



MINUTES

Regular Meeting of the KID Board of Directors
 Carl W. Petersen Board Room
 Tuesday, December 1, 2009, 9:00 a.m.

Call to Order/Roll Call: President Jaksch called the meeting to order in open session at 9:00 a.m. and District Manager Freeman called the roll.

Directors Present:

John Jaksch, President
 John Pringle, Vice President
 David McKenzie, Director
 Patrick McGuire, Director
 Gene Huffman, Director

Staff Present:

Charles Freeman, District Manager
 Scott Revell, Planning Manager
 Joetta Rupert, Real Estate Manager
 Brian Iller, Legal Counsel
 Clark Haueter, District Treasurer
 Harry Fox, Operations Manager
 Judy Smith, Administrative Contracts Specialist
 Doris Fiske, Executive Assistant

Consent Agenda: Director McKenzie moved to approve the consent agenda. Director Huffman seconded the motion and it carried unanimously.

Items on the consent agenda were:

1. Minutes, KID Board Meeting, November 17, 2009
2. Approve Budget Transfer for Interim District Manager/Planning Manager Salary
3. Resolution 2009-34 Project Acceptance and Retainage Release for Contract 2009-06
4. KID O&M Vouchers

Accounts Payable

Numbers:	58508 through 58539	\$	34,477.05
	58540 through 58582	\$	92,026.75
	58583 through 58584		1,000,000.00
Total Accounts Payable			1,126,503.80

Payroll

Numbers:	31313 through 31323		8,382.31
	31324 through 31325		2,864.15
	Direct Deposit		64,685.64
Total Payroll			75,932.10

Total Disbursements **\$ 1,202,435.90**

Voided Checks

- Check No. 58350 in the amount of \$471.09 Void. Item returned
- Check No. 58044 in the amount of \$63.50 Void and reissue to correct payee
- Check No. 58131 in the amount of \$56.32 Void. Duplicate payment
- Check No. 58464 in the amount of \$38.99 Void and reissue to correct vendor

Approval of Agenda: President Jaksch announced that the board of equalization will not be held today because the required notices were not published. A new motion will be required to set the date of the board of equalization as January 5, 2010. **Vice President Pringle moved to approve the amended agenda. Director McKenzie seconded the motion and it carried unanimously.**

Scheduled Visitors: None

Unscheduled Visitors:

1. Dale Walter, residing at 5624 W. 10th Avenue, displayed a spreadsheet he created titled "KID/LID Expenditures & Assessments 2003-2009" (copy on file). He reported meeting with Clark Haueter and Darrell Stewart and stated the numbers used in his spreadsheet through 2008 were provided by KID. For 2009 expenses, Mr. Walter averaged the last three years plus five percent which he thought were most reflective because administrative expenses were added from 2003 through 2006, but not 2007 or 2008. He said KID generated a \$766,000 excess reserve in 2009 and at this pace will recover the \$1,400,000 refunded in 2009 due to excess reserves.

Mr. Walter said some of LIDs didn't have any expenses but were charged oversight or administrative expenses. He said the business administration expense was divided over the population and was not reflective of the cost of each LID. Mr. Walter said, even if the administrative expense was justified, the application was wrong.

Mr. Walter said there was a journal entry in March 2008 of \$433,000 where KID charged the FEMA rate for equipment. He stated that RCW 35-21-088 only allows charging FEMA rates for third party equipment rental. Mr. Iller, District legal counsel, responded that RCW Chapter 35 does not apply to irrigation district LIDs and challenged Mr. Walter to provide any court case so applying the statute.

Mr. Haueter thanked Mr. Walter for providing his spreadsheet and meeting with himself and Mr. Stewart. He agreed with Mr. Walter's calculations on this revision of the spreadsheet through 2008 and said they reflect actual assessments, expenses and accumulated reserves. He said the 2009 refund matches the balance in 2008.

