

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

**MINUTES OF BOARD OF DIRECTORS MEETING**

**March 1, 2007**

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 March 1, 2007, 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. of Pate Engineers, Inc. ("Engineer"); Mark T. Stendahl, P.E. ("Consulting Engineer"); Tony Padua of Sam Yager, Inc. ("Yager"); Doug Sebastian of KB Home Houston ("KB"); Cary Durham of Dungleve, L.L.C. ("Cobblestone"); and Kaye C. Corprew, attorney, and Marian D. Henderson, paralegal, of Johnson Radcliffe Petrov & Bobbitt PLLC ("Attorney").

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 6:44 p.m.

1. APPROVE MINUTES. The Board first considered approval of the minutes of the February 1, 2007 meeting. Upon motion by Director Ward, seconded by Director Cook, after discussion and with all Directors present voting aye, the Board approved the minutes of the February 1, 2007 meeting with corrections noted by the Engineer.

2. INTERLOCAL AGREEMENT. The President next directed the Board's attention to the Interlocal Agreement for Law Enforcement Services between the District and Harris County explaining that the Agreement has been amended to include the fifth (5<sup>th</sup>) contract deputy pursuant to the Board's action at its January 18, 2007 meeting. Upon motion by Director Dunn, seconded by Director Ward, the Board approved the Amended Interlocal Agreement, a copy of which is attached hereto as Exhibit "A", and authorized execution of same.

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 "B".

- a. Report on Monthly Operations. Mr. Plunkett reported that the District had a 89.9% accountability rate with 2949 accounts.
- b. Discharge Monitoring Report. Mr. Plunkett next stated that the Discharge Monitoring Report can now be filed electronically with the Texas Commission on Environmental Quality ("TCEQ") but there is a TCEQ requirement that the Board first designate and execute a Signatory Authority. Upon motion by Director Cook, seconded by Director Ward, after discussion and with all Directors present voting aye, the Board authorized the President to execute the Signatory Authority to facilitate the electronic filing of the Discharge Monitoring Report.
- c. Notice of Violation. Mr. Plunkett next reported that the District received a Notice of Violation from the TCEQ for failure to submit a bacteriological sample. Mr. Plunkett explained that the TCEQ's records showed that the District submitted seven (7) samples instead of the eight (8) samples required. Mr. Plunkett went on to report that the Operator had indeed taken the eighth (8<sup>th</sup>) sample and faxed a copy of the report to the TCEQ and that the TCEQ is apparently behind on its paperwork.
- d. Stormwater Maintenance. Then Mr. Plunkett presented the proposals for maintaining the District's stormwater drainage facilities, copies of which are attached hereto as Exhibit "C". Mr. Plunkett stated that proposals were received from Champions Hydro-Lawn Inc., Storm Water Services, and Lawns & More. Mr. Johnson noted that \$5,200 should be added to the Lawns & More quote for the stormwater quality permit. Upon motion by Director Ward, seconded by Director Cook, after discussion and with all Directors present voting aye, the Board accepted the lowest proposal submitted by Lawns & More, subject to Ms. Corprew's review of the legal requirements for such project.
- e. Diesel Fuel Supplier. Mr. Plunkett next discussed the renewal of the District's contract with Moffitt Customized Fuels' ("Moffitt") for supplying diesel fuel to the District's facilities at a cost of \$600 per month per generator. Mr. Plunkett stated that he spoke with Jam Distributors and Hurt to obtain the proposal from them for fuel services at the suggestion of Directors Lackey and Ward. Mr. Plunkett went on to state that Jam Distributors do not have the desire to do a program the size required by the District and Hurt offered a program at \$500 per month per generator. Mr. Plunkett explained that the advantage to using Moffitt is that they are located a lot closer to the District and in case of emergencies like Hurricane Rita, Moffitt would not have that far to travel to provide the District with additional fuel if needed. Director Lackey stated that he did not foresee that as being an advantage since the District has a week's worth of fuel on hand and in the event of an approaching storm, the District would be able to top off their tanks. Director Bishop pointed out that the District has not needed to use the generators to date, so perhaps the District could do without the monthly service and save \$10,000 per year. Director Bishop further noted that topping off

the tanks at the beginning of hurricane season may be sufficient. Upon motion by Director Bishop, seconded by Director Ward, after discussion and with all Directors present voting aye, the Board elected not to renew the Moffit contract and to forego entering into an agreement for fuel supply and service at this time.

