

**DRAFT MINUTES FROM THE WHITEWATER SPRINGS  
BOARD OF DIRECTORS MEETING**

Meeting Date/Time: Tuesday, July 26, 2016, 6:00 p.m.  
Meeting Location: Joann Cole Mitte Memorial Library, 170 N. Gabriel, Bertram, Texas  
Meeting Attendees: Don Rauschuber – POA Board President  
Van Henry – POA Board Vice President  
Erin Welch – POA Board Secretary  
Cheryl Sherman – POA Board Treasurer  
Coy Brown – POA Board Member  
Multiple Whitewater Springs property and homeowners

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**Items 1 and 2 Call to Order and Establish Quorum**

Don Rauschuber called the meeting to order at 6:01 p.m. A quorum was established, with all Board members present. LaDale Young led the group in prayer, and the Pledge of Allegiance was said.

**Item 3 Public Comment**

Bill Hiers stated that the website was not providing enough details about the upcoming meetings, including all agenda items.

Mr. Carmichael requested a copy of the Inundation Report from Dee Purkeypile be uploaded to the website, as well as a map of the improvement area(s).

Oscar Saint provided a handout and commented on construction signage within the subdivision, stating that there needs to be more clear direction and signage for construction within the subdivision to help maintain the integrity of the roads and keep construction traffic off steep roads as much as possible.

**Item 4 Discuss, consider and take action concerning the May 12, 2016 and June 14, 2016 Board meeting minutes. (D. Rauschuber)**

The minutes from the May 12, 2016 meeting were not complete, and Erin Welch and Van Henry will coordinate to prepare those minutes. Erin Welch presented the minutes from the June 14, 2016 meeting, and there was no discussion by the Board. Erin Welch made a motion to approve the minutes from the June 14, 2016 meeting, Van Henry seconded the motion, and the motion passed unanimously, 5-0.

**Item 5 Discuss, consider and take action concerning Whitewater Springs Financial Statements as of June 30, 2016. (D. Rauschuber)**

Don Rauschuber provided a brief summary of the financial statements as included in the agenda packet. Erin Welch made a motion to approve the financial statements as of June 30, 2016, as presented by Don Rauschuber, Mr. Rauschuber seconded the motion, and the motion passed unanimously, 5-0.

**Item 6 Discuss, consider and take action concerning approval and payment of bills. (D. Rauschuber)**

Don Rauschuber provided a brief summary of the bills received to-date, shown below.

- A. Neimann and Heyer - \$1,463.00 and \$1,001.00**
- B. V&Y Contracting – Chip and Seal Chaney Crossing: \$17,464.00**
- C. V&Y Contracting – Chip and Seal Murphy Drive: \$28,720.00**

Don Rauschuber confirmed the past progress payments #1 and #2, which were charged against the roadway cleaning and repair budget item (NR-Roadway). The total charges

for the two roadway projects is \$135,375.00, with two partial payments (\$14,000 and \$46,184), with a remaining balance once work is complete of \$75,191. Erin Welch made a motion to approve the payment of bills for Neimann & Heyer and V&Y Contracting as read, and Cheryl Sherman seconded the motion. The Board discussed the motion, including questioning the timing of materials and equipment removal after completion of the roadway projects and keeping the contractors from parking on adjacent lots. Erin Welch amended the original motion to approve the Neimann & Heyer invoices as-read, but retaining 10% of the remaining balance of \$75,191 until all equipment is removed from the property. Van Henry seconded the motion, and the motion passed unanimously, 5-0. The original motion died for lack of a second.

**D. Other**

There were no other bills.

**Item 7**            **Discuss, consider and take action regarding FY 2016 Budget Amendment. (C. Sherman)**  
Cheryl Sherman provided a summary of the budget amendment, which was to increase the Wildlife Habitat budget by \$5,000 to \$10,000, with the amendment to be shown on the next FY 2016 Budget summary at the next Board meeting.

**Item 8**            **Discuss, consider and take action concerning matters discussed with Ms. Connie Heyer, Niemann & Heyer, LLP, Attorneys at Law, Austin, Texas, including, but not limited to the following items (D. Rauschuber):**

- A. Developer for Whitewater Springs Subdivision**
- B. Ownership and maintenance of FM 1174 fence**
- C. FM 1174 fence: vinyl/plastic versus wood/metal**
- D. Assessing fines for covenant violations**
- E. Covenant violation actions and limitations**
- F. Condensing of restrictive covenants**
- G. Needed approval(s) for new capital improvements**
- H. Whitewater Springs Dam Project**
- I. Enforcement of speed limits and recovering street damages**
- J. Road Impact Fee**
- K. Open Meeting Act**
- L. Street contractor (i.e., Cummings and V&Y)**

Don Rauschuber provided a summary of the items listed above, and a summary of a conference call between Connie Heyer, Don Rauschuber, Erin Welch, and Van Henry and a follow-up e-mail from Connie Heyer with additional information about the fence and road impact fees. No action was taken on this item.

