

**EMERALD BAY MUNICIPAL UTILITY DISTRICT**  
**FINAL AND APPROVED**  
**MINUTES OF REGULAR MEETING**  
**APRIL 16, 2007**

The Board of Directors of the Emerald Bay Municipal Utility District met in regular session on Monday, April 16, 2007, at 10:00 a.m., at the Emerald Bay Club, Emerald Bay, Bullard, TX 75757. Present were Directors Bill Harris, Ray Hartley, Deena Johnson, and Howard Rutherford. Only four Emerald Bay residents attended the meeting.

President Harris called the meeting to order at 10:01 a.m. and asked for comments on the Minutes of regular monthly meeting held on March 19 and the two special meetings held on March 24 and March 29. **Director Hartley made a motion to approve the said Minutes as written. Upon second by Director Rutherford, the Minutes were accepted by unanimous consent.**

The financial update was presented by Treasurer Hartley with discussion of the District's sewer and water system operations, statement of cash flows (\$367,131 cash on hand), and review of checks written as of March 31. **Upon motion (Rutherford) and second (Harris), the March 31 financial statements were approved by unanimous consent.**

Director Rutherford reviewed the administration of the member/member utility transfer fee (\$150) presently split equally between the selling member and the purchasing member. The Emerald Bay Club HOA has difficulty collecting the \$75 utility transfer fee from the selling member and, therefore, the purchasing member must pay the entire (\$150) transfer fee. Marian Gardner, the Club Office Manager, recommended the District bill the entire transfer fee of \$150 to the purchasing member as the District has no deposit from which to withhold the selling member's fee. **Director Hartley made a motion to bill the member/member utility transfer fee of \$150 to the purchasing member only. Upon second by Director Rutherford, the Board voted unanimous approval of the change.** Director Rutherford will revise the water/sewer transfer fee Form #2006-4 to reflect the above change and notation of the four existing homes which must connect to the District's wastewater collection system upon change of ownership.

Director Johnson reviewed the process and presented the results of the bid solicitation for mowing of the District's properties. Bid letters were sent to five (5) contractors and three legitimate bids were returned by Big K Mowing (Simpson), Mora Lawn Service, and Roper Services (Chamberlain). The Board agreed it would be more cost effective to award the contracts on an eight (8) month basis to cover the growing season. The properties were divided into two separate contract areas: (1) lawn mowing of well site #1 and well site #2, the elevated water storage tower, and the District's plant office; and (2) field mowing of the wastewater treatment/sludge fields and two effluent

ponds. The lawn mowing contract was awarded to Mora Lawn Service for \$2,400 and the field mowing contract was awarded to Roper Services for \$80/mowing (\$1,280 for eight months). The District will provide workers' compensation insurance at a cost of \$6.50/\$100 of coverage or approximately \$156 more per contractor. These new contracts save the District \$2,400 annually and the outlay of capital dollars for equipment is recovered in less than a year. Additionally, this new approach helped the HOA because approximately 40 percent of the capital dollars goes to the Club to purchase a bush hog not being used anymore. **Director Hartley made a motion to accept the bids of Mora and Chamberlain and award the contracts accordingly. Said motion was seconded by Director Johnson and the motion carried by three votes in favor (Hartley, Johnson and Harris). Director Rutherford chose to abstain from voting.** Director Johnson will prepare the appropriate contracts for execution by the District and the Contractor.

A formal letter of notification will be delivered to Kevin Simpson (dba Big K Mowing) advising the outcome of the bidding process and termination of any prior mowing contracts or agreements with the District even though Mr. Simpson attended the meeting in person. Mr. Simpson verbally advised the Board that no other mowing contractor would be allowed to cross his father's (Vince Simpson) property. It is therefore noted that the District has a legally binding easement granted by Vince Simpson for ingress and egress to well site #1.

President Harris noted the District's interest in seeing that the subdivision's covenants are maintained and enforced. The community's property values must be protected. If the values drop, the tax base will drop presenting the District with a serious long term problem. From the people in other districts he has discussed the covenant issue with propane for residential use does not affect the tax base as long as there are no safety or cosmetic issues involved. Other issues (i.e., fences and out-buildings) do affect the tax basis because they can degrade the overall appearance of the District. Mr. Harris noted that the Anderson Mill Municipal Utility District near Austin has successfully restored many of the various different units' covenants that are within their municipal district through legal action to include summary judgments and jury trials. These actions were taken under the Texas Water Code Statute §54.237:

**"ENFORCEMENT OF REAL PROPERTY RESTRICTIONS."**

(a) As used in this section, "restriction" means a limitation on the use of real property that is established or incorporated in properly recorded covenants, property restrictions, plats, plans, deeds, or other instruments affecting real property in a district and that has not been abandoned, waived, or properly rescinded.

