

Summit County Service Area #3
February 4, 2019
APPROVED MEETING MINUTES
BOARD OF TRUSTEES MEETING
629 E. Parkway Drive, Suite 1,
Park City UT 84098

BOARD OF TRUSTEES

Vince Pao-Borjigin – Chairman
Suzanne Carpenter – Vice Chairman
Larry Finch – Clerk
Robert Olson - Treasurer

Eileen Galoostian
Peter Keblish
Michael Montgomery

In Attendance (Board): Suzanne Carpenter-Vice-Chair; Bob Olson-Treasurer; Larry Finch-Clerk;

Not in Attendance (Board): Vince Pao-Borjigin – Chair; Mike Montgomery; Peter Keblish.

Electronically: Eileen Galoostian connected at 5:34pm.

In Attendance (Staff/Contractors): Marla Howard (GM); Chris Bullock (Roads Manager and Water Operator); Eileen Haynes (Assistant Clerk); Nathan Bracken (Legal).

Meeting Attendees:

1. **Welcome and call meeting to order:** Suzanne called the meeting to order at 5:34pm.
 - a. Review of January 28 meeting minutes: Larry motioned to table the January 28, 2019 meeting minutes for additional time to review. Bob stated, his additions have been submitted to the Assistant Clerk. Bob seconded the motion. Approval was unanimous.
 - b. Approval of minutes: *tabled*
2. **Administrative & Financial:**
 - a. Invoice approval: Marla stated, she has two invoices from Ferrari Surveyors in accordance with their bid. These are within her limits to approve and are submitted according to the normal approval process.
 - b. Peter Keblish move: Marla reported Peter Keblish has put his house on the market, in the lower section, and will be moving out of the Service Area. The Board is charged with appointing a replacement within 90 days to complete his term of office, (UC 20A-1-512), which expires 12/31/2021. Candidates must be registered voters. Larry reviewed posting requirements as well as advertising 30 days prior. Nathan stated, the Board must receive a resignation letter from the departing Board member and the Board must advertise for at least 2 weeks prior to making the appointment.

Eileen stated, the interview process should be more rigorous than in the past with more pointed questions. Suzanne agreed. Larry noted, candidates do not need to be a property owner in Silver Creek Estates, but they must be a community resident for at least one year. Marla will write the notice and place candidate interviews on the March 25th Board Meeting provided we receive a letter of resignation or he moves out of the area (i.e. his home sells).
 - c. Other (SC Franchise Fee Agreement - not on the agenda): Marla discussed her observations regarding the Summit County meeting between their legal department, utility companies and special districts regarding the Franchise Fee Agreement (FFA) held on Thursday, January 31st. Their goal for

the fee is to control operations in the County ROW. Dave Thomas, Summit County Chief Civil Deputy Attorney, indicated the County would look favorably upon a request for relief from the \$500 fee. Bob added, the FFA would provide the Service Area with protections we do not currently have. Eileen stated, she does not think the FFA applies to the Service Area. Suzanne suggested the FFA be amended to include language waiving the fee for SCSA#3 for as long as SCSA#3 operates.

Nathan reviewed the FFA, placed on the projector, noting the features that do not apply to the Service Area #3 (indemnity amounts, office hours, customer communication requirements, completion time limits) and stated the FFA is more appropriate to private enterprise and not a governmental entity. He observed, under Utah Code, the agreement with the County should be an Intergovernmental Agreement with very different language. The County does not have control over the Service Area. The Service Area is an independent political subdivision under the regulation of the State. Dave Thomas issued a Legal Memo on September 13, 2013 as well as on June 9, 2017 regarding Ordinance No.197 which makes it clear the Service Area has complete authority over the roads here. The FFA would take that away very directly. He recommended and requested permission to contact their attorney.

