

25 August 2020

MEMORANDUM

From: Manager
To: Board of Trustees

Subj: MINUTES FOR THE TRUSTEE MEETING 11 AUGUST 2020

The Board of Trustees convened at 1900 hrs. In attendance: Trustee Gamage, Southport (Chairman); Trustee Climo, Southport (Vice-Chairman); Trustee Tharpe, At-Large (Treasurer); : Trustee Anthony, Boothbay (Clerk); Trustee Tibbetts, Boothbay Harbor; Trustee Bellows, Boothbay; Trustee Blakeslee, Boothbay Harbor; Jonathan Ziegler, Manager. Guest: None. Absent: None.

1. The board approved the minutes for 28 July 2020.
Trustee Climo motioned, Trustee Anthony second, vote: unanimous
2. Approve Payroll for weeks ending 28 July 2020 & 4 August 2020.
Trustee Climo motioned, Trustee Anthony second, vote: unanimous
3. Approve Transactions for 27 July 2020 through 4 August 2020
Trustee Climo motioned, Trustee Anthony second, vote: unanimous
4. **ADMINISTRATION** – The manager provided the board Table 1 - *Boothbay Region Water District Cash Account Status Report as of 11 August 2020*. The cash accounts were reported to be low, however for this quarter the fire protection charges to the three towns had been delivered with Boothbay Harbors payment approved the previous evening and Southport’s already approved and paid. The night following the trustees meeting it was anticipated the Boothbay select board would review and approved their portion as well. The manager informed the board that Payment Request #2 for the New Building Construction Project would not be made until such time as funds from the construction loan administered by *The First* were into the SWEEP account.

During the previous period the district received an additional four (4) “new service applications” and established one (1) new year- round accounts and six (6) new seasonal accounts. In addition, there remained six (6) services pending, which were delayed due to contractor availability. To-date the district has added 38 new customers since the beginning of the year which equaled approximately a 1% increase in total customers

- a. **New Administrative Manager (AM) Position** – The manager announced that the new AM would be joining the BRWD on 13 August 2020. The manager shared with the board information provided to the district, via email concerning this hire and the new hires former employer and a demand for compensation. On 30 July 2020 the principal of the firm sent the following correspondence to the manager.

Table 1 BOOTHBAY REGION WATER DISTRICT Cash Account Status Report as of 11 August 2020	
Account	Balance
Business Checking	\$ 38,575.93
Deposit Sweep Account	\$ 61,083.83
Liquidity Total	\$ 99,659.76
DESIGNATED FUNDS	
BBH 2007 Sinking Fund	\$ 20,335.80
Land Acquisition Fund	\$ 14.71
Capital Reinvestment Fund	\$ 300,115.16
Mt Dora Easement Escrow	\$ 5,073.05
Southport Sinking Fund	\$ 37,312.00
EBB Upgrade 91-20	\$ 56,052.84
Bank of Maine Unemployment CD	\$ 17,295.00
Designated Fund Total	\$ 436,198.56
TOTAL CASH RESERVES	\$ 535,858.32

Mr. Ziegler,

Thank you for reaching out to our team for the request. I was hoping we could schedule a call to review next steps and discuss the transition more. In that call I would like to share contract details and perhaps more in depth questions that we both may have. For your convenience, I have highlighted the topics of our discussion and much needed reminders of our agreement.

As you have notified, our services will stop August 31, 2020. After that time, our services will be needed from time to time like any transition. We will have two options for the Water District. We can bill at our hourly rate \$110, minimum of 1 hour for each call/request or we can extend our services from August 31st to the end of the year at the current agreement for that transition.

We also learned today that you will be getting a great employee in two weeks, (the new employee) will be missed and (the new employee) is a rock star for sure. That being said, per our agreement, there is a non-compete with our employees but if you choose to hire, we are owed \$50,000 for placement. Once that has been paid, we will absolutely be more than happy to release these items. Below is the section of the attached signed agreement where we shall be compensated for this action.

Solicitation of Work / Employees.

COMPANY shall not, during the term of this Agreement and for a period of one hundred eighty (180) days after the termination of this Agreement, irrespective of the cause, manner, or time of such termination, solicit any employee or contractor of the CONSULTANT. Unless otherwise formally agreed, in the case COMPANY hires or retains CONSULTANT employees or contractors under the conditions of this paragraph, COMPANY agrees to pay CONSULTANT a placement fee in the amount of fifty thousand dollars (\$50,000), payable immediately to CONSULTANT.

