

BOARD MEETING
APPROVED MINUTES

December 18, 2009

DIRECTORS PRESENT: President Henrikson and Vice President Dan Wilkins
Directors Ron Treabess, Lou Reinkens, and Judy Friedman

STAFF PRESENT: Cindy Gustafson, General Manager
Jim Dykstra, Director of Accounting & Employee Services/Treasurer
Bob Bolton, Director of Parks and Recreation
Matt Homolka, District Engineer
Tony Laliotis, Director of Utilities
Alan Harry, Director of Development & Public Information
Mike Sexton, Legal Counsel
Ginger Charlton, District Clerk

A. CALL TO ORDER – PLEDGE OF ALLEGIANCE

President Henrikson called the meeting to order at 8:30 a.m. Director Friedman led the audience in the Pledge.

B. AGENDA AMENDMENTS AND APPROVAL

1. Agenda Deletions, Changes, and Audience Requests

Ms. Gustafson said that people were invited to discuss Lake Forest at 8:30. Mr. Sexton said that since there are two items in closed session regarding Lake Forest, the Board could have public comment on that issue right before they adjourn to closed session or whenever they want to have it. Ms. Gustafson said that staff's recommendation would be to hold public forum right after the snow removal item. Public forum items not involving Lake Forest would be taken first and then anyone who wanted to speak regarding Lake Forest would follow.

Director Reinkens asked that item #12, Election of 2010 Board Officers, be moved to the end of the open session.

2. Additions to Agenda

3. Approval of Agenda

Motion to approve the agenda as amended: Wilkins/Treabess/5-0

D. GENERAL

5. Snow Removal, Storage and Disposal Issues

Director Henrikson said that he asked to have this item on the agenda because this issue is real and is affecting everyone in town. Ms. Gustafson reviewed the history of this issue and the Board's decision in November to not allow snow storage on our properties this year

without an agreement with TCDA. She said that staff called a meeting for Wednesday, December 16th, with the snow removal contractors, TCDA, and the County to discuss potential solutions. Previous to that, staff had been in contact with TRPA and Lahontan relative to permitting issues. There doesn't appear to be a process to get a permit and continuing a practice similar to what we did in the past wouldn't raise their further concern in this matter. Staff also contacted the Forest Service to potentially use the 64-acres. Staff put together a revised contract with the prioritization of our corp. yard as the primary site for snow storage, set hours for snow storage, and a larger deposit required in case of damage.

Steve Tashara, North Lake Tahoe Resort Assn., said that NLTRA might be able to help with some funding if it would help to find a permanent solution to this problem.

Director Reinkens said that some of our wells are going dry and driving the snow out of the area will make the situation worse. He supported taking action.

Director Friedman asked if the Forest Service is currently looking favorably at the 64-Acres being used for snow storage. Mr. Bolton said that Forest Service personnel now understand the urgency of the situation but need all other options exhausted before considering it. They have, however, jumped from the proposal stage to the application stage.

Director Wilkins said that at the October Board meeting, three conditions were set up for the use of the property for snow storage. They were:

1. A singular point of contact in terms of who was coordinating the snow disposal operation.
2. We didn't want the District taxpayers to have any additional monetary liability as a result of the snow disposal operation.
3. We wanted permitting liability cleared up.

Director Wilkins said that he would like to see some public benefit derived from the benefit that the District would be providing to the subgroup of commercial property owners and haulers.

Director Reinkens said that he would like to see District-wide snow storage with Tahoma and Homewood. He said there are a few pieces of property available in those areas that might be used for emergency snow removal and he would like to see staff address it.

Director Treabess said that he agreed with Director Wilkins but felt that the quid pro quo part could be worked out later when the emergency is over.

Several haulers urged the Board to let them dump snow across the street again.

Dave Wilderotter said that TCDA is not backing away from this issue and will do whatever they can up to their capacity. He said that the haulers do a lot to help the community already and he didn't feel that a formal agreement needed to be done today.

Jan Brisco said that she and others in town are going to take the lead to bring this issue back to a more business centered issue but, for this year only, we need more of a status quo. She believes that the location across the street should be used along with satellite sites. Ms. Brisco also questioned if the District obtained the appropriate permits for the change of use at the community center.

