

DRAFT - SUBJECT TO BOARD APPROVAL

RECORD OF PROCEEDINGS

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

HELD: Wednesday, the 9th day of December, 2020, at 8:01 a.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 via Zoom:

Todd Creger, President
Yvonne Flood, Secretary
Cynthia Barclae, Assistant Secretary
Kimberly Rivera, 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 8:01 a.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

Confirmation of Location and Posting of Meeting Notices – Ms. Jacoby reported that she had physically posted the Notice and Agenda at the regular meeting location, on the website, with the County and that the Agenda and Notice was distributed to the community via email blast by Westwind Management.

Quorum - A quorum was declared.

RECORD OF PROCEEDINGS – DRAFT - SUBJECT TO BOARD APPROVAL

Ebert Metropolitan District

December 9, 2020

Page 2

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

Acknowledge the Ineligibility of Matthew Dionne to serve on the Board of Directors – Consider appointment of Board Candidate to fill the Vacancy – Ms. Jacoby reported that following the December 9, 2020 Board Meeting it was discovered that Matthew Dionne did not qualify to serve on the Board of Directors due to his property not residing within the boundaries of the District. Mr. Dionne’s Oath of Director was not filed with the Court and thus he was not installed as a Board Member. The Board determined to consider appointment of a qualified individual at a future meeting, following the consideration of amendment(s) to the District’s Bylaws.

Establishment of a Committee and Appointment of Representatives to Review and Suggest Amendment to the Bylaws – Following discussion, the Board established a Bylaw Review Committee with Directors Barclae and Flood volunteering as representatives. Director Rivera noted that she would be available if needed as well.

Appointment of Officer Positions – this matter was deferred.

Minutes - The Board reviewed the Minutes of the meeting of the Board of Directors of Ebert Metropolitan District held on October 27, 2020. Upon motion duly made by Director Flood, seconded by Director Creger and unanimously carried, the Board approved the Minutes, as presented.

2021 Regular Meeting Dates and 2021 Annual Administrative Resolution - Following discussion, upon motion duly made by Director Flood, seconded by Director Creger and, upon vote, unanimously carried, the Board approved the 2021 Annual Administrative Resolution, subject to determination following this meeting, of 2021 Regular meeting dates. [*Following the meeting, the Regular 2021 meeting dates and times were established for Friday, February 26, at 8:00 a.m.; Tuesday, May 25 at 6:00 p.m.; Wednesday, October 27th at 8:00 a.m.; and Tuesday, December 21 at 6:00 p.m.*]

DIRECTOR ITEMS:

Communication Protocols between the Committees, the Board and Representatives of the Community – Director Flood discussed a concern regarding reciprocal communication with advisory committees created by the District; other committees and well as others of the community with the goal of allowing for better communication with all involved. She noted that communication should flow up to the Board and that the Committees do not have the authority to make decisions or take action for the Board.

RECORD OF PROCEEDINGS – DRAFT - SUBJECT TO BOARD APPROVAL

Ebert Metropolitan District

December 9, 2020

Page 3

Director Creger echoed Director Flood’s comments and discussed a broader concern regarding understanding how the Committees are structured and how to better address community concerns.

Director Barclae also addressed the need for better communication as it related to the Landscape Committee communication through the sub-district structure. Director Barclae further reported regarding reviewing of a proposed amendment to the community Covenants.

Discussion ensued regarding holding of special meetings to have more open communication within the Board. It was noted by Ms. Jacoby that communication by the Board whether by email or in person, with a quorum of the Board, constitutes a public meeting which must be “noticed”, pursuant to statute.

Mr. Jacobs clarified the intent regarding the amending the Covenants noting that the Covenants would not be amended, but rather an amendment to the Guidelines will clarify regulations regarding the matter at hand, being the holiday decorating. He noted that an email blast from the Landscape Committee addressing holiday decorating matters would be sent within the next week.

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

1. Election Review and Evaluation Committee – Kimberly Rivera confirmed she is the Board Sponsor for this Committee. Ms. Jacoby reported that she had consulted with Committee member Sue Blair, Designated Election Official (“DEO”), and that it was determined by the Committee to meet again in spring, 2021. It was noted that Director Rivera may establish communication with the Committee and consider calling a Committee meeting as she desired.
2. Communications / Education / Community Engagement Committee – Committee Chair, Yvonne Flood noted that she still does not have a committee and is in need of volunteers. She noted that work is ongoing with regard to “what will” and “what won’t” be included on the website. She noted that it would be good for the Guidelines once amended, to be posted to the website as a resource to the community. She reported that as expected, website usage continues to trend upward when a Board meeting is nearing.
3. Landscape Committee – Committee Chair, Cynthia Barclae noted prior in the meeting that amendments regarding holiday decorations will be forthcoming.
4. Fiscal Policy / Strategic Planning Committee – Status of Town Center MD Reserve Study
Mr. Jacobs reported that the Reserve Study has been finalized and that revisions going forward will be noted and compiled with updates to occur once a year, in an effort to be more efficient. The finalized Reserve Study will be presented to the Town Center Board in January for final acceptance. He noted that he did receive an email from Chair, Murray