As stated before in my last email to you, I'm leading the team now and happy to connect and be there for any questions or concerns. Please send your communications to me going forward and I will bring on my team to assist in your requests and transitional items.

*Best,
(Name Withheld)*

The manager informed the board that the above message was referred to the water districts attorney, Mr. Doug Currier J.D., *Verrill Law*, who after discussions with the manager sent the following reply, both by e-mail and registered mail, on 4 August 2020.

Dear (Name Withheld):

I represent the Boothbay Region Water District (BRWD). Your e-mail to John Ziegler at BRWD concerning the release of BRWD records has been referred to me. Your threat to deny BRWD access to their own records unless they pay you \$50,000 is a serious problem.

First, BRWD thought you understood that the provision in the contract you reference is an illegal provision and unenforceable. In fact, your simple threat to enforce the provision is a violation of Maine law subjecting you to significant financial penalties.

Second, and worse, threatening to deny BRWD possession of its own property to which it is legally entitled, unless and until they make a payment to your company, is an act of illegal extortion with potential civil and criminal implications. This is especially true given it is clear that you have no legal right to the payment nor do you have any legal basis to link the payment to the return of BRWD's records.

For your convenience of I am enclosing a copy of Title 26, Section 599-B, which defines a "restrictive employment agreement" as an agreement that "Prohibits or restricts one employer from soliciting or hiring another employer's employees or former employees." Subsection 2 makes it very clear that:

An employer may not:

A. Enter into a restrictive employment agreement; or

*B. **Enforce or threaten to enforce** a restrictive employment agreement.*

Emphasis added. Moreover subsection 3 provides:

*An employer that violates subsection 2 commits a civil violation for which a fine of **not less than** \$5,000 may be adjudged.*

Emphasis Added. "Not less than" being the operative words. Imagine what the penalty will be when the illegal threat is combined with the illegal withholding of property.

To avoid this matter from escalating further, we are insisting on two things from you. First, we need you to make arrangements to return to BRWD this week all records, both electronic and hardcopy, and any software owned by BRWD. Arrangements can be made by contacting Jonathan Ziegler at BRWD. Second, we need you to confirm in writing that you did not realize that there was a statute in effect that made your demand illegal, and confirming that you are withdrawing your demand for the \$50,000 and confirming that you will not seek to enforce the contract provision that you cited.

If both do not occur by the end of the workweek, then BRWD will refer the matter to the Maine Department of Labor, as well as consider its other legal options, to obtain the return of its property and to protect itself against these violations of law.

Other than in regard to arrangements for the return of property as outlined above, any further communication about this matter must be directed to my attention.

The manager reported that on, 7 August 2020 all district financial records and property were returned to the district in entirety and he now considered this matter closed.

5. **NATURAL RESOURCES PROGRAM** – The following report to the board was submitted by the Natural Resource Program Manager (NRPM) in writing: No change in status
6. **SAFETY & TRAINING UPDATE** – The manager reported that there had been no safety violations or known missed inspections during the previous period.
 - a. **Human Resources (HR)** – No change in status.
 - b. **Training Update** – Remote employee license retention training remained ongoing.
7. **TREATMENT DIVISION (TD)** — The manager reported filter train efficiency over the previous period slightly declined, with clarifier efficiency remaining at 100% and filter efficiency dropping to 91%. Key chemical consumption rates are averaging 85% of normal.

For the previous period finish water production averaged 1.0015 MGD as compared to the same period in 2019 which averaged 0.9183 MGD.

Current raw water reserves in Adams Pond equal 215.0 MG with Knickerbocker Lake containing 310.0 MG usable raw water.

- a. **Backwash Waste Pump Replacement Project** – No change in status
 - b. **Backwash Pump #2, (BWP2)** – Starter still in transit.
 - c. **Drought Report** – During the previous period the Boothbay Region has remained in a D1 Drought (*Moderate Drought*) status. Again, the U.S. Drought Monitor measures drought in five categories D0 through D4 (*Severe Drought*), and in managers opinion the district was in no danger of running low on raw water at that time
8. **DISTRIBUTION DIVISION (DD)** – The manager reported the DD remained current with job orders, dig safe notifications and minor repairs with the list of whiteboard projects now being attended to. In addition, several of the DD had been working on updates to the GIS system which has proven to be very much needed.

