

SPRING CREEK / COW CREEK SANITARY
DISTRICT MEETING MINUTES
MONTHLY MEETING
Wednesday, October 9, 2024

The regular monthly meeting of the Spring Creek/Cow Creek Sanitary District was held at the Boat House Bar & Grill on Wednesday, October 9, 2024. President Schneider called the meeting to order at 6:00 p.m.

President Schneider, Bacon, Konda, Kopman, Schuh, Superintendent Zuber, and Clerk Linn were in attendance, along with 10 residents and 1 guest. Attorney Miller, 3 residents and 3 guests attended via Zoom videoconference.

Schneider inquired as to any changes to the agenda. Schuh noted item 11) change to Review of Appendix A. Schneider requested a motion to approve the agenda. Schuh made a motion to approve the agenda as amended. Konda seconded. All voted in favor. Motion carried.

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

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

1. Meeting Etiquette. Public comment will be taken at the end of the meeting.

Schneider requested action on the 9/11/2024 meeting minutes. Bacon made a motion to approve the 9/11/2024 meeting minutes. Schuh seconded. All voted in favor. Motion carried.

Schneider noted the proposed amendments to the 9/13/23 meeting minutes:

9/13/23 1:49:59 Utech: 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.

9/13/23 2:34:18: 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.

Kopman inquired as to what was there before. Schneider clarified the first amendment was absent and the second amendment "until a later time" was absent. Schneider noted the video recording was reviewed, and the amendments are what was actually said. Konda made a motion to adopt the amended 9/13/23 minutes. Schuh seconded. All voted in favor. Motion carried.

Schneider requested Superintendent Zuber present his report to the Board. Things have been going good. Not too many issues this month knock on wood. In September the District utilized 1.2 million gallons for the month with a daily average of 40,000.

Other items noted by Zuber:

1. The District passed the disinfection byproducts testing.
2. Finished and submitted the lead and copper survey to the state.

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3. The District passed the wastewater facility inspection from the state.
4. Three new applications have come in. Sent out 3 others which I expect a few more to come in before the end of the year.
5. Next month Forrest will retest for treatment 2.

Schneider commended Forrest for passing the inspections.

Schneider requested Konda present the Treasurer's Report. Konda noted for the month of September: Unrestricted checking account - \$211,527. \$121,500 is for a bill held from last month. Restricted meter deposits - \$30,923. Restricted long-term developer fund - \$305,500. As far as the budget for the year water/sewer fees are running at 77%. We are a little behind on water/sewer surcharge. Konda will continue to look closer at that. All in all, the District is covering all costs. 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 - \$5,111.81; Aqua Tech Systems, Inc. - \$572,553.50 (held); AT&T Mobility - \$91.24; Bartlett & West - \$81,420.00 (held); Core & Main LP - \$3,392.57; Envirotech Waste Services - \$23.97; Hi Plains Storage - \$1,100.00; Lammers - \$1,475.00; Maguire Iron, Inc. - \$121,500.00; Meierhenry Sargent LLP - \$3,000.00; Mid Dakota RWS - \$5,191.52; SD Public Health Lab - \$30.00; South Dakota 811 - \$17.85. Schneider confirmed the Meierhenry bill was for the loan closing. Konda inquired whether the Aqua Tech Systems bill will continue to be held. Schneider confirmed Mehlhaff and Ross stated there are items DANR needs to complete prior to considering payment. Konda inquired whether the Bartlett & West bill will be held in entirety. Mehlhaff noted the amounts being held are for the clean water project of which loan funds are not available for reimbursement at this time. Ross confirmed Bartlett & West understand the situation and are ok with the bill being held at this time. Kopman noted the lack of available funds for the District and whether interest is charged by Bartlett & West. Ross noted per the contract interest is not accrued until balances are outstanding for over a year. Konda made the motion to approve the bills as presented noting the hold on AMCS, Aqua Tech and Bartlett & West. Bacon seconded. All voted in favor. Motion carried.

