

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 March 24, 2011, at 1:00 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. Also attending all or portions of the meeting were Mr. William Neumann and Mr. Steve Pierce 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 McGrath of McGrath & Co., PLLC, auditor for the District; Ms. Kathleen Ellison and Ms. Carla Christensen of Fulbright & Jaworski L.L.P. (“F&J”), attorneys for the District; and members of the public. 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 January 27, 2011.** Upon motion by Director Couch, seconded by Director Andries, after full discussion and the question being put to the Board, the Board voted unanimously to approve the minutes as presented.

2. **Discussion regarding Public Comments from prior meetings (buoys/markers).** Director Cross noted that there were no comments from the public at the last Board meeting.

3. **Public Comments.** The President recognized Ms. Cross, who presented to and reviewed with the Board a letter regarding the establishment of rules and regulations for the operation of golf carts and enforcement of traffic rules and regulations within the District, a copy of which is attached hereto as Exhibit “C.” Ms. Cross inquired if the District has authority to establish traffic rules and regulations. It was noted that such item will be addressed at the next Board meeting, subject to further research by the District’s attorney.

In response to a question from Director Tarpey, it was noted that any interested person can request to be included on the District's agenda email distribution list by accessing the District's website and making his or her request on-line.

There were no further comments from the public at this time.

4. **Engage auditor for fiscal year ending March 31, 2011.** Mr. McGrath presented to and reviewed with the Board the proposed auditor engagement letter for the fiscal year ending March 31, 2011 and his firm's qualifications, copies of which are attached hereto as Exhibit "D." Mr. McGrath then reviewed with the Board the process of auditing the District's books. Mr. McGrath stated that the estimated auditing fees for fiscal year ending March 31, 2011 will be approximately \$9,100. He noted that the auditing fees have remained the same over the previous four years. In response to a question from Director Andries, Mr. McGrath stated that he will confirm that all outstanding issues arising from the transition to new directors have been resolved. 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 engage McGrath & Co., PLLC to perform the District's audit for fiscal year ending March 31, 2011 and to authorize the President to execute the auditor engagement letter.

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 and the Delinquent Tax Attorney's Report, copies of which are attached hereto as Exhibit "E." Mr. Lee noted that 72.79% of the District's 2010 taxes had been collected as of February 28, 2011.

The Board discussed the outstanding taxes shown on the delinquent tax roll in the name of Harborwalk, LP. It was noted that Harborwalk, L.P. no longer owned the property. Mr. Lee said that he would provide duplicate tax statements to Mr. Pierce.

The Board discussed the ownership of landscaping reserves/easements. Mr. Pierce said the reserves and easements were conveyed to the Harborwalk Property Owner's Association (the "POA").

Mr. Lee reviewed with the Board a letter from Mr. Kenneth Breaux (5 Oaktree) requesting waiver of penalty and interest in the amount of \$398.68, a copy of which is attached hereto as Exhibit "F." Mr. Lee stated that the District can only waive penalty and interest if the late payment was due to an error by the District or one of its agents. Upon motion by Director Andries, seconded by Director Couch, after full discussion and the question being put to the Board, the Board voted unanimously to decline Mr. Breaux's request for waiver of penalty and interest.

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. **Discuss and take necessary action in connection with the taxation of roads in Harborwalk.** Mr. Lee reported that he received the current tax rolls from Galveston Central Appraisal District ("GCAD") and the roads in the District are listed in four separate tax accounts. Mr. Lee stated that three accounts show ownership in the City of Hitchcock and one

shows ownership in Harborwalk LP. It was noted that Harborwalk LP transferred ownership of the roads to the POA by a General Warranty Deed, a copy of which is attached hereto as Exhibit "G." Mr. Lee stated that he will show the deed to GCAD and ask them to change the ownership of the roads now shown in the name of Harborwalk LP to the POA.

7. **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 "H."

Mr. Ideus assured the Board that he will transmit the Bookkeeper's Report to the Directors at least one week prior to Board meetings.

Director Cross informed Mr. Ideus that he is the only consultant who did not provide the Board with a copy of his contract for review. Mr. Ideus stated that he would email it to the Directors on the following day.

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.

8. **Adopt budget for fiscal year ending March 31, 2012.** The President recognized Mr. Ideus, who presented to and reviewed with the Board a draft budget for fiscal year ending March 31, 2012, a copy of which is attached hereto as Exhibit "I."

In response to a question, Mr. Michna stated that the Surplus Funds Application will be submitted to the Texas Commission on Environmental Quality ("TCEQ") when the dredging project is completed.

