

## HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 368

### MINUTES OF BOARD OF DIRECTORS MEETING

**April 6, 2006**

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, 22510 Tomball Parkway, Tomball, Texas, on April 6, 2006, pursuant to the 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
Allison Dunn	Assistant Secretary

All members of the Board were present. Also attending were Mike Plunkett of Eagle Water Management, Inc. ("Operator"); Eric Johnson, P.E. and Mark Stendahl, P.E. of Pate Engineers, Inc. ("Engineer"); J. Brad Whitus of Porter & Hedges; Arlicia Jenkins, resident of the District; David Haynes of Industrial TX Corp. ("Industrial"); Bill Philbin, attorney for Industrial; Willie Miller, Cathy Stewart, Samuel E. Stewart, Ruby Miller, Reva L. McClain, Frankie C. Barrett and Ethel L. Spriggs, residents and property owners along Ezekiel Road and Hufsmith-Kohrville Road; and Andrew P. Johnson, III and Kaye C. Corprew, attorneys, and Marian D. Henderson, paralegal, of Johnson Radcliffe Petrov & Bobbitt PLLC ("Attorneys").

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 and declared it open for such business as may come before it at 6:42 p.m.

1. PUBLIC COMMENTS. The President first recognized the residents and property owners along Ezekiel and Hufsmith-Kohrville Roads who requested water and sewer service from the District. Ms. Stewart stated that it is her understanding that the District is only willing to serve her property if she were to sell her property to a developer. Mr. A. Johnson explained that is not true and that there are two (2) ways the District can serve the property – through annexation of the land or with out-of-District service rates. Mr. A. Johnson suggested that the Board authorize the Engineer to look at the feasibility of providing service to the 12 homes along Ezekiel Road, and the Board agreed.

Next, Ms. Stewart stated that she does not believe it is fair that the District tax her property when she is not receiving water and sanitary sewer service to her property. Director Lackey stated that the Stewart property is not in the District and, therefore, not taxed by the District. Ms. Stewart, along with her neighbors in attendance, echoed her claim that the District

has been assessing taxes against their mineral interest for the past two (2) years. Mr. A. Johnson reiterated that since their property is not in the District it is not subject to District taxes and, therefore, there must be an error with the records of the Harris County Appraisal District. Mr. A. Johnson agreed to work with the District's Tax Assessor/Collector, Ben Pawlak with Bob Leared Interests, regarding this matter. Ms. Corprew stated that they had spoken with Mr. Pawlak's office over a year ago about this matter. Mr. Johnson again stated that he would look into the matter. [The Ezekiel Road residents and property owners departed the meeting at this time.]

2. APPROVE MINUTES. The Board first considered approval of the minutes of the March 2, 2006 meeting. Upon motion by Director Ward, seconded by Director Bishop, after discussion and with all Directors present voting aye, the Board approved the minutes as presented.

3. PAYMENT OF INVOICES. No invoices were presented for payment.

4. 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 reviewed the monthly Operations Report and then presented the Termination List. Discussion then ensued regarding repairs, replacement and upgrades of District facilities as follows:

a. Roof Repair. Mr. Plunkett reported that he had received an estimate in the amount of \$18,885 from Shaw Services for the standing seam roof at the Wastewater Treatment Plant and the roof at Water Plant No. 1. Upon motion by Director Ward, seconded by Director Bishop, after discussion and with all Directors present voting aye, the Board accepted the Shaw Services quotes for the roofs and authorized the Operator to proceed with the projects.

b. Water Plant No. 2. Mr. Plunkett then explained that he recommends that the bleach system at the Water Plant not be installed too close to the phosphates and, therefore, he has asked Shaw Services to provide a quote for constructing a separate 10' x 10' concrete slab for the bleach system. Director Lackey then stated that future construction should also include having a doorway installed at the back of the Water Plant due to NEC requirements and that the District should install a new air conditioning system in the building as the original air conditioner is undersized. Director Lackey explained that the Water Plant contains new major electrical equipment that is generating more heat than it had, thus the need for the new air conditioning system. Mr. Plunkett also mentioned that he is still waiting on the quotes for the 911 boxes.

