

Summary of Actions

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR SESSION MEETING

Sunday, January 22, 2017; 9:00 a.m.

31030 Broad Beach Road, Malibu, CA 90265

1. CALL TO ORDER

The Chair called the meeting to order at 9:07 a.m.

2. ROLL CALL

PRESENT: Chair Norton Karno, Vice Chair Marshall Grossman, and Board Member Bill Curtis.

ABSENT: Board Members Jeff Marine and Shaul Kuba.

BBGHAD STAFF ALSO PRESENT: Project Engineer Russ Boudreau, Clerk/Treasurer Heike Fuchs, and Project Counsel Ken Ehrlich.

3. ADOPTION OF AGENDA

The Chair recognized Project Counsel, who reported that the Agenda was posted on December 19, 2017 before 9:00 a.m. within the BBGHAD boundaries and concurrently posted on the BBGHAD website. The Chair recognized Vice Chair Grossman, who moved to adopt the Agenda as presented. Board Member Curtis seconded the Motion. The Chair called the question, and the Motion passed 3-0.

Closed Session

At 9:09 a.m. the Chair announced, without objection, that the Board would move into Closed Session.

Resumption of Regular Session

The Chair resumed Regular Session at approximately 9:55 a.m., and a report was given on Closed Session items.

6. APPROVE SUMMARY OF ACTIONS FROM DECEMBER 18, 2016 MEETING

The Chair recognized Vice Chair Grossman, who moved to approve Summary of Actions from December 18, 2016 with minor edits on pages 2, 3, 6 & 10 as announced by Project Counsel. Board Member Curtis seconded the Motion, and the Motion passed 3-0.

7. Ceremonial/Presentations

None.

8. Consent Calendar

None.

9. Public Hearings

None.

10. Old Business

a. Permitting and Regulatory Process Status.

(i) Consideration of Input From January 11, 2017 Property Owner Workshop

The Chair recognized Project Counsel, who estimated that approximately 70 property owners or representatives participated in the 1/11/17 property owner workshop, with approximately forty (40) to fifty (50) homeowners present at the Elkins Kalt offices and approximately twenty (20) homeowners announced on the phone. Project Counsel opined that it was overall a productive meeting and the homeowners appeared appreciative of the information received. Project Counsel informed the Board that staff received approximately 30 responses to the informal non-binding ballots provided to the homeowners after the workshop and it appears that they remain in favor of the Project at an approximate 3:1 ratio.

The Chair recognized Board Member Curtis, who asked if the CCC was aware of the workshop. The Chair recognized Project Counsel, who responded that the Coastal Commission staff was invited to the workshop but were unable to participate. The Chair opined that the CCC should be made aware of the substantial voice of the community (approximately 25%) in favor of a revetment-only Project, and the Board anticipates a substantial increase in favor of the revetment-only Project if the Project would be delayed for another year.

The Chair recognized Board Member Curtis, who suggested that the BBGHAD should inform the CCC that, if the CCC wants the Project to succeed, the agency must negotiate based on the current BBGHAD budget/assessment as the BBGHAD does not have the funding to cover the current Project costs. The Chair recognized Project Counsel, who informed the Board that CCC senior staff firmly believes that a revetment-only Project would be far more expensive than the Project due to mitigation-- and the current assessment would not even cover the expenditures for a revetment-only project.

The Chair recognized Vice Chair Grossman, who suggested that additional Project alternatives may be considered if the CCC staff retains their current position since the BBGHAD may not be able to proceed with the Project. The Chair stated that the BBGHAD needs the CCC staff to finalize their position on the Habitat Monitoring and Mitigation Plan ("Plan") in adequate time for the BBGHAD to authorize further expenditure for Spring 2017 (March-June) monitoring. The Chair alerted the Board of the very short window the BBGHAD has to start the Project in Fall 2017.

The Chair added that the unofficial balloting received was less than 50% of the homeowners.

