about things like this and you should talk to them about this because they uphold the Open Meetings Act. Chairman Schug asked DR. Moore to give them a call to which he agreed. Chairman Schug said this does not seem to be specifically covered in the statute and if the auditors say we can't have a closed meeting we will just send two representatives. Chairman Schug directed Secretary Ross to put out an agenda for a special meeting with closed session for the audit exit conference. In case they don't allow the meeting we need to vote for two members to attend along with the GM. Burt Rubinowitz and Virgil Beagles volunteered to attend the exit conference. A discussion was had about how to hold the special meeting for the exit conference and the agenda items.

8. Resolve Deficiencies and Defaults pursuant to NMSA 73-21-19

Intro: This was discussed during the manager's report and Burt Rubinowitz said he did not feel it necessary to give his presentation after having heard the report.

Motion: None.

Second: None.

Discussion: None.

Vote: None.

9. Authorize General Manager to Sign Requests for Grant Reimbursements

Intro: None.

Motion: Virgil Beagles. "Authorize General Manager to Sign Requests for Grant Reimbursements."

Second: Burt Rubinowitz.

Discussion: None.

Vote: Unanimously approved.

10. Report of Monies Due on Capital Outlays and Grant Projects

Intro: Dr. Moore said this was covered in the manager's report. Virgil Beagles asked how much of the \$70,000 did we owe the engineers and of the remaining \$53,000, who do we owe that to? Dr. Moore said approximately \$17,000 for the engineers and \$16,000 for the membrane filter system although there may be another grant out there to help with that. Virgil Beagles asked how much of the \$70,000 would go into the operations account? Dr. Moore said no more than about \$30,000.

Motion: None.

Second: None.

Discussion: None.

Vote: None.

**New Business:**

**Treasurer's Report:** Joe Mainello gave the balances of the different bank accounts;

Western Checking	\$13,616.97
Western Savings	\$12,757.44
Otero Fed Credit Union	\$2,822.19
	\$4,074.50

Virgil Beagles asked what the money in the Otero Fed Credit Union was used for? Dr. Moore said that is money we usually hold on to for one, for a rainy day and two for example if we need to buy some gravel for a washed out section of road or for over runs. Virgil Beagles asked what the Western Savings money was for? Dr. Moore said the Western Bank account monies are for the auditors. Virgil Beagles asked if the Western Checking account funds were water or general fund money. Dr. Moore said it is a mixture and when we receive reimbursements from grants those monies go into the standby charge account and would be drawn out of that account to help pay water operating expenses. Virgil Beagles said there was a check for \$10,000 on 5/16 from the standby account. Dr. Moore said it was to cover water operation expenses such as payroll and there may have been some water repair supplies in there too.

11. Declare Founders Day for 2010

Intro: Burt Rubinowitz said we passed the Founders Day Proclamation resolution some time ago to be held in conjunction with the 4<sup>th</sup> of July celebration and we need to establish the date because one of the things we

created was a free recreation facilities day for Timberson property holders. He said he had talked to TDC and they are holding there celebration on July 3<sup>rd</sup> and July 4<sup>th</sup> there is the Poker Run that Jeremy is doing and TDC suggested we make Founders Day on Monday July 5<sup>th</sup> and he agreed with that.

Motion: Burt Rubinowitz. "Declare Founders Day celebration to be July 5<sup>th</sup>."

Second: Joe Mainello.

Discussion: BF Adams asked what kind of activities are planned? Burt Rubinowitz said we don't have any activities planned other than to have the recreational facilities open to property owners free of charge.

Vote: Unanimously approved.

## 12. Report from DTI on Fatality Accident Investigation

Intro: Chairman Schug said he called around and the only person available who could answer any questions was Yvonne and she said SID, Carlos Martinez, came down, went through all their books and said unless the blood test showed a high concentration of alcohol there would be no further action. When the state police moved the quad they found the brakes did not work and there was a low right front tire and they are doing nothing more in the investigation. So as far as anybody knows the case is closed. Virgil Beagles said he heard they were going to get a substantial fine and suspension of service for a while. Chairman Schug said no one has told DTI that. Virgil Beagles said he was concerned about liability for the district because it is the land lord and Bill Curtis also expressed concern about DTI properly running their establishment as well as liability to the district. Pete Bowidowicz said the oversight on any alcohol is SID, criminally, that is the contractual agreement when they get a liquor license. I've sent them up here and their have been inspections because I directed them to and if you'd like to stay in compliance I'll bet you I can get about a half dozen state police officers over here to do compliance on everybody driving on the roads illegally of which about 60% are driving without insurance or properly registered vehicles. As far as the actual law enforcement, no we are not pecuniary liable under the criminal code as the landlord. That's between the ABC SID, the enforcement element of the Department of Public Safety, and the holder of the alcohol and container license.

