

REGULAR MEETING – JUNE 20, 2006

**BOARD MEMBERS PRESENT**

Mike Hayes  
Craig Johnston  
Jim Matchett  
Tony Lucas  
Gary Peterson

**VISITORS**

John Aitken  
Nancy Aitken  
Neil Boucher  
Don Jossi  
Paul Riesling  
Carl Ruch  
Keith Worley

**STAFF / CONSULTANTS**

Diana Miller – District Manager  
Scott Monroe – SEMO, LLC  
Dee Wisor – Sherman & Howard

**1.0 CALL TO ORDER**

The meeting was called to order at 4:30 p.m.

**2.0 NEW BUSINESS**

2.1 A motion was made and seconded; (RESOLUTION 06-065): TO APPROVE THE MINUTES OF THE JUNE 6, 2006 REGULAR BOARD MEETING OF THE PERRY PARK WATER AND SANITATION DISTRICT, AS AMENDED. Passed unanimously.

2.2 WATER/SEWER PERMITS – The following permits had already been approved:

1. Mike and Toni Hesse – 6553 Winged Foot Court – L. 18, B. 1, PP#7
2. Cardinal Construction – 5697 Country Club Dr. – L. 1, B. 5, PP#4
3. Rocky Mountain Custom Homes – 684 Independence Dr. – L. 29, B. 2, SP#1
4. Rocky Mountain Custom Homes – 749 Cumberland Rd. – L. 11, B. 2, SP#1
5. Rocky Mountain Custom Homes – 875 Quartz Mtn. – L. 3, B. 2, SP#1  
(32 permits year to date)

2.3 DISBURSEMENTS – A motion was made and seconded; (RESOLUTION 06-066): TO RATIFY CONSENT AGENDA ITEMS DATED JUNE 16, 2006 IN THE AMOUNT OF \$3,932.78 WHICH WERE PREVIOUSLY DISBURSED FROM WELLS FARGO BANK WEST. Passed unanimously.

A motion was made and seconded; (RESOLUTION 06-067): TO APPROVE CHECKS # 16695–16718 IN THE AMOUNT OF \$51,865.97 FROM WELLS FARGO BANK WEST. Passed unanimously.

- 2.4 ELECTION OF OFFICERS – Members of the Board made the following nominations: Director Johnston, Vice President, Director Lucas, Secretary, and Director Matchett, Treasurer. All of the nominations were accepted.
- 2.5 CONFLICTS OF INTEREST – The District Manager, Diana Miller asked the Members of the Board if they had any conflicts of interest which would prevent them from fulfilling their duties as a Perry Park Water and Sanitation District Board Member. Directors Johnston, Hayes, Lucas, and Peterson stated that they do not have any conflicts. Director Matchett stated that possible conflicts related to his service on the Perry Park Country Club Board of Directors may arise and that he would recuse himself from any votes which pertained to such matters. The District Manger also requested that the Members of the Board contact her as soon as possible should any potential conflicts of interest arise.

### **3.0 OLD BUSINESS**

#### **BOARD MEMBER DISCUSSION ITEMS**

Director Hayes introduced the District’s legal council, Dee Wisor, and read the following statement:

Earlier this year, the Board was advised by the District’s counsel that the District may not be in compliance with the Taxpayer’s Bill of Rights in the Colorado Constitution which is also known as TABOR. TABOR limits taxes, debt, revenues and spending of Colorado governments. As a result, the Board retained two individuals who specialize in the legal and accounting aspects of TABOR: Dee Wisor of the law firm of Sherman & Howard and Kevin Collins of the accounting firm Clifton Gunderson. They have reviewed the District’s financial records from 2000 to 2006. They have advised the Board that based upon a conservative reading of TABOR the District was not in compliance with TABOR in certain of those years.

The issue under TABOR is whether the District’s water and wastewater utilities constitute an enterprise. An enterprise is exempt from all of TABOR’s requirements. An enterprise is defined as a government-owned business with the power to issue its own revenue bonds which receives less than 10% of its revenues in the form of grants from the state or local governments. The utilities are a government-owned business with the power to issue revenue bonds. The only issue then is whether the utilities have received more than 10% of its revenues in state or local government grants. For some time, the District has levied an operation and maintenance property tax to fund some of the costs of operating the utilities. In the 2006 collection year, this levy is 6.049 mills. The Board has been advised that although there is no case law interpreting the issue, a conservative interpretation of TABOR is that the operation and maintenance mill levy revenues are a grant from the District’s government operation to its utility operation. Under this conservative interpretation the District’s utilities have not qualified as a TABOR enterprise for the years analyzed by the District’s advisors. The result is that TABOR’s revenue limitations apply in those years and the District has collected

more revenue than would be permitted under TABOR. Based upon the financial analysis by Kevin Collins, the District may have a total potential refund obligation of approximately \$565,000. This means that the District is obligated to either receive voter approval to keep the excess revenues collected or to refund such excess.

