

RECORD OF PROCEEDING

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS OF EBERT METROPOLITAN DISTRICT

August 24, 2021

7:00 – 9:15 PM

Zoom Teleconference

A Special 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 teleconference:

DATE: August 24, 2021, TIME: 7:00 PM

PLACE: Zoom Teleconference Join Zoom Meeting

Join Zoom Meeting

<https://zoom.us/j/95757796862?pwd=Q2tsUXFtMkV4NGhicGFEMGtQVDFVUT09>

Meeting ID: 957 7081 0543

Passcode: 442840

Board of Directors	Office	Term Expiration
Cynthia Barclae	President	2020-2022 (Elected)
Bruce Shibles		2020-2022 (Appointed)
Keith Mays		2020-2022 (Appointed)
Jennifer Woods		2020-2022 (Appointed)
Murray Hawthorne		2020-2022 (Appointed)

Also, present via Zoom were:

Jerry Jacobs of Timberline District Consulting, LLC – District Manager

Corey Pilato of Timberline District Consulting, LLC – Assistant District Manager

Kimberly Bruetsch, Esq. of Robinson Waters & O’Dorisio, P.C.

27 Other members of the public

1. ADMINISTRATIVE ITEMS

a) Call to Order

The Special meeting of the Board of Directors of the Ebert Metropolitan District was called to order at 7:02 PM via Zoom teleconference.

The notice and agenda of the Special Meeting were posted on the website and distributed to the community via email blast by Westwind Management Group.

b) Declaration of a Quorum

A quorum of five was declared.

c) Confirm Location and Posting of Meeting Notice

President Barclae confirmed the meeting location via Zoom teleconference and stated that Westwind Management Group email blasted the notice out to the Metropolitan District Residents.

d) Approval of Agenda and Meeting Location

President Barclae motioned to approve the agenda provided the following two items to be amended: Item f, i: Regular Meeting Minutes for May should read May 25, 2021, and not May 26, 2021, Item 4, c: remove everything after the word “chat” as this topic is for this meeting. With no other amendment proposals from the other Directors, Director Mays seconded the motion. Motion to amend and approve tonight’s Special Meeting Agenda carries with all in favor.

e) Disclosure of Potential Conflicts of Interest

President Barclae stated that there are no conflicts of interest to announce currently.

f) Review and Consider Approval for the below meeting minutes:

i. Review of Regular Meeting Minutes from May 25, 2021

President Barclae was the only Board of Director remaining as of the Regular Meeting from May 25, 2021; President Barclae approved the meeting minutes.

ii. Review of Special Meeting Minutes from July 27, 2021

President Barclae was the only Board of Director remaining as of the Regular Meeting from July 27, 2021; President Barclae approved the meeting minutes.

iii. Review of Study Session Meeting Minutes from August 10, 2021

Director Mays stated that he was not in attendance for this meeting and would like the record to reflect that. Director Hawthorne requested the word “Note” being taken out for V.,1. Director Mays requested the first “and” in V.,1. be corrected to “any.” With no other discussion, President Barclae motioned to accept the amended Study Session Meeting Minutes from August 10, 2021, second by Director Woods. Motion to amend and approve carries with all in favor.

iv. Review of Study Session Meeting Minutes from August 19, 2021

Director Hawthorne requested the header of the minutes be updated from “Draft” to “Record of Proceedings.” Additionally, in paragraph three on page 3, the amounts listed do not match the total carryover amount. With no other discussion, President Barclae motioned to accept the amended Study Session Meeting Minutes from August 19, 2021, second by Director Hawthorne. Motion to amend and approve carries with all in favor.

2. DIRECTOR'S ITEMS

a) Date/Time of October Regular Meeting

Director Barclae confirmed that the next Regular Meeting day and time are listed on the website and will be on Tuesday, October 26, 2021, starting at 7:00 PM. Initially, this was listed as Wednesday, October 27, 2021. President Barclae confirmed that the notice requirement has been satisfied.

b) Board Appointments

President Barclae stated that she has verified that the requisite filings on all four new members of the Board have been filed with and accepted by DOLA, the documentation of which now appears on the DOLAs website. Thank you, Kim (Kimberly Bruetsch, Esq. of Robinson Waters & O'Doriso, P.C.). We have also met the statutory requirement of naming the new appointees in the July 27, 2021 meeting minutes.

c) District Bylaws

President Barclae stated that due to the short notice and lack of adequate time to allow all the Directors an opportunity to review and provide their recommended revisions to the Bylaws, the Bylaws won't be proposed for adoption this evening. We'll postpone that action until the October Regular Meeting.

d) Time of day for holding public meetings

President Barclae stated that this was discussed during the August 10, 2021, Study Session that more of the public are able to attend our District meetings when they are scheduled at 7 PM on Tuesdays, Wednesdays, and Thursdays.