Carol Hackbarth asked why the excavators have not planned for this issue since it is their business. She said that the District is not supposed to be a part of this issue and she hates having her taxes used for this.

Matt Daniels said that it is the business owners' responsibility to store the snow and the haulers are here to help them. He thanked the District for helping them over the years and asked for one more year to store the snow across the street.

Director Wilkins asked Matt Daniels if he would be the single point of contact for the haulers if the District decided to go forward with helping again this year. Mr. Daniels said he would.

Paul Vatistas said that the taxpayers shouldn't be paying for the problems associated with snow storage.

Ms. Gustafson said that staff understands the urgency of the issue and is prepared today to open the corp. yard for storage. Staff believes the estimate for storage in that area was low and it can be doubled or tripled. She added that the BMP's are in place and the contract review was expedited because of the urgency of the situation.

Director Henrikson said that he feels that the area across the street should be used again this year since it has been used with no ill effects.

Director Wilkins noted that we have already leased the property to the Fire District and asked Mr. Sexton if they would need to approve the dumping of snow on the property. Mr. Sexton said that they would and he recommended against the Board authorizing the use of the property without the Fire District's approval.

Director Treabess said that he believes that if the initial dump was put across the street, it would be gone by the time the Fire District needed to begin their construction. He said he would be willing to call the Fire District for authorization for the one-time dump.

Director Reinkens said that he feels that we need to cover the costs to manage the snow storage and feels that we should charge the same \$20 per load that truckers pay at Hobart Mills.

Wally Auerbach said a geotechnical engineer was hired to look at continuing to put snow on the property across the street. The engineer's opinion was that the soils need to be dried out before excavating and no snow should be stored there.

Mr. Sexton said that he already gave the Board an opinion on the District's liability for using the property across the street for snow storage and he doesn't want them to think it's ok now because of his silence on the issue.

Director Wilkins said that the three deal points are:

- a. Single point of contact (Mr. Daniels agreed to be that person)
- b. Permitting liability (we have some degree of disclosure out there and \$2 million worth of liability insurance)
- c. Leverage some type of public benefit out of this (keep in the form of a gentleman's agreement due to the character of the people that we are dealing with)

He said that he could support use for this year of the two District properties that are represented here contingent on having a single vendor. He didn't feel we needed to require

the bike trail cleaning as a part of the contract but noted that it would be extremely well received in terms of longer term use of PUD property in the future for snow disposal.

Director Reinkens said that he believes there should be a base fee and a per-use fee involved instead of a deposit to compensate for staff time that we are doing and the merchants should be. It's not fair to the taxpayers.

Don Hale, Fire Board Member, congratulated the Board for their spirit of cooperation over the years in getting mutual concerns resolved. He said it wasn't their intent to cause this disruption over the site and that they have tried innumerable times to get the 33 acre site but the Forest Service wouldn't give it to them.

Motion to immediately allow use of the two TCPUD properties (the corp. yard and subsequently through the contract the Fairway Community Center property). Use of the property across the street would be contingent upon North Tahoe Fire Protection District (NTFPD) approval. We use one single contractor as our point. We charge the \$4,000 total fee as we have in the past. We don't take the lead but staff is directed to participate in community-wide long-term solutions to snow storage. If NTFPD does allow the property across the street to be used for snow storage, they take the lead on the contract so that they are in control and we sub under them. Wilkins/Friedman/5-0

Mr. Homolka asked Ms. Brisco what specific entitlements she felt the District had not obtained. He said that when the District entered into the lease with Creekside Cooperative Charter School, there was a full and open discussion about the uses and CEQA compliance and entitlement compliance. He asked her to come speak with him if she believed there were some items the District didn't handle.

C. PUBLIC FORUM

Rob Westin said that he came to speak in support of TCPUD regarding a letter that was published in the Sierra Sun about the Lake Forest Water Company. He said that he is the treasurer of the Skyland Homeowners Association and a member of the Skyland-Nielson Water District and they have had situations for years with Rick Dewante, the owner of their water company. Mr. Westin said that the State Water Safety Commission just sent them a letter stating that their water contains elevated levels of lead and they don't have a backup system. They have decided to form the Skyland-Hurricane Bay Improvement District and they have a petition written. Mr. Westin said that Lake Forest has had problems much worse than theirs with people getting sick and non-potable water. He said that he totally disagrees with the letter in the paper that questions whether TCPUD should look at the small water companies and he feels that it is TCPUD's role to assist small water companies in solving water issues.

