

RECORD OF PROCEEDINGS

EBERT METROPOLITAN DISTRICT REGULAR MEETING OF THE BOARD OF DIRECTORS RECORD

OF PROCEEDING

Board of Directors

Todd Creger
Yvonne Flood
Cynthia L. Barclae
Kimberly Rivera
VACANT

Office:

President
Secretary Treasurer
Assist. Secretary
Assist. Secretary
Assist. Secretary

Term Expiration

May 2022 (appointed)
May 2022 (elected)
May 2022 (elected)
May 2022 (appointed)
May 2022 (appointed)

DATE: Tuesday May 25, 2021

TIME: 6:00 PM

PLACE: VIA Zoom

***NOTICE: given current events and current advice and directives from local, state and federal jurisdictions related to COVID-19, Board members, consultants and members of the public may participate by videoconference or teleconference by utilizing the following information:**

AUDIO/VIDEO CONFERENCE

<https://zoom.us/j/2583076806?pwd=MVBHUmp0MW90K1BWYit1dG5MVGx0QT09>

Meeting ID: 258 307 6806

Passcode: 823481

Call-in: 1-253-215-8782

YOU MAY ACCESS THE MEETING PACKET AT: Ebertmd.colorado.gov

I. ADMINISTRATIVE ITEMS:

A. Call the Meeting to Order

President Creger called the meeting to order at 6:00 PM. Present were all Directors. Also Bob Blodgett, CRS, Kim Bruetsch, Robinson Waters and O'Dorisio. Others present were Murray Hawthorne, Melissa Sotelo, Al Morie, Jerry Jacobs, Charlie Foster, Gail Bell, Carol Turner, Jeffrey

B. Review Conduct of Meeting and Confirm Location and Posting of Meeting Notices

Mr. Blodgett reviewed the conduct for the Board meeting as prescribed in the District bylaws. Public comments will be taken at the end of the meeting. Mr. Blodgett received prior telephonic instruction from Director Creger to disable the Chat function until the Public comment period. All participants will be muted until the end of the meeting. The meeting will be recorded. Comments should be addressed to the Board as a whole.

Mr. Blodgett confirmed the meeting notice has been posted at the Green Valley Ranch Recreation Center and the District website. The meeting is being held via Zoom due to the pandemic.

C. Declaration of Quorum

President Creger declared a quorum of the Board was present.

D. Approval of Agenda

Mr. Blodgett recommended amending the agenda to include consideration of the 2020 draft audit under financial items. Motion by Director Creger second by Director Rivera the Board approved the agenda as amended.

E. Review and Consider Approval of April 22, 2021 Special Work Session Meeting Minutes and February 26, 2021 Regular Meeting Minutes (enclosures).

Motion by Director Barclae second by Director Creger, the Board approved both sets of minutes subject to correction of typographical errors identified by Director Barclae.

II. DIRECTOR'S ITEMS:

A. Consider Approval of Invoice From Town Center MD for 56th Avenue Landscaping Improvements - \$651,235.21 (enclosure)

Mr. Jacobs reviewed the invoice with the Board. Mr. Blodgett reported he and President Creger have reviewed the invoice and documentation with Ms. Sedgeley and found all to be in order to be payable from the Districts 2021 capital budget.

Motion by Director Creger second by Director Rivera the Board approved the invoice from Town Center Metropolitan District to pay for reimbursement of 56th Avenue landscaping improvements.

