

THE STATE OF TEXAS
THE COUNTY OF LUBBOCK

The Board of Directors of the Lubbock county Water Control and Improvement District No. 1 convened in a **CALLED** meeting in the Board Room of the administration building at the entrance to Buffalo Springs Lake in Lubbock County, Texas on **Monday, March 6, 2017** with the following persons present:

BOARD MEMBERS:

Bill Moore, President
Casey Hildebrandt, Vice-President
Sandra Lewis, Secretary / Treasurer (Absent)
Tom Keisling, Director (present by teleconference)
Greg Thornton, Director

Staff Present:

David Denman, General Manager
Penny Jones, Promotions Director
Heather Purcell, District Secretary
Sherilyn Toelle, Finance Director
Jody Jenkins, Water District Attorney

Guests Present:

Steve Clabaugh, Resident
Paul Hodges, Resident
Roger Trammel, Resident

1. Call Meeting to Order and Invocation

President Bill Moore called the meeting to order with **three** members present at 9:00 am and gave an invocation.

2. Public Comment- No public comment

3. Approve Minutes of February 28, 2017

Director Hildebrandt made a motion to approve the minutes of February 28, 2017, as written. Director Thornton seconded the motion. Director Moore, Director Hildebrandt, and Director Thornton voted aye. The motion passed.

4. Discussion of meeting formalities

Jody Jenkins discussed how meeting should be conducted and what the board can and cannot do. Mr. Jenkins stated: "This is a publication from The Texas Municipal League, who is one of the insurance carriers for the water district. It has some frequently asked questions that are a lot of the topics the board is asking about. One of the most recent questions I was asking about is telephonic appearance at meetings. Tom is on the phone now. The question is can a person participate in a meeting by phone. The answer to that is no, but they can listen and call in and hear what is going on. If the board makes a decision to do that as a board then I don't think there is anything wrong with it." President Moore asked the water district attorney how he defined participation. Mr. Jenkins: "He can call in and I think he can hear and talk about things, but his vote will not count when he is on the phone. The board can listen to his input. No different than it would be board if it was a public comment. In the handout there is a specific section on when you can have someone voting, if there is an emergency meeting for example, or if it is impossible or difficult to

continue the quorum than you can have a telephonic meeting. An advisory board is another option. The meetings get posted the same; the meeting just needs to clearly indicate who is on the following listening where it is one of those emergency situations. One of the better questions I have been asked about is the formality of the meetings, the frequency of the meetings, scheduling, that kind of thing. Prior to this board being put into place, there used to be a rule that all of that was delegated to the President, but that has been repealed by the present board. I am not sure what you guys have, but that is a question of what you want to do is how that one can be governed. You have complete discretion to determine how frequently you have meetings, when the meetings are, how the meetings get scheduled, and who puts items on the agenda. That is probably the bigger one because there is no statutory authority out there in the open meetings act or elsewhere that states how an agenda gets put together. In the past that was all dealt with by the board president and people would make comments and give it to Heather and the president would decide if it needed to be on the agenda. Since that has been repealed, I guess at this point anybody can put anything they want on the agenda." President Moore: "What I would like to do, and certainly this is open to comment, any board member can request anything on there. David and I for a number of reasons, have reviewed that to make sure there is enough information so that the people that come to the board or other board members know as much specifics about each agenda item as possible. Anyone else in the public can call Heather and say I would like to be able to talk about this item at the board. Know based on that information it may be, and I think in past boards, has been taken that most of those come to the board when in reality a lot of that stuff can be dealt with by the manager of the lake. I would like to also tell those of you to make that determination or go back and say I need more information about what the issue is, so again, everyone knows what that agenda item represents." Jody Jenkins: "That is certainly up to your discretion, but I think at this point if you want to change it where you guys have some more control over it you will need a motion and a order, since the last one that delegated all to the president is now gone. I don't believe there is anything left. Right now if anyone calls in and says I want item X on the agenda it needs to be on there." Director Hildebrandt: "So you think it would be too restrictive and I am asking everyone at the table, to have a consensus of at least two board members to have something on the agenda. Whether it is public or it is something we want. Is that too restrictive or do you think?" Mr. Denman: "Yes." Director Hildebrandt: "Answer this Jody, we would have to treat... like if any of us can put an item on without anybody else's approval, which we have to reciprocate that same policy to anyone in the public." Jody Jenkins: "Right. Theoretically they are going to come through you on the agenda I would assume, and not be calling down here asking for that to be on there. You probably have a little more control over the public items than you do over board member requests. The issue that came up six or eight years ago was that there was an agenda item for essentially every lot out here, it seemed like. There was trash on lot 1, trash on lot 2, trash on lot 3. Each one was separate agenda item on the meeting and it might take six hours to finish it after you went through all the particular items. That was the reason it got changed is what I recall." President Moore: "Let me suggest an alternative. Let's talk about that. At my request, David has restructured this meeting so that we have old business and new business and because of the need to have one or two board meeting per week is quickly going away. What I would prefer to do is to have items under new business; we would need two board members to agree to that. We put those on the agenda and then in parenthesis need approval and get this out early than we do know, so we would have plenty of time to react to those new items. That would keep them from having to call." Mr. Denman: "I would like to have an input on that. We are pushing back the time that we get it out. If I get it to you one day earlier or half a day earlier, then someone comes in one minute before posting time and wants to add something

