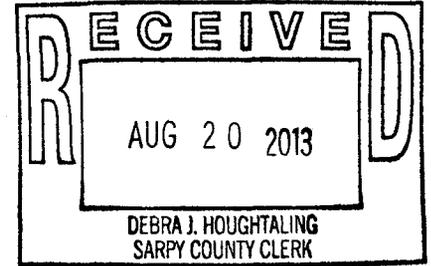


SANITARY AND IMPROVEMENT DISTRICT NO. 23  
OF SARPY COUNTY, NEBRASKA

Minutes of Meeting of Board of Trustees  
August 6, 2013



A meeting of the Board of Trustees of Sanitary and Improvement District No. 23 of Sarpy County, Nebraska was held on August 6, 2013 at 6:30 o'clock p.m. at Westmont Elementary School, 13210 Glenn Street, Omaha, Nebraska.

Present were Trustee Michael Quinn (402.699.1788), Trustee Terry Knief (402.681.3780), and Trustee Shirley Merritt (402.896.9047). Absent were Chairman Don Schuneman (402.895.0967) and Trustee David Jasa (402.895.0175). Also present were Gerald Pesek of G.F. Pesek, Inc., Gary Shepherd of Professional Accounting Service, Accounts Receivable Clerk June Jordening, Accounts Payable Clerk Linda Comstock, Andrea M. Smith of Cassidy Chapman Law Office, Doug Kellner of Thompson, Dreessen & Dornier, Inc., and one district resident.

Notice of the meeting was given in advance thereof by publication in The Papillion Times on July 24, 2013. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

- 1. Compliance with Open Meetings Law:** It was announced that in compliance with the Act, the Chairman provided a current copy of the Nebraska Open Meetings Act on the table.
- 2. Approval of Minutes:** Trustee Knief stated the next item of business on the agenda was approval of the meeting minutes from July 2, 2013. Meeting minutes from July's meeting needed the following corrections: last name in paragraph three was misspelled and change "bod" to "bid" in paragraph thirteen. Trustee Merritt motioned to approve the minutes. Trustee Quinn seconded the motion. The vote was unanimous.
- 3. Resident Concerns:** First concern: resident Mike Bendon stated he had a taxpayer concern. He gave the trustees a hypothetical situation: a property owner contracts work or does the work himself, the project causes a problem, like damages to a water line. Resident Bendon stated that as a tax payer he does not feel like he should pay to have the problem fixed, and then asked the Board whether they agree. Trustee Quinn stated he believes that the individual person/property owner is responsible or the person doing the work for the individual, depending on the situation. Trustee Knief stated that the board has previously had this discussion. Attorney Smith asked resident Bendon to specifically state his concern without using hypothetical situations. Resident Bendon stated that he was concerned over an incident where Gerald Pesek of G.F. Pesek, Inc. charged the SID for work on Trustee Merritt's home. Specifically, Trustee Merritt had her house painted; painter had wires cut from the water meter. Mr. Pesek stated he spent an hour and a half at Trustee Merritt's fixing the wires. Trustee Merritt stated that she asked Mr. Pesek how much she owed him and intended to pay Mr. Pesek. Mr. Pesek did not state why he did not receive payment from Trustee Merritt. Mr. Pesek stated that he billed the SID for the meter repair, and stated that this was the first time something like this has ever happened. The Board decided that time should be deducted from Mr. Pesek's bill and Trustee Merritt should pay Mr. Pesek, instead. Second concern: A resident contacted Gary Shepherd of Professional Accounting Service, regarding a mattress lying on a driveway, and that the resident wants the mattress to be removed. The Board discussed potential remedies and ultimately decided that Chairman Schuneman should write a letter to the property owner stating the mattress needs to be removed from the property.
- 4. Next Meeting Date:** The next meeting of the Board will be held on September 3, 2013 at 6:30 p.m. at Westmont Elementary School, 13210 Glenn Street, Omaha, Nebraska.

- 5. Professional Accounting Service:** Gary Shepherd reported that fund balances as of June 30, 2013, were as follows:

General Fund	\$	159,203.24
Bond Fund	\$	135,033.77
Bond Investment	\$	0.00
Water Deposits	\$	9,150.00
Bond Reserve Fund	\$	6,478.08

Mr. Shepherd distributed to the Trustees copies of his graphs of general fund activities and a review of those graphs ensued. Total usage was 396,336. Average usage was 998 cubic feet. Minimum users were 283. Total users were 397. The average water bill was \$30.49. Mr. Shepherd reported that \$576.74 was paid in sales tax.

