



**Albuquerque Metropolitan
Arroyo Flood Control Authority
Special Meeting Minutes
September 2, 2005**

Page 1

1. Call to Order and Roll Call

Chairman Brown called the Special Board Meeting to order at 8:30 a.m. Friday, September 2, 2005. Roll was noted as follows:

Directors present: Chairman Ronald D. Brown
Director Daniel Lyon
Director Janet Saiers
Director Danny Hernandez

Present via speaker phone: Director Tim Eichenberg

Others present: John Kelly, Executive Engineer
Sam Bregman, Attorney
Staff

A quorum was present. Chairman Brown stated that Director Eichenberg had a last-minute conflict and had asked to either be excused from the meeting, or to participate via speaker phone from his office in Santa Fe.

Attorney Sam Bregman stated that, although Director Eichenberg could participate in the discussion via phone, he wasn't sure if he would be allowed to vote. Director Eichenberg stated he would not vote.

2. Approval of Agenda

Mr. Kelly stated there were no changes to the agenda. There was one item under "new business".

Director Saiers made a motion to approve the agenda. Director Lyon seconded the motion, which passed (4-0).

3. Approval of Resolution 2005-11, Ad Valorem Tax Levy, Operating Fund

Mr. Kelly stated that DFA had computed the maximum rates allowed under the Yield Control Act, which would result in excess income of about \$170,000 in the Operating Fund budget. Other mill levy rate pairs were also explored, and staff recommended rates that would result in a small deficit at a 98% collection rate, and a small excess at a 100% collection rate. Collection of delinquent taxes from prior years should help cover the gap between tax revenues raised and budgeted income.



**Albuquerque Metropolitan
Arroyo Flood Control Authority
Special Meeting Minutes
September 2, 2005**

Page 2

Chairman Brown cautioned against dropping the mill levy too low, stating that it might need to be raised later if it is set too low now. He asked Director Eichenberg's advice.

Director Eichenberg stated that it takes four to five years for the state to collect delinquent taxes, and that it would be imprudent to assume a 100% collection rate, when historically it has been closer to 97%. Taxation and Revenue usually manages to collect only about 0.5% a year in delinquent taxes.

Director Eichenberg urged caution, and advised the Board to not lower the mill levy too much.

Irene Jeffries, AMAFCA Business Manager, handed out a spreadsheet of additional rate scenarios, which had also been faxed to Mr. Eichenberg at his office in Santa Fe. She explained that these additional rate pairs were in proportion to the maximums allowed under the Yield Control Act. The amounts collected at 98% and 100% were also shown.

Mr. Kelly explained that these rate pairs covered all of the possible combinations of mill levy rates between the maximum rates and those listed in the mailout.

Chairman Brown pointed out the line indicating a 0.180 residential and 0.398 non-residential mill levy, which results in a \$46,996 surplus at a 98% collection rate, and would be close to revenue-neutral at a 96% collection rate. He added that operating fund costs will increase due to events surrounding the West I-40 contract, and a small financial cushion would be good.

Mr. Kelly agreed that with diesel now costing over \$3/gallon, and other costs also rising, a cushion would be prudent.

Director Eichenberg affirmed his support of setting the mill levy at 0.180 residential and 0.398 non-residential.

Director Saiers made a motion that the Board adopt Resolution 2005-11 Ad Valorem Tax Levy, Operating Fund, setting the mill levy at \$0.180 residential and \$0.398 non-residential. Director Lyon seconded the motion.

Discussion followed. Chairman Brown stated that, given the current circumstances, a cautious rate reduction, rather than an aggressive one, was prudent.

Director Saiers added that with the uncertainty of the future of fuel prices, and given the possible additional costs of the West I-40 project, a financial cushion seemed good.



**Albuquerque Metropolitan
Arroyo Flood Control Authority
Special Meeting Minutes
September 2, 2005**

Page 3

In response to a question from Director Lyon, Director Eichenberg expressed his support of the 0.180/0.398 mill levy. He stated that these rates were fiscally responsible, with any error on the side of caution.

Director Hernandez asked if these mill levy rates allowed enough of a financial cushion.

Chairman Brown replied that, with these mill levy rates, AMAFCA should run a modest surplus, because collection of prior years' past due taxes will also be added to this revenue. If costs increase to a level such that money is low in June 2006, AMAFCA could tap into its contingency funds.

The motion passed, (4-0). Director Eichenberg did not vote.

