

RECORD OF PROCEEDINGS

**MINUTES OF THE REGULAR MEETING OF THE
BOARD OF DIRECTORS OF THE
EBERT METROPOLITAN DISTRICT
HELD
March 26, 2024**

A Regular Meeting of the Board of Directors of Ebert Metropolitan District, City and County of Denver, Colorado was held virtually on March 26, 2024, at 7:00 p.m. The meeting was open to the public.

In attendance and participating were Directors:

Bruce Shibles, President & Co-Treasurer
Cynthia Barclae, Secretary
Louis Kennedy, Assistant Secretary
Leslie Young, Assistant Secretary
Katherine Haynes, Assistant Secretary

Also participating were:

21 Members of the Public
Evan Ela, Cockrel Ela Glesne Greher & Ruhland – General Legal Counsel
Alyssa Ferreira, Clifton Larson Allen, LLP – District Accountants
Brittany Barnett, Timberline District Consulting – TCMD Manager
Kurt Schlegel, Special District Solutions – District Manager

CALL TO ORDER:

Mr. Schlegel called the role and noted that a quorum of the Board was present. Director Shibles called the meeting to order at 7:01 p.m.

**CONFLICTS &
DISCLOSURE
STATEMENTS:**

Conflict Disclosure Statements have been filed with the Secretary of State's Office.

**APPROVAL OF
AGENDA:**

Director Shibles moved that the Board amend the agenda by moving Item #3-B – Resolution Designating Location to Post Notices from the Consent Agenda to New Business, and approve the agenda as amended. Upon a second by Director Kennedy a vote was taken, and the motion carried unanimously.

RECORD OF PROCEEDINGS

CONSENT AGENDA: Director Shibles moved that the Board approve the Consent Agenda, consisting of the following item, as presented:

- Minutes from the December 5, 2023, Regular Meeting

Upon a second by Director Young a vote was taken, and the motion carried unanimously with Director Haynes abstaining from the vote.

CORRESPONDENCE: None

PUBLIC COMMENT: Ms. Schultz commented on the cost of the Recall Election and stated that she believed only those requesting the Recall Election should be held responsible for related costs.

Mr. Morie requested that the Board allow public comments throughout the entire business meeting – Public should be able to comment on agenda items.

Ms. Davis discussed the Recall Election, associated costs, and her Open Records Request regarding District payments made related to the Recall Election.

DIRECTOR'S ITEMS / COMMENTS: Director Haynes stated that she is in favor of and will support resuming in-person meetings vs. Virtual meetings.

Director Shibles:

A. Consideration of Approval to Transfer \$297,309.93 from the “Capital expenditures to be approved by Ebert” line item of the EMD Capital Projects Bond Proceeds Series 2018 Fund to TCMD based on the request by TCMD for reimbursement for capital projects completed in 2021. Director Shibles moved that the Board approve the transfer of funds as requested. The motion received a second from Director Kennedy to begin debate.

Director Shibles explained the history of the request, provided an explanation of the related expenditures, and stated that a former District Director approved the expenditures without first obtaining Board approval. The Directors all agreed that all District expenditures must be reviewed and approved by a majority of the Board and this practice will be followed going forward from this date.

Director Haynes stated that by the pictures provided, it appears that not all work has been completed.

RECORD OF PROCEEDINGS

Director Barclae made the following statement –

“Why is TCMD asking Ebert to pay for the repairs to those pocket parks from Ebert’s Capital Projects Bond Fund when TCMD has \$555 in its own Capital Repair and Replacement Fund ...a fund specifically intended for Repair and Replacement of EXISTING assets?”

Those pocket parks are NOT Ebert’s assets. They are Towns assets. Ebert owns NO ASSETS! That fact is indisputably stated in the 2018 IGA, until such time as the transfer of assets from Town to Ebert occurs.

Do you not see what Town, through Jerry, is trying to do? They want to tap the ¾ million that’s in Ebert’s Capital Bond Fund. That bond fund is for NEW assets, not existing assets.

Town kept the \$2.9 million that everyone was concerned about, to complete their Tower Farms project. You should ask Charlie Foster how much Gateway Regional contributed to that project. After all, that project sits squarely within the Gateway Regional Metro District too. Charlie Foster is their District’s Treasurer. Ask him how much his district has contributed to that project. Rest assured he’ll be taxing and receiving tax revenue from that project. Or is that just another arbitrage opportunity, like the \$2.9 million, that is conveniently escaping everyone’s notice.

Ebert’s Capital Project’s Bond Fund was established for new District FACILITIES,....not for the upkeep of Town’s EXISTING Facilities.

Have any of you read the terms of the 2018 IGA?

