

SPRING CREEK UTILITY DISTRICT
Minutes of Meeting of Board of Directors
July 17, 2023

The Board of Directors (the “Board”) of Spring Creek Utility District (the “District”) held its regular monthly meeting in accordance with the duly posted notice of meeting and the Texas Open Meetings Act. The roll was called of the duly constituted officers and members of said Board, as follows:

Claude Humbert	-	President
Mark Fusca	-	Vice President
Frederick Sunderman	-	Secretary
Leslie Gourley	-	Assistant Secretary
Melvin Willcockson	-	Director

All of said members were present except Director Fusca, who entered later in the meeting, and Director Willcockson, thus constituting a quorum.

Also present were Monica Pena of Utility Tax Services, LLC (“Utility Tax”); Amber Hurd of Cobb, Fendley & Associates Inc. (“C-F”); Lindsey Delong of Municipal Operations & Consulting, Inc. (“MOC”); Jonathan Roach, Ray Arce, and Jessica Gentry of Roach & Associates, PLLC (“RAPLLC”); Simon VanDyk and Calep Estes of Touchstone District Services (“Touchstone”); Brian Desilets, who entered later in the meeting, and Eric Gonzalez of Clarity Consulting Corporation (“Clarity”); Aric Braddock of ASB Services, Inc. (“ASB”), who entered later in the meeting; Shane Sullivan* of Volare Partners, LP, the Fieldhouse developer (“Fieldhouse”), who entered later in the meeting; Jennifer Vossler of McCall Gibson Swedlund Barfoot PLLC (“MGSB”); and Tim Crawford of HMF Americana, LLC (“HMF”) and Scott Greer (Engineer to HMF); [* Remote Attendees]

Call to Order: President Humbert called the meeting to order.

PUBLIC COMMENTS

There were no public comments.

CONSENT AGENDA: MINUTES

This item was deferred.

CONSENT AGENDA: CONSULTANT REPORTS

Director Gourley motioned to approve the following consultant reports: (1) Tax Assessor’s Report, attached hereto as **Exhibit “A”**; (2) Inspector’s Report, attached hereto as **Exhibit “B”**; (3) Operator’s Report, attached hereto as **Exhibit “C”**; and (4) Communications Report, attached hereto as **Exhibit “D.”** Director Sunderman seconded the motion, which passed unanimously.

GARBAGE COLLECTION REPORT

There was nothing new to report.

ANNUAL AUDIT REPORT FOR FYE APRIL 30, 2023, AND AUP AUDIT RELATED TO RE-ALLOCATION OF SERIES 2021 BOND FUNDS AND DEVELOPER REIMBURSEMENTS

Ms. Vossler noted that the April 30, 2023, Fiscal Year End (“FYE”) audit has been postponed to next month. She then presented the Woodmere reimbursement audit, discussing the amount allowed to be paid to the developer before full Texas Commission on Environmental Quality (“TCEQ”) approval. She further recommended the Board wait to release this money until the pre-purchase inspection has been completed. A short discussion ensued regarding the availability of funds and verification of the items being reimbursed.

Director Sunderman inquired about the amount of money deferred to future funding. Ms. Vossler noted that the District is reimbursing the Woodmere developer 70% now, with 30% reimbursement after TCEQ approval. Director Humbert inquired how interest for the remaining 30% would be calculated. Mr. Roach noted that paying the 70% reimbursement alleviates paying interest on the remaining 30%. The Board then discussed interest rates and the transfer of money.

After some discussion, Director Sunderman motioned to approve the Agreed Upon Procedure (“AUP”) audit and authorized the release of the 70% reimbursement check to the Woodmere developer, subject to the completion of the pre-purchase inspection. Director Gourley seconded the motion, which passed unanimously.

Mr. Braddock entered the meeting during the discussion.

Ms. Vossler and Ms. Pena exited the meeting.

