

SPECIAL BOARD MEETING  
APPROVED MINUTES

August 27, 2008

DIRECTORS PRESENT: President Kelly Atchley, Vice President Erik Henrikson  
Directors Dan Wilkins, Ron Treabess, and Lou Reinkens

STAFF PRESENT: Cindy Gustafson, General Manager  
Jim Dykstra, Treasurer, Director of Accounting & Employee Services  
Alan Harry, Administrator of Planning and Public Works  
Mike Sexton, Legal Counsel  
Ginger Charlton, District Clerk

**A. CALL TO ORDER – PLEDGE OF ALLEGIANCE**

*President Atchley called the meeting to order at 7:00 a.m. Director Wilkins led the audience in the Pledge.*

**B. PUBLIC FORUM**

*Director Reinkens thanked staff for all of the material that was presented at last night's workshop. He felt that there wasn't enough time at that meeting to discuss some of the problematic issues and he hoped that they could discuss them at some point. He said that he feels we are on the right track but that we are going to become a water distribution system in the long run. He doesn't believe that the private water companies have the capital to build source and storage and we will be in the wholesaling business in the future. He feels that we need to address this issue. He said that a rate structure like the one we'll be proposing will price people out of the basin.*

*Director Treabess asked Director Reinkens if when he says we will be a wholesaler, is he envisioning a slew of retailers that we wholesale to versus moving into one consolidated system. Director Reinkens said that he feels that we will eventually be one system but we have fragmented systems and they will join us in a piecemeal fashion as they are doing right now. In the meantime, we are the only people on the block that can raise funds on a taxation basis.*

*Ms. Gustafson said that the District wouldn't have gotten where it is without the property taxes and our rates have not covered the infrastructure that we have; the property taxes have done that. Director Reinkens said that it makes sense to him identify our capital needs into categories (source and storage, mainline distribution system). The big items should be capital and the little items should be covered under O&M. He said the District should probably go out for a big bond to build a huge infrastructure for the source and storage and distribution system. Director Wilkins said that he agreed with most of what Director Reinkens said.*

*Ms. Gustafson said that the District has held a series of workshops on the visioning process of what to do with the private water companies and can continue to hold more if*

*the Board is so inclined. She said that it would help staff get a much better handle on what the District's role is when we talk to these folks.*

*Mr. Sexton said that it looks like the Board wants to talk about what was presented last night now that they have had some time to think about it. He suggested the Board have a special meeting or workshop in the near future to discuss it because it can't be discussed at this meeting.*

*Mr. Sexton said that before the Board went into closed session, he wanted to advise the Board and Ms. Gustafson on a couple of matters. He said it's difficult because whenever he has to advise Board members or the General Manager to excuse themselves from discussion, it's not a pleasant topic. He said that he had advised Director Henrikson that FPPC rules require that he not participate in discussions relating to Lake Forest due to the fact that he owns property there. Director Henrikson asked how this is different from a Board member voting on rates and charges that affect the entire District. MS said with respect to Lake Forest, they are addressing more than rates and charges. They are addressing whether the District ought to seek to acquire that system by purchase or otherwise, establishing what work will be done in the system, and then establishing a rate base for the system. He said it is a lot different than just establishing rates. He added that if a Board member is voting on a rate that affects all members of the community in the same way that it does the Director, then the Director is not excluded from participating in that decision. After he had advised Director Henrikson not to participate, he said that he should remove himself from the podium. He could sit in the audience and address the Board as a property owner in Lake Forest, though. Mr. Sexton also advised Director Henrikson that he shouldn't participate in closed session. He said that whether Director Henrikson chooses to follow that advice is entirely up to him as a Director of TCPUD.*

*Mr. Sexton said that Ms. Gustafson owns property in Lake Forest, also. He feels that the FPPC rules apply only to Directors or public officials and there is a question in his mind as to whether the ownership of property also applies to someone in the position of General Manager. He said that he has advised Ms. Gustafson not to participate in the discussions involving Lake Forest. She indicated to Mr. Sexton that she has turned the item over to Mr. Harry to take the lead.*

*Mr. Sexton noted that Mr. Auerbach, the Assessment Engineer, owns property in Lake Forest also. He suggested that the Board receive his report in closed session and then ask him to leave for the rest of the discussion.*

*Ms. Gustafson said that Mr. Harry and Mr. Laliotis have taken the lead on this issue. She said that she is there to discuss broader policy issues and monitor where the Board wants to head, but she is in no way participating in the discussion of which choices they make.*

*Mr. Sexton asked Director Henrikson if he was going to participate in closed session or remove himself. Director Henrikson asked if it would be participating if he just sat there and listened. Mr. Sexton said that for purposes of closed session, the only purpose a director has is to participate in discussion, and if he's not participating he shouldn't attend. Director Henrikson left the meeting. Ms. Gustafson left the room for closed session.*

**C. CLOSED SESSION**

1. CONFERENCE WITH REAL PROPERTY NEGOTIATORS: LAKE FOREST WATER COMPANY Government Code Section 54956.8

District Negotiators: Alan Harry, Jim Dykstra, Tony Laliotis, Harold Morgan, and Dennis Viglione

Negotiating Party: Rick Dewante

District negotiators will be given instruction concerning whether the District will seek to purchase the water company, and, if so, price and terms of such purchase.