The Chair recognized Board Member Curtis, who suggested that the BBGHAD should be more direct with CCC staff regarding Project costs and appears open to alternatives. The Chair recognized Vice Chair Grossman, who suggested that Project Counsel and Board Member Marine must communicate this message to CCC staff at tomorrow's meeting. The Vice Chair further suggested informing the CCC that the BBGHAD used to have unanimity and that there is an increasing movement in favor of aborting the Project. The Chair recognized Board Member Curtis, who offered to attend the 1/23/17 meeting with CCC staff.

The Chair recognized Board Member Curtis, who questioned if, as an alternative, the BBGHAD should reduce the size and scope of the Project. The Chair recognized the Project Engineer, who responded that anything less than 300,000 cubic yards of sand would be tough to maintain as a dry sand beach as the Project requires sand to cover the revetment and a 10' dry sand beach to prevent the springing license from being triggered, and thinks it would not be feasible to keep the revetment covered with only e.g., 150,000 cubic yards. The Chair recognized Project Counsel, who added that the budgeting process has proven that every time the BBGHAD mobilizes to bring sand to the beach is extraordinarily costly.

A discussion ensued regarding previous BBGHAD messaging to CCC staff regarding the CDP Section 6 monitoring program and the SAP process since December 2015. The Chair recognized Vice Chair Grossman, who stated his agreement with Board Member Curtis' basic position that the Project is sound, but cost is a critical issue and the BBGHAD is looking aggressively for Project alternatives and cost reductions. The Vice Chair inquired about Jack Ainsworth's participation in tomorrow's meeting. The Chair recognized Project Counsel, who responded that Mr. Ainsworth was invited and encouraged to attend, but is not expected to attend. The Vice Chair proceeded to call Mr. Ainsworth and left a personal message requesting his attendance.

The Chair stated that he also concurs with Board Members Curtis on his business strategies in general, but it may not apply for dealings with the CCC staff, the SAP, or the approximately 15 (fifteen) agencies which typically attend SAP meetings. The Chair further opined that more junior CCC staff may not support the Project and may seek to further delay the Project. The Chair further stated that he provided Project Counsel with comments on the draft cover letter to CCC staff regarding the latest version of the Plan, instructing Project Counsel to stress the time constraints, explain the growing community sentiment of impatience, and specify that the BBGHAD is not going forward with further expenditures unless the CCC staff finalizes its Plan requirements.

The Chair recognized Board Member Curtis, who asked if the revised draft cover letter could be circulated to the Board Members before it's sent to the CCC. The Chair responded that he had already instructed Project Counsel to do so.

A discussion ensued regarding the 1/23/17 meeting location, participants, and the BBGHAD's desired outcome of the meeting. The Chair then explained that CCC Staff has submitted a very professional response to the BBGHAD's latest proposed Plan stating that the

BBGHAD's latest proposal does not comply with CDP requirements. In response, the BBGHAD intends to thoroughly respond to the CCC staff's position and opined that this will be an important part of the meeting and should not be ignored and/or postponed. Project Counsel suggested that Board Member Curtis should present to CCC staff the frustration of the community and the eroding support of the Project if it would be delayed for another year.

The Chair recognized Board Member Curtis, who voiced frustration that BBGHAD consultants may benefit financially from either lengthening the permitting process or increased monitoring tasks. The Chair responded that the Board instructed Project Engineer, at a past Board Meeting, to obtain additional bids from competitors. The Chair recognized Project Counsel, who added that BBGHAD staff is following the CDP's directives. The BBGHAD received the CDP in October 2015, and it sets up the framework for the SAP and that SAP is following the requirements of the CDP. Project Counsel stated that, at every SAP meeting, BBGHAD staff reiterates that the Plan cost is prohibitive. Project Counsel further explained that, because the CCC staff can override the SAP, CCC staff is now attacking the reduced cost Plan in a manner not pursued by the SAP.

The Chair recognized Board Member Curtis, who asked Project Counsel to inform senior CCC staff that Board Member Curtis would appreciate a private 5-10 minute "pre-meeting" with senior CCC staff before the 1/23/17 meeting. The Chair recognized Project Counsel, who responded affirmatively.

