
RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS BEAVER CREEK METROPOLITAN DISTRICT April 27, 2005

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., April 27, 2005 in the Conference Room of the Beaver Creek Club, Beaver Creek, Colorado.

Attendance

In Attendance were Directors:

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

Absent and excused was Director:

- Tommie Campbell

Also in Attendance were:

- Larry Grafel, General Manager
- Ken Marchetti, CPA, Secretary
- Kathy Lewensten, Robertson & Marchetti, P.C.
- Bill Simmons, Village Operations
- John Garnsey, COO Beaver Creek
- Tony O'Rourke, BCRC
- Jim Telling, East West Development
- Don Perozzi, Bach Gulch Metro Dist Board Member
- Constance Irons, Bach Gulch Metro Dist Board Member
- Joe Hinds, Bach Gulch Property Owner
- Ginny Forstmann, BCPOA
- Jim Funk, BC Public Safety
- Mr. Brian Nolan, BCRC Board Member
- Mr. Jim Donahoe, BCRC Board Member
- Anchor Point representative

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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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 member of the Beaver Creek Communications Committee; 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 March 26, 2005 Regular Meeting. Upon motion duly made and seconded, it was, unanimously,

RESOLVED to approve the minutes of the March 26, 2005 Regular meeting.

Future Meetings

No changes were made to the meeting schedule; the next meeting will be Wednesday, May 25, 2005.

Agenda Changes

Mr. Grafel informed the Board that Mr. Garnsey will be making the presentation regarding BC Landing Lot 4 Access instead of Ms. Canada.

Public Input Access Issues

Village Walk Tract M: Mr. Telling appeared before the Board to present an update on the Village Walk Project. He also wished to request a temporary access easement for the project. A memo and sketch were included in the packet.

He explained the Developer anticipates beginning work on 26 home sites in late spring. The existing utility lines utilized by the District will need to be relocated as part of the infrastructure improvements. Mr. Telling explained the relocations will be done at no cost to the District and appropriate easements will be provided.

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The sewer line will need to be abandoned for most of the summer during relocation. Mr. Telling stated that during the disruption a holding tank will be provided to the fire station with the Developer covering all costs related to the tank such as placement, removal, ongoing maintenance and regular pumping while it is in place. The Board requested that the maintenance and pumping be done regularly, preferably once a week or more often if required. It is anticipated that the water service will remain uninterrupted during relocation except for two half day periods. The developer will give proper notification to those affected prior to any interruptions.

Mr. Telling explained that the relocation of the water line was part of the reason they would like to request a temporary access easement through the fire station area. If the temporary access is granted the current service center bridge can be closed to expedite the relocation of the utility lines. The temporary access would be the main access to Beaver Creek Mountain during construction. The timeframe for the temporary access is anticipated to be from the middle of May through July Fourth. The access will allow safety/fire vehicles and employees access to the mountain, as well as other Beaver Creek traffic such as employees of the maintenance facility. Mr. Telling explained that single lane traffic on the bridge and on Elk Track will be needed as part of the traffic control plan during the project. It is hoped that the single lane closures would not last past the early part of June but they will definitely be done no later than the fourth of July. There will be appropriate traffic controls, including flaggers in place during the single lane closures. The Board asked that some sort of notification device such as an alarm or flashing lights be utilized by the fire station to alert traffic control of any fire emergencies to allow unimpeded access out during construction.

The Board asked if the Elk Track home owners had been contacted regarding the traffic control plan and single lane closures. It was reported that they had been contacted and had provided input. The Elk Track Homeowners had asked that delays be kept to a minimum. The Board asked that two lanes of traffic be restored after work hours when possible. Mr. Telling reported that he had reviewed the traffic control plan with Ms. Gill-Mulson of ERFPD and had received verbal approval of the plan. The Board concluded it was agreeable to the temporary access with the

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following conditions; the work is to be completed by July fourth; there will be a notification device put in place for the fire station; the Elk Track single lane closures will be kept to a minimum and be put back to two lanes after work hours when possible; the mud be removed from the roadways daily; a contingency plan be provided for the utility relocates in case of unforeseen circumstances; and the appropriate insurance coverage be in place. The Board then asked Mr. Telling to provide to Mr. Grafel a written summary of the discussion for review by the District, ERFPD and the Elk Track Home Owners. Upon motion duly made and seconded, it was unanimously

RESOLVED to approve and authorize execution of a temporary access easement through the fire station area to Beaver Creek Tract M, Lot 2, Village Walk as discussed including appropriate indemnification, sign off by ERFPD, sign off by Elk Track Homeowners, and subject to final review by counsel.

