

RECORD OF PROCEEDINGS

MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF

GVR METROPOLITAN DISTRICT

Held: Wednesday, November 18, 2009 at 6:30 p.m., at the Green Valley Ranch Elementary School, 4100 Jericho St., Denver, Colorado.

Attendance:

A regular meeting of the Board of Directors of GVR Metropolitan District, Denver, Colorado, was called to order at 6:30 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 (absent, excused)
Joanne True, Director
Charles Britton, Director

Also present were:

Andrew Pimental, District Manager; Evan D. Ela, legal counsel; Roger Rohrer; Mariann Toomey; Nick Streno; Charles Spratt; Bob Richardson; Jeff Knudsen; Eric Gravenson; Pamela Davis; Joanne Keiderling; Sherry Johnson; Charlie Foster; Cathy Frasco; Walt Cross; Ron Greening; John Smith; Elaine Smith; Jim Tanner; Fenna Tanner; Marcia P.

1. Call to Order

Chairwoman Brown called the meeting to order at 6:30 p.m. and established a quorum of six directors. The Board reviewed and discussed the published Agenda and determined to move the public comment period (Item 8 on the Agenda) to Follow Item 5 (Conflicts of Interest Disclosures). The Board, by consensus, approved the revised Agenda.

**2. Approve
Minutes from
Prior Meetings**

a. October 21, 2009 Regular Board Meeting

The Board reviewed and discussed the draft minutes from the October 21, 2009 regular meeting. Director Britton expressed his disagreement with the fact that the Board had not excused his absence from the October 21st regular board meeting. He stated that he had provided notice to another Board member prior to the meeting concerning his absence. The Board noted that it had not received that information at the meeting. The Board discussed statutory criteria of three consecutive unexcused absences being cause for removal from the Board, and noting Mr. Britton's presence at this

meeting, found the unexcused absence to be inconsequential. **Upon motion by Director George seconded by Director Noble, the Board approved the minutes without revision.**

3. Conflicts of Interest Disclosures

None were disclosed.

4. Comment Period

a. Master Homeowners Association Representative

Chairwoman Brown introduced Roger Rohrer, who had recently been elected president of the Master HOA for Green Valley Ranch. Mr. Rohrer addressed the meeting and commented on the change in leadership of the Master HOA Board, the planned efficient mode of business to be carried out by the Master HOA, and his plans for the Master HOA Board to fully cooperate with the District Board toward implementation of the purpose of Ballot Measure 5(A) passed at the November 2007 election for the benefit of the entire community. He also mentioned that on November 15, 2009 seven (7) new delegates had been seated in the Master HOA governmental structure, and that there are several vacant seats still to be filled. The Board, members of the audience and Mr. Rohrer then engaged in a lengthy discussion on various ways that tax-funded covenant enforcement could be achieved during the 2010 fiscal year. Possibilities of negotiating a new contract between the entities and potential funding sources were discussed. The audience addressed Mr. Rohrer with several questions about the future governance of the Master HOA.

b. Citizens Advisory Board Representative

Elaine Smith stated that she had no report due to her inactivity with the CAB in recent months.

c. Developer Representative

No report was given.

d. Public (limited to 3 minutes per person unless arranged with the Chair well in advance of the meeting date; public comment period limited to 20 minutes in total)

Chairwoman Brown noted that no members of the public had requested the right to speak during the comment period on the sign-in sheet.