to the agenda." Director Hildebrandt: "Should we attach a time frame? Do you have experience with that, if you want an item on the agenda you have to get it on the agenda 24 hours in advance on the 72 hour posting period?" Director Thornton: "We don't know what is going to come up that we might need to deal with." President Moore: "I think these guys need to be given the latitude to construct it and a time table to get it finished. We have to live by that and if you send out a calendar for the next three months that should not be an issue. That way we know when you are expecting us to give you anything that needs to be on there." Jody Jenkins: "One thing I see other boards doing is they will actually have an agenda item every week to put what is going to be on the meeting for the next agenda. So they will figure it out before they get there. The rules allow for an emergency situation if something comes up to is post will less than 72 hours. Theoretically you can say discussion item every week of what needs to be on the next agenda and then you can set it every time you have a meeting, especially when you are having the meetings very frequently." President Moore: "It is crushing what we have been through in the last two months. I think we have done better than anyone would have expected to be able to deal with the issues that we have in the many meetings that we have had. Those items are virtually about finished." Director Hildebrandt: "What are your thoughts specifically on a time frame?" Jody Jenkins: "You always have to have a seventy two hour notice, unless it is an emergency. There are very few emergencies out here. You are always looking at 72 hours. It is really kind of up to you guys as to what is enough. Do you need another day? Do you need another week? If you are meeting every week than I don't think it is unreasonable to schedule the agenda at the meeting. What cannot be fixed in a week? What comes up in a meeting that can be addressed the following week in most cases? Unless it is one of those true emergencies and then you have an emergency meeting." President Moore: "And a number of times in the last two months we have created our own pain if you will by waiting until the members get to the board meeting to approve a contract and then start reading through it and say hey I don't like that. We have got to get disciplined enough; including myself, to review what we have got at that point in time. Here again, this is going to require David to send the data out to us in time to review it so we know what we want before the board meeting and get them updated and get those contracts fixed. All we have to do is come in and vote. We are not screwing around with I don't like that sentence and so forth. We have been doing exactly that with the marina contract and the construction contract at the gate. We have gotten better at it. Once we decide when our meetings and monthly meetings are going to be, we need a calendar that Heather and David create that says this is what I want as a deadline to get agenda items on the agenda and whatever else needs to be structured in that calendar. We minimize the amount of time in the meetings by being prepared when we get to the meeting. I think we have pretty much agreed that we are going to have our meetings in the future Tuesday, Wednesday, or Thursday. I think everyone will be happy with that." Jody Jenkins: "An emergency meeting is something that affects the health, welfare, or something that cannot be dealt with in 72 hours that is impossible to deal with. Probably the worst case scenario that you can think of is what constitutes an emergency. I have never seen one out here that constitutes an emergency need for a meeting." President Moore: "Let's do this. Let David, Heather, and I look out three months and put a calendar together and have a board meeting on the first Tuesday of the month and then back off when we need requirements to make the board meeting run effectively and then put it out. Every board meeting we will add another month onto it." Director Hildebrandt: "Tuesdays are good for me. Like a first and third if we wanted to do every other week I would be totally in on that like a first and third Tuesday." Director Thornton: "That is fine with me." President Moore: "Then let's do that and go forward." Mr. Denman: "That would work for posting the agenda on Friday if we could have a deadline for

