

OAKWOOD LAKE WATER DISTRICT

REGULAR MEETING MINUTES OF APRIL 27, 2021

HELD REMOTELY VIA ZOOM¹

A Regular Meeting of the Oakwood Lake Water District was held remotely, via Zoom, on Tuesday, April 27, 2021 at 7:00 p.m.

1. CALL TO ORDER; ROLL CALL. The meeting was brought to order at 7:00 p.m. by President Gene Oliver. Secretary Knight took roll and the following Directors and staff were remotely present:

Gene Oliver, President
Steve Marino, Vice President
Tim Smith, Director
Nelson Bahler, Director
Glen Campi, Director (arrived at 7:15 p.m.)
Jean Knight, District Secretary
Doug Coty, Legal Counsel
Bert Michalczyk, District Engineer

Others Present Were:

Casey Wichert, Valley Operators
Lynne Wichert, Valley Operators
Dave Ragland, Lafferty Communities
Rick Lafferty, Lafferty Communities
Jim Idleman, Lafferty Communities

2. PUBLIC COMMENT

- a. Audience members may address the Board on any item pertaining to Oakwood Lake Water District's jurisdiction not appearing on the agenda. Please limit each presentation to five minutes. No public comment.
- b. Written correspondence received via District email. No written correspondence.

3. CONSENT ITEMS:

The following items can be acted on in one consolidated motion as recommended or may be removed from Consent and separately considered at the request of any Director.

- a. Approve Minutes for Regular Meeting of March 23, 2021 and for Special Meeting of April 12, 2021
- b. Accept Financial Reports for March 2021
- c. Receive Capital Projects Status Report for March 2021
- d. Receive Fiscal Year Goals Status Report for March 2021
- e. Infrastructure Finance and Construction Agreement Status Report for March 2021

¹ Pursuant to Governor Newsom's Executive Order N-29-20, N-33-20 and subsequent orders, Directors will participate in this meeting remotely. No physical meeting location will be provided in order to comply with Shelter in Place Order and closure of the Oakwood Shores Association Clubhouse.

- f. Time Schedule Order Status Report for March 2021
- g. Approve Alternative Insurance Provisions for the Right of Entry Granted to Alpine Protective Services LLC

After review,

It was moved/seconded (N. Bahler/T. Smith), roll call² by Secretary Knight was responded to as follows: Gene Oliver; Aye; Steve Marino; Aye, Nelson Bahler; Aye, Tim Smith; Aye and unanimously carried by the Board of Directors of the Oakwood Lake Water District that a. The minutes for the Regular Meeting of March 23, 2021 and the Minutes for the Special Meeting of April 12, 2021 were approved; b. The Financial Reports for March 2021 were accepted; c. The Capital Projects Status Report for March 2021 was received; d. The Fiscal Year Goals Status Report for March 2021 was received; e. The Infrastructure Finance and Construction Agreement Status Report for March 2021 was accepted; f. The Time Schedule Order Status Report for March 2021 was accepted; and g. The Alternative Insurance Provisions for the Right of Entry Granted to Alpine Protective Services was approved.

4. ACTION/ ITEMS:

- a. Consider Waiver of Late Fee for the Oakwood Lake Mobile Home Park and Approve Interim Staff Authority to Waive Late Fees. [*Director Bahler recused himself from participation in this item due to an ownership interest in the Mobile Home Park. Director Bahler was removed from the virtual meeting prior to the discussion and action.*]

Bert Michalczyk presented this item. He said that the mobile home park (MHP) wanted to appeal the late fee of \$266 as the spokesperson for the MHP said they never got the January 1st invoice. It was asked if this could be presented to the Board. The MHP cannot provide proof they didn't get the invoice and the District cannot prove they did. Engineer Michalczyk reported that the MHP has been delinquent 4 times in the past 15 months. He said, on a positive note, they did pay off the amount they owed on their payment plan. Asked what amount their normal monthly invoice is, the response was that the District bills the mobile home park as a single account – 57 units for about \$5,000 plus. Mr. Michalczyk reported that going forward, staff is going to work with them to come up with a system to make sure they have received the invoices and get a confirmation of such. It was asked by the Board how much time staff had spent working on this problem and the response was about 2 to 4 hours. Being that the agenda item is twofold, the comments made by several Directors on the first part of the agenda item was

² All actions taken at this meeting will require a roll call vote. The Secretary will perform all roll calls.

they felt the late fee should not be waived. Resources of the District personnel for 2 to 4 hours as one reason and the other was the history of the MHP being delinquent. About the waiver of late fees, the Board thought that the District Engineer and Valley Operators should have the authority to waive late fees up to \$25 for residential customers, provided a customer is in good standing (no prior late fees in prior 12 billing cycles) and the reason for the waiver request is reasonably beyond the control of the holder. After further discussion,

It was moved/seconded (T. Smith/G. Oliver), roll call by Secretary Knight was responded to as follows: Gene Oliver; Aye; Steve Marino; Aye; Tim Smith; Aye; Glen Campi; Aye and carried by a 4-0 vote the Board of Directors of the Oakwood Lake Water District (with one recusal) that 1. The late fee of \$266 for the mobile home park should not be waived; and 2. Approve staff authority to waive late fees up to \$25 for residential customers provided a customer is in good standing (no prior late fees in prior 12 billing cycles) and the reason for the waiver request is reasonably beyond the control of the account holder.

