

# MINUTES OF REGULAR MEETING BLUE VALLEY METROPOLITAN DISTRICT

Regular meeting called to order at 7:01 pm on Monday, October 9, 2023 following a work session that began at 6:30pm. The meeting was held at Blue Valley Sportsman Club with a live Zoom meeting feed. Board secretary Andrea Buller present via Zoom. Board members present: Buck McNichols, Mark Nelson, Brenda Kellen, Tim Vermeer, and Jeff Powles. Board present via Zoom: None. Board absent: None. Guests present in person; Matt Willits (left at 7:12 pm), Dan Campbell, Kathy Walton, Dennis Cunningham, Ken Novak, Ben McCormick, Flipp Brumm, Patrick Wiszowaty, Cade Sessions, Kaleb Orrock, Ryan Walker, Mary Jo Roal, and Mike Roal. Present via Zoom; Jay Turner, Tom Kellen, Bob Heid, and Ted Swenson.

**Reminder of Meeting Etiquette for in-person and online attendance** – Buck reminded everyone of the proper etiquette for the meeting.

**Review and Approval of Minutes of Previous Meeting(s)** – Buck moved to approve minutes from July. Brenda seconded. All in favor. Motion carried.

**Water Operator** –Minutes as presented by Matt Willits - NONE. Additional points from meeting:

- Buck asked to make sure we have a bleeder line in place to try to prevent the line from freezing again this year and asked Matt and his team to keep a close eye and flush hydrants and whatever else is appropriate to help prevent this issue. Buck stated the District is working to rectify the situation but wants to be proactive about preventing an issue if possible.
- As a reminder, Tony Cozzolino 265 CR 1012, will not be charged for overage during the winter if he runs a bleeder to help prevent the freeze starting at his curb stop. Matt agreed that the best place to prevent the freeze from happening is at the service line for his residence. Buck asked Matt to have Loren reach out to him to set up a bleed line. Tim asked for Matt to let the board know once Loren connects with Tony. The board will keep it on their radar and stay in contact.
- Buck told Matt the District is still moving forward with water attorneys for amending the augmentation plan.

**ARC** –

- Buck stated Jack is stepping down from the ARC effective 12/31/23 and that his time and efforts have been much appreciated.
- Bob stated he put a large envelope in the dropbox with an application. Brenda will stop by and check the dropbox tomorrow.
- More ARC committee members are needed.

**Water Rate Increase to be voted on in December Meeting/Public Hearing** – Per the water study performed by Raftelis, the annual rate increase is scheduled to be voted on at the December meeting. The water study recommended a 6% increase to be effective January 1, 2024 with the new base rate to increase to \$239 per quarter and the overage to increase to \$17.86 per 1,000 gallons over allotted usage of 30,000 gallons per quarter.

- Mike Roal asked to speak and Buck obliged. – Mike disagrees with how the overage is calculated each quarter rather than annually as they only go over one quarter per year. He feels they are penalized for having a nice yard as that is the only quarter they have overage. Buck stated these were questions discussed with Raftelis at the time of the water study. Buck reviewed his overage since 2013 and it was minimal. Buck said he understands Mikes concern as he himself hates when he has an overage but it is a choice to maintain a green yard and that monitoring water usage is each individual's responsibility.

**Engineering Project Update** – Buck read 9/27/23 email from water attorneys. Text of email below.

“ Hope you are well. Quick update on the status of the BVMD water case. We submitted a proposed Ruling in May this year with a response to the Division Engineer's consultation report. The case was pending on the Water Referee's desk while she took some time off this summer for health reasons. When she returned, she followed-up with the Division Engineer and there was some back and forth between Wendy Ryan of Colorado River Engineering and the Division Engineer, Caleb Foy. Late last week we received a written response from Caleb.

The issue that came up is the new homes are to be on septic systems. The return flow, or treated water, from these systems take several years to percolate back through the groundwater to reach the stream. This means that in the first years of the operation of the augmentation plan, there would not be sufficient replacements under the new contract to the river and there would be a small deficit of between the amount of water diverted and the amount of water that is replaced. We have proposed to use excess contract water from BVMD's previous augmentation plan to replace that amount while the development is being built out. We believe there should be sufficient water in that contract for the next couple of years and all it will take is some modification to the annual accounting provided to the Division of Water Resources. We have also added a couple of terms and conditions to the draft Ruling to allow this to occur.

