

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 140

Minutes of Special Meeting of Board of Directors

September 19, 2017

The Board of Directors (the “Board”) of Fort Bend County Municipal Utility District No. 140 (the “District”) met in special session, open to the public, on September 19, 2017, at 6:00 p.m., at the Pecan Grove Baptist Church at 1727 FM 359, Richmond, 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:

Jack Morgan Brady	President
Harry Murray	Assistant Vice President
Rosa Coward	Vice President
Arden Myers	Secretary
John Braswell	Assistant Secretary

and all of said persons were present with the exception of Director Coward, thus constituting a quorum.

Also present during all or part of the meeting were Greg Frank and Ron Dechert of Costello, Inc. (“Costello”); Mike Arterburn of Utility Tax Service, LLC (“Utility Tax”); Howard Christian of the City of Richmond (“City”); Les Newton of Planned Community Developers Ltd. (“PCD”); Greg Lentz of FirstSouthwest, a division of Hilltop Securities (“FirstSouthwest”); Commissioner Vincent Morales, Jr. of Fort Bend County Precinct 1; Jeanne McDonald, Joel Cleveland and Olivia Galvan of Jeanne H. McDonald, P.C.; and a large number of members of the public.

WELCOME

Director Brady called the meeting to order and thanked everyone for attending. He then introduced himself as the President of the District’s Board of Directors and further introduced the other Board members and the District’s consultants. Ms. McDonald then introduced Commissioner Vincent Morales, Jr. of Fort Bend County Precinct 1 and thanked him for attending the meeting. Ms. McDonald then outlined the meeting agenda and asked that questions please be held until the conclusion of the presentations. She noted that the District’s Board regularly meets once per month but that, due to Hurricane Harvey, the District is splitting its regular meeting this month into two parts; with tonight’s meeting focusing on Hurricane Harvey, its impacts, and actions that can be taken to address future flooding risk; and a meeting the following week to address the routine business of the District.

HURRICANE HARVEY

This item was taken out of order.

- a. Receive report on District activities related to Hurricane Harvey and on the status of the District's facilities and adverse impacts on the District from Hurricane Harvey;

Ms. McDonald then introduced the District's engineers, Mr. Greg Frank and Mr. Ron Dechert, who provided a report on the status of the District's facilities and the adverse impacts on the District from Hurricane Harvey, a copy of which is attached hereto.

Mr. Frank reported that the District's flap gate on its storm sewer outfall into the Brazos River was inspected prior to the storm and that it functioned as intended during and after the hurricane. He stated, however, that inspection of the District's facilities after the storm identified a sinkhole downstream from the outfall where the outfall pipe may have separated, requiring immediate repair. He recommended that the District approve a contract with Crostex Construction Inc. for emergency repairs of the sinkhole for an estimated cost of \$25,000. Action was taken below.

He then reported that the District experienced record breaking rains for several days and three and a half days of river elevations above 54.5 feet in the aftermath of Hurricane Harvey, causing flooding within the District. He then reported on the engineering history of the District's efforts to construct a replacement berm on Fort Bend County Municipal Utility District No. 145 ("FBMUD145") land, noting that, just before the storm, the District's engineers submitted additional modeling requested by Fort Bend County in connection with the County's review of the new berm alignment requested by FBMUD145. Ms. McDonald then reported that Commissioner Morales spoke with the County Engineer and that the County Engineer has signed off on the construction plans for the berm. She stated that only FBMUD145's approval is now required to begin construction. Mr. Frank then reported that the berm is not a complete solution to the risk of flooding from the Brazos River and will not be recognized by FEMA or alter the floodplain maps, noting other avenues for water to enter the District during a storm of the magnitude of Hurricane Harvey. In response to questions from the Board, Mr. Frank reported that the berm is worth constructing as it provides some protection during a narrow range of river conditions but that it is not a complete solution to provide protection in the event of a 100-year event or larger.

