

MINUTES OF THE SPECIAL MEETING OF THE BOARD OF DIRECTORS OF

HAWTHORN METROPOLITAN DISTRICT NO. 2

Held: Monday, May 11, 2020, at 1:00 p.m. via Teleconference

Due to the Executive Order issued by Governor Polis on March 25, 2020, requiring all residents of the State of Colorado to stay-at-home to minimize the spread and impact of COVID-19, and the Updated Public Health Order 20-24 implementing the Executive Order, issued by the Colorado Department of Health and Environment (CDPHE) on March 26, 2020, the meeting was held via teleconference.

**Attendance**

The special meeting of the Board of Directors of the Hawthorn Metropolitan District No. 2, was called and held as shown above and in accordance with the applicable statutes of the State of Colorado. The following Directors, having confirmed their qualification to serve on the Board, were in attendance:

Krystal Bigley  
Carly Fenton  
Matthew Cavanaugh  
Andrea Stewart  
Brittany Lutz

Also present was Megan J. Murphy, Esq., White Bear Ankele Tanaka & Waldron, Attorneys at Law, District General Counsel; Alex Fink, CliftonLarsonAllen LLP, District Accountant; and Peggy Ripko, Special District Management Services, Inc., District Manager.

**Call to Order**

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

**Conflict of Interest Disclosures**

Ms. Murphy advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Ms. Murphy reported that disclosures for those directors that provided White Bear Ankele Tanaka & Waldron with notice of potential or existing conflicts of interest were filed with the Secretary of State's Office and the Board at least 72 hours prior to the meeting, in accordance with Colorado law, and those disclosures were acknowledged by the Board. Ms. Murphy inquired into whether members of the Board had any additional

disclosures of potential or existing conflicts of interest with regard to any matters scheduled for discussion at the meeting. No additional disclosures were noted. The participation of the members present was necessary to obtain a quorum or to otherwise enable the Board to act.

**Approval of Agenda**

Ms. Murphy presented the agenda to the Board for consideration. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the agenda as amended.

**Appointment of Officers**

The Board discussed the appointment of officers. Following discussion, upon a motion duly made and seconded, the Board unanimously appointed the following officers:

Krystal Bigley as President;  
Carly Fenton as Secretary;  
Matthew Cavanaugh as Assistant Secretary;  
Andrea Stewart as Assistant Secretary; and  
Brittany Lutz as Treasurer.

**Public Comment**

None.

**Consent Agenda**

The following items on the consent agenda were considered routine or administrative. Following a summary by Ms. Murphy, the items on the consent agenda were approved by one motion duly made and seconded, and unanimously carried.

1. Minutes from March 2, 2020 Regular Meeting
2. Environmental Landworks Work Order No. 1 – Irrigation Repairs

**Facilities Management**

**District Manager Update**

Ms. Ripko stated that Special District Management Services, Inc. (“SDMS”) is providing a weekly email update, the website has been completely updated with existing contracts and Environmental Landworks is providing weekly updates to her regarding Environmental Landworks landscaping work.

The Board engaged in general discussion regarding email addresses for the weekly email update. Ms. Ripko stated that she would request a list of email addresses from CliftonLarsonAllen LLP (“CLA”).

**Covenant Enforcement Update**

Ms. Ripko stated that SDMS had temporarily suspended covenant enforcement inspections during COVID-19 but will resumed in

May 2020. Covenant enforcement letters in May will provide courtesy warnings and will acknowledge resident who may have COVID-19 concerns. A covenant enforcement report will be provided to the Board at the end of the month.

Discussion of Architectural Review Submissions

Ms. Ripko stated that SDMS has been up to date on reviewing and responding to all architectural review submissions.

Consider Approval of Proposal for Work on Tract A from Environmental Landworks

Ms. Murphy explained to the Board that Mr. and Mrs. Truby submitted a proposal to install additional trees on Tract A. The Trubys are willing to pay for the cost of the trees but not irrigation. Environmental Landworks is recommending the trees be irrigated by modifying the District's existing irrigation system on Tract A.

