

**VERNON TOWNSHIP COUNCIL
VERNON MUNICIPAL UTILITIES AUTHORITY
JOINT MEETING MINUTES**

**December 20, 2018
6:00pm**

The Joint Meeting of the Township Council and the Municipal Utility Authority of the Township of Vernon was convened at 6:00 p.m. on Thursday, December 20, 2018 in the Vernon Municipal Center, 21 Church Street, Vernon, New Jersey with Council President Jean Murphy and Chairman John Perry presiding.

STATEMENT OF COMPLIANCE: Adequate notice of this meeting had been provided to the public and the press on December 12, 2018, and was posted on the bulletin board in the Municipal Building in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-7. The purpose of this meeting is Litigation: Mountain Creek Bankruptcy. Official Action may be taken.

ROLL CALL OF TOWNSHIP COUNCIL

Present for the Vernon Township Council were: Council Members John Auberger, Sandra Ooms, Dan Kadish, Mark Van Tassel and Council President Jean Murphy. Also present was Business Administrator Charles Voelker, CFO Donelle Bright, Township Attorney Josh Zielinski and Bankruptcy Attorney Lou Modugno.

ROLL CALL OF VERNON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

Present for the Vernon Township Municipal Utility Authority were: Commissioners Thomas Buchney, John Perry, Edward Seger, Edward Snook, and Paul Kearney (Alt #1). Commissioner Dave McDermott arrived at 6:15 p.m. Commissioner Kristin Wheaton arrived 6:18 p.m. Also, present was Attorney Mo Bauer, Auditor Robert McNinch, and Attorney Rich Wenner who advised he was serving as acting secretary.

SALUTE TO THE FLAG

Council President Murphy led the assemblage to the Flag.

EXECUTIVE SESSION

Attorney Zielinski read the Resolution for the Council to enter Executive Session.

RESOLUTION TO GO INTO EXECUTIVE SESSION

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:4-6 permits the exclusion of the public in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist;

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Vernon as follows:

1. The public shall be excluded from discussion of and action upon the hereinafter specified subject matter.
2. The general nature of the subject matters to be discussed are:
 - a. Litigation

Council President Murphy asked for a motion to go into Executive Session at 6:05 p.m.

It was moved and seconded to enter into executive session:

MOTION: John Auberger

SECOND: Dan Kadish

All Members present for both bodies were in favor.

At 7:24 PM Council President Murphy asked for a motion to end Executive Session and return to open session.

MOTION: John Auberger

SECOND: Dan Kadish
All Members present for both bodies were in favor.

The Council returned to open session at 7:24 p.m..

PUBLIC COMMENTS

Council President Murphy asked for a motion to open the meeting to Public Comments.

Motion: Dan Kadish

Second: John Auberger

All members of the Council and MUA were in favor.

Seeing no members of the public wishing to come forward, Council President Murphy asked for a motion to close the Public Comments.

MOTION: Dan Kadish

SECOND: John Auberger

All members of the Council and MUA were in favor.

RESOLUTIONS REQUIRING SEPARATE ACTION:

Vernon Township Municipal Utility Authority:

Attorney Zielinski noted there were two Resolutions on the agenda each requiring separate action.

Resolution #18-51: Resolution Approving A Settlement Agreement By And Between The Vernon Township Municipal Utilities Authority, Vernon Township And Mountain Creek Resort, Inc. And Authorizing The Execution Thereof

A motion to approve Resolution #18-51 was requested.

MOVED: John Perry

SECOND: Edward Snook

Attorney Wenner asked if there was any discussion amongst the MUA Commissioners. Attorney Wenner called the roll noting that there are 5 voting members: John Perry, Edward Seger, Edward Snook, Kristin Wheaton and Thomas Buchney.

A roll call vote was taken:

AYES: John Perry, Edward Seger, Edward Snook, Kristin Wheaton, Thomas Buchney

NAYES: None

ABSTAIN: None

ABSENT: None

PRESENT BUT NOT VOTING: Paul Kearney, Alt. #1; David McDermott, Alt. #2

Attorney Wenner announced that the motion carried to adopt Resolution #18-51.

