

**EMERALD BAY MUNICIPAL UTILITY DISTRICT**  
**FINAL AND APPROVED**  
**MINUTES OF REGULAR MEETING**  
**MARCH 20, 2006**

The Board of Directors of the Emerald Bay Municipal Utility District met in regular session on Monday, March 20, 2006, at 10:00 a.m., at the Emerald Bay Club, Emerald Bay, Bullard, TX 75757. Present were Directors Jerry Ball, Bill Harris, Ray Hartley, Deena Johnson, and Howard Rutherford. Also present were eight other Emerald Bay residents.

The meeting was officially called to order by President Bill Harris at 10:00 a.m. First on the agenda was discussion of the drafted Minutes from the February 20 regular meeting. **A motion to approve the Minutes as written was made by Director Rutherford (seconded by Director Hartley) and approved by unanimous consent.**

Director Hartley presented the financial report for the period ended February 28, 2006. Mr. Hartley received a letter from Southside Bank notifying the Board of outstanding agent fees in the amount of \$1,500. Mr. Hartley will contact the bank's trust officer for clarification of this charge. Overall, the District's expenses are under budget and YTD income exceeded expenses by \$50,000. **A motion to approve the February financial report was made by Director Rutherford (seconded by Director Johnson) and approved by unanimous consent.**

Director Hartley offered additional discussion on the Columbian TecTank pay request in the amount of \$36,347.50 for the ground storage tank to be constructed at well site #1. **Director Hartley made a motion (seconded by Director Ball) to pay the invoice in the amount of \$36,347.50 which was approved by unanimous consent.**

An update of District operations was given by Director Rutherford. Mr. Rutherford noted that a new pump and control switch were installed in lift station #5 (South Bay) and a contactor was replaced in lift station #3. It was also noted that dirt work will be necessary to correct damage by nutria (small aquatic rodents) undermining the retaining wall (embankment) of the retention ponds at MUD plant. Wilkins Contracting will fill in eroded areas along water distribution pipeline route (including the boat/trailer storage area near the elevated tank) and remove some trees in the wild area. Director Ball advised the remaining black chain link fence repairs will be completed in conjunction with the fencing of well site #1. Director Harris will oversee the annual state inspection of the District's sewer plant on March 21. Director Rutherford advised that Griffith Electric will rewire the disconnects on all lift stations on March 24.

In discussion of insurance requirements for contractors, Director Hartley explained that all contractors working for the District must provide evidence of liability

insurance (require \$1,000,000 coverage) and workman's compensation for their employees. Mr. Rutherford will request Certificate of \$1,000,000 liability insurance from present contractors, Jacobe Brothers and Russell Excavating. The District must have liability insurance on all workers. Mr. Rutherford suggested the District insure day laborer, Gene Chamberlain, and two helpers for 90 days (estimated time to complete present project). Director Hartley will research liability insurance to cover the District's directors (specifically Directors Ball, Harris and Rutherford) and day laborers.

Director Johnson was directed to contact a local New Holland tractor dealer to determine the fair market value of the 35HP tractor offered by Director Ball. The 2003 Model TC35S New Holland tractor has both backhoe and front end loader attachments. A mower attachment (valued at \$1,000) could be used to mow both water well sites and the MUD plant area. Director Johnson will contact the New Holland dealer in Longview to determine the fair market value of the tractor. If the offer is acceptable to Director Ball, the purchase will be split between the sewer and water funds. **A motion made by Director Rutherford (second by Director Johnson) to purchase the tractor from Director Ball for the fair market value was approved by unanimous consent.**

In accordance with State instructions, Secretary Johnson presented the Certification of Unopposed Candidates and the Order of Cancellation to President Harris. **Upon motion of President Harris (seconded by Director Rutherford), the Board unanimously approved cancellation of the election of May 13, 2006, and the election of the two unopposed candidates (Hartley and Rutherford).** A copy of the Order of Cancellation will be posted on Election Day at the polling place.

Director Hartley presented a letter dated March 13, 2006, from Michael R. Farrell, Vice President of Southern Utilities, regarding the transfer of water service and customers to the Emerald Bay MUD. In order to establish a transfer date, Director Hartley recommended a critical path schedule of remaining stages of water distribution project. **Director Rutherford made a motion (seconded by Director Harris) to prepare a critical path schedule for project completion and establish final meter reading for September 2006. This motion was amended by Director Hartley to review the critical path with Southern and negotiate a changeover as of meter reading date in September 2006. The revised motion was approved unanimously.** As an indication of good faith, a letter of reply addressed to Mr. Farrell would state the District's expected completion date and extend an invitation to tour the facility for a status update.

