

SPRING CREEK / COW CREEK SANITARY DISTRICT
MEETING MINUTES
MONTHLY MEETING
Wednesday, March 9, 2022

The regular monthly meeting of the Spring Creek / Cow Creek Sanitary District was held at the Dwane Russell residence, 213 Shoreline Street, Pierre SD on Wednesday, March 9, 2022. Chairman Russell called the meeting to order at 7:03 p.m.

Chairmen Russell and Schuh, Clerk Anderson and Superintendent Zuber were in attendance in person. Wiseman attended via videoconference. Also present were 52 residents of the District and one guest. Legal Counsel Cody Miller and 12 residents attended via videoconference.

Russell asked for approval of the Agenda as presented. Clerk Anderson asked for last-minute items to be added to the Agenda. These items include: 2 members' requests to be added to the public record with their position for the Proposed Exclusion Hearing; a member complaint for billing out of compliance with Ordinances; and, the Sully County Notice of Hearing for a Conditional Use Permit. Schuh made a motion to approve the Agenda with additions. Wiseman seconded. All voted in favor. Motion carried.

Russell asked the Board to declare any Conflicts of Interest. No conflicts were declared.

Wiseman made a motion to approve the minutes from the last monthly meeting. Schuh seconded. All voted in favor. Motion carried.

Zuber presented his Superintendent's report to the Board. He reported the daily usage for February was between 10,000 - 13,000 gallons, he has been increasing storage capacity from 80 gpm to 100 gpm with no known loss of pressure, and that he received 4 or 5 new hookup applications last week. Zuber also reported that he had to shut off a meter pit to repair a frozen jumper. In his final remarks, Zuber asked the Board to issue a notice to residents identifying private property versus District property when dealing with water leaks and other matters needing repairs. Wiseman also asked for the notice include a reminder to residents that the District needs to be able to access meter pits. Zuber was instructed to provide a time-frame to comply with the request. The details will need to be defined prior to the notice being published.

Russell addressed the members in attendance on the Board's Policy for Public Comments prior to the start of the Public Hearing for the Proposed Exclusion of Real Property. Russell asked each member wishing to comment to come to the front of the room by the Board of Trustees table, sign in with their name and residence address, if applicable and speak for up to three minutes. He advised there would be no comments allowed from the audience.

While being cognizant of the published time of the Public Hearing, Russell opened the floor for general public comments. One resident came forward to inquire of the types of problems encountered with the system, if the District has had conversations with Mid Dakota Rural Water about taking over the system and if he could see a map of the system. The Board answered his questions and thanked him for his comments.

Chairman Russell opened the Public Hearing on the Proposed Exclusion of Real Property at 7:15 p.m. Mr. Utech's attorney, Stacy Hegge began the Hearing by reviewing Mr. Utech's proposed map of exclusion and reiterating what brought them to this Public Hearing. Her points included the July 4th, 2021 water shortage at the District level and Mr. Utech's plan for expansion around that same time. As the President of the Sanitary District at that time, he was aware that the system needed to be improved and the water capacity needed to be increased. He was instrumental in getting the facilities plans started for the District while also identifying ways he could provide services to his future development. The District has an Expansion Ordinance in place that provides any

03/09/2022

additional expansion is to funded by the Developer, not the District. There were concerns with current residents that those costs would fall on them, not on the developer.

Other issues came to light through the facilities plan that there was no capacity in the sewer lagoon for new customers. Ms. Hegge referenced the Lagoon Improvements Facilities Plan, as published on the District's Website in December, 2021, page 24: *"It is recommended that no additional development be served from this facility, then the ongoing improvements on platted lots within the existing developments."*

Ms. Hegge also referenced the Drinking Water Facilities Plan, as published on the District's Website in December, 2021, page 20: *"It should also be noted that the current contracted flow rate of 100 GPM for source water from MDRWS is sufficient for the existing system usage and a 200,000-gallon tank, however a larger size tank is only capable of providing the storage needs for the future development analyzed in this report and the current contracted flow rate from MDRWS would not be sufficient. To maintain adequate capacity an increase in contracted flow rate from MDRWS would be required. Our understanding is that MDRWS cannot provide any more flow rate than what SCCCSD is currently contracted for without upgrades to their system."*

Ms. Hegge indicated that these two reports show that the District cannot serve any more residents and that the burden is with an upgrade to Mid Dakota's system.

