

# REGULAR MEETING

## MINUTES OF THE MEETING OF SANITARY AND IMPROVEMENT DISTRICT NO. 5, CASS COUNTY, NEBRASKA

Meeting convened immediately following the adjournment of the budget hearing meeting on September 20, 2022 at First State Bank Nebraska, second floor community room, 446 Main Street, Plattsmouth Nebraska. Attached hereto are: the agenda for the meeting; the Affidavit of Printer regarding publication of notice of the meeting, which communicated the availability of the agenda, in the *Plattsmouth Journal*, Plattsmouth, Nebraska; advance notice of the meeting as provided to the County Clerk of Cass County and all Trustees; and the Trustees' acknowledgment of receipt of said notice and agenda. All proceedings were taken while convened with attendance open to the public.

### ITEM 1

Meeting called to order at 6:12 p.m.

### ITEM 2

The Chair announced the locations of the Open Meetings Act and documents related to the agenda.

### ITEM 3

Roll Call: Present: Robert Karr, Kurt W. Meisinger, James Grotrian and David L. Martin. Absent: Christine Gibson.

### ITEM 4

Trustee Grotrian nominated Trustee Meisinger as Chair which Trustee Meisinger advised he would accept if approved. Trustee Grotrian nominated Trustee Martin as Clerk which Trustee Martin advised he would accept if approved. No other nominations were made. On roll call those voting aye: Meisinger, Karr, Grotrian and Martin. Voting nay: none. Absent: Gibson. Abstaining: None. The Chair declared the resolution adopted.

### ITEM 5

Following discussion, the consensus was to reduce the committees to four (4) with the Chair and Clerk serving on only one committee given other duties. Trustees volunteered to serve as chair on the following committees:

|   |                                   |        |
|---|-----------------------------------|--------|
| a | Water and Wastewater              | Martin |
| b | Street and Storm water management | Karr   |

|   |                      |           |
|---|----------------------|-----------|
| c | Grounds              | Grotrian  |
| d | Finance/budget/audit | Meisinger |

A consensus was reached to decide on alternates for the committees at the next meeting to provide an opportunity for Ms. Gibson to be present and discuss her interests.

**ITEM 6**

No persons were present to address the Board who were not otherwise on the agenda.

**ITEM 7a**

Trustee Martin provided a verbal water and wastewater committee report as follows:

- a. The window air conditioning unit in the wastewater plant will be replaced with the same type of unit. The unit removed, along with the 5 or 6 old, non-functioning units stored in the well house will be discarded;
- b. The valves to install in the water mains in several locations to provide for isolation remained on backorder.
- c. Mr. Messer and Mr. Billesbach, in concert with the Nebraska Department of Environment and Energy, were successfully in blending water from wells 1 and 3 to provide relief for the pump in well 3. Well 2 will remain off line.

**ITEM 7b**

The Board acknowledged receipt of Mr. Messer’s water and wastewater report, a copy of which is attached.

**ITEM 7c**

Mr. Johnson advised that he had not received a monthly report on the construction of the wastewater treatment plant improvements.

**ITEM 7d**

Trustee Meisinger reported that there was no new information regarding the progress of the City of Plattsmouth in connecting to Metropolitan Utilities District’s water distribution system as a both a consumer and a wholesale buyer.

**ITEM 7e**

No action was taken following extensive discussion about applying for a \$10,000 grant from

Nebraska Department of Environment and Energy toward the purchase of a portable generator for electrical outages in order to operate the water system booster station and the wastewater lift stations. The Chair advised that the lowest cost proposal for a generator was \$79,879.00 for a 100kW unit and the next lowest proposal was \$85,152.38 for an 80kW unit.

#### **ITEM 7f**

Trustee Martin reviewed proposed amendments to the District's Water System and Sanitary Sewer System Rules and Regulations adopted March 22, 2022. Following discussion, motion by Grotrian, seconded by Meisinger to approve the revised Water System and Sanitary Sewer System Rules and Regulations to be effective October 1, 2022. On roll call those voting aye: Meisinger, Karr, Grotrian and Martin. Voting nay: none. Absent: Gibson. Abstaining: None. The Chair declared the resolution adopted. The amended Rules and Regulations are attached hereto.

