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# RECORD OF PROCEEDINGS

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## MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS

### BEAVER CREEK METROPOLITAN DISTRICT January 28, 2004

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., Wednesday, January 28, 2004 in the Alpine Room of the Beaver Creek Lodge, 26 Avondale Lane, Beaver Creek, Colorado.

#### **Attendance**

In Attendance were Directors:

- John Wells
- Al Mielcuszny
- Michael Bowen
- Stephen Friedman
- Tommie Campbell

Absent and excused was Director:

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Also in Attendance were:

- Larry Grafel, General Manager
- Ken Marchetti, CPA, Secretary
- James Collins, Esq., District Counsel
- Kathy Lewensten, Robertson & Marchetti, P.C.
- Bill Simmons, Village Operations
- Tony O'Rourke, BCRC
- Tom Schouten, BC Property Owner
- Ginny Forstmann, BC Property Owner
- Jim Funk, Public Safety
- Chris Lubbers, Village Transportation

#### **Call to Order**

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Director Wells, Chairman of the Board, noting that a quorum was present. Director Wells confirmed that prior to the meeting each of the Directors had been notified of the meeting and that written notice was duly posted at the Eagle County Clerk and Recorder's Office and at three public places within the District.

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## Beaver Creek Metropolitan District January 28, 2004 Meeting Minutes

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### Conflicts

The Board noted that it had received certain disclosures of potential conflict of interest statements more than seventy-two hours prior to the meeting for each of the following Directors, indicating the following conflicts: Mr. C. Michael Bowen is a board member of the Beaver Creek Property Owners Association which collectively represents many of the constituents of the District in matters relating to their real property interests within the District boundaries; Mr. Stephen Friedman is a board member of the Beaver Creek Arts Foundation which operates the performing arts facilities within Beaver Creek; Ms. Beatrice "Tommie" Campbell is a board member of the Borders Lodge and a member of the Beaver Creek Communications Committee; Mr. Albert Mielcuszny is an owner of a retail store which leases and contracts with Vail Associates or Affiliates; and Mr. John Wells is President of The Pines Townhomes at Beaver Creek Condominium Association. The Board noted for the record that these disclosures are restated at this time with the intent of fully complying with laws pertaining to potential conflicts.

### Minutes

The Board reviewed the minutes of the November 19, 2003 Special Meeting. Upon motion duly made and seconded, it was, unanimously,

**RESOLVED** to approve the minutes of the November 19, 2003 meeting.

### Future Meetings

The Board reviewed the 2004 meeting dates schedule included in the packet. The regular meeting day will be the fourth Wednesday of the month. Due to unusual circumstances, the February meeting will be held on the fourth Friday. Due to holidays, the November and December meetings are scheduled for the third Wednesday. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to adopt the 2004 meeting schedule as presented.

### Resolution for Posting Places

The Board reviewed the resolution to set posting places for notices. The posting places currently used are the First Bank in Beaver Creek, the Beaver Creek Club, and the District Office. Upon motion duly made and seconded, it was unanimously

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**RESOLVED** to post notices of the District's 2004 meetings as follows:

Notices of meetings of the District's Board of Directors required pursuant to Section 24-6-401, et. seq., C.R.S., shall be posted within the boundaries of the District at least 24 hours prior to each meeting at the following location:

Villa Montane District Office at 63 Avondale Lane, Beaver Creek.

Notices of regular or special meetings required to be posted at three public places within the District and at the office of the County Clerk and Recorder at least 3 days prior to said meeting shall continue to be made pursuant to Section 32-1-903(2), C.R.S.

### **Agenda Changes**

There were no changes to the agenda .

### **Public Input**

Ms. Forstmann asked the Board for an explanation of the cost of the agreement with Eagle River Fire Protection District. She noted that it appears the District contributes a significant portion of ERFPD's revenues. Director Wells explained that District contracts for the fire services, if Beaver Creek were included as part of ERFPD the property owners would be assessed 3.8 mills by ERFPD for the service. The contract amount is slightly below that level. The Board explained that they are currently in negotiations with ERFPD for a long term agreement for fire service.

### **Landscape**

Mr. Grafel reported he had met with Director Campbell and George Pierce regarding final clarifications and revisions to the landscape master plan. It is anticipated the plan will be complete in the next month. When completed the master plan will be the guiding document from which specific plans can be developed. It will be a useful tool for DRB and BCRC to use in the review process. Director Bowen asked whether willows were used, Mr. Grafel explained that water wise alternatives have been recommended in place of willows. Four projects from the plan, underneath two skier bridges, line of sight at Borders Road, and the main bus stop at the covered bridge, are being advertised for

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## Beaver Creek Metropolitan District January 28, 2004 Meeting Minutes

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bids in anticipation of proceeding this year. The specific plans for the projects were prepared using the draft landscape master plan guidelines.

### Other Business

Director Wells asked Mr. O'Rourke about a construction project by the 18<sup>th</sup> hole of the golf course. Mr. O'Rourke responded the project was an expansion of the raw water storage facility located there. He noted the project was halted as it did not have appropriate approval from DRB nor required County permits. The project is now proceeding through the normal review and permitting process. The Board asked whose project it was and if any penalty would be assessed by either DRB or the County. Mr. O'Rourke stated it was a Vail Resorts project. He offered to review the matter of penalties with the County.

### General Managers Update

**Swift Gulch:** Mr. Grafel reported that a temporary office trailer had been placed at the Swift Gulch site for use by the Districts operations crews. Once electricity has been connected and a certificate of occupancy had been issued the operations crew will begin operating solely out of the Swift Gulch site. Director Bowen stated he had been under the impression that the crew was moved over prior to now and asked the cause of the delay. Mr. Grafel explained the major equipment had been parked and maintained over at the site since the beginning of December however the operations crew did not have an appropriate space to operate from at the site until the temporary trailer becomes functional. The Board asked the move be completed as soon as possible to allow for adequate time to review the arrangement to see if it will meet the needs of the District for the long term. Mr. Grafel reported the Town of Avon was still reviewing the business points of a long term arrangement, and had indicated a proposal would be provided by the end of January for the Board's review.

**Administration Office:** Mr. Grafel reviewed the Architectural Service proposals included in the packet. The proposals were for the administration office project at the fire station parcel. The Board asked if the design would be flexible enough to allow for different placement if the triangular orphaned parcel became

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### Beaver Creek Metropolitan District January 28, 2004 Meeting Minutes

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available. Director Bowen reported that there had been discussion concerning the parcel, it appears East West would be interested in turning over the parcel for access over the bridge for several home sights, however until an agreement is reached between Vail Resorts and East West regarding the parcel no commitments will be made. Mr. Grafel stated it would be possible to design the building while taking this into consideration. He explained the building would include a conference room, office space, and parking. The Board asked whether there was any space for operations functions if the need arose. Mr. Grafel suggested there may be room for a small workspace for the operations crew, with some storage space for cinders, tools, or smaller equipment. After further discussion the Board asked that the matter be tabled until more information is available concerning the parcel and long term arrangements for fire and maintenance.

**Valet Parking:** Director Bowen expressed concern that the Valet parking service was not abiding by the terms the District had set. A representative of the Market Square Condo Association had filed a verbal complaint expressing their concerns regarding the stacking of cars and the cleanliness of the area. The Board discussed the options available to remedy the situation recognizing the service has a benefit to Beaver Creek. It was reported that at peak times Beaver Creek Security had been directing traffic due to congestion caused by the service and access. The Board asked public safety to help alleviate some of the congestion by more closely monitoring the number of vehicles allowed up once the public parking areas are full. The Board directed Mr. Grafel to ask the Valet Parking Service to clean the area more frequently, to remind them that no long term parking of cars is allowed, only drop off and pick up, and to suggest that at peak times additional employees may be needed to assist with moving the vehicles in a more timely manner. Mr. Grafel will also inform Mr. Bengel of the Market Square Condo Association of the action taken.

#### UERWA

Director Friedman reported there was nothing new or unusual to report regarding the latest UERWA meeting. An Amended and Restated Water Lease ("Lease") had been included in the packet for the Board to review. Mr. Collins explained that this "Lease" clarifies a matter that was left unclear in the amended and restated Master Service Contract dated Jan 1, 1998, which replaced the original Service Contract dated April 1, 1985. In the original

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Service Contract the District agreed to lease its water rights to the Authority, this "Lease" confirms what clearly existed prior to December 31, 1997. Mr. Collins was asked by the Board to clarify the "Lease" to recognize the District is agreeing only to the exact same terms and conditions which existed in the original Service Contract. Upon motion duly made and seconded, it was unanimously

RESOLVED to approve the Amended and Restated Water Lease subject to revision which clarifies the District is agreeing to circumstances the parties thought existed per the original Service Contract as discussed above and upon review and approval of the President of the Board.

#### **Parking Lot** **Buses**

The Board's attention was drawn to the memo in the packet regarding the parking lot bus phase out program. The matter has been under consideration for the past several years, one alternative to diesel buses is 33 passenger people mover buses. Mr. Lubbers explained the buses would be replaced over time, with several diesel buses being "mothballed" for overflow or special circumstances use. The Board asked for information concerning replacement and maintenance costs if the smaller buses were used compared to the larger diesel buses. Mr. Lubbers noted there would be a slight increase in costs as reflected in the memo. Director Mielcuszny asked if the phase out could be scheduled to mitigate the increased cost. Mr. Schouten stated that he would like to see the diesel buses phased out sooner even if there was a small increase in costs to do so. The Board brought up the matter of the two new chairlifts being proposed at Bachelor Gulch asking what impact this would have on bus needs. The Board was reminded that additional costs would be passed through the transportation fund for reimbursement by BCRC as described in the transportation agreement. Mr. Grafel noted that at this time no decision was being asked for, the matter was being presented to see if the Board was interested in having the idea explored. The Board liked the idea of reducing the diesel buses and asked that more cost information be provided as available. Mr. Grafel was asked to express the Board's concerns to Mr. O'Rourke and ask for input from BCRC on the matter.

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#### **Financial Statements**

Mr. Marchetti reviewed the December 2003 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the December 2003 preliminary financials as presented.

#### **Accounts Payable**

The Accounts Payable listing was reviewed. By motion duly made and seconded, it was unanimously

**RESOLVED** to approve the accounts payable list as presented.

#### **May Election Resolution**

Mr. Collins reviewed the draft election resolution and questions provided in the packet. He explained the questions were for discussion purposes only, providing suggested wording to help determine which matters, if any, the District may be interested in pursuing for the May election. One issue the Board expressed interest in previously is reauthorization for the \$4.4 million in bond funds that are currently restricted for a maintenance facility project. The question provided would allow these funds to be used for other capital improvements related to roadways as well as the maintenance project. The Board asked about the draft question regarding an increase in the operating mill levy. Mr. Collins explained that the approval of such a question would enable the District to increase the operations mill levy at a later date if more revenue was needed to cover necessary operating expenses, he noted that the question does not obligate or require the District to raise the mill levy if it is found not to be needed. The multi year questions regarding fire, maintenance, operations, and transportation were discussed. The Board asked that specific references to providers be removed from the multi year questions and discussed whether a year to year arrangement was preferable to multi year for some of these matters. The Board asked Mr. Collins to revise the questions as discussed and provide an outline of the questions that reviews how the District would be affected if the question is not put forward. The Board expressed concern that they be able to support any questions with specific information as to how the District benefits or is affected by the questions the

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District decides to put forth. The matter will be discussed further at the February meeting.

### **Revised By Laws**

Mr. Collins presented the revised By Laws included in the packet. He explained the revised By Laws provided an updated version which includes a section on emergency actions and meetings. The Board asked for a red-line version of the By Laws for review. Mr. Collins agreed to provide this but suggested that the District adopt as an amendment to the existing By Laws the emergency actions and meetings section. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to adopt section 6G as presented in the revised By Laws in regards to emergency meetings.

### **Fire Equipment Lease**

Mr. Collins explained the fire vehicles currently have overlapping insurance coverage. They are currently insured with the District as well as Eagle River Fire Protection District. The District's Insurance Agent had recommended the lease of the vehicles to the fire service provider to allow the District to eliminate the double insurance coverage on the vehicles. The lease would be an amendment to the current service contract. The Board asked how much the District would save on insurance costs. Staff will provide this information and the matter will be brought back to February's meeting.

### **Correspondence**

Mr. Grafel reported to the Board that he had asked Vail Resorts to assist in funding the repair of Elk Track Road. No response has been received.

### **Legal**

Mr. Collins asked for time in executive session to cover several matters.

### **Executive Session**

Upon motion duly made and seconded, it was unanimously

**RESOLVED** to enter into executive session citing §24-6-402(4)(e) C.R.S. for the purpose of discussing legal matters and contract negotiations regarding swift gulch, market square and fire negotiations. The Board entered into Executive session at 11:50 a.m. and returned at 12:25 p.m.



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#### **Adjournment**

There being no further business to come before the Board, by motion duly made and seconded, it was unanimously

**RESOLVED** to adjourn the Regular Meeting of the Beaver Creek Metropolitan District Board of Directors held on January 28, 2004.

Respectfully submitted,

Kathy Lewensten  
Secretary for the meeting

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# RECORD OF PROCEEDINGS

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## MINUTES OF THE SPECIAL MEETING OF THE BOARD OF DIRECTORS

### BEAVER CREEK METROPOLITAN DISTRICT February 27, 2004

The Special Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., Wednesday, February 27, 2004 in the Alpine Room of the Beaver Creek Lodge, 26 Avondale Lane, Beaver Creek, Colorado.

#### Attendance

In Attendance were Directors:

- John Wells
- Stephen Friedman
- Tommie Campbell

Absent and excused was Director:

- Al Mielcuszny
- Michael Bowen

Also in Attendance were:

- Larry Grafel, General Manager
- Ken Marchetti, CPA, Secretary
- James Collins, Esq., District Counsel
- Kathy Lewensten, Robertson & Marchetti, P.C.
- Bill Simmons, Village Operations
- Tony O'Rourke, BCRC
- Tom Schouten, BC Property Owner
- Ginny Forstmann, BC Property Owner
- Jim Funk, Public Safety
- Chris Lubbers, Village Transportation
- Bruce Mielke, ERFDP Board Member
- Jerry Hensel, Village Grounds Maintenance

#### Call to Order

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Director Wells, Chairman of the Board, noting that a quorum was present. Director Wells confirmed that prior to the meeting each of the Directors had been notified of the meeting and that written notice was duly posted at the Eagle County Clerk and Recorder's Office and at three public places within the District.

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## Beaver Creek Metropolitan District February 27, 2004 Meeting Minutes

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### **Conflicts**

The Board noted that it had received certain disclosures of potential conflict of interest statements more than seventy-two hours prior to the meeting for each of the following Directors, indicating the following conflicts: Mr. C. Michael Bowen is a board member of the Beaver Creek Property Owners Association which collectively represents many of the constituents of the District in matters relating to their real property interests within the District boundaries; Mr. Stephen Friedman is a board member of the Beaver Creek Arts Foundation which operates the performing arts facilities within Beaver Creek; Ms. Beatrice "Tommie" Campbell is a board member of the Borders Lodge and a member of the Beaver Creek Communications Committee; Mr. Albert Mielcuszny is an owner of a retail store which leases and contracts with Vail Associates or Affiliates; and Mr. John Wells is President of The Pines Townhomes at Beaver Creek Condominium Association. The Board noted for the record that these disclosures are restated at this time with the intent of fully complying with laws pertaining to potential conflicts.

### **Minutes**

The Board reviewed the minutes of the January 28, 2004 Regular Meeting. Upon motion duly made and seconded, it was, unanimously,

**RESOLVED** to approve the minutes of the January 28, 2004 meeting.

### **Future Meetings**

The Board reviewed the 2004 meeting dates schedule included in the packet. No changes were made.

### **Agenda Changes**

There were no changes to the agenda.

### **Public Input**

No public input was offered.

### **Landscape**

Mr. Grafel reported the landscape committee had met with George Pierce and provided final comments regarding the landscape master plan. The plan will be presented at the next meeting.

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#### General Managers Update

**Swift Gulch:** Mr. Grafel reported the Swift Gulch site was fully operational. The operations crew is still storing some items at “tin city”. These items may need to be relocated in April or May as “tin city” is part of the new ski lift project. Director Wells questioned whether Vail Resorts (VR) is still obligated to provide a maintenance site per the agreement in the event no long term arrangement is reached prior to that time. After brief discussion the Board directed Mr. Collins to draft a letter to VR regarding the matter. A long term proposal had been received from the Town of Avon; Mr. Grafel reported there had been a meeting between BCMD and Town of Avon representatives regarding the proposal. The Town of Avon had offered the upper bench at Swift Gulch to the District for storage of equipment and materials at no charge. The matter remains under discussion.

**Capital Projects:** Mr. Grafel asked the Board to review the proposed capital projects for 2004. A listing had been provided in the packet. He explained that if the overlays recommended in the plan were completed this year then all secondary roads within the District would have been overlayed in the last five years. Director Friedman asked about the timeline for the Village Road project. Mr. Grafel stated Village Road had been chip sealed in 1998 and was holding up fairly well; it has been scheduled for work in 2005. He stated there were several alternatives regarding widening, reconfiguration, or turn lanes that would need to be reviewed and decided. The main entry project would need to be considered regarding the plans. After discussion the Board directed Mr. Grafel to start developing alternate plans for Village Road for the Board to review at the May meeting. The Board then expressed approval for the overlay projects, Avondale Sidewalk at Charter, and the Landscape improvements capital projects for 2004. Director Friedman asked for the overlay bid proposals to include a traffic control plan and for the District and the contractors to keep the property owners well informed of any detours or interruptions regarding the projects. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the design and requests for bid proposals on the 2004 capital projects for the Beaver Creek

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Drive overlay, South Fairway Drive overlay, Bachelor Gulch Road overlay, Highline Drive overlay, Willis Place overlay, Avondale Sidewalk at Charter, and the Landscape improvements.

### UERWA

Director Friedman reported there was a joint meeting between ERWSD and UERWA yesterday. Discussion continues regarding tiered rates and if it positively affected customer behavior last year. There have been proposed changes to the tiers and rates to make them more equitable.

A letter from Porzak Browning & Bushong was handed out. The letter related to a legal challenge regarding the Water Administration Fee Program (WAFP). The letter asked for individual support from the District. Mr. Collins explained the District was already included through UERWA in the matter. The Board felt this was adequate representation at this time.