Director Woods motioned to make Metropolitan District Board of Directors meetings on either Tuesday, Wednesday, or Thursday at 7:00 PM to allow additional resident attendance; Director Mays seconded the motion. Motion carries all in favor.

e) Treasurer and Secretary roles

President Barclae stated that Colorado Revised Statutes 32-1-902 states that the Board is required to elect a member of the Board to the roles of Treasurer and Secretary. The statute also allows the role of Treasurer and Secretary to be held by one person. We, therefore, have a couple of options. I'd like the Director's opinions on the combined role, separate roles, and even the possibility of there being a "CO-role" in the interest of assuring continuity in the event of an absence during a meeting or a resignation.

After a brief discussion among the Directors, it was agreed to have co-roles for redundancies.

Mr. Jacobs provided additional clarity regarding co-roles specifically; prime and sub-prime roles are not designated as these are co-roles in response to Kelvin Klink's concerns.

Director Hawthorne volunteered for the role of Treasurer; Director Mays motioned to confirm Director Hawthorne for the role of Treasurer, seconded by Director Woods. Motion carries all in favor.

Director Woods volunteered for the role of Secretary; President Barclae motioned to confirm Director Woods for the role of Secretary; seconded by Director Hawthorne. Motion carries all in favor.

f) Community Input

President Barclae stated that the majority of services provided to the District are provided by the City and County of Denver. Westwind, through our administrative services IGA with TCMD, handles covenant enforcement and certain work requests. Should we have a platform of some sort, other than public meetings, by which the people can communicate with the Board to share District concerns? Like a general email that all the Directors can see on the website that comes in under a general email like info@ebertmd.colorado.gov if that is possible.

Director Mays offered to maintain the SIPA website from now on and will reach out to District Management for assistance when needed.

Kimberly Bruetsch remarked on potential open meeting law concerns associated with interactive email

Director Hawthorne remarked that the spirit of the provision is not to function as a two-way communication; its to receive input only, visible to Directors for their info only. Any discussion about the topics that come through are to be discussed in a properly noticed public meeting.

Jerry J. offered that community email can be collected by the District Manager and presented to the Board in a public forum to avoid violating open meeting law. Also suggested that one director can be designated as the District point person to answer email.

Director Mays remarked that some email may have time sensitivity characteristics that could warrant a prompt response.

The Board of Directors discussed the methods of collecting and replying to resident questions and concerns, one being the collective email address. President Barclae stated that this topic needs further discussion at a later time.

Director Hawthorne stated that this might be an excellent task for a committee to head up.

Director Barclae suggested that we discuss this further at a future meeting.

g) District Committees

President Barclae stated in reviewing the contributions and performance of the District's committees that were stood up last summer; I can say I can't recall any substantial or noteworthy work from any of those committees with the exception of the Strategic Planning and Fiscal Policy Committee, whose effort was instrumental to the accuracy of last year's Reserve Study final report. Further, I scantily recall any substantive reports of accomplishments by committee chairs during the past 12 months; therefore, I am intending to make sure there is a place on our meeting agendas specifically for each Committee.

As for the prior Board's Committees, while still acting as the sole Director at that time and with such authority, I, as the sole Director at the time, announced that I had reset the slate of Committees and would be charging the NEW Board with determining and establishing the District's Committees. Therefore, we are starting with a blank slate.

Volunteers who served on any of the prior Committees are welcome to volunteer to serve on any of the new Committees that may be established by this new Board. Prior and new volunteers will be able to contact the respective Committee Chair after those Committees are approved by the Board. As Committees are established, the Committee name and the Chairperson to contact can be found on the District's webpage.

Earlier this Spring, the prior Board discussed separating the Strategic Planning Committee and Fiscal Policy Committee into separate Committees but didn't take action to do so.

The Bylaws now contain new language and an Appendix that prescribe the structure of a Committee's charter. I invite your attention to those two places in the Bylaws.

Director Hawthorne remarked that the revised Bylaws have not yet been approved but the appendix may be used as a reference.

Director Woods inquired whether any committees are required by the Board, or other statutory authority. Jerry remarked that there are no requirements for committees.

