

MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS

OF

WESTERLY CREEK METROPOLITAN DISTRICT

Held: Wednesday, August 16, 2017, at 8:00 A.M. at 7350 East 29<sup>th</sup> Avenue, Suite 200, Denver, Colorado.

Attendance

The meeting referenced above was called and held in accordance with the applicable laws of the State of Colorado. The following directors, having confirmed their qualification to serve, were in attendance:

Katie Dell  
Tom Downey  
Justin Ross  
David Ungemah

Director Tim Thornton's absence was excused. All directors' absences are deemed excused unless otherwise noted.

Also present were:

- Jennifer Gruber Tanaka, Esq., and Megan J. Murphy, Esq., WHITE BEAR ANKELE TANAKA & WALDRON, Attorneys at Law, District General Counsel;
- John Fernandez, Reporter with Front Porch Stapleton;
- Andrew Johnston, City and County of Denver Finance Department;
- Tom Wendelin, Director at RBC Capital Markets;
- Brian Fennelly, Vice President and Chief Financial Officer of Forest City Stapleton, Inc.;
- Rus Heise, Director of Park Creek Metropolitan District;
- Robbie J. Jones, President of Kipling Jones & Co., Park Creek Metropolitan District Financial Advisor;
- Tammi Holloway, President of Stapleton Development Corporation; and
- John Simmons, Simmons & Wheeler, P.C., District Accountant.

Director Qualification

The directors in attendance confirmed their qualification to serve.

Call to Order

Mr. Downey noted that a quorum of the Board was present and that the directors had confirmed their qualification to serve, therefore, called the meeting to order.

Declaration of Quorum/Disclosure of Conflicts of Interest	Ms. Tanaka advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Ms. Tanaka reported that disclosures for those directors with potential or existing conflicts of interest were filed with the Secretary of State’s Office and the Board at least 72 hours prior to the meeting, in accordance with Colorado law, and those disclosures were acknowledged by the Board. Ms. Tanaka noted that a quorum was present and inquired into whether members of the Board had any additional disclosures of potential or existing conflicts of interest with regard to any matters scheduled for discussion at the meeting. No additional disclosures were noted. The Board determined that the participation of the members present was necessary to obtain a quorum or to otherwise enable the Board to act.
Approval of Agenda	Ms. Tanaka presented the Agenda to the Board for consideration. Following discussion, upon a motion duly made by Ms. Dell seconded by Mr. Ungemah the Board unanimously approved the agenda as amended.
Public Comment	None.
Approval of Minutes from May 17, 2017 Regular Meeting	Ms. Tanaka presented the minutes from the May 17, 2017 Regular Meeting to the Board for consideration. Following discussion, upon a motion duly made by Mr. Downey seconded by Ms. Dell, the Board unanimously approved the minutes as amended.
Treasurer’s Report	Mr. Simmons presented the Board with the April 30, 2017, May 31, 2017, and June 30, 2017 Monthly Financial Statements.  Following discussion, upon a motion duly made by Mr. Ungemah, and seconded by Mr. Downey, the Board unanimously accepted the Monthly Financial Reports as of April 30, 2017, May 31, 2017, and June 30, 2017.
Discuss Matters Related to Park Creek Metropolitan District	Presentation by Mr. Rus Heise Regarding Master Facilities Development Agreement and Individual Facilities Development Agreement(s)  Mr. Fennelly gave a presentation to the Board regarding the Master Facilities Development Agreement (“MFDA”). The MFDA contains the requirements for scope, cost, and schedule for public and private infrastructure development within the entire District. The Individual Facilities Development

Agreements (“IFDA”) contains the requirements for scope, cost, and schedule for public and private infrastructure development within each phase of development within the District. Both the MDFA and the IFDA are thoroughly reviewed and agreed to by the City and County of Denver (“City”), Forest City of Stapleton, Inc. (“Forest City”), and Park Creek Metropolitan District (“PCMD”).

Mr. Fennelly stated that eighty-eight (88) IFDAs have been approved as of August 1, 2017, which includes 66 IFDAs for streets, water, sewer and 11 IFDAs for parks. Each IFDA includes: a summary of probable costs; information regarding ownership of the property and infrastructure; an estimate of soft costs; detailed maps; letters from utility providers; construction schedule; proposed financing statement; environmental standards; and open space requirements. Forest City chooses the next phase of development to focus on and works with the City to finalize the IFDA.

