

MEETING MINUTES OF THE PUBLIC MEETING OF THE MOHAVE VALLEY IRRIGATION & DRAINAGE DISTRICT

Held April 07, 2020
Public Meeting 4:00PM
Mohave Valley Irrigation & Drainage District
1460 E. Commercial Street, Mohave Valley, AZ 86440

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Mohave Valley Irrigation and Drainage District and to the general public that the Mohave Valley Irrigation and Drainage District will hold a meeting open to the public on Tuesday, April 07, 2020 at 2:00pm via Zoom teleconference due to the Coronavirus. As indicated in the agenda, pursuant to A.R.S. § 38-431.03(A) Item 2a, the Mohave Valley Irrigation & Drainage District may vote to go into executive session, which will not be open to the public, to discuss certain matters. The board will reconvene in Open Session via Zoom beginning at 4:00 pm.

Join Zoom Meeting in open session at 4:00pm.

<https://zoom.us/j/510936970?pwd=Yk5hbVdYeFIITGFTMFg1a2kzK2NrQT09>

Meeting ID: 510 936 970

Password: 855082

CALL TO ORDER. Chairman, Charles B. Sherrill, Jr., called the meeting to order at 2:05pm.

1. ROLL CALL.

Present: Charles (“Chip”) B. Sherrill, Jr., Chairman/Director Division III
Clay Vanderslice, Director at Large
Kerri Hatz, General Manager

Via Zoom: Vince Vasquez, Director Division II
Perry Muscelli, Treasurer/Director at Large
John Kai, Jr., Director Division I
Michael J. Pearce, District Counsel

Absent: None

2. Consideration of Action to go into Executive Session of the Board for the following purposes:

a. Pursuant to A.R.S. §38-431.03(A)(3)(4) & (7), discussion and consultation with legal counsel of the District in order to consider legal questions on Items 8E, 8F, 8G and 8H. Perry Muscelli made a motion to go into Executive Session, Clay Vanderslice seconded the motion. All in favor, executive session began at 2:06pm. Kai – Y; Muscelli – Y; Vanderslice – Y; Vasquez – Y; Sherrill – Y.

At 3:35pm, Perry Muscelli made a motion to adjourn the executive session, Clay Vanderslice seconded the motion. All in favor, executive

session ended. Kai – Y; Muscelli – Y; Vanderslice – Y; Vasquez – Y; Sherrill – Y.

[The discussions and minutes of the executive session shall be kept confidential. The executive session of the Board is not open to the public.]

3. **RECONVENE IN OPEN SESSION.** Open session reconvened at 4:04pm.
4. **PLEDGE OF ALLEGIANCE.** Perry Muscelli led the Pledge of Allegiance.
5. **WAIVER MOTION.** Motion to waive the reading of full minutes and resolutions presented for approval or adoption. Perry Muscelli made a motion to waive the reading of the full minutes and or resolutions presented for approval, Vince Vasquez seconded the motion. All in favor, motion passed. Kai – Y; Muscelli – Y; Vanderslice – Y; Vasquez – Y; Sherrill – Y.
6. **AGENDA MODIFICATION.** Possible action to withdraw from, or move, any item on the Agenda. Perry Muscelli made a motion to remove item 8G off of the agenda, Vince Vasquez seconded the motion. All in favor, motion passed. Kai – Y; Muscelli – Y; Vanderslice – Y; Vasquez – Y; Sherrill – Y.
7. **REPORTS.**

Water:

- a. Staff report on District water use. Staff reported the District water use for date ending February 2020.
- b. Bureau of Reclamation Lower Colorado Water Supply Report. Staff reported the current levels of Lake Mead and Lake Powell as of April 6, 2020.

Finances: Staff summarized the financial reports through February 29, 2020.

- c. Profit & Loss Budget vs. Actual year to date July 1, 2019 thru February 29, 2020.
- d. Profit & Loss Statement for February 2020.
- e. Balance Sheet as of February 29, 2020.

Other:

- f. MVIDD Staff Report. – General information to update the board members. Staff reported that Water Order forms for 2021 will be mailed out this month.

8. REGULAR AGENDA

- A. **Approve the March 03, 2020 Regular Session Meeting Minutes.**
Discussion and possible action to approve the regular meeting minutes from last month. Vince Vasquez made a motion to approve the regular meeting minutes from March 03, 2020, Clay Vanderslice seconded the

motion. All in favor, motion passed. Kai – Y; Muscelli – Y; Vanderslice – Y; Vasquez – Y; Sherrill – Y.

