

**EVERMORE COMMUNITY IMPROVEMENT DISTRICT (CID)  
REGULAR BOARD MEETING  
Snellville City Hall  
February 25, 2009  
DRAFT**

**Attendees**

**Board Members:**

Gary Custar	Forrest Adair	Kenny King	Ken Shiver
Dean Robinson	Dwight Harrison	Jimmy Norton	Emory Morsberger

Brett Harrell, Executive Director  
Bill Gower, Treasurer  
Valerie Blalock, Secretary

Special Guests: Ms. Muriel Costabile; Mr. Jack Townsend; Commissioner Mike Beaudreau; Major Dan Branch and Ms. Kim Chasen, Gwinnett County Quality of Life Unit; Major Mindy Bayreuther, Gwinnett County Department of Police Services; Dr. Russell Treadway, City Manager; Mr. James Pugsley, Gwinnett County Planning; Mr. David A. Stedman; Mr. Glen Hale; Mr. Donald Hale; Mr. Chris Garner; Ms. Gloria Garner; Ms. Allison Starnes, Gwinnett County Chamber of Commerce Economic Development; Mr. Chuck Clay and Mr. Scott Gregory, Brock Clay Attorneys; Mr. Ron Harrison, Dwight Harrison Volkswagen; Ms. Sherry Patton, City of Snellville

**Call to Order**

Chairman Custar called the meeting to order at 2:02 p.m. and welcomed guests.

**MINUTES**

*Approval of Meeting Minutes*

Mr. Robinson motioned to approve the minutes, seconded by Mr. Harrison the January 28, 2009 Regular Business Meeting Minutes and the February 19, 2009 Specially Called Budget Work Session Minutes – unanimously approved.

*Amend Agenda – Discussion Item*

Mr. Custar advised the Board that Mr. Harrison requested the agenda be amended to include discussion of the hiring of legal representation for the CID. Without objection, the agenda was amended.

**Presentations**

*Gwinnett County Quality of Life Unit* – Major Dan Branch, Commander of the Gwinnett County Quality of Life Unit presented the Board with the 2008 Successes and 2009 Priorities. Major Branch commented that as a former Precinct Commander, he enjoyed working with the Evermore CID and that GCPD was able to solve problems as a result.

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### **Discussion Items**

*Appointment of Brock, Clay, Calhoun & Rogers, LLC Attorneys at Law to represent the Evermore CID* – Mr. Harrison asked numerous questions of Mr. Scott Gregory, attorney with Brock Clay, regarding the scope of his duties as corporate attorney for the Evermore CID including specifically duties with respect to the recall election. Mr. Gregory responded to those questions suggesting the governing law does not stipulate, after reaching the required threshold to hold an election, how the date for the recall election is determined suggesting the petitioners do not have the right to set the election date. He further suggested the Board could establish rules and procedures for holding such an election consistent with the state law and that the notice must be published once a week in the paper or the election would fall outside the scope of the statute.

Mr. Harrison provided Mr. Gregory a copy of the newspaper notice for the proposed recall election stating it would run four consecutive Thursdays beginning February 26, 2009. Mr. Harrison then asked Mr. Gregory if he would be working with Mr. Lynn Rainey, attorney for Messrs. Adair, Harrison, King, and Morsberger to determine a fair procedure for the recall election. Mr. Gregory responded that if the Board were to direct him to do so, he would work with whomever the majority of the Board chooses. As to an election, Mr. Gregory said that is something the Board needs to determine – how they want to conduct it, the best way to conduct it, and whether the Board is comfortable people received notice. Mr. Harrison asked Mr. Gregory if the notice provided to run in the Gwinnett Daily Post was sufficient notice. Mr. Gregory responded that he had not reviewed the proposed notice; however, if it ran four successive times within a month that would meet the requirements of the statute. Mr. Harrison responded that he had a signed, notarized statement from the Gwinnett Daily Post Legal Advertising Department that the notice of recall election would run on the four successive Thursdays as he indicated.

In response to questions by Mr. Harrison regarding representation, Mr. Chuck Clay, attorney with Brock Clay, recommended strongly that the CID have an Attorney-of-Record whether his firm or any other. He further stated as Attorney-of-Record, Brock Clay would represent the entity as a whole and not any individual Board Member or position. Mr. Norton then stated, to be clear, we all agree that Brock Clay will represent the CID. Mr. Harrison stated he would not support anyone being the CID attorney until each Board Member had individual access to the firm. Mr. Custar responded that the policy regarding access to the CID attorney preserves transparency for all members. Both questions and responses are provided to all eight Board Members guaranteeing all are equally informed.