Upon motion by Director Cook, seconded by Director Ward, after discussion and with all Directors present voting aye, the Board approved the Operator's Report as presented, authorized the termination of the accounts listed on the Termination List for non-payment of water and sewer services in accordance with the provisions of the District's Rate Order, and authorized the repairs and upgrades recommended and discussed.

5. PUBLIC COMMENTS CONTINUED. The President next recognized Ms. Jenkins, who had entered the meeting during the Operator's Report. Ms. Jenkins stated that she is concerned about the minutes of the October 20, 2005 Board meeting. Ms. Jenkins explained that she had happened to be browsing the District's website and reading the minutes of prior Board meetings when to her surprise she saw her name mentioned. She explained that she had been quite upset because she believed the minutes implied that she had illegally tampered with her meter and damaged it. Ms. Jenkins stated that she did not tamper with her meter and is still extremely upset that someone would imply such a thing, especially since no one bothered to talk with her about it. Directors Lackey and Bishop both stated that there had been no intent to imply that the damage to her meter had been caused by Ms. Jenkins. Director Bishop added that the only reason Ms. Jenkins' name had been mentioned had been because the Board had been familiar with her name and location due to the fact that she had been at a previous meeting. Director Lackey then noted that even though the District's Rate Order states that the resident will be held financially responsible for the District having to replace a damaged meter to his/her property, Ms. Jenkins had never been billed for the meter. Director Lackey also noted that because her meter could not be read at the time, the Operator had been instructed to take a 3-month average and bill Ms. Jenkins according to her average bill even though the Board had been fully aware that she had a house full of her family members staying with her as a result of Hurricane Katrina. The Board again apologized to Ms. Jenkins for causing her any anguish and stated that it had not been their intention to imply that she had personally caused the damage to her meter. Ms. Jenkins departed the meeting at this time.

6. ENGINEER'S REPORT. Mr. E. Johnson then presented the Engineer's Report, a copy of which is attached hereto as Exhibit "B". Attached to the Engineer's Report are copies of the pay estimates, change orders, utility commitments, and/or the recommendation of award of contracts discussed therein. First, Mr. Stendahl directed the Board's attention to a request from Houston Garden Center for service at the old Weisner Dodge location, the used car lot portion of the dealership. Mr. E. Johnson then reviewed the Report as follows:

a. Engineer's Action Items. Mr. E. Johnson 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. 12 in the amount of \$132,887.83 submitted by Industrial TX Corp. for Water Plant No. 2 construction; (2) authorize Engineer to commence work on Bond Application No. 9; (3) authorize survey of channel outfall at Willow Creek; (4) authorize commencement of work on Wastewater Treatment Plant Demolition Project; (5) authorize Engineer to prepare specifications and obtain bids for a back-up generator; (6) approve Progress Payment No. 5 in the amount of \$2,880.02 submitted by C.E. Barker, Ltd. for Northern Point, Section 5, water distribution, sanitary sewer and drainage facilities; and (7) approve revised Utility Commitment for 33-acre Cobblestone Tract (collectively referred to herein as the "Engineer Action Items").

b. Water Plant No. 2 (Industrial TX Corp.). Discussion regarding the contract for the construction of Water Plant No. 2 by Industrial was tabled for Executive Session later in the meeting.

c. Emergency Interconnects. Mr. E. Johnson reported that he had received responses from the engineer for Harris County Municipal Utility District No. 367 (Glennloch Farm) and the engineer for Harris County Water Control and Improvement District No. 119 (Memorial Springs) regarding the District's inquiry about the possibility of entering into Emergency Water Supply Agreements with them and that both had reported that their Boards were interested, however, they did not want to contribute to the costs of the interconnects. Discussion ensued and it was the consensus of the Board that the District was not interested in pursuing such emergency interconnects if the District has to pay the full amount of the costs on its own.

d. Santikos Development. Mr. E. Johnson next reported that he had communicated the Board's concerns regarding security to the developer of the 19-screen theatre complex and that the developer stated that he will try to attend the mid-month meeting to address the security concerns of the Board.

e. Cobblestone Tract. Mr. E. Johnson reported that the developers of the Cobblestone tract are requesting capacity for an additional 100 connections because they have a hotel developer interested in the property. The Engineer requested that the Board approve the amendment of the commitment letter for the Cobblestone Tract to include the additional 100 connections.