Schneider requested Jim Ross update the District on the sewer facilities plan. Ross stated he and Mehlhaff will be meeting with DANR to rectify the miscommunication on where we are at with the final plan. We have gotten all of the information from the manufacturer to be able to finalize everything on the updated plan. Our schedule is to have that done in the next few weeks. The plan is to take the updated plan and meet face to face with the review engineer and SRF to walk through them. As we have discussed they would expedite that review allowing the District to advertise that and put it out for bid. We are close to that, and all understand the urgency to get that completed to get a contractor on board before the end of the year. We also have a meeting coming up Friday with the Corp of Engineers to try and finalize everything associated with the environmental study and their permitting process. Once we have that we will be able to update the contract amendment. So, what we would like to do, whatever the Corp is requiring, is we would add that to the contract value and then take that into construction. So, we will have construction, administration and observation to move forward in one fallow swoop. Konda inquired as to what Bartlett and West needed the District to do tonight to allow for the timing on what needs to be completed to have a contractor bid prior to yearend. Ross stated he would like to be able to advertise at the same time DANR is doing their final review. Konda discussed a potential motion conditioned on DANR action. The Board discussed and assessed the risk to the District as minimal associated with passing the motion due to the condition on the motion. In addition, the approval of the motion will decrease the potential need for a special meeting in December to approve a bid. Konda inquired to Ross whether he anticipated any changes resulting from DANR's review. Ross stated he anticipates minimal minor changes or none. Ross also noted Andy (from DANR) did tell us back in July he knew the Corp process would probably still be in motion, yet DANR would support us going out for bid prior to us having that approval from the Corp as he thought that would be held up. Ross noted the Board will be updated constantly during the process, so they are aware of what is going on with the process while we are out for bid. Konda inquired, for clarification, that Bartlett and West had not received any emails or anything from the state with list of changes/written documents at all. Ross stated correct. They had received a few

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minor verbal comments early on, but they weren't anything regarding the actual treatment plant or the real design plans. They were more of a report in general comments. And the biggest issue in all of that was in regard to the force main and the discharge. It wasn't the treatment plant and the rest of the facility. Konda made a motion to allow Bartlett and West to proceed with advertisement for bid contingent on getting DANR's approval to bid prior to their final approval. Bacon seconded. All voted in favor. Motion carried.

Schneider requested Nathan Danner update the District on the water facilities plan. Pay application #7 came in. It is essentially paying for some of the SCADA panels and equipment that have been delivered to the electrical contractor. Right now, in October they will start ramping up the fabrication and shop blasting at their facility in Sioux Falls. Their current plan is the steel will start showing up at the site and have a crew on site before Thanksgiving. Dependent on the weather and the crew finishing up their other projects. Konda commented he had the opportunity to tour their facility, and they would welcome a board member or operator to do the same.

Schneider inquired to Utech and Ross on who wanted to start the conversation on Codger's Castaway development. Ross stated this afternoon Jason sent over updated as-builts. Ross looked at them briefly and it appears they addressed the comments that they had. Ross also forwarded to Forrest. Ross and Forrest will get together tomorrow to make sure everything is accounted for there. Ross' initial review is that they had answered the questions that were submitted previously. Schneider inquired as to whether Konda had seen the updates. Konda stated he briefly viewed yet was not able to open the file. Konda was of the understanding the water line crossing the property had been addressed. Ross expanded stating his comment was they connected the water line on the as-built to the valve on the hydrant rather than the valve that was inline. That made the water line show up crossing the property lines. When he adjusted the connection back to the correct valve then the water line shows up in the right-of-way. Utech confirmed that is exactly what happened while also noting he needed to get a 10'x10' easements filed for a couple fire hydrants. Ross agreed the hydrants are shown just inside the property lines. Schneider inquired whether there were any additional comments. Konda noted the need for clarity on the 3-way valve and how it is stubbed out on Ogan road. Ross noted it is in the new submission as tied into 6. Schneider inquired whether there were any additional comments. Ross stated he will get with Forrest to make sure everything matches up to what he has seen. Konda noted for clarification the Board has written comments on this, so who is handling sending the written comments out to Utech. Ross stated I owe you that and then any official approval will come from the Board to Utech. Konda also inquired as to whether the Board or Ross will take care of confirming the plan has been updated. Ross stated he will take care of that, and he will coordinate with Konda to make sure everything gets addressed.

Schneider requested comments on development fees. Konda stated the fees were to be waived until a later time and there needs to be a sunset on this including issuing approval, getting as-builts on this. There needs to be a hard sunset on this to close this project out. I don't know what is fair. I imagine Mr. Utech has a different opinion than me and I respect that. Utech stated for clarification what I would like to see and moving forward is to have more to talk about this with any future projects and stuff like that. For the sake of these 18 lots there was some confusion and misunderstanding about the agreement. So here is what I want I would like to pay for those when services need to be rendered. And I am not talking about lot by lot. I am talking about the entire 18 lots. I don't have any of those sold. I do have some that are sale pending. One guy stated he is 2 to 3 years out. Obviously, I don't want to spend money on something that just sits there. I've never been in favor of just paying for this stuff in advance. Utech stated Neal made a comment that guarantees you the capacity. Well, the capacity has already been guaranteed by the denial of them being moved out of the District. By law this Board has to provide no matter what. So that's not an excuse. That's none the less neither. What I would like is a little bit more working relationship with this Board on the fees. And again, I am not arguing the fees. All we are talking about is when they are due. Keep in mind please that there is no burden to the District here until someone actually hooks up. So, I guess until we want to bring those 18 lots online...is that 6 weeks from now...is that six months from now...I don't know. I would expect that sometime next year for sure. I would like to be able to walk in and pay those fees at that time. And you are still in control. The Board is in control. You don't have to give me hookups until those fees are paid. Right? And that's pretty clear. So, you are not getting into a situation where you are losing control. And quite frankly, you do not need the money. And I'm not arguing the money.

