



**Port O'Connor Improvement District
39 Denman Drive
Port O'Connor, Texas 77982**

**MINUTES OF A REGULAR MEETING OF
THE BOARD OF DIRECTORS
Thursday, July 19, 2018**

- A. CALL TO ORDER. President Brown called the meeting to order of the Board of Directors of the Port O'Connor Improvement District (POCID), on Thursday, July 19, 2018, at 1:00 p.m. at the District Office, 39 Denman Drive, Port O'Connor, Texas, announcing that a quorum was present and welcomed citizens and guests.

DIRECTORS PRESENT: Leon Brown, Marshall Bradford, Bobby Raybon, David Randolph

DIRECTORS ABSENT: None

It was noted that a vacancy exists with the resignation of Nathan O'Neill.

ALSO PRESENT: Dottie Palumbo, Bojorquez Law Firm, PC, General Counsel,
participated by phone
Joel Valdez, CP&Y, Inc., District Engineer

- B. PUBLIC COMMENTS. At this time, any person with business before the Board not scheduled on the agenda may speak to the Board. No formal action can be taken on these items at this meeting.

David Baker, a resident at 138 Chavez Way, stated concerns that it has taken too long to get water and sewer taps at his property. It has taken 5 months with no response to his phone calls to the District.

Mrs. Barbara Brandon, a resident at 121 W. Jackson, stated she has called the Health Department regarding raw sewage backup in her house. She is concerned that the District operations seem to be dysfunctional. There needs to be constructive direction to operations so that problems can be fixed.

- C. CONSENT AGENDA: *The following items are anticipated to require little or no individualized discussion due to their nature being clerical, ministerial, mundane or routine. In an effort to enhance the efficiency of POCID Board meetings, it is intended that these items will be acted upon by the POCID Board with a single motion because no public hearing or determination is necessary. However, a POCID Board Member or citizen may request separate deliberation for a specific item, in which event those items will be removed from the consent agenda prior to the POCID Board voting on the consent agenda as a collective, singular item. Prior to voting on the consent agenda, the POCID Board may add additional items that are listed elsewhere on the same agenda.*

1. APPROVAL OF MINUTES

- a. Minutes of Regular Meeting June 21, 2018
- b. Minutes of Special Meeting of March 9, 2018

2. APPROVAL OF PAYABLES

- a. Port O'Connor Improvement District. *President Brown asked to pull check # 9698 to have General Counsel review the bill and the prior bill and to contact the law firm for any discrepancies; check #9715 to ADT totaling \$10,678.75.*
- b. Reimburse LaSalle for credit cards payments
- c. Defined Area 1 – authorize payment to Calhoun County.

3. CONSENT AGENDA ITEMS

- a. Approval of the Second Amendment to the Port O'Connor Improvement District's Code of Ethics.
- b. Approval of the Order Calling for the November 6, 2018 General Election for the purpose of electing 2 Directors.
- c. Approval of increase in pay for District Operator Lance Roy to \$28.00 per hour.
- d. Authorize the purchase of a biometric time clock not to exceed \$1,000 in cost.
- e. Approval of Matagorda Bayview Subdivision Section 1
- f. Approval of Preliminary and Final Plat for Villa Pesca Subdivision. *President Brown requested to pull this item from the agenda and take no action at this time. There is no detail on the Preliminary and Final Plat for Villa Pesca Subdivision.*
- g. Approval of RFP for District Engineering Services and Project Engineering Services for TWDB Project 21750
- h. Order for First National Bank Credit Card and authorize President Brown to execute necessary documents.

DISCUSSION: General Counsel explained the consent documents in the Board packet. The second amendment to the Port O'Connor Improvement District's Code of Ethics provides for post term responsibilities of former Board members and misuse of official information.

The Board needs to approve the Order calling the November 6 2018 general election to elect 2 directors with terms expiring this year. Signed copies of the joint election agreement with Calhoun County have been received.

The District Project Manager is recommending the pay increase for Lance Roy and the purchase of the biometric time clock.

District Engineer has recommended approval of the Matagorda Bayview Subdivision Section 1 application in his report.

The RFP is the same RFP that was used before for District Engineering services and TWDB Project 21750. The notice will be placed in the Port Lavaca Wave and on the website.

An order has been prepared for the President to sign for a credit card for the use of Port O'Connor Improvement District Project Manager and Customer Service Representative. Board policy is currently for expenditures less than \$250.00, this will need to be amended for a procedure for emergencies.

MOTION: A motion was made by Leon Brown

SECOND: With a second by David Randolph

To approve the Consent Agenda items with the exception of check #9698, check #9715, and item C.3.f. Villa Pesca Subdivision Plat.