The Board discussed the amount budgeted for maintenance dredging and channel markers. Mr. Michna noted that the bids for the maintenance dredging project came in lower than expected. It was the consensus of the Board to reduce the amount budgeted for maintenance dredging and channel markers from \$185,000 to \$150,000.

The President stated that the bulkheads will require substantial maintenance and there is a need to reduce expenses. He noted that boats creating wakes and people watering their lawns too much cause damage to the bulkheads.

Upon motion by Director Andries, seconded by Director Couch, after full discussion and the question being put to the Board, the Board voted unanimously to approve budget for fiscal year ending March 31, 2012, as amended.

9. **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 "J."

Mr. Michna reported that the first phase of the bulkhead system repair project is complete and the Board previously approved and authorized payment of \$49,200 for the Pay

Estimates to Shirley & Sons Construction Company in connection with the project. Mr. Michna noted that the original contract indicated that 10 locations would be addressed, but the contractor was able to repair 21 locations. Mr. Michna reported that Shelmark conducted a bulkhead inspection on March 8, 2011 and identified 24 additional locations in need of repair. Mr. Michna said most of the repairs were at the connection between sheets or at the location of circulation pipes.

Mr. Michna noted that he submitted proposals for the phase two bulkhead repairs to three contractors and received one bid from Shirley & Sons Construction Company, a copy of which is attached to the Engineer's Report. Mr. Michna recommended award of the contract in the amount of \$49,199.92 for phase two of the bulkhead system repairs to Shirley & Sons Construction Company.

Mr. Michna said Shirley & Sons could start the second week of April. The President asked that the contractor not work on residential lots on weekends. Mr. Michna said he would provide a notice at all houses where bulkhead repairs will occur.

Mr. Michna reported that he provided a CD with the plats for Harborwalk, Sections One through Six to F&J and Director Cross. Mr. Michna also reported that he has received as-built drawings of District facilities other than the deadmen.

Mr. Michna shared with the Board correspondence from Dale Hardy, surveyor, suggesting that the District might want to obtain ownership of the channels and basin in Harborwalk before dredging them. Ms. Ellison said that the District already has a Navigation and Maintenance Easement which provides the District with authority to dredge the canals and basin.

Mr. Michna reported that he had discussed with Mr. Shirley the District's letter notifying him of the apparently defective material used on the bulkhead bolts in Harborwalk, Section 6. Mr. Michna noted that the bolts were specified to be stainless steel in the plans, but a preliminary analysis indicated they were not stainless steel. He said Mr. Shirley planned to investigate Section 6 when he is at Harborwalk.

The Board then discussed whether it should award the phase two bulkhead repair project to Shirley & Sons Construction Company prior to resolving the concerns on the Section 6 bolts. Mr. Michna said he would verify the materials used in the bolts for the phase two bulkhead repair project. Upon motion by Director Couch, seconded by Director Holley, after full discussion and the question being put to the Board, the Board voted 3-2 (with Directors Tarpey and Holley dissenting) to award the contract for phase two of the bulkhead system repairs to Shirley & Sons Construction Company in the amount of \$49,199.92.

Mr. Michna reported that he had discussed with Mr. Shirley and Building Products Plus the Board's letter seeking replacement of the bulkhead caps in Harborwalk, Sections 1 through 4 due to the defective coating. In response to a question, Mr. Michna reported that he was not able to find any warranty for the coating used on the bulkhead caps (21 Poly) and the manufacturer is no longer in business. Mr. Michna reported that Building Products Plus pressure washed the caps in an attempt to remove the defective coating, but any further

pressure washing will damage the bulkhead cap material. Mr. Michna reported that to re-coat the bulkhead caps will cost approximately \$100,000 (but all the previous coating would need to be removed). Mr. Michna stated that it would cost approximately \$1,500,000 to replace all the bulkhead caps with Trex Composite Wood. The Board discussed whether individual homeowners should replace or re-coat their bulkhead caps. It was the consensus of the Board that Director Holley inform the POA that homeowners seeking to make cap repairs or modifications must obtain District approval.

The Board discussed the need for a dredge disposal site. Mr. Michna reported that he previously had discussions with several landowners in the City of Hitchcock area regarding possible dredging disposal sites. Mr. Michna presented to and reviewed with the Board the contract the previous Board entered into with Shelmark for analysis and preparation of a maintenance dredging program for the Harborwalk canal system, a copy of which is attached to the Engineer's Report. Mr. Michna requested a special meeting with the Board prior to the next Board meeting to review possible dredging disposal sites and dredging construction costs.