I think we should get a response back from Caleb in the near future. And if he accepts our changes, we will provide a revised Ruling to the Water Referee and hope to have this wrapped up soon.

Please let us know if you have any questions.

Kind regards, Scott Grosscup"

Buck stated it has been a long and expensive process and is still moving forward and understands there are people waiting for a resolution on this and appreciates their patience.

**Spring Road Work – Fall Touch-up** – Spring road work went well. The board looks forward to working with the contractor in the future. Buck and Mark drove around to look at the touch up needing done as included in the bid. Mark stated the fall work needing done is to regrade the entrance to each thoroughfare and patch-up potholes accordingly.

Tim asked if we could work at getting the contractor earlier in the spring next year. The board discussed the challenges of this and what the ideal date would be.

Mike Roal asked about ditch work to be done on CR 1011. Mark and Mike discussed.

#### **Snow Plow Bid – Review and Award**

One RFP was received from Maximum Services for \$7452. Buck had Andrea read the amount of the bids received in prior years for comparison purposes. Buck moved to approve the bid. Jeff seconded. Mark abstained. Remaining board in favor. Motion carried and bid awarded to Maximum Services with base rate of \$7452 with additional fees for additional plows.

**County Letter of Occupancy – District signature requirement** – Buck stated the county does not require a signature from the District for the Letter of Occupancy. The only District signature required by the county is to confirm water tap fee has been paid. Bob Heid stated the ARC does require a letter of occupancy prior to authorizing any work after occupancy.

**Concrete on lot – 327 GCR 101 (Lot 1/Block 11)**- Mark's team is working on getting the concrete barriers removed. They clarified the right of way goes out 30 feet from the center of the road.

**Homeowner's Rights Task Forces Appointment** – The District is required to post the notice on our website which has been done.

#### **River Committee – Minutes as presented by Ben McCormick** –

**Ben McCormick would like to defer his time on the following items to Jay Turner** – Jay introduced himself. He presented the below committee agenda items.

##### **Public Fishing Passes-**

1) Our Board approved Service Plan states that permitting public use in the district is "allowed but not required." Why would we allow the public into the district if it's not required on our approved Service Plan (bottom of page 3).

2) You have shared there is a Colorado statute that mandates fishing access for the public to our District. I and my counsel cannot find this. Please cite and read aloud to the district this statute verbatim, in its entirety, and on the record. Also, please post this on our website for all to see. (Jay requested this be posted on the website as well.)

3) Please reference any Colorado court case you feel applies to our district. I have heard you reference a case in Oklahoma. Please share the case file and state what District's lawyers are relying on to advise the Board to do something that appears only to be elective, not mandatory, according to the Service Plan. Let's compare the Oklahoma statute and the Oklahoma court case, if possible. A Colorado court could adopt an Oklahoma case only if it is persuasive on the facts and law as interpreted in Colorado.

**Buck provided the following information in response:**

- BVMD is a special district, which is a governmental entity.
- Special districts have different rules from HOAs, which get to operate more like a private entity.
- Special districts have to comply with state law, including Title 32 related to special district powers, Title 24 related to meetings and public records. We also have to comply with court cases that have decided case law.
- Our practices and our service plan, declarations, bylaws, policies and procedures and other documents cannot conflict with the statutes or court rulings.
- We have operated a private fishing access for many years based on the belief that it belonged to this community and its homeowners.
- A few months ago, someone in the community questioned whether BMVD was allowed to maintain fishing access as a private benefit. We asked our general counsel, who specialized in local government and special district law, to look at this.
- The statutes do not directly address whether or not government-owned property has to be opened to the public. However, there is case law in Colorado that says governments hold property for the benefit of all members of the public, not just adjacent property owners.
- That is as close as Colorado law gets on this question. Courts in neighboring states have looked at similar questions and also found that this public trust doctrine means that if government-owned property is opened up to the public, it cannot be opened up just to a select group of neighboring residents.
- Based on this, our attorney has advised us that there is great legal risk in continuing to maintain our fishing access as a private benefit for BMVD residents only.
- We could be sued, and a lawsuit would be expensive (\$50+-\$300,000). And the end result is likely to be a court ordering BMVD to open up the fishing access to non-residents.
- The Board has a fiscal responsibility to the BMVD and its residents and property owners. Continuing a practice that comes with the risk of being sued is not a good financial strategy.
- The Board is focused on developing a fishing permit and licensing program that maintains the integrity of our community, the river, and is not a financial burden on the community. We have asked the river committee to assist in identifying priorities and concerns. The Board is being very deliberative in this process and look forward to community input.

