

RECORD OF PROCEEDINGS

MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF

GVR METROPOLITAN DISTRICT

Held: Wednesday, March 18, 2009 at 6:30 p.m., at the GVR Metropolitan District Office, 18650 East 45th Avenue, Denver, Colorado

Attendance A regular meeting of the Board of Directors of GVR Metropolitan District, Denver, Colorado, was called to order at 6:35 p.m. and held as shown above and in accordance with the applicable statutes of the State of Colorado with the following directors present and acting:

Earleen Brown, President
Michael George, Vice President
Anthony Noble, Treasurer
Mary Schumer, Secretary
Elana Perry, Director
Joanne True, Director
Charles Britton, Director

Also present were: Andrew Pimental, District Manager; Evan D. Ela, legal counsel; Eric Gravenson; Paul Gilberto; James Pebley; Walt Cross; A.K. and A. Walker; Arnaldo Espinosa; Elaine Smith; Charlie Foster; Jim and Fenna Tanner; T.J. Stone; Carlene Hill; Mary Ann McGeady, special legal counsel; and Andy Fisher, special legal counsel (arrived at 8:00 p.m.);

1. Call to Order and Establish a Quorum Chairman Brown called the meeting to order and established that a quorum of Directors was present.
2. Approve Agenda **The Board reviewed the published Agenda and upon motion by Director George, seconded by Director Schumer, the Board unanimously approved the Agenda without revision.**

3. Approve Minutes from Prior Meeting **February 18, 2009 Regular Board Meeting**
The Board reviewed the draft minutes from the February 18, 2009 Board Meeting. **Upon motion by Director George, seconded by Director Schumer, the Board unanimously approved the minutes.**

March 5, 2009 Special Board Meeting

The Board reviewed the draft minutes for the March 5, 2009 Special Board Meeting. **Upon motion by Director Schumer, seconded by Director**

Noble, the Board approved the minutes by a vote of 4 in favor, with Directors True, Britton, and George abstaining because they had not attended the meeting.

4. Conflicts of Interest Disclosures

Director True disclosed her position as a Board member of the Master Homeowners Association for Green Valley Ranch, and stated her intention not to participate in any discussions involving the District's interactions with the Master HOA and also that she would not participate in any discussions of the District Board in Executive Session concerning the litigation between the Master HOA and the District.

5. Comment Period

a. Developer Representative(s)

No comments were provided.

b. Master Homeowners Association

Mr. T.J. Stone announced that the golf tournament will be held in the coming weeks at the Green Valley Ranch Golf Club.

c. Public

Mr. Arnaldo Espinosa inquired about the process to obtain approval for painting his house. The Board explained that it was an issue to be brought before the Architectural Review Committee of the Master HOA and he was given information to contact that group.

Ms. Elaine Smith reported to the meeting on three items:

- A public meeting had been held on the new branch library planned for Green Valley Ranch that will be built just south of the Recreation Center by the City of Denver. The library is slated for completion by late 2010, it will be LEED certified and the building is expected to be approximately 24,000 sq. ft. in size.
- Neighborhood watch programs are being established throughout the District. To date, 18 block captains have been named.
- An Earth Day celebration is scheduled for April 19th following the 9News Health Fair. The Health Fair will occur from 8:00 am to 12:00 pm and the Earth Day celebration will follow from 12:00 pm to 4:00 pm.

6. Legal Report

a. Suspension of Community Center Contracts

Legal counsel reported that Vastco has agreed to sign the Settlement Agreement with the District, but has not yet signed it and therefore has not yet received the final payment.

b. Litigation Update

Legal counsel reported that a Motion to Set Trial was set for March 24, 2009, and estimated that trial would be set sometime in late 2009. Legal counsel also reported that the parties have agreed to modify the pre-trial discovery rules to allow a 30-day extension until initial disclosures are due and to allow up to seven depositions per side.

c. Other Matters

Legal counsel reported that a contract between the District and Mitchell Place Homeowners Association had been reviewed and provided to the District Manager as requested. The contract will allow the District to provide landscape maintenance services during the 2009 summer season pending conveyance of the maintained properties to the District within six months.

Legal counsel also reported that he had provided the Rebate Agreement and invoice to VPGTwo for the system development fees owed on the carwash and self-storage properties since the last meeting.

Mr. Gravenson requested that the District publish the legal costs associated with the lawsuit filed by the Master HOA against the District to date. The Board discussed placing tabulation of those fees on the District's website.

Director Britton stated his opinion that the legal bills were inadequate to state the reason for the need for the legal services and his belief that the bills were excessive. There ensued a discussion involving Mr. Gravenson, Ms. Smith, Mr. Stone and the Board concerning the ongoing litigation between the Master HOA and the District.

