

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 140

Minutes of Regular Meeting of Board of Directors

February 20, 2018

The Board of Directors (the “Board”) of Fort Bend County Municipal Utility District No. 140 (the “District”) met in regular session, open to the public, on February 20, 2018, at 6:00 p.m., at Joy Lutheran Church, 717 FM 359, Richmond, Fort Bend County, Texas 77406, outside the boundaries of the District and in accordance with the duly posted notice of meeting, and the roll was called of the duly constituted members of said Board, as follows:

Harry Murray	President
Janice Suchyta	Vice President
Gene Tomas	Assistant Vice President
Vacant	
John Braswell	Assistant Secretary

and all of said persons were present, thus constituting a quorum.

Also present during all or part of the meeting were Ron Dechert and Greg Frank of Costello, Inc. (“Costello”); Mike Arterburn of Utility Tax Service, LLC (“Utility Tax”); Olivia Cuellar of McLennan and Associates, L.P.; Susan Lang of the City of Richmond (“City”); Greg Lentz of FirstSouthwest, a division of Hilltop Securities (“FirstSouthwest”); Joel Cleveland, Olivia Galvan, and Sarah Vink of Jeanne H. McDonald, P.C; and those persons listed on the sign-in sheet attached hereto.

PUBLIC COMMENTS

A resident expressed concerns about fencing and signage near the entrance to the nature park. The resident then requested that the Board consider removal of the signage and address the aesthetics of fence posts near the nature park.

Mr. Cleveland then outlined the meeting agenda and announced that further public comments would be addressed later in the meeting.

MAY 2018 ELECTION

Mr. Cleveland reported that two board positions are up for election in May 2018. He also reported the District’s receipt of candidate applications from Director Gene Tomas, Mr. David Smith, and Ms. Suzan Conkright Orr. He also stated that vacancies on the Board will impact the need for the District to hold an election, and he noted that this matter would be addressed further at the end of the meeting with the appointment of new directors.

ENGINEER'S REPORT

This item was taken out of order. Mr. Dechert presented the Engineer's Report dated February 20, 2018, a copy of which is attached hereto.

a. Sinkhole:

Mr. Dechert reported that Crosstex Construction, Inc. ("Crosstex") completed installation of the cul-de-sac fencing. He then presented and recommended payment of Pay Estimate No. 2 and Final in the amount of \$3,500.00 to Crosstex for repair of the Brazos Outfall Sinkhole. Mr. Dechert also presented and recommended approval of the Final Quantity Adjustment for a total deduction of \$7,000.00 from the total contract price. Director Murray then inquired about the aesthetics of the fence posts near the nature park and if the contractor could be contacted to address the issue. In response, Mr. Dechert stated that the Board would need to contact a different contractor to address the fencing. After discussion, Director Murray moved to approve payment of Pay Estimate No. 2 and Final to Crosstex in the amount of \$3,500.00; approve the Final Quantity Adjustment for a net deduction of \$7,000.00 from the contract price; and authorize the engineer to contact a subcontractor/supplier to repair the fence posts near the nature park, where applicable. Director Suchyta seconded the motion, which passed unanimously.

b. District's Rio Vista Berm:

Mr. Dechert reviewed the status of the project to reconstruct the District's Rio Vista Berm, reporting that the contractor, Solid Bridge Construction, LLC ("SBC"), is addressing punch list items identified during the As-Built survey, including low spots on the berm. After discussion, no action was necessary.

c. District Berm:

Mr. Dechert reported that Costello received and responded to comments from Fort Bend County Engineering and the City of Richmond regarding the design plans for the District's berm project that includes a berm to run from the northern boundary of the District to the Rio Vista Berm (the "District Berm"). Action was taken below.

d. Southern Berm:

There was no report.

e. Drainage Inlets:

Mr. Dechert then reported that Mr. King is still coordinating with the DRS property owner to obtain a drainage easement for the additional inlet. No action was necessary.

c. District Berm:

This item was revisited. Mr. Cleveland asked the Board to convene in Executive Session to consult with its attorney on possible legal action.

EXECUTIVE SESSION TO DISCUSS: (A) PENDING OR CONTEMPLATED LITIGATION IN ACCORDANCE WITH SECTION 551.071 OF THE TEXAS GOVERNMENT CODE; (B) ACQUISITION OF REAL PROPERTY IN ACCORDANCE WITH SECTION 551.072 OF THE TEXAS GOVERNMENT CODE; (C) PERSONNEL MATTERS IN ACCORDANCE WITH SECTION 551.074 OF THE TEXAS GOVERNMENT CODE; (D) TO RECEIVE INFORMATION FROM EMPLOYEES OR QUESTION EMPLOYEES IN ACCORDANCE WITH SECTION 551.075 OF THE TEXAS GOVERNMENT CODE; OR (E) ECONOMIC DEVELOPMENT NEGOTIATIONS OR OFFERS OF FINANCIAL INCENTIVES FOR ECONOMIC DEVELOPMENT IN ACCORDANCE WITH SECTION 551.087 OF THE TEXAS GOVERNMENT CODE.

