



Windermere Oaks Water Supply Corporation

Committed to Providing Clean, Safe Water for All Our Residents

830-598-7511 or 855-400-0079

windermerewater@gmail.com

[Contact Us](#)

March 9, 2023

Dear WOWSC Members,

On March 1, the Court orally ruled on outstanding issues in the four-year old legal case in which plaintiffs Dick Dial, Rene Ffrench and Bruce Sorgen claimed the Windermere Oaks Water Supply Corporation and its current and former directors acted improperly in the sale of 4.3 acres of WOWSC land to Dana Martin and Friendship Homes and Hangars (a formal written judgment reflecting the Court's rulings will follow). The following occurred at the March 1 hearing:

- The plaintiffs' improper claims against three current (Joe Gimenez, Mike Nelson and Dorothy Taylor) and four former Board members (Bob Mebane, Mike Madden, Bill Earnest, and Pat Mulligan) were entirely **DISMISSED** by the Court. The court found **NO LEGAL MERIT TO ALL CLAIMS** against the directors, other than Dana Martin.
- The Court ordered a **"TAKE NOTHING JUDGMENT"** (that is, dismissing claims) against the Windermere Oaks Water Supply Corporation for its Boards' actions in 2015 and 2019.
- By virtue of that ruling above, the Court **DISMISSED** plaintiffs' claims that WOWSC was somehow **OBLIGATED** to expend members' funds to pursue claims against Martin.
- The Court **DENIED** Dial, Ffrench and Sorgen their claims to overturn the 2015 Land Sale contract and place the 4.3 acres at issue into a constructive trust.
- The Court **AWARDED** \$35,000 to the WOWSC and \$35,000 to the Plaintiffs' according to the jury finding as to the additional value of land at issue in the 2015 sale.
- By virtue of the other dismissals above, the Court **DISMISSED** all claims that Gimenez, Nelson, Taylor, and Earnest acted wrongfully in spending corporation (i.e., water company customer's) money to defend its current and former directors. With these rulings, once the judgment becomes final and no longer subject to appeal, the WOWSC by Texas state law **MUST PAY FOR ALL** legal defense costs of the current and former directors, excepting Martin. Once the judgment becomes final and no longer subject to appeal, the Board has stated its intent to seek payment from Martin in the amount of defense costs incurred on her behalf.

As to reasons the costs incurred by the WOWSC (and thus its members) for the legal defense of the corporation and its current and former directors were so high:

- The Plaintiffs' attorney demanded and took depositions of multiple current and former directors often extending up to the full time limits set by Texas rules.
- Their attorney demanded extensive discovery of corporate documents reaching back to 2012 and responses to Interrogatory questions coordinated by attorneys, which required significant legal time.

In reflection about the 2019 Board's actions (by Gimenez, Nelson, Taylor, and Earnest) at the October 26, 2019 community meeting:

- That Board sought to stop the neighborhood dispute through a compromise amount of \$20,000 and Martin's surrender of the right of first refusal (agreed to by Martin), and to move on down the road with producing safe, adequate water supplies for its customers (which it has continued to do despite the case and other legal entanglements).

- The WOWSC **DECLINED** to spend members' funds to pursue claims against Martin for what it viewed as a risky legal strategy with questionable upside returns regarding the value of land sold in the 2015 transaction. It did not agree with the Plaintiffs' claims that the land was worth \$1 million.
- Their business judgment was validated by the November 18, 2022, JURY VERDICT that at the time of sale, had it been sold to a neutral third party, the land should have been valued at \$270,000 instead of the \$200,000 it was sold for in 2015. That is far less than the \$1,000,000 value claimed by the plaintiffs.
- The Board, in the interest of WOWSC members, sought to minimize future legal fees by coming to mediated settlement with Martin for \$20,000 in additional consideration for the land sold in 2015, as well as Martin's surrender of the "right of first refusal" as to certain additional acreage. **Had Dial, Ffrench and Sorgen accepted the mediated settlement, none of the additional legal fees in 2020, 2021, 2022, and 2023 would have burdened WOWSC ratepayers.**
- The reluctance of the 2019 Board to join Dial, Ffrench, and Sorgen in their pursuit of Martin was borne out: At trial, their attorney said she had billed more than \$400,000. Given that the jury awarded only \$70,000 in additional value, the costs for their pursuit of the land far exceeded the actual value of the 4.3 disputed acres.
- Thus, the 2019 WOWSC Board (Gimenez, Nelson, Taylor and Earnest) appropriately used their business judgment to assess that legal costs would far outweigh any benefit to members and the corporation. The legal costs could have stopped in 2019 if the plaintiffs had stopped.

The jury's November 18 verdict made it clear: Some fights are not worth it. Just because you are right, and someone else is wrong, that doesn't mean it's a good or wise personal or business decision to engage in that fight, especially in court. The jury found against Martin, but – after all of the fighting, time, and expense – only in the amount of \$70,000 (and thus only \$50,000 above the cash amount the 2019 Board determined equitable, before legal fees).

Sometimes, the best choice is to walk away from a fight.

The plaintiffs decided otherwise, extending the legal battle. Their neighborhood allies further divided the community through petitions, additional legal actions, rate appeals, political ad hominem attacks, websites, defamatory letters and disruptive Board meetings.

Had the plaintiffs (and their neighborhood allies) accepted the Board's October 2019 decision (and NOT expanded the lawsuit by suing ALL the directors), this whole process would have ended and members' base water rates would not have been increased. Peace may have ensued in Windermere Oaks.

In sum, the Plaintiffs paid to exercise their rights in court. Water company members also paid for the Plaintiffs' exercise of those rights in the form of the higher water rates needed to defend the water company and its volunteer directors from meritless claims (excepting Martin for now, pending final disposition of the case).

Best regards,



Joe Gimenez
Legal Subcommittee Members



Mike Nelson