### Parking Lot Buses

Mr. O'Rourke reported to the Board that BCRC had endorsed the phase out of diesel parking lot buses at their last meeting. He reviewed the parking lot bus analysis included in the packet. He explained BCRC would like the phase out to happen over two years even though it may create additional costs of approximately \$28,000. He was seeking the Board's endorsement to proceed with the replacements. The Board asked if there was any concern regarding peak times and whether the smaller vehicles would be able to keep up. Mr. O'Rourke explained that service could be shifted to cover the peak times. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to endorse the phase out of the diesel parking lot buses over a two year period.

### BCRC Strategic Plan

Mr. O'Rourke reported BCRC was interested in encouraging a more coordinated capital project plan. The main entry gate project is currently being discussed. The entry location will remain the same. The project will include an upgrade of the facility and a review and improvement of traffic flow in the area. Mr. O'Rourke thought it would take approximately \$10,000 to review the design options and for preliminary engineering work. He asked if the

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District would agree to split the cost. After discussion the Board agreed. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve cost sharing the design and preliminary engineering work for the main entry gate in an amount not to exceed \$5,000.

Mr. O'Rourke asked whether the Board had any capital or residential projects that should be considered for joint cooperation between BCRC, BCMD, and BCPOA. Ms. Forstmann stated the BCPOA was interested in creating pocket parks within some of the open space areas. They are interested in providing water for some landscaping and are willing to contribute \$10,000 for this. Director Wells asked about the mix of tenants in the Village area. Mr. O'Rourke explained that this matter was under review to see what steps could be taken to infuse more energy into the core. The Board suggested consistent hours of operation and a mix of tenant types. The Board will keep the offer of working on projects jointly under consideration for future projects.

The matter of upgraded telecommunications was then discussed. The discussion considered what may be available to provide improved internet access, including wireless internet connections, or improved telecommunications in general. Mr. O'Rourke offered that BCRC was willing to contribute \$5,000 to \$10,000 to retain a professional consultant to study the matter including how the terrain and weather may affect different systems. The Board directed Mr. Grafel to research consultants and the fees that may be charged and bring the information back to the Board.

#### **Financial Statements**

Mr. Marchetti reviewed the January 2004 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the January 2004 preliminary financials as presented.

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**Accounts Payable** The Accounts Payable listing was reviewed. By motion duly made and seconded, it was unanimously

**RESOLVED** to approve the accounts payable list as presented.

**Fire Equipment  
Lease**

Mr. Collins presented the Third Amendment to the Agreement for Fire Protection and Emergency Services included in the packet. This amendment leases the Districts fire equipment to ERFPD and allows the District to drop the duplicate insurance coverage on the equipment. This will produce a savings of approximately \$6,000 for the District in insurance costs. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the Third Amendment to the Agreement for Fire Protection and Emergency Services.

**May Election  
Resolution**

The May Election was briefly discussed. Three self nominating petitions were received for the two board positions up for election. Mr. Marchetti reported that after revising the long range plan, using the assumption that the maintenance facility funds are reauthorized at the May election, that it appears the District does not have an immediate need to ask for additional debt authorization in the May election. The Board asked that this matter be discussed in executive session

**Revised By Laws**

Mr. Collins handed out a memo regarding the revised By Laws. He explained the original By Laws were adopted in 1979; the revised By Laws address statutes that have been amended since that time. His recommendation to the Board is to adopt the revised By Laws. The board tabled the matter to allow time for review.

**Other Matters**

Mr. Grafel drew the Boards attention to the public safety report noting that the false fire alarms for 2003 were included. He explained staff would be billing out for the false alarm fines.

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### Other Matters Con't.

The Board asked about the procedures in place for violations of public safety, such as at construction sites. They asked whether access is ever denied if a contractor or vendor consistently violates policy. Mr. Funk explained that fines are sent to the construction group and the property owner, if there is a safety issue the vehicles can be towed. The Board asked what type of release or form is signed when access permits are given to contractors, vendors, or others who request them. Mr. Funk will provide a copy of the form for review and comment. Mr. Funk stated he encourages his staff to work with the contractors and vendors to encourage their compliance and noted the majority do comply. The Board asked whether any consideration has been given to increasing the associated fines. Mr. Funk look into the matter and report back to the Board.

### Fire Matters

The Board gave an update on long term negotiations with ERFPD. Director Wells and Friedman had met with Chief Moore, Mr. McIlveen, and Mr. Mielke regarding a long term agreement. The meeting went well and it is anticipated the matter will move forward. Mr. O'Rourke asked the length of the term being discussed. The term being discussed is five years or longer. Director Friedman explained the District was interested in obtaining fire protection services for a reasonable amount and that discussions had been positive. Mr. Mielke was asked whether he cared to make any comments. He explained he had attended to answer any questions the Board may have and agreed that the talks were moving along in a positive direction.

### Executive Session

Upon motion duly made and seconded, it was unanimously

**RESOLVED** to enter into executive session citing §24-6-402(4)(e) and (f) C.R.S. for the purpose of discussing legal matters and contract negotiations regarding swift gulch, personnel, market square, and fire negotiations. The Board entered into Executive session at 10:25 a.m. and returned at 12:40 p.m.

After returning from Executive Session, upon motion duly made and seconded, it was unanimously



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**RESOLVED** to approve the May 4, 2004 Election Resolution, which is hereby attached and made part of these minutes, and

**FURTHER RESOLVED** to renew the annual employment contract of Mr. Grafel.

**Adjournment**

There being no further business to come before the Board, by motion duly made and seconded, it was unanimously

**RESOLVED** to adjourn the Special Meeting of the Beaver Creek Metropolitan District Board of Directors held on February 27, 2004.

Respectfully submitted,

Kathy Lewensten  
Secretary for the meeting

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# RECORD OF PROCEEDINGS

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## MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS

### BEAVER CREEK METROPOLITAN DISTRICT March 24, 2004

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., Wednesday, March 24, 2004 in the Alpine Room of the Beaver Creek Lodge, 26 Avondale Lane, Beaver Creek, Colorado.

#### **Attendance**

In Attendance were Directors:

- Stephen Friedman
- Tommie Campbell
- Al Mielcuszny
- Michael Bowen
- John Wells (via phone)

Absent and excused was Director:

Also in Attendance were:

- Larry Grafel, General Manager
- Ken Marchetti, CPA, Secretary
- James Collins, Esq., District Counsel
- Kathy Lewensten, Robertson & Marchetti, P.C.
- Bill Simmons, Village Operations
- Ginny Forstmann, BC Property Owner
- Paul Jaridis, BGMD Chairman
- Ludwig Kurz, BCRC
- Jim Funk, Public Safety
- Chris Lubbers, Village Transportation
- Bob McIveen, Vail Resorts
- Jerry Hensel, Village Grounds Maintenance

#### **Call to Order**

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Director Friedman, Acting Chairman of the Board, noting that a quorum was present. Director Friedman confirmed that prior to the meeting each of the Directors had been notified of the meeting and that written notice was duly posted at the Eagle County Clerk and Recorder's Office and at three public places within the District.

#### **Conflicts**

The Board noted that it had received certain disclosures of potential conflict of interest statements more than seventy-two hours prior to the meeting for each of the following Directors,

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indicating the following conflicts: Mr. C. Michael Bowen is a board member of the Beaver Creek Property Owners Association which collectively represents many of the constituents of the District in matters relating to their real property interests within the District boundaries; Mr. Stephen Friedman is a board member of the Beaver Creek Arts Foundation which operates the performing arts facilities within Beaver Creek; Ms. Beatrice "Tommie" Campbell is a board member of the Borders Lodge and a member of the Beaver Creek Communications Committee; Mr. Albert Mielcuszny is an owner of a retail store which leases and contracts with Vail Associates or Affiliates; and Mr. John Wells is President of The Pines Townhomes at Beaver Creek Condominium Association. The Board noted for the record that these disclosures are restated at this time with the intent of fully complying with laws pertaining to potential conflicts.

### Minutes

The Board reviewed the minutes of the February 27, 2004 Special Meeting. Upon motion duly made and seconded, it was, unanimously,

**RESOLVED** to approve the minutes of the February 27, 2004 meeting.

### Future Meetings

The Board reviewed the 2004 meeting dates schedule included in the packet. No changes were made.

### Agenda Changes

There were no changes to the agenda.

### Public Input

Mr. Jardis Chairman of Bachelor Gulch Metropolitan District (BGMD) explained he wished to update the Board on several matters. He reported that BGMD had completed the buyout of Smith Creek Metropolitan District (SCMD) on March 11, 2004. He explained that SCMD will continue in a limited capacity only. BGMD will be holding an election in May to fill two seats on the Board and to ask the voters for approval for several issues related to the buy out. He stated that after the election the BGMD board will be comprised of property and home owners. He expressed BGMD's interest in working together with the District. The Board congratulated BGMD on the buyout and stated it looks forward to working with them in the future.

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### Beaver Creek Metropolitan District March 24, 2004 Meeting Minutes

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Mr. Jardis went on to explain that BGMD had been in negotiations with Vail Resorts (VR) regarding 10,000 sq ft of space on the Tract B parking lot parcel. He explained it was BGMD's intention to place a small facility for operations on this parcel. BGMD would like to continue contracting with the Town of Avon (TOA) for maintenance of the vehicles and equipment at swift gulch, however all other operations functions would be done from the new location. BGMD is optimistic they would have the new facility operational for next ski season. Director Friedman stated that the Board had been made aware of this matter within the last 24 hours and would like to explore the possibility of joining with BGMD for a small operations facility at the site if additional space is available.

Ms. Forstmann asked whether anyone had approached BGMD about cost sharing landscape improvements in the Prater Road and Bachelor Gulch guard shack areas. Mr. Jardis explained the funds for this type of project had been escrowed as part of the buyout and that VR has control over the funds, so they would be the ones to approach. Mr. Jardis noted that one project planned for the escrowed funds was called Prater Road entry. Mr. Grafel noted that nothing had been received by the District regarding any plans for changes to the area.

Director Miencuszy asked to make a comment concerning hours of operations within Beaver Creek Village which had been discussed at the February meeting. He noted that the issue may not be as simple as it seems. Although a core set of hours may not be unreasonable, the individual owner's rights need to be respected as well. The Board thanked him for his input.

#### **Landscape**

Mr. Grafel reported the landscape master plan had been provided to the Board with the packet. Director Campbell recommended approval of the plan. Ms. Forstmann, who had sat on the landscape committee, agreed the plan was complete. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the landscape master plan.

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# RECORD OF PROCEEDINGS

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## Beaver Creek Metropolitan District March 24, 2004 Meeting Minutes

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### General Managers Update

**Swift Gulch:** Mr. Grafel reported negotiations were continuing regarding a long term agreement with the TOA at Swift Gulch. Director Bowen asked Mr. McIlveen about available space at the Tract B site per the above discussion with Mr. Jardis. Mr. McIlveen replied that 10,000 to 20,000 sq ft may be available at the site for such a use. The Board will continue discussions on the matter in executive session.

**Administrative Office:** Mr. Grafel explained this project is on hold until more is known regarding the maintenance options.

**Telecommunications:** Mr. Grafel reported that he is working with Mr. O'Rourke to locate consultants and the information should be available at the next meeting.

**Mosquito Control:** Mr. Grafel reported to the Board that a contract had been signed with Colorado Mosquito Control, Inc. for the upcoming year. They will provide monitoring and an inspection service monthly, as well as treatment in wetland area's to prevent larvae from becoming mosquitos. Mr. Kurz addressed the Board concerning a memo provided from Mr. O'Rourke regarding implementing an integrated West Nile Virus management strategy. The strategy includes educational materials, providing repellent at appropriate locations, and mosquito control measures. He explained the anticipated cost of the strategy should be approximately \$20,000 including the \$4,000 for the contract with Colorado Mosquito Control, Inc. It was hoped the costs would be shared between the District and BCRC. The Board asked if Eagle County had any plans regarding the matter. It was reported the County had set aside \$25,000 for this purpose; Ray Merry the Environmental Coordinator at Eagle County will be coordinating the counties efforts. Ms. Forstmann inquired whether mosquito tents would be used in collecting samples and asked that the safety of children be considered regarding the location of the tents so as to keep them as out of sight as possible to prevent children from playing with them

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## RECORD OF PROCEEDINGS

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### Beaver Creek Metropolitan District March 24, 2004 Meeting Minutes

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#### **Parking Penalties**

Mr. Funk reviewed the parking penalties and fines memo provided in the packet. He explained the fines and the steps that will be taken to enforce parking regulations. He reported that for one day passes the parking regulations will be provided on a hand out that will be available in both English and Spanish. He recommended that signage be posted stating "No Parking on Roadways" at certain locations throughout Beaver Creek. The Board asked that this be incorporated into existing signage, rather than creating multiple sign locations.

#### **DAR Schedule**

Mr. Lubbers asked for the Boards input regarding the discontinuation of the DAR fixed route service. He informed the Board the fixed route service has been discontinued for the last week of the season for the last couple of years. Mr. Lubbers stated the date being looked at for this year is April 5<sup>th</sup>. The on demand service will remain available. The Board responded that it was important that constituents along the fixed routes be made aware of the change and suggested placing notices within the buses, and providing written notification to homeowners and caretakers of the change. It was suggested that next year a notice be placed in the newsletter regarding the scheduled service termination date.

#### **UERWA**

Director Friedman reported the next meeting of UERWA would be tomorrow. He noted there is already a considerable concern regarding drought in the coming year. The season will begin with a 3 day a week watering schedule however this may be reviewed as the season progresses.

#### **Financial Statements**

Mr. Marchetti reviewed the February 2004 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the February 2004 preliminary financials as presented.

#### **Accounts Payable**

The Accounts Payable listing was reviewed. The Board asked for clarification regarding the payment to Ewing Trucking and Construction. The payment is for repairs made to the Districts

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### Beaver Creek Metropolitan District March 24, 2004 Meeting Minutes

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head gate which is by the storm water drainage pond located on the golf course. By motion duly made and seconded, it was unanimously

**RESOLVED** to approve the accounts payable list as presented.

#### Legal

Mr. Collins briefly reviewed the letter included in the packet regarding the Districts unit at Market Square, he reported the District was still awaiting a response.

#### Revised By Laws

Mr. Collins explained the original By Laws were adopted in 1979; the revised By Laws address statutes that have been amended since that time. His recommendation to the Board is to adopt the revised By Laws. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the execution of the Revised By Laws as presented.

#### Executive Session

Upon motion duly made and seconded, it was unanimously

**RESOLVED** to enter into executive session citing §24-6-402(4)(a) and (e) C.R.S. for the purpose of discussing legal matters and contract negotiations regarding swift gulch, property, and fire negotiations. The Board entered into Executive session at 10:00 a.m. and returned at 11:28 a.m.

After returning from Executive Session, upon motion duly made and seconded, it was unanimously

**RESOLVED** to authorize condemnation resolution as discussed in executive session, and

**FURTHER RESOLVED** to authorize an offer to purchase property to Xcel as discussed in executive session.

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### Beaver Creek Metropolitan District March 24, 2004 Meeting Minutes

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**Adjournment**

There being no further business to come before the Board, by motion duly made and seconded, it was unanimously

**RESOLVED** to adjourn the Regular Meeting of the Beaver Creek Metropolitan District Board of Directors held on March 24, 2004.

Respectfully submitted,

Kathy Lewensten  
Secretary for the meeting



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# RECORD OF PROCEEDINGS

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## MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS

### BEAVER CREEK METROPOLITAN DISTRICT April 28, 2004

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., Wednesday, April 28, 2004 in the Alpine Room of the Beaver Creek Lodge, 26 Avondale Lane, Beaver Creek, Colorado.

#### **Attendance**

In Attendance were Directors:

- Stephen Friedman
- Tommie Campbell
- Al Mielcuszny
- Michael Bowen(via phone)
- John Wells

Absent and excused was Director:

Also in Attendance were:

- Larry Grafel, General Manager
- Ken Marchetti, CPA, Secretary
- David O'Leary, Esq., District Counsel
- Kathy Lewensten, Robertson & Marchetti, P.C.
- Bill Simmons, Village Operations
- Ginny Forstmann, BC Property Owner
- Sheriff Hoy, Eagle County Sheriff
- Brian Nolan, BC Merchants
- Bob McIveen, Vail Resorts
- John Garnsey, C.O.O. Beaver Creek
- Tony O'Rourke, Beaver Creek Resort Co

#### **Call to Order**

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Director Wells, Chairman of the Board, noting that a quorum was present. Director Wells confirmed that prior to the meeting each of the Directors had been notified of the meeting and that written notice was duly posted at the Eagle County Clerk and Recorder's Office and at three public places within the District.

#### **Conflicts**

The Board noted that it had received certain disclosures of potential conflict of interest statements more than seventy-two hours prior to the meeting for each of the following Directors,

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## Beaver Creek Metropolitan District April 28, 2004 Meeting Minutes

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indicating the following conflicts: Mr. C. Michael Bowen is a board member of the Beaver Creek Property Owners Association which collectively represents many of the constituents of the District in matters relating to their real property interests within the District boundaries; Mr. Stephen Friedman is a board member of the Beaver Creek Arts Foundation which operates the performing arts facilities within Beaver Creek; Ms. Beatrice "Tommie" Campbell is a board member of the Borders Lodge and a member of the Beaver Creek Communications Committee; Mr. Albert Mielcuszny is an owner of a retail store which leases and contracts with Vail Associates or Affiliates; and Mr. John Wells is President of The Pines Townhomes at Beaver Creek Condominium Association. The Board noted for the record that these disclosures are restated at this time with the intent of fully complying with laws pertaining to potential conflicts.

### **Minutes**

The Board reviewed the minutes of the March 24, 2004 Regular Meeting. Upon motion duly made and seconded, it was, unanimously,

**RESOLVED** to approve the minutes of the March 24, 2004 meeting.

### **Future Meetings**

The Board reviewed the 2004 meeting dates schedule included in the packet. No changes were made.

### **Agenda Changes**

Mr. Grafel asked for an item to be added to the agenda under general manager's report; the item is discussion of a letter received from Vail Recreation District regarding funding. He also noted Sheriff Hoy was in attendance and would like to address the Board.

