

# RECORD OF PROCEEDINGS

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## MINUTES OF THE REGULAR MEETING OF WESTERLY CREEK METROPOLITAN DISTRICT

HELD

JANUARY 28, 2010

The Regular Meeting of the Board of Directors (“Board”) of the Westerly Creek Metropolitan District (“District”) was held on Thursday, January 28, 2010, at 9:00 a.m., at 7350 East 29th Avenue, Suite 300, Denver, Colorado.

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ATTENDANCE

Directors in attendance:

King H. Harris, Chair  
Michael Kearns  
John Lehigh  
James D. Chrisman

Also in attendance:

John Moye, Director of Park Creek Metropolitan District  
Cheryl Cohen-Vader of Stapleton Development Corp.  
Richard Gonzales of Stapleton Development Corp.  
Janis Bevier of Stapleton Development Corp.  
Tammi Holloway of Stapleton Development Corp.  
Charlie Nicola of Forest City  
Brian Fennelly of Forest City  
Derek Brown of Forest City  
Barbara Neal of Public Art  
Keven Burnett of Stapleton MCA  
Grant Bennett of DURA  
Bar Chadwick of City and County of Denver  
Dennis Piper, Park Consultant  
Angie Rivera-Malpiede of Stapleton Area TMA  
Paul R. Cockrel of Collins Cockrel & Cole  
Micki L. Wadhams of Collins Cockrel & Cole

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### NOTICE

It was noted that the agenda notice of the meeting had been properly posted as required by law. Certification of such posting is attached hereto.

### CONFLICTS OF INTEREST

Mr. Cockrel reported that Directors Lehigh and Chrisman had previously filed Disclosure of Potential Conflict of Interest Statements with the Board and the Secretary of State in accordance with statutory requirements. Such conflicts arise from their respective employment relationships or officership or directorship positions with Forest City Stapleton, Inc., Stapleton Land, LLC, or other subsidiaries of Forest City Enterprises, Inc., the developer of property within the District, including entering into various reimbursement, funding, management and service agreements with the District.

Chair Harris also has previously filed a Disclosure of Potential Conflict of Interest Statement with the Board and the Secretary of State in accordance with statutory requirements. Such conflict arise from his respective directorship or officership position with Stapleton Development Corporation, a non-profit corporation, which is responsible for the disposition of the development property owned by the City and County of Denver ("City") within the District, including entering into agreements with the District and with SDC Services Corp., a subsidiary company, which provides administrative services to the District under the Professional Services Agreement.

All Disclosure of Potential Conflict of Interest Statements, whether filed for this meeting or previously, are deemed continuing in nature and are incorporated into the record of the meeting.

All Directors stated that the participation of at least three of them in the meeting was necessary to obtain a quorum of the Board or otherwise enable the Board to act; that written disclosures of such potential conflicts of interest of each Director had been filed with

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the Board and the Secretary of State in accordance with statutory requirements; and that the nature of each Director's private interests related to their employment relationships or directorship or officership positions with either Forest City Stapleton, Inc., Stapleton Land, LLC, or other subsidiaries of Forest City Enterprises, Inc., and Stapleton Development Corporation or SDC Services Corp. After each Director had summarily stated for the record the fact and nature of his private interests and had further stated that the determination to participate in voting or take any other action on any contract or other matter in which he may have a private interest would be made in compliance with Section 24-18-201(1)(b)(V), C.R.S., on an ad hoc basis, the Board turned its attention to the agenda items.

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### MINUTES

The Board reviewed the Minutes of the November 19, 2009 Special Meeting. Upon motion duly made, seconded and unanimously carried, the Board approved such Minutes as presented.

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### TREASURER'S REPORT

The Board next reviewed the District's financial statements through December 31, 2009, as submitted by Richard Gonzales.

After discussion and motion duly made, seconded and unanimously carried, the Board (i) accepted the Treasurer's Report, a copy of which is attached hereto and incorporated herein by this reference, and (ii) authorized the payment of all accounts and the investment of any surplus funds.

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### BOARD VACANCY

The Board reviewed the four (4) letters of interest received from persons interested in filling the vacancy on the Board. Upon discussion, and motion duly made, seconded and unanimously carried, the Board appointed a Committee of Directors Lehigh and Kearns to interview each of the candidates and recommend to the Board the candidate to be appointed to fill such vacancy. The Board requested Mr. Gonzales to prepare a summary of the District's financial responsibilities and Mr. Cockrel to summarize the other District responsibilities to provide to the candidates before the scheduled interviews.

