

**SQUAW VALLEY PUBLIC SERVICE DISTRICT
BOARD OF DIRECTORS MEETING MINUTES #835
January 30, 2018**

A. Call to Order, Roll Call and Pledge of Allegiance. Chairman Dale Cox called the meeting to order at 8:33 A.M.

Directors Present: Directors: Dale Cox, Carl Gustafson, Bill Hudson, Fred Ilfeld and Eric Poulsen

Directors Absent: None

Staff Present: Mike Geary, General Manager; Fabienne Gueissaz, Office Supervisor; Allen Riley, Fire Chief; Dave Hunt, District Engineer; Brandon Burks, Operations Superintendent; Danielle Grindle, Finance & Administration Manager and Thomas Archer, District Counsel.

Others Present: Chris Arnold, Sally Brew, Emily Fralick, Patti Guilford, Bruce Hutchinson, Jean Lange, Richard Molsby, Kat Smolen, Vince Sosnkowski, David Stepner, Tyler Trojan and John Wilcox.

Chairman Cox asked Richard Molsby to lead the Pledge of Allegiance.

B. Community Informational Items.

B-1 Friends of Squaw Creek – none

B-2 Friends of Squaw Valley – David Stepner provided an update on the meeting held on Sunday, January 28th regarding the Squaw Valley Park and the Capital Projects Advisory (CAP) Committee formed by Placer County. The group hopes to secure Transient Occupancy Tax (TOT) funds for projects in Olympic Valley.

B-3 Squaw Valley Design Review Committee (SVDRC) – David Stepner said the committee will meet on Thursday, February 1st and will review a proposal from the Resort at Squaw Creek to replace the entrance building with an entry gate.

B-4 Squaw Valley Municipal Advisory Council (SVMAC) – David Stepner said the SVMAC will meet on Thursday, February 1st. There will be a presentation from Kat Smolen regarding a proposal to cover the Squaw Valley Park's soccer field for winter use.

B-5 Squaw Valley Mutual Water Company (SVMWC) – David Stepner provided an update on the company's activities including changes to their billing processes.

B-6 Squaw Valley Property Owners Association – none

B-7 Mountain Housing Council of Tahoe Truckee – Fred Ilfeld provided an update on the group's activities from the last meeting, including:

- Public agencies are collaborating on mapping public lands available for potential development or purchase, and identifying properties that are appropriate for housing;
- The Mountain Housing Council recently reviewed a regional analysis of fees and intends to produce and release a collective plan of action;
- A network of local developers has been convened to explore different project opportunities and challenges;
- Mountain Housing Council meetings are open to the public and additional workshops and webinars to identify topics and solutions to advance our action plan, and

- Residential assistance programs are being tracked and shared throughout the website and other platforms.

B-8 Tahoe-Truckee Sanitation Agency (T-TSA) – Dale Cox said T-TSA met their waste discharge limits and plans to move forward this summer with a replacement project for the portion of the Truckee River Interceptor between manholes 81 and 83.

C. Public Comment/Presentation.

Public Comment – Chairman Cox said on Thursday, February 8th from 2-5 P.M. at the PlumpJack Restaurant & Conference Center there will be a celebration of life for long-time Squaw Valley Resident, Dave Brew.

David Stepner said the SVMAC was working on a trial program to add a bus lane on Highway 89, but due to lack of time, snow and visitors (traffic), the group decided to discontinue this effort for the current winter season. He encouraged the District's Parks and Recreation Committee to meet and suggested including a survey insert in the District's annual bill to assess the interest that Squaw Valley residents have in funding parks for two-year trial period.

John Wilcox thanked the District for appointing him to the Capital Improvement Projects Advisory (CAP) committee. He said the committee has not met, but he will keep the District posted on the committee's work. Mr. Wilcox read an e-mail he received from Sierra Watch, which stated that there is a scarcity of local water supply in Squaw Valley, and that the aquifer is a subterranean stream. He believes these are false statements that are being distributed to the public.

