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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 July 27, 2005

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., July 27, 2005 in the Conference Room of the Beaver Creek Club, Beaver Creek, Colorado.

### Attendance

In Attendance were Directors:

- Stephen Friedman
- Al Mielcuszny
- Tommie Campbell
- John Wells
- John Forstmann

Absent and excused was Director:

Also in Attendance were:

- Larry Grafel, General Manager
- Ken Marchetti, CPA, Secretary
- James Collins, Esq. District Counsel
- Kathy Lewensten, Robertson & Marchetti, P.C.
- Steve Boyd, McBoyd Construction Solutions LLC
- Tom Schouten, BCPOA
- Ginny Forstmann, BCPOA
- Mike Balk, BC Property Owner
- Paul Jaridis, Bach Gulch Metro District Board Member
- Bob McIlveen, Vail Resorts
- Jack Hunn, Vail Resorts
- Tony O'Rourke, BCRC
- Jim Funk, BC Public Safety
- Ceil Folz, Vail Valley Foundation
- Chris Sable, Vilar Center
- Kursten Canada, Vail Resorts Development Co
- Greg Dickhens, Vail Resorts Development Co

### Call to Order

The Regular Meeting of the Board of Directors of Beaver Creek Metropolitan District was called to order by Director Wells, 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

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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; Ms. Beatrice "Tommie" Campbell is a member of the Beaver Creek Communications Committee; 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 June 22, 2005 Regular Meeting. Upon motion duly made and seconded, it was, unanimously,

**RESOLVED** to approve the minutes of the June 22, 2005 Regular meeting.

### Future Meetings

The Board reviewed the meeting schedule, the next meeting is scheduled for Wednesday, August 24, 2005.

### Agenda Changes

No changes were made.

### Public Input

No public input was offered.

### Owners Rep Proposal

Mr. Grafel introduced Mr. Steve Boyd from McBoyd Construction Solutions LLC. Mr. Boyd was present to discuss the owner's representative proposal included in the packet for the District Administration and Operation Facility in Eagle-Vail. Mr. Grafel reported to the Board the Agreement with Hyder Construction for the Eagle-Vail project had been signed and the Notice to Proceed

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had been provided to them. The Board asked whether this fact impacted the proposal since the District was now seeking an owner's representative primarily for project management. Mr. Boyd explained he was aware of the situation and the proposal reflected his understanding of what was being sought. He explained he would need to review the documents to date but was comfortable starting at this point in the process. He explained he would consider this project a priority and saw his role as a facilitator for positive communication between the parties involved. The Board stated they would expect the District's owner representative to be available for all concerns and questions during construction through the completion of the project. Mr. Boyd stated he was willing to be available by phone and email as needed and anticipated on site visits including attending weekly construction meetings. Mr. Grafel stated one concern expressed by Hyder Construction was to have a main contact person representing the District for the site manager to direct questions and issues to for answers. The Board explained the owner's representative would be the main contact but the owners representative would not have the authority to issue or approve any change order which caused an increase in the cost of the project until a representative of the Board reviewed and approved any such change. The Board asked for open and ongoing communication and updates regarding the project. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve and accept the proposal from McBoyd Construction Solutions LLC to provide Owners Representative services on the District Administration and Operations Facility in Eagle-Vail

### BC Landing Lot 4 Access

Mr. McIlveen and Mr. Hunn addressed the Board concerning the access to Lot 4. Director Wells asked whether Bachelor Gulch Metropolitan District (BGMD) had reviewed or commented on the information. Mr. Jardis explained BGMD will be discussing the matter at the board meeting today at noon and noted the BGMD Board had agreed upon the term sheet which was attached as an exhibit to the resolution included in the packet. The Board reviewed the sketch plan labeled option 23. Mr. McIlveen and Mr. Hunn stated they were seeking approval for the permanent access

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to Lot 4 to facilitate the closing of the property by the end of the month. The permanent access would consist of ingress off of Prater Road and egress through the current Tarnes driveway onto Bachelor Gulch Trail. They noted during construction it is anticipated that traffic would use Prater as both the ingress and egress for the project. The Board expressed concerns with the construction traffic flow and plans for traffic control. Mr. Hunn pointed out that VR had no authority to speak on East West's behalf regarding any construction issues, VR needed to provide permanent access to the Lot, then the District would need to deal with East West (the developer of Lot 4) for any construction related access issues. Mr. McIlveen explained the project timeline is estimated to be 2 seasons or 2 ½ to 3 years in length. The Board asked for assurances the construction traffic and related activity be controlled in an appropriate manner pointing out there had been some major issues with the traffic control provided by East West on a current project within the District. It was suggested the Board could allow a basic approval of the permanent access contingent upon an agreement being reached at a future date regarding the construction issues. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the resolution regarding Approving Accessway Application regarding Lot 4 contingent upon the revision to section 2 of exhibit A a copy of which is hereby attached and made part of these minutes.