B. Approve the March 03, 2020 Executive Session Minutes. Discussion and possible action to approve the Executive Session meeting minutes from last month. John Kai, Jr., made a motion to approve the executive session minutes from March 03, 2020, Clay Vanderslice seconded the motion. All in favor, motion passed. Kai – Y; Muscelli – Y; Vanderslice – Y; Vasquez – Y; Sherrill – Y.

C. Ratify payment of Expenses for March 2020. Discussion and possible action to ratify the payment of expenses for last month. Staff went over expenses for March. Vince Vasquez made a motion to ratify the expenses for March 2020, John Kai, Jr., seconded the motion. All in favor, motion passed. Kai – Y; Muscelli – Y; Vanderslice – Y; Vasquez – Y; Sherrill – Y.

D. Willow Valley Estates 21, Tract 4228; T18N, R22W, Section 21; 24 Lots. Discussion only to update the board members on the status of the subdivision as requested by the board last year. Staff advised the board members this is an update on the subdivision only as required last year when the board approved the two (2) year extension request. Staff read a portion on the letter sent in from Wayne McKellips (see exhibit “A”) regarding the update and Mr. McKellips was present on the Zoom conference and updated the board with the subdivision status. Chip thanked Mr. McKellips with keeping the board advised of the progress and confirmed that the 2 year preliminary allocation for the 24 lots is still in effect and next April will be up for review of an extension if the project is not completed by then. No action taken.

E. *Fiscal Year June 2020 - July 2021 Budget. Discussion only to review and make comments on the next fiscal year budget. Staff and the board reviewed a draft version of the budget and the board would like to add a couple of items to the budget for next year, these changes will be made and added to the budget for next month’s review and final approval of the budget will not be until June. No action taken.

F. *Water Fee Waiver. Discussion and possible action to modify the due date for existing water fees. Charles B. Sherrill, Jr., advised the board that staff had received inquiries from a couple of our local golf courses wanting to defer their payments for the 2020 amenity water fees due to the coronavirus. Staff had recommended to the chairman to extend the payment deadline to July 15, 2020 and at that time the payment be made in full. The board members discussed the matter and Vince Vasquez made a motion to approve deferring the payments until July 15, 2020, John Kai, Jr., seconded the motion. All in favor, motion passed. Kai – Y; Muscelli – Y; Vanderslice – Y; Vasquez – Y; Sherrill – Y.

G. ***Noxious Plants within the District.** Discussion and possible action to adopt rules or proceed under state statute for eradicating noxious plants. **Item removed from the agenda.**

H. ***EC-ICS Draft Delivery Agreement between the United States and MVIDD.** Discussion and possible action to approve the draft delivery agreement for EC-ICS with Bureau of Reclamation. District counsel reviewed the redline version of the draft delivery agreement with the board members. There are no major changes to the draft agreement that has been circulated for months now, the changes are in the first paragraph with adding section II verbiage to the first paragraph and removing it from section II and the Bureau of Reclamation is looking to have this approved tonight from the board. Perry Muscelli made a motion to approve, Vince Vasquez seconded the motion. All in favor, motion passed. Kai – Y; Muscelli – Y; Vanderslice – Y; Vasquez – Y; Sherrill – Y.

9. CALL TO THE PUBLIC. *Those wishing to address the Board at the Call to the Public regarding matters not on the Board agenda must fill out and submit to the Administrative Assistant a Call to the Public – Request to Speak Form located in the back of the room prior to the meeting. Action Taken as a result of public comments will be limited to responding to criticism, referral to staff, or placing a matter on a future Agenda. Comments are restricted to items **NOT** on the Regular Agenda, and must relate to matters within the jurisdiction of the Board.* Mr. Wayne McKellips asked if he could have a copy of the EC-ICS draft delivery agreement and Chip advised that it is already on our website. There were no other members of the public on the Zoom conference.

10. ADJOURNMENT. John Kai, Jr., made a motion to adjourn, Perry Muscelli seconded the motion. All in favor, meeting adjourn at 4:50pm. Kai – Y; Muscelli – Y; Vanderslice – Y; Vasquez – Y; Sherrill – Y.

Agendas are available on our website www.mvidd.net, as well as posted outside the District office bulletin board outside the office door located at 1460 E. Commercial Street, Mohave Valley, AZ 86440. To subscribe to agenda notifications please visit our website.

Pursuant to the Americans with Disabilities Act (ADA), Mohave Valley Irrigation & Drainage District endeavors to ensure the accessibility of all its programs, facilities, and services to all persons with disabilities. For an accommodation please contact the District office at 928-768-3325. Requests should be made 48 hours prior to the meeting to arrange the accommodation.

Items on Agenda marked with an asterisk (*) will be discussed in executive session with District counsel in accordance with A.R.S. § 38-431.03(A)(3)(4) & (7).

