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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 April 23, 2008

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., April 23, 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
- Robert Gary

Absent and excused were Directors:

- John Forstmann
- Ernie Elsner

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
- Bill Simmons, BC Operations
- Louis Kreig, BC Property Owner
- Tony O'Rourke, BCRC

### 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 member of the Beaver Creek Arts Foundation which operates the performing arts facilities within Beaver Creek; Mr. John

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Forstmann is a board member of the Beaver Creek Club; 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; and 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. 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 19, 2008 Regular Meeting. Upon motion duly made and seconded, it was by a vote of two (2) Ayes and one (1) abstention (Bob Gary),

**RESOLVED** to approve the minutes of the March 19, 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 Wednesday, May 28, 2008 at 8:30 a.m. in the same location.

### Agenda

No changes were made to the agenda.

### Public Input

Mr. Hanks reported Ms. Hoffman-LeBlanc had e-mailed a request for an update on the status of the emergency evacuation plan and an update on the final status of ski theft incidents for the season. Mr. Funk was not present at the meeting so Mr. Hanks will communicate these requests to him. It was noted a draft of the emergency evacuation plan has been circulated for comment.

It was reported there have been incidents of skateboarders along Offerson and Avondale roadways. A brief discussion of what could be done to discourage or stop the skateboarders followed.

The matter of potholes along the roadways was brought up. Mr. Hanks responded that A Peak is scheduled to repair some of the bigger potholes in the next week.

The Board brought up concerns about trash cans. It was reported trash cans have been left out longer than allowed. One incident of

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a turned over trash can was reported. The Board asked Mr. Hanks to inform Mr. Funk it would like to see the trash regulations being enforced since it is coming up on the time of year for bears to be emerging from hibernation. Mr. Simmons reported a mama bear and her two cubs have been active already this spring. Mr. Kreig asked why there were bear incidents noted in the public safety report that did not appear on the summary memo. Mr. Hanks will check with Mr. Funk.

### Beaver Creek Beautification “Resortscape”

Mr. Hanks reported the Beautification working group had not been able to find a date for a meeting therefore he had met with Director Balk, Mr. Kurz, and Mr. O’Rourke to choose two firms from the ones that had expressed interest. They had also received input via e-mail from the other members of the working group. The firms chosen for the next step were Design Group and EDAW. These firms will be asked to come and meet with the working group in early May for preliminary design discussions. The working group will then make a final decision. Director Balk brought up a matter for consideration. He wondered whether the District intends to do any re-alignments of roadways in the near future. He explained it would not make sense to beautify areas that may be torn out due to needed improvements. As an example he pointed out the left turn lane from Village Road onto Prater as an area to consider. The Board discussed the matter and suggested the project could be done in phases so these types of roadway improvements could be studied further. It was noted there may be costs associated with requests the working group may make to the firms selected. After discussion it was thought any estimated costs should not exceed \$15,000 for “phase 1” planning.

### General Manager Update

**Roadway Easements:** Mr. Hanks referred to the memo and draft letters included in the packet concerning the Districts current snow plowing and road maintenance work on various private roadway segments.

The private roadway segments are owned by various entities throughout the District. Mr. Hanks referred to the memo and the draft letter agreement for this type of roadway segment. He

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explained the services noted in the memo have been historically provided. He requested direction from the Board as to whether the District should continue providing the noted services at no fee subject to the release of the District from liability by implementing a letter agreement. Mr. Collins explained the letter agreement would grant the District authority to provide the service with the owner acknowledging the risks associated with the service and their waiver of the District from any liability. Mr. Hanks noted the cost of providing the services was not significant as they have been provided as part of the regular services performed on the District roadways. The Board expressed a desire to continue providing the services at no cost if the entities enter into the letter agreement to release the District from liability issues. If the entity is not willing to enter into a letter agreement the service would not be continued. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to authorize Mr. Hanks, General Manager, to enter into letter agreements with the various private entities for continuation of services historically provided on noted roadway segments at no cost to the entity with the understanding any entity which is unwilling to provide a letter agreement will not continue to receive the noted services.

The draft letter agreement with Vail Associates, Inc. which memorializes the understanding reached at the last meeting concerning their roadway segments was reviewed. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to authorize Mr. Hanks, General Manager, to execute the letter agreement between the District and Vail Associates, Inc.

**Avondale Sidewalk:** Mr. Hanks reported he had received proposals from two engineering firms for the Avondale Sidewalk project. The two firms were Borne Engineering and Vision Land Consultants. The main difference between the proposals was engineering work related to the slope and retaining wall. Borne Engineering's proposal, for approximately \$15,000, did not include any costs for engineering of the slope and retaining wall but noted there may be additional costs related to that area while Vision Land Consultants proposal, for approximately \$26,000, included a

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significant amount for engineering of the slope and retaining wall. Mr. Hanks will contact Borne Engineering to request an estimate of engineering fees related to the slope and retaining wall. The services covered by the proposals would include preparation of construction documents, bidding of the project and construction of the project including construction management. It is anticipated the work would be done in the fall. The Board asked if the Charter has been contacted regarding the needed easement. After discussion it was suggested a letter be drafted which requested confirmation from the Charter of their intention to convey the easement. The letter could also include a request for consideration on their part to cost share a portion of the project. Mr. O'Rourke stated he felt BCRC's offer to cost share the project should be thought of as the contribution from the affected property owners too since the sidewalk project benefits more than just the Charter. He stated BCRC has budgeted up to \$150,000 for their portion of the project. It was noted the sidewalk would be built primarily along property owned by the Charter. Mr. Hanks reported Post Montane has offered to cost share a portion of the project which runs along their property since they are planning improvements to their front entry this year. Mr. Hanks expects the cost estimate for the project will be available by June.

