

SPRING CREEK / COW CREEK SANITARY
DISTRICT MEETING MINUTES
MONTHLY MEETING
Wednesday, September 14, 2022

The regular monthly meeting of the Spring Creek/ Cow Creek Sanitary District was held in the meeting room at the Boat House Bar & Grill in Pierre SD on Wednesday, September 14, 2022. Chairman Schuh called the meeting to order at 6:03 p.m.

Chairmen Schuh, Bacon and Wiseman, Clerk Anderson and Superintendent Zuber were in attendance in person. Also present were 13 residents of the District and three guests. Legal Counsel Cody Miller, one resident and one guest attended via videoconference.

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

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

Schuh asked for a wording clarification to one section of the 8/10/22 meeting minutes. Wiseman made a motion to approve the 8/10/22 meeting minutes as amended. Bacon seconded. All voted in favor. Motion carried.

Superintendent Zuber presented his report to the Board. He reported that activity in the District was slowing down substantially since Labor Day weekend. 288,000 gallons were used over the Labor Day weekend, and current usage is approximately 25,000 gallons per day. Total usage for August was 2,000,000 gallons, or approximately 66,400 gallons per day.

Zuber reported that his lead and copper test results came back this month and everything came back fine. This testing is required every four years. No new hookups were received in August. R & W Construction is completing hookups on previously received applications. Their intention is to complete those and move to Bruce Peterson's. They will then work on cutting our manhole and regrading per Zuber's request.

SDARWS is scheduling the District's pigging of the sewer line for late October. Zuber indicated they are backed-up with projects so this is only tentative.

Zuber asked the if the Board has reviewed his request to attend continuing education. Zuber stated that he has all current certifications and thinks his best option would be to attend the Wastewater Certification, especially with all of the new hookups coming into the District. The Board approved Zuber's attendance at the Wastewater class in November.

As a final point, Zuber indicated he has been working with the billing staff to get information needed to implement the new billing system. Wiseman reported a resident complaint that involved a leaking toilet and wondered what Zuber recommended to identify these types of issues prior to monthly billing. Zuber noted that satellite meters will not be a true leak-detection method. Zuber discussed a radio responder that will allow a real-time read. He knows of a company that sells those and will reach out for a quote. Wiseman also asked if Zuber's reports were being completed for Bartlett & West for mapping project. He noted the reports were completed and he would visit with the engineer on requested formatting prior to submission.

Wiseman presented the Treasurer's Report. Wiseman indicated that we were reporting more income due to increased hookups, but the bottom line is remaining steady. Since the start of the projects, the District is cash-flowing all Water and Sewer Improvement Project costs, but will be able to submit to the funding sources for

09/14/2022

reimbursement of those expenses. He also noted that the District has undertaken more repairs and maintenance than what was budgeted. As the District gains knowledge and experience, they find more that needs attention. As of year-to-date, 20% of income is being moved to the General Fund for future needs. Wiseman reported the 2023 contract from Mid-Dakota Rural Water Systems has been received with a 3% increase in fees, equal to the annual rate increase as imposed by the District to users.

Wiseman also noted changes to the preliminary budget to include costs to Jet and Camera the system in 2023. The only regional company to do this comes out of Mitchell. When Wiseman contacted the company, they recommended these tests be performed every 3 to 5 years. To the District's knowledge, these tests have never been performed out here. Schuh made a motion to approved the Treasurer's report. Bacon seconded. All voted in favor. Motion carried.

Clerk Anderson presented the monthly Accounts Payable to the Board. These include: Anderson Nill & Associates - \$2,310.48; Archaeological Research Center - \$38,520.30; AT&T Mobility- \$85.43; Bartlett & West - \$17,637.00; Dakota Pump & Control - \$6,650.83; Forrest Zuber - \$450.00; Lammers, Kliebacker, et al - \$855.00; Mid Dakota RWS - \$5,499.70; Midcontinent Communications - \$40.98; Northwest Pipe Fittings - \$5.95; Oahe Electric - \$644.21; South Dakota Public Health Lab - \$15.00; South Dakota 811 - \$7.35; TAK Technology - \$125.00. Schuh made a motion to approve the bills as presented. Bacon seconded. All voted in favor. Motion carried.

