

## RECORD OF PROCEEDINGS

### MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF EBERT METROPOLITAN DISTRICT

**HELD:** Tuesday, the 27th day of October, 2020, at 6:00 p.m., held via Zoom.

#### **ATTENDANCE:**

A regular meeting of the Board of Directors of Ebert Metropolitan District, City and County of Denver, Colorado, was called to order as shown above and in accordance with the applicable statutes of the State of Colorado, with the following directors present and acting:

Todd Creger, Treasurer  
Yvonne Flood, Assistant Secretary  
Cynthia Barclae, Assistant Secretary

Also present via Zoom were:

Lisa A. Jacoby of Community Resource Services (CRS), District Manager  
Charles D. Foster of Foster Consulting, Ltd  
Debra Sedgeley of CliftonLarsonAllen LLP (CLA), District Accountant  
Kimberly Bruetsch, Esq. of Robinson Waters & O'Dorisio, P.C.  
Jerry Jacobs of Timberline District Consulting, LLC  
Magen Elenz of District 11 City Council Office  
Other Members of the Public

#### **ADMINISTRATIVE ITEMS:**

**Call to order** - The regular meeting of the Board of Directors of the Ebert Metropolitan District was called to order at approximately 6:00 p.m. via Zoom video/audio conference.

**Conduct of the Meeting** – Ms. Jacoby read aloud an excerpt from the District's Public Communications and Comment Policy regarding appropriate conduct and noted that public comment would be taken during that designated portion of the meeting with questions and comments provided via the Zoom "chat" tool or by email sent to Kimberly Bruetsch at [kbruetsch@rwolaw.com](mailto:kbruetsch@rwolaw.com)

**Confirmation of Location and Posting of Meeting Notices** – Ms. Jacoby reported that she had physically posted at the regular meeting location as well as on the website, the Meeting Notice and Agenda.

**Quorum** - A quorum was declared.

**Agenda** – Following discussion, upon motion duly made, seconded and unanimously carried, the Board approved the Agenda, as amended.

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**Acknowledge the Resignation of Sandra Hittman and Katie McDonald** – Ms. Jacoby reported that due to the sale of Sandra Hittman’s property, she no longer qualified as a Board Member and thus a letter of resignation would not be tendered. Further, pursuant to correspondence received from Katie McDonald, her resignation was acknowledged effective September 23, 2020.

**Consider Appointment of Chairman for the Meeting** – Director Flood nominated Todd Creger as Chairman for the meeting, Director Barclae seconded the nomination and Director Creger was appointed Chairman for the meeting.

**Consider Addendum to Bylaws** - Director Barclae presented her proposal for an addendum to the District’s Bylaws regarding appointment of Board Vacancies. Director Flood proposed consideration of the addendum as a more comprehensive review of the Bylaws in total, once a full board is seated, so that additional changes can be taken under consideration as a committee.

Director Barclae noted that she would like more review of this addendum and did not want to pursue Board appointments at this time. Discussion ensued.

Following discussion, upon motion duly made by Director Flood, seconded by Director Creger and, upon vote, carried with Directors Flood and Creger voting “Yes” and Director Barclae voting “No”, the motion to table the proposed addendum to the Bylaws and to set up a committee to review the Bylaws as a whole to determine any amendments to be proposed, with a full Board seated, was approved.

Attorney Bruetsch noted that from a legal perspective, based on the action taken, the current Bylaws stand.

**Consider Appointment of Board Candidate to the Board of Directors** – Director Barclae motioned to table the appointment of Board Candidates. Receiving no second to the motion, the motion failed.

Ms. Jacoby noted that consistent with prior action following resignations in June, a Board Member Solicitation/Candidate Questionnaire was published again on the District’s website in an effort to receive a broader geographical pool of qualified candidates to select from. Ms. Jacoby noted that she had received several inquiries about the role, with a total of 5 candidates submitting Candidate Questionnaires/Letters of Interest. It was noted that all of the Candidates Questionnaires/Letters of Interest were posted to the website and the additional interviews were conducted. Candidates under consideration comprised of Murray Hawthorne, James Moore, Kimberly Rivera, Matthew Dionne and Sandra James.

