

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS

OF

WESTERLY CREEK METROPOLITAN DISTRICT

Held: Thursday, February 27, 2020 at 10:15 A.M. at 7476 E. 29<sup>th</sup> Avenue, Denver, Colorado.

**ATTENDANCE**

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

Katie Dell  
Justin Ross  
Tom Downey

Director Thornton and Director Ungemah were absent. All absences are deemed excused unless otherwise noted in these minutes.

Also present were:

- Megan J. Murphy, Esq. and Jennifer Tanaka, Esq., WHITE BEAR ANKELE TANAKA & WALDRON, Attorneys at Law, District General Counsel;
- Diane Wheeler, Simmons and Wheeler, P.C.; District Accountant
- Andrew Johnston, City and County of Denver Finance Department
- Joe Stanic, CRL Associates
- Jan Bevier, Stapleton Development Corporation
- Tasha Jones, Brookfield Properties Development

**ADMINISTRATIVE MATTERS**

Call to Order

Director Dell noted that a quorum of the Board was present and called the meeting to order.

Declaration of Quorum and Confirmation of Director Qualifications

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

Reaffirmation of Disclosures of Potential or Existing Conflicts of Interest

Ms. Murphy noted to the Board that conflicts were not filed in timely manner. Following discussion, the Board determined to proceed with the meeting.

## Approval of Agenda

The Board was presented with the proposed agenda for the meeting. Following discussion, upon motion duly made and seconded the Board unanimously approved the agenda.

## PUBLIC COMMENT

Ms. Dell asked Mr. Stanic what role CRL Associates (“CRL”) had in the District. Mr. Stanic noted that he is interested in what is happening with Park Creek Metropolitan District (“PCMD”) and Westerly Creek Metropolitan District (“WCMD”). Ms. Dell noted that PCMD approved a contract with CRL. Mr. Stanic noted that he had no information regarding this. Mr. Downey asked Mr. Stanic what the purpose of CRL was. Mr. Stanic noted that he didn’t know as he was just recently pulled into this discussion within the last 24 hours.

Ms. Jones explained to the Board that she heard updates at the recent Stapleton Development Corporation (“SDC”) meeting. It was noted that they will be breaking ground in March on Filing No. 57 which is the second phase of the north to east of Dallas. Ms. Dell asked when they anticipate final construction to be done. Ms. Jones explained that on the residential side, Brookfield will be continuing selling through 2023. She noted that the tax increment financing expires in 2025 so the goal is to have everything complete before then. Mr. Johnston noted the projection for total build out is 2024 and that Ms. Gifford was unable to attend this meeting but will be in attendance going forward.

Ms. Jones explained that construction on the Martin Luther King Jr. Boulevard extension has been extended until March 9, 2020 depending on the weather.

## CONSENT AGENDA

Ms. Murphy reviewed the items on the consent agenda with the Board. Ms. Murphy advised the Board that any item may be removed from the consent agenda to the regular agenda upon the request of any director. Upon a motion duly made and seconded, the following items on the consent agenda were unanimously approved, ratified and adopted:

- a. Unaudited Financial Statements for December 31, 2019

## SDC UPDATE

Discuss Reduced Operations Plan

Ms. Dell presented the SDC approved Reduced Operations Plan to the Board. As relevant to the District, the SDC Reduced Operations Plan states: “SDC will consider using its nomination process to nominate Stapleton community residents to open seats on the PCMD Board, in a phased manner, when: (1) All public infrastructure improvements (trunk and in-tract) have been completed; and (2) All developer advances have been repaid. If an SDC designated PCMD Board member leaves the PCMD Board prior to the end of their term, SDC will make a reasonable effort to nominate a Stapleton community resident to the PCMD Board for the remainder of the departing Board member’s unexpired term.”

Ms. Bevier explained that if a seat opens up on the PCMD Board, a resident will be appointed.

Ms. Dell noted that the PCMD Board has changed the text of the Resolution In Support of Qualification and Appointment of a Stapleton Resident to the Board of Directors of Park Creek Metropolitan District from “support of a resident” being appointed to “consider a resident” for appointment. Ms. Dell noted that she discussed this with Mr. Teegarden and explained that this revised resolution makes it impossible to get a resident on the PCMD Board. Ms. Dell concluded by noting that she doesn’t think a WCMD Board member or resident will be appointed to the Board and Mr. John Moye will stay on the Board of PCMD.

Mr. Downey explained this is no change from where they were three years ago and this is not a democratic process. He argued that the people who pay the taxes should elect the individuals on the Board either directly or indirectly through other boards within Stapleton such as MCA.

Mr. Ross asked Ms. Tanaka if there was a way to expand from five seats on the Board to seven. Ms. Tanaka noted that there is a specific procedure for expanding the Board from five seats to seven seats via a resolution. Mr. Downey noted if there is an expertise that is unique enough to create an ex-officio position, they would be able to provide counsel to the Board.

