

## RECORD OF PROCEEDINGS

---

MINUTES OF A REGULAR MEETING OF  
THE BOARD OF DIRECTORS OF THE  
CONSERVATORY METROPOLITAN DISTRICT  
HELD  
MARCH 15, 2010

A regular meeting of the Board of Directors of the Conservatory Metropolitan District, referred to hereafter as ("Board"), was convened on Monday, the 15th day of March, 2010, at 9:00 A.M., at the Conservatory Clubhouse, 2665 South Jebel Way, Aurora, Colorado. The meeting was open to the public.

### ATTENDANCE

#### Directors In Attendance Were:

Don G. Samsel  
Ronald "Dick" R. Dailey  
Dan Staley  
Laverne Palmer  
Judson R. Davis, Jr.

#### Also In Attendance Were:

AJ Beckman; Special District Management Services, Inc.

Jennifer Tanaka, Esq.; White Bear & Ankele, P.C.

Georgia Harland; Simmons & Wheeler, P.C.

Vicki Keevak; The Brickman Group

Arlys Carlson, member of the community

### CALL TO ORDER

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

### DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

Attorney Tanaka advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. The Board reviewed the Agenda for the meeting, following which each Board member confirmed that they had no conflicts of interest in connection with any of the

## RECORD OF PROCEEDINGS

---

matters listed on the Agenda.

### ADMINISTRATIVE MATTERS

Agenda: Mr. Beckman distributed, for the Board's review and approval, a proposed Agenda for the District's regular meeting.

Following discussion, upon motion duly made by Director Dailey, seconded by Director Samsel and, upon vote, unanimously carried, the Agenda was approved, as amended.

### CONSENT AGENDA

The Board considered the following actions:

- Review and approve Minutes from the February 22, 2010 special meeting
- Acknowledge Homeowners' Association Meeting Reports/Updates.

Director Palmer requested several amendments to the February 22, 2010 meeting minutes. The Board determined to defer approval to the next meeting pending incorporation of the changes as discussed.

There were no reports or updates by the Homeowners' Association.

### COMMUNITY COMMENTS

Community Comments: Arlys Carlson addressed the Board inquiring as to the possibility of adding parking spaces near the local bike paths and changing Conservatory Parkway from four-lanes to two-lanes for the purpose of reducing a safety hazard and providing additional area for parking. Mr. Beckman reported that in his recent discussions with the City of Aurora ("the City") he was made aware that Conservatory Parkway is designated as a primary route for Fire Protection and Emergency Services, which is a factor the City will consider prior to authorizing any changes to the approved traffic design. Director Dailey noted that such matters are not within the purview of the District. Director Samsel noted that parks and streets are owned and maintained by the

## RECORD OF PROCEEDINGS

---

City. Director Palmer recommended that the members of the Board work with the Homeowners' Association to address the issue as a community. Director Staley discussed his experience as a planner for municipalities and volunteered to work with the Homeowners' Association and to meet with the City and to draft correspondence regarding the concerns recognized as a result of meeting with the Homeowners' Association.

### OPERATIONS AND MAINTENANCE

The Green Plan - Monthly Report: Ms. Keevak reviewed the March 2010 report with the Board, which is attached hereto and incorporated herein by this reference. Director Palmer asked about snow removal on February 8, 2010 and noted that it was not included in the February 2010 report but did appear on the invoice. Ms. Keevak will check on the matter and report to the Board with additional information. Director Palmer requested copies of the snow removal and landscaping contracts. Attorney Tanaka will provide copies of these agreements to all Directors. Ms. Keevak reported that work on the Tract J Monument Improvements will resume when the ground thaws.

Dead or Damaged Trees on Tract MM and Proposal from The Brickman Group for Tree Replacement: Mr. Beckman asked about the pricing for the replacement of trees on Tract MM. Ms. Keevak confirmed that the cost for the trees is set forth according to the price schedule attached to the proposal. Members of the Board discussed soliciting bids for tree replacements and the advantages and inherent problems associated with hiring multiple landscaping contractors. Director Staley noted that small trees tend to become better established than the larger ones, and recommended that the Board install two, two-inch caliper trees instead of the two-and-a-half inch caliper trees specified in the proposal. Director Palmer asked if the replacements would be reimbursed by insurance and asked if a prior reimbursement recognized on the financial statements included a deductible amount. Mr. Beckman will report back to the Board regarding deductible amounts. Ms. Palmer

## RECORD OF PROCEEDINGS

---

also pointed out that the cost for removing the broken tree on tract MM should be included with the claim.

