

RECORD OF PROCEEDINGS

MINUTES OF THE CONSOLIDATED SPECIAL MEETING OF THE BOARDS OF DIRECTORS OF THE BUCKHORN VALLEY METROPOLITAN DISTRICTS NOS. 1 & 2

Held: Friday, September 25, 2020 at 7:00 A.M., at <https://us02web.zoom.us/j/7636703470> Meeting ID: 763 670 3470, Dial-In Number: 1-720-707-2699

Attendance:

The consolidated special meeting of the Boards of Directors of Buckhorn Valley Metropolitan Districts Nos. 1 & 2 (the “Boards of Directors” or “Boards”) was called and held as shown in accordance with the statutes of the State of Colorado. All participation was via the Zoom meeting location due to the state of emergency declared by Governor Polis, as amended and extended; the Tenth Amended Public Health Order 20-28; the safer at home and in the vast, great outdoors Executive Order D 2020 091, as amended and extended; and CDC recommendations against gathering in large groups in order to mitigate the spread of the COVID-19 virus as follows:

<https://us02web.zoom.us/j/7636703470> Meeting ID: 763 670 3470, Dial-In Number: 1-720-707-2699

The following Directors were present:

John Hill, President (*via video/telephone conference*)

Samantha Gale, Secretary/Treasurer (*via video/telephone conference*)

Anna Maria Ray, Assistant Secretary (*via video/telephone conference*)

David Garton, Assistant Secretary (*via video/telephone conference*)

Scott Green, Assistant Secretary (*via video/telephone conference*)

Also present were: Jennifer L. Ivey, Attorney for the District, Icenogle Seaver Pogue, P.C. (*via video/telephone conference*); AJ Beckman, District Manager, Public Alliance, LLC (*via video/telephone conference*); Debra Sedgely, District Accountant, CliftonLarsonAllen, LLP (*via video/telephone conference*) and the following members of the public: John Powell, Kendra Powell, David Fiore, Beverly Fiore, Erin Gallimore, Ashley Wilson, Casey Wilson, Xander Cook, Greg Snyder, Kaleb Walker, Nick Viau, Sue Throckmorton, Jodi Doney, Jessica Nielson (*all via video/telephone conference*).

Call to Order/ Declaration of

Director Hill called to order the consolidated special meeting of the

Quorum:

Boards of Directors of the Buckhorn Valley Metropolitan Districts Nos. 1 & 2, at which time it was noted that the notice of this meeting was properly posted within the Districts. Director Hill noted that a quorum of each of the Boards were present, and he turned the meeting over to Mr. Beckman and Attorney Ivey. Mr. Beckman explained that in order to accommodate public comment and allow for the orderly conduct of District business, each speaker would be limited to three minutes.

Disclosure Matters:

The Boards of Directors reviewed the agenda for the meeting, following which each Board member confirmed the contents of written disclosures previously made, stating the fact and summary nature of any matters, as required under Colorado law, to permit official action to be taken at the meeting.

Director John Hill disclosed that he is a party to a contract to purchase taxable property located within the boundaries of the Districts and a beneficiary of a potential profits interest from entities which own taxable property located within the boundaries of the Districts. He also disclosed that he may perform consulting services for Colorado Land Management, LLC, a role in which he carries out the execution of management and project development duties performed for the Districts by Colorado Land Management, LLC in its management contract with the Districts. He is employed on an at-will verbal consulting agreement, compensation for which varies from time to time and may be greater than \$100,000, and, in part, is derived from compensation for management services by and between Colorado Land Management, LLC and the Districts. In the performance of his duties, Director Hill may, from time to time, perform consulting services for parties which are investigating possible purchases, are purchasing or have purchased lands within the Districts. Such work is generally, but not always, performed on an at-will consulting basis, with compensation on a lump-sum, fixed fee or hourly basis, or may be based on a combination of these or some other basis as of yet undetermined. This disclosure is associated with approval of items on the agenda that may affect his interests.

