

**CHEROKEE METROPOLITAN DISTRICT**  
**REGULAR MEETING OF THE BOARD OF DIRECTORS**

March 11, 2008

MINUTES

The Regular Meeting of the Board of Directors of the Cherokee Metropolitan District was held on Tuesday, March 11, 2008, at 5:30 p.m. at 6250 Palmer Park Blvd., Colorado Springs, Colorado.

BOARD OF DIRECTORS PRESENT

|               |               |
|---------------|---------------|
| Ted Schubert  | Robert Lovato |
| Gayle Jones   | Dave Hacker   |
| Andy Anderson |               |

OTHERS PRESENT

|                 |                  |
|-----------------|------------------|
| Kip Petersen    | Ed Meyer         |
| Dian Hardekopf  | Len Meyer        |
| Art Sintas      | Griff Rainford   |
| Jim Felt        | Bryan English    |
| Sara Howard     | Todd Laxson      |
| Sandy DeCarolis | Pete Heidebrecht |

OTHER GUESTS SIGNING ATTENDANCE LOG

|                       |                |
|-----------------------|----------------|
| Bill Beahan           | Ruthann Hacker |
| Mary Hernandez        | Jan Olson      |
| Jim and Judy Burnside | Chloe Olson    |
| Wade Antener          | Sean Byers     |
| Steve Hasbrouck       | Terry Shaw     |

ITEM 1:

The meeting was called to order by Chairman Ted Schubert at 5:30 p.m.

Ms. Hardekopf called roll call of the Board of Directors. All Board Members were present.

ITEMS 2 AND 3:

Mr. Schubert asked if there were any changes or amendments that needed to be made to the agenda. There were none noted.

**\*\*\*MOTION\*\*\***

**MR. HACKER MADE A MOTION TO APPROVE, AS WRITTEN, THE AGENDA OF MARCH 11, 2008. SECONDED BY MS. JONES. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

ITEM 4:

The Minutes of the Regular Meeting of February 12, 2008, were reviewed. Mr. Schubert requested that Paragraph No. 2, under Public Comments, be removed; stating those were personal comments only and should not have been included in the Minutes.

**\*\*\*MOTION\*\*\***

**MS. JONES MADE A MOTION TO APPROVE, AS AMENDED WITH THE OMISSION NOTED, THE MINUTES OF THE REGULAR MEETING OF FEBRUARY 12, 2008. SECONDED BY MR. ANDERSON. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

ITEM 5:

⇒ Public Comments

Mr. Schubert asked for a show of hands from the audience who wished to speak. One person raised her hand. With the recent media attention addressing reports of traces of pharmaceuticals found in drinking water, Mary Hernandez asked about the health concerns of the District's drinking water and if there could be harmful side effects. Mr. Petersen stated that very minute amounts of pharmaceuticals have been found in the country's surface water, and the Environmental Protection Agency will be establishing parameters regarding the concern and look into testing levels within the next several years.

ITEM 6:

⇒ Legal Report – Mr. Jim Felt

- Although most of the items on his agenda, including possible contract negotiations for additional sale of water, would be addressed in Executive Session, Mr. Felt did want to update the Board on the status of the Golf Course water substitution supply

plan. The Course's well has been drilled and is anticipated to produce 150-175 gpm. This well will be used for Golf Course irrigation, thereby returning the water that would have been used for irrigation back to the District's reserve. Because Sand Creek is tributary to the supply of Fountain Creek, the District will need to claim credit back to the Fountain Creek reserve (augmentation water). Currently, the District's effluent wastewater is covering those allocations. The District's substitute supply plan has been filed with the State Engineer's Office. There were no objections.

- Mr. Felt explained to the Board the definition of LIRF's, or lawn irrigation return flows. Theoretically, approximately 85% of the water used for the Golf Course will enter a hydrologic cycle and the remaining 15% will be percolated, or returned into the ground and given credit to Fountain Creek in a permanent augmentation plan.
- The Replacement Plan is in its final process for the supplemental version and should be filed with the State Engineer's Office by the end of the month.
- The Poleson (Gunzelman) Well contract is still in the negotiation stages, and a consumptive use finding has been completed. A legal technicality of the easement for the well is under revision by the landowner.
- Mr. Antener and Mr. Beahan raised some concerns and comments regarding the water rights, who owns them, and the sale to the District and the interpretation of those water rights with the owners. Mr. Felt advised the interpretation of those leases are currently being litigated in the court process.

#### ITEM 7:

⇒ Engineering Report - Mr. Ed Meyer

- Mr. Meyer provided a report on the wastewater project and related issues (see attached). The recharge facility project is 96.7% complete. Weather delays have exceeded the completed deadline and an extensive punch list has been developed; however, the project is anticipated to be completed by the end of March. Velocity Constructors' eleventh pay request has been received. With retainage at 5%, the net amount due the contractor is \$86,247.98. GMS recommends approval of the pay request in that amount.

