

CHEROKEE METROPOLITAN DISTRICT
REGULAR MEETING OF THE BOARD OF DIRECTORS

April 14, 2009

MINUTES

The Regular Meeting of the Board of Directors of the Cherokee Metropolitan District was held on Tuesday, April 14, 2009, at 5:30 p.m. at 6250 Palmer Park Blvd., Colorado Springs, Colorado.

BOARD OF DIRECTORS PRESENT

Steve Hasbrouck	Dave Hacker
Sean Byers	Robert Lovato

OTHERS PRESENT

Kip Petersen	Ed Meyer
Dian Hardekopf	Pete Heidebrecht
Jim Felt	Sara Howard
Art Sintas	Sandy DeCarolis
Len Meyer	Todd Laxson
Brian Beaudette	Griff Rainford

OTHER GUESTS SIGNING ATTENDANCE LOG

David and Linda Mattes	David Mattes
Ken Martinez	Mary Hernandez
Chloe Olson	Jan Olson
Assunta Manning	Heath Herber
Mike Rasdall	Karl Raymond

ITEM 1:

The meeting was called to order by Chairman Steve Hasbrouck at 5:31 p.m. Ms. Hardekopf called roll call of the Board of Directors, all Directors were present.

Before the Regular Meeting commenced, Mr. Petersen said he would like to address the vacant Board Member position by opening it up for discussion right after the Public Comments Agenda item.

ITEM 2 and 3:

Mr. Hasbrouck asked if there were any changes or amendments that needed to be made to the agenda. With the exception of the discussion of the vacancy; there were no other items noted.

*****MOTION*****

MR. LOVATO MADE A MOTION TO APPROVE THE AGENDA OF THE REGULAR MEETING OF APRIL 14, 2009. SECONDED BY MR. HACKER. ALL BOARD MEMBERS IN FAVOR. MOTION CARRIED (4-0).

ITEM 4:

The Minutes of the Regular Meeting of March 10, 2009, were reviewed. Mr. Hasbrouck asked if there were any changes that needed to be made to the Minutes. There were none noted.

*****MOTION*****

MR. HACKER MADE A MOTION TO APPROVE THE MINUTES OF THE REGULAR MEETING OF MARCH 10, 2009. SECONDED BY MR. LOVATO. ALL BOARD MEMBERS IN FAVOR. MOTION CARRIED. (4-0).

ITEM 5:

⇒ Public Comments

Mr. Hasbrouck asked if there were any public comments at this time. One member from the audience wished to make a comment.

- Mr. Heath Herber, a developer in the District, stated the County Developmental Services Department, during the approval process of a commercial building in the Muledeer Subdivision, learned that the new company would be in the water bottling business. Because of the possibility of a large volume of water being used, the County has asked for the plat to be amended. Mr. Petersen stated he and Mr. Sintas were familiar with the situation, and he has written a letter to the potential buyer. He also mentioned there had been a large turnaround of staff with the County Department and it would entail a re-education of the process. If necessary, legal counsel may make an appearance before the county administrator; and Mr.

Felt said he would write a letter to the County Attorney if necessary.

Mr. Petersen read the attached letter dated March 18, 2009, whereby Gayle Jones submitted her letter of resignation as a Member of the Board effective immediately. He suggested one of two options to fill the vacancy; one option would be to utilize the list of applicants who submitted their letters of intent in the previous appointment for vacancies and the other option would be to solicit new applications in time for the May Board meeting. Mr. Felt again reiterated there is no statute or rule protocol to conduct filling Board Member vacancies as long as it meets a basic fairness doctrine.

Mr. Byers suggested the Board use the last list of interviewees and also solicit new applications. Those previously interviewed will not have to re-interview unless they desire to do so. A selection will be made at the May Board Meeting, Ms. Hardekopf will conduct the Oath of Office, and the newly elected official will be able to take their seat for that meeting.

