

SPRING CREEK / COW CREEK SANITARY DISTRICT  
MEETING MINUTES (*AMENDED 10/09/2024*)  
MONTHLY MEETING  
Wednesday, September 13, 2023

The regular monthly meeting of the Spring Creek/Cow Creek Sanitary District was held at the Boat House Bar & Grill on Wednesday, September 13, 2023. Chairman Schuh called the meeting to order at 6:01 p.m.

Chairmen Schuh, Bacon, Wiseman, Konda, Schneider, Superintendent Zuber, and Clerks Anderson & Linn were in attendance, along with 7 residents and 2 guests. Attorney Miller, 1 resident and 2 guests attended via Zoom videoconference.

Konda made a motion to approve the agenda as presented. Bacon seconded. All voted in favor. Motion carried.

Schuh asked the Board to declare any Conflicts of interest. None were declared.

Schuh made a motion to approve the 08/09/2023 meeting minutes. Bacon seconded. All voted in favor. Motion carried.

Superintendent Zuber presented his report to the Board. He reported that total gallons of water used in August was 1.7 million, or roughly 55,000 gallons per day. Sewer loss ratio was still negative for August. Zuber noted lift station issues and severe rainstorms overwhelm the system, causing the numbers to be skewed. On the topic of lift stations, Zuber also reported that the Walleye Street lift station was still having issues. He has ordered extra floats to have on hand to repair in a timely manner.

Zuber reported he has changed all locks to "code" locks to eliminate the need for someone to be on hand with a key in the event of an emergency. He also reported that he has been in contact with State Surplus regarding the next public auction and whether the District can add items to the auction.

Zuber asked for the Board's direction on a resident's past-due balance and the inability to access the meter and curb stop on the resident's property. He asked what his authority is when encountering such a situation. Wiseman indicated a letter should be written to the homeowner regarding the location of the curb stop and their delinquent bill, giving the homeowner a set amount of time to make the curb stop accessible to the District. Schuh asked for counsel advice on this issue. Attorney Miller responded that per Sanitary District Statute 34A-5-40, the District has the authority to assess the resident's property taxes for delinquent payment, but action would need to take place very soon. Unless direction is written in the Ordinances, the District must follow state statute. No further action was taken on this matter.

As a final note, Zuber notified the Board that Mid Dakota RWS is asking for the completion of a lead-pipe survey. Lyle with Bartlett & West interjected that he knew of no homes in the District with lead piping due to the newer age of the development. He offered to work with Zuber to complete the survey.

Due to the timing of the regular meeting and the published Public Hearing, Chairman Schuh made a motion to move the meeting to the Public Hearing at 6:29 p.m. Konda seconded. All voted in favor. Motion carried.

Chairman Schuh introduced Paul Mehlhaff, the District's representative from the Central SD Enhancement District, contracted to help the District with its improvement projects and their corresponding applications to the SD DANR. Mr. Mehlhaff came forward to describe the most recently approved Bid to Construct the Elevated Water Tank project and the funding shortfall since time of application and time of approval. The total cost of the project is anticipated to cost \$3,012,000, of which the District was awarded \$1,776,000 as a Federal ARPA Grant and \$444,000 as the original State Revolving Loan Fund. This leaves a \$792,000 shortfall to complete the

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project. After consultation with SD DANR, the need for additional funding will be reviewed at its next committee meeting, but noted that most likely the application would be funded with additional loan funds, not grant monies.

The additional funding requested was reviewed by Bartlett & West and includes a 10% contingency, if needed. In Mr. Mehlhaff's opinion, this additional funding application should be more than enough to complete the Elevated Tank project.

Based on 280 users in the District and a loan rate of 3.25% over 30 years, another surcharge of \$13.56 per user per month will be needed to fund the second loan. This will be in addition to the current surcharge of \$7.95 per user per month.

The Board will need to take action on a resolution to approve the additional funding request. Mr. Mehlhaff advised Chairman Schuh that he would accept public comments or questions.

Wiseman asked when the application would be submitted. Mehlhaff responded it is due on October 1<sup>st</sup>. He is awaiting a few items in order to complete the application.

Further discussion was held regarding the additional surcharge of \$13.56. Mehlhaff noted that as the number of users increase, the amount of surcharge collected per user would decrease. He told the Board that they had the ability to adjust the surcharge annually.

With no further comment, Schuh made a motion to pass Resolution 2023-3, a RESOLUTION AUTHORIZING AN APPLICATION FOR ADDITIONAL FINANCIAL ASSISTANCE, AUTHORIZING THE EXECUTION AND SUBMITTAL OF APPLICATION, AND DESIGNATING AN AUTHORIZED REPRESENTATIVE TO CERTIFY AND SIGN PAYMENT REQUESTS. Schneider seconded. All voted in favor. Motion carried.

