

**BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTORS
Tuesday, August 25, 2009**

The Board of Directors of Brooktrails Township Community Services District met in regular session on August 25, 2009 at 7:05 p.m. at the Brooktrails Community Center.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

Roll call showed the following directors present: Williams, Ziady, Orth, Horrick and Skezas. Also present were General Manager Chapman and District Counsel Neary.

REPORT ON CLOSED SESSION

District Counsel Neary reported that the Board met with counsel on pending litigation Paland v. BTCSD and authorized Counsel to enforce the lien on the Paland property.

C. ADDITIONS/ADJUSTMENTS TO THE AGENDA

None.

D. MINUTES OF PREVIOUS MEETINGS

1. July 28, 2009. Director Orth moved to approve the minutes; Director Horrick seconded. The minutes were approved unanimously.

E. SPECIAL PRESENTATION

None.

F. PUBLIC HEARINGS

None.

G. PUBLIC COMMENTS

None.

H. CONSENT CALENDAR

2. Review of Accounts Payable report and authorization to issue checks. Director Orth moved to approve payment of the outstanding bills. Director Horrick seconded; the motion was unanimously approved.

3. Retroactive approval of August 12 check run. Director Orth moved to retroactively approve the check run of August 12, 2009. Director Horrick seconded; the motion was unanimously approved.

I. ACTION AGENDA

4. Appeal of Naomi Wagner/Ron Johnson – base rates. As a preface General Manager Chapman explained that the Wagner / Johnson property [hereinafter “Wagner”] was located in the Spring Creek subdivision, and that subdivision allows a second source of water such as a well or spring. The core issue was the accumulation of debt as the base rates accumulated over time.

Naomi Wagner then presented a letter to the directors. Director Williams asked if it were true that her position now was that she did not want to relinquish the meter or water service to her property. Ms. Wagner replied that was not entirely true. She said the reason they don’t have water service was because it has been shut off by what she would call an agreement. Director Williams asked if she wanted the meter removed. She answered by saying that the Board was reserving all the options to maintain the availability charge while expecting them to give up the meter for nothing. She believed that the meter was valuable and did run with the property, in contrast to their earlier belief that the meter belonged to Brooktrails. They had no assurance that the debt would be cancelled if the meter were surrendered. She then questioned whether Brooktrails had the right to make ordinances relating to water for Spring Creek. She believed they continued to pay their bills until the meter was shut off some time after their initial request. She claimed it wasn’t shut off due to nonpayment of the bill. She repeated they paid the bills until Brooktrails shut off the water. She said she felt Brooktrails was ambivalent in their position and keeps changing the definition of who owns the meter.

Director Williams asked who the meter belongs to. Mr. Chapman said the meter box physically belongs to Brooktrails Township CSD, and Ms. Wagner has a vested right in that meter. Director Williams asked if the meter was removed and the connection was removed, they would no longer have availability charges? Mr. Chapman said yes, if the meter were taken away. He then confirmed that any future owner of the Wagner property would have to go through the entire process of obtaining a new water connection. Director Williams then spoke to Ms. Wagner, saying if you decided you no longer

wanted the connection and the meter was removed by us, then you can give it up and there would be no further availability charges because water would no longer be available to you.

Director Orth said she needed to consider the value of having a water meter; the lien amount was peanuts compared to what a future meter would cost. Ms. Wagner said they were aware of that and that's why they're not going to part with the meter. Director Orth said if you stay with the meter, then all these charges are due. Directors repeated that if she gave up the meter, the only thing she would pay was the \$30.00 annual water availability assessment, but if she kept the meter, she would pay for the monthly base rate whether water was used or not. Director Orth spoke further that those charges have been appealed and the District has already survived a lawsuit about this (Paland). Ms. Wagner again repeated she was not sure that the District's ordinance applied. Director Orth said it sounds like you have to do some research and she should review the court case and also get her own legal advice, if she thought that our ordinance didn't apply.

