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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 27, 2013

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., March 27, 2013 in the Conference Room of the District Administrative and Operations Facility, Eagle-Vail, Eagle County, Colorado.

### Attendance

In Attendance were Directors:

- Jim Power
- Louis Kreig
- Ernie Elsner
- Mike Balk

Absent and Excused were Directors:

- Bob Gary

Also in Attendance were:

- Clyde Hanks, General Manager, BCMD
- Ken Marchetti, Robertson & Marchetti, PC
- Jim Collins, ESQ, Collins Cockrel & Cole
- Jennie Fancher, BC Admin Assistant, BCMD
- Tim Baker, Beaver Creek Resort Company
- Bill Simmons, BC Village Operations
- Sam Parker, BC Public Safety
- Barry Parker, BCPOA Vice President
- Kelly Collier, Director of Transportation, ECO Transit

### Call to Order

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Mike Balk, Chairman of the Board, noting that a quorum was present. It was 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. Ernest Elsner is a member of the Board of Directors for Beaver Creek Property Owners Association; Mr. Michael Balk is a member of the Board of Directors for Beaver Creek Property Owners Association; Mr. Robert Gary is a member of the Board of Directors for Beaver Creek Property Owners Association, Vail Valley Foundation Board and the Vilar Center for the Arts Committee; Dr. Louis Kreig is a member of the Board of Directors for Beaver Creek Property Owners

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Association; and Mr. James Power is a Director of the Beaver Creek Property Owners 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, 2013, Regular Meeting. An email had been received from Tim Maher requesting a change related to the new fire station discussion, omitting the specific numbers of Elk Track and Village Walk homeowners near the bottom of page 2. The second change is near the bottom of page 4. Director Kreig noted Director Elsner had requested addition of a new guardrail at the intersection of North Holden and Village Roads which necessitated a change to the verbiage of the resolution to include this addition. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the minutes of the February 27, 2013 Regular Meeting as revised.

### Agenda

Mr. Hanks noted one change to the Public Input section of the agenda. A request had been received from Eagle County for a contribution to the widening of Highway 6.

### Future Meetings

The next regular meeting is scheduled for Wednesday, April 24, 2013 at the same time and location.

### Public Input

Mr. Hanks reported to the Board the nature of Eagle County's request related to CDOT paving plans along Highway 6. CDOT is planning to widen the shoulder of Highway 6 in areas both in Edwards and Avon. CDOT is asking for contributions of \$350,000 from entities around Highway 6. Some money has been raised and CDOT is currently looking for another \$155,000. Highway 6 is not in the boundaries of Beaver Creek but a section between Prater Road and the main entrance to Beaver Creek runs along the BC boundary and is an area looking to be widened. The Edwards Metro District has committed \$70,000, the Town of Avon is considering a contribution, VR said no, BCMD and BGMD are being approached. The road is a CDOT road. The question of what would be an appropriate contribution was brought up. The Edwards Community Authority has committed to \$10,000. The idea of a \$10,000 contribution was brought up. Mr. Baker noted his belief that Bachelor Gulch would probably not contribute and noted the need for the improvement to enhance the safety of Highway 6.

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The shoulder widening is considered more of a parks and recreation type upgrade. The shoulder is being widened as a safety factor for cyclists as well as for automobile emergencies. Mr. Baker noted he would put it on the BCRC agenda. Director Elsner suggested waiting to see what the BCRC commits to.

The Highway 6 overlay project is a \$5 million project that does not include the shoulder widening project. The CDOT funds are not allowed to be used for widening. Eagle County committed to 50% of the amount needed if other entities will commit to the additional 50%. Mr. Baker noted from a BCRC perspective he will recommend a contribution in the range of \$10,000 to \$15,000 to his Board. CDOT is looking for \$114,000 for the Avon section. BG, TOA, BCRC, BCMD and BGMD could come up with the \$114,000 by dividing it. If BGMD and Avon each put up 30% and BCMD and BCRC each put up 20% the \$114,000 could be reached. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to provide \$12,000 toward the CDOT request for funding to widen the shoulder of Highway 6 in the area between Prater Road and the Main Entrance to Beaver Creek, contingent upon a similar contribution being committed by the Beaver Creek Resort Company, Bachelor Gulch Metro District and the Town of Avon.

