

College Station Independent School District

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MEMORANDUM

To: Dr. Clark Ealy, Superintendent of Schools

From: Mike Martindale, Deputy Superintendent for Business and Operations

Date: July 13, 2016

Subject: Review and discussion of procedures and submissions related to the bid and resulting contract with DWS Development, Inc. for the sale of 23.707 acres of real property located at Holleman Drive and Deacon W. Drive; and the consideration of options available to the Board following its review of the procedures and submissions related to the referenced bid; and possible action, based on the available options, with respect to the contract with DWS Development, Inc., and the contract dated May 2, 2016, with BCS Rock Prairie LP for the purchase of that certain 18.74 acres located at the northwestern corner of Rock Prairie Road West and Holleman Drive, College Station, Brazos County, Texas.

Agenda Item: J-1

Board Priority/
District Goal: Priorities A & B; Goals 1, 2 & 3

Haupt Tract Background

In May 2010 College Station ISD purchased 27.017 acres adjacent to what was then known as Jones-Butler Road for \$729,459, or \$27,000 per acre. The tract that College Station ISD purchased was part of a larger parent tract owned by the Haupt Family Partnership. The district purchased this land with the intent of locating a future facility on that property. No specific facility type or timeline for using that property was identified at that time.

As College Station ISD purchased its 27 acre tract, which is referred to as the Haupt tract, the balance of the Haupt Family Partnership parent tract (108.88 acres) was sold to Heath Phillips Investments, LLC. Soon thereafter, the Heath Phillips entity began developing its tract with

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what eventually became the Barracks, a multi-family housing development geared toward college students. Phillips approached College Station ISD in early 2011 with a proposal to partner on some infrastructure costs that would be a benefit to the development of student housing as well as meeting the needs of any district facility in the future.

In July 2011, the Board of Trustees of College Station ISD approved a resolution for a Joint Development Agreement with Heath Phillips Investments, LLC. In this agreement, College Station ISD provided 100% of the right of way for the construction of Deacon Drive and Towers Parkway that are adjacent to the College Station ISD property in exchange for the Phillips entity paying for 100% of site development costs. These costs included the construction of Deacon Drive and Towers Parkway, installation of a sewer line with manhole and a water line in the Deacon right-of-way, conduit in both Deacon and Towers ROW for future telecommunication lines, and the location of storm water drainage and detention facilities that would meet district storm water requirements on the Phillips entity's property. The Barracks completed all of the work identified above and has constructed multi-family housing on its tract ever since. Due to the dedication of the right of way referenced above, the Haupt tract was reduced to its present size of 23.707 acres.

Haupt and Mission Ranch Tracts

In early January 2016, Heath Phillips approached College Station ISD about the possibility of acquiring the district's property, now on the corner of Deacon W Drive and Holleman Drive. In a phone call on January 8, 2016, Heath Phillips talked with Superintendent Ealy about selling the district property to a Heath Phillips entity, and the district using the proceeds of that sale to purchase a tract from BCS Rock Prairie LP, the developers constructing the Mission Ranch subdivision. The Mission Ranch tract contemplated was located at the corner of Rock Prairie Road West and Holleman Drive. Dr. Ealy told Mr. Phillips that as a governmental entity the district could not just sell a piece of property without going through a public process. Our attorneys confirmed the options available for the selling of school district property to Mr. Phillips.

In February 2016, the Board of Trustees met in executive session to deliberate the possibility of purchasing the Mission Ranch tract and selling the Haupt tract. The Board felt that the opportunity to locate a district facility in a neighborhood with single family homes rather than a facility surrounded by collegiate housing should at least be explored. The administration and

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our representatives began evaluating the feasibility of building at the Mission Ranch site as well as determining the method the district would have to use to publicly offer the Haupt tract for sale.

The district's representatives began discussions with BCS Rock Prairie LP about purchasing a portion of its property described above and eventually agreed upon a contract for the purchase of 18.74 acres at the corner of Rock Prairie Road West and Holleman Drive. This purchase was contingent upon the sale of the Haupt tract and the use of those proceeds for the Mission Ranch purchase. College Station ISD assumed that contract from our representative at the June 28, 2016, meeting.

As the district was negotiating a contract to purchase from Mission Ranch, we determined that the Haupt tract could be sold using a competitive sealed bid process. The district's representative prepared the bid packet and specifications and worked with a real estate agent to market and advertise the property for sale. The property was marketed in the community and a listing was placed on MLS both with an asking price of \$4 per square foot (\$4,130,708).

