

**HEATHER GARDENS METROPOLITAN DISTRICT
SPECIAL MEETING
Thursday, March 23, 2023**

The special meeting of the Board of Directors of the Heather Gardens Metropolitan District was held via Zoom/Telephone in the Heather Gardens Clubhouse at 2888 S. Heather Gardens Way, Arapahoe County, Colorado, on Thursday, March 23, 2023, at 1:00 P.M.

CALL TO ORDER: President Funk called the meeting to order at approximately 1:00 P.M. on Thursday, March 23, 2023. A quorum was present.

BOARD MEMBERS PRESENT: President David Funk, Vice President Eloise Laubach, Secretary/Treasurer William Archambault and Directors Maria Mines and Mitch Albert

BOARD MEMBERS ABSENT: None.

STAFF PRESENT: Chief Executive Officer (CEO) Jon Rea, Chief Financial Officer (CFO) Jerry Counts, and Administration Manager Evelyn Ybarra.

GUESTS PRESENT: Karlie R. Ogden, Icenogle Seaver Pogue, P.C., 5 members of the Heather Gardens Association Board, Lynn Donaldson with Heather 'n Yon, and approximately 15 members of the public were present.

PRESIDENT REMARKS: President Funk read the following remarks:

The conduct of each member of this Board has always been honest, candid, and forthright. Above all, each member has conducted their responsibilities fiduciarily and lawfully.

The first issue has to do with Regular Board meetings versus Special Board meetings. Regular board meetings are scheduled and are defined in the District's bylaws as occurring on the third (3rd) Thursday of each month at 1:00 p.m. unless otherwise designated by the Board. These meetings are generally held as scheduled except for certain circumstances which could impact the utility of the meeting (e.g., the lack of a quorum due to illness or other absence of a board member; the lack of certain information which is necessary to conduct the meeting; other unforeseen circumstances, technical or otherwise) that would cause the meeting to be canceled or postponed.

The Joint Budget and Finance Committee has regularly scheduled meetings on the third Monday of every month. During most months, the third Monday occurs before and during the same week as the third Thursday occurs. However, there are months each



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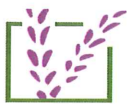
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year that begin on either a Tuesday, Wednesday, or Thursday where the third Thursday occurs before the occurrence of the third Monday, so as a matter of consideration, this Board has traditionally moved its meeting to the fourth Thursday so potentially important information from the Joint Budget and Finance Committee can be appropriately presented to the Board. When this meeting day change is predicted to occur, it is noted on the monthly Boards and meetings calendar, which is published in the Heather 'n Yon and online at the District's website. The next meeting of the Board is also noted at the bottom of the current meeting agenda and reflects the date and time of the next meeting. The meeting of the District Board, which occurs on this other date, is noted as a Special Meeting solely because it is not occurring on the "regular day" (the third Thursday.) With this information in mind, it should be noted that this change of day occurred in February, March, June, September, November, and December in 2022. That is six months out of 12 or 50% of the meetings. Similar patterns occurred in 2021 with 5 such days and in 2020 with 6 such days.

Notices of the meetings are required by law. The law is clear for both Regular Meetings and Special Meetings: Electronic Notices with specific agenda information, if available, must be posted to the District's website no less than 24 hours prior to holding the meeting. 24 Hour Notice (Non-Electronic) in addition to any other means of full and timely notice, a District will be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the District no less than 24 hours prior to the holding of the meeting. This "public place" is designated every year as required by law and is the Clubhouse bulletin board in the hallway near the Boardroom and the bulletin boards on the first floor. This 24-hour posting can be utilized in addition to or in place of posting on a public website. However, this posting of notice is not required if the District posts its meeting notices on its website. At Heather Gardens, we do both.

You may ask yourself, "Why are you telling us this stuff?" and "Why does it matter?" Here is why: A paid advertisement appeared in the March issue of Heather 'nYon where the author of the advertisement implies that the circumstances I just described to you are somehow improper. Let me be clear. There is no sinister plot by this Board to "significantly reduce community participation," as stated in this misinformation piece.

The second issue has to do with Committees. Historically, committees were created to do some function within an organization, the benefits of which could be brought to the decision-makers for consideration and further action as necessary. Most people do not realize that there is no requirement for the existence of committees in the structure of Special Districts in Colorado. The District's Board of Directors has the sole authority for the Board's decisions. The bylaws of each District spell out what that District's structure