RECORD OF PROCEEDINGS – DRAFT - SUBJECT TO BOARD APPROVAL

Ebert Metropolitan District

December 9, 2020

Page 4

Hawthorne regarding the Golf Course and that this matter will be addressed with the next version of the Reserve Study. It was also requested that the compiled information be contained in a central access location (such as Dropbox) to avoid redundancy of comments, and that a hyperlink to the Reserve Study will be established once the Reserve Study is approved by the Town Center Metropolitan District.

Enforcement of Covenants (rules and regulations) by the Town Center Metropolitan District via Westwind Management – Director Creger reported that he and Director Barclae met with Mr. Jacobs and Mr. Wyszynski to discuss this subject and a variety of subjects with an overall desire for better communication. It was noted that there is a lot of geography to cover with the volume of violations; however, with the hiring of April Delgado, communication has improved, concerns are being addressed and inspections are occurring with more consistency.

Establishment of a Committee and Appointment of Representatives for the Review and Suggested Amendment to the Bylaws – This matter was addressed earlier in the meeting.

FINANCIAL ITEMS:

Unaudited Financial Statements – Ms. Sedgeley reviewed with the Board the unaudited financial statements for the period ending October 31, 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.

Following discussion, upon motion duly made by Director Flood, seconded by Director Barclae and, upon vote, unanimously carried, the Board accepted the financial statements for the period ending October 31, 2020.

2021 Budget Hearing – The President opened the public hearing to consider the proposed 2021 Budget and discuss related issues.

It was noted that publication of Notice stating that the Board would consider adoption of the 2021 Budget and the date, time and place of the public hearing was made in a newspaper having general circulation within the District. No written objections were received prior to this public hearing.

Ms. Sedgeley reviewed the estimated 2020 expenditures and the proposed 2021 expenditures. Public comments were received and following comments, the public hearing was closed.

Following discussion, the Board considered the adoption of the Resolution to Adopt the 2021 Budget and Appropriate Sums of Money and Set Mill Levies (for the General Fund at 17.000 mills

RECORD OF PROCEEDINGS – DRAFT - SUBJECT TO BOARD APPROVAL

Ebert Metropolitan District

December 9, 2020

Page 5

and the Debt Service Fund at 40.319 mills and the Capital Repair and Replacement Fund at 1.000 mill, for a total mill levy of 58.319 mills). Upon motion duly made by Director Flood, seconded by Director Creger and, upon vote, unanimously carried, the Resolution was adopted, as discussed, and execution of the Certification of Budget and Certification of Mill Levies was authorized, subject to receipt of final Certification of Assessed Valuation from the County on or before December 10, 2020. Ms. Sedgeley was authorized to transmit the Certification of Mill Levies to the Board of County Commissioners of the City and County of Denver and the Division of Local Government, not later than December 15, 2020. Ms. Sedgeley was also authorized to transmit the Certification of Budget to the Division of Local Government not later than January 30, 2021.

2020 Audit – Ms. Jacoby presented the Audit Engagement Letter from WIPFLI to perform the 2020 Audit, for an amount of \$4,500. It was noted that the fee remains the same as last year. Following discussion, upon motion duly made by Director Flood, seconded by Director Barclae and, upon vote, unanimously carried, the Board approved engagement of WIPFLI to perform the 2020 Audit.

OTHER BUSINESS:

Update from District 11 City Council Office, Magen Elenz on behalf of Council Member Stacie Gilmore's Office - Ms. Elenz chief of staff for Stacie Gilmore, reported that there will be a holiday drive thru event being held this upcoming Friday December 11th from 6-9 at the EB Garrett Dennis campus, west parking lot.

Capital Project Update – Mr. Foster reported that paving of 38th Avenue has been completed; it has been “striped” and “signed”; however, it is not open to traffic as the streetlights have not yet been installed. It is expected that this project will be completed in 2021.

Other projects for completion in 2021 consist of the link between Tower and Argonne for Maxwell and also the link for Argonne connecting to 56th Ave; and, a couple of sidewalks making connection to the First Creek Trail.

He noted that Phase 3 of 38th Ave. consisting of a corner of 38th Ave. and Picadilly Road, has been delayed due to Urban Drainage District conducting a study for upgrades.

Further, Mr. Foster noted that he is working with the City and County of Denver regarding traffic signals on arterials, for which the City will fund; however, does not currently have the funding for. He noted he would continue to provide updates.

Mr. Foster noted that the CP Bedrock escrow of approximately \$165,000 was for the improvement to landscape along Telluride; however, that landscaping will not be completed as it is a vacant incomplete road. The funds will remain in the escrow account until the landscaping is installed.