Following discussion, upon motion duly made by Director Dailey, seconded by Director Staley and, upon vote, unanimously carried, the Board approved the proposal from The Brickman Group as revised to include the replacement of two two-inch caliper locust trees for an amount not to exceed \$1,380.00.

Proposal from The Brickman Group for Annual Flowers and Plants Installation: The Board reviewed three proposals from The Brickman Group with varying quantities of annual and perennial flowers in the amount of \$16,800. The Board determined to have one-third perennial flowers planted each year for the next three years so eventually all flowers in the monument beds are perennials. This will save significant planting and watering costs in the future.

Following discussion, upon motion duly made by Director Dailey, seconded by Director Samsel and, upon vote, unanimously carried, the Board approved proposal No. 3 from The Brickman Group which includes a plant mix of one-third perennial flowers and two-thirds annual flowers at all of the flower beds for an amount not to exceed \$16,800.

Proposal from The Brickman Group for Blue Gramma Turf on Tract U: The Board reviewed and discussed the proposal from The Brickman Group for Blue Gramma Turf on Tract U in the amount of \$1,770.00. The Board requested that that Mr. Beckman coordinate revisions to the proposal to include removing and salvaging the existing sod.

Following discussion, upon motion duly made by Director Palmer, seconded by Director Samsel and, upon vote, unanimously carried, the Board approved the proposal from The Brickman Group for Blue Gramma Turf on Tract U in the amount of \$1,770.00 with change in scope to include removal of existing sod

## RECORD OF PROCEEDINGS

---

with authority for final approval delegated to Director Staley.

Erosion Control along Hampden between the Park/Greenbelt and Conservatory Parkway and Proposal from The Brickman Group for Erosion Control: Ms. Keevak reported that the improvements included in the proposal will repair the damage caused by erosion but are not intended to be a permanent solution to the drainage and erosion problem in this area. Ms. Keevak noted that the growth of Native grass may be able to help with the erosion problem. The Board determined to defer this matter until the September Board meeting.

Berm and Drain to Tract NN and Proposal from The Brickman Group for the Installation of a Berm and Drain: Mr. Beckman discussed the drainage problems along the path on Tract NN. He explained that the proposed improvements have not been designed by an engineer. He further explained that the current drainage plan has been approved by the City, and in order to significantly modify the grade of the area to prevent the ponding occasionally observed at the bottom of the path and in one of the residential lots, an amendment to the approved plan would need to be obtained.

Following discussion the Board determined to reject the proposal from The Brickman Group because the proposed solution does not appear to be a permanent solution to the problem and is not in accordance with the approved design by the City of Aurora ("the City").

Replacing Trail Surface with Stabilized Crusher Fines on Tracts NN, VV and WW and Proposal from The Brickman Group to Replace Trail Surface on Tracts NN, VV and WW: The Board discussed replacing the trail surface with stabilized crusher fines on Tracts NN, VV and WW and reviewed and discussed the proposal by The Brickman Group to replace trail surface on Tracts NN, VV and WW in the amount of \$4,995.00.

## RECORD OF PROCEEDINGS

---

Following discussion the Board directed Mr. Beckman to obtain a revised proposal limiting the scope to tract NN only at this time as a test area to see how the proposed improvements resolve the problem.

Creation and Maintenance of GIS Map: Director Staley reported that the information available from the County's GIS database is a good start. He is pursuing additional information and is proceeding with creation of the GIS map.

Relocation of Mailboxes: Director Dailey reported that he is reviewing past correspondence on this matter and expects to complete research by the end of the week. Upon conclusion, a letter to the Postmaster will be sent requesting permission to relocate the mailboxes as the original design anticipated.

Landscape Annual Expenditures Matrix: Mr. Beckman reviewed the matrix with the Board. It was noted that insurance reimbursements will be included as adjustments to the remaining budget.