B. Status of Board Vacancy

Director Flood opened with recommending delaying filling the vacant position accompanied by no explanation. Director Barclae requested an explanation. Director Creger asked Attorney Breutsch to comment. Attorney Breutsch stated that Director Creger was in possession of information that he had shared with the Appointment Interview committee, implying the potential need for additional work, interviewing and investigation relating to the appointment. Director Barclae asked Attorney Breutsch about the investigation. Attorney Breutsch deferred to Director Creger. Director Creger did not remark. Director Flood stated that “we” want some resolution to the situation, and offered no information as to the situation she was referring to, and then questioned whether there was a fairness concern. Director Barclae requested that Director Flood explain further. Director Flood offered no reply. Director Creger then stated that the Board is under no obligation to make an appointment and that was the recommendation of the committee. Director Barclae asked whether the recommendation not to make an appointment was the committee’s recommendation or Legal Counsel’s recommendation. Director Creger stated that it was important to be in compliance with the law and then stated that it was the committee’s recommendation and then asked Director Flood to speak up. Director Flood told Director Barclae that they [who?] weren’t making an appointment and that’s all there is to it at that point. Director Barclae expressed serious concerns as to the procedure and recommended that additional legal counsel be sought. Director Barclae asked committee members Rivera and Flood if the two applicants were not qualified. Director Rivera stated they were qualified but there is a certain standard “we’re” looking for for the Board and offered no explanation as to what standards she was referring to. Director Rivera then stated the need for more investigation into the questions she had at hand and offered no information as to what questions she had at hand or the reason for invoking any investigation. Attorney Breutsch inserted that neither candidate had been eliminated from consideration at that point but that based on the timing of some information that were additional information needs so the committee can make a recommendation, but that both candidates are still under consideration. Director Barclae asked for a clarification that no appointment would be made at this time. Director Rivera responded that she, Director Flood, Director Creger and Bob (Blodgett) needed to determine when they can get together to discuss the “situations” then corrected herself with saying “options”, and then make a determination at that time, but they haven’t done that yet and she offered no information as the situations or options that she was referring to. Director Barclae asked when they would have a recommendation in light of the board’s prior appointment failures. Director Flood responded that her recommendation was not to appoint at this time and offered no explanation as to why. Director Barclae asked Director Flood when did she expect to be able to make the appointment and how much time did Director Flood need for the investigation. Director Flood stated she could not answer that question at this meeting. Director Barclae asked Director Creger how the Board was going to get through this and for a deadline. Director Creger stated that “we” are going to let one candidate where accusations had been made, to have his due process and that he didn’t want to discuss details in this public meeting. Director Creger then stated the “we” don’t have a deadline and that “we’re” not going to make an appointment at this time because he didn’t know how long the investigation would take and offered no information as to who would be doing the investigation, what was to be investigated, nor under what authority any such investigation was based on. Director Barclae then asked Director Creger to clarify that the

next action on this matter will not occur until the next Regular Meeting in October, five months for now. Director Creger stated “we’re” not going to give a deadline and that “we’re” going to follow the recommendation of the committee and that the issue is tabled.

[Administrative Note: No parliamentary procedure was followed or recognized during this entire discussion. Director Creger unilaterally terminated the discussion without soliciting consent of the Board. A written transcript of the audio of this Director’s Item is attached. The entire exchange can be heard on the Zoom recording in the recording period between 00:40:57 – 00:53:00]

C. Discuss Process for Moving Forward Collaboratively with Town Center MD

Mr. Blodgett and Director Creger stated they have been meeting with Mr. Wysznski and Mr. Jacobs with the Town Center Board since the February meeting in an effort to identify ways to move forward collaboratively with the Town Center Metropolitan District in the future.

D. Review of \$2.9 Million Reimbursement From GVR East MD

Ms. Bruetsch stated the \$2.9 million due to Town Center Metropolitan District is in a separate segregated account. The funds will be used for future needed capital improvements within Ebert with full transparency. The Ebert board will be involved in the decision related to this future expenditure.

E. Options Regarding Appointment of An Ebert MD Elector to the TCMD Board

Director Creger reported the Board had a special meeting on April 22 to discuss this issue and other options regarding direct involvement in the TCMD budgeting, capital improvement project priorities and contracting processes. Having an Ebert Elector on the TCMD Board presents other legal hurdles and conflicts which have to be overcome. In addition, this is only one vote on a four member board. The District can accomplish its objectives with earlier and more direct involvement with TCMD annually in projects and contractors that affect Ebert residents through participation in meetings and committees directly with the TCMD staff and Board. Mr. Jacobs reported TCMD is agreeable to this commitment of additional Ebert involvement throughout the year. Director Flood noted up to two board members can participate in meetings and committees without a quorum and a public Board meeting. The full Board can meet with the TCMD board on an annual or as needed basis.

Director Creger recommended that a formal agreement or document be prepared regarding the Ebert role in budget workshops, joint meetings, capital improvement projects and contractor selection in the future. Director Barclae stated this is important to clarify the Ebert role in writing.

After further discussion, the Board asked Ms. Bruetsch to draft initial language in a cooperative agreement with TCMD for future Board review. She noted this could be developed

in draft form over the next couple of months and then finalized at the board's October meeting once it was clear how it was working.

F. Participation in the TCMD Budget Process

The Board and Ms. Bruetsch noted TCMD is committed to Ebert involvement in their budget process. TCMD is committed to transparency with notices to Ebert of their budget meetings and involvement and participation in their decisions.

