

**SKYLINE IMPROVEMENT AND SERVICE DISTRICT
MINUTES OF BOARD MEETING
November 19, 2020**

A public meeting of the Directors of the Skyline Improvement and Service District was held on November 19, 2020, via Zoom, due to the Town of Jackson, Teton County and State of Wyoming public health directives about social distancing. Kurt Harland, Latham Jenkins and Jim Lewis constituting a quorum were present. Warren Machol was the only homeowner present.

Kurt, serving as Chairman, called the meeting to order at 4:02 pm.

1. Review and approve Board minutes of 10/15/ 2020.

Action: Kurt moved to approve the minutes as drafted. Latham seconded. There being no discussion or changes, the motion carried, 3-0.

2. Adoption of agenda.

There were no changes to the agenda.

Action: Kurt made a motion to adopt the agenda as presented. Jim seconded. The motion passed, 3-0.

3. Public comment on items not appearing on agenda

Warren queried about the removal of his water cost analysis and John Willott's well study from the Skyline website. That comment was added to agenda item #12.

4.Skyline director election ballot results

Jim read from the Certification of Election which was dated 11/5/2020 and signed by the 3 election judges, Susan Dong, Christine Thulin, and Jim Lewis.

- a. Number of ballots mailed: 131
- b. Number of ballots received: 72
- c. Number of ballots spoiled: 3
- d. Number of ballots not returned: 48
- e. Number of ballots undeliverable: 8
- f. For a total number of ballots: 131 (total of lines b through f)

Lines a & f above should equal

Jim said that the final vote was 61 for James Lewis. There were no write-ins. Jim said that he took his oath of office in front of a notary in AZ on 11/6/20. Both the oath of office and certification of election were mailed to the Teton County Clerk.

Copies of the Certification of Election and the Oath of Office are attached to and part of these minutes.

5. Motion to approve board Treasurer/Secretary

Action: Kurt made a motion to appoint Jim as Treasurer/Secretary. Latham seconded. The motion passed, 3-0.

6. Correspondence received by Office

Jim said that Dave was not attending the meeting but had verbally advised him that no correspondence had been received except for a few late water meter readings and the ballots.

7. Review 4 mos. actual P/L through October vs FY 2020-21 budget

Total expenses for the 4 months are 30.9% of budget, roughly 1/3 of budget for the 4 months. Total income was 3.1% of budget as the deadline for the first payment of property taxes isn't due to the County until November 10th. The District receives its portion of the payments to Teton County in Oct, Nov, December and April/May concurrent with the payment of property taxes by home and lot owners.

8. Review and approve Treasury Report as of 10/31/2020

As of October 31st, total funds in all District financial accounts total \$419,703.28, including \$12,000 in the restricted LVE Gas pipeline account, following a \$108,000 payment to LVE for the 1st payment under the LVE gas line contract. It should be noted that subsequent to 9/30/2020 additional funds have been deposited into the gas account bringing the total to \$120,000 which is the full amount of LVE's fixed price contract, and on 10/21/20 the \$108,000 payment to LVE was made.

Netting out the LVE restricted funds from both the 9/30/20 and 10/31/20, the respective Skyline balances were \$408,872 and \$407,703 respectively.

Jim also said that as directors should "open" bank statements at least once per year, Jim stated that all our account statements are online vs. mailed, and he has confirmed that the balances in the 10/31/20 Treasury report reconcile with be statements, except that the operating account is slightly higher to the \$750 maintained in the Operating account, due to checks that haven't cleared yet.

Action: Kurt made a motion to approve the Treasury report. Latham seconded and the motion passed 3-0.

9. Review and approve invoices for payment

The below list of expenses were reviewed by the Board.

Clearwater Operations & Services	\$ 1,521.25
Arbor Works Tree Service	700.00
Evans Construction	4,883.00
Frontier Landscape	550.00
Hess DAmours & Krieger,	1,590.00
High Country Consulting Services	300.00
Teton County Environmental Health	20.00
Teton Financial Consulting	2,105.05
Teton Media Works	50.25
TOTAL	\$ 11,719.55

Jim said that 2/3 of the Arbor Works invoice would be reimbursed by two homeowners (1/3 each), as the tree fell from their properties. One reimbursement has been made already and the other homeowner said he would promptly reimburse. Jim added that he has also contacted Arbor Works and asked that in the future, when they remove trees from the road, at the request of Skyline, that they provide a photograph of an identifying landmark or property address be provided with the invoice so that proper reimbursement can be requested of homeowners. Arbor Works agreed to this going forward.