#### **ITEM 7g**

Motion by Meisinger, seconded by Grotrian, to approve and authorize the Chair to execute an amendment to the contract with PeopleService, Inc. for water and wastewater operations based on the Consumer Price Index adjustment provision in the current contract. On roll call those voting aye: Meisinger, Karr, Grotrian and Martin. Voting nay: none. Absent: Gibson. Abstaining: None. The Chair declared the resolution adopted.

#### **ITEM 7h**

The Chair presented possible increases in water and sanitary sewer rates based on the various Consumer Price Indices. The Chair reviewed what the new rates would be with an increase of 20% across the board with rounding. He also suggested that any increase become effective January 1, 2023. Following further discussion, the Chair laid over further consideration to allow an opportunity to review results from the most current Rural Water District Association's rate survey.

#### **ITEM 7i**

Motion by Martin, seconded by Karr, to renew membership in the Nebraska Rural Water Association at a cost of \$200.00. On roll call those voting aye: Meisinger, Karr, Grotrian and Martin. Voting nay: none. Absent: Gibson. Abstaining: None. The Chair declared the resolution adopted.

#### **ITEM 7j**

Motion by Martin, seconded by Meisinger, to approve Pay Application No. 6 for Building Crafts, Inc. related to construction of the wastewater treatment plant improvement as recommended by the engineer, and to authorize the Chair to execute the same. On roll call those voting aye: Meisinger, Karr, Grotrian and Martin. Voting nay: none. Absent: Gibson. Abstaining: None. The Chair declared the resolution adopted.

### **ITEM 7k**

Motion by Martin, seconded by Karr, to approve Invoice No. 77688 for contract services provided by Thiele Geotech, Inc. related to materials testing for the construction of the wastewater treatment plant improvements. On roll call those voting aye: Meisinger, Karr, Grotrian and Martin. Voting nay: none. Absent: Gibson. Abstaining: None. The Chair declared the resolution adopted.

### **ITEM 8a**

Trustee Karr advised that he had met with engineer Dan Dolezal to identify the street repairs to make with the \$300,000 budget approved by the Board. The needed repairs were identified in items 1 through 5 of the report prepared by Mr. Dolezal. Trustee Karr also advised that prices were expected by Friday.

### **ITEM 9a**

For the grounds report, Trustee Grotrian advised as follows:

- a. He had found a replacement tree trimmer, Steve Greise of Topple Tree Service, who is bonded and insured, in preparation for the retirement of Sam McCandless;
- b. Mr. Dolezal and Mr. Johnson inspected, and he had viewed, the drain tube that was discharging into the ditch on Outlot 1 Block 29 Buccaneer Bay, a subdivision as surveyed, platted and recorded in Cass County, Nebraska. Further discussions are anticipated before the matter comes to the Board;
- c. Trustee Grotrian advised that he would be identifying low tree branches overhanging the streets throughout the District and would have the same be pruned to approximately 13 to 14 feet above the street.

### **ITEM 9b**

Ms. Chanel Hill, 21016 Treasure Island Rd, appeared on behalf of Bay Lake Owners Association, Inc. The Association requested Board authorization, pursuant to the District's "Signs on SID Property" policy, to place a "No Trespassing" sign in the Treasure Island Rd right-of-way just north of Lot 25, Block 22. The sign would be located in the ROW on ground that is adjacent to the lake lot south of the water's edge but north of Lot 25, Block 22. She stated that to keep the sign out of the right-of-way, the sign would not be visible from the road. Following discussion, motion by Meisinger, seconded by Martin, to authorize Bay Lake Owners Association, Inc. to place a "No Trespassing" sign in the right-of-way of Treasure Island Rd just north of Lot 25, Block 22 but to place it as far away from the street pavement as possible but still be visible from Treasure Island Rd. On roll call those voting aye: Meisinger, Karr, Grotrian and Martin. Voting nay: none. Absent: Gibson. Abstaining: None. The Chair declared the resolution adopted.