ITEM 6:

⇒ Legal Report – Mr. Jim Felt

- Mr. Felt stated the Replacement Plan application is currently in front of the Groundwater Commission and is set for a two-week trial beginning June 8. Depositions of opposing experts were scheduled to begin the week of April 13th, and the District's experts were deposed two weeks ago. The UBSMD and the Booker family filed a motion for the replacement plan to be dismissed; Mr. Grantham, the Hearing Officer assigned to the case, has denied the Motion to Dismiss. In conclusion, whatever the outcome, the ruling can be appealed; and if so, it will then go to the District Water Court to be heard by District Court Judge Schwartz.
- After the Denver Basin Lease Case trial, the District has continually tried to negotiate with the landowners using updated, negotiable contracts. Because of this, three families have consented to the negotiations which results in a approximately 65% of the Denver Basin water. The District is currently waiting on the outcome of the trial, and hopefully Mr. Felt will know the ruling by the next Board Meeting.
- The malpractice suit filed against former counsel Pete Susemihl is scheduled for trial in January, 2010.

- The Gunzelman-Poleson Well contract, which was entered into approximately two years ago, has had an extension to the agreement to re-visit and possibly file for condemnation as the owner still cannot be identified to receive the easement.
- The three new rules, 17, 18, and 19 are being appealed by both Meridian and Cherokee. Meridian Ranch is proceeding with most of the legal action. As part of the appeal process, a Stay has been approved by Judge Schwarz and at this time will hold no enforcement of the rules. Woodmen Hills and El Paso County have both filed Amicus Briefs, meaning friend of the court, to join in with the appeal to provide support.
- Ms. Hernandez asked if these new rules could adversely affect the District's replacement plan if passed, and Mr. Petersen responded that fortunately the Replacement Plan should be approved before that time and would be 'grandfathered' in.

ITEM 7:

⇒ Engineering Report - Mr. Ed Meyer

- Mr. Meyer provided a report on the wastewater project and related issues (see attached). Glacier Construction's 9th pay request has been received. It reflects \$9,442,858.25 with retainage at \$763,045.00. The retainage will be placed in the District's COLO Trust account established for this purpose. Taking both the retainage and the prior payments into account, the net amount due the Contractor is \$1,167,193.50. GMS recommends approval of the pay request in that amount.

*****MOTION*****

MR. LOVATO MADE A MOTION TO APPROVE PAY REQUEST NO. 9 TO GLACIER CONSTRUCTION IN THE AMOUNT OF \$1,167,193.50. SECONDED BY MR. BYERS. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (4-0).

- Change Order No. 2 has been negotiated with Glacier Construction which reflects the accumulation of nine minor items that have occurred through the course of construction so far. The nine items collectively represent an increase in the contract in the amount of \$31,192.00. GMS recommends approval of the Change Order in that amount.

*****MOTION*****

MR. LOVATO MADE A MOTION TO APPROVE CHANGE ORDER NO. 2 TO GLACIER CONSTRUCTION IN THE AMOUNT OF \$31,192.00. SECONDED BY MR. HACKER. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (4-0).

- With Glacier Construction's change orders thus far reflecting only 0.3% of the original contract, Mr. Petersen wanted to commend Mr. Meyer and his team for their excellent efforts in keeping change orders to such a low percentage.
- Mr. Meyer advised yard piping and electrical conduit installations are close to completion. The UV building has all block work completed together with the roofing, and the LP tank has been installed. The equalization basins are backfilled, and the hand rails have been installed. The 20-inch piping extending from the EQ basins to the UV facility is being installed. SBR Basin Nos. 1 through 3 have been backfilled, and backfill is in process on Basin No. 4.
- The electrical building structure has been completed, and the headworks building has been fully enclosed. The digester building has not seen much progress yet, and the aerobic digesters at this point are not backfilled. The south half of the solids handling building has its slab on grade in place, and work is continuing on installing the remaining slab work.
- Timber Line has been provided the SCADA specification requirements for the wastewater treatment plant and the Schriever equipment. Additional information will be provided to them in regard to the recharge facility and the two new lift stations that have yet to be installed. They are working on preparing their quotes for the additional work.
- The Water Pollution Control Revolving Fund Loan Request No. 15 has been prepared, and it requests a total of \$691,734.14 to be remitted to the District to cover eligible costs for March. GMS recommends approval of the requisition in that amount.

