

THE STATE OF TEXAS §

COUNTY OF CAMERON §

BE IT REMEMBERED on the 3rd day of MAY 2002, there was conducted an EMERGENCY Public Meeting of the Honorable Commissioners' Court of Cameron County, Texas, at the Courthouse thereof, in the City of Brownsville, Texas, for the purpose of transacting any and all business that may lawfully be brought before the same.

THE COURT MET AT:

11:00 A.M.

PRESENT:

GILBERTO HINOJOSA
COUNTY JUDGE

PEDRO "PETE" BENAVIDES
COMMISSIONER PRECINCT NO. 1

CARLOS H. CASCOS, C.P.A
COMMISSIONER PRECINCT NO. 2

COMMISSIONER, PRECINCT NO. 3

RICHARD VALDEZ
COMMISSIONER, PRECINCT NO. 4

JOE G. RIVERA
COUNTY CLERK

Mary Robles **Deputy Clerk**

ABSENT:

DAVID A. GARZA

The meeting was called to order by Judge Hinojosa at 11:06 A.M.

The Court considered the following matters as posted and filed for Record in the Office of the County Clerk on
May 2, 2002, at 2:56 P.M.:

ACTION ITEMS

- (1) CONSIDERATION AND POSSIBLE ACTION AUTHORIZING EMERGENCY EXPENDITURES RELATING TO THE DAMAGE SUSTAINED BY THE LONG ISLAND SWING BRIDGE AND ISSUES RELATED THERETO, PURSUANT TO VERNON TEXAS CODE ANNOTATED (V.T.C.A.) GOVERNMENT CODE 551.045(b)(2), WHICH ALLOWS FOR AN EMERGENCY MEETING DUE TO A REASONABLY UNFORESEEABLE SITUATION**

- (2) CONSIDERATION AND POSSIBLE ACTION REGARDING PROVIDING ALTERNATIVE FORMS OF TRANSPORTATION FOR THE RESIDENTS OF LONG ISLAND WHILE THE BRIDGE IS UNDER REPAIR, PURSUANT TO VERNON TEXAS CODE ANNOTATED (V.T.C.A.) GOVERNMENT CODE 551.045(b)(2), WHICH ALLOWS FOR AN EMERGENCY MEETING DUE TO A REASONABLY UNFORESEEABLE SITUATION**

Judge Hinojosa reported that three (3) laterally connected barges had collided with the Long Island Swing Bridge, at approximately 9:00 A.M., on May 2, 2002. He explained that the barges had pushed the set of pilings, that protect the bridge, onto the steel contraptions used to lift the top bridge flats, affecting the manner in which the bridge was operated. Judge Hinojosa stated that one (1) barge became loose and as a result hit the bridge's permanent structure, adding that the barge swung around coming to rest on the north part of the bridge. He reported that the top rail was visibly damaged, yet the damage to the supporting pilings had not been determined, and that the bridge was closed until the Texas Department of Transportation (TxDOT) and the County examined the bottom pilings. Judge Hinojosa stated that TxDOT had provided assistance upon the County's request, and that the Insurance Company had authorized the Long Island Homeowners Association to contact the Engineering Firm, who had inspected the bridge in 1998, to fully inspect the bridge. He noted that in the meantime pedestrian traffic and the crossing of an empty fire truck were authorized by TxDOT. Judge Hinojosa reported that the Engineers had arrived, inspected the bridge, and had authorized the opening and closing of the bridge. He explained that the County Auditor had authorized the use of County vehicles to provide transportation service for the residents of Long Island upon Court approval. Judge Hinojosa categorized the accident identical to the Queen Isabella Causeway collapse and noted that the County needed to provide support to the Long Island residents until the bridge was repaired and/or automobile traffic was authorized to cross the bridge.

Mr. Doug Wright, Commissioners' Court Legal Counsel, stated that after reviewing the legal issues relating to the possible actions of the County, there was no legal justification for the County to expend public funds to assist the residents of Long Island. He explained that there was specific Constitutional Prohibition against the expending of public

funds to aid private individuals, corporations and/or private entities that were consistently enforced by the Courts. Mr. Wright added that Mr. John Fuller, County Government Affairs, was consulted and was unable to legally justify the use of public funds to provide assistance. He explained that legally the situation was different from the Queen Isabella Causeway Collapse because the causeway was a State Highway and TxDOT was involved. Mr. Wright stated that the bridge was Real Property, owned by private citizens, and located within the City of Port Isabel's Extra Territorial Jurisdiction. He noted that he could not recommend the expending of public funds to provide transportation services to the Long Island residents.