John Falk, Legislative Activist for the Tahoe City Board of Realtors, said that TCPUD has been overwhelmingly helpful to their organization, open to dialogue, and exceptional in their outreach.

Wendy Wood went over her property's history with Mr. Dewante and said that TCPUD should take over all private water companies that petition to be taken over.

Travise McGuire said that she also came to the meeting due to the letter in the newspaper. She feels that all taxpayers are part of the community and what affects one member of the

community affects everyone. She said she doesn't understand the idea that everyone shouldn't work together to solve problems and provide safe water to the entire community.

Gerald Rockwell, a Tahoe Park resident, thanked the Board and staff for their support with the Tahoe Park water system and offered any help they could give.

Carol Hackbarth said that she feels the same way that Travise does about the bigger water system needing to help the smaller ones. She voiced her frustration with the PUD needing to spend money to defend itself and believes this agency is working in the best possible way. She said that Ms. Gustafson is doing a good job and meets the needs of the District and the community.

Mr. Vatisas asked to add a public agenda item to discuss the Lake Forest acquisition. He said that he agrees that the private water systems have terrible problems and people should be angry at Rick Dewante but they shouldn't direct their anger at him. He wanted to discuss Lake Forest but Mr. Sexton stopped him and said that he would need to wait.

There being no further public comment, Mr. Sexton said that for purposes of protocol, Erik Henrikson has disclosed that he owns property within the Lake Forest system and, on the advice of counsel, he is removing himself from the room before any discussion of that item. Ms. Gustafson also owns property within the Lake Forest area. She is not required to leave the room under the FPPC statutes, but he advised her to do so. Both Ms. Gustafson and Director Henrikson left the room.

Mr. Vatisas said that the Board isn't required to take over private water systems and he would only agree with a takeover if it didn't cost the District ratepayers anything. He asked for the Board's thoughts on how they are going to fill the \$2.9 million gap for acquiring the Lake Forest Water District. His second issue was the conflict of interest with Director Henrikson, Ms. Gustafson, and Wally Auerbach. He said that the District needs to clean up its act and recommended that every meeting where Lake Forest is discussed, Director Henrikson and Ms. Gustafson remove themselves from the room and let Director Wilkins take over.

Director Reinkens said that the Board had an e-mail from Mr. Vatisas that contained an implied threat and asked legal counsel if this should be discussed. Mr. Sexton said that the Board isn't discussing this; they're just allowing Mr. Vatisas to voice his opinion.

Logan Carnell, owner of a property in Lake Forest, said that she has been a part of the meetings regarding Lake Forest for the past six years and explained the problems their water system has had during that time. She said that CPUC never responds to her letters and she is thankful that TCPUD is willing to help. She said they deserve quality water and fire suppression and believes that everyone in the community should help each other. She added that she has no children but pays taxes for the schools and doesn't complain because this is a community where everyone helps each other.

Jan Brisco asked about the reserve fund of tax money collected from customers that aren't on the District's water system and Director Wilkins explained it. She said that she is concerned about that money and wondered how is she benefitting from the acquisition of private water companies. Director Wilkins said there will be a workshop at the beginning of 2010 on this issue and he suggested she attend.

There being no further public comment, Director Wilkins closed the public input on the closed session Lake Forest acquisition item.

