

**HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 368**

**MINUTES OF BOARD OF DIRECTORS MEETING**

**August 5, 2004**

The Board of Directors (the "Board") of Harris County Municipal Utility District No. 368 (the "District") met in regular session, open to the public, at 6:30 p.m., at Graceview Baptist Church, 25510 Tomball Parkway, Tomball, Texas on Thursday, August 5, 2004, pursuant to notice of said meeting posted in accordance with Chapter 551 of the Texas Government Code; whereupon the roll was called of the members of the Board, to-wit:

Roy P. Lackey	President
Tiffani C. Bishop	Vice President/Investment Officer
Sharon L. Cook	Secretary
Michael J. Ward	Treasurer
Drexel Moerbe	Assistant Secretary

All members of the Board were present. Consultants attending were: Mike Plunkett of Eagle Water Management, Inc. ("Operator"); Bob D. Boozer, P.E. of Pate Engineers, Inc. ("Engineer"); and Andrew P. Johnson, III, and Marian D. Henderson of Johnson Radcliffe Petrov & Bobbitt PLLC ("Attorney").

Developers in attendance were: John Burford of KB Home; Justin Chapman and A.J. Sullivan of Willow Falls Development, Ltd.; Erik Haaland of RPDC, Inc.; and David Garrett of Great America Company ("Great America"). Others in attendance included Michael Preiss, P.E. of Turner Collie & Braden ("TC&B"), Engineer for KB Home-Northern Point Development.

The President, after finding that notice of the meeting was posted as required by law and determining that a quorum of the Board was present, called the meeting to order at 6:43 p.m. and declared it open for such business as may come before it.

1. PUBLIC COMMENT. There were no members of the general public present to address the Board.

2. MINUTES. The Board first considered adoption of the minutes of the meetings of June 17th and July 8th and certified agendas of executive sessions. Upon motion by Director Cook, seconded by Director Bishop, after full discussion and with all Directors present voting aye, the Board approved the minutes of June 17th and July 8th, as presented, and tabled approval of the certified agendas for the executive sessions until the next meeting.

3. OPERATOR'S REPORT. The President next recognized Mr. Plunkett, who presented the monthly Operations Report, a copy of which is attached hereto as Exhibit "A." Mr. Plunkett first reviewed the monthly Operations Report and then presented the Termination List and the following discussion items:

a. Water Wise Program. Mr. Plunkett asked the Board whether or not they wanted to sponsor the Water Wise Program at the local elementary school again this school year. Discussion ensued regarding the costs involved. All Directors agreed that the Program was important. Mr. Plunkett presented an Interlocal Agreement between the Harris-Galveston Coastal Subsidence District and the District for the Board's approval, a copy of which is attached hereto as Exhibit "B." Upon motion by Director Bishop, seconded by Director Lackey, after full discussion and with all Directors present voting aye, the Board authorized the President and Secretary of the Board to execute and attest the Agreement, respectfully conditioned upon the Attorney's review and approval.

b. Rate Order. Mr. Plunkett next directed the Board's attention to the spreadsheet, a copy of which is attached hereto as Exhibit "C," wherein he has illustrated how the District's water rates compare to rates of other area districts. Mr. Plunkett reported that the District's water and sewer rates were in line with those of neighboring districts, but that the Board should probably consider raising the residential tap fees. Discussion ensued regarding the District's current water rates, particularly the minimum usage rate of \$20.00. Mr. Johnson explained that when setting up a rate structure, the object is to ensure that the minimum bill amount collected each month covers the fixed operating costs of the District. Director Bishop stated that some residents thought the \$20.00 minimum water bill was too high. Mr. Johnson stated that he would ask the District's Bookkeeper to prepare an analysis of the fixed costs in conjunction with the District's present rate structure to present at the Board's next Bookkeeper's meeting. Further discussion regarding the possible amendment of the District's Rate Order was deferred to the next meeting.

c. Northern Point Lift Station. Director Lackey next noted that the Northern Point lift station was not on line yet and with the rate of development, he could foresee a problem that may prevent the Operator from installing new taps. Director Lackey suggested that TC&B address the situation with the contractor for Northern Point to get the lift station completed and on line as soon as practicable.

Upon motion by Director Cook, seconded by Director Bishop, after full discussion and with all Directors present voting aye, the Board approved the Operator's Report and authorized the termination of delinquent accounts listed on the Termination List in accordance with the District's Rate Order.

