

February 8, 2007 - Minutes - Joint Workshop between the Village of Tularosa & the Tularosa Community Ditch Corporation

The Village of Tularosa Board of Trustees met in a Workshop with the Tularosa's Community Ditch Corporation on Thursday, February 8, 2007 at 6:00 P. M in the Conference/Court Room of the Public Safety Facility located at 609 St. Francis Drive, Tularosa, New Mexico.

**Present:** Mayor Ray S. Cordova, Trustee Patrick Garcia, Trustee Margaret Trujillo, Trustee Thomas McKean, Trustee Gloria Sainz as well as Attorney Jefferson Rhodes and Village Clerk Dianna Brusuelas.

Representing the Tularosa Community Ditch Corporation were Norval Bookout, Dan Abercrombie, Henry Prelo Jr., and Robert Baca.

Mayor Cordova introduced the members of the Tularosa Community Ditch Corporation, called the workshop to order and asked that all rise and join in the Pledge of Allegiance.

### **Item 1. Consideration of Agenda**

Trustee Margaret Trujillo moved to consider and was seconded by Trustee Thomas McKean.

**Roll Call Vote:** Trustee Garcia, aye. Trustee Trujillo, aye. Trustee McKean, aye. Trustee Sainz, aye. Motion carried with all members of the Board voting aye.

### **Item 2. Unscheduled Correspondence and Public Comments**

Mayor Cordova announced that the floor would be open for public comments.

First to speak was Walt Hisenberg who resides in the 49 Blocks at 500 Durazno. Mr. Hisenberg felt that it was his opinion and that of others that the Open Meetings Act had been violated when the TCDC held their December meeting. He also felt that it was not an emergency and if it was an emergency meeting the discussion should have been limited to the emergency item only. Mr. Hisenberg felt that the \$100.00 diversion repair assessment fee was calculated unjustly considering that the corporation has a stock market account with an excess of \$100,000.00. Mr. Hisenberg felt that if a assessment was necessary a letter of explanation should come with the bill not just the bill.

Ms. Joan Price spoke next proposing that the Village of Tularosa and the Tularosa Community Ditch Corporation jointly fund a newsletter which has articles of up coming costs, current projects.

Mr. Raymond Ramos agreed with Mr. Hisenberg and felt the Tularosa

Community Ditch Corporation By Laws were outdated. Mr. Bookout representing the Tularosa Ditch Corporation stated that they have conferred with

their attorneys, the attorneys for the Acequia Association, and the State Engineer's Office have recommended leaving the by laws as they are.

Ms. Iris Ruiz wrote a letter which reiterated what Mr. Hisenberg and Mr. Ramos said and asked the Tularosa Community Ditch Corporation commissioners to live up to their responsibility's to the community.

Mr. Dan Abercrombie spoke on behalf of the Tularosa Community Ditch Corporation explaining that the meeting at the Old Road was because Mr. Henry

Prelo could not get off work so they went to his place to meet, typically the by laws say the meetings should take place within the county of Otero. Mr. Abercrombie felt that it was an emergency because the forms were already set up to pour cement when the contractor found that there were 2 feet lower where there was an old dam in there and after meeting with the contractor the decision was made to add more cement but the rest of the Board had to be notified and see if they approved. Mr. Abercrombie explained that the bid was for \$95,500.00 and FEMA paid for 92% of that the TCDC has to come up with the additional 18% plus the addition 18" of cement and taxes. The assessment could have been figured by volume of water or frequency of water.

Mr. Ray Ramos said that the consensus was that the by-laws have to be updated, if the assessment is divided equally then the votes should also be equal.

One complainant felt that the shareholders should have been notified. Mr. Abercrombie stated that a committee would be formed to go over the by-laws after the repairs to the diversion are made because that is more important. The complainant wondered where the balance of the money was going after paying for the repairs. It was explained that it would go towards cleaning the upper diversion down to the settling tanks. It was asked why it was not put in the minutes. It was asked who would work on the by-laws and the response was that the Shareholders would meet at a Special Meeting but there is a committee of town people and farmers to review and that group would decide what to bring up to the Commission. One point Mr. Henry Prelo Jr. made was that if the people would leave their tap water on for four hours the cost of water would be horrendous compared to what people pay on a yearly basis and commended Mr. Abercrombie for the work he did to get the money for the diversion. Mr. Prelo also reminded everyone that this year is an election year and the opinions can be voiced by nominating other officers.