**ITEM 9c**

Trustee Karr advised that a pre-bid conference is scheduled for September 22 for the construction of the parking lot and relocation of the main entrance cluster mail boxes to the area east of Buccaneer Blvd and east of Treasure Island Road between Bay Road north to well house 1 south pursuant to the plans prepared by Ehrhart Griffin & Associates and approved by the Board.

**ITEM 10a**

Trustee Meisinger presented the attached finance and utilities revenue reports for September 2022.

**ITEM 10b**

Trustee Meisinger presented the attached County Treasurer's reports for the month ended July 31, 2022.

**ITEM 10c**

Trustee Meisinger presented a draft budget for fiscal year July 1, 2022 through June 30, 2023.

**ITEM 10d**

Resolution introduced by Grotrian, seconded by Meisinger:

**RESOLUTION**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF SANITARY AND IMPROVEMENT DISTRICT NO. 5, CASS COUNTY, NEBRASKA TO ADOPT THE BUDGET FOR FISCAL YEAR JULY 1, 2022 THROUGH JUNE 30, 2023 WHICH INCLUDES THE BASE LIMITATION PERCENT INCREASE OF 2.5% AND THE ADDITIONAL DISCRETIONARY LIMITATION INCREASE OF 1%.**

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF SANITARY AND IMPROVEMENT DISTRICT NO. 5, CASS COUNTY, NEBRASKA, AS FOLLOWS:

WHEREAS, a public hearing was held by the Board of Trustees of Sanitary and Improvement District No. 5, Cass County, Nebraska, as required by Nebraska law, to receive public comment concerning the proposed budget for fiscal year July 1, 2022 through June 30, 2023;

WHEREAS, a super majority (75%) of the Trustees must vote to approve the additional discretionary limitation increase of 1.0%; and

WHEREAS, it is in the best interests of the District that the property tax request for fiscal year 2022 - 2023 be a different amount than the property tax request for the prior year.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of Sanitary and Improvement District No. 5, Cass County, Nebraska that:

1. The budget for Sanitary and Improvement District No. 5, Cass County, Nebraska, is adopted for fiscal year of July 1, 2022 through June 30, 2023 in the total amount of \$958,000.
2. The dollar amounts include the base limitation percent increase of 2.5%.
3. The dollar amounts include the additional discretionary limitation increase of 1.0%.
4. The property tax request will result in a tax rate of \$0.562522 per \$100 of assessed value.

BE IT FURTHER RESOLVED that a copy of the budget and this Resolution be certified and forwarded to the Nebraska State Auditor and Cass County Clerk on or before September 30, 2022.

PASSED AND APPROVED this 20<sup>TH</sup> day of September 2022.

By: /s/ Kurt Meisinger  
Kurt Meisinger, Chair

ATTEST:  
/s/ David Martin  
David Martin, Clerk

On roll call those voting aye: Meisinger, Karr, Grotrian and Martin. Voting nay: none. Absent: Gibson. Abstaining: None. The Chair declared the resolution adopted.

**ITEM 10e**

Resolution introduced by Grotrian, seconded by Meisinger:

**RESOLUTION**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF SANITARY AND IMPROVEMENT DISTRICT NO. 5, CASS COUNTY, NEBRASKA TO SET THE PROPERTY TAX REQUEST FOR FISCAL YEAR JULY 1, 2022**

**THROUGH JUNE 30, 2023 AT AN AMOUNT DIFFERENT FROM THE PROPERTY TAX REQUEST FOR THE PRIOR YEAR.**

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF SANITARY AND IMPROVEMENT DISTRICT NO. 5, CASS COUNTY, NEBRASKA, AS FOLLOWS:

WHEREAS *Neb. Rev. Stat. §77-1632* provides that the governing body of Sanitary and Improvement District No. 5, Cass County, Nebraska passes by a majority vote a resolution or ordinance setting the property tax request; and

WHEREAS, a special public hearing was held as required by law to hear and consider comments concerning the property tax request.