### **Public Input**

Sheriff Hoy thanked the Board for the opportunity to appear. He stated the sheriff's department works closely with BC Public Safety to respond to any issues within the Resort and helps with security as needed for special events. He mentioned there were no big issues to report regarding the District, however he noted one concern of his department was mistaken 911 calls generated from guests attempting to dial out international calls from the hotels. He asked for input from the Board regarding any matters of concern. Director Friedman agreed the District did not currently have any big issues, but stated that very fact may contribute to a

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### Beaver Creek Metropolitan District April 28, 2004 Meeting Minutes

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feeling of benign neglect from the sheriff's department by the District. He stated the District understands that it can rely on the sheriff's department to respond and it would like to better understand what proactive efforts could or should be expected from the department. Sheriff Hoy explained services are not based on the tax base but on need. He stated that when a response is necessary, the District can expect a professional with a good understanding of the area. The responding officers would come from either the Eagle Vail or Edwards substations. He noted the office does not send patrol officers without reason and does not wish to be "heavy handed". The Board then asked about speeding enforcement. Sheriff Hoy explained his department does not generally perform speed enforcement within the District. He noted BC Public Safety can take some preventative measures and recommended taking steps such as putting a speed trailer out. He stated that, if asked, the department would be responsive to a request to provide a speed patrol on an as needed basis. The Board inquired about extraordinary response as it relates to homeland security. Sheriff Hoy explained his staff was continually training for such matters and reported he receives emails from Homeland Security daily. He noted that wildland fire danger is a big concern for this summer and that his staff was continually training and would be prepared to respond. The Board thanked Sheriff Hoy for coming.

Mr. Nolan asked to address the Board on matters of interest regarding the merchant association. He reported that this past season group sales were up 8% over last season. The marketing budget for the summer season has been increased so expectations are optimistic. He wanted the Board to be aware of an issue that arose this past season regarding Colorado Mountain Express (CME). CME had proposed an idea of offering free shuttle service for CME customers to take to Edwards while staying in Beaver Creek. CME originally proposed bringing the shuttles to the bus stops but was informed that this would not be allowed; CME then proposed using the Hyatt turnaround area, but later dropped the idea entirely. The Board expressed their willingness to be responsive to the constituents if the matter should arise again. Mr. Nolan wanted the Board to be aware that the merchants association was reviewing comments received regarding the hours of operations for merchants and the mix of merchants. It is interested in increasing the appeal of the Beaver Creek core to guests. A

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## Beaver Creek Metropolitan District April 28, 2004 Meeting Minutes

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discussion of the matter followed. The Board inquired as to the structure of the Merchant Association. Mr. Nolan explained it does not have a rigid structure. The meetings are informal and no elections for officers are held. He informed the Board that the merchant representative for the BCRC Board is selected in November. The Board thanked Mr. Nolan for coming.

Mr. O'Rourke updated the Board on the West Nile Virus (WNV) matter. He referred to the BCRC letter sent in response to an inquiry by Eagle County which outlined the steps to be taken by BCRC and BCMD for prevention and education regarding WNV. A copy of the letter was included in the Board packet. The letter also encouraged Eagle County to take a more proactive course of action to mitigate the WNV threat.

### **General Managers Update**

**Vail Recreation District:** Mr. Grafel handed out copies of a letter received from the Vail Recreation District (VRD) which solicited a \$3,000 payment from BCMD to allow Beaver Creek residents to be charged the "Eagle County Student" rate for the programs offered. Mr. Marchetti reported to the Board that there is some discussion at the County level about instituting a mill levy for recreation. The Board briefly discussed the pros and cons of consolidation of the various recreation districts and a county wide mill levy. After further discussion, the Board agreed to a payment for this year noting it is for a worthwhile endeavor. The Board did ask that VRD be informed that a formal presentation will be expected for any future requests and that these requests will be decided upon annually. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to make a \$3,000 payment to VRD with the understanding that any subsequent requests will be independently ruled on by the Board on an annual basis.

### **Xcel Property and Maintenance Facility**

Vail Resorts (VR) is anticipating closing on the purchase of the Xcel site in Eagle Vail after completion of the due diligence. Currently, it is anticipated the District would purchase one half of the lot the same day VR closes on the entire lot and there would be

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concurrent closings. The latest sketch plan for the Xcel site was provided by Mr. McIlveen for the Board to review. The plan showed the site being split in approximate half, with the approximate placing of the VR building. Mr. Garnsey explained VR was in the process of working with Eagle County to resubdivide and rezone the lot. Mr. Garnsey asked the District to provide feedback regarding several matters, whether the site works as presented, if any planning or general site costs could be split proportionately, not including specific site costs such as the traffic study needed by VR, and although no issues are anticipated, Mr. Garnsey asked the District to consider entering into an agreement in which the District agrees to purchase the entire lot if VR is denied use by the County. The purchase price to be paid by the District for the entire site would be the price paid by VR for the original purchase. The Board asked Mr. Grafel if the site plan provided enough space for the District needs. He replied that it did, he anticipated the District would need a building for the operations crew, several bays for maintenance, and a fuel station. It was noted the access to the site cannot be changed and that there are several easements which restrict where buildings could be placed. The Phase One due diligence report should be available shortly. The report will provide more information on the site and any concerns that may need to be addressed. The shared planning and general site costs would include the general site engineering, resubdivision costs, and costs associated with the tear down of the current building. The District would also expect to receive a proportionate share of any revenues realized from the residual value of the building materials after tear down. After discussion the Board stated they were fundamentally in agreement the site would work, the District would cost share certain expenses, and the District would purchase the site if VR cannot obtain approval for the uses described. Director Friedman asked Mr. Garnsey what would happen if the Xcel site is not ready for use by next season, whether VR would provide a maintenance site. Mr. Garnsey stated Vail Resorts would still have "tin city" available for next season if needed. Mr. O'Leary stated there may be concerns regarding a shared fueling station at the Xcel site. The fuel station would need to be metered so that appropriate use taxes were paid on the fuel and the liability issues would need to be defined. Mr. Garnsey suggested a satellite fueling facility located closer to Beaver Creek may be a better option. The matter will be looked into. The Board asked Mr. O'Leary to draft the necessary resolution and agreement

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as discussed. Upon motion duly made and seconded, it was unanimously

**RESOLVED** with regard to the Xcel site, the Board agrees to acquire the portion of the total site which is the Eastern most portion of the site as shown on the April 27, 2004 warehouse drawing which portion is slightly less than 50% of the site; District shall acquire such portion simultaneously with the acquisition of the entire site by Vail Resorts which acquisition by Vail Resorts is expected to be made pursuant to the contract between Xcel and Vail Resorts after environmental and due diligence obligations are reviewed and passed by the appropriate parties and independent evaluation; District agrees to pay a proportionate share of due diligence to the extent such costs affect the full site; the District share of costs and purchase price should be a fraction which is based on the square footage of the total site; District further agrees in the event Vail Resorts is denied appropriate rights of use of the site by Eagle County after pursuing on good faith and due diligence the District agrees to acquire the site at the same price paid by Vail Resorts as before in regards to the site, In addition Director Wells and Director Friedman are authorized to further evaluate and make decisions in the matter.

**Administrative Office:** The Board asked to discuss the administrative office project at the next meeting when more is known regarding the Xcel site maintenance options. They asked to be provided with a comparison of costs for an administrative space at the Xcel site and an administrative space at the fire station site. Mr. Grafel informed the Board that after review of the latest site plan for the adjacent parcel the “orphaned” triangular parcel next to the fire station site no longer appears to be available to the District.

**Bus Advertising Agreement:** Mr. Grafel drew the Boards attention to the Amendment to Agreement for bus advertising with TIGA Advertising, Inc. He reported that as required by the Transportation Agreement, Mr. O’Rourke of BCRC had been contacted and he had stated no objections to renewing the agreement. The District receives revenue from TIGA for the

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## Beaver Creek Metropolitan District April 28, 2004 Meeting Minutes

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advertising spaces that appear on the buses. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the execution of the Amendment to Agreement between the District and TIGA Advertising, Inc.

**Capital Projects Update:** Mr. Grafel reviewed the capital projects memo included in the Board packet. He reported the bid opening for the 2004 asphalt overlays and patching had been April 16<sup>th</sup>. B & B Excavating, Inc. had the lowest bid at \$161,459.20. The Mirabelles Option was not included. The Board asked why the projects were significantly lower than the budgeted amount. Mr. Grafel explained the asphalt prices were lower than anticipated and the scope of the water improvements needed was smaller than originally planned. The bids for the landscape improvements at the Royal Elk Town Homes were opened on March 5, 2004. Matthews & Associates was the low bidder at \$35,948. Mr. Grafel recommended awarding both projects as presented. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to award the asphalt overlay and patching project to B & B Excavating, Inc for \$161,459.20, and the landscape improvements at the Royal Elk Town Homes to Mathews & Associates for \$35,948.00.

### UERWA

Director Friedman reported the next meeting of UERWA would be tomorrow. He expected drought and mitigation measures would be discussed. If water usage decreases significantly there may be discussion regarding increasing water rates to allow revenues to remain stable.

### DAR Vehicle Replacement

Mr. Grafel reviewed the request for the DAR replacement vehicles included in the packet. Mr. Simmons stated the replacements had been scheduled evenly over a 10 year period. The fleet is not being increased, the replacement costs are being evened out. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the 2004 expenditure of \$332,500 for DAR replacement vehicles as presented.

### Financial

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## Beaver Creek Metropolitan District April 28, 2004 Meeting Minutes

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### **Statements**

Mr. Marchetti reviewed the March 2004 preliminary financial statement included in the packet. He asked for the Board's permission to look into investing \$4 million into a 6 month certificate of deposit if interest rates were favorable. The Board asked to be informed of the rates prior to any transfer of funds. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the March 2004 preliminary financials as presented.

### **Accounts Payable**

The Accounts Payable listing was reviewed. By motion duly made and seconded, it was unanimously

**RESOLVED** to approve the accounts payable list as presented.

### **May 4, 2004 Election**

The Board stated there has been some confusion as to the location of the polling place of the May 4 election. The Board asked that a notice stating the polling place location be posted at the First Bank. Ms. Lewensten informed the Board that 54 absentee ballots had been sent out.

### **Legal**

Mr. O'Leary reported on the Strawberry Park Condominium Owners Association (SPCOA) matter. He stated a letter had been received asking for interest on the amount the District agreed to pay SPCOA last year for drainage repairs. The District is holding the payment since SPCOA has not yet executed the snowmelt easement which was a condition of the payment. Mr. O'Leary stated he will notify SPCOA the District will not be paying interest on the amount.

### **Reports**

The Board briefly reviewed the comments included in the reports section of the packet. Several comments concerned the prices for dining and the need for more casual options. Mr. O'Rourke stated the diversity of restaurants and family pricing issues were under review.

### **Executive Session**

Upon motion duly made and seconded, it was unanimously

**RESOLVED** to enter into executive session citing §24-6-402(4)(a) and (e) C.R.S. for the purpose of discussing legal matters and contract negotiations regarding market square,



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and fire negotiations. The Board entered into Executive session at 11:40 a.m. and returned at 12:15 p.m.

**Adjournment**

There being no further business to come before the Board, by motion duly made and seconded, it was unanimously

**RESOLVED** to adjourn the Regular Meeting of the Beaver Creek Metropolitan District Board of Directors held on April 28, 2004.

Respectfully submitted,

Kathy Lewensten  
Secretary for the meeting

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# RECORD OF PROCEEDINGS

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## MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS

### BEAVER CREEK METROPOLITAN DISTRICT May 26, 2004

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., Wednesday, May 26, 2004 in the Alpine Room of the Beaver Creek Lodge, 26 Avondale Lane, Beaver Creek, Colorado.

#### **Attendance**

In Attendance were Directors:

- Stephen Friedman
- Tommie Campbell
- Al Mielcuszny
- John Wells

Absent and excused was Director:

- Michael Bowen

Also in Attendance were:

- John Forstmann, Elected BCMD Board Member
- Larry Grafel, General Manager
- Ken Marchetti, CPA, Secretary
- James Collins, Esq., District Counsel
- David O'Leary, Esq., District Counsel
- Kathy Lewensten, Robertson & Marchetti, P.C.
- Janet Rinaldi, Comcast Cablevision
- Bill Simmons, Village Operations
- Bob McIveen, Vail Resorts
- John Garnsey, C.O.O. Beaver Creek

#### **Call to Order**

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Director Wells, Chairman of the Board, noting that a quorum was present. Director Wells confirmed that prior to the meeting each of the Directors had been notified of the meeting and that written notice was duly posted at the Eagle County Clerk and Recorder's Office and at three public places within the District.

#### **Conflicts**

The Board noted that it had received certain disclosures of potential conflict of interest statements more than seventy-two hours prior to the meeting for each of the following Directors,

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## Beaver Creek Metropolitan District May 26, 2004 Meeting Minutes

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indicating the following conflicts: Mr. C. Michael Bowen is a board member of the Beaver Creek Property Owners Association which collectively represents many of the constituents of the District in matters relating to their real property interests within the District boundaries; Mr. Stephen Friedman is a board member of the Beaver Creek Arts Foundation which operates the performing arts facilities within Beaver Creek; Ms. Beatrice "Tommie" Campbell is a board member of the Borders Lodge and a member of the Beaver Creek Communications Committee; Mr. Albert Mielcuszny is an owner of a retail store which leases and contracts with Vail Associates or Affiliates; and Mr. John Wells is President of The Pines Townhomes at Beaver Creek Condominium Association. The Board noted for the record that these disclosures are restated at this time with the intent of fully complying with laws pertaining to potential conflicts.

### Minutes

The Board reviewed the minutes of the April 28, 2004 Regular Meeting. Upon motion duly made and seconded, it was, unanimously,

**RESOLVED** to approve the minutes of the April 28, 2004 meeting.

### Future Meetings

The Board reviewed the 2004 meeting dates schedule included in the packet. No changes were made.

### Agenda Changes

Mr. Grafel asked that an item be added to the agenda under general manager's report; the item is for discussion of roadway easements by Lot 4 and 5 on South Fairway Drive.

### Oaths of Office

Director Wells administered the Oath of Office to the two newly elected board members. Mr. John Forstmann was elected to a first term, Mr. Stephen Friedman was re-elected for a second term. He welcomed them to the Board. Mr. Collins briefly outlined the requirements for disclosure of conflicts and asked the Board members to provide any necessary information to his office so the appropriate disclosures can be made. The Board wished to thank Director Bowen and recognize his years of service on the Board; they asked Mr. Grafel to send a letter expressing this sentiment.

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### Beaver Creek Metropolitan District May 26, 2004 Meeting Minutes

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#### Election of Officers

Mr. Collins discussed the election of officers. He reviewed the offices and the duties of each. Director Campbell nominated Director Wells for Chairman/President, Director Mielcuszny seconded the nomination. Upon motion duly made and seconded it was unanimously

**RESOLVED** to approve Director Wells as the Chairman/President of the Board.

The remaining offices were discussed and opened for nominations. Mr. Mielcuszny was nominated for Treasurer, the remaining Directors were nominated for Vice President, Assistant Secretary, and Mr. Marchetti was nominated as Secretary. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve Albert Mielcuszny as Treasurer, Beatrice Campbell, Steve Friedman, and John Forstmann as Vice President, Assistant Secretary/Treasurer, and Ken Marchetti as Secretary.

#### Appointment Of Delegates

The Board discussed the delegates it would need to appoint to Upper Eagle Regional Water Authority (UERWA) board. Currently, Director Friedman has acted as the delegate to UERWA, two alternates are needed as well, Larry Grafel is currently an alternate, Director Wells was nominated as the other alternate. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve Director Friedman as the delegate to UERWA, with Director Wells and Mr. Grafel as the alternates.

#### Public Input

No public input was offered.

#### General Managers

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## RECORD OF PROCEEDINGS

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### Beaver Creek Metropolitan District May 26, 2004 Meeting Minutes

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#### Update

**Comcast Access/Operational Agreement:** The District had received a letter dated March 31, 2004 from Comcast stating its intention to terminate the Access/Operational Agreement with the District. The termination notice was sent in response to a franchise agreement put in place between Comcast and Eagle County in March 2004. Comcast has agreed to send a 5% franchise fee to Eagle County for the ability to serve the unincorporated parts of the County. A letter was sent May 13, 2004 to Comcast on behalf of the District by Mr. O'Leary requesting information about the termination, continued access through the private District Rights-of-Way, and proper compensation for the access.

Mr. Grafel then introduced Ms. Janet Rinaldi, Senior Manager Government Affairs, of Comcast to the Board. She explained she was there to hear concerns and answer questions regarding the matter. She stated Comcast had no intention of terminating cable service to the District and would be interested in exploring what additional services it may be able to provide in the future. She explained Comcast was interested in providing services and assuring the proper party is reimbursed, however she noted that Comcast does not want to pay twice for franchise fees. The Board was told federal law caps the fees that can be paid for franchises at 5% of gross revenues. The Board discussed access fees as they relate to the District. Ms. Rinaldi gave a brief review of the negotiation process with Eagle County. The Board noted that it had not been contacted during the year long negotiations. The Board questioned how the County and Comcast could negotiate use of the District's Right of Ways without notification. Ms. Rinaldi explained Comcast was interested in helping to come to an understanding regarding the Right of Ways but that it was Comcast's position that the issue regarding the Right of Ways was really between the County and the District. The Board asked if it would be possible for Comcast to escrow Beaver Creek's portion of the 5% franchise fee instead of remitting it to the county until the matter could be resolved. Ms. Rinaldi stated that she would agree to escrow the funds on behalf of Comcast.

Mr. Collins provided a brief overview of franchise powers and suggested the Board may want to discuss the matter more fully in executive session. A suggestion was made that the Board allow a temporary right to cover service pending resolution of the matter.

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### Beaver Creek Metropolitan District May 26, 2004 Meeting Minutes

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The board tabled the matter to executive session and thanked Ms. Rinaldi for attending.

**Administrative Office at Fire Station:** Mr. Grafel handed out a cost comparison of building administrative space at the Xcel site versus the fire station site. The Board reviewed the cost amounts presented. The possibility of reconfiguring the current fire station to include a smaller office space and then locating a main administrative office and conference room space at the Xcel site was discussed. The cost to include the administrative space at the Xcel site was lower than building a stand alone facility at the fire station site. After further discussion the Board asked that the administrative space be included in the Xcel site plans noting the fire station site could be utilized at a later date if needed.