[Director Bahler was returned to the virtual meeting at the conclusion of the item and vote.]

- b. Receive and Discuss Letter from Oakwood Ventures Regarding Release of Ten Will Serve Letters, Application for Development of Pond 1 and Pond 2 Property, and Possible Offer to Purchase Pond 1 and Pond 2 Property and Provide Direction to Staff. Bert Michalczyk presented this item and welcomed Lafferty Community representatives, Dave Ragland, Rick Lafferty, and Jim Idleman.

The agenda materials give a thorough overview of this agenda item and additional information is set out below.

Bert Michalczyk welcomed the Lafferty Communities attendees. He went over what Lafferty has asked to be addressed at this meeting and below are the items:

1. The trigger for the release of the next (third) tranche of ten will serve letters;
2. A request that the District participate as a property-owner applicant for processing entitlement applications for future development at Pond 1 and Pond 2; and
3. The District's willingness to consider and act upon an offer from Oakwood to purchase the two pond properties in advance of the timing previously agreed to by Oakwood and the District.

These concerns have been recurring for several months with staff requesting that Lafferty put a proposal in writing which could be brought to the Board for discussion. The Board has previously directed that staff not engage with Lafferty directly without the prior

approval of the Board. Additional requests have been made by Oakwood about sharing in the settlement funds from the Beck lawsuit and then the nature of costs that are being incurred by the District and reimbursed by Oakwood on the Manteca project. Regarding these two issues, it is Engineer Michalczyk's and Attorney Coty's position that staff can provide additional information on these items if requested, however, they do not require Board consideration at this time.

Under "Contractual Background" in the agenda materials, reference is given to the Infrastructure Finance and Construction Agreement that was entered into September 11, 2017 and has been amended five times. The four amendments entered into in the last 12 months since May of 2020 have accommodated Oakwood's sale of otherwise deed-restricted homes and specifically what triggers the release of Tranche 3 Will serve letters. Those items are:

- Oakwood's substantial completion, and the District Engineer's approval pursuant to Sections 14 of the Agreement, of the pump Station and ancillary facilities consisting of the civil, structural, mechanical, electrical, instrumentation and programming needed to make the Pump Station fully functional.
- Delivery of all piping for the Force Main and the Gravity Sewer to the job site, and
- The resolution of all stop notices pending at that time for labor and materials.

Also noted was the language was purposely negotiated to allow Oakwood to build the pump station and the force main in the order they desired which and at the time of negotiation, the Oakwood representative stated that the pumping station would be built first because of the long lead times associated with that equipment.

District staff also stated that due construction delays, the District is spending \$20,000 to \$25,000 a month to continue running the wastewater treatment plant and therefore, rate payers are currently not able to realize the lower rates anticipated from connection to the City. There are also several outstanding invoices that Lafferty is late on (one for \$53,000 and the other for \$88,000). The pipeline and pumping station were contractually due to be completed by Oakwood on November 30, 2020; the current schedule by Oakwood's contractor, Marques now projects construction to be complete about 10 months late in September 2021.

Discussion about interpretation of the Infrastructure and Finance Agreement followed as below.

David Ragland, President of Lafferty Communities spoke for a few minutes and noted the good relationship between Lafferty and the District and said Lafferty was incredibly proud of the lakefront development.

Before Mr. Ragland began talking further, Rick Lafferty spoke and wanted to say they appreciated the opportunity to speak to the Board on such short notice. He said that when

the Covid pandemic hit, processing got delayed and they were struggling. He mentioned when he had attended several of the OLWD Board meetings in the past he walked away in alignment and cooperation. He said it is a beautiful community and they all worked arm in arm with many agencies - OLWD, the Oakwood Shores HOA, the City of Manteca, Regional Water Quality Control Board, etc., and there were many challenges to his company and its investors. He noted that the extended timelines have been very profound, but he said he wants to finish what he started and that financial rewards don't exist for Oakwood. He mentioned that when they took on the Beck lawsuit, he thought it would be about \$250,000 but it's almost \$1,000,000³. And, in conclusion, they took a broken project, with OLWD and others, and created a value-added community. With respect to the release of the ten will serve letters, it is his feeling that Lafferty is asking for an accommodation. He says, "That's really the request." "Nobody misinterpreted the agreement." They need to maintain some momentum out there.

No questions came from Board members after Mr. Lafferty spoke.

David Ragland then spoke and noted that with all due respect, he feels it is an interpretation of the Infrastructure and Finance agreement and not an accommodation they are asking for. He went into the agreement and said words do matter.