*****MOTION*****

MR. LOVATO MADE A MOTION TO AUTHORIZE REIMBURSEMENT OF WPCRF REQUISITION #15 BACK TO THE DISTRICT IN THE AMOUNT OF \$691,734.14. SECONDED BY MR. HACKER. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (4-0).

- Mr. Meyer provided to the Board the attached Allocation of Costs on March's Contractor Draw Requests and a breakdown of the Project Expenditure Reimbursement Request No. 15. Although the Pikes Peak Regional Building Department provided verbal consent to the District to proceed without their presence, Mr. Meyer stated that they would require Regional to do their job and be present.
- The Regional Transportation Authority is initiating a major water line project on Marksheffel Rd. The District's pipeline was previously installed outside of Powers Blvd. and Marksheffel Rd. but now will need to be moved at RTA's expense. The project has undergone three reviews and is not yet resolved. The timetable to complete the project is summer, 2009.

ITEM 8:

⇒ Manager's Report – Kip Petersen

- Mr. Petersen provided to the Board a handout of articles retrieved from *The Denver Post*. The articles focus on the struggles and tribulations farmers on the eastern plains of Colorado are facing because of senior water-rights implemented many years earlier.
- Because of the proposed stimulus package funded by the federal government, Mr. Petersen requested \$20 million for a slip lining project within the District. This is a six-tier funding request and most likely the District will not be approved of this funding.
- Although the Tierra Vista Community development is ready for occupancy, Mr. Petersen advised the board that no water will be supplied to this development until the contract has been signed and the fees paid.
- Last week Mr. Petersen attended a meeting of the Board of County Commissioners and objected to the development of an 18-lot subdivision near Judge Orr Road and Hwy 24 in El Paso County. It is Mr. Petersen's belief that the subdivision's numerous septic systems will migrate southerly towards the District's water supply. He also mentioned the possibility of another stand-alone development totaling 300 septic systems. Again, the migration of the sewage downhill would greatly impact the District's water and the overall water quality of the basin. One of the suggestions Mr. Petersen proposed at the meeting was for the County to ask that developments flow to a central wastewater treatment facility to handle these needs. His stance and any future arguments will be very aggressive.

- Mr. Petersen, Mr. Sintas, Mr. Laxson, and Mr. Rainford met with the Colorado Department of Transportation concerning the upcoming Powers Blvd. expansion. The CDOT would need a small portion of the Golf Course (the very west end of Par 3 course; see attached photo) for developmental purposes. The cost of this project would be minimal and at CDOT's expense. The end result would be to the benefit of the District, as this would cosmetically enhance the appearance of the southwest portion of the Course. Mr. Petersen requested permission from the Board to write a letter to CDOT authorizing the approval of those changes.

*****MOTION*****

MR. BYERS MADE A MOTION TO AUTHORIZE MR. PETERSEN TO WRITE A LETTER TO CDOT APPROVING THE CHANGES TO MINIMIZE THE SIDEWALK ON THE SOUTHWEST PORTION OF THE GOLF COURSE FOR THE ANTICIPATED POWERS BLVD. EXPANSION. SECONDED BY MR. HACKER. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (4-0).

ITEM 9:

⇒ Water/Wastewater Report – Art Sintas

- Mr. Sintas provided an update on the District's water demands. Water demands for March were 2.078 mgd compared to March, 2008, of 1.679 and March, 2007, of 1.739 mgd. Consumption of the Tipton and Pikes Peak Wells is at approximately 10%.
- Stage 2 of the Water Conservation Plan commenced April 1. Again, twice-a-week watering of lawns is allowed, and the staff recommends no changes.
- The valve replacement at Galley Rd. and Valley St. was completed on March 18. Kempton Construction was the contractor. Although the budget allowed \$50,000, the total cost of the project was less than \$38,000. The next project will be the water leak survey.
- There is no schedule yet set for slip lining the sewer mains.
- There have been no water leaks since the last Board Meeting.
- Staff is currently reviewing applications for the parks maintenance position and will be interviewing soon.