APPROVED: The motion carried unanimously.

D. ITEMS FOR CONSIDERATION AND TAKE APPROPRIATE ACTION IF NEEDED:

1. Report of District Project Manager
 - a.) District Status
 - b.) Work in Progress
 - c.) Water Production Report
 - d.) Wastewater Treatment Plant Summary
 - e.) TCEQ follow up
 - f.) Approval of repairs and/or inventory
 - g.) 2018 Storm Plan

DISCUSSION: President Brown stated that District Project Manager is out on leave and that the 2018 Storm Plan has been submitted. President Brown requested that all employees should be issued first responder cards and during an emergency event, the District Project Manager should provide the President with daily updates.

MOTION: A motion was made by Bobby Raybon

SECOND: With a second by Marshall Bradford

To approve the 2018 Storm Plan as submitted with the addition of issuing to all employees first responder cards and during such events, the District Project Manager should provide the President with daily updates.

APPROVED: The motion carried unanimously.

2. Report of District Engineer
 - a.) Wastewater System Status
 - b.) TWDB Project 21750 Updates, Schedules and Change Orders
 - c.) TCEQ Bond Amendment
 - d.) Outstanding Items – Outstanding water and sewer connections
 - e.) Water Tap Connections for Port O'Connor. (District Engineer)
 - f.) Status of Generator sizing
 - g.) Status of Standard Details on the assembly of standard details and drawings for the District. (Follow up report from last meeting on AirVac and FloVac assessment)
 - h.) Status of Technical Memorandum

DISCUSSION: District Engineers report was included in the packet reporting on the period June 11 through July 9, 2018. The District Engineer provides assistance in the operation of the District to review plan submittals, responds to questions and provides guidance on electrical-generator sizing.

TCEQ Bond Amendment

CPY has reached out to TCEQ concerning an update and status. The Bond Amendment is currently in Technical Review. TCEQ needs to provide a response by August 9, 2018. Approximately 90-days of the 120-days have passed.

President Brown asked if the engineering report had been reviewed and what is the status of the application to amend the bond. This has been a request that should have been processed with the bond amendment that TCEQ is now reviewing. President Brown also stated concerns that this process has taken far too long and needs to come to a conclusion.

Water analyzer and injection system

CPY received from POCID the following on June 14, 2018; (1) Mercer RFI dated May 21, 2018 concerning the Hypochlorite Line Condition and (2) a request for additional service for \$1800. The submittal date for the equipment was May 21, 2018.

MOTION: A motion was made by Leon Brown

SECOND: With a second by Marshall Bradford

To approve Mercer's RFI dated May 21, 2018, concerning the Hypochlorite Line Condition requesting additional service in an amount no to exceed \$1800.

APPROVED: Motion carried unanimously.

Water and Sewer Maps

There continues to be several issues with the Water and Sewer Maps. The maps are to be schematic but the maps are ineffective for field crews to help locate and find data. CPY staff is reviewing the record drawings, plans and other available information to update the water and sewer maps. District Engineer stated that CP&Y Quality Control for additional verification. Ultimately, the goal is to upload the maps to the website for public use by summer 2018, pending Board Approval.

DISCUSSION: President Brown stated a concern that there has been no progress over the last six months and has not been on the District Engineer report. Mr. Valdez explained that this project

has been tied to the Technical Memorandum with TCEQ and CP&Y continues to actively work on this project.

TWDB 21750 (Refer to items E.6, E.7 E. 8)

Construction is underway throughout the District. LCI is currently working on Harrison Street. CP&Y is processing several change orders that were approved or processed before CP&Y's involvement. CP&Y will need to have these change orders resolved before processing any new change orders.

The County has expressed concerns on the current alignment. During a windshield survey, it was determined that portions of the road surrounding the community center are private and gated. Access through these areas will make contraction access difficult for LCI. General Counsel has taken the lead on securing easements for this property.

President Brown asked for a summary of his site visits in June and July and to provide such visits to the Board at future meeting to have detail on what he did at the site visit. President Brown wanted to know what was observed, the details with supporting pictures. CP&Y performed site visits on June 21, 2018, with additional visits in June were canceled due to the rain. A scheduled site visit was scheduled for July 17, 2018, with 2 additional visits scheduled.

Plat and Development Reviews - See Consent Item C.2.e.

GSW resubmitted a plan review of Matagorda Bayview Subdivision Section 1 approved on consent agenda. A Preliminary and Final Review Villa Pesca Subdivision is still under review and should be ready for approval at the August meeting. The outstanding issue is a 40' access easement.