Mr. Shepherd next distributed to the Trustees his accounts receivable analysis showing those accounts currently in a delinquent status. Shut-off notices will be mailed with regard to the following accounts if balances are not received by August 15, 2013: Account 1095 Gregory Middleton, Account 1101 Thomas J Poisel, Account 1105 Russell Swanson, Account 1123 William Matson, Account 1196 Jason McKewon, Account 1208 Ernest Henry, Account 1277 Leslie K Aleck, Account 1337 Sarah Hentschel, Account 1346 Mitch Watson, Account 1349 Jessica Hawthorne, Account 1368 So. Sarpy Dist. #46, Account 1382 Scott Nebel, and Account 1383 Andrew Waters.

- 6. Accounts Receivable:** June Jordening reported that \$12,938.36 was deposited into the general fund for the month of July.
- 7. Engineer Reports:** Doug Kellner, of Thompson, Dreessen & Dornier, Inc. (TD2), spoke to the Board regarding approval for a remote meter reader for Black Hills Energy. Mr. Kellner provided the board with pictures of the remote meter reader, dimensions, and proposed location. Trustee Knief wants to propose a different location,

possibly the location of the new siren (if a new siren is approved). Mr. Kellner stated that the remote meter reader needs to be on the right way for access, and that Black Hills Energy wants to place the remote meter reader in the next couple weeks. Trustee Quinn asks if the reader can go on an OPPD light pole. Mr. Kellner stated that was not a possibility because OPPD does not allow anything on their poles. Trustee Knief stated another alternate locations would be by the pool, further south on Richland Drive, on pool the side. Board agreed this discussion would be placed on the agenda for new business for the next meeting.

Mr. Kellner also discussed with the board parking signs and SID improvements that Chairman Schuneman asked TD2 to look into, specifically: parking signs, speed bumps, and various park and outdoor improvements. Mr. Kellner stated that the parking signs are waiting on Sarpy County for approval. He explained that the speed table/bumps must meet the traffic standard: need a speed study showing that 15% of drivers must be moving at a speed over 30 mph. Mr. Kellner told the Board that based on his observations and professional experience he does not think a speed study would pass the standard. He also told the Board that speed bumps cost approximately \$4,500-\$5000. Mr. Kellner stated that Chairman Schuneman initially stated he would like 19 speed bumps. Mr. Kellner stated that there is no way the SID could have 19 speed bumps, instead it is more likely the SID would qualify for 2 speed bumps at the most. An alternative to a speed bump is a speed flasher. Speed flashers show how fast a driver is driving. They are solar powered and range from \$3,400 for rebuilt/previously used flashers to \$4,500 for new flashers. The flashers cost approximately \$500 to install.

The proposed ideas for park and outdoor improvements include the following: a walk trail around the hill by the pool; additional planting of trees; benches on the trail; upgrading the baseball field by re-grading, adding a sprinkler system, adding a concession stand/storage shed (no electricity or water), concrete for port-a-potties; picnic tables; dog park with surrounding fence; soccer fields on the bean field that is currently leased. Mr. Kellner stated that all of the improvements are too expensive. He estimates that all of the above improvements would cost approximately \$1,000,000. Mr. Kellner stated that the soccer fields are the most expensive. The walking trail is \$140,000, picnic shelter is \$30,000, benches are \$1000, trash bins are \$800, trees are \$300 per tree, and picnic tables are \$1000.

8. **Attorney Issues:** Attorney Smith gave the Board the duplication of the water book. The Attorney will provide the duplication of the water book for the condominiums at the next meeting. Next, Attorney Smith updated the Board on the status of the lawsuit involving resident Dennis Kelly and the SID. She stated that WOWT no longer has any footage of the sidewalk piece. Attorney Chapman contributed to the meeting via phone and updated the Board on the rules regarding obtaining bids for projects, specifically regarding the Moore Brothers sidewalk bid, and the difference between a new project and continuing project.
9. **Report from G.F. Pesek:** Both wells are cycling properly. The routine monthly coliform test was negative. Century-Link phone circuits that relay the water tower control signals for water level and well response failed. Numerous Century-Link repair people worked on the project under our direction until service was resumed. The 3-year SOC 525, 2<sup>nd</sup> Qtr 2013 tests of both wells were submitted and meet EPA standards for all 26 standards. The 3-year Sanitary Survey of the water supply system conducted by the NHHS is scheduled for August 6.
10. **Payment of Bills:** All bills submitted for payment were approved by unanimous vote. Trustee Knief motioned. Trustee Merritt seconded. The detail of the approved warrants as follows:

Warrant	Date	Issued to	Amount	Purpose	Invoice #
9285	7.9.13	Midwest Labs	30.00	Water Testing	690137
9286	7.9.13	Omaha World Herald	377.46	Publications	153698, 130630
9287	7.16.13	One Call Concepts	36.10	Diggers Hotline	3061043
9288	7.16.13	Century Link	84.92	Phone No. Well	
9289	7.16.13	Century Link	84.92	Phone So. Well	
9290	7.16.13	Abe's Trash Service	31.00	Trash carts, park	837393
9291	7.24.13	Century Link	119.64	Phone water tower	
9292	8.4.13	OPPD	2,563.95	Electrical Service	
9293	8.4.13	Neb. Dept. of Health	299.00	Water testing	440515
9294	8.6.13	Linda Comstock	309.00	Accounts payable	
9295	8.6.13	Electrical Co. of Omaha	729.95	Power problem at water tower	35904
9296	8.6.13	Great Western Bank	250.00	Register and paying agent fee	6738
9297	8.6.13	Cutters Law Service	775.00	July mowing	1384, 1387, 1412
9298	8.6.13	City of Omaha	5,000.00	Apr sewer fee	92462
9299	8.6.13	City of Omaha	259.00	Apr sewer fee	92462
9300	8.6.13	Terry Knief	111.95	Clerk fees/expenses	
9301	8.6.13	June Jordening	551.10	Accounts receivable	
9302	8.6.13	June Jordening	100.00	Garden maintenance	
9303	8.6.13	G.F. Pesek	2,975.00	July maintenance	
9304	8.6.13	G.F. Pesek	990.00	Phone circuit water	

				tower	
9305	8.6.13	Professional Accounting Service	1,087.99	Accounting service	
9306	8.6.13	Cassidy Chapman	3,954.00	Legal fees	3145
9307	8.6.13	Professional Accounting Service	645.98	Water bill forms	
9308	8.6.13	Thompson, Dreeson & Dornier	2,779.32	Engineering fees	99623, 100058
9309	8.6.13	Providence Group	424.00	Well house circuit	130071
9310	8.6.13	Ralston Ins. Agency	5,000.00	Renew insurance policy	84240
9311	8.6.13	Ralston Ins. Agency	2,124.00		84240
9312	8.6.13	Abe's Trash Service	31.00	Park trash bins	848555

**11. Old Business:**

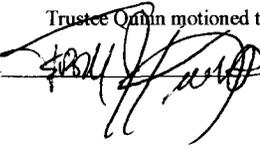
- a. Street sign bids: waiting for approval by Sarpy County
- b. New siren: Does not appear at this time that a new siren is needed, will wait until next year, or until there are further issues.
- c. Bond items: discussed above with Doug Kellner from TD2

**12. New Business:**

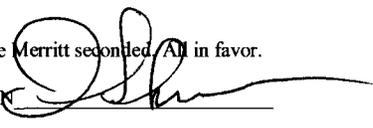
- a. Approval of location of Black Hills Energy remote meter reader
- b. Park and outdoor improvements for bonds

Trustee Quinn motioned to adjourn. Trustee Merritt seconded. All in favor.

CLERK



CHAIRMAN



CVC:ams

cc: Sanitary & Improvement District No. 23 of Sarpy County, Nebraska

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\*Also Admitted in Iowa

April 1, 2013

VIA HAND-DELIVERY

Residents of Sanitary & Improvement District No. 23 of Sarpy County, Nebraska

Re: Sidewalk Removal/Repair

Dear Homeowners:

As you may be aware, Mr. Dennis Kelly, a resident of Sanitary and Improvement District No. 23 of Sarpy County, Nebraska (hereinafter referred to as the "District", initiated a lawsuit in late 2012 against the District due to what Mr. Kelly deems to be "unsafe sidewalks." Mr. Kelly resides at 13236 Carpenter Street. His phone number is 402.894.1409.

