

**MINUTES OF ACTION
OF THE
BOARD OF DIRECTORS
GRANBY SANITATION DISTRICT
Acting by and through its Wastewater Activity Enterprise
June 10, 2020**

Due to the COVID-19 virus the regular board meeting was held using zoom.us (ID 9459708 1147). The regular meeting of the Board of Directors of the Granby Sanitation District was duly called to order via zoom.us on Wednesday, June 10, 2020, at 7:03 p.m. by President, Wayne Kerber. Present were Board members Wayne Kerber, Debra Brynoff, Kelly Griesch and Nancy Stuart. The absence of Casey Farrell was excused by the Board. Also, in attendance were District Administrator, Tammy Granger; Operations Superintendent, Andrew “Hopper” Becker; the District’s attorney Rod McGowan and the District’s engineer, John Enochs. Appearing for Sun Communities was Cameron Grant, Emily Schey and John McLaren; for Atwell Group was Rick Weed, Jon Bauman, Nick Westfall and Kurt Beleck; for Wright Water Engineers was Wayne Lorenz and Chad Bringle appeared for Kumar and Associates.

Cameron Grant asked the Board if the Anue foundation could be addressed first to accommodate the schedules of Wayne Lorenz and Chad Bringle. The Board approved their request. Nick Westfall directed the Board to the letter from Wright Water Engineers dated June 2, 2020. Wayne Kerber confirmed that the letter had been received and summarized that the Board was being asked to accept a concrete foundation for the Anue Conex that did not meet the specified design strength of 4,500 psi when inspected. Nick Westfall responded that the concrete did meet strength specifications. Wayne Lorenz stated that the compressive strength was an issue. The concrete was placed on December 20, 2019, a cold and sunny day. Concrete is normally delivered from the Fraser batch plant but due to mechanical problems the concrete was hauled from Peak Material’s Silverthorne plant. As a result, truck time ended up being over 90 minutes (truck #1 at 136 minutes; truck #2 146 minute). Field people were concerned about the truck time as well as the temperature. Fresh concrete samples were taken at the time (see the table in Wright Water’s letter). Due to the time and temperature concerns the decision was made to take core samples after the concrete was cured. All core samples met the strength requirement with the lowest average of three samples resulting in a compressive strength of 3,320 psi; therefore, from Wright Water’s standpoint the concrete cured properly. Wright Water judged that all compressive strength corings were above 3,000 psi and they consider that adequate strength for the Conex foundation.

Wayne Lorenz continued that the other concern was durability (cracking and decomposition). He stated that Wright Water had examined Peak’s mix design, the mix of the delivered concrete and soil conditions. The soil was found to have low sulfate and chloride levels. Based upon the mix, soil conditions, proper curing and core samples Wright Water represents that the concrete is satisfactory. Mr. Lorenz added that Peak pointed out that CDOT allows a longer truck time of 180 minutes when an additive is added to the mix and the delivered concrete included the additive. Wayne felt the

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foundation should be acceptable with the conditions of an extended warranty by the contractor and the application of weatherproof coating.

Wayne Kerber asked why an extended warranty is suggested if Wright Water feels the concrete meets the specifications. Wayne Lorenz responded it was due to the cold temperatures that day along with time and the fresh concrete not meeting specs. Wayne Kerber then stated that in March, 2020 Bates Engineering recommended not accepting the concrete. Wayne Lorenz advised that those comments from Bates were made before the core data was available and that Bates is a very conservative engineering firm.

Wayne Kerber inquired about Kumar's recommendations of plugging the core holes and applying a sealant. Chad Bringle of Kumar noted that the core remediation and sealing had not yet been completed. He explained that the time specification is generally to avoid overheating of concrete and that colder temperatures extend placement time. Chad represented that the low break points in the January cores were because the concrete was not fully cured. The 56-day cores tested in excess of design strength and Chad represents that the concrete is good.

Cameron Grant asked if the District's consultants have disagreements that can be discussed now. Rod McGowan responded that he would prefer to hold discussions in executive session before commenting.