To address these issues, Mr. Utech asked that his development be excluded from the District. This plan would place the cost burden out of the hands of the current residents. Mr. Utech could also expand the MDRWS system to serve his own development.

With amendments to the originally filed Proposed Resolution to Exclude Real Property, Mr. Utech presented a petition to Exclude Real Property to the Board of Trustees on February 16, 2022. The Board moved on its Proposed Intent to Exclude Real Property by Petition and the Public Hearing was noted. Mr. Utech asked for approval to move forward with his intent and the Board expressed their concerns. On Feb. 24th, Ms. Hegge submitted 11 Exhibits to the District's Attorney presenting clarification to the Board's concerns. Those exhibits have been posted to the District Website. Sully County Commission has approved the Proposed Resolution on March 1, 2022.

Ms. Hegge stated that their response to some of the concerns as brought forth are being done in good faith, as they have no obligation to do so. Some of those concerns include:

1. Easements surrounding the District System: Any areas where the District's System falls within the Excluded property. They have issued a Title Search to address these concerns and that response is on the District's Website.
2. Mapping Request to map those lines: They attempted to get this done but timing prevented its completion.
3. District Easements are not the responsibility of Mr. Utech. He has agreed to provide all necessary Easements to the District should he be excluded from the District.
4. Engineered Plans for Sewer and Water: Mr. Utech does not believe it necessary for the District to ask for Engineered Plans as his exclusion from the District would not fall under the District Ordinances. In good faith, he has provided concept plans. Mid-Dakota has approved a contingent contract to service Mr. Utech's water needs.
5. Sanitary and Sewer Regulations: Mr. Utech would be governed by the same rules and regulations of SD DANR as does the District.
6. How does this affect current customers? The current map includes no platted lots or current customer base. The plan is for undeveloped land and unplatted land.
7. Excluded Roads: This exclusion of real property does not pertain to the roads in the District. It is only relevant to the Sanitary District.

8. Questions on sliver of property owned by Morris and Cow Creek Recreation: Ms. Hegge presented an affidavit by John Morris, a partner in Cow Creek Recreation LLC, supporting the exclusion of the sliver of property in the proposed area.
9. Ms. Hegge presented an affidavit from Bruce Petersen supporting the exclusion of his property in the proposed area.
10. Question of Crossing Utility Lines: Ms. Hegge obtained correspondence from J. M. Smith Engineering stating that it is not uncommon for utility lines to cross in construction and can be handled safely. They are willing to work with the District to handle all crossing appropriately.
11. Question of Engineer's Licensure in SD: Yes, Mr. Jason Smith is a licensed engineer in South Dakota.
12. Concern about property being connected to District water line: Mr. Utech was instructed to disconnect his property from the main water service line, with Mr. Zuber's approval.
13. Petition requesting that the Proposed Real Property remain in the District. The individuals signing the petition do not reside in the District. What weight does the District give to a petition signed by non-residents of the District.
14. Final Question is Why does Mr. Utech want to leave the District? He was instrumental in developing the District and sat on the original Board of Trustees.
 - a. Timing: Mid Dakota contract allows him to move forward right away with his development. To remain in the District would require him to wait for grant funding and construction of system improvements.
 - b. Topic has been contentious: This is not a personal issue, but in the best interest and reasonable for the Sanitary District. No loss of current customers.
 - c. Sanitary District cannot provide additional water and sewer services.
 - d. Sully County Commissioner indicated that the Sanitary Board has its own issues, let alone handling an expansion of this size.
15. Ms. Hegge closed by asking the Sanitary District Board to approve the Proposed Exclusion of Real Property as presented.

Ms. Hegge offered her assistance to answer questions as presented by the public. Chairman Wiseman began the questioning with the following:

1. Mr. Utech states that he needs SD DANR approval to proceed. SD DANR has not received those engineered plans. Ms. Hegge answered that the risk is on Mr. Utech on obtaining approval, not the District.
2. Bruce Petersen's contract holders will be taking a risk on the Exclusion of Property. If SD DANR does not grant approval to Mr. Utech, those current contract holders will be at risk of receiving no sewer or water under the Exclusion.
3. Bio-Clere Sanitary System as proposed in the Concept Plan: Wiseman talked to an engineering company that deals in these systems. He discovered that these are designed to be used by single-family or small multi-family units and injected into the ground. According to Utech's concept plan, a 3-acre pond to be used for discharge. Wiseman is concerned that the concept plan contradicts the Bio-Clere functionality.
4. If Utech's plan falls through, the excluded property, primarily Bruce Petersen's property, would fall back on the District. Wiseman stated that is the reason for his request for Engineered Plans.
5. Wiseman indicated that Mr. Utech was involved in delaying a contractor last year by 2 or 3 months until they complied with the District's request.
6. Wiseman also indicated that Utech was involved with Bruce Petersen in putting a loop line in Petersen's development. He stated that based on the current paperwork, Utech should not have been involved in that decision based on conflict of interest. Utech had a first right of refusal on that property when that decision was made.
7. Wiseman also asked Ms. Hegge if anyone has contacted Golden Meadows residents. The Exclusion cuts this area off from everything.

03/09/2022

8. Wiseman stated that during last month's meeting with Sully County, it was presented that SCCSD doesn't have the necessary flow going through the system. That is not true. We currently have 100 gpm going through the system is more than enough to handle the system as long as we have capacity. The 50 gpm capacity Utech has applied for with his new campground is not adequate without storage.

Ms. Hegge responded:

1. Property to be excluded: No platted lots are to be excluded. No current customers in the proposed exclusion.
2. Conflict of interest concerns. Mr. Utech willingly left the Board to impede some of those concerns.
3. Golden Meadows: They are still within the Sanitary District property. Those lots are not covered by the Proposed Exclusion.
4. Roads and Utilities would be covered by easements of the District.
5. Engineered Plans & Bio-Clere System: He has tried to address all concerns that have been brought up to him. He was planning to put the sanitary system by the golf course so he could use the "gray water" discharge to water the golf course. Mr. Utech has since changed the location, based on concerns, to the east side of the proposed property to be excluded.
6. Storage Tank: With the development, they don't need a water tower at this time, though they do need to update MDRWS system to provide water to the new development.
7. Grant process: The Grant cannot encompass new development.

Wiseman responded: During a telephone call with Wiseman, Utech, Central SD Enhancement District, SD DNR and SD Legislative Audit regarding the process to expand the water tower beyond the current needs, Mr. Utech stated very plainly that he would pay for the additional tank size above that needed for the District's improvement. They also discussed that in return, Mr. Utech could receive credit certificates for future hookups equivalent to his investment in the bigger tank.

8. Ms. Hegge indicated that a bigger tank does not solve the issue of supply of water with Mid Dakota. Wiseman responded: Conversations with MDRWS and the District engineers, supply is not the current issue, storage capacity is the issue.

9. Ms. Hegge indicated that their request for questions prior to this hearing went unanswered by the Board until late last night, at which point they were doing what they could to address at this hearing.

Wiseman responded: Ms. Hegge is refusing to answer some of the questions as presented in the emailed response. As far as easements are concerned, Mr. Wiseman asked Bartlett & West about our current easements. These easements are from old maps from Hughes & Sully Counties. Now when projects are finished, we ask for As-Builts so we can better identify lines. Bartlett & West quoted a rough estimate to update the easements was \$100,000 to \$150,000. He indicated that the District would not pay to have this done because Mr. Utech wants to be excluded from the District.

10. Ms. Hegge did state she received the questions last evening and was unable to move forward with the mapping system. She did indicate that the easement issues will need to be addressed regardless if Mr. Utech is included or excluded from the District.

Chairman Russell responded that the concern is the exclusion area is not under As-Builts needed by the District. If Mr. Utech wanted out of the District, that should be an item he is willing to pay for.

Chairman Russell asked Chairman Schuh to present any questions. She had nothing further to ask. She did state that as a resident and homeowner, she would like to see plans specifically for the Petersen property.

Chairman Russell showed Ms. Hegge his easement concerns on the District map, specifically where the planned construction runs across the District lines. He feels like the District is only acting in the best interest of the residents in preventing unnecessary outages.

