

RESOLUTION NO. 2021-054
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPOINTING DIRECTORS TO FILL VACANCIES ON THE
FOOTHILLS METROPOLITAN DISTRICT BOARD OF DIRECTORS

WHEREAS, the Foothills Metropolitan District (the “District”) is a metropolitan district duly established under Colorado’s Special District Act (the “Act”) in Title 32 of the Colorado Revised Statutes (“C.R.S.”) under the Amended and Restated Service Plan for the Foothills Metropolitan District approved by City Council on May 7, 2013, in Resolution 2013-044 (the “Service Plan”); and

WHEREAS, the District is located entirely within the City’s boundaries and was organized to provide public improvements and services for the development known as the Foothills Mall; and

WHEREAS, in order for a person to qualify under the Act to be a director on the board of directors of a metropolitan district, the person must an “eligible elector,” which the Act defines as a registered voter in Colorado who is a resident in the district or is the fee title owner of taxable real or personal property in the district or is a person who is under contract to purchase taxable property in the district and obligated under that contract to pay property taxes for the property; and

WHEREAS, until recently, the qualified directors on the District’s board of directors (the “Board”) were Patrick Bunyard, Suni Devitt and Michael Staheli (collectively, the “Past Directors”); and

WHEREAS, the Past Directors were qualified to serve as directors on the Board based on them having a contract to purchase a certain parcel of real property (the “Property”) within the District and being obligated under that contract to pay the property taxes for the Property (the “Purchase Contract”); and

WHEREAS, the Past Directors recently lost their qualifications to serve as directors on the Board when the Property was inadvertently conveyed in fee title to the District by the previous fee title owner of the Property, Walton Foothills Holdings, VI, LLC (“Walton”) and, as result of this conveyance, the Past Directors lost their qualifying interest in the Property under the Purchase Contract; and

WHEREAS, C.R.S. Section 32-1-905(1)(d) provides that a director’s office on the board of a metropolitan district “shall be deemed to be vacant . . . if the person who was duly elected. . . ceases to be qualified for the [director’s] office”; and

WHEREAS, C.R.S. Section 32-1-905(2.5) provides that when there are no duly elected directors on the board of a metropolitan district and the failure to appoint a new board will result in the interruption of the district’s services, the governing body of the municipality within which the district is located “may appoint all directors from the pool of duly qualified, willing candidates” and within six months of such appointments the newly appointed board must call for nominations for a special election to be held in accordance the Act and applicable Colorado election laws; and

WHEREAS, the District and Walton have recently recorded a correction deed to reverse the conveyance of the Property from Walton to the District so the Past Directors are again qualified to serve as directors on the Board and may do so if appointed by the City Council as authorized in C.R.S. Section 32-1-905(2.5); and

WHEREAS, the Property is part of the Foothills Mall development, which development is owned by Walton, however the development is currently being foreclosed upon by Walton's lender, MUFG Union Bank (the "Lender") and in control of a court-appointed receiver, Cordes & Company LLP (the "Receiver"); and

WHEREAS, two of the Past Directors, Suni Devitt and Michael L. Staheli, are representatives and agents of the Receiver; and

WHEREAS, the current lack of directors on the Board will cause an interruption of the District's services and will interfere with a current contract between Walton, the Lender and a third party for the third party to purchase the Foothills Mall in lieu of the foreclosure; and

WHEREAS, the Past Directors are currently eligible electors of the District and therefore qualified to serve on the Board and are willing to do so to provide continuity in the District's governance as to its ongoing matters, including the pending potential sale of the Foothills Mall; and

WHEREAS, the City Council, having been advised of the need to make the appointment of new directors to the District's Board and having been advised that the Past Directors are duly qualified and willing to serve as directors on the Board, finds that it is in the best interests of the City and the District that the Past Directors be appointed to serve as directors on the Board as authorized in C.R.S. Section 32-1-905(2.5).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT COLLINS, COLORADO as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby appoints, in accordance with C.R.S. Section 32-1-905(2.5), Patrick Bunyard, Suni Devitt and Michael Staheli to serve as directors on the Board until their successors are duly elected as provided in C.R.S. Section 32-1-905(2.5).

Section 3. That pursuant to the requirements of C.R.S. Section 32-1-905(2.5), the Board shall call for an election within six (6) months hereof for the purpose of electing directors to the Board in accordance with the Act and all other applicable statutory requirements.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 4th day of May, A.D. 2021.



Mayor

ATTEST:



City Clerk

