

## Public Development for Private Purposes: A Case Study of Greenwood Utility District, Harris County, Texas

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The explosive growth of population in Harris County has been facilitated by the mechanism of the water district — a limited purpose government with the usual corporate powers of taxation, debt creation, eminent domain, contract, suit, etc., created to supply water, sewage disposal, and drainage facilities to the county's unincorporated areas. Provided for by two articles of the Texas Constitution, the earliest districts were usually for irrigation. As urban growth expanded beyond city limits, however, water districts became increasingly used for domestic and commercial water supply and sewage disposal, and the overwhelming majority now in operation are used for these purposes. Texas law provides for thirteen different types of water districts, but only three are used to any extent in the Houston metropolitan area. The Water Control and Improvement District (WCID) and Fresh Water Supply District (FWSD) are legislatively created, while the Municipal Utility District (MUD) can be created by the Texas Water Commission (TWC). Not only is no legislation necessary to create a MUD, but the confirmation election may be combined with the election of directors and vote to authorize bonds, with no public hearings required.<sup>1</sup>

Unlike other local governments, water districts are not limited in their taxing powers or debt ceiling by the Texas Constitution. Furthermore, they can be created with as few as two voters, and often four or five voters will institute bonded indebtedness of several millions of dollars, to be paid by the district over a period of up to forty years. For example, in 1971 four voters created Sagemeadow Utility District with an authorized bonded indebtedness of \$5 million;<sup>2</sup> in 1972, Klein Utility District was established by four voters authorizing the sale of bonds of \$4.5 million;<sup>3</sup> and in 1973 a total of fifteen

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<sup>1</sup>Tax Research Association of Houston and Harris County, Inc., *Water Districts in Harris County*, XXV (March 1972), p. 1.

<sup>2</sup>Houston Post, July 30, 1972.

<sup>3</sup>Houston Post, August 3, 1972.

persons created three water districts with a combined debt of \$29 million.<sup>4</sup> By 1979 there were 309 water districts in Harris County alone with a total indebtedness of \$640,184,000—more than the total general obligation debt of the City of Houston.<sup>5</sup> The greatest proliferation of water districts in the Gulf Coast area has occurred within the last decade.

On the whole, this land use growth is in the hands of private developers, with little oversight from the state, county, or municipal governments in whose extraterritorial jurisdiction the districts are located. Although formal creation is performed either by the legislature or the Texas Water Commission, the developer creates the water district and controls its operations for the first three years. How is this achieved?

Legislative creation is a simple process. A land developer persuades a legislator to submit a bill creating a water district. There appear to be several legislators from Harris County who have specialized in this activity. For example, former representative Joe Allen sponsored twenty-four water district bills in 1969,<sup>6</sup> and in 1971 Jack Ogg initiated over fifty such bills in the House of Representatives.<sup>7</sup> These bills are brought to the floor under the consent calendar, negating any debate by lawmakers. Five directors, who must own land in the district, are stipulated in the legislation. Before 1973, these directors were often relatives or employees of the developer, but legislation passed in 1973 forbade this practice.<sup>8</sup>

A second method to create a water district is through the Texas Water Commission.<sup>9</sup> Prior to 1971 this was a cumbersome procedure, but the passage of the Municipal Utility Act that year eliminated many of the difficulties and in 1972 the TWC created more water districts than in any previous year in Texas history.<sup>10</sup> Since 1972, most districts have been created by the TWC. County commissioners courts may also create districts, but this process is so laborious that it is seldom used.

To accomplish a district's creation, the developer must hire an engineering

<sup>4</sup>Houston Post, July 6, 1973.

<sup>5</sup>Tax Research Association of Houston and Harris County, Inc., *Status of Harris County Water Districts*, XXXII (May 1979), p. 1.

<sup>6</sup>Harvey Katz, *Shadow on the Alamo: New Heroes Fight Old Corruption in Texas Politics* (New York: Doubleday and Co., 1972), p. 163.

<sup>7</sup>John Ferguson, "The Water District Mess," *Texas Observer*, LXIV (September 22, 1972), p. 6.

<sup>8</sup>Houston Chronicle, May 17, 1973; "Water Districts," *Texas Observer*, LXV (June 15, 1973).

<sup>9</sup>In 1977, the Texas Legislature brought three formerly separate agencies — the Texas Water Rights Commission, Texas Water Development Board, and Texas Water Quality Board — under a new umbrella agency, the Texas Department of Water Resources. The Texas Water Rights Commission changed its name to the Texas Water Commission.