Wiseman updated the Board on the Archeology Study and Improvements Projects. He and Zuber met with USACE's representative, Bartlett & West, SD Game Fish & Parks at the water tower. Because of some items found during the Archeology Study, USACE recommended two options. 1: We can go through mediations with all in-state Tribes and a few out-of-state Tribes to receive approval for site location, or 2: Move the proposed location. With the help of Bartlett & West, it was determined the best option to relocate is west of the current water tower, in the trees. According to the Corps representative, the archaeology study was already done when the trees were planted. Wiseman reported we hope to have final site approval in early October. With final site approval, we can begin soil testing and other site preparations.

Vic Utech with Codger's Castaway Development presented his proposal to fund the expansion of the sewer lagoon, when needed, as well as funding additional water supply from Mid Dakota Rural Water Systems once the Elevated Tank project has reached its full user capacity. His proposal also offered to construct a facility for the District to host meetings and store equipment, with the turn-key building and land to be transferred to the District upon completion. Mr. Utech distributed copies of his proposal to the Board and attendees. He also read aloud his proposal to the attendees. Members of the Board asked Mr. Utech for clarification and discussion on his proposal.

Wiseman asked how the District would come up with the money to pay for the sewer expansion, stating the build-out would cost an additional \$2 million, based on revised Improvement Plans as prepared by Bartlett & West. The cost to expand would cost each user an additional \$375-\$500 per year in increased fees. Wiseman also expressed his gratitude to Utech for the offer, but the District also needs to understand what happens to this plan if something happens to Utech prior to completion. If the District is financially liable to purchase the incomplete project, where does the funding come from? Wiseman stated that he didn't feel like the District could pass along any more costs to members just because a developer wants to develop beyond current capacity. Our ordinances state that a developer is responsible for expansion costs. Wiseman offered a few options to help fund the expansion. One option is to develop a minimum of 50 lots every 3 years and set a minimum hookup of 20 lots every year to bring in approximately \$50,000 per year to service the debt to expand. He also mentioned that if Sully County wants to push this development, we could also be looking at a TIF from the County. Even with these standards, the District would still fall short of cash flow needed to finance the expansion. Wiseman proposed a development lot assessment of \$3900 per lot to make up the short-fall.

09/14/2022

Mr Utech responded to Wiseman's concerns. First point being he was not aware of a cost estimate for sewer expansion of \$2 Million, stating that if we have the cost estimate, he has not seen it. Second point Utech addressed is to clarify that the District does not have to budget anything for the expansion, as he has just proposed to pay for the expansion in its entirety. Once completed, he will turn it over to the District. He reiterated that the cost is \$0 to the District.

Wiseman thanked Utech for his offer, but expressed concern that the current sewer capacity was enough to service the existing platted lots in the District. If the District approves Utech's expansion, the District would be essentially over-selling capacity and taking the risk that the current plat owners would not be able to hook up in the future.

Utech rebutted that the current sewer lagoon will hold an additional 200 homes. The probability of constructing 200 homes in the time needed to expand the sewer is minimal. He stated that historically, the District sees 15-20 new homes constructed per year. Based on the average, this equates to another 10-plus years of Sewer capacity. He is asking to be approved for a portion of his development so he can move forward. Wiseman asked how many homes Utech is asking for. Utech responded 115 homes. Wiseman then asked for clarification on Mr. Utech's proposal stating that the District would not charge hook-up fees for his new development.

At this point, Mr. Utech's attorney, Stacy Hegge interjected for clarification. She stated that the intent was to exchange Utech's new expansion costs for District hook-up fees, once the existing sewer capacity has been reached. She stated that for those hook-ups attaching to the current sewer lagoon and utilizing the existing capacity of the lagoon, the District would receive the standard hook-up fees. Once Utech begins the build-out of a new sewer lagoon, they are asking the District to waive his hook-up fees.

