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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 August 22, 2007

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., August 22, 2007 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
- John Forstmann
- Ernie Elsner
- Robert Gary

Absent and excused was Director:

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
- Tom Schouten, BCPOA
- Tony O'Rourke, BCRC
- Bill Simmons, BC Operations
- Jim Funk, BC Public Safety
- Lew Harstead, Esq., Johnson & Repucci LLP ( via phone)

### 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

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performing arts facilities within Beaver Creek; Mr. John Forstmann is a board member of the Beaver Creek Club; Mr. Ernest Elsner is a board member of the Beaver Creek Property Owners Association; Mr. Michael Balk is a director of the Beaver Creek Property Owners Association and a director of the Vilar Center for the Arts; and Mr. Robert Gary is a member of the 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 July 25, 2007 Regular Meeting. Upon motion duly made and seconded, it was unanimously,

**RESOLVED** to approve the minutes of the July 25, 2007 Regular Meeting as presented.

### Agenda

Mr. Hanks requested time to update the Board on several informational items.

### Future Meetings

The Board reviewed the meeting schedule included in the packet. The next regular meeting is scheduled for Wednesday, September 26, 2007 at 8:30 a.m. in the same location.

A Board retreat has been scheduled beginning at noon on Thursday, September 27<sup>th</sup> through mid-day Friday, September 28<sup>th</sup> at the Hotel Teatro in Denver to discuss strategic matters. The Board requested the ability to hold an executive session if necessary during the retreat. Mr. Collins recommended the Board consider passing a resolution to conduct a special meeting outside of the District boundaries for this purpose. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to conduct a special meeting during the retreat scheduled for Thursday, September 27<sup>th</sup> and Friday, September 28<sup>th</sup> outside of District Boundaries as described in the resolution which is hereby attached to become part of the minutes.

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### Public Input

Mr. Schouten mentioned BCRC has been discussing the color of decorative lights for the resort for the upcoming winter season. The issue under consideration is whether the decorative lights should be blue or white. Mr. Schouten requested support from the Board for white lights stating this was the choice of a majority of the BCPOA. The Board directed Mr. Hanks to draft a letter to the appropriate party to convey the Boards support for white decorative lighting.

Mr. Schouten briefly reported on BCPOA's status related to the ongoing BGMD lawsuit. He explained BCPOA has requested to be extricated from the matter and is in discussions with BGMD currently. He explained if BCPOA is not extricated they will need to determine how to proceed. He noted a summary judgment had found the road regulations were unenforceable but other issues remain unresolved at this time.

Mr. Schouten asked for the Districts support for a PUD amendment which will prohibit vacation/timeshare ownership in single family area's of Beaver Creek. The Eagle County Planning Commission hearing for the PUD amendment is scheduled for September 10<sup>th</sup>. Mr. Schouten noted both Arrowhead and Bachelor Gulch have this type of restriction in place. He noted this would prevent vacation pool club ownership within low density neighborhoods in Beaver Creek. Both the BCPOA and BCRC support this PUD Amendment. After a brief discussion the Board directed Mr. Hanks to draft a letter of support and to attend the public hearing on behalf of the District.

### Prater Road Overlay

Director Friedman reported Mr. Jardis, President of the Bachelor Gulch Metropolitan District (BGMD) has acknowledged BGMD has some shared responsibility for costs associated with Prater and the portion of Village Road described in the non exclusive Joint Easement Agreement. BGMD did suggest the associated costs should be shared three ways, between BCMD, BGMD and Vail Resorts (VR). As an informational matter, Director Friedman reported BGMD had recently presented an invoice to VR for roadway maintenance within BGMD caused by excessive construction traffic. Director Friedman explained Mr. Garnsey had expressed VR's opinion that such costs should be covered by the

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property taxes VR pays on its property within BGMD. The Board asked to continue the discussion in executive session.

### General Manager Update

**North and South Fairway Drive Overlay:** Mr. Hanks reported B & B Excavating, Inc, will begin overlay work on North and South Fairway Drive after Labor Day. It is anticipated the work will be completed within two weeks.

**Fuel Island Containment Swale:** Mr. Hanks reported the swale in front of the fuel island has been completed. Once it is inspected the fuel tanks will be in compliance with all requirements of the EPA.

**Skier Bridge:** Mr. Hanks reported Monroe and Newell came and re-examined the damage done to the skier bridge which was caused by an accident earlier this summer. They have determined a cosmetic fix will be sufficient for the damaged area. The Board asked if any action is being taken to help prevent this type of accident in the future. During discussion some options suggested included additional signage, a hanging bar/sign or protective steel plates. The Board suggested the security gate public safety staff could remind truck drivers of the height limitations for the bridges. Mr. Hanks was directed to review the options for mitigation of the area in more detail and to bring the matter back before the Board.

**Village Road Project:** Mr. Hanks reported the Village Road project is complete. The re-vegetation has not grown as expected and will be looked at next spring for any warranty issues. There has been an issue raised regarding the lights in the pillars being too bright. Mr. Hanks is working with Mr. Hensel to determine the best option to reduce the brightness. Several options under consideration include using a lower watt bulb, louvers or a different glass.