submissions on Thursday by five pm, then Friday we can put it together and put it out." Director Hildebrandt: "Maybe we don't have to have some crazy policy, but just as board members we are cognizant of scheduling. I know I could do better on getting stuff in a timely manner." Tom Keisling per phone: "Can we vote to let me vote by telephone?" Jody Jenkins: "I don't believe so the way the statue is written. If it was true emergency situation than it is allowed, but otherwise there is not a way to do anything other than allowing you to call in." Director Hildebrandt: "I would be curious about any recommendations on a policy and procedure on public comment. I mentioned to David that I thought we might have one." President Moore: "We agreed on a couple of months ago two minutes per person." Jody Jenkins: "The only thing on limiting it is you cannot discriminate. You cannot say Greg Lewis you get twenty five seconds and everybody else can have as much time as they want. You just have to apply to all. Do we want to discuss the bid process or pretty much done with that?" President Moore: Yes I would like it in the minutes." Jody Jenkins: "There are a couple of different places to look if you wanted to go and see all the details from the statute. There is the water code in Chapter 49 and there is the local or the government code in 2259. So the water code controls first and then if it does not address it then the government code fills in the blanks. Essentially the water code says there are three types of contracts that require you to take them out for bid; those over twenty five thousand, those over seventy five thousand, and those above that. The seventy five and over you have to go through the whole process posting in the newspaper a couple of times per month and solicit your bids. To do that process the first step is creating the request for the bid. To do that it depends on how you want to take this project out. If you are going to hire a construction manager it is a different story. You can hire someone like that through the bid process and then they can deal with the hassles that come along with that bid or you can just put out bids for a proposal. When you put bids out for proposal for construction, for example, you need architect engineered drawing plans. That is the first step before you get the thing out for proposals. Get your engineer hired and get some plans drawn up, so when you take it out for bid you can say this is what the job is that has to be done and you have to comply with these specifications. Once that goes out you set a date for the sealed bids to come in, those sealed bids come back and are supposed to be opened publicly. Theoretically that means in a meeting; opened, read aloud, and put on the minutes so there is some record of how it happened. Following that is the decision on who to hire. You can make that decision based upon not just the price, but other factors. The availability of the contractor, the speediness of the job, there history, the kind of work, there is a list of eight or nine factors that can be considered. For the most part you have decent discretion on a contractor to hire. Once that contractor gets hired, the next step is creating a contract with that contractor." President Moore: "Can I back up a moment. Don't we need to explain our reason for the decision in a public meeting?" Jody Jenkins: "When you read the bids aloud, if you are going to make the decision at that point, you can make the decision then or you can schedule that, which would probably be better for the next meeting. So you have had a chance to look at all the bids after you have read them all aloud and opened them, and then you list those factors of why you chose the person you did, and start working on the contract. That contract is the harder part of the whole process because no one can do any work until the contract is done. The contract has to comply with all the requirements; some of the bigger ones are that you have a construction bond and payment in place before any work starts, and that the specifications for the job match the bid. That is something you would decide when you pick the contract. With the folks that built the building here, the bid submitted was pretty vague, for example, it is three quarters of a page with line items and I have seen the construction plans and they are probably fifteen pages. It seems that they may have summarized those, but at the end of the day, there bid and our contract say that

