

**MINUTES OF MEETING OF  
THE BOARD OF DIRECTORS OF  
WILBARGER CREEK MUNICIPAL UTILITY DISTRICT NO. 1**

January 6, 2011

THE STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS           §

A meeting of the Board of Directors of Wilbarger Creek Municipal Utility District No. 1 was held on January 6, 2011, at the offices of Armbrust & Brown, PLLC, 100 Congress Avenue, Suite 950, Austin, Texas. The meeting was open to the public and notice was given as required by the Texas Open Meetings Act. A copy of the Certificate of Posting of the notice is attached as Exhibit "A".

The roll was called of the members of the Board:

Bill Kochwelp	-	President
Tim Dalton	-	Vice President
Scott Sams	-	Secretary
D. Page Ragland	-	Asst. Secretary
Diana Zuniga	-	Asst. Secretary

and all of the Directors were present, thus constituting a quorum. Also present at the meeting were Ken Schroeder of Schroeder Engineering Company; Pete Dwyer and Danny Burnett of Cottonwood Holdings, Ltd.; Mary Bott of Bott & Douthitt, PLLC; Margret Wingrove of Crossroads Utility Services LLC; Cheryl Allen of Southwest Securities; Richard Hale and Norma Burke, residents of the District; and John Bartram of Armbrust & Brown, PLLC.

Director Kochwelp called the meeting to order at 12:05 p.m., and stated that the Board would first receive citizens' communications. Mr. Hale and Ms. Burke introduced themselves as residents of the District. Mr. Hale stated that he had lived in ShadowGlen since 2007 and, although he resided in the District, he had attended the Travis County MUD No. 2 Board meeting yesterday to voice his concerns about the increased retail water rates in the community. He stated that he had learned of the increased rates on December 1<sup>st</sup> at the annual homeowners' association meeting and was surprised that the rates had actually been approved in September. He stated that he was concerned and disappointed that the residents had not been provided more notice regarding the rate change so that the increase could have been challenged. Mr. Hale acknowledged that the minimum notice requirements appeared to have been met, but encouraged the Board to improve communications and provide additional notice the next time an issue as important as this is considered. He further stated that he was upset that the retail rates were higher in the District than in Travis County MUD No. 2, which was part of the same development. He stated that he understood the rationale but did not think it was fair, and he requested that the Board reduce the District's retail rates to the same level as Travis County

MUD No. 2's retail rates. Mr. Hale stated that he understood the reason for the increased retail rates was that the District's wholesale rates were increasing. He stated that he understood that the District's wholesale provider was part of the same company that provided water to and had drastically increased rates in the Kennedy Ridge and Hornsby Bend communities. He advised the Board that he had made a complaint with the Attorney General's office and had contacted Senator Kirk Watson's and Representative Dawwna Dukes' offices as well. Ms. Allen welcomed any help that the residents could offer in negotiations with the wholesaler. Mr. Hale further stated that he and Ms. Burke were meeting with an attorney later that afternoon to discuss whether it was still possible to protest the District's rates.

At Director Kochwelp's request, Ms. Allen then summarized the history of and methodology behind the increased retail rates. She stated that property values in the District had fallen, which reduced tax revenues, and that her goal had been to establish a combined tax and water rate scenario that would have essentially the same total impact on residents as the prior year, based on average water usage. She stated that another motivating factor in the increased water rates was that the wholesaler was attempting to raise wholesale rates to over \$11.00 per 1,000 gallons. Ms. Allen stated that, even with the increased retail rates, she was projecting a \$140,000 operating deficit this year. She stated that it was also important to keep in mind that the historical wholesale rate of \$2.80 per 1,000 gallons was uncommonly low and that the new retail rates adopted in September had brought the District more in line with other similarly situated water districts. Director Kochwelp stated that he understood and appreciated the residents' concerns and that the Board would attempt to improve communications with residents in the future by getting notice of important changes out via multiple media. He further stated that the Board would take Mr. Hale's request to reduce the District's retail rates to Travis County MUD No. 2's rates under advisement. Mr. Hale stated that even a nominal change in the rates would allow him to file a formal protest with the Texas Commission on Environmental Quality.

