
RECORD OF PROCEEDINGS

Minutes of the Regular Meeting Of the Board of Directors Berry Creek Metropolitan District December 28, 2010

A Regular Meeting of the Board of Directors of the Berry Creek Metropolitan District, Eagle County, Colorado was held on December 28, 2010 at 9:00 a.m., at the Singletree Community Center, 1010 Berry Creek Road, Edwards, Eagle County, Colorado, in accordance with the applicable statutes of the State of Colorado.

Attendance The following Directors were present and acting:

- Mike Budd
- Herb Luhman
- Heather McInerny
- Dan Godec
- George Gregory

Also in attendance were:

- Matt Dalton, Legal Counsel
- Diane Levine, SPOA
- Dan Carlson, Operations Manager
- Cheri Curtis, Secretary to the Meeting

Call To Order

The Regular Meeting of the Board of Directors of Berry Creek Metropolitan District was called to order by Director Budd, on December 28, 2010, at 9:00 a.m. noting a quorum was present.

Minutes

The Board reviewed the minutes from the November 23, 2010 Regular meeting. Upon motion duly made and seconded it was unanimously

RESOLVED to approve the minutes of the November 23, 2010 Regular Meeting as revised.

Changes to the

Agenda Legal was moved up on the agenda.

Public Input There was no public input.

Legal

Matt Dalton gave a presentation of his firm's position in relation to the Board and the District over the last fifteen years stating he did not regularly attend meetings and only provided services when requested by the Board. The Board questioned the conflict of interest since Mr. Dalton also represents WECMRD. Mr. Dalton reported he would need to remove himself from both sides if the case goes to

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litigation and suggested removing himself as legal counsel for WECMRD. Director Gregory stated it would be better to allow Mr. Dalton to continue representing WECMRD to hopefully obtain an uncontested resolution. The Board encouraged Mr. Dalton to keep the roof issue on a mediation level to resolve the conflict.

Director Budd suggested having Mr. Dalton work with the Board when developing contracts to fully understand the desires of the Board and to draft the contracts in the best interest of the District. Director Godec stated Mr. Dalton should be the advocate for the Board.

Discussion followed on the IGA for the Landscaping portion of the roundabout projects and the allocation of the expenses. The Board's goal is to protect their constituent's interest while working for the good of the community. The Board directed Mr. Dalton to revise the allocation for the project management fee and to remove the indemnification clause.

Mr. Dalton stated he would report back to the Board and specifically Director Budd on his plan to become a better advocate for the Berry Creek Metropolitan District and more responsive to the Board.

Operations Report

Mr. Carlson stated the pump at the Charolais Circle pond is not operating and the fish probably did not survive. The original pump was replaced after eight years in 2009. The Board discussed the pond maintenance and the need to protect wildlife. Upon motion duly made and seconded it was unanimously

RESOLVED to install a pump closer to shore and replace the fish in the spring of 2011.

The exercise room blinds were replaced and the door window was frosted to provide privacy.

Director McInerny questioned the snowplowing issues related to the new landscaping. Mr. Carlson stated this has been a light snowfall year and in a normal year the stakes would not work to protect the landscaping. Mr. Carlson suggested the Board consider the landscaping designs on the corners to avoid damage from the County snowplows.

Director McInerny questioned the irrigation invoices and Mr. Carlson reported there was an invoice from the Sonnenalp Golf course for \$3,648.21 that was related to the Beautification process and was charged to the Beautification line item.

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WECMRD

Field House SPOA has taken the lead on the WECMRD field house issue. Joan Fritsche from Foster Graham Milstein & Calisher, LLP has researched the roof issue and prepared a letter directed to WECMRD. The letter has been signed by the SPOA Board President and sent to the WECMRD Board.

WECMRD is planning to construct a \$153,000 athletic training facility on the Miller Ranch site. The Board discussed the charter of WECMRD and the concept of constructing a possible commercial facility.

Schmidt Property

Eagle County has distributed information on an application from the Schmidt family, owners of the property adjacent to the Eagle River and the Edwards Commercial area north of Highway 6 and west of the Spur Road. The owners are requesting a waiver to allow the fifty foot setback from the river that was the requirement when the property was constructed and to permit residential use in an area that was subsequently designated as a commercial area. By motion duly made and seconded it was unanimously

RESOLVED to respond to Eagle County stating the Board supports the waiver request.

Power Line Project

Holy Cross Energy encountered infrastructure issues and has been working on resolving the problems. The line will be buried when the ground conditions allow.

I-70 Interchange Project

Director Budd apprised the Board that discussions are continuing on a draft agreement related to the sidewalk portion of the I-70 Interchange Roundabout project. Once drafted, the Board will have the ability to review the agreement and comment prior to execution. The Board will possibly be asked to agree to maintain the sidewalk from Latigo to where it connects with the existing path.

Hoyos Request

The Board responded to Eagle County's letter regarding the Hoyos property, reporting the District contributed the trees to the Hoyos property as the District's contribution to mitigate the impacts of the construction on their property.

Beautification

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Update The ECA members agreed to have Sones Landscaping proceed with bidding the roundabout landscaping project. Berry Creek will be managing the landscaping project for ECA.

Director Budd suggested having two “person in charge” (PIC) representatives from the District. It was agreed Directors Luhman and Godec will represent the District as the PIC’s on the project.

Director Gregory will be the Berry Creek representative to ECA for the construction process.

Watershed Council

Request Director Gregory reported the UERWA has previously contributed funds to the Watershed Council and there is a direct benefit to the District. By motion duly made and seconded it was unanimously

RESOLVED to approve contributing \$2,200 to the Watershed Council.

Medical Center

Expansion Upon motion duly made and seconded it was unanimously

RESOLVED to approve supporting the PUD expansion of the Edwards Medical Center.

Entrance Signage

Since there was no report the item was tabled to the January meeting.

Financial Report

The November 30, 2010 Financial Statements were included in the Board packet. By motion duly made and seconded it was unanimously

RESOLVED to accept the November 30, 2010 financial statements as presented.

Accounts Payable

By motion duly made and seconded it was unanimously

RESOLVED to approve the December 2010 accounts payable list as presented.

SPOA

SPOA has several Board members not running for re-election at the March Annual Meeting. Ms. Levine encouraged the District Board members to recruit new SPOA Board Members.

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Director Budd presented the previous survey results to the Board. Although most of the resident's highest rated requests have been addressed including the west end roundabout project, it was noted the newsletter is the one item that needs improvement. Beginning in 2011 quarterly newsletters will be sent regularly. A follow-up survey in 2011 was suggested.

UERWA There was no December meeting. Director Gregory reported UERWA, ERWSD and the Vail Sanitation District will be combining meetings to reduce legal representation time at the meetings.

ECA The ECA members are working with Scott Sones on the landscaping design and the bidding process. The engineering funding for the next phase of the Spur Road construction was discussed. ECA and Eagle County have pledged \$250,000 each which is being matched by \$500,000 from CDOT to go toward for the engineering and design costs which are currently roughly estimated at \$1,300,000. This leaves an estimated \$300,000 shortfall for the engineering and design costs but the engineering estimates are based on estimated construction costs and there is a possibility the project cost could be reduced from the original estimate.

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 Berry Creek Metropolitan District Board of Directors this 28th day of December, 2010.

Respectfully submitted,



Cheri Curtis
Secretary for the Meeting