<sup>10</sup>Houston Post, January 31, 1973.

firm and attorney to process the work. Water district law is complex and in Harris County four law firms represent over eighty percent of the water districts. Once the paperwork is completed, the appointed board meets and authorizes an election to create a bonded indebtedness and taxing authority. Since the land is still primarily raw acreage, the developer often provides mobile homes to persons who move into them temporarily to qualify as district voters. Few families usually reside in the district, often no more than two or three. Nevertheless, after they cast their votes in the election, the district is in business.

#### *Greenwood Utility District: A Case Study*

Greenwood Utility District is an excellent example of the problems that can befall a water district. While it has not suffered from the shyster tactics of unscrupulous developers that many other districts have experienced, neither has it escaped abuses. Indeed, Greenwood is typical of what can be expected in the creation of a water district under optimal circumstances.

The district is located approximately twelve miles northeast of downtown Houston, the southern boundary of the district being contiguous with Houston city limits. Within its boundaries are a mobile home subdivision and a rental mobile home park. The district still contains much acreage which is planned for future development.

Greenwood Utility District was established by the 61st Legislature in 1969, which named the initial directors, one of whom was attorney for the developer and two who were the developer's close relatives. At the organization meeting on October 2, 1969, the board appointed a tax assessor-collector and engineers for the district. The office and meeting place were established at the developer's office within the district. In January 1971, the meeting place was changed to the office of the board's president, who was also the attorney for the district. At this time, no state law required the board to keep its records or to meet within the district.<sup>11</sup>

On November 20, 1969, a special meeting was held to call for a bond election to be held on December 23, 1969, to authorize \$2,500,000 in bonds, which would mature serially over forty years at an interest rate not to exceed ten percent per annum. The bond order also called for an authorization of taxes.<sup>12</sup> Four votes were cast in the bond election, all in favor of issuing the bonds and levying taxes.

<sup>11</sup>Greenwood Utility District, Minutes of the Meetings of the Board of Directors, January 18, 1971. Unless otherwise noted, all information about Greenwood Utility District is taken from the meeting minutes. In 1973, as a result of water district abuses, the 63rd legislature passed legislation tightening state and community control over water districts.

<sup>12</sup>Prior to 1982, the Texas constitution limited bond interest to 10 percent of face value. Maximum interest rate is presently 15 percent.

In January 1971, the district held its first election for directors. The statutory term of a director is for two years, with elections held each year. Thus, in the first election when five positions are to be filled, the two receiving the lowest vote serve only one year. All five directors ran for election; however, one of the incumbents was defeated by a resident of the district on a write-in vote. As one of the two receiving the lowest number of votes in a total of fourteen cast, he was limited to a one-year term. He was elected for a full two-year term in 1972, and another resident of the district was elected to the board to replace an incumbent who declined to run for re-election. Thirteen votes were cast in this uncontested election.<sup>13</sup>

In August of that year, the board doubled the tax rate to 60¢ per \$100 valuation which created much controversy in the community. Most residents became aware for the first time that they lived in and paid taxes to a water district. The following year, the three remaining original directors declined to run, and a hotly contested election brought out 66 voters. For the first time, all directors were also residents of the district. Although the new board again had to raise taxes to 90¢ per \$100 valuation, there was no renewal of community antagonism because the board communicated with the voters and explained the necessity of their action.<sup>14</sup> In the 1974 election, the two original district resident incumbents were re-elected in an uncontested election, with only eleven votes cast. The year 1975, however, saw an attempt by residents of the rental mobile home park to take control of the district. A spirited campaign by the three incumbents for re-election brought a turnout of over 90 people (out of a total of 217 registered voters), and the incumbents easily won re-election. In the elections of 1976 through 1979, incumbents who chose to run were handily re-elected; however, the occurrence of three vacancies which were filled by appointment and the election of two new members, one in 1978 and another in 1979, brought about a completely new board of directors between 1977 and 1979.

In 1971, Greenwood applied for and received regional authority from the Texas Water Quality Board (TWQB) for sewage disposal. Making a district a regional authority prevents the overlapping of sewage disposal services by adjoining districts. This authority enabled Greenwood to contract with two adjacent water districts, Tidwell Timbers and Parkway Utility districts, to

<sup>13</sup>The author moved into Greenwood Utility District in June 1971, and became a member of its board of directors in January 1973. Much of the subsequent information concerning district activities is from personal observation and various interviews conducted over time with the developers, other members of the board, the attorneys, tax assessors, bookkeeper, engineers, and district operators.

<sup>14</sup>Greenwood Utility District, Minutes of the Meetings of the Board of Directors, October 11, 1973. At this meeting, water rates for single family homes were raised to \$6 and sewer rates to \$4 per month. Tap fees were raised from \$100 to \$175.

supply sewage disposal services. Both districts were required to escrow a combined total of \$400,000 into a district construction escrow fund which would provide for future expansion of the sewage plant to meet their growth needs. In February 1974, Parkway further contracted with Greenwood to purchase water for 45¢ per 1000 gallons. By the close of 1979, Parkway was paying \$1.00 per 1000 gallons.

