

**MINUTES OF MEETING OF  
THE BOARD OF DIRECTORS OF  
NORTHTOWN MUNICIPAL UTILITY DISTRICT**

August 28, 2007

THE STATE OF TEXAS            §  
  §  
COUNTY OF TRAVIS            §

A meeting of the Board of Directors of Northtown Municipal Utility District was held on August 28, 2007, at the Wells Branch Community Center, 2106 Klattenhoff Drive, 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:

Texana Kowis	-	President
Robin Campbell	-	Vice President
Brenda Richter	-	Secretary
Michael Zeniecki	-	Assistant Secretary
William E. Henderson	-	Treasurer

and all of the Directors were present, thus constituting a quorum. Also present at the meeting were Mike Morin of ECO Resources, Inc.; Linda Loup and Cheryl Allen of Southwest Securities; Mona Oliver and Don Williams of Wells Branch Municipal Utility District; Sam Jones of Sam Jones Consulting, Inc.; Mike Fisher of Pate Engineering, Inc; Deputy Keith Kinnard of the Travis County Sheriff's Department; Mr. and Mrs. Chris Washington, residents of the District; Brenda Searle-Sung of KB Homes; Richard Fadal of TexaScapes, Inc.; Mary Bott of Pena Swayze & Co., L.L.P.; David Armistead of the Wildflower Homeowners' Association; Arthur Hernandez of Central Texas Utility Services LLC and Sue Brooks Littlefield of Armbrust & Brown, L.L.P.

Director Kowis called the meeting to order at 6:00 p.m., and stated that the Board would first consider approving the minutes of the July 24, 2007 Board meeting. Upon motion by Director Campbell and second by Director Zeniecki, the Board voted unanimously to approve the minutes.

Director Kowis then stated that the Board would receive citizens' communications, and recognized Mr. Washington. Mr. Washington explained that he lived at 908 Elderberry Tea Cove and had received a bill showing that he had used 49,000 gallons of water when, according to his records, his average use was 5,000 - 6,000 gallons. He stated that, on July 17<sup>th</sup>, he had spoken to a representative at ECO Resources, who advised him that a technician had been sent to his home, but that there was no evidence of a leak, and that a tag should have been left at his door. Mr. Washington stated that nothing had been left on his door indicating that anyone had called. Mr. Washington also explained that, on July 18<sup>th</sup>, he had looked at the meter, and marked where the meter was registering, and then had looked for evidence of a leak. He stated that, when he had come back out in approximately 10 minutes, the meter was in the same position, and so he had been comfortable that there were no leaks. He indicated that he had then gone

back in his home and made a “test flush”, and found that the dial had jumped from 7 to 8 following that one flush. He noted that he explained this to Mr. Morin, who had stated that it was not possible that the meter would do this. Mr. Washington stated that Mr. Morin had worked with him, but that when he had asked that the meter be removed and tested, it had not been removed on the date that he had been told it would be and that, when his meter was subsequently removed and tested, Mr. Morin had indicated that the meter had tested fine and had reinstalled the same meter. He stated that, after further discussion, Mr. Morin had agreed to replace the meter. Mr. Washington stated that Mr. Morin had agreed to bill him at the lowest tier for the 49,000 gallons of usage, but stated that he did not believe he had used 49,000 gallons of water. Director Kowis asked what relief Mr. Washington was requesting, and he responded that he felt the meter was defective and that it was not fair for him to be charged for the water. Director Campbell asked whether anything was unusual during the period of time when the usage had registered, such as his being out of town. Mr. Washington said that nothing was unusual and that his family had been home during the time the meter registered this usage. Director Kowis inquired as to Mr. Washington’s account record, and Mr. Morin stated that he had talked to Mr. Washington many times, and understood the problem. He stated that Mr. Washington had a history back to February of 2004, and that his typical usage was 5,000 – 6,000 gallons of water, although during the prior summer, he had used 25,000 gallons of water two months in a row. Mr. Morin explained that the records showed that Mr. Washington’s usage during June was 49,000 gallons and in July was 29,000 gallons, and acknowledged that this was very odd. He stated that the meter had been tested by Fluid Meter Services, and had come back as testing perfectly. He said that he did not have any reason to think that the water had not gone through the meter. Director Kowis inquired whether Mr. Washington owned or rented his home, and Mr. Washington responded that he was a homeowner. Director Zeniecki noted that Mr. Washington had used 25,000 gallons of water twice the previous summer, but other than that, had consistently used 5,000 – 6,000 gallons of water. Director Kowis pointed out that, during the previous summer, the District was experiencing a drought. Director Zeniecki stated that, based upon Mr. Washington’s history, he recommended reducing the 49,000 gallons of usage to 25,000, since it was way outside of the norm. Director Kowis inquired as to the District’s water loss during the month in question, and the Board discussed the fact that the District was already paying for more water than it billed. Director Campbell stated that he felt Mr. Washington made a very convincing argument regarding the matter and that, although Mr. Morin was billing Mr. Washington correctly in accordance with the District’s rate order, Mr. Washington had shown a pattern of usage which was inconsistent with the amount which the meter registered. He recommended that the Board reduce the usage for June to 25,000 gallons, and bill this usage at the lowest tier rate. Director Henderson concurred, and Director Richter agreed, stating that she felt that, even if there was no clear explanation, it did appear something unusual had happened. After further discussion, Director Richter moved that the Board reduce Mr. Washington’s June usage to 25,000 gallons, and bill the usage at the lowest tier rate. Upon second by Director Henderson, the motion was unanimously adopted.