7. Director Items

Director True stated her disagreement with the Board's approval of the Budget Development, Review, and Expenditure Policies. She stated her belief that the change in policy created, in her view, a liability to the individual members. She proceeded to read a letter into the record requesting a release from all liability associated with expenditures by the District, a copy of which is attached hereto.

Director Britton stated his belief that the District has been mismanaged and has been provided failed legal representation over the years.

8. Board Reports
Agenda

a. **Financials**

i. Financial Statements

Director Noble provided a verbal report to the Board of the financial statements, concluding that since the last meeting expenditures have exceeded \$283,000 against revenues of \$998,000 resulting in a net of \$695,000. Director Noble also directed the Board's attention to several errors in the draft financial statements and provided the corrected values.

Upon motion by Director Schumer, seconded by Director Perry, the Board unanimously approved the financial statements as amended and revised during discussion.

ii. Check Detail, Payroll and Vouchers Payable

Director Noble reported that he is still developing a monthly Board report format that would clearly show the Board at each meeting a comparison of expenditures to the Budget for the month as well as for the year-to-date.

Upon motion by Director Schumer, seconded by Director Perry, the Board approved payment of all identified vouchers payable by a vote of six in favor and one (Director True) opposed.

iii. Budgetary Payment Procedures

The new expenditure policy was discussed earlier in the context of Director True's comments.

iv. Other Matters

Director Noble informed the Board and the public of the Board's recently learned information that the President of the Master HOA, Mr. T.J. Stone, was currently being prosecuted for 17 charges of criminal theft involving his activities in positions of authority for a couple of private companies for which his accounting firm provided services, as well as theft of disability payments from the State of Colorado's Disability Insurance Program. Director Noble stated that the Amended Complaint filed in March included 17 Counts of Theft, each bearing a value of between \$500 and \$15,000. Director Noble recommended that the Board enter into a forensic audit of the District's accounting records, first internally, and second by an outside auditor, to determine if any questionable practices had occurred during Mr. Stone's tenure on the District Board of Directors. The Board and the public generally discussed the nature of the charges against Mr. Stone and concern was expressed about his continuation as President of the Master HOA with access to assessments and other funds currently under the Master HOA Board's control.

b. District Manager Report

Director Pimental directed the Board's attention to the Manager's Report provided in the Board packets. Comments were made as follows:

- Mr. Pimental explained the contract between the District and Mitchell Place HOA that had been briefly described in the legal report. The contract will have Mitchell Place compensate the District's staff at hourly rates necessary to maintain the landscaping located outside of the Mitchell Place fences and along Himalaya. The contract will be in effect until deeding of those properties occurs, and the deeding of properties to the District must occur within six months. No renewal of the contract is anticipated for 2010, and no winter service will be provided to Mitchell Place.
- Manager Pimental discussed the idea of establishing a community garden at the District's property at 4000 Argonne. The Board and the public discussed the need for adequate fencing and the limitations on such fencing imposed by City regulations.
- Director True asked for more detail on the teen excursions planned for the Summer Youth Program. Mr. Pimental responded that those excursions are not yet planned but he believed the \$40 fee would cover the costs. Director True also identified that the Master HOA Committee Meeting on the calendar was shown for the wrong date and she requested that information from each such meeting be posted on the website.
- Director Britton expressed his concern about various costs being incurred by the District such as the cost for mailing postcards, mileage reimbursement for use of vehicles, a cost benefit analysis on the vehicles owned by the District, the amount spent in rent and for utilities at the leased maintenance garage, the need for a couch in the offices, and the Community Center steel purchased by the District being stored offsite. Manager Pimental responded that there have been no changes in the costs mentioned by Director Britton from prior months and justified the expenses as necessary for the operations of the District. Director Noble also gave his opinion on the reasonableness of the costs incurred. Mr. Gravenson stated his belief that the costs incurred for providing postcard notice to the community about the ongoing litigation, the costs associated with that, the recently learned criminal charges against the Master HOA President, and the impacts on the District's contract with the Master HOA were useful for the community and justified expenses of the District.

9. Discussion
Items – Old
Business

a. Consider Appointments to District Committees

The Board discussed its continuing effort to recruit community members to participate on the District committees. Manager Pimental stated that no

solicitation had yet been developed, but it will soon be posted on the website. The Board considered a direct mailing as well.

b. Consider District Membership in Far NE Neighbors Association

Chairman Brown introduced this topic explaining that the Far NE Neighbors had invited the District to become a member and to participate in its activities. Director True questioned the reason why the District would join. Ms. Smith provided her reasons and Director Britton stated his belief that the District would benefit by the use of the Far NE Neighbors newsletter. The Board generally discussed the pros and cons of membership. **Upon motion by Director Britton, seconded by Director Noble, the Board approved contributing a \$100 membership donation to the Far NE Neighbors organization by a vote of five in favor, with Directors True and Perry opposed.**

c. Joint Meeting of the Master HOA and District Boards

Chairman Brown noted that no further progress has been made in attempting to set a meeting between the two boards.