Schuh made a motion to close the public hearing and return to regular business. Bacon seconded. All voted in favor. Motion carried.

Wiseman presented the Treasurer's Report for month-ending August. He reported that the financials were trending as planned. He also reported that since the Loan has closed, the District would be submitting a request for payment on all engineering and contract expenses relative to the Elevated Tank project soon, therefore replenishing the preliminary expenses incurred to date. Schuh made a motion to approve the Treasurer's report. Bacon seconded. All voted in favor. Motion carried.

Konda discussed the tractor and mower that was received by Hughes County when the District was formed. As was discussed during August's meeting, the District recognizes the need for updated, working tools and equipment for Sup. Zuber to perform his duties. Konda made a motion of intent to surplus and sell via online auction the tractor and mower. Wiseman seconded. All voted in favor. Motion carried.

Wiseman directed the Board to the first draft of the 2024 Budget for review. He stated that they have a good handle on recurring expenses over the past few years and have presented the budget with the standard 3% increase in rates. He also noted that the additional loan funding surcharge of \$13.56 is not included in this draft budget since those numbers were not available when the budget was prepared. Clerk Anderson asked Wiseman to address the requested change to the allocation of general expenses between water and sewer. The current allocation is set for 67% to water and 33% to sewer, based solely on projections. With historical information, that allocation falls more in line with 45% to water and 55% to sewer.

Konda asked about the budgeted item for Consultant Fees and how the District is budgeting for HDR

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Engineering expenses. Wiseman responded that since HDR is hired as a consultant for development projects, those expenses would be paid out of the developer fees and is not included in this budget.

Clerk Anderson presented the monthly Accounts Payable to the Board. ACMS Group, Inc - \$3,780.00; Anderson Nill & Associates - \$3,956.28; AT&T Mobility - \$90.37; Bartlett & West - \$64,947.00; Capital Journal - \$25.91; Dakota Pump & Control - \$315.13; Envirotech Waste Services - \$23.97; Ferding Electric - \$292.23; Forrest Zuber - \$450.00; Lammers, Kliebacker et al - \$3,750.00; Meierhenry Sargent LLP - \$4,440.00; Mid Dakota RWS - \$5,505.25; Midcontinent Communications - \$40.45; South Dakota 811 - \$13.65; The Onida Watchman - \$21.60; Wheelhouse Plumbing Inc - \$110.00. Wiseman made a motion to approve the bills as presented, including only the Bartlett & West Sewer Lagoon invoice for \$3,347.00. Schuh seconded. All voted in favor. Motion carried.

Schuh reported to the Board that the loan closing occurred on August 22, 2023. We are awaiting some guidance on how to submit expenses for reimbursement. Clerk Anderson will contact CSDED for further instruction.

Schuh also reported that she has executed the Contractor's Notice to Proceed, as prepared by Bartlett & West. Wiseman added that a pre-construction meeting will be scheduled soon. He is hoping to start the Elevated Tank project yet this fall.

Wiseman updated the Board on the Sewer Facilities Plan. The plan has been preliminarily approved by SD DANR and the District will again work with CSDED to submit the application. This application will be due in January, 2024.

Schuh asked Konda to discuss his proposed resolution to restrict the usage of Developer Fees to protect the funds for future growth and to develop a process for the Board to access the funds for emergency usage. Bacon asked for clarification on meeting requirements prior to emergency usage. Schuh asked if the Board could utilize interest-bearing CDs for a portion of fees collected. Further discussion was held and Konda reiterated his position that these funds should be restricted from general funding to be used for long-term capital improvements. Konda made a motion to pass Resolution 2023-1 A RESOLUTION OF THE SPRING CREEK COW CREEK SANITARY DISTRICT IN HUGHES AND SULLY COUNTIES, SOUTH DAKOTA TO RESTRICT THE USAGE OF DEVELOPER FEES IMPLEMENTED PURSUANT TO ORDINANCE 9. Wiseman seconded. All voted in favor. Motion carried.

Schuh made a motion to open a separate interest-bearing savings account at Bankwest in Pierre, SD to hold Developer Fees separate from the General Account. Schneider seconded. All voted in favor. Motion carried.

Konda requested to change the order of Agenda Item 10 to be held after Agenda Item 13 due to the nature of Item 10 so as not to create a conflict. Schuh made a motion to change the order of Agenda. Wiseman seconded. All voted in favor. Motion carried.

