

**Minutes of the Regular Meeting  
Of the Board of Directors  
Reserve Metropolitan District No. 2  
June 21, 2016**

The Regular Meeting of the Board of Directors of the Reserve Metropolitan District No. 2, Gunnison County, Colorado, was held on June 21, 2016 at 12 Noon at 318 Elk Ave. Ste. 24, Crested Butte, Colorado, in accordance with the applicable statutes of the State of Colorado.

**Attendance**

The following Directors were present and acting:

Ed Cope (By telephone)  
Peter Duke (By telephone)  
Julie Behrens (In person)  
John Flanigan (By telephone)

Also in attendance were:

Randy Livingston, Bailey & Peterson, PC (via telephone)  
Steve Thompson, Thompson Financial & Accounting Services LLC (via telephone)  
Tom Mullans, Mullans, Piersel & Reed, PC (via telephone)  
Bob Orlinski (In person)  
Grant Bennet (By telephone)  
Kim Seter, Seter and Vander Wall (via telephone)  
Mary Miles, Assistant to Tom Mullans (via telephone)  
Rob Harper, Toad Property Management, Inc.

**Call to Order**

The Regular Meeting of the Board of Directors of the Reserve Metropolitan District No. 2 was called to order at 12:02 pm at which time it was noted a quorum was present.

Pertaining to the minutes of the last meeting, Tom questioned the role the Board elected Julie to - Treasurer? Rob said the transcription was vague. Tom suggested adding more discussion of Secretary/Treasurer to this meeting's agenda. Peter made a motion to approve the last meeting's minutes. John seconded, motion passed.

**Old Business**

Financing Process: A lengthy call will take place on Thursday for the new offering memorandum. Tom noted an end of July closing is desired.

Board vacancies: Eligible electors are registered Colorado voters owning property individually, not in a trust for example. John has a list of about 8 or 9 folks that could be reached out to. Tom stresses that filling the Board vacancies within 60 days (from May 1 2016) so the county isn't the decision maker. Grant Bennet asks if a person under contract to buy would be a qualified elector? Yes, says Tom. Grant

will check with his attorneys and will be back in touch with John. John suggests waiting until July to appoint a new Board member, all agreed. The amount of work done by the Board will calm down after the bond closes. Discussion of the roles played by the officers. John made a motion to appoint Ed Cope as Treasurer and Julie Behrens as Secretary. Julie seconded, motion passed.

Financial Reports: John stated that the accounts are a bit in flux, trying to change to Bank Of The West. A confirmed PO Box is needed. Bob said 3384 in Crested Butte is the official box of the District. Bob is available to help John with the transition.

### **New Business**

John made a motion to pass resolution 2016-7, Citiwide Banks Resolution to authorize the four Board members to be signatory on this account. Julie seconded, all are in favor and the motion passes.

Tax Refund Agreement – Tom said it is has been back and forth between Dee Wiser and Gunnison County. There are some people who have not filed a petition for abatement; those people should be notified to file the abatement petition for 2014, payable in 2015. They have until January 1<sup>st</sup>. Getting approval in the substantial form so that they can be signed when they are finalized is the goal as no major changes are expected. All documents and agreements, including the discounted payoff agreement, the escrow agreement, the new financial agreement, need to be completed prior to closing of the bond sale. John questioned the timing of the release of the offering memorandum to the investors; don't these agreements need to be approved first? Yes, says Tom. Lots of folks and entities need to review and sign off on these agreements. John makes the point that if any major revisions do come up, he'll want to have a Board meeting.

Tom accidentally dropped off the call at 12:35pm. Ed departed the meeting at 12:36pm.

John clarified that Tax Refund Agreement specifies a dollar amount, "upon closing of the bonds that dollar amount will be put in an escrow agreement, that the county will be using that dollar amount to pay out these things over a period of time and in the meantime they agree not to intercept our tax money." John proposed approving the agreement as written. Julie seconded. all are in favor and the motion passes.

Toad Contract: Discussion regarding the proposed contract from Rob to handle the mail, host the meetings, general accounting of the checks & journal entries, etc. Tom questioned the property sales aspect in the proposal. Rob stated that more and more, Toad's role has increased with regards to information requests and the like. Rob will charge a \$550 monthly management fee. John made a motion to approve the contract between RMD2 and Toad Property Management, Peter seconded, motion passed.

Discounted Payoff Agreement: Compass agrees to accept 8.5 million as full and final payment on the loan with previously discussed contingencies. Bob questioned the agreement between Compass Bank and Tim Muller regarding back interest. Tom states there is an understanding that Muller and all the developer entities are waiving all amounts due. John explains participation termination, a condition of the closing of the agreement with Compass. John asks - have Dee's changes been accepted? Tom says he hasn't heard from McDonald and that information will be shared with the Board once he hears from McDonald. John makes a motion to approve the discounted payoff agreement as proposed. Julie seconds, all are in favor and the motion passes.