Suzanne stated, she does not want to hold up the Roads Policy because the FFA might not be approved until 2020. She stated, she wants Nathan to pursue an Intergovernmental Agreement with a County. Nathan replied, the purpose of creating the Service Area in the first place was to authorize the Service Area to do these different things so why would we do an Interlocal Agreement? We cannot both fulfill our mandate, as understood for many years, and meet the terms of the FFA. The FFA would require the Service Area apply for a permit each time you wanted to open your roads and the County could order you to remove your entire water system in 30 days at your expense. In his opinion, one idea is that the Service Area simply refuse to sign the FFA. Larry requested that Nathan set up a conference call between Dave Thomas, Marla, and himself where we can share our concerns with them. Bob agreed, we must get the right document in place.

Nathan stated, he does not think the FFA was very well thought through. We could pursue an Interlocal Agreement, but he doesn't think one is necessary. The easiest thing is for the County to release the Service Area from this obligation. We have the underlying statutory creation. The next option is to create an Interlocal Agreement.

3. Policies:

- a. Water Policy review: Nathan stated, the Water Policy will be adopted after you do your rate study. How do we want to deal with the .75-foot acre allotment? How will it be enforced and policed? We have made a lot of changes to it.

Suzanne stated, the Westwood lots have one-acre-foot and we cannot take a .25 acre-foot away from them when they connect to our system. Nathan stated, what Suzanne is getting at will those who have an acre-foot on a well continue to get one-acre foot on our water system? How do we account for those who intend to use more than one-acre foot and get an additional water right? His recollection is that you are going to treat them the same and charge them overages if they go over their two-acre-feet. Suzanne agreed.

- b. Road Policy review: Nathan stated, with the ROW Regulations we combined your existing policies. You had multiple roads policies, a general one, one specific to driveways and culverts and an

encroachments policy which are now combined into one policy. We have added language regarding snow removal and fill material. The County's FFA will extremely affect the viability of this new roads policy document. Suzanne stated, we should proceed with our review because the County most likely won't adopt the FFA until 2020 and we may figure out a way to get an exemption.

Nathan stated, we can't adopt this tonight because we need to have a public hearing and we need to discuss the fees. Marla asked, we could do a Public Hearing on Feb 25th which is on the agenda for that day if the Board approves these recommendations. Nathan will reach out to Mr. Thomas.

Nathan reviewed the proposed Road Policy. In the past when you had a building permit, you had a road impact fee. He tried to keep it close to the current policy which is, if you have a building permit over a certain value then the Service Area gets involved. Chris and Marla proposed \$25k. Marla stated, notification is weak, we only find out when they are bringing their stuff in and we stop them after the fact. Larry asked, if a new roof costs \$25k, how does that impact our roads? Chris replied, their trucks. Larry stated, he is not comfortable with \$25k. One load of shingles and one truck is not going to disturb our roads. You need a permit to remodel your kitchen, bathroom, deck and replace your hot water heater.

Chris stated, when contractors file for a permit, the County can't question the value entered. We had an extensive remodel of a home in Silver Creek whose permit stated the value was \$35k but it was actually an 800sf addition to the home valued at over \$200 per sf and it severely impacted our community with dump trucks and extraction. Their property value went up but because they undervalued the remodel, the Service Area was not notified, and we were not able to collect any fees. The deposit is what protects the Service Area. The Impact Fee is nominal.

Larry stated, he is not comfortable with the \$2k proposed Impact Fee. Are we spending \$2k of staff time? Suzanne replied, it would be pothole repair. Larry countered, pothole repair is covered under the deposit. Nathan replied, the deposit is to cover damage that they cause. Marla stated, we only collect the impact fee if the project is \$50k or more. The problem is caused by those who undervalue their project. Chris replied, we are trying to capture more fees than we have in the past.

Larry stated, he wants to rethink this whole thing. He accepts it is necessary for a new house but not on a kitchen remodel, a re-roof, a deck or any large ticket item. With one \$2k fee where is the 40 hours of staff time? Where are the hard costs to the taxpayers of Silver Creek? Marla stated, the purposed is to recoup any impact to our roads. Basically, it subsidizes our Class B Road Funds. Bob stated, the impact fees must be used only on the things you collect the fees to mitigate. He agrees, he can't visualize \$2k worth of damage on a \$25k project.