Motion: None.

Second: None.

Discussion: None.

Vote: None.

## 13. Approve One Month Extension of General Manager's Contract Under Same Terms and Conditions

Intro: None.

Motion: Burt Rubinowitz. "Extend the General Manager's Contract Under Same Terms and Conditions for one month."

Second: Joe Mainello.

Discussion: Burt Rubinowitz said his only concern that one month might not be long enough. Virgil Beagles said he was suppose to have brought us his contract last month to discuss it in closed session. Chairman Schug asked Dr. Moore if he would present something for them to consider within this time period to which Dr. Moore replied he would.

Vote: Unanimously approved.

## 14. Request Meeting with County Commission to Discuss Attorney Fees and Becoming a Mutual Domestic

Intro: Chairman Schug said that in the light of some of the things Dr. Moore found out that maybe we should drop this one. Chairman Schug asked Dr. Moore if we needed to talk to the county about receivership and Dr. Moore said at some point in time we will but not right now.

Motion: Burt Rubinowitz. "Table item #14 indefinitely."

Second: Joe Mainello.

Discussion: None.

Vote: All approved except Virgil Beagles who abstained.

## 15. Set a Date for Town Hall Meeting to Discuss Options Available for the Current Financial Situation

Intro: Chairman Schug said it seems when can get a lot of people to a town hall meeting but not to a board meeting and I think the town needs to know what's going on with our financial situation and what options may be available and what they would like us to do. The town seems to be blase about this stuff although they are very much affected. Virgil Beagles said you don't need a board action to call a town hall meeting and Chairman Schug said he thought it was appropriate. Dr. Moore said the staff put it together and advertised it last year but this time he recommended someone bring some food along. Bill Curtis suggested putting out a Notice of Quorum and that it should not be about official business but informal. BF Adams voiced concern about violating the Open Meetings Act and Chairman Schug said it would be OK as long as no decisions are made. Dr. Moore said the GM could convene the meeting so then it would be done at staff level. Chairman Schug said he would get with Dr. Moore and ask TDC if they wanted to get involved. Dr. Moore said the district cannot buy food but could ask people to bring some.

Motion: None.

Second: None.

Discussion: None.

Vote: None.

16. Hire Hubert Quintana to Help in Acquiring Water Grants, ICIP and Other Applicable Economic Aid

Intro: Chairman Schug said the reason the word hire is there is because they do take part of your grant money for administrative costs although many grants already include it so you wouldn't be losing much. Hubert has many, many, many years of expertise in this area and he knows where to get grants that we don't know about or don't have the time to research all this stuff. Burt Rubinowitz said he had once talked to their office and the first 20 hours are free and thereafter it is \$25 an hour with a cap of \$2,000 for assisting in grant writing. Dr. Moore said, as a point of interest, Hubert is the Director of the Southeast New Mexico Economic Development District and we could do an agreement with them and then present to this board and their board. Joe Mainello said it sounded like a catch 22 situation. Chairman Schug said he was under the impression they didn't charge you for doing the grants they just took a percentage of the grant money when you received it.

Motion: Virgil Beagles. "Have the General Manager contact Hubert and see if there are any grants out there and see if they would do it on a fee basis."

Second: Burt Rubinowitz.

Discussion: None.

Vote: Unanimously approved.

17. Designate Representatives to Attend June 30<sup>th</sup> PRC Meeting

Intro: Dr. Moore said this is a pre-hearing conference and if a quorum wants to be there we have to do a notice of quorum and if less than a quorum you must designate members to attend that meeting. The purpose of the meeting is to discuss two orders and one talks about the jurisdiction of the PRC and the second outlines a litany of issues the PRC has with Timberon. In the next week we will be answering those orders and getting it to them in a timely manner.

Motion: Virgil Beagles. "Advertise this as an open meeting at the PRC on June 30<sup>th</sup> at 1:30pm."