Director Scott Green disclosed that he is a party to a contract to purchase taxable property located within the boundaries of the Districts. He further disclosed that he is the owner of Scott Green Excavating, Inc., a contractor which currently has contract(s) with the Districts to construct a roadway and ancillary improvements. These improvements are being paid for, in part, by the Districts, with funds from District No. 2's 2010 bond issue. Director Green also disclosed that the compensation to be paid in accordance with the

contract(s) is in excess of \$600,000, and that he does not expect his position of Director to enhance his position or the position of Scott Green Excavating, Inc. either competitively or financially. This disclosure is associated with approval of items on the agenda that may affect his interests.

Director Samantha Gale disclosed that she owns property within the Districts and is a party to a contract to purchase taxable property located within the boundaries of the Districts. She also disclosed that she is related to Dave Garton, to whom the District is indebted to. This disclosure is associated with approval of items on the agenda that may affect her interests.

Director David Garton disclosed that he is a party to a contract to purchase taxable property located within the boundaries of the Districts. He also disclosed that he is a member of the board of directors of the Buckhorn Valley Master Owners Association and a member of the board of directors of the Single Family Residences at Buckhorn Valley, Inc. This disclosure is associated with approval of items on the agenda that may affect his interests.

Director Anna Maria Ray reported that she had no conflicts of interest requiring disclosure.

Ms. Ivey advised that written disclosures of these interests were filed with the Secretary of State at least seventy-two hours prior to the meeting.

Approval of/Additions
to/Deletions from the Agenda:

After review and discussion and upon motion of Director Garton and second of Director Hill the Boards of Directors voted unanimously to approve changing the order of the Agenda to address Agenda items 8.d., 8.c., and 8.e, at the top of the Agenda in order to conduct the public hearing on the 2019 budget amendment and related matters first due to time constraints.

Financial Matters

Public Hearing on 2019
Budget Amendment
(District No. 1)

Director Hill opened the public hearing on the proposed amendment to the 2019 budget consistent with published notice.

Mr. Fiore requested that the Boards reconsider the 7:00 a.m. meeting time in the interest of accommodating public attendance. Mr. Fiore then noted that he has not seen all the documents for today's meeting and his opinion that the public should have ample time to review Board meeting materials to provide constructive feedback. Mr. Fiore then noted his concerns regarding a billing error in which the District was billed for work performed by a Colorado Land Management

employee and the costs paid for services provided by Colorado Land Management. He closed his comments by asking the Board to stand down and defer any action on the 2019 budget amendment at today's meeting.

Mr. Viau stated that he agrees with Mr. Fiore's comments including the suggestion to change the meeting time. Mr. Viau expressed a concern that the District is operating in a manner that keeps information hidden from the public.

Ms. Gallimore expressed concern that 7:00 a.m. board meetings are difficult for homeowners to attend. She stated that Colorado Land Management recently issued a refund to the District of \$1,560 for amounts incorrectly billed. She explained that this was the result of her cursory review of invoices and stated that she is confident that a more thorough review would uncover additional issues. She requested that the Board not approve the amended budget and explained that her priority is to pay off the District's debt. She stated that she believes the Directors should step down due to their conflicts of interest and allow the homeowners to pick a new board.

Ms. Wilson addressed the Boards stating that she agrees with all prior comments.

Mr. Walker addressed the Boards stating that he agrees with the prior comments.

Mr. Powell addressed the Boards stating that he agrees with the prior comments.

Ms. Nelson addressed the Board stating that she agrees with the prior comments and noted that she is an accountant and explained that it is frustrating to hear that the debt payments are not being fully made.

There was no additional public comment at this time and Director Hill closed the public hearing on the proposed amendment to the 2019 budget.

Application of Service
Cost Credits to Capital
Costs:

Following review and discussion, upon motion of Director Garton and second of Director Gale, the Boards voted unanimously to approve the application of service cost credits to capital costs.