f. Houston Garden Center. Discussion next ensued as to the status of procuring easements needed to permanently connect the Houston Garden Center to the District and to loop the District's 12-inch water line. Mr. Plunkett noted that there is an issue with the temporary driveway located behind the now vacant Weisner Dodge tract, explaining that it was installed so that Weisner Dodge would not have to bring trucks in through State Highway 249 and that some of it needs to be removed in order to construct a water line.

g. Termination of Service and/or Write-Off of Delinquent Accounts. Finally, the Operator directed the Board's attention to the Cut-off List, a copy of which is attached to the Operator's Report.

Upon motion by Director Dunn, seconded by Director Bishop, after discussion and with all Directors present voting aye, the Board approved the Operator's Report and authorized termination of service of the District's delinquent customers in accordance with the provisions of the District's Rate Order.

4. ENGINEER'S REPORT. The President then recognized Messrs. Stendahl and E. Johnson, who presented the Engineer's Report, a copy of which is attached hereto as Exhibit "D".

a. Water Well No. 4 Repairs. Mr. Stendahl reported that Water Well No. 4 was back in service and that he had received a final bill from Alsay Inc. Mr. Stendahl recommended that the Board make another partial payment in the amount of \$68,425.00 at this time. Upon motion by Director Ward, seconded by Director Lackey, after discussion and with all Directors present voting aye, the Board approved the partial payment of \$68,425.00 to Alsay.

b. Water Well No. 5. Mr. Stendahl next stated that now that Water Well No. 4 is back in service, he will solicit three (3) proposals for lowering the Water Well No. 5 pump bowls 100 feet since he believes at least one (1) of the proposals will be less than \$25,000. He went on to state that the project should be completed before the high water demand season begins.

c. District Maintenance Building. Mr. Stendahl noted that the Board approved the award of the contract at the last meeting and that the Engineer is waiting on the contractor to furnish his insurance certificates and payment and performance bonds for review prior to issuing the notice to proceed.

d. Water Well No. 6 Site Acquisition. With regard to a site for Water Well No. 6, Mr. Stendahl stated that he has determined that the Matias property is not

suitable as a water well site since there is a packaged wastewater treatment plant nearby.

e. Motor Control Center (Water Plant No. 1). Next, Mr. Stendahl reported that the new Motor Control Center Project at Water Plant No. 1 is being deferred until mid-summer for construction to begin this fall. The Project will be completed prior to the high water demand period for 2008.

f. Channel M-122 Maintenance. Mr. Johnson reported that advertisement for bids for the contract to rehabilitate the Drainage Channel M-122 commenced today with the bid opening scheduled for March 22, 2007.

g. Bond Application No. 9. Mr. Johnson reported that the size of the proposed bond issue No. 9 is now \$13,330,000 after the addition of Water Well No. 6, piping and land acquisition. Director Lackey noted, however, that the District may use some of its surplus funds to reduce the size of the bond issue. Ms. Corprew stated that Director Bishop and Ms. Gamble would like to meet with Ms. Levy of the Attorney's office to discuss the resizing of the bond issue and the surplus funds matter further and that the meeting has been scheduled for 10:00 a.m., March 7, 2007 at the Attorney's office.

h. 12" Water Line Adjacent to State Highway 249. Then Mr. Johnson reported that he has completed the legal descriptions for the 20-foot water line easements crossing the Houston Garden Center and the Santikos tracts for the 12-inch water line adjacent to State Highway 249. The Engineer is preparing two (2) additional water line easement descriptions, one for the former Wiesner Dodge new car sales lot and one for the Hillegeist Shopping Center. The Engineer requested authorization to begin the design and preparation of plans and contract documents for construction of the proposed 12-inch water line.

i. Street Acceptance. Mr. Johnson next presented and reviewed with the Board the updated chart showing the status of street acceptance by Harris County for maintenance.

j. Ashford Place, Section 4. In conclusion, Mr. Johnson requested that the Board authorize the advertisement of bids for the construction of the water, sewer and drainage facilities to serve the Ashford Place Section 4, subdivision.