Action: Kurt made a motion to approve the listed expenses. Jim seconded the motion, which carried 3-0.

10. Motion to approve 10 board meetings for calendar year 2021 except for January and November

Jim recommended that the board hold 10 meetings in 2021, with no meetings scheduled for January and November. If needed we can always call a meeting but typically, the winter months are comparatively slow. All meetings except for June and July will be held from 4pm-6pm on the 3rd Thursday of the month. For the foreseeable future, all meetings will be conducted via Zoom. For June and July, the meeting dates may have to be earlier in those months given to accommodate the annual budget, newspaper advertisement and the Public Hearing. Jim will provide the actual dates at the December meeting.

Action: Kurt made a motion to approve 10 board meetings for 2021, as presented, with specific dates to be provided at the December meeting. Jim seconded and the motion passed 3-0.

11. Status of gas-line project

With the signing of the LVE contract and payment of the contractual 90% down-payment of \$108,000 in October, LVE commenced work in October and will continue as long as they can until winter weather forces them to cease until the spring thaw. They hope to get as far as Meadowlark so the connection can be made to the existing dormant line along the west side of Meadowlark. According to Craig Coles, they have received all the right of way easement agreements from various homeowners that they need thus far.

12. Water and other queries raised by homeowner Machol.

- a) Clearwater's water SOP review: Jim said that Clearwater's memo just arrived today and it hasn't been seen by the other board members or reviewed. It will be placed on the December agenda.
- b) Back-up power source to the District's current propane backup generators : Jim said that if it's not covered in the WWDC study, the board will determine the direction.
- c) Chlorine injection system- this will be covered in the WWDC study as for new or upgraded systems, EPA requires it.
- d) Recording of Board meetings: Jim said that the board had never approved the retention of recordings which were only used to facilitate minute preparation. And after approval of the minutes, the recording was erased. He added that according to the Wyoming State Records recordings are not required to be archived, and the written minutes are the official minutes of board meetings.
- e) Goals of the WWDC Level II study: The WWDC RFP is posted on the Skyline Website and the deliverables are identified in the document.
- f)Repairs of the two water leaks on Mallard: Kurt read from the Clearwater's report on the leaks which is appended to and part of these minutes.
- g)Removal of water cost analysis and well study from Skyline Website: As this is the District's website, the board determines what is posted and likewise what is removed, if they are not official records of the District.

Warren disagreed with the board's position on items d) and g). Regarding e) he asked if additional objectives could be added to the WWDC study. Jim said no, as WWDC's RFP was the basis for which the contract was awarded.

13. District's legal opinion regarding homeowner Machol's barn air/water complaint.

For background, this is a continuation of the Machol barn air/water complaint. To minimize repetition, earlier discussions can be found in board minutes of August, September, October and November 2020.

Jim read the summary below of the legal opinion provided by District Counsel, Paul D'Amours of Hess D'Amours & Krieger, LLC. The full legal opinion is appended to and part of these minutes.

“Summary

Because of provisions included in both the Regulations of Water Use of the Skyline Improvement and Service District, and/or because of immunity afforded by the Wyoming Governmental Claims Act, the District likely has no liability to a homeowner whose water heater and/or backflow preventer is damaged”.

There was considerable discussion but the following should be noted:

-Warren said that as the water pipeline is owned by the District, shouldn't costs to fix the problem be a District expense regardless that the problem only affects one homeowner. He referred to the pipeline as being used by all homeowners, and therefore fixes to the main line to address a design flaw should be a “socialized” expense, i.e., the District.

- Jim countered that the water main pre-dated the construction of the barn by some 30 years and no problems in the Meadowlark line were reported by the then users.

-Jim asked whether he could recall that he was specifically “directed” by a Skyline director to hook up to the Meadowlark line. Warren said he could not recall after 20 years. Jim said he checked with Bob Norton, who was a board director at the time, who said that permission was probably given as it was nearer the barn, but other options were available, such as tying into the NW ridge main, or tying in back to the main residence.