Upon motion by Director Ward, seconded by Director Dunn, after discussion and with all Directors present voting aye, the Board approved the Engineer's Report and the Engineer Action Items, with the exception of the Pay Application for Industrial, which the Board decided to table until after the Executive Session.

7. ATTORNEY'S REPORT. The President next recognized Ms. Corprew who presented to the Board an Annexation and Service Agreement (the "Annexation Agreement") and the Water, Sewer and Drainage Improvement Financing and Construction Agreement (the "Reimbursement Agreement") by and between the District and Dungle L.L.C. with respect to the 33-acre Cobblestone tracts, copies of which are attached hereto as Exhibit "C" and Exhibit "D," respectively. Ms. Corprew explained that the Annexation Agreement is somewhat different than the District's previous Annexation Agreements, which had been in letter form. Ms. Corprew reviewed the new format and the terms of the Annexation Agreement and the terms of the Reimbursement Agreement. Upon motion by Director Dunn, seconded by Director Ward, after discussion and with all Directors present voting aye, the Board approved the Annexation Agreement and the Reimbursement Agreement and authorized Ms. Corprew to forward them to the developer for execution.

8. NEGOTIATIONS WITH CONTRACTOR FOR WATER PLANT NO. 2. The President next recognized Mr. Philbin who introduced himself as the attorney for Industrial and stated that Mr. Haynes would like to address the Board. Mr. Haynes presented the Board with a *Savings Calculator*, a copy of which is attached hereto as Exhibit "E," and stated that he desires to settle the matter with regard to the contract for Water Plant No. 2 as soon as possible.

Mr. Haynes then reported on the status of the construction project. Next, Mr. A. Johnson informed Mr. Philbin and Mr. Haynes that he has recommended to the Board that they not negotiate with them in an open meeting, but instead have their response to Mr. Philbin by 10:00 a.m. tomorrow morning. Mr. Philbin then started to discuss the terms of settlement, and Mr. A. Johnson again stated that the Board would not negotiate the matter in an open forum and that they would discuss the matter later in Executive Session then get back with Mr. Philbin Friday morning, April 7, 2006

9. EXECUTIVE SESSION. At 8:15 p.m., the President called an Executive Session pursuant to 551.071(a) (1) to seek advice from counsel regarding the latest settlement offer from Industrial with respect to the Water Plant No. 2 construction contract. All attendees were dismissed, with the exception of the Board, Engineers and Attorneys. At 8:25 p.m., the President declared the Executive Session over and Messrs. Philbin and Haynes re-entered the meeting. Mr. A. Johnson informed Messrs. Philbin and Haynes that the Board rejects their latest settlement offer and that the District would have a new offer to them tomorrow morning. Mr. Haynes then inquired about the status of Pay Application No. 12. Directors Lackey and Ward stated that the Board intends to approve the Application, however, they still need to discuss a few matters with their Attorneys. Messrs. Philbin and Haynes departed the meeting at this time.

10. EXECUTIVE SESSION. At 8:30 p.m., the President again called an Executive Session pursuant to 551.071(a) (1) to seek advice from counsel regarding contract negotiations and potential litigation concerning the District's contract with Industrial to construct Water Plant No. 2. All attendees were dismissed, with the exception of the Board, Engineers and Attorneys. At 9:35 p.m., the President declared the Executive Session ended. Upon motion by Director Cook, seconded by Director Ward, with all Directors present voting aye, the Board approved Pay Application No. 12 submitted by Industrial for Water Plant No. 2 construction in the reduced amount of \$98,487.83 and authorized the committee to continue settlement negotiations. Director Ward agreed to deliver the check for the payment of Pay Application No. 12 to Mr. Haynes tomorrow morning.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE BOARD, upon motion by Director Cook, seconded by Director Dunn, the meeting was adjourned at 9:36 p.m.

Passed and approved this 18th day of May, 2006.

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Secretary, Board of Directors

EXHIBITS:

- A - Operator's Report
- B - Engineer's Report
- C - Annexation Agreement (Cobblestone Tract)
- D - Reimbursement Agreement (Cobblestone Tract)
- E - Savings Calculator (Industrial TX)