DISTRICT ADMINISTRATION BUILDING OPTIONS

Ms. Hurd confirmed that the Request for Qualifications (“RFQ”) had been published on CivCast for potential design-build teams to download. She further noted that submissions will be due in August. Director Sunderman inquired if the Directors could meet with the candidates for pre-approval. Ms. Hurd confirmed that once they have received submissions, the Board can decide if they want to conduct interviews or choose from the submissions. Director Sunderman stated the importance of meeting with these candidates so that they may answer any questions asked.

Mr. Desilets entered the meeting.

FOX RUN DRAINAGE MATTERS, INCLUDING RESIDENT ISSUES AND PENDING LITIGATION

Ms. Hurd noted there was nothing new to report.

ENGINEER’S REPORT

Ms. Hurd presented the Engineer’s Report, a copy of which is attached hereto as “Exhibit E,” and provided updates on the following:

(1) General District Engineering: (a) Water Capacity Analysis, noting C-F has submitted the North Pressure Plane ACR renewal to the TCEQ; (b) Fox Run Drainage Analysis, noting C-F has coordinated with Montgomery County Drainage District No. 6 (“MCDD6”) on potential mitigation options and that MCDD6 has available regional detention for purchase. She further noted that C-F sent the completed drainage study to MCDD6 for review; (c) WWTP Discharge Permit Renewal, noting C-F has received from the TCEQ a Notice of Application and Preliminary Decision (“NAPD”) for publication which is now being scheduled for publication; and (d) Reclaimed Water System, noting C-F is continuing to work on a feasibility analysis of a proposed reclaimed water system.

(2) District Projects (*Design*): (a) Fieldhouse Utility Extension, noting the public waterline and sanitary sewer force main extension to serve the Fieldhouse development, has been resubmitted to the Texas Department of Transportation (“TxDOT”) for review.

(3) District Projects (*Construction*): (a) Fox Run Water Line Rehabilitation Phase 2, noting the contractor has been working on an 8-inch pipe bursting along Springstone and Atherstone and further indicated that Binefield and Raystone are next on the schedule. She then presented and recommended payment of Pay Application No. 1 for \$156,655.95, payable to SKE Construction (“SKE”). Director Gourley motioned to approve Pay Application No. 1, as noted. Director Sunderman seconded the motion, which passed unanimously. Finally, Ms. Hurd said C-F is still awaiting Montgomery County approval of Phase 2 of the Water Line Rehabilitation plans.

(4) Development Projects: (a) BCS Capital Group, LLC - Locke Tract, noting C-F will begin design once payment from the developer is received; (b) Fieldhouse Project - 2007 Riley Fuzzel Road, noting C-F provided additional review comments to the proposed Fieldhouse development plans and confirmed the plans have been resubmitted for C-F’s review; and (c) 56-acre Riley Fuzzel, noting C-F received an annexation request for 600 apartments west of Fieldhouse.

Mr. Crawford presented a proposal for The Cottage Green multi-family apartments and a proposal for a 55+ luxury senior apartment community. The Board then had a lengthy discussion regarding the difference in build and capacity between the two (2) projects. Director Sunderman noted that he would prefer a multi-use development with residential apartments on top of a commercial strip. Mr. Crawford then explained The Cottage Green demographics. Director Gourley inquired about the price range for the apartments. Mr. Crawford confirmed the rental rates will range from 20%-30% over the market rate. Mr. Crawford then recommended the Directors visit one of their locations on FM-1488 to get a better feel for the final product. Then a lengthy discussion ensued regarding the number of units linked together in each project and the potential tax revenue from the properties.

Ms. Hurd presented the proposals for the proposed Water Plant No. 3, noting it would be approximately \$6.6 million for construction. She then stated that improvements to the booster pump in the southern pressure plane would best be performed at the depressurization plant at Birnham Woods. Director Sunderman motioned to approve the Water Plant No. 3 proposal and the Water Plant Improvements. Director Gourley seconded the motion, which passed unanimously.

Messrs. Gonzalez, Greer, and Crawford exited the meeting during the discussion.

