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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 22, 2008

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., October 22, 2008 in the Conference Room of the District Administrative and Operations Facility, Eagle-Vail, Eagle County, Colorado.

### Attendance

In Attendance were Directors:

- Mike Balk
- Robert Gary (via phone)
- Ernie Elsner (via phone)
- Louis Kreig
- James Power

Also in Attendance were:

- Clyde Hanks, General Manager
- Jim Collins, Esq. District Counsel
- Ken Marchetti, CPA, Robertson & Marchetti, PC
- Kathy Lewensten, Recording Secretary
- Heather Nolan, Administrative Assistant
- Dawn Friedman, BCPOA
- Bill Simmons, BC Operations
- Tony O'Rourke, BCRC
- Ludwig Kurz, BCRC
- Chief Charlie Moore, Eagle River Fire Protection District
- Jay Rosenbaum, BC Property Owner
- Toby Daniels, GH Daniels

### Call to Order

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Director Kreig, Acting Chairman of the Board, noting that a quorum was present. Director Kreig 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

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Association; Mr. Michael Balk is a member of the Board of Directors for Beaver Creek Property Owners Association and a director of the Vilar Center for the Arts; Mr. Robert Gary is a member of the Board of Directors for Beaver Creek Property Owners Association and the Vilar Center for the Arts Committee; and Dr. Louis Kreig is a member of the Board of Directors for 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 August 27, 2008 Regular Meeting. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the minutes of the August 27, 2008 Regular Meeting as presented.

### Future Meetings

The Board reviewed the 2008 meeting dates schedule included in the packet. The next meeting will be Wednesday, November 19, 2008 at the same time and location.

### Agenda

No changes were made to the agenda.

### Public Input

Chief Moore explained ERFPD has purchased a new ladder truck and would like to retire the old 1981 ladder truck. The District owns one-third of the 1981 truck. A memo regarding the matter had been included in the board packet. Chief Moore provided photographs of the old and new trucks. He explained the old truck was in need of approximately \$50,000 in repairs to bring it up to standards for certification. If the repairs were completed the value of the truck would be less than the cost of the repairs. He was recommending the donation of the truck to the Northeast Teller County Fire District in Woodland Park. They are a small department with a small budget and have expressed interest in accepting the truck as is with the intention of completing the repairs to certify the truck. Director Powers asked if there was any future benefit to keeping the truck in the District. Chief Moore

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stated he did not see any due to reliability issues. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to agree to disposal of the District's one-third interest of the 1981 Ladder Truck as described by Chief Moore.

### Beaver Creek Beautification "Resortscape"

Mr. Hanks reported the Resortscape committee had met yesterday with Design Workshop to finalize the master plan and report. A field trip to a Lake Creek property had been taken to review examples of stream projects. Director Balk explained there were several phases and sub projects within the plan. Once the cost estimates are known the projects can be prioritized. It was reported BCRC has removed funding for implementation of the plan from their 2009 budget due to concerns regarding the economy and the effect it will have on sales tax and RETA revenues. It is expected BCRC will be able to determine whether any 2009 funds may become available for the project in February. The District will leave the 2009 funding for the project in the budget at this time subject to review as more information becomes available regarding BCRC funding. Design Workshop is expected to make a presentation of the master plan at the BCRC annual meeting on November 29<sup>th</sup> and the BCPOA meeting in December.

### General Manager Update

**Avondale Sidewalk:** Mr. Hanks reported the Avondale Sidewalk project has been transferred to BCRC and work has begun. It is expected the project will be complete before the ski season begins.

**Village Road Sidewalk:** Mr. Hanks reported repair work on the colored concrete sidewalk along Village Road is underway. An epoxy type coating is being applied to the sidewalk to see if this will adequately address the problems. The repairs are being done at no additional cost to the District. Once the repair is complete the two year warranty period will begin.

**Fire Station:** Mr. Hanks reported the heating system boiler that had been installed in the Fire Station earlier this year was not

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appropriately certified by the State and has to be replaced. The contractor who installed it has ordered a new boiler which will be installed at no cost to the District. Mr. Hanks stated if any fines are levied by the State to the District he will request the contractor pay for those too.

**TOA Transit Agreement Review:** Mr. Hanks noted McMahan & Associates, LLC has provided an Independent Accountants Report regarding the TOA transit agreement review. A copy was included in the packet. Mr. Hanks reported he has provided a copy of the report to the TOA requesting a recalculation of the final invoice amount. As of today the District has not received a response from the TOA.