Chairman Wiseman restated that the easements need to be accurate. This is currently not a problem in the District. He also restated the Bio-Clere sanitary system seems risky after consulting with other engineers and providers of these systems. He feels that the District is being asked to take a huge risk by approving this Exclusion without requested engineering plans. The plans will need to be presented to SD DNR for approval if

03/09/2022

Excluded from the District. If they have plans, why aren't they sharing them with the District. Ms. Hegge indicated that they are not trying to hide anything, and are currently working on the plans. If Excluded from the District, they are able to move forward immediately with MDRWS to service water. She reiterated she does not know why the District would need the engineered plans if the new development would have to be approved by SD DANR before proceeding.

In good faith, Mr. Utech is willing to work with the District regarding any easement issues the District has. Chairman Russell stated the only easement issues he has is in the Petersen Development. He personally does not have any concerns approving the Speedway property, but there are still too many unanswered questions with the Petersen properties as it relates to the current residents of the District that share property lines with the Petersen properties. Ms. Hegge reiterated Mr. Utech's position to work with the District on their concerns.

Ms. Hegge also pointed Chairman Wiseman to the Bartlett & West Lagoon Plan which shows no more capacity. Wiseman noted that inside the Plan, it is reported that a properly-functioning lagoon will provide additional capacity for 300 campers and approximately 100 residences. Russell followed-up the comment by stating the Board will get clarification from the District Engineer on that point.

Chairman Russell opened the floor to the public, reminding them to come forward and sign in. First commenter was Thad Nafziger, resident of the District. He presented questions to the Board.

1. If this Exclusion comes to a vote, who votes? Chairman Russell responded that the only votes are cast by the Board of Trustees.
2. If not approved and the development proceeds, are people who hookup to that infrastructure still part of the District? Chairman Russell responded that new hookups would be part of the District.
3. Why would District let Mr. Utech out of the District if we require him to pay for his own expansion and his new development would bring in new residents to the District?

Second presenter was Neal Konda, resident of the District. He presented that he was a part of the formation of the District and helped in developing the Ordinances of the District. Specifically, the Ordinance of Expansion clearly states that new development costs are borne by the Developer and once the development is approved by the District, the development becomes part of the Public Trust and users are part of the public system. Mr. Konda addressed the older residents of the District, as it relates to the early years of development and its transition to the current District. His question is if the District excludes a 400-lot development, who guarantees the long-term operation of the excluded development? If or when the development ends, the logical continued operation would fall to the Sanitary District as the governing body, already approved to manage such systems by the State of South Dakota. Mr. Konda asked that his emailed letters to the Board be added to the record. Schuh made a motion to enter Mr. Konda's letters into the public record. Wiseman seconded. All voted in favor. Motion carried. Said letters are attached to the meeting minutes as Appendix A.

Third presenter was Tim Forsch, resident of the District via teleconference. He urged a "No" vote on this proposal for several reasons.

1. He works with developers every day for 29 years. He is not comfortable working with a developer moving forward without engineered plans. Is he building a lagoon? Where is it supposed go? He would like Mr. Utech's engineer to make their presentation to the Board.
2. Easements: Where are the easements? Where are the lines? Are the lines locatable? To the Superintendent – the lines are not entirely locatable. To the Attorney – do you have an engineer on staff? Ms. Hegge advised they had engineers working on the plans. JMSmith Engineering has been hired by Mr. Utech. He is the same engineer who designed Mr. Utech's previous developments. Bartlett & West has been hired to engineer the sewer systems.

Fourth presenter was Rick Heupel, business owner at the District. He offered his thanks to the Board for their service to the District and offered his thanks to Mr. Utech for helping with the District formation. Mr. Heupel, as a business owner commented on a few business points. Is it good business to remove the future growth of this

03/09/2022

District, after fighting so hard to form the boundaries? Is it good business to set up 2 Districts that will compete with one another? One might be more expensive. How does that hurt or help each other? He noted the most concerning part of this Exclusion is the precedent being set if the District approves this. Based on the Ordinances, does this allow anyone to be excluded from the District. He expressed that the decision made by the Board for this instance will be huge. He also hoped for a smart, open-minded solution and that the Board come to the table with Mr. Utech to figure out a "win" for everyone.

Fifth presenter was Rick Berg, resident of the District via videoconference. He advised he was involved many take-overs with his profession and his question is how much is Vic willing to pay to be excluded from this District for future customer growth. He stated the worse decision this Board could do is to allow territory to be removed and directed by someone else.