Cameron then requested to move forward with the discussion regarding clean-outs in Smith Creek Crossing. Sun would ask that the District accept the constructed sewer service lines and clean-out system design that is in place at Smith Creek Crossing and, specifically, authorize the issuance of Certificates of Occupancy when the units are ready. Cameron explained that the developer relied on the construction plans approved last May which don't address clean-outs on the plans themselves. Sun relied on the cleanouts supplied on the units. He believed there was some discussion later about a different clean-out structure but according to Sun's perspective the plans didn't change and there wasn't any expressed condition that it had to be a certain design, different than what they already planned until the infrastructure was already in the ground. Cameron stated that they felt design complied with the District's Rules and Regulations that were in place at that time, the manufacturer's recommendations for this and other Sun properties, Town municipal code and International Plumbing Code (IPC). The location of the clean-out is on each individual site and because it is considered "private" infrastructure maintenance is the responsibility of the residents and Sun, not the District. Sun is proposing to extend the clean-out access to the perimeter of the unit so that it can be accessed externally. Cameron presented slides of the proposed accommodation. Sun believes this is a reasonable accommodation. The other alternative is to physically move the units in order to excavate and install clean-outs which would be a very disruptive and costly project. They are hoping their offered solution addresses the accessibility concerns.

Jon Bauman hopes the Board is aware that Sun acknowledges that the sewer line from the unit to the sewer main is the responsibility of Sun. John McLaren stated that this is the case in all of the

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properties in their portfolio. Cameron stated that the Assumption Agreement clarifies that the sewer service line from the unit to the main is Sun's responsibility and they feel they are in compliance based upon the Agreements, Rules and Regulations as they were prior to May 13, 2020, Town code and IPC. Cameron then presented a slide presentation. Sun Rental Agreements state that residents are responsible for clearing of drains and lines and are to have them in service at all times and if they fail, Sun will step in. Cameron directed the Board to Champion Homebuilder's letter confirming that this design is how they install their units is nationwide and in all of Sun's developments. Sun feels that there is unnecessary redundancy and hope an acceptable accommodation can be reached.

Wayne Kerber stated that the District's Operations Superintendent represented that he was advised the external dual opposing clean-outs would be installed and now they aren't. Wayne advised that there is an e-mail chain from August 22 and 23, 2019 confirming communication with Atwell and Wright Water confirming communication about the requirement of external dual opposing clean-outs. Wayne explained that the amendment to the District's Rules and Regulations, Section 5.2.4 on May 13, 2020 was intended to clarify and add piping detail. Cameron argued that the change was much more specific. Rod McGowan stated that detail was explained to Sun representatives in advance of the placement of homes. Rick Weed of Atwell stated that the e-mail chain started in regards to the maintenance building. Also, the civil plans for the public sewer had already been approved without showing any detail of clean-outs. Clean-outs are covered within the units and they wouldn't be part of their plans and the IPC called out the requirements of the clean-out. At the time it was agreed that the civil plans did not need to be changed and clean-outs would be provided by the setter of the units. Rick was, at that point, not aware of how the clean-outs worked on the homes themselves and had since been given information that the clean-outs are within the plumbing structure of each unit. Rick represented that nothing was discussed and there was not an agreement that they would provide the external dual opposing clean-outs.

Jon Bauman stated that Nick Westfall and Hopper Becker had discussions in March, long after the laterals had been installed. Nick stated that around March 13, 2020 the Champion Homebuilder's detail was provided and Hopper expressed concern with the ability to clean back towards the main but Nick believed could be accomplished. Nick understood that a meeting with John Enochs and Hopper would be held but that it never happened.

Wayne Kerber asked how many sewer service lines had been installed to date. Nick replied that all laterals have been installed for all phases of Smith Creek Crossing. Rod McGowan asked if this included lots where units have not yet been set. Jon Bauman answered that empty lots would require excavating down approximately eight feet to install the external dual opposing clean-outs. For those lots where units have been set, all utilities would have to be disconnected, units moved, excavation and installation of clean-outs, then units reset and reconnected to utilities. Phase 1 of Smith Creek Crossing consists of 82 units and Phases 2 and 3 consist of a total of 228 additional units. John McLaren added that it would cost \$300,000-400,000.00 to install new clean-outs. He pointed out that access is being provided as it is in Sun's other 425 communities and they haven't had to deal with these kinds of

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issues.

Rod stated that the approved plans do not have drawings that detail the clean out, only the service line connection to the main and extension to the property line are detailed, private infrastructure is not detailed. The District did not have prior knowledge of Sun's proposed clean-outs, so it was not clear to the District what was proposed, especially when there has been correspondence about what the District expected. Jon Bauman responded that civil engineering plans show mains and laterals to the lot but do not provide detail of laterals up to 5 feet from the unit and Sun assumed that IPC and Town code would then rule. There were no details of how to make connection to the unit and conversations about clean-outs were in regards to the maintenance building not residential units.