D. Financial Consent Agenda Items.

Directors Poulsen and Ilfeld met with staff on January 29th from approximately 3:00 –5:30 P.M. to review items D-1 through D-14 as well as other finance related items on this agenda.

Director Poulsen said the committee reviewed all finance related items on the agenda and that all financial items are in order.

Director Ilfeld said the District is doing well financially and is bringing in more revenue than it is spending.

Public Comment – none

A motion to approve the financial consent agenda was made by Directors Gustafson/Ilfeld as submitted. The motion passed and the vote was unanimous.

Cox-yes

Gustafson-yes

Hudson-yes

Ilfeld-yes

Poulsen-yes

E. Approve Minutes.

E-1 Minutes for the Board of Directors Special meeting of December 19, 2017.

Public Comment – none

A motion to approve the minutes for the Board of Directors Special meeting of December 19, 2017 was made by Directors Ilfeld/Poulsen. The motion passed and the vote was unanimous.

Cox-yes

Gustafson-yes

Hudson-yes

Ilfeld-yes

Poulsen-yes

F. Old & New Business.

Item F- 4 was taken out of order.

F-4 Palisades at Squaw Valley.

The Board reviewed the item, accepted public comment, approved Water & Sewer Service Agreement Amendment I and II and accepted the Irrevocable Offer of Dedication of water and sewer systems by adoption of Resolution 2018-01.

A. Water & Sewer Service Agreement – Amendment I – Community Benefit Fee.

The project developer, Vince Sosnkowski, introduced the item. The Board approved execution of the Water and Sewer Service Agreement for the Palisades on May 30, 2017. Section 3.4 of the Agreement requires the developer record covenants that impose a fee equal to 0.5% of the cost of the property for the purposes of funding community benefits that could include improving the environment, cultural, educational and recreational benefits in Olympic Valley.

Mr. Sosnkowski explained that his legal team has not found a way to execute this covenant in a way that satisfies both state and federal regulations.

Below are excerpts of an explanation of the challenges associated with recording covenants on the parcels in the Palisades which were provided by the developer's attorney, experienced in this specialty of law:

"Federal Regulations require a demonstrable direct benefit to the payer of the fee. Here is how the final Federal Regulations define 'direct benefit':

Direct benefit means that the proceeds of a private transfer fee are used exclusively to support maintenance and improvements to encumbered properties, and acquisition, improvement, administration, and maintenance of property owned by the covered association of which the owners of the burdened property are members and used primarily for their benefit. Direct benefit also includes cultural, educational, charitable, recreational, environmental, conservation or other similar activities that-

*(1) Are conducted in or protect the burdened community or adjacent or contiguous property, or
(2) Are conducted on other property that is used primarily by residents of the burdened community.*

The Final Decision document provides an explanation which is helpful because the regulators go to great pains to show that they considered all the comments that they received during the regulatory process.

From my perspective, as legal counsel to a developer, it is irresponsible to become the facilitator for drafting and recording a binding covenant, obligating future lot and home buyers, to pay fees that may not be legal just because well-intentioned nonprofit groups in and around Squaw Valley want another source of revenue for their projects and charitable endeavors. The folks who desire Palisades to record a covenant should find a lawyer who is willing to issue a legal opinion to the effect that the covenant is a valid and a binding legal obligation, enforceable in accordance with its terms.

If the covenant is challenged, it may not be enforceable and that leaves the developer open to litigation with future owners who challenge the covenant. In discussions regarding Community Benefit Fees in Squaw Valley, there is a lot of dancing around about having a very general and non-specific fee recorded in the chain of title and letting all the difficult problems sift themselves out later.

California is stuck between a rock and a hard place because the California laws (Civil Code sections 4575 through 4580) prohibit property owner associations from being the recipients of transfer fees and yet the Federal rules are exactly the opposite --- wanting the community that is paying the fee to have the direct benefit from those payments.”

There may also be risk for the recipient of the funds associated with the approach of “letting all the difficult problems sift themselves out later”. There has been some discussion about the District being the recipient of the funds. The collection, administration, and disbursement of Community Benefit Fees as intended and envisioned may be outside of the statutory authorities provided to the District, which was formed as a County Water District under the California Water Code.