Eileen asked, if we know a new home is going in, why isn't the fee higher? We should be focusing on the higher value projects. Nathan replied, we were mostly consolidating your existing policy and not focusing on anything substantive. Your policy has always been set-up to capture new homes. When the figure was originally established a new home might have reasonably cost at least \$50k. Your current policy does not account for a big expansion or commercial construction. The point is to capture all houses that could be built. You can also charge additional for square footage over 5,000sf.

Eileen asked, is the fee due to wear and tear? She pointed out, when we had those fees, we didn't have asphalt, we had dirt roads. She suggested fees focus on the 5,000sf house and not the 3,000sf. Chris proposed, keep the \$50k for New Construction pending the review by the General Manager. Larry

replied, we are going to see more D-9 remodels using the existing foundation but actually building a new home, yet they call it a remodel.

Nathan recommends, if you are building a new home and it requires a building permit from the County you pay the impact fee. It doesn't matter what the value is. We have a flat fee, and everyone pays the same thing. Nathan also proposed, we have a fee for a remodel. Suzanne agreed. Chris suggested, we only collect a deposit on remodels. Larry suggested, if you are going to do an addition over X square feet on your home. Suzanne agreed. Chris asked, are we better off just collecting deposits instead of fees? Bob agreed, if they don't do damage, they can get some money back. Eileen asked, aren't the fees due to the wear-and-tear on the roads? In the past, we had dirt roads but now we have to repair asphalt. Larry replied, he understands her concerns, but he doesn't want to penalize the smaller project. Eileen agrees, she doesn't want to penalize the smaller projects. She wants to capture the impactful projects. Nathan replied, we have that built in when you go over 5000sf.

Nathan proposed he continue to work with Marla and Chris on this and on a separate proposal that bifurcates this such that every new construction, no matter the value, requires the standard \$2k impact fee which Nathan believes is fair and a deposit as proposed. We want to come up with a metric that captures new construction and massive remodels. Maybe we expressly exclude kitchen remodels and new roofs. Suzanne added, as long as you are staying inside the existing footprint of the home such as roof and decks. Larry and Eileen agreed. Larry added, they are not adding footings and foundation. Suzanne, Bob and Eileen agreed.

Nathan stated, he included in all of SCSA3's policies, that they can be appealed and that any decision made by the Roads Manager or General Manager can be appealed to the Board. Since we now have a couple of different permitting programs, he broke them out separately such as the Road Construction Application and the Driveway Construction Application. He added a paragraph concerning, if you are building a driveway you can consolidate applications.

Nathan stated, "under **Section 10.6**, the new driveway width will be 12-feet and all driveways will be constructed in compliance with the standards and specifications that are depicted in the drawing in Exhibit A of this regulation" was changed to as indicated in the "Applicable County Code".

Marla reported, another new addition to the policy is we are asking for a copy of the building permit and the new electronic permitting system will not issue a permit unless the Service Area authorizes it.

Nathan reported in **Section 10.8.4**, we have given the General Manager permission to refund the deposit after the inspection. We don't want to hold the money indefinitely. We will initiate an inspection in 30-days. Marla reported she has a list of deposits with no known homeowners.

Nathan discussed **Section 11.0** regarding fill material. He doesn't think the service area can regulate fill material. Instead we propose an impact fee. If its above a certain amount of square feet excavated, you add an incremental charge. The damage they create may not be immediately noticeable. He specifically avoided a deposit to be more efficient and to be consistent with the County. It is easier to estimate the amount of fill required than the number of trucks used to transport it.

Chris asked, how do we address permit applicants who lie? Larry asked, what about Ag Permits? Nathan replied, Ag permits are statutorily exempt.

