
RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS BEAVER CREEK METROPOLITAN DISTRICT April 24, 2013

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., April 24, 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 (by phone)
- Bob Gary (by phone)

Also in Attendance were:

- Clyde Hanks, General Manager, BCMD
- Kathy Lewensten, Robertson & Marchetti, PC
- Jim Collins, ESQ, Collins Cockrel & Cole
- Jennie Fancher, BC Admin Assistant, BCMD
- Tim Baker, Beaver Creek Resort Company
- Sam Parker, BC Public Safety
- Tim Maher, BCPOA President
- Barry Parker, BCPOA Vice President
- Dave Eickholt, BC Resident
- Tim Kelley, BC Resident
- Rod Miller, BC Resident (by phone)

Call to Order

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Lou Kreig, Acting 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 Association; and Mr. James Power is a Director of the Beaver Creek

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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 March 27, 2013, Regular Meeting. Director Power added that last month's discussion surrounding the transportation agreement related to service level standards. He noted past history reflects the Town of Avon and CME once provided Dial-A-Ride service and were removed for unsatisfactory service; there is a strong precedence for removing providers that don't meet BCMD's standards. Upon motion duly made and seconded, it was unanimously

RESOLVED to approve the minutes of the March 27, 2013 Regular Meeting.

Agenda

Director Power requested discussion of the current water situation and the painting of manhole covers be added to the agenda. Director Balk inquired whether the Transportation Agreement was complete. Mr. Hanks responded that it was.

Future Meetings

The next regular meeting is scheduled for Wednesday, May 22, 2013 at the same time and location.

Public Input

The subject of the guardrails for Village Road was discussed. Director Elsner prefaced the discussion with the extensive research that was completed to arrive at the chosen design as part of Project Legacy. Director Kreig presented a history of the guardrail project, providing a handout reviewing the timeline and details, which is hereby attached to be a part of the minutes. Correspondence from Beaver Creek homeowner Rod Miller was acknowledged, noting his opinion that replacing the guardrails as planned represents foolish spending and included a design of his own. Mr. Miller's design was submitted to the engineers for an evaluation.

Alpine Engineering evaluated Mr. Miller's guardrail design and reported it would be cautious in recommending the design as the materials on order and included in the sample guardrail at the intersection of Village and South Holden Roads have been tested and are preapproved. Mr. Miller's concern is financial. He is concerned about the potential of taxes rising for homeowners. Mr. Miller does not see time as a factor and would like his proposal to be considered as it could save, in his opinion, \$100,000. His feeling is that if the current guardrail meets safety standards it would certainly meet safety standards with a wood façade attached. Mr. Miller noted his concern about the BCMD engineer of record. He noted the guardrail installed at the Prater Road intersection should be the same as the current sample guardrail but the balance of the guardrails

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along Village Road do not have the same visibility and therefore do not need to hold the same design standard. Mr. Miller noted the wood from the existing order could be bolted to the current guardrails which could save money by negating the need for removal costs of current guardrail and negate the need for additional steel at the same time. Mr. Miller noted the designs considered in 2008 were considered at a time when money was not as big of a concern. He requested to see the other designs. He sees added expenses with the approved guardrails that include the cost of removing the current guardrails, costs associated with the installation of new vertical posts, the cost of installing horizontal posts and the cost of attaching the wood to the metal. This represents four steps instead of one step.

When the public was asked for further comments Mr. Maher noted his concern of the timing of guardrail installation. He does not want to see the installation occur over the 4th of July. Mr. Maher also brought up the need to re-examine where guardrails are needed within the resort. In addition North Holden needs similar treatment to South Holden and sees the section is not included in the current plan. Director Balk noted his desire to see the actual cost savings of Mr. Miller's proposal and where substantial savings are being debated.