4. ENGINEER'S REPORT. The President next recognized Mr. Boozer, who presented the Engineer's Report, a copy of which is attached hereto as Exhibit "D." Attached to the Engineer's Report are copies of the pay estimates, change orders, utility commitments, and the recommendation of award of contracts discussed therein. Mr. Boozer reviewed the Report as follows:

a. Engineer's Action Items. Mr. Boozer explained that the District's Engineer is requesting the following actions be taken by the Board at tonight's meeting: (1) approve Pay Application No. 7 to Nunn Constructors, Ltd. for Water Plant No. 1 booster pump additions and hydropneumatic tank replacement in the amount of

\$8,342.33; (2) approve Pay Application No. 7 to N&S Construction Co., LLC for Wastewater Treatment Plant expansion in the amount of \$182,462.71 upon verification of the numbers by the Engineer; (3) approve Pay Application No. 1 to Lecon, Inc. for Ashford Place detention facilities to serve Ashford Place Subdivision in the amount of \$106,525.80; and (4) approve water and wastewater capacity commitment for North Point ChildCare and North Point Center (collectively referred to herein as the "Engineer Action Items").

b. Water Plant No. 2 Site. Director Lackey mentioned that the past contractors have lost dirt on the Water Plant No. 2 site and that he also noticed that there were steep swales around Ground Storage Tank No. 3 and that they should probably be addressed to prevent a mowing maintenance problem.

c. Generator Storage Building. Discussion next ensued regarding a site for the District's new generator storage building. Director Bishop stated that she would prefer not to locate the building at Water Plant No. 1 because of the negative feedback from the area residents. After further discussion and upon motion by Director Moerbe, seconded by Director Bishop, the Board authorized the Engineer to work up a schematic for a building and to look at alternative sites other than Water Plant No. 1.

d. Wastewater Treatment Plant Expansion. With respect to the wastewater treatment plant expansion, Director Lackey reported that the fine screen delivery is being delayed and that the contract may need to be extended. Director Ward questioned the Pay Estimate for N&S stating that the numbers do not appear to add up. Mr. Boozer requested that the Board approve the Pay Estimate contingent upon his verifying the accuracy of the figures.

e. Pay Application No. 1 to Lecon Inc. for Ashford Place Detention Facilities. Director Ward next questioned whether or not the dates reflected on the Lecon, Inc. Payment Application were in error. Mr. Garrett stated that this was a case where the contractor began working prior to the contract being executed and that the dates reflected on the Payment Application strictly referenced the contract date to the date of completion of the first stage of work.

f. Stonepine, Section 2 Subdivision. Then Mr. Boozer requested the Board authorize the Engineer to advertise for bids for the construction of water, sewer, and drainage facilities to serve Stonepine, Section 2 Subdivision.

Upon motion by Director Cook, seconded by Director Ward, after full discussion and with all Directors present voting aye, the Board approved the Engineer's Report, as presented, and the Engineer's Action Items and authorized the Engineer to advertise for bids for the construction of water, sewer, and drainage facilities to serve Stonepine, Section 2 Subdivision.

5. DEVELOPER'S REPORT. Mr. Campbell reported that construction was proceeding as projected in Willow Falls and that they had 30 completed houses in Section 1 of the Willow Falls Subdivision.

a. Northern Point Subdivision. Mr. Preiss presented to the Board the tabulation of the bids for the water, sewer and drainage construction project for Northern Point Subdivision, Section 2, a copy of which is attached hereto as Exhibit "E," and explained that he is recommending the award of the contract to the second lowest bidder, Triple B Services, since they have more experience with projects of this size. Mr. Preiss then explained that since KBHome desires to commence the project as soon as possible, he is requesting that the Board approve the award of the contract to Triple B Services tonight and also authorize Director Lackey to execute the contract. Then Mr. Preiss reported that the District's Attorney had been given the Water, Sewer and Drainage Facilities Contract for Northern Point, Section 2 for review. Director Ward stated that he had concerns with the Contract because Triple B Services was actually the second lowest bidder and that even though the difference between the lowest bid and the second-lowest bid was only \$10,000 on a \$450,000 contract, he felt he owed it to the taxpayers of the District to ascertain and understand the reason why the lowest bidder was not accepted. Mr. Preiss stated that Triple B Services was selected over the lowest bidder because in checking the references, Triple B Services had extensive experience in completing contracts of this size, as well as having been the contractor for Northern Point, Section 1. Discussion ensued regarding the bidding process and whether or not the developer had approached the low bidder to request that he withdraw his bid. Mr. Preiss assured the Board that no one approached the low bidder to request that he withdraw his bid and that they would not be a party to such bid manipulation. Mr. Johnson interjected that it would be beneficial to the District to get value on the ground and delaying the award of the contract will impact the time it takes to get value on the ground for the District. Director Ward stated that since the contractor who submitted the lowest bid was not present at the meeting and did not follow up with him in providing documentation of the alleged bid tampering, he would drop the issue, too. Mr. Johnson informed the Board that Ms. Henderson had completed the review of the contract and verified the insurance; however, the contractor needed to provide a complete copy of his insurance policies to the Attorney and Engineer for the District's records. A copy of the Verification of Insurance is attached hereto as Exhibit "F." Upon motion by Director Ward, seconded by Director Moerbe, with no further discussion, the Board approved the award of the construction contract for Northern Point Section 2, water, sewer and drainage to Triple B Services and authorized Director Lackey to execute the contract on the District's behalf.

b. Ashford Place Subdivision. Mr. Garrett reported that he is still negotiating with Ms. Jody Kauachi for a storm drainage easement needed to serve the Ashford Place Subdivision needs input from the Board regarding her requests. Mr. Johnson stated that the Board would convene in executive session to discuss the matter because it was dealing with real estate negotiations and invited Mr. Garrett to stay for the executive session.

c. Stonepine Subdivision. The Board then directed its attention to Mr. Haaland, who reported that the building in Stonepine was going well and that the left turn lane on Boudreaux Road was near completion.

