

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 368

Minutes of Meeting  
Thursday, November 19, 2009

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. on Thursday, November 19, 2009 at the District's regular meeting place, Graceview Baptist Church, 25510 Tomball Parkway, Tomball, Texas, 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
Eric Daniel	Treasurer
Allison V. Dunn	Assistant Secretary

All members of the Board were present. Consultants in attendance were: Matt Carpenter, E.I.T. of Pate Engineers, Inc. ("Engineer"); Mike Plunkett of Eagle Water Management, Inc. ("Operator"); Cathy Branco of Municipal Accounts and Consulting, L.P. ("Bookkeeper"); Cpl. Mike Swindler, Dep. Eric Runyon, Sgt. Matt Rodrigue, and Lt. R. Key of the Harris County Constable's Office ("Constables"); Andrew Dunn, the District's liaison to the Harris County Constable's Office; Gina Ognoskie of KB Home ("Developer"); Jerrell Wolff of Residential Recycling of Texas ("RRT"); and Andrew P. Johnson, III, attorney and Mirna Jakupovic, paralegal, of Johnson Radcliffe Petrov & Bobbitt PLLC ("Attorney"). Also in attendance was Leah Davis, a resident in the District.

The President called the meeting to order at 7:05 p.m., and in accordance with the notice posted pursuant to law, copies of Certificates of Posting are attached hereto as Exhibit "A", the following business was transacted:

- I. **Public Comment.** Ms. Davis addressed the Board to inquire about the streets yet to be approved by the County. Mr. Carpenter stated that Northpoint East, Section 1, Pinecrest Forest, Section 5, and Three Lakes East, Section 4 currently have outstanding punch-list items. Mr. Carpenter then reported that Pate Engineers is planning on meeting with Harris County to discuss the sections which need to be adopted by the County.
- II. **Harris County Constable's Report.** The President next recognized Cpl. Swindler who reported on the security issues in the area. Cpl. Swindler then introduced Lt. Key to the Board.
- III. **Tax Assessor/Collector's Report.** Tax Assessor was not present at the meeting.
- IV. **Bookkeeper's Report.**
  - A. **Status of account balances and funds transfer bills.** The President recognized Ms. Branco who reviewed with the Board the Bookkeeping Report, a copy of which

is attached hereto as Exhibit "B". Ms. Branco first presented for approval check nos. 8059 to 8131 on the Operating Fund and Checks Nos. 1528 and 1537 on the Capital Projects Fund and discussed various expenditures and balances. Director Bishop stated that the budget may have to be amended to allow for the adjustments in the law enforcement agreement and garbage and recycling services contracts. The Board directed the Attorney to add (i) mid-term review of the budget; and (ii) amend budget, as necessary; to the December 17, 2009 meeting agenda.

- B. Review of Investments. Ms. Branco next reviewed with the Board the Investment Report, a copy of which is attached to the Bookkeeping Report. Upon motion by Director Dunn, seconded by Director Cook, after discussion and with all Directors present voting aye, the Board voted unanimously to (i) approve the Bookkeeping Report; (ii) authorize payment of Check Nos. 8059 to 8131 from the Operating Fund in the amounts, to the persons, and for the purposes listed in the Report; (iii) authorize payment of Check Nos. 1528 to 1537 from the Capital Projects Fund in the amounts, to the persons, and for the purposes listed in the Report; and (iv) approve the Investment Report.
- C. Capital Improvement Report. The President recognized Mr. Carpenter who reviewed with the Board the Capital Improvement Report, a copy of which is attached hereto as Exhibit "C".

V. **Attorney's Report.**

- A. Garbage and Recycling Contracts. Mr. Johnson reviewed with the Board the recycling contract with RRT and stated that Mr. Golden had made a few comments to the recycling contract received from RRT. Mr. Johnson requested the Board's approval of the recycling contract, subject to RRT amending the contract per the Attorney's comments. Upon motion by Director Cook, seconded by Director Daniel, after full discussion and with all Directors present voting aye, the Board voted unanimously to approve the recycling contract with RRT, a copy of which is attached hereto as Exhibit "D", subject to RRT amending the contract per the Attorney's comments.

Mr. Wolff next reviewed with the Board an information letter to the District's residents, a copy of which is attached hereto as Exhibit "D-1". Discussion ensued regarding same. The Board noted that the residents can place trash bags with excess items into containers, but may not place trash bags alone on the curbside for collection. The Board directed Mr. Wolff to remove an item on the informational letter allowing for excess items to be put in regular trash bags and placed on a curbside. Director Bishop next requested that Mr. Wolff provide service schedule for holidays falling on a Monday rather than a Friday.