Commissioner Cascos questioned whether the use of public funds would be permitted by the Constitution if said funds would be reimbursed over a period of time by the Long Island Homeowners Association.

Judge Hinojosa stated that Rio Transit provided transportation to the elderly and asked if they could provide support in the transportation issue.

Mr. Jose A. Cantu, Rio Transit Program Administrator, stated that he attended the meeting to obtain information that would be provided to the Rio Transit Program Director.

Judge Hinojosa noted the need to provide essential transportation to the Long Island residents, and suggested the use of County vehicles to transport Long Island residents at a fee of \$0.50 per individual.

Commissioner Cascos asked if the market value of transportation would be reviewed.

Judge Hinojosa clarified that public transportation cost was always subsidized.

Mr. Wright noted that providing transportation service would require the County to comply with regulatory provisions, and that the extension of credit was not permitted under the Constitution.

Mr. Francisco Martinez, District Attorney's Office, stated that input was requested from the County Auditor's Office, and that he had consulted with Mr. Fuller, who had agreed with Mr. Wright and himself, that the County could not extend credit under the Constitution, and that there was no authority for the County to provide public transportation services.

Judge Hinojosa stated that the District Attorney's Office had not indicated that the County was not authorized to provide transportation services during the collapse of the Queen Isabella Causeway.

Mr. Martinez noted his understanding to be that TxDOT was in charge and had reimbursed the County for expenditures.

Judge Hinojosa explained that the County had provided transportation services to the Town of South Padre Island following the collapse of the Queen Isabella Causeway and that the expenditures were subsequently reimbursed to the County by TxDOT. He questioned the difference for the transportation services provided at that time.

Mr. Martinez stated that the situation differed because there were two (2) governmental units working together to do something on behalf of the other governmental unit and the public.

Judge Hinojosa questioned whether the transportation service could be provided if the County were to contract with the City of Port Isabel.

Mr. Martinez responded that an Interlocal Agreement could be placed, yet the matter would have to be reviewed. He stated that under Statute it would be best that the City of Port Isabel deal with the issue.

Judge Hinojosa stated that because the community in need was not within the City's jurisdiction it was the obligation of the County to provide support.

Commissioner Benavides questioned the barges' owners' liability.

Judge Hinojosa stated that the owner would be responsible for the incurred expenditures. He requested authorization to contract with the Long Island Bridge Association regarding transportation services with a reimbursement cost of \$0.50 per person, in the event that Rio Transit could not be contracted. Judge Hinojosa stated that the County was in the transportation business during the Queen Isabella Causeway Collapse and that there was no difference to the Long Island Swing Bridge event. He stated that an oral contract was in place for TxDOT to get reimbursed for providing transportation services and suggested to Orally Contract with the Long Island Homeowners Association to get reimbursed for providing transportation services.

Commissioner Cascos suggested that the Oral Contract with the Long Island Homeowners Association to get reimbursed be based on allowable cost, adding that the issue was that the District Attorney's Office and the Commissioners' Court Legal Counsel concurred with the concerns on the matter.

Judge Hinojosa noted that Commissioners' Court Legal Counsel had not identified his proposal as illegal.

Mr. Wright stated that the attempt might be a reasonable solution but that he could not recommend that it be done based on the facts. He stated that it would be most appropriate for the Long Island Homeowners Association and the Insurance Company to be involved financially. Mr. Wright explained that the City of Port Isabel had the authority to provide transportation services and an alternate route, and that the County could assist through an Interlocal Agreement. He added that County roadway was not involved and that the suggestion to charge for the transportation services would alleviate part of the problem.

Judge Hinojosa stated that the County's ability to prioritize was being confused with the issue of providing free services. He stated that the City had the power to provide the transportation services with the legal restriction of providing free services and clarified that the transportation fee was subsidized. Judge Hinojosa stated that the County had supervised and provided transportation services during the Queen Isabella Causeway Collapse, paid and subsidized

by the Federal Government, and that the provision of transportation services was never questioned at the time. He explained that the same situation was being presented and that the issue was that if the City could provide the service so could the County, and that if a fee was charged it would cover the cost.