NOW, THEREFORE, BE IT RESOLVED BY the Governing Body of Sanitary and Improvement District No. 5, Cass County, Nebraska that:

1. The 2022 - 2023 property tax request be set at:

General Fund: \$481,100  
Bond Fund: \$476,900

2. The resulting levy request for each fund shall be:

General Fund Levy: 0.282494  
Bond Fund Levy: 0.280028

3. The total assessed value of property differs from last year's total assessed value by 20.41 percent.

4. The tax rate which would levy the same amount of property taxes as last year, when multiplied by the new total assessed value of property would be 0.514960 per \$100 of assessed value.

5. The Governing Body of Sanitary and Improvement District No. 5, Cass County, Nebraska proposes to adopt a property tax request that will cause its tax rate to be 0.562522 per \$100 of assessed value.

6. Based on the proposed property tax request and changes in other revenue, the total operating budget of Sanitary and Improvement District No. 5, Cass County, Nebraska will increase or decrease last year's budget by -.343 percent.

7. A copy of this resolution be certified and forwarded to the County Clerk on or before October 15, 2022.

PASSED AND APPROVED this 20<sup>TH</sup> day of September 2022.

By: /s/ Kurt Meisinger  
Kurt Meisinger, Chair

ATTEST:  
/s/ David Martin  
David Martin, Clerk

On roll call those voting aye: Meisinger, Karr, Grotrian and Martin. Voting nay: none. Absent: Gibson. Abstaining: None. The Chair declared the resolution adopted.

**ITEM 10f**

Ordinance introduced by Grotrian, seconded by Meisinger:

**ORDINANCE NO. 22-002**

**AN ORDINANCE TO ADOPT THE BUDGET STATEMENT FOR SANITARY AND IMPROVEMENT DISTRICT NO. 5, CASS COUNTY, NEBRASKA FOR FISCAL YEAR JULY 1, 2022 THROUGH JUNE 30, 2023 WHICH SHALL BE TERMED THE ANNUAL APPROPRIATION BILL; TO APPROPRIATE SUMS FOR NECESSARY EXPENSES AND LIABILITIES; TO PROVIDE AN EFFECTIVE DATE.**

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF SANITARY AND IMPROVEMENT DISTRICT NO. 5, CASS COUNTY, NEBRASKA:

Section 1. That after complying with all procedures required by law, the budget, attached as Exhibit A, presented and set forth in the budget statement, is hereby approved as the Annual Appropriation Bill for fiscal year beginning July 1, 2022 and ending June 30, 2023. All sums of money contained in the budget statement are hereby appropriated for the necessary expenses and liabilities of Sanitary and Improvement District No. 5, Cass County, Nebraska. A copy of the budget document (Exhibit A) shall be forwarded as provided by law to the Nebraska Auditor of Public Accounts and to the Clerk of Cass County, Nebraska, for use by the levying authority.

Section 2. This ordinance shall take effect and be in full force from and after its passage and approval as required by law.

PASSED AND APPROVED this 20<sup>TH</sup> day of September 2022.

By: /s/ Kurt Meisinger  
Kurt Meisinger, Chair

ATTEST:  
/s/ David Martin  
David Martin, Clerk

On roll call those voting aye: Meisinger, Karr, Grotrian and Martin. Voting nay: none. Absent: Gibson. Abstaining: None. The Chair declared the resolution adopted.

**ITEM 11**

Motion by Meisinger, seconded by Brandt to approve the Consent Agenda:

Be It Resolved by the Board of Trustees of Sanitary and Improvement District No. 5 of Cass County, Nebraska to approve the consent agenda:

- a the Minutes of the regular meeting held on August 23, 2022;
- b the payment of the claims and invoices; and
- c the transfer of \$4,011.07 from the Service Fee Fund to General Fund (water/wastewater electric systems usage).

