

MINUTES OF THE MEETING OF  
THE BOARD OF DIRECTORS  
TELLURIDE MOUNTAIN VILLAGE OWNERS ASSOCIATION  
DECEMBER 3, 2009

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

**STAFF PRESENT:** Erin Neer (via telephone), Jim Riley, Brianne Hovey, Leanne Hart, and Stephanie Fanos

**OTHERS PRESENT:** Elizabeth Howe (TSG), Robert Rogers, Ron Brumley (Telluride Web TV), Richard Child, Andy Krueger, and Bette Atkins

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- 1) **Call to Order** – President Sharp called the meeting to order at 2:04 pm.
  - 2) **Consent Agenda: Approval of September 23, 2009** – Director Greenspan made a **MOTION** to approve the Meeting Minutes, Director Volponi seconded the motion, and the motion passed unanimously.
  - 3) **Consideration and Review of the 2009/2010 Operating Plan for Station Recreation** – Director Greenspan confirmed with Stephanie Fanos that he was not recused out of this conversation. Elizabeth Howe was at the meeting to present the Operating Plan. She explained that TSG was working on some really exciting alternatives for that plan. She requested additional time and said that she would like to move item to another agenda to present the new developments. She added that there is not enough snow in that area at this time to warrant any operation day or night. Director Greenspan asked if they plan to make snow in that area. Ms. Howe responded that they always make snow in that area. Director Greenspan asked if they would be open for Christmas. Elizabeth Howe said that they are never open for Christmas, but shortly thereafter. Director Greenspan said that a public amenity would be great to have it open by Christmas. Elizabeth Howe responded that we cannot control Mother Nature and then spoke about World Cup. President Sharp asked Stephanie Fanos legal requirements regarding dates, etc. Stephanie Fanos recommended revisiting contract with TSG because there is not a date in place. President Sharp asked Director Riley if they plan to run the tubing hill this year. Elizabeth Howe responded that they are hoping to enhance activities, and that they have the intention to run lift/area. President Sharp said that he is not opposed to continuing the discussion to the January meeting. Director Greenspan said that he is always looking forward to exciting new things and asked about the tubing hill specifically. Elizabeth Howe clarified that TSG has not operated a tubing hill in that area for years and discussion followed regarding the tubing hill. President Sharp made a **MOTION** to continue this item to the January meeting, Director Greenspan seconded the motion. The motion passed unanimously with Directors Riley, Proteau, and Zemke recused.
  - 4) **Consideration of Amendments to Article 5 of the Amended and Restated General Declaration Regarding RETA Regulations** – President Sharp introduced the topic. Stephanie Fanos explained that she

received clarification from the Title Companies and therefore has provided fresh copies for the board. She outlined the changes: adding a provision that a transfer subject to a RETA exemption cannot obtain an exemption until all of the outstanding assessments pertaining to the property have been paid. She explained that with one transaction last year, TMVOA lost \$73,000. The existing RETA regulations do not have a good description of when RETA is actually due. This is significant because when RETA is past due, a 15% penalty is assessed. Realistically, title companies need time to process each transfer. The amendment states that RETA is due 5 business days after date of transfer (also defined). Voting record updates in 2008 showed that many transfers that were eligible for RETA exemption did not apply for RETA exemption and thus TMVOA records were not updated. After the adoption of amendments, TMVOA will develop a fact sheet and send out via mass mailing, email blast, and put it on the website. This fact sheet will provide clarification of process for RETA exemptions. Areas of RETA for clarification: when 2 properties exchanged and no money exchanged, RETA exemption is available for the lower value of the property. If one property is in Mountain Village and the other is not, there is no RETA exemption. Director Greenspan asked what takes time. Stephanie Fanos said that the mechanics of title companies takes time and she explained the process. She further explained how TMVOA is trying to prevent any transfers from not filing a RETA exemption or from not paying RETA. Director Greenspan asked if 5 days is enough time for a RETA payment to be processed. Stephanie Fanos confirmed. Director Proteau asked about property transfers that are eligible for RETA exemption who do not file an application. Stephanie Fanos explained that they are still eligible for exemption, but they are assessed a penalty of \$500. There is a 30 day grace period. Director Proteau asked if there is a statute of limitations. Director Greenspan asked if RETA is collected from parking space transfers or partial transfers. Stephanie Fanos confirmed. Director Zemke asked if the values of the properties are based on appraisal or a contract price in the case of a 2 property transfer where the lower valued property is RETA exempt. Stephanie Fanos explained that there is a provision that allows TMVOA to have the property appraised if we disagree with the valuation.