Warren also raised as examples the monies spent:

- 1) on locating the curb stop at 250 Meadowlark. Kurt responded that curb stops are the property of the ISD and Clearwater has tried to locate it over the last 3 summers with metal detectors without success. As the homeowner was renovating the house and putting in a new service line from the house, it made sense to put in a new, visible curb stop.
- 2) Installing a lower profile fire hydrant at 655 Meadowlark (Jim Lewis property). Jim said that he was asked if the hydrant could be placed on his property as Clearwater was unable to find the main line after making multiple excavations further north along Meadowlark. He said yes, but as the water line at that location ran further west onto Lewis's property and on a small berm, the resulting hydrant reached 10 feet in height off the road level and was unsightly and affected the real estate value. Additionally, as the main line was only 4 feet underground, instead of the normal 6-7 feet, the 6-foot riser was two feet about grade.

Lewis asked that either the hydrant and riser be removed and moved further south on Meadowlark so it can be a road level, or replace it with a lower profile hydrant. The latter was done as it was more cost effective as the main had already been located, and the larger hydrant and riser will be used elsewhere in Skyline.

Again, there was no resolution on the barn issue. Warren requested the board consider both a short term and longer-term solution.

14. Other business

Next meeting: December 17, 2020; 4pm-6pm
January- No board meeting
February 18, 2021; 4pm-6pm

Attendance via Remote Access: <https://us04web.zoom.us/join>, ID: 301 092 4055
4pm-6pm.

15. Adjournment of Board meeting

Kurt made a motion to adjourn the meeting. Jim seconded the motion which passed 3-0. The meeting concluded at 6:15 pm.

Approved

Kurt Harland
Chairman

Approved

Latham Jenkins
Vice Chairman

#4

CERTIFICATION OF ELECTION
SKYLINE SPECIAL DISTRICT DIRECTOR

We, the undersigned, duly-appointed Judges of Election, do hereby certify to the Board of Teton County Commissioners as follows:

That the election held on the 3rd day of November, 2020, in Teton County, Wyoming, was conducted according to Special District Law and the Wyoming Election Code including the Special District Act;

That at said election; votes were cast for the following people (everyone who received a vote must be listed. Use an additional page if needed) to fill the 4-year term for District Director as follows:

NAME	NUMBER OF VOTES
<u>JAMES LEWIS</u>	<u>61</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

That the highest number of votes was cast for JAMES LEWIS and that said candidate is duly qualified to serve on the district board of directors;

1. Number of ballots mailed was; 131
2. Number of ballots received was 72;
3. Number of ballots spoiled was 3;
4. Number of ballots not returned was 48;
5. Number of ballots undeliverable was 8;
6. for a total number of ballots 131. (Total of lines 2+3+4 +5)
(Lines 1 & 6 should be the same.)

Dated this 5th day of November, 2020

[Signature]
Election Judge
[Signature]
Election Judge

[Signature]
Election Judge

#4*

Oath of Office

Special District Directors

W.S. 22-29-119 requires that all directors of special districts covered under the Special District Elections Act of 1994, upon their election or appointment, take this oath and file it with the county Clerk within 10 days after notification of election or appointment.

I, James E. Lewis do solemnly swear (or affirm) that I will support, obey, and defend the constitution of the United States, and the constitution of the state of Wyoming; that I have not knowingly violated any law related to my election or appointment, or caused it to be done by others; and that I will discharge the duties of my office with fidelity.

Name of District: SKYLINE Improvement and Service District

Dated this 6th day of NOVEMBER, 2020.

James E. Lewis Signature

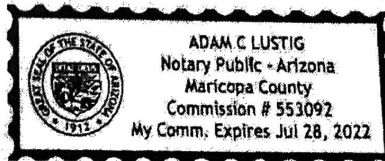
JAMES E. Lewis Printed Name

State of ~~Wyoming~~ Arizona

County of ~~Teton~~ Maricopa County

Subscribed and sworn to before me by Adam Lustig, this 6th day of November, 2020.

Adam Lustig Notary Public
My commission expires: 7/28/2022



On Fri, Oct 23, 2020 at 9:16 AM Emily Hanner <clearwateroperations@gmail.com> wrote:

To Whom It May Concern:

In June 2020 Clearwater Operations & Services worked with leak detection specialist, Tui Anderson to listen for leaks on all accessible curbstops and valves in Skyline. Mr. Anderson found a loud leak on the service line at 3125 Mallard. In Mr. Anderson's official report, he noted that there is "1 active leak between the main and the service valve at lot 12, 3125 W. Mallard Road." The leak was thought by the leak detection expert to be under Mallard Road, near a crack in the asphalt.

