
RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS BEAVER CREEK METROPOLITAN DISTRICT April 26, 2006

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., April 26, 2006 in the Conference Room of the District Administrative and Operations Facility, Eagle-Vail, Eagle County, Colorado.

Attendance

In Attendance were Directors:

- Stephen Friedman
- John Forstmann
- John Wells (via phone)
- Al Mielcuszny
- Vacancy

Absent and excused were Directors:

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Also in Attendance were:

- Clyde Hanks, General Manager
- Jim Collins, Esq., District Counsel
- Ken Marchetti, CPA, Secretary
- Kathy Lewensten, Recording Secretary
- Tom Schouten, BCPOA
- John Garnsey, COO Beaver Creek
- Bill Simmons, Operations
- Tracy Walters, McMahan & Assoc PC
- Mike Balk, BC Property Owner
- Chuck Madison, East West Partners
- Andy Gunion, East West Partners
- Ronald Kowalski, East West Partners
- Scott Turnipseed

Call to Order

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

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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; and Mr. John Wells is President of The Pines Townhomes at Beaver Creek Condominium Association; Mr. John Forstmann is a board member of the Beaver Creek Club. 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 16, 2006 Special Meeting and the March 22, 2006 Regular Meeting. Upon motion duly made and seconded, it was, unanimously,

RESOLVED to approve the minutes of the March 16, 2006 Special Meeting and the March 22, 2006 Regular Meeting as presented.

Future Meetings

The next regular meeting is scheduled for Wednesday, May 24, 2006, at 8:30 a.m. in the same location.

Agenda Changes

Mr. Hanks requested the following matters be added under the general managers update: wireless update; skiway encroachment; archive document scanning.

2005 Audit

Director Miencusny reported to the Board he had met with Mr. Walters, Mr. Marchetti and Mr. Hanks to review the 2005 preliminary audit. The meeting had ended with several revisions suggested to wording in the notes and the Management Discussion and Analysis (MD&A). The 2005 audit draft in the packet included those revisions. Mr. Walters stated the District will be receiving a clean audit opinion. He noted the placement of charts and graphs which were new this year in the MD&A. The Net Assets of the district show an increase for 2005. He briefly reviewed the remainder of the audit noting no significant adjustments had been made. Upon motion duly made and seconded, it was unanimously

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RESOLVED to approve the 2005 Audit as presented.

Bachelor Gulch

Proposed Construction

Traffic Regs

Mr. Hanks reported the Bachelor Gulch Metropolitan District (BGMD) will be considering revised road regulations at their meeting later today. The proposed regulations were included in the packet. The regulations address construction traffic over the access road into Strawberry Park. If the regulations are adopted no further construction traffic would be allowed on the access road. Mr. Hanks explained the District was not a party to any of the original agreements which describe the conditions and requirements related to the access road. The parties to the original agreements include Vail Associates (VA), BCPOA and the Strawberry Park Homeowners Association. Mr. Collins stated the District was a third party beneficiary and therefore had a legitimate interest in the matter. If the regulations are adopted the District impact may include additional wear and tear on the roadways. The Board asked Mr. Collins if he had a conflict concerning the matter since he also represents BGMD. Mr. Collins explained BGMD had engaged an independent counsel to address the matter. H stated he was comfortable discussing any factual information regarding the issue with the Board. According to the original agreements the access road was to be used until all lots were built out in Strawberry Park. There are currently four to five vacant lots, two which may never be built upon, and the remainder in various stages of development. The Board heard comments from Mr. Garnsey regarding the matter. He presented the Board a copy of the response letter from VA to BGMD. He explained one concern VA has is that there may be broader issues which need to be reviewed in context with this matter. Mr. Schouten referred to the "Borders Road Compromise" and stated BCPOA expects the original agreements to be upheld and enforced. The Board discussed whether a compromise could be negotiated which would allow a reasonable timeframe such as one to two years for sunset of the access road while not impacting other broader issues. Mr. Schouten suggested the BCPOA will offer to negotiate a reasonable sunset if the matter can be tabled for discussion over the next 30 to 60 days pending a meeting of representatives from all sides. The Board expressed support for the position of BCPOA encouraging continuation of the agreements in place while being open to negotiations regarding a reasonable sunset. The Board

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directed Mr. Hanks to attend the BGMD meeting to present the position of the Board.