Director Kowis explained that, because the District had experienced a water loss during the month in question, she did not feel the District could just write off the usage. She noted that Mr. Morin was authorized to work out a payment plan as well, and Director Richter clarified that there would be no late fees applied to the billings.

There being no one else present wishing to address the Board and no announcements by Board members, Director Kowis recognized Director Campbell, for purposes of receiving a

report regarding the District's website and web hosting account. Director Campbell requested that the Board approve the renewal fees applicable to the District's website, summarized in **Exhibit "B"**. Upon motion by Director Richter and second by Director Zeniecki, the Board voted unanimously to approve the payment.

Director Kowis then recognized Ms. Bott, who presented the audit engagement with Peña Swayze & Co., L.L.P. for the fiscal year ending September 30, 2007, which is attached as **Exhibit "C"**. She called the Board's attention to the transmittal letter included with the audit engagement letter, noting that this reviewed the phases of the audit and the parties responsible for those phases. Director Zeniecki pointed out that the amount for the audit had increased, and Director Kowis concurred, but noted that, in prior years, Peña Swayze & Co. had billed the District less than the "not to exceed" amount for its audit work. After further discussion, upon motion by Director Zeniecki and second by Director Campbell, the Board voted unanimously to approve the audit engagement letter.

Director Kowis then stated that the Board would consider taking action regarding the District's 2007-2008 budget and tax rate. Director Kowis presented the draft budget and reviewed it with the Board. She stated that the Budget Subcommittee was comfortable recommending this budget to the Board for approval. Mr. Morin noted that the revenues were based on eight new taps per month, and that the budget also projected \$1 million being transferred from the District's operating account to its parks account. He noted that the Park Subcommittee anticipated significant park development during the upcoming fiscal year. Mr. Morin also called the Board's attention to an increase in landscape maintenance expenses, as projected in the budget. Director Kowis stated that this was based on the Park Subcommittee's feeling that additional work was being required of Mr. Fadal, but that not all of the money being budgeted would necessarily be spent. Mr. Fadal agreed, stating that he would not incur additional expense unless the Board authorized him to do so. After further discussion, upon motion by Director Richter and second by Director Zeniecki, the Board voted unanimously to adopt the Resolution Adopting Budget attached as **Exhibit "D"**.

Ms. Allen then presented the District's Certified Appraised Value for 2007, attached as **Exhibit "E"**, pointing out that the value was \$355,452,073. She stated that, at the time the certification was prepared, 58 accounts had still been under appeal and that the District had subsequently received an updated value indicating that some of the appeals had been resolved and, that the actual value was \$357,587,683. She pointed out that the value included \$30 million in new improvements, and that the average home value had increased by approximately \$5,000. Ms. Allen recommended that the Board establish a tax rate of \$0.75 and explained that, with the small change in average value, this would have about a \$37 per year impact on the average homeowner. Ms. Allen also noted that this tax rate did not include debt service for the District's 2007 bonds. After discussion, Director Richter moved that the Board established a proposed tax rate of \$0.75, schedule a public hearing at which the proposed tax rate would be considered for September 25<sup>th</sup> at 6:00 p.m., at the Wells Branch Community Center, and authorize publication of notice of the public hearing on the tax rate. Upon second by Director Zeniecki, the motion was adopted, with Directors Kowis, Campbell, Richter, Henderson and Zeniecki all present and voting "yes".

