

CHEROKEE METROPOLITAN DISTRICT
REGULAR MEETING OF THE BOARD OF DIRECTORS

May 12, 2009

MINUTES

The Regular Meeting of the Board of Directors of the Cherokee Metropolitan District was held on Tuesday, May 12, 2009, at 5:00 p.m. at 6250 Palmer Park Blvd., Colorado Springs, Colorado.

BOARD OF DIRECTORS PRESENT

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|---------------------|---------------|
| Steve Hasbrouck | Dave Hacker |
| Sean Byers | Robert Lovato |
| Kurt VandenBoogaard | |

OTHERS PRESENT

| | |
|-----------------|------------------|
| Kip Petersen | Ken White |
| Dian Hardekopf | Pete Heidebrecht |
| Jim Felt | Sara Howard |
| Art Sintas | Griff Rainford |
| Len Meyer | Todd Laxson |
| Brian Beaudette | |

OTHER GUESTS SIGNING ATTENDANCE LOG

| | |
|------------------------|--------------------|
| David and Linda Mattes | Michael Rasdall |
| Ken and Rita Martinez | Mary Hernandez |
| Lynne Bliss | Jan Olson & Family |
| Wade Antener | Assunta Manning |
| Andy Anderson | Dave Hammers |
| David McRobbie | |

ITEM 1:

The meeting was called to order by Chairman Steve Hasbrouck at 5:06 p.m. Ms. Hardekopf called roll call of the Board of Directors, all Directors were present except for Mr. Byers.

ITEM 2:

Mr. Hasbrouck asked if there were any changes or amendments that needed to be made to the Agenda. Mr. Lovato requested that, after the interviews of applicants for the Director of the Board were finished, the audience be given the opportunity to offer their opinions and suggestions under public comments.

*****MOTION*****

MR. LOVATO MADE A MOTION TO INCLUDE A PROVISION IN THE MAY 12, 2009, AGENDA TO ALLOW THE AUDIENCE TO OFFER THEIR OPINIONS OF THE INTERVIEWEES FOR THE BOARD OF DIRECTOR. SECONDED BY MR. HACKER. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (4-0).

ITEM 3:

The Agenda of the Regular Meeting of May 12, 2009, including the aforementioned amendment, was reviewed. There were no other requested changes noted.

*****MOTION*****

MR. LOVATO MADE A MOTION TO APPROVE THE AGENDA OF THE REGULAR MEETING OF MAY 12, 2009. SECONDED BY MR. HACKER. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (4-0).

ITEM 4:

The Minutes of the Regular Meeting of April 14, 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. LOVATO MADE A MOTION TO APPROVE THE MINUTES OF THE REGULAR MEETING OF APRIL 14, 2009. SECONDED BY MR. HACKER. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (4-0).

Mr. Lovato offered a suggestion concerning the Minutes. He stated he had attended a seminar and learned the Minutes should always be stamped as "Draft" until after they have been reviewed and approved by the Board. After that time, the Minutes are then distributed and made public.

Mr. Byers arrived at 5:10 p.m.

ITEM 5:

Mr. Petersen read to the Board a memo dated May 7, 2009, referencing the candidates for the vacant seat on the Board of Directors. Based upon the Board's direction at the last Regular Board meeting, he contacted each of the previous applicants to determine if they wished to be considered for the current vacancy. Of the original five applicants remaining, all but Karl Raymond indicated a desire to be reconsidered.

Mr. Hammers provided Mr. Petersen documentation indicating he now personally owns property in the District. The documentation is a Quit Claim Deed to a parcel of land in the Claremont Business Park. This removes any doubt about his eligibility to be a viable candidate for the Board.

Mr. Petersen received one additional application for consideration by the Board. Mr. Kurt VandenBoogaard, a 20-year resident of the District, submitted his letter of interest. Mr. VandenBoogaard then spoke as a candidate for the seat and answered questions from the Board. Along with Mr. VandenBoogaard, Mr. Petersen identified three of the four other candidates present in the audience. After asking the candidates if they would like to make any statements, Ms. Cederberg asked the Board if they had any questions for her, and Mr. Antener stated he would have to leave the meeting early but was still very interested in the position. Mr. Hammers stated he had no statements but encouraged questions from the Board. Mr. Lovato stated Mr. Hammers was a personal friend of his and supported Mr. Hammers in a professional relationship. He mentioned the District needs "flavor", being a businessman, and Mr. Hammers could substantiate that from being a Director.

