

Mr. Jose de la Fuente
December 29, 2020
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December 29, 2020

Via email to jdelafuente@lglawfirm.com

Mr. Jose de la Fuente
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave., Suite 1900
Austin, TX 78701

Re: 2021 annual meeting for election of directors – Windermere Oaks Water Supply Corporation (“WSC”)

Dear Joe:

This is to follow up on our conversation last week concerning the WSC’s 2021 annual meeting for election of directors (“Annual Meeting”).

As we discussed, my clients believe the WSC is in violation of the WSC Bylaws and applicable Texas law regarding the Annual Meeting. By way of example:

- It is my clients’ understanding the WSC Board has announced the 2021 Annual Meeting will be held not on the first Saturday in February, as required by Art. 7, § 2 of the Bylaws, but almost 2 months later on March 27, 2021. The date set forth in the Bylaws is mandatory; it is not a “target.” The last sentence of Section 2 merely tracks the statutory requirement that the Annual Meeting must be held between January 1 and May 1. Tex. Water Code § 67.007(a). It does not give the Board discretion to select an Annual Meeting date other than the date established by the Bylaws.

- Art. 8, §4(c) of the Bylaws obligates the corporation to make director candidate application forms available at the corporation's main office and to provide such forms by mail or electronically on request. My clients are advised that several director candidates have sought application forms, but none have been provided.
- Art. 8, § 4(b) of the Bylaws sets the deadline for filing of director candidate application forms. That deadline was December 23, 2020. It appears to have been disregarded.
- Pursuant to Tex. Water Code § 67.0052, the corporation was required to notify the members of the ballot application deadline not later than the 30th day before the deadline, or no later than November 23, 2020. That deadline likewise was disregarded.
- Pursuant to Tex. Water Code § 67.0053 and Art. 8, § 5 of the Bylaws, not later than the 30th day before the date of an annual meeting, the corporation shall mail to each member or shareholder of record written notice of the meeting, the election ballot and a statement of each candidate's qualifications, including biographical information as provided in each candidate's application. The election ballot must include the number of directors to be elected and the names of the candidates for each position. That deadline is January 7, 2021. It is inconceivable under the circumstances that the WSC will meet that deadline.
- While the Board is aware of numerous concerns and complaints concerning past elections, it has declined to adopt procedures pursuant to Art. 8, § 6(f) to address such concerns and complaints and to protect the fairness, integrity and openness of the voting process.
- By way of illustration, the Board has once again appointed Janet Crow to serve as the "independent election auditor." Ms. Crow has been at the center of controversy in connection with prior director elections. She has openly aligned herself with incumbent directors who we understand are seeking re-election.
- The Board has once again declined to impress the ballots with unique control numbers or to implement some other mechanism that would ensure only legitimate votes are counted. We understand that in the past embossed seals or watermarks have been used.
- The Board is aware of concerns over the physical security of the ballots themselves. In 2019, there was even a break in at the WSC office when director ballots were being held there. Nevertheless, the Board has once again declined to implement appropriate measures to secure the ballots.

- The election process has been manipulated in the past to enable at least one candidate – Bill Earnest – who did not qualify to be placed on the ballot for director. The full ramifications vis-à-vis the actions in which Mr. Earnest participated as a director have yet to be determined.

In addition, it is our understanding that the Board intends for the Annual Meeting to be conducted via Zoom or similar “remote” conferencing platform in the same manner as recent Board meetings. Such a meeting does not comply with the requirements of applicable law. First, the WSC’s governing documents require that the Annual Meeting be held in person. See, e.g., Art. 7, § 6. They also require that votes be cast prior to the Annual Meeting (by mail or hand delivery) or at the in-person meeting. Art. 7, § 4. To the extent it is applicable, Tex. Bus. Orgs. Code Ann. § 6.002 permits videoconferencing technology if, but only if, the system permits each person participating in the meeting to communicate with all other persons participating in the meeting. This has not been the case for “remote” Board meetings. That section does not trump the voting requirements set forth in the WSC’s governing documents.

The Board’s disregard of the requirements of the governing documents and applicable law does nothing to instill member confidence in the director election process. More important, the terms of three of the Board’s directors expire on March 9, 2021. After that date, there can be no quorum and it will be impossible for the Board to transact the business of the corporation.

I raised this issue with you last week to emphasize that it is more important now than ever that the WSC comply scrupulously with the governing documents, applicable law and the obligation to conduct an Annual Meeting and election that is fair, honest and transparent. There is no “we haven’t gotten around to it” exception, nor should there be. According to the minutes from the Board’s October 12, 2020 meeting, the Board is well-aware of these obligations and claimed then to have been working on these matters with counsel and the TRWA for some time.

If the Board insists upon disregarding the WSC’s obligations, challenges are inevitable. This is no time for the Board to cause the corporation to pick – or fund – a fight it likely cannot win and surely can easily avoid. You have portrayed this Board as folks who are just trying to do the right thing. There is no time like the present for them to step up and prove it. Hold the Annual Meeting on the required date and in a legal manner. Outsource the election process to a truly independent third party with the expertise and facilities to safeguard the integrity of the process and the legitimacy of the outcome. Go the extra mile to do what is right, rather than going out of the way to envelope the process in a cloud of doubt, suspicion, and skepticism. While I cannot guarantee that no one will make a challenge, I am confident if the Board does what is right it will not cost the WSC hundreds of thousands of dollars in an effort to defend what its Board has done.

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Thank you for hearing me out. Please do not hesitate to call to discuss these matters further.

Sincerely,

Kathryn E. Allen

KEA/ks

cc: Mr. Rene Ffrench
Mr. Bruce Sorgen
Mr. Dick Dial