

MINUTES OF TWSD BOARD OF DIRECTORS REGULAR SATURDAY SESSION MARCH 20TH, 2010

Present were Chairman Arden Schug, Vice Chairman Burt Rubinowitz, Virgil Beagles, Pete Bowidowicz and General Manager Dr. Martin Moore. Treasurer Joe Mainello was not present.

Pledge of Allegiance was led by Chairman Schug.

Salute to New Mexico Flag was led by Chairman Schug.

Approval of Agenda

Motion: Burt Rubinowitz. "Approve the agenda".

Second: Pete Bowidowicz.

Discussion: None.

Vote: Chairman Schug, Burt Rubinowitz and Pete Bowidowicz voted aye.

Minutes:

1-21-10 and 2-20-10

Motion: Burt Rubinowitz. "Dispense with the reading of the minutes and accept the minutes as submitted".

Second: Pete Bowidowicz.

Discussion: Virgil Beagles said the 1-21-10 minutes were left over from last month and Dr. Moore was suppose to provide additional information. Secretary Ross said that he asked Dr. Moore and Mr. Beagles to provide additional information because he could not hear some of their comments on the DVD. Chairman Schug asked Dr. Moore and Mr. Beagles to provide the additional information to the secretary. Tabled until the next meeting.

Vote: Chairman Schug, Burt Rubinowitz and Pete Bowidowicz voted aye. Virgil Beagles voted nay.

Amended Motion: Burt Rubinowitz. ""Dispense with the reading of the minutes for 2-20-10 and accept the minutes as submitted".

Second: Pete Bowidowicz.

Vote: Chairman Schug, Burt Rubinowitz and Pete Bowidowicz voted aye. Virgil Beagles voted nay.

Treasurer's Report: Dr. Moore said he would cover financial issues in the manager's report.

Manager's Report: Dr. Moore said he had received a faxed copy of a letter from the State Auditor's office asking why the audit was not completed. We are going to answer that and there are some things they say we did not provide which I am going to verify but we will answer that. Accounting and Consulting Group LLC has almost completed 06/07 and they are scheduled to come down Tuesday morning. I have asked Sharon Northcott to be here and while she is here I will ask her to look at the files for FEMA and the revenues. I will also have her look back at 06/07 to see if there was anything she missed. Accounting and Consulting Group LLC stated goal is to have all field work done and preliminary reports written for those two fiscal years by April 2nd. Right after that the 08/09 audit will come into play and that is one the State Auditor's office wanted a separate engagement letter on. I quite forcefully reminded Accounting and Consulting Group LLC that we wanted this thing done and discussed items they claim we had not provided and we have records of email and fax that it was sent to them. Sharon Northcott transmitted the code words they needed to access the trial balance and general ledger for 06/07 and 07/08. The Board of Finance would like me to get with them and go over the technical aspects of what we are doing with finances. A representative from the State Auditor's office may be there also to see what has been going on. We can then see if they are satisfied with what we have done. I asked Sharon Northcott to have the reconciled ending cash balance for 07/08 to me on disk or email so we can get this done. I will get with the budget committee with the cleaned up numbers and see if what we have looks good. I will be asking the board to convene a special meeting