2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
Government Code Section 54956.9

**D. CLOSED SESSION REPORT**

*Mr. Sexton reported out of closed session that the Board instructed its negotiators to make an offer to purchase Lake Forest Water System and instructed them on price and terms of such offer.*

**E. GENERAL**

3. Lake Forest Water Company – Lake Forest Improvement District

*Director Atchley asked Mr. Sexton about a Prop. 218 assessment and how it would change if we didn't need the entire amount of money. Mr. Sexton said that in order to answer that question, he needed to describe where we are as a District. He said that it's unusual to talk about a Prop. 218 type of an assessment when the District doesn't already own the water system that we are seeking to assess the property owners on. Prop. 218 requires the District to seek approval of property owners to assess themselves to do some system upgrades. The difficulty here is that presently the District doesn't own the Lake Forest Water Company. He said that the first step is to seek to acquire the water company by approaching Mr. Dewante and seeking to purchase it. The agreement to purchase would have to be contingent upon the Lake Forest property owners agreeing to assess themselves the cost necessary to bring the system up to District standards. We don't know exactly what it's going to cost to bring it up to District standards because we don't know whether there might be some grant money or public funds out there that we may be able to tap into. We would go forward and negotiate with Dewante over purchase of the system. We would then go to the property owners and ask them to agree to assess themselves up to this amount of money, which would essentially be worst case. If it's approved, and we now own the system, we can reduce the actual assessment if some additional funds come in. To keep this whole thing moving forward we need to negotiate for the acquisition, get the property owners approval for an assessment, and then levy against the properties once we know the amount of the assessment.*

*Director Treabess said that last night the Board took a major step at showing that property taxes should be used to help with the upgrade and acquisition of private water companies at some level. Mr. Sexton said that the Board shouldn't commit to a certain*

*percentage, because whatever happens with the Lake Forest acquisition, it will probably guide future expectations on any acquisition of private water companies.*

*Director Wilkins said that Mr. Auerbach took a lot of time thinking through the assessment technology and the rationale for it. If an assessment district were going to be pursued, every property owner in Lake Forest would have the opportunity to vote on it and would want a high level of information on what is the basis for the assessment. Mr. Sexton said that it would be very important for us to have public workshops and outreach sessions before the mailed ballot election reaches the property owners' homes. He said that returned ballots are counted and many times the property owners voting yes believe that they don't have to send back the ballot. Director Wilkins suggested we have a public workshop that is focused on this topic in advance of the Board accepting the Engineer's Report. He said that way all the folks that would be affected by this assessment have an opportunity to review the report before it is accepted.*

*Some audience members had questions about the hook-ups in Lake Forest if the District took over. Mr. Auerbach responded.*

*Mr. Harry said that, based on changes that Mr. Auerbach made to the Engineer's Report, he had some recommendations to make to the Board. He said that the first recommendation is that past practice of the District regarding the installation of residential meters within our District has been that the District has borne the cost of the meters, meter boxes, and the excavation, so he recommended that the Board remove the \$193,500 for these items out of the estimate. His second recommendation is to move to maintain the recommended public lands assessment and direct staff to seek any other types of funds necessary to make sure that those assessments are paid. Lastly, the Board should approve the assessment methodology that has been laid out.*

**Motion to exclude the cost of water meters and water meter excavation (\$193,500) from the Engineer's Report: Wilkins/Reinkens/4-0**

*Regarding the second issue, inclusion of public lands and investigation of funding options if necessary for the offset of the assessment, it was determined that this item didn't need a motion, just recognition by the Board to direct staff to go forward. Director Wilkins said that he believes that it is appropriate to attempt to assess the public properties. He said that he knows that the State of California may choose not to pay the assessments and they are a major landholder out there. We will have no avenue of recourse to force them to pay. Mr. Sexton said that the State is so far in the hole right now, suing them wouldn't do any good. Mr. Sexton said that he would recommend against staff going out now seeking additional public funds for upgrade of the system because he doesn't want to step over the line with Mr. Dewante. Mr. Dewante may be seeking public funds also and he doesn't want him to be able to claim that the District is competing with him for the same pot of money. He said that until the District acquires the system, we shouldn't be out there trying to acquire public funds. Ms. Gustafson said that a different approach was used for the sidewalk assessment. They were aware of what generally the property owners could or would pay and it wasn't close to what the cost was. The District said that they would figure out what the property owners were willing to pay and we would secure the rest of the funding through other sources. We wouldn't do the project unless that happened.*

*Mr. Sexton said that the Board could give tentative approval of the assessment methodology subject to the Engineer coming back with the Final Report upon which we would base the Prop. 218 assessment. The Board gave direction for the above. Mr.*

*Sexton said that Mr. Harry should start thinking about scheduling some Prop. 218 outreach meetings and get all of the property owners up to speed with what the District is planning to do.*

*Director Wilkins said that our acquisition policy talks about having 2/3 support of the property owners before we go down the path we are going down. There is another area that says that we can choose to set up a property-based improvement district or we may choose to use a 1911 or 1913. He asked Mr. Sexton for clarification. Mr. Sexton said that the 1911 and 1913 are part of the Streets and Highways Code and are alternative means of setting up assessments districts. They generally require a 2/3 vote. Prop. 218 came out later and is a simpler method, is based on benefit, and is a method that property owners understand. He said that, to his way of thinking, the Prop. 218 is a better way to handle it. Prop. 218 is a weighted 51% vote. Director Wilkins said that we made this decision when we created the improvement district and he's fine with that decision. He said that the next time we do this he would like a discussion on the various options so that the Board doesn't have the confusion that occurred this time.*

*Ms. Gustafson reported that while the Board was in closed session, Cory received an e-mail from Rick Dewante stating his concern that he hadn't received an agenda for this meeting. She explained that in November the District sent him the form to request agendas and he didn't respond. Nonetheless, her typical theory is that we send agendas to anyone affected by things being discussed. She didn't specifically direct Cory to send him one this time and she didn't. Ms. Gustafson said that Cory responded to him again and she will send him all agendas on this issue in the future.*

**F. ADJOURNMENT**

*The meeting was adjourned at 9:45 a.m.*

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Catherine K. Atchley, President

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Ginger Charlton, District Clerk