

**MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING
ARABIAN ACRES METROPOLITAN DISTRICT**

May 20, 2015: 6:00 P.M.

Police Department, 911 Tamarac Parkway
Woodland Park, Colorado

ATTENDEES

Directors present: Robert (Elric) Winterer, President
Wade Holder, Treasurer
Rebecca Seaman, Secretary

Others present: Judy Bertrand, Metropolitan District Management
Carmen Barker, Metropolitan District

Jason Downie, Susemihl, McDermott & Cowan

Members of the Public: See attached list

**ADMINISTRATIVE
MATTERS**

Attendance and Agenda: The meeting was called to order by President Winterer at 6:05 pm and a quorum was noted. President Winterer stated that the Agenda Item regarding the ORC contract should be removed as the Water ORC was not present at the meeting. For the time being President Winterer wanted to have two Public Comments on the Agenda. Secretary Seaman made a Motion to do so, with Treasurer Holder seconding. This change was unanimously approved.

Disclosure of Conflicts of Interest: The Board had previously been informed of the Colorado Revised Statutes to disclose potential conflicts of interest to the Board of Directors and Secretary of State. President Winterer requested the Board members to disclose any conflicts of interest. There were no conflicts.

Minutes: Treasurer Holder made a Motion to Approve the Minutes of the April 15, 2015 Board Meeting, with Secretary Seaman seconding. The Minutes were unanimously approved and the Board noted that they liked the level of detail.

PUBLIC COMMENT

Edith Coffman stated that the Minutes from the February 11, 2015 Work Session posted on the website were not accurate and requested that they be removed from the site. It was also noted that the February 11, 2015 Agenda was not posted and the District Manager stated she had not received the Agenda from the prior management firm. Ms. Zuniga offered to send the Manager the Agenda for posting to the website.

Ms. Coffman asked when District By-Laws would be reviewed and approved by the Board. The District Manager stated there was no statutory requirement to have By-Laws. She also asked about posting the financials on the website and President Winterer said he had no problem with this. The District Manager said she still needs to verify some of the financial information that was provided by SDMS to prepare the

financials, but that she also had no problem with posting the financials. Jason Downie recommended adopting By-Laws and that it was up to the Board whether to post financials to the website.

Treasurer Holder made a Motion to post the financials on the website and Secretary Seaman seconded said Motion. The Board unanimously approved posting the financials to the website.

Edith Coffman stated that Joan had provided a copy of Traveler's insurance coverage for fraud coverage and stated that Metropolitan District Management was hired based on obtaining additional coverage. Ms. Bertrand stated that MDM had purchased additional Professional Liability Errors and Omissions insurance to comply with this request. Ms. Coffman stated that the management firm should have fraud coverage. Ms. Bertrand stated that fraud coverage would be discussed later on the Agenda.

Craig Baker discussed the loggers installed by the Water Operator and stated that Mr. Willows would not provide the location of the loggers. He mentioned that he had filed a CORA request and did not get a response from the Board within 96 hours. Joan Fritsche of Collins, Cockrel and Cole did send a response letter to Mr. Baker. Mr. Baker stated that he had not found anything in the Minutes showing that the purchase of loggers had been approved. Treasurer Holder stated that the SDMS Manager, Peter Italiano, had authority to make decisions outside of board meetings. Treasurer Holder also stated that the location of the loggers would not be available to the public as there were safety issues and a risk of people siphoning water. Treasurer Holder also stated that the loggers were for leak detection and not for determining usage.

Legal counsel, Jason Downie, stated that a CORA request cannot require the District to prepare additional data that is not currently available. Secretary Seaman also confirmed with Mr. Downie that once the information is provided to the District Board that for security or safety reasons they do not need to share the information.

Mr. Baker stated he had called the logger technical reps and questioned if they were the right product for PVC pipes. President Winterer stated that per the Water Operator they work with PVCs. Carmen Barker stated the loggers were being installed on valves, which are metal and not on the PVC.

Marilyn Callan asked MDM who does the billing. She was informed it was done in-house.

OPERATORS REPORT

Lynn Willows was absent but the Operators Report was provided to the Board and Carmen Barker spoke to the report. Mr. Cliff Sowa stated that some of the ORC reports were missing from the website. Ms. Barker said she would speak to the ORC to obtain those.

Ms. Barker discussed the renewal of the Well Permit for #10 and stated that it will only extend for one year at a cost of \$100. It is implied that if extended that the District is on the road to drilling the well, so she recommended letting it expire. The cost for

requesting another well permit is \$40. Treasurer Holder made a Motion to not renew the well permit. Secretary Seaman seconded the Motion and the board unanimously approved letting it expire.

Ms. Barker stated that the MPA (Microscopic Particulate Analysis) testing showed that Wells #3 and #6 look great and are not under the influence of GUIDI. The Water Operator is aware of the results. Ms. Barker is working with Brian Pickle of the CDPHE to insure that additional samples would be required.

Ms. Barker discussed the forfeit of taps for Martin and Douglass properties. They had paid for the water taps but had not connected. If the tap is abandoned it must be capped off. President Winterer stated that one property has no house; only a foundation and the other in Trout Haven has house but they have a well from before the District was established.