concerning many of these issues. In the federal election case we understand the motion to dismiss with prejudice was granted and we have so many days to pay the settlement amount once that is finalized. I've talked with Sharon Northcott and the office folks to make sure we have the money together to pay that. We have approximately \$75 in the general fund with another \$6000 set aside for wages for the FEMA road work and another \$1500 which is the extent of our general fund money. Because of that, I have spoken to some staff and will address the rest on Monday, all activities will be water related and there will be no maintenance of roads until such time as we have the money. We have lots of water related work to do but when that runs out I will have some difficult decisions to make concerning employees. I told the employees they will get at least two weeks notice on the decisions to reduce hours or do lay offs. Starting Monday, any expenditure requests for general fund money will be denied. We have approximately \$159,000 in unpaid bills right now and we started the year with about \$142,000. Our major expense is legal, judgments and attorney fees. We are keeping up with our utilities. We have about \$1000 on the credit card and we are going to phase that card out. We need to find the revenue to pay our bills and get on a cash as you go basis. We will have to be able to identify a revenue source for any loans even from one fund to another according to the State Board of Finance. We are not the only ones in bad shape, Sunland Park is in really bad shape right now. I have looked at the FEMA rates and make the case that they increase the rate per cubic yard they pay the district for fill. Looking at equipment rate costs for FEMA work left to do, I believe there is a chance to capture up to \$150,000 if FEMA will up the 2006 rate they pay us for the remaining work to be done. I have done a study on past legal bills and we may have an opportunity to recapture some funds from the 05/06 and 06/07 era. I gathered up the legal invoices and will be sending them to Travelers Insurance and the Manual Lujan Agency with a demand letter for payment. Previously they told us to point out in the policy where it says they will pay and I will send them a letter demanding they point out where it says they don't have to pay. Chairman Schug said we should copy the state agency that deals with insurance on all this stuff. Dr. Moore said he intends to. On the water side we are in better condition but not great. We have about \$100,000 in grants for the membrane filter system and those payments have been taken care of. In the standby account we have about \$83,000 as of yesterday. The bank statements are available for anyone who wants to look at them though he didn't have them with him today. We received a sizable back standby payment of around \$13,000 so people are starting to pay them, some in monthly installments. The frozen pipes are starting to thaw and we are able to tap pipe and reroute it so people can have water. We buried a 200 or 300 foot section of pipe 3 feet down that had been right on the surface. Rough preliminary estimates are that we have approximately a mile of pipe we will attempt to replace and get rebedded. Joe Shields passed his Water Systems Operator test so we have 2 certified water operators and we congratulate him. The Application for Final Construction and Operation draft for the membrane filter system has been completed and is available for review and we will submit it the week after next. I have spoken with the State Engineer's office on the diversion points and we will meet with them in the next 2 weeks so we can bring them on line and have additional water coming in. We estimate, with improvements, we could fill or almost fill that 10 inch transit pipe which could provide maybe 600 or 700 gallons a minute. This will prime the situation so as soon as the ground is firm enough, we can get in and do the work. The engineers cost estimate for work at the diversion points is approximately \$30,000. Water will be coming in from 4 directions instead of one into the collection point which will help and also bring it up to code. We have a problem with 6 and 8 inch pipe leading into the collection point which limits the amount of pressure we could have from that collection point. I feel communications from our attorneys was not timely and I have gotten with them and they say they will try and improve that. Virgil Beagles requested a copy for the board of the letter from the State Auditors. Dr. Moore said he had received it yesterday but would go and make copies. Virgil Beagles asked for clarification on the \$150,000 Dr. Moore said he may be able to get from FEMA. Dr. Moore said when they set this up originally, hourly costs for equipment and other things are either not in there or below the FEMA rate. We are doing the work in-house and with the many miles of road work on this list there is no way we can do it for the amount of money they say we can do this for, they underestimated the cost of the project. FEMA says they recognize we are using our own fill and we should be reimbursed for it and we are working on that

with them. Chairman Schug said the rock needed, which has to be brought up from down below, to bring the roads to passable condition in certain weather conditions, was not negotiated into the contract by Glenda Gentry. Dr. Moore thanked Chairman Schug for bringing this up with the county and although this weeks meeting with the county had been postponed, he was meeting with the County Manager next Tuesday at 9:00am to discuss the swimming pool, piggy backing off their permit for rock aggregate 5 miles south of here or going to the BLM and getting our own permit and to get fill at the reduced rate they get because of the volume they deal with. Virgil Beagles said why don't we ask Southwest Waste Control how much they would charge us to deliver base course material when they come to pick our trash. Dr. Moore agreed that was a good idea and we will explore that. I will ask the County Manager to get with the swimming pool contractor to have them get with the Environmental Department and either get that permit and get it done or get some kind of sanction award from the contractor. Virgil Beagles offered to get with the district office of the state Highway department and see if they could help with equipment and material if the board would approve. Pete Bowidowicz said Earl Smith was the DOR in Roswell. Chairman Schug said if they could get anything moving in that direction it could be put on the agenda for the board and asked them both to check on it and advise the board. Dr. Moore said the insurance renewal was coming up and we have one truck we have a continuing argument with them about, it may be the water truck, concerning a missing number in the VIN and they want to have an inspector verify it. Pete Bowidowicz advised Dr. Moore to call Pete Duncan at State Police in Alamogordo. Pete Bowidowicz asked Dr. Moore to ask the county about bringing in aggregate and crusher fine for roads they are responsible for here and to bring up the possibility they might adopt some additional roads here. Dr. Moore said he had spoken with the Pinon shop foreman, who was operating a grader here on our roads, and he said they were bringing in some rock from stream beds south of town. He appreciated calls citizens had been making to the county to keep the pressure on so they won't dump a small amount and then just leave.

