
RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS BEAVER CREEK METROPOLITAN DISTRICT July 22, 2009

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., July 22, 2009 in the Conference Room of the District Administrative and Operations Facility, Eagle-Vail, Eagle County, Colorado.

Attendance

In Attendance were Directors:

- Mike Balk
- Robert Gary
- Ernie Elsner
- James Power
- Louis Kreig

Also in Attendance were:

- Clyde Hanks, General Manager
- Jim Collins, Esq. District Counsel
- Ken Marchetti, CPA, Robertson & Marchetti, PC
- Kathy Lewensten, Recording Secretary
- Jennie Fancher, Administrative Assistant
- Tony O'Rourke, BCRC
- Sam Parker, BC Public Safety
- Charlie Campisi, BCPOA
- Frank Smith, BC property Owner
- Jim Kaylor, BC Property Owner
- Bill Simmons, BC Operations
- Pam Kross, BC Property Owner
- Glen Palmer, Alpine Engineering Inc
- Dale Decker, Asphalt Specialist

Call to Order

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

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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 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 June 17, 2009 Special Meeting. Upon motion duly made and seconded, it was unanimously

RESOLVED to approve the minutes of the June 17, 2009 Special Meeting as presented.

Future Meetings

The Board reviewed the 2009 meeting dates. The next regular meeting is scheduled for Wednesday, August 26, 2009 at the same time and location.

Agenda

No changes were made to the agenda.

Public Input

No public input was offered.

Beaver Creek "Project Legacy"

Mr. Hanks informed the Board that at the BCRC meeting last week the BCRC board voted to suspend any expenditures on Project Legacy including Sub-Project No. 1. He referred to the memo from Mr. Kurz that had been included in the packet. Mr. Kaylor explained BCRC has experienced a significant decrease in revenues and has been reviewing all budgeted items to help reduce the expected shortfall this season. He stated BCRC is not projecting improvement in the near future and is therefore not comfortable adding an additional liability of one half of the expense from Sub-Project No. 1 to its balance sheet at this time. The Board discussed how this information affects the project. Mr.

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Hanks reported after requested re-bids the cost of Sub-Project No. 1 had been reduced to a range from \$430,000 to \$440,000 without the inclusion of the water feature. One course of action discussed was to postpone moving forward with Sub Project No. 1 until BCRC can participate, another course of action discussed was to proceed with only a portion of Sub Project No. 1. After further discussion the Board determined it would be best to postpone the project until more is known from BCRC. Upon motion duly made and seconded, it was unanimously

RESOLVED to postpone Sub-Project No. 1 of Project Legacy for one year.

The Board asked whether Sub-Project No. 2, the Comprehensive Signage, Wayfinding and Design Guidelines had been started. It has not. They asked whether BCRC would be open to considering funding their portion of the cost for these guidelines. The project cost is \$46,500; BCRC's portion would be \$23,250. It was noted staff replaces signage on an ongoing basis so it would be beneficial to have the guidelines for reference so the new signs could conform. Mr. Kaylor stated he was not sure if BCRC had discussed this portion of the project yet or if it was in the BCRC budget for next fiscal year. He and Mr. O'Rourke agreed to bring the matter up for discussion with the BCRC board and will report back.

General Manager Update

Wayne Creek Settling Pond: Ms. Kross introduced herself to the Board noting she owned property along one side of the Wayne Creek settling pond. She stated over the past few years the adjacent property owners have paid to clean the sediment from the settling pond. She explained it is necessary to clean out the sediment to allow water proper access to the drainage pipes, to retain the depth of the pond and for aesthetic purposes. The cost of cleaning the settling pond is approximately \$2,500 every two years. She was requesting consideration by the Board of a contribution towards the sediment cleaning costs. Mr. Hanks stated the pond is located within the District drainage easement. He and Mr. Schlegel described the normal flow of drainage through this area. It was noted there is a drain pipe located within the pond and a grate for drainage above the pond. The District is responsible for maintaining and cleaning out other drainage grates, pipes, ponds and areas throughout the District. Ms. Kross pointed out drainage

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would be negatively affected if the sediment was not removed from the pond. She reiterated she understands there is an aesthetic benefit to the pond for the property owners and wanted to be clear that she was asking the District to share the cost, not assume total responsibility. Mr. Collins suggested the Board take the matter under advisement in executive session and respond back to Ms. Kross regarding the request within the next few weeks. The Board agreed.

