
RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS BEAVER CREEK METROPOLITAN DISTRICT March 19, 2008

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., March 19, 2008 in the Conference Room of the District Administrative and Operations Facility, Eagle-Vail, Eagle County, Colorado.

Attendance

In Attendance were Directors:

- Stephen Friedman
- Mike Balk
- Ernie Elsner

Absent and excused were Directors:

- John Forstmann
- Robert Gary

Also in Attendance were:

- James Collins, Esq. Collins Cockrel & Cole
- Ken Marchetti, CPA Robertson and Marchetti, P.C.
- Clyde Hanks, General Manager
- Kathy Lewensten, Recording Secretary
- Heather Nolan, Administrative Assistant
- Dawn Friedman, BC Property Owners Association
- Ginny Forstmann, BC Property Owner
- Jim Funk, BC Public Safety
- Bill Simmons, BC Operations
- James Power, BC Property Owner
- Louis Kreig, BC Property Owner

Call to Order

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

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member of the Beaver Creek Arts Foundation which operates the performing arts facilities within Beaver Creek; Mr. John Forstmann is a board member of the Beaver Creek Club; Mr. Ernest Elsner is a board member of the Beaver Creek Property Owners Association; Mr. Michael Balk is a director of the Beaver Creek Property Owners Association and a director of the Vilar Center for the Arts; and Mr. Robert Gary is a member of the Beaver Creek Property Owners Association and the Vilar Center for the Arts Committee. 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 February 27, 2008 Regular Meeting. Upon motion duly made and seconded, it was unanimously,

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

Future Meetings

The Board reviewed the 2008 meeting dates schedule included in the packet. The next regular meeting will be April 23, 2008 at 8:30 a.m. in the same location.

Agenda

Mr. Hanks reported Ms. Hoffman-LeBlanc had called with a request for more information regarding an apparent increase in the number of ski theft incidents noted in the public safety reports. He requested Mr. Funk address her concerns.

Public Safety

Mr. Funk responded to the above information request concerning the number of ski theft incidents. He agreed the number of reported events appears to have increased over last year. He noted 140 incidents are typical for a season. Generally, approximately half of the reported incidents involve rental skis. The skier inadvertently picks up a wrong pair of skis, then notices they are not correct and returns them. The incident is resolved and the skis are returned to the rental shop or appropriate party. The remaining incidents are investigated. If a party is caught with stolen equipment it is a felony charge. Throughout the season the various ski resorts keep each other informed if it appears any organized thefts are occurring. BCRC has allocated funds to install camera

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systems in the near future to help deter such incidents. Mr. Hanks will provide this information to Ms. Hoffman-Leblanc.

Public Input

No public comment was offered.

Beaver Creek Beautification “Resortscape”

Mr. Hanks reported four firms have expressed interest in providing a proposal for the “resortscape” project. The firms that responded to the Districts request were: Terrasan, Design Group, Land Designs by Ellison and EDAW. The next step will be reviewing the submissions and selection of the firms that will be asked to provide a proposal. Ms. Forstmann noted she was familiar with all of the responding firms and felt they were all qualified for the project. Mr. Hanks stated he would like to convene the working committee to review the responding firm’s qualifications in the next few weeks. The Board noted it needed to appoint the District representatives for the committee. Upon motion duly made and seconded, it was unanimously

RESOLVED to appoint Directors Balk and Elsner to the “Resortscape” working committee.

Mr. Hanks noted the other members of the working committee are Mr. Kurz, Mr. Hensel, BCPOA representative Ms. Forstmann and BCRC representatives Mr. Donohue and Mr. Kaylor.

General Manager Update

Roadway Easements: Mr. Hanks referred to the memo included in the packet concerning the Districts current snow plowing and road maintenance work on Vail Resorts property. There are currently no roadway easement agreements related to the roadway segments noted. He explained the segments were identified during the ongoing review of the Districts roadway easements. The memo outlined several options available for consideration by the District regarding continuation of these services. The Board asked if the work is performed under the operations agreement with VR. Mr. Hanks responded it was. The vehicles and equipment that are used are owned by the District and operated by VR employees under the operations agreement. VR and BCRC currently cover 15% of the BC municipal services costs with the District covering the

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remaining 85% through the operations agreement. These percentages were reviewed several years ago and at that time appeared accurate. The Board requested the percentages be reviewed and confirmed this fall during the renewal process for this operations agreement. The matter of liability for services performed on VR property was discussed. The Board expressed the view such services would be covered under VR liability since the staff is provided by VR and it is understood the staff may perform services directly for VR as part of their duties. Mr. Collins suggested a clarification letter could be sent to VR detailing the liability matter.

