



## SMSSD Board Meeting Minutes

Held August 14<sup>th</sup>, 2024, 5:30pm to 9:00pm

Senior Citizens Center - 101 East 100 North Mt. Pleasant. Utah 84647

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## SMSSD Board Meeting Minutes

Board Members in attendance: Craig Godwin, Don Hunter, Trent Andersen, Beca Mark, and Ferris Taylor

Staff: Roy Fox, Water Superintendent and SMSSD Treasurer, Jeremy Fox to set up mics

SMSSD Customers in Attendance: Ira & Tricia Wright (B72), Ron & Vicky Yocom (B102), Kim Hansen (D-4), Jake Blaney (C13), EvaMae Cook (H17), Max Henrie (J70), Ladawn Godwin (J154), Jacolyn Hunter (J133), Kaylan Ash (J136)

Zoom Participants: Beca Mark (Host), Jay Springer (Smith Hartvigsen – SMSSD Lawyer), Trent Taylor (D46/D47), Kenton Powell (Indian Ridge SSD Board Chair - also working on Bylaws)

After an announced technical delay getting mics set up, the meeting was **Called to Order at 5:45 PM** by Craig Godwin, as Board Chair, with welcome to those in attendance and on Zoom.

Invocation: Beca Mark

### **Agenda announced - moved SMSSD Bylaws up for legal participation**

- 1) Approval of Previous meeting minutes
  - a) SMSSD reviewed the April 16, 2024, Board Meeting Minutes, as emailed to the SMSSD Board on July 30<sup>th</sup>, and also as distributed to attendees at the meeting.
    - i) Motion to approve by Don Hunter, second by Beca Mark and approved by Board.
  - b) Board and attendees reviewed the May 28, 2024, Soom Board Meeting Minutes.
    - i) Jake Blaney questioned Paragraph 3(a) on SMR/SMSSD billing comparison where Jake provided Roy Fox the SMR billing list and Roy did a lot-by-lot comparison. The SMR Board did not receive the entire SMSSD Billing list.

- ii) It was noted that as a State Agency, customer lists cannot be shared outside of the SSD, but Trent Andersen, as a Board Member, was given the comparison list and the results of differences between SMR member dues and SMSSD customers billed.
- iii) Trent Andersen and Jake Blaney requested that the list be emailed to Trent again.
- iv) With one exception, the only differences were in cases where SMSSD invoices from Sanpete County tax records, but SMR invoices from historical records which do not recognize in all cases the SMR lots that were combined for tax purposes as the SMR Subdivision was being approved and deeded to property owners.
- v) The one exception is noted in the minutes as being the Overlook Lot where access is given to all SMR members and guests in exchange for waiving water fees and dues on the owner's lot. The minutes correctly reflect the May 28, 2024, discussion.
- vi) After discussion, a motion to approve the May 28, 2024, BOD Minutes was made by Beca Mark, seconded by Don Hunter, and approved 100% by the SMSSD Board.

## 2) Approval of financials

- a) Full SMSSD Financials were emailed to the Board on August 8, 2024, and included in the handout packet of materials for each board member and for the attendees.
- b) In summary, SMSSD financials include the following balances (details available online):
  - i) Checking                               \$4,121.71
  - ii) X-Press                                 \$31,240.17
  - iii) Loan Payments                     \$58,528.22
  - iv) Warranty                              \$1,519.88
  - v) Debt Service                         \$1,519.83
  - vi) Water Shares                        \$1,519.88
  - vii) Total                                 \$98,449.69
- c) The Impact Fee Account, required to be a separate account, has a balance of \$10,000.83
- d) Roy Fox noted that Check #1743 in the amount of \$1,881.80 was issued to Craig Godwin as reimbursement for parts he was able to purchase in Salt Lake City at half of the quote prices Roy Fox had been getting. The parts were bought and delivered to SMSSD.
- e) Motion to approve the SMSSD Financials as summarized and detailed in handouts, along with the reimbursement check noted above, was made by Beca Mark, seconded by Ferris Taylor, and approved by 100% of the SMSSD Board.

## 3) By-Laws for SMSSD

- a) The August 14, 2024, Draft Bylaws of SMSSD were shared, reviewed, and discussed.