Standard Details

CPY has been working with AirVac and local entities on the assembly of standard details and drawings for the district. Files have been received by AirVac. The deadline for these items are in August 2018.

USW Status Report – Request to remove this item from the report due to litigation.

CP&Y has been working on an assessment of the USW deficiencies of the POCID and LaSalle systems CP&Y witnessed. We are on hold until we can confirm if additional documentation can be provided by USW to show that did perform the necessary calibrations and testing required by TCEQ.

Maintenance Plan

A Maintenance Plan has been assembled for the District's use based on the existing equipment. This information has been shared with the District but has not been implemented.

President Brown stated that this has been on the agenda without the Maintenance Plan being presented to the Board and requested that the District Engineer send the plan to the Board and copy General Counsel.

Technical Memorandum

Currently the Technical Memorandum is on hold to summarize its findings, discussions and recommendations based on recent findings from numerous sources including the following:

1. FlowVac Report
2. Input from AirVac
3. Water Report Talent by Jim Kaylor
4. Operational Staff input
5. Review of Equipment specifications, operation and maintenance manuals and other related literature
6. CP&Y independent analysis of the water and wastewater
7. CP&Y walkthroughs and process interactions

There have been some delays impacting submittal of the report including lack of proper record keeping caused by USW and a former USW/POCID employee that walked off the job. The proposed Technical Memorandum will help address the following:

1. Asset Management Plan: This plan will prioritize the list of improvements and develop a plan to implement the projects. These improvements may impact generator sizing and asset acquisition.
2. Generator Sizing: The current generators are undersized or old.
3. Add Redundancy in the system
4. Bond revaluation and reorganization
5. Address inflow and infiltration
6. Recommendations to address security including Homeland Security
7. Make recommendations on equipment and other items as necessary

There were concerns stated as to why the Technical Memorandum is on hold. CP&Y has had all of the data since March 16 at which time was provided to GBRA (Guadalupe-Blanco River Authority). It was noted that previous emails indicated 45 days were needed. The Technical Memorandum needs to be submitted at the next regular meeting.

Inflow and Infiltration Issues

CP&Y is currently monitoring the Inflow and Infiltration (I&I) issues in the system. Currently, identified some areas where I&I is currently an issue. Initial discussions have been made with Alligator Head Subdivision to help identify the issues. This item is on hold.

Generator Sizing

CP&Y has requested turn-key operations for Generator Sizing from various entities. It is anticipated to have information by end of July 2018. President Brown asked when will the Board get the information. Should be on the next agenda.

Water Meter Count Information

CP&Y provided information on the water meter sewer connections for POCID. Various reports had differing information.

E. CONSIDER AND TAKE APPROPRIATE ACTION ON THE FOLLOWING:

1. Conflict of Interest and Resignation of Nathan O'Neill.

DISCUSSION: President Brown requested that his statements read be included in the minutes. The following was read out loud:

“At the March 15, 2018 meeting former Director O’Neill questioned the coding on his father-in-law, Billy Goode, invoice to the District. He requested that the invoice be recoded. The District’s First Amended Code of Ethics, our Ethics Policy, clearly state the requirements of Chapter 171 of the Texas Local Government Code and the requirement that state law and the District Ethic’s Policy applies to relatives such as former Director O’Neill’s father-in-law, Billy Goode. During this meeting, Former Director O’Neill was reading from the Ethics Policy.

The Board had a special meeting on March 28, 2018 where Billy Goode’s invoice was approved and General Counsel recommended that former Director O’Neill file a conflict of interest affidavit. Former Director O’Neill abstained from voting on a matter before the board that concerned a relative, however, Chapter 171 states he also must fill out an affidavit. Chapter 171 states:

Sec. 171.004. AFFIDAVIT AND ABSTENTION FROM VOTING REQUIRED.

(a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, **BEFORE** a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

(1) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or

(2) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

(b) The affidavit must be filed with the official record keeper of the governmental entity.

Sec. 171.002 SUBSTANTIAL INTEREST IN BUSINESS ENTITY

(c) A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by consanguinity or affinity as described by Chapter 573 of the Government Code, has a substantial interest under this section.

The affidavit was signed and filed with the Calhoun County Clerk's Office on May 21, 2018 after the Board action of March 28, 2018. The Calhoun County Clerk is not the official record keeper.

The Board directed General Counsel to notify the Calhoun County Criminal District Attorney Dan Heard for Former Director O’Neill not complying with Chapter 171 of the Texas Government Code. Violations of Chapter 171 are a Class A misdemeanor.