### Prater Road

Mr. Hunn and Mr. McIlveen presented the plan for additional parking along Prater Road as discussed in previous meetings. They referred to the Prater Road Parking Management Plan included in the packet and reiterated it was the intent to have rigorous enforcement in place. There will be no parking signs in place for enforcement purposes. The Board stressed that until all available parking lots were full this option should not be considered for use. It is anticipated the parking would be needed for approximately 18 days during the winter season, and none during the summer. Mr. McIlveen stated that no trees would need to be removed for the implementation of the plan but trees would be added to mitigate the visual impact. He noted the parking would be reviewed at the end of each season with the District to see whether it would be allowed the next season. Director

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Forstmann reported to the Board that homeowners in the area had expressed safety concerns and asked that the parking not be allowed. The Board asked for the matter to be tabled until a later meeting. A motion was made to not allow any parking on Prater Road until any change is approved. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to not permit parking on Prater Road until a specific agreement regarding parking on Prater Road is negotiated and in place.

### Parking Lots/ ROA Landscaping

Mr. McIlveen reviewed the upcoming landscaping projects at the entry to Bachelor Gulch at the area by the round a bout. Mr. Jardis expressed the opinion that this work needs to be completed as soon as possible as the area is in major disarray. Concern was expressed regarding the turning radius at the round a bout especially for truck traffic. The Board asked if Vail Resorts was willing to be responsible if truck traffic ends up destroying the concrete apron around the round a bout. Mr. McIlveen and Mr. Hunn stated that Vail Resorts was aware of this risk.

The Bear Lot pedestrian improvements were discussed. The line of sight at the crosswalk has been widened. Director Forstmann asked whether any consideration had be given to the suggestion of having a drop site on both the East and West sides to discourage crossing Prater Road. The matter will be reviewed and brought back.

### Elk Track Traffic Concerns

The Board reported receiving a letter from the Elk Track Homeowners regarding non compliance with the traffic control and construction activity guidelines for the Village Walk project. Mr. Funk explained the BCRC regulations concerning the hours of operations for construction projects. The Board expressed concern that East West Partners had not followed the plan they had agreed to with the District. The Elk Track Homeowners were asking for a limit to the hours of operation and for the roads to be more regularly cleaned. The Board directed staff to send a letter to East West and Vail Resorts expressing the Districts concerns and expectations that the traffic control will be improved to meet the standards agreed to.

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### Resignation of General Manager

Director Wells informed the public the Board had received Mr. Grafel's letter of resignation to be effective July 31, 2005. The Board accepted the resignation and expressed appreciation for Mr. Grafel's contributions to the District over the last 6 years of service. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to accept the resignation of Mr. Grafel effective July 31, 2005 and wish him well.

Mr. Grafel asked the Board to allow him to purchase the 2003 Ford Expedition from the District. The board agreed to the purchase.

### Legal

**November Election:** Mr. Collins referred to the election resolution included in the packet. He stated the ballot question will need to be certified by September 2. The election is to be an independent mail ballot election. Ms. Lewensten will be appointed the Designated Election Official.

The first election question concerning the operating mill levy increase was reviewed. A request to simplify the language to more clearly express the intent of the District was made. Mr. Collins will revise the questions with the suggestions offered and present it for consideration at the next meeting.

Next the question concerning the Vilar funding was discussed. The Board discussed the pros and cons of including the question on the Ballot. Director Wells pointed out BCRC is supporting the Vilar with money from the civic assessment which is partially provided by the property owners and wondered whether this would create a double taxation effect. He expressed concern with not knowing more details regarding how the monies would be used. Director Friedman stated that it was appropriate to allow the voters the opportunity to express their opinion on the matter to the District through a ballot question. Director Wells noted the registered voters number approximately 400 while the number of actual owners is significantly more leading to the question of whether it is appropriate for the minority to decide for the majority. Director Campbell pointed out that all homeowners can chose

