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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 28, 2010

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., July 28, 2010 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
- Louis Kreig
- James Power
- Ernie Elsner

Also in Attendance were:

- Clyde Hanks, General Manager
- James Collins, Esq, Collins Cockrel & Cole
- Ken Marchetti, CPA, Robertson & Marchetti, PC
- Jennie Fancher, BC Admin Assistant, Recording Secretary
- Dawn Friedman, BCPOA
- Tony O'Rourke, BCRC
- Sam Parker, BC Public Safety
- Bill Simmons, BC Village Operations
- Cliff Thompson
- Ludwig Kurz, BCRC
- Rod Miller, BC property owner

### 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. It was 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

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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 23, 2010 Regular Meeting. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the minutes of the June 23, 2010 Regular Meeting.

### Future Meetings

The Board reviewed the 2010 meeting schedule included in the packet. The next regular meeting is scheduled for Wednesday, August 25, 2010 at the same time and location.

### Agenda

No changes were made to the agenda.

### Village Road

The Board turned its attention to the subject of Village Road. A meeting was held the prior week, on Friday July 16<sup>th</sup> to present and discuss the engineer's report of Village Road and the available options for its repair. Mr. Hanks, BCMD General Manager, reported that BCMD has a couple of options to consider: One being that the draft report should be considered for acceptance. The second item being that the Board should decide if they wish to move forward with a ballot issue requesting a mill levy for the repair of Village Road. Director Balk requested an opinion from each individual director.

Director Power stated that he is confident with the engineer's report on Village Road and that he believes that the report should be adopted. As for the bond issue Director Power does not believe that there is adequate support to move forward and that it should be delayed. In the meantime, Village Road should be patched as

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needed and full depth patching should be reserved for only the most serious areas of damage.

Director Gary stated that he did not feel that the BCMD has a use for the report, that it is biased. The purpose of the July 16 meeting had been to present the engineer's findings and get feedback from the Beaver Creek community. Director Gary stated that the BCMD should continue to patch where necessary and review the road every four to five years. Infrared patching should be implemented unless forced to go deep, each individual situation should be examined and a call should be made.

Director Elsner stated that his comments had not been included in the engineer's report, nor were specific letters that he requested been included. Mr. Hanks explained that the report was a summary and analysis by the engineers and he included data-based appendices only, leaving out opinion-based appendices. Director Elsner was disappointed that three Alpine Engineering memos were not included. Mr. Hanks explained that these were interim reports and as such were not implemented. Director Elsner also brought up that Prater Road work was intended to be part of Project Legacy and is to be split 50/50 with the BCRC. Mr. Hanks explained that Project Legacy is intended for beautification purposes and Prater Road work deals with both its geometry and safety. Director Elsner made a point that was supported by Director Balk that Prater Road has always been a part of Project Legacy, established by the Project Legacy committee and shall remain so. Overall Director Elsner feels that the engineer's report on Village Road is biased and misleading. Director Elsner would like the drainage of Village Road examined further and that full depth patching should be implemented where necessary but that the replacement of the road is not necessary.

Director Kreig stated that he has taken time to absorb all of the information. The three issues that the Beaver Creek public seem to have after the July 16 meeting include: 1.) Village Road looks good and nothing should be done, noting his opinion that this is total denial 2.) The consensus appears to be that the report is biased, that there is a conspiracy about what the solution should be 3.) There has been an attack on the integrity of the engineers and Mr. Hanks. Director Kreig stated that he feels that the Village Road analysis is accurate enough to point out that there are

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underlying problems with the road that cannot be seen but that should be fixed. At the very least full depth patching of the road should be considered. Director Kreig also noted that the property owners won't support a bond issue for Village Road, he believes that the Village Road Analysis should be accepted as a fair report.

Ms. Friedman, President of the BCPOA noted that the BCPOA has not taken a vote regarding Village Road, as the BCMD has not voted on it yet. When asked her opinion on the matter Ms. Friedman noted that she had received 12 emails on the subject, with 11 against the idea of a bond issue for Village Road and only one being for it. Ms. Friedman does not think that the BCMD should put a bond issue on the ballot because it would not pass.