The Board next discussed providing additional information to the residents regarding the recycling service. Mr. Plunkett stated that the memo line on the water bills will contain information regarding recycling.

- B. Reimbursements from Series 2009 Bond Proceeds. Mr. Johnson next discussed Utility Conveyance Agreements for 80 Huffsmith Venture Ltd. ("Huffsmith"), KB Home Lone Star, LP. ("KB Home"), and Northwest Estates LLC, (the "Northwest"). Mr. Johnson stated that Huffsmith is requesting a reimbursement for Ashford Place, Section 2 and Section 3. Mr. Lackey then inquired as to the issue of streets waiting for the County's approval and whether the developers will pay for those costs. Mr. Carpenter stated that Pate Engineers will work with Charlie Clairborne with Northwest to complete the punch list items related to Three Lakes East, Section 4. Mr. Johnson stated that Mr. Clairborne has an agreement with KB Home according to which he is entitled to 25 percent of the KB Home reimbursable amount. Mr. Johnson further noted that Mr. Clairborne has agreed to pay for the streets to be accepted and the District may escrow the funds needed to resolve the punch list items for Three Lakes East, Section 4.

Mr. Johnson next discussed the reimbursement amount to KB Home and stated that KB Home is seeking to be reimbursed for Northern Point, Section 4 and Section 5 in the amount of \$935,818.36. Mr. Johnson then reported on Northern Point Detention Pond ("Detention Pond") and stated that \$274,291 is currently escrowed for the detention pond construction costs. Mr. Johnson noted that the Texas Commission on Environmental Quality (the "TCEQ") has allowed the District to reimburse KB Home for the land conditioned upon the District receiving a clear title. Mr. Johnson then reported on his communication with Jennifer Keller, a senior land director with KB Home, and stated that KB Home has four options in regards to the Northern Point Homeowners Association ("HOA"); (i) file a suit against the HOA based on an erroneous deed; (ii) negotiate a cash settlement with the HOA; (iii) allow the District to condemn whatever interest the HOA has in the property; or (iv) do nothing and see what happens. Director Lackey commented that the District has no agreement with the HOA, only with KB Homes. Mr. Johnson stated that KB Home did mistakenly deed the Detention Pond site to the HOA and the District had no knowledge of that act until the trail was discovered on the District's portion of the Detention Pond. Mr. Johnson next stated that KB Home proposed that the Board prepare a letter to the HOA absolving them of the previous request to remove the trail. Mr. Johnson further stated that KB Home will work on negotiating a deal with the HOA aimed at providing the District with the clean title. Furthermore, KB Home is willing to return the Detention Pond site to the District in the shape requested by the Board and will commit to that in writing. Ms. Ognoskie asked would the District accept the direct deed from the HOA. Mr. Johnson replied that as long as the District receives the clear title it does not matter where it comes from. Discussion ensued regarding the same.

*Executive Session.* At 8:15 p.m., the President called an Executive Session upon the motion of Director Bishop, seconded by Director Cook pursuant to Sections 551.071 and 551.072 of the Open Meetings Act, to discuss matters involving legal issues related to attorney client privilege and deliberations on real property, respectively. The members of

the Board of Directors, Mr. Johnson and Ms. Jakupovic retired to a private conference room for the Executive Session.

*Regular Session.* At 8:50 p.m., the President reconvened the meeting in Regular Session. No action was taken in Executive Session.

Upon motion by Director Daniel, seconded by Director Lackey, after discussion and with all Directors present voting aye, the Board unanimously voted to:

- (1) approve the reimbursement check to Huffsmith from the Series 2009 bond issue in the amount stated in the Audit report and interest through November 19, 2009;
- (2) approve the reimbursement to KB Home (non-escrowed funds only) in the amount stated in the Audit Report and the interest through November 19, 2009, subject to the following provisions: (A) (i) 75 percent of the amount stated in the audit report is to be disbursed to KB Home; (ii) 25 percent of the KB Home reimbursement stated in the Audit Report is to be disbursed to Northwest, subject to KB and Northwest verifying the amount to be paid to Northwest and Northwest executing an agreement to withhold the amount estimated by the Engineer to complete the County punch list for street acceptance, plus 50% for the expenses related to the streets within Three Lakes East, Section 4, awaiting acceptance by Harris County; and (B) an agreement between KB Home and the District according to which KB Home will assume all responsibility in connection with the HOA as well as any expenses the District incurs in its dealing with the HOA and other matters; and (C) upon receipt of that agreement, the Board will prepare a letter to the HOA absolving it of the responsibility to remove the trail or pay additional expenses to the District.