Mr. Hisenberg asked Attorney Jeff Rhodes if it was a fact that because the TCDC felt they complied with the Open Meetings Act that it supersedes the by-laws. Mr. Rhodes responded that the Open Meetings Act applies to any public body, which the Tularosa Community Ditch Corporation is and the Village is, so it in effect trumps, though when the by-laws were done there was no Open Meetings Act was not in existence and there are other statutes that deal with acequias. Mr. Hisenberg felt that the actions taken were then null and void.

Mayor Cordova then closed the Unscheduled Correspondence and Public Comments and went on to the next item on the agenda.

### **Item 3. Sinking of First Street**

Mr. Dan Abercrombie explained the area in question and offered some solutions. Mayor Ray Cordova read some correspondence he had from the Village's Field Supervisor stating that he had met with Ditch Boss Robert Baca and were both in agreement that a culvert would help the problem. Mayor Ray Cordova recalled meeting with Mr. Dan Abercrombie on First Street and Mr. Abercrombie was to get together with Mr. Bookout and then get back with each other. Mayor Cordova explained that the Village's Field Crew had a plan to build a concrete wall with a base and the village would furnish the labor is the Ditch Corporation would furnish the material and hoped that would fix it. Mayor Cordova felt that meeting at the site with everyone would be better and discuss the best remedy. The agreement was to meet and discuss the best remedy and do the repairs jointly.

### **Item 4. Water Rate Increase**

Questions were raised as to following the Court Decrees. Attorney Jeff Rhodes stated he had the microfish that includes the 1971 and that he went to the Court House to see if the 2003 modification that the Village Board approved and sent to the Ditch Corporation ever got signed by Mr. Olsen. Mr. Abercrombie felt that Mr. Olsen had sent it to the Court House to be recorded. After much discussion Trustee Margaret Trujillo asked, "do we follow the decree or do we decide on something and then move on?" Attorney Jeff Rhodes answered that as far as the charge for additional water, we have to agree that that's what it is and that it is fair for us to pay what is agreed upon, then the Decree is modified. Trustee Margaret Trujillo then asked whether the people on the 49 Blocks would have the same opportunity to agree on the increase or not agree, as the village does and wondered if they would have the chance to say that it was done equitably or does the assessment just stay? Attorney Jeff Rhodes stated that there are further complications, the 1972 Stipulation and Decree *only* involved the Ditch Corporation and the Village, everyone else falls under Cause 293 which was filed in 1911 and felt that if assessments have to be approved by the Court they have to be approved under 293. The statutes have provisions for assessments governing acequias.

Mr. Abercrombie proposed having a meeting in about two weeks giving notice, reaffirming or modifying, items will be put on the agenda and the meeting will be posted.

Mr. Hisenberg felt (from listening to the attorney) that the people in the 49 Blocks did not have to pay the \$100.00 assessment and looking at the Community Ditches Financial Summary dated 12/1/2005-11/30/2006 showing an Edward Jones account with a net gain of \$16,781.98 and a balance of \$175,352.46 felt that the 8% match would come out of that.

Mr. Dan Abercrombie proceeded to read from State Statute, Section 73-2-25, "no person who has, after due notice, failed to refuse to do his work or pay the amount assessed against him in lieu of the work upon the acequia or ditch shall be allowed to take or use any water from the same or any contrant acequia or lateral thereof while default on the payment of failure to do work continuous. Any person who continues to take or use water after having been given notice of failure or refusal to do his work or pay the amount assessed against him in lieu of the work shall pay a civil fine for the benefit of the ditch or acequia of not less than \$100.00 nor more than \$200.00. The penalty may be recovered in an action by the Ditch Officials before the magistrate court in the county where the ditch is located."

Trustee Margaret Trujillo asked if at the next meeting would all the actions taken at the prior meeting be reaffirmed. Mr. Dan Abercrombie said that at the next meeting they would either reaffirm all the actions or change all the actions. Mayor Cordova requested that a posting of the meeting be brought to the village office.

#### **Item 5. Status of 1965 Stipulation, Cause 10450, Cause 293**

Attorney Jeff Rhodes felt that this was already discussed and he had looked at Cause 10450 and would have to further look at Cause 293.

#### **Item 6. Number of Voting Shares for Village of Tularosa**

Attorney Jeff Rhodes (based on what he had available) and based on the February 1971 Roster of the 587 shares, the village had 12 of them but does not know how many more were acquired since then or if the ones acquired is included. There was some indication that the village had 12 voting shares.

