

RECORD OF PROCEEDINGS

**MINUTES OF A REGULAR MEETING
OF THE BOARD OF DIRECTORS OF THE
PARKER JORDAN METROPOLITAN DISTRICT
HELD
OCTOBER 16, 2012**

A regular meeting of the Board of Directors (the "Board") of the Parker Jordan Metropolitan District (the "District") was held on October 16, 2012 at 5:00 p.m. at CliftonLarsonAllen LLP, located at 8390 E. Crescent Parkway, Suite 500, Greenwood Village, CO 80111.

Attendance

In attendance were Directors:

Norman A. Sheldon
Bill Lamberton (left at 8:35 p.m.)
Clint Waldron
Cal Lennon
Mike Cornelsen (via telephone from 6:30-9:30 p.m.)

Also in attendance were:

Bob Blodgett, Kevin Collins & Matt Urkoski; CliftonLarsonAllen LLP
Rick Kron; Grimshaw & Haring
Gene Commander; Polsinelli Shughart, P.C.
Dan Sheldon; United Development Companies, LLC
Paul Coleman, Butch Fiore, Carol Johnson, Tim Sullivan & Tim Mangnall; Fiore & Sons, Inc.
Josh Duncan & Ken Cecil; J3 Engineering
Steve Bailey, Attorney for J3

Call to Order

Director Sheldon called the meeting to order at 5:00 p.m.

Pledge of
Allegiance

Mr. Fiore led the Board and audience in the pledge of allegiance.

Declaration of
Quorum/Director
Qualifications
Disclosure Matters

The Board was advised that pursuant to Colorado law, certain disclosures by the Board members may be required prior to taking official action at the meeting. The Board then reviewed the agenda for the meeting, following which each Board member confirmed the contents of any written disclosure previously made, stating the fact and summary nature of any matters, as required under Colorado law, to permit official action to be taken at the meeting. Additionally, the Board determined that the

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participation of members present was necessary to obtain a quorum or otherwise enable the Board to act.

Director Sheldon reported that he had disclosed his interest as an owner of property located in the District. These disclosures are in association with the consideration and/or approval of agenda items which may affect his interests. A written disclosure of his interests was filed with the Secretary of State prior to the meeting.

Director Lamberton reported that he had disclosed his interest as an owner of property located in the District. The disclosure is in association with the consideration and/or approval of agenda items which may affect his interests. A written disclosure of his interests was filed with the Secretary of State prior to the meeting.

Director Waldron reported that he had disclosed his interest as an owner of property located in the District. Director Waldron is also an associate attorney with White, Bear & Ankele, which serves as general counsel to Cornerstar Metropolitan District. The disclosure is in association with the consideration and/or approval of agenda items which may affect his interests. A written disclosure of his interests was filed with the Secretary of State prior to the meeting.

Mr. Cornelsen presented information on his disclosure as an owner of a home in the Southcreek Subdivision. He stated his home backs up to the 27-Acre Open Space. His address is 16161 E. Otero Avenue.

Director Lennon reported that he had disclosed his interest as the owner of the home at 16224 E. Phillips Drive within the District.

Consideration
of Agenda

No changes were made to the agenda.

Public
Comment

None.

CONSENT AGENDA

Mr. Blodgett distributed copies of the September claims dated October 16, 2012 represented by checks 1521 through 1536 totaling \$45,595.26 and Director's fees totaling \$377.40 for four Directors. Director Cornelsen's fee will be paid at the November meeting. Mr. Blodgett also distributed copies of the September 30th financial statements.

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The Board unanimously approved the Consent Agenda, as follows,

- a. Review and Approve Minutes of the September 18, 2012 Special Board Meeting
- b. Review and Accept October 15, 2012 Cash Position Report
- c. Review and Accept September 30, 2012 Financial Statements
- d. Review and Approve September 2012 Claims Totaling \$45,595.26 and Director's Fees Totaling \$377.40 Represented by Check Numbers 1521 Through 1536
- e. Approve the Amended Developer Reimbursement Policy
- f. Information Items

DISCUSSION AGENDA

PJCOS Stream
Restoration and
Open Space
Reclamation
Amenity Work

- a. Fiore Request for Additional Compensation

Mr. Sullivan provided three notebooks for the Board's review. He stated that Fiore hired an independent engineer, Kimley-Horn & Associates, to evaluate the District's prior response to their NOI's from the Construction Manager and District engineer. After review, Kimley-Horn is recommending payment of approximately \$855,000 in additional compensation to Fiore. Mr. Sullivan stated that Fiore's actual cost was approximately \$1.4 million; however, based on review by Kimley-Horn they recommend payment of \$855,000.