2019 Budget Amendment
(District No. 1):

Director Garton requested clarification on the controversial nature of the budget amendment. Mr. Beckman explained that the amendment is for the 2019 Budget due to unexpected costs incurred for work performed by Colorado Land Management in connection with a

refinancing of the District's debt. The refinancing did not occur, and the appropriation for the General Fund exceeded the budgeted amount, due to the unexpected work necessary to prepare information for the anticipated refinancing. Mr. Garton asked what options are available to the Board. Ms. Sedgeley reported that if the amendment is not approved there will be a note in the Audit indicating that the District will be in violation of budget law, however the District will hopefully still receive an unmodified opinion from the Auditor. Ms. Sedgeley then recommended that the Board approve the budget amendment. Mr. Garton then addressed the public explaining that the time for the Board meetings was chosen based on a time that has worked for all parties in the past in order to avoid conflicts with work schedules. He suggested that the Board would consider other times, and noted that additional transparency is needed, however regarding the 2019 budget amendment, since the money has been spent the Board should amend the budget. He further noted that the Board should review what occurred to cause the need for the amendment. Director Green explained that he believes the amendment has been sufficiently reviewed.

Following further review and discussion, upon motion of Director Garton, second of Director Gale with Directors Hill and Green abstaining and Directors Garton, Gale and Ray voting "Aye", the motion passed.

2019 Audits:

Mr. Beckman asked the Boards if they would like Ms. Sedgeley to review the audits. Director Hill noted that it was distributed to the Board previously and he has had time to review. Following discussion, upon motion of Director Hill and second of Director Garton, the Boards unanimously approved the 2019 Audits for District No. 1 and District No. 2, and the accompanying Management Representations letters and directed filling of the Audits with the State.

Other Business

Proposal from Element Engineering, LLC:

Mr. Beckman explained that the proposal is for an Engineer's assessment of the raw water system. Director Hill noted that the work included in the proposal is necessary to address the concern brought before the Town Council regarding the District's irrigation system and was requested by the Town. He further noted that Element Engineering is familiar with the system and time is of the essence in addressing the issue and recommended that the Board approve the proposal.

Director Hill made a motion to approve the proposal in the amount

of \$5,000. Director Garton seconded the motion. Mr. Fiore then requested that the public have the opportunity to speak before a vote of the Board is taken, and further stated that to take the vote prior to public comment is legally troublesome. Attorney Ivey noted that the Board may allow public comment before the vote if it so desires.

Mr. Fiore then addressed the Board noting that in his opinion the matter is of interest to the Developer and not the District, that conflicted directors should recuse themselves and not to do so would be criminal.

Director Garton asked for clarification on the urgency. Director Hill explained that the study of the irrigation system was requested by members of the public and the Town of Gypsum, and noted that he has no interest in the engineer performing the work other than to have the work done expediently and inexpensively. He recommended that the matter be tabled and excused himself from the meeting due to time constraints.

Ms. Wilson acknowledged that the Town of Gypsum requested that a study be performed prior to the next phase of development and suggested that the engineering firm performing the study should be selected by the public. Mr. Beckman noted that he would reach out to Ms. Wilson, Mr. Fiore and Ms. Gallimore to discuss the matter further outside of the Board meeting.

Mr. Hill departed the meeting at this time.

Districts Website: Mr. Beckman recommended that the Boards approve www.bvmetrodistrict.org as the District's interim website and explained that the website is intended to be an informational resource, separate from the HOA's website where residents can access District information for transparency purposes. He added that he is working on adding a payment portal for payment of irrigation charges.

Following motion of Director Green and second of Director Garton, the Boards unanimously approved www.bvmetrodistrict.org as the interim website for the Districts.

Mr. Fiore thanked the Boards for taking steps to improve transparency.

Financial Matters (continued):
Accounts payable (District No. 1): Ms. Sedgely presented accounts payable to be ratified through the period ending September 21, 2020 in the amount of \$362,578.27.

