
RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS BEAVER CREEK METROPOLITAN DISTRICT November 28, 2007

The Regular Meeting of the Board of Directors of the Beaver Creek Metropolitan District (the "District") was held at 8:30 a.m., November 28, 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 (via phone)
- Robert Gary

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
- Suzanne Hoffman-Leblanc, BC Property Owner
- Lou Kreig, BC Property Owner
- Bill Simmons, BC Operations
- Jim Funk, BC Public Safety
- Tony O'Rourke, BCRC

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 performing arts facilities within Beaver Creek; Mr. John Forstmann is a board member of the Beaver Creek Club; Mr.

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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 October 24, 2007 Regular Meeting. Upon motion duly made and seconded, it was unanimously,

RESOLVED to approve the minutes of the October 24, 2007 Regular Meeting as presented.

Agenda

Mr. Hanks noted the Market Square Proposed Amendment to Master Services Agreement was not yet finalized and requested the matter be moved to the next meeting's agenda.

Future Meetings

The Board reviewed the meeting schedule included in the packet. The next regular meeting is scheduled for Wednesday, December 19, 2007 at 8:30 a.m. at the District Administration Facility.

General Manager Update

Prater Road Parking: Mr. Hanks reviewed the request for parking along Prater Road for the coming ski season which was included in the packet. Similar to last year it was noted more days were being requested than had been used in the prior year to allow for flexibility in case of exceptional snow. The Board requested a time limit restriction for parking along the roadway be imposed which ended the parking at 6:00 P.M. They requested signage be posted which states the restriction so it could be enforced. Mr. Simmons agreed to do so. The Board gave authority to Mr. Hanks to approve the snow days. They requested he work with Mr. Funk to monitor the matter. Upon motion duly made and seconded, it was unanimously

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RESOLVED to approve the request for Parking along Prater Roadway subject to the guidelines as presented in the November 19, 2007 memo and as discussed.

Market Square Utilities: Mr. Hanks referred to the memo in the packet related to the allocation of prior utility bills at Market Square. He explained the deficit of payments in the utility bills from Oct 2000 through Oct 2005 was due to negotiations related to the percentage allocations. In particular the Vilar Centers percentage had increased from 3% to 38% however they continued paying the 3% while the engineer's allocations were reviewed and negotiated. Market Square's management has proposed that all parties contribute to the deficit based on the current approved percentages. The Districts portion of the deficit would be 3% or \$9,090. Mr. Hanks recommended approval of the payment. The Board agreed subject to the consent by all other parties to the arrangement. Upon motion duly made and seconded, it was unanimously

RESOLVED to approve the payment of \$9,090 in past utility costs at Market Square contingent upon all parties consent to the arrangement proposed by Market Square.

Legal

Market Square: Mr. Collins reported on the Market Square conveyance matter. He explained an outline of the deal has been provided to Ms. Folz. She has been asked to provide approval of the outline. This has not yet been received. Mr. O'Rourke approved the structure of the deal on behalf of BCRC. Once all approvals are received the final conveyance documents will be prepared for execution. The Board asked Mr. Hanks to follow up with Ms. Folz.

World Cup Transportation:

Mr. Hanks explained he had e-mailed Ms. Folz's request for District support for the 2007 Visa Birds of Prey World Cup Races to the Board prior to the meeting. For the past few years the District has provided transportation and snow removal for the World Cup Races. There is no cost to the District. Mr. Hanks had approved the request prior to the meeting based on the response he had received and asked the Board to ratify the action. Upon motion duly made and seconded, it was unanimously

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RESOLVED to ratify and approve the request for transportation support and snow removal services in the same manner as past years for the World Cup Races.

Wildland Fire Mitigation:

Mr. O'Rourke reported the wildfire mitigation work is complete for 2007. A total of 900 lodge pole pines were removed. There is another three years worth of similar work. Mr. O'Rourke referred to the meeting notices included in the packet. He explained the meetings were a requirement for submitting requests for federal funding grants. The Board pointed out the term "high-risk" communities was misleading as the highest level of risk within Beaver Creek is "moderate" they requested this be made clear at the meetings.

General Manager Update, Cont.