Mr. Geary said a status report on Community Benefit Fees was provided to the Water & Sewer Committee including an update on legal challenges due to new federal regulations. Staff and Counsel reviewed the issue including a summary of the steps needed to be performed by the project developer to comply with the terms related to Community Benefit Fee included in the Agreement with the District. Federal regulations regarding such fees have changed and are more rigorous. The project developer is having difficulty meeting the requirements and staff and counsel have spent considerable time researching the issue.

Public Comment – David Stepner commended Mr. Sosnkowski for his efforts on the Community Benefit Fee issue, and agrees that it is unreasonable to include this requirement in the Agreement due to the legal issues related to the item.

Directors Hudson/Gustafson made a motion to approve the Water and Sewer Service Agreement Amendment I as presented. The amendment includes removal of Section 3.4 which deletes the requirement to impose Community Benefit Fees. The motion passed and the vote was unanimous.

Cox-yes

Gustafson-yes

Hudson- yes

Ilfeld-yes

Poulsen-yes

B. Water & Sewer Service Agreement Amendment II – Warranty Bond.

Mr. Geary and Mr. Archer reviewed the item. The Water and Sewer Service Agreement between The Palisades Development, LLC and the Squaw Valley Public Service District, executed on May 31, 2017, states that “the Developer shall procure and continuously maintain, at its sole expense, a Performance, Payment and Maintenance Surety Bond issued by a company authorized to do surety business in the State of California upon its standard form, or other suitable form of security, guaranteeing that Developer will perform all of its obligations under this Agreement and will pay for all work and material furnished to the job. Said bond or other security shall be in an amount equal to 100% (One Hundred Percent) of the value of the cost of construction of the Improvements and shall provide coverage for the Improvements and on account of Developer’s obligation to replace or repair any and all defects in material or workmanship in said Improvements for a period of two (2) years following completion and acceptance of Improvements by District.” Amendment II reduces the percentage of the bond from 100% (One Hundred Percent) to 15% (Fifteen Percent).

Director Ilfeld asked if the District has approved an agreement like this one in the past. Mr. Archer said that the District has not, but it is very unlikely that 100 percent of the system would fail. Mr. Hunt said that it is common in other special districts for bonds to only cover one year, but this agreement extends the bond to cover two years, as there will not be a demand on the system during the first year.

Public Comment –

Jane Lange asked how much it would cost the developer to cover the 100 percent bond. Mr. Sosnkowski said the one-million-dollar bond would cost him about \$30,000 each year.

Directors Ilfeld/Gustafson made a motion to approve the Water and Sewer Service Agreement Amendment II as presented, and as amended by counsel. The amendment will reduce the required Maintenance Surety Bond from 100 percent to fifteen percent for a period of two years. The motion passed and the vote was unanimous.

Cox-yes

Gustafson-yes

Hudson- yes

Ilfeld-yes

Poulsen-yes

C. Irrevocable Offer of Dedication (IOD).

Mr. Hunt reviewed the item. The developer and its contractor, AM-X Construction and Excavation, Inc. recently completed the construction of water and sewer system improvements as provided for in the Improvement Plans prepared by Auerbach Engineering Corporation and reviewed and approved by the District. The District’s consultant, Farr West Engineering, provided inspection during construction. The improvements were completed to the satisfaction of the District and all punch list items have been addressed. Therefore, the District is ready to accept dedication of these improvements.

The developer, Palisades Development, LLC is required to meet the provisions of the Water and Sewer Service Agreement prior to the District accepting dedication of the improvements. Specific items to be provided include:

- Completion of the improvements and final inspection punch list items;
- As-built drawings;
- Recorded copy of the Final Map;
- Statement of “as-built” dollar value;
- Subdivision Map Guarantee;
- Warranty bond in the amount of 15% of the cost of the improvements for a two year period;
- Cash security in the amount of \$38,000 for work yet to be completed (grading of the Emergency Vehicle Access Road and abandonment of existing water and sewer services and stub outs).