G. Discuss Committee Status Reports

1. Committee Review/ Recommendations (Director Creger and Flood) (enclosures)

Director Creger reported he and Director Flood have discussed the structure of the committees. He reviewed the recommendations provided in October 2020 regarding current standing committees of the board. Director Flood stated this work began in the fall of 2019 with the prior Board President and Board members. The Strategic Planning and Fiscal Policy Committees were combined at some point. Some Committees have met, others have not. Director Flood noted that the Committees report to the Board and do not make a decision on behalf of the Board independently. Director Barclae asked about public information on the Committees for residents. Director Flood noted the Committee information is on the District website. Volunteers have been obtained for each committee other than Communication. The Board discussed length of time individuals should be on a committee. Should there be a term limit?

2. Election Review and Evaluation Committee (Director Rivera)

Director Rivera reported she met with Ms. Blair at CRS. They are working on documents related to mail ballots, frequently asked questions and other election items. Her Committee could use additional assistance. The next election is May 2022 but the process will start in about six months.

3. Communications/Education Committee (Director Flood)

Director Flood stated she had nothing new to report at this time.

4. Joint TCMD/Ebert Landscape Committee (Directors Creger and Barclae)

Director Barclae reported the Joint Landscape Committee met last week. They are going to provide information on getting rid of thistle. TCMD reported they will start review of the Fairway Villas beach area and needed landscape work.

5. Fiscal Policy and Strategic Planning Committee (Director Creger)

Board members noted that some residents do not agree with the combined Strategic

Planning and Fiscal Policy Committee. Some want to work only on strategic planning issues that have financial implications to be addressed by a separate committee. Director Creger stated this joint committee has not met recently. After additional discussion, motion by Director Flood second by Director Creger the Board voted to separate the Strategic Planning and Fiscal Policy Committee into two separate Committees for the future.

6. Future direction

The Board asked that the Committee information on the District website be refreshed and a request for volunteers be sent by blast email as well as through the website. Director Flood noted committee members should be asked if they want to remain on the Committees. Director Barclae asked about the Committee meeting schedule. Director Flood noted that the Committee chair calls the first meeting and then the Committee decides on their future meeting schedule.

H. Other Items

III. FINANCIAL ITEMS:

A. Review Ebert MD Unaudited Financial Statements for the Period Ending March 31, 2021 and February 28, 2021 (enclosures).

Ms. Sedgeley reviewed with the Board. After discussion, motion by Director Rivera second by Director Creger the Board accepted the March 31 Financial Statements. The Board did not review the February 28 statements since this information was included in the March 31 statements.

B. Other - 2020 draft audit

Ms. Sedgeley reviewed the draft 2020 audit with the Board. She noted the auditor is completing fieldwork and the auditor's unqualified opinion will be included once it is complete. She recommended the Board approve the audit subject to minor non-substantive changes by the auditor or legal counsel and authorize Ms. Sedgeley to file with the state auditor. Motion by Director Creger second by Director Rivera the Board approved a motion as stated by Ms. Sedgeley.

C. 2021 budget resolution

Director Barclae noted section six of the resolution inadvertently states Adams County instead of Denver County. She asked that this be corrected. Mr. Blodgett will coordinate.

IV. OTHER BUSINESS:

- A. Update from District 11 - City Council, City and County of Denver (Magen Elenz to present).

Ms. Sotelo reported Denver has received \$700 million of state and federal economic recovery funds. They are seeking resident input for its use. Please see the website risetogetherDenver.org to comment. Green Valley recreation center is open with reservations. A vaccination site is being provided at Montebello recreation center. The Denver Department of Housing and Stability is seeking input on an affordable housing plan. A survey link is available online through the department. The Board thanked Ms. Sotelo for her report.

- B. Capital Projects Update (Charlie Foster to present).

I will send you Charlie Foster's report to include here and then after that use the following:

Mr. Foster also reported he is working on needed traffic signals in Green Valley Ranch. There are six waiting to be constructed. These are the responsibility of the City and County of Denver.

- C. Town Center Metropolitan District Report (Brandon Wyszynski and Jerry Jacobs to present)

Mr. Jacobs reported TCMD completed an audit of trails regarding which were complete and who is responsible. TCMD will do one trail. The rest are the responsibility of Green Valley Ranch South and Denver. He also stated there has been an unusual amount of vandalism on mailboxes. He is reviewing that issue. He reported 650 irrigation heads were activated. Repairs are being performed. Fortunately there have been no mainline breaks.