The Board requested a review by Mr. Hanks of the intersection of Prater and Village Road to see if additional marking or signage may be appropriate for left hand turns from Village Road onto Prater Road.

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**Prater Road Closure Request:** Mr. Hanks informed the Board he has received a request from BCRC to close Prater Road from September 5<sup>th</sup> through November 15<sup>th</sup> for the construction of the Prater Road Gatehouse. The Board asked if it would be possible to leave one lane of traffic open. Mr. O'Rourke explained due to the tight timeframe for the building he did not believe there would be sufficient room to allow one traffic lane to be open but did agree to review the traffic plan to see if it may be possible to leave one lane open for part of the time. The Board requested appropriate information be provided to those affected by the closing. The Board delegated authority to Mr. Hanks to give permission to close Prater Road subject to verification that one lane of traffic cannot be left open.

**BC Fire Station Improvements:** Mr. Hanks reported Hess Contracting is approximately two thirds done with the new siding and windows at the BC fire station. One issue which arose during construction was the discovery of a leaking heat radiator which had caused mold damage. The damage is being fixed and mold mitigation specialists have been in to test the mold levels. The mold levels are within normal ranges. Mr. Hanks noted coordination of the mold mitigation work with Fire Staff had gone smoothly. The project will be complete in mid September.

**Wildland Fire Mitigation:** Mr. Hanks reported a meeting had been held with Anchor Point last week. He explained there are three area's within Strawberry Park being considered for mitigation this fall to reduce the fire risk within the District. He recommended the District use the fire mitigation budget of \$50,000 towards the costs for these Strawberry Park areas. Mr. O'Rourke noted BCRC had budgeted \$70,000 in 2007 for mitigation costs. The Board questioned the ownership of the areas. It was reported none of the areas are on forest service property but the areas do include VR property, property over which the District has easements and relatively little private property. Director Forstmann asked if the private property owners were going to be notified and charged for the portion of the mitigation related to their area. Mr. O'Rourke explained approximately 19 of the 1300 trees in the areas were on private property. He stated the owners would be notified to allow them to work with the effort but that the work would be done as a matter of expediency. Mr. O'Rourke stressed the mitigation measures were being undertaken to reduce

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risk within the resort which benefits all property owners. A concern was expressed that a precedent not be set with this project that District funds would be used to benefit private property owners. If mitigation measures are needed on private property, the owner of the property should be contacted and encouraged to take the appropriate mitigation measures or invoiced for the costs.

Mr. O'Rourke explained the funding for future mitigation measures can be determined on a year to year basis during the budgeting process. He noted BCRC is considering budgeting \$120,000 for 2008. Mr. Hanks noted in the Beaver Creek Wildland Fire Plan the District made a commitment to reduce the fire risk which would lead to an assumption the District would also contribute funds for mitigation. The Board expressed a desire to have a better understanding of the future expectations and responsibilities of the District. Director Friedman summarized the discussion by stating the District would encourage the mitigation measures within Strawberry Park to move forward with the District contributing \$50,000 towards the cost with the understanding that future mitigation measures will be assessed on an annual budget basis after a further review of the approved wildland fire plan and acknowledging no precedent is being set as to future funding or its use.

**Prater Rd & Hwy 6 Intersection:** Mr. Hanks reported BCRC has asked for two representatives from the District to participate on a committee with two representatives from BCRC to study the alternatives for the intersection at Highway 6 and Prater Road. The Board asked why representatives from BGMD would not be included. Mr. O'Rourke stated BCRC was hoping to start with a smaller committee. The Board asked if any financial commitment was expected. Mr. O'Rourke stated there was no expectation of a financial contribution. The Board appointed Directors Elsner and Forstmann to participate on the committee contingent upon the inclusion of two representatives from BGMD.

### Front Gate Project

Mr. O'Rourke stated the work at the front gate is complete except for a few punch list items.

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### TOA Bus Service

Mr. O'Rourke reported the Town of Avon (TOA) has informed BCRC that it intends to discontinue bus service up to the Village. The TOA suggested BCRC contribute \$250,000 for continuation of the service if it desires. They are currently in discussions regarding the matter.

### Legal

Mr. Collins reported he was working with Mr. O'Rourke and BCRC counsel on the Market Square conveyance matter.

### 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 from Special Counsel, Mr. Lew Harstead, Esq. related to Eagle River Fire Protection District and citing §24-6-402(4)(e) C.R.S. for the purpose of determining positions and strategies related to Prater Road cost share negotiations. The Board entered into Executive session at 10:00 a.m. and returned at 11:55 a.m.

### General Manager Update

**Board Retreat:** Mr. Hanks briefly reviewed a draft agenda for the Board retreat. The Board offered comment and topics for consideration.

### Financial Statements

The Board reviewed the July 2007 preliminary financial statement included in the packet. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the July 2007 preliminary financials as presented.

### Accounts Payable

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

**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

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**RESOLVED** to adjourn the Regular Meeting of the Beaver Creek Metropolitan District Board of Directors held on August 22, 2007.

Respectfully submitted,

Kathy Lewensten  
Secretary for the meeting

I hereby affirm that all of the discussion concerning Eagle River Fire Protection District in Executive Session constituted attorney-client communications.

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Lew Harstead, Esq., Johnson & Repucci LLP