

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 September 29, 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 except Director Couch. Director Andries entered the meeting in progress. Also attending all or portions of the meeting were Mr. Mark Caldwell of Harborwalk; Mr. Mark Burton of Municipal Accounts & Consulting, L.P. (“Municipal Accounts”), bookkeeper for the District; Mr. Tommy Lee of Assessments of the Southwest, tax assessor and collector for the District; Mr. Carl Sandin of Perdue, Brandon, Fielder, Collins & Mott L.L.P. (“PBFC&M”), delinquent tax attorney for the District; Mr. Marcus Michna of Shelmark Engineering, LLC (“Shelmark”), engineer 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 August 11, 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 approve the minutes as presented.

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

3. **Public Comments.** The President recognized Ms. Cheryl Steller, who thanked the Board for all of their hard work as Board members. Ms. Steller inquired whether the District is required to have electronic voting equipment for elections. Ms. Ellison informed Ms. Steller that electronic voting equipment is required by federal and state law for all District elections. Ms. Ellison also stated that Galveston County has agreed to provide the necessary election equipment should the Board hold an election in May 2012. She noted that renting the

equipment from the County should be a less expensive alternative than renting the equipment from a private vendor.

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

4. **Public hearing on tax rate.** The President opened the hearing on the proposed 2011 tax rate. There were no comments on the proposed tax rate and the public hearing was closed.

Director Andries entered the meeting at this time.

5. **Adopt Order Setting Tax Rate and Levying Tax for 2011.** The Board reviewed the Order Setting Tax Rate and Levying Tax for 2011, a copy of which is attached hereto as Exhibit "C." Mr. Lee reported that the Notice of Public Hearing on the Tax Rate was published. 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 adopt the Order Setting Tax Rate and Levying Tax for 2011, thereby levying a tax rate of \$0.5875 per \$100 assessed valuation (\$0.40 for debt service and \$0.1875 for operations and maintenance).

6. **Bookkeeper's report and payment of bills.** Mr. Burton presented to and reviewed with the Board the Board the Bookkeeper's Report for the period ending September 29, 2011, a copy of which is attached hereto as Exhibit "D." Mr. Burton also presented to the Board a Resolution authorizing Municipal Accounts to make transfers from TexPool on behalf of the Board.

Upon review of the Actual vs. Budget Comparison, the President asked whether the monthly budgeted amounts should be prorated over the year or whether they should be based on expected cash flow. Director Andries then presented to and reviewed with the Board a summary of projected cash flows in connection with the Operating and Construction Funds, a copy of which is attached hereto as Exhibit "E." The President stated that the summary is very helpful and requested that the same type of summary be prepared for the Debt Service Fund. Mr. Burton stated that he will coordinate with Director Andries to prepare such summary for the Debt Service Fund. Mr. Burton said he will soon be coordinating with the Board to prepare the District's budget for the succeeding fiscal year.

Director Tarpey commended Mr. Burton on the new bookkeeping format and the rest of the Board concurred.

Mr. Burton presented to and reviewed with the Board a summary of proposed investments for General Operating funds and Debt Service funds, a copy of which is attached hereto as Exhibit "F." Discussion ensued. Director Tarpey stated that he would prefer to have most, if not all, of the District's funds invested in local banks or local branches of banks. It was the consensus of the Board that Mr. Burton utilize the presented framework for investments with input from the District's Treasurer (Director Andries) concerning specific investment providers to utilize.

Upon motion by Director Holley, seconded by Director Tarpey, 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. **Adopt Resolution Reviewing and Making Changes to the Investment Policy and Revising the List of Authorized Brokers.** The Board reviewed the Resolution Adopting an Amended Investment Policy and List of Authorized Brokers, a copy of which is attached hereto as Exhibit "G." Ms. Ellison described the proposed changes to the District's Investment Policy and indicated that Mr. Burton had provided input. She said most of the changes were to update the policy to conform to changes made in the Public Funds Investment Act. Upon motion by Director Holley, seconded by Director Tarpey, after full discussion and the question being put to the Board, the Board voted unanimously to adopt the Resolution Adopting an Investment Policy and List of Authorized Brokers. The President requested that the Investment Policy be posted on the District's website.

