



Visit Estes Park  
The Destination  
Marketing Organization  
VisitEstesPark.com

## Board of Directors Regular Meeting Sept. 6, 2017 Minutes

**Board Members Attending:** Steve Kruger, Lindsay Lamson, Adam Shake, Charley Dickey, Wendy Koenig (Town Trustee Liaison), and Sean Jurgens.

**Also Attending:** Zach Clemens, Mark Holdt, Paula Scheil, Arthur Messal, Michelle Hiland, Kaylyn Krueger, Jon Neidermuller, Carrie Arnold, Tim Resch, and Michael Fogarty.

Elizabeth Fogarty, President and CEO, Visit Estes Park  
Michael Bodman, Finance & Admin. Manager, Visit Estes Park (taking minutes)  
Jonathan Chmil, Lyons Gaddis, Visit Estes Park Attorney  
Kathy Asche, C.P.A., Visit Estes Park Accountant

Before the meeting began, Arthur Messal sat in the boardroom table seat normally used by Visit Estes Park CEO Fogarty. Twice, Messal was asked by VEP staff to move to a seat used by the public away from the boardroom table. Twice, Messal refused to move out of the CEO seat, and he crossed his arms in an aggressive posture. Later, after Trustee Koenig urged Messal to move aside, Messal moved to a seat used by the public.

The meeting was called to order by Chair Steve Kruger at approximately 1:00 p.m. Shake moved to enter the meeting, Lamson seconded, and the board approved unanimously.

**Public Comments** – Arthur Messal: The audit was of limited value and the budget remains unclear. Michelle Hiland: The board needs a better understanding of what was done by the auditor. Carrie Arnold: Speaking as a VEP stakeholder, one who owns a local business, Arnold stated that she appreciated the auditor's attendance and that she did not agree with Messal and Hiland's opinions nor their tactics to discredit VEP.

### A. Action Items

#### 1. Approval of Agenda

Shake moved to approve the agenda, Lamson seconded, and the board approved unanimously.

#### 2. Public Comment Policy

Kruger read the public comment policy aloud. Lamson noted that the purpose is to provide for public comment in an orderly fashion. Koenig suggested that the Chair could have the authority and flexibility to adjust the three-minute time limit as needed.

Policy 21, item 3.a., would be amended to include, "... or as adjusted by the Chair." Lamson moved to re-approve the policy with this change included, Jurgens seconded, and the board approved unanimously.

#### 3. Approval of Revised 06-14-2017 Board Meeting Minutes

Dickey moved to approve the minutes, Lamson seconded, and the board approved unanimously.

**4. Approval of 08-02-2017 Board Meeting Minutes**

Shake moved to approve the minutes, Jurgens seconded, and the board approved unanimously.

**5. Board Officer Position**

Dickey stated that Lamson's conduct was inappropriate for his board officer position as Vice Chair. Dickey moved to remove Lamson as Vice Chair. No one seconded Dickey's motion, and thus there was no vote. Michelle Hiland exclaimed "second" without invitation or permission of the board and the Chair stated this was not appropriate.

**6. Board Member Conduct**

Dickey stated that the VEP board should request that Lamson resign from the board, no one seconded Dickey's motion, and thus there was no vote.

**7. VEP Board Meeting Location**

Lamson noted that the formal Town Hall setup and configuration could help improve the level of civil discourse and outweighs any discomfort that some might feel in that room. Lamson moved to relocate the meeting location to the Town Hall boardroom, subject to availability, Shake seconded, and the board approved unanimously.

**8. VEP Board Meeting Video Recordings**

Shake noted that there's a small cost involved. Lamson moved to record board meetings by video, Jurgens seconded, and the board approved unanimously.

**9. VEP Board Public Email**

Shake noted that Dickey has been deliberately going against existing board policy, which prohibits online posting and sharing of VEP board emails. Under normal circumstances, Shake would vote to approve online posting of board emails. But, in the circumstances, since Dickey has been deliberately violating board policy and using public town and county board email as a forum to express his opinions contrary to VEP board policy, which is inconsistent with sunshine laws, and most likely against the VEP bylaws, Shake stated that he is against moving forward with a policy change.

Jurgens and Lamson agreed with Shake, with Lamson noting that a vote to change policy would be a vote to validate Dickey's behavior. In addition, Lamson noted that board emails are already public and subject to CORA.