Buck reiterated that the statute does allow the District to place limitations on the river access amenity. The board has worked diligently to determine what the options are for the limitations as discussed in prior meeting. Buck stated he doesn't believe anyone in the community wants unlimited access to be granted.

Jay stated his counsel and himself have found something different. He stated they did find those two options but believe it is only based on if there is a bond levy or debt in place in which public funds are utilized to fund the District. Jay is concerned that in the future the number of public access passes could be increased. He provided the following comment he presented for minute purposes:

“3 main issues I feel we as a Special Metro District needs to consider in making a decision in allowing the public on to the River:

1. The Liability: Rivers are dangerous. I have seen people drown. I was with Kaleb early season when it happened again. Last year, I had a friend slip, hit their chest square on a rock and stop their heart, face down in the water. I have seen people seriously hurt themselves – In fact, I have broken bones on rivers far more timid than the Lower Blue. What happens when someone encounters a wild animal? What happens when pass-issued group acts unruly and unsafe? What happens when something happens that we can't even think of? Waivers of Liability DO NOT absolve us of responsibilities. Are we ready for the liability and litigation? This is the worst case scenario and it is not a question of if, but when.

2. The Costs: Are we prepared for our responsibilities of a Special Metro District to make our entire access SAFE to the public? Who has heard of the Americans with Disabilities Act? Business owners and Attorneys nod your heads. As an organization, are we clear what kind of start-up and forever maintenance costs exist to make the river safe for THE ENTIRE PUBLIC? Which make no mistake, as a Special Metro District we are obligated to do. We have a different set of rules we must play by. Are we going to say we will discriminate to those with impairments, handicaps or disabilities to fish our now public/private waters? Course NOT – the time, energy and monies required to get us to these standards are out of sight!
3. The Devaluation of Property: I gained interest and bought my property for exclusive fishing access. Anyone else here the same? Raise your hands. I have spoken to an owner wants to sell but will not do so until this is resolved. I have the contact information of a buyer that withdrew an offer to purchase in this neighborhood after hearing about this. Make no mistake... THIS. NEGATIVELY. IMPACTS. THE. MARKET. VALUE. OF. ALL. OUR. HOMES! I don't need to tell this Board that the entire purpose of its existence is to provide services to its constituents that help maintain/enhance our property values. THIS does exactly the opposite."

Buck stated that the other option would be to turn the property into an HOA and this is a common choice with properties with similar structure but is done during the initial structuring of the District. The HOA would require a 100% vote in favor. It would be funded and managed completely separately. Jay and the board are in agreement this is not a realistic option.

The board and Jay discussed in detail the discussion items above. Mark stated that the board makes decisions based on the District's legal counsel's advice. Mark stated that as a board they stand with the District's attorneys until a better solution is presented. Tim stated he would be open to reading a legal opinion from other legal counsel if someone presents the board with one. Mark stated he agrees as there is no benefit to a single member of the board in moving forward with this but as board members they must act in a manner that reflects the best interest of the District.

Jay motioned that a second legal opinion be sought. Buck stated that he spoke with a renowned HOA attorney, and they stated the district's legal counsel is spot on. Jeff stated he has spoken with two special district attorneys he uses on a regular basis and they both agree with the district's legal counsel.

All agree that the goal is to come together and Jay suggested a concession would be an assurance that the number of passes is limited to 5 and is not advertised.

Another resident stated they do not agree and they have gone to multiple attorneys who all believe something is wrong about this and what advise the board is being given.

