

MINUTES OF A REGULAR MEETING OF
THE BOARD OF DIRECTORS OF THE
BANNING LEWIS RANCH METROPOLITAN DISTRICT NO. 5
(THE "DISTRICT")
HELD
SEPTEMBER 26, 2022

A regular meeting of the Board of Directors of the Banning Lewis Ranch Metropolitan District No. 5 (referred to hereafter as the "Board") was convened on Monday, September 26, 2022, at 11:00 a.m. This District Board meeting was held at Banning Lewis Ranch Sales Center 9158 Braemore Heights, Colorado Springs, Colorado 80927 and via Microsoft Teams. The meeting was open to the public.

ATTENDANCE

Directors In Attendance Were:

Robert Cass, President
George Smith, Vice President*
Victoria Niemi, Treasurer*
Kathryn Giddens, Secretary
Dawson Hubert, Director

Also, In Attendance Were:

Krista Baptist, Korben Heim, and Rob Lange; CliftonLarsonAllen, LLP
Colin Mielke; Seter & Vander Wall, PC
Jan Cass*, Lauren Gallup, Mark Davis, Kevin Bradley*, Bonni Knutson*, and
Lou Downs*; Members of the Public

*These members attended the meeting virtually.

**ADMINISTRATIVE
MATTERS**

Call to Order and Agenda: Director Cass called the meeting to order at 11:06 a.m. The Board noted that additional items may be discussed under the "Other Business" portion of the agenda. Following discussion, upon a motion duly made by Director Cass, seconded by Director Giddens and, upon vote, unanimously carried, the Board approved the agenda, as presented.

Disclosures of Potential Conflicts of Interest: The Board discussed the disclosures and Director qualifications with legal counsel and noted that disclosures had been previously filed with the Colorado Secretary of State's Office.

Quorum, Location of Meeting and Meeting Notices: A quorum was confirmed. It was noted that the meeting was noticed on the website and posted as required.

Public Comment: The Board opened the meeting for public comment.

Mr. Bradley commented on the District Fees, and his belief that he does not receive value for the fees he has paid. Mr. Bradley expressed his desire for a credit or refund of fees paid. Director Niemi responded that a credit or refund cannot be given at this time, and Director Cass offered to connect further with Mr. Bradley on his concerns. No actions were taken.

Minutes from the August 3, 2022 Special Board Meeting: Director Hubert requested a clarification on the claims listing and Mr. Lange provided more information regarding claims and invoices. Director Cass commented regarding the revisions and mentioned that the Board requests that revisions be reflected in the minutes.

Directors noted that the original minutes were incomplete, and that the minutes should have documented the Board's determination that it was unacceptable for OakwoodLife not to have provided any documentation, including invoices for expenses so far this year. Directors also asked CLA Accounting and District Management to come to the next meeting with information on how they plan to resolve this issue.

Following review and discussion, upon a motion duly made by Director Cass, seconded by Director Hubert and, upon vote, unanimously carried, the Board approved the minutes from the August 3, 2022 Special Board Meeting with the revisions as discussed.

Minutes from the August 29, 2022 Regular Board Meeting: Director Niemi mentioned her prior request to have OakwoodLife present at the September regular meeting should be included in these minutes.

The Board discussed ways in which OakwoodLife could be held accountable for failure to provide invoices. Mr. Mielke explained to the Board that OakwoodLife's contract is with Banning Lewis Ranch Metropolitan District No. 1 and informed the Board that District No. 5 could request District No. 1 demand OakwoodLife provide invoices.

Director Giddens requested that the minutes be revised to reflect the names of board vacancy candidates and the chosen candidate for the Board vacancy.

Following review and discussion, upon a motion duly made by Director Cass, seconded by Director Niemi and, upon vote, unanimously carried, the Board approved the minutes from the August 29, 2022 Regular Board Meeting, pending the revisions requested by the Board.

**FINANCIAL
MATTERS**

Officer Position for Director Hubert: Director Cass noted that the previous Director held the Assistant Secretary position and the new Director would hold the same position. Following discussion, upon a motion duly made by Director Cass, seconded by Director Giddens and, upon vote, unanimously carried, the Board appointed Director Hubert to the position of Assistant Secretary.

Cash Position and PTax Statements: Mr. Lange reviewed the Cash Position and PTax Statements with the Board and informed the Board that there would be a trustee transfer of reserve to fund the surplus. Following discussion and review, upon a motion duly made by Director Cass, seconded by Director Hubert and, upon vote, unanimously carried, the Board accepted the Cash Position and PTax Statements.