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where they register to vote and therefore do have the opportunity to be heard if they so choose. Director Forstmann stated he was opposed to the measure because he feels from a policy standpoint it is wrong. He explained the District has strict financial responsibilities and he is against this type of expenditure. He would prefer the ballot question not appear for similar reasons as stated previously by Director Wells. Director Mielcuszny stated he believes it is the expectation of the constituency that this question will appear on the Ballot therefore he supports allowing the voters the opportunity to be heard. Discussion continued regarding past contributions by other entities and the District. The Board discussed whether it would be possible to subject the tax to annual appropriation and a contract. Mr. Collins stated this is possible. Mrs. Forstmann brought up the notion that if the tax passes it may negatively affect donations by individuals to the Vilar as they may see the District mill levy as their contribution instead of continuing to individually provide contributions and financial support. If the issue is put on the ballot and the voters approve the increase then during contract negotiations the Board could have the opportunity to exercise discretion as to what expenditures would be appropriate but would at least know the voters wish to move forward with the funding. Upon motion duly made and seconded, by a vote of 4 Ayes and 1 Nay (Director Forstmann) it was

**RESOLVED** to place a question on the ballot regarding funding of the Vilar subject to contract and annual appropriation.

Mr. Collins explained he will revise the ballot questions as discussed above and bring them back to the August meeting for further review.

**Market Square:** Mr. Collins informed the Board a letter had been sent to Mr. O'Rourke asking for his assistance in moving the issue of possible conveyance of the Market Square unit forward.

### Main Entry Gate

Mr. Grafel reviewed the revised plan included in the packet for the remodel at the front main entry gate being proposed by BCRC. At this time the Board is being asked for conceptual approval prior to any construction documents being issued. The main gate will be relocated closer to Highway 6, with the homeowners access being

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moved to the far left lane. Traffic flow was discussed, it was pointed out that if guest lanes backed up the access for homeowners would be blocked. The Board asked if any thought had been given to rerouting a portion of the East Lot bus traffic route from Village Road to Highway 6. Mr. O'Rourke responded it had, but that it appears to add too much time to the routes and will not be part of the current plan. There was further discussion concerning safety of pedestrians and bicyclists. Mr. O'Rourke stated a prototype of the sketch will be made to study the flow of traffic and impacts. He will bring more information back to the August meeting.

### General Managers Update

**Eagle-Vail Admin/Maint Facility:** Mr. Grafel reported the Agreement with Hyder Construction for the Eagle-Vail project had been signed and the Notice to Proceed had been provided to them. The specifications and drawings are still being prepared.

**Roof Shingles Guidelines:** Mr. Grafel reported that at the BCRC meeting last week the guidelines regarding shake shingles were adopted and approved as part of the new rules and regulations for DRB. He reported that Mr. Hunn from DRB had stated that alternate shingle material had been approved for the Village Walk project.

### Wild land Fire Mitigation

The Board asked whether the mitigation plan provided by Anchor Point had been implemented. Mr. Grafel stated it has not yet been started. The plan is under review by BCRC.

### UERWA

Director Friedman reported water supplies are looking good for the year so far. Discussions are continuing with the Denver Water Authority and Western Slope entities regarding a possible reservoir in Wolcott.

### Financial Statements

Mr. Marchetti reviewed the June 2005 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously



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**RESOLVED** to approve the June 2005 preliminary financials as presented.

**Accounts Payable** The Accounts Payable listing was reviewed. The payment to BCRC for Public Safety was discussed; the Board expressed the desire to have a written agreement covering these services before any future payments are made for this service. Staff was directed to express this desire to the appropriate parties. By motion duly made and seconded, it was unanimously

**RESOLVED** to approve the accounts payable list as presented.

**2004 Preliminary Audit**

The Board brought up the matter of the 2004 Audit. All the requested information had been received and no further questions were noted. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the 2004 Audit as presented.

**Tract Q Cost Share**

Director Friedman reported he had informed Mr. Garnsey the District was not prepared to change the offer made and to date no response has been received.

**Custodial Resolution**

The Board reviewed the custodial resolution included in the packet. The resolution appoints Robertson and Marchetti, P.C. as the official custodian of the records and sets guidelines and fees for requests made for public documents. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the resolution designating the official custodian of records of the District a copy of which is hereby attached and made part of the record.

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

**RESOLVED** to enter into executive session citing §24-6-402(4)(f) C.R.S. for the purpose of discussing personnel matters. The Board entered into Executive session at 12:05 p.m. and returned at 12:10 p.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 June 22, 2005.

Respectfully submitted,

Kathy Lewensten  
Secretary for the meeting