Old Business:

1. Audit Update
Intro: Chairman Schug said this was covered during the manager's report.
Motion: None.
Second: None.
Discussion: None.
Vote: None.
2. Approval to Retain Hinkel, Hensley, Shanor and Martin Law Firm (Drew Cloutier) in Dewayne Beagles vs. TWSD Cause No. CV-10-114
Intro: Dr. Moore said he received correspondence from the law firm that they would represent us and that in a standard court proceeding, the district is a body corporate and must have legal council. This is interesting new ground we are plowing in that not only is our rate appeal going before the district court, this an administrative court hearing in a civil court and is a different beast. We really don't know if we are required to have legal council or not. Timberon is the first water district to have a water rate adjustment appeal go before the district court and we're breaking new ground. This is a discretionary matter for the board.
Motion: Pete Bowidowicz. "Retain Hinkel, Hensley, Shanor and Martin Law Firm (Drew Cloutier) in Dewayne Beagles vs. TWSD Cause No. CV-10-114".
Second: Burt Rubinowitz.
Discussion: Pete Bowidowicz said part of the taxes we pay are for the Attorney General's office to make decisions and he strongly recommends that as opposed to retaining attorneys we get the opinion of the AG as to what we can expect from this district court for a rate increase. Burt Rubinowitz said that for proceedings before district court, that they are all different and district 12 does not have theirs published. In general a body corporate does need representation but he concurred with Pete Bowidowicz. Chairman Schug thought the board should ask Judge Counts. DeWayne Beagles said he was not going to challenge the board having or not having an attorney. Dick Dysart questioned whether there was time to get a response from the AG and

Chairman Schug said our experience is that you are lucky to get any response from the AG. Pete Bowidowicz said in a matter like this it is procedural and the presiding judge would make the decision but this is new ground. Virgil Beagles said we could get a quicker response by asking a legislator to ask the AG for us. Chairman Schug said we should ask the district clerk with the request in writing, to which there was general agreement, and he said he would do that. Virgil Beagles said this law firm has said they have a conflict of interest in representing me and we need to hire a separate attorney to represent him and that should be taken into consideration. Burt Rubinowitz called the question.

Vote: All voted nay.

Motion: Pete Bowidowicz. "Have the Chairman prepare a letter to the district court and present it requesting clarification of procedural matters in this case".

Second: Burt Rubinowitz.

Discussion: None.

Vote: All voted aye except Virgil Beagles who abstained.

3. Findings of Valentine Court Case

Intro: None.

Motion: Virgil Beagles. "Discuss the Valentine court case".

Second: None.

Discussion: None.

Vote: None.

4. Bob Beauvais's letter concerning Octavio Sanchez

Intro: None.

Motion: None.

Second: None.

Discussion: None.

Vote: None.

5. Disgorgement of Attorney Fees/Liability Insurance in the Reynolds Case CV577

Intro: Virgil Beagles said the board had directed Dr. Moore, about a year ago, to get all the documents together to submit to the Manual Lujan Agency. Dr. Moore said we covered that in the manager's report. Virgil Beagles said Manual Lujan Agency had requested the invoices and we are just now getting around to doing that, to which Dr. Moore agreed.

Motion: None.

Second: None.

Discussion: None.

Vote: None.

6. Disgorgement of Wausson/McCall Invoices for Material

Intro: Dr. Moore said the invoices have been made available to and are being reviewed by the auditors.

Motion: None.

Second: None.

Discussion: None.

Vote: None.

7. Discuss Going to the DA or AG Concerning the Alamogordo Hearing

Intro: None.

Motion: Virgil Beagles. "Discuss Going to the DA or AG Concerning the Alamogordo Hearing".