Mr. Ungemah asked what the validation and acceptance process is for public infrastructure. Mr. Fennelly responded that the City inspects the completed public infrastructure to ensure it is constructed according to the IFDA. Additionally, MCA Executive Director, Mr. Kevin Burnett, inspects any public infrastructure that MCA will operate and maintain. PCMD is responsible for the public infrastructure until the City accepts the public infrastructure. Forest City provides a 2-3 year warranty period.

Mr. Ungemah asked if PCMD is done with the project in 2-3 years after the last infrastructure is completed. Mr. Fennelly responded that PCMD would not be involved the operation and maintenance of public infrastructure accepted by the City. However, three percent (3%) of the mill levy imposed by the District is given to PCMD to operate and maintain public infrastructure that is not accepted by the City. PCMD contracts with MCA to perform the operation and maintenance services.

Mr. Ungemah asked if the funds necessarily need to go from the District then to PCMD then to MCA for operation and maintenance. Mr. Fennelly responded that PCMD could change the contractual relationship with MCA if they wanted to.

Mr. Ross asked what infrastructure MCA manages. Mr. Fennelly responded that PCMD owns alleys, pools, pocket parks, and medians within the District. Mr. Burnett reviews all

the public infrastructure owned by PCMD and, based on the total square footage, estimates how much money is needed for the upcoming year.

Mr. Ungemah asked if MCA has the ability to impose a special assessment to operate and maintenance PCMD property. Mr. Fennelly responded that if MCA imposed a special assessment, MCA could spend that money how they saw fit.

Discussion of Park Creek  
Metropolitan District 2017  
Bond Issuance

Mr. Heise began a presentation to the Board regarding the PCMD 2017 bond issuance. Each year, PCMD has decided to borrow funds to convert existing debt in the form of developer advances from Forest City into municipal bonds. Forest City has continued to advance funds to keep pace with the infrastructure needs for the District. PCMD has issued municipal bonds to refinance their outstanding debt at a lower interest rate. Once a year, PCMD has refinanced with both taxable and tax-exempt municipal bonds.

Mr. Heise noted that the 2017 bond issuance is expected to be a par amount of \$90 million, with an interest rate of 5.5% for taxable bonds and 4.5% for tax-exempt bonds, currently the interest rate is 9.5% for taxable bonds and 4.5% for tax-exempt bonds. This will present as savings of approximately \$60 million over the 30-year term of the bonds. PCMD has stable revenues from property taxes to pay all outstanding debt, and it is estimated that all debt will be paid off sometime between 2041-2043.

Mr. Ross asked about the cost of refinancing. Mr. Fennelly responded that Forest City does not charge any fees on the developer advances to PCMD.

Ms. Jones discussed the 2017 bond issuance with the Board. The proposed 2017 bond issuance is a par amount of \$90 million, with an interest rate of 5.5% for taxable bonds and 4.5% for tax-exempt bonds, currently the interest rate is 9.5% for taxable bonds and 4.5% for tax-exempt bonds. This will present a net present value savings of \$65 million. The projected coverage ratios are strong for the three tiers of debt: senior, subordinate, and junior subordinate bonds. Kipling Jones & Co., has a fiduciary obligation to PCMD and will work together with Forest City to confirm the final numbers are in the best interest of the PCMD. The 2016 bond issuance carried insurance and were rated with resulted in more savings for the District. Mr. Wendelin added that all parties will work with the

City to confirm the City is in support of the 2017 bond issuance.

Mr. Downey asked why the bonds should be issued from PCMD and not the District. Section 5.3 of the Intergovernmental Financial and Construction Agreement (“Master IGA”) provides the District shall not incur any Obligations, Developer Advances, or direct costs for Processing of Construction of the Infrastructure or any other purpose, unless otherwise approved in writing by each District. Mr. Downey asked what is the purpose of PCMD staying in place once the infrastructure is in place. Mr. Heise responded that the Service Plan for the Stapleton Metropolitan District dated April 12, 2000 the (“Service Plan”) and the Master IGA requires debt to be issued by PCMD and to change that structure would require the consent of all bondholders.

