

**HIGHLAND PINES DOMESTIC WATER IMPROVEMENT DISTRICT
GOVERNING BOARD MEETING
JUNE 29, 2020
PUBLIC HEARING MINUTES**

1. **CALL TO ORDER:** Board Chair Celia Carr called the meeting to order at approximately 11:01 a.m. Board Chair Carr noted that this Public Hearing is in response to a Petition filed by Jeff and Jennifer Wilhelm and Kevin and Ruby Lollar to add 2 parcels to the Highland Pines Domestic Water District that was filed with the District on May 22, 2020. The Petition seeks to add the following parcels to the District boundaries: Parcels 100-01-134Q (5250 Timberlost Trail) and 100-01-134P (5200 Timberlost Trail).

2. **ROLL CALL OF BOARD MEMBERS:**
 - Celia Carr, Board Chair – Present
 - Sandra McClintock, Vice Chair – Present Via Telephone
 - David Cook, Board Member – Present
 - Bryan Crossley, Treasurer – Present
 - Patti Ferguson, Board Member – Present

All of whom participated in the meeting, thus constituting a quorum.

Also attending the meeting were: William R. Whittington, the District’s attorney of Boyle, Pecharich, Cline, Whittington, and Stallings PLLC (“BPCWS”); Carol Castillo, District Bookkeeper/Administrator of Municipal Accounts & Consulting, LP (“MAC”); Dave Dirren of Sunrise Engineering; Clyde Halstead of Carpenter Hazlewood, Delgado & Bolen, an attorney representing the City of Prescott; along with District Residents/Members of the Public: Holly Meneou; Jerry Woodward; Peter Tyson; Fred Ferguson; Greg McClintock; Ken Karkula; Russel Laing; Bob Herman; Roman Jamrogiewicz; Gerald & Martha Borgelt. Petitioner Jeff Wilhelm was present, but Kevin Lollar was absent.

3. **PUBLIC HEARING:** Board Chair Carr noted that the Petition is receiving careful consideration and attention by each Board Member. The objective of the public hearing is for the Board to fully understand the Petition filed and to listen to public comments. Board Chair Carr asked that all attendees act in a respectful and polite manner.

Board Chair Carr stated that packets were available to the public which included the agenda, the Petition and a fact sheet/map regarding the property being considered. She briefly reviewed with the public, a map which included the non-contiguous location of properties requesting annexation to the District.

Open Public Hearing on Petition to Add Parcels 100-01-134Q (5250 Timberlost Trail) and 100-01-134P (5200 Timberlost Trail) to the District

- a. Board Chair Carr gave Mr. Wilhelm the floor and as much time as needed to present his Petition – Mr. Wilhelm stated the Petition was clear, and that he was not going to read it aloud as everyone had copies. Mr. Wilhelm’s comments were directed towards a technicality and some of the relating facts. The hearing and petition are governed by a statute, and he cited a portion of ARS §48-1014 regarding requirements for the Board’s findings from this public hearing relating to whether or not the public convenience, necessity or welfare would be promoted by the addition to or alteration of the District. As Mr. Wilhelm reads the legal requirements from the statute, he believes the Board does not have discretion to decide for annexation only if it’s in the District’s best interest.

Mr. Wilhelm mentioned that the Board and the City of Prescott have in the past found that annexing properties in this area will promote the public convenience, welfare, and necessity. The District and the City have found this in the past because a lot of the wells are dry or grossly inadequate in this area. That is why the District was formed in 1984. Specifically the founders of the District, the County Board of Supervisors, stated in their Resolution No. 611 “it appears that the public convenience, necessity and welfare will be promoted by the establishment of the District and all of the properties included in the boundaries of the District will be benefited by the establishment of the District.” The City of Prescott later found in Resolution No. 30-13 that “it would be to the benefit of the Citizens of Prescott and the residents of the Highland Pines DWID for the District to be served by the City’s potable water system”.

In Mr. Wilhelm's opinion, no circumstances have changed since those findings were made by the Board of Supervisors and City of Prescott – the wells are still dry and still underperform. He believes because of those facts the precedent has been set. He poses to the Board that unless they know of facts different from what the founders of the District and the City knew, that they have a good faith duty under the Statute to find that public convenience, necessity and welfare will be promoted by the annexation of these properties.

Mr. Wilhelm stated that he was not going to go into the Easement issue at this time but is willing to discuss the matter with Mr. Whittington as needed.