**ECO Transit:** Ms. Kelley Collier, the Director of Transportation for Eagle County Transit, was introduced to report the findings of the ECO Transit Spine Feasibility Study. ECO Transit is dedicated to taking thousands of cars off the roads every day and provides transportation for the workforce in Eagle County. Ms. Collier presented the findings of the feeder feasibility study to gather input on what the community sees as gaps in transportation services. ECO Transit is looking at bringing back the Vail/Beaver Creek Express. ECO Transit is also looking at how it can improve its service along the I70 corridor. ECO Transit is looking for feedback, not money, at this time. In 2009 the decrease in tax revenues resulted in a 34% cut in service which forced ECO Transit to look at changes to existing service levels and future service levels and how to do more with less. Part of the examination brought the question of whether a spine circulator system makes sense. The results of the survey reveal that a spine system is seen as desirable if it can offer efficient connections and be supported by a local commuter network at each of the hub locations.

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Eagle County is number one in the nation for rural transit trips with 100 trips per capita and as a result is seen as very successful in mass transit. The youth component is an important aspect of transit in Eagle County as well. The spine service would go from Eagle to Vail. Dotsero has low ridership and a local route would service Eagle to Gypsum. Leadville operates 2 buses a day each way. CDOT is working on initiatives toward an advanced guideway system which would service the I70 corridor between Denver and Glenwood Springs. Here in Eagle County a transit facility is needed in Edwards. Ms. Collier reported that 25% of the ECO Transit budget comes from fares the rest comes from sales tax. ECO Transit is currently looking at diversifying its revenue streams with the implementation of advertising on the buses as one possibility.

The Vail/Beaver Creek route would be in operation during ski season to start with buses running at peak times. This route needs 23 passengers per trip to be operational. Beaver Creek sees a priority for transporting employees and service workers to the resort as easy as possible. Chairman Balk inquired as to what is happening with the population of Eagle County. Ms. Collier noted that conversations have led to a belief that the population has dropped, especially Down Valley. The goal of ECO Transit is to create a better service for those that are here. Mr. Hanks inquired as to whether people use the BC parking lots to park and ride the bus to Vail. Mr. Simmons reported that an eye is kept on the parking lots to ensure that people are not parking there to ride the bus and measures are taken to discourage this from happening.

Mr. Marchetti reported on population information. The 2010 census reported a population of 52,000 in Eagle County which the state demographer estimated a reduction to 51,776 in 2011. The population is expected to be 53,681 in 2013. Mr. Hanks inquired whether the population dropped between 2008 and 2010. Mr. Marchetti responded that the population in 2008 was 50,301 which went up to 51,520 in 2009.

### **General Manager Update**

**Fire Station:** Mr. Hanks reported specific negotiating points will be discussed in executive session. Conversations have continued with VR, focusing on how to get through the issue of building a connector road that they can use. VR's concern is that a road will be built and they will not be able to use it. BCMD has not proceeded with condemnation, as alternative proposals have been produced. Cost estimates and drawings for constructing a connector road and a road up to the fire station have been received. The PUD amendment for the existing site is secured. The negotiations with VR are related to acquiring the land by the Water Tank.

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Chairman Balk inquired of Mr. Barry Parker, since the BCPOA Executive Committee is not taking a position on the fire station, if it would be right to assume it is indifferent to the issue. Mr. Parker stated the committee assumes BCMD will proceed with its current direction and that it wants what is best for the community as a whole but realizes that the community has conflicting feelings about the issue. Mr. Parker noted the BCPOA does not want to get sued and sees no advantage to taking a position. Director Elsner noted there is a handful of property owners versus the entire population of property owners that is affected. Mr. Parker noted the BCPOA Executive Committee is not against the proposed fire station however it is staying out of the way. Chairman Balk noted the issue will be raised at the full BCPOA Board meeting this afternoon requesting a position. If no support is given it will be assumed the community is ok with a \$5 million bond issue. Director Power noted if there is a bond issue vote there is no guarantee that it will pass.