Mr. Sexton asked Director Henrikson and Ms. Gustafson to come back into the meeting. He noted that there is a generalized allegation by Mr. Vatistas that the District needs to clean up its act because there is a conflict by Director Henrikson and Ms. Gustafson. He explained that there are two areas of conflict that affect a public agency. The first one is the one that Mr. Vatistas is referring to, a Fair Political Practices conflict which prohibits public officials from being financially benefitted by public decisions in which they take part. The second area is Section 1090 of the Government Code which prohibits public officials from contracting with the agency that they serve. He said when Ms. Gustafson and Mr. Auerbach were married, the District sought advice from Mr. Sexton, the FPPC, and the Office of the Attorney General. Mr. Sexton's opinion advised the District on how to handle things, which is what they put in place. The FPPC blessed his opinion and said there was no conflict within the realm of the way the District was handling things. The Office of the Attorney General said the same thing. The District established a consultant selection process that is totally divorced from anything Ms. Gustafson does. It's run by the District Engineer and two Board members. He said there is no conflict and to throw out words like the District needs to clean up its act is not very helpful in his opinion when the District is doing everything that its attorney and the regulatory agencies that have jurisdiction over these things are saying that it needs to do. Making remarks like the one he made makes good press and then the public spreads it around town. He said these people are trying to do their best for the community and Mr. Auerbach has a business to run and doesn't need any more bad press.

He added that there are two types of filers under the FPPC regulations. One involves Board members who manage public investments (Govt. Code Section 87200). As to them, when there is an issue such as this they must leave the room. Ms. Gustafson is not in that position and does not have to leave the room, but he would advise her to do so and she generally does. Conflict involves participating and making decisions or being involved in the making of decisions, it does not involve ministerial acts. He advised Ms. Gustafson to continue to monitor what her staff is doing, schedule board meetings, be advised that the District is committing funds for District use, and discuss budgetary matters including matters involving Lake Forest as long as she is not making a decision or participating in a decision relating to those budget issues.

Director Wilkins asked if any Board members have any clarifying comments to add in respect to what they heard in public discussion. Director Friedman did, so Director Henrikson and Ms. Gustafson excused themselves from the room again.

Director Friedman asked for clarification on if the total Lake Forest project is estimated to be about \$3 million and if about 73% of the property owners agreed to assess themselves \$1.6 million. That information was verified.

Director Reinkens said that the construction costs are an estimate at this point and time and we have contracted with Auerbach to refine the design and come up with a refined number. Director Wilkins said that Auerbach will prepare construction drawings. Mr. Homolka, Mr. Laliotis, Director Reinkens, and Director Wilkins went through a consultant selection process determined Auerbach to be the most qualified, cost effective consultant for this project and the most responsive to our request.

Director Treabess said that he knows how intelligent Mr. Vatistas is and is bothered that he puts out a huge amount of information that, in his opinion, is totally wrong. He said that he doesn't understand how Mr. Vatistas doesn't comprehend that property taxes by all district taxpayers including private water company people paid for the Highlands' fire hydrants and water tank. He estimated that Mr. Vatistas has cost the District a little under \$25,000 in staff

costs and attorney fees within the last year due to anticipated threats and false information on the rate studies. He wondered if he's doing it because he asked if he could be General Manager and fire this General Manager and it didn't happen or when he said he could save the District money if we paid him up to \$200,000 and we didn't take him up on it.

Director Wilkins closed this item and Director Henrikson and Ms. Gustafson returned.

D. GENERAL

4. Memorandum of Understanding with North Tahoe Fire Protection District

Ms. Gustafson said that the items that the Board requested at the last meeting are included (monument sign and disposition of the old Station 51 site).

Motion to approve the MOU: Treabess/Reinkens/5-0

E. FINANCIAL

All items covered under consent calendar.

F. PROJECTS

All items covered under consent calendar.

G. SEWER & WATER UTILITIES

All items covered under consent calendar.

H. PARKS AND RECREATION

6. Lake Forest Boat Ramp Season Passes

Mr. Bolton reviewed the 2010 launch passes that the Parks and Recreation Committee and District staff recommended. He added that they were asking for authorization for staff to work with NTPUD to offer their resident pass rates to TCPUD residents and TCPUD to provide our resident pass rates to NTPUD residents. Ms. Gustafson said that full rate recovery is attempted but they can't predict all variables.

Motion to approve: Reinkens/Treabess/5-0

Mr. Sexton said that these fees affect the Board the same way they do other members of the public and the FPPC has addressed this issue. When adopting fees and charges that affect the Board the same way as the public, they don't have a conflict.

I. CONSENT CALENDAR

Director Henrikson asked to pull item 9-a, Director of Utilities report.