Mr. Frank then reported on District efforts leading up to Hurricane Harvey to use tiger tubes or sandbags along the old and new proposed berm alignments in an attempt to mitigate District flooding. Ms. McDonald reported that FBMUD145 would not consent to the District's use of tiger tubes on FBMUD145 property along the initial route proposed by Mr. Frank. She stated that FBMUD145 might have granted permission to place a temporary flood barrier along their newly proposed berm alignment; however, the permission was never granted and logistical and safety concerns precluded further consideration of that alignment.

- b. Receive report on negotiations regarding reconstruction of the berm on FBMUD 145 land;

Ms. McDonald then reported on the history of the District's berm replacement efforts with FBMUD145 and the need for the District to continue negotiations with

FBMUD145 for the establishment of an easement that would allow for the construction of a replacement berm on FBMUD145 land.

- c. Consider and approve actions and/or associated repairs of such facilities, as needed;

Mr. Dechert then reported that the post-event inspection also identified the collapse of a segment of the District's berm just north of the District's boundaries. He further reported that the collapse was approximately 50 feet wide by 30 feet deep and that surveying of the site is ongoing. Mr. Dechert then requested Board authorization to assess the damage and begin design work for the necessary repairs. Director Braswell then moved to authorize the District's engineer to assess the damage to the berm and begin design work for the necessary repairs. Director Murray seconded the motion, which passed unanimously.

Director Myers entered the meeting at 6:25 p.m.

Mr. Dechert then requested approval of emergency repairs of the sinkhole, discussed above, by Crostex Construction Inc. at an estimated cost of \$25,000. Ms. McDonald then requested Board authorization to make a request to the Texas Commission on Environmental Quality ("TCEQ") for approval of the contract for the emergency repairs should the cost of repairs exceed \$25,000. Director Braswell then moved to approve contracting with Crostex Construction Inc. for the emergency repairs of the sinkhole and authorize the submission of a request to the TCEQ for approval of the contract for emergency repairs should the project costs exceed or be anticipated to exceed \$25,000. Director Murray seconded the motion, which passed unanimously.

- d. Consider authorizing requesting proposals for or advertising for design and/or construction services related to facility repairs or for services for needed actions, as needed;

Mr. Dechert then reported on the Brazos River bank erosion along the western boundary of the District. He reported that the District has lost approximately 60 feet of the high bank as a result of the 2016 and 2017 floods. He then recommended that the Board solicit statements of qualifications from river geomorphologist to assist in evaluating the District's options for stabilizing the river bank. Director Braswell moved to authorize the District's engineer to solicit statements of qualifications from river geomorphologists. Director Murray seconded the motion, which passed unanimously.

- e. Discuss emergency preparedness; and

Ms. McDonald then reported that the easement the District is negotiating with FBMUD145 is intended to permit the District to install temporary flood barriers along the easement tract in the event another storm threatens to cause the Brazos River to top its banks again before the permanent berm can be completed. She further explained that the District does not currently own land or have permission to use land that would allow the District to cut off water topping the Brazos adjacent to FBMUD145. Mr. Frank then explained that the replacement berm would provide some protection during a narrow

range of river conditions but that it is not a complete solution. He also reiterated that the berm is not a certifiable levee and that the flood plain status of River's Edge will not be affected by the construction of the berm. In response to questions from the Board, Mr. Frank further stated that Costello will be investigating potential solutions to flood water flowing into the District from Jones Creek, down FM 359 and elsewhere. Director Braswell moved to authorize the District's engineer to investigate mitigation solutions from flood water flows into the District. Director Murray seconded the motion, which passed unanimously.

f. Authorize other appropriate action.

No additional action was taken.