John Enochs read the text of the August 23, 2019 e-mail from Rick Weed and noted that it was specific to the Smith Creek Crossing, not the maintenance building, and in response to Mark VanNostrand's email. John stated that the IPC and IRC both require clean-out clearance of not less than 18" from, and perpendicular to, the face of the opening to any obstruction, it cannot be underneath a building and unit equipment does not qualify as a clean-out. New construction in the District requires external dual clean-outs for the convenience of the homeowner and to meet the District's charge of protecting public safety and welfare. John Enochs noted that Cameron Grant previously noted that service line maintenance was the responsibility of the homeowner. John Enochs took Rick Weed's email of August 23, 2019 as confirmation that external dual opposing clean-outs would be installed and Nick and ESCO were copied. Nick Westfall stated that local plumber, Rod Lock, feels their proposal meets plumbing code. John countered that the proposed alternative isn't 18" from the building and is not in the service line but rather under the building does not allow for cleanout towards the main. Jon Bauman explained that their proposal is to extend the cleanout to the skirting and then there are two more under the building. Rick Weed again stated that at the time of the August 23, 2019 e-mails, he was not aware of the clean-outs equipped on the units which served the purpose of the dual clean-outs and he voiced his understanding that this equipment would be compliant. He again stated his position that the email discussion related to the maintenance building not Smith Creek Crossing.

The proposed clean-out detail was clarified by slides presented by Cameron Grant. A horizontal pipe extends out to the skirting and is capped. This extension connects to a wye that ties into the vertical drain running from the unit to the lateral. This allows access from outside the unit and accesses the lateral towards the main.

On a related issue Wayne Kerber advised that an operations and maintenance plan for the private infrastructure at Smith Creek Crossing had not yet been received. Jon Bauman questioned the need for the O&M plan, inquiring if it was a requirement in the District's Rules and Regulations. Rick Weed asked if an O&M plan necessary for single-family dwelling construction. Rod McGowan explained that it is required in the agreements between the District and Sun, therefore, there is no need to debate its requirement. Cameron Grant responded that it is required pursuant to the Agreements and needs to be produced and the difference is that Sun will be involved with Smith Creek Crossing in perpetuity.

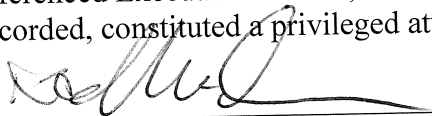
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Rod stated that it is an important requirement as Sun is asking for a variance to the District's regulations. John McLaren agreed that the O&M plan will be provided and it is of mutual benefit to have a good plan in place. Sun has centralized property infrastructure and Sun guarantees private infrastructure maintenance.

Nancy Stuart moved to enter into Executive Session for a conference with the District's attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) and for the purpose of determining positions relative to matters that may be subject to negotiations, developing a strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e) regarding Sun Smith Creek Crossing LLC and Sun Communities' projects with Rod McGowan, John Enochs, Hopper Becker and Tammy Granger in attendance. The motion was seconded by Debra Brynoff and unanimously approved by roll call vote (**summary**: yes-4). Yes: Debra Brynoff, Kelly Griesch, Nancy Stuart and Wayne Kerber.

Nancy Stuart moved to exit Executive Session, Debra Brynoff seconded and the motion was unanimously approved by roll call vote (**summary**: yes – 4). Yes: Debra Brynoff, Nancy Stuart, Kelly Griesch and Wayne Kerber.

Attorney's Opinion Required by Colorado Revised Statute, Section 24-6-402(2)(d.5)(II)(B).
As the attorney representing the Granby Sanitation District, and who was in attendance at the above-referenced Executive Session, I am of the opinion that the entire Executive Session, which was not recorded, constituted a privileged attorney-client communication.



Rod McGowan, Legal Counsel

Rod McGowan summarized that the Board discussed the matter of Smith Creek Crossing Clean-outs, the Anue foundation and the substantial completion punch list from March 13, 2020. In regards to the clean-out issue, Rod voiced the Board's frustration with Sun's non-compliance with the District's Rules and Regulations, even when there have been specific communications about the matter. Yet we are at a point that laterals have been installed, some units have been set and the proposed exterior clean-outs are all that we currently have. Consideration will be given to approving exterior access on all units as proposed at tonight's meeting.

