

**MEETING
OLIVE/GRAESER TRANSPORTATION DEVELOPMENT DISTRICT
BOARD OF DIRECTORS**

**Creve Coeur Government Center
300 North New Ballas Road, Creve Coeur, Missouri 63141**

**Wednesday, December 16, 2009
Immediately following 10:00 a.m. property owners' meeting**

MINUTES OF MEETING

*The audio of this meeting will be posted on the website of the City of Creve Coeur:
www.creve-coeur.org.*

1. OPENING AND CALL TO ORDER.

Based upon a determination that seven out of nine voting directors were present, constituting a quorum, Natalie J. Nichols, legal counsel to the District, called to order a meeting of the board of directors of the Olive/Graeser Transportation Development District (the "District") at approximately 10:25 a.m.

2. ROLL CALL.

Directors present: Steve Heitz
Denise Chomicki
Rick Matejka
Carole Jamison
Joe Beaudean
David Hutkin
Rocky Adkins

Directors absent: Stacy Manolakas
Les Steinberg

Advisory directors present: Dan Smith
Mel Klearman
*Mark Perkins (*arrived for latter portion of meeting)

Advisory directors absent: None.

Others present: Natalie J. Nichols, Jenkins & Kling, P.C., District legal counsel
Paul Langdon, City Planner
David Caldwell, Creve Coeur resident

3. PUBLIC COMMENTS.

An opportunity was presented for anyone in the audience to make comments.

Mr. David Caldwell stated that he would be attending District meetings to keep residents informed. Advisory Director Smith stated that meeting audio will be posted on the City's website along with other District documents.

4. NEW BUSINESS.

- a. **RESOLUTION 09-001:** A resolution authorizing the first actions of the Board of Directors of the Olive/Graeser Transportation Development District

Ms. Nichols explained that this resolution involves a number of initial formation matters, some of which need to be discussed.

Mr. Matejka moved to approve Steve Heitz as Chair of the Board of Directors. Mr. Hutkin seconded the motion, which carried unanimously.

Mr. Heitz moved to approve the following slate of officers:

Secretary: Stephen L. Kling, Jr.
Treasurer: Denise Chomicki
Assistant Secretary: Natalie J. Nichols

Mr. Hutkin seconded the motion, which carried unanimously.

Mr. Matejka moved to approve Steve Heitz as Executive Director of the District. Mr. Hutkin seconded the motion, which carried unanimously.

Discussion ensued on Ms. Manolakas's question about whether the reimbursement for actual expenses provided for in the bylaws is a burdened or unburdened rate. Ms. Nichols clarified that this provision does not deal with compensation, but only reimbursement by the District of any actual expenses an individual director or officer may incur on behalf of the District.

Discussion ensued on whether \$3,000,000 is a proper limit on the policy of directors' and officers' liability insurance. Ms. Nichols stated that this policy amount is required by the District Development Agreement. Advisory Director Klearman asked whether he would be covered under the policy; Ms. Nichols stated that she would check and get back to him.

Mr. Heitz moved to approve Resolution No. 09-001 with the foregoing amendments and an amendment approving the District Treasurer and Chair of the Board of Directors as signatories on the District's bank accounts. Mr. Adkins seconded the motion, which carried 7-0.

- b. **RESOLUTION 09-002:** A resolution authorizing the Olive/Graeser Transportation Development District to execute a District Development Agreement and First Amendment thereto, both dated August 31, 2009

Ms. Jamison moved to approve Resolution No. 09-002 as presented. Mr. Heitz seconded the motion, which carried 7-0.

- c. **RESOLUTION 09-003:** A resolution appointing a custodian of records of the Olive/Graeser Transportation Development District and stating the District's intent of compliance with Chapter 610 of the Revised Statutes of Missouri

Discussion ensued on Ms. Manolakas's comment that \$100 an hour for research time involved in filling a records request seems high. Ms. Nichols stated that the Sunshine Law authorizes a governmental body to charge for the actual cost of research time, and the \$100 an hour figure was selected in the event the District's attorneys are required to spend time fulfilling the request (e.g., in the event closed records must be excised from the records produced). Ms. Nichols stated that her hourly rate is \$155 an hour. Ms. Nichols also stated that most requests will likely involve photocopying documents and that many people can be directed to the City's website for the District's documents.

Discussion ensued on Ms. Manolakas's question about who decides when the fees for a Sunshine Law records request will be waived. Ms. Nichols stated that the Sunshine Law allows the fees to be waived when a public governmental body determines that the waiver is in the public interest, and that this decision would likely be made by the District's legal counsel in conjunction with the Executive Director, but that the board could designate one or more persons to make this decision.

Ms. Chomicki moved to approve Resolution No. 09-003 with an amendment to designate the District Secretary, Stephen L. Kling, Jr., as the custodian of records. Mr. Heitz seconded the motion, which carried 7-0.

- d. **RESOLUTION 09-004:** A resolution authorizing the Olive/Graeser Transportation Development District to impose a transportation development district sales tax at the rate of one percent (1%) on taxable sales within the District

Mr. Heitz moved to approve Resolution No. 09-004 as presented. Mr. Hutkin seconded the motion, which carried 7-0.