Palisades Development, LLC completed the improvements to the satisfaction of the District and provided all necessary documentation.

Public Comment – none

A motion to accept an Irrevocable Offer of Dedication of water and sewer systems by adoption of Resolution 2018-01, conditioned on receipt of warranty bond and recorded, was made by Directors Hudson/Ilfeld. The motion passed and the vote was unanimous.

Cox-yes
Gustafson-yes
Hudson-yes
Ilfeld-yes
Poulsen-yes

F-1 1st Public Hearing – Water Code Revisions – Connection Fees.

The Board conducted the first public hearing of Ordinance 2018-01; water code revisions as related to Connection Fees and accepted public comment.

Ms. Grindle and Mr. Hunt reviewed the item. No action is required as this is the first of two public hearings.

In April 2017, the District and HDR Engineering, Inc. completed a Comprehensive Water and Sewer Cost of Service Analysis. Part of the study involved updating the District’s water and sewer connection fees. The purpose of connection fees is to recover the costs of public facilities

in existence at the time the fee is imposed or for new public facilities to be acquired or constructed in the future that are of proportional benefit to the person or property being charged. These fees are charged to new customers connecting to the system, or to existing customers increasing their demands.

In formulating a new connection fee, staff analyzed future improvements related to providing capacity. At the time of the study, the District was not aware of the drilling of a new well as part of the PlumpJack Squaw Valley Inn renovation project. As discussed at previous Board Meetings, the significance of this project requires the District to revisit the cost of a new connection. In addition to revisiting the connection fees, the District would like to change how residential units are defined and charged. Instead of meter size, residential connection fees will be based on property type. Commercial properties will continue to be based on meter size.

The goal of the revised connection fee is to recover the cost of the new well and other future projects either through connection fees or through user fees. The second goal is to charge residential units in an equitable manner based on water demands. The timing of recovering costs will depend on how quickly or slowly new construction occurs. There is a chance it will take many years; however, the District anticipates full recovery of the costs and a positive balance in the Water Capital fund for future unplanned projects. Additionally, as new projects come up, the connection fees will be revisited to ensure they are sufficient to pay for new capital assets.

The proposed update increases connection fees by \$567, from \$10,414 to \$10,981 for a one inch meter connection. Based on estimated growth, the District will collect \$1.15 million in connection fees by 2028. These funds, along with the current capital account balance of \$785,000, will fund the capital improvement projects. Total projects for the next ten years are estimated to cost \$1.47 million, meaning at the end of ten years the District anticipates \$460,000 will remain in the capital account for future undefined projects.

The District is concurrently amending the Water Code, Division 2: Definitions. There are several single family and multi-family residential property types in Olympic Valley, each with their own specific water use patterns. Each of these new property types are defined in Division 2 of the Water Code.

Mr. Geary requested direction from the Board in regard to Accessory Dwelling Units (ADUs) that are discovered by the District. The law is clear on how to handle new ADUs, but is silent on ADUs that are discovered and have not been permitted by the District.

Director Ilfeld stated that the recommendation from the Finance Committee is to waive connection fees for recently discovered ADUs but to start charging user fees for those units.

Chairman Cox agreed, and said that the District should notify T-TSA upon discovery of ADUs that have not been permitted by the District.

Chairman Cox also encouraged staff to contact Placer County to perform a blanket zoning change from the current R1 to R2.

Mr. Geary recommended requesting a presentation from Placer County at a SVMAC or District Board meeting regarding second units and their zoning requirements.

The board directed staff to waive connection fees for newly discovered ADUs, but to start charging applicable user fees and to notify T-TSA. Under Section 2.02, discovery of an existing attached or detached ADU will show “No” under connection fees.

Public Comment – Patti Guilford stated that she believes that individuals who have second units that are out of compliance should have to pay the connection fees.

John Wilcox commented that representatives from Placer County have attended two SVMAC meetings, and suggested meeting with the County staff before they make a presentation so they know what the issues the Olympic Valley community is experiencing.