Mr. Gregory suggested the Board concentrate on the process. It is Mr. Gregory's opinion that the Board will have to vote on and adopt an election process for the recall. Mr. Gregory offered that that statute provides that the Board may adopt rules of procedure that in his opinion should be in writing and include such provisions as who can vote and what credentials are required to vote. He said these are things that should be well established prior to holding the election. Mr. Gregory said he did not foresee the necessity of conversations with individual Board Members to complete the preliminary work of developing a process and that he would work with staff to get any necessary information or documents. Mr. Custar confirmed that Mr. Gregory would not be seeking input from any individual Board Members and Mr. Gregory responded no and he would not feel it appropriate. Mr. Gregory said that should individual Board Members have concerns, they could be disseminated to all via email. Mr. Harrison said that sounds fair.

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Mr. King disagreed saying he does not believe it proper for the CID Board to adopt a policy for the recall election. He would not object to Brock Clay working with Lynn Rainey, however, he believes the recall election is already set and in process. Mr. Gregory responded that the Board is the only entity in law that can adopt policy concerning elections. He continued that the law provides that twenty percent of the electors may call for an election, but it does not stipulate how the election is conducted or anything else and he believes the Board is the appropriate entity to adopt what the process is going to be. Mr. Gregory said one cannot vote by proxy and one must vote in person. He advised that the Board needs to adopt a policy prior to any election or the process may get out of control.

Mr. Harrison asked for clarification that Mr. Gregory could leave the meeting, work on establishing procedures for the recall election without any communication with any Board Member or the Executive Director and that his only communication would be with Lynn Rainey, because of his involvement, and then come back to the Board with a recommendation. Mr. Gregory responded that is correct. Mr. Custar objected saying Mr. Rainey is the attorney representing the four Board Members seeking the recall and he does not want Mr. Rainey influencing the process. Mr. Custar said developing the process should not be a joint effort. Mr. Harrison said he hoped Mr. Gregory would be present on March 25<sup>th</sup> to oversee the election process, that he intended Lynn Rainey to also be present, and collectively, between the two attorneys, he believed we would get a good process.

Mr. Custar asked Mr. Gregory what he had in mind with regard to reviewing the petitions to determine whether they meet the legal standards. Mr. Gregory responded he would seek Board direction in that regard to determine whether the individuals that signed the petitions were authorized to do so. He continued that he would think that this is something the organization would want in the record whether or not the petitions are in compliance. Mr. Custar stated that if we are concentrating on the recall election process prior to determining the validity of the petitions triggering that election we would be "putting the cart before the horse." Mr. Gregory responded that is an issue he has concern with early on in as much as there is a Board divided it might now be difficult to agree on what constitutes a valid petition. Mr. Gregory offered "in hindsight" the first thing the Board would do after receiving a request for a recall election would be to determine if the petitions are valid and whether they are over the twenty percent and the Board could have delegated that to the Tax Commissioner or anybody. Once the Board determined the petitions were valid and reached the twenty percent, then the Board would set the date for the election and run the legal ad. That would be a reasonable policy for the Board to adopt; it was not adopted; now the Board is in the position of having a recall election based on affidavits presented. Mr. Gregory added that if there are questions on the petitions the Board could ask the Tax Commissioner or the County Attorney or Brock Clay to review them.

Mr. Harrison interjected that approximately 150 petitions were presented to the County Tax Commissioner and his understanding in speaking with the County is that they went through the petitions not once, but three times verifying ownership of the property, correct name, parcel numbers, that the forms are all signed by the owner of the property or their representative and notarized. Mr. Robinson asked if the petitions were notarized in the presence of the owners. Mr. Harrison responded, "Yes sir."

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Mr. Morsberger moved to retain Brock Clay as the CID Attorney to facilitate developing a fair and open process for the recall election. Mr. Custar asked if that included following all proper procedures – i's dotted and t's crossed. Mr. Morsberger responded yes. Mr. Harrison asked if that included consultation with Lynn Rainey. Mr. Morsberger responded he would assume Brock Clay would consult Lynn Rainey, but that was not part of his motion. Mr. Shiver stated in as much as this is a discussion item and not an action item and that no Board Member has voiced any objection to Brock Clay we should continue with the agenda.

Mr. Clay offered that the problems with elections arise when rules are not established in advance, with credentialing, who is qualified to vote, what proof is necessary to cast that vote, what is the process for casting that vote, is it a secret vote, a ballot, and who counts them.