The Board convened into Executive Session at 6:11 p.m. pursuant to Section 551.071 and Section 551.072 of the Texas Government Code to discuss anticipated litigation and acquisition of real property.

RECONVENE IN OPEN SESSION: RECONVENE IN PUBLIC SESSION TO CONSIDER AUTHORIZING DISTRICT STAFF AND CONSULTANTS TO TAKE ANY ACTION NECESSARY WITH RESPECT TO (A) PENDING OR CONTEMPLATED LITIGATION; (B) ACQUISITION OF REAL PROPERTY; (C) PERSONNEL MATTERS; AND (D) RECEIVING INFORMATION FROM OR QUESTIONING EMPLOYEES; (E) ECONOMIC DEVELOPMENT NEGOTIATIONS OR OFFERS OF FINANCIAL INCENTIVES; AND (F) ANY OTHER MATTERS RELATIVE TO ANY OF THESE MATTERS WHICH WAS DISCUSSED IN EXECUTIVE SESSION.

The Board then reconvened into open session at 6:31 p.m.

c. District Berm:

Director Murray then reported that the District is having difficulties obtaining the easements necessary to build the District Berm. He stated that property owners along the berm's alignment had initially expressed a willingness to work with the District but have since changed their positions. He stated that the Board is authorizing the initiation of condemnation proceedings to obtain the easements needed. Director Murray then moved to authorize Olson & Olson, L.L.P. to submit initial offers for the purchase of easement tracts, as required by law. Director Tomas seconded the motion, which passed unanimously.

FINANCING/BOND ISSUE

This item was taken out of order. Director Murray reviewed with the Board ongoing and future capital projects and reviewed the revised estimated cost summaries for such projects,

included in the draft Financial Impacts – Permanent Berm/Contingencies chart (the “Draft Finance Chart”) attached hereto. He also reported that the financial impact of funding all the proposed projects and contingency measures (the “Projects”) is estimated to be \$3,300,000.00. He then identified two possible scenarios the District could pursue to fund all of Projects, while still maintaining a reasonable cash reserve in the operating fund. He explained that the District could finance the Projects from the District’s General Operating Fund over three years and implement the Projects in phases (“Scenario A”) or the District could pursue the issuance of bonds and begin implementation of the Projects immediately (“Scenario B”). Discussion ensued regarding the impacts issuing additional debt compared to the impacts of delaying certain flood mitigation projects. Director Murray then requested Mr. Lentz, the District’s financial advisor, to comment on the scenarios presented. In response, Mr. Lentz stated that Scenario B would allow the District to maintain a healthy operating fund in case of unforeseen expenditures and allow the District to implement the Projects quickly, without raising the District’s overall tax rate or extending the term of its debt. After discussion, Director Suchyta moved to authorize the District’s engineer to prepare a Bond Application for submission to the Texas Commission on Environmental Quality for projects 1-5, as identified on the Draft Finance Chart. Director Braswell seconded the motion, which passed unanimously.

EMERGENCY FLOOD MITIGATION EFFORTS

Director Murray then recommended that the District consider preparing for and pursuing two flood mitigation contingency measures to be implemented in the event of an imminent flood event: emergency temporary closure along the District Berm alignment using Tiger Dams and related materials; and emergency temporary closure of the opening to the oxbow along the southern boundary of the District using Tiger Dams and related materials, including pumps to lower the water level in the District’s lakes. He then reported that the District has attempted to negotiate easements to address temporary flood mitigation efforts along the District Berm alignment but that the property owners refused. He stated that the condemnation proceedings discussed earlier in the meeting will address this issue as well. He then asked that the public refrain from actions that could be deemed as intimidation or harassment towards the property owners along the District’s designed Berm alignment.

After discussion, Director Suchyta moved to approve preparing for and pursuing the following contingency measures to be implemented in the event of an imminent flood event: emergency temporary closure along the District Berm alignment using Tiger Dams and related materials; and emergency temporary closure of the opening to the oxbow along the southern boundary of the District using Tiger Dams and related materials, including pumps to lower the water level in the District’s lakes. Director Braswell seconded the motion, which passed unanimously.

Director Murray then moved to authorize the District’s engineer to advertise for bids for purchase of materials and equipment necessary for the approved temporary flood mitigation measures. Director Suchyta seconded the motion, which passed unanimously.

Director Suchyta then moved to authorize the engineer and attorney to request proposals from operators for a stand-by contract to install and otherwise execute the emergency measures, including training. Director Murray seconded the motion, which passed unanimously.