Buck stated he has been looking for a smoking gun in regard to this. Buck stated he has looked for the answer in writing and it does not exist. Title 32 does make clear that the district is public property. The courts will use case law to determine a case like this and will look at Title 32 to determine it is public property. Buck believes it is too much of a risk for the district to move forward behaving as if the district is a private area. Buck stated he doesn't want to deal with this issue either but it is now on the table for the board to deal with. Buck told Jay the board would welcome him to present a smoking gun stating something different but at this point, the board can't go against the legal advice they have received from the District's legal counsel.

Jay asked what part of Title 32 states special district associations are public property. Brenda read from the Statute. Jay expressed his gratitude for the information and to the board for their time and consideration.

#### **Items presented at meeting by Ben McCormick**

**Access and Security** - Our River Committee requests permission and funding to purchase a new lockbox and issue individual codes for each fishing pass holder. The River Committee would also like to offer our services to manage lockbox code issuance. We would like to implement the new lockbox and codes by January 2024 at the latest.

In addition to a new lockbox, we would like to install two cameras. One camera to be placed at the top parking lot and a second camera placed at the gate.

We believe our signage is confusing and too wordy. We would like to replace the current signs with “Private Property” and “No Trespassing” signage that is more concise and recognizable.

The River Committee would like to redesign the fishing and parking passes to include owner names and contact information on each parking pass. New passes to be implemented by January 2024.

Lastly, we would like to request the authority to revoke lockbox codes should owners break the fishing access rules.

Overall, we feel the River Committee requires a more direct line of communication with owners. This will result in improved education, adherence to river access rules, and holding owners accountable when rules are broken.

### **Responses to items presented:**

- Buck stated he believes Ben has the full support of the board as no one else in the District is going to volunteer their time to do such. Buck stated the river committee was created for that very purpose and having a committee with people with invested interest like Ben will be a great solution for the District.
- Tim stated that when passes are accepted, the owner accepts responsibility for anyone in their presence.
- They agree that a camera and access entry system will resolve many of the problems right away.
- Tim suggested an electronic name tag with photo identification.
- Andrea will send an updated list of current pass holders to Ben McCormick.
- Brenda and Buck addressed getting the existing code changed promptly and Buck offered to go with Ben tomorrow to change the gate code.
- Brenda asked if everyone needs gate access or if that really is only relevant for people wanting to use a boat. Everyone discussed that is a valid point and the rules are very clear regarding that. This issue was discussed further.
- Jeff stated it has been previously discussed that we need a charter for the River Committee to determine the parameters of what the committee can and can't do. Jeff stated he is happy to help them determine that.
- Mark stated it is important to everyone and that it is fantastic to have this group of people to serve on the committee. In 2009 his company did work on the gallery and worked really hard with the board and the community to look at how they could best complete the project. This has not been something the board has ever really been able to afford to do and there really has not been enough community interest. While the fishing access is really not the responsibility of the board, they are working hard to protect that access.
- Buck reiterated that they have the full support of the board and are greatly appreciated. It is a very important issue to the board and he has spent a lot of time trying to be as clear and transparent as possible. The board is working hard to make the best decision with the information they have. He has ran an HOA for a long time. When he joined the board, he realized it had been ran for a long time without much structure or a long-term plan. The board recently hired engineers to provide a 25-year plan to accomplish their goal to eventually be able to turn the management of this board over to a management company that is educated and licensed to guide the board's decisions rather than the potential of uneducated volunteers making uneducated decisions. The people currently in the room will not always be involved with the District so long-term planning is important. The last few years have been very difficult and as a reminder, it is ran by volunteers. The goal is to set up the District up for success to protect the drinking water for the entire community as water is the most valuable thing in this community.

### **Public Address –**

- Kathy Walton – She has witnessed groups of people staying at vacation rentals in the District accessing and utilizing the fishing access in violation of the rules and regulations. Kathy stated she has lived her 27 years and it is very frustrating.
  - Buck stated he understands it is frustrating and believes the actions the board is taking will help and hopes she can get some relief knowing an action plan is in process to take the burden off the community. Buck stated they appreciate her eyes and ears.