490 Holden Road: Mr. Smith requested an update on the changes that were to be made to the skiway at 490 Holden Road. He stated earlier this year the District had reached an understanding with the property owner that an access path would be created and the rocks removed from the skiway once the weather allowed. Mr. Hanks reported he had met with the property owner yesterday to follow up on the expected timeline for the changes. He explained the property owner expressed a desire to leave the property as is until Labor Day since it is now listed for sale. The property owner would like to leave the rocks where they are but offered to level them out, and suggested a gravel path be located along the left side of the easement. The Board discussed the rocks. It was pointed out the rocks make the skiway unusable for the early part of the ski season since sufficient snow has to accumulate to properly cover them. If they were removed the skiway could be opened sooner. After discussion the Board determined the rocks should be removed as they appear to create a safety issue along the skiway/easement and that a gravel path needs to be created for improved access. The Board asked how to ensure these changes would occur if the property should sell. Mr. Collins stated the encroachment agreement that covers the area is revocable. He suggested providing written notice to the property owner notifying them of the Districts desire to have the rocks removed and a gravel path installed by the first part of October. If the changes are not completed by the property owner in the timeframe noted, the District can make the changes. Upon motion duly made and seconded, it was unanimously

RESOLVED to revoke the Encroachment Agreement for 490 Holden Road to allow for planning and implementation of the restoration of the skiway by removal of the rocks, which are considered a safety hazard, and the installation of a gravel access path by no later than October 2009.

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Village Road

Mr. Palmer and Mr. Decker appeared before the Board to present an update on the condition of Village Road. A memo had been included in the packet summarizing some of the findings. Mr. Palmer explained Village Road continues to show symptoms of sub-grade failures. He handed out pictures of several failure areas along the roadway. He reported testing cores have been taken from various places along the roadway which revealed an inconsistent depth for the asphalt. In some areas the asphalt is up to twelve inches deep, in others it is only seven inches. From looking at the cores it appears the original layer of asphalt is starting to deteriorate. Mr. Decker explained some deterioration is not unusual after 30 years. He reported HP Geotech was evaluating the cores to help determine the extent of the deterioration. He noted the roadway is functional but that failure areas will continue to appear until the matter is resolved. He noted the roadway is not expected to have a catastrophic failure in the next six months, but suggested the Board review mitigation measures that prepare the roadway for the future. The roadway could be overlaid which may extend the life of the roadway for several years, but would not correct any underlying problems. A longer term fix would be to rebuild the roadway. A rebuild would take approximately four to five months and would cost in the neighborhood of approximately \$3.5 million. Mr. Hanks pointed out if the roadway is rebuilt improvements to the curve by Prater Road could be incorporated. These improvements would increase the cost by approximately \$500,000. There would also be costs associated with the replacement of the curb and gutter. The Board discussed the option of adding turning or climbing lanes. Mr. Campisi requested consideration for emergency evacuation access and the potential need for additional lanes or routes if Village Road were unavailable. Mr. Simmons stated both lanes on Village Road could be used for outbound traffic in the case of an emergency and noted there are other roadways that lead out of the area, such as one through Bachelor Gulch that could be utilized in emergency situations. Mr. Palmer and Mr. Decker explained better information will be available in August. The Board tabled the discussion until the August meeting.

Legal

Rosenbaum-Wayne Creek: Mr. Collins reported the District's agreement with Mr. Rosenbaum has been executed. He now needs to obtain approval from the Design Review Board.

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Amended By-Laws: Mr. Collins referred to the Amended By-Laws that were included in the packet. He explained the By-Laws had been updated to comply with the latest changes in the laws. Upon motion duly made and seconded, it was unanimously

RESOLVED to approve the Amended Beaver Creek Metropolitan District By-Laws as presented.