Mr. Hasbrouck asked if there were any public comments. Mr. Martinez, from the audience, asked if there were any interviewees not present, and Mr. Petersen responded by saying he had been trying to reach Mr. Emricson but believed he was out of state. Mr. Martinez's concerns were that Mr. Emricson served as a past Board Member with the same legal counsel and General Manager during the troubled times and should not be considered. Mr. Hasbrouck reminded the audience that the selection was only for an 11-month appointment, and there would be a forthcoming election in May, 2010. Mr. Martinez added that he believed there was a significant change for the good in the present Board, and they have made a gallant effort in moving forward.

Mr. Anderson, a member of the audience, then addressed his concerns about Mr. Hammers, stating he believed a civilian, not a businessman, should be representing the District. He also believed Mr. Hammers was involved in the recall effort of previous Board Members. Ms. Hernandez believed a lot of time and energy would be subjected to the new Director to represent the District and to appoint the individual with the best interest of the District. Mr. Rasdall

defended Mr. Hammers, stating he didn't have anything to do with the previous recall and thought it was an excellent idea to have a businessman representing the District.

At this time, Mr. Antener had to leave the meeting.

Mr. Mattes asked Mr. Hammers where he thought the District was going to be in five years. Mr. Hammers stated he thought the Board should go as far away as possible from the Upper Black Squirrel administration and look for opportunities elsewhere.

Ms. Manning stated she didn't think Mr. Lovato should be able to vote, based on his opinionated support for Mr. Hammers, and asked the rest of the Board members if there was any other favoritism. Mr. Hasbrouck responded by saying this was not a due process election, and the Board was just filling a vacancy. In light of that, the voting process would continue to move forward and Mr. Lovato's vote would be accepted.

Ballots were provided to the Board Members; and after being tallied by Ms. Hardekopf, the results were handed to Mr. Petersen. Following are the results of the votes:

| | | |
|---------------------|---|---|
| Kurt VandenBoogaard | - | 2 |
| Jan Cederberg | - | 1 |
| Dave Hammers | - | 1 |

ITEM 6:

It was then announced Mr. VandenBoogaard would be sworn in as the newly appointed Board Member for the District.

ITEM 7:

⇒ Appointment of Board Officer

Mr. Hasbrouck requested Ms. Hardekopf to conduct the Oath of Office for Mr. VandenBoogaard. She asked him to stand and raise his right hand and read and affirm the Board of Directors' Oath of Office. Mr. VandenBoogaard then signed his oath (see attached).

At this time, a short break was requested by Mr. Hasbrouck. The meeting recessed at 5:53 p.m.

The regular meeting resumed at 6:04 p.m.

ITEM 8:

⇒ Election of Office for Secretary/Treasurer

*****MOTION*****

MR. LOVATO MADE A MOTION TO ELECT MR. BYERS AS SECRETARY-TREASURER ON THE BOARD OF DIRECTORS FOR THE REMAINING TERM. MR. BYERS RESPECTFULLY DECLINED. MR. LOVATO MADE A MOTION TO ELECT MR. VANDENBOOGAARD AS SECRETARY-TREASURER ON THE BOARD OF DIRECTORS FOR THE REMAINING TERM. SECONDED BY MR. BYERS. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).

ITEM 9:

⇒ Public Comments

Mr. Hasbrouck asked if there were any public comments at this time.

- Mr. Dave Mattes asked to see a five-year plan of the District's water availabilities. Mr. Lovato said the answer lies in the new wastewater treatment plant, but Mr. Mattes asked about other alternatives and other sources. Mr. Petersen assured Mr. Mattes he would compile documentation concerning a five-year plan for the Board's perusal.
- Ms. Hernandez stated her concerns about the possibility of the District being annexed by the City in the foreseeable future. Mr. Petersen assured Ms. Hernandez that, because of the makeup of the infrastructure being different and possible mill levies and city developmental fees being taxed to the citizens, it was highly unlikely the City would ever annex the District. Mr. Felt additionally commented that the risk assessment for the city is extremely low, meaning the cost benefit ratio to the city would be in the negative if they were to consider any annexation of the Cherokee District.

ITEM 10:

⇒ Legal Report – Mr. Jim Felt

- Mr. Felt stated the Replacement Plan application is currently in front of the Groundwater Commission and is still set for a two-week trial beginning June 8. Mr. Jim Culichia is trying the case and has received favorable comments from objectors. The District will be trying to settle with the remaining objectors; however, there is a

good chance that the Farmer and Booker families and UBSGMD will not settle which will force the case to go to trial.