Vote Key: A = Abstained; Y = Yes; N = No

Exhibit "A"
April 07, 2020 Regular Meeting Minutes

McKELLIPS LAND CORPORATION

(Incorporated 1959)

233 W. ROYAL PALM ROAD
PHOENIX, ARIZONA 85067

TELEPHONE (602) 999-3853

March 19, 2020

By U.S. Mail and Electronic Transmission to MVIDD.net

Board of Directors
Mohave Valley Irrigation & Drainage District
Attn: Kerri Hatz, General Manager
1460 Commercial Street
Mohave Valley, Arizona 86440

Re: Willow Valley Estates 21, Tract 4228
(Formerly Willow Valley Estates 20, Tract 4134C)
April 7, 2020 Agenda Item

Gentlemen:

At its public meeting on April 2, 2019, the Board of Directors, after review of an exhaustive letter dated February 25, 2019, written by the undersigned describing the various hardships this Company has had to endure in trying to complete the subject 24 lot subdivision and following a discussion by the members, the Board approved a two-year extension of the previous water allocation of 10.10 acre feet of district water to the subdivision, subject to a review of progress after one year. The purpose of this letter is to provide information for that progress review.

To demonstrate the earnestness of the Company to do something positive with this subdivision I believe a brief summary of the history of the progress thus far would be helpful in understanding the enormous amount of work and expense that has gone into the development of this project up to this point:

1. The initial preliminary allocation of water for this subdivision was made by the District at its regular meeting on October 4, 2005. Thereafter preliminary financing was arranged and most of the engineering was completed and a preliminary plat was approved by Mohave County Planning and Zoning.
2. In its efforts thereafter to obtain the required water assurances from the Arizona Department of Water Resources it was discovered that the local water company, Willow Valley Water Co., Inc., was not in compliance with the Arizona Department of Environmental Quality and had inadvertently failed to obtain a Certificate of Convenience and Necessity for the property from the Arizona Corporation Commission, Utility Division. On July 26, 2005, at the request of the Company, the Water Company filed an application with the Commission for an extension of its Certificate of Convenience of and Necessity which was ultimately approved on *March 23, 2006*, subject to the condition that the water company file a Letter of Adequate Water Supply

for the area to be issued by the Arizona Department of Water Resources (ADWR"). The Company intervened in that proceeding which dragged on through a bureaucratic nightmare until *September 3, 2014*, (delaying development for all that time). When the ADWR finally issued the required letter (*nearly nine years after the original application for the CCN*), and the water company was able to obtain its CCN, the Company was able to proceed with the subdivision. All of these proceedings were at considerable cost to the Company as it was paying its own and the Water Company's attorney's fees and costs for multiple pleadings and meetings.

3. The subdivision was initiated under Mohave County's former subdivision ordinance and was grandfathered in after a new county subdivision ordinance was adopted. However, because of all the delays caused by, among others, the above proceedings, and an inability to obtain an extension, Mohave County P&Z required the Company to start processing the subdivision all over again and, even though this was the third phase of a larger development, changed the name to the current Willow Valley Estates 21. As a result of having to start over, the laborious and lengthy process of submitting a new preliminary plat to the multiple departments of the county for approvals was begun again.
4. In its review of the new submittal, the County decided that the previously approved flood control retention area was unsatisfactory and the company was required to go through a lengthy process to dedicate a separate retention area. This involved combining two separate tax parcels outside the boundaries of the subdivision and filing a separate parcel plat, which in turn involved the difficulty of obtaining a deed from title company trustee in receivership and ultimately getting into a battle with the County cartography department which refused to change the ownership records because it did not like or understand the legal description.
5. The area of this subdivision was included within the storm drainage and flood control system of the previous two subdivisions of which it was originally supposed to be the third phase. Though previously approved, the County had recently changed its hydrology requirements and advised that even though the system was properly engineered and constructed under the former requirements, the county considered the original storm drain installation insufficient for inclusion of the new subdivision. This in turn required the water flow for the new subdivision to be redirected from the north to the south and the installation of a new retention basin. In order to obtain a site for the new retention basin the Company was required to negotiate an agreement with a third party for the installation of a new retention basin outside the boundaries of the subdivision on that party's property which will require additional construction and expense of certain future improvements for the benefit of the third party's other properties.
6. The Fort Mojave Tribal Utility Authority provides the sewer service for the subdivision. The Company ran into difficulties dealing with the Utility over capacity assurances and the payment of its tap fees (because the Utility had lost its records) which after additional delays were eventually resolved.
7. After resolving its issues with the FMTUA, the Company made application to ADEQ for approvals to construct the water and sewer systems and submitted a Notice of Intent to

Discharge and a Request for Approval of the Sanitary Facilities and received approvals and has since obtained renewals of the water and sewer approvals.