**Villa Montane Office Lease:** The Board discussed whether it wished to continue leasing the office space in the Villa Montane in light of the recent discussions concerning administrative space at the Xcel parcel. It is necessary for the District to give notice prior to June 30 if it wants to terminate the lease of the space December 31, 2004. The Board agreed to terminate the lease. Upon motion duly made and seconded it was unanimously

**RESOLVED** to authorize staff to exercise the District's rights under the Villa Montane Lease to cause the termination of the lease at the end of 2004.

**Escalator Maintenance Agreement:** Mr. Grafel discussed the escalator maintenance agreement included in the packet. In the past the District has reimbursed BCRC for escalator maintenance performed on the two escalators by the Vilar Center. When the new escalator maintenance agreement was negotiated by Mr. Hensel he asked that two separate agreements be provided, one for BCRC and one for the District. The new agreement provides an increased level of service and safety checks for a substantial cost savings of approximately \$10,000 annually. The Board questioned how the two escalators became the Districts responsibility. It was reported that when it was anticipated that the transportation function would be using the Market Square space as a transportation hub the escalators were part of the plan. Currently, Dial a Ride does drop off and pick up at the Market Square site, so the escalators are still used for the purpose intended, however not

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## RECORD OF PROCEEDINGS

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### Beaver Creek Metropolitan District May 26, 2004 Meeting Minutes

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at the level anticipated. The Board discussed whether the escalators should remain a District expense and what options may exist concerning the matter. The Board decided to review and study the matter over the next year. It was noted that the contract was for multiple years, Mr. Collins suggested approving the contract and adding a non appropriations clause to mitigate that issue. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the Escalator Maintenance Agreement with Schindler Elevator Corporation subject to the addition of a non appropriations clause.

**Wildland Fire Mitigation:** Mr. Grafel drew the Boards attention to the information concerning Wildland Fire Mitigation which was included in the packet. The information is being sent for comment to the various Beaver Creek entities prior to being finalized and submitted to Eagle County for approval. It is hoped the regulations will be ready for submittal in July. The report indicates the majority of Beaver Creek is rated as a low risk. The remediation plan is still being developed by Mr. Funk, Mr. Grafel and Ms. Mulson from ERFPD. The Board asked how the regulations will impact existing trees and landscaping. It was suggested that Mr. Funk be asked to meet with Director Forstmann and Director Friedman to give examples of what would be required using the regulations and explain the impact of the regulations on existing trees and landscape. Mr. Simmons said he will work with Anchor Point to include the Boards concern regarding existing trees and removal into the report; he did note this depends on the fire rating of the property. The Board asked to have the plan brought back to the June meeting for further discussion.

**Lot 4 & 5 S. Fairway Drive:** Mr. Grafel reported a prospective buyer for the undeveloped lot on S. Fairway Drive had executed a survey which reflected an encroachment of approximately seven feet on the property for the District Roadway. Mr. Grafel reviewed the property and reported that it appears the roadway is within the District Right of Way easement. Mr. Collins suggested a letter be sent explaining the District believes the roadway is within the proper easement and if they have any other information the District would appreciate their providing it for review.

**Xcel Property and**

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## Beaver Creek Metropolitan District May 26, 2004 Meeting Minutes

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### **Maintenance**

#### **Facility**

Mr. Grafel presented the latest sketch plan for the Xcel site in Eagle Vail. He noted the District portion was now located on the western side of the property. Mr. McIlveen explained the sides were changed because the east side worked better for the warehouse use proposed by VA. Mr. Grafel added that the west side fits the Districts uses. Vail Resorts (VR) is working with the county to obtain the necessary special use permit for their portion. The closing date has been moved to July 1 to allow more time for due diligence. The Board asked the status of the agreement between the District and VR regarding the purchase by the District of the entire parcel if the zoning is not approved for VR. Mr. O'Leary stated there was a letter of understanding in place. Mr. Garnsey asked for a formal agreement. A suggestion was made to have the projects move through the county process together to take advantage of any efficiencies and economies that may be available without it being a joint application. It was also recommended that any professionals, such as the architect or engineering, which could be shared may offer cost saving as well. There was a question as to whether any contact had been made with the Eagle Vail DRB. After discussion it was decided the Eagle Vail DRB will be contacted once the plan is more definite. Mr. Garnsey stated he was asking the Board to approve the switching of sides of the parcel. The Board agreed that the switch made sense. A brief discussion about the access road and reciprocal easement agreements for access followed. The administrative needs of the District were discussed; the Board asked that administrative areas be included in future plans for the site.

### **UERWA**

Director Friedman reported the next meeting of UERWA would be tomorrow. In the UERWA packet was a conservation plan that had been drawn up by an employee of ERWSD. UERWA will be discussing general demand management, drought management, how water policy impacts growth, and strategic and long range issues related to growth. Director Campbell suggested the water board contact the school district regarding education in conservation methods for school children. Director Friedman noted that education efforts had been increased and would present the idea at the UERWA meeting.

### **Financial**



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#### **Statements**

Mr. Marchetti reviewed the April 2004 preliminary financial statement included in the packet. The Board asked Mr. Marchetti to look at the options available for investing the Districts fund balances and present alternatives at the June meeting for consideration. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the April 2004 preliminary financials as presented.

#### **Accounts Payable**

The Accounts Payable listing was reviewed. The Board asked if there was a maintenance contract for the street lights. Mr. Grafel noted there is not, the invoices paid to Mirage Electric were for several months of repairs and replacements due to accidents and normal maintenance. By motion duly made and seconded, it was unanimously

**RESOLVED** to approve the accounts payable list as presented.

#### **Other Business**

Director Wells stated he had received a memo from BCPOA regarding the May Election. The BCPOA stated there had been confusion as to the location of the polling place for the May 4 election. The memo noted many residents were confused as to why ballots were not provided directly to registered voters as they had been in the last election. The last election was a mail ballot election instead of the polling place election held this year. The Board recommended future elections be handled as mail ballot elections to help alleviate these concerns.

#### **Legal**

Mr. O'Leary reported no new progress had been made in regards to the Strawberry Park Condominium Association (SPCA) matter. The District has been holding a payment for one third of the cost of the drainage repairs since last December. SPCA has not yet executed the snowmelt easement which was a condition of the payment as agreed to in the settlement letter from December 2003. He suggested the District send another letter which states the Districts position that the issue was settled back in December 2003, reiterates the District will not be paying interest on the amount, and asks for the executed snowmelt easement. The Board directed Mr. O'Leary to send a letter.

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## RECORD OF PROCEEDINGS

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### Beaver Creek Metropolitan District May 26, 2004 Meeting Minutes

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Mr. Collins updated the Board on the Market Square conveyance. At this point he was requesting authorization to send a letter notifying Market Square that the District will no longer pay any fees or assessments on the District unit. A draft of the letter had been emailed to the Board prior to the meeting. Upon motion duly made and seconded, by a vote of 4 ayes, 0 nays, and Director Forstmann abstaining from the vote,

**RESOLVED** to authorize legal counsel to send a letter as discussed to Market Square.

#### **Executive Session**

Upon motion duly made and seconded, it was unanimously

**RESOLVED** to enter into executive session citing §24-6-402(4)(b) and (e) C.R.S. for the purpose of receiving advice from counsel, discussing legal matters, and contract negotiations regarding Comcast, market square, and fire negotiations. The Board entered into Executive session at 11:20 a.m. and returned at 12:05 p.m.

#### **Adjournment**

There being no further business to come before the Board, by motion duly made and seconded, it was unanimously

**RESOLVED** to adjourn the Regular Meeting of the Beaver Creek Metropolitan District Board of Directors held on May 26, 2004.

Respectfully submitted,

Kathy Lewensten  
Secretary for the meeting

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# RECORD OF PROCEEDINGS

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## MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS

### BEAVER CREEK METROPOLITAN DISTRICT June 23, 2004

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., Wednesday, June 23, 2004 in the Alpine Room of the Beaver Creek Lodge, 26 Avondale Lane, Beaver Creek, Colorado.

#### Attendance

In Attendance were Directors:

- Stephen Friedman
- Tommie Campbell
- Al Mielcuszny
- John Wells
- John Forstmann

Absent and excused was Director:

Also in Attendance were:

- Larry Grafel, General Manager
- Ken Marchetti, CPA, Secretary
- James Collins, Esq., District Counsel
- Kathy Lewensten, Robertson & Marchetti, P.C.
- Bill Simmons, Village Operations
- Bob McIveen, Vail Resorts
- Jim Funk, BC Public Safety
- Tony O'Rourke, BCRC
- Jim Kaylor, BCRC
- Ginny Forstmann, BCPOA
- Tracy Walters, McMahan & Associates, PC

#### Call to Order

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Director Wells, Chairman of the Board, noting that a quorum was present. Director Wells confirmed that prior to the meeting each of the Directors had been notified of the meeting and that written notice was duly posted at the Eagle County Clerk and Recorder's Office and at three public places within the District.

#### Conflicts

The Board noted that it had received certain disclosures of potential conflict of interest statements more than seventy-two hours prior to the meeting for each of the following Directors,

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## Beaver Creek Metropolitan District June 23, 2004 Meeting Minutes

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indicating the following conflicts: Mr. Stephen Friedman is a board member of the Beaver Creek Arts Foundation which operates the performing arts facilities within Beaver Creek; Ms. Beatrice "Tommie" Campbell is a board member of the Borders Lodge and a member of the Beaver Creek Communications Committee; Mr. Albert Mielcuszny is an owner of a retail store which leases and contracts with Vail Associates or Affiliates; and Mr. John Wells is President of The Pines Townhomes at Beaver Creek Condominium Association; Mr. Forstmann is a board member of the Beaver Creek Club. The Board noted for the record that these disclosures are restated at this time with the intent of fully complying with laws pertaining to potential conflicts.

### **Minutes**

The Board reviewed the minutes of the May 26, 2004 Regular Meeting. On page 6 under Wild land Fire Mitigation, the last sentence was revised to state the June meeting instead of July. Upon motion duly made and seconded, it was, unanimously,

**RESOLVED** to approve the minutes of the May 26, 2004 meeting as revised.

### **Future Meetings**

The Board reviewed the 2004 meeting dates schedule included in the packet. No changes were made.

### **Agenda Changes**

Mr. Grafel asked that discussion regarding a possible sidewalk project at Avondale Lane be added under the general manager's report.

### **Public Input**

Ms. Forstmann addressed the Board on behalf of BCPOA. She asked the Board to consider providing a team for the burro races which occur at the Beaver Creek Rodeo on Thursday evenings in the summer. She noted both BCRC and BCPOA had teams participating. The Board will take the matter under consideration.

### **Preliminary 2003 Audit**

Mr. Marchetti introduced Mr. Walters from McMahan and Associates to the Board. Mr. Walters stated he would be presenting the 2003 preliminary audit which had been included in the packet. Mr. Walters informed the Board the District would be

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### Beaver Creek Metropolitan District June 23, 2004 Meeting Minutes

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receiving an unqualified clean opinion for the year. He reviewed the various sections of the 2003 audit report and answered questions from the Board.

Mr. Walters was asked whether the collateral that backs District funds held in PDPA accounts is checked as part of the audit. He explained that financial institutions are required to have collateral that is not account specific but held in a pool that covers the total of PDPA deposits at the institution. He noted the State of Colorado certifies financial institutions which meet the PDPA requirements and as part of the audit the certification with the State is checked. The Board discussed whether it would be beneficial for the District to have a sinking or reserve fund for major capital expenditures and replacements and whether resources exist to fund such a reserve. Mr. Grafel noted Village Road was the only major overlay expenditure left to be scheduled; all other roads have been overlaid recently and should only require routine maintenance for the next 10 to 15 years. Mr. Marchetti offered to look into the matter as part of the budgeting and long range planning process this fall. The Board asked staff to prepare a more formal analysis of capital assets for review as part of that process.

The Board asked Mr. Collins to review the audit notes for consistency, in particular as the notes relate to ongoing matters with Market Square, access fees, and employee housing. Mr. Collins suggested he and Mr. Marchetti would work with Mr. Walters regarding the notes. He then suggested the Board request the notes be made more general with a management letter provided for the details. Mr. Walters stated this was acceptable to him. The 2003 Preliminary Audit will be revised and brought back to the July meeting.

#### **General Managers Update**

**Wild land Fire Mitigation:** Mr. O'Rourke gave a brief overview of the status of the Beaver Creek Wild land Fire Mitigation plan; a summary was included in the packet. He noted currently Eagle Counties Plan has Beaver Creek rated as a moderate risk; the recent review of the BC Area by Anchor Point has resulted in a report that reflects a low rating for the majority of properties within Beaver Creek. He stated the Federal Register for wild land fire also reflects the majority of Beaver Creek as a low risk. The lower rating will not be recognized until BC receives approval

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from the County on the BC alternate wild land fire plan. The Board asked if the plan covers mitigation expected from properties with a low rating and whether they were exempt from mitigation requirements. Mr. Funk noted this matter was not specifically mentioned. Mr. O'Rourke agreed to a revision to clarify the lower rating expectations. The Board suggested having the plan reviewed by an insurance authority to see if any issues regarding insurance matters were present. Mr. O'Rourke noted the DRB was in the final stages of approving revised DRB guidelines which follow the proposed BC wild land fire regulations. Director Forstmann asked for review of the proposed DRB guidelines to assure they are in conformance with the Covenants. The Board asked that the plan include flexibility to accommodate the District or individuals requests for unusual circumstances or for amendment of the plan in the future.

The Board expressed a general concern that they have received the wild land fire information in bits and pieces and would like to have a complete document for review. They asked that more detail be presented regarding mitigation measures, DRB guidelines, and the proposed regulations so they are able to make an informed decision. Mr. O'Rourke agreed to assemble all of the relative documents and provide copies for the Board to review well in advance of the regular July meeting.

Mr. O'Rourke stated it was his impression that once complete the wildfire plan would be presented jointly by BCRC and BCMD to the County. The Board asked Mr. Collins to explain the powers and duties the District has regarding fire authority. Mr. Collins explained the District has the authorization to adopt a fire code only if the county concurs. The Board suggested it makes sense for the District to act as the lead agency. The District would then submit the plan noting it has support from the BCRC, BCPOA and BCDRB. The District could then enter into an agreement with a "fire mitigation specialist", such as BC Public Safety, to implement the plan. Mr. O'Rourke stated he did not have an issue with the District being the lead agency. The Board directed Mr. Collins to meet with Mr. O'Rourke to discuss the matter.

**Village Road Improvements:** Mr. Grafel presented the Village Road options as described in the memo included in the packet. Director Friedman asked what a basic overlay would cost and why

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other options were presented. Mr. Grafel answered that a basic overlay would be approximately \$800,000; he explained the other options were presented for discussion purposes only. The Board discussed traffic concerns on Village Road. It was noted that due to several factors, such as Beaver Creek being close to build out and new chairlifts being planned, it was anticipated that traffic may see a slight decrease. After taking this under consideration, the Board agreed it does not appear to be the appropriate time to widen or add lanes to Village Road. A basic project would consist of roto-milling the current surface, adjusting manholes, and asphalt overlay, it would take approximately one month. The Board asked if the basic overlay project could be scheduled for this fall. Mr. Grafel explained he would check into the matter and report back at the July meeting.

**Avondale Sidewalk:** Mr. Grafel handed out a memo and preliminary sketches of a proposed project to place a sidewalk along the north side of Avondale. Ms. Forstmann asked what the policy was concerning curb and gutter throughout Beaver Creek. Mr. Grafel explained curb and gutter placement is based on drainage issues and placed selectively. The Board questioned why the sidewalk project had not been submitted prior to the meeting and whether there was any urgency for the project. Mr. Grafel explained there was no urgency; he had received the pertinent information and had been aware of the project for some time so had compiled the information for presentation. The Board asked the matter be tabled until the July meeting.

**Fire Protection:** The Board is currently waiting for a response from ERFPD regarding the last correspondence.

**Operations Agreement:** Mr. Grafel reported the operations agreement had been delivered to Mr. Simmons for execution. He also reported to the Board that VR is requiring mandatory time off for its employees. This policy has had a negative effect on the performance of operations since employees are not available. After brief discussion the Board asked Mr. Grafel and Mr. Collins to draft a letter to VR regarding the matter stating it is not acceptable to the District.

**Xcel Property and**

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#### **Maintenance**

##### **Facility**

Mr. Grafel reported he had received a proposal from Victor Mark Donaldson Architects for services related to District Buildings on the Xcel site; this is the same architect VR is using. He handed out copies of the proposal for the Board to review. The Board tabled a decision until the property is secured.

Mr. Collins discussed the purchase of the Xcel property. VR has asked for the District to be a part of a joint closing on July 8<sup>th</sup> with Xcel, instead of having a two step closing. In order to facilitate this there are several agreements that need to be developed and executed prior to the closing. Although his office and VR counsel have been diligently working on the matter the documents had only been offered for review in the past days. He and the Board agreed that it was frustrating to receive the many agreements involved just the night before and in unfinished form. Mr. Collins suggested that if the necessary documents were not presented in satisfactory form by Friday, July 2<sup>nd</sup> the District could request the two step closing and not participate in a joint closing. He explained there was no real benefit to the District to prefer one type of closing over the other. The Board reviewed the draft documents with Mr. Collins. The Board noted that no budget had been offered for the shared costs referred to in the VR and BCMD agreement, and no maximum had been referenced. Concern was also expressed over the exclusion agreement clause. Mr. Collins offered to continue working on completing the documents so they could be presented in final form for review. He suggested the Board authorize Director Wells and Director Friedman to review the documents on behalf of the District. Upon motion duly made and seconded it was by a vote of 4 Ayes, 0 Nays and one abstention (Director Forstmann),

RESOLVED to authorize Director Wells and Director Friedman to Acquire Real Property on behalf of the District as discussed by the Board and subject to the related documents being reviewed and finalized by Counsel, Director Wells, and Director Friedman.

