

EMERALD BAY MUNICIPAL UTILITY DISTRICT
FINAL AND APPROVED
MINUTES OF REGULAR MEETING
MAY 22, 2006

The Board of Directors of the Emerald Bay Municipal Utility District met in regular session on Monday, May 22, 2006, 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. Eleven other Emerald Bay residents were also in attendance.

The meeting was officially called to order by President Bill Harris at 10:01 a.m. President Harris administered the Oath of Office to the newly elected directors, Ray Hartley and Howard Rutherford. Both directors were duly elected as unopposed candidates for the May 13, 2006 general election for a four-year term expiring in May 2010. Director Jerry Ball did not stand for re-election and no one filed for this directorship. The District's legal counsel is researching the State Election Codes to determine the procedure required to fill this vacancy. The State mandates all vacancies be filled within 90 days of the vacancy date.

Section 49.054 of the Water Code requires election of new officers after each election or appointment. **Director Hartley made a motion to retain the Board officers as follows: Bill Harris, President; Ray Hartley, Treasurer; Howard Rutherford, Vice President-Operations; and Deena Johnson, Secretary. The motion was seconded by Director Rutherford and approved by unanimous consent.** The administrative duties will be shared until a new director is elected or appointed to fill the vacancy.

President Harris asked for comments on the Minutes of the April 17 regular meeting. There being none, **Mr. Rutherford made a motion to accept the Minutes as written. The motion was seconded by Director Hartley and the April 17 Minutes were approved by unanimous consent.**

Director Hartley reviewed the financial report for the period ended April 30, 2006. Mr. Hartley had to revise the District's budget as the new water system is not operational. He noted the State allows revision of budgets for such significant circumstances. The *Profit & Loss Budget* shows that *Net Ordinary Income* is slightly more than budgeted, and *Expenses* are only \$573 more than budgeted amount. Even though *Repairs & Maintenance* were \$2,296 less than budgeted, *Utilities* were over budget by \$2,282 due to installation of the new electric meter at the MUD plant, permit renewal fees for affluent irrigation of the golf course, and the engineer's charge of \$5,000 to prepare the permit renewal application. Mr. Hartley also noted that the preliminary tax assessment shows an increase in property values for Emerald Bay, so the District can

lower the tax rate for 2007. **Upon motion duly made (Hartley) and seconded (Harris), the April financial report including the check detail was approved by unanimous consent.**

Director Harris addressed the Ameritank issues noting the elevated storage tank had been inspected by Bonded Inspections and the results were inconclusive. Therefore, the District's legal counsel, Glen Patrick, recommended that Ameritank be paid the contract amount (\$17,288.10) less one percent retainage to disinfect the elevated tank. Mr. Harris read into the record Mr. Patrick's transmittal letter addressed to Lois Rockefeller, Ameritank's attorney, requesting a release of liens, a one-year bonded warranty, and a four-year extended (unbonded) warranty. If the terms are not acceptable to Ameritank, the check shall be returned to the District. Director Hartley will apply for insurance coverage on the elevated storage tank as soon as the MUD receives the releases from Ms. Rockefeller.

A brief operations report by Director Rutherford confirmed the District's wastewater plant is functioning satisfactorily. Mr. Rutherford explained the diffuser (bubbler) system installed by Director Harris to eliminate the odor released through the golf course sprinkler system.

Mr. Harris noted that the Emerald Bay Marina and one resident outside the back gate are outside the boundaries of the District's CCN and will not be serviced by the Emerald Bay water system when it becomes operational. These two customers will continue to be serviced by Southern Utilities.