**MATTERS RELATED TO  
PARK CREEK**

**METROPOLITAN DISTRICT**

Update from Park Creek None.  
Metropolitan District

Discuss Volunteers for None.  
Attendance at Next Park Creek  
Metropolitan District Meeting

**FINANCIAL MATTERS**

Update on Bank Accounts

Ms. Wheeler provided a general update to the Board. She explained that she has the forms to open a COLO Trust Account. She explained that a COLO Trust is a money market account for governments to invest their funds. Ms. Tanaka noted that White Bear Ankele Tanaka & Waldron will provide \$100 to open the COLO Trust Account.

Ms. Wheeler updated the Board on the checking account. She noted they typically use FirstBank and provided the Board with the necessary forms to start the process.

Mr. Johnston asked if the checking account was publically bid. Ms. Tanaka noted that it is not required that a District’s checking account be publically bid and stated FirstBank has no fees and is easy to work with. Ms. Dell and Mr. Downey commented that they both are happy there are no fees.

Mr. Johnstown asked Ms. Wheeler if she was developing a policy for the constructs that exists for checks and balances. Ms. Wheeler explained that taxes need to come straight to WCMD. Ms. Wheeler asked Ms. Bevier about the millions that should be going straight to the trustees and if Denver and Adams County pay those directly. Ms. Bevier explained that the tax money goes to Denver Urban Renewal Authority first and then within 30-35 days is sent to the District.

Following discussion, upon a motion duly made and seconded, the Board unanimously approved opening a COLO Trust Account and FirstBank checking account.

**LEGAL MATTERS**

Resolution No. 2020-02-01: Ms. Murphy presented the Board with the Resolution Concerning the Location of Special and Regular Meetings. Ms. Dell noted that the next meeting is scheduled for April 15, 2020 and RK can host the meeting. She explained that the Board should work on finding a more permanent meeting location. No action was taken.

Mr. Johnston asked if there would be an election for WCMD. Ms. Tanaka noted they would not know until Tuesday, March 3<sup>rd</sup>. Mr. Johnston asked if there was community outreach to see if people were interested. Mr. Downey said that several Board members reached out to neighbors. Ms. Tanaka noted that the call for nominations was published in the Denver Daily Journal.

### **EXECUTIVE SESSION**

regarding receiving legal advice pursuant to § 24-6-402(4)(b), C.R.S. as it relates to SDC reduced operations plan and Intergovernmental Financing and Construction Agreement with PCMD and determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, instructing negotiators pursuant to § 24-6-402(4)(e), C.R.S.

Upon motion of Mr. Downey, and upon an affirmative vote of at least two-thirds of the quorum present, the Board entered in executive session at 11:00 A.M. for the purpose of obtaining legal advice related to the SDC Reduced Operations Plan and Intergovernmental Financing and Construction Agreement with PCMD pursuant to Section 24-6-402(4)(b), C.R.S.

Pursuant to Section 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 legal counsel to the District, constitutes privileged attorney-client communication pursuant to Section 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, regulation or take formal action during execution session.

The Boards reconvened in regular session at 11:27 A.M.

### **OTHER BUSINESS**

Ms. Tanaka and Ms. Murphy provided a brief update to the Board regarding the May 2020 election. Ms. Tanaka noted there has been 1 self-nomination form submitted and there are 3 seats available.

Ms. Tanaka noted that she will pursue a CORA Request for the CRL Contact and follow up with PCMD to find out why this contractor was hired.

Ms. Tanaka noted that WCMD and PCMD were invited to make a presentation at the Citizens Advisory Board (“CAB”) meeting on March 19, 2020. She explained she would email the Board with more information.

Ms. Tanaka stated she would ask the PCMD Board to increase their membership from 5 to 7 members and the letter would be sent to SDC, PCMD, City Mayor’s Office and Brookfield. She explained that the Resolution and Reduced Operations Plan does not address the substantive concerns and does not promise appointment of a resident to the PCMD Board within a given time frame.

**Next Meeting**

The next regular meeting of WCMD is scheduled for June 17, 2020.

**ADJOURNMENT**

There being no further business to come before the Board, upon motion, second and unanimously carried, the Board determined to adjourn the meeting.

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



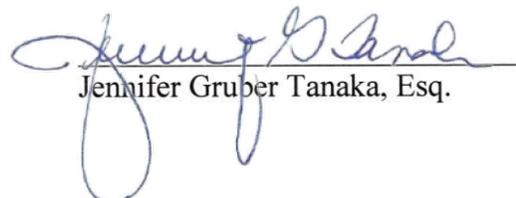
Justin Ross (Apr 29, 2020)

Secretary for the District

The foregoing minutes were approved by the Board of Directors on the 23<sup>rd</sup> day of April, 2020.

**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 at a special meeting of Westerly Creek Metropolitan District convened at 11:00 A.M. on February 27, 2020 for the sole purpose of discussing the SDC reduced operations plan and Intergovernmental Financing and Construction Agreement with PCMD as authorized by Section 24-6-402(4)(b), C.R.S.. 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.



Jennifer Gruber Tanaka, Esq.

# Westerly Creek Metro District - Execution Packet

Final Audit Report

2020-04-29

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