Director Kowis then stated that the Board would receive the District's security report, and recognized Deputy Kinnard. Deputy Kinnard updated the Board on the status of security patrols

within the District, noting that the Sheriff's Department had arrested several individuals for theft of building materials from the Continental Homes' development. He requested additional security brochures, and the Board requested that Ms. Oliver coordinate obtaining those for the District.

Director Kowis then stated that the Board would receive a report under the Interlocal Agreement with Wells Branch Municipal Utility District. Mr. Williams reported that the Park Subcommittee had toured the District, and also advised the Board that he had instructed the contractor who would be raising a segment of the stone wall adjacent to Meadowpoint Subdivision to proceed. Director Richter requested Ms. Littlefield's office notify Ms. Masri that this work should be done in the next few weeks, and Ms. Littlefield agreed to do so. The Board discussed the new District signage, and Directors Kowis and Richter stated that they were not pleased with the color of the signs and had requested Mr. Fadal look into alternatives. Director Kowis advised the Board that the pond on Crystal Tea had been cleaned out and looked much better. The Board agreed that Mr. Williams should proceed with algae control for all of the wet ponds. Director Richter inquired whether Mr. Williams was getting prices for bollards with metal posts, and he indicated that he was.

Ms. Oliver then reported on the restrictive covenant violations, noting that there were many lawn violations because of the recent rains. She advised the Board of a violation for a trash can in public view at 13900 Randalstone and, after discussion, upon motion by Director Richter and second by Director Henderson, the Board voted unanimously to authorize Ms. Littlefield's office to proceed with a suit regarding the violation.

Director Kowis then recognized Mr. Armistead for the purpose of receiving a report regarding restrictive covenant violations in the Wildflower neighborhood, and Mr. Armistead indicated that he also had many yard maintenance violations. He inquired whether the District was on water rationing and Director Kowis explained that the District normally followed the City of Austin's process. She notified the Board that the City had discussed more stringent water rationing rules. Mr. Armistead stated that he had no lawsuits for the Board to authorize at this meeting, and then inquired regarding goals for the soccer fields. The Board asked that Mr. Williams investigate the location of the goals previously purchased by the Board.

Director Kowis then recognized Mr. Fadal, for purposes of receiving a report regarding landscape maintenance. Mr. Fadal indicated that all maintenance was up to date, and then presented the proposals attached as Exhibits "F", "G" and "H", regarding the cleanup of the Parkway Pond 2, a Gabion Access Ladder for Parkway Pond 2, and fall overseeding of the Stoney Creek Park and the soccer fields. After discussion, upon motion by Director Richter and second by Director Zeniecki, the Board voted unanimously to approve the proposals. Director Kowis stated that Mr. Williams believed the District did not own the land contained within Lot 39, Wildflower Subdivision, where the detention pond was located, but only had an easement. She asked that Mr. Williams forward this information to Ms. Littlefield, so that she could investigate.

Director Kowis then recognized Mr. Morin, for purposes of receiving a report from the District's general manager. Director Kowis inquired why J.C. Evans was included on the District's write-off list, and Mr. Morin acknowledged that his company ought to be able to contact them rather than write the account off. Ms. Littlefield pointed out that J.C. Evans should

have a fire hydrant meter checked out, and a fire hydrant deposit posted. Mr. Morin agreed to investigate. After further discussion, upon motion by Director Richter and second by Director Campbell, the Board voted unanimously to approve the write-offs, with the exception of the write-off for J.C. Evans.

Mr. Morin then distributed the updated list of bills and invoices attached as **Exhibit "I"** and reviewed it with the Board. After discussion, upon motion by Director Richter and second by Director Henderson, the Board voted unanimously to approve payments as presented, with the exception of Check No. 7844 for the fence repair, which Director Richter indicated was unsatisfactory. Mr. Morin agreed to follow up with the fencing contractor to have the situation addressed.