On August 12, 2020, Westwood Curtis dug down to the curbstops at 3125 Mallard. We turned off the curbstops and the leak sound became significantly louder. This is indicative of a leak on the district side. After confirming that the curbstops were not leaking they continued towards the water main looking for the leak. On August 13, they excavated across the road and all the way to the main. They did not find the leak. We determined that the curbstops were faulty and allowed a small amount of water to pass through in the closed position. This small flow caused the increased pitch in the leak sound, leading the leak detection expert to believe that the leak was on the district side.

Clearwater operated and inspected the corporation stop on the main and determined it was operational and in good shape. We utilized the existing corporation stop due to the fragility and high consequence associated with working with aged asbestos cement main line material. We then installed a new poly service line from the main to the curbstops.

At a later date, the homeowner had Westwood Curtis and Forest Lake work together to replace the homeowner service line from the curbstops to the house.

After gaining access to the curbstops at 3215 Mallard, I utilized the leak detection equipment and discovered a leak that got louder when the curbstops were in the off position. On August 11, Westwood Curtis excavated and exposed the curbstops. We discovered a stop and waste curbstops, an irrigation type valve that is non compliant for use in potable water systems. We also discovered water flowing down from the service line between the house and the curbstops, on the homeowner side. On August 27 Clearwater shut off the water on Mallard to allow Westwood to replace the district's curbstops. Because the service line at 3215 Mallard is at one of the lowest spots in the line, the water took a long time to drain from the system to allow for the curbstops replacement.

I hope this clarifies what we encountered during these digs. Please let me know if additional information is required.

Regards,

Ben Hanner

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Clearwater Operations & Services

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MEMORANDUM

To: Skyline Improvement and Service District Board of Directors

From: Paul E. D'Amours *PED*

Date: November 6, 2020

RE: Liability for Damage to Homeowner's Water Heater and Backflow Preventer

Issues/Question Presented:

I have been asked by the Skyline Improvement and Service District's (the "District") Board of Directors (the "Board") to provide a written opinion appropriate for distribution to requesting members of the District on whether the District has liability for damage to a homeowner's water heater and backflow preventer allegedly caused when the District's water is shut off and then turned back on, as a result of excessive air seeking to escape through the homeowner's system.

Summary:

Because of provisions included in both the Regulations of Water Use of the Skyline Improvement and Service District, and/or because of immunity afforded by the Wyoming Governmental Claims Act, the District likely has no liability to a homeowner whose water heater and/or backflow preventer is damaged.

Background:

A homeowner within the District has alleged that, after the District shuts off water within the District's water system, and then turns it back on, excessive air pressure builds up in the water lines installed in his barn; and that such excessive air pressure had damaged his water heater and backflow preventer. According to the homeowner, he has needed to replace two (2) damaged water heaters and two (2) backflow preventers over the course of twenty (20) years and is now in the process of replacing his water heater and backflow preventer again.

On July 8, 2020, the District's water operator met with the homeowner to investigate the problems that the homeowner was alleging were occurring. The operator opined that the homeowner's complaints were legitimate "because the service line to his barn is connected to the Meadowlark main before it dives down the hill north of [the homeowner's] barn." He explained:

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When water is restored to the Meadowlark line, air finds the path of least resistance up the hill and into [the homeowner's] barn. I am unsure as to why the barn connection is on the Meadowlark line, but I feel that this connection location is to blame for [the homeowner's] problems. I believe that if [the homeowner's] barn connection were tied into the main line on N West Ridge Road, these problems would go away or be greatly reduced because the air would find [its] way to the air release valve.

Analysis:

A. The homeowner's claims for damages are likely precluded by the District's Regulations of Water Use.

In 2017, the District adopted Regulations of Water Use (the "Regulations") which provide for management and operating of the District's water system, which are authorized by the Wyoming Improvement and Service District Act and were promulgated pursuant to the Wyoming Administrative Procedures Act. *See* W.S. § 18-12-139; and §§ 16-3-101 et seq. Section 4.2 of the Regulations, titled Claims for Damages, reads in pertinent part:

No claim for damages shall be made against the District by reason of the following: damage to water heaters, boilers, appliances, or other personal property resulting from shutting water off, turning it on, inadequate or sporadic pressures, or power outages....