Mr. Haueter said some of the assumptions Mr. Walter made for 2009 are not correct or could be looked at differently. The \$1,689,695 under 2009 Assessments for LIDs is not directly comparable to the 2008 Assessments of \$1,245,915. \$1,245,915 was provided in answer to a public records request for only pressurized service areas 2 through 189, and the \$1,689,695 assessed in 2009 includes all pressurized services areas not just the smaller pumps. Also, the \$923,639 three year average for expenses would be about \$1.2 million if a five year average were used and would approximately match the number used for the assessment, leaving a zero balance in 2009.

Mr. Walter said the \$1,689,695 number is where the KID added 7th Avenue, 1.8 Rehab, and the other pump(Gage Project) which KID used to spread over approximately 1,500 to 1,600 customers and now spreads over the total population of the LIDs. He said the number is a valid for the LIDs because it is assessing all the LIDs 2 through 189.

Mr. Haueter displayed the summary trial balance by fund including Funds 345, 346, 347 for 7th Avenue, 1.8 Rehab and the Gage Projects and said Mr. Walter has not been requesting this information. The accumulated total of \$336,000 was not part of the analysis on the expense side but is included as revenue. Mr. Walter asked Mr. Haueter to tie this to the Utility Billing.

At President Jaksch's request, Mr. Haueter described changes to accounting due to the new toll structure and likened the system to how utilities such as garbage service are billed. He noted that expenses were not tracked or billed by LID for 2009. Mr. Jaksch said the Board is not sympathetic to the suggestion of reverting to the old accounting system. Mr. Walter suggested the Board review the RCW and said he believed expenses must continue to be tracked by LID. He stated he thinks the tiered rate is unfair.

2. **James Wade**, residing at 1813 S. Rainier Place, said he previously requested a report on how much sales of KID property offset assessments and has not received an answer. Ms. Rupert reported that Realty recently hired a temporary employee to look into it. Ms. Rupert recently submitted a report on income from Realty for the last five years. She said a meeting with the Engineering Department and the District Manager is needed to determine what projects benefited.

President Jaksch said there used to be a line item on assessments that showed how ratepayers' bills were offset by Realty sales. Ms. Rupert said she asked Mr. Stewart for information on the years that occurred and was told there is no history.

President Jaksch said a report is needed on how money taken from Reserves for the last three to five years was used, and thus benefited the ratepayers. Ms. Rupert asked that this be added to the next Finance Committee meeting agenda.

Mr. Wade described the process of requesting and receiving an absentee ballot and said it took too long. Director McGuire said an absentee ballot request form is required by statute. Vice President Pringle said the acreage must be verified.

Mr. Wade asked whether KID would use two votes for everyone this year. President Jaksch said a letter has been mailed to Mr. Wade which addresses his questions on election procedure.

Mr. Wade said he thought rate payers were paying money all along for the canal break through the capital projects charge. Director McGuire said the capital project charge is for capital improvements and the canal break was a unique event. President Jaksch clarified that a capital improvement is an infrastructure improvement expected to last over time and a canal break is an emergency situation that must be fixed.

Mr. Wade said he thinks the switch to the tiered structure was done illegally. President Jaksch said this topic has already been addressed.

Mr. Iller read from RCW 87.03.032 regarding qualified District electors certifying that they cannot conveniently vote in person and providing a written request to vote by absentee ballot.

3. **Ron Asmus**, residing at 802 S Dawes, a denied encroachment request for a retaining wall behind a house he is building for a client on a lot with KID pressurized irrigation. He said KID is asking regarding depth of pipe and maintaining access is not consistent with past

practices. He said if there is an established practice, even if it is not what was supposed to be done, prospective buyers and homeowners need to be informed ahead of time before KID begins to enforce their policies.

Discussion ensued regarding possible details of the wall and the topography. Mr. Asmus verified that the pipe and retaining wall in question would be within the KID easement. Mr. Revell sketched a cross section of lot and proposed retaining wall.