Dickey stated that board emails should be public to be transparent, and that he has not received any emails that could put VEP at a competitive disadvantage. Kruger stated that not only has town public email turned into a forum for Dickey to deliberately violate VEP board policy, but it has also become a forum for social-media commentary for a public audience.

According to one member of the community that Kruger encountered at Safeway, "changing policy to support the worst behavior of one board member," is not a good idea. Dickey stated that his behavior, even if inappropriate, is not the issue. Kruger replied that Dickey's behavior is, in fact, an indicator of whether automatic public posting of board emails is a good idea. Dickey's behavior to smear the VEP organization on public town email has demonstrated the bad side of it, according to Kruger.

Shake moved to not approve automatic online public posting of VEP board emails, Lamson seconded, and the board voted 4-1, with Dickey against, in favor of continuing existing board policy.

**10. Approve Policy 12 Stakeholder Industry Partner Services – Baby Supply Rental Service**

When there's no locally available service to serve the needs of guests, the board can approve advertising for non-local services outside the district boundaries, such as the current issue of baby supply rental services, according to Fogarty.

Lamson moved to add baby supply services to Policy 12, Shake seconded, and the board approved unanimously.

**11. Approve Visitor Study and Economic Impact Study – Budget Spending**

Fogarty stated that new research, including a new economic impact study and a new visitor study, were budgeted in 2017 but spending was suspended until further approval by the board. Since these studies are needed, Fogarty requested approval from the board to proceed with the studies and to spend the budgeted monies.

Lamson moved to approve spending for the research studies, Shake seconded, and the board approved unanimously.

**B. Discussion Items and Reports**

**1. Estes Park Town Board Liaison Update**

Trustee Koenig was present as a substitute for Trustee Cody Walker. She did not have any updates from Trustee Walker, and the VEP Board had no questions for Koenig.

**2. RMNP Update – Kyle Patterson, RMNP Management Specialist/Public Affairs Officer**

Patterson was unable to attend the meeting.

**3. 2016 Audit Results**

Kruger read aloud a prepared statement on the fiscal year 2016 audit and requested that the entire statement be entered into the record (see attachment).

Subsequently, Paul Neidermuller, C.P.A., of Clifton Larson Allen, spoke about the fiscal year 2016 audit. Neidermuller confirmed that the Comprehensive Annual Financial Report (CAFR) (town audit report) did, in fact, include Visit Estes Park and VEP's financial position. An audit consists of opinions on the financial statements, including those of a component unit (i.e., Visit Estes Park), hence the plural of the word opinions, according to Neidermuller.

The audit was conducted in accordance with *Generally Accepted Accounting Principles* (GAAP) applicable in the United States of America. An audit includes examining and evaluating (a) the appropriateness of accounting policies used, (b) the reasonableness of significant accounting estimates made by management, and (c) the overall financial presentation of the financial statements. In this connection, Clifton Larson Allen (CLA) issued unmodified, clean opinions. CLA believes that the audit evidence obtained, including evidence related to the financial statements of Visit Estes Park, is sufficient and appropriate, according to Neidermuller, to issue an audit opinion on the financial statements as a whole.

After a short break, it was revealed that Arthur Messal had not disclosed that he had been secretly recording the auditor's verbal statement. Neidermuller noted for the record that Messal's recording had been done without Neidermuller's consent.

Dickey asked the auditor if he thought the newspaper article (i.e., VEP press release) was factual content and whether the auditor performed a comprehensive review of Visit Estes Park's financial management, including financial statements, compliance, internal control, budgetary procedures and

controls, and accounting systems. The auditor replied that he did not review the press release; he would not comment on any of the steps performed as part of the audit; and that he stands behind CLA's opinions. Neidermuller stated that the complete audit documentation requested by Dickey, which includes the procedures and all of the steps performed during the audit engagement, is the sole and exclusive property of CLA and constitutes confidential and proprietary information. Disclosing the particulars of the audit procedures and all of the steps involved could help organizations design a fraud by circumventing anticipated audit procedures, according to Neidermuller.