GENERAL REVIEW OF WATER SUPPLY OPTIONS AND PENDING CAPITAL IMPROVEMENT PLAN (STORM) PROJECTS

Ms. Hurd presented the updated water CIP with comments from the special meeting held on June 27, 2023, which included the bid cost from SKE and maintenance items added to the year 2033. The Board then discussed the replacement of specific booster pumps and generators at each water plant and other line items that needed to be added to the CIP. Director Gourley inquired where the money would be taken from when construction starts on their administrative building. Director Humbert confirmed this money would come from the District's operating fund. He then inquired if C-F had compared the pricing to the previous amount A&S Engineers, Inc. ("A&S") had. Ms. Hurd noted they escalated the amount by a certain percentage. A discussion then ensued about raising the inflation rate in the CIP calculations.

Ms. Hurd presented the storm drainage CIP. She then discussed the replacement of pumps and electrical and generator work improvements. Director Sunderman inquired about the new generators at the Legends Ranch storm facility. Mr. Braddock confirmed they are completed.

After a lengthy discussion, Director Gourley motioned to approve the storm CIP, subject to the discussed revisions. Director Sunderman seconded the motion, which passed unanimously.

BOOKKEEPER'S REPORT

Mr. Desilets presented the Bookkeeper's Report; a copy is attached as **Exhibit "F,"** noting that Texas Class has a higher interest rate than TexPool. After some discussion, Director Sunderman motioned to move the District's debt service fund and the general fund from TexPool to Texas Class. Director Gourley seconded the motion, which passed three-to-one (3-1) with Director Fusca abstaining.

Director Fusca entered during the discussion.

The Board then discussed moving the District's general and special revenue funds from Central Bank to Cadence Bank. Mr. Desilets confirmed he would provide more information at the next meeting. He then presented the 2023-2024 Operating Budget. After some discussion, Director Gourley motioned to approve the: (1) Bookkeeper's Report; and (2) 2023-2024 Operating Budget Amendment. Director Fusca seconded the motion, which passed unanimously.

FUTURE REQUIREMENTS FOR LEAD AND COPPER RULES

Ms. Delong confirmed they had completed Phase 1 of the Lead and Copper Rules & Regulations ("LCRR"), identifying all connections before 1988, and noted that approximately 600 connections need to be field verified along with a handful of others for spot-checking. She further stated that these inspections will occur in the next six (6) months.

PREVENTATIVE MAINTENANCE PROGRAM

There was nothing new to report.

FIFTH AMENDMENT TO OPERATOR CONTRACT AND POSSIBLE RATE ORDER AMENDMENTS

This item was deferred.

DEVELOPERS' REPORT

There was nothing new to report.

JOINT FACILITIES ADVISORY COMMITTEE MATTERS, INCLUDING DOWNSTREAM ISSUES

Mr. Roach confirmed that the Joint Facilities Advisory Committee ("JFAC") meeting would be held on August 29, 2023, at 5:00 p.m.

DIRECTOR'S REPORT

Director Humbert noted that the Lonestar Groundwater Conservation District ("LSGCD") had selected a Director to fill the vacancy. He then stated that LSGCD discussed sites for the subsidence study, and he did not think they were seriously considering the site proposed by the District. Director Humbert inquired if there were any comments on the LSGCD rules that were recently released. Mr. Roach noted he had no comments.

Director Sunderman noted that Region 6 Flood Planning Group ("Region 6") plans to submit its flood plan by the end of July. He further stated that if Region 6 had not received a District's project by then, the District would have to wait until the next cycle. Director Sunderman then discussed flood control interest, trading, and surplus monies. He pointed out that there is a big push for water development in the next cycle, noting they are thinking of pumping water from South Texas up to the dry areas. Finally, Director Sunderman indicated that an environmental position has opened up in Region 6 and explained the benefits of holding a Board position in Region 6 would have for the District.

FLOOD IMPROVEMENT PROJECT

This item was discussed above.

REVIEW INSURANCE PROPOSALS (*EXPIRES SEPTEMBER 30, 2023*)

Mr. Roach informed the Board that the District's insurance policies with Arthur J. Gallagher & Co. ("AJG") expire on September 30, 2023. Director Sunderman noted he had spoken with the Texas Water Development Board ("TWDB") about how risk assessments are based on what the District has experienced. He pointed out that these policies do not consider any faults or catastrophes from the last 20 years.