It is well established law that an agency's rules and regulations have the force and effect of law. *See* Tayback v. Teton Cty. Bd. of Cty. Commissioners, 2017 WY 114, ¶ 25, 402 P.3d 984, 990 (Wyo. 2017).

As noted above, the homeowner alleges that when the District's water is shut off and then turned back on, excessive air in the District's water system causes damages to the water heater and backflow preventers installed in his barn. Water heaters are specifically named in the above-cited section of the Regulations; and backflow preventers clearly fall within the categories of "appliances or other personal property." As a result, by their clear language, the District's Regulations preclude any claims for damages against the District for the homeowner's water heaters and backflow preventers on account of the District's water being turned off and on.

B. The District is likely immune from liability under the Wyoming Governmental Claims Act.

Even if Section 4.2 of the District's Regulations were deemed invalid or otherwise inapplicable, the District is likely immune from liability on account of "governmental immunity" afforded to governmental entities by the Wyoming Governmental Claims Act (the "Act"). The Act grants governmental entities, including special districts such as an improvement and service district, broad immunity from tort liability. Unless a claim against a governmental entity falls within one of the statutory exceptions to governmental immunity, it will be barred. The Act states:

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A governmental entity and its public employees while acting within the scope of duties are granted immunity from liability for any tort except as provided by W.S. 1-39-105 through 1-39-112. (W.S. § 1-39-104.)

The Wyoming Governmental Claims Act includes an exception to governmental immunity “for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of public utilities and services including gas, electricity, water, solid or liquid waste collection or disposal, heating and ground transportation;” but further provides that a governmental entity is not liable for damages “caused by a failure to provide an adequate supply of water ... or services [described above].” W.S. § 1-39-108. Said otherwise, a governmental entity remains liable for damages resulting from the *operation* of a public water system, but not on account of a lack of water.

According to the report provided by the District’s water operator as recited above, damage to the homeowner’s water heater and backflow preventer is likely the result of the design of the District’s water system, and the particular location of the homeowner’s connection to the water system. When the District’s water is turned off and then back on, the design and the location of the homeowner’s connection to the water system results in any excessive air within the District’s water system finding the path of least resistance up the hill and into the homeowner’s barn.

The Wyoming Supreme Court has clarified that liability under this provision of the Act is imposed only for “negligence in keeping the public utility operable and functional,” and is not imposed for acts that are not directly related to keeping the public utility operable and functional. Therefore, if the damage is deemed to be caused by something other than “negligence in keeping the District’s water system operable and functional,” such as the design of the water system, for example, then the District likely would be immune from liability under the Act.

Three Wyoming Supreme Court cases that have considered this provision of the Act provide some guidance on how a court might consider the homeowner’s claim. In the case of Sawyer v. City of Sheridan, 793 P.2d 476, 478 (Wyo. 1990), the owners of a mobile home village sued the City of Sheridan alleging that the City was negligent by requiring the mobile home village to install iron water pipe, which eventually experienced electrolysis and failed. The Court held that a requirement to use iron water pipe was not related to the operation of a public utility.

Then, in City of Torrington v. Cottier, 145 P.3d 1274 (Wyo. 2006), the Court considered a case where a homeowner had incurred damages from a sewer back-up, which was caused by roots having grown into and blocked the sewer line. In that case, the Court defined “operation” as used in the Act as “the state of being operable and functional.” As a result, the Court held that “operation of a public utility entails keeping the sewer system free from blockage.”

Most recently, in Sinclair v. City of Gillette, 270 P.3d 644, 648 (Wyo. 2012), the Court considered a case where the City of Gillette had installed a storm water drain on property for which the governmental entity did not have an easement. The landowner in that case alleged that the City “was negligent and careless in failing to properly investigate the status of ownership of the land, particularly after the [landowner] repeatedly complained that they owned the land and the City had

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no right to build the storm drain on the [landowner's] land.” The Court held that negligence in determining the legal status of property is unrelated to the “operation” of the storm drain. The Court noted that “[t]he storm drain operates and functions regardless of who owns the property.”

Based upon the above-cited Wyoming Supreme Court cases interpreting the Wyoming Governmental Claims Act, the result will likely depend on what a Court would deem to be the cause of the homeowner's alleged damages. Given the above-described facts and circumstances, it is more likely that a Court would find that the homeowner's alleged damages were caused by the particular design of the District's system and the homeowner's particular location of connection to that system than by the District's operation of its water system.