Mr. Miller, a Beaver Creek property owner, member of the BCPOA and the chairman of the BCPOA committee tasked with evaluating the Village Road Engineer's report, stated his criticism of the report, stating that he believes that it is biased and dishonest. He believes that there is no critical analysis in the report and that it is lacking credibility. He would like to create a new report, evaluating the science, approach and assumptions of the engineers. Infrared patching should be used where required and full depth patching used where it is required. Mr. Miller does agree that Village road is in less-than-desirable condition but that it was acceptable at the time that it was built. He cannot imagine that Vail Associates would have built a road with less-than-desirable materials, engineers must have signed off on the road. Mr. Miller stated that a report needs to be done and that he intends to submit his own report.

Director Balk stated that the main aspect of Village Road that concerns him is financial. He believes that the recession has created an ideal borrowing climate, that costs are very competitive in this economic environment and inflation could potentially be a significant cost factor in future years. Aside from the affordability of borrowing money and low construction costs there is no reason to repair Village Road right now. Mr. Balk believes that, based on the best estimate of the engineers, the BCMD may not have the option of waiting for much more than five years. Therefore, if the engineers' conclusions about the foundational asphalt problem are sustained in the final accepted report, then by postponing action the community is choosing to implement not only the more

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expensive option, in Mr. Balk's opinion, but also to risk wasting it's money on patches and overlays during the delay period. It is important to remember that Village Road is the only road into Beaver Creek and its health is crucial to the health of the resort itself. Director Balk pointed out that the foundational level of Village Road is bad but there has not been a catastrophic event and there is no reason that work has to be done right now. BCMD can continue the way it is heading, crack sealing and patching where necessary. Village Road is not in imminent danger, but the reason for the project is not aesthetic but related to its bottom layer, the crumbling asphalt foundation.

Mr. Miller questioned the cost of the videotaping of the July 16 meeting and requested the email address for an engineer who was seated in the audience at the July 16 meeting. Mr. Hanks responded that the video taping cost was included in the overall audio visual costs from the Hyatt, estimated at \$1,000. Mr. Hanks also responded that he had e-mailed the engineer in question asking if he wanted his personal information shared. He had yet to receive a reply. Mr. Hanks said he would email the request again.

Director Power noted that he does not feel that the report was biased and that the engineers' conclusions led them in a direction. The bottom layer of asphalt is the issue.

Upon motion duly made and seconded, it was

**RESOLVED** to accept the Village Road Analysis Report of June 2010, as an interim report, as a fair and accurate description of road problems and possible solutions.

This acceptance is pending the receipt and analysis of Mr Miller's report, after which the Board will vote again on a final action.

The vote passed with Directors Balk, Kreig and Power voting in favor and with Directors Gary and Elsner voting against the motion.

### **Project Legacy**

A year ago the BCMD had committed \$500,000 to Project Legacy for the entry part of the project. The thought was brought up to move forward with the Prater Road section of the project. Mr. Tony O' Rourke stated that BCRC is now prepared to move

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forward 50/50 on all the projects with Project Legacy, proposing starting with the Village Core, then Beaver Creek Entry, followed by the Prater Road curve, the Recreation Path, and Village Road. BCRC would be happy to move the order around and could commit to the Prater Road curve piece and guardrails in that section for roughly \$450,000 and could maintain an operating reserve of 15% to 18%, which includes the common assessment.

The common assessment was developed as a two year plan. The Prater Road curve project could be accomplished in 2011 and BCRC will be in a solid position moving forward. Mr. Hanks stated that in regards to the Prater Road curve project, for reconfiguring the corner the road would have to be taken down to the ground. The new guardrails would only be replaced near the Prater Road curve. An overlay from the main entry gate to around the turn, down Prater to Bachelor Gulch Road would add perhaps \$75,000 to the project.

Director Elsner stated he does not believe BCRC should levy the common assessment again but that BCRC should approach BCMD for a loan. He does not believe that the reserve fund should be touched and that Project legacy is discretionary spending. Any money that the BCRC collects should be put in the reserve fund and the common assessment reduced. Mr. O'Rourke noted that the common assessment is being used to replenish BCRC's working capital reserve. It was discussed to delay the overlay until closer to the World Cup.