Mr. O'Rourke requested the Board consider including a small segment of sidewalk needed by the Beaver Creek Lodge on Avondale as part of this project. The Board agreed to include this segment.

Mr. O'Rourke offered to have BCRC take the lead on the project since it is a relatively small project explaining it may expedite the process. The Board directed Mr. Hanks to work with Mr. O'Rourke to determine the best way to proceed with the project. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to authorize Mr. Hanks, General Manager, to determine and engage the lowest responsible engineering firm for the Avondale Sidewalk project, and

**FURTHER RESOLVED** to authorize sending letters to the Charter requesting confirmation of their intent to convey an easement for the sidewalk and to the Charter,

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Post Montane and Beaver Creek Lodge requesting consideration of cost share contributions.

**Road Overlay and Asphalt Patch:** Mr. Hanks handed out a summary of the 2008 asphalt patch and overlay projects. The work related to Upper Prater Road was discussed. Mr. Hanks reported he had heard informally Bachelor Gulch Metropolitan District (BGMD) had requested bids for an overlay on Lower Prater Road. He explained Lower Prater Road starts at the Round A Bout and goes north to Highway 6. The Board agreed Upper Prater should be included if in fact BGMD has contracted to overlay Lower Prater. If Lower Prater will not be overlaid the Board noted Upper Prater should be excluded. 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. Mr. O'Rourke stated BCRC is open to adjusting the programming on the property owner transponders for the gates to allow access into both the BC and BG gates once the larger issue of responsibility for Prater Road is determined. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to authorize execution of the 2008 Asphalt Patch and Overlay Agreement with Elam Construction Inc. including the portion related to Upper Prater Road subject to confirmation BGMD has contracted to overlay Lower Prater Road.

**Encroachments:** Mr. Hanks reported he had turned down a request for an encroachment on Beaver Creek Drive. The property owner wanted to plant tree's within the District easement. Mr. Hanks explained the District discouraged permanent improvements but informed the property owner he could appeal the decision to the Board.

**Parking Lot  
Transportation  
Agreement**

Director Friedman asked if the termination of the Transportation Agreement with the Town of Avon (TOA) for the parking lot bus service was proceeding as expected. Mr. Hanks referred to the letters included in the packet explaining these discuss terms and steps related to the termination. He noted the TOA has been

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notified the District will be requesting an audit in the near future. Mr. O'Rourke explained a major issue contributing to the termination of the agreement was the inability of the TOA to address the deficiencies related to customer service levels. It was noted the change in service to Vail Resorts is not expected to have any negative financial impact to the District. Negotiations regarding the cost for continuing to park the District's buses at Swift Gulch are ongoing. Mr. Hanks requested the Board consider approving the letter agreement for the parking lot bus service between the District and Vail Resorts which had been included in the packet. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the Letter Agreement between the District and Vail Resorts related to transportation services for the parking lot route effective May 1, 2008.

### UERWA

Director Friedman updated the Board on the various matters being discussed by UERWA. He stated negotiations regarding Denver Water matters and the state wide plan continue. He noted it is anticipated the same water use guidelines that have been in place the last few years will remain for this year noting it depends on how fast the snow pack melts. He reported there will be no increase in water rates for the fourth year in a row. He stated after the May meeting he will continue to attend the UERWA meetings as the first alternate representative for the District and will be available for updates as needed.

### ERFPD

Director Friedman stated the drafting of an amendment to the ERFPD agreement continues. He had met with Mr. O'Brien, ERFPD board member, to discuss the matter. The substance of the amendment appears to be understood by both sides. He expressed optimism the amendment will be ready by the next meeting for consideration.

### Financial Statements

The Board reviewed the March 2008 preliminary financial statement included in the packet. The Board asked about the budget for the Avondale Sidewalk project. Mr. Marchetti explained the project had been budgeted at a cost of \$95,000 with a cost sharing contribution of \$95,000 for a zero net effect. He explained the forecast will be updated as more definite amounts are

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provided. The Board noted it was expected the District would incur expenses related to the project. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the March 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.

**Other Business** Director Friedman said he has enjoyed serving the last eight years on the Board stating it was a privilege to contribute to the community. He expressed thanks for the opportunity and noted the District has come a long way. He remarked the District has the ability to be a uniting force within the community and expressed a wish that the District continue to move forward in a positive manner. Directors Balk and Gary thanked Director Friedman acknowledging his service and noting the last years have been very productive for the District. Mr. Collins stated it had been a pleasure to work with Director Friedman.

**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 negotiations regarding Prater Road and ERFPD matters. The Board continued the executive session at 10:00 a.m. and returned at 10:25 a.m.

**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 23, 2008.

Respectfully submitted,

Kathy Lewensten



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Secretary for the meeting