

May 9, 2022

Via email Bill.Hunter@gov.bc.ca

Mr. Bill Hunter
Director Mountain Resorts Branch
Minister of Tourism, Arts, Culture and Sport

RE: Silver Star Property Owners Association (“SSPOA”) – Silverhawk Utility Rate Review by Waterworth

Dear Mr. Hunter,

The SSPOA offers the following comments on the draft report by Waterworth on Silverhawk Utilities. The SSPOA supplied a large amount of information to JP Joly, some of which is noticeably absent in the report. In addition, we offer some additional observations for your consideration.

1) REFERENCES TO PANORAMA AND CORIX

The brief prepared by the SSPOA that compared rates at Panorama and Silver Star provided specific examples of the disparity in rate setting. The Waterworth report mentions Corix (C-P) and Panorama but not the large differences in the commercial rates, nor the SSPOA findings. Corix appears to treat single family residential ratepayers unfairly with unrealistic minimums in the rates. The Waterworth report on Page 7 states:

“C-P are highly engaged with their customer base. Customer satisfaction is a priority and C-P has a history of listening to customer concerns and working together with them to resolve “

We are pleased that Waterworth was able to receive cooperation with Corix for their analysis, however, the SSPOA experience was vastly different. When the SSPOA made queries of Corix on their rates of the various wastewater facilities that they operate, we were met with a non-cooperative silence. To further illustrate, you will find that Corix does not publish their wastewater rates on their website.

The Waterworth report in section 3.7 notes the comparison of Silver Star (SHU) and Panorama (C-P) and states in the key differences that *“SHU has about 50% more accommodation units than C-P”*. The SSPOA, in their brief on comparisons, found that while there are differences in the numbers of units, both commercial and residential, the total

wastewater processed by Corix in 2017 was 102,243m³. Silverhawk Utilities processed 122,485 m³ in 2016 at Silver Star, so **both utilities are processing similar volumes with the same seasonal factors.**

Corix at Panorama does provide a substantial cost difference on the commercial wastewater billings in comparison to Silver Star, and appears to have a fair system for rating the various condominiums. Their system of “bed units” is based on a realistic “pillow count” formula, so amongst the commercial rate payers, there is an equitable and transparent system of rate making. This is not the case at Silver Star, and more importantly, the bed units used by Corix illustrate the excessive pillow formula used by Silverhawk. However, at Panorama it is the residential billings that are inequitable and as high as Silver Star. It should be noted that the fair and transparent system of “bed units” for ratemaking is probably because of the Corix Panorama water utility being regulated.

Corix is also the wastewater utility for Canadian Lakeview Estates in Vernon (where there are unregulated) and our position paper of 2018 showed annual rates at \$1550 per annum compared to \$1538 at Silver Star. In comparison the brief noted (in the table on page 2), the annual rates at Big White were \$590 and Sun Peaks at \$545.

The unregulated wastewater issue is not confined to Silver Star Mountain Resort!

2) THE AECOM REPORT

This report provided detailed data on the capital and operating costs for the proposed upgrade in 2011 to the Silver Star wastewater facility. There was no mention by Waterworth of any of this information, which is of concern considering AECOM were the consultants that Silverhawk engaged in complying with the BC Government’s demands for nitrogen removal. Waterworth has relied on the 2014 report prepared by Stantec commissioned by the Regional District of North Okanagan, which was prepared without the cooperation of Silverhawk on operating costs:

“SHU has not revealed details of their financial position,”

The AECOM report on the other hand, states that the “Stage 1 conceptual-level cost estimates” for the “Modified Ludak Ettinger Proposal” had a projected capital cost of \$3,660,000 and an annual operating and maintenance cost of \$448,200. Granted the figures are from 2011, but they are the only independent financial data available of Capital and Operating costs.

Also of concern, the Waterworth Report has the following statement in section 3.1:

“SHU is a Class 3 system with an expensive, and advanced MBR system. As they point out on their website: “we require a sophisticated treatment plant that results in effluent that is crystal clear with absolutely no smell and is permitted for use as irrigation for unrestricted public access”. This is a high standard and SHU has been in compliance with its regulatory requirements.”

The SSPOA feel this statement portrays a justification of higher-than-normal wastewater rates. To their credit, the Waterworth report does state in the same section:

“In the 2018 Financial Statements [2], SHU reports that Operating Costs (excluding depreciation and including “purchases”) amount to \$985,000, about 67% of which is salaries and benefits.