(Laugh). Schneider stated we always need the money. (Laugh). You see what I'm saying. I would just like the Board to be flexible about doing their duties. Kopman requested Utech clearly state what he wants. Utech stated in the future I do want to sit down with the Board I got a lot of things...we tried to get together, yet you all had a lot of things...I got parents that got hurt. Schneider agreed they have been trying to get together the last two months. You initiated it first and then we initiated. What we wanted to do is present to you the video recording that we talked about today and the as-builts as Jim provided to Jason. The three of us or whatever wanted to present that to you, and it didn't work out. Utech appreciated the Board reaching out and I was tied up in Deadwood and couldn't get away. Kopman inquired as to when he sells a lot is when he wants to pay the fees. Utech stated yes. When they want to bring them online. I mean even selling them, just like Neal and Wiseman, they built buildings. Anyone can build buildings and not need water and sewer. It's not selling them. It is really when somebody needs to hookup is when it becomes a burden to the District. And that fee should be paid before then. Schneider noted, in his personal opinion, I see an issue for example with Neal and Bryan's buildings. That's never going to happen. Part of this developer fees was kind of earmarked for if we do have cost overruns. If we do have a major lift station go down. There is a whole list of things this is earmarked for that haven't happened yet. Is it going to happen. We know it is. So that is why I tend to more agree with Neal to set a time to the deal. Whether we do this right now or not, I would like to at least offer a meeting to get this ironed out and I would lean toward direction more of a finite time. Bacon noted his concern as to allowing this to happen, what happens to the next contractor that states I don't want to pay the fees until I have a lot that wants to hook up. Utech made the comment you are also charging for something that isn't a burden. It doesn't make a difference as another developer would be in the same shoes as mine, so you could work that developer just as easily. So, it really shouldn't be assessable as far as I am concerned. The fact that you have to pay this fee to go to work on your own property with your own money with no guarantees from the Board whatsoever aint right. Bacon noted we still have to have the facilities available for the lot to be developed. That is the point. We have to spend this money to get equipment to make sure you have facilities for this entire area. Utech stated again I am not arguing the fees. I am arguing when they are due. Schneider stated the way he looks at it the Board is representing all of the people, which is you too. We are representing everyone in the District. Yes that gets contentious. I get that. We do need to work together because again this agreement wasn't as clear as it should have been. But we also have the ordinances that we are bound by that can be used as action against us on the ordinance. The ordinance was zero to 30 days. We have already worked that aside. And I am saying we can work more, but, in my opinion, we are going to have to have a date, and I would like to hear what the rest of the Board has to say, so we can work on it. Kopman noted we have one developer here; we might as well work with him. Utech clarified there were two special meetings called to change the ordinances so you can work with the Board, changed the ordinances so you can work and be flexible with the ordinances. Just because the ordinances have a standard, you already passed ordinances that say you can be flexible. So, we are not breaking the ordinances at all. Schneider stated, correct if I am wrong, if that was to be utilized that should have been granted variance in the beginning is all that I am saying. Fees were to be due at a later date and further conversation was upon completion. That was the conversation and intent that was recorded that night. I am happy to give it to you if you want to listen to the tape. It was about 3 hours long and it wasn't a fun meeting. Schneider inquired if Bacon had anything else. Bacon noted he expressed his thoughts already. Schneider noted the contracts do need to be clearer in the future. Utech noted the District is still getting the money. Nobody is arguing the money here. We are just arguing the time of payment. You are still getting the payment. In my opinion it is more fair to expect that payment when it becomes a burden on the District. Konda inquired as to when we would start the warranty. Who is responsible for that. The other concern is if you sell you are no longer the developer on that lot. So if we make any type of agreement that payment is due when services are rendered to one lot it has to be absolutely bullet proof. If you sell 17 of the lots and it just so happens that one of them wants to connect, we don't want to have where you say I am only responsible for the one. I sold the other 17, so it is someone else's problem now. That's what gives me pause on it more than anything. Utech stated he believes there is a way to work around this. I have just a couple popping in my head. It will have to be decided by the attorneys. Schneider noted Miller just joined the zoom call. Utech stated let's say there could be like a ten-lot slush fund in a reserve fund. You got that so you can pull it down until you get to like 8 and then you say hey Vic you need to add on, so you throw another \$32000 in there. Would that solve anything? Is that an option? There are details that would definitely have to be worked out. Utech then asked Konda to repeat his concern now that Miller has joined the call. Konda stated basically our

