

MINUTES OF THE MEETING OF
THE BOARD OF DIRECTORS
TELLURIDE MOUNTAIN VILLAGE OWNERS ASSOCIATION
MAY 4, 2009

BOARD MEMBERS PRESENT: Nelson Sharp, Jonathan Greenspan, Daniel Zemke, Dave Riley, Jeff Proteau, John Volponi, and Jonathan Sweet (via telephone)

STAFF PRESENT: Erin Neer, Stephanie Fanos, and Brianne Hovey

STAFF EXCUSED: Jim Riley and Leanne Hart

OTHERS PRESENT: Coelene O’Kane and Sidney Zink (Fredrick Zink & Associates), Ron Brumley (Telluride Web TV), Karen James (The Watch), and Mayor Bob Delves, Linda Cook, and Carly Shaw (SMVC)

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- 1) **Call to Order** – President Sharp called the meeting to order at 12:36 pm.
 - 2) **Consideration and Acceptance of Audited Financial Statements through December 31, 2008** – Sidney Zink said that the audit is complete at this time, however if the board has any concerns, they are open to making certain changes. They do not expect to make any changes in terms of numbers. One change since the draft is a \$30,000 reduction in liabilities due to a misunderstanding of a bill. Erin Neer explained that it was an over-accrual of the ice skating rink. Ms. Zink continued, saying the auditors’ unqualified audit opinion is that the financial statements are fairly represented for the last year. She added that it is the company’s second year as the auditor, so they were able to do a year-to-year comparison this year. The auditors used the audit and accounting guide issued by The American Institute for CPAs for Common Interest Realty Associations. Ms. Zink said TMVOA is an unusual organization as it is a 501C4 (tax exempt), nonprofit corporation and a Common Interest Realty Association. She said having two years of financial statements is always better because there is a comparison of where the organization has been. Ms. Zink went on to explain the pieces of the report. The first statement is the Balance Sheet; dated December 31, 2008, which shows total assets are down by \$4 million, while liabilities up \$1 million. She said this is a bit concerning. She explained that the Balance Sheet is a statement of the financial condition in terms of assets, liability, and, most importantly, equity. She said the members’ equity is solid at about \$20 million. She added that it is important to look at the asset composition. TMVOA’s asset composition is fairly liquid and the organization is positioned as well as it can be.

Ms. Zink then spoke about the Income Statement; she said that TMVOA’s Income Statement is unique because it is broken up into three categories, including Non Recurring Costs. Ms. Zink said there is not a lot of unilateral control over the expenses in the Non-Recurring Costs category. She added that for 2008 there are significant numbers in this section. Ms. Zink said there was a significant decrease in RETA, accounting for virtually all of the decrease in revenue. Interest and Investment Income of \$583,000 was cut almost in half from 2007, but better than most organizations. Because of the nature of investments, TMVOA continued to earn interest and dividends. She added that the reference provides further

breakdown. Ms. Zink said the recurring revenues and expenses (pre-non-recurring) are a positive number by a little bit. The Accrual Statement shows costs whether or not they have been paid.

The Statement of Cash Flows is broken down into three parts – operating activity, investing activity, and financing activity. She explained that the operating activity is the day-to-day activity plus investment earnings. The Statement of Cash Flows shows the cash in from owner assessments and RETA accounts. All expenditures, including operating and non-recurring, are also part of the operating activity. In operating activity, TMVOA spent \$4 million more than it took in. President Sharp asked about the difference in assessments collected between the Income Statement and the Statement of Cash and asked if the difference indicated an amount owed. Ms. Zink said yes. Director Riley asked about the difference in Cash received from rents and other income, noting the drop of \$1.7 million. Ms. Zink said the Town owed TMVOA \$1 million in 2007 and the Metro District owed TMVOA about \$600,000 in 2006, which was collected in 2007. She said they were both non-recurring items. Ms. Zink continued discussing investments. President Sharp asked how the auditors assessed the cash value of TMVOA's assets. She said they used the broker's statements. Ms. Zink said that for the year, cash was depleted by \$4.75 million. The bottom portion reconciles the cash decrease.