### PROPERTY REAPPRAISAL

Ms. McDonald then reported that Governor Greg Abbott declared Fort Bend County a disaster area due to Hurricane Harvey, which allows local governments, including the District, an opportunity to request reappraisals of properties damaged as a result of the hurricane. Mr. Arterburn then explained the procedures and costs involved with requesting a reappraisal from the Fort Bend Central Appraisal District. He also stated that Fort Bend County and the Fort Bend County Drainage District have already requested reappraisal of property within their respective boundaries. In response to an inquiry from the Board, Mr. Lentz stated that he has no recommendation regarding the District requesting a reappraisal of properties in the District affected by flooding. After discussion, Director Murray moved to adopt a resolution requesting that the Fort Bend Central Appraisal District reappraise properties in the District damaged by Hurricane Harvey. Director Braswell seconded, which passed unanimously.

### TAX RATE

Mr. Lentz then introduced himself and reminded the Board that, at its August meeting, it approved publishing a notice with an anticipated combined District tax rate of \$1.15 for tax year 2017. Ms. McDonald then stated that the District's public hearing on the tax rate had to be cancelled due to the change in time and location of today's special meeting. Mr. Lentz then presented his amended tax rate recommendation for the District's 2017 taxes based, in part, on the aftermath of Hurricane Harvey. He recommended that the Board set the District's total tax rate at \$1.25 (i.e., \$0.75 debt service tax and \$0.50 maintenance tax), being the same tax rate the District levied in 2016 and essentially equal to the parity tax rate of \$1.2466. He then explained the procedure for setting the District's tax rate. Discussion then ensued regarding the several known and possible unknown District expenses the District has and will incur due to Hurricane Harvey. After discussion, Director Braswell moved (a) that the Board approve an anticipated debt service tax rate of \$0.75 and maintenance tax rate of \$0.50, for a total 2017 tax rate of \$1.25 per \$100 of valuation; (b) that the Board set the public hearing for the District's next regular meeting; and (c) that the Board authorize the tax assessor-collector to publish notice as required by law. Director Murray seconded the motion, which passed unanimously.

## ENGINEER

There was no additional report.

## HURRICANE HARVEY

This item was revisited.

- a. Receive Report on District activities related to Hurricane Harvey and on the status of the District's facilities and adverse impacts on the District from Hurricane Harvey;

Ms. McDonald then introduced Mr. Christian with the City of Richmond, who provided a report on the status of the District's facilities and the adverse impacts on the District from Hurricane Harvey. Mr. Christian reported that the City's facilities sustained minor damage and that safety measures required the City to shut down the District's lift stations temporarily.

## APPOINTMENT OF DIRECTOR

Mr. Newton then requested to address the Board regarding resignation and appointment of Directors to the Board. He explained that he called Ms. McDonald to ask if there was a way to accelerate the change to migrating resident directors expected in the 2018 election, and she advised if directors resigned, the Board could replace them with eligible residents. He stated that the District's Directors were contacted individually and asked to step down to allow for more residents to serve on the Board. He also stated that the Brazos River's Edge Community Association ("BRECA") and the District's resident director, Mr. Harry Murray, were consulted on possible candidates to fill the vacancies being requested. Director Murray then presented his criteria for appointee recommendations to the Board and reviewed the qualifications of his nominees: Janice Suchyta and Gene Tomas. After discussion, Director Braswell moved to accept the resignations of Directors Coward and Myers effective at the end of the meeting, to appoint Janice Suchyta to fill the vacancy left by Director Myers for the remainder of the position's unexpired term, to appoint Gene Tomas to fill the vacancy left by Director Coward for the remainder of the position's unexpired term, to accept bonds, oaths of office, and sworn statements of Ms. Suchyta and Mr. Tomas, and to approve a new District Registration Form. Director Myers seconded the motion, which passed unanimously.

## PUBLIC COMMENTS

The Board then opened the floor to public comments.

A resident inquired about the use of tiger dams along DRS property. In response, the District's engineers stated that using DRS property, without also using FBMUD145 land, is not feasible as the berm still would need to tie into the high ground in FBMUD145.