- b) There were questions asked, documents or regulations referenced, and clarifications provided, with legal input from Attorney Jay Springer at Smith Hartvigsen, PLLC, SMSSD's Legal Counsel.
  - i) Questions raised earlier by the Board in their review had been sent to Jay Springer at Smith Hartvigsen to assure the Bylaws comply with State and County requirements.
  - ii) Jay Springer on the Zoom call, reviewed answers to questions that had been raised by referencing Utah Code and took new questions from the Board and those in attendance. The discussed updates will be added to the draft of the SMSSD Bylaws.
  - iii) Jay Springer was asked if Sanpete County should "approve" the SMSSD Bylaws
    - (1) Jay responded that the County can, and have, delegated the administrative control of SMSSD to the Board that they have appointed.
    - (2) Outside of "clawing back" that Board administrative control, which there is no anticipation they would do, they can't override Utah Code or the policies and procedures established by the County Commissioners and/or SMSSD resolutions.
    - (3) As the County has requested the creation of the SMSSD Bylaws, they will be given a copy and any clarifications they might request will be responded to.
- c) Other key questions with summary responses and important clarifications included:
  - i) Jay Springer suggested that to assure order of priority language and the effect of references to documents throughout the Bylaws, an opening paragraph be added.
  - ii) On the question of limiting the service area of SMSSD to SMR that came up multiple times, Jay Springer said it a non-issue per the Utah Code. Even if SMSSD was created to serve properties within SMR, that does not preclude or limit the statutory authority that every SSD has to expand its boundaries in order to serve properties outside its boundaries, so long as the proper requirements and procedures are met and there is a public benefit for an existing SSD to do so.
  - iii) The discussion suggested that key organizing documents be attached (or links be provided) in the Bylaws. Those attachments will be developed and added.
  - iv) Questions were asked multiple times about requirements for bylaws. It was a request by the Sanpete County Commissioners that these bylaws be created. The section of their minutes from March and April of 2024 will be included in the Bylaws to note their discussion that one of the next SMSSD Board members be a full-time "RESIDENT" of SMR, document their request that bylaws be written, and highlight their request for agreed upon language from SMR and SMSSD for the Commissioners to approve a resolution on building permits and SMSSD expansion.

- v) Further on the question raised as to whether SSD bylaws were required when SMSSD was organized, Jay Springer clarified that “No, bylaws are not required for an SSD.” He shared the general role of bylaws, but in short, these bylaws are not required as SSDs operate per Utah Code and have policies, processes, procedures, and resolutions. These Bylaws will put in one place for the County and the Community those rules, policies, processes, and procedures of SMSSD, including references to parts of Utah Code, County decisions, and the organizing documents of SMSSD.
- vi) On the question of the status of the SMSSD Water Rights, Craig Godwin noted the agenda item in the meeting that would review in detail the Smith Hartvigsen/Craig Smith “Evaluation of Water Rights Held by SMSSD” dated July 2, 2024. Jay Springer stated that the use of water rights in an area (according to the Division of Water Rights) is far broader than the service area of an SSD. Per the discussion, Section C(6)(d) will be added from the Sanpete County Commissioner minutes, stating the Commissioners are waiting for agreed upon language from SMR and SMSSD to solidify this issue. When a resolution is submitted to Kevin Daniels and approved by the Commissioners, that resolution will clarify this question in these Bylaws.
- vii) On the question of the use and status of the Birch Creek Irrigation Company water shares still in SMR’s name, Jay Springer pointed out that SMSSD is distinct from Birch Creek Irrigation Company and by mutual written agreement in seeking SMR Subdivision approval, their third-party water shares are included as water committed to the SMR subdivision. Those water shares must be managed separately by the third party - the Birch Creek Irrigation Company. SMSSD, nor any other SSD, cannot be responsible for managing another private or public water company’s water.
- viii) Trent Andersen asked to have clarified that the SMSSD Board “elects” officers but that the Sanpete County Commissioners are the appointing authority that appoints SMSSD Board Members. That can be done by breaking out a separate paragraph in the Administrative Control Board Section to highlight that only Sanpete County Commissioners have the authority to appoint or remove an SMSSD Board Member. It is already included in the “Officers” Section that the SMSSD Board “elects” their officers and election is separate and distinct from a new Section D(6) with respect to Sanpete County Commissioners appointing or removing SMSSD Board Members.
- ix) Jay Springer had shared that Section H in these Bylaws on “Standards of Conduct” is general Utah Code Language. It could be augmented to include policies on decorum and bolstered ethics by an SMSSD approved resolution at some future date.