Second: Pete Bowidowicz.

Discussion: Virgil Beagles said the last hearing where Judge Valentine ruled for that \$101,000, during that hearing, Ken Bradshaw swore under oath that he and Johnny Ebbs went to the basement and found the safe open and nothing in it. Johnny Ebbs got on the stand and backed up the same thing. We know today that the safe probably hadn't been opened in about 5 years as you and Burt went down and got the safe open. Your attorney lied to the judge also because

he said he had talked to Debbie Goss and he had her called as a witness on the witness stand and she said there was nothing down in that safe, we know that's a lie. She will be at the hearing on May the 8th, and we have her affidavit saying she has never talked to Mr. Sanchez and so Mr. Sanchez has lied to the Judge. And if this board doesn't do the right thing and go after these individuals for lying to the court then you all are going to be liable, I guarantee. He then said to Dr. Moore that he was there and asked if anything he said was incorrect. Dr. Moore said that, during the trial, Mr. Sanchez did say he had spoken to Miss Goss and he repeated that to me after the trial. He insisted he had spoken to her. Mr. Bradshaw told me they did find what they considered to be a safe, standing open with nothing in it. Burt Rubinowitz said several managers have had access to that safe as well as the office manager in the intervening four or so years, since that case was initiated, and I have no reason to believe they did not observe what they say they did and no reason to believe that was a lie. At least 5 or 6 people have had the combination and I have no idea what may have taken place and I don't believe Mr. Beagles has been monitoring that safe over the last four years and knows what has happened as well. I don't think we have any way of knowing if those gentlemen's testimony was truthful. Mr. Beagles said they claimed it had been muddy down there and had 2 or 3 pipe leaks and when you and Marty got in that safe there was a pristine drug test and if it had been muddy as they talked about this document would have been muddy. There is no other way that document got in there, Debbie Goss testified her and Ronny Wyatt put that in there. Burt Rubinowitz said he did not know the contents of the envelopes he observed in the safe. Dr. Moore said he had opened the envelopes and several of them contained drug tests with in the date range in question and we got with the attorneys and then forwarded them to the court. Virgil Beagles said these were the drug tests DeWayne had asked for 5 years ago and it had been claimed by you and your attorney they don't exist and last June before the court it was claimed they don't exist. We know your attorney lied there because they do exist. Nobody opened that safe and we spent nearly \$500,000 in tax payer money and you finally opened that safe 3 weeks ago. Why wasn't that safe opened previously? Burt Rubinowitz said the two gentlemen Mr. Beagles referred to earlier had gone down there and there was nothing in that safe. Chairman Schug said he doesn't believe all the facts were presented properly because he doesn't believe the questions were asked properly and there was not enough description of the safe to be able to say they were not telling the truth. He said he had not read the transcripts and Mr. Beagles asked, if after reading them and it says what I said, then would the board go after the attorneys and get back the \$400,00 or \$500,000 for misrepresenting this board. Pete Bowidowicz said that going to the AG or the DA would be putting the cart in front of the horse, there needs to be a decision by the presiding judge first that in fact there was an incident where a court officer was not truthful and did not properly represent the client and the court. Vote: Virgil Beagles voted aye and the rest of the board voted nay.

Motion: Virgil Beagles. "If the court finds there has been perjury in this trial, that this board authorize the manger to go after the attorneys or there insurance company, whatever, and recover all the money that this board and the citizens have paid to defend this action when it should never have gone to court in the first place".

Second: None.

Discussion: None.

Vote: None.

8. Infrastructure Maintenance Fee Hearing

Intro: None.

Motion: Burt Rubinowitz. "Set a date at the earliest possible time to have a hearing to implement the Infrastructure Maintenance Charge".

Second: Pete Bowidowicz.