Director Hartley reviewed the water project financial status as of February 28. Mr. Hartley noted the net expenditures are \$1,276,350 with \$647,173 remaining to complete the project. Total funds available for the project is \$719,956. Director Harris advised the District may buy a small parcel of land from Terry Cowan to enlarge well site #1 for ease of ingress and egress of large equipment.

After a short break, President Harris reconvened the meeting and introduced legal counsel, Glen E. Patrick, and engineer, Kirk Bynum. The District asked Mr. Patrick to

respond to the legality of the District disconnecting water service to any resident for non-payment of their final Southern Utilities billing. Mr. Patrick advised the District should pass a resolution requiring payment of all current water service billings by the District and all billings from any other water service provider. Mr. Harris read the proposed Resolution (see attached) amending Section Four of Regulation 2-2 authorizing disconnection of services for failure to pay former water service provider. **A motion to accept the Resolution regarding notice of delinquency and subsequent disconnection of water/sewer service was made by Mr. Harris and seconded by Mr. Hartley. The motion passed by majority vote in favor (Mr. Ball abstained).**

Mr. Hartley noted that one sewer customer residing in Emerald Bay was three years in arrears. The customer has repeatedly declined to accept certified mail notifications of disconnection of service. Mr. Patrick suggested that Mr. Hartley send notices by both certified mail and regular mail. Mr. Hartley suggested notice of 10-day period before disconnecting service after the District has made every reasonable attempt to notify the customer. Patrick noted that, notwithstanding the fact that account is delinquent, effective 10 days from the date of this notice service will be terminated.

Discussion followed regarding the collection of deposits for new water service connections. Director Hartley suggested that deposits not be required as the Emerald Bay Club conducts credit checks on all new members, and water service is billed on the monthly Club statement. In the event non-payment results in disconnection of service, the District should consider a deposit for re-connection of service. Mr. Patrick advised the District should require a Water Service Agreement and a Sewer Service Agreement be executed by all customers.

Mr. Harris read the Ameritank letter dated February 14, 2005, addressing the relocation of the elevated storage tank site. Mr. Harris advised the location was changed to allow continued sludge dispersment on the field near the MUD plant. However, no change orders were ever issued by Ameritank in regard to location change.

Initial visual and radiographic inspections by Bonded Inspections of Dallas showed porosity, slag and non-fusion of the welds on the standpipe and cone section. In a meeting on February 8, Ameritank agreed to extend a ten-year bonded warranty on the elevated storage tank for defects in workmanship and materials. However, Ameritank was not able to secure such a warranty. Director Ball suggested escrowing the retainage amount (\$19,209.00) in a bond with the interest and principal payable to Ameritank upon completion of project.

Mr. Glen Patrick addressed the change order issue noting that the contractor (Ameritank) has not complied with the contract regarding the change of location. The Courts would enforce the terms of the contract. Mr. Patrick also responded to legality of using retainage to resolve weld issues. Mr. Patrick recommended grinding down structural welds to determine if welds meet both contract requirements and AWWA standards of the industry. Mr. Patrick will review the contractual agreement with Ameritank and advise Mr. Bynum accordingly.

Kirk Bynum estimated the cost of additional testing between \$5,000-\$10,000. If the x-rays prove welds are within specifications, the District will bear the cost of the inspections. Mr. Bynum will write a letter giving notice to the bonding company that if weld inspections are satisfactory, the District will pay Ameritank. Otherwise, retainage will be used to resolve the issue. Mr. Harris asked if the bonding company would be responsible for only the amount of damages. Mr. Hartley suggested limiting expenditure liability for testing. **Mr. Harris made a motion that Kirk Bynum would (1) contact Bonded Inspections of Dallas to get an estimate of the cost of testing the base cone and compression ring welds (Level 1 and Level 2) and (2) notify the bonding company. All directors were polled as to conducting additional testing with unanimous approval.** The Board will hold a special meeting to act on the procedure.

There being no further business, the meeting was adjourned at 12:45 p.m. upon motion duly made (Hartley) and seconded (Ball) with unanimous consent.

Respectfully submitted,

Deena M. Johnson  
Secretary

William F. Harris  
President

Attachments:

Financial Report for 2/28/06  
Water Project Status 2/28/06  
Columbian TecTank Pay Request for \$36,347.50  
Water Project Status Report  
Southern Utilities Letter dated 3/13/06  
Brannon Corp. Letter dated 2/23/06  
Resolution Amending Regulation 2-2  
Certification of Unopposed Candidates  
Order of Cancellation