Kelly Griesch moved to approve the extension of clean-out access to the exterior wall of the unit, connecting to the vertical plumbing discharge from the unit to the main as proposed by Sun Communities at tonight's meeting conditioned upon: 1.) The District must be in receipt of and approve an Operations and Maintenance Plan for the private infrastructure at Smith Creek Crossing. 2.) Be in receipt of a detail of the alternative clean-out piping from the unit drain to the sewer service line's connection to the main that shows external access so that the District has a record of what has been installed in order to provide for the issuance of Certificates of Occupancy. The motion was

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seconded by Debra Brynoff and approved by a unanimous vote by roll call (**summary:** yes-4). Yes: Debra Brynoff, Kelly Griesch, Nancy Stuart and Wayne Kerber

In regards to the Anue Foundation, Rod stated that there was a difference of opinion of whether or not to accept the concrete. Granby Sanitation District is willing to accept the existing Anue Conex foundation providing that Sun provides an extended warranty for the life of the Anue system, and as part of the warranty Sun fill the core holes and apply treatment to the concrete and maintain the concrete during the warranty period. Any agreement on the issue will be made part of the Assumption Agreement and recorded to follow property ownership. Wayne Kerber added that the District relied on the recommendation from Wright Water for an extended warranty. However, Wright Water did not specify the length of the warranty so the District proposes a 20-year extended warranty to cover the life of the Anue system. John McLaren feels that 20 years is a long time but they rely on the engineer's stamp. Nick Westfall stated 20 years is beyond a typical warranty period and feels 1-5 years would be industry standard. John McLaren stated that Sun is willing to stand behind the project and but even if done exactly right is 20 years a reasonable length of time? Wayne Kerber advised that the Board assumes that the foundation design was intended to last for the life of the Anue system and it would be expensive the replace the concrete and the District doesn't feel that that is an expense the District should bear based upon design assumptions, otherwise, the Board will give weight to Bates Engineering's recommendations that Sun replace the foundation. John McLaren was concerned that he wasn't sure if any concrete would last that long. Nick Westfall asked for "maintenance" to be defined. Wayne Kerber answered that the District is relying on Kumar's recommendation of applying a coating and filling core holes. Discussion was held that coating frequency depends on the product that is selected. Nick Westfall asked if a bond could be posted in lieu of a warranty. Rod responded that there still has to be a principal responsible for the obligation and a bond just backs that up. Cameron agreed that a bond may not be necessary as Sun will be there indefinitely. John McLaren confirmed that Sun intends to be around due to their investment in the project. Jon Bauman stated that he had no fear of the concrete failing but feels the maintenance for 20 years may be overkill. Wayne Kerber replied that the recommendations of Wright Water Engineers and Kumar Associates are being followed. Jon Bauman responded that he agrees with filling the core holes and applying a treatment but feels ongoing maintenance is not necessary. Wayne Kerber advised that if the District does not require maintenance and the foundation fails, the District doesn't want to be made liable if they don't apply treatment. Jon Bauman and John McLaren stated they are in agreement with the warranty. Rod advised that the engineers will develop a treatment plan and the attorneys will prepare a warranty for the Board's final approval.

In regards to the Certificate of Substantial Completion punchlist Wayne Kerber noted that there are a number of unfinished items that are not likely to be completed by the deadline of June 15, 2020. Rod state that in reviewing the particular issues and status of the project a number of items have come to light. 1.) The Letter of Credit expires July 1, 2020. 2.) Proof of Payment to determine if there are outstanding liens has not been completed. 3.) Punchlist items not yet completed. Rod asked if Sun is willing to extend the Letter of Credit as soon as possible so that the District doesn't have to draw on it?

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Jon Bauman voiced frustration that the punchlist is outstanding but indicated that they had dealt with weather impacts and a large, complex project. He feels the list could be completed in six months, if not by July or August, and the extension to the Letter of Credit done by July 1, 2020. Rod advised that the extension needs done at least five days prior to July 1, 2020 in case the District has to make a draw on it.

Next, Rod McGowan stated he had prepared a draft resolution addressing areas that need resolution and while it doesn't specify a specific time limit the Agreements establish a 30-day period to cure defaults. Jon Bauman doesn't feel that there are any outstanding issues causing the system to fail or be non-operational but Sun will address getting the Letter of Credit extended and renew focus on getting work closed out. Rod explained that the resolution doesn't set a timeframe or direct action by staff but it does make a record of issues that are outstanding and directs staff to take whatever action is needed to resolve those issues. It does not put the system at risk but does go on record to items that need addressed and, hopefully, refocuses everyone's attention to get it done.

