

RECORD OF PROCEEDINGS

MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF

GVR METROPOLITAN DISTRICT

Held: Wednesday, October 21, 2009 at 5:30 p.m., at the GVR Metropolitan District Office, 18650 East 45th Avenue, Denver, Colorado

- 1. Call to Order** Chairwoman Brown called the meeting to order at 5:30 p.m. and noted the presence of a quorum of the following five (5) directors:

Earleen Brown, President
Michael George, Vice President
Anthony Noble, Treasurer
Mary Schumer, Secretary
Elana Perry, Director (absent, excused)
Joanne True, Director
Charles Britton, Director (absent, not excused)
- 2. Executive Session:** Upon motion by Director George, seconded by Director Noble, the Board voted unanimously to enter Executive Session at 5:32 p.m. for the purpose of interviewing two finalist law firms being considered as general counsel for the District beginning in 2010. Interviews were held with the law firm of Seter VanderWall at 5:32 p.m., and with the McGeady Sisneros law firm at 6:00 p.m.
- 3. Public Meeting Attendance:** The regular meeting of the Board of Directors of GVR Metropolitan District, Denver, Colorado, was re-convened from executive session at 6:30 p.m. and held with the five Directors present and acting as shown above and in accordance with the applicable statutes of the State of Colorado.

Also present were: Andrew Pimental, District Manager; Evan D. Ela, legal counsel; Christopher Flag and Sam Brown, both representing Tower Commons LLC; Austin Rosen, representing Carl's Jr. Restaurant; Eric Gravenston; Charlie Foster, representing the developer, Oakwood Homes; and James Tanner.
- 4. Establish Quorum and Approve Agenda** Chairwoman Brown noted the presence of a quorum of Directors and noted the two absences. Chairwoman Brown requested a motion to excuse Director Britton's absence. **No motion was made and Director Britton was deemed not excused from the meeting.** The Chair recognized that Director Perry had been excused for an extended absence by prior action of the Board.

Manager Pimental requested adding Item 14(d) to the Agenda concerning discussion of a grant from Great Outdoors Colorado for improvements to a detention pond and possible construction of athletic fields. **Upon motion by Director George and seconded by Director True, the Board approved the Agenda with the revision unanimously.**

**5. Approve
Minutes from
Prior
Meetings**

a. September 16, 2009 Regular Board Meeting

The Board reviewed and discussed minor revisions made to the draft minutes provided at the meeting. **Upon motion by Director George, seconded by Director True, the Board unanimously approved the minutes as revised during discussion.**

**6. Conflicts of
Interest
Disclosures**

Director True informed the meeting that she would not be participating in the discussion or the vote on Agenda Item 13(a), a discussion of the deadline to agree upon a new Covenant Enforcement Services Agreement with the Master HOA.

**7. Comment
Period**

a. Master Homeowners Association Representative

No report was given.

b. Citizens Advisory Board Representative

No report was given.

c. Developer Representative

No report was given.

d. Public

Representatives of Tower Commons LLC and Carl's Jr. Restaurant deferred comment until Agenda Item 10, Public Hearing on Certification of Delinquent System Development Charge for Lot 5, Tower Commons.

8. Legal Report

a. District Bond Refunding

Mr. Ela reported that the Bond Refunding transaction had closed as scheduled and that the escrow agent for the District will be making payments and disbursements in accordance with the District's Escrow Agreement.

b. Pirnack Refund

Mr. Ela reported that the District has still not received a written response from Mr. Pirnack concerning return of deposits made with Pirnack-Walters

Enterprises in the course of the Community Center Project. He noted that it would be discussed during a later Agenda item.