- x) As is recorded in the minutes again later in the meeting, a request was made to ask Craig Smith whether the Impact Fee resolution needs to be adjusted to clarify how it works for different situations or clarifications on what is a “habitable structure” (i.e. upgrades to existing connections, creating connections where prior access existed, etc.). To support these bylaws, SMSSD will ask for a written letter on any clarifications on the Impact Fee resolution language.
  - d) To move the bylaws forward, a motion was made by Beca Mark, seconded by Trent Andersen, and approved by the SMSSD Board, to give SMSSD customers, through a web-flash by SMSSD (and the SMR Board and all SMR members, through an eblast by SMR), a two-week opportunity to provide feedback, edits, comments, and/or additions to these Bylaws for the SMSSD Board and Smith Hartvigsen to consider.
  - e) The results of the discussions and the changes recommended during the Board meeting will be included in the updated draft of the SMSSD Bylaws for customer distribution.
  - f) The draft will be on the [www.smssdutah.com](http://www.smssdutah.com) website for all customers to read, review, and provide comments via an email to [smssd2013@gmail.com](mailto:smssd2013@gmail.com).
  - g) It was requested that SMSSD and SMR Board Members all carefully review the Bylaws.
- 4) It was discovered Zoom had not been recording. The meeting is recorded from here on.**
- 5) Update on water system
- a) Thad’s Peak Improvement
    - i) Craig Godwin displayed a copy of the almost 500 page “bid document” for the Thad’s Peak water and fire assistance project which all bidders had to complete.
    - ii) This project goes back several years and bids were solicited in 2022/2023 but came in at over \$2 million dollars. The decision then was to re-request bids later.
    - iii) In the Sanpete County Commissioners Meeting of February 20, 2024, the Commissioners shared that in pulling out of the Central Utah Water Conservation (CUWC) District, money was made available to support “shovel ready” projects that could be completed by December 31, 2024. Specific contact information was shared, and Roy Fox pursued the complex grant process with the SMSSD law firm, the SMSSD Water Engineers, the County, and the CUWC for funding the Thad’s Peak project.
    - iv) After several months of negotiations and SMSSD Board approval on May 28, 2024, SMSSD was given a 75% grant for the Thad’s Peak project, which has resulted in a grant of \$650,578, with SMSSD being responsible for 25% - an amount of \$216,806.
    - v) SMSSD had arranged with the State to restructure the SMSSD Bond in 2022 for the Thad’s Peak project and Craig Godwin has been able to extend the availability of the restructured bond, which now finances SMSSD’s portion of the Thad’s Peak project.

- vi) The financial implications to SMSSD are favorable in that the original bond had been paid down to \$2,244,000. The additional 25% funding and restructuring fees total about \$281,000, so the bond has been restructured to a total of \$2,522,000.
- vii) Because the interest rate on the original bond was at 2.5% but the negotiated restructured interest rate in 2022 had been 2.09%, SMSSD's annual bond payment will now be \$113,000 rather than the prior payment of \$144,000, providing an annual savings to SMSSD of \$31,000. That will strengthen SMSSD's financial position.
- viii) All property owners in North Sanpete County should appreciate the fire fighting benefits of the fill station – a fire hydrant to fill fire trucks and also the ability to fill Helicopter “pumpkins” for fighting fires on the mountain.
- ix) All hearings, motions, seconds, and SMSSD Board votes with respect to the Thad's Peak project, the bond restructuring, and the approval of the project this year can be found in SMSSD Board Minutes, up to and including the just approved May 28, 2024, SMSSD Minutes evaluating and selecting a contractor and approving the project.
- x) This is probably some of the best financial news that SMR property owners and SMSSD customers have received since the SMSSD was created.