Encroachments: Mr. Hanks reported on the ongoing project of identification of the status of the smaller segments of roadways within the District. He has been working with Alpine Engineering to review the history of the segments to better understand which have been accepted by the District and what services the District has agreed to provide such as snowplowing or cinder placement. While the matter is being reviewed the operations crew will continue to perform work in a manner that is similar to what has historically been done. He hopes to have a listing of the segments and services which can be used to formalize the arrangements in the coming year.

Public Input

Ms. Hoffman-LeBlanc asked which entity receives the fines that are imposed for construction violations. It was noted BCRC receives the fines. She expressed frustration that she did not see a fine for an incident that occurred on October 28th. Mr. Funk will review the matter.

Ms. Hoffman-LeBlanc expressed concern with some construction vehicles not having adequate winter tires to navigate within Beaver Creek on slippery roadways. She asked if there is any enforcement for proper tires. Director Friedman noted the District cannot mandate the type of tire on a vehicle but does monitor safety within the District. Mr. Simmons explained there is a scale from stage one to stage four for the conditions on roadways in Beaver

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Creek. Depending on the stage of the roadway, there may be restrictions placed on the types of vehicles that are allowed access, such as “only winter tires” or “only four wheel drive vehicles”. Larger delivery trucks may be required to have chains depending on the stage of the roadways. Director Balk suggested when someone calls to inform public safety they have a truck coming into Beaver Creek, staff could provide the road conditions or any warnings. If the conditions are not good the roadway could be checked to see if additional sanding or preparation of the roadway is possible.

Town of Avon Transportation Agreements

Mr. Hanks and Mr. Simmons reported the two agreements with the Town of Avon for transportation services have been finalized and are ready for action.

Parking Lot Transportation Service: Mr. Hanks explained the revisions to the parking lot bus service agreement. The term will be extended to October 31, 2008. He noted the provisions related to the District buses being used for TOA charter services have been updated to more fairly reflect the value for the use of the equipment. He recommended approval of the agreement. Upon motion duly made and seconded, it was unanimously

RESOLVED to approve the Intergovernmental Agreement for Transportation Services related to the “Free Parking Lot Service” with the Town of Avon.

“Ski School Express” (SSE) Service: Mr. Hanks explained this was a new agreement which came out of negotiations between BCRC and TOA in response to concerns expressed by BCRC with ski school participants being able to reach the Village due to cutbacks in the scheduled service from Avon. The Agreement will be between the District, TOA and BCRC for a term of one year through October 31, 2008. The District will supply buses for the service from the current fleet. The TOA and BCRC will be sharing the cost of the service; the District will not have any financial responsibility for the service. The TOA continues to encourage a ski school at the BC Landing location. Several concerns related to the service were expressed including the somewhat limited availability of the service through the use of

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vouchers. Mr. O'Rourke noted the service will be monitored throughout the season to see how it is working. Upon motion duly made and seconded, it was unanimously

RESOLVED to approve the Agreement for Transportation Services related to the "Ski School Express" service.

Prater Gate Project

Mr. O'Rourke reported the Prater Road gatehouse had been completed a week ahead of schedule and is in use.

Front Gate

Mr. O'Rourke reported a truck had hit and damaged the homeowner's gate at the front entrance. He explained the homeowner's lane will be closed for a day to make the necessary repairs. Director Forstmann suggested language changes for the new entry signs.

Bike Path Memorial

Mr. O'Rourke explained BCRC had received a request from the family of Mike Janelle to consider renaming the BC recreation/bike path in memory of him. He explained a small sign will be placed by the intersection of Prater Road on the path to accomplish this and requested the Board's permission. The Board agreed to the request.

Beaver Creek Beautification

Mr. O'Rourke inquired about how the Board would like to begin the process of finding appropriate landscape and signage professionals for the initial updated planning for Beaver Creek. Director Friedman explained the District had envisioned a "complete approach" which would go beyond landscape and signage. Mr. O'Rourke expressed concern whether a single firm existed that could provide a comprehensive overview. He encouraged the District to take the lead in a search for such a professional. The Board instructed Mr. Hanks to prepare and send requests for information (RFI) to various firms to see if there is interest. It is hoped a firm can be found and the process can begin as soon as possible to allow the plans to be completed and implemented in the coming year.