Motion to approve remainder of the consent calendar: Wilkins/Treabess/5-0

7. Minutes

- Finance Committee – October 16, 2009

- Sewer and Water Committee – October 22, 2009
- Finance Committee – November 13, 2009
- Personnel Committee – November 16, 2009

8. Finance Report

9. General Manager and Staff Reports

a. General Manager

- Director of Development and Public Information
- Director of Utilities
- District Engineer
- Project Status
- Technical Services

b. Director of Parks and Recreation

- Parks Superintendent
- Recreation Superintendent

Director Henrikson asked Mr. Laliotis to discuss the leak report. Mr. Laliotis said that overall customer leak indicator range is 6.8%. All meters are in now so in a few months when they have enough data they can look at the District as a whole.

Motion to approve item 9-a, Director of Utilities Report: Henrikson/Reinkens/5-0

10. Lakeside Trail 5-7 – Placer County Grading Plan Deferral

11. Audit Committee Charter – Suggested Changes

J. GENERAL

13. 2010 Meeting Calendar

The Board reviewed the draft calendar and made changes reflected on attached calendar.

14. Committee Assignments and Meeting Schedule

Director Wilkins suggested a consolidation of committees to cut down on the number of meetings. The board gave direction for Director Wilkins and Ms. Gustafson to work together to flush out the committee structure for the January meeting.

15. Reports

Mr. Laliotis reported that based on the hard freeze of a couple of weeks ago, meters were reread and approximately 30 houses that had blown out pipes were discovered. Staff shut them off and saved a lot of water and house damage. Ms. Gustafson said that this level of service is beyond what public entities are required to do but we do it to serve our taxpayers.

Mr. Laliotis announced Mark Scutt's retirement and introduced him to the audience. He said that Mark has been a wonderful asset to the District and over the years he has relied on Mark's seniority and familiarity of the District to help him do his job better. The Board and staff congratulated Mark and thanked him for his many years of service.

Ms. Gustafson reported that the District is currently advertising three job positions. They are for Human Resources Administrator, Field Supervisor – Underground, and Engineering Technician.

16. General Correspondence

Ms. Gustafson reported that the District received the President's Special Recognition Award from ACWA/JPIA for achieving a low ratio of paid claims and case reserves in the Liability Program. It's a big accomplishment for this district and benefits our taxpayers.

Mr. Laliotis said that TTSA notified him that they lost their permit to dispose of vector waste from Lockwood landfill and asked us to temporarily stop bringing our waste to them. He contacted IVGID and they are working out an agreement for us to dump our waste at their facility through our Mutual Aid Agreement.

Director Wilkins asked Mr. Sexton about e-mails from the public that are addressed to the entire Board. He said that he was taught to not "respond to all" on these e-mails because then they are potentially getting into a Board meeting via e-mail. He would like Board members to be aware of conversations he may be having with constituents and asked if copying that communication back to the General Manager and then asking her to include it in General Correspondence is the best way to do it. Mr. Sexton said that was correct. Director Treabess recommended putting a new section in board books for Directors comments and correspondence.

Director Reinkens said that he asked Craig Trumbull to forward his District e-mail's to his personal e-mail. This creates a District file that stores it for him. Director Wilkins asked if mail that is forwarded to him via Mr. Trumbull can go back through the PUD when he responds. Mr. Sexton said there is a way to do it but he wasn't sure it was set up that way.

17. Board Follow-up

Ms. Gustafson reviewed the chart and pointed out the item on agendizing the Water System Acquisition Policy. She said that we will have a special meeting on the policy at the end of January or early February.

Director Friedman asked what our letter to Placer County regarding snow storage would say. Ms. Gustafson said that she was planning on forwarding Mike Sexton's legal opinion on our involvement in that issue and urge them to take the lead on the issue. TCDA and the Resort Association will be sending their own letters that request the same thing. Director Reinkens asked that areas to dump snow in Tahoma and Homewood be included. Ms. Gustafson said that she will bring this item back to the Board for further direction.

K. DIRECTORS' FORUM

18. Director's Comments

Director Friedman echoed the appreciation to staff for proactive actions during the freeze and for work with Heritage Plaza.