Mr. Hale then reasserted his concern about the lack of notice of the water rate increase. He requested a copy of the insert that had been included in the water bills following approval of the new rates. Ms. Wingrove stated that this insert had been prepared and mailed by the District's previous utility operator but that she would locate and email a copy of the notice to Mr. Hale. Mr. Hale then stated that, despite his efforts, many residents were not able to attend noon meetings in downtown Austin. He suggested that the Board consider holding meetings at which important issues would be discussed in the development. Director Kochwelp asked how information was customarily disseminated among the residents. Mr. Hale stated that, in most cases, information was circulated to residents via the homeowners association, the community action group, or the Yahoo email group. Mr. Burnett stated that he would do what he could to coordinate communications within the community. Director Zuniga suggested that residents send any comments or questions to the District via email, which could then be read by Director Kochwelp during citizens' communications. Mr. Bartram recalled that the Board had previously considered, but postponed, development of a District website due to cost and the fact that the District was already operating at a deficit. He suggested that the Board reconsider the options, such as co-hosting a site with Travis County MUD No. 2 or exploring the possibility

of posting District-related information on the Master District's website. The Board agreed. Mr. Hale then asked if the developer could subsidize the difference between the District's retail rates and Travis County MUD No. 2's retail rates, and a discussion of developer funding for the District ensued. Mr. Dwyer stated that he was very sensitive to the problem and would work to improve communications among all of the stakeholders. Director Kochwelp then thanked Mr. Hale and Ms. Burke for attending and stated that he would be interested in hearing what the Attorney General's office and/or the political representatives had to say on the Southwest Water Company connection to these similar issues. Mr. Hale, Ms. Burke, and Ms. Allen then left the meeting.

Director Kochwelp then stated that the Board would consider approving the following item on the Board's consent agenda: the minutes of the December 2, 2010 Board meeting. Upon motion by Director Dalton and second by Director Ragland, the Board voted unanimously to approve the minutes.

Director Kochwelp then stated that the Board would receive a report from the District's bookkeeper. Ms. Bott first reviewed the bills, invoices, and transfers set forth on the revised cash activity report attached as Exhibit "B", and recommended approval, noting that there were no transfers for the month. She then reviewed the District's investment report, tax collection report, and the financial statements as of November 30, 2010, including the balance sheet, statement of revenues, and supplementary information for the District's general fund and special revenue fund. She then reported that the request for developer funding for the District's share of the Master District reserve had been funded and that she had processed the request for second quarter developer funding. After discussion, upon motion by Director Sams and second by Director Zuniga, the Board voted unanimously to approve the payment of bills and invoices, as presented.

Director Kochwelp then stated that the Board would receive a report from the developer. Mr. Dwyer reported that negotiations regarding the formation of a new partnership for the development had concluded and that 2010 ShadowGlen, LLC had been formed at the end of 2010. He reviewed the new development structure, which he noted had no debt. He stated that there would no longer be a land bank, that 2010 ShadowGlen, LLC would be the sole residential developer, and that Cottonwood Holdings, Ltd. would be the commercial developer. Mr. Dwyer stated in connection with the restructuring of the development entities and formation of 2010 ShadowGlen, LLC, the developers were requesting that the ShadowGlen districts consent to the assignment of all district-related agreements to the new entity. He stated that there would also be an amendment to the development/consent agreement with the City of Manor. Mr. Bartram stated that, conceptually, this was what everyone had been waiting for since the foreclosure in 2009, but that he had only received the documents that week and had not had a chance to review them. Mr. Bartram suggested that the Board appoint a subcommittee to approve and execute the requested consents after legal review. Mr. Dwyer stated that this was also a good opportunity to clean up all loose ends with amended and restated reimbursement agreements. The Board generally agreed.

Director Kochwelp then recognized Mr. Schroeder for purposes of receiving a report from the District's engineer. Mr. Schroeder stated that he would defer comment until the Master District and Advisory Committee items on the agenda.

Director Kochwelp next announced that the Board would receive a report from the District's financial advisor. Ms. Bott stated that, before leaving, Ms. Allen had advised her that there had been no foreclosures in the District during the last month and that the written foreclosure report would resume next month.

Director Kochwelp then stated that the Board would receive a report from the District's utility operator. Ms. Wingrove reviewed the utility report for the month of November. She noted that overall water sales were down from the prior month and confirmed that the bacteriological and chlorine residual tests were satisfactory. She then reviewed the connection report for the District and the other Participant Districts. She stated that there had been one new connection in Travis County MUD No. 2. Ms. Wingrove next reviewed the District's water usage and billing report, noting that, due to the transition to the new billing system, there had been no terminations during the month. Ms. Wingrove next reviewed water accountability and noted that water loss was at  $\pm 4\%$  for the month. She then reviewed the aged receivables and builder deposits, and reported that there were no write-offs for the month. Mr. Burnett stated that he would let Bowen Homes, which was no longer building in the District, know that it could request a return of its deposit. Ms. Wingrove then concluded by reporting that there had been a few complaints about odor in the water. She stated that it appeared that the prior operator had not flushed the lines as much as it should have, which caused the water to go stale. Ms. Wingrove confirmed that her company had aggressively flushed the lines and that there had been no complaints since.