The Chair recognized Project Engineer, who reported that, since the issuance of the BBGHAD CDP, the CCC has placed the same monitoring requirements on all new beach nourishment projects, including public projects.

The Chair recognized Vice Chair Grossman, who asked for the Project Engineer's recommendation to the Board if CCC staff rejects the reduced scope Plan. The Chair recognized Project Engineer, who responded that, if the CCC demands the spring testing identical to fall testing, then it would revert back to the \$850,000 monitoring plan and, at that point, the Project Engineer would not have any recommendation.

The Chair recognized Vice Chair, who inquired about the Army Corps status. The Chair recognized Project Counsel, who responded that the Army Corps has yet to issue its permit and the BBGHAD must submit the requested compensatory mitigation plan to respond to the Corps' proprietary interests separate from the CCC's CDP. Project Counsel further added that the Army Corps has requested an up-front compensatory mitigation plan, explaining that it includes adaptive management and compensatory mitigation in five (5) year increments if adaptive management measures do not work.

The Chair recognized Vice Chair, who asked which agency should be dealt with first, CCC or the Army Corps. The Chair opined that both agencies should be addressed simultaneously. The Chair recognized Vice Chair, who inquired about the methodology for compensatory mitigation. The Chair recognized Project Counsel, who responded that it is being determined through monitoring and accepted Corps' mitigation ratios.

The Chair recognized Board Member Curtis, who inquired about the determination of Project baseline conditions and the trigger for compensatory mitigation. The Chair recognized Project Counsel, who responded that the Project baseline, according to the law, should be the day before the emergency revetment was installed. The Chair recognized Board Member Curtis, who opined that it would be irresponsible to agree to a Project that will knowingly result in the payment of compensatory mitigation. The Chair responded that BBGHAD staff has been working diligently to put a cap of \$750,000 for compensatory mitigation and such amount has been budgeted.

The Chair recognized the Vice Chair, who stated that the BBGHAD has spent a considerable amount of monies on the Army Corps lobbyist and inquired if his involvement has translated into positive results. The Chair recognized Project Counsel, who opined that the BBGHAD has seen positive results from the lobbyist's activities and the lobbyist is very motivated to finalize the Army Corps permitting process. The Chair recognized Vice Chair, who asked about the status of the Environmental Impact Statement "EIS" (longer path) vs. the Environmental Assessment "EA" (shorter path). The Chair responded that Army has not made any decisions yet on this issue, has indicated that an EA will be issued, and stated that it is part of the negotiating process with Army Corps.

The Chair recognized Board Member Curtis, who asked Project Counsel to brief him on the CCC staff's backgrounds. The Chair recognized Project Counsel, who outlined their backgrounds and respective positions on the Project.

The Chair recognized Vice Chair Grossman, who stated that Staff should be extremely prudent on spending and asked about the Chair's inquiry to put a ceiling on legal spending. The Chair responded that he discussed this issue with Project Counsel. The Chair stated that Project Counsel requested to defer the Chair's request to April 1, 2017, as there are many unresolved items with the Army Corps, CCC and SAP. The Chair stated the Project Counsel will then provide an alternative legal fee proposal to the Board.

- (ii) Lead Agency Update
 - (A) CCC (and Science Advisory Panel)

1. Budget update including Habitat Monitoring Plan Costs

The Chair recognized Project Counsel, who reported that the documentation enclosed in the Board Packet is overdue and will be submitted to the CCC no later than 1/23/17. The document is a compilation of two responses to the CCC staff's comments on the Plan received on Sept. 20, 2016 and December 20, 2016 and a separate document-- a revised scope Marine Habitat Monitoring and Mitigation Plan (MHMMP). Project Counsel stated his hope that these documents serve as the basis for a resolution with the CCC on the CDP and the Plan, especially Special Condition 6.

