

SPRING CREEK / COW CREEK SANITARY  
DISTRICT MEETING MINUTES  
MONTHLY MEETING  
Wednesday, September 11, 2024

The regular monthly meeting of the Spring Creek/Cow Creek Sanitary District was held at the Boat House Bar & Grill on Wednesday, September 11, 2024. President Schneider called the meeting to order at 6:00 p.m.

President Schneider, Bacon, Kopman, Schuh, Superintendent Zuber, and Clerk Linn were in attendance, along with 18 residents and 1 guest. Konda, attorney Miller, 7 residents and 3 guests attended via Zoom videoconference.

Schneider requested a motion to approve the agenda. Schuh made a motion to approve the agenda. Bacon seconded. All voted in favor. Motion carried.

Schneider read the Bryant resignation letter. Schneider requested a motion to accept the resignation. Schuh made a motion to accept the resignation. Bacon seconded. All voted in favor. Motion carried.

Schneider recognized Leonard Kopman as a potential new board member. Bacon nominated Kopman as a new board member. Schuh seconded. All voted in favor. Motion carried. Schneider read the Oath of Office. Kopman responded with Yes. Schneider welcomed Kopman to the board.

Schneider noted the following items in the President's message:

1. 9/11 Recognition.
2. Interest Rate Corrections from Previous Meeting. The rates are lower than discussed at the previous meeting confirming the board does not want to open those up: DW-01 2.125%, CW-01 2.125%, DW-02 3.25%, and CW-02 3.75%.
3. Meeting Etiquette. Public comment will be taken at the end of the meeting noting the person will come to the front and note who they are and where they live. Everyone wishing to testify will have 3 minutes, and other individuals may yield their allotted time to the present speaker if they wish.

Schneider asked the Board to declare any Conflicts of Interest. None noted at this time.

Schneider requested action on the 8/14/2024 meeting minutes. Konda made a motion to approve the 8/14/2024 meeting minutes. Bacon seconded. All voted in favor. Motion carried.

Schneider requested Superintendent Zuber present his report to the Board. In August the district utilized just short of 1.5 million gallons for the month with a daily average of 48,000.

Other items noted by Zuber:

1. Busy month fixing meters.
2. Dakota Sky Lodge meter was replaced.
3. No repairs noted on any lift stations. Less rags have been found in the lift station trash this year. The public service outreach worked, and Zuber appreciates the effort put forth by the community.
4. Utech has completed his pressure testing.
5. GIS appears to be complete with up-to-date plats.
6. 3 new applications sent out. None received in August.
7. Zuber ordered a few more ¾" meters to be ready for new potential users.
8. Will be doing fall flushing soon to clean up lines.

Schneider requested Konda present the Treasurer's Report. Konda noted for the month of August: Unrestricted checking account - \$55,215. Balance is significantly down as monies were utilized to pay Aqua

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Tech to keep the plan process moving. Reimbursement has been received as of the date of the meeting yet was after the cut-off date for the August financials. Restricted meter deposits - \$30,919. Restricted long-term developer fund - \$304,792. Accounts payable – \$912,781 is a very large month of which some payments will be held until reimbursement is received. Schuh made a motion to approve the Treasurer's report. Bacon seconded. All voted in favor. Motion carried.

Schneider requested Clerk Linn present the monthly Accounts Payable to the Board. AMCS - \$3,908.52 (held); Anderson Nill & Associates - \$5,258.42; Aqua Tech Systems, Inc. - \$627,064.20 (\$572,553.50 held); AT&T Mobility – \$91.24; Bartlett & West - \$87,620.51 (\$81,420.00 held); Forrest Zuber - \$450.00; Maguire Iron, Inc. - \$180,540 (\$121,500.00 held); Mid Dakota RWS - \$5,449.55; SD Public Assurance Alliance - \$2,378.59; SD Public Health Lab - \$15.00; South Dakota 811 - \$5.25. Schneider noted the held Aqua Tech bill in the amount of \$572,553.50 will be discussed later on the agenda. Schuh made the motion to approve the bills as presented. Bacon seconded. All voted in favor. Motion carried.

Schneider requested Jim Ross update the District on the sewer facilities plan. Ross spoke with Aqua Tech and confirmed the shop drawing will be sent once the balance of the 10% down payment has been received. Once received Ross will coordinate with DANR and the Corp in regard to the environmental assessment. Expected to have environmental assessment completed yet are currently in a holding pattern awaiting our marching orders. Ross will continue to push to get that. Once we understand all that, Ross will have an amendment for the contract to include construction services. Konda inquired as to whether the \$572,553.50 amount due to Aqua Tech is a critical path item requiring starting now to meet the end deadline or is it adequate to be under contract. Ross responded stated it is adequate to be under contract. Need to have the money obligated and a plan for it before the end of the year so you don't have any risk of losing the ARPA money.