Mr. Revell said KID has policies governing encroachments. He said the encroachment request was reviewed by Engineering in September and denied. Mr. Asmus or his client appealed the decision and the review began during the District Manager transition. Mr. Revell agreed that there have been inconsistencies in application of policies in the past, but said staff is taking corrective steps, closing gaps in the policies and streamlining the permitting process.

Discussion ensued regarding possible depth and size of the pipe and whether it could be raised. Size and design of the proposed retaining wall and estimates regarding placement were also discussed. Mr. Revell said the issue is application of KID policy and that there is a formal review of the administrative appeal and a written decision will be issued in seven to ten days.

Discussion ensued regarding KID use of easements. Director McGuire said the issue is allowing permanent structures to be built in easement and the setting of precedent. Mr. Asmus said retaining walls have been allowed in easements for years and that KID only needs five feet for the easement not ten.

Discussion continued regarding whether KID could get equipment in to the backyard after the wall was built. Mr. Fox said experience shows that could not be guaranteed. President Jaksch raised the issue of homeowner expectations of repairs to encroachments should they be damaged during repairs and said the new policy will state that KID is not responsible for repairs to encroachments.

Mr. Revell mentioned the issue of additional dirt and fill. He asked if KID has authority to approve an encroachment that may impede its ability to operate the delivery system. He said a normal condition of permits for other utilities is that if the utility needs to do work the property owner must make the landscape repairs. He noted that some utilities do make the repairs and that, historically, KID has repaired damage to landscaping.

Mr. Revell said a written decision will be given to Mr. Asmus. Mr. Asmus said the request should not be denied in view of established practices and that prospective buyers need to be notified before KID changes a practice.

Mr. Revell noted that easements are reported with the plat and the holder of easement is the dominant estate not the underlying land owner. Mr. Iller confirmed that when a use of the land by the owner is in conflict with the purpose of the easement it is an encroachment which may not be allowed and that is why the owner must apply for permit for the encroachment.

Mr. Asmus said guidelines are important to developers and that consistency is important. He briefly described failing to get permission to hook to the neighboring pump station for a 1994 development. He said when KID later accepted the neighboring system it tore out what he put in and attached to the system he wanted to access in first place.

New Business:

1. Board of Equalization: Director Huffman moved to give notice by publication in the Tri-City Herald legal notices on December 6th and 13th of 2009 that the 2010 Assessment Roll has been filed with the KID Board of Directors and that the Board of Directors, acting as a board of equalization, will meet on January 5th, 2010 at 9:00 a.m. to equalize assessments. Vice President Pringle seconded the motion and it carried unanimously.

2. Election - Date of Board Meeting to Canvass the December 8, 2009 Election: Mr. Freeman discussed requirements for canvassing the 2009 election. Director McGuire moved to change the date of the next regularly scheduled Board meeting from Tuesday, December 15, 2009 to Monday, December 14, 2009 for the purpose of canvassing the Election of December 8, 2009. Director McKenzie seconded the motion and it carried unanimously.

3. Policy 2.19 Budget Authority: Mr. Haueter presented the proposed policy to clarify budget authority delegation which was discussed at the November 2, 2009 Finance Committee meeting. Director McKenzie moved to approve Policy 2.19 Budget Authority. Director Huffman seconded the motion and it carried unanimously.

4. Policy 4.2 Protection of KID and USBR Rights of Way and Easements: Mr. Freeman reported that policy language needs to be refined before approval. President Jaksch tabled Policy 4.2 until January 5, 2010.

5. Policy 7.1 Electronic Technology Use: Mr. Freeman presented the draft policy and procedure intended to replace policies and procedures 4.5 Electronic Mail and 4.6 Internet Use. The new policy and procedure will also incorporate use of GPS on District cell phones. He stated that the policy has been reviewed by the Finance Committee and legal counsel.

Vice President Pringle suggested that procedure line 1.6.2 also state that cell phones must be kept on during working hours. Director McGuire said no personal use of District electronic technology should be allowed, excepting emergency phone calls. Discussion ensued.