Former Director O’Neill resigned effective July 3, 2018.

In accordance with Texas Election Code Section 201.023, if an officer submits a resignation, whether to be effective immediately or at a future date, a vacancy occurs on the date the resignation is accepted by the appropriate authority or on the eighth day after the date of its receipt by the authority, whichever is earlier.

The resignation was effective on July 13, 2018”.

2. Consideration and approval of the appointment of Stevenson “Steve” Ferguson to serve the unexpired term of Nathan O’Neill.

No action was taken.

3. Administration of the Oath of Office to Stevenson “Steve” Ferguson.

No action was taken.

4. Presentation by Avik Bonnerjee, Registered Texas Assessor/Collector, B&A Municipal Tax Service LLC on POCID Sales Tax Audit.

DISCUSSION Mr. Avik Bonnerjee, Registered Texas Assessor/Collector, B&A Municipal Tax Service LLC explained the POCID Sales Tax Audit that was presented. Information collected comes from the Texas State Comptroller’s office and as they perform the audit, the properties are cross-referenced with the State. For this area, the Comptroller’s office begins collection on those in the rears in May when all businesses are open. The Board requested that the reports be sorted by business name instead by street address.

5. Consider the employment of Homer “Wade” Cheek for the position of District Operator.

DISCUSSION: President Brown stated that the District has been working with TCEQ and recommends that POCID authorize him to send a letter offering employment to Homer “Wade” Cheek as an operator for the District. Mr. Cheek has Class A Water and Class B Wastewater licenses. In the offer he requests being able to provide health benefits on the date of employment.

MOTION: A motion was made by Marshall Bradford

SECOND: With a second by Bobby Raybon

To authorize President Brown to extend an offer of employment to Homer “Wade” Cheek with a starting salary of \$30.00/hour to include health benefits on his start date.

APPROVED: Motion carried unanimously

6. Authorize Payment No. 13 to Lester Contracting for TWDB Project 21750. (District Engineer)
DISCUSSION: The District Engineer has reviewed and approved Payment No. 13 to Lester Contracting for TWDB Project 21750.

MOTION: A motion was made by Leon Brown

SECOND: With a second by Bobby Raybon

To approve Payment No. 13 to Lester Contracting for TWDB Project 21750 in an amount of \$51,422.40.

APPROVED: Motion carried unanimously

7. Discuss and consider easement and land access across Community Center and along W. Harrison Avenue. (General Counsel)

DISCUSSION: General Counsel received an email on July 9 from the District Engineer that he spoke with Commissioner Finster on a few occasions. The County questioned if the alignment could be aligned within the existing Harrison Avenue ROW. See image below, my understanding what the County is requesting. They were concerned that the parking lot would be distributed. The Commissioner and District Engineer had other conversations concerning the land transactions between the POCID and the County. Based on previous conversations during the POCID Board Meeting, it appears that the POCID has a prescriptive easement for the existing sanitary sewer line crossing the parcel. It is unclear, to CPY, if the easement has exclusive rights or shared land rights. The BGE plans made reference to a new 20-foot easement adjacent to the existing easement. Although the BGE Plans shows a 20-ft easement with a 10-ft separation between the proposed water and existing sewer, the actual measurements appears to be 15-ft easement with only 7.5-ft lateral distance between the water and sewer. The 7.5feet measurement does not meet TCEQ water and sewer separation distance. The proposed water alignment appears to be crossing onto private land along Trevor Street and along Harrison Street. This ROW has an existing gate which limits vehicular traffic to enter. It appears that the ROW has not been accepted by the County. The POCID would need clarification from the County if this is ROW or Private Land. If these parcels are private land, then the District would need to secure Easements from each parcel. If these Parcels are ROW, then we will ask the County for permission stating these parcels are ROW and the POCID and LCI has permission to be on the property.

No action was taken at this time.

8. Review and approve TWDB Project 21750 Change Order No. 2.

DISCUSSION. The District Engineer reviewed and recommends approval of the changes in the field directives. If Board approves, LCI will prepare the Change Order.

No action was taken pending Mr. Valdez, District Engineer, verifying amounts paid to LCI.

9. Update on CP&Y, Inc. District Engineer Contract. (District Engineer and General Counsel)

No action was taken.

10. Consider Rule 6.7 Water Wells of the POCID rules and regulations and procedures to connect to the Water or Wastewater system.

