

**MINUTES OF A SPECIAL MEETING
OF THE BOARD OF DIRECTORS OF
FLYING HORSE METROPOLITAN DISTRICT NO. 2**

HELD: Wednesday, the 1st day of February 2023, at 8:30 a.m. at the offices of Classic Homes, 2138 Flying Horse Club Drive, Colorado Springs, CO 80921 and via WebEx video and teleconference.

ATTENDANCE:

A special meeting of the Board of Directors of the Flying Horse Metropolitan District No. 2, City of Colorado Springs, El Paso County, Colorado, was called and held as shown above and in accordance with the applicable statutes of the State of Colorado, with the following directors present and acting:

George Lenz, President
Jerald Richardson, Secretary/Treasurer
Douglas Stimple, Assistant Secretary
Joseph Loidolt, Assistant Secretary
Daniel Mulloy, Assistant Secretary

Also present were Sarah Steph, and Nate Lenz of Classic Homes, Seef Le Roux of CliftonLarsonAllen, Russell W. Dykstra of Spencer Fane LLP and members of the public.

CALL TO ORDER:

It was noted that a quorum was present for the purpose of conducting a special meeting of the Board of Directors of Flying Horse Metropolitan District No. 2. The meeting of the Board of Directors of the District was called to order at 8:30 a.m.

DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST:

Mr. Dykstra noted that general disclosure statements had been filed on behalf of the members of the Board of Directors with the office of the Colorado Secretary of State and with the Secretary of the District. Upon motion duly made, seconded and upon vote unanimously carried, the Board directed that said general disclosures be incorporated herein. It was noted that a disclosure had been filed for Director Mulloy.

APPROVAL OF AGENDA AND MEETING LOCATION:

Upon motion duly made, seconded and upon vote unanimously carried, the Board approved the Agenda as presented.

PUBLIC COMMENT:

The Board heard comments from the public regarding the 2021 audit and debt repayment.

APPROVAL OF MINUTES:

Following discussion and upon motion duly made, seconded, and upon vote unanimously carried, the Board approved the minutes from the special meeting held on November 18, 2022 as presented.

FINANCIAL MATTERS:

Review and Consider Approval of December 31, 2022 Draft Financial Statements. Mr. Le Roux presented the financial report to the Board. Discussion ensued regarding the bond payment and mill levy. Following discussion and upon motion duly made, seconded, and upon vote unanimously carried, the Board accepted and approved the report as presented.

Review Final 2023 Budget Which Includes the Final DLG-70. The Board reviewed and discussed the final budget and DLG-70. No action was taken.

ATTORNEY ITEMS:

Mr. Dykstra discussed the May 2023 election process with the Board.

DIRECTOR ITEMS:

Discuss Definitive Response Regarding the \$400,000 in Commercial Tax Revenue Forecasted in 2023. Discussion ensued. No action was taken.

Discuss the Projects, Plans, Specifications, Construction Contracts, Status, etc. for the Improvements Included in the \$11MM that MD No. 1 is Seeking Certification. Discussion ensued. No action was taken.

Discuss a Motion for MD No. 2 to Approve or Disapprove All or Part of the \$11MM in Projects as Valid Qualified Facilities and/or Improvements that Meet the Requirements for Reimbursement as Specified in the Service Plan and According to the IGA. Discussion ensued. No action was taken.

Discuss Feedback and Resolution Plans Going Forward to Address the Conflict Director Mulloy Addressed at the November 18, 2022 Meeting. Discussion ensued. It was noted that Director Mulloy must provide evidence of any alleged conflict. No action was taken.

Discuss Setting a Schedule for Board Meetings to be held Every Other Month for 2023. Discussion ensued. Following discussion it was noted that the Board will continue to call special meetings as needed.

Discuss the Recent Interquest Court Decision and Impact on District. Discussion ensued. No action was taken.