Mr. Hanks noted private roadways and related easements are being reviewed and should be ready for presentation and discussion at the next meeting.

Wayne Creek Commons Matter: Mr. Hanks asked the Board to consider acceptance of the Special Warranty Deed from Wayne Creek Commons Homeowners Association (WCCHOA) for Highline Drive. Mr. Collins explained this was an administrative matter as the District had provided a letter of acceptance for Highline Drive to WCCHOA in the past however the District had never received a formal dedication of the roadway. The District has historically been providing maintenance and snow plowing services on this roadway. The Special Warranty Deed would complete the acceptance process. Upon motion duly made and seconded, it was unanimously

RESOLVED to accept the Special Warranty Deed between Wayne Creek Commons Homeowners' Association, Inc. and the District for Highline Drive as described.

Avondale Sidewalk: Mr. Hanks reported on the Avondale Sidewalk project. He stated proposals have been requested from two engineering firms per the Board's direction at the last meeting. After review of the area, he has found the District does not currently have an easement or right of way at the location of the project. He stated the Charter appears willing to dedicate an easement to the District. The Board asked whether the Charter had been approached about possibly cost sharing the project. Mr. Hanks explained the Charter has not yet been approached since the scope or extent of the project is still unclear. BCRC has expressed

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a willingness to cost share in the project. Mr. Hanks reported the Poste Montane will be working on their front entry this year. They have stated they are open to providing an extension of the snowmelt system for a portion of the sidewalk on a cost share basis.

Road Overlay and Asphalt Patch: Mr. Hanks reported the budgeted asphalt patching and roadway overlay projects were bid out. Elam Construction provided the lowest bid. He referred to the memo included in the Board packet which detailed the bid. It was noted lower Prater Road had not been included in the bid. He was asking the Board to consider approving the bid so the work could be scheduled for the first few weeks of June.

The Board discussed the portion of the bid related to Prater Road. It was noted negotiations are ongoing with Bachelor Gulch Metropolitan District (BGMD) regarding cost sharing or responsibility for Prater Road maintenance and snowplowing. The Board requested time in executive session to review the matter.

Director Balk expressed concern regarding the portion of the bid related to the overlay of Upper Strawberry Park Road and Court. He explained that he does not think it is appropriate for the Districts taxpayers to fund approximately \$155,000 for overlays on roadways which are not readily accessible by all taxpaying constituents of Beaver Creek due to the presence of the access gate. He indicated the basis for his objection to the \$155,000 maintenance funding would be eliminated if the Strawberry Park residents agreed to allow Beaver Creek taxpayers to use the road. They could do this, for example, by allowing the current electronic transponders that open the main gates to open the Strawberry Park gates as well. He explained in this way, the "Beaver Creek Public", who are contributing to this maintenance, could use the roads that they financially support. He stated without that, irrespective of the legal status, the situation remains, in his opinion, morally unfair. He suggested that to rectify the situation, all the residents of Strawberry Park have to do is to agree to the above recommended provision that allows Beaver Creek taxpayers to use the road. He offered the opinion that to deny access creates, in effect, a two tiered Beaver Creek citizenship in which a de facto private road, serving a limited few, is paid for by the entire mass of taxpayers the Metro District represents. Director Friedman disagreed stating

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that Strawberry Park roads were similar to many roads in the District in that the nature of the roadways is for access by residents or their guests. The one difference is the existence of the construction road between Bachelor Gulch and Strawberry Park Road which creates the possibility of that being used as a through street between Beaver Creek and Bachelor Gulch, something never intended and not in the best interests of the Beaver Creek community. The gate at the foot of Strawberry Park Road not only reinforces the covenant regarding construction traffic but also serves to ensure that private traffic does not use Borders and Strawberry Park Roads as such a through route. Both the access gate and the construction roadway are subject to restrictions within non District related agreements which were reviewed as part of the ongoing litigation between BGMD, VR, BCPOA and SPHOA. The restrictions present in these agreements are not something the District has the ability to circumvent based on the rulings by the court in the BGMD matter. It was pointed out the taxpayers in Strawberry Park have a reasonable expectation the Strawberry Park Roadways will be plowed, maintained and resurfaced as needed since the District accepted the roadway some time ago and has historically provided snow plowing and maintenance. Director Friedman stated that he did not believe that the District should be changing its policy based on the amount to be spent for this proposed overlay, which had been included in the approved budget for this year. Director Balk requested time in executive session to further discuss the matter and take advice of counsel.

