

RECORD OF PROCEEDINGS

MINUTES OF A SPECIAL MEETING OF
THE BOARD OF DIRECTORS OF THE
BANNING LEWIS RANCH METROPOLITAN DISTRICT NO. 5
(THE "DISTRICT")
HELD
OCTOBER 31, 2022

A special 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, October 31, 2022, at 11:00 a.m. This District Board meeting was held at Banning Lewis Ranch – The Barn 9150 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, Carrie Bartow, and Rob Lange;
CliftonLarsonAllen, LLP
Colin Mielke; Seter & Vander Wall, PC
Suzanne Qualia, Loren Gallup, Ken & Heidi Westberg, Jan Cass, Priscilla Davies, Frank Gross, Judith (unknown last name), Sue (unknown last name), David Rosser, Ed & Alice Bolton, Arn & Heidi Wiens, Shannon Burgess, Linda Rodriguez, Marion Dries, Deb Nussdoerfer, Sherri Pierson, Margaret Mecca, Butch Pemberton, Ed Scuttalero; Members of the Public

ADMINISTRATIVE MATTERS

Call to Order and Agenda: Director Cass called the meeting to order at 11:07 a.m. Following review, upon a motion duly made by Director Giddens, seconded by Director Smith and, upon vote, unanimously carried, the Board approved the agenda, as amended to include an executive session for the purpose of receiving legal advice from the District's legal counsel related to El Paso County District Court Case No. 22CV31248 between Acierno & Company and Farrington Construction Management, et al., and to discuss a crossclaim involving Banning Lewis Ranch Metropolitan District No. 5.

Disclosures of Potential Conflicts of Interest: There were no conflicts to be filed.

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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. It was noted that the notice of the budget hearing was published in The Transcript as required.

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

Ms. Mecca shared her concerns regarding ADA access to the Barn, mail room, and parking in front of the Barn for residents and emergency vehicles. She also noted the mailroom should have an industrial shredder and bench for residents to rest or go through their mail. In addition, the bathrooms lack amenities for safety and privacy in the shower area. She expressed concern about the possibility of mold under the ice machine due to concrete issues. The Board will provide a response to Ms. Mecca's concerns. No actions were taken.

Minutes from the August 3, 2022 Special Board Meeting and the August 29, 2022 Regular Board Meeting: The Board reviewed and acknowledged the revisions to the August 3, 2022 Special Board Meeting and the August 29, 2022 Regular Board Meeting.

Minutes from the September 26, 2022 Regular Board Meeting: Following review and discussion, upon a motion duly made by Director Cass, seconded by Director Smith and, upon vote, unanimously carried, the Board approved the minutes from the September 26, 2022 Regular Board Meeting.

Business to be Conducted in 2023, Schedule Regular Board Meetings, 2023 Annual Administrative Resolution, Establishing Regular Meeting Dates, Time and Location, and Designating Location for Posting of 24- Hour Notices, Appoint representative to Post Notices within the District: The Board discussed review of an annual administrative resolution for calendar year 2023. This item was tabled until the November 28, 2022 meeting to provide board members with an opportunity to review a draft resolution.

It was noted that the meeting time and schedules would be coordinated and any Board member questions regarding annual administrative matters can be directed to legal counsel.

Requirements of Section 32-1-809, C.R.S. and Direct Staff Regarding Compliance for 2023 (District Transparency Notice): The Board discussed the requirement to post a transparency notice for calendar year 2023. This item was tabled until the November 28, 2022 meeting.

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Requirements of Section 32-1-306, C.R.S. and Direct Staff Regarding Compliance for 2023 (Annual Map Filing): The Board discussed the requirement to submit an annual map filing with El Paso County and the Division of Local Government. This item was tabled until the November 28, 2022 meeting.

2023 Insurance Renewal, Adoption of Documents Needed to Obtain or Maintain Insurance Coverage through the Colorado Special Districts Property and Liability Pool and T. Charles Wilson Risk Management and Authorize Membership in the Special District Association: The Board discussed its insurance renewal for calendar year 2023. This item was tabled until the November 28, 2022 meeting.

FINANCIAL MATTERS

Unaudited Financial Statements as of September 30, 2022: Mr. Lange reviewed the unaudited financial statements with the Board. Following review and discussion, upon a motion duly made by Director Cass, seconded by Director Smith and, upon vote, unanimously carried, the Board approved the unaudited financial statements as of September 30, 2022.