Wiseman reiterated his concerns that if something should happen to Vic after he purchases the land for expansion and prior to the completion of the expansion, the District has the option to buy the land at his purchase price plus costs, again stating the financial burden to the District and its existing residents.

Wiseman and Schuh both stated that due to the proposal being received only a few hours before the meeting, they needed more time to review the contents. Wiseman stated the Board would take the proposal under advisement and will respond accordingly at next month's meeting. Ms. Hegge understands that the Board would need to take action during a public meeting and will need an Executive Session to seek legal counsel. She asked if the Board could have the conversation tonight, if possible. Wiseman stated the response would be presented at next month's meeting, at which time Mr. Utech asked for a response sooner than next month. Bacon responded that as a Board Member, he feels it is reckless to make a decision today. Utech & Hegge asked if the Board would go into Executive Session tonight and collectively respond with steps they can take in the interim to keep the discussions moving forward.

Wiseman made a motion to move into Executive Session at 6:51 p.m., pursuant to SDCL 1-25-2(3). Schuh seconded. All voted in favor. Motion carried.

Schuh made a motion to return to Regular Business at 7:12 p.m. Wiseman seconded. All voted in favor. Motion carried.

Bacon announced that after discussing the Utech proposal with counsel, the Board has agreed to provide an appropriate response to the proposal prior to the next meeting. Utech asked for a time frame. No specific time frame was given. Hegge asked if there were other concerns that could be addressed at tonight's meeting. Bacon stated that he has questions, but because of the timing of receipt of the proposal, he is not prepared to address those questions.

Schuh made a motion that ORDINANCE NO. 6, REGULATION OF SYSTEM EXPANSION, an Ordinance of the Spring Creek / Cow Creek Sanitary District to REPEAL ORDINANCE NO. 2020-3 AND RE-ENACT THE

09/14/2022

SAME AS AMENDED ESTABLISHING REGULATIONS RELATING TO THE EXPANSION OF THE EXISTING WATER DISTRIBUTION, WASTEWATER COLLECTION AND TREATMENT SYSTEM, AND PROVIDING FEE STRUCTURE AND PENALTIES FOR VIOLATIONS THEREOF be given a FIRST READING. Wiseman seconded. All voted in favor. Motion carried.

Ms. Hegge asked if Draft copies were available to review. Clerk Anderson responded that because these are First Readings of Ordinances, these were considered "drafts" and not available for public review at this time. Anderson stated the appropriate time for Public Comment is during the 20-day publication period after the Second Reading.

Schuh made a motion that ORDINANCE NO. 7, REGULATION OF WATER USE, an Ordinance of the Spring Creek / Cow Creek Sanitary District to REPEAL ORDINANCE NO. 4 AND RE-ENACT IT AS AMENDED HEREIN ESTABLISHING REGULATIONS RELATING TO WATER USE, WATER RATES, FEES, REGULATIONS, AND PENALTIES FOR VIOLATIONS THEREOF be given a FIRST READING. Bacon seconded. All voted in favor. Motion carried.

Schuh made a motion that ORDINANCE NO. 8, REGULATION OF SEWER USE, an Ordinance of the Spring Creek / Cow Creek Sanitary District to REPEAL ORDINANCE NO. 5 AND RE-ENACT IT AS AMENDED HEREIN REGULATING THE USE OF PUBLIC AND PRIVATE SEWERS AND DRAINS, PRIVATE WASTEWATER DISPOSAL, THE INSTALLATION AND CONNECTION OF BUILDING SEWERS, AND THE DISCHARGE OF WATERS AND WASTES INTO THE PUBLIC SEWER SYSTEMS AND PROVIDING USER RATES, AND PENALTIES FOR VIOLATIONS THEREOF be given a FIRST READING. Bacon seconded. All voted in favor. Motion carried.