The Chair recognized Board Member Curtis, who asked about the reason for being late submitting the documents. The Chair recognized Project Counsel, who responded that BBGHAD technical consultant was very ill during the month of December 2016. Project Counsel further

opined that the delay has been hurting the progress of the Project and asked Moffat & Nichol to make recommendations of alternative biologists to replace BBGHAD technical consultant Merkel. The Chair stated biologist Merkel is well known, well respected and highly regarded and has been the active spokesperson for the BBGHAD the entire time.

(B) SLC

No separate report.

(C) Army Corps

The Chair recognized Project Counsel, who reported that a written compensatory mitigation plan ("Mitigation Plan") is due to the Army Corps, which is included in the Board Packet. Project Counsel stated that he received input from the Chair to reduce the cap of the compensatory mitigation proposal to \$250,000.00. Project Counsel reported that this document was also delayed and that he is hopeful to submit it to the Army Corps within the next 2-3 days, after receiving all of the input from the Board. Project Counsel estimated that, as soon as this documents is submitted, that the Army Corps permitting process will be completed within the next 2-3 months.

The Chair responded that his comments on the Mitigation Plan are: a) BBGHAD staff to add their analysis, input, and thoughts on the Summary page, b) on page 23 of the draft Mitigation Plan, questions regarding the timing of the payment of the compensatory mitigation and that he prefers not to borrow monies and having to pay interest, c) inquiry into the legal process of appealing an Army Corps permitting decision, and d) reduction of the proposed cap on mitigation to \$250,000.00 with the hope of ultimately paying nothing due to adaptive management measures.

The Chair recognized Vice Chair, who asked if any of the major financial obligations of this nature (mitigation) to CCC, SLC and Army Corps could be conditioned upon the BBGHAD obtaining all of their permits under the law? The Chair recognized Project Counsel, who briefed the Board on the reasoning for the payment(s) to each agency and specified which ones are and are not dependent on the BBGHAD proceeding with the Project.

The Chair recognized Vice Chair, who asked if another attorney at Project Counsel's firm is reviewing all of the Project contracts? Project Counsel responded affirmatively, and added that he is using lawyers with the expertise needed for each particular contract.

(iii) Responsible & Consulting Agency update: RWQCB, NMFS, Cal. DFW, CalTrans, etc.

The Chair recognized Project Counsel, who reported that BBGHAD anticipates the Regional Board permit to mirror that of the Army Corps.

b. Permitting Outreach & Strategy Update.

No separate report.

The Chair recognized Board Member Curtis, who inquired if he can have his wife contact Senator Henry Stern to brief him on and ask him to expedite the Project. The Board unanimously encouraged Board Member Curtis to contact the Senator.

c. SLC Lease Package.

The Chair recognized Project Counsel, who summarized the SLC status, stating that the SLC approved the BBGHAD Project in August 2016 in accordance with terms previously approved by the Board, but that the BBGHAD Board has never formally ratified the SLC Lease as requested by the SLC. Project Counsel further stated that he inquired about ratifying the Lease at the December 2016 Board Meeting and was informed that, in light of the "revetment only" possibility and the possibility of reducing the encroachment, the Board preferred to defer the consideration of ratification of the SLC lease. Project Counsel explained that, after the homeowners' workshop, he seeks guidance from the Board on how to handle the ratification of the SLC lease.

The Chair recognized Vice Chair Grossman, who asked about the Board's consideration at the December 2016 meeting. The Chair responded that the Board did not know if the community wanted to proceed with the Project, and if the Project was aborted, the BBGHAD may dissolve and the homeowners themselves may end up being liable for their encroachments.

The Chair recognized Vice Chair, who inquired about possible consequences of the BBGHAD not ratifying the Lease. The Chair recognized Project Counsel, who responded that Staff has not had any communications with the SLC in the past 30 days, but that the BBGHAD has deposited the financial security and still has to provide the \$10 million in general liability insurance and ratify the Lease. Project Counsel further briefed the Board that the Lease already covers scenarios if the BBGHAD proceeds with the Project or becomes a revetment-only Project, and opined that ,if the homeowners on the West End would like to eliminate/minimize the encroachment, than the BBGHAD could ask for reducing any future Lease payments.