Discussion: Virgil Beagles asked under what statute this charge was authorized. Burt Rubinowitz said he believed we were authorized under the water and sanitation district act and was not a tax like the 10 mil levy as asserted by Mr. Beagles because it was a fee or charge as

allowed under the act. Virgil Beagles said the board needed an attorney's opinion as this was not allowed under that statute. Chairman Schug asked why Mr. Beagles would oppose this. Virgil Beagles said all you do is spend money on attorneys. Chairman Schug said that when you are on this board you vow to do what is necessary to help this community to survive and you have opposed everything this board has done to keep this community alive. Virgil Beagles said he asked this board during the last item to go after the attorneys fees if the judge ruled that perjury was committed by the attorneys and I didn't get a second from any of you and you won't go after Wausson and McCall and so you aren't doing what you were elected you to do. Chairman Schug if you hadn't sued us in the first we wouldn't need to hire the attorneys. Virgil Beagles said why wouldn't I sue you, you take \$385,000 and give it to them when it could have been done in house on the original contract like Marty is proposing now instead of renting our equipment at 10 cents on the dollar and paying them \$9.00 a load for our own material. At this point, Pete Bowidowicz and Burt Rubinowitz left the meeting, to which Virgil Beagles said he appreciated them leaving. Chairman Schug called a 5 minute break. Chairman Schug said we have to go through the same procedure as we did for the water rate adjustment. Burt Rubinowitz said due to notice requirements about the earliest we could do it would be the end of April between the 23rd and 30th with the exact date to be determined. Vote: Burt Rubinowitz voted aye. Virgil Beagles and Pete Bowidowicz voted nay. The motion failed.

8. Insurance Update

Intro: Dr. Moore said he covered that under manager's report.

Motion: None.

Second: None.

Discussion: None.

Vote: None.

10. Swimming Pool Update

Intro: Dr. Moore said he covered that under manager's report.

Motion: None.

Second: None.

Discussion: None.

Vote: None.

11. First Reading of Amendments to Bylaws

Intro: Burt Rubinowitz presented the the first reading of amendments to the Bylaws. He said that nothing had to be done at this meeting but at the next reading the board can amend, reject or approve.

Motion: None.

Second: None

Discussion: BF Adams asked if there was a guideline on when the write-in candidates must declare. Burt Rubinowitz replied the declaration date for all candidates was the same and would be set in the resolution for the election and there would be boxes on the declaration form so the candidate could decide whether they wanted their name to show on the ballot. DeWayne Beagles said that Secretary Ross was expecting guidance from the Secretary of State's office about this and had this been taken into consideration. Secretary Ross said earlier in the week he had talked with Larry Dominguez of the Secretary of State and he said he was unaware of anything he had sent to the Secretary of State and asked for an email concerning this and he would look around for what I had previously sent to the Secretary of State's office. Burt Rubinowitz said the bylaws are flexible and if any changes in the statutes are made they can go through this same process to amend them. Dewayne Beagles said the Supreme Court had ruled that there should automatically be a space provided for a write-in candidate on the ballot. Burt Rubinowitz said that the amendment we propose will provide for write-ins in any position for which a write-in declares. DeWayne Beagles said the purpose of a write-in is if you are not happy with who is declared. Burt Rubinowitz said the committee had done extensive research

on this and the committee feels that what it proposes is in compliance with the law as far as what it was able to determine from what it looked at. The court decision referred to by DeWayne Beagles is not in conflict with the bylaws as far as we could determine and if a majority of the board feels the proposed amendment is in conflict with it, they can vote to show that. BF Adams asked DeWayne Beagles if his objection was that write-in candidates had to follow the same rules as other declared candidates. DeWayne Beagles said that yes that the Supreme Court ruling said they didn't and after, if they were elected they still had to meet the requirements for eligibility. and if they weren't eligible, the board would pick the person to serve until the next election. Pete Bowidowicz said he felt it was the god given right of any person to change there mind at the last second in the voting booth and vote for anyone you want and be able to write them in. Virgil Beagles said the amendment for article 4.09 allowing a procedure to initiate a hearing to remove a board member for tax delinquency was not covered in the statute which he said only allows for the removal of a board member for malfeasance or misfeasance by the district court. Burt Rubinowitz said the law was not clear on who could initiate the hearing but he thought the board or district court could consider the removal of a director but that the committee would look at that for further clarification. Virgil Beagles said amendment 26 which says the secretary is indemnified is not right as Judge Reynolds ruled that an independent contractor cannot be indemnified, they must be an employee. Chairman Schug said the secretary is an independent contractor but we can make him an employee of the board. Dr. Moore said the bylaws say the secretary may or may not be an employee of the district but does not state the secretary is an employee of the board. Burt said the committee would look into that. There were other areas of concern, spelling and numbering, that were addressed by Burt Rubinowitz and that he said would be brought to the committee for there deliberation

Vote: None.