5. Presentation and Discussion of Proposed 2010 District Budget

a. Hearing to Receive Public Comments on Proposed 2010 Budget
(limited to 3 minutes per person; public comment period limited to 45 minutes in total)

Chairwoman Brown opened the public hearing on the proposed 2010 budget at 6:55 p.m. Director Noble provided an overview of the proposed budget and then answered numerous questions from the audience. Director Noble explained that 2010 expenses will include some notable reductions such as a reduction from 11 to 8 fulltime employees (FTE) in 2010, with one additional position funded for 10 months only, and reductions in the costs of contract services and debt service. He noted new expense categories for elections costs, and a \$43,000 contingency to begin saving funds for possible early repayment of the outstanding bonds. He noted that early repayment on the recently refunded bonds can begin in 2014. Director Noble pointed out that the O&M mill levy in 2010 has been reduced to 8.14 mills, a reduction of 1.025 mills from 2009. He directed the public's attention to a refund to the taxpayers of 3.527 mills (equaling a loss of revenue to the budget of \$225,365). He also noted that overall tax revenue received in 2010 will be approximately 46% less than the tax revenue received in 2009 due to the large reduction in debt service mill levy, the refund to taxpayers, and the reduction in O&M mill levy.

Additional discussion was held between the Board and the public concerning ways to potentially fund a new contract between the District and the Master HOA so that covenant enforcement services can be funded by tax revenues rather than homeowner assessments. Two primary means were identified; (i) for the District to withhold the \$225,365 taxpayer refund in 2010 and instead use it if necessary to fund HOA services during a portion of the 2010 fiscal year, or (ii) apply portions of the approximately \$3.2 million fund balance in the District's accounts for partial-year costs. A fairly small portion of the fund balance would be necessary to fund the expenses incurred by a contract with the Master HOA for a portion of 2010. Chairwoman Brown entertained a motion to close the public hearing. **Upon motion by Director Schumer, seconded by Director George, the Board voted to close the public hearing at 7:45 p.m. by a vote of five (5) in favor and 1 (Director Britton) opposed.**

b. Board Discussion/Deliberation of 2010 Draft Budget

The Board determined not to continue further deliberation of its draft budget at this time.

6. Presentation and Discussion of Proposed Amendments to 2009 Budget

a. Hearing to Receive Public Comments on Amendments to 2009 Budget (limited to 3 minutes per person; public comment period limited to 15 minutes in total)

Chairwoman Brown opened the public hearing at 7:50 p.m. Manager Pimental presented the proposed budget amendment summary to the Board and the public. Manager Pimental explained that the budget amendment was necessary due to the Board's decision to use \$4.1 million dollars of the District's funds balance for early repayment of the 2009 outstanding bonds in conjunction with the refunding of the balance of the bonds. He noted that this resulted in an increase of appropriation from the debt service fund as well as an increase in the appropriation from the general fund from the amended budget approved by the Board on January 21, 2009. There were no comments from the public concerning the proposed amendment. **Upon motion by Director Schumer, seconded by Director True, the public hearing was closed at 8:00 p.m. by a vote of five (5) in favor and 1 (Director Britton) opposed.**

b. Board Discussion/Deliberation of Amendments to 2009 Budget

Director True inquired why the total budget appropriation amount increased approximately \$1 million dollars due to the amendment. The reason for the increase could not be immediately explained and the Board determined to table approval of the budget amendment until the Board's regular meeting on December 9, 2009.

7. Legal Report

a. Termination of Community Center Contract with Pirnack-Walters

Mr. Ela informed the Board that correspondence between Ben Tracy, special litigation counsel, and Pirnack-Walters had determined that Mr. Pirnack is seeking to withhold an additional \$65,000 above and beyond the \$65,000 to which he may be entitled under the contract terms. Mr. Ela explained that Mr. Pirnack has not clearly stated the justification for this additional fee, but has been asked to do so.

b. SDC for Carl's Jr. Restaurant

Mr. Ela distributed a draft letter to representatives of Tower Commons stating the terms of the agreement reached between the Board and Tower Commons concerning the Board's decision not to certify the delinquent account to the County Treasurer for collection in 2010. Mr. Ela informed the Board that the Tower Commons had performed the first part of the agreement by paying \$36,006, the original SDC, by the stipulated date of October 23, 2009, and therefore the delinquent amount had not been certified. He noted that Tower Commons retains the obligation to replace dead trees within the Tower Commons Development by June 1, 2009, and if not accomplished by that time, the District would reassess the penalty and interest charges, including those accruing from now until then for

certification in the Fall of 2010. Mr. Ela mentioned that upon payment of the SDC, the attorney for Tower Commons had sent a letter implying that the payment was the only obligation required of Tower Commons, and

therefore the letter from the District will be sent by certified mail to fortify the record with the terms of the agreement.