Be It Further Resolved by the Board of Trustees of Sanitary and Improvement District No. 5 of Cass County, Nebraska that the following bills, statements and invoices be and hereby are approved, and that the Chair and Clerk, be and hereby are authorized to execute and deliver warrants for the payment of the same, all dated September 20, 2022, to be drawn on the General Fund, and which are redeemable upon presentation to the Cass County Treasurer.

**GENERAL FUND WARRANTS**  
**CONSENT AGENDA, ITEM 11b**  
**(Due September 20, 2022)**

| <b><u>Amount</u></b> | <b><u>Warrant</u></b> | <b><u>Service Provider</u></b> | <b><u>Purpose</u></b>   |
|----------------------|-----------------------|--------------------------------|---|
| \$ 555.00            | 18333                 | Frankel Zacharia               | Inv. Nos. 3491 (Tech) and 127136 (financial reports; prepare paperwork for auditor for fiscal year 2021 - 2022) |
| \$ 2,175.00          | 18334                 | Wojo's Outdoors                | Inv. No. 1063 (mowing & spraying)   |
| \$ 6,345.74          | 18335                 | Roger K. Johnson               | Inv. No. 304 (attorney fees & costs)  |
| \$ 4,405.39          | 18336                 | OPPD                           | Service dates 8/4/22 - 9/6/22   |

\$ 10,182.13 18337 Ehrhart Griffin & Assoc. Inv. No. B8393 (misc. engineering & survey work; manholes; pavement repair; parking lot design; drainage/sinkhole evaluation)

Be It Further Resolved by the Board of Trustees of Sanitary and Improvement District No. 5 of Cass County, Nebraska that the following bills, statements and invoices be and hereby are approved, and that the Chair and Clerk, be and hereby are authorized to execute and deliver warrants for the payment of the same, all dated September 20, 2022, to be drawn on the Service Fee Fund, and which are redeemable upon presentation to the Cass County Treasurer:

**SERVICE FEE FUND WARRANTS**  
**CONSENT AGENDA, ITEM 11b**  
**(Due September 20, 2022)**

| <u>Amount</u> | <u>Warrant</u> | <u>Service Provider</u> | <u>Purpose</u>   |
|---------------|----------------|-------------------------|--|
| \$ 962.50     | 18299          | Embris Group, LLC       | Inv. Nos. 66 & 67 (general engineering; water facilities analysis)   |
| \$ 600.00     | 18300          | Sargent Drilling        | Inv. No. 28161 (well & pump testing)   |
| \$ 9,049.98   | 18301          | PeopleService, Inc.     | Inv. No. 41185 (\$5,577.00 October operations; \$2,250.28 August billing 557 accounts; waste reduction filing form 94; NSF check 35.00; lab \$112.70; additional maintenance labor \$1,050.00) |
| \$ 1,044.00   | 18302          | Roger K. Johnson        | Inv. No. 305 (attorney fees & costs)   |
| \$ 69.24      | 18303          | Windstream Comm         | Inv. dated 8/16/22 (well house phone)  |
| \$ 1,707.50   | 18304          | TREKK Design Group      | Inv. No. 22-899 (pump pit; JetVac; sludge hauling, etc.)   |
| \$ 21,262.00  | 18305          | Johnson Service Co.     | Inv. No. 16596 (sewer line repair)   |
| \$ 200.00     | 18306          | Nebraska Rural Water    | Inv. 2022 (membership with hookups between 500 and 833)  |

Be It Further Resolved by the Board of Trustees of Sanitary and Improvement District No. 5 of Cass County, Nebraska that the following bills, statements and

invoices be and hereby are approved, and that the Chair and Clerk, be and hereby are authorized to execute and deliver warrants for the payment of the same, all dated September 20, 2022, with the warrants to be drawn on the Construction Fund account and if registered to draw interest at 7.00% per year and to be redeemed no later than September 20, 2027:

**CONSTRUCTION FUND WARRANTS**  
**CONSENT AGENDA, ITEM 11b**  
**(Due September 20, 2022)**

| <u>Amount</u> | <u>Warrant</u> | <u>Service Provider</u> | <u>Purpose</u>   |
|---------------|----------------|-------------------------|--|
| \$141,173.10  | 18184          | Building Crafts, Inc.   | Pay App. No. 6 (WWTP expansion)                          |
| \$ 974.00     | 18185          | Thiele Geotech          | Inv. No. 77588 (concrete and other testing for the WWTP) |
| \$ 7,107.36   | 18186          | Roger K. Johnson        | Inv. No. 8 (attorney fee WWTP)                           |

Be It Further Resolved by the Board of Trustees of Sanitary and Improvement District No. 5 of Cass County, Nebraska that both the Board and the District find and determine, and covenant and warrant, and agree that (a) the facilities for which the above Warrants are issued are for essential governmental functions and are designed to serve members of the general public on an equal basis; (b) there are no persons with rights to use said facilities other than as members of the general public; (c) ownership and operation of said facilities is with the District or another political subdivision; (d) none of the proceeds of the Warrants will be loaned to any person and to the extent that special assessments have been or are to be levied for any said facilities, such special assessments have been or are to be levied under Nebraska law as a matter of general application to all property specially benefitted by such facilities in the District; (e) the development of the land in the District is for residential or commercial use; (f) the development of the land in the District for sale and occupation by the general public is proceeding with reasonable speed and (g) the District hereby authorizes and directs the Chair or Clerk to file, when due, an Information Reporting Form pursuant to Section 149(e) of the Internal Revenue Code of 1986 pertaining to the above Warrants.

Be It Further Resolved by the Board of Trustees of Sanitary and Improvement District No. 5 of Cass County, Nebraska that the District covenants, warrants and agrees as follows: (a) to take all actions necessary under current federal law to maintain the tax exempt status (as to taxpayers generally) of interest on the above Warrants; and (b) to the extent that it may lawfully do so, the District hereby designates the above Warrants as its “qualified tax exempt obligations” under Section 265(b)(3)(B)(ii) of the Internal Revenue Code of 1986, as amended, and

covenants and warrants that the District does not reasonably expect to issue warrants or bonds or other obligations aggregating in the principal amount of more than \$10,000,000 during the calendar year in which the above Warrants are to be issued.

Be It Further Resolved by the Board of Trustees of Sanitary and Improvement District No. 5 of Cass County, Nebraska that this and the preceding Resolutions are adopted as the Certificate with Respect to Arbitrage of the District pertaining to the above Warrants and the District and Chair and Clerk of the District hereby further certify, as of the date of the registration of the above Warrants with the County Treasurer of Cass County, Nebraska, as follows:

1. No separate reserve or replacement fund has been or will be established with respect to the above Warrants. This District reasonably anticipates that moneys in its Bond Fund reasonably attributable to the above Warrants in excess of the lesser of: (a) 10% of the net principal proceeds of the above Warrants, (b) the maximum annual debt service due on the above Warrants, or © 125% of average annual debt service due on the above Warrants will be expended for payment of principal of and interest on the above Warrants within 13 months after receipt of such moneys. That amount which is currently held in the District's Bond Fund which exceeds the amount which is to be expended for payment of principal and interest on the above Warrants within 13 months after receipt of such moneys, plus that amount arrived at pursuant to the immediately preceding sentence, will not be invested in any securities or any other investment obligations which bear a yield, as computed in accordance with the actuarial method, in excess of the yield on the above warrants.
2. To the best of their knowledge, information and belief, the above expectations are reasonable.
3. The District has not been notified of any listing of it by the Internal Revenue Service as an issuer that may not certify its bonds.
4. This Certificate is being passed, executed and delivered pursuant to Section 1.148-2(b)(2) of the Income Tax Regulations under the Internal Revenue Code of 1986, as amended.

On roll call those voting aye: Meisinger, Karr, Grotrian and Martin. Voting nay: none. Absent: Gibson. Abstaining: None. The Chair declared the resolution adopted.

## **ITEM 12**

Meetings forward will be at First State Bank Nebraska, second floor community room, 446 Main Street, Plattsmouth Nebraska. Trustee Meisinger announced that the following meeting dates based upon everyone's availability: October 18, 2022; November 29, 2022; December 20, 2022; January 17, 2023; February 21, 2023; and March 21, 2023.