DISCUSSION: Assistant General Counsel John Dugdale reviewed the rules that specifically relate to water wells: The authority for the POCID's water well permit requirement is Section 6.7, Water Wells – Permit Required. The second paragraph of Section 6.7 includes required content of the application: 1)The name and address of property where well is to be located; 2) an adequate description of the well's location; 3) the contemplated use of the water from the well; and 4), a signature acknowledging the responsibilities of the applicant and the rights of the District.

The POCID's Water Well Permit Application includes a section entitled "Acknowledgment of Rules" and enumerates 4 requirements. The fourth enumerated requirement in question reads:

Property owner and/or applicant understands that if the well is going to service a home, said home will not be able to hook up to & utilize the District's sewer system.

The application does not provide authority for prohibiting a private well owner, who is not connected to either District water or sewer systems, from utilizing the District's sewer system. Nor is there such a prohibition in the Rules and Regulations against a private well owner's use of the District's sewer system where the private well owner does not treat and dispose of its wastewater, which includes domestic sewage.

In fact, a private well owner is not prevented from applying for and paying to connect with the District's sewer system where that private well owner at the time of application does not already tap into the District's water system and treat on her property her own domestic and sanitary wastewater.

It appears a simple solution to the erroneous unqualified prohibition against a private well owner from connecting to the District's sewer system is to replace that Paragraph 3 with the following, or something similar:

Property owner and/or applicant for a potable water well to service a home understands that should it in the future utilize District sewer system service, it will be required to connect to the District's water system.

Please note that Sections 6.1(h) (1) – (3) of the Rules do set out circumstances where: 1) A person who builds a new structure and utilizes the District's sewer system must tap into the District's water system; and 2), where a private well owner also operates her own wastewater treatment facility, she must apply for District water and sewer service within two years of those services becoming available.

It was noted that there is a scrivener's error in the Rules, so that immediately above this subsection (h) there is a provision "Right of entry to officers; right to interrupt service" that is also designated as "(h)"].

No action was required at this time, however, an amendment to the Rules and Regulations will be provided by General Counsel at a later meeting.

A brief recess was called at 2:21 p.m. The Board reconvened the meeting at 2:26 p.m.

11. Discuss FY 2018 – 2019 budget planning calendar and budget process.

President Brown advised the Board that there will be a special meeting called sometime before August 3, 2018 to discuss the budget. No other items will be on the agenda. The meeting will be held in a workshop format.

F. EXECUTIVE SESSION

The Port O'Connor Improvement District convened in Executive Session at 2:30 p.m. in accordance with the authority contained in any of the identified items posted on the agenda pursuant to the following exceptions:

Texas Government Code Ann. § 551.071: Consultation with Attorney
Texas Government Code Ann. § 551.072: Real Property
Texas Government Code Ann. § 551.074: Personnel Matters

Consultation with General Counsel pursuant to Texas Government Code Section 551.071, Consultation with Attorney, on pending or contemplated litigation; or a settlement offer; or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Texas Government Code Chapter 551 for the purpose of receiving legal advice concerning status of pending projects, including but not limited to:

1. *USW Utility Group v Port O'Connor Improvement District*: Cause No. 2018-CV-3268-DC, pending in the 24th Judicial District Court, Calhoun County, Texas.

David Tuckfield had a hearing set for the Plea to the Jurisdiction on July 7, but Kathy Allen had a death in the family and at the last minute it was rescheduled to push it off until August 2. We will follow up at the next meeting.


2. Interlocal Agreement with Guadalupe-Blanco River Authority for services relating to the operation of POCID facilities; including operation, maintenance, repair laboratory and testing services
3. Defined Area 1 Agreement for Maintenance and Operation for Port O'Connor Defined Area 1 between Port O'Connor Municipality Utility District and Caracol Community Association dated January 1, 2011 and past due amounts owed.
4. Interlocal Agreement between the Port O'Connor Improvement District and LaSalle Water Control and Improvement District No. 1A for Operations and Maintenance Services dated June 14, 2006, as amended and past due amounts owed to POCID.
5. TCEQ Notices of Alleged Violations and POCID legal remedies

The Executive Session was adjourned at 3:05 p.m. and the Board reconvened the Open Meeting.

- G. TAKE ANY ACTION AS A RESULT OF EXECUTIVE SESSION. There was no action taken on any of the items discussed in Executive Session.

H. ITEMS FROM BOARD MEMBERS (Note: Board members may request specific factual information, recitation of existing policy, or placement of items on the Agenda for discussion at a later meeting.) There were no requests.

I. ADJOURN. President Brown adjourned the meeting at 3:06 p.m.


Leon Brown, President


Maria Denney, Secretary

Signed this 16th day of August, 2018.

These minutes were approved on August 16th, 2018.