Schuh presented a proposed change to Addendum #1 to the Bylaws to replace a specific contact person's name in the Media Policy with a Board-appointed Trustee position. Schuh made a motion to approve an amendment to Addendum #1 to the Bylaws as enacted on July 14, 2021. Wiseman seconded. All voted in favor. Motion carried.

The Board has received Amendment 1 to Task Order 6 from Bartlett & West to increase the lump sum fee as it relates to the elevated tower improvement project and the new proposed location. Wiseman approved Amendment 1 to Task Order No. 6. Schuh seconded. All voted in favor. Motion carried.

The Board has received Task Order No. 5 from Bartlett & West to pursue completion of the Sewer Facilities Plan as submitted to SD DANR. Wiseman made a motion to approve Task Order No. 5. Schuh seconded. All voted in favor. Motion carried.

The third and final contract to consider is a preliminary contract with HDR Engineering to act as a third-party engineer to review District Ordinances and review new plans as submitted by developers. Bacon asked if bids were sought from other engineering firms to perform the same duties. Wiseman indicated the few others he talked to were not able to take on the extra work. This particular firm has extensive experience with other entities similar to the District. Wiseman recommended approving the contract. Schuh asked for clarification on the fee schedule. Wiseman asked for the company representative to speak on behalf of the proposed contract. Brian King of HDR Engineering was available via Zoom. Mr. King stated that the proposed contract is considered an On-Call contract, meaning they are available when needed and services will be billed only as needed. He stated that conversations with Wiseman indicated the need for a review of the new Codger's Castaway Development due to the size and complexity of the development. The proposed contract is divided into tasks, one of which is the estimated time and costs to review Codger's Castaway. The Board discussed who is responsible for the costs associated with reviewing developer's plans. After further discussion, the Board decided to table the HDR Engineering contract for further review.

09/14/2022

Wiseman presented his revisions and recommendations on the 2023 Budget to the Board. Base water rates will increase \$7.85 per meter; base sewer rates will increase \$15.20 per meter. Both are required surcharges due to funding of the new water tower and sewer lagoon improvement projects. These surcharge amounts are effective for 20 years, or the life of the loan, and are not subject to the annual 3% increase.

Wiseman asked for a \$40,000 budget for Superintendent's repairs and maintenance. He stated that we hired a Superintendent to run the system and we should allow him the ability to make decisions without coming to the Board to get approval for every system repair and maintenance. This will include a system-wide camera & jetting of the system.

Wiseman also addressed the debt servicing costs of \$82,507 plus 10% reserve requirements. He has built these amounts into the budget for cash flow purposes. He also brought up the need for the District to have its own office and storage building in the near future. This construction could potentially cost an additional \$18,000 per year to service the debt needed to finance the project. As of right now, the District is renting space at various locations to hold meetings and elections. Wiseman asked to table the Budget until next month's meeting.

Clerk Anderson asked for guidance on how to notify users of next month's meeting location, if a change is needed. Wiseman asked for an email blast. Schuh asked for updates to the website.

Schuh opening the floor to public comment.

Resident 1: Expressed concerns that Mr. Utech has been working on his development proposal for a long time. He believes that realistically something needs to move forward soon and that is not fair to the developer or other residents of the District. This proposal started almost one year ago and we are no where closer now than we were then. He also asked why the Board is considering the use of another third-party engineering firm when the District already has an engineer. Why can't the current engineer that already has the data be the firm involved in the expansion review? This resident feels like there needs to be a greater effort for the District and its engineers to work with Vic and Vic's engineers. He stated that as an outsider looking in, the District has not given Utech the necessary direction to move forward. The resident also addressed Open Meeting rules and the Board Members' inability to meet outside of a scheduled meeting. Is it possible for the Board to give authority to the Superintendent and/or the Engineers to act in a greater capacity during the interim?

Resident 2: Stated that he started developing in 1996. Comments made tonight by the Board will turn the public off with all the additional costs entailed to develop. As a developer, these costs are passed down to the buyers and being required to pay for a third-party engineer, hired by the District, to review those plans prior to approval is insane. If the District doesn't want development in the area, keep doing what you are doing. Resident also asked why the Board wouldn't comment on the amended Ordinances tonight at the meeting, wondering if they included more costs to developers. In closing, this resident thanked Scott Bacon for his willingness to serve on the Board and stated that he came to the board with good sense and good thoughts for the District.