VERNON TOWNSHIP MUNICIPAL UTILITY AUTHORITY

RESOLUTION 18-51

RESOLUTION APPROVING A SETTLEMENT AGREEMENT BY AND BETWEEN THE VERNON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY, VERNON TOWNSHIP AND MOUNTAIN CREEK RESORT, INC. AND AUTHORIZING THE EXECUTION THEREOF

WHEREAS, Vernon Township (“Vernon”) and Mountain Creek Resort, Inc. (“Mountain Creek”) entered into a sewer agreement dated October 24, 2005 (“2005 Sewer Agreement”), in which Mountain Creek agreed, subject to the terms thereof, to pay the debt service on the Sewer Bonds (as that term is defined in the Settlement Agreement), plus certain costs associated with the development, construction, operation, and maintenance of the Project, less the revenue obtained by Vernon for sewer charges on an annual basis; and

WHEREAS, by agreement dated on July 18, 2012, Vernon and Mountain Creek entered into an agreement (“Sewer Agreement”), which modified and superseded the 2005 Sewer Agreement; and **WHEREAS**, subject to the terms thereof, the Sewer Agreement Obligations continue annually until the Sewer Bonds are paid in full; and

WHEREAS, on May 15, 2017 (the “Petition Date”), Mountain Creek and certain of its affiliates each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing their chapter 11 cases (collectively, the “Chapter 11 Cases”) in the United States Bankruptcy Court for the District of New Jersey under case number 17-19899 (SLM) (the “Court”);

WHEREAS, Vernon and the Vernon Township Municipal Utilities Authority (“VTMUA”) (collectively, the “Vernon Parties”) allege that Mountain Creek subsequently defaulted on its obligations under the Sewer Agreement; and

WHEREAS, on November 13, 2017, Vernon filed a proof of claim [Claim No. 140] asserting that the sum of \$28,345,874.94 (the “Vernon Township Claim”) is due under the Sewer Agreement and further alleging that such sums are secured by assets of Mountain Creek; and

WHEREAS, on November 13, 2017, the VTMUA filed a proof of claim [Claim No. 141] (the “VTMUA Claim,” and together with the Vernon Township Claim, the “Vernon Claims”) asserting that the sum of \$28,345,874.94 is due under the Sewer Agreement and further alleging that such sums are secured by assets of Mountain Creek; and

WHEREAS, on March 30, 2018, the Vernon Parties filed an adversary proceeding (the “Vernon Adversary Proceeding”) in the Chapter 11 Cases captioned *In re Mountain Creek Resort, Inc., et al.*, (*Township of Vernon et al. v. Mountain Creek Resort, Inc., et al.*), Adv. Pro. No. 18-01664 (SLM) (Bankr. D.N.J. Mar. 30, 2018), seeking, among other things, a declaration that the Vernon Parties hold first priority liens on all of Mountain Creek’s real property to secure in excess of \$28 million allegedly due under the Sewer Agreement; Mountain Creek and all the other defendants in the Vernon Adversary Proceeding disputed that the Vernon Parties hold liens, or are entitled to assert any liens, on any of Mountain Creek’s property including its real estate; and

WHEREAS, on June 5, 2018, following a May 31, 2018 status conference in the Vernon Adversary Proceeding, the Court entered an order pursuant to D.N.J. LBR 9019(a)(1) [Adv. Pro. Doc. No. 20] (the “Mediation Order”) requiring that the parties to the Vernon Adversary Proceeding make a good faith attempt to settle the litigation through mediation; and

WHEREAS, after engaging in several mediation sessions with all of the parties to the Vernon Adversary Proceeding, and separate negotiations among the Vernon Parties and Mountain Creek, the Vernon Parties and Mountain Creek have reached an agreement to resolve the Vernon Adversary Proceeding and the Vernon Claims and all claims arising from or relating to the Sewer Agreement and the transactions relating thereto; and

WHEREAS, a settlement agreement (the “Settlement Agreement”) has been drafted and approved by counsel for the Vernon Parties and counsel for Mountain Creek and other interested parties; and

WHEREAS, the Settlement Agreement sets forth the complete understanding of the Vernon Parties and Mountain Creek as it relates to the issues raised by the Vernon Parties in the Adversary Proceeding including, *inter alia*, the Vernon Claims and all claims arising from or relating to the Sewer Agreement and the transactions relating thereto; and

WHEREAS, the VTMUA desires to authorize the execution of the Settlement Agreement.