Dickey maintained that VEP needs to conduct an independent audit and pay more than \$2,000 to obtain better results. VEP attorney Chmil replied that an independent audit would be duplicative of the current audit; it would not remove VEP from the town's audit. VEP accountant Asche added that Dickey's figure of \$2,000 is not correct. The town bills VEP for the marketing district's part of the audit, and the cost is much higher than \$2,000. Somewhere between \$5,000 and \$6,000 is the actual cost.

Asche stated that an additional audit would be an audit of the audit. She did not see the point of auditing the auditors and the work that had already been done as that approach would be duplicative. Asche stated that she did, in fact, provide extensive and detailed information for the audit. In order for the town to receive a clean, unmodified audit opinion, each of the components, including VEP, needs to receive a clean opinion as well, according to Asche.

Dickey questioned CEO purchasing. Holdt replied that the upcoming executive limitations policy will address Dickey's concerns. The CEO is responsible for ensuring that the board receives accurate and timely financial information, according to Holdt. This is where the board responsibility lies. Fogarty added that she is also restricted by state law in terms of spending, since state law prohibits spending in excess of available revenues and beginning cash balances.

Lamson expressed regrets that CLA had been drawn into local political intrigue. Those few responsible for the intrigue were disappointed that the audit did not find any financial problems at VEP, according to Lamson. He added that Dickey's public statements about the audit in the newspaper were uncalled for and could amount to defamation concerning CLA and C.P.A. accountant Kathy Asche. Lamson asked about CLA as a firm. Neidermuller replied that CLA is a top-ten audit firm.

Shake asked Neidermuller if there were any unresolved audit questions, and Neidermuller replied, no, there were no unresolved questions about the audit. Shake asked if there was any fraud, and Neidermuller replied that there was no fraud noted. No limitations were imposed upon CLA by VEP, according to Neidermuller. There were no areas of concern noted or reported concerning the overall VEP corporate environment. In addition, there were no disagreements between the auditors and VEP. CLA is a top-ten professional C.P.A. firm, and all of the auditors who work on VEP's audit stay current with continuing and professional education. The audit was conducted in accordance with all CLA firm standards and professional accounting & auditing standards.

Kruger asked Dickey if his public email statement that the audit was a "sham" amounted to a subjective opinion. Dickey replied that it was "one of mine." Dickey stated that this line of questioning sounded like the same "nit-picky crap" that the board has been going through lately. Then Dickey pounded on the boardroom table and asked to return to the published agenda.

#### **4. Board Emails**

Kruger asked Dickey why he found it necessary to send publicly posted online emails to Mayor Jirsa and Commissioner Donnelly on a regular basis. Kruger noted that this practice was a deliberate violation of VEP board policy. Dickey replied that the reasons were transparency and "covering my ass." Kruger asked Dickey to refrain from foul language.

Using town and county public email as a means to editorialize opinions related to VEP board business is inappropriate and a violation of board policy, according to Kruger. Lamson added that he is disturbed by the public picture painted by Dickey of the VEP board (in Dickey's public emails), and how that picture gets attributed to the whole board at a later date, such as what happened at the last town-county-VEP quarterly meeting. Rather than a dysfunctional board, it's just one member who is misbehaving, according to Lamson, with Dickey firing off public emails containing half-baked allegations on a regular basis, which makes everyone on the board look bad. Dickey's behavior is harmful to the VEP organization, according to Lamson.

Kruger noted that Dickey's request for the VEP board to ask for Lamson's removal as Vice Chair was sent through public email in violation of VEP board policy. Kruger reminded Dickey of his obligations to uphold VEP board policy at all times.

**5. Board Strategic Plan Policy – Sage Consulting Mark Holdt**

Holdt went through his VEP strategic plan policy and board governance presentation, and the board contributed their thoughts as he went along. All of the strategic plan information needed in relationship to the 2018 Operating Plan was completed by the VEP board. The board agreed that approval of the strategic plan should be on the agenda as an action item at the next special meeting when the board is scheduled to approve the 2018 Operating Plan.

**6. 2018 DRAFT Operating Plan Review**

Fogarty presented the draft 2018 Operating Plan for review by the board. The document is a confidential working draft, a "work product" that is excluded from public disclosure and CORA requests until it is formally approved in its final form, according to VEP legal counsel. In response to concerns expressed by the board, Dickey confirmed that he would not share the work product.