Sixth presenter was Apryl Boyle, resident of the District. She wanted to bring to the attention of residents in the room regarding Mr. Konda's comments about a system absorbing another system. She advised that everyone here should question the stability of the current system. As stated in prior meeting notes, it is "likely we will make it through the winter with current funds." So why would Mr. Utech gamble his own assets in a system that is questionable itself? Chairman Russell noted that the system is doing quite well. Ms. Boyle restated that the meeting minutes reflected otherwise. She pointed Mr. Russell to the meeting minutes that stated the District could not pay the engineer for its fees.

Chairman Wiseman interjected to explain the finances of the District. He explained that we inherited the system with an infusion of \$160,000 from Hughes County. We have operated for 14 months. We have paid for maintenance on the water tower, the engineering fees of over \$100,000 to prepare the facilities plans to make system improvements, the most-recent was the approval for an archaeological study of \$38,000 required at the construction site. We still have \$165,000 in the bank. Yes, the current financials show a net loss for the year-to-date but we are not broke. We have money in the bank. He also corrected a statement made during the Sully County meeting on March 1st where someone said we only had \$10,000 in the bank. He stated that is absolutely false.

Mr. Wiseman commented on how proud he is of the system's operation. He noted how he wants to keep the water and sewer rates where they are. In his research, he knows of communities paying almost \$200 per month for sewer alone.

Ms. Boyle also commented on prior discussion held in regards to Mr. Utech paying for expansion. She indicated that using the term "expansion" is not permitted because of pending grant funding. Therefore, the Board is on the record stating that his contribution to the system would be a donation.

Ms. Hegge asked for permission to address the public, stating that she agrees with most points. She identifies that this situation is different than most in that the District has a current infrastructure issue. In her opinion, she encouraged the Board to stay focused on resolving those current issues in front of them and to allow the Exclusion to move forward.

Chairman Russell indicated to the public that the infrastructure issues were inherited by the County, and the Board was working to fix 20 years of issues in 18 months. With Vic's help, this Board has accomplished the grant funding applications to upgrade the water and sewer systems. There is a solid plan in place. Mr. Russell noted that the Bartlett & West study assumed development on every platted lot when formulating the current capacity needs. The District has approximately 160 platted, open lots at this time. After the July 4th water shortage, the District increased its gallons per minute usage contract with MDRWS and are currently planning to increase the storage capacity with the approval of grant funding, if approved, in April of this year.

03/09/2022

Ms. Hegge asked the Board if Mr. Utech could move forward with platting lots in his new development and be allowed access to water with the new storage tower. Mr. Russell indicated that may be possible for a few of them, but certainly not all 400 at this time, pending approval by the engineers on both sides.

Wiseman made a motion to move into Executive Session pursuant to SDCL 1-25-2(3) at 8:47 p.m. Schuh seconded. All voted in favor. Motion carried.

Schuh made a motion to move out of Executive Session and into Regular Business at 9:33 p.m. Wiseman seconded. All voted in favor. Motion carried.

Ms. Hegge asked to address the Board prior to the motion. In listening to the comments during the Public Hearing, they would like to propose a two-week extension to bring engineered plans to the Board for their consideration, along with the ability to discuss with Attorney Miller and Chairman Wiseman to discuss concerns and look for a mutual agreement to remain in the District.

Chairman Russell made a motion to accept the proposal. Chairman Wiseman asked to extend the two-week time frame to accommodate timing needs of the District for the SD DANR Grant approval and subsequent monthly meeting. Mr. Utech indicated that would not work for him and asked if they could hold telephone conferences to accommodate the two-week extension. Motion failed a second.

Ms. Hegge asked that the Public Hearing be continued until the District's next monthly meeting on April 20, 2022. Russell made a motion to continue the Public Hearing and to hold Attorney/Trustee meetings in the meantime. Schuh seconded the motion. All voted in favor. Motion carried.

With the Public Hearing on continuation until next month, Chairman Wiseman presented the Treasurer's report. He stated again for the record that the February month-end bank balance was \$167,000 and the District reported a net loss of \$10,800 for the month due to engineering fees. Schuh made a motion to approve the Treasurer's report. Russell seconded. All voted in favor. Motion carried.