Upon motion by Director Dunn, seconded by Director Ward, after discussion and with all Directors present voting aye, the Board approved the Engineer's Report as presented, authorized the Engineer to commence design, preparation of plans and contract documents with respect to the proposed 12" water line and authorized the advertisement of bids for the construction of the water, sewer and drainage facilities to serve the Ashford Place, Section 4, subdivision.

5. DEVELOPERS REPORT.

a. Northern Point Subdivision. The President next recognized Mr. Sebastian who reported that there are only 93 lots left in the Northern Point Subdivision. Mr. Sebastian reported that there had been 12 closings during the month of February and 11 sales. Discussion then ensued regarding the status of the Northern Point Detention Pond. Mr. Johnson stated that the Detention Pond had been constructed in two parts and that the District already owns one portion; however, it is difficult to accept the maintenance of one portion without the other having been accepted by the District. Ms. Corprew explained that the Developer is responsible for the first year of maintenance while the project is still in the warranty period and then the District could take over the maintenance once the one-year warranty period is over and the facility has been accepted by the Engineer. Discussion then ensued as to whether the Detention Pond was at the beginning or end of the one-year maintenance period. It was the consensus of the Board, Developer and Engineer that the Detention Pond had already passed the one-year maintenance period and that the maintenance of the Northern Point Detention Pond should be prepared for transfer to the District. Mr. Sebastian then stated that the Northern Point Homeowners Association would like to put a granite walking trail along the Detention Pond and that they are willing to pay for it if the District will authorize it. The Board agreed to consider a proposal and Mr. Sebastian stated that he would bring one to the April 5, 2007 Board of Directors meeting.

b. Cobblestone Tracts. Then Mr. Johnson reported that he is recalculating water and sanitary sewer capacity needs for the Cobblestone tracts because the Developer has someone interested in constructing an apartment complex on the property. Discussion ensued regarding the availability of capacity and Mr. Dunham added that 55 connections will not be needed for another year and a half. Director Bishop asked whether the District is over-extending itself in committing water that it does not have. Director Lackey asked whether or not this apartment complex project will be subsidized and Mr. Dungrove assured the Board that the project would not be a government subsidized project. In response to Director Bishop, Mr. Johnson stated that for all land located within the District, developed and undeveloped, the projected build-out is 4,400 equivalent single-family connections by 2010 and that with the addition of Water Well No. 6, the District should have an adequate water supply. [Mr. Dunham departed the meeting at 8:53 p.m.].

c. Willow Falls Subdivision. The President next recognized Mr. Padua who reported that there are 80 lots left in Willow Falls, Section Three. Mr. Padua added that when that number falls to 50 lots, Yager will start advertising lots in Willow Falls, Section Four.

d. Miscellaneous. Mr. Johnson reported that he had received an inquiry regarding the Gallegos 50-acre tract located outside the boundaries of the District from a gentleman representing Habitat for Humanity.

6. PAYMENT OF INVOICES. Upon motion by Director Cook, seconded by Director Bishop, after discussion and with all Directors present voting aye, the Board authorized payment of checks numbered 5556 and 5557 to Director Lackey for AWBD Mid-Winter Conference expenses and reimbursement for payment to Technical Diagnostic Services, respectively.

7. ATTORNEY'S REPORT. The President next recognized Ms. Corprew who presented and reviewed with the Board the Attorney's Report, as follows:

