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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 September 23, 2009

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., September 23, 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 (via phone)
- Ernie Elsner (via phone)
- 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
- Dawn Friedman, BCPOA
- Chris Lubbers, BC Transportation

### 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, 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

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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 August 26, 2009 Regular Meeting. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the minutes of the August 26, 2009 Regular Meeting as presented.

### Future Meetings

The Board reviewed the 2009 meeting dates. The next regular meeting is scheduled for Wednesday, October 28, 2009 at the same time and location. A budget work session is scheduled for Wednesday, October 7, 2009 at 8:30 a.m. in the same location.

### Agenda

No changes were made to the agenda.

### Public Input

No public comment was offered.

### Village Road

Mr. Hanks reported he had obtained a second opinion from Schmuesser Gordon Meyer (SGM) regarding options for Village Road as directed at the last meeting. He referred to the memo from SGM which was included in the packet. The Board reviewed the recommendations. Mr. Hanks stated several more test holes will be drilled and that staff will continue to meet with SGM and AEI to determine a long term solution. A meeting with potential contractors will be held to receive their input regarding the logistics of rebuilding Village Road. As previously noted no catastrophic failures are expected in the near future which allows time to evaluate a long term solution. Mr. Hanks will obtain cost estimates for any additional patching that is anticipated for 2010.

The Board discussed the possibility of rebuilding Village Road. It is expected such a project would cost approximately \$4 to \$5 million. It would be necessary for the District to obtain voter approval for any long term debt issuance that would be needed for

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funding such a project. The Board reviewed potential election dates and timelines. The Board may consider including a question on the ballot for the May 2010 election once more information is available. It was noted the District can ask for debt authorization from the voters in May but would not be required to issue the debt related to the authorization until it is needed to fund the actual project, such as in the fall of 2010.

Director Balk reported while attending BCRC's September meeting he had informed them Village Road may need to be rebuilt in the near future and mentioned Project Legacy had included restructuring/upgrading of the Prater Road/Village Road intersection. He had requested BCRC consider acknowledgment of the potential for a 50% cost reimbursement to the District at a future date for any work related to project legacy done on Village Road.

Ms. Friedman requested the dips surrounding manhole covers be repaired as part of the rebuild of Village Road. Mr. Hanks stated although the manholes would be level when the project is done, normal wear and tear cause manholes to become uneven over time.

### General Manager Update

**Beaver Creek Creekside Park Drainage:** Mr. Hanks reported he had reviewed the easements around Beaver Creek. The District and Vail Resorts both have easements. He met with Mr. Hensel and Ms. Forstmann at the park to discuss potential improvements. Mr. Hensel already has an appropriate 404 permit which allows some clearing or cutting down of vegetation along the creek. Mr. Hensel will instruct his crews to begin cutting down some of the vegetation and removing the deadfall as discussed in their meeting with Ms Forstmann. The Board asked Mr. Hanks to be sure to inform the surrounding neighbors of the proposed work. Mr. Hanks responded the feedback from a few of the neighbors has been positive; they were interested in opening up the area a bit. The area will be looked at again in the spring.

**Skiway Contribution Agreement:** Mr. Hanks stated the Skiway Contribution Agreement between BCRC and the District was up for renewal. This agreement provides terms for the 50% cost sharing of work, such as grooming and snowmaking, performed by VR on the transportation skiways with a maximum contribution

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cap of \$50,000 from BCRC. The original term of the agreement had been 10 years. There have not been any issues related to the agreement. Director Balk stated at the BCRC meeting they discussed the agreement. BCRC determined it would prefer to renew the agreement on an annual basis. Mr. O'Rourke stated BCRC is concerned how the economy will affect their revenues so at this time BCRC is not interested in entering into any long term obligations. If in the future BCRC should choose to discontinue contributing 50% of the skiway costs the District would be responsible for 100% of the cost. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve a one year renewal of the Skiway Contribution Agreement under the same terms and conditions.

**Transportation Agreements:** Mr. Hanks referred to the proposed transportation agreement costs and draft agreements that were included in the packet. He explained the terms proposed would be used to prepare the related exhibits for the Dial-A-Ride, Village to Village, and Parking Lot agreements which are up for renewal on November 1, 2009. The final agreements will be provided for consideration at the October meeting. Mr. Lubbers reviewed the changes made in the various transportation services noting these have been discussed at previous meetings and with the transportation committee. He explained the Village to Village service has been scaled down to a basic service level; the Parking Lot service changes include discontinuing the employee route and an increase in wait times between buses; and the Dial-A-Ride changes include discontinuation of the Holden route. Mr. O'Rourke stated after the changes are implemented if it appears there are issues with the changes they will be open to discussions for making revisions as necessary. It was suggested the surveys be closely monitored to see if service quality is affected by the changes. The Board asked for an update in January regarding any reaction to the changes. The transportation committee will continue meeting regarding long term planning. Ms. Friedman asked if the property owners have been notified of the changes. Mr. O'Rourke will make the information available in an upcoming newsletter. Upon motion duly made and seconded, it was unanimously

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**RESOLVED** to approve the proposed transportation agreement costs and draft agreements as presented subject to non-substantive modifications which may occur and final review by Mr. Hanks and District counsel.

**490 Holden Skiway:** Mr. Hanks reported a drawing of the improvements to the 490 Skiway have been provided to the owner. He is waiting for a response.

### Legal

**Vilar ballot question:** Mr. Hanks noted a copy of the TABOR notice that will be provided to eligible electors for the November election was provided in the packet.

### Financial Statements

The Board reviewed the August 2009 preliminary financial statement included in the packet. Mr. Marchetti stated the District is in good shape. The 2010 preliminary budget will be reviewed in detail at the October 7<sup>th</sup> meeting. Upon motion duly made and seconded, it was unanimously

**RESOLVED** to approve the August 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 a bus accident claim. The Board entered into executive session at 9:40 a.m. and adjourned the executive session at 9:50 a.m.

### 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 September 23, 2009.

Respectfully submitted,  
*/s/ Kathy Lewensten*

Kathy Lewensten  
Secretary for the meeting

I hereby affirm that all of the discussion concerning the bus accident claim in Executive Session constituted attorney-client communications.

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James Collins, Esq., Collins Cockrel & Cole