## **Encroachment**

Mr. Hanks introduced Mr. Rosenbaum, owner of 71 Highline Drive, who is requesting an encroachment. A memo had been included in the packet regarding the matter. Mr. Rosenbaum explained after purchasing the home in March 2007 he hired GH Daniels to landscape the area by the stream. GH Daniels had planted perennials, created a stone walkway and installed a flagstone patio by the stream. He stated no modifications were made to the natural stream flow. In October 2007 DRB sent a letter to him noting no encroachment existed for the improvements. It has been confirmed the work was done without appropriate approvals from DRB or an encroachment agreement from the District. The Board asked Mr. Daniels if he had been aware of the necessary approvals and encroachments that were needed. Mr. Daniels stated their firm was not familiar with the approval requirements in Beaver Creek. The Board expressed dismay that a contractor would not contact the DRB prior to installation of a project to check on appropriate procedures and approvals.

Mr. Rosenbaum began working with Mr. Hanks earlier this summer to obtain an encroachment. Mr. Hanks explained he had denied the encroachment on the basis the District does not allow structures within its easements. In this case the structure is the flagstone patio. Mr. Rosenbaum was in attendance to appeal this decision. Mr. Rosenbaum explained he does not feel his landscaping and patio improvements are any different than surrounding lots. He presented pictures of other landscaping on lots in the area for comparison. He stated he did not feel it would be appropriate to single him out for compliance if the other lots did

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not have encroachments either. The Board expressed concern that by allowing a deviation from the policy a precedent may be set that is not intended.

The Board stated the property owner was appearing before the Board to ask for "approval" after the improvements had been installed leaving the District in an undesirable position. Mr. Hanks reminded the Board that in a prior encroachment appeal the District required the property owner to hire a stream specialist to restore the stream to the natural state by removing portions of the improvements. Mr. Kurz stated the DRB requires property owners to obtain any needed encroachments prior to approval of improvements to help manage the impacts to the stream flows and to attempt to keep the areas as natural as possible, not manicured lawns. It was noted that whether there is an encroachment agreement or not if the District needs to do work within the drainage easement which disrupts any property owner improvement it would not be the District's responsibility to repair the improvements.

Mr. Rosenbaum asked the Board whether it intended to enforce compliance with the encroachment policy on all properties within the District noting there may be several besides his that did not have appropriate encroachments in place. The Board requested input from Mr. Collins regarding available options in the matter. Mr. O'Rourke asked if there may be a way to grandfather existing improvements in while retaining the right moving forward to impose the encroachment policy. Mr. Collins suggested the District consider the options available in executive session.

The Board agreed to table the matter to allow time to review the present encroachment request in more detail and to obtain further information regarding options available. They explained to Mr. Rosenbaum they will contact him when they are ready to further discuss the matter.

## 5th Amendment Inter-village

The Fifth Amendment to Inter-village Transportation System Agreement had been included in the packet. This agreement covers the inter-village routes between Bachelor Gulch, Beaver Creek and Arrowhead. The percentages for Beaver Creek have

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remained the same. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the execution of the Fifth Amendment to Inter-village Transportation System Agreement.

**7<sup>th</sup> Amend DAR  
Transportation  
Agreement**

The Seventh Amendment to First Restated and Amended Transportation System Services Agreement had been included in the packet. This agreement provides for the Dial a Ride services (DAR). Upon motion duly made and seconded, it was unanimously

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

**Parking Lot  
Agreement**

The Transportation system Agreement (Parking Lot) had been included in the packet. Mr. Hanks explained the District will now contract directly with The Vail Corporation to provide the parking lot service instead of the Town of Avon. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the execution of the Transportation system Agreement (Parking Lot).

**Town of Avon  
Service Agreement  
(Maintenance)**

Mr. Hanks referred to the Service Agreement with the Town of Avon which had been included in the packet. This agreement covers the maintenance for the Districts vehicles and equipment. The 2009 proposed hourly service rate is \$105 per hour as compared to the 2008 rate of \$100 per hour. Upon motion duly made and seconded it was unanimously

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**RESOLVED** to approve the Service Agreement for the Districts Vehicles and Equipment for a term through December 31, 2009.