Mr. Morin then presented the transfer letters set forth on **Exhibits "J" through "L"**. Upon motion by Director Henderson and second by Director Campbell, the Board voted unanimously to approve the transfers. Mr. Morin then presented information relating to a Positive Pay Service/ACH Fraud Filter, but indicated that he did not have information from all of the District's banks or final costs. Ms. Littlefield stated that she was recommending that all of her districts obtain this service and explained that several districts had experienced recent incidences of electronic bank fraud, which she felt would become an increasing problem for the security of District funds. Director Kowis stated that she wanted to receive assurance that ECO Resources had appropriate internal controls in place to minimize the risk of electronic bank fraud. After discussion, upon motion by Director Richter and second by Director Zeniecki, the Board voted unanimously to authorize Director Henderson to work with Mr. Morin to implement electronic bank fraud protection systems on the District's bank accounts as quickly as possible.

Mr. Morin then advised the Board that the District would be seeing wholesale rate increases from the City of Austin, and that the water rate would increase 5.7% and the wastewater rate would increase 10.1%. Director Kowis asked Mr. Morin to investigate why Northtown's wastewater rates would increase so much more than other wholesale customers' rates. The Board agreed that a corresponding increase in the District's retail rates should be considered at the next Board meeting.

Director Kowis then recognized Ms. Littlefield, for purposes of receiving the attorney's report. Ms. Littlefield advised the Board that she expected the District's bond application to be considered by the City Water/Wastewater Commission in September and by the City Council in October. She noted that she had received several staff comments, which were being addressed. She presented the Board with a memorandum summarizing recent legislative changes affecting districts, and noted that there would be several action items for the Board to consider at future meetings as a result of these changes. Director Campbell noted that one bill appeared to require the District to post its utility consumption information on its website. Ms. Littlefield stated that she would confirm that this was applicable to all districts and, if so, let Director Campbell know so that he could obtain the necessary information from Mr. Morin and post it. Ms. Littlefield also presented a memorandum regarding the Strategic Housing Finance Corporation of Travis County, and noted that the result of individuals obtaining financing through this corporation was to take properties off of the tax roll. She stated that, currently, the District only had one home which was affected, but that both resales and new homes were eligible for the program and that the situation should continue to be monitored. Ms. Littlefield also presented information regarding legislation which allowed residents to prohibit overnight parking of commercial

vehicles on streets adjacent to residential subdivisions. She explained that this appeared to be a problem in the Parkside subdivision. The Board noted that implementation would require action by District residents, and that the procedure could not be implemented by the Board separately. Ms. Littlefield then advised the Board that the City of Austin had indicated that it would approve the District's provision of solid waste services to the out-of-district area contained within the KB Home development, and that she would be preparing an interlocal agreement to allow this. She also presented an amendment to the District's Recycling and Solid Waste Disposal Services Agreement and, after discussion, Director Richter moved that the Board approve the Amendment, subject to the Solid Waste Subcommittee's final approval, and authorize Director Campbell to execute it once it was finalized. Upon second by Director Zeniecki, the motion was unanimously adopted. A copy of Amendment No. 2 to Recycling and Solid Waste Disposal Services Agreement, as finalized, is attached as **Exhibit "M"**.

Director Kowis then recognized Mr. Jones, for purposes of receiving a report from the District's engineer. Mr. Jones reported that he had not yet agreed to accept the Lakes at Tech Ridge improvements because of issues relating to the District's authorization to enforce the maintenance obligation of the homeowners' association, which had been discussed at the prior meeting. Ms. Littlefield explained that she had reviewed both the Landscape Maintenance Agreement and the Restrictive Covenant Agreement which the City of Austin had required, and that those documents did not provide the District with the protection and right of enforcement which the Board had required. She noted that, in particular, the Restrictive Covenant Agreement ran in favor of the City of Austin, which allowed the City to enforce it, but not the District.

Mr. Jones then presented Pay Estimates No. 3 and 4 for the Lakes at Northtown, Section 1, copies of which are attached as **Exhibits "N"** and **"O"**, and recommended approval of the pay estimates. Upon motion by Director Zeniecki and second by Director Campbell, the Board voted unanimously to approve the pay estimates, as presented.