Financial Escrow Agreement: Tom stated that Dee has sent out emails to everyone, trying to get all the documents signed, it is very time consuming. John made a motion to accept the escrow agreement as written. Julie seconded, all are in favor and the motion passes.

Bob Orlinski stated that no checks have been written since March 15. There was a deposit of \$100,000 for a balance of \$182,042.27. There are two outstanding checks. One to David Weekly for \$1980, Bob thinks he paid twice, and one for \$10,000 to Bailey-Peterson. Tom says any outstanding checks should be voided at this point and written on the new account.

John Flanigan made a motion to go into Executive Session at 1:01pm to determine positions relative to matters that may be subject to negotiations, developing strategy for negotiations and instructing negotiators pursuant to §24-6-402(4)(e) C.R.S. (Continuing negotiations necessary to meet the terms of a settlement agreement). Conference with an attorney for the District for the purpose of receiving legal advice on specific legal questions pursuant to §24-6-402(4)(b) C.R.S. (Attorneys Fees).

Regular Session begins again at 1:28pm. John updated all on the proposal made by Bailey-Peterson via email earlier today. The Board would like to accept the \$695,000 number. The Board would like to authorize the immediate payment of the \$215,000 via the trust account. Randy would like to take all that is currently in that account, including interest accrued. John agrees with that. John said "The funds associated with the Compass Bank re-purchase which is sort of known, tranche A, those seem to be fairly straight forward and may not move around a lot. The funds associated with the tax abatement include, it's meant to be a maximum amount and the sources and uses that we've all seen, it includes both funds that haven't been applied for that were paid in '15 for '14's taxes and funds that haven't been applied for and cannot be applied for that were paid in '14 for 13's taxes. There is a significant amount of money in that second category, north of \$150,000, so if that money is available to be shifted from tranche B into tranche C, that would provide us obviously with the ability to pay \$480,000 at close. The flip side of it is that we still don't know, we don't know what these numbers are exactly, so we can't, at this point, agree to pay \$480,000 at the close of the bonds. We can say that we will pay basically everything above what it costs to re-purchase the Compass debt, what it costs to fund the tax abatement escrow, what cost issue and regenerate the bonds, up to \$480,000 to you guys (Bailey-Peterson) at close, but we can't guarantee you this \$480,000. And that's really the conundrum we find ourselves in." John went on to further discuss upcoming road maintenance, re-sealing and guardrails, for which "any additional monies you've heard that the District has in bank accounts" would be necessary.

Randy states that the reduction was given in exchange for a date certain to be paid. That is, 30-45 days after close. What about that commitment? asks Randy. Tom clarified "there is a commitment that we are talking about making to pay whatever there is available out of the bond proceeds after the required dollars are taken out and paid to for the other things that are in the bond". Discussion regarding commitments and contracts; Peter states that payments made already shows the Board's commitment. With the final number being un-known, what would happen if there were a shortfall of say \$50,000? asks Peter. Would this be a reason to argue? Peter asks Randy to be reasonable. Randy says the firm has been reasonable, and he appreciates the monies paid so far. Randy "understands that is there have been several accusations and several intimations that" the firm shouldn't get paid, "and that we shouldn't get paid at a level that was contracted to pay, so there is concern from this side about that activity." Randy states "that if there is a commitment by the Board that it will pay the \$215,000 or \$217,000, whatever is held in the Citiwide account right now and that it will disperse it immediately, and