It was agreed to have Mr. Hanks look into the Prater Road curve project and collect hard numbers. The cost estimate should include the option of an overlay and at the next meeting the BCMD Board can decide whether to move forward with the project or not.

### **BCRC**

The BCRC proposed 2011 budget includes the common assessment. The reserve is going to be kept at a healthy level. For the Prater Road curve part of Project Legacy to move forward, a memo will be drafted proposing that the BCRC moves forward on the project, on a 50/50 basis.

Director Power inquired as to whether there was any information on the Holden Road break-ins. Mr. O'Rourke noted that the incidents occurred not just in Beaver Creek but in Avon as well,

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suspecting some type of criminal game activity. The majority of the BC incidents occurred in Ridgepoint. Mr. Parker, Head of BC Public Safety, noted that the Eagle County Sheriff's Department has a person of interest. The incidents were more vandalism than theft.

BCRC is looking to have a replacement for Mr. O'Rourke's position by November 1 and should have no trouble doing so. The Board is first looking locally but will pursue a national search if necessary.

### General Manager Update

**Holden Road:** Mr. Hanks reported that he met with engineers to survey the frost heave situation on Holden Road. Five driveways on a section of Holden Road experienced three to four inch frost heaves this winter, making exiting driveways more challenging for some homeowners. The frost heaves went down most of the way on most of the driveways, half of the way on others. Mr. Hanks, Mr. Schlegel and Mr. Palmer are examining possible solutions to the frost heaves. The first option is to improve drainage by adding drains five to six feet deep, to get water out of the soil. It will take a couple of years to dry out. The problem this past winter was caused by the exceptional cold that occurred early on, with a lack of snow. The frost depth was measured to four feet, much deeper than usual. If the water can be drained from the soil, the heaving will be reduced. Mitigation at the edge of a couple of the driveways, where they meet the road, is also being considered, to reduce the lip. The houses on the downhill side of the driveway face a tough situation in the winter time as they face a three to four inch lip when climbing out of their driveways. The driveways are snowmelted, causing the issue, the extremes of the heated driveways not freezing and the road freezing. A specific design of the sub drain is being pursued, along with a cost estimate.

**Wildland Fire Truck:** Mr. Hanks reported that the old wildland fire truck has been sold to a fire department in Rockland County in New York State for \$26,500. The truck was listed on a website handled by Fenton Fire, who will receive a commission of \$1,500. The District will clear \$25,000 on the sale.

**Project Legacy Signage Manual:** BCMD and BCRC are jointly engaged in the production of the Project Legacy Signage Manual.

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Design Workshop is creating the manual. Mr. Hanks and Mr. Kurz are working together to create consistency on language for the signs. The font size, color and specifics are being worked on by Design Workshop. The end result will be a manual that will create consistency.

**Insurance Claims:** There have been two insurance claims this year. The third claim, where a Dial A Ride bus hit a lamp post, is a small amount that, if filed, would be a claim against ourselves. It is best to pay this amount ourselves and not affect our insurance costs.

**Dial A Ride Transfer from BCRC:** Mr. Hanks and Mr. O'Rourke have been working on the term sheet. They have been examining the agreement and are going to implement language that dictates a minimum level of service for Dial-A-Ride. Any reductions in service below a set level will require mutual agreement. The agreement is a step in the right direction, securing a service level first and facing financial issues as the next step.

### Legal

**November Election:** A resolution is being recommended on the proposition and constitutional amendments that will be on the November Ballot. The resolution will state the BCMD Board's position against Amendments 60 and 61 and Proposition 101. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to endorse a resolution stating the Board's position against Amendments 60 and 61 and Proposition 101.

### Financial Statements

The Board reviewed the June 2010 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to accept the June 2010 preliminary financials as presented.

### Accounts Payable

The Board reviewed the Accounts Payable listing. Upon motion duly made and seconded, it was unanimously



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

**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 July 28, 2010.

Respectfully submitted,  
*/s/ Jennie Fancher*

Jennie Fancher  
Secretary for the meeting