Director Woods inquired as to why a committee might be required in the first place? What drives the necessity? What problem are we solving?

Director Mays remarked that committees shouldn't be arbitrarily created.

Director Barclae remarked that additional discussion on committees may be queued up for future meetings.

Resident Kel Klink suggested that the former strategic planning and fiscal policy committee continue.

Director Hawthorne motioned to stand up a Fiscal Operations Committee. Second by Director Barclae. Motion to stand up the Financial Operations Committee carried with all in favor.

Director Barclae remarked 'We are rapidly nearing the beginning of the budgeting process. In light of the upcoming budget activities, I have drafted a proposal for a new Committee based on the structure prescribed by the Appendix in the Bylaws. I've named it "Financial Operations Committee." Please take a look at the draft of the charter. I'd like to discuss this, get your thoughts, and if there is concurrence, establish this Committee in light of the upcoming budget cycle.

As for its team, I'm inclined to suggest that we carry over the team from the Strategic Planning and Fiscal Policy committee to this Committee, considering some similarities between the two Committees. The Committee's volunteers can be revised later. I'd like to open a discussion on other potential Committees that we think may be beneficial to the District. As you think of a Committee or two, please think in terms of the Appendix. We do not need to decide tonight, but I would like us to stand up Committees that we believe will serve a beneficial purpose to the District, that will be actively led by you and your select volunteers, and that have a specific purpose and deliverables.

Mr. Jacobs clarified that Committees are not required for a Metropolitan District to address Director Woods's question.

President Barclae stated that the types of Committees desired can be picked back up at a later time.

The Directors discussed the need for a budget Committee after Kelvin Klink's comments and concerns for not having this Committee during the budget period. Director Hawthorne motioned to restart the Financial/Fiscal Operations Committee, Director Mays seconded. Motion carries all in favor.

h) Board Continuity

President Barclae stated that she spoke on the issue of Board continuity during the August 10, 2021, Study session. Going forward, I'll be adding as a recurring agenda item a place where directors can make suggestions for the composition of a Director's Manual. Directors can propose content to adopt or decline accordingly. I envision these

Manuals as being District property that would be returned to the District President upon any event resulting in a termination of Board service. These District Manuals will be returned to the District and passed on to new Board Members as they are elected or appointed. The specification will be a Three-inch 3-ring Binder with initial content being the most current copy of the Special District's Association "Special Districts Manual," as a copy of which will soon be provided to each Director. Future content will be as recommended and approved by the Directors.

Director Woods suggested that the Director's manual be hosted electronically on the district's website.

Directors discussed, and all agreed that an electronic method would be preferred for Board Member Manuals, as a link to a document repository such as Drop Box, on the district's website. This will provide the option of printing the manual if preferred.

Presently our Assistant District Manager is making the updates. Every time our ADM goes into that website, we get charged a fee. We can avoid that fee by having a Board Member keep it current. Keith Mays volunteered to be the website manager with support by the District Manager as needed. Thank you, Keith, for volunteering to manage our website.

i) Special District membership and training

Director Barclae mentioned the presence of new language in the draft bylaws regarding funding for new director training.

President Barclae stated that this Board of Directors has a unique situation in that our draft of our yet unapproved revised Bylaws requires at least 12 months of remaining service on the Board to be eligible to be reimbursed for Director training. In light of the highly unusual circumstances that transpired in June and July of this year, effectively gutting this Board and having to replace it with essentially an entirely new lineup of Directors, I asked that we have funds to be able to have our directors attend the SDA training in September. Director Barclae remarked that she checked with the district accountant (CLA) who confirmed there is room in the budget to handle this expense. Three directors were registered for virtual attendance and two for in-person attendance.

j) Ebert resident's appointment to Town Center Metropolitan District (TCMD) Board of Directors

President Barclae stated that the Board of Directors is waiting on TCMD's legal dept to complete the remaining paperwork appointing Bill Schmidt to the TCMD Board. Further, on this matter, I'd like each Director to note their thoughts and idea as to how they think this "seat" should be filled hereafter...for instance, should the Ebert Board retain responsibility for making the appointment? Should determining its occupant be the privilege of the District residents through the rigor of the election process? What are the risks, pros, and cons of our options? I will make this an agenda item at one of our next meetings because if we agree to make it a publicly elected position, we need to include it in the upcoming election cycle this Winter. Subject to everyone's concurrence, I would like our next discussion on this matter to be in terms of risks, pros, and cons.

Director Woods asked whether there is any cost associated with making it an elected position.