then the balance that makes up the \$695,000 offer will be paid at closing of the bond to the full extent that money is available from those proceeds, and from other cash that is available and then if there is something left over, we can take payment for that balance of first available funds". Tom asked, "When you said other cash available payment at closing, you are talking about funds coming out of the bond proceeds?" Somebody on the phone says "no" and John says "yes". The same somebody starts to say "...isn't coming from bond..." Randy's louder voice says "the way the sources and uses work, from what Dee Wiser has sent around that there is \$300,000 that is not coming out of bond proceeds," "Right" says John, "called other cash available or words to that effect" continued Randy. Tom says "wherever the money is, this closing, whatever available cash there is from the bond dollars and proceeds and any other cash available that was categorized as for bond, that, I think that is what the Board is talking about. The problem is that depleting what's in our bank account at the moment is a little scary to the Board. Because, again, there's going to be nothing to, no income coming in, unless there is some lots sold." Peter makes a point about going into winter with an empty checkbook. John says "the thing we ought to be clear about is that the sources and uses for the, that the bond model shows is 11.3 million. So there is \$300,000 in contemplated cash and that's what's in the Compass bank account, Steve, that's the 292 that you modeled," "Yup" says Steve, "but", continues John, "they rounded off to 300 million. So that's what left over in the Compass Bank account after Compass has been paid that interest payment due in June. And that was contemplated as a source in the sources and uses so the total sources and uses in the loan are 11.3. And then obviously that \$300,000 just happened to be earmarked as litigation expenses in the way that they put the sources and uses together along with the 117 that's in the second tranche. And then there's another 110 in the third tranche which I assume is meant to pay off Compass Bank, a hundred grand that we owe them." "Right" says Tom. Continues John, "And so that's the way the sources and uses work, it's not like there is going to be, and so what we are saying is, I believe what we are saying is, that the extent to which after we get through with the sources and uses there is more than \$417,000 available because of maybe movement in the abatement number, movement some other numbers, we are going to pay that to you guys. Up to the 478 that we owe you. But it's not, just to make sure, not an 11 million dollar number it's an 11.3 million dollar number. I think that is what you wanted to hear, Randy." Randy says "that's what I do want to hear. I guess the other thing that has to be addressed, and acknowledged, is, if somebody talked about the Series B the tax exempt bonds being for the tax rebate and there not potentially the one point box 545 not being used fully. That money, if it's out of a Series B bond can't be used to pay litigation expenses" "No, but it can be shifted to Series C" says John. Randy continues, "Well, it, that's my point, they would have to be shifted." "Yes", says John, "that's right. In order to help here, you'd have to come up with a plug, and maybe you don't need the whole, say you did save the 150 but you only needed 50, so you wouldn't borrow 100, you'd only borrow 10.9, right?" "Right" says Randy. Tom said, "So it's something we are going to be discussing with Sam and make sure there is not a problem with all that. That's the Board's intent, and I think that they're, we're, willing, I'm not speaking for them as yet, because the resolution, or the motion hasn't been made, but if somebody would make a motion for all the things we have been talking about here, I think that it would pass." Silence. Tom continues, "Certainly need Bailey-Peterson to say Yes, this is going to work for them." Silence. John says, "So Randy, basically what you outlined we could make a motion to do as you outlined, as long as that is still what you want us to do, to make this go away." "That is acceptable," says Randy. "Okay" says John. "So I'll make a motion that the Board approve the release of the funds in the joint account to Bailey-Peterson immediately, I'm not sure how that gets done, but immediately." "It might take a couple of days," says Tom, "because we have to get the resolution signed and then over to Citibank." "Yep," says John. "And then at the same time, and Julie's got that resolution, she's going to be circulating that around, so we've got that. And then at the same time the Board will upon closing, or upon closing or within reasonable time after closing, 7 days or whatever, of closing of the bond issue, pay to Bailey-Peterson proceeds in excess of the Compass Bank



requirement, the tax requirement, and the origination expenses, up to the maximum of whatever is due of 695 minus whatever gets paid out of the trust account in funds and to the extent that's not enough, then as additional funds come into the District in terms of RETA funds, Bailey-Peterson will get first dollar of those until 695 is satisfied." Julie seconded the motion. The motion passes. Randy appreciates the action of the Board. Randy states "as for the Citiwide bank account, what we are going to need as soon as possible, tomorrow preferably, is a copy of the resolution that shows who is on the account and I guess that's going to be you, John, and I understand that a number could do it, but just for ease of administration, a copy of the resolution that shows who is on the account, 2 forms of I.D., picture I.D. from John, and contact information. Can be a scanned copy of drivers license or whatever your I.D. is..." "I have a drivers license and a passport that I keep on my computer," says John, "will those two forms be fine?" "Those will work," says Randy. "And then contact information which I probably have, but you can re-affirm it." Discussion regarding the revised resolution and Julie's role. Mary has already sent out to all via email; John will sign it on behalf of the Board. John confirms what Randy needs from him. "So what you need from us Randy is that resolution, two forms of I.D. from me, and contact information for me and then will you send me some sort of form that I sign?" Randy says, "I believe that is going to happen yes, she, yes she is going to prepare the paperwork at the bank, Sharon Parry will get that to you." "Okay," says John. "You should expect that stuff from me this afternoon." Randy says, "Okay, very good, appreciate it."

John thinks it would be a good idea to have Capital Maintenance Plan for the roads, perhaps getting a proposal from SGM to discuss at the next Board meeting. Rob suggests Jerry Burgess at SGM as a contact. A Road Maintenance Agreement needs to be discussed at the next meeting.

John made a motion to adjourn the meeting at 1:54pm, Julie seconded, meeting adjourned.

Respectfully Submitted  
Rob Harper  
Secretary for the Meeting