- On behalf of the new Board Member, Mr. Kurt VandenBoogaard, and to refresh the memories of the audience, Mr. Felt gave a brief and informational overview of the history of the District's wells and current and future water supply situation.
- There is now a noticeable sign posted at the Golf Course stating non-potable water is in use on the Course. This new development is from the Sand Creek well that was drilled on the Course to satisfy irrigation requirements which results in more potable water back to the District.
- The balance of 53 acre feet remaining from the Kane water purchase, whereby the District originally contracted to buy and purchase 147 acre feet, has gone under foreclosure and is being encumbered by the American National Bank. The District will most likely be given the option to purchase this water in the foreclosure process but will need to examine the issues.
- Legal counsel and Mr. Petersen will be traveling to Denver on May 15, 2009, to argue an appeal on the Springs East Airport case. This is a result from the owner of the development requesting a change of use from irrigation to municipal use and is seeking entitlement to more than the allowable amount of water.
- There is still no decision regarding the Denver Basin Lease Case.

ITEM 11:

⇒ Engineering Report - Mr. Ken White

- In Mr. Meyer's absence, Mr. White provided a report on the wastewater project and related issues (see attached). Glacier Construction's 10th pay request has been received and reflects \$10,160,601.03 earned to date. This pay request incorporates Change Order No. 2 and brings the overall retainage level to \$764,604.60. Taking both the retainage and the prior payments into account, the net amount due the Contractor is \$716,183.18. GMS recommends approval of the pay request in that amount.

*****MOTION*****

MR. LOVATO MADE A MOTION TO APPROVE PAY REQUEST NO. 10 TO GLACIER CONSTRUCTION IN THE AMOUNT OF \$716,183.18. SECONDED BY MR. HACKER. THERE WAS NO FURTHER DISCUSSION.

WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED. (5-0).

- Mr. White complemented his handout to the Board with a visual presentation of the Wastewater Treatment Plant. Completion date is tentatively set for January 25, 2010; as of right now, progress is on schedule. Mr. Petersen commented on the great work that GMS and especially Mr. White has been doing on the wastewater treatment project.
- Yard piping is approximately 98% complete, and electrical conduit installations are close to being completed. All major structures are backfilled and SBR Basins 1 through 3 have the handrails installed. Waste-activated sludge yard piping is generally complete. All block work has been completed on the operations building, and the basic electrical building structure is complete. The head works building has been completed, and the standby generator has been installed.
- Design is in progress on the two sewage lift stations required by the District with modifications to the existing Sand Creek Wastewater Treatment Facility. There have been discussions to consider the Current Contractor, Glacier, to undertake this additional work by means of a Change Order. GMS will keep the Board apprised if that is the direction they wish to proceed.
- Change Order No. 1 has been negotiated with Timber Line Electric to provide the hardware, customize the software and install and make adjustments to the overall SCADA system at the WWTP and recharge facility. A second Change Order will be forthcoming with respect to the two lift station sites and modifications at the SAFB site. The Change Order reflects an increase in the contract amount by \$264,432.00, which Mr. Meyer discussed at a previous meeting and was to be expected and budgeted for, bringing the adjusted contract to \$307,027.93. GMS recommends approval of the Change Order in that amount.

*****MOTION*****

MR. LOVATO MADE A MOTION TO APPROVE CHANGE ORDER NO. 1 TO TIMBER LINE ELECTRIC IN THE AMOUNT OF \$264,432.00. SECONDED BY MR. HACKER. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).

- The Water Pollution Control Revolving Fund Loan Request No. 16 has been prepared, and it requests a total of \$440,369.75 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 #16 BACK TO THE DISTRICT IN THE AMOUNT OF \$440,369.75. SECONDED BY MR. BYERS. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).

- Mr. White provided to the Board the attached Allocation of Costs on April's Contractor Draw Requests and a breakdown of the Project Expenditure Reimbursement Request No. 16.

At this time, a short break was requested so Mr. Hasbrouck could provide signatory authority on the above contracts. The meeting recessed at 7:07 p.m.

The regular meeting resumed at 7:15 p.m.

ITEM 12:

⇒ Manager's Report – Kip Petersen

- Mr. Petersen was proud to report he had received three originally signed contracts from Tierra Vista Communities, but he doesn't have payment as of yet. Water will not be turned on until payment has been received, although Tierra Vista is requesting the water by the end of May. The contract stipulates the District receive an initial payment of \$500,000 and subsequent payments of \$250,000 every April and October of each calendar year for the next eight years. Mr. Petersen asked the Board to authorize the President to sign the documents; provided payment will be received. Mr. Byers commended Mr. Petersen for 'standing his ground' and making a good judgment call.