## **ITEM 13**

Mr. Johnson advised that he had been contacted by telephone by attorneys for Timothy and Rhonda Gibbons who are the Plaintiffs in the litigation entitled *Gibbons v. Kappas Enterprises, LLC and SID 5 of Cass County Nebraska*, Case No. CI21-307. Mr. Johnson further advised that he had requested Gibbons' attorneys to make the request of the District in writing and to appear at the meeting to present their request. The request is attached hereto. Mr. Lee Greenwald, Baird Holm Law Firm, at Mr. Johnson's request addressed the Trustees concerning the relief his clients sought, that is to have the District make demand on Kappas Enterprises to unlock on the gate at the end of the improved Treasure Island Rd, and to leave it unlocked, since the same was placed in the publically dedicated right-of-way. Mr. Johnson advised that this was the primary issue to the District in the Court Order dated September 16, 2022.

Mr. Greenwald presented the language of the Order related to Treasure Island Rd be publically dedicated right-of-way. Mr. Johnson advised that the Order was a matter of public record, and that the Court ordered that Treasure Island Rd was publically dedicated and that, as such, was not subject to any claim of adverse possession. Mr. Johnson further advised that the Court reserved ruling on the Gibbons' request to have the gate removed until further consideration could be given to whether the Gibbons' could make such a request.

No motion was made to enter closed session to protect the public interest to discuss current litigation entitled *Gibbons v. Bock 27 Lake Lot Owners Assn v Kappas Enterprises, LLC, Burlington Northern Railroad, SID 5 of Cass County Nebraska et al: Case No. CI21-307; and Gibbons v. Kappas Enterprises, LLC and SID 5 of Cass County Nebraska, Case No. CI21-307.*

## **ITEM 14**

Following discussion of the Court's order dated September 16, 2022 in *Gibbons v. Kappas Enterprises, LLC, et al, Case No. CI21-307* as it related to (1) the dedication of Treasure Island Rd to the public. (2) publically dedicated roads not being subject to adverse possession claims, (3) the District's power and authority over rights-of-way within the District which it holds in trust for the public's benefit, use and enjoyment of the public, and that it has the powers related to streets as set forth in *Neb. Rev. Stat. §31-740*, motion by Meisinger, seconded by Grotrian, to direct Mr. Johnson to write a letter to Kappas Enterprises, LLC, through its attorney, demanding on behalf of the District that Kappas Enterprises, LLC:

- a. unlock the gate located in the right-of-way at the end of the pavement

improvements on Treasure Island Rd in Buccaneer Bay subdivision;

- b. leave said gate unlocked until further order of the Court to determines who must remove, or otherwise pay for the removal of, the gate located in the right-of-way; and
- c. take the action in paragraph “a” above by October 1, 2022

and to direct Mr. Johnson to:

- a. advise Kappas Enterprises that if the lock remains securing the gate on October 1, 2022, the Board of Trustees will cause the lock securing the gate closed to be cut off; and
- b. advise Kappas Enterprises that any lock reinstalled to secure the gate after October 1, 2022, will be cut off when discovered; and
- c. send a copy of the demand to all parties involved in the litigation or their attorneys and to the owners of all properties west of the gate.

On roll call those voting aye: Meisinger, Karr, Grotrian and Martin. Voting nay: none. Absent: Gibson. Abstaining: None. The Chair declared the resolution adopted.

**ITEM 15**

The agenda having been completed, on motion by Grotrian, recognized by the Chair, the meeting adjourned at approximately 8:06 p.m.

\_\_\_\_\_  
Christine Gibson, Trustee

\_\_\_\_\_  
Kurt W. Meisinger, Trustee

\_\_\_\_\_  
David L. Martin, Trustee

\_\_\_\_\_  
Robert Karr, Trustee

Recorded by:

\_\_\_\_\_  
James Grotrian, Trustee

\_\_\_\_\_  
Roger K. Johnson

Attorney for the District