Schuh asked Wiseman to discuss the Inspection Services contract. Wiseman reported that the Board has encountered difficulties in finding completed documents on developments over the past few years. Wiseman asked the Board to approve Inspection Fees paid by the developer fees for the District's peace of mind. Konda stated his agreement to the testing requirement but not for the District to pay for or direct the work of a developer's contractor.

Schneider expressed his opinion that the Board should do its due diligence on a development of Codger's Castaway's size. This contract is intended for District-use only as an unbiased spot check.

Bacon asked if the District would be liable for repairs if it uses its District tester. Wiseman reminded Bacon that the Developer has a one-year guarantee to the District after completion of the project.

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Schuh expressed concerns with additional costs and the assumption of liability.

After further discussion and scenarios, Attorney Miller stated his concerns with liability issues under Agency Law. A District Inspector would control how the project moves forward and it could be construed as a District project, not a Developer project.

With no agreement by the Board, no further action was taken by the Board on this contract.

Schuh asked for an update on Nystrom's Development. Wiseman indicated that Mr. Nystrom has provided a signed set of plans, but his engineer has misplaced the required testing documents. The engineer is working with Wiseman and Mr. Nystrom to complete the requirement.

Schuh discussed the Codger's Castaway approval letter and the potential conflict in the letter. As written, the letter includes language to include an additional 17 lots of water and sewer installation, but will not be provided service until approved by the District and developer fees are paid. Konda asked for the Board to consider one additional lot as missed on the original count. If not, the road would have to be disturbed to install services to the missed lot.

Further discussion was held with the Developer regarding the approved 75 lots and the desire to install pipe for services to the 17 skipped lots as the construction develops, although no service would be provided until the additional lots were approved by the District and the Developer Fees paid.

Schuh made a motion to approve the additional 18 lots for construction without providing service to those 18 lots. Konda seconded. 3 voted Aye, 2 voted Nay. Motion carried.

Konda read aloud the Board's conditional approval requirements as presented in the approval letter. Discussion was held on the requirement to present pictures instead of geolocation. Konda asked for a change to include labeling of pictures so photos can be identified.

Wiseman departed the meeting.

*AS AMENDED 10/09/2024:*

*Yeah we are keeping all of them right there. I haven't seen nothing about this letter but my understanding is they are asking to allow me to go to this front entryway which I did ask for which I did ask for the first time, so I can put the road in so I have two roads/two exits for safety reasons that the county would like to have for fire and stuff like that. We don't have to plat them. You guys can stop the platting because that is not approved. That's what is approved. That is where the section ends. What we are trying to say let's put in the pipe/services to that section and obviously I would have to pay the developer fees before we plat any of those sections. At least we have a good solid road.*

Konda made a motion to execute the Conditioned Approval Letter to include 75 lots of service plus an additional 18 lots of construction, waive Developer Fees on the additional 18 lots until approved for service by the District and the Developer Fees paid, and to authorize Chairman Schuh to sign the letter on behalf of the District. Schuh seconded the motion.

*As Amended 10/09/2024:*

*Konda: I make a motion to approve the 75 lots, the 18 lots contingent on paying the developer fees at a later date exercising item 3 in our ordinance that give us the authority to waive the fees until a later time no connections made to those per the approval and to authorize Kathleen to sign the approval as soon as these clerical or small changes are made. Kathleen seconded. 3 voted Aye, 1 voted Nay. 1 trustee absent. Motion carried.*

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Konda discussed the proposed resolution for a short-term, 120-day moratorium on approval of development plans. He stated known frustration by Utech on the processes of the District during his latest development. A moratorium gives the Board time to design and develop criteria to make the District's process more efficient. Schneider made a motion to pass Resolution 2023-2 (as amended to correct title) A RESOLUTION OF THE SPRING CREEK COW CREEK SANITARY DISTRICT IN HUGHES AND SULLY COUNTIES, SOUTH DAKOTA TO ISSUE A NOTICE OF MORATORIUM ON APPROVAL OF PLANS FOR DEVELOPMENT. Konda seconded. 3 voted Aye, 1 voted Nay, 1 Trustee absent. Motion carried.

With no further business, Schuh opened the floor to public comment. Comments were heard regarding the Moratorium, the Developer's conditional approval letter and the restricted use of developer fees for emergencies.

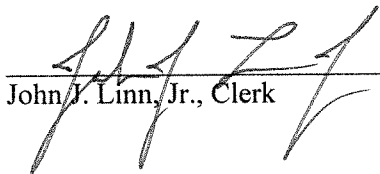
With no further business to discuss, Schuh made a motion to adjourn the meeting at 9:24 p.m. Konda seconded. All voted in favor. Motion carried.

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



Todd Schneider, Board Chairman (Amended 10/09/2024)

ATTEST:

  
John J. Linn, Jr., Clerk