**Town of Avon**  
**Service Agreement**  
**(Parking)**

Mr. Hanks presented the Service Agreement with Town of Avon (TOA) for parking of the District buses. Since the District has contracted directly with VR for the parking lot bus service operations the TOA is charging the District to park the buses at the Swift Gulch Facility. Director Kreig asked about liability issues if the buses are moved by TOA personnel. Mr. Collins stated the TOA would be responsible in such an instance. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the Service Agreement for parking of the Districts buses. The term of the agreement is month to month from November 20, 2008 through April 13, 2009.

**Legal**

**Identity Theft Resolution:** Mr. Collins recommended the Board consider taking action to addresses the new Federal Identity Theft Prevention Policy rules that will take effect on November 1, 2008. He suggested language for the motion. Upon motion duly made and seconded, it was unanimously

**RESOLVED** that the Board of Directors acknowledges that it bills a water surcharge through the Eagle River Water and Sanitation District, and that the Federal Trade Commission requires, pursuant to its Identity Theft Rules, that utilities adopt Red Flag Policies to prevent and mitigate identity theft. To that end, the Beaver Creek Metropolitan District acknowledges that the Eagle River Water and Sanitation District, its billing agent for the purposes of the water service fee surcharges, has adopted an Identity Theft Program; and that Program is hereby adopted by reference by the Beaver Creek Metropolitan District.

**UERWA Resolution:** Mr. Collins referred to the resolution that was included in the packet that was requested by UERWA. He explained the UERWA would appreciate support from the various

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entities for continued use of the combined water rights to the benefit of all entities in the authority. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the resolution related to UERWA matters as presented, which is hereby attached to become part of the minutes.

### **2009 Budget**

This meeting had been published for the 2009 budget hearing. The public hearing was opened. Mr. Marchetti referred to the 2009 preliminary budget included in the September 2008 financial statements in the packet. He explained the numbers had changed slightly from the 2009 preliminary budget presented at the October 13<sup>th</sup> work session. Mr. Hanks referred to the road overlay memo in the packet noting the project costs that were anticipated in 2009. Ms. Friedman asked if funds had been budgeted in 2009 to complete the Strawberry Park Road overlay. Director Balk explained the District is looking into a matter that may require the 2009 overlay funds to be distributed to a higher priority project which may cause the Strawberry Park overlay to be delayed for another year. He explained more will be known in the spring after further studies have been done on the road segment in question. Mr. Hanks reported he is working on obtaining costs for an upgrade to the snowmelt systems and any possible cost sharing that may be available. The Board tabled further discussion on the 2009 budget and continued the public hearing to the November 19, 2008.

### **Bond Refunding**

Mr. Marchetti reported that he has delayed looking any further into a potential refunding of the Districts 1998 bonds. He explained due to the recent changes in the economy the market remains very volatile. He will continue to monitor the market and will report back if it appears the District would benefit by refunding the 1998 bonds at a later date.

### **Financial Statements**

The Board reviewed the September 2008 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the September 2008 preliminary financials as presented.



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**Accounts Payable** The Accounts Payable listing was reviewed. Mr. Hanks explained he had requested more information regarding the legal invoice from Porzak, Browning & Bushong for water matters. Mr. Collins explained Mr. Porzak represents local entities including the District regarding water matters. Mr. Porzak files the necessary legal paperwork including statements of opposition on behalf of the Districts and then splits the costs evenly between the entities. The invoice reflects the Districts portion of the invoice charges. Mr. Collins has requested a budget from Mr. Porzak for future expenses. Upon motion duly made and seconded, it was unanimously

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

**Other Business** Ms. Friedman reported on the ongoing legal matter between Bachelor Gulch Metro District (BGMD) and the BCPOA. She reported negotiations regarding the matter were not successful so the matter is scheduled to be heard by the courts in December. BCPOA anticipates the ruling will find legal expenses incurred by BCPOA for the matter will need to be reimbursed by BGMD.

Mr. Simmons informed the Board that Mr. Funk resigned his position. He is currently interviewing candidates to fill the vacancy. Ms. Friedman asked about the status of the emergency evacuation plan for the District. Mr. Simmons stated the plan was with the consultants for final drafting and is expected shortly.

**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 determining positions related to encroachment matters. The Board entered into executive session at 10:15 a.m. and returned at 10:50 a.m.

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

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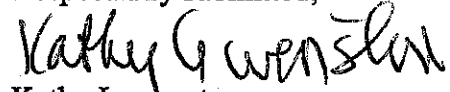
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**RESOLVED** to adjourn the Regular Meeting of the Beaver Creek Metropolitan District Board of Directors held on October 22, 2008.

Respectfully submitted,



Kathy Lewensten

Secretary for the meeting