In late 1975, both Tidwell Timbers and Parkway Utility Districts requested Greenwood to develop plans for sewage plant expansion, and at its January, 1976, meeting, Greenwood's board of directors instructed its engineers to proceed with sewage plant expansion plans. A year later, the board began construction of a second plant which began operation in April 1978. The additional plant capacity was totally for the benefit of the two client districts and they absorbed the costs.

In February 1973, the new board of directors returned the meeting place to a location within the district, enabling residents to more easily attend meetings. Subsequent state legislation made this move mandatory. Other actions taken to make the district more visible to the community were the inclusion each month in the community newsletter of notice of board meetings, posting of meeting dates and times on the club's bulletin board and front door, and explanatory letters sent to residents explaining the bonded indebtedness and tax requirements. Also, the board instructed the tax assessor and collector to send out notice to all taxpayers of their assessed values and notice of the meeting of the board of equalization whether or not the taxpayer had rendered his property. In an effort to strengthen its financial position, the board adopted the policy of disconnecting a customer's water when he became sixty days delinquent in water and sewage payments. Since 1973, the board has stressed its role as trustee for the district; board members consider themselves responsible to the community; and the board attempts to work out problems with residents and property owners rather than confront them.

Nevertheless, the district is, or has been in the past, guilty of many of the practices observed by critics:

Such things as merit and budget systems, machine operations, double-entry accounting and competitive purchasing are unknown to these little governments. Most of them do little or nothing in the way of reporting their activities. And many do not even maintain offices (their addresses may be the office of a local attorney or the county clerk). District employees are almost always employed on a part-time or fee basis, and often such functions as property assessment and tax collection, annual audits, legal actions, and conduct of elections, are "farmed out" to the other local governments.<sup>15</sup>

<sup>15</sup>Woodworth G. Thrombley, *Special Districts and Authorities in Texas* (Austin: Institute of Public Affairs, The University of Texas, 1959), p. 11.

Greenwood has had serious tax assessing and collection problems. Since all homes are mobile, too often people suddenly move or the homes are repossessed, and the district has no way of collecting the owed taxes. If the homes are repossessed by the developer, Greenwood will eventually collect the tax, but homes repossessed by dealers become lost causes. This problem is magnified in the rental park where turnover is large and very few people pay taxes on their homes.<sup>16</sup> People who move into the rental park are usually unaware that they are subject to the water district property tax and are generally astonished when they receive their tax notice. It is extremely difficult to find an attorney who is willing to attempt delinquent tax collection on property whose taxes amount to only a few hundred dollars at most. For this reason, in 1974, the district adopted a water cut-off policy when taxes are six months or more in arrears. This policy has been successful in enabling the district to collect its delinquent taxes within the home-owned subdivision, but because water charges are paid by the rental park land owner and not by individual residents, the policy has no effect on collecting delinquent taxes from rental park homeowners.

Greenwood has also had continuous problems with the tax assessors it employed. In 1974, internal problems in the tax assessor's office created havoc for the district, and although Greenwood hired a new tax assessor in 1975, problems were encountered similar to those previously experienced. The directors, aware that Greenwood is unique in that its realty consists of mobile homes, hoped to correct its assessing problems by hiring, in 1978, a tax assessor familiar with mobile home valuation fluctuation. Unfortunately, Greenwood's experience with the tax assessor was also unsatisfactory. In 1979, the Greenwood directors hired a tax assessor who is also assessor for the school district in which Greenwood is located, and is thus familiar with mobile home appraisals. Although there were some communication problems between the tax assessor and the board, he rectified many of the previous errors. In January 1984, a Harris County appraisal district, established by the 66th Texas Legislature, assumed tax assessment for all water districts within the county, which may alleviate many of the tax assessment problems that Greenwood has experienced.

Another problem has been that people working for the district have been either contract or part-time employees, and in the past the district suffered neglect. The employment of a new operator in July 1979, solved some of the district's problems; however, the doubling of operations costs severely taxed

<sup>16</sup>The home must have been in the park as of January 1 of the tax year in order to be taxed; conceivably, people could move their homes out on December 31 and back on the property again on January 2 and escape taxes. This is not done because the cost of moving is much higher than the taxes.

the district's finances.

Probably the most serious consequence for Greenwood has been the problems encountered by the developer, which have severely hindered the population growth of Greenwood. Development from the beginning did not keep pace with projections, and it virtually came to a standstill in early 1973. During most of 1974 and the first quarter of 1975, a moratorium was placed on the sale of lots in the subdivision. Finally, after reorganization, the original developer was removed and a new company took over and for a time pursued a more aggressive development policy. This company also encountered problems, and development stopped again in 1977. Once again a new developer came in and the community began to expand. The result of these development problems is that Greenwood has developed to only two-thirds of its 1972 projection. Also, in 1973, the Department of Housing and Urban Development (HUD) assumed control of the bankrupt rental mobile home park. There were very few residents for many months, but HUD pursued an active growth policy, sold the rental park to a private company in 1976, and the rental park is now over ninety percent occupied.