- Mike Roal – asked if vacation rentals are allowed. Buck stated they are and that Grand County actively regulates it. Tim stated if they are selling the fishing rights as part of their rental, that might be a violation. Tim would like to challenge the river committee to come up with some language to address this. Jeff stated there are a number of penalties that can be utilized once the policies stating such are in place.
- Ken Novak - steel building went up in the neighborhood on CR 1015. Bob stated a steel building with wood siding is allowed but not all steel. Tim stated it is a pole barn with steel siding. Bob will look into this.
- Bob Heid – believes the board should shut down all access for a year based on Jay’s points he brought up to give the board time to research and make a good decision. He stated he knows a federal judge he is going to reach out to for her professional opinions. Buck stated that if Bob can provide a different solution, the board will review it, but as of now the board is operating based on the advice of the District’s legal counsel.
- Flip Brumm – asked about posting location. Buck stated the meetings are posted on the website as required and any other notifications are a courtesy. Meeting notices are on each invoice and a mass email was sent out prior to this meeting.
- Dennis Cunningham – asked how much the mill levy is. Andrea informed of 2023 and 2024 amount.

**Public Access to BVMD** – Addressed during prior agenda items.

**Secretary’s Report** – (All visitors left meeting prior to beginning of Secretary’s Report)

**July 10,2023 - Unfinished Secretary’s Report due to Meeting Emergency Dismissal**

- Current Balance(s) as of 6/30/23 – Stand for Audit
  - UBB Checking = \$ 138,667.21
  - UBB Savings = \$ 88,395.15
  - COLO Trust = \$ 187,374.43
- Paid Bills to Approve = \$ 68,507.09 – Jeff moved to approve paid bills as presented. Brenda seconded. All in favor. Motion carried.
- Need digital signatures from Board members and approval to use this year
- ARC Funds
  - Nonrefundable Funds to be used by ARC = \$ 8,029.46
  - Deposits held (could be refunded) = \$ 19,306.50
- Consumer Confidence Report (haven’t received from Matt yet – will post on website when received)
- Accounts to Certify with County (letters sent by 7/31 if any)
- Snow Plowing RFP (to be published in Sept for Oct meeting)

**Secretary’s Report – Current Meeting**

- Current Balance(s) as of 9/30/23 – Stand for Audit
  - UBB Checking = \$126,359.30
  - UBB Savings = \$ 88,450.86
  - COLO Trust = \$189,948.10
- Paid Bills 7/11/23 - 10/5/23 to Approve = \$25,382.35 – Buck moved to approve. Mark seconded. All in favor. Motion carried.
- ARC Funds
  - Nonrefundable Funds to be used by ARC = \$
  - Allocation to cover annual costs to be presented at December meeting
  - Deposits held (could be refunded) = \$
- Draft Budget 2024 – Board discussed in detail. Jeff moved to approve draft budget with \$62,372.90 budgeted shortfall. Brenda seconded. All in favor. Motion carried.
  - Grand County draft Assessed Valuation = \$7,089,040
  - Estimated property tax change = \$2,624,250 increase
- 2023 Budget Amendment – do not expect to need to amend
- Certify Delinquent Accounts – None necessary
- SIPA Updated EGE Agreement – Jeff moved to approve. Brenda seconded. All in favor. Motion carried. Buck will sign.
- River Access Gate Lock – addressed in prior meeting agenda.
- Meeting minutes not to be posted until approved per legal counsel recommendation – While not required or recommended, the board would like to continue attempting to post unapproved minutes

for transparency and prompt dissemination to the residents if possible. Andrea will continue to do such as circumstances allow.

Buck moved to adjourn the meeting at 10:07 pm. Brenda seconded. All in favor. Motion carried. The next regular meeting is scheduled for December 11, 2023 which will also be a Public Hearing for the budget.

BLUE VALLEY METROPOLITAN DISTRICT

*Andrea Buller*

\_\_\_\_\_, Secretary

*[Signature]*

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Buck McNichols, Chairman

*[Signature]*

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Mark Nelson, Vice Chairman

*Brenda Kellen*

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Brenda Kellen, Treasurer

*[Signature]*

\_\_\_\_\_  
Jeffrey Powles

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Tim Vermeer