Discuss the Contractual Agreement Encompassing the Scope, Responsibilities, Statement of Work and Deliverables Covering the \$1,802,830 Claimed for the 5% Management Fee in the RE Tech+

Reports from 2005 to 2015 including Written or Implied Warranties. Discussion ensued. No action was taken.

Review the Compliance Section, Pages 13 and 14 of the Service Plan, Including Annual Reports from 2005 to 2018 and Sufficiency of Reporting. Discussion ensued. No action was taken.

Discuss Director Mulloy and Douglas Stimple's Email Communication. It was noted for the record that email communication from Mr. Stimple was in his capacity as Classic Homes CEO and not as a district director and does not directly involve the District's Board.

OTHER BUSINESS:

The Board discussed Director Mulloy's HOA map posting request.

ADJOURNMENT/CONTINUATION:

Following discussion, upon motion duly made, seconded and unanimously carried, the Board adjourned the meeting at 10:46 a.m.

The foregoing Minutes constitute a true and correct copy of the Minutes of the above-referenced special meeting and was approved by the Board of Directors of the Flying Horse Metropolitan District No. 2.

Gerald Richardson

Secretary of the District

Attach
to Mins for D2 11-18-22

PG 82-90

This is to further the Director's Daniel Mulloy's "Conflict of Interest" discussion initiated at the FH MD #2 Special Meeting November 18, 2022 during the Director's Agenda Items.

1. *I recommend that MD 2 expand and clarify the conflict-of-interest statement to enlighten the taxpayers and public. The specific conflict of interest is that the Classic Homes/Elite Properties employees and owners are also Directors on the FH MD #1, #2, & #3 boards. In itself, this does not constitute an issue and is allowed by the statutes. Actually, a developer MD board is necessary to initiate the project. I think that clarifying that not all Directors have a conflict of interest would be desirable. Daniel J. Mulloy is not affiliated in any way with Classic Homes/Elite Properties or their subsidiaries*

While not a "conflict-of-interest" there is a conflict between how the developer and the Flying Horse Metro Districts operate and the requirements specified in the Intergovernmental Agreement (IGA). This results in this Flying Horse Metro District 2 Director not able to carry out his duties in his position according to the IGA and the Service Plan.

IGA
#2
#3
#1
#4
#5
#6
#7
#8
#9
#10
#11
#12
#13
#14
#15
#16
#17
#18
#19
#20
#21
#22
#23
#24
#25
#26
#27
#28
#29
#30
#31
#32
#33
#34
#35
#36
#37
#38
#39
#40
#41
#42
#43
#44
#45
#46
#47
#48
#49
#50
#51
#52
#53
#54
#55
#56
#57
#58
#59
#60
#61
#62
#63
#64
#65
#66
#67
#68
#69
#70
#71
#72
#73
#74
#75
#76
#77
#78
#79
#80
#81
#82
#83
#84
#85
#86
#87
#88
#89
#90

The IGA specifies that the FH MD 1 'consult' with FH MD 2 prior to presenting the "Preliminary Budget Documents". Further, for reimbursable facilities and/or improvements, FH MD 1 is to submit plans, schedules for deposits, proposed construction schedule, construction contracts and related documents for FH MD 2 review and comment.

When these were requested, I was advised that the FH MDs do not adhere to the IGA requirements because it (the IGA) is not practical. Further, the FH MDs are investigating a 'work around' to continue operating in breach of the IGA.

While this does not seem to be significant by virtue that Metro District Directors are also executives and owners of the developer. Due to their positions outside of the MDs, they have intimate knowledge of the development's planning and construction. While participating in the developer's management they are also discussing issues and making decisions regarding the FH MD's.

In my opinion, the IGA provisions together with the Service Plan are practical and also essential to establish the MD's authority and responsibilities as a taxing district, issue/service bonds and reimburse the developer for qualified facilities and/or improvements.

The developer may find the IGA inconvenient, but not differentiating MDs' and Classic Homes' business, results in a lack of transparency and no official record regarding the MDs' proceedings or decisions. I'll leave it to someone else to investigate how this is consistent with the Colorado Open Records Act or the Open Meeting Requirements of the Colorado Sunshine Law.

