

**TOWN OF LUMSDEN
MINUTES OF THE DEER VALLEY UTILITY COMMITTEE HELD ON
FEBRUARY 3rd, 2012**

The Deer Valley Water Utility Committee convened a meeting in the Council Chambers on the afternoon of Friday, February 3rd, 2012 at 4:00 p.m. with Chairperson Dan Kirby presiding.

Present:	Chairperson:	Dan Kirby
	Mayor:	Bryan Matheson
	Councillor:	Al Sulma.
	Chief Administrator Officer:	Byron M. Tumbach
	Deer Valley Developments Inc.	Cameron Johnson Shane Melanson
	Deer Valley Home Owners Assoc.	Warren Wagner

The Committee met with representatives of Deer Valley Development Inc. to discuss issues with the water utility.

Chairperson Dan Kirby called the meeting to order and provided a brief outline of the process the Town would like use in their negotiation with Deer Valley Developments Inc. (DVDI). As this was a negotiation meeting the Chairperson asked Cameron Johnson if he approved of Warren Wagner being present during the negotiation, Mr. Johnson indicated that Mr. Wagner was welcome to remain present during discussions.

Mr. Johnson presented a proposal for the Committee to consider, regarding the settlement of Water Utility Arrears and Well costs, attached hereto and forming a part of these minutes.

DVDI is disputing the fact that the Town is charging potable water rates, yet supplying Deer Valley with raw water. They indicated that they feel the potable water rates that have been charged in the past for raw water provided assisted the Town in financing the capital costs experienced for the construction of Well 5. DVDI was looking to develop a pricing system on non-potable water rates with the Town of Lumsden.

DVDI put forward Sask Water Corp rates on non-potable water as a bench mark, but are open to negotiation. They acknowledged that the 40% surcharge would still be applied based on the current agreement. To get a resolve on the utility arrears and the establishment of a suitable rate going forward they proposed a target date of March 15th to come up with a mutual agreement. If an agreement could not be found the parties next recourse would be arbitration.

Mr. Johnson stressed to the Committee that the residents of Deer Valley were committed to organizing their own public utility and that DVDI was willing to lead the exercise.

Chairperson Kirby thanked Mr. Johnson for attending the meeting and submitting the proposal. He indicated that the Committee will be providing a recommendation to Town Council for their consideration at the next meeting.

Adjournment:

The meeting adjourned at 5:15 p.m.


Chairman


Chief Administrative Officer



February 3, 2012

Mr. Bryon Tumbach
Town of Lumsden
P.O. Box 160
300 James Street N.
Lumsden, SK S0G 3C0

RE: Deer Valley Water Agreement

Dear Bryon:

We are writing this letter to propose a process under which discussions can be held to amend the water rate being charged to the Deer Valley community. As we have previously discussed with the Town of Lumsden, the Water Supply Agreement (Phase 1) between Deer Valley Development Inc. ("DVDI") and the Town of Lumsden is outdated and does not properly reflect the water service being provided to Deer Valley. Further, Deer Valley is in the process of reorganizing its water & sewer operations through the creation of a public utility and it will be important that this entity enter into a water service agreement directly with the Town. As such, our overall objective of this process is to reach an agreement on a long-term water rate that reasonably reflects the services being provided by the Town to the Deer Valley community.

The specific issues that we have identified with the current agreement are summarized as follows:

- The agreement was structured such that the Town was to provide potable water service to Deer Valley. Potable water service has not been provided over the term of this agreement and as such the amended water service agreement will need to define the water service as non-potable.
- Section 9.2 of the agreement stipulated (i) a **Base Rate** of \$4.60 (which was the water rate charged to Town residents for potable water at the date of the agreement), and (ii) a **Surcharge Fee** of 40% of the Base Rate (to cover

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additional operation and pumping costs, chlorine testing and depreciation of existing infrastructure).

Pricing adjustments for the water service were discussed in Sections 8.2 and 9.2 (c). These sections clearly stipulated that underlying cost increases which impacted pricing for the water service would be (i) shared proportionately between DVDI and the Town based on the benefits received by both parties, and (ii) subject to adjustment for dramatic or unexpected cost increases in the water supply process.

