

MINUTES OF THE BOARD MEETING
OF THE BOARD OF DIRECTORS OF THE
DENVER SOUTHEAST SUBURBAN WATER
AND SANITATION DISTRICT

A regular meeting of the Board of Directors of the Denver Southeast Suburban Water and Sanitation District was held on Wednesday June 12, 2013 at the main office, the time and place of the meeting according to the posted notices. Present were District Board Members – Robert Chapman, Walter Partridge, Rod Bergholm, Heidi Tackett and Robert Greene, District Manager - Charles Krogh, General Counsel - Jim Folkestad, District Accountant - Kevin Collins, and District staff –Rhonda Lancaster and Kevin Clark.

Chairman Chapman called the meeting to order at 6:00 p.m. and established the presence of a quorum.

Minutes for the May 8, 2013 Regular Board Meeting were approved as written. Also approved were the minutes for the Special Meeting held on June 6, 2013.

Motion: Robert Chapman

Second: Walter Partridge

Vote: All Directors present voted in favor.

PUBLIC RESPONSE

None

DIRECTOR'S BUSINESS

With the fire danger imminent, Chairman Chapman asked Manager Krogh if Bingham Lake has been made available for fire fighters. Manager Krogh assured the Board that if firefighting crews need water by air they will dip into whatever reservoirs are nearby and they are welcome to both Bingham Lake and Walker pit near Franktown.

Director Tackett asked Mr. Folkestad if he can expedite the completion of the project for working on the District's Rules and Regulations.

ITEMS FOR BOARD ACTION AND DISCUSSION:

DISCUSSION OF 10 YEAR CAPITAL PLAN

Manager Krogh provided the Board with a draft update to the 10 year capital plan which identifies water projects including WISE cost estimates, Cherry Creek Project Water Authority costs, Pinery Water local water supply projects and Pinery Water system projects. All of these add up to around the \$40,000,000.00 range. The capital plan will be updated based on the final WISE subscriptions and the Cherry Creek Project Water Authority master plan which is due to be completed in September.

DISCUSSION OF PINERY WEST SUBDIVISION IMPROVEMENTS AGREEMENT

The Board and staff held a discussion regarding the Pinery West Subdivision Improvements Agreement in preparation for working to further define obligations of the District and Developer. Manager Krogh informed the Board that there is a home builder ready to sign on with the Developer so it looks like they are ready to get things started. The District will be building a 1 million gallon storage tanks on the tank site in Colorado Golf Club (Reservoir 2B – the site has room for two tanks) for future demand and fire storage for the Pinery West and Broe Developments. The Agreement language will need to include the amount that the Developer is responsible for, timing of the payment and to place limits on how many taps can be sold prior to the tank being completed. The Developer will be responsible for approximately 450,000 gallons of storage. Manager Krogh explained that for the commercial property, calculations of water use assumptions will need to be clearly stated in the agreement so if the development pattern and water usage are different than currently contemplated adjustments to the Developer contribution can be made. Also, the Developer will be replacing the existing 50 year old 16" water main on the property and that cost will be reimbursed by the District. Language will need to be added to the Agreement to include the upsizing of the water main that the Developer plans to extend to the southern boundary of the District which will be done at the District's expense. . The discussion was concluded with comments from attorney Jim Folkestad assuring the Board that this is consistent with the District's policy to have the Developer pay for development infrastructure and then be reimbursed for the "Townwide" portion through tap fees.

WELL A DESIGN CONTRACT

District staff requested a proposal from Dewberry Engineers to provide project design, bidding services and construction phase services for the Pump Station 1 Well Field Modifications which consists of the re-drilling of Well A (Lower Dawson) and combining Well 1 and Well A into the same metering vault. A motion was entered to approve the Well A Design Contract with Dewberry Engineering not to exceed \$80,000.00.

Motion: Robert Greene

Second: Robert Chapman

Vote: All Directors present voted in favor.

RESOLUTION 2013-4 AUTHORIZING PURCHASE OF PROPERTY

The Board was provided with this Resolution as needed to go along with the previously approved Property Purchase Agreement in the Pinery West Development. A motion was entered to approve Resolution 2013-4 authorizing the Chairman and Treasurer to sign the documents required to complete the purchase of Lots 10 and 11 and tracts K and O in the Pinery West Development. Attorney Folkestad added that the documents are required by the title company handling the purchase and the closing is slated for June 24, 2013.

Motion: Heidi Tackett

Second: Robert Greene

Vote: All Directors present voted in favor.