Beginning in 1973, Greenwood adopted a firm policy of requiring a deposit equal to two months water and sewage rates and disconnecting water if the resident became two months delinquent. This action solved its rate collection problems and, together with its sale of water and sewage disposal services to the two adjacent districts, has enabled Greenwood to operate at a profit.

The district has, however, had continual problems in its sewage plant operation, particularly with the chlorinator. In February 1976, the sewage treatment plant went septic. It had to be closed down and totally cleaned out at a cost of over \$5,000. There have also been problems with fire hydrants failing to work and manholes being stopped up. Greenwood has been cited several times by the Harris County Pollution Control Agency and the Texas Water Quality Board.

In April 1974, Greenwood annexed fifty acres of adjacent land at the request of the owner who planned to develop the acreage into single family dwellings, townhouses, and commercial outlets. The landowner's plans, however, did not materialize. Several additional developers have expressed interest in building subdivisions within the district, but no new development has actually taken place.

In 1974, Greenwood raised its tax rate to \$1.50 per \$100 valuation, making it the second highest water district tax rate in Harris County. In 1979, the district again raised its tax rate to \$1.65 per \$100 valuation, the fourth highest water district tax rate in Harris County. With no future development on the horizon, Greenwood will continue to have severe financial difficulties and will likely need to again raise its tax rates and service fees in the near future.

### Conclusions

Critics of small, limited-purpose governments find them fraught with problems. One is the economy of operations. In general, smaller units result in the greatest per capita expense. The 1979 cost of treating sewage in Houston was 39¢ per thousand gallons. The cost to Greenwood's residents, however, was 58¢ per thousand gallons.<sup>17</sup>

Special districts are also accused of being undemocratic. Although this charge unquestionably applied to Greenwood before 1973, major efforts have been made to project a visible water district that is responsive to the community.

Another major charge is that private enterprise controls public facilities. This condition is hardly unique to water districts. Private control pervades the public sector. Nonetheless, it appears to be especially concentrated in water districts where "developers of predevelopment water districts profit at the expense of district residents initially, and taxpayers of a nearby city in the long run."<sup>18</sup> The history of Greenwood is replete with illustrations to support this contention, and Greenwood is typical. The Advisory Commission on Intergovernmental Relations made the following observation in 1969:

Short-sighted, ill-conceived, or uncoordinated action by special districts is likely to create difficult problems for other governments—such as school districts which must provide educational facilities and county and municipal governments that are expected to furnish roads and streets, handle traffic, regulate use, and provide other essentials.<sup>19</sup>

The most crucial accusation is that small districts fragment government. Fragmentation does tend to make government less accessible and economical as well as leading to haphazard urban development and the indiscriminate use of natural resources at a time when the survival of the nation depends upon planned growth. Greenwood, for example, is similar to other water districts in that the automobile is the life blood of the community. The nearest public transportation is nearly five miles from the district, but there is no expectation of a bus line to the central city from the area within the next five years for the simple reason that there is insufficient population to support one. Because of

<sup>17</sup>Rice Center, *Annexation and Houston: Research Report* (Houston, 1979), pp. 48-50; Greenwood Utility District, Minutes of the Meetings of the Board of Directors, November 8, 1979.

<sup>18</sup>David W. Tees, "A Fresh Look at Special Districts in Texas," in *Governmental Organizations and Authority in Metropolitan Areas* (Arlington: The Texas Urban Development Commission, 1971), p. 54.

<sup>19</sup>Advisory Commission on Intergovernmental Relations, *Urban America and the Federal System* (Washington, D.C.: Government Printing Office, 1969), p. 88.

the leapfrog growth of Houston's suburbs with large areas of undeveloped acreage separating them, the cost of adequate mass transportation for greater Houston is prohibitive. In addition, Harris County suffers severe problems of subsidence. Greenwood is one of over 300 water districts in Harris County drawing groundwater in excess of forty million gallons per day, more than the cities of Pasadena, Baytown, and LaPorte combined, and over half the total gallonage consumed by industry.

For these and other evident problems in Houston and its adjacent hinterland to be solved, growth will have to begin to involve more than single-factor, entrepreneurial planning. An urban area is an extremely complex phenomenon. Parts of it grow even while others decay. It will require thoughtful, responsible, and consistent governmental oversight to direct a coherent process of multifactor development that strikes a more equitable balance between private initiative and public well-being.