Dickey asked why it says on VEP's outreach and transparency document that a draft is shared with the public. Fogarty replied that the current 2017 Operating Plan posted on the website is used as the first, working draft of the 2018 Operating Plan, and that an email has already been sent to the public formally requesting public input on the upcoming 2018 Operating Plan. So, the public has been given an opportunity to provide feedback. Koenig stated that work products remain confidential on the town board, and she sees the VEP Operating Plan as the same type of confidential, non-public work product that the town handles on a regular basis.

Fogarty and Board Treasurer Jurgens presented the summary 2018 budget contained in the draft Operating Plan. The budget was designed to support the operating plan and the strategic plan. Dickey asked about budget line items. Fogarty replied that a more detailed Colorado Department of Local Affairs budget with line-item information will be reviewed and approved by the board in December.

The board agreed that it would not be necessary or appropriate, as a strategic and policy-level board, for the board to delve into internal staff operations, line items, or amounts being spent on, for example, print ads in a particular magazine distributed in Texas once a week. Line items and further details below that level are managed by the CEO, so that the total, bottom-line budget numbers remain in balance, consistent with overall strategic and policy-level budget limits imposed on the CEO by the VEP board.

**7. Special Meeting Date**

The board agreed to hold a special meeting to consider approval of the 2018 Operating Plan on September 20 at 1 p.m. Kruger reminded the VEP board that feedback to the CEO on the draft operating plan should be strategic and policy-level in nature.

**8. CEO Update – Financial Report & Update**

The board agreed to read the financial report in the packet and ask the CEO if any questions come up.

**Board Comments** – Shake stated that his refusal to support Dickey’s motion to remove Lamson as Vice Chair was not because he agreed with Lamson’s behavior towards Commissioner Donnelly but rather because Lamson was not wearing his VEP hat at the time, everyone can have a single bad day as long as it’s not a deliberate recurring habit, and because Lamson did not seem to break any board policies or bylaws. Dickey, in contrast, is engaging in a recurring habit of deliberately breaking VEP board policies and bylaws while wearing his VEP hat, according to Shake. Jurgens stated that the board needs to work together and speak with one voice. Then the board can be more productive. Kruger thanked the CEO and the staff for being professional and putting out proverbial fires related to false information spread on public town and county email about what, at the end of the day, was a clean audit. According to VEP attorneys, fiduciary duty requires the highest degree of trust, honesty, and good faith; it requires the fiduciary to act in the best interests of the entity for which they serve as a fiduciary.

**Adjournment** – Jurgens moved to adjourn at approximately 5 p.m., Shake seconded, and the board approved unanimously.

  
Michael Bodman, Recording Secretary

  
Chair

DATE: 11-22-17

DATE: 11/22/2017

Attachment: 2016 Audit Statement by Chair Kruger

Steve Kruger, Chair

### INTRODUCTION TO AUDIT RESULTS REVIEW – AGENDA B.3

- A small number of local residents are claiming that Visit Estes Park is intentionally avoiding financial scrutiny by conducting its audit as part of the town's audit.
- These few people, who I can count on one hand, claim that there was no real financial review of Visit Estes Park and no real evidence for the auditors to reach a meaningful opinion concerning Visit Estes Park's financial statements as part of the town's financial statements and the town's results.
- In addition, these same few people are claiming that Visit Estes Park's press release announcing the results of the audit was misleading and not accurate.
- The local paper, the *Trail-Gazette*, ran a front-page news article questioning the validity of the Visit Estes Park audit.
- Before printing the story, the *Trail-Gazette* cited language in the audit report that, "*Visit Estes Park does not issue separate financial statements and is discretely presented in the town's financial statements,*" to suggest that (1) there was no financial review of VEP, and (2) there were no VEP financial statements provided to the auditors.
- Not coincidentally, this exact same thing was stated on Town of Estes Park and Larimer County public email by one of our own VEP board members, Charley Dickey, who was identified in the article as a source by the *Trail-Gazette*.
- *Discretely presented financial statements* in this context means discrete or distinct (i.e., visible), it does not mean discreet (private or invisible). For example, on p. 1 (Statement of Net Position) of the report, look for the right-hand column labeled Marketing District for discretely presented (i.e., distinct but not separate) financial statement information for Visit Estes Park.
  - It is evident that Mr. Dickey misinterpreted the word "discrete" multiple times on Town and County public email, and reached a conclusion based on his lack of understanding – a conclusion that is harmful to the organization.
- It is well established VEP board policy that the board *speaks with one voice* or not at all.
- The board is required to perform *appropriate fiduciary responsibilities* as stated in the State Statute (Section 210).
- The VEP board also reached a decision to make the CEO the only person *authorized to speak to the media* on behalf of the organization. Mr. Dickey not only spoke to the media, he shared false information on behalf of the organization.