**\*\*\*MOTION\*\*\***

**MS. JONES MADE A MOTION TO APPROVE PAY REQUEST NO. 11 TO VELOCITY CONSTRUCTORS IN THE AMOUNT OF \$86,247.98. SECONDED BY MR. HACKER. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- Design work has been completed on the WWTP Project, and submissions of the plans and specifications are projected to be made to the Health Department and Regional Building in the next two weeks. Mr. Meyer provided the attached project schedule to the Board for their perusal.
- Mr. Hacker asked Mr. Meyer if it was feasible to pre-purchase materials and supplies to "stock pile" for future needs, and Mr. Meyer advised that the inventory on this project involved too many intricate and miscellaneous materials to make pre-purchasing costs effective.
- A change order was necessary for Hume Constructors to complete the electrical work on the Golf Course Irrigation Well Project, as it was determined the disconnect switch for the old pump station did not meet current code requirements. The change order reflects a total of \$3,490.61. GMS recommends approval of the change order in that amount.

**\*\*\*MOTION\*\*\***

**MR. HACKER MADE A MOTION TO APPROVE CHANGE ORDER NO. 1 TO HUME CONSTRUCTORS IN THE AMOUNT OF \$3,490.61. SECONDED BY MS. JONES. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- Hume Constructors' final pay request has been received. It requests the release of retainage in the amount of \$11,096.30. Coupled with the above change order of \$3,490.61, the total amount due the Contractor is \$14,586.91. Mr. Meyer informed the Board that the advertisement for the final pay has been completed. GMS recommends approval of the pay request in that amount.

**\*\*\*MOTION\*\*\***

**MS. JONES MADE A MOTION TO APPROVE FINAL PAY REQUEST NO. 4 TO HUME CONSTRUCTORS IN THE AMOUNT OF \$14,586.91. SECONDED BY MR. HACKER. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- Mr. Meyer provided to the Board the third draw request on the \$15 million dollar Revolving Fund Loan. Mr. Meyer reminded the Board that this money has already been spent by Cherokee and is now being reimbursed back to the District; the total for this third draw is in the amount of \$92,311.16, and GMS is requesting this amount be approved.

**\*\*\*MOTION\*\*\***

**MS. JONES MADE A MOTION TO AUTHORIZIE REIMBURSEMENT OF REQUISITION #3 BACK TO THE DISTRICT IN THE AMOUNT OF \$92,311.16. SECONDED BY MR. HACKER. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

At this time, Mr. Schubert asked for a short break. The meeting recessed at 6:18 p.m.

The regular meeting resumed at 6:28 p.m.

ITEM 8:

⇒ Manager's Report – Kip Petersen

- After approximately one and one-half years of the District's attempts to remove an encroachment on the District's property, Mr. Petersen advised the Board that the removal had been successfully completed. The shed and electrical hook-ups, and the fence have been removed and placed within the property lines of the lot; also, the District received \$4,500 from the homeowner to cover the surveying and legal fees that were incurred. A Restraining Order against Mr. Petersen is still in affect from an alleged service of same, and eight subpoenas have been generated as a result of this which will be litigated in El Paso County Court on March 20. It is hoped the Notice of Service will be quashed and the Order issuing the Restraining Order will be vacated.
- With the approaching Board of Directors election May 6, 2008, Mr. Petersen will be instructing staff not to campaign for any candidates on company property or during business hours. Any questions can be addressed to him, Ms. Hardekopf, the Designated Election Official, or Mrs. Baker, her assigned alternate. Mr. Petersen further stated he will be happy to answer any questions from candidates and act as a resource for District information, stating the election will be "done by the book."

Jim Felt asked if there were any candidates present in the audience, and seven, including two of the Board Member's up for re-election, raised their hands.

Mr. Beahan requested confirmation that it would be satisfactory to place banners along Palmer Park adjacent to the golf course. Mr. Petersen stated this was acceptable as long as it was between the sidewalk and Palmer Park and not on the golf course.

Ms. Hardekopf stated that a drawing was held last week to determine placement of the candidates on the official ballot. A notice of this ballot will be placed on the office's window a month before the election. Also, reminders will be sent to customers in the April billing statements noting the date, time, place, and candidates of the election.

- Mr. Petersen stated the prepared Conservation Plan for the District was submitted to the Water Conservation Board. After initial denial in January, and subsequent revisions, conditional approval has been received. The District's hopes are to receive full approval; and at the current time, progress has been stalled by unreturned phone calls and unresponsiveness from the Water Conservation Board. Hence, Mr. Petersen may be placed in a position to become more aggressive in his attempts to move forward with the process.
- With construction beginning to commence with additional housing at SAFB, the District is anticipating receipt of approximately \$4.1 million dollars in tap fees from SAFB.
- Meridian Metropolitan Service District, who shares 45.8% responsibility of the Waste Water Treatment Facility, has asked the District to revisit the IGA on the replacement plan and consider re-negotiating some of the items within the document. Mr. Petersen stated that these discussions would take place in the near future.
- Mr. Petersen answered, in length, questions from the audience regarding the upcoming Board of Directors' Election.

#### ITEM 9:

##### ⇒ Water/Wastewater Report – Art Sintas

- Mr. Sintas provided an update on the District's water demands (see attached). Demands for February, 2008, were 1.646 mgd compared to the same time last year of 1.630 mgd. The Sweetwater Wells have kept up very well with the demands this past winter.