Mr. Kelly attended many board meetings in the summer of 2012 and particularly identified the sidewalk immediately surrounding a tree on Carpenter Street, nearest the property of the Westmont Condominium Property (hereinafter referred to as the "Condo Association"). The Condo Association was made aware of its obligations in a separate letter on December 4, 2013.

It should be noted that Mr. Kelly installed this sidewalk. Subsequent to the installation of this sidewalk by Mr. Kelly in 2007, Mr. Kelly contacted Channel 6 and participated in a special news segment regarding the safety of the sidewalk as he had installed it. TD2 submitted a letter to the District dated December 4, 2012 stating that the sidewalk installed by Mr. Kelly which was the basis of his initial concerns as indicated at the meetings, "does not pose a significant danger when traveling on the sidewalk."

The District has been in contact with its engineering firm, TD2, regarding Mr. Kelly's allegations. It is TD2's recommendation that the District develop a formal transition plan for all sidewalks. The plan will include specific time frames for the areas of sidewalk with the highest need. TD2 stated that repairing and replacing all of the sidewalks, as Mr. Kelly demands, would require significant assessments against property owners.

TD2 previously developed a similar plan with the City of Papillion. Papillion's plan spans out over approximately 15 years.

Mr. Kelly's first lawsuit was filed in the County Court of Sarpy County, Nebraska, docketed at CI12-4873 and captioned as *Dennis Kelly v. Sanitary and Improvement District No. 23 of Sarpy County, Nebraska*. As the law firm representing the District, a Motion to Dismiss was filed in this lawsuit and a hearing was held on December 4, 2012, which resulted in this lawsuit being dismissed.

Mr. Kelly stated in this lawsuit that the District sidewalks in their entirety are "in complete disrepair and in a hazardous condition." As such, the District has taken action. Not only was the initial lawsuit defended vigorously, but replacing and repairing sidewalks has continued to be a District priority.

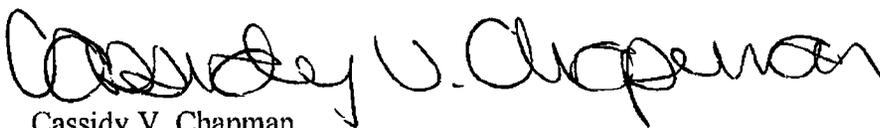
Mr. Kelly again filed suit against the District for identical reasons in the District Court of Sarpy County, Nebraska docketed at CI13-228 and captioned as *Dennis Kelly v. Sanitary and Improvement District No. 23 of Sarpy County, Nebraska; Board of Trustees*. The second lawsuit seeks a Writ of Mandamus against the District. A Motion to Dismiss and a Motion to Strike have been filed and will come on for hearing today. The current Motion to Dismiss and Motion to Strike requests that attorney fees and costs be assessed against Mr. Kelly for the filing of these lawsuits, which this office deems to be pure harassment on the part of Mr. Kelly. To date, this office has expended considerable time and expense in defending Mr. Kelly's lawsuits. The District is obligated to pay these costs and expenses, which may result in an increase in the overall tax levy if the litigation continues.

Lastly, under Neb. Rev. Stat. §31-727(2), the District may assess the expenses of maintaining and/or repairing public sidewalks to the real property benefited. This letter is to provide you, the homeowners, the opportunity to remove, replace, or repair the sidewalks on your individual properties. If the homeowners do not remove, replace, or repair the sidewalks on their property, the District may take action to remove, replace, or repair all sidewalks and assess the costs to the homeowners through a special assessment.

This office has contacted the Sarpy County Building Department. The Department stated that if brand new sidewalks are constructed, they are required to setback four-feet from the curb and to be four inches deep. If the sidewalk is being replaced that had the former specification of a two-foot setback, the Sarpy County Building Department needs to examine the sidewalk and approve the sidewalk to have the four-foot setback.

To stay abreast of all current District business and activities, please consider attending a board meeting or review the minutes posted on the District's website, <http://westmontsid23.com/Minutes.htm>. Otherwise, please contact me with any questions or concerns regarding this matter.

Sincerely,



Cassidy V. Chapman  
Attorney for Sanitary & Improvement District No. 23