Yet, through discussions arising from this project, there is also anecdotal evidence that suggests the reported expenses, particularly the salaries, are high.”

The large disparity of operating costs, irrespective of inflation since 2011 to 2018 (when the AECOM report was prepared) and, despite the “anecdotal evidence”, these operating cost should have been addressed more fully. One of the core complaints of the SSPOA is that Silverhawk continually states that they run their run their business as if they were a regulated utility. This was noted in section 3.4 of the Waterworth report:

“SHU explains on their website(www.silverhawkutilities.com/rates-how-our-rates-are-set) that they calculate rates “as if they are a regulated utility”. This implies that they would be using a utility-basis method for calculating revenue requirements.”

There are several reasons for the lack of Net Book Value (NBV) clarity:

- poor 2018 financials, showing little evidence of capital spending on their balance sheet.
- the variance in capital costs stated by Edna-Mae Sukovieff in her affidavit, at around \$7 million
- the AECOM report estimating \$3.6 million for the plant upgrade.
- then consider the \$2 to \$3 million that Waterworth considers appropriate to add 9000 pillows, which would virtually double the capacity of the Silverhawk plant and
- then you look at the NBV on the 2018 statements of \$673,000.

It is disappointing to see Waterworth suggest that, maybe the net value was “*simply mis-recorded*” and that if it was \$2.5 million our rates would justify a fair return of 10%.

The SSPOA feels that Silverhawk “mis-records” or misstates information at their convenience, and when it is to their benefit. Waterworth failed to mention in the report that Silverhawk stated in 2012 that CURF was to raise “in excess of \$800,000” and immediately sent out equal invoices over the 3 following years that totaled \$1,500,000. That fact was only acknowledged by Silverhawk after the SSPOA canvassed the Silver Star community’s invoices.

3) CAPITAL REPLACEMENT FUND

In section 3.6, the Waterworth report identified the shortcomings in the Ministry of Environment MWR regulation, which has left the residents of Silver Star unprotected - then and now. This lack in regulation provided Silverhawk the opportunity to impose a \$1.5 million dollar Capital Upgrade Replacement Fund (CURF) on the ratepayers, which they collected over 3 years with none of the oversight protections afforded other private wastewater utility ratepayers. The only reason we were not protected was the regulation’s requirement of having sufficient “primary” residences.

The report mentions the “cash call” in section 3.2, and in section 3.3 Waterworth notes:

“In calculating net value of assets it is appropriate to subtract any contributed capital such as, in this case the \$1,500,000 CURF funds. Normal practice would be to record the tangible capital assets in the financial statements net of the CURF contributions.”

However, the report **fails to address the appropriateness of the Silverhawk CURF “cash call” demand** (versus amortizing the amount into the rates) or the **SSPOA’s concerns of the potential for being double dipped** on any sale of the utility with no oversight on the net value determination.

4) UNION OF BC MUNICIPALITIES (UBCM) CALLS FOR REGULATION

Waterworth states in section 2.1 that:

“In 2005 and 2007 the UBCM called on the provincial government to regulate private sewer utilities due to the excessive rates being charged.”

The UBCM has in fact, formally made the request **4 times: in 2002, 2005, 2007 and 2018**. These requests were not because of Silverhawk’s actions alone, but originated from various complaints throughout the province over those years, causing the UBCM to request government to address the issue.

5) PILLOW FEES

Waterworth addresses the question on pillow fees in their summary & conclusions, Section 4:

*“- The finding is that the pillow fees being charged could amount to around \$20,000,000 of new revenues if the service area grows by 9,000 new pillows.
- However, expanding the current system capacity to support 9,000 more pillows would likely only cost in the order of \$2-3 million dollars.
- Therefore, it looks like the pillow fees are extremely high”*

The implementation of Silverhawk’s pillow calculation change in 2008 resulted in Silverhawk collecting additional monies from the ratepayer. The capacity was already paid for by the developers. The SSPOA completed an inventory of these fees collected for the period 2009-2019 and determined that Silverhawk had collected \$800,000 over what the developers had already paid for sewer capacity. Add the years 2020 and 2021, and **it is likely over \$1 million**. Waterworth did not request this information (Document No. 16)

Waterworth states that in normal practice: *“New developments must pay pillow fees as a contribution towards the cost of expanding capacity, either before or after the expansion “*

However ,Silverhawk does not follow common practice. Instead, their procedure statement would be:

New Existing developments must pay pillow fees as a contribution towards the cost of expanding capacity, either before or after the expansion well after the subdivision and its capacity has been approved by the government authorities.