The competitive sealed bid process for the purchase of the Haupt tract was first advertised in *The Eagle* on Thursday, May 5, 2016, and then again on Sunday, May 8, 2016. All bids were due at 10:00 am on Thursday, June 16, 2016. The district received a total of three bids from two bidders, and each submission is linked to the Board agenda.

The first bid was from Barracks Expansion, LLC for a total purchase price of \$2,500,000 (\$2.42 per square foot) with a proposed closing date in June 2016. The second bid was an alternate bid from Barracks Expansion, LLC for \$4,130,707 (~\$4.00 per square foot). This second bid called for a closing as late as March 2017, which is later than the closing date specified in the bid documents. Furthermore, this second bid was contingent on the property being appraised at the offered purchase price. If the property failed to appraise for the purchase price, then Barracks Expansion, LLC would have the unilateral right to terminate the contract. The third bid was from DWS Development, Inc. for a purchase price of \$3,356,200 (\$3.25 per square foot) with a closing date by July 29, 2016, consistent with the bid packet instructions and form contract included with the bid packet provided by the district.

Our attorneys reviewed all three of the bids with six members of the Board of Trustees in executive session on June 21, 2016. Board Vice President Jeff Harris was not in attendance.

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On Tuesday, June 28, 2016, the Board of Trustees publicly reviewed and discussed the three bids that were received. Board Vice President Jeff Harris abstained from both the discussion and the vote to award the bid, and Trustee Quinn Williams had not yet arrived at the meeting. Trustee Carol Barrett was not in attendance at this meeting. The Board voted 4-0 to accept the bid from DWS Development, Inc. for a sales price of \$3,356,200. The Board also authorized the Board President, the Superintendent or their appointed designees to contract for the sale of the property in accordance with the terms of the bid selected by the Board and to do any and all things necessary to close on the sale of the property. Board President Dr. Valerie Jochen signed and executed the contract for the sale of the Haupt tract and the contract was dated effective July 7, 2016.

Objection to Award of Bid to DWS Development, Inc.

On Wednesday, June 29, 2016, the district's counsel received a letter from Brittan Johnson, the attorney representing Barracks Expansion, LLC. A copy of this letter is linked to the Board agenda. In the letter, the Mr. Johnson objects to the awarding of the bid to DWS Development, Inc., alleging that a prior business relationship existed between the district and DWS Development, Inc. relating to a sewer easement across this Haupt property, and that a business relationship between DWS Development Inc. and College Station ISD School Board Vice President Jeff Harris's employer, The Ellison Firm, was not properly disclosed. Additionally, while not explicitly alleging any wrongdoing on anyone's part or providing any evidence of such, Barracks Expansion, LLC does question the fact that the purchase price for the Mission Ranch tract is within 4% of the sales price of the Haupt tract.

In his June 29, 2016, letter, Mr. Johnson formally requests that College Station ISD not enter into a contract with DWS Development, Inc. until a formal inquiry into the bid process and the cited business relationships have been conducted. Our attorneys reviewed the bid process used, Texas Local Government Code Chapter 176, and other applicable statutes, and provided an initial response to Mr. Johnson's letter on June 30, 2016. That letter is linked to the Board agenda as well.

Findings

The basis of the first allegation presented by Mr. Johnson is that a business relationship between DWS Development, Inc. and College Station ISD existed and that it needed to be

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disclosed. This is incorrect. Although a Joint Development Agreement was approved by the College Station ISD Board of Trustees in September 2014 for an easement to construct a sewer line across this district property, DWS Development, Inc. never executed the agreement. DWS Development, Inc. was able to satisfy its access to sewer lines through a third party. On November 26, 2014, the district confirmed with the attorney for DWS Development, Inc. that since DWS Development, Inc.'s sewer needs were met through a third party, College Station ISD was voiding the joint development agreement and closing the file. In sum, the proposed joint development agreement was never fully executed and never became operative.