A resident then inquired about the District's ability to provide better drainage. In response, the District's engineers stated that the suggestion will be taken under advisement.

A resident then inquired about the height of the replacement berm in context to the original berm height. In response, the District's engineers stated that the replacement berm would have a height of 87 feet.

A resident then inquired about the District's contingency measures and the ability to raise the lift stations. In response, Mr. Christian stated that it may be possible to raise the lift pumps.

Director Myers left the meeting at 7:16 p.m.

A resident then commented on her experience from the District's two flooding events. The resident also inquired regarding the loss of the District's berm being caused by the lack of a berm on FBMUD145 land. In response, Mr. Dechert said that it was not a factor. He also reported that the blowout occurred after the river had receded.

A resident then inquired about the bank erosion. In response, Mr. Dechert stated that the first river event may have caused 30 feet of high bank erosion and that the latest river event caused an additional 30 feet of erosion. He stated that further surveying is being conducted.

A resident then inquired about future bank erosion. In response, Mr. Dechert stated that additional erosion could be expected in another river event.

A resident then inquired about District actions taken to mitigate flooding leading up to and during Hurricane Harvey. In response, Ms. McDonald stated that several calls were made between the District's engineer and attorney and the engineer and attorney for FBMUD145 regarding the use of tiger tubes and sandbags to construct a temporary berm; however, as discussed above, FBMUD145 did not grant permission and mounting logistical and safety concerns resulted in the effort being called off. She also stated that members of the Board were briefed regarding the flood mitigation efforts, but she could not recall specific calls and times.

A resident then inquired regarding the resignations of District Directors and the qualifications of nonresident Directors still serving on the Board. In response, Ms. McDonald asked each nonresident Director to comment on their qualifications. Director Brady then stated his qualification to serve on the Board. Director Braswell then stated his reasoning for declining to step down from the Board when asked.

A resident then inquired regarding the height of the replacement berm. In response, Mr. Dechert stated that the berm height was determined by the corresponding height of the tie in points, 87 feet.

A resident thanked the Board for holding an evening meeting and commented on the community's interest and ability to assist the District in its efforts to mitigate flooding.

A resident then inquired regarding the size of the collapse of the District's berm. In response, Mr. Dechert stated that the collapse was 50 feet wide by 30 feet deep.

A resident then inquired regarding bacteria testing in the District's lakes. In response, Director Murray stated that he would follow up on the issue.

A resident then inquired regarding preemptive efforts to mitigate future flooding. In response, the District's engineers stated that they will be investigating additional options and report back to the Board.

A resident then inquired about the potential for liability in taking measures to protect one's personal property from flooding at the expense of someone else's property. In response, Ms. McDonald stated that such actions could result in a law suit.

A resident then inquired about depth of the District's lakes and the ability to expand them to retain additional water. In response, Mr. Dechert stated that it is not feasible to expand the lakes and doing so will not address the flooding issue caused by the river topping its banks.

A resident then inquired about the report of the District's study on erosion. In response, Mr. Dechert stated that the District has not conducted a study and that the Board authorized the request for statements of qualifications for a river geomorphologist at this meeting.

A resident then commented that the District cannot afford to pay for a levee and the need to work on a regional solution.

Commissioner Morales then commented on the recent Hurricane and his willingness to help the District in any way he can. He also stated that the County has completed all of the steps on its end to approve construction of the replacement berm on FBMUD145 property, but the County has no authority to compel another governmental entity to act.

A resident the inquired about flooding risk from construction on Highway 90 on the District. In response, Mr. Dechert stated that the District does not oversee that construction project or have the authority to review and comment on the construction plans.

A resident then commented that the District needs to provide more communication to residents.

A resident then commented on a statement by the District's Developer as disrespectful.

A resident then inquired about the District establishing a website.

#### EXECUTIVE SESSION

The Board did not convene in executive session.

#### ADJOURNMENT

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



  
Assistant Secretary

LIST OF ATTACHMENTS TO MINUTES

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