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 Smith and, upon vote, unanimously carried, the Board ratified approval of previous claims and approved the payment of current claims in the amount of \$18,263.37.

Special Revenue Fund Balance Sheet and the Special Revenue Fund Statement of Activities as of August 31, 2022: Mr. Lange reviewed with the Board. It was noted that OakwoodLife has not provided invoices for services during 2022 and CliftonLarsonAllen confirmed continues to try and obtain those invoices from OakwoodLife. The Board discussed and questioned the costs and scope of landscape maintenance. Mr. Lange confirmed that BrightView cost allocations were based on house numbers for 2022, but that CliftonLarsonAllen is attempting to get separate invoices for each District for work in calendar year 2023.

Schedio Groups Engineer's Report and Verification Costs No. 5: Mr. Lange reviewed the Engineer's Report and Verification Costs No. 5 with the Board. The Board discussed and determined no action was required by the District.

Public Hearing to Consider Amendment of the 2022 Budget: The Board opened a public hearing at 11:56 a.m. to consider an amendment to the 2022 Budget.

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It was noted that Notice stating that the Board would consider approval of the 2022 budget amendment and the date, time and place of the public hearing was published pursuant to statute. No written objections were received prior to the public hearing.

Mr. Lange reviewed the 2022 budget amendment with the Board noting that approximately \$65,000 has been expended from the Capital Improvement Fund during 2022 and recommending a proposed increase to the Capital Improvement Fund budget to \$150,000.

There was a public comment regarding the amount of the amendment at \$150,000 versus a lesser amount. Mr. Ed Scutallero commented that there should be a limit to the total amount as much as possible, and to re-amend the budget if needed. Ms. Alice Bolton questioned the reimbursement for the developer advance. Ms. Bartow explained the developer advances, the capital nature of those advances, and the manner of documenting and reimbursing the advances by District No. 5. Ms. Bartow and Mr. Lange agreed to meet with Director Cass at a later date to further discuss cost allocations for the District. The Board considered the public comments and discussed a reduction of the budget amendment to \$100,000.

Following public comment, the Board closed the public hearing at 12:04 p.m.

Following discussion, upon a motion duly made by Director Cass, seconded by Director Hubert and, upon vote, unanimously carried, the Board approved the amendment to the 2022 budget at the reduced amount of \$100,000 and adopted the Resolution to Amend the 2022 Budget with that change incorporated.

Executive Session: Prior to executive session, Mr. Mielke discussed the engagement of Spencer Fane to act as District No. 5's legal counsel in El Paso County District Court Case No. 22CV31248 between Acierno & Company and Farrington Construction Management, et al. Mr. Mielke had previously distributed an engagement letter to the board members for Spencer Fane's engagement to act as litigation counsel, and asked for the Board to vote on the engagement. Upon motion made, seconded and unanimously carried, the Board approved the engagement of Spencer Fane to act as litigation counsel for in Case No. 22CV31248.

Mr. Mielke informed the Board that Jim Wooll, the litigation attorney at Spencer Fane for Case No. 22CV31248 was currently available by phone to discuss the litigation with the Board and provide legal advice on litigation strategies for District No. 5. Based on Mr. Wooll's schedule, Mr. Mielke recommended entering into executive session at this time and then return to open session to complete the remainder of the meeting. As such, Mr. Mielke asked for a motion to enter into executive session pursuant to § 24-6-402(4)(b), C.R.S. to go into

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executive session for the purpose of receiving legal advice from the District's legal counsel related to El Paso County District Court Case No. 22CV31248 between Acierno & Company and Farrington Construction Management, et al., and to discuss the crossclaim involving District No. 5. Upon a motion duly made by Director Cass, seconded by Director Smith and, upon vote, unanimously carried, the Board entered into executive session at 12:10 p.m. Upon completion of the executive session, the Board reconvened its open meeting at approximately 1:00 p.m. and confirmed that no official action was taken during the executive session.

Public Hearing on Proposed 2023 Budget: The Board opened the public hearing at 1:04 p.m. to consider the proposed 2023 Budget.

It was noted that Notice stating that the Board would consider adoption of the 2023 budget and the date, time and place of the public hearing was published pursuant to statute. No written objections were received prior to the public hearing.

Mr. Lange reviewed the proposed 2023 budget with the Board. No public comments were received, and the public hearing was closed at 1:10 p.m.

Following review, upon a motion duly made by Director Cass, seconded by Director Hubert and, upon vote, unanimously carried, the Board approved the 2023 budget and adopted the Resolution to Adopt the 2023 Budget, Appropriate Sums of Money and Set Mill Levy, subject to final assessed valuation and legal review.