Nathan reported in **Section 12.0**, the application states we will return unused deposit and fees if the permit is allowed to expire. Suzanne stated, the extension should be limited. Marla stated, they

should only be able to get one extension. It is easier for us to return fees. Nathan will revise document to complement the County's permitting. Nathan summarized, once the Permit expires the applicant will have to re-apply. Nathan will discuss this further with Chris and Marla. He will research the County's expiration and extension policies.

Nathan stated, **Section 13.0** is your existing language. He added a 'catch-all' section that addresses Liability on your roads which proposes if you damage our roads you are responsible for the cost to repair which we will deduct from your deposit if any. Suzanne added, repaired "*under the direction of the Roads Manager*".

Nathan introduced **Section 14.0** stating, we didn't address traction control devices. He pointed out, the Service Area doesn't have the authority to keep someone off the road, but the County does. You have the authority to set the policy that the County enforces. Suzanne stated, you can't ask for reimbursement unless you have told them.

Chris confirmed, we want to assign responsibility. He is concerned about delivery and garbage trucks because that is who is running off the road. Nathan stated, most roads authority also have police power. The approach that we have taken, as stated in the **Preamble**, is that you can recoup your costs which we identify as "motorist assistance." You can't fine them, but you can present them with a bill for your costs. You really only have jurisdiction of your property owners and their contractors so if you respond to a call for assistance you must identify what you are dealing with and you can do so at your discretion.

- c. Road fees and deposit hearing date discussion: Marla stated, we could do a Public Hearing on Feb 25th which is on the agenda for that day if the Board approves these recommendations. Nathan agreed. Nathan needs to get in touch with Mr. Thomas.
- d. Governance Policy review: Nathan opened the discussion by asking if the Board has any questions. Eileen stated, she was confused about "24-hour notice" for a meeting. Nathan replied, only for Emergency Meetings. Special Meetings can be 24-hours' Notice and Emergency Meetings can be under 24-hours. Nathan corrected the document to make it easier to understand. He reviewed the Duties of the Chair regarding "interpretive decisions". The purpose is to give staff a "point person". Bob and Larry are comfortable with this language. Nathan reviewed the language that prohibits the chair from interfering with decisions appropriate to the point person.

Nathan discussed Closed Board Meeting minutes stating it is useful to have a record of discussion. The policy was amended to state "the Clerk will keep or cause to be kept the minutes of every regular meeting, special meeting and emergency meeting as directed by the Board."

Bob commented on the "**Preamble**" which uses "Summit County Service Area #3 (Service Area)" while all through the document we type in "SCSA#3" instead of "Service Area". Nathan replied, the Resolution uses the term "Service Area" and the Ordinance uses "SCSA#3". He suggested he change the Preamble to "SCSA#3 or Service Area". Bob also observed, on *Page 2 item b* it would be helpful to state "*the Clerk and Treasurer will serve for two-year terms.*" Eileen and Suzanne agreed.

Nathan reviewed **page 2, item 2.c.iv** under "ELECTION OF OFFICERS, DUTIES OF THE CHAIR" stating it is relatively common for the Chair, in addition to "making interpretations of existing policy" will "serve as the Board's official spokesperson." Bob stated, it's important to provide clarity as to whether a Board member is representing him or herself or is representing the Board and to designate

such a person. Suzanne replied, the document elsewhere includes language that allows the Chair to delegate a different spokesperson for a particular matter. Eileen and Suzanne agreed to what is proposed.

Nathan presented Suzanne's proposed changes under "BOARD GOVERNANCE", **page 5, item 4.c:** "the Board will govern" amended: "ensuring that the Ends are the focus of board actions supporting the Service Area 'mission'." Bob and Eileen agree. Nathan stated under **page 6, item c.iv.** added "methods of communication as defined in Amendment A, Section B." Bob added you should capitalize Section.