**Item 9**            **Discuss, consider and take action related to enforcement of deed/CCR rules. (D. Rauschuber)**

Don Rauschuber provided a summary of the draft documents prepared, called Amendment of Rules and Regulations of Whitewater Springs, and Exhibit "A Enforcement Policy. The draft documents allow the Board to set a fine schedule for ACC violations, speeding, etc., per-notice and per-violation. There was discussion about who would enforce the rules, including the possibility of the ACC. It was determined that first the CCRs had to be consolidated and condensed, so the violations would be easier to understand. Erin Welch and Coy Brown offered to work on the condensing of the CCRs to provide to the POA by the end of 2016 for approval, and for the September 2016 Board meeting, Don Rauschuber and Van Henry will work on a resolution to amend and condense the CCRs. No further action was taken on this item.

- Item 10**      **Discuss, consider and take action concerning POA Board Meeting Notice Requirements. (D. Rauschuber)**  
Don Rauschuber provided a summary of the information from Connie Heyer about notification requirements and Board meetings, as included in the backup packet for the meeting. No action was required or taken. Van Henry will look into the costs and processes associated with digital meetings (i.e., online and teleconference), including services such as GoToMeeting.
- Item 11**      **Discuss, consider and take action concerning the Shane Dicke proposed re-plat of Section IV Lots 622, 623 and 624 into one lot. (D. Rauschuber)**  
Don Rauschuber provided a summary of the proposed re-plat of Lots 622, 623, and 624, as presented in the backup packet. Erin Welch made a motion to approve the re-plat of Lots 622, 623, and 624 into a single lot, Van Henry seconded the motion, and the motion pass unanimously, 5-0.
- Item 12**      **Discuss, consider and take action concerning tree pruning within road right of way/common areas.**  
Jerry Martinez stated that there have been several instances when property owners need to understand that it is alright for the POA to trim trees within the road ROW and/or common areas. Don Rauschuber confirmed that the POA has the authority to clear the ROW if it is a matter of public health and safety, but the POA should visit with the property owner first, if any of the clearing would carry over into an individual lot. No action was required or taken on this item.
- Item 13**      **Discuss, consider and take action concerning the replacement of the FM 1174 fence. (D. Rauschuber)**  
Don Rauschuber provided a brief summary of the FM 1174 fence issue, and reading into record an e-mail from Connie Heyer from June 14, 2016 (included under Item 8 above in the backup packet), then summarizing a conference call with Connie Heyer on July 26, 2016 with a follow-up e-mail from Connie Heyer read into record, which stated, in summary:  
    "...if the HOA has been maintaining the fence area for 10+ years, openly, obviously, hostile-ly (without permission of the owner) and under claim of right (we believe it is our right to maintain these fences), then there is a potential claim of adverse possession – that you have acquired an easement to keep and maintain these fences there due to adverse possession..."  
    "With regard to whether someone could remove a current fence or add a new fence, the short answer is "no, not without permission of the architectural control committee." Article II of the declaration prohibits any external improvements or changes without plans being submitted and approved by the ACC. This would include removal or additions of fencing, retaining walls, outbuildings, or any other improvements..."  
The Board then determined, based on this information from Connie Heyer, that the POA has the authority to make improvements, repairs, or removal/replacement of the FM 1174 fence, but that a License Agreement may be needed to replace the fence, and that there is at least 10 years of historical evidence of repairs by the POA. This item was opened for public discussion/comment.

PUBLIC COMMENT

Frank Owen: What was the intent of the fence?

Sam Locke: The intent was to be part of a gated community.

Gil Silva: Property owners may be an issue

Ken Dreger: The fence was first painted again in 2007/2008, but when does the 10-year period start where the POA started the upkeep? We need to establish a date.

Don Rauschuber, in response to Mr. Dreger: The starting date would be 1999 when the subdivision was originally built.

Jerry Martinez: Was a precedence set with Suntex-Fuller? The fence has always been painted by the POA.

Ken Dreger: Maybe the Board can send a letter to the FM 1174 property owners regarding the status of the fence.