Discussion ensued with Mr. Ragland restating the arguments made in the April 12, 2021 letter from him which was included with the Staff Report for this Item. District staff reiterated its position, which was also presented in the Staff Report. The gist of Mr. Raglan's argument is that the wastewater project is currently at substantial completion thus mandating the release of the third tranche of will serve letters at this time.

District staff stated that the project is clearly not substantially complete as that term is commonly used in the public works construction industry as well as how it is defined in the specifications that Oakwood developed.

Attorney Coty noted that the Board has in front of it a request that it can consider - an accommodation request from Mr. Lafferty – that does not require interpretation of the Agreement.

Director Oliver stated that he would like to have the Board take the matter under advisement and consider at a later time and reconvene in a special meeting and revisit the item at that point and time to think about it.

Director Bahler says he would have felt better if it was just presented an accommodation and not going to through the convoluted explanation of substantially complete as was presented originally in Mr. Raglan's letter of April 12 and as verbally presented at this meeting.

³ Through April 2021, OLWD reimbursement requests have total \$630,000.

Doug and Jean will work to schedule a meeting next week.

At 8:27 p.m. Dave Ragland, Rick Lafferty and Jim Idleman, Lafferty Communities
Left the meeting

5. STAFF REPORTS:

- a. Director Reports – no report
- b. Staff Reports –

Bert Michalczyk reported:

- Manteca Force Main – 90% complete with the force main. Property issues at the eastern terminus will be addressed during closed session. The current estimate for completion is September, 2021.
- There is a new radio communication antenna at Pond 2 which resolved the communication issue between that facility and the treatment plant.
- There has been significant vandalism at the gate from the mobile home park into the Pond 2 area and at the RD17 gate and fence at the west end of Aplicella. RD 17 may be putting cameras in these areas. The District Engineer feels that the District needs a more active security system. Director Oliver stated that the HOA has a camera system at its gates that can identify every vehicle license entering Oakwood Shores.
- Pond No 1 – A homeless camp had built up near the railroad track. There was a recent fire and the whole encampment burned down.

Attorney Coty reported that San Joaquin County approved the resolution for the District's elections to be moved to even years. This should also save the District some election expenses in the near and long terms.

- c. Committee Report (Ad-Hoc Chiavari Landscape Replacement Water Committee. Bert Michalczyk reported that the Committee met last week and that will be discussed in closed session.

It was requested by staff to take closed session item (a) out of order as the last item.

The meeting was closed to the public closed 8:38. At this time, Secretary Knight and Casey and Lynn Wichert left the meeting and the Directors and remaining staff moved to closed session.

6. CLOSED SESSIONS:

- a. Conference with Real Property Negotiator – as authorized pursuant to Government Code Section 54956.8: Property: *Landscaping Area on North Side of Chiavari*; Agency

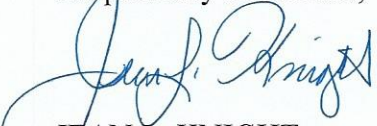
- Negotiator: *District Engineer*; Negotiating Party: *Oakwood Shores Owners Association*;
Under Negotiation: *Price and Terms of Payment for Easement*
- b. Conference with Legal Counsel – Existing Litigation - as authorized pursuant to Paragraph 1 of Subdivision (d) of Government Code Section 54956.9: *Oakwood Lake Water District v. Beck Properties, et al.*; San Joaquin County Superior Court Case No. 39-2015-00329828 CU-CD-STK
 - c. Conference with Real Property Negotiator – as authorized pursuant to Government Code Section 54956.8: Property: *Pond 1 and Pond 2 Property*; Agency Negotiator: *District Engineer*; Negotiating Party: *Oakwood LT Ventures II*; Under Negotiation: *Price and Terms of Payment*
 - d. Conference with Legal Counsel – Consider Initiation of Litigation – as authorized pursuant to Paragraph 4 of Subdivision (d) of Government Code Section 54956.9: APN 241-260-040 owned by Meritage Homes of California Inc. (*Condemnation for Easement*)
 - e. Conference with Legal Counsel – Consider Initiation of Litigation – as authorized pursuant to Paragraph 4 of Subdivision (d) of Government Code Section 54956.9: APN 241-260-050 owned by R E L M Properties Inc. (*Condemnation for Easement*)
 - f. Conference with Legal Counsel – Consider Initiation of Litigation – as authorized pursuant to Paragraph 4 of Subdivision (d) of Government Code Section 54956.9: (*1 Potential Case*)

A Closed session was held on the above items. Return to open session. There was no reportable action.

7. ADJOURN - The meeting was adjourned at 9:38 p.m.

The Agenda for this meeting was posted in a sign board in front of the Oakwood Shores Clubhouse, 1699 Bella Lago Way, Manteca, CA at least 72 hours preceding the meeting.

Respectfully Submitted,



JEAN L. KNIGHT
District Secretary