The Board thanked Mr. Sullivan for his presentation. The Board asked that Fiore be excused so the Board could discuss the Fiore claim in Executive Session.

- b. Executive Session –Legal Advice (If Necessary)

By a unanimous vote at 5:20 p.m., the Board voted to go into Executive Session pursuant to §24-6-402(4)(b) to consult and receive advice from the attorney on specific legal questions and under (e) to develop negotiating positions under attorney-client privileges concerning the Fiore NOIs or request for additional compensation, consultant liability, and related issues.

By unanimous vote at 6:50 p.m. the Board adjourned out of Executive Session.

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Director Sheldon thanked Fiore again for their professionalism during the project and presentation. However, he indicated the Board considered four points in determining that no additional compensation is due to Fiore: (1.) The fact that Fiore picked up the bid documents only two days before the bids were due and did not ask any questions or clarifications prior to submitting their fixed-price contract bid, (2.) The diversion channel was constructed by Fiore at their choosing. The exhibit in the plans regarding a pump and a swale was not a requirement, it was simply an option for Fiore to consider, (3.) Drop structures- these had to be reconstructed because of Fiore's failure to follow the plans and specifications as required by the Urban Drainage and Flood Control District and adopted as a standard condition in the plans by J3 and (4.) The soil riprap calculations were not done adequately by Fiore in advance of the bid submittal. Other contactors were able to calculate the soil riprap quantities correctly from the J3 plans.

Mr. Sullivan and Mr. Fiore stated they disagreed with the Board discussion. They provided brief rebuttals to the District's position. Mr. Commander noted that this discussion would be held under Rule 408 to attempt to gather all of the facts related to Fiore's claim and reach a fair and equitable conclusion.

Fiore asked whether or not the Board would consider an arbitration process. Mr. Commander indicated he would review that with the Board.

Mr. Sullivan again stated that the original \$1.6 million claim was based on unit quantity prices. The revised amount of \$1.075 million was based on actual quantities and costs.

The Board indicated they would get back to Fiore in the near future.

By a unanimous vote at 8:15 p.m., the Board voted to go into Executive Session pursuant to §24-6-402(4)(b) to consult and receive advice from the attorney on specific legal questions and under (e) to develop negotiating positions under attorney-client privileges concerning the Fiore NOIs or request for additional compensation, consultant liability, and related issues.

By unanimous vote at 8:30 p.m. the Board adjourned out of Executive Session.

Mr. Commander will meet with Mr. Duncan and J3's attorney to discuss next steps regarding some of the other claims made by Fiore about the adequacy of the engineering plans. Further report will be provided at the November Board meeting.

c. Final Completion Update – Gene Commander/Dan Sheldon

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Mr. Sheldon reported that Fiore is finalizing the as built; they are not yet completed. In addition, final retainage has not yet been scheduled to be paid to Fiore.

- d. Status of Change Order No. 5 to Fiore Contract for Assignment of PJCOS Maintenance Responsibilities to PJMD and Other Items – (\$45,891.30)

Upon a motion duly made, seconded and unanimously approved, the Board denied Change Order No. 5.

Other Capital Projects

- a. Ladera Connection – Josh Duncan

Mr. Duncan distributed copies of the GESC permit and construction plans to the Board. He recommended the Board retain Calvada for the required survey in the amount of \$1,200. Upon a motion duly made, seconded and unanimously approved, the Board authorized Calvada to do the necessary survey.

- b. HCC Trail West of Jordan Road

No request has yet been received from Dove Valley Metropolitan District.

- c. LWC Grant Close-Out Status

Mr. Einarson at Arapahoe Open Space was complimentary of the District's grant close out report. This project is complete.

Legal

- a. Irrigation Line Construction/MPIC Easement Issues

Mr. Kron discussed John R. Fetters' III email to the District. Mr. Fetters responded on behalf of Ms. Alderman, who is busy with a trial. After discussion, the Board authorized Mr. Kron to draft a response letter for Board review regarding the sleeves and irrigation easement.

Mr. Sheldon noted that the present SEMSWA position is that any activity within the Fetters' easement in PJCOS is subject to the District's erosion control permit. The Board expressed concern about this position from SEMSWA. Director Sheldon and Mr. Sheldon were authorized to meet with Mr. McCarty, Executive Director of SEMSWA to discuss this issue.