Mr. Wright stated that he was uncomfortable with Judge Hinojosa's suggestion but that the Court could approve it.

Judge Hinojosa stated that the Rio Transit Program was contacted when he was advised that there could be a legal problem for the County to provide transportation services, but that due to time constraints a decision was needed at this time in the event that the Rio Transit Program indicated that they could not assist.

Commissioner Cascos questioned the County Auditor's position if the Court approved the provision of transportation services.

Mr. Mark Yates, County Auditor, stated that there was a consensus that the County did not have the capacity to subsidize. He stated that during the causeway collapse the County acted as an agent of TxDOT who had the capacity to subsidize, adding that he was unaware if the Long Island Homeowners Association had said capacity. Mr. Yates highlighted the difference between the events were that the Agreement with TxDOT was to get one hundred percent (100%) reimbursement of expenditures, adding that the County could assist the Long Island Homeowners Association in working with the vehicle rental agencies to set up costs. He noted his opinion to be, that the allowing certain configurations of barges by the Navigation District allow that they be held responsible and they should come forward and resolve the issue.

At this time, there was discussion as to the possible reimbursement method, the determining of the cost, and the establishing of the rate.

Judge Hinojosa requested authorization to contract with the Homeowners Association to provide transportation service to the residents of Long Island on an actual cost reimbursement, to use County vehicles that could legally be used, that the Homeowners Association decide if they want to set up a system by which they could charge to get reimbursed by the residents at the rate that they decided and that if desired the County can keep track of the tickets as part of the services to be provided by the County. He stated that in the meantime he would try to have the Rio Transit Program provide the service at no cost.

Mr. Yates clarified that the proposed service would be provided within the City of Port Isabel.

Commissioner Benavides moved that the County Judge be authorized to Contract with the Long Island Homeowners Association to provide transportation service to the residents of Long Island based on an actual cost reimbursement, that the use of County vehicles that could legally be used, be authorized, and if that the Long Island

Homeowners Association decided to set up a ticket system by which they could charge to get reimbursed by the residents, at the rate established by the Long Island Homeowners Association, the County be authorized to track the ticket system upon request as part of the services to be provided by the County.

Commissioner Cascos asked if the Court was made whole the County Auditor's would authorize expenditures, and asked Commissioners' Court Legal Counsel what else needed to be done.

Mr. Yates responded in the affirmative.

Mr. Wright stated that the making whole of the County for expenditures was only part of the legal issue and that he was not totally comfortable with the Judge's explanation. He noted that he could not sign off on it until he had the opportunity to review the matter. He stated that he had concerns with the County providing transportation services to private individuals and not doing it through the conduit of the State. Mr. Wright noted that the situation involving the causeway differed the present situation of providing services through an Association and that the Constitutional Article spoke specifically to providing benefits to Associations of individuals.

Judge Hinojosa accepted the explanation of the Commissioners' Court Legal Counsel, and noted that he disagreed.

Upon motion duly made by Commissioner Benavides, seconded by Commissioner Valdez and carried as follows, the County Judge was authorized to Contract with the Homeowners Association to provide transportation services to the residents of Long Island based on an actual cost reimbursement, the use of County vehicles that could legally be used was authorized, and if the Long Island Homeowners Association established a Ticket System, by which they could charge to get reimbursed by the residents, at the rate set by them, the County was authorized to track the Ticket System upon request as part of the services to be provided by the County.

AYE: Commissioners Benavides, Valdez and Judge Hinojosa,

NAY: Commissioner Cascos.

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There being no further business to come before the Court, upon motion by Commissioner Cascos seconded by Commissioner Valdez and carried unanimously, the meeting was **ADJOURNED** at 11:55 A.M.

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APPROVED this 4th day of **June 2002**.

**GILBERTO HINOJOSA
COUNTY JUDGE**

ATTEST:

**JOE G. RIVERA
COUNTY CLERK AND EX-OFFICIO CLERK
OF THE COMMISSIONERS' COURT OF
CAMERON COUNTY, TEXAS.**