Mr. Hartley has worked diligently with the programmer to perfect the water billing system and has accompanied the Southern Utilities' meter readers to jointly read and record the water meter readings for the District's residents. Mr. Hartley will contact Burns for recommendations on hiring meter readers. Mr. Hartley will also explore the possibility of hiring the two men who read for Southern Utilities to work for the District on a contract basis. Wilkins Contracting submitted a proposal to operate the new water system for \$1,650 per month. Mr. Harris recommended negotiating a two-year contract with Wilkins rather than a one-year or annually renewing contract. **Director Hartley made a motion to accept the Wilkins proposal of \$1,650/month to operate the water system with the District's written procedures to take effect upon completion of the water system. The motion was seconded by Director Rutherford and approved by unanimous consent.**

Bill Harris read into the record the Southern Utilities letter dated May 2, 2006, addressed to all Emerald Bay customers regarding the termination of water service by Southern on or about June 12, 2006. Mr. Harris explained the role of the Texas Commission on Environmental Quality (TCEQ), the Certificate of Convenience and Necessity (CCN), and the history of events leading to the present dispute with Southern regarding water system completion deadline. Mr. Harris noted that commercial or wholesale water rates are unregulated; thus, the reasoning for Southern Utilities' insistence on terminating the provision of retail water service to Emerald Bay customers.

Mr. Harris then read into the record the TCEQ letter dated May 11, 2006, confirming that “Southern has the obligation to provide continuous and adequate service to every customer within its certificated area and **may not cease** operations without commission approval.” The TCEQ confirmed that Southern shall provide service “until Emerald Bay’s water supply facilities are completed and on line or for a period not to exceed 24 months” from the date of TCEQ approval of Emerald Bay’s plans and specifications on September 30, 2004. Therefore, the TCEQ upholds the District’s contention that the target completion deadline is September 30, 2006.

Ray Hartley presented a letter from a District member, John Tracy, expressing concern that Southern might ignore the opinion of the TCEQ and discontinue water service to Emerald Bay on June 12. In conjunction with Tracy’s letter, Mr. Hartley suggested the Emerald Bay Club Board obtain an injunction to prevent Southern from discontinuing water service. Directors Harris and Hartley will contact the District’s Austin attorney to discuss legality of termination of service by Southern and whether to seek an injunction against them to protect the District’s customers. It was also suggested that Mr. Hartley contact Mr. Farrell of Southern to determine their intentions in this regard. **Director Hartley made a motion (seconded by Director Rutherford) that the Board contact the District’s Austin attorney, Susan Potts, regarding the issue of obtaining an injunction against Southern to prevent termination of water service. Said motion was approved by unanimous consent.**

The District is considering the purchase of a tractor to haul sludge, move dirt and equipment, mow grounds around MUD property and other uses. The MUD has been using the tractor of a former director, Jerry Ball, during the construction of the water system. Director Johnson contacted tractor dealers and obtained Blue Book values for comparable model New Holland tractors and determined the fair market value to be \$12,200 to \$16,000. Mr. Ball purchased the tractor for \$23,000 with only 5 hours usage and agrees to sell the tractor for \$16,500. In order to comply with existing contract regulations, the District shall purchase the tractor through a third party agent. Mr. Ball will handle the preparation of an agreement to sell the tractor to an agent. **Director Hartley made a motion to purchase the tractor for \$16,500 under the conditions discussed. The motion was seconded by Director Rutherford and approved by unanimous consent.**

Director Johnson asked for comments on the preliminary draft of the District’s rules and regulations governing both the sewer and water systems. In order to facilitate a more comprehensive review of the proposed rules, a special work session was scheduled for June 4, 2006.

Ray Hartley reviewed the latest water project status report as of 4/30/06. Total expenditures to date are \$1,535,847 with net funds of \$530,927 available for the project. Based on estimates, the project total should be \$1,640,000. Mr. Hartley noted that accounting rules may require the value of all donated time on the project be added to asset value.

There being no further business, the meeting was adjourned at 11:55 a.m. upon motion duly made (Rutherford) and seconded (Harris) with unanimous consent.

Respectfully submitted,

Deena M. Johnson
Secretary

William F. Harris
President

Attachments:

Financial Report for 4/30/06

Water Project Status Report

Patrick Letter dated 5/19/06

Southern Letter dated 5/2/06

TCEQ Letter dated 5/11/06

Tracy Letter dated 5/20/06

Tractor Value Research