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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 August 24, 2011

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., August 24, 2011 in the Conference Room of the District Administrative and Operations Facility, Eagle-Vail, Eagle County, Colorado.

### Attendance

In Attendance were Directors:

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

Also in Attendance were:

- Clyde Hanks, General Manager
- Jim Collins, Esq, Collins Cockrel & Cole
- Ken Marchetti, CPA, Robertson & Marchetti, PC
- Jennie Fancher, BC Admin Assistant,
- Kathy Lewensten, Recording Secretary
- Bill Simmons, Director of Operations
- Dawn Friedman, BCPOA
- Tim Baker, BCRC Executive Director
- Paul Heding, Land Design by Ellison
- Glen Palmer, Alpine Engineering, Inc
- Jim Kaylor, BCRC Board Member

### 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. 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

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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, 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 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 July 27, 2011 Regular Meeting. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the minutes of the July 27, 2011 Regular Meeting.

### Agenda

No changes were made to the agenda.

### Future Meetings

The next regular meeting is scheduled for Wednesday, September 28, 2011 at the same time and location.

### Public Input

**60 Wayne Creek Rd:** Mr. Heding stated he wished to request reconsideration or reduction of the \$10,000 fine imposed at last months meeting. He reiterated an encroachment agreement was approved by the District based on the original plans prior to the beginning of construction and provided copies of the encroachment and drawings depicting the changes made. He again apologized for moving forward with the realigned boulder walls before receiving approval on an amended encroachment agreement. The Board pointed out the fact the project did not follow proper procedure, noting a fine is appropriate in such circumstances. The matter was tabled for further discussion in executive session.

### General Manager Update

**Prater Rd Realignment:** Mr. Hanks reported Marcin Engineering has incorporated comments from two meetings into drawings for the Prater Road realignment. He will be scheduling a meeting for review by the committee for final comments.

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**Fire Station:** Mr. Hanks reported a meeting has been scheduled with Mr. Lovell and Mr. Iskenderian to begin discussions/negotiations regarding the parcel up by the VR maintenance center.

Director Power reported Mr. Myers and Mr. Dalton, Elk Track Homeowners, have requested a meeting with District representatives to present their point of view and “background material” related to the “agreement” that has not yet been produced. The Board was receptive to such a meeting.

**ISO Rating:** Mr. Hanks stated the ISO consultant is still waiting for some additional information regarding building heights before looking closely at whether it would be beneficial for Beaver Creek to obtain its own ISO rating.

### Roadways

Mr. Hanks reported B & B and Elam had bid on the paving projects for this year. He referred to the memo and bid tab in the board packet. He pointed out individual bids for sections of the project had been obtained so the Board could determine which parts of the project it wishes to proceed with. The base bid is for patching on Village Road with some drainage improvements; Alternate A is for additional patching along Village Road; Alternate B is for a partial overlay of South Holden Road from Village Road to Borders Road; Alternate C is for a full overlay of Holden Road. He recommended at a minimum to accept the base bid and Alternate A. The District has \$553,000 available in the 2011 budget for the project. If the entire project is accepted the cost would be approximately \$510,000.

The Board discussed whether construction traffic related to construction of two new homes on Holden Road would have a negative impact on a full overlay. Mr. Palmer stated the effects would not be extreme. Director Elsner asked if any consideration had been given to including an overlay of Holden Place Road in the project. Mr. Palmer explained it had not been included since during review of the roadways it was determined it was not in too bad of shape. He stated an estimate to include it could be requested. Mr. Hanks pointed out one benefit of doing a complete overlay would be cost savings related to incremental costs such as mobilization of equipment and bidding expense.

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Director Elsner asked about Alternate A and the need for additional patching on Village Road. Mr. Palmer explained this alternate bid included patching deteriorating areas which are not expected to last through another year. Mr. Hanks reminded the Board of the large pothole that developed this past winter noting the areas included in the alternate bid are the type that are expected to be susceptible to such dramatic deterioration. He stated CTL had been consulted for a second opinion on the areas.