BC Landing Lot 4 Access: Mr. Garnsey presented four different access options to BC Landing Lot 4 as provided in the sketches included in the packet. He explained that after review by the traffic engineers for Bachelor Gulch Metro District (BGMD) and Vail Associates (VA) two options remained on the table for discussion, these are "1D" and "19revised". In option "1D" the traffic would enter with a right turn from Prater road and exit with a right turn onto Bachelor Gulch Trail. In option "19revised" the traffic enters and exits on Prater Road. Mr. Garnsey asked the Board for input on the two remaining options.

The Board asked why the access issue was before it, noting the property was included in BGMD not BCMD. It was explained that BGMD and the District have overlapping easements related to Prater Road and the options under discussion involve Prater Road. Mr. Collins stated that due to the overlapping easement the access appears to require approval of the District. Mr. Perozzi explained that BGMD had expressed concerns about adding more traffic onto Bachelor Gulch Trail and Ms. Irons indicated that option "19revised" was currently favored by BGMD. Director Forstmann expressed safety concerns regarding both options. Director Wells expressed frustration with the current design of the round-a-bout on Prater. Mr. Garnsey explained that time had run out last fall

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prior to completion of the round-a-bout. He stated the round-a-bout will be modified and completed this year as designed to meet roadway standards. The Board was asked about allowing construction access, both in and out, from Prater Road even if "19revised" was not the access chosen. Director Friedman pointed out that option "1D" appeared to be more of a compromise since the traffic entered from Prater which impacts the District and the traffic exits onto Bachelor Gulch Trail impacting BGMD. It was noted that traffic control could be put in place for the construction traffic regardless of which option was chosen. After further discussion the Board consensus was that option "19revised" was not a preferred option; option "1D" may be supported if all other issues of concern can be resolved to the satisfaction of the districts. The Board tabled the matter and asked for the District's input to be presented to BGMD at their continued meeting on Monday with a report made back to the Board.

General Managers Update

Eagle-Vail Admin/Maint Facility: Mr. Grafel handed out copies of a revised \$1.95 million proposal received yesterday from Hyder for the maintenance facility. Directors Forstmann and Wells explained they had met with Mr. Grafel and Tom McLagan, President of Hyder Construction to discuss the project. After reviewing the March 31 \$1.75 million proposal from Hyder it appeared that due to the proposed changes in the design of the structure there would have been over \$100,000 in additional design and specification revision costs bringing the cost up to approximately \$1.85 million to build a substantially reduced facility. There also would have been a significant delay in the start of the project due to time needed for the redesign and reapplication for a building permit. Taking this into consideration Director Wells, Director Forstmann, and Mr. Grafel met with Tom McLagan, President of Hyder last Friday to see if there was a compromise that could be reached to build the facility closer to the original design.

After incorporating the value engineering and scope reductions as described in the revised proposal presented today Hyder is willing to construct the proposed facility for \$1.95 million. Director Friedman expressed concern that there had not been sufficient time to review the latest proposal. He expressed frustration in trying to understand what was being included or excluded from the original

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design since several variations of proposals had been reviewed. He observed that if the current proposal was basically the same proposal that had been presented at the March meeting that he was unsure what the District had accomplished except a delay in the process of getting started. Director Forstmann stated that the original building had been over-designed for the \$1.65 million that the District had budgeted. He explained that the additional review process had been necessary to verify that the District would receive a fair value for the \$1.95 million price. Director Forstmann's recommendation was to approve the proposal as submitted. He stated it was his understanding after questioning Mr. Grafel that the building will be functional. Upon motion duly made and seconded, by a vote of 3 ayes and 1 opposed (Director Friedman due to not having sufficient time to review) it was

RESOLVED to approve proceeding with the revised proposal as submitted by Hyder Construction for \$1.95 million.

The Board asked about the timeframe for obtaining a signed agreement with Hyder. Mr. Collins explained the contract documents have been provided to Mr. Grafel and Mr. Donaldson, and that the attached specifications will need to be revised to reflect what was presented today then it will be ready for execution. The Board asked that the pay applications and work in progress draws be approved by an "owners representative" not the architect. The construction management fee was discussed as it applies to Victor Mark Donaldson Architects (VMDA). Mr. Grafel stated that the District still had a \$6,000 retainer fee being held by VMDA he anticipated drawing upon this retainer for the construction management fees based on a time and material basis.

Legal

Mr. Collins stated there were no legal issues that needed action at this time.