4. West I-40 Phase III Diversion Channel Project – Consideration of Finding Albuquerque Excavators, Inc., in Default of Contract and Making Demand of Surety to Comply with Terms, Conditions and Obligations of Performance Bond

Mr. Kelly stated that, on the afternoon of September 1, 2005, AMAFCA had received a Notice of Voluntary Default from Mr. Jerry Padilla, President of Albuquerque Excavators, Inc. (AEI), and a letter informing AMAFCA that the surety would be stepping in. The bonding company affirmed that they would be stepping in and performing under the terms and conditions of the performance bond.

Mr. Kelly introduced Tom Finley of the surety company, Zurich North America, and Michael Menicucci, AEI's attorney. Dan Aguirre of Wilson & Company was also present.

Mr. Kelly stated that there were several transition items to be taken care of, including dust control on the site, maintenance of the Storm Water Pollution Protection Plan (SWPPP), site fencing, and so on. These would need to be taken care of during the interim period before a new contractor is brought in to complete the job.

He added that, given the voluntary default by AEI, any action by the Board regarding involuntary contract default was not needed. However, the surety needed time to investigate and to negotiate with local contractors. The surety had requested AMAFCA suspend the project for a time to allow them to do this.

Mr. Finley stated that the surety would handle the investigation and negotiations as quickly as possible, but they need to have time to find the right party to take over the project. He requested a contract suspension to allow time for this to happen.

Chairman Brown asked how long of a contract suspension the surety would need.



**Albuquerque Metropolitan
Arroyo Flood Control Authority
Special Meeting Minutes
September 2, 2005**

Page 4

Mr. Finley requested a thirty day extension if possible, but said he could agree to a shorter suspension if 30 days was too long.

Mr. Kelly suggested that the Board could choose to give the Executive Engineer authorization to suspend the contract up to three weeks, retroactive to September 1, subject to working out the site issues mentioned earlier. This suspension would be until the Friday after the next regular Board meeting. The Board could be updated on progress at that meeting.

In response to a question from Director Hernandez about costs incurred, Mr. Kelly replied that, while Wilson & Company would not incur any construction inspection costs, they would be working with the surety to provide information they needed. There would also be costs for site security, and ongoing dust control.

Chairman Brown added that Chris Perea, of Wilson & Company, might end up spending about two thirds of his time working with the surety, for the next three weeks. He would also probably be answering contractors' questions about the scope of the remaining project.

Director Hernandez responded that liquidated damages are supposed to cover the additional costs AMAFCA would incur. The default will cost AMAFCA money, and he wished to minimize the public expense.

Chairman Brown stated that AMAFCA needed to balance their contractual obligations with the public interest. He added that AMAFCA and the surety wanted to see the right contractor brought in to finish the job, resulting in a quality finished project.

In response to a question from Director Hernandez, Mr. Kelly stated he hadn't had time to calculate an accurate estimate of AMAFCA's costs since receiving the letter from AEI the day before, to the point that another contractor would take over the job. In response to a query from Chairman Brown, he added that a lot of the costs would be incurred prior to the September 20, 2005 meeting, and an accurate figure could be given then.

Director Lyon expressed his support of a three week suspension of the contract, and having the surety report to the Board. He would like the suspension decision to be made by the Board, and not by staff. He pointed out that the contractor hired to complete the project might not be able to schedule the work for several months.

Director Lyon made a motion that the Board suspend the contract time on the West I-40 Phase III contract to September 20, retroactive to September 1, with the surety to work with staff, and surety to report on progress to the Board at the September 20, 2005 Board meeting. The motion was seconded by Director Hernandez.



**Albuquerque Metropolitan
Arroyo Flood Control Authority
Special Meeting Minutes
September 2, 2005**

Page 5

Discussion followed. In response to a question from Director Saiers, Mr. Kelly stated that as the contract was suspended, imposition of liquidated damages would be suspended as well. However, direct costs would be tracked.

In response to other questions from Director Saiers, Mr. Bregman stated that contract time would be frozen till September 20, but all the duties and responsibilities of the contractor and surety are still in place. Chairman Brown added that all pending Board actions on the contract would be superseded by this action.

Director Eichenberg commented that the surety had known since the December 2004/January 2005 contract suspension that there was a problem on the project. He added that waiving the \$2300/day of liquidated damages doesn't insure the surety works quickly to find a contractor to finish the job.

Director Hernandez asked what the advantage to AMAFCA was, of suspending the contract. Chairman Brown indicated that it demonstrated AMAFCA was working with the surety in good faith.