(b) A district may take all actions necessary to enforce a restriction, including the initiation, defense, or intervention in litigation or an administrative proceeding to enjoin or abate the violation of a restriction when, in the reasonable judgment of the board of directors of the district, enforcement of the restriction is necessary to sustain taxable property values in the district.

(c) In addition to damages which a district is entitled to recover, a district shall be entitled to recover its costs and

reasonable attorney's fees when a district is the prevailing party in litigation or an administrative proceeding to enforce a restriction.”

The District has adopted policies and procedures governing the provision of non-standard water and/or wastewater service for subdivision development outside of the District's certificated area. A substantive statement of said policies is being published in the *Bullard Banner* for two consecutive weeks and will become effective on April 23, 2007. The District initiated these rules to safeguard the community from bearing the cost to expand or upgrade the existing water and/or wastewater system facilities to service future development. Section 13.243 of the Texas Water Code states that a retail public utility must provide service to an area within one-quarter (1/4) mile of its certificated boundaries if that area is not receiving similar service from another retail public utility. Director Harris read an amendment to the Chapter 7 Non-Standard Service rules (see attached) regarding variances and amendments thereto. **Upon motion (Hartley) and second (Rutherford), the amendment was approved by unanimous consent.** The amendment will likewise be published in the *Bullard Banner* for two consecutive weeks prior to becoming effective.

Director Rutherford gave a brief overview of the District's field operations. A hole or washout has appeared at the intersection of North Bay Drive and Williamsburg at Park Ridge. Rainwater may be entering the sewer system through this washout so repairs will be coordinated through the Club Board's Streets/Architecture Chairman, Bill Gray.

Director Harris gave a brief overview of the District's plant operations. The chlorine building at the wastewater plant is fully operational as is the chlorine analyzer in the elevated water storage tower. Mr. Harris has asked BLOC to develop a long-range plan for the SCADA system. Expansion of the District's plant office facilities has been delayed by weather and prior commitments by Athens Building Systems. Mr. Harris asked Director Rutherford to check with the builder (Everett Hare) to verify that the sewer line at the new Cordova house is working properly.

The District must purchase a brush hog, sickle mower, and turning plow to maintain its wastewater treatment facilities. George Holmes (former Club Board director) advised the Club HOA owned a brush hog which had set unused for two years. The District will evaluate the condition of the brush hog and its adaptability to use with the District-owned tractor. If usable, the District will then negotiate with the HOA for the purchase thereof at an agreeable price.

Director Harris reviewed the project punch list and completion dates were updated for continuing projects. Director Johnson will prepare and publish a notice of the billing change for the member/member utility transfer fee (\$150) to the purchasing member only.

Discussion ensued regarding other matters affecting the District's services. Director Harris noted that resident, Jerry Ball, funded the drilling of a 245-foot exploratory well to determine the quality and quantity of water available on the District's

acreage near CR 344. As the GPM volume was lower than required for the golf course irrigation system, the well was plugged and abandoned. Mr. Harris advised the Club should be drilling a water well now to service the golf course before water conservation districts control the number of wells drilled, the depth drilled and the volume of water allowed to be pumped from those wells.

Mr. Harris obtained a copy of the well report for the original well drilled on Manziel's property on the other side of CR 344. The well was drilled to 740 feet and produced 366 GPM. The well was abandoned due to a high iron oxide content—it was not due to a high salt content.

Mr. Harris addressed the EPA issue that faces the golf course maintenance dumpsite used to dispose of waste oil, pesticides, and other contaminants. There are two Smith County EPA officers patrolling the county noting such violations.

Glen Patrick, the District's legal counsel, sent a letter to landowner, Dean Fountain, requesting a 473.41-foot utility easement along his property line for construction of a pipeline to connect the third well site to the ground storage tank at well site #1. Mr. Fountain was offered \$1.86 per linear foot of right-of-way or \$880.54 for a utility easement. The District has already obtained an easement granting ingress and egress to the property.

Lastly, a Tyler company has offered a plan to lease a telemetry system. The telemetry system has the capability to read the water meters, provide high-speed internet service, provide surveillance of well sites, etc. Mr. Harris has also approached Sprint/Nextel with regard to leasing space on the District's water tower for cell phone antennas.

There being no further business, the meeting was adjourned at 11:39 a.m. upon motion duly made (Hartley) and seconded (Harris) with unanimous consent.

Respectfully submitted,

Deena M. Johnson  
Secretary

William F. Harris  
President

Attachments:  
Financial Statements 3/31/07  
Sec. 7.14 Amendment  
Project Punch List