May 2008 Election

Ms. Lewensten reported the May 2008 Board election will be cancelled and the candidates will be declared elected as only two candidates applied for the two open seats. As of May 6 the newly elected Board Members will be Dr. Louis Kreig and Mr. James Power. The Board congratulated the two candidates and welcomed them to the Board. Their terms of office will begin after taking the oath of office at the May 28th meeting.

Public Safety

Mr. Funk handed out a memo which compared the wages of the BC public safety staff with fire wages from throughout the state. He explained the public safety positions are bit different in scope than a normal fire department position. He noted BCRC appears to be on the lower end of the salary ranges. He explained his staff is encouraged to complete their certifications in a timely manner

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which in turn increases their salary. The Board expressed concern regarding the caliber of the applicants due to the lower salary range. Mr. Funk stated the department has not experienced a shortage of qualified applicants as there are fewer fire department openings than interested applicants. Some applicants apply to the public safety department in order to continue the required hours, training and certifications that they need and find they enjoy this type of work. After further review Mr. Funk anticipated the salary range may be revised for the upcoming season.

Mr. Funk reported natural gas meters within the District are being reviewed by staff to identify any access issues. Public Safety staff will then work with the property managers to identify mitigation measures such as removing excess snow or landscaping. BCRC is looking at the potential need for a regulation related to snow build up.

UERWA

Director Friedman requested confirmation from the Board that it is considering appointing him a designated alternate member on the UERWA Board for the coming year. He explained at the May meeting he will no longer be qualified to be the primary designated principal member for the District since he will no longer be a Director. He reminded the Board it will need to appoint the designated principal member at the May Board meeting. He briefly updated the Board on the various matters being reviewed by UERWA such as the Denver Water matters and the state wide plan. Upon motion duly made and seconded, it was unanimously

RESOLVED to appoint Director Friedman as the first designated alternate member and Mr. Hanks as the second designated alternate member to the UERWA board effective May 6, 2008.

Financial Statements

The Board reviewed the February 2008 preliminary financial statement included in the packet. Mr. Marchetti noted the District is in a solid financial position. He explained the long range plan is being updated and suggested a review session be planned for June. He mentioned the “resortscape” project costs are unknown at this time and noted the funding sources for the project will need to be reviewed. Upon motion duly made and seconded, it was unanimously

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RESOLVED to approve the February 2008 preliminary financials as presented.

Accounts Payable The Accounts Payable listing was reviewed. Upon motion duly made and seconded, it was unanimously

RESOLVED to approve the accounts payable list as presented.

ERFPD Director Friedman stated negotiations continue with ERFPD regarding a possible amendment to clarify matters related to training and certification. The substance of the matter appears to be understood by both sides however putting the understanding into writing has proved to be a bit more difficult. Director Friedman and Director Elsner will be having another meeting with ERFPD representatives and hope to present a draft amendment for consideration in the near future.

Executive Session Upon motion duly made and seconded, it was unanimously

RESOLVED to enter into executive session citing §24-6-402(4)(b) C.R.S. for the purpose of receiving advice of counsel regarding the Strawberry Park matter. The Board entered into Executive session at 10:12 a.m., and

FURTHER RESOLVED to enter into executive session citing §24-6-402(4)(e) C.R.S. for the purpose of determining positions related to negotiations regarding Prater Road matters. The Board continued the executive session at 10:45 a.m. and returned at 11:10 a.m.

Upon returning from executive session the Board took the following action. Upon motion duly made and seconded, it was by a vote of two (2) Ayes and one (1) Nay (Director Balk)

RESOLVED to approve awarding the Asphalt Patch and Road Overlay bid to Elam Construction with the exception of the portion related to Upper Prater Roadway subject to a footnote this portion may be included at a later date.

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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 March 19, 2008.

Respectfully submitted,

Kathy Lewensten
Secretary for the meeting

I hereby affirm that all of the discussion concerning Strawberry Park in Executive Session constituted attorney-client communications.

James Collins, Esq., Collins Cockrel & Cole