#### **Legal**

Mr. Collins reported on the matter of Comcast access fees. He suggested the District combine efforts with Bachelor Gulch Metropolitan District (BGMD) to resolve the issue. He offered a draft letter to the County on behalf of the Districts for review. The



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basic premise is to ask the County to remit 4% of the 5% fee paid to the county by Comcast to BGMD and BCMD respectively. Mr. Collins noted that an independent opinion had been received which supported the Districts position. If this is not acceptable, Mr. Collins would like the Boards permission to request a meeting with the Eagle County Commissioners, the Chairman of BGMD and BCMD, Comcast, the Eagle County Attorney, and himself to discuss the matter. Upon motion duly made and seconded it was by a vote of 4 Ayes and 1 Nay (Director Forstmann)

**RESOLVED** to direct Mr. Collins to proceed as he recommended and discussed above.

#### **UERWA**

Director Friedman asked the opinion of the Board regarding consolidation of UERWA and ERWSD. The Board is still opposed to consolidation at this time.

#### **Investment Alternatives**

Mr. Marchetti briefly reviewed the investment information included in the packet as directed by the Board at the May meeting. The Board asked whether the account could be held directly in the District name. Mr. Marchetti stated he would ask for the account to be handled that way. He suggested using Piper Jaffray as there are no fees associated with the account. Upon motion duly made and seconded it was unanimously

**RESOLVED** to authorize investment in a Piper Jaffray account held in the District name, and

**FURTHER RESOLVED** to authorize the appropriate Officers to execute necessary documents to open the account.

#### **Financial Statements**

Mr. Marchetti reviewed the May 2004 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the May 2004 preliminary financials as presented.

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### Beaver Creek Metropolitan District June 23, 2004 Meeting Minutes

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**Accounts Payable**      The Accounts Payable listing was reviewed. By motion duly made and seconded, it was unanimously

**RESOLVED** to approve the accounts payable list as presented.

**Executive Session**      Upon motion duly made and seconded, it was unanimously

**RESOLVED** to enter into executive session citing §24-6-402(4)(b) and (e) C.R.S. for the purpose of receiving advice from counsel, discussing legal matters, and contract negotiations regarding Comcast, market square, and fire negotiations. The Board entered into Executive session at 12:20 p.m. and returned at 12:25 p.m.

**Adjournment**      There being no further business to come before the Board, by motion duly made and seconded, it was unanimously

**RESOLVED** to adjourn the Regular Meeting of the Beaver Creek Metropolitan District Board of Directors held on June 23, 2004.

Respectfully submitted,

Kathy Lewensten  
Secretary for the meeting

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# RECORD OF PROCEEDINGS

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## MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS

### BEAVER CREEK METROPOLITAN DISTRICT July 28, 2004

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., Wednesday, July 28, 2004 in the Alpine Room of the Beaver Creek Lodge, 26 Avondale Lane, Beaver Creek, Colorado.

#### Attendance

In Attendance were Directors:

- Stephen Friedman
- Tommie Campbell
- Al Mielcuszny
- John Wells
- John Forstmann

Absent and excused was Director:

Also in Attendance were:

- Larry Grafel, General Manager
- Ken Marchetti, CPA, Secretary
- James Collins, Esq., District Counsel
- Kathy Lewensten, Robertson & Marchetti, P.C.
- Bill Simmons, Village Operations
- Bob McIveen, Vail Resorts
- Jim Funk, BC Public Safety
- Tony O'Rourke, BCRC
- Ginny Forstmann, BCPOA
- John Garnsey, COO Beaver Creek
- David O'Leary, Collins Cockerel & Cole, PC

#### Call to Order

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Director Wells, Chairman of the Board, noting that a quorum was present. Director Wells confirmed that prior to the meeting each of the Directors had been notified of the meeting and that written notice was duly posted at the Eagle County Clerk and Recorder's Office and at three public places within the District.

#### Conflicts

The Board noted that it had received certain disclosures of potential conflict of interest statements more than seventy-two hours prior to the meeting for each of the following Directors, indicating the following conflicts: Mr. Stephen Friedman is a board

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## Beaver Creek Metropolitan District July 28, 2004 Meeting Minutes

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member of the Beaver Creek Arts Foundation which operates the performing arts facilities within Beaver Creek; Ms. Beatrice "Tommie" Campbell is a board member of the Borders Lodge and a member of the Beaver Creek Communications Committee; Mr. Albert Mielcuszny is an owner of a retail store which leases and contracts with Vail Associates or Affiliates; and Mr. John Wells is President of The Pines Townhomes at Beaver Creek Condominium Association; Mr. John Forstmann is a board member of the Beaver Creek Club. The Board noted for the record that these disclosures are restated at this time with the intent of fully complying with laws pertaining to potential conflicts.

### Minutes

The Board reviewed the minutes of the June 23, 2004 Regular Meeting and the June 23, 2004 Executive Session. Upon motion duly made and seconded, it was, unanimously,

**RESOLVED** to approve the minutes of the June 23, 2004 Regular meeting and the June 23, 2004 Executive Session as presented.

### Future Meetings

The Board reviewed the 2004 meeting dates schedule included in the packet. No changes were made.

### Agenda Changes

No changes were made, however Director Wells noted the agenda items may be discussed in a different order due to the fact that Director Forstmann needed to leave the meeting at 10:00a.m.

### Public Input

No public input was offered.

### General Managers Update

**Village Road Project:** Mr. Grafel handed out a worksheet containing the bids received for the Village Road overlay project for this fall. He explained the bid opening was yesterday, three contractors had submitted bids with Elam Construction being the low bidder at \$427,612.59. The bids had come in significantly lower than the estimated cost of \$600,000. The main difference appeared to be the price used per ton of asphalt, the estimate had used \$60/ton and the bids came in closer to \$45/ton. It is anticipated the project will begin right after Labor Day. Mr. Grafel

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explained traffic control is part of the bid and noted that there may be slight delays on Village Road during the project. The Board asked if the manholes would be made level with the road as part of the project. Mr. Grafel answered that they would. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to award the Village Overlay Project to the lowest bidder, Elam Construction.

**Vehicle Count Survey:** Director Forstmann asked Mr. Simmons and Mr. McIlveen to explain the purpose of the vehicle counting equipment on Holden and Village Road. Mr. McIlveen stated the study was undertaken for general information purposes. He explained the company which performs the testing was doing a study in the Town of Avon and had called to ask whether there was any interest for them to do a study in Beaver Creek while they were in the area. Mr. McIlveen noted a traffic study had not been done for approximately four years and that current information is nice to have.

**Eagle Vail Maintenance Facility:** Mr. Grafel reported the purchase of the Xcel Eagle-Vail Property had been completed. He has been working with Mr. Mauriello regarding any necessary Eagle County approvals for the proposed District facility. It appears the District is allowed the special uses it will need by right without going through any special process. Vail Resorts has made their submittal for the special use permit they need, it appears to be going well. Proposals have been requested from certified environmental contractors for removal of the asbestos and remediation of the dry well which were noted in the phase 1 environmental study. After completion of the clean up the contractor will request inspections from the state and provide certification to the District and VR. Mr. Garnsey noted the State of Colorado may offer reimbursement for some of the remedial work, and suggested the District check with Mr. Funk regarding the matter.

Mr. Grafel reported on the process for demolition of the current Building on the site. He noted the building is structurally sound and in fairly good condition. The building does not have any significant salvage value. Mr. Grafel reported that Mr. McIlveen had informed him that Eagle County and Eagle River Fire

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Protection District had been approached by the Bond/McCoy Fire Department regarding contributions to purchase or construct a fire service building up in the Bond/McCoy area. Mr. Grafel suggested the Board consider offering the building at no cost to the Bond/McCoy Fire Department if they will dismantle and move it at no cost to the District. The Board discussed the idea, noting the building would need to be offered on an "As is, Where is" basis with indemnification provided to the District. Mr. Grafel explained the asbestos would need to be removed by the District and VR before the building could be dismantled. The Board discussed the matter noting it appeared to serve a purpose for both the District and the Bond/McCoy Fire Department. The Board directed Mr. Grafel to prepare a proposal for presentation to the Bond/McCoy fire department after he is in receipt of the proposal for the asbestos removal.

Mr. Garnsey informed the Board the Town of Avon (TOA) is aware of VR plans for the Eagle Vail site and has offered their support for the project. Mr. Marchetti asked whether any consideration has been made regarding the vehicle maintenance currently provided to the District by TOA and whether that will change after the Eagle-Vail site is developed. Mr. Grafel stated the TOA was open to continuing the current arrangement which is set to expire in November. Director Wells asked whether it would be prudent to extend the current agreement through next spring to allow the District and VR time to review the matter and solidify the plans for the Eagle-Vail property. Mr. Garnsey offered the District the use of "Tin City" for a short term solution if needed. The board directed Mr. Grafel to prepare an extension of the current contract with TOA through April for consideration.

Mr. Grafel reported that Alpine Engineering was currently working on the infrastructure design for the water, sewer, gas and electric for both VR and the District. He asked whether the Board was interested in approving the proposal from Victor Mark Donaldson Architects (VMDA) for their services. The Board expressed concern that no guaranteed maximum price had been provided, and general confusion over the overall cost. Director Forstmann asked whether the District was building one, two, or three buildings. Mr. Grafel stated one District building would have the administration and operations area with two maintenance bays, and one building would be for the wash bays. The Board noted the proposal from

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VMDA appeared to consider the admin/operations building as being separate from the maintenance building. It was determined the District intends to build one 6000 sq. ft building for the admin/operations and maintenance bays. The Board suggested asking for a proposal from VMDA which clarifies the buildings, has a guaranteed maximum for each Phase of architectural service, and states it will bill on an hourly basis by month, not in a lump sum. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to authorize Mr. Grafel to negotiate and enter into an agreement with VMDA which contains a combination of three guaranteed maximums, one for each stage, which will be billed on an hourly basis against each stage.

The timeline for the project was briefly discussed. It is anticipated the infrastructure will begin in October or November with the intention of having the buildings ready to be occupied by spring. Mr. McIlveen reported that VR was hoping for the same timeline. VMDA is currently researching the types of buildings and the costs for VR, the intent is for the District and VR to use similar buildings for economies of scale.

**Operations Agreement:** Mr. Grafel reported the operations agreement was in Ms. Rehm's office for review and execution. The agreement had been modified to remove the references to the exclusion agreement and the maintenance portions. It is anticipated the District should have the agreement for review at the next meeting.

**Fire Protection:** The Board discussed the long term agreement in the packet from ERFPD. Director Wells suggested minor revisions to several items. The Board stated the agreement was fundamentally acceptable. Mr. Funk informed the Board that the safety standards for the public safety personnel had been revised to allow more flexibility with ongoing training classes, they can be now be provided by others outside of ERFPD. The Board asked Mr. Collins to incorporate the minor revisions suggested to the agreement. Upon motion duly made and seconded it was, by a vote of 4 Ayes, 0 Nays, and one abstention (Director Forstmann),

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**RESOLVED** to approve and authorize the execution of the long term agreement with Eagle River Fire Protection District pending minor revisions as discussed and after review and acceptance by Director Wells and Director Friedman.

Director Forstmann left the meeting at 10:00 a.m.

**Beaver Creek Arts Festival:** Mr. Grafel drew the Boards attention to the request from BCRC for use of the covered bridge transportation area for the Beaver Creek Arts Festival from August 6th to August 8th. The bus drop off locations would be modified for the event. Upon motion duly made and seconded it was unanimously,

**RESOLVED** to approve the BCRC request for use of the covered bridge transportation area for the BC Arts Festival.

#### **UERWA**

Director Friedman informed the Board that he had been elected the Chairman of the UERWA Board at the last meeting. He reported that at the last UERWA meeting the former chairman had made an impassioned argument for consolidation. Director Friedman asked the Board for reaffirmation that the position it wished to take was against consolidation at this time. The Board reaffirmed that it is still against consolidation since a compelling case has not yet been made for consolidation. The Board stated it would be willing to put an item on the agenda for discussion at a future meeting if there were interested parties that would wish to make a presentation regarding the matter. A brief discussion regarding water levels at Lake Powell, restrictions, and rights followed.

#### **Investment Alternatives**

Mr. Marchetti presented the memo regarding investments included in the packet. He briefly reviewed the Districts current investment policies and noted the memo presented possible revisions for consideration. The Board looked at the Bond Ladder Analysis included, and asked that it be revised by deleting "Fannie Mae" investments. Mr. Marchetti reported to the Board that the District funds were currently located primarily in a Colotrust-Plus account and a First Bank of Avon Certificate of Deposit. The Colotrust-



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### Beaver Creek Metropolitan District July 28, 2004 Meeting Minutes

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Plus account is backed by Agencies and Instrumentalities. He mentioned the District could move the ColoTrust-Plus funds into a ColoTrust-Prime account, which has a higher standard for securities. The Board tabled the discussion until the August meeting.

#### **Wild land**

#### **Fire Mitigation:**

The Board was provided a WildLand Fire Regulation Notebook at the meeting. Mr. O'Rourke apologized for not getting the information to the Board earlier. He noted that no action was expected on the matter until the August meeting. There are still several items that need to be finalized. It is anticipated the District will be the lead agency for presenting the plan to Eagle County. BCRC will be the enforcing entity once the regulations are in place. The Board asked if there was an appeals process in place. Mr. O'Rourke proposed any appeals be made to a joint board first, then if necessary the BCRC and the District could work independently if appealed again.

Mr. O'Rourke reported that Anchor Point had finished the review of Beaver Creek and was finalizing the information. He expects to receive final information regarding Strawberry Park and the Beaver Creek Road area. There will also be a detailed map with specific addresses and ratings prepared. He will provide these to the Board as soon as possible. The Board asked whether a rating can be changed from moderate to low if the mitigation measures are completed. Mr. O'Rourke stated it was the intention to strike a balance to keep reducing risk while keeping the impacts to a minimum. He suggested that BCRC and BCMD both budget for \$100,000 in expenditures towards mitigation efforts. The District funds would be used to purchase capital equipment such as chippers, shrub cutters, mulchers, and similar items. The Board expressed its desire to see Vail Resorts take a proactive role and provide contributions towards the mitigation as well.

Mrs. Forstmann asked what the legal ramifications were if a property owner did not comply with the mitigation requirements. One suggestion would be to perform the mitigation work and bill back the property owner. Mr. Collins was asked if the District would be liable in the event mitigation was not acted on. He replied that the District needs to do what is appropriate and

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### Beaver Creek Metropolitan District July 28, 2004 Meeting Minutes

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reasonable, and in a worst case scenario the District's exposure would be limited by governmental immunity.

The Board expressed a desire to hear a presentation from Anchor Point to help better understand the material. Mr. O'Rourke offered to arrange a presentation for the Thursday, August 12<sup>th</sup> BCRC meeting and invited the Board to attend. The Board discussed the matter and agreed it would be beneficial for the Board to hold a work session on August 10<sup>th</sup> at 8:30 am to discuss the new maps and information expected next week and a work session on August 12<sup>th</sup> at 9:00 am during the BCRC regular meeting to hear the presentation from Anchor Point.

#### **Preliminary 2003 Audit**

Mr. Marchetti discussed the modifications suggested for the notes in the 2003 preliminary audit concerning the Market Square agreement and the TCI Access fees. At the last meeting, the Board had asked Mr. Marchetti and Mr. Collins to review the audit notes for consistency, in particular as the notes relate to ongoing matters with Market Square and access fees. After discussion the Board agreed on the revised notes. Upon motion duly made and seconded it was unanimously

**RESOLVED** to accept the audit with the revisions to the notes as discussed and presented.

#### **Legal**

Mr. Collins updated the Board on the matter of Comcast access fees. He reported that during a conference call on July 21 between himself, the Eagle County Attorney, the Districts Special Franchise Counsel, and various others he was successful in making it clear that the District considers the Comcast agreement still in effect and that the District was willing to challenge the Franchise authority used. The Eagle County Attorney agreed to present to the Eagle County Commissioners the option for the County to remit 4% of the 5% fee paid to the county by Comcast to the District. Mr. Collins will keep the Board updated.

Mr. Collins informed the Board that independent Special Counsel has been retained to review the Market Square matter. They are currently preparing a response regarding the Districts position that

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it will no longer pay any fees and that nothing further is owed. He will provide information to the Board as it becomes available.

#### **Financial Statements**

Mr. Marchetti reviewed the June 2004 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the June 2004 preliminary financials as presented.

#### **Accounts Payable**

The Accounts Payable listing was reviewed. By motion duly made and seconded, it was unanimously

**RESOLVED** to approve the accounts payable list as presented.

#### **Other Business**

The Board asked about 2004 Vilar Center for the Arts payment. Mr. Marchetti explained the District had not yet provided direction regarding the 2004 payment to the Vilar. In past years the District has provided \$250,000 to the Vilar. Director Friedman reported the matching funds for endowment contributions were not likely. He stated that there may be an opportunity to provide the payment for debt reduction of the Vilar instead of endowment or general operating costs. The Board directed Mr. Grafel to contact Ms. Folz regarding the matter.

Director Mielcuszny asked about the surveys that are included in the report section of the Board Packet. He wondered whether it is possible for the District to provide questions or input as to the content of the survey. Mr. Grafel explained the District does have the ability to provide input. The Board discussed concerns that have been brought up to them individually. It was suggested the District review the surveys and provide input in the future to receive more qualitative responses.

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**Adjournment**

There being no further business to come before the Board, by motion duly made and seconded, it was unanimously

**RESOLVED** to adjourn the Regular Meeting of the Beaver Creek Metropolitan District Board of Directors held on July 28, 2004.

Respectfully submitted,

Kathy Lewensten  
Secretary for the meeting

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## MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS

### BEAVER CREEK METROPOLITAN DISTRICT August 25, 2004

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., August 25, 2004 in the Bavaria Room of the Beaver Creek Lodge, 26 Avondale Lane, Beaver Creek, Colorado.

#### Attendance

In Attendance were Directors:

- Stephen Friedman
- Tommie Campbell
- Al Mielcuszny
- John Wells
- John Forstmann

Absent and excused was Director:

Also in Attendance were:

- Larry Grafel, General Manager
- Ken Marchetti, CPA, Secretary
- James Collins, Esq., District Counsel
- Kathy Lewensten, Robertson & Marchetti, P.C.
- Bill Simmons, Village Operations
- Bob McIveen, Vail Resorts
- Jim Funk, BC Public Safety
- Tony O'Rourke, BCRC
- Ginny Forstmann, BCPOA
- Chris Lubbers, Village Transportation

#### Call to Order

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Director Wells, Chairman of the Board, noting that a quorum was present. Director Wells confirmed that prior to the meeting each of the Directors had been notified of the meeting and that written notice was duly posted at the Eagle County Clerk and Recorder's Office and at three public places within the District.