they are going to do everything in those plans for that price that they agreed to do it." Mr. Denman: "Jody you know with bids like we received and have numerous pages of specifications, in order to streamline a decision at the board meeting, what process we need to go through if the board wanted to select me or if they wanted to select an outside engineer. That way the board comes to it and the trust whomever they have chosen to go through the process and it make is it a quick decision instead of passing all these papers around and taking thirty minutes to decide on a vote." Jody Jenkins: "So that is part of the reason to use a construction manager is to do that process that you are talking about. Without that I am not sure there is a way. Essentially you would get the bids in at a board meeting and schedule another one with sufficient time for everyone to look at it and determine whether or not the request or take the whole project out for bid. You could certainly summarize it for them, but the need to be looking (board members) need to be looking at the plans and specs along with the bid to make sure they comply." Mr. Denman: "You say they could delegate that to a construction manager if we had an engineer on board already like some cities do?" Jody Jenkins: "Well if you had one that was an employee, I am not sure you would be taking a bid out to hire someone, if it was an employee it would have already happened. There job as an employee would be more to advise the board. The board could say here are the plans, here are the specifications, here are the bids, you tell us at the next meeting if there are any issues and we will decide on a contractor as a whole. I think you could be in that same role as an employee now. You could advise the board if they chose to say David tell us what the differences are between the specs and this bid. Ultimately, they need to see all of it in one package to make their vote. So then, that contract gets signed all the requirements in place, the bonds have to be in place for they start work, and once they start work, if there are any changes, those changes cannot exceed a certain percentage of the contract. I think it is like six percent. At that point you would have to retake the project out for bid to make a change bigger than that. I don't remember the number of the top of my head. In this last one we did, the twenty-five thousand that you guys agreed to was less than the requirement of the statute." President Moore: "Ok. The only other thing that has thrown us a curve ball is the prepayments that have been requested. Ultimately the only one that was really important was the gate contract for pre-payment. The other two, actually the point of sale, you need not to be in the universal contracts. Buying something at retail at that statute did not apply to that. We had all that worked out to where we are not in conflict with that statute." Jody Jenkins: "The statute basically deals with payment for construction work. It specifically says that you can't pay on a construction project until progress has been made according to the schedule that the board agrees to. The guys on the building here they created a calendar and said that is what we are going to do every day. We took that and divided it by the total number of weeks in the project and said ok, so as long as you are doing this work that is how much we will pay you every week. That is probably one of those that I would say is close enough, it is not necessarily what the statute says. The statute says this percent of progress deserves this percent of payment and with this one it was hard to tell the percentage of completion at what stage any of these particular items he agreed to do where in percentage points. That is how we handled that. When it is not in construction contract, you don't have that same provision that requires progress payments." President Moore: "Ok. But to the fact that we also took the payments on point of sale equipment totally within the contract from start to finish can structure those payments like we want to. It does not have to be the finite calculation that you went through on the gate contract. Is that correct?" Jody Jenkins: "Well the statute theoretically states that you tell the supplier, give me a break down of what percentage of complete each step is and I am going to pay you according to that. That is one option and the other option is like we did on this one where you say tell us what you are