DVDI believes that the water rate being charged by the Town is excessively high and needs to be adjusted to reflect the following concerns.

- (I) The Base Rate of \$4.60 was not reduced to reflect the price difference of non-potable water service relative to potable water service; and
 - (II) The Town's water rate charged to its residents for potable water service has significantly increased over the term of this agreement. Substantially all of the escalation in the Town's water rate has been caused by infrastructure (including interest) costs and increased operating costs associated with the Town's water treatment plant. The Town has increased the Base Rate charged to Deer Valley for these costs despite Deer Valley having received no benefit from them.
- The development plan at Deer Valley was structured into four phases (as noted in Schedule A to the agreement). The current agreement was for Phase 1 which was the original 82 lot subdivision. In Section 12.2 the Town agreed to provide water services to all four phases of the development, however, the parties agreed that for each new phase the availability of water, water requirements and cost sharing would be determined by agreement between the parties. As Deer Valley has now fully serviced Phases 3 and 4 and is commencing planning work for Phase 2, it will be necessary to ensure that an amended water agreement properly deals with these phases of development.

We recognize that unexpected costs associated with the drilling of Well #5 were borne by the Town due to DVDI's lack of financial ability to complete the work at that time. However, DVDI has paid substantial premiums for its water service since that time (based on our past discussions with the Town it is our understanding that these rates were charged to recover the Town's costs for Well #5). Due to our understanding of both the statute of limitations provisions and the immediate need to establish a fair water service rate for the Deer Valley community, we do not believe that it would be productive to spend time on these issues but to instead find a go-forward solution that works for both the Town and community of Deer Valley.

We believe that a benchmark rate for the pricing of non-potable water service needs to be agreed upon by both the Town and Deer Valley (which would then form the Base Rate).

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We are proposing that representative water rates provided by SaskWater be used as this benchmark (we have attached a summary of these rates as Attachment #1) but are open to consider alternate benchmarks that the Town deems appropriate. A Surcharge Fee would continue to be charged by the Town and calculated in accordance with the current agreement.

We would like to settle the outstanding payment arrears on our account with the Town. We have not paid the account over the last year as we dispute the rate being charged by the Town. We would like to propose that (i) the underlying water rate charged on the invoices in arrears be adjusted to the amended rate that is negotiated through the process discussed herein, and (ii) that the interest and penalties charged over the dispute period be waived. Subject to reaching this agreement, we will immediately arrange for the financing required to fully pay our unpaid account with the Town.

We have tried on a number of prior occasions to amend the water service agreement with the Town but no progress has previously been achieved. We believe that it is important to make one more effort to come to a mutual agreement on this issue and are proposing that we set a target deadline of March 15, 2012. In the event that mutual agreement cannot be reached by this date we would recommend that we submit the resolution of this issue to arbitration, in accordance with the provisions of the Arbitration Act, before the Saskatchewan Municipal Board.

We would like to confirm that the negotiation of an amended water service agreement will be lead by DVDI. In saying this, DVDI will also involve certain residents of the Deer Valley community who have expressed an interest in being involved in the reorganization of the water operations into a public utility. It is important to DVDI that the community is supportive of this reorganization and through the efforts of both the RM of Lumsden (in its capacity as facilitator) and the Deer Valley Home Owners Association it now appears that strong community support exists to transition to a public utility.

We look forward to working through the resolution of this issue with you.

Yours truly,



Cameron Johnson
Deer Valley Development Inc.



ATTACHMENT #1

Water Rates as provided by Sask Water (per 1000 gallons)		
	Potable	Non-Potable
August 2001 - July 2004	\$ 4.69	\$ 1.95
August 2004 - March 2005	\$ 5.74	\$ 2.15
April 2005 - April 2006	\$ 7.00	\$ 2.32
July 2006 - April 2007	\$ 7.56	\$ 2.46
May 2007 - March 2010	\$ 8.73	\$ 2.56
April 2010 - April 2012 (Watrous)		\$ 2.71
April 2010 - April 2012 (Regina area)		\$ 2.79

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