#### Conflicts

The Board noted that it had received certain disclosures of potential conflict of interest statements more than seventy-two hours prior to the meeting for each of the following Directors, indicating the following conflicts: Mr. Stephen Friedman is a board member of the Beaver Creek Arts Foundation which operates the

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performing arts facilities within Beaver Creek; Ms. Beatrice “Tommie” Campbell is a board member of the Borders Lodge and a member of the Beaver Creek Communications Committee; Mr. Albert Mielcuszny is an owner of a retail store which leases and contracts with Vail Associates or Affiliates; and Mr. John Wells is President of The Pines Townhomes at Beaver Creek Condominium Association; Mr. John Forstmann is a board member of the Beaver Creek Club. The Board noted for the record that these disclosures are restated at this time with the intent of fully complying with laws pertaining to potential conflicts.

### Minutes

The Board reviewed the minutes of the July 28, 2004 Regular Meeting. Upon motion duly made and seconded, it was, unanimously,

**RESOLVED** to approve the minutes of the July 28, 2004 Regular meeting.

### Future Meetings

The Board reviewed the 2004 meeting dates schedule included in the packet. No changes were made.

### Agenda Changes

No changes were made to the agenda.

### Public Input

No public input was offered.

### General Managers Update

**Eagle-Vail Maintenance Facility:** Mr. Grafel updated the Board on various matters concerning the Eagle-Vail Maintenance Facility. He informed the Board that an agreement has been reached with Environmental Resources Management (ERM) for asbestos removal from the current structure. The removal should be completed by the end of September. ERM will coordinate with the State of Colorado and provide the District with the appropriate certification upon completion. As discussed at the last meeting, a letter regarding the possible donation of the current building to the Bond/McCoy fire department is prepared and ready to be sent. Mr. McIlveen reported that ERM had sent a letter to Bond/McCoy Fire and Eagle County which explained this building may be

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available to them if they would be willing to disassemble and move it. ERFPD encouraged them to accept the offer and suggested Eagle County consider contributing towards any costs. The Board directed the District letter be sent as soon as possible.

Mr. Grafel reported the agreement with Victor Mark Donaldson Architects (VMD) has been executed. VMD will be present at the next meeting to provide a schematic design for review and comment. Alpine Engineering Inc. (AEI) is working on the infrastructure and utilities.

Several referrals have been received by Eagle County regarding the Districts plan. One referral is from the Veterinary Clinic next to the property regarding concerns they have as to how the Districts project may affect their business. The Board discussed how best to respond. After discussion the Board directed Mr. Grafel to work with Mr. Collins to formulate a response to the property owner explaining the District has a use by right but intends to act as a good neighbor and will try to be sensitive to the concerns. The other referrals were from Ellie Caryl on behalf of ECO Trails and one regarding employee housing at the site. Mr. O'Rourke noted that Beaver Creek already contributes annually to ECO trails. Mr. Grafel will get with Mr. Mauriello regarding any needed responses to keep the process moving forward. The anticipated completion date for the Districts building is April of next year. A question came up regarding the scenario of the District purchasing VR's portion of the property if VR does not receive county approval for their project. The Board discussed the matter and stated it would like to move forward with the plan as described and if necessary could decide what to do with the east side of the property at a later date.

**Operations Agreement:** It was reported the operations agreement had been revised as discussed at the last meeting and was undergoing review by Ms. Rehm and Mr. O'Leary. The Board expressed frustration at the length of time this agreement has taken and would like to see it completed in the next 30 days. Mr. Simmons offered to help accomplish this goal. The Board stated it expects the agreement to be ready for the September meeting.

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**Village Road Project:** Mr. Grafel reported that Elam Construction will begin the overlay project on Village Road on September 8<sup>th</sup> with an anticipated completion two weeks later. To help with traffic control there will be message signs out, notices will be provided at the gate to guests, hand delivered to property owners, and provided to the concierge information network for distribution. There will be traffic delays but Elam has agreed to try to keep this to a minimum.

**Road Striping:** Director Forstmann asked the Board's opinion regarding striping of all secondary roads in Beaver Creek. Currently striping is intermittent, mostly around curved areas. He explained that striping would help motorists remain on the correct side of the roads. The Board felt this was worth looking into and asked Mr. Grafel to bring an estimate for striping all roadways in BC to the next meeting.

#### **Wild land**

#### **Fire Mitigation:**

The Board had attended two work sessions since the last regular meeting regarding the WildLand Fire Regulations. Anchor Point had been present at the work sessions to provide additional information and to answer questions. The plan continues to be reviewed by the various Beaver Creek entities, with additional revisions being recommended. BCRC asked for an opinion from Thad Renaud, Esq. regarding the authority of BCRC in fire matters. Mr. Grafel provided copies of the opinion to the Board.

Director Forstmann expressed concern regarding how detailed the plan had become and questioned whether it would be prudent for it to be more general to allow flexibility where possible. Mr. O'Rourke explained that some sections of the plan are dictated by elements in the current Eagle County wildfire plan. He further stated that the intent is to create a plan that contains guidelines and regulations that allow for property owners to keep as much landscaping as possible while adhering to the necessary safety precautions. Director Friedman offered that the plan should include such things as the intent of BC to replace shake roofs and how the open areas of greatest concern will be handled, but that the specifics of wildfire prevention for each property should not be required. The Board expressed a desire to remove the individual home assessments from the plan noting these were advisory only



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and should not be included. Mr. O'Rourke reported the BC DRB has enacted new regulations regarding roof materials; shake roofing will not be allowed on new roofs or on complete re-roofs of existing structures, only fire retardant materials are acceptable. Mr. O'Rourke reported the mitigations work plan is still being revised however it is anticipated that brush clearing will begin this fall. A discussion of defensible space and irrigation of landscaping followed. Mr. O'Rourke stated the plan will continue to be modified until a consensus can be achieved. Mr. McIlveen reported ERFPD was supportive of the Districts efforts and that Ms. Gill-Mulson, ERFPD Code Enforcement, had been in contact with Mr. Funk to assist in reviewing the plan. The Board reviewed an article handed out by Mr. Grafel which described a new device for home wild land fire protection.

The Board discussed concerns regarding the plan, such as clarification of how future changes to Eagle County regulations or BC regulations will be handled and the options regarding liability exposure. The Board asked whether there was a provision which described the process to amend the plan in the future after it is accepted by Eagle County. The Board also asked under what circumstances Eagle County would be able to terminate the plan. Mr. Collins stated he would address long term approval and in perpetuity of the plan and report back to the Board.

#### **Other Business**

##### **Bears**

The Board asked Mr. Funk what steps were being taken regarding the bears that have been sighted in Beaver Creek. Mr. Funk responded that Public Safety is currently aware of 10 active bears. A bear prevention program has been in place for the last three years. His department is reporting 5 to 10 encounters a day with bears and are writing up incident reports to help document the encounters. The Department of Wildlife (DOW) is the regulatory agency which dictates the methods that can be used for deterring the bears. DOW is the only agency allowed to destroy bears. Current methods allowed in BC by DOW are paintball and pepper ball guns. DOW does not destroy a bear until it determines that a bear has crossed a certain threshold. DOW has determined one female bear, that entered a home several times, is now a threat and the bear will be trapped and destroyed in the next week. One problem is the abundance of available trash in open dumpsters.

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Mr. Funk stated VA is in the process of changing out its dumpsters to bear proof containers. For individual homeowners there are affordable plastic bear proof trash receptacles available. He reminded the District that there is a resolution in place that states trash may only be put outside on trash day. The Board asked Mr. Collins if the District has bear control power. Mr. Collins stated the District did not have bear control powers, only mosquito control powers. The Board asked Mr. Funk if additional staffing would help. Mr. Funk explained he would look at his staffing and immediately create a position for bear patrol exclusively. The Board extended an offer to help fund such a position if necessary. It was suggested the Board along with BCRC and Vail Resorts send a joint letter to DOW, the County Commissioners, and the State regarding the health and safety concerns regarding the bears. Mr. Collins will draft the letter. The Board asked for the incident reports to be included with the letter.

#### **Vehicle Donation**

Mr. Lubbers reviewed the request included in the packet for one 20-passenger shuttle to be provided to the Vail Valley Foundation (VVF) for use. He explained this vehicle was scheduled to be replaced this year and would normally be traded in. The residual value of the vehicle is approximately \$8,000. The vehicle was purchased as part of the transportation fund which passes through costs to BCRC per the Transportation Agreement. Mr. Collins explained that per the same agreement it is necessary to ask the District to state its position regarding the vehicle. After a brief discussion, the Board stated it did not object to BCRC donating the vehicle to VVF.

#### **UERWA**

Director Friedman informed the Board a joint meeting between ERWSD and UERWA will be held tomorrow. The purpose of the meeting is to discuss several matters. There is interest in establishing more “in-basin” supplies of water and to confirm more “wet” water than “paper” water for the future. A brief discussion regarding options that exist for the Wolcott reservoir, Eagle Park reservoir, and Homestake reservoir which are being discussed by ERWSD and UERWA to help insure water levels, restrictions, and rights followed.

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### **2004 Budget Amendment**

Mr. Marchetti explained that it was necessary to amend the 2004 budget to appropriate funds for the purchase and development of the Eagle-Vail Property and for additional transportation vehicle purchases. He stated the meeting had been published as the public hearing for the 2004 budget amendment. Ms. Forstmann, BCPOA, requested to receive notification of any future public hearings by e-mail. Mr. Marchetti explained that when the 2004 Budget had been prepared no amount had been budgeted for purchasing or building of a maintenance facility or land; with the Districts anticipated expenditure of approximately \$1.75 million on the Eagle-Vail property and development it is necessary to appropriate these funds. In addition, the transportation fund budget originally budgeted for \$500,000 in new vehicle purchases; the actual amount is closer to \$1.13 million. The Board asked Mr. Marchetti to review prior minutes to see when the additional transportation vehicles were approved. It was noted that the transportation fund expense shortfall is funded by BCRC. The Board asked for revision of the 2004 budget amendment resolution included in the packet. Specifically that it be revised to clarify the funding for the additional transportation equipment costs as a pass through to BCRC. The Board then continued the 2004 Budget Amendment Hearing to the September 22, 2004 meeting.

### **Investment Alternatives**

Mr. Marchetti presented the investment schedules included in the packet. He explained the ladders now reflected US Treasuries without any "Fannie Mae" investments. Mr. Marchetti reported the District funds were currently located primarily in a ColoTrust-Plus account and a First Bank of Avon Certificate of Deposit which will mature in October 2004. The Board discussed the investment options noting it wanted to be fiscally conservative. After discussion the Board directed Mr. Marchetti to move the ColoTrust-Plus funds into a ColoTrust-Prime account. Director Wells suggested the District place approximately one half of the District funds or approximately \$5 million the US Treasury ladder. Upon motion duly made and seconded, it was unanimously

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**RESOLVED** to direct Mr. Marchetti to allocate the Districts funds as follows: \$5 million into U.S. Treasury securities and the balance into ColoTrust-Prime.

### **Financial Statements**

Mr. Marchetti reviewed the July 2004 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the July 2004 preliminary financials as presented.

### **Accounts Payable**

The Accounts Payable listing was reviewed. Director Mielcuszny asked whether the performance bonus paid by the District under the DAR agreement went to the employees directly. Mr. Marchetti will look into the matter and report back. The Board then asked that the check to Vail Associates for \$91,000 to be held until the answer is known. By motion duly made and seconded, it was unanimously

**RESOLVED** to approve the accounts payable list as presented.

### **Legal**

Mr. Collins reported discussions were continuing regarding the Comcast Access Fees. No further action is needed by the Board at this time. He did inform the Board he may ask for a committee of two Directors to attend a meeting with Eagle County if it becomes necessary. The Board asked Mr. Collins to check with Comcast to see if the fees are being escrowed as promised.

Mr. Collins reported the Strawberry Park Condominium Associations attorney, Mr. Sperberg had been in contact with Mr. O'Leary regarding revisions to the snowmelt easement. It was made clear to Mr. Sperberg that no substantive changes are acceptable and that the District will not be responsible for any additional costs other than those agreed to last December.

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**Executive Session**      Upon motion duly made and seconded, it was unanimously

**RESOLVED** to enter into executive session citing §24-6-402(4)(b) and (e) C.R.S. for the purpose of receiving advice from counsel, discussing legal matters, and contract negotiations regarding wildland fire matters. The Board entered into Executive session at 11:40 a.m. and returned at 12:05 p.m.

**Adjournment**      There being no further business to come before the Board, by motion duly made and seconded, it was unanimously

**RESOLVED** to adjourn the Regular Meeting of the Beaver Creek Metropolitan District Board of Directors held on August 25, 2004.

Respectfully submitted,

Kathy Lewensten  
Secretary for the meeting

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# RECORD OF PROCEEDINGS

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## MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS

### BEAVER CREEK METROPOLITAN DISTRICT September 22, 2004

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., September 22, 2004 in the Conference Room of the Beaver Creek Club, Beaver Creek, Colorado.

#### Attendance

In Attendance were Directors:

- Stephen Friedman
- Tommie Campbell
- Al Mielcuszny
- John Wells
- John Forstmann

Absent and excused was Director:

Also in Attendance were:

- Larry Grafel, General Manager
- Ken Marchetti, CPA, Secretary
- James Collins, Esq., District Counsel
- Kathy Lewensten, Robertson & Marchetti, P.C.
- Bill Simmons, Village Operations
- Bob McIveen, Vail Resorts
- Jim Funk, BC Public Safety
- John Garnsey, COO Beaver Creek
- Ginny Forstmann, BCPOA
- Tom Scouten, BCPOA
- Ceil Folz, Vail Valley Foundation
- Mark Donaldson, Victor Mark Donaldson Architects Architect
- Chris Juergens, Victor Mark Donaldson Architects

#### Call to Order

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Director Wells, Chairman of the Board, noting that a quorum was present. Director Wells confirmed that prior to the meeting each of the Directors had been notified of the meeting and that written notice was duly posted at the Eagle County Clerk and Recorder's Office and at three public places within the District.

#### Conflicts

The Board noted that it had received certain disclosures of potential conflict of interest statements more than seventy-two

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## Beaver Creek Metropolitan District September 22, 2004 Meeting Minutes

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hours prior to the meeting for each of the following Directors, indicating the following conflicts: Mr. Stephen Friedman is a board member of the Beaver Creek Arts Foundation which operates the performing arts facilities within Beaver Creek; Ms. Beatrice "Tommie" Campbell is a board member of the Borders Lodge and a member of the Beaver Creek Communications Committee; Mr. Albert Mielcuszny is an owner of a retail store which leases and contracts with Vail Associates or Affiliates; and Mr. John Wells is President of The Pines Townhomes at Beaver Creek Condominium Association; Mr. John Forstmann is a board member of the Beaver Creek Club. The Board noted for the record that these disclosures are restated at this time with the intent of fully complying with laws pertaining to potential conflicts.

### **Minutes**

The Board reviewed the minutes of the August 25, 2004 Regular Meeting. Upon motion duly made and seconded, it was, unanimously,

**RESOLVED** to approve the minutes of the August 25, 2004 Regular meeting.

### **Future Meetings**

The Board reviewed the 2004 meeting dates schedule included in the packet. No changes were made.

### **Agenda Changes**

No changes were made to the agenda.

### **Public Input**

Ms. Forstmann expressed the appreciation of BCPOA for the long term fire agreement recently completed by the District. She stated a letter had been sent to Director Wells and Director Friedman thanking them and the District for successful completion of the Eagle River Fire Protection District Agreement.

### **Vail Valley Foundation**

Ceil Folz of the Vail Valley Foundation explained she was attending the meeting to ask for the Boards support for the World Cup Races this fall and to ask for support for the Vilar Center. She provided a hand out to the Board which described the requests. She explained that in the past the District had provided transportation and snow removal on Dally Road for the World Cup

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Races. There will be four races this year whereas last year there were two so the request is for one additional day. The event is scheduled to run from November 30<sup>th</sup> through December 5<sup>th</sup>. The Board asked if there was any impact or conflict regarding normal transportation if the District supports the event. Mr. Garnsey stated that there were no conflicts or impacts foreseen since the event is scheduled at the end of Thanksgiving week. It is a positive event for the hotel and retail segment of Beaver Creek. There is no cost to the District. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the request for transportation support and snow removal services in the same manner as past years for the World Cup Races.

Ms. Folz then asked the Board to consider supporting the Vilar Center by contributing \$250,000 for the Vilar capital fund for future repair and major maintenance. She explained that the Vilar Center is anticipating needing seats and carpeting in the future and is trying to build a capital fund to help with those and other significant expenditures. She noted the District has supported the Vilar in the past.

Ms. Folz informed the Board that the Vail Valley Foundation (VVF) had recently agreed to take a leadership role and facilitate the funding for the preservation of the Eaton Parcel in Edwards as open space. She noted that VVF has a one year contract for the land and is hoping to obtain \$12 million in funding. They are currently discussing the matter with Eagle County and GOCO to see if any open space funds are available. She mentioned that a developer had offered to fund \$6 million in exchange for allowing part of the parcel to be developed, at this time the VVF is not interested in accepting the offer. She stated the VVF is excited about this opportunity and would appreciate any support offered.

Ms. Folz thanked the Board for allowing time for her presentation, for past support, and hopefully, for future support. The Board thanked Ms. Folz and will take the matters under consideration.

**General**  
**Managers**



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### Beaver Creek Metropolitan District September 22, 2004 Meeting Minutes

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#### **Update**

**Eagle-Vail Maintenance Facility:** Mr. Grafel informed the Board that the Eagle Vail project was moving forward. The land has been re-subdivided; Vail Resorts has received approval from the planning commission and is scheduled to appear at the meeting of the Eagle County Commissioners on September 28. Mr. Grafel stated the Bond/McCoy fire department had not expressed interest in the old building on the site so requests for demolition proposals have been sent out. The asbestos cleanup should be complete by the end of the month.

