

MINUTES OF MEETING OF BOARD OF DIRECTORS  
FLAMINGO ISLES MUNICIPAL UTILITY DISTRICT  
OF GALVESTON COUNTY, TEXAS

THE STATE OF TEXAS §  
COUNTY OF GALVESTON §  
FLAMINGO ISLES MUNICIPAL UTILITY DISTRICT OF §  
GALVESTON COUNTY, TEXAS §

The board of directors (the “Board”) of Flamingo Isles Municipal Utility District of Galveston County, Texas (the “District”) met in special session, open to the public, at Harborwalk Yacht Club, 1301 Harborwalk Boulevard, Hitchcock, Texas, on July 7, 2011, at 12:00 p.m.; whereupon the roll was called of the directors, to-wit:

Arnold J. Cross, Jr., President  
Ronald Ray Holley, Vice President  
Richard Couch, Secretary  
Michael L. Andries, Treasurer  
Donald P. Tarpey, Assistant Secretary

All members of the Board were present except Director Couch. Director Holley entered the meeting in progress. Also attending all or portions of the meeting were Mr. William Neumann of the Midway Companies; Mr. Bob Ideus of Municipal Business Services, bookkeeper for the District; Mr. Tommy Lee of Assessments of the Southwest, tax assessor and collector for the District; Mr. Marcus Michna of Shelmark Engineering, LLC (“Shelmark”), engineer for the District; Mr. Mark Burton, C.P.A.; Ms. Kathleen Ellison and Ms. Carla Christensen of Fulbright & Jaworski L.L.P. (“F&J”), attorneys for the District; and Marian Cross, District resident. A sign in sheet is attached hereto as Exhibit “A.”

Notice of the meeting was posted in accordance with law at the locations and at the times shown on Exhibit “B” attached hereto. The meeting was called to order and the following business was transacted:

1. **Approval of Minutes of May 5, 2011.** Mr. Michna requested that the minutes be revised to reflect the updated contract amount for the dredging project, which is \$137,412. Upon motion by Director Andries, seconded by Director Tarpey, after full discussion and the question being put to the Board, the Board voted unanimously to approve the minutes as corrected.

Director Cross requested that F&J prepare a meeting follow-up/action list in conjunction with preparation of the minutes.

2. **Discussion regarding Public Comments from prior meetings.** Director Cross noted that there were no public comments from the previous meeting.

3. **Public Comments.** There were no comments from the public at this time.

4. **Discuss District Regulations on Bulkheads and Canals and any necessary action regarding same.** Ms. Ellison reviewed with the Board a draft letter to residents and a proposed formal policy in connection with District Regulations on Bulkheads and Canals, copies of which are attached hereto as Exhibit "C." Director Andries said the letter should emphasize that the reason the Board is adopting the regulations is to control the cost of maintenance and repair of bulkheading, which is paid for by property owner taxes. He also said the District should give property owners reasonable notice that they must remove encroachments on the bulkheads. In response to Director Tarpey's question, Ms. Ellison stated that the penalty amount of \$5,000 per violation does not include the cost to repair any damage to District facilities caused by an encroachment on the facilities.

Director Holley entered the meeting at this time.

After further discussion of the proposed letter and policy, the President asked Ms. Ellison to incorporate the suggested changes into the letter and policy and resend them to the directors. Ms. Ellison said that if the directors approved the letter and policy without substantial changes, she would ask Tommy Lee's office for mailing labels so the letter can be sent to all District property owners prior to the next meeting. The Board noted that the Policy, once adopted by the Board, should be posted on the District's website and included in the closing documents to inform new homeowners of the District's policy.

5. **Tax Assessor and Collector report and payment of bills.** The President recognized Mr. Lee, who reviewed with the Board the Tax Assessor and Collector's Report, a copy of which is attached hereto as Exhibit "D." Mr. Lee noted that 77.91% of the District's 2010 taxes had been collected as of June 30, 2011.

Mr. Lee reported that the Preliminary Assessed Valuation for 2011 was \$73,100,000, which assumes personal property values are the same as for 2010. Mr. Lee reported that the current taxable value is \$71,800,000. Mr. Lee reported that he expects to receive the certified tax roll by the end of the month.

In response to a question from the President, Mr. Lee stated that the developer/bank did not pay its outstanding taxes by June 30, 2011 and therefore the account has been turned over to the District's delinquent tax attorney for collection.