Bruce, you know that we’ve asked Town several times to identify exactly what NEW FACILITIES remained to be built in Ebert ... and their answer was NONE. Only Tower Farms remained and they gave us a written summary at one of our collaboration meetings illustrating how the \$2.9 million was sufficient to fund that project.

The Board should instead, EITHER motion to apply the balance of the Bond Fund (¾ million dollars) to pay toward the Debt Service and reduce everyone’s property taxes one-time again, OR motion to transfer the balance to Ebert’s CRRF to build Ebert’s Reserve. Rest assured, Town hasn’t planned for the necessary reserves Ebert is going to need come transition time. Or, ...just raise everyone’s taxes.”

Following discussion, a vote was taken on the motion, which failed unanimously. The Directors requested additional backup regarding this request and Ms. Barnett offered to drive the areas in question with the Directors to review the work projects that have been completed.

RECORD OF PROCEEDINGS

B. Discussion and Consideration to Approve Participation with the Joint Landscape Committee as part of ongoing effort to resolve the litigation. Director Shibles discussed the fact that the Ebert Metropolitan District's Board of Directors voted in 2023 to cease participating in the Joint Landscape Committee however, based on the ongoing litigation and related discussions that it may be beneficial to once again engage with this committee. Director Shibles moved that the Board authorize up to two (2) Directors to participate in the Joint Landscape Committee. The motion received a second from Director Kennedy.

Director Barclae asked what has changed and how will this participation be different from what took place previously.

Director Haynes stated that she would like to see the process for involvement defined and then be recorded in writing.

Following discussion a vote was held and the motion carried with four (4) Directors voting YES and one (1) Director voting NO.

UNFINISHED BUSINESS:

Director Recall Election Results: Director Shibles stated that the recall election was held on February 13, 2024 and was successful. In addition, Katherine Haynes was elected to fill the vacancy created by the recall. Director Shibles welcomed Director Haynes to the District's Board of Directors.

Update on Litigation Status: Director Shibles briefly described the status of the litigation and stated that the two entities are working on a proposed Memorandum of Understanding (MOU) to address the issues that triggered the legal action. The Directors will be discussing the next step(s) and options available during an Executive Session to be conducted later in this meeting.

Based on the results of the recall election held in February 2023, the Litigation Committee now has a vacancy. Director Shibles moved that the Board appoint Director Kennedy as the second member to the District's Litigation Committee. Upon a second by Director Young a vote was held, and the motion passed unanimously.

NEW BUSINESS:

Election / Appointment of Officers: Based on the results of the recall election held in February 2023, the Office of Treasurer is now vacant. Director Shibles moved that the Board appoint Director Kennedy as the District's Treasurer, and Director Kennedy accepted. Upon a second by Director Young a vote was held, and the motion passed unanimously.

RECORD OF PROCEEDINGS

Resolution Designating Location to Post Notices: Mr. Schlegel presented a proposed Resolution designating the official location(s) to post District Notices. The District's website has been identified as the primary location and the question exists as to the location of a physical posting, should the Internet not be available. Director Haynes moved that the Board adopt the Resolution Designating the District's Official Posting Location specifying the District's website, <https://ebertmd.colorado.gov/>, as the primary posting location; and the King Soopers located at 18605 E. Green Valley Ranch Boulevard, Denver, CO 80249 as the alternate location for posting District Notices; and that the District post physical notices in addition to notices on the website. Upon a second by Director Kennedy a vote was taken, and the motion passed with four (4) Directors voting YES and one (1) Director voting NO.

FINANCIAL ITEMS:

Review of Cash Position and Financial Statements: Ms. Ferreira presented the District's unaudited Financial Statements dated February 29, 2024, for the Board's review. Director Kennedy moved that the Board accept the Unaudited February 29, 2024 financial statements, as presented. Upon a second by Director Shibles a vote was taken, and the motion passed unanimously.

District Payables: Ms. Ferreira presented the District's payables for the period of November 30, 2023 through March 21, 2024 for the Board's review. Director Kennedy moved that the Board ratify payments made in the amount of \$30,294.85 and approve current payables in the amount of \$14,791.44. Upon a second by Director Shibles a vote was taken, and the motion carried unanimously.

DISTRICT MANAGER'S REPORT

Covenant Control and Restrictions (CCR) Status Report: Mr. Schlegel stated that a current CCR Status Report, provided by Westwind Management Group, LLC has been included in the Board members meeting packet. The Directors agreed that this form of report is not useable and requested that Mr. Schlegel work with Westwind Management to develop a report format that presents more useful data for the Directors.

District Work Order Status Report: Mr. Schlegel stated that a current status report, provided by Timberline District Consulting, LLC has been included in the Board members meeting packet, and there is only one (1) item that is outstanding at this time.