b) Evaluation of Water Rights

- i) The SMSSD Board and attendees were given a copy of a comprehensive “Evaluation of Water Rights Held by Skyline Mountain Special Service District,” dated July 8, 2024, as prepared and documented by Craig Smith and staff at Smith Hartvigsen.
- ii) Craig Godwin read the first page of the Craig Smith report and some highlights, including comments and answers to questions by Jay Springer. Key quotes are:
  - (1) “These Water Rights are critical to the core function of SMSSD, which is to serve the public with safe and sufficient culinary water within the boundaries of SMSSD.”
  - (2) “All water rights holders must be vigilant in managing their water rights. Periodic Reviews are key to avoiding loss or reduction of the Water Rights.”
  - (3) “As to the condition and status of the Water Rights, the short answer is all of SMSSD's Water Rights are being well managed and are in excellent condition. None are facing any threat of being lost or reduced. I (Criag Smith) attribute this condition to the efforts of the SMSSD Water Superintendent, Roy Fox, who has been proactive in caring for SMSSD's Water Rights. When needed, he has involved water law practitioners – me and my firm – as well as water engineers, Hansen, Allen & Luce (HAL), to protect and care for SMSSD's Water Rights. Roy should be commended for his continued efforts over many years.” SMSSD agrees.

- (4) It was noted that the SMSSD water rights date from 1880 up through 1971.
  - (5) “All SMSSD Water Rights are “**Perfected**”, meaning there are no further administrative steps which still must be taken to secure recognition of the Water Rights by the State Engineer of Utah, Teresa Wilhelmsen, P.E., or the Utah Division of Water Rights (“**DWRi**”). This means the water can be used for domestic, irrigation, and other purposes, including all culinary uses. This is the best use classification possible for public water suppliers such as SMSSD.”
  - (6) “All SMSSD Water Rights may be used within its service area, which coincides with SMSSD district boundaries.”
  - (7) “In 2019, the engineering firm of Hansen, Allen & Luce created the current Forty Year Plan for the SMSSD Water Rights. A copy of this Forty Year Plan is attached as Exhibit E (see [www.smssdutah.gov](http://www.smssdutah.gov) website). This Plan has been submitted to the DWRi, as required in the Rule, and can be found in the water right files kept by DWRi. In the Forty Year Plan, all of the Water Rights of SMSSD will be needed within the next forty years. Thus, the Water Rights meet all the requirements for this protection from loss through forfeiture under Utah Code 73-1-4(2)(e)(vii.)”
- iii) A request was made of Trent Andersen, as the SMR Liaison, that SMR have a similar “Evaluation of Water Shares” held by SMR in the Birch Creek Irrigation Company to assure SMR members that those water shares, which were necessary in obtaining approval of the SMR Subdivision having sufficient water to meet state standards, are equally protected and that all reporting and other requirements are kept current.
- (1) Where Smith Hartvigsen has familiarity and expertise in water rights and shares, they may be the appropriate firm to do that evaluation. That is SMR’s decision.
  - (2) Trent Andersen will discuss with the SMR Board and make a recommendation on how to proceed with the evaluation of the SMR water shares in Birch Creek.
- c) 2024 Updated 2021 Standards and Requirements
- i) As noted in the April 16, 2024, SMSSD Board Minutes, the updated “2024 Standards and Requirements for Skyline Mountain Special Service District” were distributed to the Board, those in attendance at that meeting, and posted on the SMSSD website.
  - ii) Roy Fox asked in April for input in describing how SMSSD and SMR work together.
  - iii) As planned in the April 16, 2024, meeting, Roy Fox is now bringing the updated Standards and Requirements to the SMSSD Board for Board approval.
  - iv) After discussion, a motion was made by Ferris Taylor to accept the 2024 Standards and Requirements for Skyline Mountain Special Service District, seconded by Don Hunter, and approved 100% by the SMSSD Board.

d) SMR's Construction Plan Approval

- i) A copy of the "Skyline Mountain Resort Construction Plan Approval" form was distributed, with a request that the language on the 3<sup>rd</sup> (last) page be modified to provide notice to applicants and to SMR via check boxes that SMSSD Impact Fee have been paid and Sanpete County has received an "Will Serve" letter from SMSSD.
- ii) The suggested language is "Skyline Mountain Resort HOA makes potable water accessible through the Skyline Mountain Special Service District (SMSSD) via a pressurized system for full-time lots (Lots A, B, C, etc.) or assessable from wells for the remaining Mountain and Birch Creek (seasonal/recreational) lots. See the [www.smssdutah.com](http://www.smssdutah.com) website for details or email [smssd2013@gmail.com](mailto:smssd2013@gmail.com).
- iii) Suggested language for the checklist and approval could be: **SMSSD Checklist:**