Director Reinkens said that he attended the ACWA/JPIA semi-annual conference and was happy to report that the claims and rates are continuing to go down. He said that there are big uncertainties in the workers comp. area due to the involvement of the courts and we may see a rate adjustment next year. He also reported that there was a seminar put on

regarding the Kaisen Principle that was standing room only. He said that we should put this item on the agenda in January or February to have a discussion on these BMP's. Another seminar was on Best Practices and he brought handouts for the Board. Ms. Gustafson said that some staff attended a webinar on this topic and will discuss it further in early 2010.

Director Wilkins said that the tendency for misinformation to be spread by folks like Mr. Vatistas or when folks like Mr. Vatistas try to effectively put demands on staff time, it can put staff and the General Manager in a very difficult position in terms of doing the work that the Board told them to do or performing one-off analysis for an individual. He suggested from this point forward that if staff is being requested by a private citizen to do work that is above and beyond providing records, that the request first be approved by the Board President. This way the General Manager isn't in a position of being criticized by a member of the public for not responding to his/her request for a member of staff to work on an item. The Board sets the workload for the District and if a reasonable request comes in from a member of the public, the Board President will be in the referee role.

Mr. Sexton said that was a good idea and suggested that the Board President send a memo stating his decision on the request to the GM for inclusion in the Board packet so that the Board knows what has been approved and disapproved.

L. MEETING REVIEW AND STAFF DIRECTION

19. Staff will Review Board Action and Direction Given at this Meeting.

- Craig Trumbull will see if he can set up the Board's computers with the Board members' other accounts and consolidate where the e-mails are received and if they can be sent back using the same account.
- Staff will complete the snow storage letter to Placer County forwarding Mr. Sexton's legal opinion. If approached, the Board could consider other public properties the District owns on this interim basis and staff will agendize whether we want a decision on getting into this business by having authority under legislative changes.
- Ms. Gustafson will discuss committee make-up with the Board President and bring committee changes back to the Board in January.
- Staff will change the format of the Board report with the shading.
- Staff will work with the Board President on future public requests other than public records requests.

J. GENERAL

12. Election of 2010 Board Officers

Motion to elect Dan Wilkins for 2010 Board President: Henrikson/Treabess/5-0

Motion to elect Ron Treabess for 2010 Board Vice-President: Friedman/Reinkens/5-0

President Henrikson asked if there was any public comment on any closed session items except for Lake Forest.

Paul Vatistas asked what the anticipated litigation item is about. Mr. Sexton responded that the Board doesn't need to disclose that and they decline to do so. Mr. Vatistas presented a letter to Dan Wilkins stating that he isn't planning on any litigation with the District.

M. CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Government Code Section 54956.9

20. The Board is meeting to decide whether a closed session is authorized pursuant to paragraph (1) of subdivision (a) of section 54956.9. If the Board determines that closed session is authorized, it will meet in closed session to discuss anticipated litigation – One potential case

CONFERENCE WITH LABOR NEGOTIATORS – Government Code Section 54957.6

21. District Representatives – Cindy Gustafson and Jim Dykstra
Employee Organization – All Employees

PUBLIC EMPLOYEE APPOINTMENT/EMPLOYMENT/PERFORMANCE EVALUATION/COMPENSATION – Government Code Section 54957

22. General Manager

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Subdivision (a) of Government Code Section 54956.9

23. Eminent Domain Proceeding of Lake Forest Water Company

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

24. 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

N. CLOSED SESSION REPORT

Mr. Sexton reported the following from closed session:

20. The Board determined that closed session was not authorized pursuant to paragraph (1) of subdivision (1) of Government Code section 54956.9; therefore, anticipated litigation was not discussed.
21. Staff updated the Board on the status of labor negotiations. The Board approved preparation of a contract based upon agreed deal points.
22. The evaluation of the General Manager was put over until the January Board meeting.
23. No reportable action taken.
24. No reportable action taken.

O. GENERAL

25. Interviews with Firms for Federal Legislative Advocacy

P. ADJOURNMENT

The meeting was adjourned at 3:45 p.m.

Dan Wilkins, President

Ginger Charlton, District Clerk

Prepared by Ginger Charlton