Mr. Barry Parker noted the issue was brought up at the Executive Committee meeting about rehabbing the current station as had been done in Vail. Chairman Balk noted the station in Vail that was renovated was not the primary station, no one lives there and little equipment is stored on site. Director Power noted the current station could be renovated but why would the community want to spend \$2 million when it can get a new station for nothing. Mr. Parker inquired what BCPOA support achieves. Director Elsner responded that it sends a message to VR that it has property owner support. Mr. Parker noted his opinion that offering support is setting up the BCPOA to be sued.

Traffic up Elk Track Road will be restricted to fire station traffic. The spur road from the current fire station bridge to Dally would be for VR vehicles. The proceeds from selling the land where the current fire station sits is expected to be enough to build a new station, build a connector road and build the road up to the new station. Mr. Barry Parker noted BCMD may have more luck with support from the entire BCPOA Board.

Director Kreig noted other stakeholders involved with the issue include BCRC and the business community. The commercial interests pay taxes as well and don't want to pay more taxes. Director Elsner noted the commercial properties would be happy to have a ladder truck closer than Cordillera. Mr. Barry Parker noted the BCPOA questions whether a ladder truck is needed and if one can even negotiate within the village.

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Director Power noted the ladder truck does not drive the decision. A new station is needed with or without a ladder truck.

**ERFPD Contract Renewal:** Mr. Hanks reported the contract renewal negotiations are moving along with some back and forth related to pinpointing what costs are variable versus what costs are fixed. The 2012 audited financials were received this week. The original range was BCMD at \$1 million versus ERFPD at \$1.6 million. The range is narrowing. The next step is agreeing to the variable and fixed costs and ironing out where there is disagreement. Mr. Hanks assumes one area that will remain contentious will be capital costs. There should be an agreement available for the June meeting.

**Road Issues:** Mr. Hanks reported the June meeting will include the annual road update. Currently there is \$160,000 in the budget for road and drainage repairs for Village Road. There is a possibility the other overlays and related projects that have been budgeted may be postponed depending on short term cash requirements related to the fire station matter. Director Elsner questioned whether drainage repairs are necessary. Mr. Hanks noted drainage repairs help with ice on the road in the winter. There is standing water on the west side of Village Road.

**Transportation Agreement:** Mr. Hanks updated the Board on the status of the Transportation Agreement. A proposal was submitted to BCRC. Mr. Baker came back with concerns over the default provision, section 4.1. BCMD is responsible for managing VR as the contractor that actually runs the system. BCRC's responsibility is to provide adequate funds above and beyond the fixed amount to achieve a base level of service, a funding responsibility where BCMD has a service management responsibility. This needs to be captured in the language. Mr. Baker noted from the BCRC perspective it wants to ensure that it is not on the hook for VR's performance. BCRC is the funding mechanism to ensure that VR can meet expectations. It is up to VR to perform up to a set level of service. They have an annual contract and they have to meet their obligations. Mr. Baker noted his opinion that the language changes in section 14.1 are not needed as it creates ambiguity. BCMD is in charge of managing VR. BCRC funds any improvements to service. It is up to BCMD to enforce the management of the service levels. There is a right to cancel the contract with VR if VR fails to perform.

Director Elsner inquired what would happen if there was another severe recession. Mutual consent is needed to reduce service levels. VR does not get to raise or lower the standards. The odds are small of issues

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happening as everyone has an interest in keeping the service levels up. Mr. Baker noted the first sentence of 14.1 states “A party’s failure to perform in accordance with or to otherwise comply with the terms, covenants and conditions of this restated agreement” the funding obligation is set forth earlier in the document and there is no need for the added sentence in 14.1. Mr. Collins agreed, recommending if there is any change it should be the language proposed last night. If BCRC doesn’t want to pay there is a default. Mr. Hanks noted from a practical point of view to accept the language drafted last night or simply reduce the first sentence to the first half a party’s failure to perform last night, get rid of the first sentence, it should read: “in accordance with or to otherwise comply with the terms, covenants and conditions of this restated agreement.” restated agreement with a semi colon after “or”14.1 is the only change in the contract. Director Elsner questioned whether it is right to approve the agreement without reviewing all of the changes. Mr. Hanks replied that all of the changes discussed at the meeting had been added to the contract. This (14.1) is the only change in dispute with the BCRC. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the Transportation Agreement with the verbiage change to section 14.1, to read “in accordance with, or to otherwise comply with the terms, covenants and conditions of this restated agreement; or”

Mr. Barry Parker brought up service levels related to Dial-A-Ride noting there are issues just a few weeks out of the year and perhaps renting additional vehicles and drivers should be examined. Mr. Baker noted it is not an issue of fleet capacities but a matter of funding. The issue is being examined. It is tough to design service levels around the two peak weeks where there are issues. Mr. Hanks agreed to email Director Elsner the final version of the Transportation Agreement.