Joint Resolution Prohibiting Skateboarding on Roadways: The Board considered the Joint Resolution Prohibiting Skateboarding on Roadways that had been included in the packet. Mr. Collins reported BCRC had approved the resolution at their meeting last week. Director Power asked whether bicycles should remain in the restrictions. The Board directed Mr. Collins to review the regulation to see whether it should be revised for bicycles. The matter was tabled until the August meeting.

2009 Road Overlays: Mr. Hanks reminded the Board that the 2009 roadway overlay bid that had been awarded to B & B Excavating this spring was contingent upon the findings for Village Road. Since it appears no actual road work will be done on Village Road in 2009 he was recommending moving forward with the overlays. He noted Strawberry Park road will not receive an overlay this year as the road remains in good condition. Work will be scheduled for later this fall. The Board requested removal of the "Private Road" sign along Elk Track. The Board authorized moving forward with the overlays as discussed.

Director Gary asked if there is a possibility stimulus funds may be available for District roadway projects. Mr. Hanks reported Ms. Fancher has been looking into the matter.

UERWA

Director Power reported the UERWA board had requested and received an executive summary regarding the possibility of consolidation of the water districts. He noted the summary did not offer advantages or disadvantages of consolidation and was general in nature. UERWA has since requested their Water Counsel provide the pro's and con's of consolidation. He will bring the information to the Board once it is received. It was noted Beaver Creek Metro District has year round water use rights which are

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unusual. At this time Director Power just wanted the Board to be aware of the discussions taking place.

2008 Audit

Mr. Walters from McMahan and Associates joined the meeting by phone. He began discussion of the 2008 Audit. He reported a meeting had been held between Director Elsner, Director Gary, Mr. Hanks, Mr. Marchetti and himself to review the 2008 Audit in detail. He noted all requested revisions had been made as discussed at the meeting. He explained the District would receive a “clean” unqualified opinion. Director Elsner requested a red line version of the audit for final review. Upon motion duly made and seconded, it was unanimously

RESOLVED to accept the 2008 Audit subject to final authorization by the audit committee.

Financial Statements

The Board reviewed the June 2009 preliminary financial statement included in the packet. The Board directed Mr. Marchetti to revise the 2009 forecast budget to reflect the delay of project legacy. The Board discussed the potential need for a bond issuance to cover the Village Road costs in the near future and the potential need for an operating mill levy increase. It was suggested the October budget planning work session will need to include discussions on future funding for operations, roadways, transportation and the Vilar center. Upon motion duly made and seconded, it was unanimously

RESOLVED to approve the June 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) (b) C.R.S. for the purpose of receiving legal advice regarding the Wayne Creek Settling Pond matter and the Vilar Center mill levy . The Board entered into executive

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session at 10:30 a.m. and adjourned the executive session at 10:50 a.m.

Upon returning from executive session the Board took the following actions. Upon motion duly made and seconded, it was unanimously,

RESOLVED to authorize drafting an agreement as discussed for consideration by Ms. Kross which includes an offer from the District to provide no more than \$1,000 per year or a maximum of \$2,000 every two years towards the cost of cleaning sediment from the Wayne Creek settling pond with the condition the District payment will be made directly to the contractor hired to perform the work, and

FURTHER RESOLVED to notify the Eagle County Clerk of a potential November 3, 2009 independent mail ballot election.

Adjournment

There being no further business to come before the Board, by motion duly made and seconded, it was unanimously

RESOLVED to adjourn the Special Meeting of the Beaver Creek Metropolitan District Board of Directors held on July 22, 2009.

Respectfully submitted,
/s/ Kathy Lewensten

Kathy Lewensten
Secretary for the meeting

I hereby affirm that all of the discussion concerning Wayne Creek Settling Pond and the Vilar Center Mill Levy in Executive Session constituted attorney-client communications.

James Collins, Esq., Collins Cockrel & Cole