Mr. Johnson next stated that KB Home can review the letter, but the District will have full control over the content of the letter. Mr. Johnson next noted that it will be verified whether the HOA paid for any previous expenses and if not, those expenses will be added to the KB Home invoice.

Discussion next ensued regarding the Detention Pond maintenance. Ms. Ognoskie reported that KB Home has engaged Stormwater Solutions to maintain the pond and had spent over \$40,000 on maintenance. [Ms. Ognoskie departed the meeting at this time.]

A. Tax Documents in connection with Unlimited Tax Bonds, Series 2009.

Mr. Johnson next presented to and reviewed with the Board tax documents in connection with the Unlimited Tax Bonds, Series 2009 including the Tax Certificate, which states the responsible expectations of the District at the time of the issuance of the Bonds, and the 8038G. Mr. Johnson stated that execution of the documents was authorized when the Bond Resolution was approved by the Board. The Board unanimously authorized execution of such.

- B. Amend Rate Order. Mr. Johnson requested the Board's approval to amend the Rate Order to include the cost of recycling service. Upon motion by Director Cook, seconded by Director Lackey, after full discussion and with all Directors present voting aye, the Board unanimously voted to increase the sewer service rates by \$2.50 per connection to offset the District's costs for the recycling services just approved by the District. Discussion next ensued regarding amending the Rate Order with respect to the monthly charge billed to the District's customers (the "NHCRWA Charge") in connection with the monthly fee paid by the District to the NHCRWA based on the total amount of ground water pumped at the District's water wells and/or the total amount of surface water delivered to the District by the NHCRWA.

The Board directed the Engineer and the Operator to prepare a rate recommendation based on the percentage of water usage between ground and surface water for the next board meeting.

- VI. Consent Agenda. The Board next considered the consent agenda, as presented. Upon motion by Director Cook, seconded by Director Daniel, after discussion and with all Directors present voting aye, the Board unanimously voted to: (i) renew membership in AWDB; (ii) authorize attendance at the AWDB winter conference; and (iii) approve and authorize Annual Continuing Disclosure Filing.

VII. General Business.

- A. Approve Minutes of November 5, Board meeting. Upon motion by Director Lackey, seconded by Director Daniel, after full discussion and with all Directors present voting aye, the Board approved the minutes of November 5, 2009, as amended.
- B. Board Meeting Procedures. No matters to report at this time.
- C. Emergency Operations and repairs to District facilities. Mr. Plunkett reported on the heavy odor originating from the lift station. Mr. Plunkett stated that carbon filters have been ordered to be placed in the lift station, which may remove the odor. Mr. Plunkett discussed additional treatments to remove the odor, such as air injections. Mr. Plunkett then discussed possible solutions for the tanks located at the waste treatment plant which have started to leak. Mr. Plunkett then discussed electronic payment options with Compass Bank. The Board directed the Attorney to add this matter to the agenda for December 3, 2009.
- D. Water Wise Program Participation. Mr. Plunkett reported that all documents in connection with the Program have been received. No action was taken on this matter.
- E. Strategic Partnership Business List. No action was taken on this matter.

- F. Purchase of Land for Community/Emergency Services Facility. Director Lackey reported that he has been contacted by a developer interested in purchasing property located off Seven Sisters [street] to build a convenience store and a gas station. Director Lackey discussed a possibility of the District purchasing 12.9 acres at the same location for the purpose of building an emergency service department, a fire station, a police station, and a community center. Director Lackey stated that the emergency facilities would increase the value of the property as well as improve the response time within the District. Director Lackey further reported that emergency services are taxable entities which could enter into a 40-year lease with the District for the referenced facilities. Discussion ensued as to different leasing options. Director Bishop inquired about the costs and financing options to erect the emergency facilities. Mr. Johnson stated that some of the financing options could be a mix of operating funds, surplus funds, Bond funds, and, if necessary, a Bond Anticipation Note ("BAN"), once the bond application is filed. Director Lackey stated that, pursuant to his discussions with the emergency service department and the fire station as to the beginning of the lease, the timeframe would be 2012. Discussion ensued regarding same. After full discussion the board directed the Engineer to (i) prepare a preliminary schedule of the project; (ii) prepare preliminary costs of the project; (iii) talk to the landowner regarding the availability of the property; and (iv) prepare a conceptual cost estimate.

VIII. **Adjournment.** There being no further business to come before the Board, the Board adjourned the meeting at 10:25 p.m.

Passed and approved this \_\_\_\_ day of December, 2009.

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Secretary, Board of Directors

**Exhibits:**

- "A" Certificates of Posting
- "B" Bookkeeping Report
- "C" Capital Improvement Report
- "D" Recycling Information Letter