### FINANCIAL MATTERS

Claims: Ms. Harland reviewed the claims with the Board. She noted that Checks 1719 through 1787 totaling \$4,565 were for refunds to homeowners that were due a credit as of December 31, 2009. She explained that the checks had been reviewed and signed by Director Palmer and have been sent to the recipients. Mr. Beckman reported that Ms. Palmer had reviewed all of the accounts and found errors with ten of the payments. Two checks were reissued, and eight were voided based on the corrections. Ms. Harland also noted that six additional accounts were not included in this report are still pending due to needed information from Special District Management Services.

Following discussion, upon motion duly made by Director Dailey, seconded by Director Palmer and, upon vote, unanimously carried, the Board ratified the approval of checks 1719 through 1787 totaling \$4,565.

## RECORD OF PROCEEDINGS

---

The Board then considered approval of the payment of claims for the period ending March 15, 2010 totaling \$25,070.58.

Following discussion, upon motion duly made by Director Dailey, seconded by Director Palmer and, upon vote, unanimously carried, the Board approved the payment of claims for the period ending March 15, 2010 totaling \$25,070.58.

Financial Statements: Ms. Harland presented the unaudited financial statements for the period ending February 28, 2010 for Board review.

Following discussion, upon motion duly made by Director Dailey, seconded by Director Staley, and upon vote, unanimously carried, the February 28, 2010 unaudited financial statements were accepted.

Cash Flow Projection: Ms. Harland reviewed the cash flow projection through March 31, 2011 with the Board.

2009 Audit: The Board entered into discussion regarding the 2009 Audit. Ms. Harland reported that she will follow up with the Auditor about scheduling field work and report the status at the next meeting.

### DELINQUENT FEES REPORT

Delinquent Account Report: Mr. Beckman reviewed the Delinquent Account Report with the Board.

Director Samsel inquired as to the status of payment by Westside Conservatory LLC. Mr. Beckman reported that Mr. Warnick has discussed the status of the accounts with them and to date the District has received half of the total owed. The Board directed staff to follow the District's collections procedures for the remaining amounts due and not to allow additional concessions for the Westside Conservatory LLC accounts.

Mr. Beckman reported that he and Attorney Tanaka will be reviewing the status of all of the accounts this

## RECORD OF PROCEEDINGS

---

afternoon with the billing staff to determine which accounts should be subject to the lien process.

### LEGAL MATTERS

Structural Inspection on Picnic Shelter Located in Tract V: Attorney Tanaka reported that presently D.R. Horton is refusing to warranty the structure or follow through with other obligations such as the installation of power for the monument at Conservatory Parkway and Nepal since the District is pursuing litigation on an unrelated matter. She has informed D.R. Horton that the District will not accept the structure without a warranty.

The Board then discussed the lighting at the monument on Conservatory Parkway and Nepal and directed Mr. Beckman not to pursue repairs at this time as this will be included with the litigation.

Tract JJ Easement: Attorney Tanaka reported that she has been attempting to set up a meeting with representatives from the City to discuss the agreement but is having difficulty reaching City staff do to recent internal reorganizations. She recently discussed this matter with the City Attorney who is assisting with the coordination. She will report the status at the next Board meeting.

Ownership and Maintenance of Fences Separating District and Private Property: This matter will also be discussed with The City of Aurora staff members along with the easement on Tract JJ once a meeting is set.

Intergovernmental Agreement (the "Agreement") between Conservatory Metropolitan District (the "District") and the City of Aurora (the "City"): The Board reviewed and discussed the Agreement between the District and the City that is required by the Amended and Restated Service Plan for the District that was approved by the City in November 2009.

Following discussion, upon motion duly made by Director Samsel, seconded by Director Davis and, upon



## RECORD OF PROCEEDINGS

---

vote unanimously carried, the Board approved the Agreement between the District and the City.

May 4, 2010 Election: Attorney Tanaka reported that the election was canceled, as allowed under Colorado law, by the Designated Election Official because there were no more candidates than positions open.

---

### OTHER BUSINESS

Community Outreach: Items for Community Update. Director Dailey recommended including information advising the community of the free rolls of sod that may be available as a result of the work on Tract U.

