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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 March 25, 2009

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., March 25, 2009 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)
- Robert Gary
- Louis Kreig
- Ernie Elsner
- James Power

Also in Attendance were:

- Clyde Hanks, General Manager
- Eric Jorgensen, Esq. District Counsel
- Ken Marchetti, CPA, Robertson & Marchetti, PC
- Kathy Lewensten, Recording Secretary
- Jenny Fancher, Administrative Assistant
- Ludwig Kurz, BCRC
- Bill Simmons, BC Operations
- Sam Parker, BC Public Safety
- Bob Cummings, Architectural Engineering Consultants

### Call to Order

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Director Gary, Acting Chairman of the Board, noting that a quorum was present. Director Gary 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 and a director of the Vilar Center for the Arts; Mr. Robert Gary is a

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member of the Board of Directors for Beaver Creek Property Owners Association 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 February 25, 2009 Regular Meeting. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the minutes of the February 25, 2009 Regular Meeting as presented.

### Future Meetings

The Board reviewed the 2009 meeting dates. The next meeting is scheduled for Wednesday, April 22, 2009 at the same time and location. Mr. Hanks requested consideration of a change in the June meeting to Wednesday, June 17th instead of June 25th. The Board agreed to schedule the meeting on June 17th.

### Agenda

Mr. Hanks requested an addition under executive session for discussion of operations staff compensation.

### Public Input

No public input was offered.

### General Manager Update

**Encroachments:** Mr. Hanks reported pending approval of an encroachment in Strawberry Park for a tree which had been placed in an easement. He expects the volume of encroachments to increase with the beginning of the construction season.

### Beaver Creek Beautification "Project Legacy"

Mr. Hanks reported on Sub-Project No. 1 for Project Legacy. Sub-Project No.1 consists of the design and construction of the front entrance and gatehouse on a not to exceed basis of \$500,000. He discussed the term sheet related to the 50/50 funding of Sub-Project No. 1 which had been presented to the Beaver Creek Resort Company (BCRC) Board for consideration earlier this month. A

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draft final term sheet was provided by hand out to the Board. The term sheet provided parameters for repayment by BCRC to the District for BCRC's portion of the \$500,000 cost of Sub-Project No. 1. Director Elsner asked why the reimbursement date had been changed to October 2012 since at the last meeting it had been proposed as October 2010. It was explained BCRC's Board was not comfortable with 2010 due to the uncertain economy. It was noted the interest rate is set as a fixed rate increasing by year. The Board was in general agreement with the term sheet as discussed. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the Term Sheet in substantially the form presented subject to final review by counsel.

Mr. Hanks reported the committee is in the process of reviewing the pros and cons of having BCRC being the contracting entity for Sub-Project No. 1. He stated it was anticipated this would allow a broader field of contractors, including smaller local contractors, to bid on the project. He noted legal counsel is being consulted on the matter. BCRC's bidding process is similar to the process that would be used by the District. Mr. Kurz stated that if BCRC was the contracting entity bids would be solicited by public notice in newspapers and by direct contact. Although the contract holder would be legally responsible for the contract, overall project management would be a joint effort between BCRC and the District. BCRC would not receive any fees for being the contracting entity or for overseeing the project. The process for disbursements was briefly discussed.

Mr. Hanks referred to Design Workshop's proposal to provide construction documents, assist with the bidding process and help oversee the actual construction for Sub-Project No. 1. For all of the services the total fee would be \$46,000 plus direct expenses not to exceed 15%. These fees would be split 50/50 with BCRC and will be paid as incurred.

Mr. Hanks recommended approval of the engagement of Design Workshop as described in their proposal. He also recommended allowing BCRC to be the contracting entity for Sub-Project No. 1. Upon motion duly made and seconded, it was unanimously

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**RESOLVED** to approve engagement of Design Workshop for the services discussed, and

**FURTHER RESOLVED** to agree to BCRC being the contracting entity for Sub-Project No. 1.

### General Manager Update- (con't)

**Speeding Matters:** Mr. Hanks referred to the information in the Board packet related to traffic speed control. He reported BCRC had reviewed the matter at their meeting earlier this month. A recommendation was being made to increase the speed limit on Offerson Road to 20 MPH as described in the memo from Mr. Kurz. Upon motion duly made and seconded, it was unanimously,

**RESOLVED** to increase the speed limit on Offerson Road to 20 MPH.

The purchase and installation of solar powered speed monitoring devices was discussed next. The devices could be installed in an effort to discourage speeding. BCRC's Board has determined they are not interested in funding purchase of these devices at this time. They do not feel the impact would be significant enough to justify the cost. Mr. Hanks noted the District currently owns a portable speed notification sign that is used in the summer months. He suggested the District could consider purchasing one device and installing it along the downhill side of Village Road to use as a test. Director Power expressed concern regarding placement of any speed monitoring device that may block the bike path. Mr. Hanks stated the device could be mounted similar to speed limit signs and would be located out of the bike path. The Board discussed how to evaluate the effectiveness of the device. Mr. Hanks and Mr. Parker stated they would work together to collect related data from the monitor within the device. After a brief discussion the Board tabled the matter.