Second: Joe Mainello.

Discussion: Burt Rubinowitz said it was his understanding that we had voted twice to not be subject to the regulations of the PRC and 73-21-55 which was changed by HB337 and states that we are not subject to the state's public utility act and we voted twice to not be subject to the PRC, and I would like to know under what authority they are using that requires us to attend these meetings. Dr. Moore said one of the orders is to discuss that very issue. There has been discussion with the commission on this issue but they want to hear more. Joe Mainello asked if we had received the litany of issues and Chairman Schug said we had received a litany of issues that was sent to the PRC. Chairman Schug asked Dr. Moore if we had received an agenda and Dr. Moore said we have not. Dr. Moore said this was an administrative procedure and we went through a similar thing when we went before the state Labor Relations Board, and some of the things they talk about is if anything can be resolved, and if not, in what order we are going to proceed in the hearing itself. Virgil Beagles said the main thing they are concerned about is the health and safety of the people here and they've got full authority over that. Chairman Schug said we have a Drinking Water Bureau and an Environmental Bureau which looks after that and that's their charter and the PRC's charter is to set rates. Joe Mainello asked if there had been any health and safety concerns raised? Dr. Moore said when you have these issues raised it is brought to the Drinking Water Bureau and when the PRC deals with a body corporate in the private sector they have direct oversight function to see that a corporation is not acting, or not able to operate in a good or safe manner. My reading of the documents is that they are considering that very question. It is clear that Timberon is a taxing body so the Department of Finance asked how a water and sanitation district ended up operating a golf course, fishing lakes and a swimming pool. We went through the history and they understand that and don't question the districts organization or function, they question how it was set up back in 1993. There is some murky water here and that's one of the issues they will be exploring. Chairman Schug said that has nothing to do with water. Dr. Moore said he's not stating his opinion he is explaining what the folks at the state are saying and they're scratching their heads. We have a strange and interesting mix of enterprises and clearly defined government type functions and the state has been wrestling with this issue for the last 15 to 17 years. Joe Mainello asked again if we are in receipt of any violations of health or safety regulations. Dr. Moore said that as far as the Drinking Water Bureau goes we are not at least for the last year and a half since the boil water alert situation we had in 2008. Dr. Moore said this pre-hearing conference is definitely the place where you bring up these issues. Burt Rubinowitz again voiced his concern about attending meetings at the PRC when 73-21-55 exempts the district from their jurisdiction but would not object to attending on a courtesy basis. Virgil Beagles said he thought he heard Dr. Moore say the DFA had asked him to get clarification on the standby fees and that's through the PRC? Dr. Moore said they did and there are two places you can go for clarification, the standby charges we have were established and approved through the PRC, so they are one place in which you would discuss it and the other would be the office of the Attorney General. That was at a

meeting in Albuquerque in 2008. Burt Rubinowitz said he wanted to point out that was prior to 73-21-55. Chairman Schug said he thought we need to go there and bring up our reservations about their authority and we can answer any questions they have.

Vote: All approved except Burt Rubinowitz who voted nay.

18. Consider Censure of Director Beagles

Intro: None.

Motion: Burt Rubinowitz. "Table this item indefinitely."

Second: Joe Mainello.

Discussion: None.

Vote: Unanimously approved.

19. Announcement of Special Session/Closed Meeting to Receive the Audit Exit Conference from Accounting and Consulting Group at 2:00pm Following this Saturday Regular Meeting

Intro: Not done because Accounting and Consulting Group could not be here.

Motion: None.

Second: None.

Discussion: None.

Vote: None.

20. Swear in Elected Directors at the End of the Meeting

Done at the very end of the meeting.

Peter Bowidowicz said he abstained from being sworn in due to his feelings about the election and will pass as being a board member in the future but will still be a consultant for the golf course.

Virgil Beagles said that if you have the swearing in this will be brought before a federal judge because the election didn't have write in candidates and we will reopen the federal case.

Burt Rubinowitz and Joe Mainello were sworn in as directors.

**Committees:**

Swimming Pool Committee: Chairman Schug said they are ready for final inspection and we have one lifeguard and a trainer for them. Dr. Moore said they had one application for lifeguard and one individual who is going to volunteer. Chairman Schug said there was an electrical inspection to be done and Dr. Moore said there needs to be a final inspection on basically everything and an operating permit issued each year in response to a query from Joe Mainello. Dr. Moore said there have been donations and we will let the board know on a dollar amount so the board can vote on it so we can use it.