Director Suchyta then moved to authorize the District's attorney to negotiate and prepare any necessary easements or permissions in connection with temporary flood mitigation measures. Director Tomas seconded the motion, which passed unanimously.

Director Murray then moved to authorize the District's engineer to proceed with design of a sluice gate on the TxDOT outfall at FM359 and Jones Creek. Director Suchyta seconded the motion, which passed unanimously.

RESOLUTION OF INTENT TO REIMBURSE

Mr. Cleveland explained to the Board that they can adopt a resolution to reimburse the operating account for expenditures related to construction of the Rio Vista Berm from Bond proceeds. He then presented a Resolution Expressing Intent to Reimburse the Operating Account for expenditures related to construction of the Rio Vista Berm for the Board's consideration and approval. After discussion, Director Suchyta moved to approve the Resolution for Intent to Reimburse the Operating Fund for expenditures related to construction of the Rio Vista Berm from future bond proceeds. Director Murray seconded the motion, which passed unanimously.

MINUTES

The Board next considered approving the minutes of its special meetings held on January 23, 2018, and January 30, 2018. After discussion, Director Suchyta moved to approve the minutes of the January 23, 2018, and January 30, 2018, special meetings as presented. Director Murray seconded the motion, which passed unanimously.

TAX ASSESSOR-COLLECTOR'S REPORT

Mr. Arterburn distributed and reviewed with the Board the Tax Assessor-Collector's Report for January 2018, a copy of which is attached hereto. He reported that as of January 31, 2018, the District's 2016 taxes were 99.85% collected and the District's 2017 taxes were 95.80% collected. Action was taken below.

Mr. Arterburn then reported that new values for disaster impacted properties should soon become available from the Fort Bend Central Appraisal District ("FBCAD"). He then reported on the deadline for impacted property owners to contest the new values.

After discussion, Director Murray moved to approve the Tax Assessor/Collector's Report and payment of the bills. Director Suchyta seconded the motion, which passed unanimously.

DELINQUENT TAX ATTORNEY

There was no report.

INVESTMENT ISSUES

Mr. Cleveland then reviewed with the Board the District's current authorized investments under the District's Investment Policy and presented for the Board's consideration a Resolution Confirming the Investment Policy previously adopted on February 21, 2012. Director Murray moved to approve the resolution as presented. Director Suchyta seconded the motion, which passed unanimously.

Mr. Cleveland next presented for the Board's consideration a resolution updating the list of broker/dealers with whom the District may engage in investment transactions. Director Suchyta moved to adopt the Resolution Adopting List of Approved Broker/Dealers. Director Murray seconded the motion, which passed unanimously.

Ms. Cuellar then presented the Public Funds Investment Act ("PFIA") disclosure of Mr. Jorge Diaz as the District's Bookkeeper and Investment Officer. Director Suchyta moved to approve the PFIA disclosure and authorize its filing. Director Tomas seconded the motion, which passed unanimously.

AWBD

Mr. Cleveland then asked if the Board would like to authorize its directors to attend the Association of Water Board Directors ("AWBD") Summer Conference in San Antonio. He recommended that the Board set the maximum number of per diems and hotel nights eligible for reimbursement. Director Suchyta moved to authorize all directors to attend the AWBD Summer Conference and to authorize up to a maximum of four (4) per diems and reimbursement for up to three (3) hotel nights for attendance at the conference. Director Murray seconded the motion, which passed unanimously.

BOOKKEEPER

Ms. Cuellar distributed and reviewed with the Board the Bookkeeper's Report from January 24, 2018, through February 20, 2018, and Investment Report for January, a copy of which is attached hereto. She reported a 15.72-month reserve in the District's operating account. She also recommended amending the District's budget to reflect previous Board action regarding the District's maintenance tax revenue. After discussion, Director Tomas moved to approve the Bookkeeper's Report, the Investment Report, the payment of the bills, and amending the budget to reflect the District's current anticipated maintenance tax revenues. Director Murray seconded the motion, which passed unanimously.

OPERATOR'S REPORT

Ms. Lang presented the Operator's Reports for January, a copy of which is attached hereto. She reported 799 connections, 22 delinquent accounts, and no identify thefts for January 2018. Ms. Lang then reported that three customer requests to enter payment plans in connection with delinquent accounts were received and approved, as previously authorized by the Board. Action was taken below.

Director Suchyta then inquired about the Operator's method for processing District customer payments through its billing system and reported receipt of resident complaints regarding the Operator's customer service. In response, Ms. Lang stated that the City of Richmond, as the District's Operator, adheres to the policies and procedures outlined in the District's Rate Order. Director Suchyta then explained that some of the complaints identified by residents were regarding online payment issues. In response, Ms. Lang explained the various payment methods that customers may use to pay their water bills and that such methods are listed on the bills. She also stated that in the past some customers experienced payment issues due to online payment disbursements conducted by the customer's personal banking institution and not through the Operator's online payment system. After discussion, Mr. Cleveland stated that the Board could consider amending the District's Rate Order at the District's next meeting.