is, how it does business, and how it can change those elements. A change to the committee structure was envisioned by the Board to be more effective and efficient. Consolidation of many committees into an advisory group does not change the importance of their mission. The Advisory Group approach places a larger number of people (more minds/more ideas) in an arena to understand and advise on a broader view of the organization rather than view issues only in the context of a particular subject or perspective. This panoptic approach, instead of a myopic view of challenges, can often result in better decisions. Having specialized committees does not necessarily provide the best way to do business. Often specialization creates circumstances where information is not shared as freely as is beneficial between or with other elements of the organization. Organizations can be faced with specialized groups which perceive that their group is “the most important” to the organization, which further complicates communications. This is called siloing and is often a real detriment to the organization. By removing the barriers, whether actual or perceived, members of the group can often contribute more freely, ask questions more confidently and in general, make better assessments of the opportunities they encounter. They can work together in support of the Districts Enterprises rather than inappropriate, ineffective, and unnecessary micromanagement of a particular area of interest. The HGMD Board did not eliminate anything by consolidating to form the Enterprise Advisory Group. In fact, every person who was on one of the committees was included in the membership of the new Group if they wanted to continue their service. New members were also added. The possibilities for better communication and results were broadened. The implication that this sort of positive, constructive collaboration is wrong is simply misguided. Discrediting this Board with contrived innuendo and implied impropriety is what is unacceptable.

As a Board, we should always seek better ways to do things, not simply cling to old ways of doing things because it is how we’ve always done it. Changing the structure of the District is a positive thing. I believe the members of the Enterprise Advisory Group also think it is a good thing. We as a Board have a responsibility to not only manage change but, in a real sense, we must provoke it.

The third issue has to do with slander and libel of the members of this Board. In a letter to the editor of the March 2023 Heather ‘n Yon, the author, after offering a contrived list of “communication requirements” of the Board, some of which are the very circumstances I spoke of as the first issue (i.e., timeliness of notices and regular meeting schedules) he states the following: “Sadly the last couple of years – all of these examples have been overlooked and in some cases, violate state statutes.”

I will not dignify this diatribe by reading the entirety of this letter to you today, but you should read it so that you can understand not only his attempt to provide a false



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narrative that is derogatory and disparaging to the Board but also the criminal aspect of what this person is writing. Libel is defined as “a published false statement that is damaging to a person’s reputation; a written defamation. His lie is libel in the truest sense.

I will state this clearly, plainly, and unmistakably; This Board has never committed any violation of Colorado Statutes in the conduct of the business of this Special District.

The Heather Gardens Metropolitan District receives its authority, guidance, and constraint from the laws of Colorado and the governance documents promulgated by the Board of Directors. (Policies, Bylaws, Rules and Regulations, etc.) The Board has always acted within its authority. The Board contracts the services of the legal counsel for consultation regarding not only special legal matters but also matters that can affect the Board or its members on a daily basis. Council routinely reviews agendas, meeting informational packets, and meeting notices and usually has a presence at our meetings.

Despite these undesirable and unpleasant occurrences, this Board will continue to serve our community responsibly with integrity and respect. This Board deserves nothing less from our community.

APPROVAL OF MINUTES: Motion made by Vice President Laubach, seconded by Director Mines and passed unanimously to approve the minutes of February 23, 2023, Special Meeting, as written.

REPORTS OF DIRECTORS, COMMITTEES, AND PROFESSIONAL CONSULTANTS:

Chief Executive Officer (CEO) Report: The Board received a copy of the CEO’s Statement of Work (SOW). CEO Rea reported the “Spring Craft Fair” held in the Clubhouse starts tomorrow and runs through the weekend. Every year it continues to grow with lots of vendors. Today’s event, “Lunch with a Cop,” held in the Rendezvous Restaurant, was a great turnout. The Senior Safety Seminar was also held this week with guest speakers Aurora Chief Officer Art Acevedo, Senior Resources Officer Jim Seneca, and Traffic Officer Dennis Dempsey. There were no questions or comments on the SOW report.

Enterprise Advisory Group (EAG): Director Mines reported the work session last week went well. President Funk provided a presentation slide regarding the members’ goals for working with management. The members will continue to work on finalizing the EAG-1 procedure memorandum. In addition, a proposal was submitted for a dog park that the members were researching to provide the pros/cons at next month’s meeting.

Foundation Committee: No meeting. Vice President Laubach reported in their last



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meeting a question came up about the status of the Foundation being a 501(c)(3). She was tasked to research the matter. Vice President Laubach researched records from 2010 and found no information designating the Foundation as a 501(c)(3). She also met with CEO Rea and CFO Counts. CFO Counts did extensive research, received feedback from the District's auditors Rubin Brown, and studied the tax code. The documentation they found was distributed to the Board. Vice President Laubach confirmed that even though the Foundation is not a 501(c)(3), the donations are tax-deductible under IRS code 26 U.S.C 170(c)(1) - a gift to a local government entity is tax deductible if it is solely for "public purposes." Vice President Laubach had discussed with CFO Counts whether to apply for 501(c)(3), and CFO Counts did not think it would be a good idea because they would need to file a Form 990, which is a tax return. Vice President Laubach suggested to the Board not to apply for a 501(c)(3).

Secretary/Treasurer Archambault moved not to recommend applying for a 501(c)(3) as designated for the Foundation since contributions to the Foundation are already tax deductible, seconded by Vice President Laubach, and passed unanimously.

Joint Long Range Planning Committee (JLRPC): No meeting.

Treasurer's Report: The Board received a copy of the Treasurer's report. There were no questions or comments.