The Board discussed the pros and cons of completing the whole project. Director Elsner expressed a desire to do the Base Bid and Alternate A and nothing on Holden Road at this time. This would allow time for the District to better assess its future financial position as more is known about the decreasing assessed valuation. Director Kreig agreed stating he felt Holden Road was in good enough shape the overlay could be delayed for a year. Director Balk stated he did not see a benefit to waiting since the District had budgeted for the expense. A motion was made and seconded to proceed with doing the entire project, by a vote of three (3) Ayes (Directors Balk, Gary and Power) and two (2) Nays (Directors Elsner and Kreig) it was

**RESOLVED** to accept B & B Excavating Inc.'s bid in the amount of \$509,577.13 which includes the Base Bid, Alternate A and Alternate C.

### General Manager Update Con't.

**Pond Dredging:** Mr. Hanks stated historical information regarding responsibility for costs related to the dredging of the pond on Hole 18 is inconclusive. The District's storm water drainage plan would not require a pond in that location however the vault located by the pond is directly related to storm water drainage for the District. In 2000 District staff was utilized to dredge the pond however they do not have the proper equipment nor time to do the job now. The District shared the cost of the aerator in the pond with the BC Golf Course some years back. The estimate for the pond dredging is approximately \$33,000. The vault should also be cleaned out. The estimated cost for this is approximately \$5,000 to \$10,000. Director Kreig pointed out the BC Golf Course is responsible for covering the full cost of dredging the pond on Hole 12. He suggested the District pay for the cleaning of the vault and one half of the dredging of the pond on Hole 18. After further discussion a

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motion was made and seconded to propose to the BC Golf Course a 50/50 split of the costs for dredging the Hole 18 pond and cleaning of the vault, by a vote of four (4) Ayes and one (1) Nay (Director Kreig) it was

**RESOLVED** to authorize Mr. Hanks to propose to the BC Golf Course a 50/50 split of the costs as discussed.

**Project Legacy Signs:** Mr. Hanks reported the sign project continues with signs being installed along Village Road and in the plaza area. Feedback so far has been generally positive however there is some concern the font on the directional signs may be a bit small.

**Insurance Claims:** There are no claims currently outstanding.

**Other Matters:** The Board wished to recognize the efforts of public safety in response to recent emergency situations. Their response efforts reflect a well trained and efficient staff.

### Financial Statements

The Board reviewed the July 2011 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to accept the July 2011 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.

### Transportation Matters

Mr. Baker presented his point of view of the transportation agreement noting he has not discussed the matter with the BCRC Board but will be doing so at their meeting tomorrow. He stated the 1999 Transportation Agreement was meant to be a mechanism for funding transportation services, not dividing them. He stated the agreement created an obligation for certain levels of funding

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for transportation services. He had consulted with BCRC Counsel who reviewed the May 1998 election question and interpreted it as allowing the District to impose a mill levy of up to 12.2 mills for transportation. The transportation mill levy is currently at 7.449 mills. He was asking the Board to consider increasing the transportation mill levy for 2012 to a level which keeps the property taxes collected the same as the amount collected in 2011. This would mean the transportation mill levy would need to be raised to approximately 9.3 mills in 2012. He stated this should not need the approval of voters, per his counsel's interpretation of the May 98 election question. He offered to not impose a common assessment in 2012 if the mill levy was increased. If the mill levy is not raised the common assessment will need to be imposed to cover the expected \$600,000 shortfall in transportation funding. He expressed a desire to work through the matter with the District.

Mr. Baker stated he had met with the BCPOA Executive committee yesterday to present his information. Ms. Friedman stated the BCPOA does not have an opinion at this time as this was new information and they have not had time to consult their attorney regarding the legal implications.

Director Elsner asked why a hotel tax increase was not being considered. Mr. Baker responded he feels the hotels contribute a fair portion now.

The Board tabled the matter for discussion in executive session.

### 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 subject to negotiations related to the imposed encroachment agreement fine and transportation funding matters. The Board entered into executive session at 9:50 a.m. and adjourned the executive session at 11:15 a.m.

Upon returning to regular session the Board determined no reduction will be made to the fine imposed on 60 Wayne Creek Road. Upon motion duly made and seconded, it was unanimously

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**RESOLVED** to confirm the fine amount of \$10,000 imposed on 60 Wayne Creek Road as set forth in the resolution hereby attached to become part of the minutes.

Mr. Hanks and Mr. Collins received direction from the Board regarding a letter that will be drafted to BCRC concerning transportation funding.

#### **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 August 24, 2011.

Respectfully submitted,  
*/s/ Kathy Lewensten*

Kathy Lewensten  
Secretary for the meeting