Ms. Lang then presented customer requests for bill adjustments and waivers of late fees for the Board's consideration. Ms. Lang reported on a request for a billing adjustment from Ms. Jill Forde, a District resident living at 406 Catalina Breeze Court, and stated that the request did not provide an adjustment amount. Ms. Lang explained that Ms. Forde recently experienced a pipe burst on her side of the meter and received a bill for an amount double her monthly average. Ms. Lang then explained the District has an established policy that it does not make bill adjustments for leaks or usage from the customer's side of the meter. Ms. Lang then reported on requests from Ms. Sueann Duarte, a District resident living at 2907 Carlisle Terrace Court, for the waiver of \$8.06 in late fees and Mr. Ken Byrd, a District resident living at 110 Copper Stream Court, for the waiver of \$11.21 in late fees. Ms. Lang explained that Ms. Duarte and Mr. Byrd submitted their payments through bank drafts conducted by their banking institutions and that their payments were not received timely by the Operator. Action was taken below.

Director Suchyta then inquired about concerns raised regarding the City's offices being closed during the District's billing due dates. In response, Ms. Lang stated that she was not aware of the City's offices being closed on District due dates, except for an emergency closure during Hurricane Harvey. She also reported that a lock box is available at all hours for customers to submit their water bill payments. The Board then requested that Ms. Lang provide a calendar of the City's office closures and the District's billing due dates.

After discussion, Director Suchyta moved to approve the Operator's Report; terminate service to those customers with delinquent accounts; deny Ms. Forde's adjustment request to her water bill; approve Ms. Duarte's request for waiver of a \$8.06 late fee; and approve Mr. Byrd's request for waiver of a \$11.21 late fee. Director Braswell seconded the motion, which passed unanimously.

MAINTENANCE OF RECREATIONAL FACILITIES

a. Report on work performed by Champions Hydrolawn;

There was no report.

b. Report on work performed by James King Construction;

There was no report.

c. Report on work performed by Lake Management Services, L.P.; and

There was no report.

d. Report on work performed by Brazos River's Edge Community Association, Inc.

There was no report.

ACTION LIST

The Board then reviewed the action list.

PUBLIC COMMENTS

The Board then opened the floor to public comments.

APPOINTMENT OF DIRECTORS

Mr. Cleveland then informed the Board that Director Braswell submitted his letter of resignation from the Board of Directors, effective at the end of the meeting. Mr. Cleveland then informed the Board that they could consider filling the vacancies created by the resignations of Directors Brady and Braswell. He noted that if the Board appointed Suzan Conkright Orr and David Smith to the vacant positions, all persons running for the Board at the May 5 election would be incumbents, the election would be uncontested and, therefore, could be canceled, saving the District money. Director Murray also noted that it would result in all five Board positions being held by District residents. Director Braswell moved to fill the vacancy left by Director Brady with Suzan Conkright Orr, effective at the end of the meeting; and fill the vacancy created by his resignation with David Smith, effective at the end of the meeting. Director Suchyta seconded the motion, which passed unanimously.

ADJOURNMENT

There being no further business before the Board, the meeting was adjourned.

(District Seal)




Vice President

LIST OF ATTACHMENTS TO MINUTES

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ACTION LIST

ATTORNEY

Mr. Cleveland will prepare and negotiate any necessary easements for the District's emergency contingency measures.

Mr. Cleveland will distribute the District Rate Order to the Board of Directors.

Olson & Olson will submit initial offer to property owners for easement acquisition.

DIRECTORS

Director Murray will obtain additional baseball field proposals.

COMMITTEES

Communications Committee

Communications Committee will commence review of web design proposals and make a recommendation to the Board.

ENGINEER

Costello will follow up on the District's request of an NRCS bank stabilization grant.

Costello will contact subcontractor/supplier to repair fence posts near nature park, where applicable.

Costello will work with contractor to resolve punch list items for Rio Vista Berm (i.e. the low spots on berm).

Costello will design sluice gate on TxDOT outfall at FM359 and Jones Creek.

Costello will follow up with James King regarding contact with property owner for installation of District drainage inlet.

Costello will advertise for bids for purchase of materials in connection with the District's emergency contingency measures.

Costello will solicit request for proposals from operators for installation of emergency contingency materials and training regarding same.

Costello will draft an operations manual for flood mitigation facilities.

Costello will draft the District's Bond Application for submission to the TCEQ with other District consultants as necessary.

OPERATOR

Ms. Lang will distribute a calendar of previous utility bill due dates.