a. Amended Resolution Determining And Adopting Prevailing Wage Rates For Construction Contracts ("Prevailing Wage Rate"). Ms. Corprew then explained that governmental entities in the State of Texas are required to adopt prevailing wage rates that then become part of the construction contracts entered into by that entity. Ms. Corprew noted that the District falls under such requirements, as reflected in the Texas Water Code, and that on April 6, 2004, the Board had adopted the prevailing wage rates of the City of Houston (the "City"). Ms. Corprew went on to explain that on February 1, 2006, the City Council adopted new prevailing wage rates and job classifications for both Prevailing Wage Rates for Engineering Construction and Building Construction, such rates being the same as the United States Department of Labor ("DOL") Davis-Bacon determinations. Ms. Corprew further explained that since the wage rate determinations are subject to change, the City Council gave the City Contract Compliance Officer the authority to modify the City's wage rates and job classifications on a quarterly basis, as may be needed. Ms. Corprew then recommended that the District adopt the City's prevailing wage rates and job classifications, and that the District's Engineer and Operator be given the authority to implement new wage rates and job classifications as they are revised and published by the City Contract Compliance Officer. Upon motion by Director Bishop, seconded by Director Cook, after discussion and with all Directors present voting aye, the Board adopted the Amended Resolution, a copy of which is attached hereto as Exhibit "E".

b. Conflict of Interest. Ms. Corprew next presented a letter to the Board from the Attorney disclosing a conflict of interest with respect to representing the District in negotiations with the North Harris County Regional Water Authority ("NHCRWA") regarding a Groundwater Transfer Agreement since the Attorney represents both the District and the NHCRWA, a copy of which letter is attached hereto as Exhibit "F". Ms. Corprew pointed out that the Texas Disciplinary Rules of Professional Conduct Governing Attorneys in Texas (the "Rules") require that both parties would have to agree to waive any conflict of interest for the Attorney to continue representing both parties in the matter. Failing that, the Rules require the Attorney to withdraw from its representation of both parties. Upon motion by Director Ward, seconded by Director Cook, after discussion and with all Directors present voting aye, the Board agreed to waive the conflict of interest for the Attorney and authorized the President to execute the waiver.

c. Water Well No. 1. Ms. Corprew stated that she has nothing new to report relating to the potential litigation regarding Water Well No. 1.

Upon motion by Director Cook, seconded by Director Bishop, with all Directors present voting aye, the Board approved the Attorney's Report as presented. [Messrs. Plunkett, Sebastian and Padua departed the meeting at 9:11 p.m.]

8. EXECUTIVE SESSION. At 9:12 p.m., the President called an Executive Session pursuant to 551.072 to seek advice from counsel regarding real estate negotiations with respect to Water Well No. 6 site acquisition. All attendees were dismissed, with the exception of the Board, Engineers and Attorneys. At 9:34 p.m., the President declared the Executive Session over and reconvened the meeting in open session.

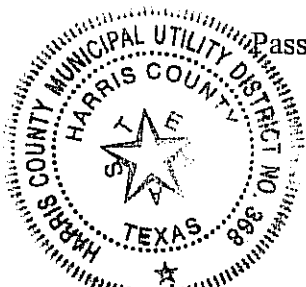
9. WATER WELL NO. 6. Upon motion by Director Cook, seconded by Director Bishop, after discussion and with all Directors present voting aye, the Board authorized the Attorney to negotiate for Water Well No. 6 site acquisition.

10. EXECUTIVE SESSION. At 9:42 p.m., the President called an Executive Session pursuant to 551.074 to seek advice from counsel regarding personnel matters. All attendees were dismissed, with the exception of the Board and Attorneys. At 10:30 p.m., the President declared the Executive Session over and reconvened the meeting in open session.

11. CONSULTING ENGINEERING SERVICES. Upon motion by Director Ward, seconded by Director Dunn, after discussion and with all Directors present voting aye, the Board voted to accept the proposal from Mark T. Stendahl, P.E. to act in his capacity as a contract consulting engineer for Pate Engineers, Inc.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE BOARD, upon motion by Director Ward, seconded by Director Cook, with all Directors present voting aye, the President adjourned the meeting at 10:37 p.m.

Passed and approved this 5<sup>th</sup> day of April, 2007.



  
Secretary, Board of Directors

EXHIBITS:

- A - Amended Interlocal Agreement with Harris County for Law Enforcement Services
- B - Operator's Report
- C - Stormwater Maintenance Proposals
- D - Engineer's Report
- E - Amended Prevailing Wage Rates Resolution
- F - Attorney Conflict of Interest Letter and Waiver by Board