8. After accomplishing all of the foregoing, the Company was finally able to make application to Mohave County P&Z for final subdivision plat approval and approval of the improvement plans, eventually address all final comments from the county and obtain final approval of the plat. And, it has also obtained an extension of time to file the final plat.

Since that time the Company has diligently been trying to find someone to either buy the subdivision as is or to build it out for a reasonable price. So far only two entities have bid to construct the required improvements the first of whom gave an incomplete bid and then apparently lost interest and failed to complete the bid. The second party to bid gave a bid that was nearly twice what the Company's engineer had estimated would be required and, more importantly, was in excess of the amount of money the Company had available for the construction of the improvements. Both the engineer and an independent third-party construction company expert have advised that the second bid was out of line. As for a sale, the Company has gone through the process of obtaining on May 30, 2017 a Special Order of Exemption from the Arizona Department of Real Estate permitting it to sell the property to a "sophisticated investor" (e.g. developer/contractor) and has listed the property on the multiple listing service and with a broker. The Company has also prepared a flyer which it has distributed to all of the builders and contractors in the area and listed with the local chambers of commerce that it thought might be interested. Up until recently no interest has been shown by any of the contacted parties.

However, within the last few weeks the Company has finally been able to find a contractor who expressed an interest in bidding to build out the subdivision and it is expected that if he follows through his bid will be more realistic than what was received before. In addition, the Company believes that if the bid is in excess of the Company's previously available funds for the construction that it can now make arrangements to obtain the necessary financing to complete the subdivision. Also, the Company is obtaining a bid from a separate contractor to do some preliminary work on the subdivision by providing some necessary fill dirt to assist in raising the lot elevations to the newly required elevation.

The company has expended a substantial amount of time and money in connection with all of the foregoing including substantial legal and engineering services (which are continuing to be incurred), has completed the initial grading (most of which will have to be redone as well as adding substantial fill to redirect the storm drainage from north to south and raise the building pads above flood levels), and has paid for some of the infrastructure that will service this subdivision. In addition, the Company has paid the power company a deposit for its anticipated design costs, has paid MVIDD the sum of \$21,600.00 in non-refundable fees as payment in full of the fees required in connection with the original application and extensions, and has been required to dedicate all of the sewer taps it had previously prepaid to the FMTUA to this subdivision, which today are valued at \$84,000.00.

Though it appears to have taken an inordinate amount of time to arrive at this point, in view of the obstacles that it has had to overcome, the Company has nevertheless made

substantial progress on the development of the subdivision and has incurred substantial costs in connection with it. I would like to emphasize that this is a only a twenty-four lot subdivision and the water allocation for it is extremely small and would have no appreciable effect on the district's available supply if was returned to the district but would cause a substantial financial loss to the Company and its owners if it could not finish the subdivision. In addition to the loss it would cause the owners it would be a problem for the neighboring properties. Since this was supposed to be the third phase of a larger complete subdivision it is the missing piece of the puzzle that ties in all of the streets and utilities for the previous phases. To further illustrate how this subdivision relates to the previous two phases I have attached a copy of the final Preliminary Plat for your review. This is, incidentally, the last subdivision that this company intends to do or has the property to devote to subdivision development.

Please consider this a request to reaffirm the previous two-year extension of our preliminary water allocation of 10.10 acre-feet of district water, so the Company may complete the development of this subdivision or, if necessary, sell it. If the Board considers this request needs further discussion, please place the matter on the April public meeting Agenda so that I may participate. If you need anything further or have any questions please contact me or our engineer, Larry Morse, at ARQ Engineering, LLC (928.758.3333). Thank you for your assistance as usual.

In my communications with the Board I always feel obligated to add the following legal disclosure. As you know, in addition to being an officer of McKellips Land Corporation, I was, until I retired, a practicing attorney with a law firm (Carson Messinger PLLC). My former law firm and I have in the past acted as paid consultants to Terry Leek, former counsel for the District, in connection with a legal opinion he was preparing for the Board on a matter totally unrelated to the foregoing matter. I do not believe that such activity would have made me an "employee" of the District within the meaning of the state conflict of interest provisions set forth in A.R.S. §38-503, but in event that it should be so construed, this letter is intended to make known my interests in order to comply with the disclosure requirements of A.R.S. §38-503. I request that you enter this disclosure in the minutes and the records of the District as required by law.

Sincerely,



G. Wayne McKellips, Jr.
President