New Business:

12. FOI Request by Bill Gideon

Intro: Dr. Moore said we are proceeding with it and will respond by 14 April and we had the attorneys look at it so we make public what needs to be made public. We have a fax from Mr. Beagles about a July letter from the AG's office talking about the content of business related. Virgil Beagles said only correspondence between the attorney and board members is eligible for attorney client privilege. Dr. Moore said he had forwarded stuff from the attorneys to board members and that was the only thing he thinks he had that would be covered. The request was for the period 1 July 2009 to 28 February 2010.

Motion: None.

Second: None.

Discussion: None.

Vote: None.

Committees:

Swimming Pool Committee: None. (See general manager's report)

Budget Committee: None. (See general manager's report)

By-Laws Committee: None. (See item 11 above)

Water Rate Committee: Chairman Schug said we have the hearing on April 12th.

Golf Course Committee: Pete Bowidowicz said as of his readings last week at one o'clock in the afternoon, the ambient air temperature was 58 degrees and the ground temperature on every green and fairway was 37 to 38 degrees. There is no hope of opening the golf course until the ground temperature is a sustained 50 to 55 degrees. Someone put up a log barrier between 1 and 2 at the access to B&B and that's been removed. Four wheelers have been entering the course and generated a lot of destruction to the cart paths. Dr. Moore said they were going to cement some posts in to help solve that.

Website Committee: None.

Water Rules and Rights Committee: Chairman Schug said our water operator told him he had been putting in check valves to prevent back flow on all new installations.

Directors Remarks:

Virgil Beagles asked Dr. Moore if DTI was current. Dr. Moore said he thinks they are 1 or 2 months past. Virgil Beagles said the propane meter was still on the wrong side and the tax payers are still paying for their hot water. Dr. Moore said he wasn't sure if that was right but he had directed the billing be changed and he would check on that and take corrective action if necessary.

Pete Bowidowicz said that he thought that he could talk for every board member and if we find anything that's wrongful, and I am very proud of the fact I am a court officer, been one for years, if there is, going back to the discussion on item #7 about going to the DA on what happened, and I enforce the laws and statutes of the state of New Mexico, and if I ever have knowledge of wrong doing I'd do it. But in a case like this we are very presumptuous making the decision of perjury and it is out of our hands until the decision of perjury is made by the attending judge. I'm not skirting the fact that people in this community should not know if there is any wrong doing. However if we are premature, that's hearsay and rumor mill. I deal objectively and if there is the determination of perjury, a determination of malfeasance in the position as a court officer that decision has to be made by the appropriate. If we go after the fact to recoup, so be it, everything else is rumor. I wanted to clarify my feelings about that Virgil, and we have enough rumors going on up on this mountain and we don't need to add anymore. Virgil Beagles said he would like to see all board members at Judge Valentine's court on May the 8th and you can see for yourself on this. Pete Bowidowicz said the thing is let the judge make the decision and we act afterward.

Burt Rubinowitz said he thought he was talked out.

Chairman Schug said he wanted to thank everyone for staying through this long meeting. Chairman Schug said Treasurer Joe Mainello had gone to Albuquerque for heart surgery but had been told by the surgeon that he didn't need it and it would not add to his quality of life. They had told him an artery was blocked but his own body had accommodated for that and done it's own bypass. Joe said he will get some second opinions. He had also said they didn't give him a lot of details and he was confused. Dr. Moore said our thoughts and prayers were still with him.

Agenda Request: None.

Executive Session: None.

Unscheduled Citizens Communications: Dick Dysart asked if for the FEMA work we were still getting 06 rates or were you going to try and get them to jack them up to 10 rates. Dr. Moore said their rules say we can't go above the 06 rates but we've still got some room to get some money out of them even with the 06 rates. Yes, I have already asked them that question.

Motion: Pete Bowidowicz. "Adjourn the meeting". (1:02pm)

Second: Virgil Beagles.

Vote: Unanimously approved.

Minutes submitted by Secretary Charlie Ross _____
Date

Approved by Chairman Arden Schug _____
Date