Board Chair Carr noted that the Petition states that by adding the two non-contiguous properties the owners will no longer have a reason to dispute with the District the easement for the transmission line going through the two properties. She also noted that the transmission line has been there for 47 years, there was a recorded easement in 1973, but the property owners are disputing whether or not it was abandoned. Legal counsel has been asked to research this matter. Board Chair Carr asked Mr. Wilhelm to confirm that petitioners will not dispute the easement if they are granted access to the District water system. This was confirmed by Mr. Wilhelm who also stated petitioners would sign a new easement if needed.

Mr. Wilhelm's presentation concluded.

- b.** The floor was opened for public comment. Each member of the public was given 5 minutes to express their comments on the petition for property annexation.

Mr. Fred Ferguson inquired into the legal basis Mr. Wilhelm had to dispute the validity of the easement. Wilhelm stated that their dispute is based on the fact that it was granted in favor of The Highland Pines Water Company, which is defunct, and that there was no assignment of the easement, even though the sale documents contemplated an assignment. At the time of sale, they only recorded a Bill of Sale which said nothing about easements. He referenced an Arizona Statute that states one has to give property owners notice of encumbrances to their property by recording assignments of easements.

Discussion ensued by Mr. Ken Karkula and Mr. Greg McClintock. Given the factual scenario presented by Mr. Wilhelm, those same facts would hypothetically apply equally to any easement in the District – regardless of its purpose. That Mr. Wilhelm's facts are suggesting all District easements have been abandoned, although neither believed it to be true. Mr. Jerry Woodward commented that some easements survive whether it expires by virtue of abandonment. Board Chair Carr pointed the public back to focus on the Wilhelm property and the Petition, as that is the matter of this public hearing.

Ms. Marty Borgelt stated the original approval from the City of Prescott to install the water line dates to the 1970s and prior owners of properties never had an issue, so why suddenly do those properties need access to water from the District? Mr. Wilhelm responded that they do not suddenly need access to water but the prior owner's choice not to get water or use well water before may have been a personal preference. Mr. Wilhelm is now requesting his property be annexed to the District and the legal reason why it could be done. Ms. Borgelt responded that he is hanging this all on a technicality, which Mr. Wilhelm replied it is to the District's benefit to have more paying customers.

The Board Chair reminded everyone to act respectfully and they were not going to open the floor to back and forth comments. Persons can make comments and agree to disagree, but not more than that.

Ms. Borgelt commented that if non-contiguous property annexation is approved, everyone that is not currently in the Water District can make those same arguments, and if so, what is the Board prepared to do about that? She also asked if the Board is aware that the City is working to get water to more people outside of the City and intend to have those individuals go on the sewer line as well in order to use water credits. If the City does this, it will be expensive for a sewer line to come up like the water line. Board Chair Carr asked Ms. Borgelt for her opinion on the Petition. Ms. Borgelt stated she is against the petition because it is opening the District up all sorts of requests.

Mr. Karkula stated he was curious about what the water rights element is in this situation – are there water rights in play so the City could approve this petition and asked if the City of Prescott has been involved up to this point. He also stated a concern of the District appearing to be “blackmailed” with the easement issue. He observed that the easement issue should be considered separately, and not as a way to force the District into the property annexation. Board Chair stated that she is under the belief that the Petitioners have addressed the Petition with the City and they can purchase the water rights. It has not been completed, but there are 180 water rights on the open market and the Petitioners would have to track down the sellers and pay for them. The cost is not known, but the Petitioners have said they will pay for the water rights. Mr. Wilhelm confirmed Board Chair Carr’s statement. Mr. Karkula has a concern regarding the construction element, and any long-term maintenance issues seeing how the Girl Scout Camp has had a large impact on the District.

Mr. Russel Laing commented that when he bought his lot in Highland Pines, he paid \$30,000 for half an acre. At the same time, he could have bought 2 acres for \$20,000 near the Petitioner’s land. The reason he bought his property was because it had water access, so it had increased value. What value do the current residents get from the annexation? He agrees with Mr. Karkula that the District is being held hostage over the easement and suggested that just the easement be worked out separately. He also asked about the capacity of the water system and how many more people it can support. Board Chair Carr commented that the infrastructure is aging and about 20% of the District’s budget goes to maintenance and repairs – approximately \$50,000 - \$60,000 per year. Even so, the District has about 34% water loss, so there is extensive leakage. Adding additional water customers, the Board is concerned with the stability of the current infrastructure.