10. Discuss annual maintenance program and take necessary action in connection with same, including review of 20-year plan prepared by District engineer. Mr. Michna reviewed with the Board the revised 20 year maintenance plan and budget, a copy of which is attached to the Engineers' Report. Mr. Michna stated that the budget was revised to increase the 2011 maintenance budget from \$7,500 to \$50,000 and decrease the 2012 maintenance budget to \$7,500. The President asked for a five-year budget. Mr. Michna stated that he will prepare a five-year projection of costs for Board review.

11. Review bids and award contract for maintenance dredging project. Mr. Michna reviewed with the Board the bid tabulation for the maintenance dredging project, a copy of which is attached to the Engineer's Report. Mr. Michna reported that the low bidder is Shirley & Sons Construction Company. Mr. Michna stated that the base bid is \$129,000 (for excavation and the placement of the excavated material). Mr. Michna stated that the contractor provided the options of installing floating buoy channel markers (\$384/marker) and installing fixed piling channel markers (\$525/marker). Extensive discussion ensued regarding what type of markers to have installed and how many. Upon motion by Director Couch, seconded by Director Holley, after full discussion and the question being put to the Board, the Board voted unanimously to award the contract for the maintenance dredging to the low bidder, Shirley and Sons Construction Company, in an amount not to exceed \$150,000, consisting of \$129,000 for dredging to the Intercoastal Waterway, \$7,543 for the installation of two floating buoy channel markers and 11 fixed piling channel markers, and an amount approved by the President upon recommendation by the engineer for relocation of the channel markers in the south channel and dredging in the canals.

Mr. Michna reported that he will scheduled a pre-construction meeting with the contractor for coordination with the Marina and boat traffic. Mr. Michna stated that he will be submitting the appropriate construction notifications to the U.S. Army Corps of Engineers for the maintenance dredging and the U.S. Coast Guard Aids-to-Navigation for nationwide permit.

12. Report on easements with General Land Office. Mr. Michna reported that Shelmark has 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. Director Couch stated that the assignment should be completed prior to approaching the GLO about permit fees.

13. **Discuss and take necessary action in connection with development of District website.** Ms. Christensen reported that the Texas Network has designed the District's website and the site is live. Ms. Ellison reported that a brief description of the District has been added to the website home page. The Board said they liked the presentation on the website. Ms. Christensen stated that she will also have the map depicting the phase two bulkhead repair locations and the notice of repairs prepared by Mr. Michna posted on the District's website.

14. **Attorney's report.** Ms. Ellison stated that she did not have any further to report to the Board.

15. **Developer's Report.** The President recognized Mr. Pierce, who stated that he did not have anything to report at this time.

16. **Review of Consultant Contracts.** The President stated that the Board should review consultant contracts to make sure they are reasonable. Discussion ensued. It was decided by the Board that the following Directors would review the following contracts and report back to the Board:

<u>Directors</u>	<u>Contract</u>
Andries and Holley	Tax Assessor and Collector Contract
Andries and Holley	Financial Advisor
Cross and Tarpey	Attorney
Cross and Couch	Engineer
Andries and Holley	Bookkeeper

17. **Discuss recent AWBD Conference.** Director Cross reported on his attendance at the AWBD Conference held in early February in Galveston, Texas. Director Cross stated that he believes it is worth the cost to maintain the District's membership in AWBD. Director Cross recommended the directors take turns going to one AWBD conference a year. In response to a question, Ms. Ellison stated that F&J will provide the Board members with information regarding the upcoming AWBD breakfast seminar to be held on Wednesday, April 13, 2011.

18. **Set next meeting date.** It was the consensus of the Board to tentatively schedule the next Board meeting for Thursday, May 5, 2011 at 1:00 p.m. at 1301 Harborwalk Boulevard (Yacht Club). It was the consensus of the Board to meet for a one-hour workshop at 12 p.m. on May 5, 2011 (prior to the Board meeting) with Mr. Michna to discuss disposal sites.

19. **Other Matters.** Director Tarpey asked about the status of repairs to Harbor Drive. He asked F&J to write a letter to the City on behalf of the Board expressing its concern with the lack of repair and the effect on property values.

Mr. Michna said he is still trying to confirm the bulkhead deadmen locations.

20. **Document Public Comments for next Board meeting discussion.** The President noted that there was one public comment to further discuss at the next meeting and requested that an item be included on the next agenda to discuss the District's authority regarding golf cart regulations and operator requirements on private roads within the District.

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 May 12, 2011.

President, Board of Directors

ATTEST:

Secretary, Board of Directors

(DISTRICT SEAL)