Website. Director Samsel reported that he has posted the Agenda to website and has posted the Community Updates. Also, he recently updated the emergency and non-emergency contact information. Attorney Tanaka advised that she has revised the Frequently Asked Questions and Director Samsel will post these on the District's website.

Action Items Status Matrix: Mr. Beckman reviewed and discussed the action items with the Board.

---

### BOARD MEMBER INPUT

Board Member Input: Director Palmer distributed and discussed information for her informational meetings. The first meeting is scheduled for this evening at 7:00 p.m. at the clubhouse.

---

### NEW BUSINESS

New Business: There was no new business to discuss.

---

### CONTRACT APPROVALS

Proposals involving the Expenditure of Funds received from The Brickman Group and First Addendum to Independent Contractor Agreement with The Brickman Group: The Board considered approval of the Ninth Addendum to the Independent Contractor Agreement with The Brickman Group.

Following discussion, upon motion duly made by Director Samsel, seconded by Director Davis and, upon

## RECORD OF PROCEEDINGS

---

vote, unanimously carried, the Board approved the Ninth Addendum to the Independent Contractor Agreement with The Brickman Group.

### LEGAL MATTERS CONTINUED

Litigation against D.R. Horton, Status of Notice of Claim for Dead and Declining Trees and Compliance Matters and Financial Status of District: EXECUTIVE SESSION: Pursuant to Sections 24-6-402(4)(b) and (e) of the Colorado Revised Statutes, upon motion duly made by Director Samsel, seconded by Director Palmer and, upon an affirmative vote of at least two-thirds of the quorum present, the Board convened in executive session at 11:49 a.m. for the purposes of discussing legal matters as authorized by Section 24-6-402(4)(b) C.R.S. and discussing matters subject to negotiation pursuant to Section 24-6-402(4)(e), C.R.S.

Furthermore, pursuant to Section 24-6-402(2)(d.5)(II)(B), C.R.S., no record will be kept of those portions of the executive session that, in the opinion of the District's attorney, constitute privileged attorney-client communication pursuant to Section 24-6-402(4)(b), C.R.S.

The Board reconvened in regular session at 11:59 a.m.

Following discussion, upon motion duly made by Director Palmer, seconded by Director Samsel and, upon vote, unanimously carried, the Board Directed Attorney Tanaka to work with Director Staley to coordinate oversight of forensic testing of trees by D.R. Horton and to grant and extension of the testing period through May 31, 2010.

### ADJOURNMENT

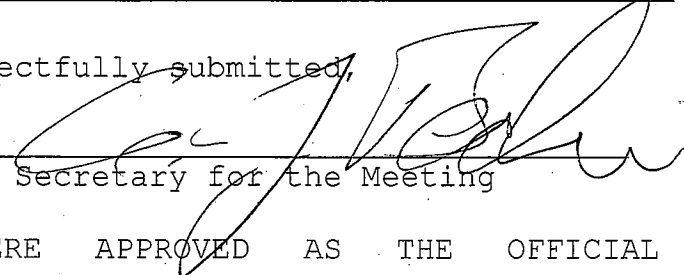
There being no further business to come before the Board at this time, upon motion duly made, seconded and, upon vote, unanimously carried, the meeting was adjourned.

**RECORD OF PROCEEDINGS**


---

Respectfully submitted,

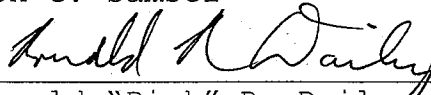
By

  
Secretary for the Meeting

THESE MINUTES WERE APPROVED AS THE OFFICIAL  
MARCH 15, 2010 MINUTES OF THE CONSERVATORY  
METROPOLITAN DISTRICT BY THE BOARD OF DIRECTORS  
SIGNING BELOW:




Don G. Samsel



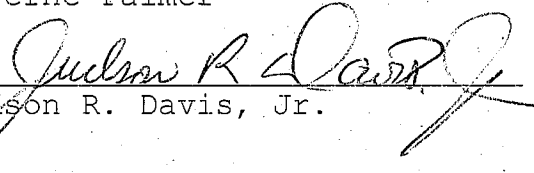
Ronald "Dick" R. Dailey



Dan Staley



Laverne Palmer



Judson R. Davis, Jr.