

SPRING CREEK / COW CREEK SANITARY DISTRICT  
MEETING MINUTES  
SPECIAL MEETING  
Monday, April 11, 2022

A special meeting of the Spring Creek / Cow Creek Sanitary District was held at the Dwane Russell residence, 213 Shoreline Street, Pierre SD on Monday, April 11, 2022. Chairman Russell called the meeting to order at 10:00 a.m.

Chairmen Russell, Wiseman and Schuh, Clerk Anderson and Attorney Cody Miller were in attendance in person. Also present were 26 residents of the District and guests. One resident attended via videoconference.

Russell asked for approval of the Agenda as presented. Schuh made a motion to approve the Agenda. Wiseman seconded. All voted in favor. Motion carried.

Chairman Russell announced to attendees that there would be no public comments at today's special meeting. He asked that residents reserve their comments for the Regular meeting on April 20<sup>th</sup>, 2022.

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

Russell announced Stacy Hegge, attorney representing Vic Utech, to begin negotiations and discussion on the Proposed Exclusion of Real Property. Ms. Hegge expressed her gratitude for allowing them to come before the Board in the interim to continue to talk through negotiations before the Board takes action on the Proposed Exclusion.

Stacy introduced her associate, Talbot Wiczorek from their Rapid City firm. He has been asked to present to the Board at this meeting because he has deeper knowledge and history working with governmental agencies, county commissions, and sanitary districts.

Mr. Wiczorek introduced himself and presented his credentials in working with small water and sanitary districts in the Black Hills. He also serves as a County Commissioner in Meade County. He has worked on both sides of the issue at hand.

His points to the board are as follows:

1. In his opinion, it makes sense for the District, long-term, to let Mr. Utech out of the District and allow him to do what he wants to do.
  - a. This District is in a unique situation whereas the County was running the water and sewer prior to formation of the District. This is not a common practice for counties to administer a system of this type.
  - b. After reading the Bartlett & West report, not only is the District undersized for its current needs, the District is "way behind the ball" in being undersized for what it has already platted.
  - c. He understands that the District has applications pending with SD DANR to improve the existing systems. And he anticipates that the District will receive a grant/loan combination award from the SD DANR but no plan is in place for expansion.
2. In his opinion, the District boundaries are "too big" to serve the existing capacity.
  - a. He understands there is legitimate concern from residents to subsidize any new development.
  - b. Allowing exclusion from the District will allow developers to absorb the additional costs without concern of funding sources by the existing residents.
  - c. Bartlett & West reports capacity at 227 houses & 600 RV sites, with 190 already committed.
  - d. Developer develops internal lines. In his experience, it is not the developer's obligation to secure water/sewer to development.

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3. The District's Ordinance requiring Engineered Plans prior to hookup is rather unique and impractical.
  - a. Generally he sees Districts identify if they can serve the development prior to the developer obtaining engineered plans.
  - b. He states that Utech cannot obtain engineered plans because the District cannot provide a water source at this time.
  - c. District's storage capacity is too small to handle a development of this size.
4. He addressed the question of whether the District and Vic Utech can work better together. In his opinion, the answer is "No." He indicated that the District has a lot of hurdles to work through before it can handle this development.
5. Mr. Wiczorek stated that the District cannot stop development.
6. Because of the influx COVID Infrastructure funding, he stated the District would face a lack of contractors available to fulfill the Improvement Phase of the District project, if approved by SD DANR.

Mr. Wiczorek offered to answer questions and field answers with any negotiations the Board may have.

Russell stated that the District has made a lot of improvements since it took over. According to the engineers, the District does have the capacity to serve all platted lots with water and sewer. The District has increased its water supply from Mid Dakota Rural Water to help alleviate the shortage that occurred last summer. He also noted that the Board is working on a restriction ordinance for summer months during a drought. He noted that they are all new to this business and are learning as they go. He feels they have made good improvements with what they have so far. At this time, MDRWS doesn't have any more capacity to give to anyone, whether the District or Mr. Utech's development.