Director Creger reported that comments from the public were taken and interviews were conducted thanking all of the candidates for their interest. Director Creger announced that Kimberly Rivera and Matthew Dionne were selected from the pool of candidates following the interviews.

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Upon motion duly made by Director Flood, seconded by Director Creger and, upon vote, carried with Director Flood and Creger voting “Yes” and Director Barclae voting “No”, the motion to appoint Kimberly Rivera and Matthew Dionne to the Board of Directors, was approved. *[Following the meeting it was determined that Matthew Dionne was not qualified to serve on the Ebert Board of Directors. Further consideration will occur at the December 9, 2020 Board Meeting.]*

**Appointment of Officer Positions** – Following discussion, upon motion duly made, seconded and unanimously carried the following slate of officers was appointed:

President	Todd Creger
Treasurer	Matthew Dionne
Secretary	Yvonne Flood
Assistant Secretary	Cynthia Barclae
Assistant Secretary	Kimberly Rivera

It was noted that Mr. Dionne and Ms. Rivera’s positions on the Board would become effective upon the filing of their Oaths of Office with the Court. *[Following the meeting it was determined that Matthew Dionne was not qualified to serve on the Ebert Board of Directors. Further consideration will occur at the December 9, 2020 Board Meeting.]*

**Minutes** - The Board reviewed the Minutes of the meeting of the Board of Directors of Ebert Metropolitan District held on August 18, August 26 and September 28, 2020. Upon motion duly made by Director Flood, seconded by Director Creger and unanimously carried, the Board approved the Minutes, as presented.

**Administration of Oath of Office** – Matthew Dionne joined the meeting at this point and Director Creger administered Matthew Dionne’s Oath of Office. *[Following the meeting it was determined that Matthew Dionne was not qualified to serve on the Ebert Board of Directors. Further consideration will occur at the December 9, 2020 Board Meeting.]* It was noted that Kimberly Rivera was not in attendance and that her Oath of Office would be administered outside of the meeting.

**Ratification of Engagement of Robinson Waters & O’Dorisio, P.C.** - Upon motion duly made by Director Flood, seconded by Director Creger and unanimously carried, the Board ratified approval of the engagement of Robinson Waters & O’Dorisio, P.C. as general counsel.

### DIRECTOR ITEMS:

**Committee Status Reports** - Discussion ensued regarding the status of the following Committees:

1. **Election Review and Evaluation Committee** – Ms. Jacoby reported that with the loss of Sandra Hittman, this Committee no longer has a Board Sponsor. Director Creger noted

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that Kimberly Rivera had expressed an interest in serving on this Committee. Director Flood noted that she would also be available to serve as the Board Sponsor on this Committee if needed.

Ms. Jacoby noted that she would follow-up with Kimberly Rivera regarding serving on this Committee as Board Sponsor and with Sue Blair as the Designated Election Official (“DEO”) regarding the status of this Committee.

2. Communications / Education / Community Engagement Committee – Committee Chair, Yvonne Flood noted that she would appreciate having additional volunteers for this Committee. She reported that traffic to the website had increased by 51%, up by 46% from the last Board meeting. Director Flood reviewed with the Board a proposal for website policy and procedures.

Following discussion, upon motion duly made by Director Barclae, seconded by Director Creger and upon vote, unanimously carried, the Website Policies & Procedures were adopted by the Board.

3. Landscape Committee – Committee Chair, Cynthia Barclae reported that two meetings were called by Town Center, but only one was held. Work towards a master gardener presentation is underway. Graffiti can be reported to the City and County of Denver via 311 and via completing forms for graffiti reporting. She noted that a Newsletter from Westwind Management may not be getting to all, and possibly updating or combining of email lists are required. Director Barclae reported on the status of mosquito control noting that there were not a lot of mosquitos this year. She noted that a walkthrough was performed to define areas of responsibility for mosquito control and that there is protocol including a schedule for mosquito control and weed abatement.
4. Fiscal Policy / Strategic Planning Committee – Director Creger (Board Sponsor) reported on the status of the Committee noting that he has been working with Chair, Murray Hawthorne, regarding feedback and the consolidation of the Fiscal Policy and Strategic Planning Committee as one Committee and discussing the purpose of the consolidated Committee. Director Flood suggested that the Committee consider further the role of the Fiscal Policy and Strategic Planning and consider separating the Committees out again.
  - a. Status of Reserve Study by Town Center Metropolitan District – Mr. Jacobs provided an update on the Reserve Study noting revisions were sent to Association Reserve. He noted that predominately the changes consisted of relocating of certain fence lines out of the sub-districts and into Town Center Common Areas. A revised Study is expected within a week.