After some discussion, Director Gourley motioned to authorize RAPLLC to request a renewal proposal from AJG. Director Sunderman seconded the motion, which passed unanimously.

REVIEW OF THE ETHICS AND FEES OF OFFICE POLICY

Mr. Roach noted that the 88th Legislative Session passed a law increasing Director per diems from \$150 to \$221 per day and pointed out that it is retroactive to June 16, 2023. Then Director Humbert noted a new law that eliminates the yearly review of cybersecurity training. He further discussed the possibility of having this requirement for new Board members once they join the Board for educational purposes.

After some discussion, Director Gourley motioned to approve the new per diem increase to \$221 per day, retroactive to June 16, 2023. Director Sunderman seconded the motion, which passed unanimously. Next, Director Gourley motioned to authorize cybersecurity training for new Board members. Director Fusca seconded the motion, which passed unanimously. Then, Director Sunderman motioned for all Directors to be residents within the District. Mr. Roach explained that being either a qualified voter in the District or paying taxes on land owned within the District are the existing statutory requirements for being a Director. The motion then failed for lack of a second.

2023 LEGISLATIVE UPDATES

Director Sunderman inquired about the proposed Extra Territorial Jurisdiction (“ETJ”) law. Mr. Roach noted Senate Bill 2038 passed and allows anyone living within the ETJ to vote to remove themselves from the ETJ, but such vote must include at least 50% of property owners. He further noted they can also be removed from the ETJ if 5% of registered voters sign a petition, which will cause a special election to occur, and the majority vote passes. He pointed out that if you are already in a Sales and Purchase Agreement (“SPA”), you cannot go through this process until that SPA expires. The Board then had a lengthy discussion about their current SPA and further business with the ETJ.

Mr. Roach noted significant property tax reforms passed in the second special legislative session. Director Sunderman inquired about the exemption status for the District. Mr. Roach stated that the Municipal Utility District (“MUD”) exemptions and tax ability did not change. He further noted that all nonresidential properties are now capped at a 20% tax of overall value. Mr. Roach then discussed some additional updates from the second special legislative session.

TECHNOLOGY/WEBSITE UPDATES, INCLUDING SB2 AND HB1154, AND DROPBOX SIZING MATTERS

Mr. VanDyke presented the Communications Report, noting more people are using shared links to go to the District’s website. He then suggested adding resources to draw people to the website, such as: installing signs, door tags, etc. Director Gourley inquired about posting signs to warn about droughts. Ms. Delong noted they will monitor weekly to see how the well is doing before notifying the residents about a drought.

The Board then discussed updates to the signs in the District, changing the name of their District park, and other improvements. Director Humbert inquired if the Directors could receive a separate notification whenever Touchstone sends out District alerts. Mr. VanDyke confirmed that he could make a “VIP” list that includes the Directors.

Messrs. Estes, Desilets, VanDyke, and Ms. Hurd exited the meeting.

EXECUTIVE SESSION PURSUANT TO TEXAS GOVERNMENT CODE, SECTION 551.071, 551.074, ET. SEQ.

The Board entered into executive session at 9:14 p.m.

RECONVENE IN OPEN SESSION AND AUTHORIZE ANY ACTION RESULTING FROM EXECUTIVE SESSION

The Board reconvened in open session at 9:28 p.m. There was no action taken from executive session.

DISCUSS PENDING BUSINESS AND MATTERS FOR FUTURE AGENDAS

The Board concurred to reconvene for their next regular meeting on August 21, 2023, at 5:00 p.m. There being no further business to discuss, the meeting was adjourned due to a loss of quorum.

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Passed and approved this 21st day of August 2023.

/s/ Frederick Sunderman
Secretary, Board of Directors

[SEAL]



LIST OF EXHIBITS

- Exhibit A - Tax Assessor's Report
- Exhibit B - Inspector's Report
- Exhibit C - Operator's Report
- Exhibit D - Communications Report
- Exhibit E - Engineer's Report
- Exhibit F - Bookkeeper's Report