Mr. Chapman then clarified that the base rates applied to anyone with a meter at their house that was attached to the system, used or not. He pointed out that in the last four years we have made about four and a half million dollars worth of capital improvements into the water system, as required by the Department of Health Services. Whether or not you use your meter, the District still has massive amounts of debt structure to pay. Ms. Wagner said she questioned whether this applied to Spring Creek, which has the right to develop water. She said it went back to the fact that the water was shut off by mutual consent. It seemed to them there was an agreement to shut off the meter and not charge availability, and then it suddenly started up again. She thought that the ordinance shouldn't have been applied retroactively to their property. She asked to review the lawsuit and said if the Board didn't want to resolve this tonight they could return to it.

District Counsel Neary said certainly there were some differences that apply to Spring Creek. In Brooktrails proper the District holds the water rights, which effectively prohibits wells on Brooktrails properties. However, those prohibitions don't apply in Spring Creek or Sylvandale. In those subdivisions you could have a well. Continuing, Spring Creek still has been annexed to the District and is subject to District ordinances; these ordinances govern the water and sewer system. The ordinances apply throughout the entire District. If there is no water connection on the property, the ordinance doesn't apply, but if there is a connection, the ordinance does apply. He then reviewed the history of the District, with its original concept of part-time residency. It was common at that time for people to turn their water off for months at a time and it was not District policy to charge a base rate to those customers at that time. As Brooktrails turned into a full-time occupancy community, in 1987 the District adopted Ordinance 76, which had no exceptions. In 2003 there were only a small number of individuals who would still turn their meters off temporarily (the ordinance applied but had not been enforced and they were not being charged base rates). In order to be fair, Mr. Chapman notified those owners that it would apply to them.

Mr. Neary continued that the base rates cover the fixed operational costs; the tier rates cover the incremental costs of high water users and encourages conservation. The operating costs have to be distributed equally among all connections; this is analyzed once a year. If someone isn't paying the base rate for six months in a year, the District isn't being fairly compensated for the cost of providing the service and keeping the system working, so when somebody turns on the tap it will work. In his opinion, the Utility Ordinance applies to Spring Creek just as to anyplace else in the District. The issue here is whether you have a connection, and if the connection is active—you have the right to pay your water bill and get it reconnected and turn on the tap and use District water—then while it's sitting there waiting for you, you have to pay a base rate. This had just been challenged by somebody who was a vacation resident, who raised constitutional and due process issues and it went through the Court of Appeals and the decision validated our process of recovering fixed operational costs through base rates. The issue for Ms. Wagner, he said, was to go down either of two roads. Originally, he said, you brought the idea to relinquish your connection, which we're not too keen on you doing because there is the possibility somebody later will disaffirm that and there will be an argument. He felt it possible, though not likely, that the next person on the moratorium waiting list would be able to benefit by this. He felt that it had occurred to Ms. Wagner that her well could go dry.

The other road they could go, he continued, is to request the Board to waive the base rates on grounds that distinguish you from somebody else, and under the ordinance, they have the authority to do this. You mentioned some sort of mutual consent when the meter was turned off, he said. But in order to convince the Board to consider an abatement of an existing accumulation of charges—which it has done before—you would have to pay the base rate on an ongoing basis if you retain the connection. He didn't think there was a middle road; it was either of the two roads he had described. He reiterated she could request some relief from the accumulated bills and start anew and that's what he would advise. He felt she shouldn't have to make this decision on the spot but should think it over; he said he would be happy to talk to her about it, to formulate something that would make sense to the Board. He said right now he didn't think it was making sense.

Ms. Wagner returned to her theme of whether the base rates applied to the entire District and said she hadn't seen that in writing. Mr. Neary said she was confusing two different things. There is a water availability charge for undeveloped property owners who have water available; it really was an important charge when first enacted in 1977 when there were 200 houses here and a water system had to be

maintained for 6,600 lots, so a water availability charge of \$10/parcel was started. That was a different issue.

Ms. Wagner said she still wanted to see actual written statements that show that these ordinances apply to Spring Creek and their own CCRs. As far as the cost of maintenance, she referred to the last paragraph in her letter which said their not using the water has saved Brooktrails many thousands of gallons over the years. She felt this was the core of the matter. She said, we were offering you the meter and you didn't want to take it; now we're withdrawing that offer, and you really want it; she felt that was an irony. Director Williams said the District didn't want or not want; it was the District's position that she should take her choice, but she couldn't have it both ways.