The Board then continued the meeting to Thursday, February 18, 2010 at 9:00 a.m. to further discuss the appointment of a new director.

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### MAY 4, 2010 REGULAR ELECTION

Mr. Cockrel then summarized the election proceedings and deadlines for the upcoming May 4, 2010 regular Board of Directors election. Self-Nomination and Acceptance forms must be filed with the District's Designated Election Official no later than February 26, 2010.

Thereupon, Mr. Cockrel presented the Election Resolution calling for the election; designating Micki L. Wadhams as the District's Designated Election Official for conducting the election; designating the location of the District's polling place; and providing authorization for the District's Designated Election Official to proceed with the conduct of the election as required by the Uniform Election Code, including the authority to cancel the election on or after March 4, 2010, if there are no more candidates than positions to be filled. Upon motion duly made, seconded and unanimously carried, the Board adopted the Election Resolution, a copy of which is attached hereto and incorporated herein by this reference.

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### NOTICE POSTING

Mr. Cockrel presented the statutory Resolution designating the location to post the 24-hour meeting Notice. Upon motion duly

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made, seconded and unanimously carried, the Board adopted the Resolution, designating the offices of the District, 7350 East 29<sup>th</sup> Avenue, Suite 300, Denver, Colorado, as the location to post such Notice. A copy of such Resolution is attached hereto and incorporated herein by this reference.

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INCLUSION  
HEARING

Chair Harris then opened the public hearing to consider the Petition for Inclusion filed by Stapleton Development Corporation for the inclusion of property into the District. Upon discussion and motion duly made, seconded and unanimously carried, the Board approved such inclusion and approved the Order for Inclusion of Real Property, a copy of which is attached hereto and incorporated herein by this reference. The Board directed that counsel process the inclusion with the Denver District Court. Thereupon, the Chair closed the public hearing.

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MEETING  
CONTINUED

The Board then continued the meeting to Thursday, February 18, 2010 at 9:00 a.m.


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Secretary for the Meeting

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APPROVED:

  
James D. Chrisman

  
King H. Harris

  
John S. Lehigh, Jr.

  
Michael P. Kearns

**NOTICE OF REGULAR MEETING**  
**OF THE BOARD OF DIRECTORS OF**  
**WESTERLY CREEK METROPOLITAN DISTRICT**

NOTICE IS HEREBY GIVEN that the regular meeting of the Board of Directors of the Westerly Creek Metropolitan District, City and County of Denver, Colorado, will be held at 7350 East 29th Street, Suite 300, Denver, Colorado, on Thursday, January 28, 2010, at 9:00 a.m.

**AGENDA**

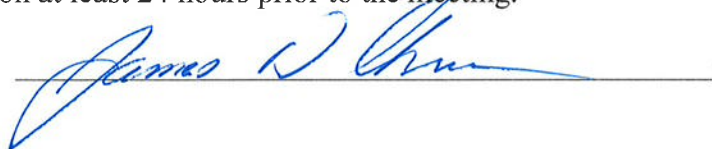
1. Public comment.
2. Disclosure of potential conflicts of interest.
3. Approval of Minutes of November 19, 2009 annual meeting.
4. Treasurer's Report.
  - Review of current financial statements
5. Attorney's Report.
  - Discuss director appointment
  - Adoption of Resolution Calling for the 2010 Regular District
  - Election Adoption of Resolution Designating Posting Location
6. Conduct public hearing on Petition for Inclusion from Stapleton Development Corp.
7. Any other matter that may come before the Board.

This meeting is open to the public.

WESTERLY CREEK METROPOLITAN DISTRICT

By  /s/ James D. Chrisman  
Secretary

I hereby certify that a copy of the foregoing Notice of Regular Meeting was, by me personally, posted at the designated location at least 24 hours prior to the meeting.

  
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Westerly Creek Metropolitan District  
Monthly Financial Report  
Period Ended December 31, 2009

The following reports are attached to this narrative:

- 1) Year To Date Budget Variance Report - General Fund (1 page)

Changes in Fund Balance

- Property tax income shows a negative variance due to the overstatement of *property* tax income for November. November *property* tax income was stated as \$155,555, but was actually \$134,916.  
December *property* tax income is \$9,187. Zero income was planned. Year to date income exceeds budget by \$67,073.
- Specific Ownership tax income continues to exceed budget both for the month and year to date.
- All tax income is transferred to Park Creek.
- Expenses exceed budget for the month because of an extra month's catch up expense for staff services and rent. Year-to-date expenses are less than budget.
- All Westerly Creek expenses are funded by Park Creek.

