

**Albuquerque Metropolitan  
Arroyo Flood Control Authority  
Special Meeting Minutes  
October 11, 2004**

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**1. Call to Order and Roll Call**

Chairman Eichenberg called the Special Board Meeting to order at 8:00 a.m. Monday, October 11, 2004. Roll was noted as follows:

Directors present: Chairman Tim Eichenberg  
Director Linda Stover  
Director Ronald D. Brown  
Director Danny Hernandez  
Director Daniel Lyon

Others present: John Kelly, Executive Engineer  
Irene Jeffries, Business Manager  
Sam Bregman, Attorney

A quorum was present.

**2. Approval of Agenda**

There were no changes or objections to the agenda.

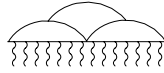
**3. Approval of Resolution 2004-9, Modification of Ad Valorem Tax Levy for Tax Year 2004 Applicable to General Operating Fund**

Chairman Eichenberg stated that AMAFCA staff had learned through the County that the State's Department of Finance and Administration (DFA) had adjusted the mill levy rates for AMAFCA's General Operating Fund upwards to the maximum allowed under the yield control formula.

Chairman Eichenberg stated that today's meeting was to discuss the situation, and, if decided by the Board, set new mill levy rates and pass a new Ad Valorem Tax Levy resolution.

Mr. Kelly gave the Board some background information and stated that DFA's direction was that AMAFCA could set its rates less than the maximum allowed under the Yield Control Act, but the proportion of the Residential rate to the non-residential rate needs to be the same as in the maximum rates allowed. He then presented results of several possible mill levy rate scenarios that would be proportionate to the maximum allowed rates.

Mr. Kelly stated that if the Board did nothing the higher mill levy rates set by DFA, 0.187 residential and 0.452 non-residential, would result in \$57,743 in excess revenue. If the Board



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kept the residential rate at the current rate of 0.186 and raised the non-residential rate to 0.450, there would be \$45,568 in additional tax revenues.

Mr. Kelly stated another option would be to keep the non-residential rate at the current rate of 0.433 and lower the residential rate to 0.179. This would result in a \$47,696 deficit in tax revenues.

The final option Mr. Kelly discussed would be to lower the residential rate to 0.183 and raise the non-residential rate to 0.442. This option would result in \$3,683 in additional tax revenues, for an increase of less than 0.1% of the annual operating fund budget. He stated that this option produced the most neutral positive impact on revenue.

Mr. Bregman discussed the legalities of DFA's actions. He explained that DFA had had a change in personnel since this issue was discussed between AMAFCA and DFA in 2001. He referred to the DFA letter of August 28, 2004, under which AMAFCA has been operating.

Mr. Bregman stated that DFA's current attorney's opinion was that the rates had to remain proportional in order to provide "equal protection" under the U.S. Constitution to the two classes of property owners. He opined that this interpretation was incorrect, but questioned how to dispute it and questioned if the potential outcome of a dispute would be worth the risks involved.

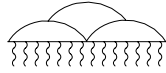
Mr. Bregman also informed the Board that time is of the essence, as the County will be voting to approve this mill levy along with others at their October 12 County Commission meeting.

Extensive discussion followed, with the entire Board expressing dismay that DFA was not allowing the AMAFCA Board of Directors to set its own mill levy rates, as long as the rates set were less than the maximum allowed under AMAFCA's enabling legislation.

Mr. Bregman suggested that the Board approve one of the options set forth by Mr. Kelly, and start discussions with DFA in order to avoid this happening next year. Mr. Bregman cautioned the Board that if they did not adopt a new mill levy resolution, a claim could be made that the tax revenues collected by AMAFCA had not been authorized.

Director Hernandez made a motion that the Board set the Operating Fund mill levy for tax year 2004 at 0.183 residential and 0.442 non-residential. Director Brown seconded the motion.

After further discussion, the motion passed 4-1, with Director Lyon voting against.



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Director Hernandez then made a motion that the Board utilize all possible avenues to engage in discussions with DFA to clarify this issue and establish the Board's right to set its mill levy.

Director Brown seconded the motion, and after brief discussion, it passed unanimously (5-0).

Director Hernandez then made a motion that Chairman Eichenberg, and any other Board Member who chooses to, attend the October 12 County Commission meeting to present AMAFCA's position. Director Brown seconded the motion. Further discussion followed.

Chairman Eichenberg pointed out that making an issue at the County Commission meeting could have an adverse effect on AMAFCA's bond election.

After further discussion, Directors Brown, Lyon, and Stover stated they agreed with Director Hernandez on principle and Chairman Eichenberg on practicality. They agreed that it would be better to let the mill levy be handled administratively, and work with DFA to prevent this situation from occurring next year.

The motion failed, 1-4.

Mr. Kelly then presented Resolution 2004-9, stating it was similar to 2004-8 with the following changes: a fifth "whereas", regarding the proportionality requirements of the Yield Control Act, was added; the mill levy amounts in paragraph two were changed to 0.183 residential and 0.442 non-residential; and paragraph five, repealing Resolution 2004-8, was added.

Director Stover made a motion that the Board adopt Resolution 2004-9 Modification of Ad Valorem Tax Levy for Tax Year 2004 Applicable to General Operating Fund, setting the mill levy at 0.183 residential and 0.442 non-residential.

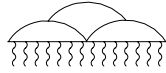
Director Brown seconded the motion, which passed unanimously (5-0).

**4. Unfinished Business**

There was no unfinished business.

**5. New Business**

Director Brown asked if there was any update regarding the Paakweree drainage easement release for the property to be purchased by Albuquerque Public Schools (APS). John Kelly gave the Board a brief update, with Directors Lyon and Hernandez (the Right of Way



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Committee) giving input. The easement release document will be structured so that if the sale to APS (the "condition precedent") does not happen, the easement will not be released.

Director Hernandez asked who will work with Mr. Bregman to resolve the problem with DFA and establish who has the right to set AMAFCA's mill levy rates. Chairman Eichenberg appointed Sam Bregman (lead), John Kelly, Director Hernandez, and Director Lyon, as the "Finance Committee", to work with DFA to resolve the mill levy issue.

**6. Items from the Floor / Public Comment**

None.

**7. Adjourn**

With no further business to discuss, Chairman Eichenberg adjourned the meeting at 8:55 a.m.

/s/

Ronald D. Brown, Secretary-Treasurer 10/21/04

Recorded by Pam Woodruff, Secretary to the Executive Engineer