Mr. Downey asked if PCMD could merge with the District. Mr. Fennelly responded that Forest City will continue to be involved in the project until all the developer debt is converted to municipal bonds and the current governing documents required PCMD to exist until all debt is retired. Ms. Tanaka stated that all developer advances would be repaid if the two districts merged or consolidate and as the cost of operation and maintenance increase over time the District may need to issue debt.

Ms. Dell asked at what point in time PCMD can no longer exist. Mr. Heise responded that he can analyze the financial models and provide a timeline to the District.

Mr. Ross asked how much longer PCMD will remain in control. Mr. Heise responded that the Service Plan requires PCMD to be the control district. Mr. Fennelly responded that Forest City entered into this project as the developer, in part, because of the structure in the Service Plan of PCMD issuing debt and Forest City does not want this structure changed.

Ms. Tanaka stated that PCMD will terminate after some period of time and the residents of the District will control the governance pursuant to the terms of the Service Plan. Mr. Downey stated that: Stapleton Development Corporation (“SDC”) will be dissolving in approximately a year and a half and the District has been receiving the financial education requested from the City and PCMD; however, in December 2016 the District said they would not support a new bond

issuance unless there was a plan to transition governance from PCMD to the District. SDC has the power to appoint the board of directors for PCMD because SDC owns the only piece of property within PCMD.

Mr. Fennelly stated that Forest City is currently earning 8.5% interest on advanced funds and these bonds would be issued a lower interest rate which saves the property owners in the District money.

Mr. Downey asked what happens to the SDC appointment power and control of the PCMD board of directors when SDC is dissolved. Under the current structure, the people that pay taxes are not able to make decisions regarding the debt issuance. Mr. Fennelly responded that is the structure from the Service Plan and the Master IGA.

Ms. Holloway stated that SDC has been talking to various stakeholders and it will be the board of SDC's decision what to do with the appointment power to PCMD.

Ms. Tanaka requested that Ms. Jones add White Bear Ankele to the 2017 bond issuance distribution list and provide the most recent documents to Ms. Tanaka. Ms. Tanaka stated that the cease and desist letter sent on or about December 8, 2016, to each member of the District's Board of Directors from the Chairman of PCMD (the "Cease & Desist Letter") must be rescinded prior to the 2017 bond issuance in order for the District to sign a no-litigation certificate. Mr. Fennelly asked if there was any alternative course of action to rescinding the Cease & Desist Letter. Ms. Tanaka and Ms. Dell responded no.

## **Legal Matters**

Conduct Public Hearing on Inclusion of Aurora Commercial, Parcel A-4 in the District and Consideration Adoption of Resolution No. 2017-08-01: Order for Inclusion of Real Property (Aurora Commercial, Parcel A-4)

Mr. Downey opened the public hearing on the Inclusion of Aurora Commercial, Parcel A-4 in the District and adoption of Resolution No. 2017-08-01. Ms. Tanaka reported that the notice for the public hearing was published in accordance with Colorado law and no written objections were received prior to the hearing. There were no public comments at the public hearing and Mr. Downey closed the public hearing. Upon a motion duly made by Mr. Ross, and seconded by Ms. Dell, the Board unanimously adopted the inclusion of property as presented and adopted the corresponding inclusion of real property resolution.

Conduct Public Hearing on

Mr. Downey opened the public hearing on the Inclusion of

Inclusion of Aurora Commercial, Parcel B-8 in the District and Consideration Adoption of Resolution No. 2017-08-02: Order for Inclusion of Real Property (Aurora Commercial, Parcel B-8)

Aurora Commercial, Parcel B-8 in the District and adoption of Resolution No. 2017-08-02. Ms. Tanaka reported that the notice for the public hearing was published in accordance with Colorado law and no written objections were received prior to the hearing. There were no public comments at the public hearing and Mr. Downey closed the public hearing. Upon a motion duly made by Mr. Ross, and seconded by Ms. Dell, the Board unanimously adopted the inclusion of property as presented and adopted the corresponding inclusion of real property resolution.