- D. Other

Director Barclae asked for a map indicating the location of future traffic signals and trails. Mr. Jacobs will coordinate with Mr. Foster and prepare a map to send to the Board. Director Barclae asked if information regarding who pays for the trails and signals can be added to the map. Mr. Jacobs will review.

Director Barclae recommended the Board meet sometime in August rather than waiting until the end of October for their next meeting. After discussion, the Board called a special meeting for Tuesday, August 24 at 6:00 PM. Director Barclae also recommended that the December 21 board meeting be moved to December 7. After discussion, the Board canceled the December 21 meeting and changed it to Tuesday, December 7 at a to be determined time. The board asked for input from those present at the meeting regarding whether this should be an 8:00 AM or 6:00 PM board meeting. Director Flood noted the Board in the past has alternated these times so as not to inconvenience the same residents all of the time.

V. PUBLIC COMMENT – Please submit comments/questions via the Zoom “chat” tool (when it’s enabled) or to Kimberly Bruetsch via email at kbruetsch@rwolaw.com

Mr. Schmid recommended that the board appoint any Ebert elector to the Town Center Metro District board in addition to participating directly in committees and meetings. Ms. Bell concurred with this comment. She also recommended that public input be provided at the beginning of future Board meetings rather than the end. Mr. Klink asked questions regarding the accounting for the Town Center capital project invoice approved earlier in the meeting. Mr. Shelton recommended the Fiscal Policy and Strategic Planning Committee remain as one Committee.

VI. ADJOURNMENT:

Motion by Director Flood second by Director Creger the Board adjourned the meeting at 8:35 PM.

The next Regular meeting is scheduled for October 27, 2021 @ 6:00 PM. There will also be a Special Board meeting on August 24, 2021 at 6:00 PM.

Director's Item B. "Status of Board Vacancy"

Ebert Metro District Board Meeting 5-25-21, Zoom audio Transcript period: 00:40:57 – 00:53:00

Bob Blodgett (District Manager)

The next Directors item is the Status of the Board Vacancy

Yvonne Flood – Director

So uh Kimberly and I were appointed to... interview and make a recommendation on filling the board vacancy. And our recommendation at this point is that we...uhm....delay... filling the position.

Cynthia Barclae – Director

And your reason behind that?

Todd Creger - Director and Board President

Kimberly arr uh Kim Breusch do you want to uh comment also?

Kim B. (District's Legal Counsel)

Uhhmm I mean if uh I I'm not sure what your.... specific question is Todd, uhm I I think based on the information that Todd has been provided and that was shared with the committee uhh there's some additional work that has to be done... uhhmm and there may be uhh a need to do uhm... some additional interviews and or uhh investigation related to the appointment and so that's why the committee has just decided to defer at the moment.

Cynthia

What investigation is that?

Kim B. (District's Legal Counsel)

I don't know what that what you guys have shared with one another outside the meeting but there's some there's [unintelligible] so you mean you may have to talk with Todd about that Cynthia?

Cynthia

OK the only thing we know is the uhm.. information we got from Bob on one of the candidates but I don't understand what you're investigating. Can someone answer that who was on the committee?

Yvonne

We want some resolution to the situation Cynthia really...uhm....It's hard to make a decision when you know we were confronted with this kind of information so I think that without going into detail we could uhm I ee maybe even have a separate executive session to discuss some of this? because I'm not sure it's fair to the candidates?, ...uhm... otherwise? Kimberly can comment on that.

Cynthia

Fair.... yeah fair...you need to go into a little bit more because even the way that it's addressed on the agenda is not the way that it's addressed in October... so uhm... in those.. in that meeting... so I'm I'm a little concerned we do get some information but you have your....you can give your opinion on that... so you've made no decision one way or the other, right? How many people applied for this position?

Todd

There were two. Ya.

Cynthia

Ok, and out of those 2?

Todd

Well [unintelligible] according to uhh conversations with Kim Breusch uhh as long as the Board makes a good effort uhh in uhh trying to fill the candidate seat uhh if the committee felt that at the point point we do not uhh have uhh adequate information about one candidate and uhm it did not want to recommend possibly uhh uhh you know move forward with a recommendation uhh counsel was [unintelligible] asked about the... uhh how to move forward (stuttering) and [stuttering] under the statues here in Colorado and in our bylaws we are under no obligation to make an appointment if we feel that we don't have a qualified candidate at this point.

Cynthia

Really...

Todd

And that was a recommendation of committee

Cynthia

That was the committee or that was advisory from council? I'm a little confused there . You did say that you talked to Kim (B.)