Mr. Dan Abercrombie stated that in January 14, 1972 the village had 10\_ voting rights so what ever was purchased since then will translate directly. Attorney Jeff Rhodes said he counted 12 in February of 1971 and doubted if the village had gotten rid of any and told Mr. Abercrombie he could give him the numbers. Mr. Abercrombie proceeded to read a part of Cause 10450, January 14, 1972, number 3, "that the plaintiff has converted an additional 3\_ water rights since the entry of the Final Decree on February 9, 1965 and that the Plaintiff shall pay 14.82% of the assessment made by the Defendant for cost of maintaining and operating the Tularosa Stream System above the Plaintiff's point of intake which costs shall include the Ditch Bosses salary and payroll taxes applicable hereto.

Number 4, that the Plaintiff shall be entitled to 10\_ voting rights in the Defendant corporation for the shares the Plaintiff has converted to date pursuant to the terms and conditions of the Final Decree dated February 9, 1965 herein provided however that such voting rights shall be exercisable only by Plaintiff on the election of officers of the Defendant and on such other issues directly affecting Plaintiff. Attorney Jeff Rhodes wondered if there was a mistake that there should have been 12 instead of 10\_.

Trustee Thomas McKean wondered why in 2005 the village was told they only had 7\_ shares and the Decree of 1972 says 10\_ shares then in the year 2004 you say we have 17.6 shares and wondered why the minutes change from one year to the other, there were 17.92 in 2004 and everyone agreed that it should be corrected to 17.17 voting shares, Mr. McKean wondered who everyone was and how it could change from one year to the next. Mr. Abercrombie said it has to do with the total number of certificates the village has. Mr. Abercrombie suggested putting it on the agenda for the next shareholders meeting. Mr. Bookout felt that the only one not converted were the 7. something. Trustee Thomas McKean wondered why the total shares differ from years to years. The response what that some were retired.

#### **Item 6. Number of Voting Shares for Village of Tularosa**

Discussion ensued as to how a person could vote when they only owned 1/4 share and the equality of the \$100.00 assessment. Trustee Thomas McKean wondered *why* the village was paying the 15% of the expenses.

#### **Item 7. Salary of Ditch Boss not approved by Village of Tularosa nor the Court**

Trustee Margaret Trujillo stated that the court sets the amount of the Ditch Bosses salary and the amount actually being paid is different. The question being if the court sets an amount and the Ditch Corporation is paying more why should that portion be included in the 14.82% we pay. Attorney Jeff Rhodes asked if the village was paying 14% of the total. The response was yes. Mr. Rhodes then concluded that there might be a problem because the village should only be paying 14% of the Ditch Bosses salary for work above the intake.

Trustee Thomas McKean asked what mileage rate the Ditch Boss was getting. The response from the bookkeeper, Michele Lackey, was 40¢ a miles and that the federal rate was 44¢, it was noted that the State Mileage and Per Diem Act allows 32¢ and it applies to political subdivisions and might include the Ditch Corporation. Mr. Dan Abercrombie read 73-2-21.

Trustee Thomas McKean stated three items of questions (1) the amount of shares (2) percent we pay in operating expenses (3) and the Mayordomos salary

#### **Item 8. Communication between Village of Tularosa and Tularosa Community Ditch Corporation, when work is interrupting water flow into the Water Plant**

Mayor Ray S. Cordova recommended to the Ditch Corporation that they both have better communication because of the village's water plant and the Water Plant Operators can divert the water as necessary.

#### **Item 9. Long Term Plan for appropriating and storing excess waters in the Tularosa Creek**

Mr. Dan Abercrombie stated that they had \$100,000.00 from the state to do a Feasibility Study for storing water, they received one bid from hydrosphere Inc. The question was whether this was for the hydro-electric and who would collect the money generated and if it was a joint effort; would the collections be in proportion or equally. It was decided that there was enough time for negotiations after the study. The decision to put the item on the agenda for the Regular Meeting of February 22, 2007 was made.

**Item 10. Open Meetings Resolution adopted by Tularosa Community Ditch**

A suggestion to use the Conference / Court Room for the meetings was made and the agreement to bring a posting to the Village Hall. The annual meeting is on the first Monday of December of every year at 7:00 P. M. A meeting will be held in a couple of weeks.

**Item 11. RFP for Feasibility of pipe and reservoir pending**

Item 11 was in conjunction with item 9.

**Item 12. Adjourn**

Trustee Margaret Trujillo moved to adjourn and was seconded by Trustee Gloria Sainz. Motion carried with all members voting aye.

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Ray S. Cordova, Mayor

ATTEST:

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Dianna R. Brusuelas, Village Clerk

The written are the official minutes of the meeting. The recorded tapes are part of the minutes only for interpreting any ambiguity in the written minutes. When the minutes are approved and signed the written minutes are the official minutes of the meeting.

Workshop minutes approved by the Board of Trustees at the Regular Meeting of March 20, 2007.