c. Transition of General Counsel

Mr. Ela informed the Board that he had met with Barbara Vander Wall concerning the transition of legal counsel and transfer of files and anticipated all could be completed by January 1, 2010.

8. Director Items

Director Britton addressed the meeting and provided a proposal he had obtained from Community Resource Services, a company in the business of providing District management services. Director Britton explained that he had obtained a bid of \$192,000 as the total annual fee required by Community Resource Services to completely supplant the District's staff. The Board and the public engaged in the discussion of the pros and cons of privatizing the staff functions and whether the proposed annual fee would, in fact, enable Community Resource Services to perform all of the functions now performed by staff and at a level that the District and Community had come to expect. Chairwoman Brown expressed the Board's willingness to examine such alternatives in the coming years, but that a new services agreement between Master HOA and the District has become a more important priority to address first.

**9. Board Reports
Agenda**

a. Financials

i. Financial Statements

Director Noble presented the financials. He noted a \$2.7 million net loss in 2009 as compared to revenues due to primarily the \$4.1 million payment made as a component to the bond refunding. He noted that tax collection for 2009 achieved 97%. **Upon motion by Director Schumer, seconded by Director George, the Board voted five (5) in favor and one (1) opposed (Director Britton) to accept the financial statements.**

ii. Check Detail, Payroll and Vouchers Payable

Director Noble briefly summarized the vouchers payable and noted that an additional \$20,000 in interest payment will be made to Zions National Bank per the invoice received concluding the 2009 bond refunding transaction. He noted that the \$20,000 interest payment had not been included in the vouchers payable. **Upon motion by Director Schumer, seconded by Director Noble, the Board approved the payment of all vouchers payable by a four (4) in favor with two (Directors Britton and True) opposed.**

b. District Manager Report

Manager Pimental directed the Board's attention to the Manager's Report which had been provided in the Board packets. He described the reasons for terminating the concrete replacement contract with Chavez Contractors and stated that the work would be completed in 2010 by a contractor to be chosen during that year. Manager Pimental also explained the results of the audit performed by the State of Colorado Conservation Trust Fund staff, and explained their conclusion that only approximately 35% of the operations and maintenance costs of the office building can be paid out of Conservation Trust funds. This is due to the fact that, of the District programs in total, only about 35% are of a nature that qualify for use of Conservation Trust funds and therefore the use of such funds for the office building has to be apportioned similarly.

**10. Discussion
Items –
Unfinished
Business**

a. Consider Resolution 11-18-09(A), LPOR Grant from Great Outdoors Colorado

Manager Pimental explained that the Nolte Engineering Feasibility Study was not yet complete, but encouraged the Board to approve the resolution so that it could be submitted with the grant application within the coming weeks. He again summarized the concept of the project to convert a storm water detention pond into useable athletic fields while maintaining the storm water function. **Upon motion by Director George, seconded by Director Noble, the Board approved Resolution 11-18-09(A) by a vote of five (5) in favor with one (1) (Director Britton) opposed.**

**11. Discussion
Items – New
Business**

a. Consider Board Meeting Schedule for 2010

Manager Pimental explained that he had developed a schedule for meetings in 2010 which would require only that the December meeting be held on the 2nd Wednesday of the month, with all regular meetings being held on the 3rd Wednesday of the month. He explained that in order to meet the statutory requirement of presenting the Board with a draft budget by October 15th, he and his staff would provide it independently to the Board prior to such date, so that initial discussions could occur at the regularly scheduled October meeting.