Mr. Roman Jamrogiewicz (who the Chair noted, is not in the District but lives close to Mr. Wilhelm’s property) asked that if the Petition is granted, what would happen to those property’s wells? Mr. Wilhelm said that the wells would be abandoned and clarified that both properties currently have wells, but they don’t produce sufficient water.

Mr. Halstead, an attorney representing the City of Prescott, wanted to address the City of Prescott issues. If the District approves the annexation of these two properties, the District would request permission from the City to see if sufficient water exists. The City would ask petitioners to provide additional water credits.

Board Chair Carr asked Mr. Halstead a question regarding the District’s IGA with the City: the IGA says “prior to the expansion of the District’s boundaries, or the provision by the District of any potable water outside its current boundaries, the District shall first pay for any upgrades to the City’s infrastructure which may be needed to accommodate any increased demand, prove to the satisfaction of the City that there is an assured water supply for said expansion, and obtain written approval from the City for said expansion”. She asked that he explain the upgrade/expansion costs. He noted that the transmission line is extensive and owned by the District, so if upgrades were needed to the City’s system as a result of annexation, the District would be responsible to pay for the improvements to the City of Prescott. The costs to the District would be determined 1) after the District makes the request to the City to annex the two properties, 2) The City reviews the order to approve, 3) the City determines if there are sufficient water rights available, 4) the City determines if water infrastructure upgrades to the City are needed. Board Chair Carr commented that based on this process, it is difficult for the Board to decide about property annexation since potential costs to the District for City infrastructure upgrades are unknown. There was clarification that the District cannot formally approve to annex the properties before getting the City’s approval; the District first votes to approve asking for the City to review and approve. Mr. Halstead did note that adding two properties would not generate any City infrastructure upgrade costs but cannot say if the City of Prescott water infrastructure could accommodate more than two additional properties.

Board Chair Carr commented that there are 486 properties in the District. Approximately 364 (or 75%) of the properties currently receive water. The District first owes water to the 122 properties that are in the District but not yet using water. As custodians and stewards to the District, it is the Board’s responsibility to make sure that the District has enough water to supply to all residents currently in the District before adding more properties to be serviced. Mr. Halstead commented that the City has already committed infrastructure to the complete build out of the District, so the outstanding 122 properties will not affect the City system. Having an additional 122 outstanding properties connect to water would only impact the District’s infrastructure.

Ms. Holly Meneou, a local realtor, commented that to annex into the District took them 2 years, so it is not a speedy process.

Mr. Bob Herman commented that he objects to the using the easement to get the annexation.

Mr. Fred Ferguson asked Mr. Wilhelm about the plan for connecting the properties to the water distribution system, what the cost is, and how those costs would be paid. Mr. Wilhelm responded that they would pay for any costs to get connected to the system and the engineers have already said connection is feasible. The project has not been priced out yet though. Board Chair Carr stated that the District engineer had commented it would be incredibly challenging to get the properties connected to water with potentially two ways to tap in and connect. She asked if the Petitioners researched how they would tap in, and if they had already hired an engineer. Mr. Wilhelm said at this time they do not have an engineering plan but have had discussions with the District's engineers. They have not hired an outside engineer to review the issue. Mr. Wilhelm stated while they don't have a plan now, they would connect however the engineers said it can be done and while they don't know the costs now, feel comfortable they could pay for whatever it would generally entail.

c. Board Chair Carr then read several emails she had received with public comments regarding the Petition.

The first email posed several questions which she asked Mr. Wilhelm: the Lollar's currently have a home on the property – how is water currently being supplied? They have a well and they also haul water. Do the Lollar's have a storage tank? They have one associated with the well. Does the Lollar situation differ in any significant way from the other homes located on Timberlost? Mr. Wilhelm could not speak to other owner's properties. Another member of the public commented that wells are a matter of public record, and there are only a few of them. The owners probably haul water or have it delivered. Another question was how they proposed to access the District's water supply? The Sunrise Engineering report gives general information about how the system would be accessed.

Board Chair Carr then asked Mr. Dirren from Sunrise Engineering to give a summary of the letter he had provided that included how the Petitioners may be able to access the water system. The letter he had written provided for a few different options: get water directly from the main line and put it in the tank and have pumps, or the District would have to run a distribution line down from where water is currently provided. Mr. Dirren did not have a generalized cost estimate but stated it would affect the entire District's system and an analysis would be recommended before anything was done. He also said it was their firm's recommendation to not annex the properties until the transmission line project was completed so they could evaluate the situation then.