Budget Committee: Joe Mainello he had no report because the budget committee hasn't met lately.

By-Laws Committee: Burt Rubinowitz had no report.

Water Rate Committee: Chairman Schug had no report.

Golf Course Committee: Pete Bowidowicz said we got some heads for the main pump at the main lake and that will be used to get water on the fairways which are getting brown. On number nine there was some mention of verticutting which at this altitude is unheard of and talk of thatching and reseeding. Next weekend I'll put fungicide on all the greens. Overall between the volunteers and John it's not in the best condition, but it's playable and we have Debbie in the pro shop during the week. I caution anyone who doesn't pay, there is a statute, which is called, acceptance services, and it is immediate arrest, you go directly to jail. Chairman Schug said he had heard in the past they had watered the fairways from the spring. Pete Bowidowicz said you have to keep up the head pressure and you have a decision to make, and that is do you want to keep greens or do you want fairways. And since each green is worth about \$36,000 to replace it and everything on the fairways is hardy mule grass they'll stay brown until you water it then they'll turn green. My recommendation to Bill and John is our priority is greens and as soon as we get the pump up we'll go with fairways. Plus we don't have any money to pay somebody to water fairways and it's such a delicate gravity system and it's so complicated that it's our decision to go with the greens. Bill Gideon asked if the pump was not working? Pete Bowidowicz said we had to send in to have the heads rebuilt and a couple of valves weren't there when we took the heads off it.

Website Committee: Burt Rubinowitz said it is time for the first annual renewal and the cost to set it up had been \$221. There should be no set up charge this time so it should be less. He said he would be contacting them and transfer ownership to the district and it has to be renewed some time in July.

Water Rules and Rights Committee: Burt Rubinowitz had no report.

**Directors Remarks:**

**Agenda Request:**

**Executive Session:** Discuss communications received from the district's attorney concerning attorney's fees and adjustments. Virgil Beagles said you cannot discuss attorney bills in a closed session because it is public



business. Pete Bowidowicz agreed with Virgil Beagles. Dr. Moore also agreed and recommended scheduling a special session or discussing it at the next regular meeting. Virgil Beagles said the letter said the attorneys wanted \$15,000 up front and \$10,000 a month. Dr. Moore said we can't afford to pay it right now. Chairman Schug said he would like to have the manager and some members of the board negotiate with the attorneys about these fees because he didn't feel some of our representation was really adequate. Virgil Beagles said you need to remember Judge Reynolds ruling, he told you they were reading the law wrong and couldn't represent Wausan and McCall and the district and over \$125,000 was spent to represent Wausan and McCall, so this board needs to be sending a letter to them saying you need to refund that money to us because of what the judge said. If you have a question about it you need to ask the judge to restate his finding because he told us in open court and your attorney got up and said the reason we are doing this is because we wanted to control our witnesses.

Motion: Virgil Beagles. "Send the lawyers a letter saying we want reimbursement of \$125,000 for representing Wausan and McCall, contrary to what the court said."

Second: Pete Bowidowicz.

Discussion: None.

Vote: Pete Bowidowicz and Virgil Beagles voted aye. Joe Mainello abstained. Burt Rubinowitz and Chairman Schug voted nay. The motion did not pass.

**Director's remarks:**

Virgil Beagles had none.

Burt Rubinowitz said that today is June 19<sup>th</sup> and the Texas legislature failed to inform the people of Texas when the emancipation proclamation was passed for six months. Today is the day that people in Texas celebrate black liberation day.

Pete Bowidowicz had none.

Joe Mainello thanked Pete Bowidowicz for doing more than double duty for everything he does in his occupation in addition to volunteering to run the golf course. He also thanked the volunteers at the golf course who are mowing, watering and everything else they do as well as the part timer who is putting in extra hours. These people are going above and beyond and he thank them all.

Chairman Schug seconded what Joe Mainello said and thanked everybody for coming.

**Unscheduled Citizens Communications:** None.

Motion: Virgil Beagles. "Adjourn the meeting." (12:55pm)

Second: Burt Rubinowitz

Vote: Unanimously approved.

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

Approved by Chairman Arden Schug \_\_\_\_\_  
Date