



# Windermere Oaks Water Supply Corporation

*Committed to Providing Clean, Safe Water for All Our Residents*

October 31, 2019

Dear WOWSC Member,

Your water company's Board of Directors approved an amended and superseding agreement with Friendship Homes and Hangars, LLC on Saturday, October 26, with one alteration from the item posted as part of the agenda packet you received in the mail.

Namely, the Board deleted a provision for a restrictive covenant which would have required a certain class of airport membership if the 7.01 acres +/- it stills owns were to be sold as airport property. All other items on the amended term sheet were approved unanimously on Oct. 26.

In case you weren't there, Board members openly discussed and deliberated the amended and superseding agreement for well over 45 minutes and described their findings and due diligence on the matter of the contract. Several WOWSC members have filed lawsuits against the water company because of the contract, costing us all more than \$133,000 in legal fees to defend the corporation over the last two years. Here is what was discussed during the Saturday meeting, as well as summarized facts and historical information:

- In 2016, WOWSC and Friendship Homes & Hangars, LLC finalized a sale of real property, in which WOWSC sold approximately 4.3 acres of land to Friendship, and the parties granted each other additional rights. That contract and the sale have been the subject of much dispute and ongoing litigation. The agenda item for the October 26 meeting, "Consideration and Vote on Amended and Superseded Agreement," referred to certain potential changes to some elements, and approval of others, of that 2016 agreement.
- In 2013, the WOWSC Board had announced its intent to build a new wastewater treatment plant. Once installed and operational, the Board advised the membership it would sell 11 acres of excess real property the company owns to pay for a portion of the debt for the new treatment plant.
- Members of the current 2019 Board determined, through various interviews and conversations, that, in 2014-2016, past Board members Bob Mebane, Pat Mulligan, Mike Madden, and Bill Earnest performed due diligence by asking a number of people about the value of the 11 acres which the Board wanted to sell. They had asked a small airport developer, a member with the State of Texas Aviation agency, a real estate agent familiar with small airports in the area and another agent that was previously contacted in 2013 by another WSC Board member. Their conversations with people in the know indicated that the value of the land was in the range of \$10,000-30,000 per acre. Mr. Mebane also spoke

to other property owners in the area, and there had been a previous offer of \$175,000 for the 4.3 acres *plus* an additional 5 acres, or about \$18,800 per acre.

- In addition, that 2015 Board received, in July of that year, a contingent offer from the Windermere Oaks Property Owners Association for \$20,000 for a little less than 2/3 of an acre (equivalent to approximately \$29,000 for a full acre). This 2/3 acre was a boat storage area that was part of the 11 acres owned by the water company. The POA's offer was rejected by the water Board because of their desire to sell the entire 11 acres as a whole and their view that the land was worth more.
- The 2015 Board members were advised by WOWSC's attorney that WOWSC is a non-profit corporation that is different from a city, county, school district, or state agency. As such, the water company could sell the land in any manner it desired, and it was (and still is) perfectly legal for the company to transact business with a Board member, so long as at least verbal disclosures are made and the Board, in its judgment, determines that the transaction is fair for the entity. The current Board's legal counsel have also confirmed this point of law. And a current Board member also confirmed this with the president of the Texas Rural Water Association.
- Based on its due diligence and market value information it had gained, the 2015 Board determined that the offer it received from Friendship Homes in late 2015 – for a net \$203,000 for 4.3 acres, or \$47,209 per acre – was a good and fair value. The parties went under contract in December 2015. The highest pro-rated per acre price ever previously offered – of \$29,000, by then-WOPOA President Danny Flunker – had been exceeded by 63 percent.
- The owner of Friendship Homes was Dana Martin, a WOWSC Board director in 2015. She disclosed her interest in the transaction, and recused herself from meetings which discussed and approved the deal. This is clear from minutes posted by WOWSC in 2015 and 2016. Per the laws applying to our non-profit corporation, this was a legal transaction.
- However, over the last two years, some WOWSC members have been vocal about certain elements of that 2015-2016 contract needing change. For example, an easement to the second half of the property was not drafted sufficiently for certain legal standards. And the contract's granting a right of first refusal to Friendship Homes for additional acreage caused concern. Per a mediated agreement, the amended and superseding contract approved on October 26th gained Friendship Homes' surrender of that right of first refusal. Friendship Homes also agreed to the desired easement and to properly record the easement to provide access to the remaining property owned by the WOWSC. As a result, WOWSC will once again own the remaining acreage free-and-clear, with full access to it from Piper Lane.
- WOWSC Boards have given much consideration to the sale price of the property. As mentioned, Board members in 2014-15 sought many expert opinions. Several appraisals have been conducted since then. They sought to ascertain the value of the property around the time of the 2016 sale. The current Board considered all of them. Different appraisers, representing different parties, valued the property at \$185,000 (for all 10.8 acres), \$221,000 (for 3.86 acres), and \$700,000 (for 3.86 acres). All the land described requires certain

development work and additional costs, such as installing fill, which have been a source of disagreement.

- In view of the appraisals, the proposal which passed on October 26th contained a negotiated revaluation of the property. The WOWSC will receive an additional \$20,000 from the title company. A portion of this will be paid now and the remainder will be held in trust until litigation ends.
- At the October 26 meeting, the current Board members expressed their concern that ongoing litigation is costing the WOWSC an extraordinary amount far exceeding our 2019 budget. To date, approximately \$95,000 has been spent on legal fees, mostly defending our corporation from two lawsuits brought against us by a few members. The litigants' requests for Public Information data also have cost our corporation substantial amounts in legal fees. As mentioned in previous letters, the litigants suing our corporation have not been successful in court. The options proposed by them are not viable from a risk-reward standpoint, possibly subjecting WOWSC to additional litigation, costs, and risks. One current Board member described his assessment at the October 26 meeting, saying that it's better to accept \$20,000 than to spend another \$100,000+ in litigation for the WOWSC to sue for a net gain of about \$40,000 (according to an appraisal) if we won the case. It did not make business sense.
- In addition, from an operational standpoint, litigation is too costly to the water corporation. Volunteer Board members spend too much time on legal issues and are diverted from focusing on the water delivery issues they were elected to oversee. The litigation has caused division in the neighborhood and it is hard to recruit and retain people to serve on our volunteer, unpaid board. The WOWSC Board expressed its sense that it would like to amend and supersede the 2015 transaction to resolve the litigation, conserve our resources, restore healthy neighborhood discussions and revisit a 5-year plan which has been ignored for the last three years.

The current WSC Board has been very vocal about its need to focus on our company's core business: providing water and sewer service to the people of Windermere Oaks. Our goal has been to keep the main thing the main thing. The legal subcommittee that mediated the agreement with Friendship Homes worked hard to negotiate the amended and superseding contract. In the end, after significant public deliberation, considering numerous and lengthy public comments at the October 26th meeting, the Board believed the terms of the amended, superseding contract are fair and in the best interest of the WSC.

There are numerous other issues of concern to a small group of members which we will hope to address in future communications with you, our members. We hope that you will reserve judgment before acting upon the wild rumors and innuendo that float around the neighborhood on these matters. We are pleased with the input, deliberations, and result of the October 26th meeting and believe they will further the interests of our neighborhood water company.

Sincerely,

Joe Gimenez, President

Mike Nelson, Secretary-Treasurer

Members of the WOWSC Legal Subcommittee