Mr. Freeman said, in his experience, personal use of computers is not allowed but that Beth Smith, Human Resource Manager, has said it is common now in most work places. Mr. Haueter said that the Washington Administrative Code and the State Auditor's website have many examples of acceptable "de minimus use," as long as the District does not incur any additional cost. Mr. Revell described current District practice and advised balancing of good stewardship of public resources and modern expectation for communication. He said the proposed policy and procedure are consistent with those of other local public employers and that staff recommends approval of the proposed draft.

Director McGuire said he stated in the Finance Committee meeting that no personal use should be allowed. He said he understands realities of modern society, but the majority of employees have personal cell phones. Ms. Rupert said that when she worked for the school district many years ago, employees were allowed personal use of computers during breaks. Director McKenzie advised against defining the number of minutes allowed. He also advised the Board against going backwards from delegating authority to management, though he does not endorse personal use of District equipment. Nancy Pringle stated that policy at the school district

changed to disallow personal use of computers. Director Huffman stated no personal use should be allowed as it might be abused if a certain number of minutes were allowed. President Jaksch asked if the Board wanted to take out the time limit and use reasonableness if something happens. Director McGuire suggested removing the number and using de minimus. President Jaksch directed that the revisions be brought to the December 14th meeting.

6. Rescind Outdated Policies and Procedures: Mr. Freeman discussed staff's review of old format policies and procedures and presented the list of outdated policies and procedures recommended for elimination. **Director Huffman moved to rescind the old format Policies and Procedures identified in Attachment 1. Director McGuire seconded the motion and it carried unanimously.**

President Jaksch called a short break at 10:10 a.m.
The meeting reconvened in open session at 10:20 a.m.

7. Realty Business: Ms. Rupert distributed the draft 2010 Real Estate Division Budget. She presented the Realty Committee recommendation that the entire Operations Special Projects budget balance of \$34,341 be transferred to from the 2009 Realty budget to the KID 2009 O&M budget. She displayed the 2010 Realty Division proposed budget and reviewed highlights including total salaries and fringe, operating expenses, education and training, and professional services.

The property management issue of illegal dumping, including dumping of vehicles, was discussed. KID will prosecute violators as possible. Discussion continued regarding encroachment, cattle running, storing equipment, increased clean up costs and enforcement.

Ms. Rupert said Realty will call out any special projects on Red Mountain by the property number and series 4000. She verified that past expenses for Red Mountain LID have been tracked.

Discussion ensued regarding the projects included under Operations Special Projects. Mr. Haueter clarified that the monies for these projects do not need to be moved. He said the only thing that needs to be transferred is the spending authority of the remaining \$34,341 of that line item.

Director Huffman moved to transfer the remaining 2009 Realty Budget Special Projects balance of \$34,341 and the associated projects to the Water Division Operations Budget. Vice President Pringle seconded the motion and it carried unanimously.

Vice President Pringle moved to approve the Real Estate Division 2010 Operations Budget in the amount of \$649,900 and the Realty Special Projects Budget in the amount of \$160,000. Director Huffman seconded the motion and it carried unanimously.

8. District Manager's Report: Mr. Freeman reported that the State Auditor is expected to arrive on Thursday. He said the Election notice has been published twice. He informed the Board of dates he will be out of the office for training.

Director McGuire reported that the applications received for the Water Rates Advisory Committee did not include adequate representation for agricultural interests.

President Jaksch noted that the Engineering Manager position advertisement has been released.

President Jaksch reported that the Department of Ecology is proposing that any new water permits on the Columbia River be issued for only five years. He expects to raise the issue for clarification at their meeting in two weeks. He said the proposal calls into question the Edison Street Pump Consolidation project.

Executive Session: None

Director McKenzie moved to adjourn the meeting at 10:41 a.m. Vice President Pringle seconded the motion and it carried unanimously.

Attest:

Witness:



John A. Jaksch, Board President



Charles Freeman, Secretary/Manager

Prepared by Doris Fiske, Executive Assistant