**Paid SMSSD Impact Fee of \$10,000.00** \_\_\_\_\_

**Sanpete County has the SMSSD "Will Serve" Letter** \_\_\_\_\_

**SMSSD Approvals Complete** \_\_\_\_\_ **Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_

- iv) Trent Andersen will follow up with the SMR Board and staff on adding appropriate language to the SMSSD Construction Approval Form for SMR construction requests.

e) SMSSD Facebook Page

- i) SMSSD has a Facebook page that is not being used.
- ii) It was noted that there are risks and liabilities with how Board members of any organization post or comment in social media, as it creates legal liabilities.
- iii) After discussion, including Tricia Wright's question if there was anything of importance on the page that needs to be copied and retained, (the answer was "No"), a motion was made by Ferris Taylor, seconded by Trent Andersen, and approved by the SMSSD Board to take down the SMSSD Facebook page and discontinue its use.

f) Colledge Well Contract

- i) Craig Godwin has been contacted by Alan Colledge and his son on the Colledge well contract, who own 7 lots in the O section (believe to be lots O19 through O26). The Colledges are in New Guinea on an LDS Mission and their son is taking care of their affairs.
- ii) When the Colledges put in their well at the top of Elk Meadow, by agreement with SMSSD assuring that the well met SMSSD and SMR requirement, SMSSD was given the option to purchase that well for SMSSD provision of water services at the original construction cost when the well was put it (less than \$100,000).



- iii) The agreement stated water fees would be waived for the 3 lots served by the well.
- iv) After reviewing the contract, confirmed by SMSSD, the Colledges have been paying monthly water fees on those three lots since they put in the well.
- v) They are asking for a credit on the water accounts for the other 4 lots they own (and pay fees on) in the amount of \$2,388, i.e., a credit on each of the four lots of \$597.
- vi) After discussion and clarification, with recognition they had paid on the 3 lots since 2017, a motion was made by Don Hunter, seconded by Ferris Taylor, and approved by the Board to credit each of the Colledges other 4 lots with \$597. Thos accounts will be reduced each month by the current water rate per lot until depleted.
- vii) Craig Godwin will communicate the decision to Alan Colledge and his son, Aaron.

## 6) State Compliance

- a) Completed Independent Audit 2023 (State Auditor's office through Squire & Company)
  - i) The "Independent Accountant's Report on Applying Agreed-Upon Procedures" by Squire & Company for the SMSSD year ending December 31, 2023, and dated June 20, 2024, was distributed to the SMSSD Board and attendees.
  - ii) To show the depth and breadth of the State Audit process performed by Squire & Company, Craig Godwin read the report, the procedures, and findings for everyone.
  - iii) All but a couple of the findings were essentially "We noted no exceptions...", "The District is not required...", "The District is not a municipality...", etc.
  - iv) The Board discussed the two negative findings:
    - (1) "One board member, Trent Andersen, had not completed the required training,"
    - (2) "A conflict of interest disclosure was missing for board member Trent Andersen."
  - v) It was shared that Trent Andersen completed his State Training on May 22, 2024 and filed his Conflict of Interest Disclosure and his Oath of Ethical Behavior on May 6, 2024, but that was after the 2023 State Audit was performed on May 2, 2024.
  - vi) State Training is required at the beginning of a Board Members term, so Trent Andersen and all the current SMSSD Board are now complete on that requirement.
  - vii) The Conflict-of-Interest Disclosure is required within a month of being appointed as a new SMSSD Board Member, and then has to be refiled annually between January 1 and January 31 each year, along with the annual Oath of Ethics form.
  - viii) Trent Andersen's "Open and Public Meetings Act" training still needs to be done.
  - ix) Tricia Wright asked the cost of the State Audit.
    - (1) It was \$600 to \$1000, as this is an existing and ongoing contract.
    - (2) If SRM wants to consider an auditor, contact Squire & Company in Orem.
- b) The State has officially accepted/approved the SMSSD 2022 "Source Protection Plan."

