

MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS

OF

WESTERLY CREEK METROPOLITAN DISTRICT

Held: Wednesday, December 20, 2023, at 8:00 A.M. held via teleconference

ATTENDANCE

The meeting was held in accordance with the laws of the State of Colorado. The following directors were in attendance:

Robert Douglas Marsh
Matthew Blackburn
Jack Seward
Kristin Rozansky

Also present were:

- Heather L. Hartung, Esq. and Nelson G. Dunford, Esq., WHITE BEAR ANKELE TANAKA & WALDRON, Attorneys at Law, District General Counsel;
- Diane Wheeler, Simmons & Wheeler;
- Jim Chrisman;
- Shannon Gifford;
- Robbi Jones;
- Michael Persichitte; and
- Andrew Bartlett.

Director Derek Lis was absent.

ADMINISTRATIVE MATTERS

Call to Order

Director Marsh noted that a quorum of the Board was present and called the meeting to order at 8:01 a.m.

Declaration of Quorum and Confirmation of Director Qualifications

A quorum for the Board was confirmed present and the directors' qualifications to serve were also confirmed.

Reaffirmation of Disclosures of Potential or Existing Conflicts of Interest

Mr. Dunford advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Mr. Dunford reported that disclosures for those directors that provided White Bear Ankele Tanaka & Waldron with notice of 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. Mr. Dunford 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 participation of the members present was necessary to obtain a quorum or to otherwise enable the Board to act.

Approval of Agenda

The Board reviewed the proposed agenda for the meeting. Director Seward noted a desire to add an additional, director-only executive session for purposes of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators, later in the meeting. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the agenda as amended.

PUBLIC COMMENT

None.

CONSENT AGENDA

Director Marsh reviewed the items on the consent agenda with the Board. Director Marsh advised the Board that any item may be removed from the consent agenda to the regular agenda upon the request of any director. Following discussion, upon a motion by Director Seward and seconded by Director Blackburn, the Board unanimously approved the agenda as presented.

- a. Minutes from November 15, 2023 Special Meeting; and
- b. Claims as of September 30, 2023 (\$26,224.04)

**PARK CREEK
METROPOLITAN
DISTRICT**

Presentation from Kipling Jones & Co. Ltd. Regarding Park Creek Metropolitan District Proposed Debt Issuance

Ms. Jones updated the Board on the proposed Park Creek Metropolitan District debt issuance, noting that the closing is scheduled for January 30, 2024. She further noted that this issuance will be Series 2024A, with a possible second, “regular” issuance in December 2024 as Series 2024B, in the amount of approximately \$10 million, which may be necessary due to changing costs and construction timelines. The Board discussed the proposed debt issuance and the no-litigation certificate that will be provided by the District for the closing which is currently scheduled for January 30, 2024. She stated that Fitch has upheld

its AA rating of PCMD bonds and took a moment to trace the history of the Fitch ratings, adding that Developer Advances to be retired via this issue would likely occur late in 2Q.

Mr. Persichitte addressed the delay in issuance caused by the special legislative session and noted that market conditions for bonds are improving. He reiterated the structure of the transaction—payoff of the \$45 million-dollar 2022 Note and provision of \$15 million in new money, with a final maturity date of 2051.

Update Related to Park Creek Metropolitan District

This matter was deferred.

MATTERS RELATED TO STAPLETON DEVELOPMENT CORPORATION

Update from Stapleton Development Corporation (“SDC”)

Director Rozansky requested a list of the Board of Directors of SDC. Mr. Dunford noted repeated attempts to obtain such a list; Director Seward noted he has the list, which he would forward to Mr. Dunford for distribution to the Board. Director Seward noted that SDC had adopted a “reduced operations plan” and would meet only twice during the year. There being no representative from SDC, further discussion was deferred.

EXECUTIVE SESSION

The Board intends to enter into executive session pursuant to §24-6-402(4)(b), to conference with an attorney for the District for the purpose of receiving legal advice as it relates to obligations under the settlement agreement and receiving legal advice on potential alternatives to the settlement agreement.

Upon motion of Director Seward, seconded by Director Blackburn, and upon an affirmative vote of at least two-thirds of the quorum present, the Board convened in executive session at 8:19 a.m. for the purpose of receiving legal advice pursuant to §24-6-402(4)(b), C.R.S., relating to obligations under the settlement agreement and receiving legal advice on potential alternatives to the settlement agreement.

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

Also pursuant to § 24-6-402(4), C.R.S., the Board did not adopt any proposed policy, position, resolution, rule, or regulation and did not take formal action during executive session.

The Board reconvened in regular session at 9:03 a.m. Following discussion, upon a motion by Director Seward and seconded by Director Blackburn, the Board unanimously voted to instruct legal counsel to schedule an in-person special meeting for 7 p.m. on Wednesday, January 17, 2024, in the MCA conference room for the purpose of discussing drafts of potential changes to the IGA.

The Board intends to enter into a second executive session, pursuant to § 24-6-402(4)I(I), to determine positions relative to matters that may be subject to negotiations.

The Board deferred this matter to the January 17, 2024 Special Meeting.

DIRECTOR MATTERS

Discussion Regarding Possible Actions to Improve Communication between the District and the Community It Serves

The Board deferred this matter.

Consider Proposal from Heatherly Creative for Website Design and Maintenance

The Board discussed this matter. Following discussion, upon a motion by Director Seward and seconded by Director Blackburn, the Board unanimously approved the proposal from Heatherly Creative for website design and maintenance, in an amount not to exceed \$1000 for design and not to exceed \$600 per year for maintenance.

OTHER BUSINESS

Regular Meeting –February 21, 2024

The Board confirmed this date for the next regular meeting of the Board.

Discuss 2024 Meeting Times

Director Marsh expressed his desire to schedule future meetings in the evening and in person, so as to allow greater resident participation. Director Blackburn agreed and asked to meet more regularly and in person. This item will be further discussed at the next meeting.

ADJOURNMENT

There being no further business to come before the Board, upon a motion duly made and seconded, the Board unanimously determined to adjourn the meeting at 9:12 a.m.

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

Derek Lis
Derek Lis (Mar 11, 2024 10:27 MDT)
Secretary for the District

The foregoing minutes were approved by the Board of Directors on the 21st day of February, 2024.

**ATTORNEY STATEMENT
REGARDING PRIVILEGED ATTORNEY-CLIENT COMMUNICATION**

Pursuant to Section 24-6-402(2)(d.5)(II)(B), C.R.S., I attest that, in my capacity as the attorney representing Westerly Creek Metropolitan District, I attended the executive session meeting Westerly Creek Metropolitan District convened at 8:19 a.m. on December 20, 2023, for the sole purpose of receiving legal advice pursuant to §24-6-402(4)(b), C.R.S., relating to obligations under the settlement agreement and receiving legal advice on potential alternatives to the settlement agreement. I further attest it is my opinion that all of the executive session discussion constituted a privileged attorney-client communication as provided by Section 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 Section 24-6-402(2)(b), C.R.S. or Section 24-6-402(2)(d.5)(II)(B), C.R.S.

Megan J. Murphy
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