6. ATTORNEY'S REPORT. The President next recognized Mr. Johnson, who presented the Attorney's Report, a copy of which is attached hereto as Exhibit "G," and reported as follows:

a. Collateral Assignment of Contracts, Contract Rights and Security Agreement. Mr. Johnson first presented the Board with a Collateral Assignment of Contracts, Contract Rights and Security Agreement on behalf of 80 Huffsmith Venture, a copy of which is attached to the Attorney's Report. Upon motion by Director Cook, seconded by Director Lackey, after full discussion and with all Directors present voting aye, the Board approved the Collateral Assignment of the right to collect the receivables relating to the water sewer and drainage facilities to serve Ashford Place Subdivision from 80 Huffsmith Venture (Great America) to First Bank & Trust.

b. CenterPoint Energy Relocation Agreement. Director Lackey reported that he had not yet received the Agreement with CenterPoint Energy to relocate a guy line at the Wastewater Treatment Plant from CenterPoint; therefore, this item was tabled.

c. Special Warranty Deeds for Willow Falls Detention Basin and Willow Falls Lift Station. Mr. Johnson next presented two (2) Special Warranty Deeds for Willow Falls Detention Basin and Willow Falls Lift Station, respectively, and stated that Mr. Yager wanted the District to accept the facilities prior to the District's reimbursement to the developer. Upon motion by Director Bishop, seconded by Director Cook, after full discussion and with all Directors present voting aye, the Board accepted the deeds attached to the Attorney's Report.

d. Memorial Springs II Development, Ltd. (Sam Yager, Inc.) Storm Sewer Easement and Drainage Easement. Mr. Johnson reported that these two (2) easements have been negotiated with Memorial Springs II Development, Inc. ("Memorial Springs") and executed by same and, therefore, he is recommending the Board accept the easements, copies of which are attached to the Attorney's Report.

Upon motion by Director Cook, seconded by Director Ward, after full discussion and with all Directors present voting aye, the Board approved the Attorney's Report and accepted the two (2) Memorial Springs estimates.

7. EXECUTIVE SESSION.

a. Ashford Place Subdivision Easement. The President dismissed everyone except Mr. Boozer, Mr. Garrett, Mr. Johnson and Ms. Henderson and convened in executive session at 8:25 p.m. pursuant to Section 551.072 Texas Government Code, as amended, to discuss real estate negotiations with respect to the Kauachi storm drainage easement. At 8:29 p.m., the Board reconvened in open session to vote upon matters considered in executive session. Upon motion by Director Cook, seconded by Director Lackey, after full discussion and with all Directors present voting aye, the Board authorized Mr. Garrett to make the requested improvements to the Kauachi 11-acre tract in consideration of Mr. and Mrs. Kauachi's conveyance of the easement to the District

and the Attorney to send a letter to them informing them of the District's willingness to consider providing water and sanitary sewer service to the tract if they will agree to annexation of the tract into the District.

b. Klare Sanitary Control Easement. At 8:39 p.m., the Board went into executive session again pursuant to Section 551.072, Texas Government Code, as amended, this time with the Mr. Boozer, Mr. Johnson and Ms. Henderson present to discuss another real estate matter involving the negotiations of the Klare sanitary control easement for Water Plant No. 2. At 8:46 p.m., the Board reconvened in open session to vote upon matters considered in executive session. Upon motion by Director Bishop, seconded by Director Cook, after full discussion and with all Directors present voting aye, the Board authorized the Attorney to extend an offer for the appraised value of the easement tract and to agree to serve the 6.5-acre tract upon annexation of same into the District. A copy of the Engineer's estimate to serve the Klare property is attached to the Attorney's Report.

8. OLD BUSINESS. Director Ward reported that he had spoken with Barbara Payne and that the District's web page should be up and running any day now. Director Ward stated that he was getting pictures of the District for the web site and invited any Director with a digital camera to take and send pictures to him of various District facilities and/or neighborhoods for inclusion in the collage he is preparing for the site.

THERE BEING NO FURTHER BUSINESS BEFORE THE BOARD, upon motion by Director Bishop, seconded by Director Cook, the meeting was adjourned at 9:00 p.m.

PASSED and APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2004.

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Secretary, Board of Directors

(SEAL)

EXHIBITS

- A - Operator's Report
- B - Interlocal Agreement between the Harris-Galveston Coastal Subsidence District and the District in connection with the Water Smart Program
- C - Spreadsheet comparing District's rates to rates of other area districts
- D - Engineer's Report
- E - Bid Tabulation for proposals to construct water, sewer and drainage facilities to serve Northern Point, Section 2
- F - Verification of Insurance in connection with Northern Point, Section 2 Water, Sewer and Drainage Facilities Contract - Construction Project (Triple B Services)
- G - Attorney's Report