Nancy Stuart moved to adopt Resolution 2020-06-01, A Resolution Authorizing Enforcement and Remedial Action with Regard to Sewer Service at Sun River Run Ranch and Sun Smith Creek Crossing. The motion was seconded by Kelly Griesch and the resolution was unanimously adopted by roll call vote (**summary:** yes – 4). Yes: Debra Brynoff, Nancy Stuart, Kelly Griesch and Wayne Kerber.

Discussion was held regarding establishing new deadlines for completing the punch list, reaching final completion, final settlement and Letter of Credit expiration. The Board expressed its desire for Sun to make completion of the District's infrastructure priority. John McLaren replied that it is their priority to get it done in total as the construction season is short and he does not want to appear before the Board again.

Kelly Griesch moved to extend deadlines from July 1, 2020 as follows:

- Substantial Completion punch list – 90 days
- Final Completion/Final Settlement – 7 months
- Letter of Credit expiration – 8 months

and the Letter of Credit needs to be extended or replaced by July 1, 2020. If all requirements are satisfied within this timeframe the Letter of Credit can be released early. The motion was seconded by Debra Brynoff and was carried by a majority vote by roll call (**summary:** yes – 3, no - 1). Yes: Debra Brynoff, Kelly Griesch and Wayne Kerber. No: Nancy Stuart

Tammy Granger requested that Sun supply a list of projects that will be completed in 2020 and plans for 2021. Wayne Kerber advised that there are some reimbursable bills due from Sun; Jon Bauman asked that they be supplied to him. Nick Westfall advised they are still working on an answer about check number 1511817. John McLaren asked to be kept in the loop regarding invoices and expressed his appreciation to the Board for their consideration. The Sun/Atwell contingent left the meeting at

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this time.

The minutes from the regular meeting held on May 13, 2020 were considered. Kelly Griesch moved to approve the minutes as written. The motion was seconded by Nancy Stuart and approved by a majority of a roll call vote (**summary:** yes – 4). Yes: Debra Brynoff, Nancy Stuart, Kelly Griesch and Wayne Kerber.

Next, the bills listing and financial reports were reviewed and discussed. Debra Brynoff moved to pay the bills, including Diamondback Engineering and Surveying, Inc. invoices 2020-140, 2020-141 and 2020-142, and approve the financial reports. Nancy Stuart seconded and the motion was unanimously approved by roll call vote (**summary:** yes – 4). Yes: Debra Brynoff, Nancy Stuart, Kelly Griesch and Wayne Kerber.

The delinquency report was reviewed. There was no action taken on delinquencies this month.

Hopper Becker presented the Operations report and discussed the following matters:

- Influent flows have been fairly consistent in May.
- Continue to experience wood chip supply issues.
- The annual DMR QA study has been started and the deadline was extended.
- In regards to the solids handling project the team is working on getting the pilot trailer set up and samples collected for polymer testing and soil sampling completed.
- The District's laborer was terminated and the hiring process will commence. Joe Starika will be working on a temporary, part-time basis.
- June flows and solids are increasing and Hopper expects he will need to order a container for sludge disposal.
- Sun issues continue to be a high demand for time.

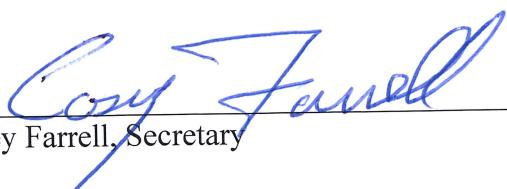
Tammy Granger gave the Administrative Report as written. Staff is attempting to set up a meeting with the building department, building permit review team members and the Town of Granby to discuss illegal apartment units.

In the Attorney's report Rod McGowan advised that Carl Borgstrom had paid the required deposit for his inclusion petition. Upon review of Smith Creek Crossing's status, it was determined that there is no connecting easement to get from Smith Creek Crossing infrastructure across the Smith Creek Crossing and Town of Granby properties to Carl's property and we are not sure when the sewer main will be completed and available to Borgstrom for connection. Rod stated that he had reached out to Carl asking if he was agreeable to postponing consideration of inclusion until these issues are addressed. If he agrees, the Petition and hearing can be tabled by the Board, if he doesn't agree the Board may need to deny his petition if his property cannot be served.

There being no further business to come before the Board it was duly moved by Kelly Griesch,

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seconded by Nancy Stuart and unanimously carried by roll call vote (**summary:** yes – 4) that the meeting stand adjourned at 10:24 p.m. Vote: Yes: Debra Brynoff, Nancy Stuart, Kelly Griesch and Wayne Kerber.



Casey Farrell, Secretary