10. Discussion
Items – New
Business

a. Planning/Implementation Committee Organizational Meeting

Director Noble stated that as Chairman of the Committee he was seeking to determine an appropriate date for the organizational meeting. He identified Ms. Charlene Hill as a member of the Committee as well as others in the audience. He stated he would provide a notice to the Committee members of a time and date of the meeting and that the meeting would not last more than two hours.

b. District Newsletter

Manager Pimental handed out a draft newsletter to the Board and asked for its review and comments. The Board generally discussed the format and design of the newsletter and that no personal contact information for Director be published in the newsletter. It was determined that the general District email address should be used for any of the community members to direct comments or questions to any of the individual Board member. The Board directed Mr. Pimental to finalize and mail the newsletter to the community but to immediately solicit the use of email for distribution to the maximum extent possible. The public suggested that the newsletter be made available on the website in other languages such as Spanish and others. The Board discussed the possible ways of doing this with some Board members expressing a desire not to publish in other languages. Manager Pimental was directed to investigate the feasibility of posting in different languages. **Upon motion by Director Noble, seconded by Director Perry, the Board voted in favor of publishing a bi-monthly newsletter in the format discussed and revised by a vote of six in favor and one (Director True) opposed.**

11. Executive Session

Chairman Brown identified the need for an Executive Session as noted in the Agenda. Legal counsel informed the meeting that because one of the reasons for the Executive Session was to discuss a personnel matter involving the District Manager, prior to entering Executive Session, the District Manager should be asked, in accordance with § 24-6-402(4)(f), C.R.S., if he preferred that the personnel discussion be held in open meeting or in Executive Session. Manager Pimental stated that he preferred it be held in open session. Chairman Brown stated that the discussion concerning the personnel matter would occur after the Board reconvened in open session following Executive Session, but urged the Board to enter Executive Session at this time because of the presence of special litigation counsel, both of whom will participate in the Executive Session. **Upon motion by Director George, seconded by Director Schumer, the Board voted to enter Executive Session at 9:05 p.m. by a vote of six in favor and one (Director True) opposed. Director True stated her objection to being asked to be excused from Executive Session discussions that involve the lawsuit filed against the District by the Master HOA, an organization upon which she is a member of the Board of Directors. Director Britton stated his objection to the attendance of the District Manager in the District's Executive Session.**

The Board reconvened its regular meeting from Executive Session at 10:15 p.m. Director True re-joined the meeting by speaker phone.

12. Other Matters

In accordance with Mr. Pimental's request for public discussion of personnel matters related to him, legal counsel provided the Board background on: (i) a letter addressed from Director Britton to the District Manager stating Director Britton's concerns and fears in interacting with Manager Pimental; and (ii) Manager Pimental's response. Legal counsel advised the Board that the allegations raised a personnel matter that should be investigated by the Board, and suggested that the Board discuss the allegations made with Director Britton and Mr. Pimental to determine if accommodations can be made to alleviate the expressed concerns. Whereupon the Board began its investigation of the matter by asking Director Britton to describe the specific incidents that were the basis for his allegations. Director Britton detailed four separate incidents as follows:

- Director Britton stated that Mr. Pimental had provided Director Britton's picture to the staff when he was a candidate for the Board resulting in all the staff knowing who Director Britton was when he first came to the District office after being elected.
- Director Britton stated that he attended a committee meeting on March 11, 2009, on community programs, and his attendance resulted in an argument with Mr. Pimental about Director Britton's availability for a Special Board meeting that had been scheduled for

March 5, 2009. He stated that these arguments are not healthy for him or for the organization.

- Director Britton stated that once when Mr. Pimental was handing him papers, Mr. Pimental did not immediately release the papers from his hand, indicating aggressive behavior.
- Director Britton stated he has requested numerous times for the District to send his Board member compensation of \$100 per meeting directly to a charity of Director Britton's choice, and Mr. Pimental's refusal to do so without obtaining tax withholding information from Director Britton. Director Britton stated his firm belief that tax forms are not necessary for the District to route his compensation directly to a charity.

Legal counsel and the Board questioned Director Britton and Mr. Pimental about Director Britton's specific allegations and discussed the circumstances surrounding each. Mr. Pimental stated that the staff has had a very difficult time contacting Director Britton by telephone and has attempted to deliver materials directly to his home at times when it appeared Director Britton was home but would not respond to the door. Mr. Pimental related that in trying to schedule the Special Board meeting for March 5th at the Board's request, he repeatedly called Director Britton asking if he would be available for that meeting, a key piece of information for determining whether a quorum would be present at the meeting, but never received a response from Director Britton. Manager Pimental stated that he did not intend any aggression at any time he handed materials to Director Britton.