The Chair recognized homeowner Max Factor III, who asked if it would be advantageous for the homeowners with minor encroachment and the revetment being too close to their septic systems to put in an Advanced Onsite Wastewater Technology System to eliminate the encroachment issue? The Chair recognized Project Counsel, who responded that it depends on whether the encroaching homes already have seaward septic systems in place or not. Project Counsel further added that the Engineer has stated that, except for 9 (nine) homes, the revetment can be moved regardless of where the septic systems are located.

The Chair thanked Mr. Factor for his input and asked Project Engineer about the locations of the approximately 30 homes encroaching on public land. The Chair recognized Project Engineer, who responded that these homes where the revetment cannot be pulled back are fairly evenly spread out. The Chair directed Project Engineer to translate the encroaching properties into addresses and to provide this information to Project Counsel.

The Chair stated that the Board unanimously agreed not to ratify the Lease but, instead, to remain aware of the issue in light of the Project's permitting process and Army Corps (and other agency) action.

d. Project Manager Search Update.

The Chair recognized Project Manager, who reported that at the last Board meeting Board Member Curtis met with potential Project Manager candidate, Charles Melber. Project Counsel further informed the Board that he and Board Member Marine had the impression after the meeting that it would not be appropriate to hire Mr. Melber until further consideration from the Board and input from Board Member Kuba—in light of Board Member Kuba's review of the budget.

The Chair recognized Vice Chair, who asked if the Chair believes that the BBGHAD needs to hire a Project Manager at this moment? The Chair responded that, without having Board Member Kuba's report, he is not ready to take actions, pointing out that the in-house service Board Member Kuba's firm is providing is the finest service the BBGHAD can expect and that the BBGHAD has not received any proposal back from the marine delivery options and Ventura County/Calleguas Creek.

The Chair recognized Board Member Curtis, who concurred with the Chair's position adding that, as a result of the meeting with the potential candidate(s), alternative candidates would be appreciated. The Chair thanked Board Member Curtis for his input and stated that the Board continues searching for a Project Manager.

11. New Business

None.

12. BBGHAD Officer Report

a. Treasurer's Report

The Treasurer reported, as of January 17, 2017, the BBGHAD's cash balance was \$2,147,676.40 and the estimated unpaid bills amount to \$631,088.71. The Chair added that the BBGHAD received another payment from the County in the amount of \$304,743.68 this past Friday, which is not yet reflected in the Treasurer's Report.

The Chair thanked the Treasurer for including the actual expenses paid by the BBGHAD from 2011-2016. The Chair directed the Treasurer to: a) separate out the loan as it is currently listed in the total Project expenditures, and b) reconcile the Fair Share contributions with the total amounts listed per homeowner. The Treasurer agreed to revise the documents accordingly.

The Chair recognized Vice Chair, who requested a brief recess before moving on to the next Agenda item. The Chair called for a brief recess at 1:30 p.m. and called the meeting back to order at 1:44 p.m.

13. BBGHAD Board Member Reports

The Chair reported that he attended the homeowners' workshop on January 11, 2017. The Chair thanked Project Counsel for his hospitality and opined that the workshop was very constructive and complimented Project Counsel and Project Engineer on their presentations. The Chair stated that he was very proud of how staff handled the equivalent of a rather hostile series of questions. The Chair further opined that there were approximately 50% of homeowners participating and a massive amount of practical and useful information provided to the homeowners and everyone participating had an opportunity to express their views.

The Chair apologized to Vice Chair and Board Member Curtis for not being able to attend due to the legal advice of Counsel Colantuono.