Clerk Anderson presented the monthly Accounts Payable to the Board. These include: Anderson Nill & Associates - \$2,297.64; AT&T Mobility - \$1,192.86; Bartlett & West - \$15,800.00; Core & Main - \$2067.58; Factor360 - \$430.26; Lammers, Kliebacker, et al - \$1,292.00; Mid Dakota Rural Water - \$4,530.13; Midcontinent Communications - \$40.09; South Dakota Public Health Lab - \$30.00; TAK Technology - \$270.00; US Postmaster - \$156.00. Wiseman made a motion to approve the bills as presented. Schuh seconded. All voted in favor. Motion carried.

Wiseman updated the Board on the Facilities Plans. He noted the approved bid for the archeological study has been received from the State. They do not have an anticipated start date yet. He also reported that the SD DANR is holding their Grant Funding meeting on April 12-13, 2022. He advised the Board that he is planning to attend the meeting to answer any questions that may arise in the Clean Water Facilities Plan approval process.

It was moved by Schuh and seconded by Russell that Ordinance No. 4, AN ORDINANCE TO CHANGE THE ORDINANCE NUMBERING, MODIFY METHODS OF ADJUSTING, AND ADJUSTING RATES AND FEES be given a FIRST reading. All voted in favor. Motion carried.

It was moved by Schuh and seconded by Russell that Ordinance No. 5, AN ORDINANCE ESTABLISHING RULES FOR WATER USAGE DURING A DROUGHT be given a FIRST reading. All voted in favor. Motion carried.

District Attorney Miller advised the Board of its options for increasing the number of District Trustees to 5 members, as governed by SDCL 34A-5-17. If the Board wants to present this change to the voters, they must pass a resolution to do so. After the Resolution is passed, the Board can: 1. Bring it to a vote at the next annual

03/09/2022

election and if passed, vote on the additional Trustees at the following annual election in 2023, or 2. Hold a special election to vote on approval, then elect the additional Trustees at the next regular election in 2022. He advised that we may not have enough time to publish the required notices to hold a special election, allow for the process of obtaining petitions and vote on the additional Trustees at the 2022 election.

Wiseman made a motion to move forward with Option 1 above, thereby voting on the increased Board of Trustees during the 2022 election and electing the new Trustees during the 2023 election. Schuh seconded. All voted in favor. Motion carried. Attorney Miller will draft the Resolution for the April meeting.

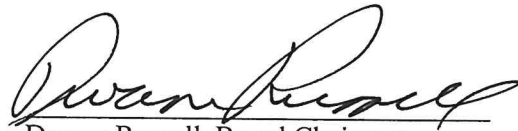
Clerk Anderson presented an email she received from Mr. Henry Mueller, a potential consumer who is purchasing lots from Bruce Petersen, stating their desire to remain part of the Sanitary District, should the Board approve the Exclusion of Real Property that would affect their purchased lots. Schuh made a motion to enter the email into public record. Russell seconded. All voted in favor. Said email is attached to the meeting minutes as Appendix B.

Clerk Anderson also presented a consumer complaint received from a resident stating the monthly rates as reflected on the February 10, 2022 billings are not in compliance with the District's Ordinances. Clerk Anderson presented answers to some of the questions, but advised that the Board would need to address this issue with the consumer, specifically how the additional increased supply by MDRWS is divided amongst the users.

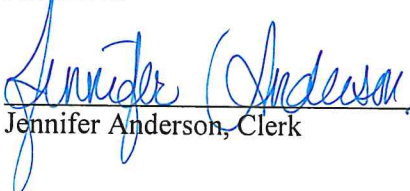
Clerk Anderson advised the Board of receipt from Sully County of a Notice of Hearing for a Conditional Use Permit to occur on March 16th at 9:00 a.m. Wiseman indicated he would like to ask Sully County to table this Permit in light of negotiations pending with Codger's Castaway as approved during the Public Hearing earlier this evening. Russell made a motion to approve Wiseman's request to table the Permit and to add the Conditional Use Permit notice to public record. Schuh seconded. All voted in favor. Motion carried.

Chairman Russell opened the floor to public comment. Roger Breske came forward to publicly thank Russell for opening his garage for the District meetings. He asked if the Board would consider moving their meetings to a public location. Chairman Russell indicated that we are currently seeking a permanent public location, but have not located one yet.

Being no further business, Russell made a motion to adjourn the meeting at 10:38 p.m. Schuh seconded. All voted in favor. Motion carried.


Dwane Russell, Board Chairman

ATTEST:


Jennifer Anderson, Clerk