c. IGA with Town Center Metropolitan District

Mr. Ela explained his participation with the District Manager in drafting a proposed Intergovernmental Agreement with Town Center Metropolitan District, by which the District will provide GIS Services to Town Center Metropolitan District. Manager Pimental further described the scope of the work that will be performed by District staff pursuant to the Contract. **Upon motion by Director George, seconded by Director Noble, the Board unanimously approved the IGA with Town Center Metropolitan District.**

d. IGA with Denver Public Schools

Mr. Ela informed the Board of his involvement with the District Manager in drafting a proposed Intergovernmental Agreement with Denver Public Schools to address an improved process for reserving and using DPS facilities for the District's Youth Programs. Manager Pimental described the need for the IGA, obligating DPS to reserve its facilities up to a year in advance of the use of the facility, which will give the District certainty in the use of the facility and expected costs. Manager Pimental will provide the draft IGA to DPS for their consideration, and additional revisions may be necessary to achieve a mutually agreeable draft. Mr. Ela informed the Board that they will have the opportunity to consider the final draft at such time as it has been fully negotiated with DPS.

e. Certification of Delinquent System Development Charge

Mr. Ela provided a summary description to the Board of the process of certifying delinquent system development charges and in particular the calculation of the system development charge that was assessed against Carl's Jr. Restaurant located within Tower Commons PBG. He informed the Board that the next item on the Agenda, a public hearing to be conducted after notice was provided to Tower Commons and Carl's Jr. Restaurant, was required by statute prior to certifying delinquent charges to the County Treasurer for collection as a tax lien.

9. Public Hearing:

Public Hearing on Certification of Delinquent System Development Charge for Lot 5, Tower Commons PBG, a/k/a 4730 Tower Road or 18620 Green Valley Ranch Boulevard, d/b/a Carl's Jr. Restaurant

Chairwoman Brown opened the public hearing at 6:55 p.m. Mr. Chris Flag and Mr. Sam Brown of Tower Commons addressed the Board and explained the oversight on the part of their tenant, Carl's Jr. Restaurant, in paying the

District's SDC when it was assessed in June 2008. Mr. Flag stressed to the Board the fact that prior system development charges for other properties within Tower Commons have been paid, and stressed that Tower Commons had a good-faith dispute concerning the amount of SDC computed for the Dominos Restaurant. He stated that Tower Commons has no dispute with the charge being imposed on Carl's Jr., only that it was overlooked and can be addressed at this time. He explained Tower Commons' willingness to pay the actual SDC, without accrued penalties and interest, on behalf of Carl's Jr. Restaurant's due to the disadvantaged economic position being experienced by the restaurant. He requested that the accrued interest and penalties, amounting to \$23,583.93, be waived by the District Board due to the economic circumstances. Mr. Austin Rosen, employee of By the Rockies, LLC, operators of Carl's Jr. Restaurant, addressed the Board. He explained the disappointing business traffic at the restaurant since it opened, and the importance of waiving the interest and penalties that have accrued on the System Development Charge. He stated that an agreement has been worked out between his company and Tower Commons LLC concerning repayment of the SDC to Tower Commons as business revenues allow. He stated that the Carl's Jr. restaurant located within the District is projected to lose \$100,000 in 2009.

The Board had several questions for these representatives, including the following:

- Will Tower Commons charge interest on its payment of the SDC for Carl's Jr.? The representatives answered "no."
- Why was the deadline for payment missed? Representatives stated that notice had been provided to Carl's Jr. Restaurant, but that the By the Rockies employee charged with managing the account had left the company and Mr. Rosen, his replacement, was unaware of the charge until the notice of this hearing.
- What portion of the total is due to penalties and interest? Mr. Ela explained that \$9,001.50 had been assessed as a penalty (equaling the 25% maximum penalty allowed under statute) and \$14,582.43 had accrued as interest through September 1, 2009.
- Manager Pimental mentioned that approximately 24 trees have died within the Tower Commons development, 18 of which are on the perimeter tree lawn adjacent to Tower or 48th Avenue. He suggested that Tower Commons commit to replacing all dead trees prior to the next growing season.
- The Board further discussed the reasons for the negligence of Tower Commons and Carl's Jr., and the District's desire to improve the appearance of the community by replacement of dead trees. During discussion, the Board discussed waiver of the penalties and interest for this property if Tower Commons commits to replacement of the 24 dead trees no later than June 1, 2010, and also requiring that the SDC charge of \$36,006 be paid no later than Friday, October 23,

2009. Representatives from Tower Commons expressed their willingness to replace the trees in return for waiver of the penalties and interest charges. Mr. Pimental stated that he and his staff could provide information and support to Tower Commons in obtaining replacement trees and could verify, as of June 1, 2010, whether the replacement project was successful.