And.....**They don't have to account for these monies to anyone!**

In the review done by the SSPOA of Panorama and the rate setting formula, it showed that Corix uses a realistic pillow count ("bed units") that is similar to the formula that was used at Silver Star before Silverhawk unilaterally changed it in 2008.

6) RECOMMENDATIONS IN THE WATERWORTH REPORT

The SSPOA offers the following comments (in bold print) on the Waterworth report's recommendations quoted below in italics:

- 1. Use the summary information provided in this report to approach SHU to discuss the issues with dialogue. A mediation process may also address the communication to reset the relationship between SSPOA and SHU perhaps proposing the model that a contract be established between the two parties. **Based on history, including the Silverhawk demand of \$50,000 to participate in this rate review, the SSPOA is skeptical that this could work.***
- 2. Request or demand better data from SHU. Getting better data would help develop a more accurate analysis. If SHU are certain they have made proper calculations and their rates are appropriate, then they ought to gladly cooperate with the goal of putting all this conflict to rest. **Government should approach and ask Silverhawk for the specific information identified by Waterworth as necessary to address the "Key Gaps" in Section 4.0***
- 3. Explore opportunities for providing assistance to gain SHU cooperation. **Again, skeptical.***
- 4. Reassess the interpretation of the existing MWR regulations with respect to SHU that may encourage a resolution. These are sometimes referred to as technicalities. **The SSPOA totally support this initiative, notably, changing the requirement of permanent residences in order to be protected by MWR regulation. Also, the that MoE should track "private for-profit operations" when issuing or maintaining permits.***
- 5. Coordinating with Regional District of North Okanagan on regulatory issues. **We agree, Government should be addressing the enforcer role that the RDNO is playing in the Silverhawk extortion of extra pillow fees when applying for a building permit. Also, there is a need to address private sewer capacity when subdivisions are approved***
- 6. Business licensing. **Not sure how this would solve anything***
- 7. Crown land tenure for the sewage infrastructure, including easements and leases. **This solution was proposed by Psyche Brown in the past and again by Tori Meeks of the Mountain Resorts Branch during a conference call a few years ago. Silverhawk has been in trespass for 22 years, so we doubt threats at this time would have an effect.***

7) CONCLUSION

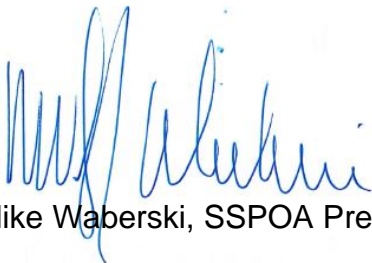
Our comments are intended to ensure the relevant issues are identified so that the Waterworth report will completely illustrate the issues to the decision makers. The SSPOA feels that the BC Government must reach out to Silverhawk, giving them an opportunity to provide the 5 “Key Gaps” as identified in the report. This will allow Silverhawk another opportunity to participate in this process. These gaps are:

- 1) *A depreciation schedule showing details of capital spending over the years, and how those assets were depreciated;*
- 2) *A detailed breakdown and explanation of operating expenses;*
- 3) *An analysis of future deferred capacity revenue requirements;*
- 4) *Evidence of any reserve funds that have been set aside for future replacement and future expansions;*
- 5) *Detailed calculations on how rates are developed;*

If Silverhawk continues to defer or demands payment to provide the information, this can then be documented as an addendum to the report. The report identified enough red flags without the cooperation of Silverhawk and in the end, the SSPOA are satisfied with the Waterworth comments, specifically:

- *“This situation between SSPOA and SHU is not an issue in most jurisdictions in Canada and US where private sewer utilities are regulated from a pricing and economic standpoint. And even in some unregulated regions in the US, other mechanisms are in place to avoid this type of conflict.”*
- *“Therefore, it looks like the pillow fees are extremely high.”*
- *“there is also anecdotal evidence that suggests the reported expenses, particularly the salaries, are high.”*
- *“on the balance, it appears that SHU is over-charging its customers. SHU rates are much higher than rates at Panorama, a comparable system to SHU suggesting that SHU is earning an unreasonable return on investment. The fees levied on new developments to offset the cost of future capacity expansions also appears to be unreasonably high”*

On behalf of the SSPOA Board of Directors
Yours.



Mike Waberski, SSPOA President

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- SSPOA Board of Directors