

RECORD OF PROCEEDINGS

MINUTES OF A SPECIAL BOARD MEETING OF THE BOARD OF DIRECTORS OF THE FOOTHILLS FIRE PROTECTION DISTRICT HELD August 30, 2010 (Monday)

A special meeting of the Board of Directors of the Foothills Fire Protection District (referred hereafter as "BOD") was convened on Monday, August 30, 2010 at 6:33 P.M., at the Mount Vernon Country Club, 24933 Club House Circle, Golden, Colorado.

The meeting was open to the public at 6:30 p.m.

I. ATTENDANCE

Patrick Smith-Board President
Julie Ann Courim-Vice President
Richard Bartlett-Treasurer
David Robinson-Secretary
Steve Close-Assistant Secretary
(excused absence at 7:19)
John Kilpatrick-Chief
Patrick Ahern-Deputy Chief
Craig Moilanen-FFPD

Laura Kilpatrick-Community
Murry Wynes-Self
Brian Zoril-Self
Kyle Vaugh-FFPD
T. J. Carney-Community
Dave Stajcar-FFPD
Pati Stajcar-Self
Dave Gerald-FFPD

II. ADMINISTRATIVE MATTERS

A. Call to Order at 6:35

B. Approve Agenda

Director Bartlett requested the addition of paragraph D, Financial Matters and the addition of paragraph E, Personnel Matters for discussion in a possible Executive Session.

Director Courim, The possible Executive Session is about payroll and Chief I need to notify you it is about you because you are in attendance.

Chief responds OK.

Motion to approve agenda as amended by Director Bartlett and seconded by Director Smith, passed 5-0

III. DEPARTMENT MATTERS

A. Station Proposal for Rainbow Station

Director Smith; we have a revised estimate that is \$265,400. Do we feel comfortable that this is an upper limit?

Director Robinson; What I have prepared is a combination of what the building committee had previously prepared, an independent estimate of the foundation and concrete prepared by a Contractor and items that I estimated that we either not included, such as site work, or were less than what I would estimate for the project. I then added a 5% contingency to these estimates and arrived at the \$265,000 estimate.

Chief Kilpatrick; Is there any accommodation for a General Contractor in this estimate?

Director Robinson; No there is no markup for a General Contractor to manage the project. The estimate does include subcontractor pricing for their work without assuming that any work would be self performed.

Director Close; I may be able to have the soils test performed without charge, I will ask.

Kyle Vaughn; The Building Committee still assumes that we would act as the General Contractor to save cost.

Director Smith; The most important consideration is that we have someone 100% committed to be able to do the coordination and manage the project. It is crucial to maintain schedule and to prevent cost overruns.

Director Robinson; I believe you can accomplish this if you can have the Steel Building contractor include in his package the foundation and concrete contractor. The most critical coordination issue will be with the foundation coordinated with the steel building. Once you have the building erected and "dried in" then the heating, electrical and plumbing system will be easier to coordinate. If you can construct the project in this fashion I feel comfortable that you will be able to manage the project.

Director Smith; Will Directors Close and Robinson be able to assist with the engineering coordination?

Director Robinson; Yes. I think that once we have the structural engineering complete and the bid price for the concrete work we will have much more confidence in the estimate. Those two items are the major

costs. Once that is complete I will prepare the plans for the electrical, heating and plumbing systems that we can then bid.

Director Courim; I noticed that there is a significant difference in cost (\$13,000) between these two estimates for the concrete work. Which one do we think is correct?

Director Robinson; My estimate was based on a conservative foundation design, the committee's estimate was based on a more accurate design provided by a structural engineer. At this point we are not sure which is correct but believe it should be in the range of the larger estimate.

Director Smith; We have \$150,000 we allocated for this project, if the project is \$265,000 what impact does that have on the budget?

Director Bartlett; I think we will be fine. If we spend the additional \$115,000 for the building this year we will still have \$117,000 to spend on operations at the beginning of the year.

Director Close; Would we be able to fund the additional \$115,000 without needing to spend money over time such as bonds?

Director Bartlett; Yes, we have the cash available.

Dave Stajar; I would encourage completion of the entire building including the mezzanine and the exterior slab, it will be less expensive to do at one time.

Director Robinson; I would agree, however we may have to utilize those two items as contingency until we have bid prices to validate the estimate.

Deputy Chief Ahern; How often is the actual construction cost lower than the estimate? How confident are you in the estimate?

Director Robinson: Since the two major cost items have been fairly well defined and we have added more of the minor items I think we will be fairly close.

Deputy Chief Ahern; My concern is that if we have cost overruns that we will be left without enough funds for operations.

Director Courim: How comfortable are we with the funds we have allocated for operations until the end of the year? If we have cost overruns in operations how will we fund those?

FF Moilanen: We may be ok however the fuel costs have been up this month because we have had an increase in calls. I don't expect any major repairs to the fleet.

Chief Kilpatrick; I have several comments on what I did not see in the estimate, security locks with panic bars, exterior lights, communications, interior lights, bathroom, laundry facilities, shower, fill dirt and removal of trees. The current septic system may not have the capacity, it will need to be determined if the capacity is available. My greatest concern is that this project needs a General Contractor to manage the project to maintain cost and maintain schedule.