The Water Operator will verify that there are no physical taps on either property. Treasurer Holder wanted to confirm when the wells were drilled to investigate if they were drilled in order to bypass paying AAMD water fees. President Winterer recommended that if they have not actually connected that the District forgive what they owe and forfeit the \$8,000 tap fee. Secretary Seaman and Treasurer Holder recommending tabling this issue until the next meeting in order to obtain more information and the Board agreed.

The District Manager expressed concerns regarding the leak at 243 Donzi Trail. She was informed that the Water ORC had shut off the water to the property. Ms. Barker will confirm this with Mr. Willows.

Ms. Barker is scheduling a tour of the District with Mr. Willows in June and noted that Allison Trujillo, AAMD's Rep from USDA will be attending. She stated the Board should attend if possible and that homeowners were invited. Ms. Barker stated she will obtain the records from Mr. Willows to perform a review and insure there is a record of loggers, serial numbers, valves and type of water meter in an inventory. Ms. Barker stated this information needed to be prepared in order to apply for energy impact grants and that it appears this hasn't been done. She offered to bring in an example of the way documentation should be done. Ms. Barker expressed concern that 2 different types of meters are in use and that replacement meters appear to be Census vs. the existing Badger. However, she cannot proceed further with the documentation until the walk-through has been done with Mr. Willows. She stated that the Board should be aware that this is work considered Out of Scope for MDM as it falls under water operations. She informed that Board that the estimate for this is \$65/hr. and that should they wish her to proceed with the walk-through, gathering data, and preparing documents that her estimate for this initial work is \$1,000. Ms. Barker also stated that this did not include preparing documents to obtain grants in the future, , but that this was the first step in getting documents ready for grant submission. Ms. Bertrand stated that by paying off debt this would help with potential requests for grants as well. President Winterer made a Motion to approve Ms. Barker beginning work on the documentation and inventory at an amount not to exceed \$1,000. Secretary Seaman seconded said Motion and it was approved unanimously. Mr. Sowa stated that although this was Out of Scope that SDMS would have charged for this as well.

LEGAL COUNSEL

Jason Downie was present and responded to questions as they arose. He stated that everything he does is 'out of scope' and that any requests for his services or advice should be authorized by the Board; including calls from homeowners. President Winterer asked Mr. Downie to copy the District Manager on any documents or emails that go to the Board or him. Treasurer Holder stated that AAMD does not want any person to spend legal time without approval by the Board.

Mr. Downie stated he would send a scanned copy of his signed contract to Ms. Bertrand. Ms. Bertrand stated she would forward the contract on to the rest of the Board.

Mr. Downie stated that there has been no further action regarding Mr. Rupp but Treasurer Holder stated he had discussed the debt with Mr. Rupp over coffee.

Mr. Downie stated he was surprised at the invoice for legal transition presented to the Board from Joan Fritsche at Collins, Cockrel and Cole as he had sent Ms. Fritsche a letter requesting notification of any charges for transfer of legal counsel to Susemihl, McDermott & Cowan. He offered to provide the District Manager with a copy of the letter sent to Ms. Fritsche. The Manager was instructed to hold the check to CCC firm and contact Mr. Jim Collins and Ms. Joan Fritsche regarding the charge, especially in light of the charges being at Ms. Fritsche rate and not at paralegal rates.

Mr. Downie was asked by a homeowner whether AAMD should push the DA on restitution, but the District Manager and Board stated that recovery of any funds was close to impossible as Mr. Malcolm still owed approximately \$3M in the State of Nebraska.

MANAGER'S REPORT

The District Manager provided the Manager's Report which is made part of these Minutes.

FINANCIAL MATTERS

The District Manager requested approval from the Board to transfer \$32,991 from ColoTrust (bond reserve fund) to Zion's First National Bank for payment of the interest on the bond due on June 30, 2015. Treasurer Holder made a Motion to allow the transfer of funds, with Secretary Seaman seconding the Motion. The Board unanimously approved.

Liens on properties for non-payment of water were discussed. The District Manager stated she had located a document from SDMS that showed one lien filed. Mr. Downie informed Ms. Barker that she could obtain that information by calling Teller County.

Claims/Accounts Payable for May 2015: The accounts payable were presented to the Board and the Manager stated that she had spoken with Mr. Koffard of Biggs Koffard about removing the service fee charges if they were paid off in June. He is considering

removing some of the charges. President Winterer asked if the funds were available for this large of a payment. The Manager stated that the District is now saving approximately \$8,000 per month with a different manager and legal counsel and that the funds were available. The Manager also stated that Biggs Koffard would not perform the 2014 Audit without payment in full and that statute requires that the Board be provided with the Audit by June 30th and be filed with the Colorado State Auditor by July 31 of each year. Treasurer Holder made a Motion to approve the claims, with Secretary Seaman seconding the Motion. The claims were unanimously approved.