Stephanie Fanos explained the process of collecting assessments from owners who have been forced into foreclosure or who have suffered bankruptcy. Director Riley asked about the decision made to create a reserve and whether or not it began in the end of 2008. Erin Neer explained that this reserve is set up to begin in 2009. Ms. Zink said there would be one exception noted in their opinion letter regarding the capital reserve projection. She said the capital projection is not required, but it is recommended supplemental information. Ms. Zink went on to discuss the principals of consolidation. She said for many years, there has been a subsidiary that technically is consolidated into TMVOA's statements. This is the last year for consolidated statements.

Ms. Zink said no basic accounting policies have changed in the last year. She went on to discuss items on page 7, the composition of the investment portfolio. Information on the composition of the investment portfolio is required disclosure. Ms. Neer added that she updates the calculations each month. Ms. Zink went on to page 8, accounts receivable and doubtful accounts. Director Sweet asked about capital assets and whether or not the numbers for Blue Mesa and the reception center includes depreciation. Ms. Neer confirmed that the numbers do include this depreciation. Director Sweet asked if other assets were being depreciated as well. Ms. Neer said the only asset that is not depreciated is land and that everything else is depreciated per GAAP regulations. Ms. Zink said note 5 talks about the investment in land and that TMVOA does not intend to be the developer for the affordable housing purpose. Director Riley asked about the land. Stephanie Fanos explained the land is under an acre and right now it is zoned as mixed use. The land is currently zoned to be used as live-work, and that the previous owner has been going through the process to rezone the land as affordable housing. There is potential for 16 units of affordable housing.

Ms. Zink discussed the disclosure about obligations and related parties. Director Volponi asked about the report from VCA on ability to pay debt. Ms. Neer said there is not a report at this time since it is not a requirement. Director Greenspan, from his Council perspective, explained briefly the current state of VCA's finances and improvements being undertaken. Ms. Neer stated that she would work with the Town to obtain a quarterly financial update on VCA. Ms. Zink talked about the last page and the changes. She discussed the seven discrepancies. Erin Neer explained process for receivables and cash flow.

Ms. Zink discussed the Consolidating Balance Sheet. She said it looks a little silly because the subsidiary has been dissolved. Director Zemke asked about page 3 regarding income and expenses, specifically, the

bad debt expense of \$162,000. He asked if that was due to foreclosures. Erin Neer confirmed. Mr. Zemke then asked about legal expenses other \$103,980 in 2008 and nothing in 2007. Ms. Neer and Stephanie Fanos explained the expense was related to litigation, specialized legal counsel services related to CCIOA and governing document compliance, legal opinions, and tax exempt status compliance and it was non-recurring. They said \$30,000 was linked to the lawsuit.

Sidney Zink said that along with every audit opinion, auditors are required to issue statements. The letter is directed to the board of directors. This letter is a result of a lot of boards being out of touch with the auditors and the staff. The auditors work together with management, but work for the board. She said most of the letter is boilerplate because there were no issues or disagreements. The letter also states the responsibilities of the auditors under auditing standards. Ms. Zink said the auditors have to make a judgment call over what is significant and what is not. Ms. Zink discussed the audit entries made for depreciation and other similar entries and Ms. Neer discussed the contra accounts utilized for such entries in the budgetary statements that are used for internal purposes. Ms. Zink concurred that the issue was primarily a presentation issue between the audit requirements and internal budgeting policy.

Ms. Zink moved on to the second letter, which discusses control deficiencies standards. She explained the different kinds of deficiencies. She said the auditors did find a few minor deficiencies, however only major deficiencies are required to be mentioned on paper. The minor deficiencies were discussed during the audit.