**BC Landing Plaza/
Upper Gondola
Terminal**

Mr. Madison presented drawings depicting the final construction plans for the BC Landing Plaza and the Upper Gondola Terminal as requested by the Board. He noted a full set of the final plans have been provided to Mr. Hanks. Director Forstmann stated he had met with representatives of East West to review the final plans prior to the meeting. The height of the towers, the relocation of the tee box and the final details of the landscaping and terminal construction were reviewed. Dopelmeyer has been chosen to construct the gondola. The water line has been relocated and the tree relocation has begun. Mr. Hanks requested East West notify the District sufficiently ahead of time regarding any roadway matters, such as closures or traffic delays. Mr. Kowalski offered to have a weekly construction meeting with Mr. Hanks to keep him informed on the project. Upon motion duly made and seconded, it was unanimously

RESOLVED to accept the gondola proposal as presented with the understanding East West will coordinate with Mr. Hanks regarding any construction matters of concern to the District and subject to the project meeting the regulations of the appropriate governmental authorities.

Mr. Madison reported a drainage issue had been discovered at the project site. The proposed improvements for mitigation of the drainage issue include placing drainage pipe down Prater Road, widening the road, and adding some curb and gutter. The drainage currently runs down the side of the roadway and passes through a grate. Mr. Hanks reported the operations crew clears the grate on a regular basis, more frequently in the spring runoff period. He stated if the drainage were put underground as proposed, down the hillside to the parking lot, it would improve the aesthetics of the area and relieve the crew of the responsibility of clearing the grate. The Board asked whose responsibility it would be to maintain the drainage in the future. Mr. Hanks stated after the warranty period it would become a District responsibility. Mr. Kowalski explained the normal warranty period was one to two years. The Board requested an extended warranty period be negotiated with East West to allow time for the new drainage to be exposed to all

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normal conditions. Upon motion duly made and seconded, it was unanimously

RESOLVED to accept the proposed drainage improvements subject to a negotiated warranty period to be described in a letter agreement.

65 Highline Dr. Encroachment

Mr. Turnipseed presented an application for a revision to the encroachment for 65 Highline Drive. He explained improvements made were not the same as in the original encroachment. A stone patio extends an additional six inches into the easement and a fifteen foot stone retaining wall had been placed alongside a drain pipe within the easement for the stream. BCDRB had asked Mr. Turnipseed to confer with a certified creek expert to see if the wall had a negative impact to the stream. The expert stated the wall did not have a negative impact to the stream. The Board expressed concern the changes were made without the District being notified and prior to receiving a valid encroachment. Mr. Turnipseed offered to remove the wall and return the stream landscaping to the original condition. He explained the work would be done by hand with no heavy equipment. The Board stated they would accept the six inch extension as it appeared to be accidental. Upon motion duly made and seconded, it was unanimously

RESOLVED to accept the six inch encroachment of the stone patio.

The Board expressed concern over other properties within the District which have improvements that may have been made without the District's consent or in violation of the encroachment applied for. A discussion as to the responsibility of the BCDRB related to enforcement of the encroachments and the improvements followed. The Board asked Mr. Hanks to coordinate with BCDRB to review the encroachments in place to check if there are violations present. The Board would like to see future applications for encroachments coming to the District with a recommendation from BCDRB.

General Manager Update

Eagle-Vail Admin Maint Facility: Mr. Hanks reported Hyder expects the majority of the outside work remaining to be

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completed by the end of May. He stated the fuel island has the fence and electricity installed. The spill plan is being developed. A new concrete pad will be placed to the east of the fuel tank for the waste oil tank. The security camera system is being installed. Negotiations are continuing with AEC regarding the issues with the electrical design of the plans. AEC has agreed with two of the eight issues.

Village Road Landslide: Mr. Hanks reported the area of the landslide on village road has been tested by a soils engineer. There does not appear to be an excessive amount of water in the soil. The preliminary view is the slide may have been caused by excessive snow being placed over the area this winter. The slope of the area very steep and is hard to sustain. Several recommendations have been made by Alpine Engineering to mitigate the matter. One recommendation is to place micropiles along the guardrail to anchor the ground. Another is to restructure the hillside to stabilize it by building retaining walls or by placement of drainage tubes. The estimated cost for the above is \$250,000 for the micropiles and \$250,000 for the stabilization. The Board asked whether Vail Resorts has been contacted since the hillside beyond the easement is owned by them. A cost sharing of the project should be considered between the District, BCRC and VR since it involves the entrance to Beaver Creek. Mr. Hanks reported the engineers recommended delaying the sidewalk project until this area is stabilized. The Board expressed the desire to have the sidewalk completed as soon as possible. Director Forstmann suggested obtaining a second opinion and recommendations from a structural engineer to see other alternatives for mitigation that may exist. Mr. Hanks will have more information at the May meeting.