Payment of Claims: Mr. Lange reviewed the claims with the Board, noting that there was only one claim at the time of the meeting. Following review, upon a motion duly made by Director Cass, seconded by Director Hubert and, upon vote, unanimously carried, the Board ratified approval of previous claims and approved the payment of current claims in the amount of \$107.00 related to an invoice from Schedio for capital outlay work.

Special Revenue Fund Balance Sheet and the Special Revenue Fund Statement of Activities as of July 31, 2022: Director Cass asked if there was a budget hearing held to amend the BLR MD1 budget to establish the Special Revenue Fund. Mr. Lange explained that the Special Revenue Fund is a component of the General Fund for Banning Lewis Ranch Metropolitan District No.1 and therefore no budget amendment is required. No actions were taken.

Director Cass expressed his concern with budgeting for per-house contracts and estimates significant variations. He noted that the "annual budget" column in the financial report is actually a "year-to-date" and the column title should be corrected. He further noted that having an "annual budget" column would be helpful, but did not request it be changed because it would result in additional accounting costs for the District. Director Cass also noted that over 300 home sales have closed within the District and that the original budget anticipated only 209 home sales being closed this year.

Director Cass questioned the District's cost for snow removal work, water and electricity. It was noted that a meter installed on District land provides irrigation for all common landscaping in Phase 1 of The Retreat, either owned by District 1 or Oakwood Homes. Director Cass asked that snow removal costs for The Retreat be distinguishable from the rest of Banning Lewis Ranch in the future. Mr. Lange indicated the areas will be invoiced separately in 2023. No actions were taken.

Director Cass expressed his concern regarding landscape maintenance and the monthly split of work for BrightView Landscaping. Ms. Baptist notified the Board that District mapping is underway. Director Cass had a concern on maintenance work by BrightView on Tract No. 24, which is currently owned by Clayton Homes and not yet transferred to any Banning Lewis Ranch Metropolitan District, as part of the boarder tract transfer. No actions were taken.

Director Cass addressed the Board regarding Oakwood Life invoicing, and the payment clause of the contract. The contract states that invoices for work older than 45 days will not be paid. Mr. Mielke provided his comments and explained to the Board that Banning Lewis Ranch Metropolitan District No. 1 has the contract and is responsible for deciding whether to pay. Director Cass requested Mr. Mielke discuss this provision with legal counsel for District No. 1 and determine the ability to refuse payment on delayed invoices.

Accounting mentioned that the Management Representation Letter for the 2021 Audit would need to be signed. Mr. Lange and Director Giddens would coordinate the signature and submit to the auditor.

Director Niemi questioned the 2021 OakwoodLife costs on the 2021 budget. Mr. Lange informed the Board that this was not an anticipated expense for the District, nor anything to be anticipated to receive a request for reimbursement. No actions were taken. Director Smith questioned whether the 2021 OakwoodLife costs are expected to be reimbursed through a developer advance agreement or whether OakwoodLife is expected to absorb the 2021 the costs. Mr. Lange reaffirmed that he does not expect Oakwood to seek reimbursement for the 2021 expenses. Reimbursement requests would be documented through Banning Lewis Ranch Metropolitan District No. 1 , but District No. 5 can review reimbursement requests for reasonableness. No actions were taken.

Other: Director Cass requested the timeframe for the 2023 budget hearing. Mr. Lange said the 2023 budget would be provided to the Board by October 15, 2023. Ms. Baptist informed the Board that the Budget Hearing would be scheduled and the Board would be notified.

LEGAL MATTERS

Draft Gate Access Policy: Mr. Mielke discussed the gate access policy drafted by legal counsel for District No. 1. It was noted that further details regarding public access would likely need to be included in a future draft. Director Cass expressed concerns on the timeline and adding sufficient detail to areas in the policy. Mr. Mielke noted that the Board can make comments on the gate access policy for Banning Lewis Ranch Metropolitan District No. 1's consideration.

The Board would like their primary concerns for the gate access policy to be noted and submitted to District No. 1's legal counsel for drafting the final policy.

Director Hubert presented an example policy to legal and proposed a general access code for public use, as well as his concern with the possible gate issue at the Dublin Road access.

The Board determined to provide bullet points of important considerations to Mr. Mielke to provide to District No. 1's legal counsel to incorporate into a second draft. No actions were taken.