The District has acted in good faith in interpreting TABOR during its budgeting process in the past. However, based upon the advice the Board has received, the Board believes that it should consider calling an election on November 7, 2006, to ask the District's voters for permission to keep all monies which have been collected in excess of TABOR's limits. In effect, this will be a referendum on whether District voters want to continue the District's funding from a combination of property tax and utility user charges or if they want to see user charges increased and property taxes decreased.

The Board intends to educate District constituents about the TABOR issue over the summer with a view to making a final decision on whether to call an election by September.

Director Hayes established the date of July 17<sup>th</sup>, at 6:00 p.m at the Larkspur Fire Station for a public information meeting. He confirmed that a notice would be sent out to the District's constituents.

#### **4.0 STAFF AND CONSULTANT REPORTS**

4.1 PERRY PARK WATER AND SANITATION DISTRICT SYSTEM'S REPORT – The members of the Board reviewed the monthly operations report, which had been submitted by SEMO.

4.2 PROJECT STATUS REPORT – The members of the Board reviewed the monthly project status report, which had been submitted by the District Manager.

#### **5.0 REQUESTS FOR BOARD ATTENTION**

5.1 PAUL RIESLING – SECOND CHANCE PROPERTIES – Mr. Riesling was present at the meeting to request an update on the Districts ongoing efforts to establish guidelines for inclusion. Director Hayes updated him and let him know that the District was still in the process of formalizing the guidelines, but that every situation would still need to be considered individually and that one of the most important requirement would be deliverable, consumable, renewable water rights. Mr. Riesling stated that it was his understanding that there were agreements in place for Meribel Village water and well rights to transferred to the District in exchange for service. Director Hayes said that he was not aware of any such agreement but that the District would review any documentation that he gathered and presented to them. Director Matchett also clarified that the feasibility study which was prepared by the District Engineer Rick Pickard defined what infrastructure would be needed.

5.2 NEIL BOUCHER – PERRY PARK PROPERTIES – Mr. Boucher was present at the meeting to request that the Board reduce the current mainline extension bonding requirements. Director Hayes let him know that the District staff was in the process of researching how other Districts handle bonding on mainline

projects and that hopefully the information could be ready by the July 18<sup>th</sup> meeting allowing the Board to make a decision.

**6.0 AUDIENCE PARTICIPATION** – Mr. Don Jossi a resident of the District since 1972 at 5905 S. Pike Drive was present at the meeting and offered to the Board that he recollected that Meribel Village lot owners were promised water and sewer service by the District and that documentation of the agreement existed. He let the Board know that he would supply a sworn affidavit if necessary. He expressed his opinion, which based on past promises and negotiations, that Meribel Village should be given different consideration regarding inclusion than projects like Remuda Ranch and Sandstone Ranch.

Mr. Jossi also asked the Board for clarification on the events that occurred involving the water in the Perry Park Country Club reservoir during the recent fire near Perry Park Ranch. The Board let him know that there had been some minor confusion on who could release the water for use by the Forest Service, but that the confusion had been quickly cleared and that the Forest Service had been allowed to pull water from the reservoir for use in fire fighting efforts. Mr. Worley suggested that the Board establish formal policy regarding this issue so that there would be no confusion in the future. After a short discussion it was the consensus of the Board to have the District Manager Diana Miller work with Country Club General Manger Mike Kliner, Fire Chief Jamey Bumgarner and Keith Worley to draft an agreement which would define the parameters for use of the water in the reservoir during emergencies.

Mr. Keith Worley was present at the meeting and asked the Board what issues involving TABOR would be discussed at the public meeting on July 17<sup>th</sup>. The Board let him know that both Dee Wisor and Kevin Collins would be attending the meeting and that they would be presenting facts regarding the possible future effects on the District and its constituents. Mr. Worley also inquired as to whether there will be an election or not and the Board informed him that the decision has not been made yet.

Mrs. Nancy Aitken was present at the meeting and stated that the Meribel Village lot owners are not the only ones that feel like they were misled regarding water and sanitary sewer service availability for their properties. She said she has heard of many property owners that bought lots inside the District with the belief that they would be able to build on them, to later find out that there was no water and sewer available and that they would be unable to build on the property until significant infrastructure was constructed.

**7.0 ADJOURNMENT** - A motion was made and seconded; (RESOLUTION 06-068): TO ADJOURN THE REGULAR MEETING. Passed unanimously. The meeting adjourned at 7:00 p.m.

ATTEST:

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Secretary