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- b. Intergovernmental Agreement (“IGA”) between the District and GVR Metropolitan District for Sharing Common Area Costs – Ms. Jacoby discussed the Agreement terms and the request from Ebert Metropolitan District to GVR Metropolitan District for additional funding for a cost per square foot shortfall determined. It was noted by Director Flood that it was her understanding that termination of the Agreement was to occur per prior discussions. Mr. Jacobs described the history and reason for the structure of the agreement for the maintenance of the property by Ebert on behalf of GVR Metropolitan District.

Following discussion, upon motion duly made by Director Flood, seconded by Director Creger and, upon vote, unanimously carried, the Board determined that a Notice of Termination be drafted by Attorney Bruetsch to GVR Metropolitan District indicating termination of services effective December 31, 2020, pursuant to the terms of the Agreement.

Enforcement of Covenants (rules and regulations) by the Town Center Metropolitan District via Westwind Management – Director Creger presented and volunteered to represent the Ebert Board via Mr. Jacobs to spearhead a discussion with Town Center Metropolitan District for the discussion of issues that are important to the Ebert community so as to influence Westwind Management’s enforcement of covenants (rules and regulations). Director Barclae also volunteered to participate in these discussions.

### FINANCIAL ITEMS:

Town Center Metropolitan District Request for Reimbursement of the GVR Boulevard Landscape Upgrades and 56<sup>th</sup> Avenue/Picadilly Irrigation Upgrades – Ms. Jacoby discussed the budgeting for these expenditures and Ms. Sedgeley discussed the substantiation and process for the request for the above referenced reimbursement in the amount of \$869,292.58.

Following discussion, upon motion duly made by Director Flood, seconded by Director Creger and, upon vote, unanimously carried, the Board approved the reimbursement to Town Center Metropolitan District in the amount of \$869,292.58 for the stated projects benefitting Ebert. It was noted that the use of remaining budgeted funds will be taken under consideration by the Board.

Unaudited Financial Statements – Ms. Jacoby noted that the Financial Statements can be found on the District website - [Ebertmd.colorado.gov](http://Ebertmd.colorado.gov). Ms. Sedgeley reviewed with the Board the unaudited financial statements for the period ending September 30, 2020.

Ms. Sedgeley noted that the District does have an Agreement with the Town Center Metropolitan District to levy 17 Mills for the funding of maintenance of the community. There is a maximum amount obligated by Ebert to Town Center Metropolitan District pursuant to the Agreement. It is estimated that the Agreement obligation will be fulfilled within 5 to 6 years.

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Following discussion, upon motion duly made by Director Creger, seconded by Director Flood and, upon vote, unanimously carried, the Board accepted the financial statements for the period ending September 30, 2020.

**2021 Draft Budget** – Ms. Sedgeley discussed the exclusion of CP Bedrock property and the continued obligation towards debt and reviewed with the Board the draft 2021 Budget. Ms. Sedgeley requested the Board review the Budget and provide any revision comments. The Public Hearing to consider adoption of the 2021 Budget was confirmed for December 9, 2020 at 8:00 a.m. anticipated to be held via Zoom.

### **OTHER BUSINESS:**

**Update from District 11 City Council Office, Magen Elenz on behalf of Council Member Stacie Gilmore's Office** - Ms. Elenz reported on the new City and County of Denver public health order being indoor and outdoor face coverings being required and that a step back to “safer at home level 3” has been mandated; meaning restaurants, churches and retail are required to reduce capacity from 50% to 25%.