RECORD OF PROCEEDINGS – DRAFT - SUBJECT TO BOARD APPROVAL

Ebert Metropolitan District

December 9, 2020

Page 6

Mr. Foster clarified that the CP Bedrock escrow does not include excluded property from the District. The excluded property is not a part of the escrow, but consists of 51 acres of commercial property just to the west of Tower Road. Mr. Jacobs noted that these properties perform and fund their own maintenance.

Questions regarding 38th Ave. and Telluride were addressed. It was noted by Mr. Foster that pursuant to a 2003 Agreement, Denver agreed to pay \$25+ million for streets and associated improvements plus an additional \$5.6 million was received. As part of that Agreement, Town Center Metropolitan District agreed to improve 38th Avenue and Telluride. In return, the revenues that would have gone to GVR Metropolitan District, were received by Town Center Metropolitan District.

Town Center Metropolitan District Report – Mr. Jacobs reported that work orders for the year amounted to 761 received with 728 being completed to date.

He reported on the Final Acceptance and turnover to Town Center Metropolitan District for maintenance consisted of the following: Filing 39 streetscape north side; Serenty Park; 56th Avenue streetscape from Ireland to Picadilly; Filing 62 common areas and streetscape; and, First Creek Village Filings 3 and 4. Capital projects completed consisted of: Phase 4 fencing; GVR Boulevard and Kirk Street landscaping, drainage repairs and replacements. The irrigation upgrades and detention pond cleanup projects were completed as well.

Mr. Jacobs noted earlier in the meeting that the Town Center Reserve Study has been completed and will be on the agenda for Town Center's acceptance at the Town Center Metropolitan District January meeting.

PUBLIC COMMENT:

Public comments were addressed.

LEGAL ITEMS - EXECUTIVE SESSION - Pursuant to C.R.S. §24-6-502(4)(b), upon motion duly made by Director Flood, seconded by Director Barclae and, upon vote, unanimously carried, the Board entered into executive session at 10:07 a.m. to receive legal advice from Counsel regarding matters pertaining to the termination and renegotiation of Intergovernmental Agreement (“IGA”) between the District and GVR Metropolitan District for Sharing Common Area Costs; appointment of an Ebert MD Board Member to the Town Center MD Board of Directors; evaluation of the sub-district relationship; matters pertaining to 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; the Addendum to

RECORD OF PROCEEDINGS – DRAFT - SUBJECT TO BOARD APPROVAL

Ebert Metropolitan District

December 9, 2020

Page 7

Second Amended and Restated District Facilities Construction, Funding and Service Agreement; and, Termination Amendment to the Leisure Facility Agreement by and between Town Center Metropolitan District – Subdistrict No. 1 and WTS International, LLC.

Furthermore, pursuant to §24-6-402(2)(d.5)(II)(B), C.R.S., no record will be kept of those portions of the executive session that, in the opinion of the District's counsel, constitutes privileged attorney-client communication pursuant to §24-6-402(4)(b), C.R.S.

Upon motion duly made by Director Flood, seconded by Director Barclae, upon vote, unanimously carried, the Board entered into regular session at 11:27 a.m.

Intergovernmental Agreement (“IGA”) between the District and GVR Metropolitan District for Sharing Common Area Costs – Following discussion, Director Creger was authorized to follow-up with Mr. Jacobs regarding the status of Notice of Termination and request for renegotiation of the Agreement.

Appointment of an Ebert Metropolitan District Board Member to the Town Center Metropolitan District Board of Directors – Following discussion, Ms. Jacoby was authorized to follow-up with Mr. Wyzynski regarding the status of qualifying of an Ebert Board Member or other individual to sit on the Town Center Metropolitan District Board.

Status of Evaluation of Sub-District Relationship – The Board determined to take under consideration documents associated with this matter.

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 – Following discussion, Attorney Bruetsch was authorized to follow-up with Town Center Metropolitan District’s legal counsel, Jennifer Ivy with Icenogle Seaver Pogue, P.C. regarding a request by Ebert Metropolitan District’s for disclosure, transparency and oversight of the use of funds received via Green Valley East Metropolitan District of approximately \$2.9M.

Addendum to Second Amended and Restated District Facilities Construction, Funding and Service Agreement (“IGA”) – Following discussion, Attorney Bruetsch was directed to circulate the draft Addendum for the Board’s consideration.

Termination Amendment to the Leisure Facility Agreement by and between Town Center Metropolitan District – Subdistrict No. 1 and WTS International, LLC – Following

RECORD OF PROCEEDINGS – DRAFT - SUBJECT TO BOARD APPROVAL

Ebert Metropolitan District

December 9, 2020

Page 8

discussion, Director Creger was authorized to request a copy of this referenced termination agreement or any related settlement documents from the Town Center Metropolitan District.

ADJOURNMENT OF MEETING:

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

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

DRAFT