Mr. Grafel introduced Mr. Mark Donaldson and Mr. Chris Juergens from Victor Mark Donaldson Architects to the Board. Mr. Donaldson presented drawings of the site layout and basic look of the buildings. A timeline was handed out for the planning and bidding phase of the project. The construction schedule anticipates a January start date with a May completion date. The District will need to obtain a building permit and meet the building code but does not need to go through any other approvals at the County level as it has a use by right. The administration and operations building will be located to the rear of the lot with parking for the District equipment towards the front of the lot. There is a 50 foot easement located at the front of the property making this the best layout for the site. The Board asked that a berm be planned for the front of the lot to mitigate the visual concerns of having parking located there. Mr. Juergens reviewed the basic layout of the administration building. It will include a conference room, offices, file storage, a break room, an operations office and maintenance bays. The Board asked that a reception area be included as well as a catering kitchen. The outside will have a Beaver Creek look to it using stone and log features. The Board expressed a strong position that no cedar shakes be used for roofing material. Mr. Donaldson explained that these were concept drawings and that they are interested in receiving feedback so a final drawing can be presented at the October meeting. A brief discussion of the bidding process for construction contracts followed. It is anticipated that site work will be started in late October.

**Operations Agreement:** The Board turned its attention to the operations agreement included in the packet. Mr. Grafel explained the significant changes involved the removal of the language concerning relief from the exclusion agreement regarding VR

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### Beaver Creek Metropolitan District September 22, 2004 Meeting Minutes

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providing a maintenance site and the vehicle maintenance requirements. The date of the agreement was discussed. After discussion it was recommended that the agreement be dated this year, noting it has automatic renewal terms based on annual appropriation but also allows termination with notice. One concern raised by the District is the mandatory time off (MTO) now required by Vail Resorts and whether the District was paying for this time. Director Wells stated that the District should only be charged for actual time worked for the District. The Board asked that a letter of clarification be sent to Vail Resorts stating the District will pay for actual time worked and 26% payroll burden only. It was noted that the District was not asked to comment on the change regarding MTO. Director Wells then asked Mr. Simmons to check whether the District has been charged for MTO in the past and if so to provide a credit with an explanation to the District. He further asked that the District be consulted in the future regarding any personnel policies that affect the agreement. Upon motion duly made and seconded it was unanimously

**RESOLVED** to approve the Operations Agreement between the District and The Vail Corporation d/b/a Vail Associates, Inc. subject to the clarifications as discussed.

**Striping of Roads:** Director Forstmann asked Mr. Grafel about the cost estimates for striping the roads. Mr. Grafel explained it would be less than \$20,000 to stripe the remaining roads in Beaver Creek however he asked for more direction from the Board. After discussion the Board asked that a map of the roads showing which were striped along with cost estimates to stripe the sections that are not currently striped be provided for discussion at the next meeting.

**Village Road Project:** Mr. Grafel reported that Elam Construction was proceeding with the overlay project on Village Road. It is anticipated that it will be complete on Monday, September 27<sup>th</sup> unless there are weather delays.

**Wild land**  
**Fire Mitigation:**

Mr. Grafel explained the comments taken over the last month were being incorporated into the plan. Mr. Funk reported that cost estimates have been received for mitigating the area's of greatest concern. These include the lodgepole stands in Strawberry Park

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and mitigation measures along Beaver Creek and Holden Drive. Director Friedman asked about the recent Beaver Creek Resort Company meeting in regards to the plan. He expressed concern that the matter is not moving forward and stated it would be responsible of the District to continue moving ahead with mitigation measures while the process continues. Mr. Scouten offered to report to the Board on the BCRC meeting as he had attended it. He reported that Mr. O'Rourke had given a report that stated there was concern over indemnification issues and the appeals process. He stated that Ms. Rehm had commented during the BCRC meeting that it may be wise to leave the matter with Eagle County due to sovereign immunity. The Board asked Mr. Collins what enforcement power it may have in fire matters. Mr. Collins stated that once the District adopts a fire code plan, the plan can include who has the authority to run a fire department and would have the authority to enforce, however the County has to concur with the plan and approve the authorization of enforcement. It was stated that it would not be in the best interest of the community to leave the wildland fire protection with the County. The matter was tabled for further discussion in executive session.

#### **Other Business** **Bears**

Mr. Funk reported that a full time bear patrol had been started as requested at the last meeting. They are using some stronger pepper spray and seem to be making progress. After a week of intensive patrols the bears were no longer sighted during daylight hours and the night time sightings have decreased. As reported at the last meeting, one bear was trapped and put down. Mr. Collins office has sent a letter to the state regarding the matter along with the incident reports. The trash companies have brought in bear proof dumpsters. By next year the trash companies will only provide bear proof/resistant containers, they are also trying to coordinate the trash pick up day to be the same. Mr. Scouten reported that BCRC had adopted a regulation regarding bear proof containers and fines associated with failure to comply. The Board thanked Mr. Funk for taking action so quickly.

#### **UERWA**

Director Friedman stated there were no updates regarding UERWA matters.

#### **2004 Budget**

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### Amendment

The Board opened the continued public hearing on the 2004 budget amendment. No public comment was offered so the hearing was closed. Mr. Marchetti presented the revised resolution which now further explained the need for the amendment as it relates to the Districts anticipated expenditure of approximately \$1.75 million on the Eagle-Vail property and development in the capital fund and the \$1.13 million in new vehicle purchases in the transportation fund. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the 2004 Budget Amendment and appropriations as amended.

### Investment Policy

Mr. Marchetti discussed the proposed changes in the investment policy as presented in the board packet. He explained the changes clarified the Districts position regarding investments. The Board stated it wanted any District funds or accounts to be held in the Districts name, not the institutions. Mr. Marchetti stated that funds will be used to open a custody account. The custody account will be used prior to investing the funds in other firms after obtaining competitive bids. Mr. Collins handed out a resolution regarding investment policy for the Boards review. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the resolution as presented, attached hereto to become part of the minutes.

### Transportation Lease Options

Mr. Marchetti discussed the lease options included in the packet regarding the transportation vehicle purchases scheduled for this year. He explained this puts the financing of the vehicles in place. The lease expense is part of the transportation fund which is reimbursed by BCRC. Mr. Marchetti recommended the Wells Fargo lease noting it had the most favorable terms. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the Wells Fargo lease purchase agreements as presented in the proposal and authorize Mr. Grafel, General Manager of BCMD and Mr. Marchetti to execute the necessary documents after counsel review.

### Financial

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#### **Statements**

Mr. Marchetti reviewed the August 2004 preliminary financial statement included in the packet. He suggested a work session be scheduled to preview the 2005 budget. After discussion the Board decided to hold a budget work session on Wednesday, October 13<sup>th</sup> at 8:00 a.m. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the August 2004 preliminary financials as presented.

#### **Accounts Payable**

The Accounts Payable listing was reviewed. By motion duly made and seconded, it was unanimously

**RESOLVED** to approve the accounts payable list as presented.

#### **Legal**

Mr. Collins handed out a letter received from Comcast regarding the monies Comcast has been keeping while the matter of the access fees is being negotiated. The letter states the funds are being held in a separate account pending resolution. He handed out another memo which reported that it appears a tentative agreement has been reached in which the District will continue to receive the access fee. The Board asked whether the County will receive a 1% fee since 5% can be charged and the District only receives 4%. Mr. Collins stated he would look into the matter but did not believe the County would receive 1% as they were anticipating receiving a contribution from Comcast for access capital to provide access programming which should be available county wide. He anticipates that the matter will be resolved by the end of the month.

Mr. Collins reported nothing has changed regarding the Strawberry Park Condominium Association. He is waiting for a response from their attorney.

Mr. Collins handed out a copy of a letter drafted to send to Market Square's attorney. Basically it states the District will not pay anything further and explains the District position.

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#### **Other Business**

The Board reviewed the bus complaint letter included in the packet under correspondence. The Board was informed that BCRC had sent a response letter. A brief discussion of waiting times and appropriate idling times followed. Ms. Forstmann also inquired about trucks “jake brakes” and whether they are governed by any regulations. Mr. Grafel offered that the Department of Revenue could be contacted regarding setting up check points to check trucks safety issues. Mr. Collins mentioned that the matters could be covered under the Districts road regulations however the District does not have noise ordinance powers.

#### **Executive Session**

Upon motion duly made and seconded, it was unanimously

**RESOLVED** to enter into executive session citing §24-6-402(4)(b) and (e) C.R.S. for the purpose of receiving advice from counsel, discussing legal matters, and contract negotiations regarding wildland fire matters nad the contribution to the Vilar. The Board entered into Executive session at 11:30 a.m. and returned at 12:20 p.m.

#### **Adjournment**

There being no further business to come before the Board, by motion duly made and seconded, it was unanimously

**RESOLVED** to adjourn the Regular Meeting of the Beaver Creek Metropolitan District Board of Directors held on September 22, 2004.

Respectfully submitted,

Kathy Lewensten  
Secretary for the meeting

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# RECORD OF PROCEEDINGS

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## MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS BEAVER CREEK METROPOLITAN DISTRICT October 27, 2004

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., October 27, 2004 in the Conference Room of the Beaver Creek Club, Beaver Creek, Colorado.

### Attendance

In Attendance were Directors:

- Stephen Friedman
- Tommie Campbell
- John Wells
- John Forstmann

Absent and excused was Director:

- Al Mielcuszny

Also in Attendance were:

- Larry Grafel, General Manager
- Ken Marchetti, CPA, Secretary
- James Collins, Esq., District Counsel
- Kathy Lewensten, Robertson & Marchetti, P.C.
- Bill Simmons, Village Operations
- Bob McIlveen, Vail Resorts
- Jim Funk, BC Public Safety
- John Garnsey, COO Beaver Creek
- Tony O'Rourke, BCRC
- Chris Lubbers, Village Transportation
- Ginny Forstmann, BCPOA
- Deborah Warren, President, Mountain Valet, Inc.
- Mark Donaldson, Victor Mark Donaldson Architects Architect
- Chris Juergens, Victor Mark Donaldson Architects
- Henry Bornstein, BC Property Owner
- Bonnie Vogt, BC Property Owner
- Mike Balk, BC Property Owner

### Call to Order

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Director Wells, Chairman of the Board, noting that a quorum was present. Director Wells confirmed that prior to the meeting each of the Directors had been notified of the meeting and that written notice

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## Beaver Creek Metropolitan District October 27, 2004 Meeting Minutes

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was duly posted at the Eagle County Clerk and Recorder's Office and at three public places within the District.

### **Conflicts**

The Board noted that it had received certain disclosures of potential conflict of interest statements more than seventy-two hours prior to the meeting for each of the following Directors, indicating the following conflicts: Mr. Stephen Friedman is a board member of the Beaver Creek Arts Foundation which operates the performing arts facilities within Beaver Creek; Ms. Beatrice "Tommie" Campbell is a board member of the Borders Lodge and a member of the Beaver Creek Communications Committee; Mr. Albert Mielcuszny is an owner of a retail store which leases and contracts with Vail Associates or Affiliates; and Mr. John Wells is President of The Pines Townhomes at Beaver Creek Condominium Association; Mr. John Forstmann is a board member of the Beaver Creek Club. The Board noted for the record that these disclosures are restated at this time with the intent of fully complying with laws pertaining to potential conflicts.

### **Minutes**

The Board reviewed the minutes of the September 22, 2004 Regular Meeting. Upon motion duly made and seconded, it was, unanimously,

**RESOLVED** to approve the minutes of the September 22, 2004 Regular meeting.

### **Future Meetings**

The Board reviewed the 2004 meeting dates schedule included in the packet. No changes were made.

### **Agenda Changes**

No changes were made to the agenda.

### **Public Input**

Ms. Vogt addressed the Board on the topic of the Vilar Center Funding. She expressed her personal support for a contribution from the District to the Vilar. She explained that once she had learned this issue was before the Board she had emailed Beaver Creek property owners to encourage support for the contribution. She read from a listing of property owners who had expressed support but were unable to attend the meeting in person. Director Forstmann noted that he had obtained a copy of the email and had concerns that certain facts presented in the email may not have



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been accurate. The Board thanked Ms. Vogt for taking the time to state her view and noted the matter would be discussed by the Board later in the meeting.

### General Managers Update

**Eagle-Vail Maintenance Facility:** Mr. Grafel reported the plans for the Eagle-Vail operations and administration building had been revised as discussed at the last meeting. Mr. Donaldson and Mr. Juergens presented the revised sketch plans. The kitchen area had been enlarged, a reception area had been created, and a waiting room had been added just outside of the conference room. One suggestion was to include an ice machine in the kitchen. The Board requested the berm at the front of the property be designed to be as high as feasible without needing retaining walls. Mr. Donaldson asked for input from the Board on the type of roofing and outside finishes to be used. The Board discussed the pros and cons of various materials noting the desire to use quality material while remaining within budget. The Board expressed the expectation that the project will be designed and constructed within the \$1.6 million budget range that has been allocated. (\$200,000 is included in the 2004 budget, \$1.5 million is proposed in the 2005 budget.) Mr. Donaldson suggested the Board may want to get a professional estimate which would cost approximately \$2,000 to \$3,000 to insure this is the case. The Board did not feel this would be necessary at this point in time. Mr. Grafel and Mr. Donaldson will meet to review the estimated costs and report at the next meeting. Mr. Donaldson explained the Board may be asked for input regarding the interior finishes at the next meeting.

**Valet Parking:** Ms. Warren introduced herself to the Board explaining she was asking permission to continue the Valet Parking service from the location at Market Square by the Vilar Center. She requested that in the future, if an opportunity arises, the valet service be allowed to move closer to Centennial lift, perhaps by the covered bridge bus area. The Board expressed concern over complaints received during the prior season in relation to traffic back ups and waits due to the service. Ms. Warren stated that she had worked closely with BC Public Safety to help mitigate the traffic issues and prevent back ups. The Board suggested the proper staff be present during peak hours to help alleviate any traffic back ups. After discussion all parties agreed

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the service is desirable but that the current location by the Vilar and Market Square is less than ideal. Mr. Garnsey explained that alternatives have been and will continue to be reviewed. However, for this season, it appears the current location is best. The Board asked that alternative locations be given serious consideration and that a report be offered at the next meeting regarding the matter. Mr. O'Rourke offered that reasonable monetary consideration for use of the District's Market Square location could be considered. Director Friedman stated it was important that Market Square has an opportunity to state their concerns with the service. He suggested the Market Square Manager could be contacted to discuss the matter. A report could be brought back to the Board addressing how the Market Square safety concerns and issues will be handled. Ms. Warren noted that if the valet service is not continued this year it is likely the service would be discontinued permanently. Mr. Garnsey stated he greatly appreciated the Board's willingness to be flexible. He agreed to look at alternative locations and he offered his assurance that they will work with Market Square to mitigate any concerns. The Board thanked Ms. Warren for coming and tabled the matter until the November meeting.

#### **Wild land**

#### **Fire Mitigation:**

Mr. Grafel reported BCRC considered how to present the wildland fire plan to the County at their last meeting. One option discussed at the BCRC meeting would be to allow Eagle County to enforce the Beaver Creek joint plan. Mr. O'Rourke drew the Board's attention to the memo in the packet regarding the matter. He stated BCRC had adopted option three (3) from the memo. Option three recommended Eagle County be allowed to enforce the joint Beaver Creek wildfire mitigation plan. BCRC counsel advised that this option offers BCRC the best liability protection due to Eagle County's "sovereign immunity". Mr. O'Rourke noted that because Eagle County remained the ultimate authority over the plan it was a practical option. One concern expressed by the Board is that parts of Beaver Creek might be compromised if Eagle County were given enforcement authority. Mr. O'Rourke explained that discussions were ongoing with Anchor Point as to what measures can be taken to lower the rating on all areas of Beaver Creek to low, which would allow them to be exempt from the regulations and enforcement. The Board asked to be notified of any meetings regarding the matter with sufficient time being allowed to discuss

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the issues. One question was whether the District had the ability to have enforcement powers which would allow it to provide governmental immunity to BCRC. It was stated that the District's can create enforcement power within the plan however the immunity would not be as great as the County's and leaves BCRC exposed. Mr. O'Rourke offered to get back to the Board with alternate meeting dates for a joint meeting to discuss how to proceed.

#### **Transportation** **Signs and Plan**

Mr. Funk addressed the Board concerning transportation planning and signage information included in the packet. He stated the new Beaver Creek Landing lifts and the wolf parking area present an opportunity to maximize the new lifts, reduce traffic flow into the resort, and reduce parking on Highway 6. The Town of Avon has been asked to revise their routes so the majority of their buses drop off at the Beaver Creek Landing with the understanding that two express buses would be allowed to go all the way up in the mornings. Through planning the parking areas can be utilized in such a way that overflow parking is kept to a minimum. It is anticipated that traffic will be directed to the Bear (West) lot first as it contains the most parking spaces. Mr. Funk looked at electronic signs being placed at different locations to help provide information and directions to guests as to availability of parking and locations. He will need to obtain permission from CDOT to place the signs in their Right of Way. As part of the process he has explored the option of cost sharing the sign expense between VR, BCRC, the District, and CDOT. The cost of the signs is approximately \$150,000, the cost share would be one-fourth for each participant. The Board asked how the cost share proportions would be handled if CDOT chooses not to participate. Mr. Garnsey responded the District will not be asked for more than one-fourth of the cost regardless of CDOT's participation. The Board asked that if more entities participate it be allocated a proportional share based on the number of participants. Upon motion duly made and seconded, it was unanimously,

**RESOLVED** to approve the Districts participation in cost sharing of transportation electronic signs with a not to exceed amount of \$37,500.

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#### **Bear Regulations**

The Board discussed the BCRC Bear regulation included in the Board packet. Mr. Garnsey explained the regulation was in response to the numerous bear problems. He stated the Division of Wildlife (DOW) was reluctant to help Beaver Creek until there were regulations including fines in place. Now that the regulations are in place DOW will come in to trap and relocate nuisance bears. The regulations require “bear-proof”, not “bear-resistant” trash containers be used. These containers will be available through the service providers by spring. The Board asked if the regulation could be revised to include all wildlife except birds. Director Friedman asked why the regulation allowed trash to be placed out the night before instead of the morning of the pick up. Mr. Garnsey stated that BCRC was open to revising the regulation to include additional wildlife and revising the time the trash could be placed outside. The Board commented that homeowners will need to be informed of the steps they will need to take to comply with the regulation and a schedule of the fines that can be levied.