Mr. Jones then noted that, in connection with the Low Flow Lift Station Improvements, he had received Pay Estimate No. 2, a copy of which is attached as **Exhibit "P"**, and Change Order No. 2, representing reduction in the amount of \$2,600, a copy of which is attached as **Exhibit "Q"** and recommended approval of the pay estimate and change order, and acceptance of the project for operation and maintenance. Upon motion by Director Zeniecki and second by Director Henderson, the Board voted unanimously to approve the pay estimate, the change order and acceptance of the project.

Mr. Jones then stated that, in connection with the By-pass Piping Project for the City of Pflugerville Water Supply Facilities Conversion, he had received Pay Estimate No. 4, a copy of which is attached as **Exhibit "R"**, and recommended approval. Upon motion by Director Henderson and second by Director Zeniecki, the Board voted unanimously to approve the pay estimate. Mr. Jones then advised the Board that, in connection with Change Order No. 2, which had been discussed at the prior Board meeting, he had received the Change Order attached as **Exhibit "S"** from the contractor. He noted that he had reviewed the Change Order in detail, and prepared the memorandum attached as **Exhibit "T"**, explaining items which he recommended be allowed and those which he recommended be disallowed. He noted that the Change Order had originally been submitted in the amount of \$50,514, and that amount had subsequently been reduced by the contractor to \$30,100. He noted that several of the cost items which were included in the revised Change Order presented by the contractor had not been authorized by

either his office or Mr. Fisher's office, and that the cost had been submitted to the District for approval "after the fact". Mr. Arthur Hernandez then addressed the Board and stated that he had been asked by Mr. Fisher and Mr. Jones why the road had not been reopened. He stated that he had only had a 30-day road closure permit and, because the subcontractor, Hansen Pipe out of Dallas, was the only one allowed to make a tap into the type of line which the City of Austin had, he had needed to work with Hansen Pipe to schedule the work. He stated that, after the tap had to be moved due to the failure of the City of Austin to locate some of its facilities, it had been discovered that the area in question was rock, and that it had taken him one and one-half weeks to break through the rock. He said that he had been told by the City of Austin to reopen the road because it was interfering with the residents' access. Mr. Hernandez acknowledged that the reopening of the road was not formally approved by the Board, but stated that he was trying to do the right thing. He stated that he blamed the engineers for their lack of research. After discussion, the Board agreed that it would defer discussion of the matter to executive session, and Director Kowis noted that the Board would make a decision after it received legal advice from its attorney.

Director Kowis then stated that the Board would receive reports from developers and landowners' representatives. She recognized Ms. Searle-Sung, who stated that KB Homes' models would be opened on September 8<sup>th</sup>, and invited the Board to tour the models. Director Richter agreed to schedule a tour with Ms. Searle-Sung. Ms. Searle-Sung stated there would be 14 models, sized between 1,500 and 3,700 square feet, and starting in the \$170s.

At 7:59 p.m., upon motion by Director Richter and second by Director Henderson, the Board voted unanimously to convene in executive session as authorized by Section 551.071, *Texas Government Code*, in order to receive legal advice from its attorney regarding the change order received from Central Texas Utility Services LLC in connection with the By-Pass Piping Project. At 8:15 p.m., the Board reconvened in open session, and Director Kowis announced that no action had been taken during executive session. Director Campbell then moved that the Board approve a change order in the amount of \$22,400 for the project. Director Richter seconded the motion, which passed unanimously. The Board agreed that Director Zeniecki should be authorized to sign the change order on behalf of the Board, once it was prepared and submitted by the contractor.

At 8:21 p.m., Director Richter moved that the Board convene in executive session, as authorized by Section 551.074, *Texas Government Code*, in order to discuss personnel matters. Upon second by Director Henderson, the motion was unanimously adopted. At 9:05 p.m., the Board reconvened in open session, Director Kowis announced that no action had been taken during executive session. There being no further business to come before the Board, the meeting was adjourned, upon motion by Director Richter and second by Director Zeniecki.

Date:\_\_\_\_\_.

(SEAL)

---

Brenda Richter, Secretary  
Board of Directors