Ms. Marty Borgelt commented that 20 years ago it cost them over \$16,000 to get a line from Skyline Drive to their house – approximately 220 yards.

Board Chair Carr commented as a member of the public, there are a lot of unknowns and risks to the annexation of two non-adjacent properties to the District. Weighing the risks involves "Informed Consent" which she does not feel the Wilhelm and Lollars have provided to the District Board of Directors. So, while she is open to annexation, she is not sure if the District knows all the risks associated with property annexation and burden on the current District water line infrastructure.

The remaining emails were read at the hearing– those emails are attached. The emails read were from Jeff and Deb Deleeuw; Paul Carr; Sue and Bob Leonard; Kathy Esslinger (neighbor to the Petitioners that is not connected to the system and has a transmission line easement as well) and Greg McClintock.

An email from Russell Laing was not read aloud since he had made his comments in person.

Sandy McClintock commented that the Highland Pines Water Company had to build the transmission line between Spence Road to the City of Prescott water distribution system to be annexed. That line was given to the City and they use it to pump water to several other neighborhoods.

David Cook commented that he liked the engineer's suggestion that the District complete their main transmission line project prior to revisiting property annexation after the project has been completed, the pumps evaluated, and the lower water tank leak fixed.

Patti Ferguson stated that the District cannot afford to take on any additional engineering expenses until they main water line project has been completed.

Greg McClintock stated that the transmission line project costs have already been passed on to District residents as property taxes which began in 2019 and will continue for the next 10-20 years. That infrastructure project will only maintain the District's status quo. He does not see that the District is in any financial position to spend additional dollars since they can hardly afford what is needed at this point.

- b. **Close Public Hearing on Petition to Add Parcels 100-01-134Q (5250 Timberlost Trail) and 100-01-134P (5200 Timberlost Trail) to the District.** There being no further public comments, Board Chair Carr closed the public hearing.

4. BUSINESS:

- a. **Discussion and possible action re: Petition to Add Parcels 100-01-134Q (5250 Timberlost Trail) and 100-01-134P (5200 Timberlost Trail) to the District.**

Board Chair Carr noted that the public hearing was now closed. The Board was open to discussion and possible action on the Petition. She asked Mr. Wilhelm if there was any additional information, documents, or plans the Petitioner would like the Board to consider before any motion for action. Mr. Wilhelm did not have anything further to add.

Mrs. Ferguson suggested that prior to any action, the Board take the matter under advisement to get confidential legal counsel from Mr. Whittington regarding the easement. Mr. Whittington commented that the Board had received his easement research that morning, but that it is confidential and cannot be shared with the public.

Mr. McClintock asked if the nature of the discussion being needed at this point is confidential and should be done in executive session.

Sandy McClintock agreed that an Executive Session would be helpful.

Patti Ferguson suggested waiting to decide until after a full report was received from Sunrise Engineering. The Board discussed that the District should not pay for that research.

Mr. Wilhelm commented that if petitioners are going to pay for the engineering and water connection, the Board does not need to be concerned with costs or the connection method. Patti Ferguson said the Board is concerned because it will be the District's responsibility to maintain it in the future, and the Board is concerned with the impact to the infrastructure regardless of cost. The impact needs to be known before a decision can be made.

Mr. Dirren commented that to understand the impact the Board would need to run a water distribution model for the system, which has not yet been done. A water distribution model would add 122 additional owners into the water distribution system that are not currently connected to water, to see how that would affect the system and the storage tanks and pumps. Then the model would look at adding the two additional connections. Mr. Dirren cannot say at what point "the straw would break the camel's back".

The Board received legal counsel's easement research just prior to the start of this public hearing and has not seen it and would like to review it prior to making a decision on annexation. Mr. Crossley thought an additional executive session would be prudent once that information has been reviewed.

Patti Ferguson made a motion that the Board take this matter under advisement, have an executive session regarding the Petition put on the August 13th meeting agenda, and this public hearing be recessed until that time. Sandy McClintock seconded the motion. The Public Hearing will be recessed and continued at the August meeting. The motion passed unanimously by the four board members present in person. Sandy McClintock abstained from the vote since her telephone connection had been interrupted.

- 5. **ADJOURNMENT:** There being no further discussion, the meeting was adjourned at 11:58 a.m.