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of the Vernon Township Municipal Utilities Authority that the Settlement Agreement in the form attached hereto as Exhibit A is hereby approved.

BE IT FURTHER RESOLVED that the Chair of the Board of Commissioners of the Vernon Township Municipal Utilities Authority is hereby authorized and directed to execute the Settlement Agreement.

Vernon Township Council

Attorney Zielinski noted the second resolution was:

Resolution #18-257: Resolution Authorizing Settlement of Litigation between the Township Of Vernon and Mountain Creek Resort, Inc.

A motion to approve Resolution #18-257 was requested.

MOVED: John Auberger

SECOND: Dan Kadish

A roll call vote was taken:

AYES: Dan Kadish, Mark Van Tassel, John Auberger, Jean Murphy

NAYES: Sandra Ooms

ABSTAIN: None

ABSENT: None

Motion carried to adopt Resolution #18-257.

RESOLUTION NO. 18-257

RESOLUTION AUTHORIZING SETTLEMENT OF LITIGATION BETWEEN THE TOWNSHIP OF VERNON AND MOUNTAIN CREEK RESORT, INC.

WHEREAS, Mountain Creek Resort, Inc. (“Mountain Creek”) owns and operates a four-season resort located in the Township of Vernon (“Township”) that is commonly known as the Mountain Creek Resort (“Resort”); and

WHEREAS, Mountain Creek owns and/or leases multiple parcels of real property to operate the Resort (“Property”); and

WHEREAS, Mountain Creek intended to further develop the Resort and its contemplated development required additional wastewater capacity; and

WHEREAS, Mountain Creek requested the Township acquire the necessary additional wastewater capacity from the Sussex County Municipal Utilities Authority (“SCUMA”) and build the infrastructure necessary for the additional wastewater capacity (“Project”); and

WHEREAS, the Township required Mountain Creek to share the costs of the Project; and

WHEREAS, the Township and Mountain Creek entered into a sewer agreement on October 24, 2005 (“2005 Sewer Agreement”), in which Mountain Creek agreed to pay the debt service on SCMUA bonds plus the costs associated with the development, construction, operation, and maintenance of the Project less the revenue obtained by the Township for sewer charges on an annual basis; and

WHEREAS, on July 18, 2012, the Township and Mountain Creek entered into a sewer funding agreement (“Sewer Funding Agreement”), which modified and superseded the 2005 Sewer Agreement; and

WHEREAS, the Sewer Funding Agreement, among other things, modified Mountain Creek’s financial obligation in respect of the Project and thereafter required Mountain Creek to pay 63% of any yearly budget deficit incurred by the Vernon Township Municipal Utilities Authority (“VTMUA” together with the Township “Vernon Parties”) in relation to the Project; and

WHEREAS, on May 15, 2017 (the “Petition Date”), Mountain Creek and certain of its affiliates each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing their chapter 11 cases (collectively, the “Chapter 11 Cases”) in the United States Bankruptcy Court for the District of New Jersey under case number 17-19899 (SLM) (the “Court”); and

WHEREAS, the Vernon Parties allege that Mountain Creek subsequently defaulted on its obligations under the Sewer Agreement; and

WHEREAS, on November 13, 2017, Vernon filed a proof of claim [Claim No. 140] asserting that the sum of \$28,345,874.94 (the “Vernon Township Claim”) is due under the Sewer Agreement and that such sums are secured by assets of Mountain Creek; and

WHEREAS, on November 13, 2017, the VTMUA filed a proof of claim [Claim No. 141] (the “VTMUA Claim,” and together with the Vernon Township Claim, the “Vernon Claims”) asserting that the sum of \$28,345,874.94 is due under the Sewer Agreement and that such sums are secured by assets of Mountain Creek; and