Coy Brown, in response to Mr. Dreger: The POA could lose force with a letter.

Ron Frioux: I would be surprised if the FM 1174 owners thought they own the fence, and likely wouldn't care less.

Eldon McGill: Does it matter if any of the FM 1174 lots are delinquent?

#### BOARD DISCUSSION

Van Henry made a motion to end the public comment and open the Board discussion, Erin Welch seconded the motion, and the motion passed unanimously, 5-0. Van Henry then took a poll of the Board regarding their opinion of the fence, in light of the information provided by Connie Heyer and the public comment. Mr. Henry's opinion is that the fence is a common conveyance and demarcates the subdivision and protects the subdivision and owners. Coy Brown said the POA has followed good faith regarding legal matters and has met the 10-year mark, adding that the fence provides safety and should be under POA control. Cheryl Sherman concurred and said the POA should just get it done. Erin Welch agreed, and Don Rauschuber agreed, adding that the fence is the face of the development.

Coy Brown made motion to move forward on the FM 1174 fence project to repair or replace the fence, and obtain approval of the materials. Don Rauschuber stated that the rules for the fence should be in place first, including cleaning up of the language specific to materials. Coy Brown added that the Board should take the attorney's recommendation with the 10-year prescriptive right, and move on with the repair or replacement of the FM 1174 fence. Erin Welch seconded the motion. Van Henry stated that the owners of lots fronting FM 1174 should be notified that the fence is POA property, and that a CCR amendment would be needed, and that no alterations to the fence can be done by individual owners. Coy Brown's motion passed unanimously, 5-0. Don Rauschuber then made a motion to approve the ProFence Phase One project, which includes 3 rails with 5x5 posts and 2x6 rails at a cost not-to-exceed \$50,000, subject to the ACC authorizing a variance for the vinyl fence material, with the funds being charged against NR-Fence. Erin Welch seconded the motion, and the motion passed unanimously, 5-0. Don Rauschuber will contact ProFence and request a variance from the ACC for the vinyl fence material.

**Item 14      Discuss, consider and take action concerning stocking Whitewater Springs Lake. (V. Henry)**

John Nowak had no new information, so this item was tabled until a later date.

**Item 15      Discuss, consider and take action concerning the purchase of a Whitewater Springs Reservoir floating dock. (D. Rauschuber)**

Ken Dreger stated that prices have increased since the original authorization, and that the dimensions of the floating dock have changed. The new dimensions are: Two 10' x 20' sections with a 10' x 6' ramp, with a total length of approximately 50 feet. Don

Rauschuber made a motion to amend the budget for this item at a cost not-to-exceed \$6,000, Erin Welch seconded the motion, and the motion passed unanimously, 5-0.

**Item 16            Discuss, consider and take action concerning pool house repairs or replacement. (D. Rauschuber)**

**Together With**

**Item 17            Discuss, consider and take action concerning portable restroom and shower facilities for swimming pool. (V. Henry)**

Sam Locke stated that there are some complaints about the port-a-potties, adding that he does not believe the existing building is unsafe. There was no formal report in this regard. Jerry Martinez offered two (2) plans:

Plan A: Make all the improvements at once.

Plan B: Make the improvements in two (2) phases:

Phase 1: Restrooms, storage, total foundation with open air area.

Phase 2: Build-out full and enclose the total structure.

Don Rauschuber said that the bathroom needs to be replaced now as the first phase. In order to make any formal improvements, a real site plan would be needed for the total project. Cheryl Sherman agreed that the bathrooms need to be fixed now. Van Henry asked about moving funds from the Tech budget to prepare a real site plan with elevations. Gil Silva wanted to ensure any liability release associated with the bathrooms. Don Rauschuber stated he would conduct a site visit with Jerry Martinez on Tuesday morning, and Jerry Martinez said he would provide the Board with a real site plan and proposal for the improvements. No further action was taken on this item.

**Item 18            Discussion, consider and take action concerning cell phone and/or internet service. (V. Henry)**

Jerry Martinez stated that he is still trying to contact Frontier. No action was taken on this item.

**Item 19            Discuss, consider and take action concerning a Welcome Packet. (E. Welch)**

Erin Welch provided a brief summary of the completed Welcome Packet. Don Rauschuber made a motion to approve the Welcome Packet and post it on both websites and make it available to the ACC with multiple copies and a .pdf. Cheryl Sherman seconded the motion, and the motion passed unanimously, 5-0.