ITEM 10:⇒ Golf Course, Pro Shop, and Maintenance

- Mr. Laxson reported on the Golf Course activities (see attached) stating the Course was closed for eight days in March, which was three fewer than 2008. They were slightly behind the March, 2008, numbers in range revenue and rounds of golf but were slightly ahead of 2008 in grill and merchandise revenue.
- The Colorado School for the Deaf and Blind, in conjunction with the USGA, has started their spring golf program. They play at Cherokee Ridge every Monday and Thursday through May 11. Rampart and Liberty high school ladies' golf are back for 2009, and they will be practicing at Cherokee Monday through Thursday through the end of April.
- The Course has contacted most of its regular leagues, and despite a few minor changes, most will be back for the spring and summer. League play for Cherokee Ridge guarantees green fees on weekday afternoons through the end of the summer.

Maintenance – Griff Rainford

- With cool weather and overnight temperatures in March, the course has been slow in green up. However, the Course is coming around nicely and water usage has been limited because of occasional snow and continued cold weather. All irrigation has been from the lake and well complex since February.
- In March, the irrigation station was charged and necessary maintenance was performed. Some daytime watering was performed to help with aerification, and watering at night will begin once overnight temperatures climb above the freezing mark.
- Two seasonal employees were brought back to help with the spring aerification and to help get the course ready for nicer weather. Fairway aerification was delayed due to cold weather. Greens were fertilized to promote green up for aerification in April.

ITEM 11:⇒ Old Business

There was no old business to report at this time.

ITEM 12:⇒ New Business

- Mr. Lovato requested that he be involved in June's Board Meeting via teleconferencing. He will know more details pertaining to his schedule in the near future. Mr. Hacker will also be absent from June's Board Meeting.
- Mr. Felt advised the Board there will be an action item following the Executive Session.

Karl Raymond asked the Board what the impact on the District would be when the housing development at the Schriever Air Force Base comes on line. Mr. Petersen said that only 30-50 homes are being built this year, and that approximately 112 acre feet will come out of a water allocation already reserved for SAFB.

A short break was taken at 7:27 p.m. before Executive Session commenced.

ITEM 13:⇒ Executive Session: CRS 24-6-402(4)(b)*****MOTION*****

MR. BYERS MADE A MOTION TO ENTER INTO AN EXECUTIVE SESSION CITING 24-6-402(4)(b) LEGAL CONSULTATION. SECONDED BY MR. HACKER. ALL BOARD MEMBERS IN FAVOR. MOTION CARRIED. (4-0).

Executive Session was entered into at 7:43 p.m.

*****MOTION*****

MR. BYERS MADE A MOTION TO COME OUT OF EXECUTIVE SESSION AND RETURN THE MEETING TO THE OPEN SESSION OF THE REGULAR MEETING. SECONDED BY MR. HACKER. ALL BOARD MEMBERS IN FAVOR. MOTION CARRIED. (4-0).

The Regular Session began at 8:45 p.m.

Mr. Petersen stated that a number of legal issues were discussed with only one item needing discussion and approval in open session. Mr. Felt discussed to option that Cherokee has to purchase FMIC shares. At this time Cherokee

would be able to purchase 10 shares at \$10,000 with the option to purchase another 14 shares at \$10,300. Mr. Felt asked the Board to authorize both Mr. Petersen and Legal to negotiate the purchase of these shares.

*****MOTION*****

MR. LOVATO MADE A MOTION TO AUTHORIZE MR. PETERSEN AND LEGAL TO NEGOTIATE A CONTRACT AND PURCHASE 10 FMIC SHARES WITH THE OPTION TO PURCHASE 14 MORE. SECONDED BY MR. BYERS. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (4-0).

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 8:48 p.m.

Steve Hasbrouck, President

Board Members

Steve Hasbrouck, President
Dave Hacker, Vice President
Robert Lovato, Director
Sean Byers, Director

Term Expires

May, 2012
May, 2010
May, 2012
May, 2010