Schneider opened a discussion about the District potentially utilizing restricted funds in the future to pay outstanding invoices due to the time lag awaiting reimbursement from DANR. The intent would be to reimburse the restricted funds once the DANR reimbursement is received. Examples of potential utilization are cost overruns on the project and reimbursement timing on payments required to keep a project moving. Schneider noted this is not a critical issue right now yet wanted to discuss the future possibility with the Board. Resolution 2023-1 regulates the restricted funds. Konda noted item 6 of the resolution requires the intent shall be published as an item on the regular meeting agenda. Ross recommended the intent is included in the next meeting agenda with the possibility that it may be needed. Kopman inquired as to what risk is there. Schneider noted the only risk they were able to recognize at this time would be if the funds were utilized to construct equipment that was later not approved by DANR. Ross noted the plans that were submitted back in March do not have an official review approval, yet they have had multiple design discussions with DANR and everything that Aqua Tech is providing meets what was remitted in March. In addition, DANR has provided approval for the advertising and the deposit which was provided to Aqua Tech inferring DANR is also on board with the process. Bacon noted the utilization of the restricted funds makes sense if it is needed to move the project forward in a timely manner. The Board agreed with Bacon's statement. Konda added the utilization would be subject to the funds being reimbursable when reimbursement is received.

Schneider requested Nathan Danner update the District on the water facilities plan. Danner stated they will be starting the shop blasting and priming in Sioux Falls in late December. In addition, steel and mobilization will be sent to the site around November. Fabrication drawing for approval will be received in the near future. Bacon inquired on whether they will begin to erect right away. Danner noted one of Maguire's project managers has left the company, so they are still determining when the process will begin. Weather will also play a role in timing. The schedule is to have the tank ready to be painted in May 2025 yet the timing on when to erect is weather dependent.

Schneider requested Utech provide an update on Codger's Castaway development. Pressure test has been done and passed. Compaction test has been submitted. As-built has been submitted. Third party testing has been submitted. Pictures have been submitted. Water testing has been submitted. Believe everything has been turned

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in in the last couple days. Schneider noted a decision cannot be made at this time as items were submitted so close to the meeting date. Utech stated he is not asking for approval tonight. Utech noted his original intent was to put in infrastructure to allow an entrance to be utilized without having to dig it up again and his understanding of the previous agreement was to pay fees when the lots are brought online. Schneider noted the Board felt the fees would be paid at the time of approval and if not paid the back valve would possibly be shut off. Utech noted shutting things off that have already been approved is not acceptable. Schuh inquired if there was another valve closer to the 18 unapproved lots. Utech stated no. Schneider inquired as to whether the lots are currently for sale. Utech noted the lots are for sale which is benefit to the District because if something sells, he has to pay it to get it hooked up. Konda noted when the approval letter is issued, in order to start your warranty and all that, the developer fees should be paid out and finished and we could close the books on this particular project. It would be done instead of having it hang out there 6 months, a year, or whatever it takes to have it closed. Schneider noted the whole reason to grant those 18 lots at the time was so Utech didn't have to tear up the road which was a benefit for Utech. Schneider also understood that is the way the agreement was written, and it may not have been the best way. Utech and the Board both acknowledged the lack of clarity in the agreement and agreed a meeting needs to take place in the next 30 days to rectify the timing on payment of the fees.

Schneider conducted the first reading of Ordinance No. 11:

**AMENDMENT TO TERMS AND DEFINITIONS IN ORDINANCES**

AN ORDINANCE OF THE SPRING CREEK/COW CREEK SANITARY DISTRICT OF HUGHES COUNTY AND SULLY COUNTY, SOUTH DAKOTA, TO AMEND ORDINANCES NO. 7, 8, AND 10 REDEFINING TERMS AND REFLECTING NECESSARY CHANGES DUE TO NEW DEFINITIONS.

Schuh made the motion to approve the first reading of Ordinance No. 11. Bacon seconded. All voted in favor. Motion carried.

Schneider presented Resolution No. 2024-4 for approval.

A RESOLUTION OF THE SPRING CREEK/COW CREEK SANITARY DISTRICT ADOPTING THE POLICY AND SCHEDULE FOR PER DIEM RATES OF REIMBURSEMENT FOR MEALS, MILEAGE, AND LODGING RATES.

Bacon made the motion to approve Resolution No. 2024-4. Schuh seconded. All voted in favor. Motion carried.

Schneider noted the Board received two letters regarding the surcharge proposal from two different attorneys representing two different clients. The Board is in the process of answering them and response letters will go out to the respective attorneys tomorrow. Schneider also noted that the concerns of the letters and most concerns which have been relayed to the board infer another party should be paying more of the allotted surcharge. The Board surcharge proposal which has already been sent through DANR and the bonding agent is in between those two. It is not favoring one side or the other. It is down the middle. Schneider also noted not everyone is happy with the proposal, but the board attempted to make it as fair as they could.