**Item 20            Discuss, consider and take action concerning the following matters: (E. Welch)**

**A. Notification to residents regarding road paving/repair activities.**

**B. CCR front and side yard building setback requirements.**

**C. WSWSC water service availability.**

Erin Welch requested clarification of these three (3) agenda items, as needed. Specifically, the setback language needs to be cleaned up and clarified in the CCR document(s). No action was taken on this particular item. Regarding notification of roadway work, it was determined that no notification is required. Don Rauschuber asked Bill Hiers about the purpose for a truck route, and Mr. Hiers stated that this is a load-bearing issue, but does not need formal action at this time. Erin Welch then asked about the possibility of adding the confirmation of water service availability by the Water Supply Corp. as part of the ACC approval for new homes. Coy Brown agreed that if there are no available water meters, people need to be aware immediately. Bill Hiers confirmed that Well #4 on Lot 605 may be completed by May 2017, but that there is enough water availability and capacity for existing and needed service at this time. Don Rauschuber agreed that of all the entitlements needed, utilities are one of the first ones that should be confirmed. Mr. Hiers confirmed that while there is no issue about water

capacity and availability at this time, Well #4 is needed to ensure sufficient future use. Priscilla Thorp stated that she has told people to be sure to get water taps. No action was required or taken on these items.

**Item 21**

**Discuss, consider and take action concerning Committee Reports:**

**A. Pool Committee**

Sam Locke stated that the filters were reconditioned last week, the pool deck needs to be redone/repared, there needs to be some type of automatic filling mechanism for the pool, and he needs a new wet-vac.

**B. Road Committee**

Bill Hiers stated that the road edging project is completed, and is now in the cleaning/clearing up phase. He then reconfirmed the 90% payment approval to V&Y Contracting referenced earlier in the meeting.

**C. Security Committee**

Ron Frioux stated there is recent damage at the front, and that UR Security will replace the license plate camera.

**D. Technology Committee**

No report, as Jerry Martinez is still trying to contact Frontier.

**E. Wildlife Habitat Committee**

No report.

**F. Maintenance Committee**

Gil Silva provided the following summary: The planter box at the entry has been replaced, there are repairs needed at the end of Whitewater Drive at North Creek Drive, some people want the walking path to be mowed since it is not accessible on foot, but that the Wildlife Committee could address that issue. Van Henry stated that Mike Austin said the pat is a total loss; Ken Dreger said he would get an estimate to clean up the walking path.

**G. Nomination Committee**

There is currently no Nominating Committee, but Priscilla Thorp said she would chair the committee, to be seated in September.

**H. Fire Wise Committee**

No report.

**I. Architectural Control Committee**

Ron Frioux provided a handout of the ACC report, which included the following summary:

New Business:

1. Approval was given for two new homes, one on Murphy Drive and the other on Whitewater Drive.
2. A carport, storage building and outdoor kitchen were approved for the Vickers.
3. A patio extension was approved for the Owens.
4. Two sets of plans have been submitted for homes on Westcreek. Approval is pending until the septic plans have been received.
5. Upon receiving permission from TxDOT, a driveway has been installed on 1174. No plans have been submitted at this time.

Old Business:

1. Currently 2 homes are under construction.

**J. Other Committee**

There were no other committee reports.

**Item 22**

**Discuss, consider and take action concerning the setting of dates and agenda items for future WWS POA Board meetings. (D. Rauschuber)**

The Board set the following dates for the next meetings:

- September 8, 2016 – regular Board meeting
- October 25, 2016 – regular Board meeting
- December 3, 2016 – Annual meeting, to be held at 1:00 at the Comfort Inn in Burnet, Texas.

These meetings are scheduled to availability of the Mitte library and Comfort Inn. Cheryl Sherman will check the availabilities.

**Item 23**

**Adjournment**

At 9:28, Don Rauschuber made a motion to adjourn, Erin Welch seconded the motion, and the motion passed unanimously, 5-0.

**DRAFT MINUTES FROM THE WHITEWATER SPRINGS  
CALLED BOARD OF DIRECTORS MEETING**

Meeting Date/Time: Monday, August 29, 2016, 6:00 p.m.  
Meeting Location: Teleconference Meeting  
Meeting Attendees: Don Rauschuber – POA Board President  
Van Henry – POA Board Vice President  
Erin Welch – POA Board Secretary  
Cheryl Sherman – POA Board Treasurer  
Multiple Whitewater Springs property and homeowners

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**Items 1 and 2 Call to Order and Establish Quorum**

Don Rauschuber called the meeting to order at 6:05 p.m. A quorum was established, with all Board members present except Coy Brown.