Mr. Simmons reported BCRC had looked into installing speed and location monitoring devices in the Dial-a-Ride fleet. The devices would cost approximately \$17,000 for the equipment and \$17,000 for yearly monitoring. There may be additional costs related to software. The devices had been installed on Colorado Mountain Express vehicles. CME has stated they felt the devices have contributed to a positive change in the behavior of their drivers. At

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this time the matter has been tabled by BCRC as they feel it is a management issue that can be handled without the devices. Mr. Simmons wanted the Board to be aware of the information. Mr. Hanks noted installing the devices may offer an opportunity to dispatch vehicles more efficiently. The matter was tabled.

**Transportation Fund Review:** Mr. Hanks reminded the Board of BCRC's request for a review of the funding of the Transportation expenses. BCRC has stated the increase in Transportation costs are causing a larger amount to be funded by BCRC. They would like the District to consider increasing the mill levy. It was explained the mill levy for transportation funding began at 12.2 mills in 1999 based on BCRC abolishing a 12.2% assessment. Over the years the mill levy has been reduced to approximately 7.5 mills due to state statute requirements. The property taxes generated have increased slightly due to the increase in assessed valuation; however, expenses have increased at a higher rate. Mr. Hanks reported he has begun assembling and reviewing detailed information related to the transportation fund expenditures and revenues. A suggestion was made to appoint representatives to a committee that would review the matter in more detail to see if there are cost efficiencies that may be available and to study different funding options. Two representatives from the District would be needed to meet with BCRC representatives. Director Balk and Director Gary were designated to represent the District.

**AEC Snowmelt Energy Study:** Mr. Hanks introduced Mr. Cummings from AEC to the Board. Mr. Cummins reviewed the Feasibility Analysis of the snowmelt system that was included in the packet. He stated the District boilers are 10 years old and work at approximately 64% efficiency. He noted the District boilers have been well maintained and are in good mechanical condition. He explained newer boilers could be installed and would work at approximately 95% efficiency. The approximate cost to replace the boilers would be \$350,000 with an estimated payback of 7 years. He stated other options are to upgrade the control system or to install zones. The estimated cost for the control system upgrade is approximately \$60,000. The payback is estimated at 5 years if used with the existing boilers. The current control system is out of date and leaves the system on instead of cycling depending on need. Mr. Hanks recommended replacing the controls this summer and leaving the boilers as is. The Board suggested the capital costs

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could be recovered by using the cost savings and apportioning them based on the current user's percentages which are utilized for invoicing monthly operations costs. The Board directed Mr. Hanks to move forward with replacing the snowmelt control system.

**Fire Station:** Mr. Hanks reported he has discussed the potential for location of a fire station at the VR service center site with Alpine Engineering. He offered to provide a site visit for any Director that may be interested.

### Reimbursement Resolution

Mr. Marchetti requested the Boards consideration of a Reimbursement Resolution for the costs associated with Project Legacy. He explained the resolution would allow the District the flexibility to recover any expenditures related to Project Legacy from today forward if the District should issue any related bonds in the future. It does not obligate the District to do so. It is expected this years expenditures will be paid out of reserve funds. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the Reimbursement Resolution as presented, which is hereby attached to become part of the minutes.

### Bond Refunding

Mr. Marchetti reported he had sent out Requests for Proposals for the refunding of the 1998 Bonds as directed at the last meeting. Director Elsner worked with Mr. Marchetti to review the responses. Mr. Marchetti referred to the information in the packets. It had been determined that First Bank offered the best scenario. He requested ratification of acceptance of the proposal from First Bank. The First Bank Loan Committee is expected to approve the term sheet at their meeting today. He explained once the term sheet receives loan committee approval the District will be able to lock in the interest rates. The transaction is expected to close by May 1<sup>st</sup> with the necessary documents being prepared for review and execution at the next regular meeting. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to ratify the execution and acceptance of the First Bank Proposal Letter to Provide General Obligation Financing, and

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**FURTHER RESOLVED** to authorize Director Elsner to execute the Commitment Letter to lock in interest rates.

### **DAR Vehicle Matter**

Mr. Kurz requested permission from the Board to sell one Dial-a-Ride vehicle to a private party for \$8,500. He explained the vehicle is scheduled for retirement this year. The Board did not have any objection to the sale of the vehicle.

### **Financial Statements**

The Board reviewed the February 2009 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the February 2009 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.

### **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. and §24-6-402(4)(f) C.R.S. for the purpose of determining positions related to matters that may be subject to negotiations and personnel matters. The Board entered into executive session at 10:10 a.m. and returned at 10:20 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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**RESOLVED** to adjourn the Regular Meeting of the Beaver Creek Metropolitan District Board of Directors held on March 25, 2009.

Respectfully submitted,

*/s/ Kathy Lewensten*

Kathy Lewensten

Secretary for the meeting