Mr. Ela explained that the Board schedule could be approved, but at Manager Pimental's suggestion, the Board's schedule and the posting of the 24-hour notice as required by statute had been combined into one Resolution. He stated that it is appropriate to approve such Resolution at the Board's 2010 meeting, in keeping with the statutory requirement that the posting location be designated at the first meeting of each year.

b. Consider Contract with selected General Counsel, Seter VanderWall, P.C.

Manager Pimental provided a copy of the proposed engagement letter between the law firm of Seter Vander Wall and the District for general counsel beginning on January 1, 2010. He explained that Barbara Vander Wall is discounting her fees for the costs associated with attending board meetings and preparing minutes, as well as other meeting-related tasks, and also limiting the costs she would charge the District for review of files received from current general counsel. **Upon motion by Director Noble, seconded by Director George, the Board approved the engagement letter with Seder Vander Wall by a vote of five (5) in favor with one (1) (Director Britton) opposed.** Director Britton explained his vote in opposition as based on his belief that there was no need to engage legal counsel on an ongoing basis, but only to engage legal counsel when needed.

c. Discussion of May 2010 Election – Polling-place or Mail-ballot

Mr. Ela explained that this item had been placed on the Agenda because of the staff's desire to approve the election resolution at the December 2009 meeting so that the expected high public interest in the election can be handled by a designated election official, and nomination materials can be provided earlier than February 2010. Mr. Ela explained that the Board should determine whether it would prefer a polling place election, which are typically cheaper to conduct but with smaller voter turnouts, or a mail ballot election, which typically has a higher voter response but entails greater expense to conduct. The Board discussed the fact that approximately one-third of the registered electors in the District have requested permanent mail ballot status and the preference of many other voters to attend a polling place to vote. From the discussion, the Board directed staff to work with legal counsel to prepare the election resolution based upon a polling place election, recognizing that nearly one-third of the registered electors within the District would be receiving mail ballots anyway.

d. Consider District Staff Communications Concerning Work Environment

Chairwoman Brown began the discussion by addressing Director Britton on his conduct when he is entering and occupying the District office building during business hours. Mr. Ela explained that the attorney/client memorandum that had been provided to all Board members had been requested by Chairwoman Brown and prompted by letters written from members of staff complaining that Mr. Britton's behavior created a hostile work environment with elements of harassment and intimidation, all of which are forbidden by the District's Personnel Policy Manual.

Mr. Britton explained his view that he felt harassed and intimidated by the District Manager, and that he had been put on trial at an executive session earlier in the year. Mr. Ela attempted to explain the distinction between the executive session discussion, which was concerned with allegations by a Director that a staff member had violated the Personnel Manual policies, and the discussion at this meeting, in which the staff members have alleged violations of the District Personnel Manual by a Director.

Chairwoman Brown explained her disappointment that Director Britton has been unwilling to participate fully as a Director in the same manner as the other Directors, beginning with his refusal to engage in background checks and other preliminary matters that all Board members had followed, his refusal to participate in Director duties and his demonstrated behavior around staff members when visiting the office building. She proposed that the Board as a whole adopt a climate of mutual respect and cordiality to one another and to the staff and proposed the following motion: **“I move that each Board member individually commit to this District to behave in their interactions with staff in an appropriate manner. Harassing, intimidating, threatening, or directly confrontational behavior must be avoided in order to maintain a workplace which complies with the District’s expectations outlined in the Personnel Manual for workplace conditions.”** The motion was seconded by Director George and was passed by the Board by a vote of five (5) in favor with one (1) (Director Britton) opposed.

12. 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 held.

13. Other Matters

No other matters were discussed.

14. Adjournment

Upon motion duly made and seconded the meeting was adjourned at 9:50 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 9th day of December, 2009.

Respectfully submitted,

/s/ Mary Schumer

Mary Schumer, Secretary