*****MOTION*****

MR. LOVATO MADE A MOTION TO AUTHORIZE MR. HASBROUCK TO PROVIDE SIGNATORY AUTHORITY OF THE TIERRA VISTA COMMUNITY CONTRACTS ONCE PAYMENT HAS BEEN RECEIVED. SECONDED BY MR. BYERS. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).

- Mr. Petersen continues to work on additional resources for the District's summer months. He is seeking the same amount of water from CSU this summer as he did last summer.
- As a representative of the District and President of the Pikes Peak Regional Water Authority, Mr. Petersen recently made a presentation to the City's Utility Policy Advisory Committee (UPAC) and has been actively involved in discussions seeking to establish mutual community and regional partnerships. He believes the District will get to provide input to this Committee.
- An additional ten shares of Fountain Mutual has been purchased which complements the District's existing shares to augment its demands on Sand Creek.
- Upwards of 600 homes are subject for development near Judge Orr Road and Hwy 24 in El Paso County. Mr. Petersen's proposal at a recent County Commissioners' meeting to ask the County to research the harmful effects of nitrates in the many septic systems has resulted in the County to agree to conduct a study on water quality specifically in this region. Mr. Petersen did commit some financial resources to help conduct this study along with Meridian Ranch, El Paso County and other entities.

ITEM 13:

⇒ Water/Wastewater Report – Art Sintas

- Before Mr. Sintas provided the attached April update to the Board, he wanted to welcome Mr. VandenBoogaard to the Board. Water demands for April were 2.011 mgd compared to April, 2008, at 2.285 and April, 2007, at 2.005 mgd. Since the beginning of this month, the District is at 2.7 mgd average with a peak of 3.8 mgd the weekend of May 9. The Tipton and Pikes Peak wells are at 18% consumption, and the District started flowing water from CSU on May 12.
- Mr. Byers wanted to discuss the definition of grey water from household use. Grey water is captured water from ordinary household uses such as showers, washing machines and sinks. It is unlawful through State regulations to capture and reuse this water for irrigation purposes.
- Stage 2 of the Water Conservation Plan is in effect. Along with 95 written violations, two, \$50 violations have been issued. There

have been 65 sod permits sold since April 1. The deadline for receiving a sod permit is May 15.

- Craig Gelston has been hired to oversee all the District's parks, recreational areas, medians and landscaping. He will be employed full time and will have two full-time summer employees to help him through the summer months.

ITEM 14

⇒ Golf Course and Pro Shop – Todd Laxson

- Mr. Laxson reported on the Golf Course activities (see attached) stating the Course has been somewhat affected by the pattern of unpredictable weather in April. Rounds of golf year to date are ahead of 2008 by 9%. Merchandise sales are ahead by 3%.
- The Grill has averaged \$129 per day from the beginning of the year. The majority of afternoon leagues have started for 2009 which guarantees green fees for four days a week and the Course's Monday leagues will start May 18th which will fill the fifth day of the week.

Maintenance – Griff Rainford

- Mr. Rainford updated the Board on the April maintenance of the Golf Course (see attached). With timely snow and rain during the month, less water was needed to irrigate the course.
- In April, the Maintenance crew rebuilt the greenside bunker on #8. Greens, tees and fairways were aerified, top dressed, and fertilized. The water applied in April was retrieved from the well/lake complex.
- 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.
- Mr. Rainford also presented to the Board the attached table showing the Golf Course's monthly averages of water usage from the year 2002 to present. He will continue to add data to these charts to enable the Board to see how much water the Course has used over the years and through which sources the water will come from.

ITEM 15:

⇒ Old Business

- Mr. Hacker will be absent from the June Board Meeting; and because the ongoing Replacement Plan trial in Denver, Mr. Petersen didn't know if he would be present at the meeting. Jim Felt will be present at the Board Meeting.

ITEM 16:

⇒ New Business

There was no new business to report.

ITEM 17:

⇒ 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 MR. BYERS. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).

A short break was taken at 8:00 p.m. before Executive Session commenced.

Executive Session was entered into at 8:07 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 PRESENT IN FAVOR. MOTION CARRIED (5-0).

The Regular Session began at 9:09 p.m.

There was nothing to report on from the executive session at this time.

ITEM 18:

⇒ Adjournment

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

The Meeting adjourned at 9:11p.m.

Kurt VandenBoogaard, Secretary/Treasurer

Board Members

Term Expires

| | |
|--|-----------|
| Steve Hasbrouck, President | May, 2012 |
| Dave Hacker, Vice President | May, 2010 |
| Kurt VandenBoogaard, Secretary/Treasurer | May, 2010 |
| Robert Lovato, Director | May, 2012 |
| Sean Byers, Director | May, 2010 |