Stephanie Fanos explained that there is a requirement to seek approval from San Miguel County and the Town of Mountain Village to amend this section of the General Declaration. Ms. Fanos had made an appointment with the county on Tuesday and also put this item on the agenda for Town Council on Tuesday as well to obtain consent. President Sharp asked for comments or questions from board or public. Director Riley said that he would like to put this item and the policies on the agenda for the next meeting, he said that he does not fully understand all of the items and would like the opportunity to come to a better understanding. Stephanie Fanos said that she appreciates it, but would need to reschedule meetings with the town and the county and then would be looking at January for adoption. Director Sweet suggested approving the changes and asked if Director Riley wanted to amend them later, how difficult it would be. Stephanie Fanos explained that it would be the same process. Director Sweet asked about making change and then retreating. Stephanie Fanos confirmed that it would be the same process and that the complicating factor is getting approvals from the county and town. Ms. Fanos further explained that there is a transaction that TMVOA could lose significant funds on without this amendment. Director Riley asked her for details and she said she could provide those details in executive session. President Sharp deferred this topic to executive session.

**5) Consideration of Proposed Policies**

- a) **Whistleblower Policy** - Stephanie Fanos explained that these policies were scheduled to be adopted at the September meeting and then were continued. She further explained that the Whistleblower and Retention of Documents policies are required by the Sarbanes-Oxely Act and that the updated form 990 asks where those policies are in place. Ms. Fanos explained that the Whistleblower Policy protects employees, board members, volunteers from retaliation by the organization in the event that they bring to light allegations of

improper conduct. She then explained how the policy was put together. President Sharp suggested voting on each policy individually. President Sharp asked if there was any comment or discussion on the Whistleblower policy. No comment. President Sharp made a **MOTION** to adopt the resolution of the Telluride Mountain Village Owners Association Adopting Whistleblower Policy with an effective date of 12/3/09. Director Greenspan seconded the motion and the motion passed unanimously.

- b) **Retention of Documents Policy** - Stephanie Fanos explained that this policy explains which documents to keep on a permanent basis or for a number of years. She said that TMVOA has had significant issues due to lack of documentation. President Sharp asked about the issues. Stephanie Fanos said that there is no history of contracts and some procedures in place that the document has to be preserved for the length of the contract plus the statute of limitations. Director Greenspan asked about storage and whether or not there is a storage plan. He also asked how often the board would be reviewing these things. Stephanie Fanos said that the documents will be stored in electronic form. RETA documents have already been scanned and saved onto the server. This policy requires that electronic copies need to be maintained on site and off site. Original backup is time intensive, afterwards is less so. Director Greenspan said that he just signed up for offsite storage and asked what happens when the offsite server goes down and they were not able to provide answers to him. Stephanie Fanos explained that if someone cannot answer that question, you should not use them. President Sharp asked who TMVOA currently uses. Ms. Fanos said that this is a new policy and offsite storage has not been secured. Director Zemke noted that there is no language with regard to access: who has access and how to access. Stephanie Fanos said that this is a standalone policy with regards to retention only; there is a separate policy with regards to document access. Director Volponi asked about the schedule for the destruction of documents. Stephanie Fanos explained the reason behind the schedule. Director Proteau asked about the cost of storage. Stephanie Fanos explained that in moving towards electronic there will be less of a need for physical storage and thus less of a cost. Director Greenspan asked who the keeper of the records is. Stephanie Fanos explained that TMVOA is the keeper of the records (the President and COO). President Sharp said that this is a combination of IRS and Sarbanes-Oxley compliance and asked if there is a deadline. Stephanie Fanos confirmed that TMOVA is required under Sarbanes-Oxley to have this and that TMVOA is past due. President Sharp asked for further comment. There was none. Director Riley made a **MOTION** to approve the Document Retention Policy with an effective date of 12/3/09, President Sharp seconded the motion and the motion passed unanimously.
- c) **Committee Formation Policy** - Stephanie Fanos asked to move Committee Formation Policy up. President Sharp said that would be fine. Stephanie Fanos explained the history and intention of the creation of committee policies. This policy is intended to establish the framework the board will use to establish committees that will be in compliance with the Colorado Nonprofit Act and the Colorado Common Interest Ownership Act. There are two types of committees allowed: committees containing only board members and committees containing non board members. Stephanie Fanos explained that committees with non board members do not much direct power, but they can provide valuable input. Director Volponi asked if this applies to committees that the board appoints a board member to another committee. Stephanie Fanos said in that case, board members are not able to act on behalf of the association, but they still report back to the board. Another thing stated in policy is that committees are subject to the same meeting requirements as the board (meeting notices etc). All meetings of committees are open to the members. Director Riley asked if a board member has to constructively reserve authority while serving on an auxiliary committee. Ms. Fanos suggested that board members would only be charged with reporting back to the board in this instance. President Sharp asked for further questions or comments and input from public. There was none. Director Zemke made a **MOTION** to adopt the Committee Formation Policy with an effective date of 12/3/09. President Sharp seconded the motion and the motion passed unanimously (Director Greenspan was out of the room).

