



**LAKEWOOD VILLAGE
MUNICIPAL DEVELOPMENT DISTRICT**

BOARD MEETING

MARCH 23, 2017

Board Members:

Eric Farage, President
Bernd Mueller, Vice President
Dave Batchelder, Treasurer
Linda Asbell, Secretary
Linda Loudon

REGULAR MEETING - 6:01 P.M.

With a quorum of the Board Members present, President Eric Farage, called the board to order at 6:01 p.m. on Thursday, March 23, 2017, in the Council Chambers of the Lakewood Village Town Hall, 100 Highridge Drive, Lakewood Village, Texas.

REGULAR AGENDA:

(Agenda Item A)

Consideration of Release of Attorney Messer
Opinion Related to MDD Operations and
Expenditures

(Agenda Item A.1)

Lakewood Village Town Councilman Tantalo stated that he has some comments to make if the board votes to not disclose the attorney opinion. If the board votes to release the opinion to the public Councilman Tantalo will make those comments at the next council meeting. There was some discussion about the need for authorization from the Town Council to release future opinions.

MOTION: Upon a motion made by Linda Asbell and seconded by Eric Farage, the Board voted five (5) “ayes” and no (0) “nays” to release the Attorney Messer opinion to the public. *The motion carried.*

The board discussed including the opinion as an exhibit to the minutes. (See exhibit A)

Discussion of Municipal Development District
Financial Report

(Agenda Item A.2)

President Farage reviewed the financial report.

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Discussion of Rocky Point Water Operations

(Agenda Item A.3)

There was no discussion.

Discussion of Projects

(Agenda Item A.4)

Linda Loudon reported that she spoke at the March 9th Town Council meeting about a community celebration of the Town's 40th anniversary of incorporation. The Town Council supported the event and asked Linda Loudon to be the Coordinator. There was discussion of the MDD and the Town Council splitting the cost of the meat and requesting other dishes to be brought pot-luck style by the attendees. The board discussed holding the event on October 14th in the early evening. Linda Loudon suggested the Town Council and MDD Board members all wear badges. Paul Bowers donated \$300 to be used for the event. Linda Loudon will obtain prices for meats and supplies to get an idea of cost and establish a budget. There was some discussion about the creation of a resolution authorizing the event as an official MDD "project". Linda Asbell will draft a resolution to present to the board at the next meeting.

Consideration of Minutes of February 23, 2017
Meeting

(Agenda Item A.5)

MOTION: Upon a motion made by Linda Loudon and seconded by Bernd Mueller, the Board voted five (5) "ayes" and no (0) "nays" to approved the minutes as presented. *The motion carried.*

COMMENTS:

(Agenda Item B)

Linda Asbell requested all future meetings open with the Pledge of Allegiance.

ADJOURNMENT

(Agenda Item C)

MOTION: Upon a motion made by Linda Asbell and seconded by Linda Loudon, the Board voted five (5) "ayes" and no (0) "nays" to adjourn the meeting at 6:28 p.m. *The motion carried.*

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These minutes approved by the Lakewood Village Municipal Development District Board on the 27th day of April 2017.

SUBMITTED

Linda Asbell, TRMC
MDD Secretary/Town Secretary

EXHIBIT A



MEMORANDUM

To: Lakewood Village MDD
From: Andy Messer, Will Trevino
Date: January 31, 2017
Re: Lakewood Village MDD Questions

We write to provide our legal opinion on the following three questions:

1. Does the water system [Rocky Point Water Company] meet project guidelines as listed in section 505.158 of the Local Government Code?

There are several provisions of the Local Government Code that would support purchase and maintenance of the Rocky Point Water Company. The purchase of the Rocky Point Water Company is clearly within the project guidelines of § 505.154 of the Local Government Code. Section 505.154 grants a municipal development district authority for acquiring a project, as defined by the Development Corporation Act, which is required or suitable for a "water supply facility" that includes land, buildings, equipment, facilities, and improvements. TEX. LOC. GOV'T CODE § 505.154. The MDD board could also find, within its broad discretion, that the Water Company purchase is a project involving land, equipment, facilities, expenditures, and improvements to promote new or expanded business development, in accordance with Local Government Code § 505.158. Likewise, the MDD board could further find, within its broad discretion, that the Water Company purchase is a project involving a water utility, site improvement, and related improvements to promote or develop new or expanded business enterprises, in accordance with Local Government Code § 501.103. *See* GA-1050 (2014) (EDC board has broad discretion in determining a project).

2. Can the [MDD] use sales tax money to pay down debt of the water system purchased?

Under Local Government Code § 377.071(a), the MDD may perform any act necessary to the full exercise of its powers, including accepting a grant or loan of money, acquiring, selling, leasing conveying or otherwise disposing of property. Under Local Government Code §§ 377.072 (c)(1) & (3), the MDD may also pay the costs of planning, acquiring, establishing, developing, constructing, or renovating a project, and pay the costs of operating or maintaining a project. The debt of the water system purchased is a qualified expense incurred in acquiring the Rocky Point Water Company. Sales tax proceeds may be used to pay the debt of the acquired Rocky Point Water Company.