RESOLUTION 2013-5 REVOKING APPROVAL OF LEASE WITH SKYWAY TOWERS

Manager Krogh and Attorney Folkestad have requested that the Board approve a resolution that revokes the approval of the Skyway Towers LLC agreement for the AT&T cell site that was given at the November 2012 regular Board meeting. The District has been informed by consultants for AT&T that they are no longer interested in the Reservoir 7 site. The District has asked for reimbursement of our attorney's fees to date from AT&T. A motion was entered to approve Resolution 2013-5 revoking the previous approval of the lease with Skyway Towers.

Motion: Heidi Tackett

Second: Robert Greene

Vote: All Directors present voted in favor.

WISE UPDATE

The Board was presented with an update on the status of the participant approvals for the WISE project with Parker being the last to approve. It is expected that Parker will consider approval on June 13th. Also included in the update was the WISE project schedule of building infrastructure phasing that represents a \$140,000,000 (split among the participants) cost to reach the goal of full deliveries anticipated by 2020. Also included was the information on the purchase of the ECCV pipeline. Manager Krogh pointed out that he has been involved in meetings about WISE for the last 6 years and they are approaching the finish line. A motion was entered to approve the amendment of the WISE IGA that will reflect the change of the number of other participants from 10 to 9.

Motion: Rod Bergholm

Second: Heidi Tackett

Vote: 4 Directors voted in favor, Director Greene voted against.

ATTORNEY'S REPORT

Attorney Jim Folkestad updated the Board with active items of interest to the Board.

ACCOUNTANT'S REPORT

Accountant Kevin Collins with Clifton Larson Allen presented the April 30, 2013 financial statements to the Board. Mr. Collins reported that restricted funds need to be transferred into ColoTrust and that there is \$3,000,000 left in that fund. Variances for water operating expenses are high due to items paid in full once a year. The balance available through April 30, 2013 for the collected Water Supply Project Fee is \$1,332,034. A motion was entered to accept the April 30 2013 Financial Statements.

Motion: Heidi Tackett

Second: Rod Bergholm

Vote: All Directors present voted in favor.

Director Bergholm requested that there be more detail included in invoices coming from Folkestad, Mulhern and HRS. He is concerned about what the District is paying for and to ensure that staff knows what the detail of these invoices are when approving them for

payment. Manager Krogh will provide Director Bergholm with detail for the invoices in question.

TREASURER'S REPORT

Director Bergholm presented the Treasurer's Report for Board approval for the month of April 2013. A motion was entered to issue checks as written in the amount of \$851,008.32 for disbursements and \$18,802.66 for the interim report. Manager Krogh added that included in the disbursements was a check issued to him in the amount of \$565.00 for reimbursement of a 457 plan discrepancy found in the audit. Also, Mr. Krogh has written a check to reimburse the District in the amount of \$534.00 that was the result of an overpayment into Mr. Krogh's 401A plan back in 2009.

Motion: Rod Bergholm

Second: Robert Greene

Vote: All Directors present voted in favor.

Manager Krogh presented an updated change order list for the Well H pipeline project. The Board agreed with the payment of the three change orders presented.

DISTRICT MANAGER'S REPORT

- The Manager participated in a panel presentation at the AWWA Conference on WISE project. There was also a poster session on water quality done by CH2M Hill.
- The District's 2013 Budget includes the purchase of 2 new pickup trucks for water staff. The order needs to be placed for the state bid soon. These will be replacing two 2007 vehicles that will be taken to auction for sale.
- The Board was presented with the 2013 contract for audit services provided by Paul Geodeke in the amount of \$9,250.

Motion: Robert Chapman

Second: Robert Greene

Vote: All Directors present voted in favor.

- Manager Krogh provided the Board with a copy of the breakdown of the meter pit replacements program produced by Water Superintendent Dan Hammann.
- Manager Krogh handed out a letter to the Board notifying them of his desire to resign as District Manager effective December 31, 2013, the end of his existing contract term. The letter also lined out what Mr. Krogh would like to be involved with during the next 6 months in terms of assisting the District in recruiting a new Manager. He also expressed his interest in continuing to support the District on a part time basis in a number of areas.
- Attorney Jim Folkestad provided the Board and staff his findings on researching the idea of Director Bergholm's interest in applying for the District Manager position and the ethical principles and laws, if any, involved in this situation. He asked for second opinions from Paul Wiser SDA special counsel and from James Collins with Collins Cockrel & Cole. Please refer to the letter from James Collins attached to the minutes.

Mr. Folkestad commented that it is for the applicant to do the ethical thing, not for the Board to act on and that he gives his opinion on behalf of the Board.

At 8:05pm the Board voted to move into an Executive Session pursuant to C.R. S. Section 24-6-402(4)E for determining the District's position on matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators in regard to District water rights, and C.R. S. Section 24-6-402(4)F to discuss personnel matters .