Landscape Tract Review: Mr. Mielke reviewed the warranty deeds for landscape tracts to District No. 1 for ongoing ownership and maintenance, as well as the BrightView tract maintenance work on District tracts. Director Cass expressed concern that maintenance costs paid by residents involves properties not owned by the District. There is no documentation to clarify the division of maintenance between residents and developer.

Director Niemi suggested that Scott Smith could be a possible contact for OakwoodLife to receive answers for tract maintenance.

The Board directed management to find a contact and learn the process and supporting documentation for maintenance of tracts not owned by the District or District No. 1. The Board further noted that water taps owned by District No. 1 are used to water the landscape tracts not yet owned by District No. 1.

Other: Director Cass shared his concern on the Board details on transparency notice and administration resolution to be updated for 2023 and gave feedback regarding expected changes from the 2022 transparency notice.

Mr. Mielke informed the Board that the Administrative Resolution is adopted at the first meeting of the year, but the issue could be moved to the last meeting of the year if the Board wished. Legal counsel and management will coordinate on preparation of the 2023 Annual Administrative Resolution for board comment prior to the end of the year. No actions were taken.

**MANAGER
MATTERS**

Other: None.

DIRECTOR MATTERS

Formation of Committees: Director Cass discussed the prior working session and special meeting to discuss the formation of the committees led by board members, each committee having three to five members, which will investigate and make recommendations to the Board related to committee functions. Each committee would define its own purpose, responsibilities, and necessity. Each committee will brief the board on those topics. The Board noted that committees would not have authority to act, but instead would report to the Board with recommended action items. Discussion ensued regarding a number of possible committees:

- Finance committee led by Director Niemi and Director Cass.
- Communication committee led by Director Giddens.
- Oakwood Life committee would act as oversight for contracts and progress on contract requirements. There was concern that any action could be considered modification and release the contractor from any agreement, and it was confirmed that the committee would not have enforcement powers over contractors. The Board also discussed how to balance residential interest regarding involvement in the community and OakwoodLife's contractual obligations to provide services. Director Hubert would serve on this committee to balance these items.
- Facilities committee, which the Board determined to table until The Barn is transferred to the District.
- Education committee to create and distribute communications to the community. The Board discussed a Resident Handbook required to be created by OakwoodLife as a contract deliverable. There is resident interest in working on this, but they do not want to interfere with contractual obligations and potentially void OakwoodLife's obligations under its contract with District No. 1.

Director Hubert suggested a handbook organizing points of contact, procedures, and operational guidelines, etc. No actions were taken.

Director Niemi would like a detailed guideline for the procedures for The Barn and Retreat operations. She also requested an update regarding the conflict resolution guidelines between the residents and OakwoodLife in reconciling their separate interests. She addressed the issue of who will be handling operations at The Barn. Oakwood Life to provide input on guidelines and procedures for resident handbook. There will be an update at the October meeting.

Director Hubert requested a list of residents and to document potential volunteers. The Board discussed the roles of the committees, the resident handbook, and the Oakwood Life communications. The committees must have prior approval before they move forward with their proposed projects.

OakwoodLife Contract Expenses: CLA reported they are in contact with OakwoodLife and are waiting to receive invoices from them. The Board voiced their concern regarding timing, activities, and lack of responsiveness from OakwoodLife. No actions were taken.

Director Niemi expressed her concern regarding transparency for residents on Board actions and their inclusions on committees. Director Niemi indicated her concern that committees will operate to simply discuss items and will not help resolve issues unless they are authorized to take action.

Following discussion, upon a motion duly made by Director Smith, seconded by Director Giddens and, upon majority vote, the Board approved to establish committees. Director Niemi abstained from the vote. It was noted that a Director would lead each committee and develop a statement of purpose and primary responsibility to discuss at the next meeting.

The Board discussed a desire to install a comment and/or concern box at The Barn. Mr. Mielke noted that The Barn is not owned by the District and therefore authorization would need to come from the owner of The Barn. Mr. Mielke also discussed the need to clearly identify that the authority and obligation to address comments inserted in the box are the responsibility of District No. 1 so as to avoid unintentionally creating liability for District No. 5 board members. No actions were taken.

Creation of Bylaws: This item was tabled and will be added to the next meeting agenda.

Other: None.

OTHER BUSINESS

Other: Director Cass discussed the process for drafting and reviewing of meeting minutes and packets and will coordinate with District management on this process going forward. No actions were taken.

ADJOURNMENT

There being no further business to come before the Board at this time, Director Cass adjourned the meeting at 1:12 p.m.

Respectfully submitted,

By Kathryn Giddens
Secretary for the Board