- Water leak season is winding down, and there have been no leaks to report since last meeting.
- Part of the improvements for the District allocated for this year's budget was to replace ten fire hydrants. This has been completed. The valve replacement on Galley Road will be completed this month.
- Slip lining sewer lines on Peterson Road is currently under way.
- As part of the dissolved oxygen evaluation, improvements to the plant will include adding three floating aerators on the Number 3 lagoon to increase the dissolved oxygen. Aerators are in the process of being shipped, and power cables are currently being installed. The State Health Department is now requiring an amended Site Application Approval which will take approximately four weeks to finalize. Mr. Hacker asked why an amended Site Application is required, and Mr. Sintas stated that having such will give the District the approval to install the aerators.

#### ITEM 10:

##### ⇒ Golf Course, Pro Shop – Todd Laxson

- Mr. Laxson provided his monthly report to the Board (see attached). Highlights for February, 2008, included green fee sales ahead from last year at this time by 22%, merchandise sales ahead of last year at this time by 20%, and the Grill on the Green ahead by over 250% for the month of February (\$3,130 for 2008 and \$1,231 for 2007).
- Spring merchandise is being received to complement the old merchandise at the Shop, and some of the seasonal employees have returned to work the busier days.
- Three girls' high school golf programs have approached the Golf Course to solve their practice needs. Along with the Pikes Peak Linkers and the Colorado School for the Deaf and Blind, the Course has five junior golf programs that currently use Cherokee Ridge as their main practice facility. Two more programs will be added before the end of the school year.

##### Maintenance – Griff Rainford

- Mr. Rainford updated the Board on the December maintenance of the Golf Course (see attached). The well project is nearing completion, and the lake should be ready by early April.
- All carts, mowers and equipment have been serviced and are ready for the upcoming season. Fungicide has been applied to all greens to protect them during the early spring weather. Tree pruning has continued but has experienced some delay due to equipment projects. The course is starting to show wear because of increased play and drier weather.
- As the weather begins to warm and the course starts to become green, a few seasonal employees will be brought in to perform spring clean up and aerification. The irrigation system will be charged, tested, and maintenance will be performed to ensure proper and efficient operation during the growing season.

ITEM 11:

⇒ Old Business

There was no old business to report.

ITEM 12:

⇒ New Business

There was no new business to report.

ITEM 13:

⇒ Executive Session: CRS 24-6-402(4)(b)

**\*\*\*MOTION\*\*\***

**MR. HACKER MADE A MOTION TO ENTER INTO AN EXECUTIVE SESSION CITING 24-6-402(4)(b) LEGAL CONSULTATION. SECONDED BY MS. JONES. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

Executive Session was entered into at 7:18 p.m.

**\*\*\*MOTION\*\*\***

**MR. HACKER MADE A MOTION TO COME OUT OF EXECUTIVE SESSION AND RETURN THE MEETING TO THE OPEN SESSION OF THE REGULAR MEETING. SECONDED BY MR. ANDERSON. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

The Regular Session began at 9:05 p.m.

- Mr. Petersen asked the Board to authorize Cherokee's legal Counsel to take necessary legal action to require Mr. Dan Farmer the re-drilling of Kane #1 well. Mr. Petersen explained that within the agreement to purchase the Kane water, Mr. Preisser was to get the permit to re-drill the Kane well. Mr. Farmer has not been cooperating up to this point and has refused to allow the drilling.

**\*\*\*MOTION\*\*\***

**MS. JONES MADE A MOTION TO AUTHORIZE LEGAL COUNSEL TO MOVE FORWARD WITH THE PUSH TO GET KANE #1 WELL RE-DRILLED. SECONDED BY MR. ANDERSON. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- As a result from discussions within the executive session, Mr. Petersen asked the Board to make a motion to approve Cherokee entering into a contract with Mr. Lee Rosenbaum, Special Counsel, for a lawsuit to be filed against Cherokee's former Legal Counsel, Mr. Pete Susemihl. This contract will be on a contingency basis. A long discussion ensued regarding decisions made by past Board Members and the liability to them for decisions made and contracts signed. Mr. Felt stated that Board decisions are based upon information obtained from the professionals that the District hires and trusts; any liability to former or current Board Members should not come into play.

**\*\*\*MOTION\*\*\***

**MS. JONES MADE A MOTION TO ENTER INTO A CONTRACT WITH LEE ROSENBAUM ON A CONTINGENCY BASE FOR A LAWSUIT AGAINST FORMER LEGAL COUNSEL FOR CHEROKEE METROPOLITAN DISTRICT. SECONDED BY MR. ANDERSON. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

ITEM 14:

⇒ Adjournment

There being no further business to come before the Board at this time, a motion was made for adjournment.

The Meeting adjourned at 9:22 p.m.

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Gayle Jones, Treasurer

Board Members

Term Expires

Ted Schubert, President

May, 2010

Andy Anderson, Vice President

May, 2010

Gayle Jones, Secretary

May, 2010

Dave Hacker, Director

May, 2008

Robert Lovato, Director

May, 2008