- It is evident that Mr. Dickey flagrantly violated three separate VEP board policies (speak with one voice, fiduciary duty, and speaking to the media) – all harmful to the organization.
- This behavior is contrary to Mr. Dickey’s fiduciary duty to put the interests of the organization ahead of his personal agenda.
- Mr. Dickey was quoted by the *Trail-Gazette* questioning the validity of the audit, thus engaging in behavior harmful to the public perception of the organization, which is also contrary to established VEP board policy and Mr. Dickey’s fiduciary duty.
- This activity of trying to discredit the Visit Estes Park audit, as Mr. Dickey states a “sham” audit, has harmed the Visit Estes Park organization. Can we get a loan if need one after the next natural disaster? Has our ability to campaign for a lodging tax increase (paid solely by visitors but voted on by the community) been permanently vitiated?
- As far as the potential for false conclusions based on potentially misleading language goes, one of the inherent shortcomings of human communication is the potential for words to be deliberately misinterpreted, especially by people with a political agenda.
- Conducting the audit as part of the town’s audit is a determination made according to *Generally Accepted Accounting Principles*.
- On whether a comprehensive review of Visit Estes Park’s financial management, including financial statements, compliance, internal control, budgetary procedures and controls, and accounting systems was done, the answer is: Yes. These items were reviewed as part of the audit process to gather sufficient evidence and report an overall audit opinion, one that includes Visit Estes Park as part of the town for audit purposes.
- My understanding is that there is no way for an auditor to issue a favorable opinion without considering internal control, accounting, and other procedures as these issues relate to fair presentation of financial statements.
- There were no material weaknesses identified by the auditors for Visit Estes Park.
- In the very first sentence, the VEP press release stated, “Visit Estes Park has received a clean financial audit opinion from external C.P.A. audit firm Clifton Larson Allen LLP *as part of the Town of Estes Park’s annual financial audit.*”
  - Note the words “part of,” as opposed to separate or standalone.
  - Town Administrator Frank Lancaster has emphasized that, “There were no deficiencies identified by the auditors mentioned in the Town [audit report] related to VEP.”
  - Mayor Jirsa has stated that the VEP press release is “technically correct.”
  - I also believe that the VEP press release is accurate.



- Someone who is hostile to Visit Estes Park and motivated to discredit the organization as a justification for diverting funds from marketing to childcare, affordable housing, and municipal services could deliberately misinterpret the VEP press release, according to their subjective opinions, for political reasons.
- In fact, the only people questioning VEP's audit and the related press release are those same few people I mentioned at the beginning, who I can count on one hand, with hostile intent towards VEP and a misguided political agenda.
- This political agenda is almost certainly illegal, since the state statute authorizing local marketing districts expressly prohibits the diversion of funds from their intended purpose, destination marketing and management, to childcare, affordable housing, and municipal services.
- Being a part of the Town of Estes Park's audit is already the highest level of scrutiny for a public organization like VEP. A standalone audit of VEP would be duplicative of the current audit and more likely to be challenged than if VEP is subject to same standards as the town.
- Many, if not all, of Visit Estes Park's financial and accounting policies & procedures (P&P) have been implemented based on the town's same policies & procedures. The purpose for this has been tri-fold:
  - VEP is reported as a component of town, so VEP has intentionally taken steps to mirror the town's policies & procedures whenever possible to avoid internal differences in reporting.
  - To streamline the audit, since VEP's policies & procedures will be similar if not the same as the town.
  - To utilize staff time efficiently -- there is no need to "re-create the wheel" when acceptable and complimentary polices & procedures are already approved by the town.
- I am requesting this entire statement be entered into the Visit Estes Park Board minutes based on the gravity of the situation.
- We will now move on to Paul's Visit Estes Park audit presentation on behalf of Clifton Larson Allen. We will entertain questions from the board afterward.