Director Orth said she got a very good deal on the cost of the meter as compared to the cost for future meters. Ms. Wagner protested the various comments telling them what to do and said they could make their own decisions. She said they haven't had the water on for at least 15-16 years, and because they have another source of water, their situation was not the same as the other part-time residents cited.

She asked Counsel Neary if he were talking about physically removing the meter when he talked about a waiver. He said yes; if you want to relinquish the connection and avoid base rates, we would reluctantly be willing to accommodate you. Then your appeal to the Board for relief would be to forgive the accumulated charges, probably a much stronger case. The other alternative would be to recognize the potential value of the connection and apply to the Board for abatement of some portion of the accumulated debt, but he believed the Board would require her to concede the base rate. Ms. Wagner requested clarification and was told that yes, she would have to continue to pay the base rates, in addition to the assessment.

Ms. Wagner said she would like to consider all of this. Mr. Neary said she could call his office and he would go over it with her. Ms. Wagner said she felt this would take more time, and she said she wanted the Board to know now that they would expect to be compensated for their costs. President Skezas said that's not going to happen. Director Williams questioned the confusion about the base rate and connection after 2003. Mr. Chapman said he didn't know when the Wagner meter was locked, but eventually we would put a lock on any unpaid bill. Ms. Wagner said there was no unpaid bill and it was locked at their request when Brooktrails finally agreed to lock it. She guessed this was around 1991.

Ms. Wagner said she was sorry, but she had to go back to their original contention that the billing was incorrect, the lien is unwarranted, and we do not owe that debt. They were consistently not using water and saving Brooktrails that water, which would more than compensate for any maintenance cost that they had. Director Williams said he didn't think the system gets that benefit; he said if that is your position, you need to seek legal advice because we do not agree. Mr. Chapman explained the \$2,474.00 represented the current billing as of this month. He thought this billing probably began in the spring of 2003. He had given her a break by not charging the 10% late charge after awhile. Therefore the vast portion of this bill consisted of just the base rate being applied monthly over time.

[At this juncture the tape, for some reason, quit; minutes from this point are constructed from the General Manager's notes.]

It was decided to table this action to allow Naomi Wagner and Ron Johnson to read the Paland lawsuit that was adjudicated in favor of the District. Mr. Chapman mentioned this may come back in October or November.

5. Appeal – Excessive Use Cap – Edward Adams. Mr. Chapman explained to the Board of Directors about the history of Mr. Adams' water usage. He pointed out that Mr. Adams' water usage was high even in the wintertime, a common theme for large families (10,000 + gallons). Mr. Chapman indicated after further analyzing his account for summer use, he could not recommend more than an additional 2,000 gallons beyond the 22,445 gallon base unit. Therefore his recommendation was 22,645 gallons for family use (i.e., 22,445 base + 2,000).

Mr. Chapman welcomed Mr. Adams to the podium. Mr. Adams then explained to the Board his particular predicament of having six children, plus two adults, living at his household. He discussed his large garden with 400 strawberry plants, plus approximately 20 nut trees of various size spread out over three joined lots. After general board discussion Board President Skezas mentioned he didn't take exception to Mr. Adams family size, but he did point out to Mr. Adams he felt his garden was a bit much given the District's water policy.

Director Orth moved to allow 2,000 additional gallons of water per billing period for a total cap of 22,645 gallons for family use. Director Ziady seconded. Director Horrick requested a three-year limit for this 22,645-gallon family cap. Roll call vote was as follows:

AYES:	Directors:	Williams, Ziady, Orth, Horrick, Skezas
NOES:	Directors:	None
ABSENT:	Directors:	None

J. ADDITIONS TO FUTURE AGENDAS

None.

K. SPECIAL REPORTS

From Directors: None.

From District Counsel: Mr. Neary said he was working with the law firm of Mason & Morrison, Daisy Hopkins' legal counsel, regarding the issue of a small piece of property adjacent Ms. Hopkins' parcel located on Blue Lake Lane.

From General Manager: Mr. Chapman briefly reported that a large illegal dumpsite had been found that day off of Dogwood Terrace. Mr. Chapman was going to file a police report.

L. PUBLIC COMMENTS

None

M. ADJOURNMENT

Director Horrick moved to adjourn. President Skezas adjourned the meeting at 8:40 p.m.

George Skezas, President

ATTEST:

MICHAEL V. CHAPMAN