Mr. Ela again asked Director Britton to explain his reasoning concerning his belief that he could receive Board member compensation without any reporting to tax authorities. Director Britton then stated that he believed he could be paid by a Form 1099 instead of through a W-4 withholding designation. Mr. Ela stated that he had been advised by the Special District Association attorneys as well as other attorneys in his law firm that using a Form 1099 to report a Board member compensation is not the expected reporting format from the I.R.S.; however, Mr. Ela stated that he would have his firm revisit and research the issue to enable a proper identification of the risks to the Board for its consideration and which would allow the Board to make an informed decision on whether it would allow Director Britton to receive his compensation through the Form 1099 process. Mr. Ela reiterated his belief that the District cannot provide compensation directly to a charity on behalf of Director Britton; that it must be paid to directly to Director Britton with appropriate notice to the tax authorities, and that this does not appear to be a District Manager issue.

Individual Board members asked Director Britton additional questions about his feelings and about the specific incidents that he based his allegations upon. In discussing the particulars of each of those situations, a list of accommodations to alleviate Director Britton's comments was developed by the Board. These accommodations included the following:

- No further phone calls are to be made from Mr. Pimental or District staff to Director Britton for any purpose. Director Noble volunteered to make phone contact with Director Britton for any urgent matters. Director Britton agreed that the receptionist for the District could also make phone calls to advise him of meetings.
- The box in which Director Britton's Board materials and communications are placed will be moved from a location within Mr. Pimental's office (where all the other Board member's boxes are located), to a location near the front door and near the receptionist's desk in the District offices so that Director Britton can come and obtain his materials without having to enter Mr. Pimental's office.
- Director Britton will not participate in committee meetings that involve Mr. Pimental, and the Board will not expect him to do so.

With these accommodations in place, the Board by consensus, agreed that no further investigation should be necessary into this matter. Director Britton did not state any objection to the accommodations, nor did Mr. Pimental.

13. Adjournment **Upon motion duly made and seconded the meeting was adjourned at 11:25 p.m.**

The foregoing constitutes a true and correct copy of the minutes of the above-referenced meeting and was approved by the Board of Directors of the District on the 22nd day of April, 2009.

Respectfully submitted,

/s/ Mary Schumer

Mary Schumer, Secretary

**Attachment 1 –
letter received from
Director True**

March 18, 2009

President
GVR Metropolitan District
18650 E 54th Avenue
Denver, CO 80249

Re: Budget Development, Review and Expenditure Policies

Dear Ms Brown

I am writing this letter to voice my concerns regarding the above policy the board approved at the end of the February 18, 2009 board meeting.

Since the issues between the District and the HOA escalated, I have been refused access to the executive sessions of the District. At no time after those previous sessions have I ever been contacted that the session had ended. February 18, 2009 Mr. Ela attempted to contact me at approximately 9:45 p.m. Since this had never happened in the past months and since I had no idea who was calling me, I did not answer and did not get Mr. Ela's message until the next day. Due to that, I was denied the opportunity to voice my concerns regarding the above policy, I therefore am doing it now.

The remaining 6 board members approved the District Manager to sign the District's checks to pay pre-authorized expenditures between \$1,000 and \$5,000. While these expenditures need to be approved by two board members, there are two issues with this:

1. The checks issued by the District take two signatures and you have just overridden that procedure. So do all checks now only take one signature?
2. The second issue is, the board is responsible for all monies being spent and checks released, how can you now make me liable for checks signed by people other than the board? I realize these are for pre-approved expenditures, but I/we are still legally responsible for the expenditures of the District.

The remaining 6 board members also approved the same authorization for the District Manager to be the sole signator on all checks for pre-authorized expenditures over \$5,000. While these expenditures need to be approved by a majority of the board, the same two issues as above also apply.

The final issue is expenditures from self-funded programs needing the authorization of the District Manager. Since the only self-funded program the District has is the youth program and we have a manager for that program, why are they not allowed to run their program. That manager should be told her budget the beginning of the year and it is her responsibility to stay within that budget. Why do we need the District Manager to micro-manage? Do we really need to pay the District Manager over \$90,000 to approve purchasing school supplies, food etc?

Due to the above stated issues, I would ask legal council to draft a statement releasing me of any and all legal consequences stemming from any checks released that are signed by the District Manager.

Sincerely,

Joanne True
GVR Metropolitan District Board Member

cc: District Board Members
District Legal Council