8. **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 "H." Mr. Lee noted that 78.89% of the District's 2010 taxes had been collected as of August 31, 2011. Mr. Lee reported that the District received a check today in the amount of \$112,897.23 from P.I. Holdings No. 1, Inc. for outstanding taxes. Mr. Lee noted that penalty, interest and delinquent tax attorney fees were included in the payment.

Mr. Lee reported that Galveston Central Appraisal District ("CAD") has updated the change in ownership of the Harborwalk properties so the appropriate owner name is now listed on the tax roll.

Mr. Lee reported that Galveston CAD believes that the that taxable values for the lots in Harborwalk Section 6 reflect full market value. Discussion ensued. Mr. Lee reported that the Board may challenge the 2012 values with the CAD, but the challenge must be made before May 31, 2012. Mr. Lee noted that the CAD will honor the waiver of special inventory valuation for the lots in Harborwalk, Section 6 made by the previous developer.

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.

9. **Delinquent tax attorney report and necessary action on delinquent accounts.** The President recognized Mr. Sandin, who presented to and reviewed with the Board the delinquent tax attorney report, a copy of which is attached hereto as Exhibit "I." Mr3. Sandin reported that PBFC&M filed suit again P.I. Holdings No. 1, Inc. this morning, prior to receipt of the payment for delinquent taxes.

Upon inquiry from Ms. Ellison, Mr. Sandin reported that new legislation provides a revised exemption for "goods-in-transit" beginning with the 2012 tax year. Mr. Sandin stated that a taxing unit may exercise a local option to tax goods-in-transit that are otherwise exempt if a public hearing is held, and the governing body thereafter passes an order to tax such property.

Mr. Lee noted that the public hearing and the official action taken to tax the property for 2012 and subsequent years must occur no sooner than October 1, 2011. Mr. Sandin and Mr. Lee said that they believed it would be unnecessary for the District to take any action to tax goods-in-transit because there are no goods-in-transit in the District.

10. Engineer's report and authorization of capital improvement and maintenance actions, including change order on dredging contract. 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 he has no design activities to report on this month.

Mr. Michna presented to and reviewed with the Board the revised Change Order No. One to the maintenance dredging contract and a map showing the dredging work that his cost estimate was based upon and the work that was actually bid and performed by the contractor, copies of which are attached to the Engineer's Report. Mr. Michna noted that the change order was for removal of 1,800 cubic yards of additional dredge material. Mr. Michna said that pursuant to the Board's direction, he had contacted the contractor concerning the change order and the contractor had agreed to remove his profit margin. Mr. Michna said he was asking the District to pay one-half of the remaining cost with Shelmark absorbing the rest. Mr. Michna stated that that the revised Change Order No. One is in the amount of \$14,580.

The President said such a cost overrun was unacceptable and asked Mr. Michna what he would change in the future to avoid such an overrun. Mr. Michna said in the future he would get an updated survey prior to performing any construction design and would give the Board options on how to proceed. He noted that Shelmark did not include sufficient detail in the original specifications and drawings. The President stated that there needs to be a clearly defined project scope for any construction contract and that it is Shelmark's responsibility to ensure that the bid documents and specifications include the same project scope as presented to the Board in the engineer's proposal. The President noted that, in the future, Shelmark should only take direction from the Board.

Mr. Michna stated that that in the future he would plan to look at the projected work for the next year in December and make inspections in January. He said it would be best to have construction work done in the spring. Mr. Michna said he would provide the District's bookkeeper with detailed project costs and related engineering fees in order for the bookkeeper to include such information in the District's budget detail.

Director Andries said he would support the revised change order because he believed that if the Board had been consulted when the issue arose, it would have agreed to the extra work, since otherwise the channel would have been partially dredged. He noted that the engineer needed to obtain a more current survey before beginning a project.

The Board discussed how to measure the actual amount of additional dredging performed by the contractor. Mr. Michna stated that he inspected the actual dredged material and estimated that the contractor dredged at least 1,800 yards of additional material. Director

Tarpey stated that based on equipment specifications, he did not believe that the contractor could have moved that much material in three days. Discussion ensued.

Upon motion by Director Andries, seconded by Director Holley, after full discussion and the question being put to the Board, the Board voted 3-1 (with Director Tarpey dissenting) to approve Change Order No. One to the maintenance dredging contract in the amount of \$14,850.