- e. **RESOLUTION 09-005:** A resolution designating Pace-Creve Coeur Associates, L.L.C. as the agent of the Olive/Graeser Transportation Development District for the purpose of completing the Infrastructure Improvements

Ms. Nichols stated that this approval is required by the District Development Agreement. Mr. Hutkin moved to approve Resolution No. 09-005 as presented. Mr. Adkins seconded the motion. All Pace Directors (Mr. Heitz, Ms. Chomicki, Ms. Jamison, Mr. Beaudean, and Mr. Matejka) abstained from the vote. The motion carried 2-0.

- f. **RESOLUTION 09-006:** A resolution of the Olive/Graeser Transportation Development District selecting Pace-Creve Coeur Associates, L.L.C. to perform certain accounting functions for the District

Advisory Director Smith stated that although he has confidence in Pace, he believes the District should have an independent accountant. He stated the Olive Boulevard Transportation Development District, also located in Creve Coeur, engages an independent accountant for approximately \$600 a month. Discussion ensued on the advantages and disadvantages of having the project's developer serve as the District's accountant and bookkeeper.

Mr. Heitz moved to amend Resolution No. 09-006 as follows:

1. Delete paragraph (c) of Section 1.
2. In paragraph (d) of Section 1, delete the second sentence.
3. In the final paragraph of Section 1, revise the first sentence to read: "The District's funds and all interest earned thereon shall be the property of the District and shall be held by the trustee and shall not be held by the Developer."
4. In the final paragraph of Section 1, delete the second sentence.
5. Add a new Section 2 to read as follows: "The District shall be audited annually by an independent accounting firm. Developer shall forward monthly balance sheets and income statements relating to the administration of the District to all members of the Board of Directors. In the event any Director identifies an irregularity, the District shall cause an independent accountant to investigate the irregularity."

Mr. Hutkin seconded the motion, which carried 7-0.

Mr. Hutkin moved to approve Resolution No. 09-006 as amended. Mr. Adkins seconded the motion. All Pace Directors (Mr. Heitz, Ms. Chomicki, Ms. Jamison, Mr. Beaudean, and Mr. Matejka) abstained from the vote. The motion carried 2-0.

- g. **RESOLUTION 09-007:** A resolution approving a compliance reporting policy for the Olive/Graeser Transportation Development District

Mr. Matejka moved to approve Resolution No. 09-007 as presented. Mr. Heitz seconded the motion, which carried 7-0.

- h. **Review and approval of application for Missouri sales tax exemption certificate**

Ms. Chomicki moved to approve the application for Missouri sales tax exemption certificate. Mr. Hutkin seconded the motion, which carried 7-0.

- i. Discussion items: The following were mentioned as upcoming steps for the District, with discussion on some of the items as indicated:
 - (i) Infrastructure improvements. Mr. Heitz stated that Pace hopes to get MoDOT approval by the end of January 2010. Construction of the Walgreens will begin first, followed by construction of the Olive Boulevard improvements. Mr. Heitz stated he expects the

Olive Boulevard improvements to be completed in early to mid summer.

- (ii) Adopt budget for FY2010
- (iii) Engage engineers. The District will likely not engage engineers, as Pace's engineers have done or are doing the work for the project. The District may reimburse Pace for its engineering fees subject to the TDD Act and the District Development Agreement.
- (iv) Engage bond counsel
- (v) Bond financing. Ms. Nichols stated the District must use its best efforts to cause bonds to be issued within 90 days after activation of the stoplight per the District Development Agreement.
- (vi) Issue notes to Pace
- (vii) Bidding and contracting guidelines. Ms. Nichols informed the board that state law, including the TDD Act, contains bidding and contracting requirements, and the District may, but is not required to, adopt its own set of bidding and contracting guidelines.
- (viii) Construction management agreement with Pace. Pace stated it will likely not seek this, as it will be hiring a general contractor to perform the work.
- (ix) Intergovernmental cooperation agreement with the Missouri Highways and Transportation Commission; potential intergovernmental cooperation agreements with City of Creve Coeur and St. Louis County
- (x) Approve TDD Consent and Agreement required by Pace lenders re: TDD Notes
- (xi) MHTC will appoint an advisory director after it approves the project
- (xii) Opt in/opt out of sales tax holidays
 1. Back to School—1st weekend in August—clothes >\$100, school supplies, computers. § 144.049. Have to opt OUT if do not want to participate.
 2. Show Me Green—April 19-25—energy star certified new appliances. § 144.526.1. Have to opt IN if want to participate.
- (xiii) Scheduling future board meetings. Mr. Heitz stated another board meeting will need to be held in January to approve the intergovernmental cooperation agreement with the Missouri Highways and Transportation Commission.

5. ACCEPTANCE OF DOCUMENTS AS PART OF THE RECORD.

The following documents were accepted as part of the record of this meeting:

- (a) Judgment and Order forming the District
- (b) Notice of meeting posted at the City of Creve Coeur
- (c) Resolutions

- (d) Engagement letter with Jenkins & Kling, P.C.
- (e) District Development Agreement and First Amendment
- (f) Memorandum of District Development Agreement
- (g) Bylaws
- (h) Letter to Missouri Ethics Commission giving notice of newly created political subdivision
- (i) Completed application for Missouri sales tax exemption

6. ADJOURNMENT.

There being no further business, Mr. Heitz moved to adjourn the meeting. Mr. Adkins seconded the motion, which carried unanimously.

The meeting was adjourned at approximately 11:40 a.m.

Natalie J. Minors
~~Secretary~~/Assistant Secretary of the Olive/Graeser
Transportation Development District

Date approved: January 4, 2010