- d) **Budget and Gondola Committee Policies** - Erin Neer explained her memos regarding the proposed budget committee and gondola committee policies and mentioned that the policies have been in action this fall. President Sharp asked if the CRS 38-33.3-308(2) is a long clause, noting that it is referenced often. Stephanie Fanos explained that it is and that it is based on CIOAA. She further explained that they explain that board meetings have to be open to the public, that the public is welcome to comment on agenda items, etc. President Sharp asked for comments and questions. Director Volponi asked if posts on the website generate automatic eblasts. He assumed that not everyone checks the website on a regular basis. Stephanie Fanos said that could be added to item 5 on both policies. Director Greenspan said that he has concerns about over blasting members. Discussion followed. Leanne Hart gave her opinion that when the frequency of emails goes up, people pay less attention to the emails. President Sharp suggested not adding the provision. Leanne Hart confirmed that all meetings are noticed on the website and that there is a specific area for committee meetings and board meetings. President Sharp asked for additional comment. There was none. Erin Neer mentioned the formation of an audit committee in January that they will be working with the auditors. Stephanie Fanos suggested the motion to approve the formation of a gondola committee of the board and the adoption of committee policies of the board as set forth in the memo from Erin Neer to the board dated 9/23/09. Director Greenspan made the **MOTION**, President Sharp seconded the motion, and the motion passed unanimously. Stephanie Fanos suggested the motion to approve the formation of a budget committee of the board and the adoption of committee policies of the board as set forth in the memo from Erin Neer to the board dated 9/23/09. Director Zemke made the **MOTION**, President Sharp seconded the motion, and the motion passed unanimously.
- e) **Update of Ethics Policy** - Director Riley suggested discussing the ethics policy next. Stephanie Fanos provided background of conflict of interest policy and the code of ethics. President Sharp had suggested making an ethics policy that is separate from the Conflict of Interest Policy. Stephanie Fanos said that the actual code of ethics is the same with General Duty and Fiduciaries added. Paragraph D explains TMVOA's Tax Exempt Status. Director Greenspan asked for clarity on part K: Felony Convictions. Stephanie Fanos said that TMVOA does not have the ability to force a committee member to resign. She said that the board can limit to felonies involving certain charges. Director Zemke requested that the language be tailored to felonies related to questionable fitness. President Sharp asked for comments or input, there was none. With new language for paragraph K, Stephanie Fanos suggested the **MOTION** to approve adoption of the Ethics Policy with an effective date of 12/3/09 that supersedes and replaces the existing Ethics Policy of TMVOA as set forth in the proposed policy subject to the following amendment to paragraph K: that felonies shall be limited to crimes involving fraud, dishonesty, or crimes that raise questions to the fitness for serving in this position. President Sharp made the **MOTION**, Director Greenspan seconded the motion, and the motion passed unanimously.
- f) **Update of Conflict of Interest Policy** - Stephanie Fanos said that the Conflict of Interest Policy has been updated as a result of updates to form 990. TMVOA is subject to regulations by the Colorado Nonprofit Act, CIOAA, and the Internal Revenue Code. A process has been added that deals with private inurement issues and private benefit issues, which is a very detailed area of the law. Private inurement and private benefit concepts are issues to be concerned about as an organization and as individuals because TMOVA could lose its tax exempt status. In addition, disqualified persons who receive private or excess benefits can be subject to an excise tax ranging from 25% to 200%. This policy provides a process so that organization is thinking about these concepts for organization benefits and individual benefits. The State of Colorado definition of a conflict of interest is incorporated with the definition of a conflict of interest based upon the Internal Revenue Code provisions. Ms. Fanos explained how the policy was drafted. The board needs to protect the decisions that TMVOA makes. The policy serves both the interest of TMVOA, is fair,

and recognizes that there are decisions that will need to be approved that will affect for example TSG. She expressed the importance of looking at decisions closely to protect both TMVOA and the entity entering an agreement with TMVOA.