Motion: Robert Greene

Second: Robert Chapman

Vote: All Directors present voted in favor.

At 8:20 pm Director Bergholm excused himself from the meeting.

After the Executive Session, Jim Folkestad stated that all of the discussion in the Executive Session constituted a privileged attorney-client communication and therefore, no record or electronic recording was required to be kept of that discussion. Jim Folkestad further stated that the Board did not adopt any proposed policy, position, resolution, rule, regulation, or formal action with respect to the matters discussed during the Executive Session.

At 9pm a motion was entered to adjourn from Executive Session and re-enter into the regular meeting.

Motion: Robert Greene

Second: Heidi Tackett

Vote: All Directors present voted in favor (4).

There being no further business to come before the Board, Chairman Robert Chapman closed the regular meeting at 9:02pm.



ROBERT CHAPMAN, CHAIRMAN OF THE BOARD
OF DIRECTORS, DENVER SOUTHEAST SUBURBAN
WATER & SANITATION DISTRICT

ATTEST:



WALTER PARTRIDGE, SECRETARY

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June 11, 2013

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Attachment
for minutes

Re: Ability of a District Board Member to be Hired as District Manager

Dear Jim:

In summary, it is the opinion of this Firm that there is no legal prohibition against a Board Member of a Colorado Special District being hired to serve as the District Manager.

Obviously the Board Member would be required to resign from the Board of Directors, pursuant to the prohibition in § 32-1-902(2)(b), C.R.S. While a resignation prior to the Board undertaking the application and selection process may avoid negative political commentary, it is our opinion that such a resignation is not necessary – so long as the Board Member applicant abstains from any involvement in the hiring process; and certainly resists any attempt to influence the remaining Board Members.

Finally, disclosure of potential conflict, pursuant to the Disclosure Statutes, would be helpful in defending his candidacy; and a good Record of the Board Member's abstention from any involvement would be helpful to the defense.

The applicable Statute under the Standards of Conduct / Code of Ethics for local government officials is found at § 24-18-105(3), C.R.S., which reads in part: "... a local government official . . . should not, within six months following the termination of

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James B. Folkestad, Esq.
June 11, 2013
Page 2

his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term of employment. These matters include rules, other than the rules of general application, which he actively helped to formulate and applications, claims or contested cases in consideration of which he was an active participant."

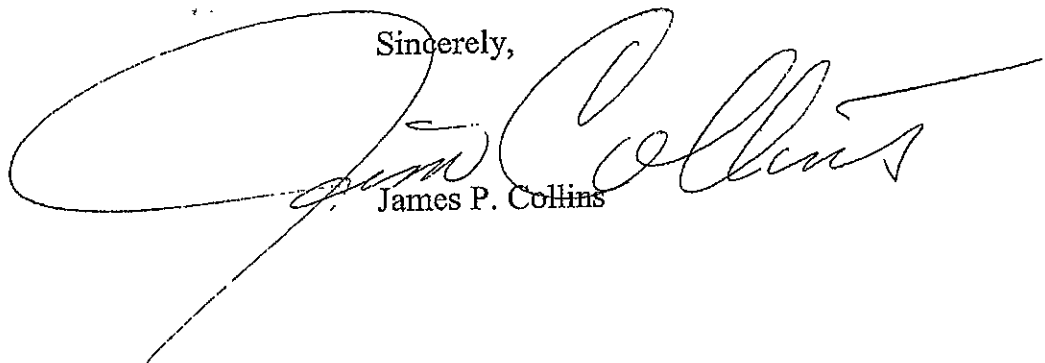
We have always interpreted this to apply to subsequent employment in the private sector that takes advantage of knowledge, rules or decisions made by the Board Member in his Board position. The object is to prevent Board Members from settling cases, passing rules and regulations, or taking other actions that could be seen to be subsequently rewarded by a position of employment. Additionally, the Statute alludes to not taking "*direct advantage unavailable to others*". Finally, this is a principle that says "*should not*" and does not constitute a prohibition.

We have considered all of the above to opine with great confidence that not only should a Board Member not be prohibited from applying for a Manager position, but perhaps in some cases should be encouraged to apply. A Board Member would often bring a wealth of background and experience with the District that others would need to acquire.

In conclusion, we recommend the application process be open to the general public; and that the interested Board Member be allowed to submit an application along with others. We recommend the Board Member abstain from any and all discussion, and in fact remove himself from the room whenever this hiring process occurs.

I hope this is helpful. Please let me know if any questions remain.

Sincerely,



James P. Collins

JPC/zah