Table 2			
Boothbay Region Water District			
2020 Knickerbocker Lake Water Withdrawal Report			
Start Date	End Date	Gallons Pumped	Gallons Remaining
Gallons Allowed to be Withdrawn by NRPA Permit			51,500,000
15-Jul-20	18-Jul-20	2,716,200	48,783,800
19-Jul-20	25-Jul-20	6,708,000	42,075,800
26-Jul-20	1-Aug-20	7,142,700	34,933,100
2-Aug-20	8-Aug-20	6,713,000	28,220,100
Total Withdrawn		23,279,900	28,220,100

- 9. **5 RIVERS REGIONAL WATER COUNCIL** – No change in status
- 10. **LAND ACQUISITION UPDATE** – No change in status
- 11. **ALTERNATIVE ELECTRIC POWER OPTIONS** – No change in status.
- 12. **SQUIRREL ISLAND VILLAGE CORPORATION (SIVC) WATER MAIN** – The manager reported the matter was on stall until the Maine Drinking Water Program (DWP) made a determination of how, or if, the SIVC would become a regulated public water supply (PWS). Early indications were that the DWP would punt on this question and say they were exempt which may actually work in the district’s favor. That said, the moderator Jody McColeman, Senior Staff Attorney at the Maine Public Utilities Commission (PUC), would not move forward until that question, which, over district objection citing it had nothing to do with the district’s request of the PUC, was answered.
- 13. **NEW MAINTENANCE GARAGE PROJECT** – The manager reported that work continued on-schedule. Since the previous board meeting the frost walls had been installed, all utility conduits had been set in-place with the floor base backfilled, leveled and compacted. Floor insulation and vapor barrier installation were in process. The contractors plan was to have the rebar and slab heating installed, with the final pour for the floor to be completed the week of 17 August 2020. Upon completion of that evolution the walls would begin to go up. I am waiting for a change order quote for trustee evaluation adding a small mezzanine for admin storage as well as adding a paving quote for the Adams Pond Road facility.
- 14. **CAMERONS POINT WATER MAIN** –No change in status.

15. **BARLOW HILL & MARINER WAY WATER MAIN REPLACEMENT PROJECT** – The manager reported that on 8 August 2020 he had met with Mr. Eric Wood and Mr. Justin Wood, *E.M. Wood Construction* to discuss the project. As a result of that meeting it was determined, due to contractor availability and the extent of a road closure to popular tourist destination, Ocean Point, it was best to split this project in two with Barlow Hill to be completed beginning 8 September 2020 and Mariner Way to be undertaken as early as practicable in 2021 as to beat the tourist influx on Ocean Point Road and to have the road ready by seasonal turn on. In addition, materials were now on order and a temporary water plan was being conceived. We will have a preconstruction meeting the of 2 September 2020, at 1300 hr., in the BRWD Admin Office conference room, to fine tune the start time and order of work.
16. **RED ZONE WIRELESS** – The manager informed the board *Red Zone Wireless* and the district had executed the contract modifications approved by the board at the 28 July 2020 board meeting. In addition, *Red Zone Wireless* was instructed to contact the town of Southport to ascertain what permits were needed prior to me authorizing any work at the site. Documentation originating from officials within the code enforcement office of the town of Southport were provided to the district explaining no further permitting was required after which the manager notified Mr. Dave Libby, district cell tower administrator (by contract) to authorize *Red Zone Wireless* to proceed.
17. **SPOFFORD LANE WATER MAIN EXTENSION** - The manager forwarded the recommendation of Utilities Technician, Mr. Shawn Simmons, Class III, district operator in-charge of the installation, who recommended the board to accept the new water main extension. The 500 -foot 2-inch, high density polyethylene (HDPE) has been installed to water district specifications, successfully passed both pressure and bacteriological testing, with one new customer added. The manager reported that all financial accounts were settled. The board accepted the new water main.
Trustee Climo motioned, Trustee Anthony second, vote: unanimous
18. The meeting was adjourned at 1927 hr.
Trustee Climo motioned, Trustee Tibbetts second, vote: unanimous

END OF MINUTES