Director Tarpey questioned the taxable values for Harborwalk, Section 6 lots. Mr. Lee stated that if the Board believes the values of the Section 6 lots are substantially higher than indicated, the District can challenge the values with the Galveston County Appraisal District, but the 2011 values could not be challenged after May 31, 2011. Upon motion by Director Tarpey, seconded by Director Holley, after full discussion and the question being put to the Board, the Board voted unanimously to challenge the 2012 taxable value of the Harborwalk, Section 6 lots. Mr. Lee said the Appraisal District would require a written resolution, which he would bring to the next meeting.

Upon motion by Director Tarpey, seconded by Director Holley, after full discussion and the question being put to the Board, the Board voted unanimously to approve the tax assessor and collector's report and to authorize payment of the checks identified therein.

6. **Bookkeeper's report and payment of bills.** The President recognized Mr. Ideus, who presented to and reviewed with the Board the Bookkeeper's Report, a copy of which is attached hereto as Exhibit "E." Upon motion by Director Holley, seconded by Director Andries, after full discussion and the question being put to the Board, the Board voted unanimously to approve the Bookkeeper's Report and to authorize payment of the checks identified therein.

7. **Report on Application to TCEQ for Use of Surplus Funds.** Ms. Ellison reported that the Board previously approved the Application for Use of Surplus Funds in the amount of approximately \$88,000 in connection with the dredging project. Ms. Ellison reported that the Application will be filed with the TCEQ as soon as the District's engineer provides F&J with the necessary documents related to the dredging project.

8. **Engineer's report and any necessary action regarding bulkhead system repairs, bulkhead cap work and fill, and maintenance dredging project.** The President recognized Mr. Michna, who presented to and reviewed with the Board the Engineer's Report, a copy of which is attached hereto as Exhibit "F."

Mr. Michna reported that he has no design activities to report on this month.

Mr. Michna reported that Shirley and Sons Construction Company has completed the bulkhead system repairs. Mr. Michna reported that all completed work has been inspected and the contract has been paid in full (\$49,199.92).

Mr. Michna reported that Shirley and Sons Construction Company commenced work on the dredging maintenance contract previously awarded in the amount of \$137,142. Mr. Michna noted that Pay Estimate No. One in the amount of \$116,000 has been paid in full. Mr. Michna reviewed with the Board Change Order No. One in the amount of \$32,400. He stated that the increase is due to an unforeseen dredging quantity adjustment of 1,800 cubic yards. Mr. Michna explained that Shirley & Sons had to dredge one area in the channel three times because it kept silting in. Upon inquiry from the Board, Mr. Michna said the area now seemed stable. He said the estimate of the cubic yards of dredge material was based on a survey completed after Hurricane Ike and quantities could have changed since then.

The Board discussed how the contractor calculated the change order. Director Tarpey said the cost of the change order should be based on the additional time the contractor had to spend on the project and not the volume of dredge material removed. It was noted that the change order represents a 25% cost overrun. It was the consensus of the Board that Mr. Michna contact the contractor to further negotiate the cost of the Change Order.

Mr. Michna stated that the amount due for Pay Estimate Nos. Two and Three (excluding the Change Order and retainage) is \$21,042. Upon motion by Director Tarpey, seconded by Director Holley, after full discussion and the question being put to the Board, the

Board voted unanimously to authorize payment of \$21,042 in connection with the dredging maintenance contract.

Mr. Michna recommended payment of Invoice No. 005-042-011 from Dale Hardy/GeoSurv, LLC in the amount of \$1,885 for verification of dredging depths and channel markers. Upon motion by Director Andries, seconded by Director Holley, after full discussion and the question being put to the Board, the Board voted unanimously to approve and authorize payment of Invoice No. 005-042-011 in the amount of \$1,855 in connection with verification of the dredging depths and channel markers.

Mr. Michna reported that he is in the process of obtaining certification from the manufacturer that the bulkhead nuts in Harborwalk Section 6 are made of the stainless steel specified. Mr. Michna reported that QC Laboratories, Inc. (“QC”) was retained by the original contractor to perform testing on soil in Harborwalk, Section 6 in an effort to estimate the corrosiveness of the soil. Mr. Michna stated that QC determined that the soil in the northern areas of Harborwalk, Section 6 contains chemicals which most likely caused the corrosion of the bulkhead nuts.

Mr. Michna said he would get an estimate of the cost of necessary repairs to give to the bank. The President noted that the District has not yet accepted the facilities in Harborwalk, Section 6 for maintenance and any further work regarding the bulkhead nuts should be paid for by the bank. Upon inquiry from the President, Ms. Ellison reported that Mr. Pierce had not responded to the President’s letter requesting reimbursement to the District in the amount of \$12,000 for bulkhead repairs in Harborwalk, Section 6. Mr. Michna said he would prepare a formal report with recommendations for resolving the issues with the bulkhead nuts. Mr. Michna stated that he will also provide the report and recommendations to the developer for corrective action.