Schneider requested a motion to approve the response to the Hegge/Utech letter. Konda made the motion to approve the response to the Hegge/Utech letter. Bacon seconded. All voted in favor. Motion carried.

Schneider requested a motion to approve the response to the Cadwell/Wiseman letter. Schuh made the motion to approve the response to the Cadwell/Wiseman letter. Bacon seconded. All voted in favor. Motion carried.

Miller noted an e-mail was received today regarding the earlier developer fee discussion. The members agreed they had not had time to review. Miller stated per the earlier discussion with Utech the issues may be resolved with the proposed meeting and they may not want a response at this time.

Schneider requested Linn to review the software presentation. Linn noted AMCS has removed their support staff

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from the US causing timing and assistance issues with the current software. Linn provided information as to the two companies who have provided proposals. The Board asked Linn to follow up on additional items for the next meeting. The Board also noted the cost associated with switching software interfaces and the preference to choose a larger, national company with a proven track record.

Schneider opened the floor to public comment.

Ann Wiseman provided an update on Bryan's health. Ann is working with Shawn Nichols and if anyone wants a copy of the letter they sent to the Board they can reach out to Ann at (---) --- --- and you have my permission to include my phone number in the meeting minutes. If you read the letter you will see that our lawyer, Shawn Nichols, has advised us that we do have the status for a class action lawsuit. If there are any residents who would like to join Bryan and I in the class action lawsuit they can reach out to (---) --- ----.

Curt Olson stated he appreciates the work the board does. With that being said he invites members of the board to attend a Sully County commission meeting on a regular basis. Curt asked the question as to whether GFP are paying for water/sewer services, if not why not, and if there is a consequence if the Board changes the way the surcharge is calculated. Schneider noted the Board has been advised to not open up the previous loans as there could be a risk of losing the current low interest rates. As a follow up Curt asked if the Board can ask DANR. Schuh responded yes it was asked and the Board is not willing to pursue with the concern the loan could be reopened. Mehlhoff stated the process is adopted with an Ordinance and to change the process would result in a new Ordinance being rehashed and submitted to DANR which could result in a change in interest rates. More users will drive the surcharge down, yet it is not considered a potential for opening the loan. Schneider noted everyone who has a meter is paying on the surcharge as a response to Curt's first question.

Vic Utech requested each member who is attending via zoom be required to identify themselves. Linn noted he requests individuals to identify themselves, yet he does not have a way to force them. Utech noted the following items about Aqua Tech: With the permits that are currently in place, do we have DANR approval for the proposed sewer system. Ross stated we have DANR approval, yet they have not finalized all of their comments on the final design. Utech inquired if the design could change. Ross stated no as we are pretty well locked in on that as it is designed around the Aqua Tech system, so we don't anticipate any changes except for minor ones. Utech stated that answer is pretty much no as you have a verbal approval and not written. Utech stated Ross mentioned they do not have Corp permits for the sewer system. Ross stated they are in the process of working through those. Utech inquired of who else do we need to get permits from. Ross noted that is all part of the process with the Corp. We are trying to get exempted on everything as it has already been disturbed. Utech stated he is trying to get figured out why it seems we are spending thousands of dollars on a sewer system that we have not been approved on as of yet. Ross did not agree with Utech's perspective as DANR has been with us every step of the way. We could not have selected the manufacturer without their approval. We could not have made any payments to the manufacturer to start drawing without their approval. They have been in the process the whole time. Andy with SRF described to us a few months ago that he was in favor of moving forward because he did not want to have any risk of losing the ARPA money for the district. So he was supporting the process to continue moving forward so we can have a contract in place by the end of the year. Utech wanted to bring into everybody's mind that the sewer repair project for the pond was approved by DANR for \$1.2 million, do not quote me on that amount, and after the grant money was allowed, they turned around and pulled our permits, our approval. Therefore, we were not allowed to apply for the grant money on the first round of this 5-million-dollar project. Utech stated he does not have any trust in DANR. The District got jipped. The District was allowed to apply in the second round, yet the second round was only left over money. We were denied the ability to get up to an 80% grant for this sewer system. DANR did that to us. Nobody here did that to us. DANR did that to us. Utech inquired whether this is a timeframe issue is why we are pushing for money for this now. Ross responded with yes. Utech noted he understands that part. Utech stated the District will have to start the entire surcharge process all over if the cost for the project comes in higher. Schneider asked Ross if we currently have bids on this. Ross stated we do have bids on the equipment which are right in line with the original

numbers. We did try to inflate the cost estimate a little bit, on purpose, knowing prices have been bouncing all over the place. We have seen other similar projects which have come in pretty close. There is always a risk, yet they do not see anything crazy out there today which would tell us that it will be significantly higher. Also we have an election coming up soon and that scares Ross. Utech noted the water tower bid came in \$800,000 over the estimate. So there is a risk here and we may not be done with surcharges. Utech noted the restricted developer fees were specifically set aside for future expansion. Someone from the crowd stated times up. Andrew Utech yielded his time to Vic Utech. Utech noted there is a risk with utilizing these monies. Schuh stated there is always a risk. Utech noted again being against using the restricted funds. Schneider confirmed it is very restricted and the Ordinance states word for word what the restricted funds can be utilized for.