Dave Stepner stated that the R1 zoning does not affect ADUs, and he will help facilitate a meeting with Placer County at a SVMAC meeting.

F-2 Dissolution of the Bike Trail Snow Removal Program’s Operations Reserve Fund.

The Board reviewed the item, accepted public comment and authorized dissolution of the Bike Trail Snow Removal Program’s Operations Reserve Fund and return of deposits to contributors, subject to the execution and payment of a new maintenance and snow removal contract from Placer County.

Mr. Geary reviewed the item. Since the 2013-14 winter, this program has been partially funded through contributions from four in-Valley contributors. The North Lake Tahoe Resort Association (NLTRA) has historically pledged each year to pay up to \$70,000 based on time and materials. The other four contributors have donated a lump sum each year in various amounts of their choosing.

All costs were split proportionally based on pledge amounts. Per the District’s Financial Reserve Policy, any funds left over at the end of the year from in-Valley contributors are kept in a reserve account to be used in situations such as a sudden increase in expenses, one-time unbudgeted expenses, unanticipated loss in funding, or uninsured losses. The goal was to have one year of the operating budget in the reserve account, or approximately \$100,000. Currently the reserve balance is \$73,534.

New to the 2017-2018 winter, the District contracted directly with Placer County for complete funding of the program, up to \$70,000, without the need to solicit in-Valley contributions as matching funds.

District staff has been transparent with the four in-Valley contributors in regard to the Reserve Fund. There is accurate accounting of their contributions and expenses for the Bike Trail Snow Removal Program over the four years that they have provided funds. As in-Valley contributions are no longer required to provide matching funds, the District can refund contributions made to the Program. Staff will also offer in-Valley contributors the option to have the District keep their

contributions for use on the Bike Trail Snow Removal Program but it is unlikely any of the contributors will select this option.

Public Comment – none

A motion authorizing staff to refund the Bike Trail Snow Removal Program's Operations Reserve Fund to in-Valley contributors, subject to the execution and payment of a new maintenance and snow removal contract from Placer County, was made by Directors Hudson/Poulsen. The motion passed and the vote was unanimous.

Cox-yes

Gustafson-yes

Hudson-yes

Ilfeld-yes

Poulsen-yes

F-3 Annual Review of Purpose, Mission and Core Values Statements.

The Board reviewed the item, accepted public comment and agreed that no changes are needed.

An annual review of the District's adopted Purpose Statement, Mission Statement and Core Values is part of the Board's annual activities. The last review was conducted in January 2017 and no change was made. The last change was made in 2014 with an addition to the Mission Statement to include "conservation-minded".

These statements are typically reviewed annually in order to accommodate changes requested by the Board, any significant changes in the community and to accommodate concerns or requests made by the public.

Public Comment – none

Chairman Cox asked if the Board was in agreement that no changes are needed. All Board members responded that no changes are needed at this time.

G. Status Reports.

G-1 Fire Department Operations Report.

Chief Riley reviewed the report.

Public Comment – none

G-2 Water & Sewer Operations Report.

Mr. Burks reviewed the report.

Public Comment – none

G-3 Engineering Report.

Mr. Hunt reviewed the report, introduced the new Junior Engineer, Tyler Trojan and provided updates on the Truckee River Siphon Project and the PlumpJack Renovation Project, which is scheduled to start demolition in May.

Public Comment – none

G-4 Administration Report.

Ms. Gueissaz reviewed the report.

Public Comment – none

G-5 Manager's Comments.

Mr. Geary reviewed the report.

Public Comment – none

G-6 Legal Report (verbal).

Mr. Archer had no comments.

Public Comment – none

G-7 Director's Comments.

H. Adjourn.

Directors Hudson/Gustafson made a motion to adjourn at 11:50 A.M. The motion passed and the vote was unanimous.

Cox-yes

Gustafson-yes

Hudson-yes

Ilfeld-yes

Poulsen-yes

By, F. Gueissaz