General Comments:

- Westerly Creek has no assets and therefore there is no Statement of Assets report.



Westerly Creek Metropolitan District  
 Year To Date Budget Variance - General Fund  
 For the 12 Months Ended December 31, 2009

Current Budget	Actual	Favorable/ (Unfavorable)		YTD Budget	Actual	Favorable/ (Unfavorable)
<b>Revenues:</b>						
	\$ (14,018)	\$ (14,018)	Property Tax - Debt Service Mills	\$ 13,235,376	\$ 13,300,402	\$ 65,026
	(434)	(434)	Property Tax - Oper & Maint Mills	409,306	411,353	2,047
66,402	111,929	45,528	Specific Ownership tax	791,456	1,497,625	706,169
\$ 66,402	\$ 97,477	\$ 31,076	Westerly Creek Revenue	\$ 14,436,138	\$ 15,209,379	\$ 773,241
\$ 4,449	\$ 6,924	\$ 2,475	Payment from Park Creek	\$ 217,111	\$ 187,941	\$ (29,170)
\$ 70,851	\$ 104,402	\$ 33,551	<b>Total Revenue</b>	<b>\$ 14,653,250</b>	<b>\$ 15,397,321</b>	<b>\$ 744,071</b>
<b>Expenditures</b>						
\$ 2,653	\$ 5,306	\$ (2,653)	Staff Services	\$ 31,836	\$ 31,836	
129	129		Office Services/Supplies	1,548	1,462	86
209	418	(209)	Office Rent	2,689	2,690	(1)
			Dues	1,000	457	543
			CCD Review/Monitoring Fee	15,000		15,000
500		500	Professional Services	2,000		2,000
958	1,216	(258)	Legal Fees	11,496	4,615	6,882
			Accounting/Audit Fees	13,000	8,400	4,600
	(145)	145	Treasury Commission	136,447	137,118	(671)
			Insurance Expense	2,096	1,364	731
\$ 4,449	\$ 6,924	\$ (2,475)	Westerly Creek Expenses	\$ 217,111	\$ 187,941	\$ 29,170
\$ 66,402	\$ 97,477	\$ (31,076)	Payments to Park Creek	\$ 14,436,138	\$ 15,209,379	\$ (773,241)
\$ 70,851	\$ 104,402	\$ (33,551)	<b>Total Expenditures</b>	<b>\$ 14,653,250</b>	<b>\$ 15,397,321</b>	<b>\$ (744,071)</b>
Change in Net Assets						

**WESTERLY CREEK METROPOLITAN DISTRICT**  
**RESOLUTION DESIGNATING LOCATION TO POST NOTICE**


WHEREAS, Special Districts are required by Subsection 24-6-402(2)(c), C.R.S., to designate annually at the District Board's first regular meeting of each calendar year, the place at which notice will be posted at least 24 hours prior to each meeting.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF WESTERLY CREEK METROPOLITAN DISTRICT AS FOLLOWS:

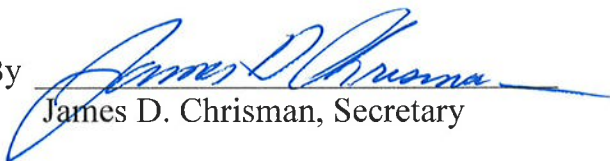
1. Notices of meetings of Westerly Creek Metropolitan District Board of Directors required pursuant to Section 24-6-401, et seq., C.R.S., shall be posted at least 24 hours prior to each meeting at 7350 East 29<sup>th</sup> Avenue, Suite 300, Denver, Colorado.
2. Notices of regular or special meetings required to be posted at three public places within the District and at the office of the County Clerk and Recorder at least 72 hours prior to said meeting shall continue to be made pursuant to Section 32-1-903(2), C.R.S.

ADOPTED AND APPROVED this 28<sup>th</sup> day of January, 2010.