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concern is that Vic is asking to pay development fees when somebody actually asked for service then the development fees would be due in total. My concern is if he goes out and sells 17 of the lots today and down the road someone comes up and says they want service now. We go back to Vic and say hey the money is due. Then it's not the issue of I don't even own those lots any more go talk to that guy. That's my concern. It's what I don't want to see happen. Schuh noted that would be hard to keep track of. Schneider added what if they never ask for water. Miller stated he shares some of the same concerns as the ownership is going to change and then it is difficult for the District to recover those developer fees on the back end. As far as whether they ever ask for water, I am not sure necessarily a problem because if the District determines that they are required once they have a structure on the property to have those services then you can require a monthly fee and then once they are receiving services you can require or collect the developer fee. But again, I think it is a problem down the road. When we are dealing with a developer right here and now is when it should be paid. Schuh inquired as to what Utech is proposing. Utech stated for the sake of the 18 lots, and like I said I would like to go back and revisit this or come up with a different plan maybe later unless you want to address it from now on. For the sake of the 18 lots, Neal would like to have a sunset clause, so can we do a year? And again, guys I don't think it is going to be that long. Like I said I got one sale pending now, yet he isn't going to build for 2 years. I highly doubt we will get through next year without somebody wanting to be on water. I highly doubt it. Schneider inquired that he is effectively asking for a two-year as it has been a year since the agreement was written. Utech stated that is not how I see it, but... Konda stated I don't know that a year for a sunset is bad, yet it has to be said in there that it has to be paid if anyone needs service prior to them receiving that. Utech responded with of course. Schneider stated the entire amount. Utech said yes, the entire amount. Konda acknowledged the language in the agreement was less than good. Konda stated the agreement said it would be pushed off until another time. There was no sunset on it then. I would like to see less than that. I was even thinking 90 days myself. Schuh wasn't thinking a whole year. Kopman inquired as to how much we were getting in interest on the fees. Konda estimated current interest was about \$5000 for the year. Utech stated he doesn't feel there is any harm done to the District or to the people of the District by a year. Obviously, nothing is going to happen now as we are going into winter. So if we can get past that. Schneider noted some of the biggest times are starting in May and the biggest time is July. Utech noted we have a limited construction season here. Utech said let me add this. Neal just asked about a warranty. It's a one-year warranty. Right? How about we do a one-year warranty from the time it is paid. Schneider says well yah. Utech states if we wait a year then you actually get a two-year warranty on that project. You are getting an extra timeframe on the warranty. Schneider stated let's do six months. Utech said let's do a year and extend the warranty. Schneider stated how about six months, and we extend the warranty. Schuh stated you know someone is going to want service before that. Utech said yes and then you don't have to wait a year. Schneider asked Neal how he felt about six months as I know you are thinking 90 days. Utech stated 90 days is the middle of winter. Konda stated I understand that, but like I told you I want to close this out and be done with it. Utech started but wait a minute. For your convenience you want me to cough up a bunch of money. Is that fair? Come on now. Konda stated if the language is put together clearly that if someone needs service the full amount on the 18 lots payable prior to the service being connected. I can get on board with going out to a year, but the money has to be there. I can get on board with that. I don't like it. But if we extend the warranty from when it is actually paid, for a year from when it is actually paid. Schneider asked for Cody's input. Miller stated that we can make a deal that works for everybody if you guys can agree to it. I would say at this time if we are going to be stretching back making another extended deal here I think we need to have signed agreement between the parties then not just the clearest notes or motion or minutes. We need to have a signed agreement. Schneider recommended making the deadline June 30th. Utech stated fair enough. Konda stated we need to get somebody together with Vic, Cody and Stacy to get some draft language put together. Then we can take action on it at the next meeting with a fully written out document. Schneider stated the intent would be the entire payment is due no later than June 30th, unless a person requests water, the entire amount for 18 lots is due prior to providing them water. In addition, the one-year warranty starts upon payment of the 18 lots. Utech asked for one more thing. I would like to have credit back on lot 1 because the entire easement for the District for the lift station. There will never be anything built on that so there will not be a burden. I paid a \$4000 developer fee, and nothing can ever be built on it. And then one of your board members built a house on two lots. So obviously you can't build more than one structure. This is something we can talk about later. I don't know if it should be on this deal or not. There are a couple of situations that I feel like we might be paying for that will never come to be. Is it possible in