Joint Budget and Finance Committee: The Board received a copy of the Joint Budget and Finance Report. Secretary/Treasurer Archambault reported there was a separate meeting held to discuss the bank accounts due to concerns about a couple of recent bank failures in the United States. Both HGA and HGMD use KeyBank here in Colorado. Most of the money in the checking accounts was transferred into Money Market accounts backed up by the US Treasury and are triple-A rated. The Committee did not make a recommendation on changing banks and will continue to monitor this issue and report back if recommendations change. CFO Counts did a great deal of research on the banks and presented very good information. The Committee will hold a work session in person and via Zoom on April 4 at 1:00 p.m. along with Board members to discuss the revisions to the Joint Budget and Finance Procedure Memorandum JPM B-1 that are posted and available on the website. The community was asked to submit questions/comments to HGA Treasurer Terry Hostetler prior to the work session. There were no questions or comments.

UNFINISHED BUSINESS:

- a) **Approval of Repayment of Administrative Fees to the Foundation Fund:**
Motion made by Vice President Laubach and seconded by the Secretary/Treasurer Archambault and passed unanimously.

Text of Motion: I move that the Heather Gardens Metropolitan District Board of Directors appropriate \$8,922.45 in the 2024 Heather Gardens Metropolitan District budget and allocate it to the Foundation Fund to repay administrative fees collected from 2019 through 2022. The dollar amount should not be used in the calculation of the recreation fee.

NEW BUSINESS:

- a) **Approve Using Lottery Funds for Pickleball Equipment and Painting of the Court (\$4,028):** Motion made by Director Mines and seconded by Director Laubach as amended and passed unanimously.

Text of Motion: Based on the recommendation of the Enterprise Advisory Group, I move that the Heather Gardens Metropolitan District Board of Directors approve using Lottery Funds for pickleball equipment and painting of the court at the cost of \$4,028 plus a change order of \$403 for a total of \$4,431 not to exceed without further Board approval.

Note: The president of the pickleball club stated that if the amount goes over, they will pay the difference using their club funds. It was clarified that any money put in by the club is a donation to the District for community use.

- b) **Approve Using Lottery Funds for a Ping-Pong Table and Balls (\$300):** Motion made by Director Mines and seconded by Vice President Laubach as amended and passed unanimously.

Text of Motion: I move that the Heather Gardens Metropolitan District Board of Directors approve using Lottery Funds for a ping-pong table and balls at the cost of \$300 and not to exceed \$300 without further Board approval.

- c) **Motion to Approve the Contract for Election Services:** Motion made by Secretary/Treasurer Archambault and seconded by Vice President Laubach and passed (3 For and 2 (President Funk and Director Mines) Abstained due to running for re-election).

Text of Motion: I move that the Heather Gardens Metropolitan District Board of Directors approve the Contract for Election Services Agreement with Public Alliance, LLC, for a total estimated amount of \$23,473 with a change order of 20%. This is a budgeted expense. Funds were appropriated for this purpose in the 2023 budget.

- d) **Approval of Matters Related to Heather Gardens Metropolitan District Election:** Motion made by Vice President Laubach and seconded by



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Secretary/Treasurer Archambault and passed (3 For and 2 (President Funk and Director Mines) Abstained due to running for re-election)

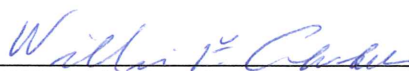
Text of Motion: I move that the Heather Gardens Metropolitan District Board of Directors approve the following matters as related to the Heather Gardens Metropolitan District Election:

1. Instruct Evelyn Ybarra, Assistant to the Boards, to plan and administer a moderated "Meet the Candidates" event which will be held for the community on Saturday, April 15, 2023, at 10:00 a.m. in the Heather Gardens Sandberg Auditorium and on Zoom. The details of such event and further instructions for the participating candidates will be provided as soon as practicable by the Assistant to the Boards. The utilization of necessary additional staff and resources is supported by this Board.
2. Instruct Evelyn Ybarra, Assistant to the Boards, to collect from the candidates a picture and a short biographical profile (not to exceed 200 words). The picture and biographical profile must be submitted no later than March 31, 2023, at 4:00 p.m.
3. Instruct Evelyn Ybarra, Assistant to the Boards, to have pictures and biographical profiles published on the Heather Gardens Metropolitan District website no later than Friday, April 7, 2023. Additionally, these pictures and biographical profiles may be submitted to the Heather 'n Yon periodical.

OPEN FORUM:

A resident commented in the previous minutes about the carryforward capital projects that were missed and approved in the February meeting and asked if it would affect the carryforward approved in January. Secretary/Treasurer Archambault commented it is an addition to the carryforward amount approved in January. President Funk also commented it is carryforward spending authority for that money which is not allocating or appropriating any funds for this year.

ADJOURNMENT: Upon motion by Secretary/Treasurer Archambault, seconded by Vice President Laubach, and passed unanimously, the meeting adjourned at 1:51 P.M.



William Archambault, Secretary/Treasurer