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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 26, 2013

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., June 26, 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
- Mike Balk
- Bob Gary
- Ernie Elsner (by phone)

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, Vail Resorts
- Sam Parker, BC Public Safety
- Kris Sabel, Executive Director, Vilar Center
- Dean Davis, Facilities Manager, Vilar Center
- Tim Maher, BCPOA President
- Barry Parker, BCPOA Vice President
- Dave Eickholt, BC Resident
- Jeff Luker, BCRC

### 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.

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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 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 April 24, 2013, Regular Meeting. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the minutes of the April 24, 2013 Regular Meeting.

### Agenda

Mr. Hanks noted two additional informational items will be added to his report related to the cycling race and the purchase of some trees.

### Future Meetings

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

### Public Input

**Vilar Center:** Kris Sabel, Executive Director for the Vilar Center, presented the Board with the annual report for the Vilar Center, with a focus on projects that have been completed and projects ahead. Mr. Sabel reported the winter was challenging for ticket sales due to low snow. The reduction in income due to low sales was offset by an increase in donor volume. This past year there were improvements made to the Vilar Center that included some remodel projects that improved the egress to the building, making access safer. Upgrades were made to equipment, necessary for putting on high quality performances. The biggest project for the coming year is an evaluation of the HVAC system. BCMD is in its 3<sup>rd</sup> year of a 5 year voter approved contribution cycle. If contributions are to be extended without lapse the three ballot opportunities would be May 2014, November 2014 and November 2015. Director Power noted acknowledgement for how well the Vilar Center is operated. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve \$250,000 contribution toward Vilar Center capital improvements for the 2014 budget.

**BCPOA Indemnification:** The topic of BCPOA indemnification was discussed. Mr. Hanks briefed the Board and the audience on the state of negotiations for land for a new fire station. A counter proposal was received from Vail Resorts in Mid May. The negotiating team of Directors Kreig and Balk, along with Mr. Hanks discussed the counter proposal, made some edits and created a draft agreement. Scenarios were also written, outlining what would happen if legal action emerged or didn't emerge. The draft agreement was sent back to VR. The urgency of finalizing the agreement if construction

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is to begin this fall on a Connector Road was conveyed. There has not been a response from VR. Mr. Maher referred to the letter in the packet, desiring a response. Mr. Maher inquired about the timing for this fall. Mr. Hanks responded the Connector Road could be built this fall if a response is received from VR. The process involves the Forest Service signing off on the design, staking the centerline of the road at which point VR and the FS would review. The biggest issue is to avoid wetlands. The current design is not in the wetlands area. Wetlands issues extend the permitting time by 12 to 18 months.

Mr. Maher noted the drawings the USFS showed him displayed a different route than the one described by BCMD. Mr. Hanks responded no design has been submitted to the USFS and the Connector Road is not intended to go through wetlands. If an agreement is reached BCMD will build a Connector Road, how it is used is up to VR. VR expectations are that traffic will go on the Connector Road and not through Village Walk. Only BCMD, the Fire Department and ERWSD can go up Elk Track Road, there would be no traffic to the Service Center allowed on the road to the new fire station. Mr. Maher noted traffic on the Connector Road is likely to generate a lawsuit.

The Connector Road will be built before BCMD gets land to build a new station. The building of a Connector Road does not give a right for its use. Use of the road will resolve the density issue for the current fire station site. Failure to use the road will inhibit the density change. VR wants a road, terms of the agreement will be revealed in Executive Session today. Mr. Maher inquired about the timeline. If an agreement cannot be reached in the next two to three weeks there will be no construction on a road this fall. A letter was sent to BCMD from the BCPOA on April 2<sup>nd</sup>, requesting indemnification for any legal fees resulting from a lawsuit related to the new fire station project. Mr. Collins responded the request for coverage of all legal expenses cannot be done, and is not legal. It was suggested that a dollar amount could be set aside similar to the \$100,000 offered to VR. Director Elsner inquired whether the BCPOA Board approved the request for indemnification. Mr. Maher responded no. Director Elsner asked whether it should be an approved request. Mr. Maher noted this was an approach, to define terms. Director Elsner responded the BCPOA has an obligation to take a position on major decisions that affect the community. BCPOA can claim legal fee reimbursement if a lawsuit ensues. Director Elsner would decline the BCPOA request. Director Kreig agrees with Director Elsner. Director Power cannot believe the issue of a new fire station is still being discussed when there is a great need. Reimbursement to the BCPOA is not relevant due to the timing of the current agreement. Director Gary noted BCMD is not receiving anything from the BCPOA that warrants indemnification. The BCPOA is designed to take an opinion on major issues within the community.

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President Balk noted both BCMD and the BCPOA represent the same constituents. Mr. Maher responded the two groups are very different in that the BCPOA only represents 700 out of 2,400 tax payers, who have funded the legal reserve. The issue for the BCPOA is that claims related to Bachelor Gulch have placed the Directors and Officers insurance in jeopardy. The urgency of support was not compelling to the BCPOA due to legal damage that could ensue. Mr. Maher noted the questionability of the deal with VR and everything appears as it was in March. Chairman Balk noted the distinction between property owners in Beaver Creek and Property owners that pay dues to the BCPOA. Were the BCPOA to be sued there is an option to not make a claim. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to deny the request for indemnification money for the BCPOA equal to that given to VR.