- i) This will be an agenda item for the next SMSSD Board Meeting agenda.
    - (1) This Plan covers what must be done to protect areas around wells and springs.
    - (2) It also includes guidelines on what to use in septic systems to avoid ground water pollution.
  - ii) The acceptance of the plan, submitted in 2022, is an indication of how complicated and time consuming some State compliance things are to get fully accomplished.
- 7) Report from SMSSD/SMR Liaison
- a) Trent Andersen requested Roy Fox resend him the matching of SMR billing of lot owners versus the SMSSD water billing list.
  - b) His questions on the 2023 State Audit Report received and reviewed have been answered.
  - c) The priority topic for SMR is the question of water rights/shares and the implications for property owners to be able to get building permits.
    - i) There was additional Board discussion about the importance and urgency of getting to the County Attorney agreed upon language so the Commissioners can sign a resolution clarifying both building permits and SSD service area boundaries.
  - d) Craig Godwin was asked to follow up with Craig Smith on whether the Impact Fee resolution language needs to be adjusted to clarify how it works for different situations or clarifications on which “habitable structure” permits trigger an Impact Fee.
- 8) New / Old Business
- a) Resend Trent Andersen and the SMR Board the draft language for the resolution
  - b) Roy Fox noted the SMSSD Board should visit the wells, springs, fill stations and other SMSSD assets. He is available to coordinate the visit and inspection.
- 9) Open time for Customers
- a) Most questions and comments were shared by attendees throughout the meeting.
  - b) Max Henrie read from the Water Rights Deed, recorded 08-SEP-2009, which will be included as an attachment to the SMSSD Bylaws, that states “Grantee, and all of its successors and assigns, shall first use the water under the foregoing water rights only within the boundaries of the Skyline Mountain Resort, as established and in effect as of the date of execution of this Deed (“Effective Date”), to ensure that each residence within such boundaries receives at least 0.45 acre-feet for indoor culinary use if such residence is for year round occupancy or 0.25 acre-feet for indoor culinary use if such residence is for seasonal occupancy; at which point any remaining surplus water under the foregoing water rights may be used outside the boundaries of the Skyline Mountain Resort, as established and in effect as of the Effective Date. In the event that the

Grantee ever dissolves, title to the aforementioned Water Rights, wells and other appurtenances shall automatically revert to the Grantor upon the initiation of the dissolution process of the Grantee.”

- i) Craig Godwin noted that SMSSD has never been in disagreement of that statement.
- ii) The attendees were also asked if any disagreed with anything in what was read.

10) SMSSD Board Action Items from meeting for follow up:

- a) Roy Fox to resend Trent Andersen the matching of SMR billing with SMSSD billing.
- b) Craig Godwin to send the Draft of SMSSD Bylaws to County Attorney, Kevin Daniels
- c) Finalize Draft of SMSSD Bylaws from meeting for web-blast to customers for feedback.
- d) SMR to also send an eblast to SMR members to provide feedback on Draft of Bylaws.
- e) SMR Board to provide promised resolution language for County Commissioners
- f) Craig Godwin to follow up with Craig Smith on any clarifications on Impact Fee language with respect to Habitable Structure and/or when fees are imposed
- g) Request that Trent Andersen and SMR Board provide an “Evaluation of Birch Creek Irrigation Company Water Shares held by SMR” similar to the Water Rights Report.
- h) Trent Andersen and the SMR team to add to SMR Construction Approval Form appropriate language on Impact Fee and “SMSSD Will Serve letter to County.”
- i) Complete any outstanding training including Open and Public Meeting Act.

11) Executive Meeting

- a) There were no issues requiring an Executive Meeting.

Motion to Adjourn: Don Hunter, second by Trent Andersen and approved by the Board.

**The SMSSD Board Meeting Adjourned at 8:47 PM.**

The Board and participants were thanked for the open discussion, especially with respect to the SMSSD Bylaws and the process to have them reviewed by SMR members, approved by lawyers at Smith Hartvigsen, and then brought back to the SMSSD Board for a vote.

Next SMSSD Meeting: TBD, but probably the 2<sup>nd</sup> week of September 2024 for approval of the SMSSD Bylaws and other agenda items.