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the future that we can have some credit back. There never will be two hookup fees on those. Konda clarified they are not hookup fees they are developer fees. Schneider noted that is the same for anyone else here that decides to merge lots after they are sold. The developer would not be able to say give it back. Utech inquired whether the Board would go after an additional developer fee if one lot was split into two. Konda made the comment that it may be considered if plans changed during construction prior to platting it may be considered. Yet the District has no control over how individuals utilize lots after the development has been approved by the District. Utech stated it could be changed to payment upon construction. Schuh and Konda did not agree with the proposal. Utech stated you are asking for development fees on things that are never being developed but you just passed infrastructure fees that you refused to charge empty lots because they may never be built on per Cody's own words. So you have people you just passed ordinances on that may never build on these lots then they shouldn't have to pay anything. So, you are talking out of both sides of your mouth here a little bit. You are saying these people 325 empty lots may not build on them so they don't have to pay anything, yet Vic Utech the developer should have to pay on every lot. I don't know about that. You are saying one side over here is convenient for you and one side over here is convenient for you. Schneider stated I consider that two different things, yet again we will talk about it another time. Schuh requested clarification on which lot he was requesting reimbursement on. Utech stated lot 1 is entirely an easement and won't be built on. Konda clarified lot 1 was not entirely an easement when it was originally submitted. Schneider stated we do not have to make that decision tonight. Konda stated the appropriate time to raise this issue would have been before approval of the development, not 6 months to a year later. Schneider and Utech both agreed we accomplished a lot this evening. Ross inquired as to the language needed for the maintenance bond. The Board noted there would not be a maintenance bond for the 18 lots as it was approved utilizing Ordinance 9.

Schneider conducted the second 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 second reading of Ordinance No. 11. Bacon seconded. All voted in favor. Motion carried.

Schneider requested Schuh review Appendix A. Schuh noted the 3% increase in the user fees and noted the addition of the \$5.20 surcharge. Schuh referred the Board to Ordinance 7, Article 7, Section 3E. Schneider inquired whether we need to create an article 12 this year to implement collection of the \$5.20 DW-02 and potentially the CW-02 surcharge. Konda noted his recollection was that language was specifically added so we would not have to republish ordinances as we changed small stuff. We send out Appendix A 30 days' notice that the bills are going up and the \$5.20 was read in a resolution adopting the surcharge and the responsibility to pay that surcharge. Miller noted the section references resolution 2022-3 and he believes that section is specific to that resolution. It may work to add in the 2024 resolution, yet you would have to complete by doing an ordinance amending it. Miller recommended waiting to approve both DW-02 and CW-02 in one ordinance change once CW-02 is ready. Miller noted the District can start collecting the DW-02 surcharge as the resolution allows for it, yet it cannot be noted in Appendix A. Appendix A will be distributed with the updated amounts on the current information and a note will need to be included with Appendix A notice informing the users that the DW-02 surcharge collection will also begin January 1, 2025. The notice will be advertised on the website and included with the 30-day notice. The ordinance will be updated to be consistent with the passed resolutions in the future. Mehlhaff noted the resolution for CW-02 will be composed in the future and the District does not need to start collecting the CW-02 surcharge at this time.

Schneider inquired if everyone had an opportunity to review the updated software proposal. Schneider noted Hannah is recommending Ampstun. Schuh made a motion to approve Ampstun for the billing software. Bacon seconded. All voted in favor. Motion carried.

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Schneider opened the floor to public comment.

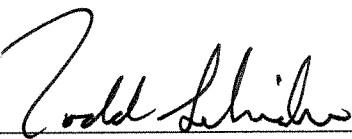
Andrew Utech noted he heard the marina near the proposed sewer discharge area may be coming back online. Schneider asked Ross if he had heard anything. Ross stated no, yet we will want to flush out and make sure we don't have any conflicts going forward.

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

Schneider inquired as to the need for an Executive Session. None noted at this time.

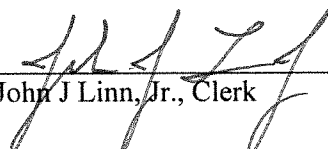
Being no further business, Bacon made a motion to adjourn the meeting at 7:33 p.m. Schuh seconded. All voted in favor. Motion carried.

SIGNATURES TO FOLLOW



Todd Schneider, Board President

ATTEST:



John J Linn, Jr., Clerk