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**Highway 6 and
Prater Road
Intersection:**

Director Forstmann and Director Elsner reported they had met with the committee reviewing the intersection of Highway 6 and Prater Road. The committee discussed alternatives such as a round-about or modification of the timing of the signal lights with additional turning lanes. Neither option appears viable at this time. Mr. O'Rourke explained the intersection will be monitored for now. He explained the hardware and computer which controls the timing of the current traffic light may be upgraded if CDOT approval is obtained. He explained to date CDOT has not been very responsive to any inquiries regarding the intersection.

ERFPD

Director Friedman referred to a letter received from ERFPD regarding the training and certification for two public safety employees. He asked Mr. Funk to describe the process by which training hours are verified and certifications are obtained for individuals. Mr. Funk explained some of the training hours for individuals may be obtained outside of the ERFPD training department, such as from Copper Mountain Fire Department. In such cases, in the past, the outside department would verify the hours and ERFPD would accept these and then would submit the request for certification for the individual. It now appears ERFPD will not longer be willing to accept the outside department training verification so the certifications would no longer be processed through ERFPD. If outside training verifications are part of the individuals training hours the outside training department would be the agency which would send in the certification. The Board decided to continue the discussion of the matter in executive session.

Legal

Mr. Collins referred to the letter from the Department of Local Affairs regarding the 5.5% limitation that had been included in the packet. He explained the history of the interpretation of the 5.5% limitation and its removal from a District. He noted different State Attorney Generals have expressed different interpretations. The previous, conservative interpretation of the matter reflects the view that the 5.5% limitation is not removed unless specific language has been approved by the voters. The current, liberal interpretation of the matter is the 5.5% limitation is removed by general non specific language. The District ballot question had non specific language in a May 7, 1996 election in which the voters of the

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District “de-bruced”. It is thought the District may not have had an intention to remove the 5.5% limitation. The District has abided by the 5.5% limitation within the approved budgets in prior years. Mr. Collins suggested the District can continue to voluntarily abide by the 5.5% limitation with a notation made of the voluntary limitation within the discussions of the annual budget. The Board discussed the pros and cons of self imposing the 5.5% limitation. Mr. Collins offered an alternative in which the District responds to DOLA by a letter which states the District disagrees with DOLA and did not intend to remove the limitation. He recommended the District seriously consider voluntarily imposing the 5.5% limitation without a formal letter to DOLA. It was pointed out in an emergency situation it may be beneficial to be able to keep some additional revenues. Upon motion duly made and seconded, it was unanimously

RESOLVED to voluntarily abide and impose the 5.5% limitation on the 2008 budget for the District with the understanding the limitation will be voluntarily imposed on future budgets under all but emergency circumstances.

2008 Budget

The continued public hearing for the 2008 budget was opened. No public comment was offered and the hearing was closed. The Board discussed the revenues and expenditures projected for 2008. A mill levy rate of 21.014 mills had been used in preparing the budget. This reflected a decrease of 4.786 mills over last year’s rate. The decrease is primarily due to an increase in the Final Assessed Valuation and the voluntary imposition of the 5.5% limitation. Mr. Marchetti had provided a memo reviewing the Vail Resorts municipal operations budget. The Board asked if an independent audit of the operations charges had been requested in the past few years. Mr. Marchetti explained it had been at least 5 years since this had been requested. The Board directed Mr. Marchetti to request McMahan and Associates do a more thorough audit of the operations charges as part of the 2007 audit. Upon motion duly made and seconded, it was unanimously

RESOLVED to adopt the 2008 budget and appropriate the sums of money for Beaver Creek Metropolitan District as revised, and

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FURTHER RESOLVED to certify the mill levy for Beaver Creek Metropolitan District

Financial Statements

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

RESOLVED to approve the October 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 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)(e) C.R.S. for the purpose of determining positions and strategies related to UERWA matters, Prater Road negotiations and ERFPD matters. The Board entered into Executive session at 10:45 a.m. and returned at 11:15 a.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 November 28, 2007.

Respectfully submitted,

Kathy Lewensten
Secretary for the meeting