The public hearing was closed by Chairwoman Brown at 7:30 p.m.

Director George then moved, and Director Noble seconded, that the District Board permanently waive the interest and penalties that have accrued upon the delinquent System Development Charge for Lot 5, Tower Commons PBG, occupied by Carl's Jr. Restaurant, if the following conditions are met:

- 1. Payment of the SDC of \$36,006 is received by the District not later than close of business on October 23, 2009; and**
- 2. Tower Commons replaces, to the District's satisfaction, the 24 dead trees identified by Manager Pimental not later than June 1, 2010.**

Should replacement of the trees not occur to the District's satisfaction by said date, this motion will serve to merely defer the penalties and interest, and such penalties and interest will be reassessed, including additional interest accruing from September 1, 2009 through the time that such charges are certified in 2010, and if unpaid at that time will be certified in 2010 for collection as a tax lien.

The Board unanimously approved the motion.

10. Director Items

Director Noble stated his concern about a letter addressed to the Board from a District employee, Ms. Micaela Duffy, concerning her disagreement with accusations made by Director Britton in his letter to the District Manager. He summarized that Director Britton's presence in the District Office Building during business hours is perceived as threatening by members of the District staff and should not be tolerated. The Board then discussed with legal counsel various options for restricting Mr. Britton's interaction with staff members if, in fact, his presence is deemed as harassment or threatening. The Board determined to take no action against Director Britton at this time, but that the District's staff should be directed by Manager Pimental to treat Director Britton no differently than any other member of the public when he is in the District's Office Building, and that the District should make no more attempts to further accommodate Mr. Britton beyond the accommodations already in place.

**11. Board
Reports
Agenda**

a. Financials

Director Noble verbally summarized the financial statements. He mentioned that no vouchers payable were presented for approval by the Board at this meeting. **Upon motion by Director George, seconded by Director Schumer, the Board unanimously accepted and approved the financial report.**

b. District Manager Report

Manager Pimental directed the Board's attention to the Manager's Report provided in the Board packets and made the following comments:

- Manager Pimental described the need to replace the computer server relied upon by the District. He explained that it had originally been planned to be done in conjunction with the Community Center and Maintenance Building projects, neither of which have gone forward as originally planned. He stated that replacement is now needed and the cost would be approximately \$13,000 to replace one server, and to convert the old server as the backup. The Board generally discussed options available as explained by Manager Pimental and determined by consensus to approve the necessary upgrades.
- Manager Pimental responded to Director True's question concerning the tilling of garden plots within the community garden.
- Director True asked about the use of school facilities for the community programs and Manager Pimental explained his frustration in working with certain school principals, and thus the District is using a different facility than it has used in the past.

**12. Discussion
Items –
Unfinished
Business**

a. HOA – New Services Agreement Deadline

Chairwoman Brown confirmed that she had not received any response to her letter to the Master HOA concerning the passing of the October 1st deadline set out in the litigation settlement agreement with the Master HOA if any HOA services are to be budgeted by the District in 2010. Director Noble stated that the costs of performing any services for the Master HOA will not be included in the 2010 District Budget.

b. Community Services Survey

Manager Pimental directed the Board's attention to his summary of the community services survey that was performed during the month of September. He stated that there were approximately 300 responses to the survey or portions of it. The Board discussed the results as tabulated by Manager Pimental and noted the preference by a majority of the respondents that a community center project not be completed. **Upon motion by**

Director George, seconded by Director Schumer, the Board approved termination of the contract with Pirnack-Walters Enterprises for construction of the community center by a vote of four in favor and one (Director True) opposed. Upon further discussion, the Board directed Manager Pimental to contact Benjamin Tracy of the firm of Nathan, Bremer, Dumm & Myers and to direct Mr. Tracy to coordinate the notice to Pirnack-Walters of the termination, and to negotiate if necessary the financial terms of the termination. Mr. Ela requested that he be notified when the negotiated settlement is achieved with the Pirnack-Walters firm so that the statutorily required notices concerning claims by subcontractors can be timely published.

c. Consider Selection of General Counsel Firm

The Board discussed the interviews held earlier in the meeting with the two finalist legal firms and each Board member stated their impressions of the interview, the firms, and the individuals interviewed. After lengthy discussion, **Director Noble moved and Director True seconded, that the District hire the firm of Seter VanderWall, and principally, Barbara VanderWall, as general counsel for the District to begin on January 1, 2010. The motion passed by a vote of three in favor, with two (Directors Brown and Schumer) opposed.**

**13. Discussion
Items – New
Business**

a. Consider Resolution 10-21-09(A), Certification of Delinquent SDC for Carl's Jr.