Ms. Elenz reported that the 56<sup>th</sup> Avenue expansion project is being brought before City Council for release of the 4<sup>th</sup> issuance of funds. An RFP will be in early 2021 and the construction contract will be awarded in 2021 with the project expected to occur late 2021/2022.

The “flyaway” project with 32 acres of retail (and Costco) in Town Center (west of Pena on GVR Blvd) is being rezoned, but the project is expected to be completed in 2021/2022.

**Capital Project Update** – Mr. Foster reported that paving of 38<sup>th</sup> Avenue is currently occurring, weather permitting, with completion pushed to next spring, due to a high pressure gas line issue.

He noted that construction of the remaining sections from Argonne to Tower Road (the remaining section of Maxwell) will provide another access point, and also the remaining section of Argonne connecting to 56<sup>th</sup> Ave is being completed. A trail from the development west of Dunkirk and south of 56<sup>th</sup> Ave, will connect to the First Creek Trail system open space.

**Town Center Metropolitan District Report** – Mr. Jacobs reported regarding the status of work with assisting with the various Budgets for Town Center, the sub-District and Ebert; finalizing the Reserve Study and qualifying the capital reimbursement request approved earlier in the Board Meeting. A Work Order report will be due out in November year-to-date presented in a Town Center meeting. Mr. Jacobs thanked Director Barclae for her contribution to the Landscape Committee and noted that her reporting structure is being adopted to further engage other volunteers and to capture a wider representation in other areas of the community for a more comprehensive Committee and response. Winding up landscape season is occurring; draining

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down and blowing out of irrigation systems is underway and the 2 exterior pools of the community, in Subdistricts 1 and 3, have been closed.

### **PUBLIC COMMENT:**

Public comments were addressed.

**LEGAL ITEMS - EXECUTIVE SESSION** as needed to hear legal advice from Counsel pursuant to Section 24-6-502(4)(b): There was no executive session held.

**Appointment of an Ebert Metropolitan District Board Member to the Town Center Metropolitan District Board of Directors** – Ms. Jacoby discussed the inherent conflict of interest with the appointment of Board Members from either District to each District; however, it was noted that consideration will be made towards addressing the review and concerns regarding performance of contracts for Ebert, through Town Center Metropolitan District.

**Status of Evaluation of Sub-District Relationship** – Ms. Jacoby discussed the complicated and expensive structure of separating out Ebert and the sub-districts from the current Town Center Metropolitan District structure. It was noted that Directors Barclae and Creger will spearhead this discussion with Town Center.

**Green Valley Ranch North Development Agreement between the City and County of Denver; C&H Ranch Company LLC; Oakwood Commercial Ventures LLC; OC 2001, LLC; HC Development & Management Services, Inc.; Town Center Metropolitan District; Ebert Metropolitan District and School District No. 1 in the City and County of Denver, dated February 20, 2003** – Ms. Jacoby noted that this matter pertains to Green Valley Ranch East Road Improvements and the possible recovery of \$2.9M of Town Center reimbursed funds.

Attorney Bruetsch reported on the status noting that a follow-up letter had been sent to new legal counsel (Jennifer Ivy with Icenogle Seaver Pogue, P.C.) for Town Center Metropolitan District, as it relates to this specific legal matter only. She noted that Attorney Ivy has requested a few weeks to bring herself up to speed on the matter before responding.

**Addendum to Second Amended and Restated District Facilities Construction, Funding and Service Agreement (“IGA”)** – Ms. Jacoby noted this matter is related to concerns regarding subsidizing by Ebert, Town Center (or other entity), noting that Ebert facilities and those expenditures of funds received from Ebert, be specifically limited to facilities and services within Ebert boundaries which directly benefit Ebert property’ owners and residents.

### **ADJOURNMENT OF MEETING:**

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There being no further business to come before the Board and upon motion duly made, seconded and unanimously carried, the meeting was adjourned.

It was noted that the next regular Board meeting is scheduled for Tuesday, December 9, 2020 at 8:00 a.m. to be held via Zoom.

The foregoing Minutes constitutes a true and correct copy of the proceedings of the above-referenced meeting and were approved by the Board of Directors of Ebert Metropolitan District.

  
Secretary for the Meeting