As a FH MD #2 Director, but not a partner or employee of Classic Homes, I am not included in the developers' planning and operating meetings. Hence, I am not provided the essential information/documents, discussion and decisions that are required for me to carry out my duties as Director. ~~Unfortunately, I do not possess nor have access to the requisite information or documents that would allow me to develop an informed opinion regarding FH MD #2 matters. For this reason, I will oppose and vote no on any motion to adopt the proposed 2023 budgets.~~

Further, given that the FH MDs are in breach of the IGA and the district activities do not include my participation or advice, I question if I have the authority to act on behalf of Flying Horse Metro Dist. #2.

This includes approving the ongoing bond servicing, reimbursing past or future facilities and/or improvements, other financial and operational matters.

I understand that withholding my approval for the proposed FH MD Budget does not interrupt servicing the FH MD #2 bonds.

Reference the follow documents:

1. CONSOLIDATED SERVICE PLAN AS APPROVED AND ADOPTED BY THE CITY COUNCIL, CITY OF COLORADO SPRINGS, EL PASO COUNTY AUGUST 24,2004. (Service Plan) This document is unsigned. I determined that the first 16 pages are relevant.
2. INTERGOVERNMENTAL AGREEMENT (IGA) between FH MD #1, #2 & #3 dated December 2, 2004.

Excerpted from the Intergovernmental Agreement condensed and paraphrased for this purpose:

See below – starting from page 13 IGA, Article V paragraph 5.1.

Step	Date	Item	Question
	Prior to Step 1	Dist. 1 consult with 2 & 3 re: Construction, Operations & Maintenance – Administration Services and Debt Service for upcoming Budget Year	When are we planning to 'consult'?
1	9/15	Dist. 1 produces and delivers Preliminary Budget docs to Dist. 2 & 3 that address: Facilities, Administration Services, Operation and Maintenance of Facilities, Debt service on revenue bonds and debt service Dist. 2 & 3 bonds. At a minimum these docs shall include: <ul style="list-style-type: none"> a. Schedule for deposits into Facilities Funding Account and Operations and Maintenance Account by Dist. 2 & 3 considering timing of receipts. b. Estimate of Operations and Maintenance Costs c. Proposed Construction Schedule for the Budget Year. d. Schedule of payments to be made on account. (In case of MD #2 this would likely be entries into the Developers Advances account) e. Schedule of bond issuances f. Schedule for limited tax general obligation bond issuances. g. Estimate of Actual Capital Costs for Budget Year 	When will we receive the specified & requested docs.?
2	11/1	MD 2 & 3 shall either approve or propose additions/deletions.	Mtg currently scheduled for 11/18
3		In the event that there is a failure to agree the Preliminary Budget Docs shall become final.	

On a related issue: Starting from page 15 IGA Article V paragraph 5.10.

5.10 Final Plans and Specifications

Prior to the construction/acquisition of any specific Facilities, Dist. 1 shall prepare and submit Plans for such Facilities to Dist. 2 & 3 for approval. 45 days to object given certain criteria for objections.

5.11 Construction Contracts.

Dist. 1 shall deliver to Dist. 2 & 3 copies of any and all construction contracts and related documents concerning Facilities. Dist. 2 & 3 must approve change orders in advance that will increase Actual Capital

Costs for the Budget Year. No change order or change orders shall increase the total Dist. 2 & 3 capital costs without an amendment to this Agreement and such voter approval may be required.

5.12 Completion of Construction

Prior to final acceptance of any Facilities by Dist. 1 and prior to issuing a final certificate of payment under any construction contract, Dist. 1 shall consider options expressed by Dist. 2 & 3 regarding subject Facilities, if any, Dist. 1 shall approve final payment and issue a final certificate of payment only when Dist. 1 believes in good faith, and pursuant to generally accepted standards of engineering and construction review, that construction has been accomplished in compliance with conditions and terms of the applicable construction contract.