Russell also noted that this development was not going to happen overnight. The District is currently working on ordinances to increase hookup fees which will help offset the growing infrastructure needs.

Wiseman offered his comments. He, like Russell, indicated that he did not believe the proposed development of 400 lots would occur in one year, stating the District averages approximately 15 new homes per year. He also noted that the sewer capacity, once the lagoon is repaired correctly, has the capacity to hold 300 more campsites and an additional 125 homes. On the water side, Mr. Utech has the opportunity to join with the District to expand the new water tower above what was designated as necessary to meet the current needs. As per federal regulations, the District cannot borrow money to expand an existing system, but it can cost-share with a developer.

Wiseman asked where Utech's storage was to handle the proposed 50 gallons per minute coming in from Mid Dakota, stating it is impossible to pipe in 50 gallons per minute for a short period of time without having some sort of storage capacity.

He restated that the District and Mr. Utech can work together to make the development happen. He recognizes that development is needed in the area. This is a premier recreational community in the country. The District is currently looking to spend \$3.5 million to fix up the system that has been neglected. The District would be setting itself up to inherit another \$13 million from this excluded property should we have another year like 2008 where governments were left to pick up the pieces of a housing crash. Wiseman asked to work together to make this a smart growth and smart community. So many people are on both sides of the aisle. It is not the District's job to pick sides. It's the District's job to oversee smart growth so everyone can benefit.

Wiseman referenced the layout as presented to the Board for today's meeting, stating that it did not include plans for the Golf Course and Bruce Petersen property. The layout doesn't show the plans for that area moving forward. They can't see where the future sewer is planned for this area. Wiseman stated we can work together to fix this problem as we know it needs to happen. And it costs money to fix. If Mr. Utech goes on his own to develop this area, it will be several million dollars.

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Wiseman believes that with the proper rate structure, they can all work together. He stated that the current system is not broke, as has been noted publicly in recent discussions. The District has incurred expenses in excess of \$150,000 that was not planned nor budgeted during the past year and they still have \$160,000 in the bank. He restated that the rumors need to stop and that the District's function is to work for the best interests of the community.

Russell added that we can always ask for more grants after the development begins to grow. We cannot legally do so at this time.

Mr. Wiczorek could not comment on the rumors and accusations presented by Wiseman. Mr. Wiczorek indicated that his biggest struggle when reviewing the District's plans was the unknown "have to figure out" issues. Wiseman agreed that the District did not have plans for Utech's development. Before Mr. Utech resigned from the Board, discussions were being held on how the two parties could come together to finance a larger tank to meet developer's needs while the District was improving the tank for its current subscribers. Those discussions were halted when Utech resigned from the Board.

Mr. Wiczorek reiterated the impossibility to provide engineered plans prior to development. Russell and Wiseman indicated that our engineers worked from developer plans to identify infrastructure supply and demand.

Wiseman noted that negotiations have not been an option until recently. The Board does not know what is planned for the new development or what, if anything is open for negotiations. The only request by the Board is a set of plans before making a decision either way.

Mr. Wiczorek indicated working in Rapid is much more difficult to work with than Hartford & Sioux Falls area. In his experience, they do not require an engineered plan to proceed with developers. Wiseman again stated that it is difficult, if not impossible to make a decision on this issue without some kind of plan. Wiseman corrected the false presumption that our ordinances required a fully engineered set of As-Builts in order to get approval by the District. He noted that to begin the development, the Board requires a preliminary set of engineered plans.

Mr. Wiczorek pointed out that the District's plan is only to serve current customers. Wiseman noted that we are improving our system based on current plotted lots, not all of which are being developed. The District is currently ahead of the game by funding its own preliminary field work so we are ready for bids when the funding process allows. He added that our contractor and construction supply is a state-wide issue. Why would Utech's infrastructure development be any different or faster?

Russell added that working together with Vic would be a win/win situation for all involved. In Vic's defense, Russell noted that several people had come to the Board trying to stop Vic from developing that area. Again, it is not in the District's authority to stop development.