Coelene O’Kane said that with internal controls on top of the list, it was a pleasure to work with staff. President Sharp asked how TMVOA stacked up against other non-profits. Sidney Zink said it is common for non-profits to not recognize the importance of accountability. She said that this staff does recognize the importance of accountability. Ms. Zink said it can be challenging to find qualified personnel in small communities. She said that they are glad that TMVOA recognizes this need and has made such a strong commitment to qualified staff, which in turn is providing a good return to the organization. President Sharp made a **MOTION** to accept the audited financial statements subject to the \$30k adjustment and related footnotes. Director Greenspan seconded the motion and the motion passed unanimously.

- 3) **Consideration and Acceptance of 2008 Tax Return (Form 990) and Update on Related Disclosures and Required Policy Updates** – Ms. Zink explained that the IRS changed the tax return procedure. She showed the board the book “The New Form 990”, which explains why the IRS needs to know certain information. She said that both Erin Neer and Stephanie Fanos have studied the form. Once the form is submitted, the information is public. She explained that this is another reason to be very careful and specific when filling out the information. The first page wants to know who you are, what are you doing, and why should you be tax exempt.

There are now more questions on Form 990 about what you do, how you make decisions, and how you are controlled. Ms. Zink explained that any “no” answers in the policies section, should be looked at and resolved. Ms. Fanos said that the board previously authorized staff to work on these policies. Ms. Zink explained again that this form is public and that if someone asks for a copy of it, TMVOA will provide a copy of it. Ms. Neer clarified also that one such item is the recommendation of utilizing an audit committee and said that an audit committee will be established next year.

Director Sweet asked about a cash transaction in expense of \$10k and disclosure. He asked if he needed to disclose every entity that he is involved with. Ms. Fanos confirmed that he does. Director Greenspan asked about a deadline. Ms. Neer responded that the form needs to be submitted as soon as possible.

Director Greenspan asked if the tax return is due on May 15th. Coelene said there is a possible extension. Ms. Neer discussed expenses on rental, primary cost is utilities. Triple net costs paid out of pocket, but then charged triple net cost to tenants. Rental revenues are about \$412,000 compared to rental costs of \$35,000.

Ms. Zink advised to write as few words as possible on schedule L. She said in general, non-profits should not loan money out to anybody. Ms. Zink said on schedule O there is reasonable space to provide reasonable detail. She said schedule O addressed classes of membership and classes of board members. She then discussed grants and what information must be provided for every entity. EIN must be provided for grantees.

President Sharp asked if there were any further questions or comments on the tax return. Ms. Fanos said the board approved funds in 2007 for an independent specialized council to be sure that TMVOA is in compliance. Ms. Zink explained that TMVOA could lose tax-exempt status if not in compliance. Ms. Fanos said tax compliance used to be enforced by revoking tax-exempt status, however, now, the IRS has an option not to punish the tax-exempt organization, but the other organizations that benefit from the transactions in question. President Sharp asked for a quick indication of whom is comfortable accepting this without having a lot of time to review. Director Riley said he read the tax report while presenting and felt very comfortable with the presentation. President Sharp said he would read it over thoroughly prior to signing. President Sharp made a **MOTION** to accept the tax return. Director Riley seconded the motion and the motion passed unanimously. President Sharp added that the motion was subject to any amendments and major revisions. President Sharp thanked the auditors for a clear and thorough presentation. Ms. Zink said that if TMVOA decides to go with an audit committee in the future, the auditors would present this level of detail to the audit committee. Then, the audit committee could make a recommendation to the rest of the board.