14. Reconsideration of Resolution of Dispute Regarding Previous Assessment Overpayments by BBGHAD Owners.

The Chair recognized Project Counsel, who reported that this is a reconsideration of Resolution No. 2015/06, which established the provisions for a refund of certain assessment monies paid by west end owners. Project Counsel summarized the history of the west end refund matter, stating that the BBGHAD learned in January 2015 that the BBGHAD could not permit direct sand deposition west of 31380 Broad Beach Road. The Board then determined that the west end owners should receive a credit of the difference between assessment funds paid under the 2012 assessment from January 1, 2015 to June 30, 2015 and what the same owners would have paid had the 2015 assessment been in place for that same time period. Project Counsel further reported that 1 (one) out of 22 (twenty-two) homeowners has signed the Settlement Agreement in accordance with Resolution No. 2015/06 and has not received any comments/reasons from any individual homeowners for not signing the agreement. Project Counsel further reported that Board Member Curtis raised this issue in a Board meeting a couple of months ago that: 1) the terms of requested release were too broad, and 2) successors and assigns should not be bound by the agreement.

Project Counsel stated that the parts in the agreement that are at issue are highlighted in either yellow or green in the Board Packet. Project Counsel recommended that: 1) regarding the "successors and assigns" issue", the Board should maintain the agreement's current language in the agreement, and 2) he had no recommendation for the scope of the release.

The Chair verified with Project Counsel the two contested issues: 1) the "successors and assigns" provision, and 2) the requested release of rights to contest or object to the Project and claim a refund for the BBGHAD portion of assessment paid or owing from or after July 1, 2011. Project Counsel responded affirmatively.

The Chair recognized Vice Chair, who asked for clarification on who has signed and received a refund so far. The Chair recognized Project Counsel, who responded that only 1 (one) property owner has signed the agreement, and that the other 21 (twenty-one) refunds are budgeted and being carried in the Treasurer's Report.

The Chair recognized Board Member Curtis, who opined that the intention of the agreement was not to obligate the west end to new requirements, but simply to create an assessment that accurately reflected the west end's obligations (25% of the full assessment).

Board Member Curtis further opined that any other discussions about further obligations and/or releases in the agreement are inappropriate.

The Chair recognized Vice Chair, who asked Board Member Curtis if he thinks the issue should be settled based on the current Engineer's Report (25% assessment for west end owners) so it does not have to be revisited in the future? The Chair recognized Board Member Curtis, who responded that, based on information received regarding possible future mitigation, he would recommend to the other west end homeowners to agree on a flat fee rather than signing off on a percentage on "unlimited exposure".

The Chair stated that Board unanimously approved Resolution No. 2015/06 inclusive of a consideration of a discretionary willingness by the Board to refund monies to the 22 (twenty-two) homeowners, who would not receive any sand nourishment in front of their properties. The Chair further stated that the Board was advised by Project Counsel that it was legally sustainable, for either approach, to provide or not to provide any refunds from the time it was realized that there would not be any sand nourishment for the 22 (twenty two) West Enders until the official reconstitution of the Project (75% east end and 25% west end). The Board unanimously stated that it was concerned about successors raising a claim for previous tax assessments paid, especially since one or two homeowners had already filed refund claims as well as the Board recognizing that there was a possibility of the Board being drawn into litigation over one or more parts of the Project, either by claim for refund or on the basis of an environmental lawsuit. The Chair summarized that the incentive of having spared the costs of litigation for the community was the basis for the Board, after thorough consideration, to exercise its discretion and provide the refund to the twenty-two homeowners. The Chair added that the BBGHAD Board did not base Resolution No. 2015/16 upon an agreement between the BBGHAD Board and the west end owners, but rather a unilateral act at the Board's discretion. The Chair stated that, due the fact that the 5 (five) Directors unanimously agreed at the time, he favors the original compromise.

The Chair recognized Board Member Curtis, who asked what the net effect would be of asking twenty-two homeowners to sign this agreement? The Chair responded that he has not talked to any of the west end homeowners, with the exception of Board Member Curtis, Ms. Jane Arnault and Max Factor III, and that he does not want to speculate.

The Chair recognized Board Member Curtis, who opined that the majority of the west end owners do not believe that they are receiving any benefits from their 25% contributions to the Project at the current assessment and resent paying for it. Board Member Curtis further added that, since the Resolution No. 2015/06 was adopted, Project costs have increased and additional mitigation risks exist going forward. Board Member Curtis stated that he would not sign and support any document binding his successor to never have the right to have issues with the Project. Board Member Curtis further added that he would not support anything that creates any future obligations for the west end owners and/or their successors.