going to do every day and we are going to pay you on tight end basics. When it is construction you have to pay as progress happens. The statute requires a minimum ten percent retain age until fifty percent of the work is done. After fifty percent you can decide not to retain anything else. That retain-age would cover you until the end of the project." President Moore: "On the POS it would be more like buying components off of the shelf with minor modifications to software or even closer to pure retail than the boat slips would be. The boat slips are built, but they are built to standard specs that these people work towards. As I said, all these people have been very helpful as far as scheduling these payments within the start and end time." Jody Jenkins: "These folks that have never had any government contracts, this requirement are for every city, county, etc. in the whole state. It is not unique. So if they have ever done it they should be familiar with the way it works." Director Hildebrandt: "What about the twenty-five to seventy-five rise? Not that we have anything going on, but if you have that twenty-five to seventy-five and you have construction specifically does that change?" Jody Jenkins: "No. That is always the same. The payment progress is separated out. The big difference between the prices is how you take the bids out." Director Hildebrandt: "Twenty-five to seventy-five you need to get a few bids but you don't have to public post it?" Jody Jenkins: "So anything over fifty has some requirements for a bond and some additional items. You don't have to post in the newspaper as often." Director Hildebrandt: "And under twenty-five is pretty?" Jody Jenkins: "I think you can do it under twenty-five without any kind of posting." Director Hildebrandt: "That is pretty much for anything under twenty-five?" Jody Jenkins: "In the past the boards have delegated X number of dollars to the manager to spend and it was like five thousand. Seems like it was somewhere in that range the board would consider trivial; I would not want to say trivial, but I am not sure there is a better word. This would be the things that don't warrant a board meeting to make a decision on." Director Thornton: "Did you look at the marina contract?" Jody Jenkins: "Yes. The contract is pretty close to the one that we have used in the past. We made some modifications to it. After the last meeting there were a few more changes that were requested, ultimately related to signage. Seems like we made a change on the parking, which I did not see a problem with that to start with, but we changed it to be not exclusive. We added that term in there. Everything else is pretty standard. You know the decision that we got on the last one from the Supreme Court pretty much said that are contract is not worth a whole lot in the grand scheme of things. We have an agreement because that is the plan to abide with. At the end of the day, I don't know that we could alter terms that the State has already said that there is no right to, or obligation to have any liability on those issues."

5. Executive Session

The Board of Director met in Executive Session as authorized under Article 6252-17, Section Paragraph (f) and (g). The Board convened into Executive Session at 9:34 am

- A. Section 551.071, Consultation with Attorney
- B. Personnel, Section 551.074, Lake Manager 90-day review
- C. Contracts, Section 551.072

6. Reopen in regular session and take action if necessary

The Board of Directors reopened into regular session at 10:14 am, but no action was taken from the executive session.

7. Reports

A. Police Department Report by Stewart Naron

- Stewart Naron reported on current incidents that have happened at Buffalo Springs Lake.
- Police Vehicles cannot get on the ATV trails. The police department needs a UTV or ATV to get on the trails.
- Checking to see if Police Officers are allowed to work at the gate. Not sure if Licensed Peace Officers are allowed to take money or not.

B. Public Works Report by Robbie Green

- Finished the fire hydrant and water line at the water tower and is now operational.
- Installing fire hydrant in front of Lot 308.
- Working on the amphitheater and watering the grass.
- Martin Noey installed nine barbecue pits where all the small lean-to covered pavilions are.

C. Maintenance Department Report by Jack Bush

- The grant bathrooms are being fixed and should be working before spring break.
- The maintenance department is working on the awning at the gate.
- The fence around the administration office will be repainted, pending temperature and wind. Director Thornton would like to coordinate the paint on the administration building and fence with the new gates so everything matches. Mr. Denman stated that he will do that as soon as he knows what the gate colors will be. He further stated that he began painting and replacing timbers on the administration building since letters were being sent to residents to paint their homes.
- The culvert across from Lot 166 had been worked on. Dirt was being dumped in front of the culvert and closed it up. The pipe was stopped up and had to be cleaned eight to ten feet inside the pipe. President Moore asked if there was anything that could be done structurally to keep that from happening again. Jack Bush stated it should stay clean for at least another year and should not happen again.

D. Promotions Department Report by Penny Jones

- Penny Jones went over the cost and revenue of all the 2016 events and went over the upcoming events for 2017. Director Thornton stated he would like to have a boat race in 2018. Director Hildebrandt suggested tagging fish at BSL for the upcoming fishing tournament. Ms. Jones stated that she has had several complaints about the condition of the ATV trails. Director Hildebrandt asked for the suggesting in writing.

E. Manager Report by David Denman

- New dumpsters and repainted dumpsters with reflectors and replacing the old ones around the lake.
- FYI for all board members, if you want to know legal advice, the administration has access to TML and their advice is free.