**Incident Report:** The Board referred to the report in the packet. Mr. Hanks noted a BCMD plow driver backed into a car last week, causing minimal damage. The incident is being dealt with. Mr. Barry Parker inquired whether there is a prescribed speed limit for plow drivers, noting the plow truck drivers drive too fast. Mr. Hanks noted the plow drivers have the same speed limits as all traffic within the resort. Chairman Balk agreed that plow drivers drive too fast. Director Elsner asked Mr. Sam Parker of BCPS why the cars by the construction site on North Holden are allowed to double-park and block one lane of traffic. Mr. Parker responded the DRB allows up to 10 cars to park on the street. Mr. Simmons noted a follow-up will occur.

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## Legal

Mr. Collins noted the only change in front of the legislature involves a public hearing being required when there are any changes in rates; and recorded disclosure will be required by tax authorities. Mr. Collins is not directly involved with the ERFDP contract renewal but agreed the Fire District is positive about getting it done. The Denver Post had an interesting article related to Collins, Cockrel and Cole. Mr. Collins' partner, Paul Cockrel, is being sued by an HOA in Greenwood Village related to an incident where a developer stole \$3 million from a District for which Mr. Cockrel was the attorney. He had nothing to do with the developer taking funds out of the district.

## Financial Statements

The Board referred to the February 2013 preliminary financial statement included in the packet. Mr. Marchetti noted the changes were made to move funds out of contingency into Project Legacy. There is \$90,000 left in the contingency category. The year end reserve is expected to be \$4.6 million, \$3.2 million at the end of 2014. This year there is a projected surplus in the operating reserve of \$123,000, however the \$952,000 in capital improvements will take the fund balance down overall this year. Mr. Marchetti is still projecting a decrease in assessed value of 5%. More will be known about assessed value in 60 days, a report will be available for the May meeting. Chairman Balk asked about the \$318,000 in capital for road overlay and drainage projects for 2013. Mr. Marchetti noted the breakout of the \$318,000 is for an overlay for Borders Road, Highline Drive and Wayne Creek Drive. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to accept the February 2013 preliminary financials as presented.

## Accounts Payable

The Board reviewed the Accounts Payable listing that had been included in the packet. Upon motion duly made and seconded, it was unanimously

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

Director Power inquired how much has been paid to Dominic Mauriello. Mr. Hanks noted \$50,000 has been paid to-date to Mr. Mauriello related to the fire station site development.



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### UERWA

Director Power updated the Board on UERWA matters. The water situation is typically measured in comparison with levels from 2002, a drought year. The snow/water equivalent just passed the level of last year which was just below the level of 2002. Last year we finished the winter season with all of the reservoirs full. Right now the Black Lake 1 reservoir is at 37%, Black Lake 2 is 30%, Green Mountain is at 39% and Wolford is at 36%. There is a meeting tomorrow morning which will deal primarily with the drought situation. Tomorrow afternoon there will be a meeting related to the Water Authority Agreement. Director Power has some concerns about the distribution of assets should the authority be dissolved. Chairman Balk inquired how the current levels of the reservoirs compare to 2002. The answer will be found out tomorrow.

### Executive Session

Upon motion duly made and seconded, it was unanimously

**RESOLVED** to enter into executive session citing §24-6-402(4) (a) C.R.S. for the purpose of determining positions subject to negotiations related to the acquisition of property for a new fire station; The Board entered into executive session at 10:50 a.m. and adjourned the executive session at 11:45 a.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 March 27, 2013

Respectfully submitted,



Jennie Fancher

Secretary for the meeting