UERWA

Director Friedman reported a letter had been sent to Director Wells and the BCMD Board from the Town of Minturn requesting support for their application to the Colorado Water Conservation Board to increase the minimum stream flow. Director Friedman explained this was a complex issue which is being reviewed by the UERWA at the next meeting and suggested the District wait until after the UERWA meeting for more information regarding the

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matter. The Board directed Mr. Grafel to respond by letter to the Town of Minturn thanking them for their letter noting that it is a complex issue and stating the District does not see a need for any action at this point.

The changes in the Rules and Regulations which were included in the packet were discussed. Director Friedman and Mr. Collins indicated that the changes primarily concerned the definition of common space and appear to be fair and appropriate. After review the Board expressed no objection to the changes.

Financial Statements

Mr. Marchetti reviewed the March 2005 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

RESOLVED to approve the March 2005 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.

Tract Q Cost Share

Directors Friedman and Mielcuszny had met with Mr. Garnsey and presented the Districts position regarding Tract Q cost sharing. The position of the District is to agree to reimburse all outside costs incurred through April 30, 2003, which total \$260,676.15, of which the Districts 22% portion would be \$57,348.76. Mr. Garnsey asked to be allowed time to review the May, June, and July 2003 invoices from RNL to see if any of the costs were applicable to that time frame before responding.

Other Business

The Board had received a letter from the BCPOA asking for the Board to revisit the 3% treasurer fee charged by Eagle County for collection of taxes. Mr. Marchetti reported that Western Eagle County Metropolitan Recreation District (WECMRD) had expressed an interest in taking the lead on approaching the Eagle County Commissioners with a request to revisit the matter and

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suggested the District may be able to work in conjunction with them regarding the matter. He will contact them and report back to the Board.

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 positions and developing strategy relative to matters under negotiation. The Board entered into Executive session at 10:45 a.m. and returned at 10:55 a.m.

**Wild land
Fire Mitigation:**

Director Wells started the joint discussion between BCMD and the BCRC Board members in attendance, Mr. Garnsey, Mr. Donahoe, and Mr. Nolan, by stating that the Board had suggested a joint meeting as it felt it would be beneficial to meet face to face to discuss the Wildland Fire Mitigation Plan. Director Wells stated the Board had been under the notion the plan was to be a partnership but that currently the Board felt slighted by the comments made at the March meeting questioning the value added by the District. The Board expressed concern that over the past few months they have not been better informed regarding changes or revisions to the plan and remain unclear as to what exactly is being prepared to be presented to the County.

Mr. Garnsey replied it was not the intention of BCRC to treat the District disrespectfully or to not include the District as an equal partner in the process. He explained BCRC is interested in having the plan move forward expeditiously and in doing so may have gotten ahead of the process. He asked the Board to consider moving forward with a clean slate. The Board agreed and noted that the District's role as the entity responsible for providing fire protection makes it logical that it should take an equal and active part in the process, perhaps even a lead role.

Prior to the March meeting the Board had been presented with a draft resolution which had been prepared by BCRC counsel to be presented to Eagle County. On behalf of the District Mr. Collins had provided comments and requested several changes. The document presented in the March board meeting packet did not contain any of the changes. When the Board questioned Mr.

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O'Rourke if the changes would be included he had indicated they would be, however the District remains uncomfortable with the process. Director Wells stated the District would prefer to undertake making the changes recommended to the draft resolution and will present the revised document back to BCRC.

The Board wished to briefly discuss two issues, one was the defensible space criteria definition, the other was enforcement. The Board asked if it was possible for them to contact Anchor Point directly to have concerns and questions regarding the defensible space definitions and documentation answered directly, Mr. Garnsey stated that would be fine. The representative from Anchor Point provided the Board with his contact information. The two options available for enforcement would be to allow the County to enforce the plan or for the District to appoint a representative for enforcement. Mr. Garnsey stated that after considerable review BCRC Counsel had recommended using the County as the enforcement agency due to the fact that they would have ultimate authority over any plan. Director Forstmann offered his opinion that it would be better to have the community regulated by itself since the County did not currently have the level of staffing that may be required and could make changes without input from Beaver Creek. It was suggested that both alternatives should be explored to see which would be more beneficial to the Beaver Creek community.

A recommendation was made that representatives from both Boards meet to review and complete the documentation that is being prepared for presentation to Eagle County. Once the plan is in a more definite form, then the method of enforcement could be reviewed in more detail since what needs to be enforced will be more clearly defined. After this step is taken the matter will be brought back to a later meeting.

The Board suggested BCRC and BCMD consider having joint meetings throughout the coming year to maintain better communication between the boards regarding all pertinent issues. The BCRC representatives agreed.

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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 April 27, 2005.

Respectfully submitted,

Kathy Lewensten
Secretary for the meeting