President Sharp asked where the line changes with regards to the issue of private benefit. He used the example of funding the group sales position, if we do nothing but fill up Capella, there is a breach. He wanted to know at what point it becomes a public benefit. Stephanie Fanos explained that it is a really difficult part of the law. She defined insiders as directors, officers and employees. She said that insiders are looked at very closely in the context of private inurement and there is little forgiveness. She said that private benefit extends well beyond private inurement, which deals with insiders, and applies to other individuals who are not insiders. She added a sentence in paragraph 3 that says: "TMVOA shall consult with legal counsel to assist TMVOA in determining if any matter involves or as the potential to involve private inurement, private benefit or excess benefit issues". Ms. Fanos reiterated that this is a specialized area of the law and that TMVOA has used Faegre and Benson in the past as special legal counsel and that she has identified other attorneys who specialize in the area of the law. She then explained an example of private inurement involving the sale of an asset to an insider. Director Volponi asked where the line is drawn. The board discussed the benefits of a festival. President Sharp asked if it is safe to say that if the bulk of the lodging and retail members benefit, then TMVOA should not be in trouble. Director Greenspan said that the board will go through processes, guided by staff and legal counsel and asked if there are other trigger mechanisms and how they would that play in. Stephanie Fanos said that she gets calls all of the time from TMVOA members regarding how could a particular Board member vote on a particular topic. There is a one page form that can be filed with the IRS that will trigger an investigation. Director Riley said that the issues raised here are his questions as well. He asked if there is any way in the policy to give more clarity in the way that Stephanie Fanos just described it. Stephanie Fanos explained that the policy is not intended to give clarity of what is a private inurement and private benefit and what is not. The policy is intended to provide a framework for identifying if the issues existing and a process for dealing with them. She added that she can provide a memorandum for the board members to better understand these issues. Director Riley said that further clarification would help. Stephanie Fanos said that she could arrange for an expert to speak to the board regarding these issues. Discussion followed. Stephanie Fanos said that the code does not supply a specific bright line definition. President Sharp outlined the major changes regarding private benefit and inurement in paragraph 4 of the Conflict of Interest Policy. Director Volponi said that some of TMVOA's funds go to the Gondola. Stephanie Fanos explained that TSG is always conflicted out because TMVOA and TSG are parties to several agreements regarding the gondola. Director Greenspan asked if during the audit process something would be picked up. Stephanie Fanos confirmed that it would. Ms. Fanos explained that this is an emerging part of the law and will become looked at much closer in the future. Most CIOAA organizations are not tax exempt. It is the tax exempt status of TMVOA that triggers the concepts of private inurement and private benefit. Director Riley asked if there is a way to clarify the boundaries between direct and indirect conflicts of interest. Stephanie Fanos said that she will provide a memo that will provide much more detail. TMVOA has done a much better job of calling out conflicts of interest in the last year. Director Greenspan asked about hypothetically his business doing event set up. Stephanie Fanos responded with an example: if SUNRRISE submits a bid for trash removal and is the only bidder. The board will need to determine that no one else will bid on the job and whether or not the bid amount submitted is fair. Then, the board has exercised its due diligence. If the bid is ridiculous, the board needs to really consider whether or not to follow through with that transaction. Director Greenspan explained that he's going through this process with town council now. Director Riley asked about the example of a group sales person who is hired by MTI and funded by TMVOA if they only sell Capella. Stephanie Fanos explained that they can also look at the results and say that even though the board went through the proper steps, only one hotel benefited for example. President Sharp said that there are areas

that the board needs to be watching for. He asked for further comment, questions, or input. Director Riley would like to study the policy more and see Stephanie Fanos' memo. Stephanie Fanos said that she can provide a memo and some examples that could provide more clarity. President Sharp made a **MOTION** to continue this discussion to the January meeting. Director Zemke seconded the motion and the motion passed unanimously. Director Sweet asked if there is an urgency to adopt this policy prior to January 1 with regards to private inurement. Stephanie Fanos recommended that this policy be in place by the time TMVOA goes through the audit.

President Sharp asked if there were any time conflicts for the afternoon. Director Zemke said that he would need to leave by 4:30 pm. Stephanie Fanos suggested going to executive session for the purpose of discussing the RETA amendments and then come out to vote before anyone leaves. Director Riley said that he was able to read through the RETA document and added that he had no questions. President Sharp made a **MOTION** with an effective date of 12/3/09 to adopt the First Amendment to the Amended and Restated General Declaration for the Telluride Mountain Village Owners Association with regards to RETA, as submitted. Stephanie Fanos said that the effective date will be the date the amendment is recorded rather than 12/3/09. President Sharp amended motion accordingly. Director Volponi seconded the motion and the motion passed unanimously.

- 6) **Executive Session** – The board moved into executive session at 3:51 pm via a **MOTION** made by Director Zemke to executive session, seconded by President Sharp. The meeting moved back to regular session by a **MOTION** by Director Greenspan. The motion was seconded by Director Volponi and passed unanimously, with Director Zemke excused.
- 7) **New Business** – President Sharp said that TMVOA needed a subcommittee to address current staff concerns and issues and establish what the personnel structure will look like going forward and report back to the full board with recommendations. President Sharp, Director Greenspan, and Director Riley each volunteered to be on committee. Stephanie Fanos asked what the name of this committee would be. Director Volponi suggested Staff Organization Committee and President Sharp confirmed the name. Director Greenspan made the **MOTION**, Director Proteau seconded the motion, and the motion passed unanimously.
- 8) **Adjournment** – Director Greenspan made a **MOTION** to adjourn the meeting, Director Volponi seconded the motion. The meeting was adjourned at 5:26 pm.