Resident 3: Stated that he appreciates Vic's development. Vic has mentioned that he doesn't anticipate rapid growth based on historical construction numbers, but what he didn't mention is the 300 camper pads that will most likely fill up quickly. This resident's concern is the lagoon capacity if the camper pads fill up as they likely will and that the District needs to properly plan this portion of the development.

Resident 4: In response to Resident 3, this resident admittedly does not have all the answers but wanted to start discussions with a good proposal. He knows there are options and is looking for discussion. Resident also wanted to address Wiseman's comments regarding incomplete plans as received by Codger's Castaway. He stated that he knows the plans are not complete, but submitted to the Board as-is to start a discussion. His engineers are lacking needed data to properly plan the fine details. The resident indicated he just wants feedback from the Board and he is not getting it. Wiseman responded that this resident has access to all the

09/14/2022

requested information. Resident also stated that his engineers have other questions. Wiseman asked the resident to send him the list of questions so they can be addressed. The resident also addressed the tabling of the third-party engineering contract, essentially kicking his project down the road for another 30 days. Now he does not have a point of contact for his engineers to discuss the details with. Bacon responded to this comment stating that he has not had contact with the engineer and feels it is reckless for him to approve a contract that he was not aware of until tonight.

Resident 5: Questioned if Wiseman has done all the leg-work for the engineers or if any other Board member has made any calls. Resident stated that their point of contact has always been Wiseman and he thanked Wiseman for being their point man. Resident 4 interjected that because Wiseman was the designated point of contact, it was Wiseman's duty to report his findings back to the Board and to make recommendations. By not approving the recommended contract, resident feels like the Board is kicking the can down the road.

Resident 6: Asked why the Board was not publishing First Reading of Ordinances. In his experience, he has never been to a meeting where the documents are not available for First Reading. He stated the users of the District have no idea what the changes consist of without the documents being published. Clerk Anderson responded that because the First and Second readings are considered Drafts, they are exempt from legal publication. Resident asked why they were not being published as a Draft copy. Clerk Anderson reported that as the Clerk of the District from the start of the District's organization, the Board decided they would only publish documents required by law. Resident stated that in today's society, the public expects openness and stated that the Board needed to be more open.

Resident 7: In response to Resident 6 concerns, this resident stated that these decisions were made at the inception of the District, under a prior President. He stated that since inception, every Ordinance has been passed under the same procedure as the first. If Resident 6 is questioning why the District follows this precedent, he needs to ask the first president. Chairman Schuh addressed the first President of the District, a meeting attendee, whether he recalled why this process was originally agreed upon. The first President stated he did not know why, but asked for the Board to consider publishing Drafts.

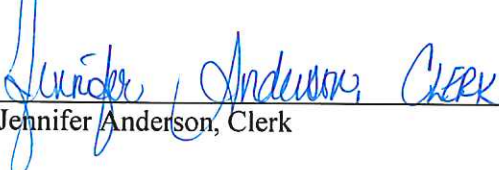
Attorney for Utech made a formal request to Attorney Miller to receive a copy of the third-party engineer contract, as a drafted copy. Attorney Miller also spoke on behalf of publishing unexecuted (or Draft) documents. Based on the concerns as expressed by the membership, he indicated that the Board could take action to publish Draft documents to the website 24 hours prior to the meeting or make a copy of the Draft document available to view at the meeting.

Wiseman made a motion to make Draft copies of Ordinances and Bylaws available by publishing the same to the District's website within 24 hours of each meeting.

Being no further public comment and no further business, Schuh made a motion to adjourn the meeting at 8:22 p.m. Bacon seconded. All voted in favor. Motion carried.


Kathleen Schuh, Board Chairman

ATTEST:


Jennifer Anderson, Clerk