- b. CORA Lawsuit Update

Mr. Kron reported the Colorado Municipal League with the Special District Association, Colorado Counties, and Colorado Association of School Boards has filed an amicus brief in support of the District's

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position. The oral agreement in the Court of Appeals will occur in the coming months.

c. Status of Rules and Regulations for PJCOS

Mr. Kron reported the City of Centennial has adopted their ordinance for prohibited activities in PJCOS. It takes effect November 1st. The draft rules and regulations for the District will be brought forth at the November meeting.

d. Fiore Builders Risk Insurance Policy Status

Mr. Kron will contact the District's insurance carrier to discuss this issue with them.

e. Cure of Open Meetings Act Violations

Mr. Kron noted that, based on a recent Court of Appeals decision, in some circumstances, an action taken at a Board meeting that does not conform to the notice requirements of the Open Meetings Act may be cured by Board approval at a later, properly held public meeting. Proper notice of the later public meeting must be given, the Board must have a full open discussion (with public input if appropriate) prior to the Board's approval at the meeting, and the prior decision can be approved, but it cannot be simply 'rubber stamped'.

Financial

a. Reimbursement from Other Entities for PJCOS

Mr. Collins reviewed the schedule of reimbursement of other entities for PJCOS work. The Board accepted the report.

Director's Items

a. Bookmobile Usage

Director Sheldon reported he has requested that five signs be placed in the vicinity of the Broncos Parkway Trailhead where the Bookmobile will be located on October 20th and other weekends in November and December. The Board concurred.

b. Confirm Quorum for Next Meeting

Director Lennon suggested moving the meeting to November 13th, since November 20th is Thanksgiving week. The Board concurred. Mr. Blodgett's office will contact the Board to determine whether Tuesday, November 13th at 5 p.m. will work for a rescheduled Board meeting.

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c. Other

The Board asked Mr. Blodgett's office to poll the Board regarding a holiday dinner sometime in early December.

Manager's Items

a. CCBWG Update – Signage Project

Upon a motion duly made, seconded and unanimously approved,, the Board authorized Director Sheldon to execute the signage agreement sent by the CCBWG, which provides the District will assist Arapahoe County Open Space in locating the necessary mile marker signs along the Cherry Creek Regional Trail within PJCOS.

b. Results of October 15th Budget Workshop

Mr. Collins has revised the draft budgets. They will be forwarded to the Board.

c. 2013 Budget – Call Public Hearing

Upon a motion duly made, seconded and, unanimously approved, the Board set a public hearing on the proposed 2013 budget to be held at the November regular Board meeting. It is possible that the actual adoption of the budget may be at that meeting or delayed until another Board meeting in early December.

d. Kiosk

Mr. Blodgett provided an update on efforts to provide remote access to update information on the kiosk.

Other Business

a. Other Business

Mr. Sheldon asked if the Board would write a letter of support for a traffic signal at the intersection of Jamison Road and Broncos Parkway. He indicated the signal is fully funded but does yet meet warrants, so Arapahoe County will not yet construct it. He also asked for a letter of support for a right-out to Broncos Parkway from his retail site. The Board did not act on either of these requests.

Mr. Sheldon asked if the District might be interested in obtaining a donation of 1-2 acres of property from a site he owns on the northeast corner of Jordan Road and Broncos Parkway. He envisioned that a branch library or the bookmobile could be at this location and generate additional activity at this site for future retail uses.

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The Board noted that there has been recent discussion about the lack of a community center and swimming pool in the Southcreek area. The Board discussed whether or not this type of activity might work on this site.

Mr. Blodgett will gather cost information from Lincoln Park Metropolitan District and the Stonegate Village Metropolitan District regarding their community center and pool activities, acreage and cost.

The Board authorized Mr. Sheldon to discuss with Mr. Collins any tax deductibility issues related to the possible land donation to the District.

The Board expressed an interest in attending the Cherry Creek Stewardship Partners annual conference on the Cherry Creek Watershed on Thursday, November 1st. Directors Lennon and Sheldon can attend. Mr. Blodgett will send information to the rest of the Board to see if they can also attend.

Mr. Duncan indicated he would be out of the country November 4th through November 17th. Mr. Cecil will be available in his absence. He will coordinate with Mr. Commander prior to his departure.

The Board asked if kiosk usage statistics can be obtained by the District? Director Waldron asked if the security camera at the kiosk is remotely accessible? Mr. Blodgett will check.

The Board determined that the potential stepstool at the kiosk was too expensive given potential liability issues. Action was tabled indefinitely.

Adjournment

Upon unanimous motion, the Board adjourned the meeting at 10:10 p.m.



Secretary for the Meeting