Todd

We'll she's our uhh ih she's our attorney. And we want to make sure we're staying, you know, uhh in uhh [unintelligible] in compliance with all the laws and so forth, so we definitely are going to consult her. But uhh iii I was not involved in any of the decision making,...this was the committee....Yvonne.

Yvonne

[unintelligible] making an appointment, Cynthia, that's all there is to it. At this point.

Cynthia

Oh well I am a little concerned about the whole procedure. So uhm I have to make a few phone calls. I think we need a little bit more legal counsel at this pointunless you can give a reason why you're not appointing. The two people

that applied were not qualified...is that...that's what you're saying Yvonne and Kim?

Kim Rivera - Director

We're not saying that they weren't qualified, were just saying that there is a certain standard that we're looking for for this board and I think that you would share the same opinion.... uhmm in this case, there wasn't necessarily uhmm there's uhh on one hand there's questions that we have all received as a board that uhmm that we received information that we need to take a look and that a little bit further and then there was also a few other questions that we had for Kimberly, or for Kim, that we uhh we did share with her, and so we at this point or back when we did our interviews, determined that it wouldn't....it wasn't appropriate to make a decision at that time.... so it's not necessarily that they're not qualified it's just that it would not have been fair to do uhmm without making it sound harsh, but more investigation into...the....questions that we had at hand.

Kim B. (District's Legal Counsel)

Just just to clarify my understanding right now is that no, neither of the candidates has been eliminated nor have they decided not to appoint. Uhm based on the timing of some of the information that was provided to the board uhmm there's some additional information needs to be obtained so the committee can make a recommendation uhmm so both of the candidates that have applied at least my understanding of the situation is are both still under consideration.

Cynthia

So they're both under consideration and you're not...and just to clarify, so you're not making a a appointment at this time. When will you know when are you going to go back and review, in light of our new information that that seems to be causing the situation?

Kim Rivera

We're gonna have to go ahead and determine a time which we can, which Yvonne and I, and our new manager or even, you know, Bob, Todd whomever, uhmm can get together, and we can go ahead and discuss the situations uhmm... or not necessarily situations, but the options, and then quite possibly make it...determination at that time. But we haven't done that yet.

Cynthia

OK you know we're going back in to just a few months ago and you know Yvonne wanted to fill the seat and then we got Matt and he wasn't qualified so I uhm am just a little bit of a loss as to where we're going. We got some information that we certainly can act on it this time, so it, so being Kimberly and Yvonne as the board for, ..that interviewed, you have decided to table it? What when are you going to have an answer since you were in a big rush last October? That's all I'm wondering.

Yvonne

[Unintelligible]...was going to come forward Cynthia...so we would think that we need to give it its due consideration, and my recommendation was that we not appoint someone at this time.

Cynthia

And when will you be able to know when you're going to a point? How much investigation time?

Yvonne

[unintelligible]

Cynthia

Pardon me?

Yvonne

I don't think I can answer that tonight.

Cynthia

Oooh I think that we should be able to say something when are you and Kimberly gonna meet or we gonna have a special meeting? Todd how are we gonna get through this?.. one way or the other?

Todd

We're gonna let the one candidate where the accusations been made, have his due process and which there has been information gathered by but we don't wanna [unintelligible] were not gonna go into details in a public meeting on some private things that are occurring...

Cynthia

I understand that.

Todd

Right

Cynthia

I understand that. I'm just trying just trying to get some kind of a deadline.

Todd

Well we don't have a deadline. Uhh we're we're not going....as the committee's recommended... we're not going to make an appointment this time. We will keep channels open. And uhh but we're not in a position to give a date because we don't know how long that investigation's.... it's not being conducted by us, it's being...we're gathering information but there's there's a counterpoint to the accusation that's been made we want to get all that information...provided to us.

Cynthia

Right, OK, so are you saying also that it won't be appointment won't be announced until our next meeting which is when October.

Todd

I said we're not going to give a deadline so uhh let's uhh you know I don't think.... we're... you're asking questions we're not we don't have a lot of answers, we can't share some answers publicly it's just we're going to follow what the

Ebert Metropolitan District

May 25, 2021 - Agenda

Page 13

committee said and at this time it's been tabled.

Cynthia

Wow....OK...I guess we have some investigating to do and a little legal work...

Todd

Uh hu

Cynthia

I'm for that...OK

Todd

So Bob would you like to continue? (next agenda item)

[This transcript was prepared with the aid of digital "voice to text" software.]