Director Garton moved that the accounts payable be ratified as presented. Director Green seconded the motion.

Mr. Fiore stated that he wanted to clarify that the 2019 budget amendment previously approved was necessary in order for the board to then ratify the payables being considered and suggested that such action is highly improper. Mr. Beckman explained that the 2019 Budget Amendment for District No. 1 was an appropriate action by the Board and not necessary for the subsequent ratification of the previously approved payables.

All Directors voted in favor of ratifying the payables and the motion passed unanimously.

Mr. Fiore requested that copies of the payables be provided to him.

Financial Statements:

The Financial Statements for the period ending June 30, 2020 were enclosed in the meeting packet; Mr. Garton confirmed that the financials were reviewed prior to the meeting, and that further review by Ms. Sedgeley is not necessary.

Following discussion, upon motion by Director Garton and second by Director Green, the Boards unanimously accepted the unaudited Financial Statements for the period ending June 30, 2020.

July 24, 2020 Special Meeting Minutes:

Following review and discussion upon motion of Director Garton and second of Director Gale, the Boards unanimously approved the July 24, 2020 Special Meeting Minutes as presented.

Legal Matters:

There were no legal matters.

Manager's Report:

The report was included in the meeting packet.

Public Comment for Matters Not on the Agenda:

Public Comment for matters not on the agenda was also received during the public hearing on the proposed amendment to the 2019 budget. In addition, the following public comment for matters not on the agenda was received:

Ms. Wilson asked about options for Board seats available to residents and asked if Director Garton would be willing to vacate his seat. Attorney Ivey explained that the next regular election would be in May of 2022, and due to recent legislative changes to convert District Elections to odd numbered years, another election will follow in May of 2023 and odd-number years thereafter. Attorney Ivey also explained that if a vacancy should occur that it is left to the

Board to fill such vacancy.

Director Green stated that he takes offense to the repeated comments that the Board members are receiving a financial benefit from serving on the Board. He noted that the Board has worked very hard on a small budget to provide services to the public, that the Board members have donated hours of their time to running the District, including over 700 hours of his own time on open space, irrigation, and grant acquisition. He explained that when the recession of 2008 occurred, the property values plummeted, affecting tax revenue and sources of funding however the Board met its obligations to continue providing irrigation water and maintained its water rights. He then explained that he would be willing to give up his Board seat, as his interest is to continue helping the residents and the development of the community. Mr. Fiore noted that Mr. Green was the only bid for the recent pipeline project of \$1.3 million. Mr. Green explained that the project was publicly bid, there were at least three other contractors that expressed interest in bidding the project but ultimately chose not to because of the level of complexity.

Mr. Wilson asked if the project would have been necessary in the first place if there were a different Board in place. Mr. Green responded that he believes it would have been necessary, and further noted that he thinks the right people are still on the Board.

Ms. Gallimore readdressed her concerns that the debt payments are not being made in full, however payments to Colorado Land Management continue to be made. Ms. Sedgeley explained that the District is imposing the maximum mill levy, and therefore meeting its debt obligations.

Mr. Fiore suggested that a forensic audit or the assistance of another governmental agency might be necessary in order to fully understand the transactions related to Director Garton being a bond holder.

Ms. Wilson noted that she understands the mill levy imposed by District No. 2, and she would have preferred to pay additional amounts to the District's debt rather than to Colorado Land Management. She stated her opinion that Director Green has done good things for the community and appreciates his willingness to step down so new residents can be involved.

Mr. Powell thanked the Board for listening to the public. Director Gale then responded that she has been on the HOA and District Board since their inception and she is glad to see residents with a vested interest taking an interest in the community that has not been

seen previously.

Adjournment:

There being no further business to come before the Boards of Directors, upon motion of Director Green and second of Director Gale, the Boards voted unanimously to adjourn the meeting.

DocuSigned by:

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Secretary for the Districts