Nathan discussed **p. 6 item 4.c.v** stating we added an addendum on how the board will operate and make decisions. Nathan stated, in **item 4.c.v** we want to keep the board focused on policy goal and not on the minutia of staff functions. Suzanne reviewed item **4.c.vi and vii** "Complaints relative to SCSA#3 Policy should be reviewed in Board meetings, not addressed..." which changes original version of "heard" to "reviewed" allowing us to consider complaints that may come in writing.

Nathan explained **item 4.c.vii**, stating right now questions from the media go to the Chair or their designee. You can designate whoever you want. The proposed language is more specific. If you are speaking to the media, you have to act according to the will of the Board.

Nathan discussed **p. 7 item 6 PROCESS FOR ADDRESSING BOARD MEMBER VIOLATIONS.** If you don't like the way a fellow board member is doing something, there is not a whole lot you can do about it unless it's illegal. This is not a private entity board where you can vote someone off because they haven't complied with policies or they haven't attended enough meetings. Larry prefers "faithful" in lieu of "steadfast". Suzanne agrees.

Suzanne discussed **p. 8 item 7.c** "*Delegation to the SCSA#3 Staff and Contractors*". The process we have been building with transparency should continue.

Eileen asked, where does the document discuss transparency between Board Members and Residents? Nathan replied, you have a personnel policy which governs how the personnel and contractors are to interact. Suzanne directed Eileen to **ADDENDUM A, Section B** Code of Conduct for Service Area Chair and Board Members at public-attended meetings. Nathan referred Eileen to **p. 4 item 3 MISSION OF THE BOARD** and read it out loud. Eileen reiterated, "we need communication and transparency called out regarding Board Relations with the Service Area". Nathan cited, **item 3.a Utilizing proactive strategies...** and added "*ensure meaningful and transparent communication with Service Area residents to determine their concerns, needs and demands*". Marla, Suzanne and Eileen agreed.

Eileen stated, she feels additional board members should have the opportunity to vote as well. Larry, Bob and Suzanne want to make a decision tonight. Eileen agreed, she is not up for a "rehash".

Nathan stated, this document doesn't address vacancies because it is addressed elsewhere in the Statutes. Some jurisdictions incorporate everything in the Statutes in their rules so it can be used as a manual. That is not the approach we have taken here however, this document incorporates "The Little Manual".

4. Roads and Trails:

- a. RFP update: Marla stated, the Road RFP has been issued in the State Legal Notices, the Park Record newspaper and on the Utah Public Notice website. We will accept proposals until the close of business on Feb 22nd. Chris stated, he informed one of his contacts that the RFP was issued. He e will also notify “the Big 5” contractors.

5. Water:

- a. HAL proposal for RFP development update: Chris reported, we reviewed and discussed the Fire Flow and the Arsenic RFP data. HAL will have the Fire Flow design completed for us to put it out for bidding fairly quickly. We reviewed *Arsenic One Pilot*. The design will ultimately be based upon the filtration system we choose. Then we will place the filtration designer’s set of plans into the construction packet RFP. Marla reported, HAL brought pictures and examples of other similar projects they have worked on. Suzanne summarized , HAL is identifying the footprint and overall space we need for this system and our challenge is to identify a suitable location. Bob stated, the size of the easement at Greenfield is not large enough to accommodate the proposal. Marla reported, Kathy doesn’t recall ever getting an easement for that property. Marla will research Jerry’s records. The current easement holder is the HOA. Nathan offered to have his paralegal do research on any easements.

6. Public Comment: we had no public participants.

Larry motioned to end the Public Meeting and move into Voting. Bob seconded this motion and approval was unanimous.

7. Voting:

- a. Water Policy Approval: *tabled.*
- b. Governance Policy Approval: *Larry motioned to adopt the Governance Policy as amended during the working session which Suzanne seconded. With no further discussion, the Governance Policy was , approved as amended during working session.*
- c. Road fees and deposit hearing date approval: *tabled.*

8. Adjournment: *Larry motioned to adjourn the meeting at 8:09pm which was seconded by Bob. Approval was unanimous*