Upon motion by Director Tarpey, seconded by Director Holley, after full discussion and the question being put to the Board, the Board voted unanimously to approve the Engineer’s Report.

**9. Discuss and take any necessary action to transfer Private Aids to Navigation to District.** Mr. Michna reported that the Coast Guard still lists the previous developer as the owner of the private aids to navigation (buoys) in the channels. He said he is in the process of obtaining the previous developer’s approval in order to have the Coast Guard transfer the private aids to navigation (or buoys) to the District. The President noted that if the District does work on facilities, it should have ownership of them. Upon motion by Director Tarpey, seconded by Director Holley, after full discussion and the question being put to the Board, the Board voted unanimously to accept ownership of the private aids to navigation once transferred from the previous owner to the District.

**10. Discuss annual maintenance program and take necessary action in connection with same, including review of five-year plan prepared by District engineer.** Mr. Michna reviewed with the Board the revised five-year maintenance plan and budget, a copy of which is attached to the Engineers’ Report. Mr. Michna stated that five-year maintenance plan budget was revised to include future capital improvement and maintenance projects (i.e.

marina bulkhead repairs, bulkhead cap repairs, and maintenance dredging). The Board then discussed repairs needed at the marina and the substantial cost differential between the residential bulkhead repairs and the marina (commercial) bulkhead repairs. Director Andries asked if there is any way to tax the commercial owners at a higher rate than the residential owners of property due to the cost differential. Ms. Ellison said that the District can enact a 20% homestead exemption but she was unaware of any other ways to tax commercial property at a higher rate than residential property. She said she would ask the financial advisor to address the subject.

The Board discussed the ongoing problem with boats not obeying the City of Hitchcock's 'No-Wake' ordinance. Mr. Michna stated that he will obtain a copy of the ordinance. The President also noted that there needs to be additional signage installed to better alert people to the 'No-Wake' regulation. It was noted that the wakes contribute to the deterioration of the bulkheads, which increases the District's repair and maintenance costs. Mr. Michna stated that he will determine if the Ordinance addresses enforcement of the 'No-Wake' regulation.

Director Andries stated that he will coordinate with the District's financial advisor and bookkeeper to project the District's financial needs over a five year horizon.

11. **Report on easement with General Land Office.** Mr. Michna reported that Shelmark previously submitted the application to the General Land Office ("GLO") for approval of an assignment of the Coastal Easements from Harborwalk, L.P. to the District. Mr. Michna reported that the GLO issued Coastal Lease (CL20110003), the District has executed the Coastal Lease, and Shelmark provided the Coastal Lease Agreement to the GLO for execution.

12. **Discuss and take necessary action in connection with development of District website.** The President requested that Ms. Christensen obtain quarterly website traffic reports for the Board. Ms. Christensen stated that she will request a quarterly report from the Texas Network.

13. **Attorney's report.** Ms. Ellison reported on recent legislative activity and bills that affect the District.

14. **Developer's Report.** There was no Developer's report at this time. Mr. Michna reported that the City of Hitchcock said that repairs to Harbor Drive should commence on July 19, 2011.

15. **Set next meeting date.** It was the consensus of the Board to tentatively schedule the next Board meeting for Thursday, August 11, 2011 at 1:00 p.m. at 1301 Harborwalk Boulevard (Yacht Club).

16. **Document Public Comments for next Board meeting discussion.** The President noted that there were no public comments from this meeting to further discuss at the next meeting.

17. **Review of Consultant Contracts.** The President noted that the Board would remain to review the consultant contracts and excused the consultants from the meeting. The consultants, Ms. Cross and Mr. Burton left the meeting at this time. The Board then reviewed the consultant contracts.

Ms. Cross and Mr. Burton then returned to the meeting. The President asked Mr. Burton to make a proposal concerning the bookkeeping services his firm offers. Mr. Burton then presented to the Board his firm's qualifications and the services it offers.

Upon motion duly made and seconded, after full discussion and the question being put to the Board, the Board voted unanimously to terminate its contract with Municipal Business Services and to engage Municipal Accounts & Consulting as its bookkeeper.

THERE BEING NO FURTHER BUSINESS to come before the Board, the meeting was adjourned.

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The foregoing minutes were passed and approved by the Board of Directors on August 11, 2011.

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President, Board of Directors

ATTEST:

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Secretary, Board of Directors

(DISTRICT SEAL)