After the agenda and meeting packet were distributed the Trubys withdrew their offer to provide the trees.

Director Bigley added that the Trubys were unwilling to take on liability for the trees. Director Cavanaugh added that the current irrigation pressure at the Trubys was not sufficient to water these additional trees. If the District plans to add additional trees on the north end of the community, it would be a significant cost to add an additional water tap (a flat fee of \$20k-\$30k) in addition to other costs. No action was taken.

Discussion Regarding Environmental Landworks Work Order No. 2 – Tree Stakes

Ms. Ripko stated that a homeowner reached out to her and requested tree stakes in the community be removed. Director Bigley noted that the Davey Tree stakes are the metal stakes and cannot be removed until the tree warranty issue is resolved. Director Fenton commented that most of the trees along Highway 93 have stakes that need to be removed. No action taken.

## **Legal Matters**

Consider Approval of License and Maintenance Agreement for Tract A between the District and the Trubys

Ms. Murphy noted that the Trubys have withdrawn their proposal to install additional trees on Tract A. No action was taken.

## **Financial Matters**

Financials/Claims Payable

Mr. Fink presented the Board with the March 31, 2020 unaudited financials for consideration. Following discussion, upon a motion duly made and seconded, the Board unanimously accepted the unaudited financials.

Mr. Fink presented the Board with interim claims through May 8, 2020. Following discussion, upon a motion duly made and seconded, the Board unanimously ratified the interim claims.

Executive session regarding receiving legal advice pursuant to § 24-6-402(4)(b), C.R.S. as it relates to the Independent Contractor Agreement with The Davey Tree Company and determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, instructing negotiators pursuant to § 24-6-402(4)(e), C.R.S.

Upon a motion by Ms. Bigley, seconded by Ms. Fenton an upon an affirmative vote of at least two-thirds of the quorum present, the Board convened in executive session at 1:48 p.m. for the purpose of receiving legal advice pursuant to § 24-6-402(4)(b), C.R.S. as it relates to the Independent Contractor Agreement with The Davey Tree Company and Independent Contractor Agreement with CliftonLarsonAllen LLP and determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, instructing negotiators pursuant to § 24-6-402(4)(e), C.R.S.

Pursuant to § 24-6-402(2)(d.5)(II)(B), C.R.S., no record will be kept of the portion of this executive session that, in the opinion of the District's legal counsel, constitutes privileged attorney-client communication pursuant to § 24-6-402(4)(b), C.R.S.

Pursuant to § 24-6-402(4), C.R.S., the Board did not adopt any proposed policy, position, resolution, rule, regulation or take formal action during executive session.

The Board reconvened in regular session at 2:36 p.m.

Ms. Murphy noted that if the Board authorized planting new trees they would be waiving any claims against Davey Tree or CLA regarding dead trees due to statute of limitations and spoliation of evidence.

Following discussion, upon a motion duly made and seconded the Board determined to request \$4,125 from Davy Tree under the warranty, request Environmental Landworks to plant as many trees as can be purchased with \$4,125 with the cost of planting trees not to exceed \$1,500, and authorized Director Cavanaugh to oversee the project. Director Bigley abstained from the vote.

## **Other Business**

Consider Approval of Engagement Letter with Allen Vellone Wolf Helfrich & Factor P.C.

No action taken.

**Other Business**

The Board engaged in general discussion regarding covenant enforcement violations. Ms. Ripko commented that she will continue to follow the covenant enforcement policy and any files will be turned over to legal counsel for enforcement.

**Next Meeting**

The next meeting is scheduled for Monday, June 1, 2020 via teleconference.

**Adjournment**

There being no further business to come before the Board and following discussion and upon motion duly made, seconded and unanimously carried, the Board determined to adjourn the meeting.

The foregoing constitutes a true and correct copy of the minutes of the above-referenced meeting

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Secretary for the Meeting

The foregoing minutes were approved by the Board of Directors on the 1<sup>st</sup> day of June, 2020.