Mr. Custar concluded by saying Brock Clay would work on getting a fair and equitable process on conducting this election.

*Comments from Gwinnett County District 3 Commissioner Mike Beaudreau* – Chairman Custar recognized Commissioner Beaudreau to address the Board and those present regarding the recall effort. Mr. Beaudreau thanked all for serving on the Board in a voluntary capacity. Commissioner Beaudreau wanted to clarify his position on the recall effort and he said he did not believe the behavior of any member of the Board reached the malfeasance level necessary for the Board of Commissioners to remove them. He continued by saying at the same time the two Board Members being targeted for recall also have done nothing that would subject them to this challenge. Commissioner Beaudreau said he believes the recall effort against Mr. Robinson and Mr. Shiver is “despicable” and “quite frankly shameful.” As far as the County’s role, he is not looking forward to having any staff at all involved. Commissioner Beaudreau concluded by saying that over the past five years working with Mr. Harrell he has not met anyone more professional or has done a better job as far as working with him. He said Mr. Harrell is the most successful CID Executive Director that he is aware of and more than that, any public servant he is aware of. He concluded by saying he is really disappointed for the two Board Members subjected to the recall, he knows them personally, and knows they are good people.

Mr. Harrison suggested that the Commissioner may have made an assessment and he did not know everything that the Board might know. He said he thinks the Commissioner made an assessment without all the information. Commissioner Beaudreau responded that he and Mr. Harrison had met several times including over lunch and he has an understanding of all sides of the issue and further understands Mr. Harrison disagrees with him.

### **Action Items**

*FY 2009 Budget* – Mr. Morsberger motioned to adopt the FY 2009 Budget. During discussion, Mr. Adair requested the motion be amended to include a provision that the Board must reauthorize any project incurring a 5% cost increase to determine whether the Board would go forward or terminate a project. Mr. Morsberger amended his motion to adopt the FY 2009 Budget with Board reauthorization for any project asterisked in the budget incurring a 5% cost increase, seconded by Mr. Shiver – approved with Mr. Norton opposed.

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*Instruct Executive Director to renegotiate Landscape Contract* – Mr. Adair modified his request to obtain at least three bids for a Landscape contract and then negotiate with the existing vendor. Mr. Harrell reminded that the Board renewed the current Landscape contract in December with a thirty-day cancellation clause; however, putting the contract out to bid would preclude negotiating further with our current vendor. Mr. Adair motioned to have the Executive Director put the Landscape contract out to bid, seconded by Mr. Harrison – approved with Messrs. Adair, Harrison, King, Custar, and Robinson in favor and Messrs. Morsberger, Norton, and Shiver opposed.

Mr. Morsberger excused himself from the meeting at 3:45 to make an appointment.

*Instruct Executive Director to renegotiate Public Safety Contract* - Mr. Harrison presented the Board with information he obtained from Plaza Security regarding a reduction in rates should the Board elect to have unarmed officers vs. armed officers. Mr. Harrison motioned to have the Executive Director put the Security contract out to bid providing for unarmed patrols, seconded by Mr. King – approved with Mr. Norton opposed. [Mr. Morsberger absent]

*Instruct Executive Director to record Solid Rock promissory note* – Mr. Adair motioned to authorize the Executive Director to record the promissory note for Solid Rock Development Corporation for the Yellow River sewer line extension project, seconded by Mr. Robinson – unanimously approved. [Mr. Morsberger absent]

## **Board Reports**

*Chairman's Remarks* – None

*Adopt Treasurer's Report* – Mr. Gower provided the Board an update on the CID's financial condition. The CID's income statement, balance sheet, bank statements, collateralization report, and copies of all checks are included in the Board Member's packets. Mr. Harrison motioned to adopt the Treasurer's Report, seconded by Mr. Robinson – approved with Mr. King abstaining.

*Board Member Remarks* – None

*Staff Report* - Ms. Blalock referenced her memo in the Board packet including an indication of the amount of trash and debris collected last month by Leach Landscaping.

*Economic Development Report* – Mr. Harrell referenced his report in the Board packet. Mr. Harrison asked if Kohl's was making plans to build on the corridor. Mr. Harrell responded that they have pulled initial permits for the site adjacent to Lowe's; however, in light of the current economy, they may be proceeding at a slower pace than originally anticipated.

*Executive Director's Update* – Mr. Harrell referenced his report in the Board packet.

## **Announcements**

Next Meeting March 25, 2009, 2:00 pm – Snellville City Hall – Community Room

## **Adjournment**

By acclamation, the meeting adjourned at **4:04 p.m.**