Mr. Ela suggested that the Board approve Resolution 10-21-09(A) to certify the delinquent SDC and associated penalties and interest to the County Treasurer so that if Tower Commons fails to timely pay the initial SDC by October 23, 2009, the District could proceed to certify on Monday, October 26th. **Upon motion by Director George, seconded by Director Noble, the Board unanimously passed Resolution 10-21-09(A) to certify the entire delinquent account to the Denver County Treasurer on October 26, 2009, if the \$36,006 SDC is not timely received from Tower Commons LLC by October 23, 2009.**

b. Presentation of Draft 2010 Budget

Director Noble and Manager Pimental directed the Board's attention to the draft 2010 Budget which had been provided to the Board one week earlier. They noted a couple of revisions that had been made from the prior draft. The Board generally discussed these revisions, the process for making the draft available to the public for review and the public hearing to be held during the Board's regular meeting on November 18, 2009.

c. Set Time and Place of Public Hearing on 2010 Budget

Manager Pimental informed the Board that he had secured the use of the Green Valley Ranch Elementary multi-purpose room for the Board meeting and public budget hearing on November 18, 2009, beginning at 6:30 p.m. Mr. Ela explained that his firm would accomplish the required publication of the notice for the hearings, including both the 2010 Budget as well as the amendment to the 2009 Budget. The Board discussed its preference that the publication of notice being done in the Denver Post rather than the Daily Journal, as has been the District's past practice. The Board asked Mr. Ela to provide them with a comparison of costs for publication in each of the publications by e-mail following the meeting.

i. District communication to taxpayers of public hearing

The Board also discussed how to provide direct notice of the budget hearing to each of the residents of the District. There was a general discussion of various formats and costs, and consensus was reached to provide a direct notice by mail, which will be prepared by Manager Pimental and his staff. Manager Pimental was directed to send the notice out no later than the end of October, and to provide a simplified summary of the budget in the mailing. Director Noble and the Board then discussed what should be included within the simplified summary of the budget.

d. Consider Resolution 10-21-09, Intent to Participate re: GOCO Grant Application.

Manager Pimental described the Landscape Committee's plan to renovate Tract B in Filing 27 (currently an undeveloped detention pond) so that athletic fields can be constructed within the Tract without interference with the Tract's function as a detention pond. He stated his desire to apply for a grant from Great Outdoors Colorado for up to \$700,000, which would also require a \$300,000 match from the District, or at least 30% of the total project cost if a GOCO grant is awarded. Mr. Ela informed the Board that passage of a resolution is required as a part of the grant application, because it would provide GOCO with the assurance that the District would appropriate the matching funds necessary if the grant was awarded. One Board member inquired about the cost for developing the grant application and Manager Pimental informed the Board that he intended to use the engineering firm of Nolte Engineering to perform the feasibility study necessary for the application, and it would cost no more than \$10,000. **Upon motion by Director George, seconded by Director Schumer, the Board voted unanimously to expend up to \$10,000 from the General Fund for the feasibility study for the project. The Board determined to table Resolution 10-21-09(B) until the November meeting, pending the results of the feasibility analysis being performed by Nolte Engineering.**

14. Executive Session *Executive Session (as needed to receive confidential legal advice on specific legal questions per § 24-6-402(4)(b), C.R.S.)*

No executive session was called.

15. Other Matters There were no other matters discussed.

16. Adjournment **Upon motion duly made and seconded the meeting was adjourned at 10:27 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 18th day of November, 2009.

Respectfully submitted,

/s/ Mary P. Schumer
Mary Schumer, Secretary