The issues involved with Mr. Miller's proposal include a number of facets. If the current order for wood is canceled in order to review Mr. Miller's design and results in a re-order the cost could go up as much as 30% due to a current wood shortage. There are concerns about safety and insurance if BCMD were to install an untested/unapproved guardrail. The wood suggested in Mr. Miller's proposal is two inches thick whereas the wood on order is twelve inches thick. The specific wood with steel backing has been tested and cannot be compared to Mr. Miller's proposal which has not been tested. Director Gary noted the considerations related to the guardrails are threefold: cost, appearance, and safety. The cost of one versus the other should be able to be determined by firm figures. If the cost savings is small Director Gary believes the original design should be chosen. As far as appearance, it is unknown as the new design has not been seen. The safety is in question, which would involve a government agency or an underwriter's lab for testing. The issue needs to be examined from all three points of view to uncover if there is a significant difference.

Director Elsner noted the cost of removing the current guardrails is \$16,000, which would be an \$8,000 cost to BCMD. Director Elsner shared his concern with attaching wood to the current guardrail and it not being wide enough. There would need to be a redesign which could change the cost significantly. Mr. Miller suggested approaching the vendor where the wood has been ordered, change the size and eliminate the steel backing. Mr. Miller noted the design that exists on South Holden currently should be the design implemented

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at the North Holden and Prater Road intersections, and re-examine the design for other sections along Village Road.

Mr. Hanks noted a certified guardrail is one that is tested, involving after-crash trajectories. Installing Mr. Miller's proposed guardrail would involve being comfortable with installing an uncertified guardrail. The structural aspect of Mr. Miller's proposal raises the question of splintering when hit, a three inch piece of wood would react differently from wood that is twelve inches thick. The certification process could add some cost. Director Power added he had a company which considered going into the guardrail business and did not end up doing so in part because certifying a guardrail is a huge undertaking. The cost savings needs to be examined to determine whether it warrants taking a risk. Director Elsner inquired how the steel backed guardrail handles the curvature of the road. Mr. Hanks responded the guardrail comes in ten foot sections. Bachelor Gulch is a good example of how the ten foot sections piece together.

Mr. Miller noted certification is important and his willingness to withdraw his proposal as a result, unless Mr. Hanks can find out that the current guardrails prior certification could be grandfathered. Mr. Kreig asked Mr. Baker if he has heard anything to warrant a change to BCRC involvement in the project. Mr. Baker responded \$200,000 has been set aside for the guardrail project. Director Balk noted he would like to go ahead with the guardrail as planned, with perhaps less stonework on the sections that are less visible as discussed. Director Gary acknowledged his agreement. Director Elsner noted his belief that Mr. Miller's design would require certification and the project should be moved forward with as originally planned. Mr. Power agreed to proceeding with current plan. Mr. Collins noted a motion of approval is not necessary. Acting Chairman Kreig noting the Board is unanimous with proceeding as originally planned.

General Manager Update

Fire Station: Mr. Hanks updated the Board on the status of the Fire Station. Acting Chairman Kreig informed the Board that Director Balk updated the BCPOA Board on the status of negotiations to acquire land for a new fire station at the March 27 BCPOA meeting. After some debate a resolution was passed supporting BCMD's efforts to build a new fire station in accordance with documents submitted to Eagle County for the purpose of saving tax payers the expense of up to \$5 million for remodeling or rebuilding at the current site with a vote of 2 to 1. This support was conveyed to VR in a cover letter accompanying the latest proposal. A reply to that proposal was received Friday and will be discussed in Executive Session.

ERFPD Contract Renewal: Mr. Hanks reported nothing has happened with regards to contract renewal negotiations. The budget issues are being

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examined. Mr. Hanks is looking at each category in the budget and determining from the BCMD point of view what costs are direct and what are allocated costs. Direct costs are clear. Allocated costs will provoke discussion. Some line items in the budget are reasonable to accept allocated costs, others are not. There will be a meeting near the end of May. Director Elsner asked for a rough numerical breakdown of the costs. Mr. Hanks responded the direct costs would be in the range of \$600,000 to \$700,000 a year and the shared variable costs would be somewhere between \$200,000 and \$300,000 a year. Director Elsner inquired as to what number would make it appropriate to approach the VFD. Mr. Hanks does not foresee the need to approach the VFD. If the May meeting does not go well then BCMD can approach VFD but at this point the negotiations with ERFPD appear plausible. Director Elsner noted money is an issue. The option is there.