Conduct Public Hearing on Inclusion of Aurora Commercial, Parcel B-8 in the District and Consideration Adoption of Resolution No. 2017-08-03: Order for Inclusion of Real Property (Aurora Commercial, Parcel B-9)

Mr. Downey opened the public hearing on the Inclusion of Aurora Commercial, Parcel B-9 in the District and adoption of Resolution No. 2017-08-03. Ms. Tanaka reported that the notice for the public hearing was published in accordance with Colorado law and no written objections were received prior to the hearing. There were no public comments at the public hearing and Mr. Downey closed the public hearing. Upon a motion duly made by Mr. Ross, and seconded by Ms. Dell, the Board unanimously adopted the inclusion of property as presented and adopted the corresponding inclusion of real property resolution.

Conduct Public Hearing on Inclusion of Stapleton Filing No. 34, Parcels A & B in the District and Consideration Adoption of Resolution No. 2017-08-04: Order for Inclusion of Real Property (Stapleton Filing No. 34, Parcels A & B)

Mr. Downey opened the public hearing on the Inclusion of Stapleton Filing No. 34, Parcels A & B in the District and adoption of Resolution No. 2017-08-04. Ms. Tanaka reported that the notice for the public hearing was published in accordance with Colorado law and no written objections were received prior to the hearing. There were no public comments at the public hearing and Mr. Downey closed the public hearing. Upon a motion duly made by Mr. Ross, and seconded by Ms. Dell, the Board unanimously adopted the inclusion of property as presented and adopted the corresponding inclusion of real property resolution.

Conduct Public Hearing on Inclusion of Stapleton Filing No. 43, Parcel 2E in the District and Consideration Adoption of Resolution No. 2017-08-05: Order for Inclusion of Real Property (Stapleton Filing No. 43, Parcel 2E)

Mr. Downey opened the public hearing on the Inclusion of Stapleton Filing No. 43, Parcel 2E in the District and adoption of Resolution No. 2017-08-05. Ms. Tanaka reported that the notice for the public hearing was published in accordance with Colorado law and no written objections were received prior to the hearing. There were no public comments at the public hearing and Mr. Downey closed the public hearing. Upon a motion duly made by Mr. Ross, and seconded by Ms. Dell, the Board unanimously adopted the inclusion of property as presented and adopted the corresponding inclusion of real property resolution.

Conduct Public Hearing on Inclusion of Stapleton Filing No. 49, Parcel 7 in the District and Consideration Adoption of Resolution No. 2017-08-06: Order for Inclusion of Real Property (Stapleton Filing No. 49, Parcel 7)

Mr. Downey opened the public hearing on the Inclusion of Stapleton Filing No. 49, Parcel 7 in the District and adoption of Resolution No. 2017-08-06. Ms. Tanaka reported that the notice for the public hearing was published in accordance with Colorado law and no written objections were received prior to the hearing. There were no public comments at the public hearing and Mr. Downey closed the public hearing. Upon a motion duly made by Mr. Ross, and seconded by Ms. Dell, the Board unanimously adopted the inclusion of property as presented and adopted the corresponding inclusion of real property resolution.

Conduct Public Hearing on Inclusion of Stapleton Filing Nos. 52 and 54, Parcels 1,2,3,4 and 5 in the District and Consideration Adoption of Resolution No. 2017-08-07: Order for Inclusion of Real Property (Stapleton Filing Nos. 52 and 54, Parcels 1,2,3,4 and 5)

Mr. Downey opened the public hearing on the Inclusion of Stapleton Filing Nos. 52 and 54, Parcels 1,2,3,4, and 5 in the District and adoption of Resolution No. 2017-08-07. Ms. Tanaka reported that the notice for the public hearing was published in accordance with Colorado law and no written objections were received prior to the hearing. There were no public comments at the public hearing and Mr. Downey closed the public hearing. Upon a motion duly made by Mr. Ross, and seconded by Ms. Dell, the Board unanimously adopted the inclusion of property as presented and adopted the corresponding inclusion of real property resolution.