In response to an inquiry from Director Lyon, Mr. Finley stated that the surety was working with AMAFCA toward a common goal of a completed project. He added that the surety wants to get the job done right, as quickly as possible, as they have a financial motivation to do so.

He continued, stating that it takes time to find the right contractor. He did not want to realize, months after the project was complete, that portions of it had been done incorrectly.

Director Lyon pointed out that if the Board was not satisfied with the surety's progress as of the September 20, 2005 Board meeting, they could reimpose accrual of liquidated damages. Mr. Finley affirmed that accrual of liquidated damages would resume at the end of the contract suspension, and that the surety felt a financial motivation to get the project done quickly and correctly.

Chairman Brown expressed the Board's interest in finding the best contractor to finish the project, not necessarily the first one that is available.

In response to a question from Director Hernandez, Mr. Finley declared that, prior to the contractor's voluntary default, the bonded contractor still had a contract with AMAFCA. The surety could not have interfered with AEI's contract with AMAFCA by contacting other contractors ahead of the actual default.



**Albuquerque Metropolitan
Arroyo Flood Control Authority
Special Meeting Minutes
September 2, 2005**

Page 6

Chairman Brown summarized that the amount of the liquidated damages will need to be justified with actual costs at the end of the contract, so AMAFCA's costs will be covered. He stated his support of a contract suspension from September 1 to September 20, 2005.

The motion passed, (4-0). Director Eichenberg did not vote.

Chairman Brown stated that although Jerry Padilla was not at the meeting, he wished to express his appreciation of Mr. Padilla's cooperative spirit to acknowledge the situation and voluntarily default the contract. He thanked Mr. Menicucci for working with the parties to come to an amicable resolution, and Mr. Finley for the surety company being prepared to proceed promptly.

5. Unfinished Business

None.

6. New Business

Mr. Kelly stated that AMAFCA had received communications from Councilor Cadigan regarding traffic control at the Lyon Storm Drain Project. Chairman Brown also spoke with Councilor Cadigan.

He added that one of Councilor Cadigan's concerns was that the public did not know that this was an AMAFCA project. At Chairman Brown's direction, two signs were being prepared stating that the work was an AMAFCA project, necessary before Lyon Boulevard could be widened. The sign included Mr. Kelly's name, the AMAFCA phone number, and the AMAFCA website address for more information.

Chairman Brown added that Mr. Kelly and Councilor Cadigan received a positive email response from the concerned citizen, regarding the rapid response to the concern. Councilor Cadigan also personally expressed to Chairman Brown his thanks to AMAFCA for Mr. Kelly's quick response.

In response to a question from Director Saiers, Mr. Kelly stated that public frustration at the Lyon Boulevard Storm Drain project had to do with the fact that the intersections at both Paradise and Lyon, and Irving and Lyon, were involved at the same time (pipe work at one, and utility relocation at the other). These intersections impacted the two main routes into Ventana Ranch. The work has now proceeded past Irving, so that is no longer an issue.



**Albuquerque Metropolitan
Arroyo Flood Control Authority
Special Meeting Minutes
September 2, 2005**

Page 7

He added that another frustration was how long the detour switchover took on one Friday evening. The signs identifying the project as an AMAFCA project would be installed on Tuesday, September 6.

In response to the earlier questions regarding a Board member participating via phone, Mr. Bregman cited the Open Meetings Act, NMSA 1978, §10-15-1, paragraph C, where it stated, “a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.”

He stated the AMAFCA enabling legislation stated that AMAFCA has the authority to make and adopt its own rules regarding such matters. He added that he will continue to review the legislation to determine if a director appearing by speaker phone may also vote on matters before the Board.

7. Items from the Floor/Public Comment

Director Saiers expressed how the catastrophe in Mississippi and Louisiana caused by Hurricane Katrina had brought home to her how fragile our interconnected infrastructure really is.

Chairman Brown added that the situation in New Orleans was compounded by the fact that many people did not comply with the evacuation order and emergency plan.

Director Hernandez pointed out it was similar to the situation in North Albuquerque Acres, where there hasn't been a large rainstorm in a long time. People get complacent and don't realize the enormity of the problems that can result from unexpected weather events.

8. Adjourn

With no further business to discuss, Chairman Brown adjourned the meeting at 9:27 a.m.

Tim Eichenberg, Secretary-Treasurer 9/20/05

Recorded by Pam Woodruff, Secretary to the Executive Engineer