Mark McConnell inquired as to why a developer is allowed to continue on with his project when the Ordinance requires the developer to pay his fees within 30 days of breaking ground. In addition McConnell mentioned it is unacceptable that the Board stated they may cut off service to the developer and the developer replied with that is unacceptable. Schneider stated there is an agreement dated 9/13/23 that passed on a 3-1 vote as one of the Board members got up and left. The wording that got in here was poor. The Ordinance states fees are due when breaking ground or within 30 days if I am not mistaken. This good will gesture of allowing the 18 lots to be developed would eliminate the need to tear up an access road in the future. There are grey areas here which will probably end up being determined legally. We want to continue to work together on this and we recognize the fault in this agreement. As a Board we want the developer fees paid, yet it will be for the parties to come to an agreement to rectify the situation. We will defend what we feel is right as long as we have a legal standing. If the Board can avoid legal fees on that I will to a point. The Board is trying to find a balance in defending their stance and to discourage legal fees which will result in fees going up. McConnell followed up inquiring whether developers will be required to adhere to the Ordinances in the future. Schneider stated all developers will follow the Ordinance. Schneider requested Attorney Miller to comment. Miller stated this is one of the things I mentioned in an email to Schneider is that this is one of those situations where a variance was granted. It was kind of a scratch your back thing to help Utech out so he didn't have to tear up the road again. Ultimately this is what we get back for it. Technicalities. Different words. Could it have been clearer; sure it could have. The end result in this is additional legal fees passed down to the residents of the District and future developers having to adhere strictly to the Ordinance as it is written with very little to no variance given these issues. Schneider stated we attempted to help out on this one, and this is the way it works, we may not in the future.

Tim Forsch inquired whether the Ordinance requires the developer to bring the road back to its original state. In addition, Forsch wants the residents to know that the road district will not be plowing the snow on Landing Avenue thanks to Mr. Vic Utech as he claims that is his road and he will not allow any maintenance on the road. Schneider stated we can look into that some more, but that was all part of the project which was approved already. Schneider stated there was an offer of \$2500 he believes to the road district. Forsch interjected and stated Vic will not allow the road district to do maintenance on that road. Let's just ask him. Schneider interjected and stated this is a road district issue. Forsch stated he is going against public safety by not allowing the road district to maintain the road. Schneider again stated that is a road district issue. Forsch stated the area in question was torn up as part of the original development and it is a concern for the District. Schuh stated the Board needs to continue to look into this. Schneider agreed.

Linda Williams inquired as to what option the Board will be utilizing for surcharge. Schneider noted the surcharge proposal that was approved by DANR and the bonding agency is online for viewing. For residential users approximately 255 users will pay \$30 per month. If you use more than 3000 gallons per month the fee will be \$40 per month. Williams noted this is their second home and the fee is higher than what they pay in Rapid City for their primary home. Schneider noted that the District had to take out over \$5 million in loans to fix the system that was neglected for years that was handed to us. Williams stated the developers should be paying their fair share of the costs. Schneider stated the Board's surcharge proposal on the 4<sup>th</sup> loan spreads the payment across the users. Schneider also noted the current lagoons were not sustainable the way they were. The Board attempted to purchase land for expansion, yet no one would sell to the Board. Therefore, the Board went to the system that

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is currently being proposed. Konda stated the surcharges are paid year around by each user whether they are here one day a year or that they are full time.

Schneider inquired as to whether there was any additional public comment. Hearing none the public comment was closed.

Konda inquired as to a need for Executive Session. Schneider stated none at this time. Miller agreed that there is no need for an executive session as all the Trustees approved the response letters.

Being no further business, Schuh made a motion to adjourn the meeting at 7:42 p.m. Bacon seconded. All voted in favor. Motion carried.

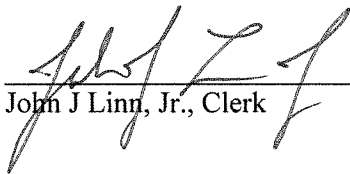
\*\*\*SIGNATURES TO FOLLOW\*\*\*



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Todd Schneider, Board President

ATTEST:



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John J Linn, Jr., Clerk