RECORD OF PROCEEDINGS

Statutory Compliance: Mr. Schlegel stated that the District is in compliance with the required submissions, and that the next item due is the annual financial audit, which is due by July 31, 2024.

OTHER BUSINESS:

Resolution Related to Potential Resolution of Current Litigation Involving a Limited Amendment of the 2018 IGA to Increase the “Maximum Service Amount” and Limit the “Total Actual Service Costs” Accordingly Similar to Action Recently Taken by Town Center Metropolitan District (TCMD): Director Shibles described the proposed Resolution which, if approved, will enable the Ebert Metropolitan District and the Town Center Metropolitan District to fund total actual service costs incurred by the Districts and moved that the Board Approve and Adopt the Resolution Approving Limited Amendment to the Second Amended and Restated District Facilities Construction, Funding, and Service Agreement. Director Kennedy seconded the motion.

Director Barclae then moved to amend the motion to approve the Resolution as follows –

Delete and replace the text of section (3) in the last paragraph, with the following: [to allow] ... “for the Ebert Board of Directors to determine the purposes for which said funds shall be applied, to include the amounts allocated for such purposes. The privilege of this section 3 shall manifest itself in TCMD’s 2025 General Fund Budget, the approval of which shall be subject to the majority consent of the Ebert Metropolitan District Board”, and also stated the following:

“It should be an express intent of this resolution to ensure that Ebert has a direct say in the discretion as to where, how, and how much of this “one-time increase” in the Maximum Service Level shall be applied and allocated, ...which is approximately \$2.6 million dollars.”

There was discussion among the Directors and Counsel regarding the original motion and the proposed amendment to the motion.

Following a second by Director Young, a vote on the amendment to the original motion failed with two (2) Directors voting in favor of, and three (3) Directors voting in opposition to the amendment to the original motion.

A vote was then held on the original motion to approve and adopt the Resolution Approving Limited Amendment to the Second Amended and Restated District Facilities Construction, Funding, and Service Agreement. The motion carried with three (3) Directors voting YES and two (2) Directors voting NO.

RECORD OF PROCEEDINGS

EXECUTIVE SESSION:

Director Shibles moved that the Board enter into an Executive Session, pursuant to C.R.S. Section 24-6-402(4)(b), for the purposes of receiving legal advice on specific legal questions, requested legal analysis from District legal counsel related to the formation of new districts within the boundaries of an existing district, and status of ongoing litigation with Town Center MD including seeking a stay of the litigation from the Court; and

Pursuant to C.R.S. Section 24-6-402(4)(e), for the purpose of determining positions relative to matters subject to ongoing negotiations, developing strategy for such negotiations, and instructing negotiators regarding enforcement of covenants and improvements to meet the requirements of covenants with respect to public properties contained within the District.

Upon a second by Director Kennedy a vote was taken, and the motion carried unanimously. The board members were placed into a breakout room and the Executive Session commenced at 9:16 p.m.

Following discussion, Director Shibles moved that the Board conclude the Executive Session and reconvene the public session. Upon a second by Director Kennedy a vote was taken, the motion carried unanimously, and the Executive Session was terminated at 10:07 p.m., and the public session reconvened.

OTHER BUSINESS:

Director Shibles moved that the Board direct legal counsel to work in cooperation with the TCMD's legal counsel to seek a stay in the current litigation with the proposed MOU between the two Districts as the basis for the stay. Upon a second by Director Kennedy a vote was taken, the motion carried unanimously.

NEXT MEETING:

The Board's next regular meeting will take place virtually on Tuesday – June 11, 2024, at 7:00 p.m. and shall be noticed in accordance with CRS 32-1-902 and 24-6-402, on the District's webpage <https://ebertmd.colorado.gov>.

RECORD OF PROCEEDINGS

ADJOURNMENT

There being no further business to come before the Board, upon motion duly made, seconded, and unanimously carried, the meeting was adjourned at 10:10 p.m.

Respectfully Submitted:

Secretary for the Meeting

Please reach out to Westwind Management Group for questions and concerns related to Green Valley Ranch North.

Association Business Manager

April Delgado

(303) 369-1800 ext. 135 April@westwindmanagement.com

Administrative Assistant


Audrey Brown

(303) 369-1800 ext. 117
Audrey@westwindmanagement.com

CERTIFICATION CONCERNING RECORD OF
EXECUTIVE SESSION HELD ON MARCH 26, 2024

I hereby certify that it is my opinion that the discussion held during the executive session convened near the end of the regular meeting of the Board of Directors of Ebert Metropolitan District held March 26, 2024, constituted privileged attorney-client communication, and therefore no record or electronic recording was required to be kept for such executive session pursuant to Section 24-6-402, C.R.S. I further certify that I was in attendance by Zoom tele-video conference and participated in the discussions for the entire executive session commencing at _:_ pm and adjourning at _:_ pm. The privileged discussions during executive session concerned specific questions of legal counsel concerning ongoing litigation with Town Center Metropolitan District over violations and enforcement of the Master Declaration of Covenants, Conditions, and Restrictions for Green Valley Ranch North and pertaining to the creation of special districts within the boundaries of existing special districts, all in accordance with Section 24-6-402(4)(b), C.R.S.