WHEREAS, on March 30, 2018, the Vernon Parties filed an adversary proceeding (the “Vernon Adversary Proceeding”) in the Chapter 11 Cases captioned *In re Mountain Creek Resort, Inc., et al.*, (*Township of Vernon et al. v. Mountain Creek Resort, Inc., et al.*), Adv. Pro. No. 18-01664 (SLM) (Bankr. D.N.J. Mar. 30, 2018), seeking, among other things, a declaration that the Vernon Parties hold first priority liens on all of Mountain Creek’s real property to secure the more than \$28 million allegedly due under the Sewer Agreement; Mountain Creek and all the other defendants in the Vernon Adversary Proceeding disputed that the Vernon Parties hold liens, or are entitled to assert any liens, on any of Mountain Creek’s property including its real estate; and

WHEREAS, on June 5, 2018, following a May 31, 2018 status conference in the Vernon Adversary Proceeding, the Court entered an order pursuant to D.N.J. LBR 9019(a)(1) (the “Mediation Order”) requiring that the parties to the Vernon Adversary Proceeding make a good faith attempt to settle the litigation through mediation, and appointing the Honorable Michael B. Kaplan as mediator; and

WHEREAS, after engaging in several mediation sessions with all of the parties to the Vernon Adversary Proceeding, and separate negotiations among the Vernon Parties and Mountain Creek, the Vernon Parties and Mountain Creek have reached an agreement to resolve the Vernon Adversary Proceeding and the Vernon Claims and all claims arising from or relating to the Sewer Agreement and the transactions relating thereto (“Settlement Agreement”); and

WHEREAS, by entering into the Settlement Agreement, the Vernon Parties will reduce the expense of continued litigation with Mountain Creek and limit any potential exposure to the Vernon Parties if the Court were to rule against the Vernon Parties in the Vernon Adversary Proceeding or the Chapter 11 Cases.

NOW, THEREFORE, BE IT RESOVLED by the Township Council of the Township of Vernon that entering into the Settlement Agreement is a fair and reasonable resolution of the claims raised by and between the Township of Vernon and Mountain Creek in the Chapter 11 Cases and the Vernon Adversary Proceeding.

BE IT FURTHER RESOVLED by the Township Council of the Township of Vernon that the Mayor is authorized to execute the Settlement Agreement on behalf of the Township of Vernon.

BE IT FURTHER RESOVLED that the Settlement Agreement and this Resolution shall not be effective until the Court approves the Settlement Agreement.

COUNCIL and MUA COMMISSIONERS COMMENTS

Attorney Wenner asked if there were any Comments from the Commissioners. There were no comments from the Commissioners.

Attorney Zielinski asked if there were any comments from the Council.

Council President Murphy commented about the old sewer agreement and her hopes for the future in stabilizing the sewer debt.

Council President Murphy asked for a motion to adjourn, which was moved and seconded, however a member of the public came forward requesting to make a comment.

Council President Murphy asked for a motion to open the Meeting to Public Comments.

MOTION: Dan Kadish

SECOND: John Auberger

All Members of the Council and MUA were in favor.

Joseph Tadrick, expressed concern that the bill for the sewer debt would fall on all tax payers. Council President Murphy indicated that would happen if the Township did not come to a settlement.

Joe Hession, CEO for Mountain Creek stated he appreciated the Township's efforts noting that the Township and Mountain Creek need to work together for a bright future.

Seeing no more members of the public wishing to come forward, Council President Murphy asked for a motion to close the Public Comments.

MOTION: Dan Kadish

SECOND: John Auberger

All members of the Council and MUA were in favor.

ADJOURNMENT

There being no further items of business to be conducted on the agenda, a motion for Adjournment was made by Council Member Ooms, seconded by Council Member Kadish with all members voting in favor.

The Joint Meeting of the Township Council and Vernon MUA of the Township of Vernon was adjourned at 7:31 p.m.

Respectfully submitted,

Lauren Kirkman, RMC, CMR
Municipal Clerk

Jean Murphy,
Council President

Minutes approved: January 14, 2019