### **General Manager Update**

**Village Road:** Mr. Hanks presented the Board with the annual update on Village Road, referring to the materials in the Board Packet. This year, at a minimum, the work requested includes 7 full-depth patches, milling and replacing where there is surface damage, and roughly 600 feet of drainage work. The recommended minimum repairs have an estimated cost of \$180,800. \$188,200 is in the budget. There is also \$318,500 budgeted for overlays on Borders Road, Borders Spur Road, and Highline Drive. This work is currently out to bid. At the July meeting the bids will be in for all of the road projects, including patching and drainage, and a decision can be made. The decision could be made to delay the Borders Road overlay to accommodate for the construction of the Connector Road should that project move forward. Additional patches are requested estimated at \$73,000, if they are not done this year they should be completed before the overlay next year. Next year full depth patching would take place before overlaying. If everything was completed this year it would cost roughly \$250,000, \$188,000 is in the budget. Typically patches that need to be completed have been, with those identified as needing to be taken care of next year being put off until the following year. Repairs take place in the fall because roads are drier. Actual estimates could come in lower. If VR does not respond the decision will be made and overlays will be completed as planned. \$185,000 of contingency money has already been committed to guardrails.

The issue of construction parking was discussed. Parking for deliveries and construction is inconvenienced during overlays. Mr. Luker inquired how construction parking is handled. Mr. Hanks responded Overlay work is scheduled ahead of time and at least 6 weeks notice is given. Construction traffic is monitored by Public Safety. There have been multiple parking issues

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with construction vehicles at 319 Holden. Mr. Parker noted the project has been fined many times.

**ERFPD Contract Renewal:** Mr. Hanks reported he and Director Gary will be meeting Friday to resolve specific line items and will meet with ERFPD shortly after.

**Guardrail Update:** There have been some delivery issues. The plan is to install the guardrail right after Labor Day. The bids are out for stonework. Mr. Baker recommended Castleton be contacted as BCRC has been very happy with their work.

**Encroachments:** An encroachment agreement is expected from 392 Holden Road. Work done at the property damaged the sub drains that were installed two years ago. In addition they altered the grade of the drainage ditch. The project was shut down and the homeowner has agreed to make the necessary repairs to meet our specifications.

176 Holden has asked for an encroachment that would add a garage that would come right to the BCMD easement. Official plans have not yet been presented to the DRB.

Comcast is installing additional fiber cable which will involve a road cut on Scott Hill Road. This will take a day, which will occur after the 4<sup>th</sup> of July weekend.

**Striping:** Striping of the roads has just finished. One issue which was examined was taking a look at the striping at the Prater Road curve. If you come up Prater to turn right the acceleration lane would be lost. The striping was going to be changed but a closer look revealed the old lines would need to be removed which involves painting over or grinding them out. Mr. Hanks saw next year, when the overlay occurs as the right timing for re-striping the curve. Mr. Baker noted the safety of the improvement of the curve outweighs the aesthetics of removing the old lines. Mr. Hanks noted the striping company has come and gone. Mr. Baker stated his opinion that making a constant radius is more important and should be considered. Currently there is a decrease in radius that demands a constant turning of the steering wheel. A change in striping would create a constant radius and more pleasant driving conditions. It was discussed to change the striping now, as an experiment before the overlay takes place next year.

**Highway 6 Widening:** Mr. Hanks referred to the packet. A thank you was received from CDOT for the \$12,000 commitment toward the widening of Highway 6. This will be a 2014 expenditure.

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

**Pro Cycling Challenge:** The Pro Cycling Challenge will be holding a finish in Beaver Creek on August 22<sup>nd</sup>. The race will be coming from Steamboat and will come in the main entrance, take a right on South Holden Road, a left on Borders Road, head up Strawberry Park, through Bachelor Gulch and will come back to Beaver Creek on Prater Road finishing by Centennial Station. There will be road closures from 2 to 4:30 pm, possibly a shorter time. There will be a time earlier in the day that there will be no access south of Avondale Road. There is a detailed plan in place and communication will be going out to homeowners in the next two weeks. There will also be a citizens' ride that will not involve road closures.

**Tree Replacement:** Aspens in the island by the Covered Bridge have died and are being taken out. BCMD is contributing \$1,500 out of its maintenance fund toward the replacement of these trees.

### Legal

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

### Financial Statements

Mr. Marchetti noted a turnover in personnel affected commercial appraisals, which included 200 and 300% increases for hotel properties. Tax collections move forward until cases are settled. Mr. Marchetti will track major appeals. Those who win appeals receive a rebate with interest. Mr. Marchetti will provide an allowance at budget time related to properties on the appeals list. Mr. Marchetti's projection for the end of the year, without construction of a Connector Road and with the Borders Road overlay, is \$4.6 million. 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 May 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.

### Executive Session

Upon motion duly made and seconded, it was unanimously

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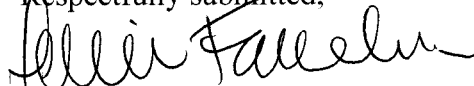
**RESOLVED** to enter into executive session citing §24-6-402(4) (a) C.R.S. for the purpose of determining positions subject to negotiations related to the acquisition of property for a new fire station; The Board entered into executive session at 10:30 a.m. and adjourned the executive session at 11:08 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 June 26, 2013

Respectfully submitted,



Jennie Fancher

Secretary for the meeting