Russell asked Mr. Wiczorek to visit with Vic regarding the possibility of negotiations. Mr. Wiczorek asked if the Board would be able to supply Vic's development in phases. Wiseman responded that the District could not answer that today without plans and a hydraulic study. Mr. Wiczorek asked for a definition of Hydraulic Study. Is it considered a "usage and demand" analysis? Wiseman responded that Bartlett & West performs this study for the District on household usage to determine what the current system can handle.

Atty Miller stated that when the District tried to work with Vic in the past on this issue, they discussed financial support for the additional tower capacity in exchange for hookup certificates. If that is still an option, the Board would be willing to discuss further. When asked if the Board believes this development can be phased in under the District, Miller indicated it can. The sewer capacity is questionable and discussions still need to take place on the options in that regard.

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Schuh added that she believes both parties need to work together to make this a great system. She also has worries with the possibility that the District may someday stand to inherit the excluded system.

Wiseman brought up another issue that has been addressed by both Hughes and Sully Counties. If this area continues to develop as planned, the counties will require the area to become its own municipality. Russell stated in light of the growth potential, the area would be best suited as a cohesive unit, not one made up of smaller areas.

Mr. Wieczorek gave his thanks to the Board members for their service and time on the Board. He also stated that it is probably better to let Vic out of the District and do his own thing. The difficulty he sees is the sewer limitations on the current system. Russell responded that Bartlett & West has provided multiple options for the Sewer system. Wiseman also stated that without Vic's plans, it is difficult for the Board to do their due diligence with its own engineers and other regulator agencies to identify if there is capacity to phase in this development.

Wiseman also addressed the proposed Bio-Clere sanitary system that Vic previously presented to the Board and whether that would meet SD DANR approval.

Ms. Hegge asked if the District has discussed with Bartlett & West what future expansion of the Sewer System looked like. Wiseman stated the only conversations were relative to moving the lagoon entirely to facilitate expansion. Wiseman noted that the existing system, once repaired and operating correctly, has the capacity to handle additional users.

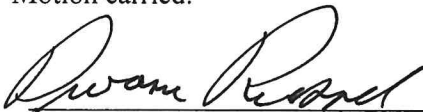
Russell made a motion to move into Executive Session, pursuant to SDCA 1-25-2(3) at 11:00 a.m. Wiseman seconded. All voted in favor. Board moved into Executive Session.

Schuh made a motion to return to the public Special Meeting at 11:22 a.m. Wiseman seconded. All voted in favor. Regular session commenced.

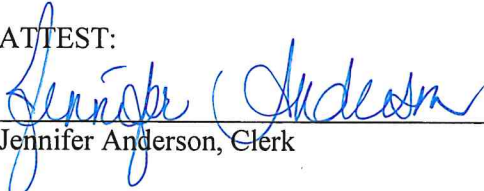
Atty Miller addressed Atty Wieczorek in regards to any questions or proposals for the Board. Mr. Wieczorek asked permission to email Bartlett & West, with a copy to Mr. Miller, for clarification on the capacity of the District's water and sewer system prior to the Public Hearing. No proposal is ready to be made at this time by his side. With no objection by the Board, they would like to start by contacting Bartlett & West.

Atty Miller restated that there were no proposals on the table at this point. The Board takes the position that it can handle the water issue and tower expansion with additional support from Vic. The Board can work out an agreement with Vic to receive prepaid hookups in exchange for monetary contributions to build the larger water tower. On the sewer side, the Board understands that the existing sewer system can handle additional housing and campsites (exact quantity unknown, but approximately 100) in addition to the current platted lots. The Board understands that the new development will be completed in phases and would ask Vic to provide a plan for Phase One, around 100 homes, so the District can provide its engineer with the plans to determine its capacity to provide services. This will allow Vic to move forward on Phase One while allowing the District time to reserve and appropriate funding once he moves into Phase Two.

Being no proposals and no further questions of the Board, Chairman Russell made a motion to adjourn the meeting at 11:27 a.m. Wiseman seconded. All voted in favor. Motion carried.

  
Dwane Russell, Board Chairman

ATTEST:

  
Jennifer Anderson, Clerk