Director Kochwelp then stated that the Board would receive a report regarding Master District and Advisory Committee items. Mr. Bartram stated that Metro H<sub>2</sub>O, Ltd. ("Metro") had provided a substantial amount of additional information in support of its proposed wholesale water rate increase and that this information was currently under review by Mr. Joyce and Ms. Harkins, the Master District's rate consultants, who expected to have their evaluation ready for the January Advisory Committee meeting.

Mr. Schroeder then reported on wastewater treatment plant operations. He stated that the daily wastewater flows at the wastewater treatment plant for the month of November had averaged  $\pm 155,000$  gpd, with a maximum day of  $\pm 230,000$  gpd, which was within the expected range of flows based on the current number of connections. He stated that operations costs for the plant were generally within budget and that the sludge hauling appeared to be under control. Mr. Schroeder next addressed the status of repairs at the wastewater treatment plant. He stated that the bids for the first phase of electrical modifications, namely enhanced grounding and surge protection, were received in mid-December and that the Master District had awarded the contract to Pfeiffer & Son, Ltd., the low bidder with a bid of \$48,260. Mr. Schroeder next reviewed the status of the other approved wastewater treatment plant repairs, as reflected on the report attached as Exhibit "C". He stated that this report would be updated

as work progressed and to the extent that Crossroads Utility Services identified additional needed repairs.

Mr. Bartram then reported that a claim for indemnification and setoff against the remaining "holdback" funds for the purchase of the wastewater treatment plant had been made, and he reviewed the letter attached as Exhibit "D". He reported that he was also working on a claim against SWWC Services for operations-related matters. Mr. Bartram then reviewed the agenda and minutes from the December 6, 2010 Board meeting of Wilbarger Creek Municipal Utility District No. 2 and the draft report from the December 15, 2010 Advisory Committee meeting, which were recurring agenda items so that the Board could stay informed of the activities of the Master District and Advisory Committee.

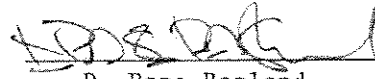
Director Kochwelp then recognized Mr. Bartram for purposes of receiving a report from the District's attorney. Mr. Bartram first reviewed the consultant directives. He next reviewed the status of the Cross County Water Supply Corporation / Blue Water Systems, LP water transmission line project. He stated that Mr. Reilly of Cross County Water Supply Corporation had confirmed earlier in the week that the project was still on schedule and that the tie-in to Metro's elevated storage tank would occur in late January or early February. Mr. Bartram then reported that the District had received an equity return from the Texas Municipal League Intergovernmental Risk Pool based on the District's low loss ratio during the prior year. Mr. Bartram then concluded by recommending that the Board receive legal advice regarding (i) the request to reduce retail water rates; (ii) the pending claims and issues with Metro and SWWC Services (including the wholesale water rate negotiations, the indemnification and holdback claim, the operations claims, and Metro's claim for the \$826,000 received from the City of Manor), and (iii) the developer restructuring and related contract assignments and consents, in executive session. The Board concurred, and at 1:25 p.m. Director Kochwelp stated that the Board would convene in executive session for such purpose, as permitted by Section 551.071 of the Texas Government Code. The Board reconvened in open session at 1:45 p.m., and Director Kochwelp stated that no action had been taken during executive session.

Director Zuniga then moved that the Board appoint Directors Dalton and Sams to a subcommittee authorized to negotiate, finalize, and execute consents to the assignment of all district-related agreements to the new development entity, subject to legal review, and that the execution of any consents be conditioned on the developers' payment of the District's legal fees as well as amended and restated reimbursement agreements with updated property descriptions. Upon second by Director Ragland, the motion carried unanimously.

Director Kochwelp then questioned whether there were any future agenda items or further business to come before the Board. There being none, the meeting was adjourned.

*(Signature page follows.)*

(SEAL)

  
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D. Page Ragland  
Assistant Secretary, Board of Directors

Date: February 3, 2011