Prater Road Recreation Path: Mr. Hanks reported Prater Road is scheduled for paving work by VR this season, it appears a pathway will be created so at this time no further action is needed by the Board.

Crosswalks: Mr. Hanks referred to the memo in the packet regarding the proposal for crosswalks in the District. He had met with Mr. Funk and Mr. Schlegel to review the crosswalks. He explained the map and the criteria used to designate class one, two and three crosswalks. The class one crosswalks would be enhanced by placing raised pathways using pavers and flashing

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signs. The estimated cost for improving the 6 class one crosswalks noted is \$120,000. The Board discussed other locations, such as Beaver Creek Drive and Village Road, that should be considered for improvements. It was noted that by placing a raised crosswalk at the Beaver Creek Drive location it may help control the speed of traffic on Village Road. One recommendation was to remove the flashing signs from the proposal this year and improving all of the class one and two crosswalks with the raised pavers and improved markings which may bring the cost down to \$50,000. The flashing signs could be added at a later date if they are still desired. A suggestion was made to contact BCRC to see if they are interested in cost sharing the project. Mr. Hanks will obtain potential bids for the work and present them at the next meeting.

Vilar Capital Funding: Mr. Hanks stated a draft Memo of Understanding (M.O.U.) that had been drafted by the subcommittee of the Vail Valley Foundation regarding the property taxes for capital improvements being collected by the District through the new mill levy was included in the packet. The Board discussed options for methods by which the District would release the funds. The District would prefer to hold the funds and release them upon receiving a written request from the Vilar. The request should be accompanied by the appropriate supporting documentation such as an invoice for the capital improvement done. Discussion concerning the handling of any excess funds from a prior year concluded the funds would not be lost to the Vilar, but could be applied for at a later date to be use towards an appropriate capital expense. The Board discussed how to best apply a definition of a capital expense for this funding. Mr. Collins was directed to draft a response to VVF based on the discussions.

Skiway Encroachment: Mr. Hanks reported an application for a temporary encroachment along the skiway by Villa Montane had been received. It all appears to be in order and the skiway will be returned to the original condition by fall. The Board agreed to the temporary encroachment.

Wireless Network: Mr. Hanks and Mr. Collins had met with special counsel regarding the legal ability of the District to provide a wireless service. The District would need voter authorization to provide this service. Mr. Hanks estimated it would cost

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approximately \$15,000 to further develop a plan, including election costs. The Board tabled the matter.

Document Scanning: Mr. Hanks requested authorization to proceed with a project over the summer to scan all archived documents for the District. He estimated the cost of the project including appropriate hardware to be \$10,000. The Board noted the recent agreements are already converted to PDF files. They commented that not all older archive files should be converted and suggested a method of determining which files were still pertinent to the District be studied. The matter was tabled.

Bus: BCRC has requested the title to one of the Dial A Ride buses. There will be no direct financial impact to the District as BCRC reimburses the transportation fund including the purchases of the transportation vehicles. Upon motion duly made and seconded, it was unanimously

RESOLVED to approve the release of the title of one Dial a Ride bus to BCRC.

Legal Matters

Market Square: Mr. Hanks reported a meeting has been scheduled for next week with the litigators to begin negotiations regarding the back dues amount. The transfer of the District unit to VVF is moving slowly. Ms. Folz is reviewing the matter.

Financial Statements

Mr. Marchetti reviewed the March 2006 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

RESOLVED to approve the March 2006 preliminary financials as presented.

Accounts Payable

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

RESOLVED to approve the accounts payable list as presented.

Appreciation to Outgoing Directors

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Director Friedman noted the election of three new board members will occur prior to the next board meeting and wished to express appreciation to Director Mielcuszny and Director Wells for their service on the Board.

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 26, 2006.

Respectfully submitted,

Kathy Lewensten
Secretary for the meeting