The second allegation made by Mr. Johnson is that a business relationship between DWS Development, Inc. and The Ellison Firm, where College Station ISD School Board Vice President Jeff Harris is a shareholder, was not timely disclosed. Sections 176.003(b) and 176.013(f) of the Texas Local Government Code provide that a local government officer may file the appropriate conflict disclosure statement within seven (7) business days of becoming aware of the need to do so or notification of the alleged violation by the local government entity (here, College Station ISD). Likewise, sections 176.006(a-1), 176.006(d) and 176.013(g) of the Texas Local Government Code provide that a vendor may file the appropriate conflict disclosure statement within seven (7) business days of becoming aware of the need to do so or notification of the alleged violation by the local government entity (here, College Station ISD). Both Mr. Harris and Mr. Scarmardo (on behalf of DWS Development, Inc.) were notified by letter of the allegations on June 30, 2016. College Station ISD received updated CIS and CIQ forms from Mr. Harris and Mr. Scarmardo, respectively, on July 5, 2016. Both updated disclosure documents are linked to the Board agenda as well as a letter of response from Mr. Harris.

Furthermore, Mr. Harris was absent from the Board's deliberations in executive session meeting regarding the bids received for the sale of the Haupt tract. At the subsequent Board meeting, Mr. Harris abstained from both discussion and voting on awarding the bid for the sale of the district's property. In sum, even assuming there was an actual conflict, Mr. Harris had no input into the sale of the Haupt tract.

For additional context, as noted above College Station ISD did enter into a joint development agreement with Heath Phillips Investments, LLC in July 2011. That agreement facilitated the construction of Deacon W. Drive and Towers Parkway adjacent to district property and provided infrastructure at the site including water and sewer lines, conduit for future telecommunications, and storm water drainage and detention facilities. No conflict of interest

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questionnaire (CIQ) citing this previous business relationship with College Station ISD was filed by Mr. Phillips or Barracks Expansion, LLC.

Board Options

Upon review and discussion of the bidding process and procedures used and the resulting contract with DWS Development, Inc., the Board can either (a) ratify the contract with DWS Development, Inc. and authorize the sale of the 23.707 acres of real property located at Holleman Drive and Deacon W. Drive to DWS Development, Inc.; or (b) declare void the contract with DWS Development, Inc. for the sale of 23.707 acres of real property located at Holleman Drive and Deacon W. Drive if it determines that DWS Development, Inc. did not comply with the requirements of Chapter 176 of the Texas Local Government Code. College Station ISD is not required to void the contract in such event, but has the discretion to do so. Section 176.006(i) of the Texas Local Government Code states, "The validity of a contract between a vendor and a local governmental entity is not affected solely because the vendor fails to comply with this section [Section 176.006]."

If the Board resolves to declare void the contract with DWS Development, Inc. for the sale of 23.707 acres of real property located at Holleman Drive and Deacon W. Drive, then the Board could consider resolutions concerning either (i) the termination of the Commercial Contract – Unimproved Property dated May 2, 2016, with BCS Rock Prairie LP as for the purchase of that certain 18.74 acres located at the northwestern corner of Rock Prairie Road West and Holleman Drive, College Station, Brazos County, Texas, or (ii) the waiver of the contingency requiring the sale of the Haupt tract and proceeding to closing on the purchase of the 18.74 acre tract.

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Recommendation

The Board of Trustees, the administration and representatives of College Station ISD take our reputation for fairness, honesty and transparency seriously. We have done so in this matter as well. Upon notification of concerns by Barracks Expansion, LLC and its counsel, the district and our representatives reviewed our processes and procedures to determine whether they have met the statutory requirements. More than just legal requirements, the district wants to ensure that the community can see the district's commitment to fair, open and honest business dealings. To that end, we have attached numerous documents to the Board agenda for the public to view.

When the district was approached in January 2016 by Mr. Phillips about the possibility of selling our Haupt tract and purchasing a similar tract from Mission Ranch, the board and district spent time and effort to evaluate whether to move forward. College Station ISD used a public process utilizing competitive sealed bids, so that no respondent would have an advantage over any other.

When the bids were discussed by the Board, two bids met the requirement to close by July 29, 2016: the bid from Barracks Expansion, LLC for a purchase price of \$2,500,000, and the bid from DWS Development, Inc. for a purchase price of \$3,356,200. The only bid that gave the district the proceeds needed to purchase the property from BCS Rock Prairie LP was the bid from DWS Development, Inc.

The administration recommends that the Board of Trustees of College Station ISD ratify the contract with DWS Development, Inc. and authorize the sale of the 23.707 acres of real property located at Holleman Drive and Deacon W. Drive to DWS Development, Inc., and to close on the sale of the 23.707 acres to DWS Development, Inc. and the purchase of the 18.74 acres from BCS Rock Prairie LP on or before July 29, 2016.

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