WESTERLY CREEK METROPOLITAN  
DISTRICT

By   
King H. Harris, Chairman

ATTEST:

By   
James D. Chrisman, Secretary

## WESTERLY CREEK METROPOLITAN DISTRICT

### A RESOLUTION CALLING FOR THE 2010 REGULAR DISTRICT ELECTION

WHEREAS, the terms of office of Directors James D. Chrisman, John S. Lehigh, Jr. and the vacant position shall expire after their successors are elected at the regular special district election to be held on May 4, 2010 ("Election") and have taken office; and

WHEREAS, in accordance with the provisions of the Special District Act ("Act") and the Uniform Election Code of 1992 ("Code"), the Election must be conducted to elect two (2) Directors to serve for a term of four (4) years and one (1) Director to serve for a term of two (2) years.

NOW, THEREFORE, be it resolved by the Board of Directors of the Westerly Creek Metropolitan District in the City and County of Denver, State of Colorado that:

1. The regular election of the eligible electors of District shall be held on May 4, 2010, between the hours of 7:00 A.M. and 7:00 P.M. pursuant to and in accordance with the Act, the Code, and other applicable laws. At that time, two (2) Directors will be elected to serve a four-year term and one (1) Director will be elected to serve a two-year term.

2. There shall be one election precinct for the convenience of the eligible electors of the District, the boundaries of which shall be identical to the boundaries of the District, and there shall be one polling place at the following location:

7350 East 29<sup>th</sup> Avenue, Suite 300  
Denver, Colorado

situate in the City and County of Denver, State of Colorado, which shall also be the polling place for disabled electors and for eligible electors not residing within the District. If the Designated Election Official deems it to be more expedient for the convenience of the eligible electors of the District (who are also eligible electors in other special districts with overlapping boundaries which are conducting elections on the Election day), the Election may be held jointly with such special districts in accordance with coordinated election procedures as set forth in an agreement between all participating special districts. In such event, the election precincts and polling places shall be as set forth in such agreement. The Designated Election Official is authorized to execute such agreement on behalf of the District, which agreement shall include provisions for the allocation of responsibilities for the conduct and reasonable sharing of costs of the coordinated Election.

3. The Board of Directors hereby designates Micki L. Wadhams as the Designated Election Official of the District, who is hereby authorized and directed to proceed with any action necessary or appropriate to effectuate the provisions of this Resolution and of the Act, the Code, or other applicable laws. The Election shall be conducted in accordance with the Act, the Code, and other applicable laws. Among other matters, the Designated Election Official shall publish the call for nominations, appoint election judges as necessary, appoint the Canvass

Board, arrange for the required notices of election, and printing of ballots, and direct that all other appropriate actions be accomplished.

4. Applications for mail-in ballots may be filed with the Designated Election Official at 7350 East 29<sup>th</sup> Avenue, Suite 300, Denver, Colorado, no later than the close of business on the 7th day prior to the election (Tuesday, April 27, 2010), if the mail-in ballot is to be mailed to the elector, or until the close of business on the Friday immediately preceding the election (Friday, April 30, 2010), if the mail-in ballot will not be mailed to the elector.

5. Self-Nomination and Acceptance forms are available at the Designated Election Official's office located at the above address. All candidates must file a Self-Nomination and Acceptance form with the Designated Election Official no later than the close of business on Friday, February 26, 2010.

6. If the only matter before the electors is the election of Directors of the District and if, at the close of business on March 2, 2010, there are not more candidates than offices to be filled at the Election, including candidates timely filing affidavits of intent no later than March 1, 2010, the Designated Election Official shall cancel the Election and declare the candidates elected. Notice of such cancellation shall be published and posted in accordance with the Code.

7. If any part or provision of this Resolution is adjudged to be unenforceable or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Resolution, it being the Board's intention that the various provisions hereof are severable.

8. Any and all actions previously taken by the Designated Election Official or the Secretary of the Board of Directors or any other persons acting on their behalf pursuant to the Act, the Code or other applicable laws, are hereby ratified and confirmed.

9. All acts, orders, and resolutions, or parts thereof, of the Board which are inconsistent or in conflict with this Resolution are hereby repealed to the extent only of such inconsistency or conflict.

10. The provisions of this Resolution shall take effect immediately.

ADOPTED AND APPROVED this 28<sup>th</sup> day of January, 2010.

WESTERLY CREEK METROPOLITAN  
DISTRICT

By   
King H. Harris, Chairman

ATTEST:

By   
James D. Chrisman, Secretary