- Looking into the cost to pour concrete at the Marina water edge to overlay the current sidewalk to make it safe. All the wooden timbers need to be replaced.
- I. Review lot lease conditions from letters sent to resident
 - Mr. Denman reported on the status of letters sent to residents and who has complied. The board would like lot 80 on the list and requested a schedule of completion.
 8. Consider status of Marina and begin a new marina lease contract with the new Lessor
President Moore stated the Marina is vacant and there is a new lease to vote on today.

Director Hildebrandt made a motion to accept the current Marina lease between the water district and Steve Clabaugh. Director Thornton seconded the motion. Director Moore, Director Hildebrandt, and Director Thornton voted aye. The motion passed.

9. Consider approving the point of sales amended contract
President Moore told the board the point of sales contract was nothing more than a payment return. The payment terms are about \$8,544.00 a week with the payment of \$28,480.50 after the testing, installation, and completion of the project. Director Thornton said that the way the building came out the last lane should be the exit lane and it would save \$15,000.00 or \$10,000.00. It does not have anything to do with the method of payment. President Moore stated it would affect the dollar amount. Director Hildebrandt stated the water district will lose six to eight trees that will have to be removed to make the room. Director Thornton said there would be four inbound lanes with the elimination of the one he is referring to. Director Hildebrandt stated it would be a kiosk, three lanes, and a line buster. President Moore stated that if the water district keeps producing \$15,000.00 to enable no waiting, except for two or three times a year, it is worth it.

Director Thornton made a motion to approve the payment terms of \$8,544.15 per week for ten weeks plus the final payment after testing, installation, and completion of \$28,480.50. Director Hildebrandt seconded the motion. Director Moore, Director Hildebrandt, and Director Thornton voted aye. The motion passed.

10. Consider purchasing a boat slip bid
President Moore stated that he appreciated the input from all the board members about the reasons not to do the boat slips and boat lifts at this present time, but he is not giving up yet. Ms. Jones and President Moore will be on the radio in the morning to promote the boat slip idea, the new point of sales, the new marina, and the events throughout the summer. He would like to enlist people that would be interested in having a boat slip so that the current list of seven committers could be increased to fifteen or twenty. This would help move this project along if there were more commitments and the board can look at the boat slips in another sixty days.

11. Consider purchasing a boat lift bid
No Action Taken.

12. Consider amending the rule stating that kayak fisherman can only use the shallow end of the lake.
President Moore stated he is not sure there is a rule on this agenda item. President Moore spoke with the Chief of Police and the police chief agreed to strengthen boating use on the big end of the lake. President Moore's opinion is that the board should allow kayak

fisherman on the lower end of the lake. Director Thornton was not sure the board had the authority to stop that. President Moore stated he was not sure but would like the board to come up with something that could be enforceable or take the sign down and allow it. He said Kayak fisherman only fish forty to fifty feet off of the bank. Director Hildebrandt stated that the only limitation should be May through August Friday afternoon, Saturday, and Sunday in mid day peak hours, if there was a limitation because if you are a kayak guy and you want to brave the waves out there you are taking your life into your own hands. Director Thornton asked instead of taking the sign down change it to something usable. Director Hildebrandt recommended putting a sticker over the part that is pertinent to this discussion.

13. Wednesday night boat testing

President Moore stated he is not a fan of the Wednesday night boat testing. The board has allowed the racing boats to test and tune in the past because they have always asked for permission. Director Hildebrandt stated that just generally speaking during the peak of summer Wednesday is not a busy day, during the day at the lake, but might be in the evening. President Moore stated he never liked this because it creates a wake and causes erosion. He is uneasy at allowing certain people at certain times not to follow the rules and encourages the board to do the same. Director Thornton stated since there are not boat races there is no need to shut the lake down for one or two people. President Moore agreed with Director Thornton. President Moore stated that if asked to do this permission would not be granted.

14. Adjourn

The board of directors adjourned at 11:47 am.