- 4) **Update on RETA Revenue** – Ms. Neer summarized what had come in and what she is expecting in terms of RETA. She reviews RETA numbers with President Sharp each week. Director Zemke commented that March was a good month for RETA. Ms. Neer said that RETA hit budget projections in March. She continued by stating that there is an absence of single-family homes closing. President Sharp said things are not getting much better.
- 5) **Consideration of Amending Budget for Increased Square Footage of Capella Amenity Purchases by the Town and Funded by TMVOA** – Ms. Fanos explained that this discussion is for one particular unit to be funded by TMVOA. TMVOA entered into an agreement with the District (now the Town) in which of the all amenities in the Capella project, other than the parking garage are funded by TMVOA. The Town of Mountain Village will own the facilities, but TMVOA will fund. One such unit is the Zamboni room. According to the original contracts, and based on original specifications the estimated square footage was 200 sq. ft. The approved plan was 506 sq. ft. Per agreement, TMVOA is obligated to pay the purchase price at the actual, increased square footage. She said that on top of the purchase price are the closing costs associated with two condos that TMVOA is purchasing in addition to the property that TMVOA is funding on behalf of the Town of Mountain Village, which had not been included in the budget. Ms. Neer said some blanks were left in the motion because the amount of closing costs and square footage was not known. Closing costs recently were estimated to be \$15,000. Ms. Fanos said that they wanted to be conservative with that number because she does not want to approach the board for another adjustment request. Ms. Fanos asked if there were any questions. Director Riley asked if this was necessary as a result of the agreement with the town. Ms. Fanos said originally there was a purchase agreement between TMVOA and RAL. In that agreement there were certain requirements to buy back certain spaces in the

RAL project. As the project moved along, the terms were memorialized in two additional documents. One from the Metro District and one from TMVOA. Originally TMVOA was going to buy back all of the improvement except for the underground parking. Previous boards agreed the Town would hold the title and TMVOA would provide funding. Town has since assumed the Metro District's role. Director Riley asked if TMVOA has a choice. Ms. Fanos said that TMVOA does not. Ms. Fanos asked the Town via Jim Mahoney if TMVOA could use some of this additional storage space for event equipment, etc., but that we have not received a final answer yet. Director Riley said that would be great. President Sharp asked Ms. Neer to fill in the blanks. Ms. Neer clarified that the first amount in the motion should be \$91,800, the second one is \$151,800, and the final one is \$15,000.

Director Riley made a **MOTION** as worded by Ms. Neer. Director Greenspan recused, Director Volponi recused. Director Proteau seconded the motion and the motion passed unanimously with Directors Greenspan and Volponi recused.

Ms. Fanos gave an update on the status of spaces. TMVOA is obligated to a direct purchase of two spaces, the TASP space and the post office space. Ms. Fanos has been working with RAL's counsel. TMVOA has retained an inspector who has identified a few punch list items for which we are expecting a notice of completion this week. The properties would then be inspected again, and upon successful inspection, would trigger a closing date. For the Town owned units that TMVOA is required to fund, TMVOA is working closely with the town on closings. She said TMVOA doesn't want to take money out of investments too early, but will want to be able to timely fund the units. Ms. Fanos believes that TMVOA units will close prior to the Town's units due to the current issues surrounding both closings. Director Volponi asked about the use of the post office space. Ms. Fanos said in the interim the space would be used for storage, as approved by Town Council. This would provide the board time to look at options. She added that the space is not finished and that funds would have to be allocated to finish. She said TMVOA would have to apply for a change in the usage of the space through Town Council.

Director Riley asked if TMVOA owned the two buildings at the entrance. He said they needed some maintenance, rooftops, and staining, etc. Ms. Neer said that major repairs are being reviewed through the facility reserve numbers currently being calculated, but that in the meantime, she would review the buildings to determine what might be needed in the short term. Director Greenspan said last TMVOA meeting, Mayor Delves brought up affordable housing. Ms. Fanos asked if his comment was related to the topic. Director Greenspan said it was new business. Ms. Fanos said it was a special meeting and therefore we needed to only discuss items on the agenda. Mr. Greenspan withdrew his comment. Director Sweet asked about bringing the Beach Boys for a concert again, but then withdrew this discussion as well as it was not on the agenda.

- 6) **Adjournment** – Director Riley made a **MOTION** to adjourn the meeting, Director Volponi seconded the motion. The meeting was adjourned at 2:31pm.