3. Can the [MDD] use sales tax money to host a spring community event with the ETJ and provide food and beverage?

The MDD board could find, within its broad discretion, that the community event is a project involving “expenditures” to promote new or expanded business development, in accordance with Local Government Code § 505.158. Whether a particular project will promote business development is a question of fact within the discretion of the the MDD board to determine in the first instance. *See* Tex. Att’y Gen. Op. GA-0529 (2007) (a city could make a loan to a private developer to fund a private housing project if the city found the project would promote economic development).

Discussion:

Acquisition of the Rocky Point Water System and Paying Debt

A municipal development district, like the Lakewood Village Municipal Development District (MDD), is primarily governed by chapter 377 of the Local Government Code. *See* TEX. LOC. GOV’T. CODE §377.00 —.108 (governing MDDs). An MDD sales tax is a sales tax that closely resembles a Type B economic development sales tax. The MDD tax encompasses a development project that includes a “project” as that word is defined by the Development Corporation Act. Authorized projects the MDD may undertake include Type B projects in §§ 505.151—.158 of the Development Corporation Act, and also for a civic and convention center facilities. TEX. LOC. GOV’T. CODE § 377.001(3)(B). Sales and use tax imposed by the district may be used to pay the costs of:

- (1) planning, acquiring, establishing, developing, constructing, or renovating one or more development projects in the district;
- (2) pay the principal of, interest on, and other costs relating to bonds or other obligations issued by the district or to refund bonds or other obligations; or
- (3) pay the costs of operating or maintaining one or more development projects during the planning, acquisition, establishment, development, construction, or renovation or while bonds or other obligations for the planning, acquisition, establishment, development, construction, or renovation are outstanding.

Id. at (c) 1-3.

Section 505.158 of the LGC authorizes a project that includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the MDD to promote new or expanded business development. Section 505.154 specifically authorizes the acquisition of water supply facilities and water conservation programs including land, buildings, equipment, facilities, and improvements found by the MDD board to be required or suitable for:

- (1) the *development or improvement of water supply facilities*, including dams, transmission lines, well field developments, and other water supply alternatives; or
- (2) the development and institution of water conservation programs, including incentives to install water-saving plumbing fixtures, educational programs, brush control programs, and *programs to replace malfunctioning or leaking water lines and other water facilities*.

TEX. LOC. GOV'T. CODE § 505.154 (emphasis added).

The determination of whether the acquisition of the Water Company was suitable or required for the development or improvement of water supply facilities involves fact questions that are within the discretion of the board to determine in the first instance. *See* TEX. ATT'Y GEN. OP. GA-0264 (2004) at 10 (explaining that whether a particular project satisfies the requirements of the Economic Development Act involves questions of fact within the discretion of the development corporation). The Water Company purchase clearly fits within a project under § 505.154. This specific finding is supported by a review of the board's minutes that indicate a desire to bring the water system to be compliant with Texas Commission on Environmental Quality (TCEQ) standards and to achieve a Superior Water System Designation by the TCEQ. *See* Lakewood Village Municipal Development District board minutes of March 9, 2016, March 24, 2016, and June 23, 2016. The MDD was legally authorized under § 505.154 to acquire the Rocky Point Water Company.

Under Local Government Code § 377.071(a), the MDD may perform any act necessary to the full exercise of its powers, including accepting a grant or loan of money, acquiring, selling, leasing conveying or otherwise disposing of property. The MDD is authorized under § 377.071 to "acquire, sell, lease, convey, or otherwise dispose of property or an interest in property, including a development project, under terms and conditions determined by the district." TEX. LOC. GOV'T. CODE § 377.071(a)(3). Under Local Government Code §§ 377.072 (c)(1) & (3), the MDD may also pay the costs of planning, acquiring, establishing, developing, constructing, or renovating a project, and pay the costs of operating or maintaining a project. The powers set out by the Local Government Code applicable to municipal development districts plainly grants authority to legally pay the principal of, interest on, and other costs related to water supply projects. TEX. LOC. GOV'T. CODE § 377.072(c). The debt of the water system purchased is a qualified expense eligible for payment, and sales tax proceeds may be used by the MDD to pay the debt regarding the Rocky Point Water Company.

Using sales tax proceeds for a community event

Local Government Code § 505.158 permits an MDD to make expenditures that promote new or expanded business development. It is well-established that whether a particular project will promote business development is a question of fact within the discretion of the MDD board to determine. *See, e.g.,* Tex. Att’y Gen. Op. GA-0529 (2007). The MDD board may find, within its discretion, that the community event is a project involving “expenditures” to promote new or expanded business development, in accordance with Local Government Code § 505.158. I would recommend that the Town’s logo and/ or name be part of the event and that invitations be made to developers and other business owners.

Summary

In summary, the acquisition of the Rocky Point Water Company is authorized by §§ 505.154, 505.158 and 501.103 of the Local Government Code. The debt of the water system purchased is a qualified expense incurred in acquiring the Rocky Point Water Company and the sales tax proceeds may be used to pay down the debt of the acquisition under §§ 377.071(a) and 377.072(c) of the Local Government Code. Finally, the board may legally find that the expenditure for the spring community event promotes new or expanded business development and use sales tax proceeds to co-sponsor an event, including providing food and beverage.