Insurance Claim Recovery: The Board referred to the report included in the packet. Mr. Hanks noted no new claims have been filed.

Legal

Mr. Collins noted there is nothing to report other than items for Executive Session.

Financial Statements

The Board referred to the March 2013 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

RESOLVED to accept the March 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.

UERWA

Director Power updated the Board on UERWA matters noting current water levels are compared with those of 2002, a drought year. Last year water levels were below that of 2002 and most of this winter they have been below. 2002 levels were passed recently. In addition the historical averages were just passed. The Eagle Park Reservoir was estimated to be 82% at the end of the season. It is now expected to be better. The Black Lake reservoirs are only at 40% but are expected to fill up. The water comes from the snow. Normal watering regulations are expected to be in place.

Manhole Covers

Last year a request was discussed to paint the manholes white and it was resolved to test one by painting a circle around one. This seems to have worn

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off. Mr. Hanks replied that it can be repainted and inquired as to whether the Board would like to paint more than one. Mr. Hanks noted an overlay of Village Road is budgeted for 2014 and at that time the manholes will be readjusted to reduce discrepancies between the manhole covers and the road to a half inch or less. They have to be slightly below the road so as not to be clipped by a snowplow. The original request was to paint the manhole covers white and Director Power noted the need was only to paint the downhill covers. There are six of them that should be painted. Upon motion duly made and seconded, it was unanimously

RESOLVED to approve the painting of a white ring around the six to eight downhill manhole covers.

Other Business

Mr. Parker inquired as to whether cyclists have a speed limit, noting many currently exceed the speed limits set for vehicles. Public Safety warns cyclists when unsafe practices are noticed. Long boarders have also been an issue. Mr. Hanks noted perhaps rumble strips could be implemented to slow people down, or perhaps temporary speed bumps. Mr. Hanks will bring the issue to Public Safety and to Jerry Hensel who is in charge of maintaining the path. Mr. Maher recommended moving the "No Motorized Vehicles" sign as it blocks the view of uphill traffic.

Mr. Maher referred to a letter he had sent to the Board requesting indemnification for the BCPOA with regard to its support for the BCMD efforts to acquire land for a new fire station. He noted that VR has been offered such indemnification should a lawsuit be filed against them. They would like to have the BCPOA also receive indemnification to cover possible legal costs and damages. The initial Board response to a total indemnification was negative. The first problem is legal. As a public entity the BCMD cannot agree to an unknown and open-ended cost. Were it to even be considered, it would have to be submitted for voter approval. Further, the limited indemnification offered to VR of \$100,000 was part of a larger negotiating package, for which Metro received something of value in return, and indemnification was voided if we were not made aware of any prior documentation on which a lawsuit might be based. Mr. Maher responded that he was not engaging in argument but rather being prudent on behalf of the BCPOA to make this request. Mr. Parker noted that Director Balk had offered as the last BCPOA meeting to consider such a request. Director Balk responded that we were doing so at this meeting and, even if initial board sentiment was negative, would continue to consider BCPOA input now and at future meetings. Mr. Maher noted that the full BCPOA Board had voted for supporting the BCMD's efforts to secure the land for the firehouse from VR, resulting in possible legal exposure. Others noted that the BCPOA Board vote in this matter did not include any contingencies for indemnification. However, Mr. Collins noted that the BCPOA request was

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understood and will be taken into consideration both at the BCMD Executive Session and, along with everything else, in future negotiations with VR.

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 10:20 a.m. and adjourned the executive session at 11:18 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 April 24, 2013

Respectfully submitted,



Jennie Fancher

Secretary for the meeting