

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS

OF

WESTERLY CREEK METROPOLITAN DISTRICT

Held: Wednesday, August 18, 2021 at 8:00 A.M. held via Zoom Conferencing at 1-720-707-2699; meeting ID 921 1171 7886; passcode: 613387

**ATTENDANCE**

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

Justin Ross;  
Tim Thornton;  
Katie Dell;  
Dave Ungemah; and  
Kristin Rozansky.

Also present were:

- Jennifer Gruber Tanaka, Esq. and Megan J. Murphy, Esq., WHITE BEAR ANKELE TANAKA & WALDRON, Attorneys at Law, District General Counsel;
- Marcus Lock, Esq. and Jacob With, Esq., Law of the Rockies;
- John Simmons, Simmons & Wheeler, District Accountant;
- Brian Fennelly, Brookfield Properties Development; and
- Homeowners.

**ADMINISTRATIVE MATTERS**

Call to Order

Ms. Murphy 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 directors' qualifications to serve were also confirmed.

Reaffirmation of Disclosures of Potential or Existing Conflicts of Interest

Ms. Murphy advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Ms. Murphy 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. Ms. Murphy 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. Following discussion, upon motion by Mr. Ungemah and seconded by Ms. Dell, the Board unanimously approved the agenda as amended.

**PUBLIC COMMENT**

Mr. Fennelly asked the Board: (1) does the District understand the developer has relied on the Service Plan and IGA? We believe changes to documents need to approved by City Council and bond holders; and (2) from the developers' perspective as the largest taxpayer how does the District's position enhance the developers interest?

**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. Following discussion, upon a motion duly made by Mr. Ungemah and seconded by Ms. Rozansky, the following items on the consent agenda were approved, ratified and adopted:

- a. Minutes from June 7, 2021 Special Meeting; and
- b. Claims in the amount of \$16,618.28.

**FINANCE MATTERS**

Acceptance of June 30, 2021  
Financial Statements

Mr. Simmons presented the June 30, 2021 financial statements to the Board. Following discussion the Board determined to defer acceptance of the June 30, 2021 financial statements. The Board asked Mr. Simmons: (1) why are the specific ownership taxes so low compared to budget? and (2) what is included in the line item for "monitoring fees"?

Presentation of 2020 Audit  
and Consider Acceptance of  
Same and Approval of Client

This Board determined to defer this item.

Representation Letter

## **LEGAL MATTERS**

Adoption of Resolution 2021-08-01 : Resolution of the Board Designating the Location of Regular Meetings of the Board of Directors

Ms. Murphy presented Resolution 2021-08-01: Resolution of the Board Designating the Location of Regular Meetings of the Board of Directors to the Board. Following discussion, upon a motion by Mr. Ungemah and seconded by Mr. Thornton, the Board unanimously adopted the resolution.

## **EXECUTIVE SESSION**

Regarding receiving legal advice as it relates to SDC Reduced Operations Plan and Intergovernmental Financing and Construction Agreement with Park Creek Metropolitan District and pursuant to § 24-6-402(4)(e), C.R.S., for the purpose of 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. Ross seconded by Mr. Ungemah, and upon an affirmative vote of at least two-thirds of the quorum present, the Board entered in executive session at 8:24 A.M. for the purpose of obtaining legal advice related to the SDC Reduced Operations Plan and Intergovernmental Financing and Construction Agreement with Park Creek Metropolitan District pursuant to Section 24-6-402(4)(e), 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 Board reconvened in regular session at 8:57 A.M.

Mr. Ross stated: (1) the District is not proposing to amend the Intergovernmental Financing and Construction Agreement between the District and Park Creek Metropolitan District; (2) the District believes it is in the best interest of all residents and taxpayers of the District that the residents and taxpayers of Central Park control the Park Creek Metropolitan District Board of Directors; and (3) the most recent settlement agreement sent by Park Creek Metropolitan District fails to address the transfer of control of the Park Creek Metropolitan District Board of Directors to the residents and taxpayers of Central Park.

## **MATTERS RELATED TO PARK CREEK METROPOLITAN**

**DISTRICT**

Updates from Park Creek Metropolitan District

None.

Discuss Volunteers for Attendance at Next Park Creek Metropolitan District Meeting

Mr. Ungemah volunteered to attend the next Park Creek Metropolitan District meeting.

**OTHER BUSINESS**

Next Meeting

The Board noted the next meeting will be in September to accept the 2020 Audit.

**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.

*Katie Bedard Dell*

Katie Bedard Dell (Sep 27, 2021 11:25 MDT)

Secretary for the District

The foregoing minutes were approved by the Board of Directors on the 27<sup>th</sup> day of September, 2021.

**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 8:24 A.M. on August 18, 2021 for the sole purpose of discussing the SDC Reduced Operations Plan and Intergovernmental Financing and Construction Agreement with Park Creek Metropolitan District 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.

*Megan J. Murphy*  
Megan J. Murphy, Esq.