**Item 3 Public Comment**

Danny and Carla Melcher thanked the Board for having a teleconference meeting so that they could attend from Oklahoma City.

Gil Silva asked when the community would vote on the FM 1174 fence, as the cost exceeds the amount the Board is allowed to authorize without a vote. This question is postponed until the agenda item later.

**Item 4 Discuss, consider and take action concerning the replacement or repair of the FM 1174 fence. (D. Rauschuber)**

Don Rauschuber stated that Jerry Martinez told him PEC was who had previously damaged the north side of the FM 1174 fence, but that PEC has already repaired the damage and the fence is back in service.

Don Rauschuber then provided a summary of the previous FM 1174 fence approval, specifying that at the July 26, 2016 Board meeting, the Board approved the ProFence proposal at a not-to-exceed cost of \$50,000 for approximately 2,650 linear feet south of the entrance. The new estimate is approximately \$62,000 for approximately 3,450 linear feet, and the estimate is all-inclusive – tear-down and clear the existing fence. To-date, there has been no response from Cathy Frioux regarding the variance request for the vinyl fencing material. Mr. Rauschuber opened the item for public comment.

Otis Cobb asked for clarification of the current floodplain area at the southern end of the fence line. Don Rauschuber stated he believed the fence line along FM 1174 was outside the floodplain.

Gil Silva asked about the total project cost for all three (3) phases, which would be approximately \$96,000, which would require a vote of the POA.

Don confirmed the original ProFence approval was \$50,000. The original estimate was approximately \$19 per linear foot, while the current revised estimate is approximately \$17.97 per linear foot.

Milton Simmons asked if anyone had approach Burnet CAD regarding the fence improvements, as that could affect property values for the FM 1174 owners.

Van Henry made a motion for the Board to discuss the FM 1174 fence quote, Don Rauschuber seconded the motion, and the motion passed unanimously, 4-0.

It was determined that the new ProFence estimate is approximately 24% higher than the original estimate. Jerry Martinez confirmed that the vinyl fence material offered by ProFence has a lifetime pro-rated warranty at a minimum of 40 years. MJ Hansen requested that warranty information be included in the contract documents.

Sara with ProFence joined the meeting via telephone, and confirmed the warranty information. It has full coverage for the first five (5) years, then a percentage each year after that. Warranty information will be included in the contract documents. Don Rauschuber asked about the potential start date, and Sara said the general timeline would be to first remove and haul off the existing fence, and they could start the project in about three (3) weeks with approximately four (4) weeks needed for project completion. The project would be done in sections, so that no part of the subdivision would be exposed during the project.

There was further discussion about the 100-year floodplain, as no part of the vinyl fence should be located in the floodplain; only the existing barbed wire fence would not obstruct water flows in case of a flood. Erin Welch confirmed that older floodplain maps show Lot 312 with approximately 360 linear feet of floodplain, but she would obtain a more recent floodplain map to confirm.

The Board discussed the possibility of completing only approximately 2,470 linear feet in 2016 with the remainder to be completed in 2017. Ken Dreger requested that the current floodplain map be obtained and that ProFence remeasure the total distance, as there are too many questions about the length of the fence at this time. Danny Melcher also requested confirmation of the total distance and cost of the fence project.

There were questions about the phasing of the project and the total cost based on the latest ProFence proposal. Don Rauschuber stated, and Sara with ProFence confirmed, that the project is only Phase One of the contract document, and that Phase One is all-encompassing. The project would start approximately 100 feet west of the entry area at the black portion of the fence, continuing approximately 3,450 linear feet with a unit price of \$17.97 per linear foot, for a total cost of \$62,000, which includes removal and clearing of the existing fence, and installation of the vinyl fence.

Don Rauschuber made a motion to approve the \$12,000 in additional funds and approve the amended ProFence contract, with the following caveats: 1) The budget will be amended to reflect the additional \$12,000, 2) The ACC authorizes the use of the vinyl material for the FM 1174 fence, 3) Warranty information is included in the ProFence contract documents, and 4) The 100-year floodplain is verified. Erin Welch seconded the motion. Van Henry asked if the cash-on-hand is sufficient in the current budget, and Don Rauschuber confirmed this would not adversely affect cash-on-hand. The motion passed unanimously, 4-0.

Jerry Martinez stated that when the contract is complete, a date should be set for a pre-construction meeting with at least one Board representative present. There was additional discussion about past flooding events.

## **Item 5**

### **Adjournment**

At 7:13 p.m., Van Henry made a motion to adjourn, Erin Welch seconded the motion, and the motion passed unanimously, 4-0.