The Chair recognized Vice Chair, who stated that the percentage (25%) of the assessment for the west end was never negotiated, but was recommended by the independent Engineer's Report. The Vice Chair further stated that, as far as the language in Resolution No. 2015/06 precluding someone from objecting or contesting the Project, it is intended to prevent lawsuits as there were members of the community considering litigation. The Vice Chair stated that, due to

the fact that 21 (twenty-one) homeowners did not sign the agreement, he would reconsider the document but feels strongly about not contesting the 25% assessment going forward, including binding the successors and assigns.

The Chair recognized Project Counsel, who stated his concern that the Board should not attempt to bind or mandate the substance of, or otherwise affect the independence of the current or future Engineer's Report, and recommended that the Engineer's Report remain independent of the content of any west end agreement.

The Chair recognized homeowner Max Factor III, who opined that a Board could not pass a resolution binding future Engineer's Reports and an ongoing government agency to what an appropriate share for the west end would be. The Chair concurred with Mr. Factor III, but stated that there is one possible exception to this general rule-- when the benefits of an agreement outweigh the outcome of future actions. The Chair recognized Max Factor, who concurred with the Chair's statement regarding the exception to the rule and opined that, due to the unknown dynamics (sand movement/mitigation) of the Project, it would be beyond the scope of the Board to enter into such an agreement.

The Chair recognized Board Member Curtis, who asked the Chair if he believes that any west end property owner would change their view in exchange for a \$7,000 or \$8,000 refund. The Chair responded that he does not know and does not want to speculate, and added that he is aware that not all west end owners have the same perspective on this issue as one of them has already signed the document.

The Chair recognized Vice Chair, who asked Board Member Curtis if he had any assurance for the remainder of the BBGHAD that none of the west end owners would challenge the 25% assessment in the future? The Chair recognized Board Member Curtis, who responded that he could not give any assurances based upon what could happen with the Project. Board Member Curtis suggested that the BBGHAD Board present the west end owners with a release stating that: a) there cannot be a "reach back" for tax assessments paid in the past except for the 6-months period from January 1, 2015 – June 30, 2015, and b), for future Engineer's Report(s), the BBGHAD must hire an independent Engineer for the BBGHAD and west end owners would hire their own engineer, and, if the two engineers could not agree on an assessment scheme, they would retain an independent third engineer to devise an assessment scheme. The Chair recognized Max Factor III, who opined that west end owners will not receive any substantial long-term benefit from the Project and, therefore, should only agree to a fixed annual assessment amount or be "bought out" of their assessment responsibilities, and that he would not agree to any percentages.

MOTION: the Vice Chair moved, and Board Member Curtis seconded, to direct Project Counsel to draft a proposed resolution embodying the thoughts and concepts expressed by Board Member Curtis and the Vice Chair regarding a west end resolution and present it to the Board for consideration at the next Board meeting. Hearing no further comment, the Chair called the question, and the Motion carried 2-1.

The Chair recognized Vice Chair, who stated his appreciation for the west end owners' views and input at Board meetings.

15. Public Comment - Non-Agenda Items

None.

16. Future Meeting

The Chair stated that the next BBGHAD meetings are scheduled for February 26, 2017 and tentatively March 19, 2017, both to start at 9:00 a.m., location to be determined.

17. Adjournment

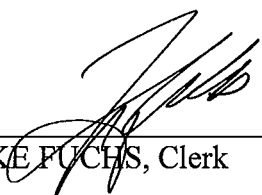
Vice Chair Grossman moved, and Board Member Curtis seconded, to adjourn the meeting. The Motion passed 3-0 and the meeting adjourned at 3:32 p.m.

Approved and adopted by the BBGHAD
Board on February 26, 2017



NORTON KARNO, Chair

ATTEST:



HEIKE FUCHS, Clerk