Conduct Public Hearing on Inclusion of Stapleton Filing Nos. 52 and 54, TOS Parcels 6,7,8,9, and 10 in the District and Consideration Adoption of Resolution No. 2017-08-08: Order for Inclusion of Real Property (Stapleton Filing Nos. 52 and 54, TOS Parcels 6,7,8,9 and 10)

Mr. Downey opened the public hearing on the Inclusion of Stapleton Filing Nos. 52 and 54, TOS Parcels 6,7,8,9 and 10 in the District and adoption of Resolution No. 2017-08-07. Ms. Tanaka reported that the notice for the public hearing was published in accordance with Colorado law and no written objections were received prior to the hearing. There were no public comments at the public hearing and Mr. Downey closed the public hearing. Upon a motion duly made by Mr. Ross, and seconded by Ms. Dell, the Board unanimously adopted the inclusion of property as presented and adopted the corresponding inclusion of real property resolution.

Ms. Holloway stated that she will provide an update boundary map after the inclusions are recorded. Ms. Tanaka asked if Mr. Cockrel contacted the City of Aurora or Adams County regarding the inclusion of property that is outside the City. Mr. Fennelly stated that Mr. Cockrel had complied with the statutory process to include property outside the City into the District.

Introduction of Mr. Pat

Mr. Downey informed the Board that Mr. Teegarden had a



Teegarden, Chairman of Stapleton Development Corporation  
Development Updates

family emergency and was unable to attend the meeting. The Board deferred this matter until the next meeting.

Mr. Downey informed the Board that he met with Ms. Holloway and Mr. Teegarden regarding the dissolution of SDC and their appointment power to the PCMD Board of Directors. Mr. Downey expressed his sentiment that the residents of the District that are paying taxes should be able to control the governance of PCMD.

Discuss Matters Related to Park Creek Metropolitan District

Discuss Volunteers for Attendance at Next Park Creek Metropolitan District Meeting

The Board discussed the next Park Creek meeting will be August 24, 2017 at 9:00 a.m. After discussion, Mr. Downey and Ms. Dell will attend the Park Creek meeting.

Executive Session (§§ 24-6-402(4)(b) and (e), C.R.S., for purpose of discussing Park Creek Metropolitan District

Pursuant to Sections 24-6-402(4)(b) and (e), C.R.S., upon a motion duly made by Ms. Dell, seconded by Mr. Ross, and, upon unanimous vote the Board convened an Executive Session at 9:31 a.m. for the purpose of seeking legal advice and discussing matters subject to negotiations with third parties.

Pursuant to Section 24-6-402(2)(d.5)(II)(B), C.R.S., no record will be kept of the remaining portion of this Executive Session that, in the opinion of the District's attorney, constitutes privileged attorney-client communication pursuant to Section 24-6-402(4)(b), C.R.S.

The Board reconvened in regular session at 10:07 a.m. No action was taken by the Board.

**Other Business**

None.

Next Meeting

The next regular meeting of the District is scheduled for September 20, 2017.

Adjournment

There being no further business to come before the Board, the meeting was adjourned.

The foregoing constitutes a true and correct copy of the minutes of the above-referenced meeting

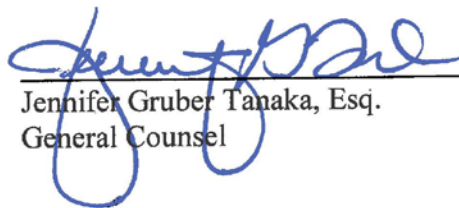


Secretary for the District

### **Attorney Statement**

#### **Regarding Privileged Attorney-Client Communication**

Pursuant to § 24-6-402(2)(d.5)(II)(B), C.R.S., I attest that in my capacity as the attorney representing the Westerly Creek Metropolitan District (the “District”), I attended the Executive Session on August 16, 2017, for the sole purpose of conferencing with the District’s Board of Directors for the purpose of giving legal advice on specific legal questions and for discussing matters subject to negotiation as authorized by §§ 24-6-402(4)(b) and (e), C.R.S. I further attest that it is my opinion that all or a portion of the executive session discussion constituted attorney-client privileged communication as provided by § 24-6-402(4)(b), C.R.S., and based on that opinion, no further record, written or electronic, was kept or required to be kept pursuant to § 24-6-402(2)(d.5)(II)(B), C.R.S.



Jennifer Gruber Tanaka, Esq.  
General Counsel