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

11. **Authorize Continuing Disclosure.** Ms. Ellison stated that the District is required to make an annual filing of its audit and certain other information with the Municipal Securities Rulemaking Board's data base so that bondholders can view current information on the District. Ms. Ellison stated that the filing must be made by September 30th. Ms. Ellison stated that F&J requested updated information from the bank, but did not receive any updated information. 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 authorize F&J to file the Annual Report on Financial Information and Operating Data, a copy of which is attached hereto as Exhibit "K," along with the District's audit.

12. **Attorney's report.** Ms. Ellison reported that the Order Adopting Regulations on Bulkhead Caps and Canals that was approved at the last Board meeting will be sent for recordation in the Galveston County property records. She asked the Board to let her know if it wishes her to take other steps to disseminate the policy to new owners in Harborwalk.

Ms. Ellison reviewed with the Board a letter to BBVA Compass Bank regarding reimbursement for the repairs to the bulkhead in Harborwalk, Section 6, a copy of which is attached hereto as Exhibit "L." Ms. Ellison noted that letters were also sent to Mr. Pierce of The Midway Companies in February and May 2011 and no response was received. Ms. Ellison noted that if the \$12,000 reimbursement is not forthcoming, the District could withhold that amount from future reimbursements to the bank or its successors, as the Texas Commission on Environmental Quality would require those repairs to be made before the District could accept the facilities. The President advised Mr. Caldwell concerning the District's investigations into the deterioration of the nuts in Harborwalk, Section 6. 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 authorize the President to execute the letter and to authorize F&J to send the letter to BBVA Compass.

In response to a question, Mr. Caldwell reported that Legend Homes plans to close on the purchase of property from BBVA Compass Bank/P.I. Holdings No. 1, Inc. sometime in November 2011.

Ms. Ellison reported that the City of Hitchcock's Water Safety and Boating Regulations have been posted on the District's website. Ms. Ellison also reported that F&J prepared a letter to the City of Hitchcock requesting that it install additional signage in the

District in an effort to better alert boaters of the City's boating regulations and requesting information regarding how the boating regulations are enforced. The President confirmed that there had been no response to the letter.

Ms. Ellison requested Mr. Caldwell's assistance in obtaining BBVA Compass Bank's written consent to the transfer of the private aids to navigation to the District. Mr. Michna noted that Harborwalk, L.P., the previous owner of the private aids to navigation, has signed an application to the U.S. Coast Guard to transfer the private aids to navigation to the District.

13. **Approve rental agreement with ES&S for election equipment for May 2012 election.** Ms. Ellison noted that F&J had obtained for the Board's consideration an Agreement for the Rental of Equipment and Sale of Services with ES&S for electronic voting machines for the May 2012 Director elections due to the fact that a number of Texas counties have indicated that they will not have sufficient voting equipment to rent to districts for the May 2012 election. Ms. Ellison stated that she had since learned that Galveston County is willing to provide the necessary voting equipment to Galveston County districts for the May 2012 election. Ms. Ellison noted that the District would not be responsible for any fees to Galveston County if the District notifies Galveston County in a timely matter of cancellation of the election. Ms. Ellison reported that there is a possibility that the District can delay its May 2012 election until November 2012 or even May 2013. Ms. Ellison stated that she will keep the Board posted on the status of such matters. It was the consensus of the Board not to take any action on the rental agreement with ES&S.

14. **Set next meeting date.** It was the consensus of the Board to tentatively schedule the next Board meeting for Thursday, December 8, 2011 at 1:00 p.m. at 1301 Harborwalk Boulevard (Yacht Club).

15. **Document Public Comments for next Board meeting discussion.** The President noted that the public comment from Ms. Seller from this meeting was previously addressed and would be an agenda item at the next meeting.

16. **Review of Consultant Contracts.** The President noted that the Board does not have any consultant contracts to review at this time.

17. **Other Matters.** Director Tarpey inquired about ways for the District to decrease its expenses. Discussion ensued regarding the possibility of holding quarterly meetings. Director Tarpey noted that it is not crucial to have the engineer and attorney attend every meeting, especially when they have nothing substantive to report to the Board. It was the consensus of the Board to discuss the 2012 meeting schedule and necessary engineering projects at the next Board meeting.

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 _____, 2011.

President, Board of Directors

ATTEST:

Secretary, Board of Directors

(DISTRICT SEAL)