Dated this 28th day of March, 2024.

By: 

Evan D. Ela, General Counsel
Ebert Metropolitan District

00:16:01 Kelvin Klink: I would like to make a comment
00:26:05 Patti Davis: I welcome anyone with additional questions about the recall and the cost-benefit analysis to contact me at pdavisphd@gmail.com. I have detailed information to share with any Ebert resident and can hopefully answer your questions about the recall process, rationale, and costs.
00:30:31 Viktor Slovanic: if its no way to conduct business, dont reward Town with payment
00:31:08 Bill Schmidt: For the record, the Town Center Board is supportive of this new approach
00:31:32 Viktor Slovanic: good observation Kadija
00:33:49 Leslie Young: I do not know how to "raise my hand" but I concur with Kadija and in all good conscience cannot vote in the affirmative of such an arbitrary resolution with lack of backup. We are not here to cover for Jerry's shortcomings.
00:39:51 Kelvin Klink: The prepared statement that Ms Barclae read covered a lot of good points. It is suggested that a copy of the statement be included in the Minutes.
00:40:19 Viktor Slovanic: seems like the source of funding is an issue that needs discussing too
00:41:29 Patti Davis: Agreed, Kel Klink.
00:41:47 Viktor Slovanic: i heard mrs barclae say town should pay for it from their capital repair and replacement fund, not eberts crrf
00:49:32 Viktor Slovanic: good idea khadija
01:06:45 Brittany Barnett: Thank you for your time. I look forward to working with the Ebert Board moving forward.
01:14:06 Evan's iPad: I'm happy to provide any materials you need or to answer any auestions that arise.
01:14:06 Viktor Slovanic: sounds like the cost of not enforcing the covenants is going to cost the district hundreds of thousands from what Bruce just described
01:15:03 Viktor Slovanic:so, isnt it cheaper to just enforce the covenants?
01:18:16 Khadija H: Replying to "I'm happy to provide..."

Thank you. I'm sure I will take you up on that offer. 😊

01:18:57 Viktor Slovanic: seems like it took eberts withdrawal from the lanscape committe to get Town to shift gears, from what mr morie just describe
01:20:55 Patti Davis: The gates are all listed in Exhibit D of the Ebert lawsuit if anyone would like to see it.
01:22:37 Patti Davis: Congratulations, Louis
01:24:54 Kelvin Klink: In the past, the Ebert Notification was posted inside the Rec Center.
01:27:11 Patti Davis: Ms. Barclae - we can hear your off-scfreen conversations with someone in your room
01:27:18 Keith Mays: FV has exterior bulletin boards adjacent to some of the post office boxes that may be used if desired.
01:31:51 Viktor Slovanic: shouldnt district postings be

limited to public property, not private property?

01:33:21 Patti Davis: 54th Place - in FV 1

01:33:39 Viktor Slovanic: the land for the notice box would need to be on public land, right?

01:36:22 Viktor Slovanic: high volume foot traffic areas are in the mall areas, but those are private property. perhaps a sign like gvr south's hoa announcement board along gvr blvd is an option too.

01:36:51 Leslie Young: address for King Soopers: 18605 E 48th Ave

01:38:58 Viktor Slovanic: motions that get no second, expire

01:52:24 Viktor Slovanic: maybe april can priduice a summary showing the violation categoryies and numbers in each category that are in the 30, 60, 90+ days still not corrected? or something like that?

02:00:07 Viktor Slovanic: i didnt hear cynthia say anything about being in towns "daily business"....I think she said the allocations itemized in Towns 2025 general fund budget.

02:01:59 Viktor Slovanic: memorandum? is that some secret document thats being developed outside of public view?

02:05:20 Viktor Slovanic: the only way for ebert to be 'guaranteed' that it has any influence in towns expenditure decisions, is to have something in writing to that effect, right?

02:06:46 Viktor Slovanic: will the memorandum of understanding be subject to Board approval? it should be

02:09:02 Viktor Slovanic: the 19.5 is distributed to Town at the rate of 17 mills per year

02:10:08 Viktor Slovanic: according to the iga, as I read it

02:12:26 Viktor Slovanic: like what?

02:12:44 Viktor Slovanic: what other issues?

02:18:19 George Cook: There was a comment about water being used for trees. What is wrong with the water?