The Manager presented the unaudited financials; including Balance Sheet and Income Statement. She also provided the analysis of Debt. She stated that SDMS had included the SDMS and CCC Judgment on the Balance Sheet but that it actually was a debt to the homeowners and not the District. President Winterer agreed and the District Manager stated she would remove it from AAMD Financials but continue to provide payments and outstanding balances for the homeowners.

VACANCIES ON BOARD OF DIRECTORS

President Winterer stated that there were two positions open on the Board of Directors and that there were only two candidates; David Belfiore and Betty Williams. The President stated he had performed a criminal check and that both candidates had clean records. The District Manager stated that she had confirmed they were eligible electors and qualified for Board positions. Director Seaman made a Motion to appoint David Belfiore to the Board; with Treasurer Holder seconding. Mr. Belfiore's appointment to the Board was unanimously approved. President Winterer made a Motion to appoint Betty Williams to the Board; with Treasurer Holder seconding and the Motion was unanimously approved.

The District Manager provided both parties with Notices of Appointment and requested that they both read the Oath of Office aloud. They did so; thus officially becoming members of the Board of Directors of Arabian Acres Metropolitan District.

Director Williams informed the Board that she would not be able to attend the next meeting. The District Manager stated that the Board can excuse her at the June meeting.

FRAUD INSURANCE

Edith Coffman stated that in the Minutes of March 2015 the Board voted to hire Metropolitan District Management subject to the insurance issues be resolved. The President of Metropolitan District Management had agreed to revise their contract and utilize the verbiage and insurance coverage that the previous firm SDMS had. However, Joan Fritsche of CCC firm had stated that errors and omissions and fraud coverage be obtained. MDM did purchase additional errors and omissions insurance for AAMD only. However, Ms. Coffman wanted MDM to purchase an additional \$9,000 policy for fraud. Ms. Bertrand stated that MDM would not pay 27% of their contract fee for insurance that had not been requested of the previous management firm.

Treasurer Holder asked Mr. Downie if fraud insurance was typically required and he stated it was not. Treasurer Holder made a Motion to accept MDM's coverage as it is standard practice coverage and the District has been run without fraud coverage since the fraudulent act by Terry Malcolm. Secretary Seaman stated the District needed to learn to trust again and that with procedures in place she did not feel it necessary to have additional fraud coverage. Director Belfiore stated he did not believe it was necessary and Director Williams stated that she agreed and SDMS was not required to carry it. Director Belfiore seconded Treasurer Holder's Motion to accept MDM's coverage as it is. The Board unanimously approved not requiring a third type of coverage and felt that general and professional liability including errors and omissions currently carried by MDM was adequate. This Motion resolved the issue in the March 18, 2015 Minutes which stated MDM was hired "subject to issues being resolved".

BILLING SOFTWARE

MDM stated that have not had an opportunity to review the Frye Cubic software. President Winterer asked MDM to review the software before the next meeting if possible.

OTHER BUSINESS

Ms. Marilyn Callan informed the Board that there was a continuance of the Terry Malcolm trial until June 25, 2015 at 1:30 p.m. at the same courtroom. She also asked for clarification from Mr. Downie that he did not represent PJ Anderson. He stated he did not in the past, or currently, represent Mr. Anderson.

EXECUTIVE SESSION

Pursuant to Section 24-6-402(4)(b) of the Colorado Revised Statute, upon Motion duly made by Treasurer Holder and seconded by Secretary Seaman and upon an affirmative vote of at least two-thirds of the quorum present, the Board convened into Executive Session at 8:50 p.m. for the purpose of receiving legal advice on matters pertaining to the Rupp Family Partnership litigation.

Furthermore, pursuant to Section 24-6-402(2)(d.5)(II)(B) CRS no Minutes or recording will be kept of the Executive Session that, in the opinion of the District's attorney constitute privilege attorney-client communication.

The Board reconvened at 9:15 p.m.

ADJOURNMENT

There being no further business to come before the Board at this time, upon motion by Director Seaman, seconded by Director Holder, and upon unanimous vote, the meeting was adjourned at 9:20 p.m.

The next regular meeting is scheduled for June 17, 2015 at 6:00 p.m. at Police Department, 911 Tamarac Parkway, Woodland Park, Colorado

Respectfully submitted,
Judy Bertrand, District Manager: Secretary

THESE MINUTES APPROVED AS THE OFFICIAL MAY 20, 2015 MINUTES OF ARABIAN ACRES METROPOLITAN DISTRICT BY THE BOARD OF DIRECTORS.

(Signed copy in possession of the District Manager)

David Belfiore, Director

Wade Holder, Treasurer

Rebecca Seaman, Secretary

Betty Williams, Director

Robert (Elric) Winterer, President

I hereby certify that it is my opinion that the entire discussion during the executive session constituted a privileged attorney-client communication and that no record or electronic recording was required to be kept pursuant to C.R.S. § 24-6-402. I further certify I was in attendance at the executive session. The executive session was properly announced and was for the purpose of receiving legal advice on specific legal questions in accordance with C.R.S. § 24-6-402(4)(b) and matters that may be subject to negotiations in accordance with C.R.S. § 24-6-402(4)(e).

Jason W. Downie (#27256)
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