Authorize District Accountant to Prepare the DLG-70 Certification of Tax Levies Form for Certification to the Board of County Commissioners and Other Interested Parties: Following the Board discussion, upon a motion duly made by Director Cass, seconded by Director Hubert and, upon vote, unanimously carried, the Board authorized the District Accountant to prepare the DLG-70 Certification of Tax Levies form for certification to the Board of County Commissioners and other interested parties.

Appointment of Board Member to sign the DLG-70 Certification of Tax Levies: The Board appointed Victoria Neimi to sign the DLG-70 Certification of Tax Levies.

Appointment of District Accountant to Prepare 2024 Budget: The Board discussed that this item will be included in the 2023 annual administrative resolution to be considered by the Board at its November meeting. This item was tabled until the November 28, 2022 meeting.

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Engagement Letter with BiggsKofford to Prepare the 2022 Audit: Mr. Lange reviewed the engagement letter with the Board. Following discussion, upon a motion duly made by Director Cass, seconded by Director Hubert and, upon vote, unanimously carried, the Board approved the engagement letter with BiggsKofford to prepare the 2022 audit.

Other: It was noted that the Bond Disclosures will need to be signed. Mr. Lange and Director Cass will coordinate to address this item.

LEGAL MATTERS

Resolution Calling a Regular Election for Directors on May 2, 2023, Appointing the DEO and Authorizing the DEO to Perform all Tasks Required for the Conduct of a Mail Ballot Election: Attorney Mielke reviewed the Resolution with the Board. Following a discussion and review, upon a motion duly made by Director Cass, seconded by Director Giddens and, upon vote, unanimously carried, the Board approved the Resolution Calling a Regular Election for Directors on May 2, 2023, and appointed Catherine Bright as the DEO and authorized Ms. Bright to perform all the DEO tasks required for the conduct of a mail ballot election.

FAMLI Act: Attorney Mielke reviewed information included in the board packet regarding the recently enacted FAMLI Act and the requirement for local government employers to choose to opt-out or opt-in to the FAMLI program. The Board was advised that because the board members are not compensated and the District has no employees, the District does not fit within the definition of a local government employer and may disregard this act. No action was taken.

Draft Gate Policy and Community Manual: Attorney Mielke noted that the draft community manual, which will include a gate access policy, is currently being reviewed by the Banning Lewis Ranch Metropolitan District No. 1 legal counsel and will be distributed to District No. 5 at a later date for review and comment. Finalization of the policy is anticipated to be completed by the end of the 2022 year.

Landscape Tract Review: Attorney Mielke updated the Board regarding the receipt of deeds showing landscape tract ownership in the District and that he is still awaiting a map of the landscape tracts from BrightView. The Board discussed the landscape tract maintenance, and Director Cass noted that once the map is provided the Board will need CliftonLarsonAllen to further identify how landscape costs are allocated to the tracts on the map. No actions were taken.

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OakwoodLife Update: The Board requested to be kept informed at each Board meeting the status of Banning Lewis Ranch Metropolitan District No. 1 receiving OakwoodLife's invoices. At the time of the meeting, no invoices had been received by District No. 1, and no status update was available. It was discussed that OakwoodLife has not been paid for its services during 2022 and that District No. 1 will review all invoices to determine whether payment is appropriate prior to making any payments. It was noted that a request has been made to deliver OakwoodLife invoices to District No. 5 upon receipt, and District No. 1 has confirmed that it will do so.

Other: None.

MANAGER MATTERS

CliftonLarsonAllen LLP Master Service Agreement and Related Statement(s) of Work: The Board discussed. This item was tabled until the November 28, 2022 meeting.

Other: None.

DIRECTOR MATTERS

Committee Reports to Include Purpose Statement, Primary Responsibilities, and Future Activities: The Board determined to move up the "Director Matters" portion of the meeting to earlier on the agenda for future meetings. Discussion regarding committees was tabled until the November 28, 2022 meeting.

Board Meetings on November 28, 2022 and December 26, 2022: The Board discussed. It was agreed that the November 28, 2022 meeting would be held as scheduled. At that time, the Board will decide on the December 26, 2022 meeting.

OTHER BUSINESS

Other: None.

ADJOURNMENT

There being no further business to come before the Board at this time, Director Cass adjourned the meeting at 1:40 p.m.

Respectfully submitted,

By Kathryn Giddens
Secretary for the Board