Mr. Jacobs explained the cost difference between having an election versus appointing a person to the Board of Directors, adding that there is a difference in representation when handled by appointment versus election but there is also a cost benefit by not having to risk the cost of an election which tend to run near \$40,000 for this district.

Director Hawthorne emphasized that we should get public input on this matter, and encouraged the public to voice their opinions to the directors.

k) Upcoming election cycle

President Barclae stated that the Board of Directors would be engaging in another election cycle beginning late December of this year when the announcement to solicit nominations begins. With CRS's no notice termination of services, at present, we have no organization to conduct that election for us. Our IGA with TCMD regarding administrative services places this responsibility in their lane. Timberline and I are also looking for a firm that can conduct our election. We will provide updates as appropriate since there are procedural deadlines associated with District elections.

Mr. Jacobs stated we are not running up on any deadlines at this point and we can get the proper paperwork filed in September and we can pursue a firm that can run the election if its needed.

Director Hawthorne stated that we do need to run an election in light of the Board's 4 appointees whose terms end May 2022.

Jerry clarified that an election is only necessary when the number of homeowners that apply is more than seats open on the Board of Directors. If the number of homeowners applying for a seat equals the open spots, then no election is needed. He also stated that the bulk of the cost of the election occurs after the nomination period ends and an election becomes necessary because the number of people running exceed the number of open board seats.

l) Budget Meetings

President Barclae stated that the budget meetings are coming up beginning in September 2021. Our designated Treasurer will attend and provide updates accordingly. I anticipate available members of the Financial Operations Committee will attend the budgeting meetings and provide the District with updates at our scheduled meetings.

m) \$2.9 Million monies discussion

President Barclae explained that the Board of Directors has requested a detailed accounting trail from the District Accountant establishing, in no uncertain terms, the origin of those funds through to including their repayment, including all earned interest. We know that a sum of 2.9 million was repaid by GVR East and collected by TCMD last summer.

Debra Sedgley from CliftonLarsonAllen (accounting firm) will provide those details, but this will take a little time to gather as the company has a new storage site for documents.

Director Woods asked whether CLA was subject to CORA requests. CORA requests are limited to a 72 hr response time.

Director Hawthorne suggested that a CORA request may be appropriate.

n) Other Director Items

Director Hawthorne suggested the Board reviewed the items under "Other Business" before going into Executive Session as attendees may not want to stay on the meeting until the Board returns.

3. OTHER BUSINESS

a. Remarks / Comments from Directors

As there were no remarks, the meeting continued.

b. Other items

Director Barclae with the assistance of Jerry and Corey steered the discussions to answer myriad Chat questions and comments (see Chat transcript attachment). The dialog may be heard directly by listening to the Zoom video recording beginning at 01:14:45.

Gail Bail requested additional information regarding the comment on networking during the SDA conference. President Barclae stated that she would like to use this time to get applications for other District Management companies and assistance with the elections.

Gail wanted to remind the Board of Directors attending the SDA conference that the Developer is well known within the SDA community and to remind them that they represent the District at this conference.

Director Hawthorne reassured Gail that the Board of Directors for Ebert Metropolitan District is aware that they represent the District; not the Developer.

Robert Spears wanted to follow up regarding contact monitoring and performance. Does the District have a written work statement of performance for the contacts and who wrote the contract?

Director Hawthorne remarked that contracts are handled by TCMD through their District Manager. Mr. Jacobs clarified that all service contracts are held by TCMD; not Ebert. Ebert Metropolitan District only holds the letter of engagement for Ebert's legal counsel. Contracts are available on the website for public review.

c. Review of Resident Questions

Please see attached for questions and answers covered during the meeting.

4. ADJOURNMENT

There was no further business to come before the Board of Directors. Upon a motion from President Barclae, seconded by Director Hawthorne and carried unanimously, the meeting adjourned at 8:40 PM.

a) Executive Session

As needed to receive legal advice from Counsel pursuant to C.R.S. Section 24-6-402-4-(b) and/or Section 24-6-402 (e) i. Discussion matter pertaining to the former District Management company termination without proper notification.

The Board of Directors, Metropolitan District attorney, and District Management went into executive session at 8:40 PM.

The executive session ended at 9:15 PM when Director Woods motioned to conclude the executed session and was seconded by Director Mays. Motioned carries all in favor.

The foregoing Meeting Minutes constitute an accurate account of the above reference proceedings and were approved by the Board of Directors of Ebert Metropolitan District.