#### **VVF Vilar Contribution**

The Board took up the matter of the 2004 contribution to the Vail Valley Foundation for the Vilar Center. Director Friedman stated for the record that he was on the Vilar Board and although he does not consider it a conflict he will abstain from any vote. He presented a brief review of the history regarding the contributions. The District was asked by the Vilar for financial support in 2001. The request was for several years of contributions based on annual appropriation. The District responded by contributing \$250,000 in January 2002 and \$250,000 in January 2003. Due to economic conditions which caused changes in the financial situations of some of the original large donors to the Vilar, including Mr. Alberto Vilar, the large donors were not able to continue to support the Vilar. The Vilar center has since contracted with VVF for operations and restructured their debt to help mitigate the financial constraints. The original concept was to have matching funds for the District contribution and to place it into an endowment fund. Due to economic changes the matching funds have not been available.

Director Forstmann stated his concern with the District making such a contribution is that in his opinion it is not appropriate use of District funds. He stated the District should stay within its budget

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and spend funds on projects which are clearly defined as District matters. He also expressed concern that the contribution may inadvertently set a precedent and thereby make it difficult to turn down similar requests. He stated he was not clear whether the contribution was within the authority of the District and that he would feel more comfortable if the matter was placed before the constituents for a vote. Mr. Balk stated the prior Board had made an agreement in principle to support the Vilar for several years therefore the 2004 contribution should be made with the understanding that any further financial support be placed before the constituents for a vote. Mr. Garnsey noted the Vilar plays a dynamic role within Beaver Creek. He stated the understanding of the Vilar from the prior Board was that it had agreed to support the Vilar for three years, 2004 would be the final contribution of that commitment. If the contribution is not made it will create a tremendous financial challenge for the Vilar.

A discussion of the Districts long range financial position and its ability to pay followed. The District is anticipating the possibility of asking for a mill levy increase in the near future to cover expenses. One view was that this contribution alone does not appear to create the need for the mill levy increase nor would it create a financial hardship in the next year. Another view stated that it would not be fiscally responsible to spend \$250,000 this year if the funds may be needed for future expenses. Director Forstmann pointed out that the commitment was made with the understanding that the contribution was based on annual appropriation and questioned whether it was appropriate to allow the contribution when the District should first pay for the items which are clearly defined as the Districts.

Mr. Bornstein addressed the Board. He stated that he considered the Vilar the crown jewel of Beaver Creek. He described the Districts support of the Vilar as being similar to municipalities which support to the arts within their communities. He noted the Vilar needs to have financial support in order to continue to improve and remain vital and urged the Board to make the contribution.

After further discussion the Board tabled the matter until the November meeting.

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### Legal

Mr. Collins informed the Board that he is anticipating receiving a retraction from Comcast which will reinstate the access fees for the District. The Agreement will reinstate the 4% access fee paid to the District by Comcast.

Mr. Collins reported no new information had been received regarding the Strawberry Park Condominium Association. He is waiting for a response from their attorney.

Mr. Collins reported there appeared to be some positive movement in the Market Square matter. He will let the Board know if anything develops.

### Intervillage Transportation Agreement

Mr. Lubbers presented the First Amendment to Intervillage Transportation System Agreement. He reported that BCRC had approved the agreement at their October meeting. The Board noted that this is a pass through cost in the transportation fund. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the execution of the First Amendment to Intervillage Transportation System Agreement.

### Town of Avon Transportation Services

Mr. Lubbers presented the Restated and Amended IGA for Transportation Services which covers the parking lot bus services. He explained the IGA had been revised to include a higher standard for driver behaviors. The Board asked for time to review the agreement and tabled the matter until the November meeting.

### Transportation System Service Agreement

Mr. Lubbers presented the Third Amendment to First Restated and Amended Transportation System Service Agreement which covers the Dial a Ride service within Beaver Creek. He noted the second western route had been included in this year's agreement. Upon motion duly made and seconded, it was unanimously

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**RESOLVED** to approve the execution of the Third Amendment to First Restated and Amended Transportation System Service Agreement.

**2005 Budget  
Public Hearing**

Director Wells noted that the meeting had been published as the public hearing for the 2005 budget. No public comment was offered. Mr. Marchetti handed out a worksheet which presented the significant changes within the budget numbers. For the long range plan it appears in two years the District will need to consider how to fund ongoing operating, maintenance, and capital costs. He explained there were two options for funding, one is a mill levy increase, and another is to ask for authorization to issue bonds. Both involve asking voters for approval. The Board will consider the budget at the November meeting.

**Financial  
Statements**

Mr. Marchetti reviewed the September 2004 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the September 2004 preliminary financials as presented.

**Accounts Payable**

The Accounts Payable listing was reviewed. By motion duly made and seconded, it was unanimously

**RESOLVED** to approve the accounts payable list as presented.

**Adjournment**

There being no further business to come before the Board, by motion duly made and seconded, it was unanimously

**RESOLVED** to adjourn the Regular Meeting of the Beaver Creek Metropolitan District Board of Directors held on October 27, 2004.

Respectfully submitted,

Kathy Lewensten  
Secretary for the meeting

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# RECORD OF PROCEEDINGS

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## MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS BEAVER CREEK METROPOLITAN DISTRICT November 17, 2004

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., November 17, 2004 in the Conference Room of the Beaver Creek Club, Beaver Creek, Colorado.

### Attendance

In Attendance were Directors:

- Stephen Friedman
- Tommie Campbell
- John Wells
- Al Mielcuszny

Absent and excused was Director:

- John Forstmann

Also in Attendance were:

- Larry Grafel, General Manager
- Ken Marchetti, CPA, Secretary
- James Collins, Esq., District Counsel
- Kathy Lewensten, Robertson & Marchetti, P.C.
- Bill Simmons, Village Operations
- Jim Funk, BC Public Safety
- John Garnsey, COO Beaver Creek
- Tony O'Rourke, BCRC
- Ginny Forstmann, BCPOA
- Tom Schouten, BCPOA
- Mike Balk, BC Property Owner
- Deborah Warren, President, Mountain Valet, Inc.
- Mark Donaldson, Victor Mark Donaldson Architects
- Chris Juergens, Victor Mark Donaldson Architects
- David Zippie, CPA, Market Square Property Owners
- Dan McNeil, McNeil Prop Mgmt, Market Square Prop Owners

### Call to Order

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Director Wells, Chairman of the Board, noting that a quorum was present. Director Wells confirmed that prior to the meeting each of the Directors had been notified of the meeting and that written notice was duly posted at the Eagle County Clerk and Recorder's Office and at three public places within the District.



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## Beaver Creek Metropolitan District November 17, 2004 Meeting Minutes

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### Conflicts

The Board noted that it had received certain disclosures of potential conflict of interest statements more than seventy-two hours prior to the meeting for each of the following Directors, indicating the following conflicts: Mr. Stephen Friedman is a board member of the Beaver Creek Arts Foundation which operates the performing arts facilities within Beaver Creek; Ms. Beatrice "Tommie" Campbell is a board member of the Borders Lodge and a member of the Beaver Creek Communications Committee; Mr. Albert Mielcuszny is an owner of a retail store which leases and contracts with Vail Associates or Affiliates; and Mr. John Wells is President of The Pines Townhomes at Beaver Creek Condominium Association; Mr. John Forstmann is a board member of the Beaver Creek Club. The Board noted for the record that these disclosures are restated at this time with the intent of fully complying with laws pertaining to potential conflicts.

### Minutes

The Board reviewed the minutes of the October 27, 2004 Regular Meeting. Upon motion duly made and seconded, it was, unanimously,

**RESOLVED** to approve the minutes of the October 27, 2004 Regular meeting.

### Future Meetings

The Board decided to cancel the regular December meeting. The next regular meeting is scheduled for January 26, 2005.

### Agenda Changes

No changes were made to the agenda.

### Public Input

No public input was offered.

### VVF Vilar Contribution

The Board took up the matter of the 2004 contribution to the Vail Valley Foundation for the Vilar Center. Director Mielcuszny began the discussion by stating his concerns, one being that the contribution is not directly authorized by the constituents; another is the use of the funds and the accountability for the use. Director Friedman stated that as the District's representative on the Vilar Board he has been able to review the use of the previously provided funds and assured the Board they have been used for

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Vilar expenses and needs as presented in past meetings. He explained the 2004 contribution would be earmarked for capital expenditures.

Director Miencusny pointed out that according to the long range plan the District is facing a deficit in the fund balances in 2007; he expressed concern at making the contribution with this in mind. It was noted and agreed that the deficit would not be avoided by not making the contribution. Director Wells stated his primary concern was the financial health of the District. He felt it would be imprudent to make a contribution in light of the facts as known. He offered a proposal which would make the same amount of funds available to the Vilar in the form of a no interest loan which could be drawn down by the presentation of invoices for capital projects. The repayment date for the debt could be based on the deadline for the elections in 2006. Director Miencusny suggested the loan could be set up to allow the debt to be forgiven if the constituents approved an election question supporting Vilar contributions. Mr. Garnsey stated the loan idea is a nice gesture but did not feel it would address the needs of the Vilar. He stated that it was unlikely the Vilar would be willing to accept more short term debt as they have been trying to reduce debt not increase it. Director Wells made a motion which stated the District would make the funds available on a loan basis as discussed above for designated purposes by draw as reviewed and approved by the District Manager through the middle of 2006, the no interest loan would be due by the end of 2006. The motion was seconded. The vote was 2 Ayes (Directors Wells and Miencusny) and 2 Nays (Directors Friedman and Campbell), the motion did not pass.

It was mentioned that the prior Board had anticipated making contributions for three years, 2004 would be the third year of contribution from the District. A discussion of the responsibility of this Board to abide by a prior Boards intent regarding the contribution followed. Both sides presented arguments regarding the matter. One argument for the contribution was that the contribution was a known item and that there were no overriding reasons to not honor the prior Boards intent. One argument against was that this Board should not be bound to the prior Boards intent if circumstances dictate a change in position due to fiscal responsibility.

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The Board then turned its attention to a discussion of election dates that would be available for putting the issue of future support for the Vilar on a ballot, the content of an election question, and whether the support would be indefinite or finite. The Board continued discussing alternatives and options related to the 2004 contribution and voter authorization for future support. It was offered that since the contribution was intended for capital expenditures in the future the Vilar would prefer a delay in any decision regarding the payment instead of outright denial. It was noted a delay would allow the Board to better ascertain how the constituents feel regarding the matter. Upon motion duly made and seconded, it was unanimously

**RESOLVED** that no payment for Vilar Center activities shall be made at this time. The Beaver Creek Metropolitan District Board will reconsider a payment during 2005.

#### General Managers Update

**Valet Parking:** Mr. Grafel reported on the memo and agreement regarding valet parking included in the board packet. He stated that alternative sites for the valet parking service had been reviewed as directed at the last meeting. He had met with representatives from BCRC, Public Safety, and the valet service to discuss several alternative sites, the sites are reviewed in the memo. The alternative sites would need to have modifications such as realignment of curbs, reconfiguration, and mitigation for displacement of current transportation operations prior to being suitable for valet use. These modifications do not appear feasible before the beginning of the season but can be considered for the future. Due to this Mr. Grafel recommended the Market Square location be utilized for one more season. Mr. O'Rourke noted the area had been designed to be a transportation hub so valet parking is a valid use of the area and reiterated that the service was only seeking permission to use the area for the 2004-2005 season. The Board noted that they would consider the valet service request for this season only, with the understanding that the matter would need to be readdressed prior to the beginning of next season.

Mr. McNeil addressed the Board stating he was there to speak on behalf of the Market Square Residential Property Owners

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regarding the valet service. He thanked the Board for the opportunity to express the concerns of Market Square. He reported the Market Square residents have expressed concerns regarding safety issues, cleanliness of the area, and the potential for damage to the brick paver surface that is used. The safety issue concerns people walking in close proximity to the cars being dropped off for valet parking. Mr. Funk was asked if concrete pedestrian barriers could be placed to encourage people to stop and look before proceeding. Mr. Funk agreed to provide the barriers and assist in placing them appropriately. Mr. McNeil asked whether the valet service had adequate insurance coverage. Ms. Warren stated she had insurance. Mr. Collins stated the Board can ask to be named as an additional insured on the valet services policy. A copy of the insurance certificate from the valet service will be provided to Market Square. The cleanliness of the area was discussed; last season the area was scheduled to be power washed on a monthly basis. Mr. McNeil stated this is not frequent enough noting the Market Square staff had cleaned the area last season several times. Ms. Warren offered to work with Market Square to contract for power washing services so it could be done on a weekly or as needed basis. Mr. McNeil agreed this would be an acceptable solution. Director Mielcuszny asked that the issue of car stacking be addressed, either by more staff or better control of traffic and use of the turnaround as available. The brick paver area was designed to handle adequate weight so it is believed the area will not suffer major damage, however it was pointed out that the area is in the District's condominium unit and therefore the District is responsible for the maintenance and repair of the area. If any unusual maintenance or repair is required the District can decide at that time if the valet service should reimburse the District for the repairs.

After further discussion the Board directed Mr. Grafel to revise the agreement to include the requirement of cleaning the area weekly or as needed, putting pedestrian barriers in place, and providing proper insurance certification. The Board agreed the valet service could continue at the Market Square site for one more season if it abided by all conditions stated, with the understanding that the District has the right to terminate the agreement with 30 days notice. Upon motion duly made and seconded, it was unanimously

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**RESOLVED** to allow the Mountain Valet to use the Market Square area for one month while the appropriate modifications are made to the 2004-2005 letter of agreement, and

**FURTHER RESOLVED** to approve entering into an agreement with Mountain Valet for the 2004-2005 season utilizing the Market Square Transportation Area following the terms of the letter agreement including the modifications regarding the frequency of cleaning, placement of pedestrian barriers, and proper insurance as discussed subject to the approval of the District President and authorizing the execution of the agreement after approval.

**Eagle-Vail Maintenance Facility:** Mr. Grafel reported the plans for the Eagle-Vail operations and administration building had been revised to include a full catering kitchen as discussed at the last meeting. Mr. Juergens presented the revised sketch plans. He noted that due to several modifications the square footage had increased to 5,600 square feet, previously it was 5,200 square feet. The berm in the front has been designed to have a 4 foot boulder retaining wall with a 7 foot high dirt berm with landscaping. The building has been designed using readily available materials. Mr. Donaldson stated it is still likely the structure can be completed within the budget. It is anticipated the bid packages will be available in early January with the bid process happening the second to third week of January. If the bid can be awarded in January the timeline for completion in May should be realistic.

**Wild land**  
**Fire Mitigation:**

Mr. O'Rourke reported he was anticipating an early December meeting with Eagle County regarding general discussion on the Beaver Creek wildland fire mitigation plan. It was suggested two representatives from the District meet with Mr. O'Rourke to discuss the matter prior to the Eagle County meeting.

**Town of Avon**  
**Transportation**  
**Services**

Mr. Simmons reviewed the Restated and Amended IGA for Transportation Services which covers the parking lot bus services with the Town of Avon. He explained the IGA had been revised to

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include a higher standard for driver behaviors and destination sign displays. Director Wells asked for a technical modification on page 7, section 4(h)iii regarding clarification for indemnification. Mr. Collins noted the change. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the execution of the Restated and Amended IGA for Transportation Services between the District and the Town of Avon effective October 1, 2004 with the modification as noted on page 7 section 4(h)iii.

### **2005 Budget**

Mr. Marchetti presented the 2005 budget. He noted the public hearing had been held previously at the regular October meeting. He stated the budget now reflected all discussed items from prior meetings. Director Mielcuszny handed out a worksheet which compared revenues and expenses from 1998 through 2004. The Board discussed the District expenditures and changes over the years. In the past, major capital projects have been funded by bond issues. In the future ongoing maintenance expenses related to prior capital projects such as landscaping or roadway overlays are anticipated to be covered in the general fund. Mr. Marchetti explained there were two options for funding of these expenses, one is a mill levy increase, the other is to ask for authorization to issue bonds. Both involve asking voters for approval. The budget shows the District has sufficient fund balances to cover its needs in 2005. Director Wells asked that the contingency for the General Fund be increased to \$300,000 for both 2005 and 2006, the board agreed. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to adopt the 2005 budget and appropriate the sums of money for Beaver Creek Metropolitan District as revised, and

**FURTHER RESOLVED** to certify the mill levy for Beaver Creek Metropolitan District

### **Legal**

Mr. Collins handed out copies of a Withdrawal of Letter of Revocation from Comcast which was received by fax yesterday afternoon. He explained the letter acknowledges the District

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access rights and further states that payment of the access fees for 2004 will be sent with the original letter.

Mr. Collins reported no new information had been received from the Strawberry Park Condominium Association. He is waiting for a response from their attorney. Ms. Lewensten informed the Board that the check written to Strawberry Park Condo Association last December for the agreed upon amount of \$16,633.99 has been voided due to the age of the check. When the matter is resolved this check will need to be reissued.

Mr. Collins reported no new developments regarding the matter of the Districts Market Square condo unit. Mr. O'Rourke informed the Board that BCRC was looking at possibly taking over the Vilar Market Square escalator maintenance costs from the District. He will keep the Board informed of any developments. In addition, Mr. O'Rourke informed the Board that there may be some interest by the Vilar Center to take over the Districts common costs associated with the Districts Market Square Condo Unit in return for conveying the unit to the Vilar Center with the proper transportation easements for the District. The Board expressed interest in both suggestions.

#### **UERWA**

Director Friedman informed the Board that UERWA is making progress regarding additional water storage. The Wolcott Reservoir is being studied and appears to be a good idea. It would be part of an overall settlement with front-range entities and would help UERWA be better prepared for a worst case scenario if a water call were made by other entities. He stated that in his capacity as the President of the UERWA he had been asked to attend the Cordillera Metropolitan District (CMD) meeting, one concern of CMD was the lack of direct representation on the UERWA Board considering the significant number of residents represented by CMD.

#### **Financial Statements**

Mr. Marchetti reviewed the October 2004 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the October 2004 preliminary financials as presented.

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**Accounts Payable** The Accounts Payable listing was reviewed. The Board asked staff to obtain more information regarding the VAI direct expense costs included in the \$112,361.33 payment to Vail Resorts for the Districts share of the Tract Q costs and report to the Board. By motion duly made and seconded, it was unanimously

**RESOLVED** to approve the accounts payable list as presented.

**Adjournment** There being no further business to come before the Board, by motion duly made and seconded, it was unanimously

**RESOLVED** to adjourn the Regular Meeting of the Beaver Creek Metropolitan District Board of Directors held on November 17, 2004.

Respectfully submitted,

Kathy Lewensten  
Secretary for the meeting