Wynes; If our funding is reduced in 2011 does construction of the station in 2010 make sense?

Chief Kilpatrick; We just received that information from the county and the funding for 2011 decreases by less the ½ percent.

Motion to increase the budget for the Rainbow Station Equipment Bays to \$265,400 by Director Bartlett and second by Director Smith. Passed 5-0

Director Smith; The BOD needs the Building Committee to provide a monthly status report including cost expenditures, construction schedule and issues.

Director Close excused from meeting at 7:19 P.M.

B. Land assessment for parcel at US40 and Lookout Mtn Rd.

Director Smith; We have an appraisal for the property that is approximately \$200,000. I believe we should put discussions on this property on hold considering the approval of the Rainbow Station improvements.

C. Chief's Report.

- a. Directors signed the resolution on Proposition 101, Amendments 60 & 61.
- b. Discussion of proposed IGA with Lookout Mountain Water District. Director Robinson questioned the implications and intend of paragraph 3.2.3 which requires usage of pressure relief valves when connecting to LMWD fire hydrants. Chief Kilpatrick will question the intent prior to signature.
- c. Change order request for the new Rosenbauer Engine. Three change orders were presented that had both charges and credits, the net result

was a final contract amount of \$324,000. Previously approved amount was \$ 330,298 for a net reduction of \$5,702.

Motion to accept the revised contract by Director Courim and seconded by Director Smith, passed 4-0.

D. Financial Matters:

Director Bartlett: We just received the tax assessment information from the county and the decrease we anticipated for 2011 is minimal. The preliminary budget for 2011 now indicates that we should be able to allocated \$100,000 to capital improvements, \$120,000 to the truck fund and \$120,000 to the pension fund. This is a good surprise.

E. Personnel Matters Involving Chief Kilpatrick:

Director Bartlett; I will call for an Executive Session dealing with personnel matters, except if the employee who is the subject of the executive session has requested an open meeting, 24-6-402 (4) (f) CRS. The question is Chief Kilpatrick this is an executive session dealing with you, would you like it to be an open session or a closed session?

Chief Kilpatrick responds open session.

Director Bartlett; we have an open session. John we had a discussion not too long ago where you said you would like to have your insurance paid for and that because it was in your authority to pay that amount because it is less than the \$2,500 limit. I said ok you have to come to the BOD. Since I was not here in July I don't know if that was approved. So I ask the BOD if that was approved.

Director Robinson; No it was tabled.

Director Bartlett; That particular discussion got me to thinking about payroll, so I pulled some payroll and found something disturbing. One is for the August 13 and August 27 payroll checks I noticed an additional \$1186 in each check. I thought this could be for health insurance. Also in the last 5 pay periods I see overtime hours, some at time and a half, some at regular time. To the amount of \$2500, that was either phoned in or faxed in to the payroll system. I would like to hear your explanation of why these things were done.

Chief Kilpatrick: In reference to the Health Benefits I brought this issue to the BOD at a BOD meeting. The request was not so much if I received health benefits, but was it acceptable to the BOD if I received them as a personal reimbursement for my out of pocket expenses. The reason I asked

was that it became apparent to me that everyone in the department received insurance, but it was not required to be a department sponsored group health plan. That it is a reimbursement for that employee's personal private health insurance. That being the case I felt that I should also be receiving reimbursement. It was not a question of if I should get the BOD approval. If I had know if this is the way the system was set up I would have said upon my employment this is what I want. Health insurance is listed as a benefit for all paid employees. It is not specified as to what the plan is. Additionally it does not say when an employee qualifies for health insurance. Therefore I felt that since I had paid for my health insurance from the beginning of my employment and I was entitled to benefits from the beginning of my employment, that is why I set it up the way I did. I did not feel that I needed the BOD approval in my particular case. It was not an attempt to pull the wool over anyone's eyes. You said you wanted to table your decision in June until the personnel review. At the personnel review in June there was no mention of the issue. There was no mention made at the July BOD meeting. So I believed the BOD had forgotten it and did not intend to address the issue at all and that I would blissfully go along thinking that I must not be entitled to health insurance, even though I am a paid employee of the District.

Director Bartlett; During the initial negotiations concerning your salary what was the yearly salary you were to receive?

Chief Kilpatrick; The original salary was \$65,000 plus benefits.

Director Bartlett; T.J. Carney, you were present for those discussion of salary what is your recollection.

T.J.Carney; We did discuss salary, we did not discuss benefits, and we discussed status. We came to agreement on his salary and his status as an exempt employee.

Director Bartlett; Quite frankly I am nervous about seeing \$2,500 go out as payroll without the BOD knowing about it. I'm not saying it is necessarily wrong but the BOD did not have a say. As far as overtime goes, as T.J. just mentioned you are an exempt employee. Why is there overtime of \$2,500 we have paid you?

Chief Kilpatrick; It is my understanding that exempt status of employees of the District is based upon a ruling by the Department of Labor that Districts with fewer than 4 employee's could require all of their fire fighters to be exempt. When we hired Jill Inman as a part time employee for about three weeks we had 5 employees and with five employees you lose that exemption. So I felt that all of the employees of the district would be entitled to overtime.

T.J.Carney; Exempt status was based on the fact that Chief Kilpatrick was the manager of the District, not the number of employees but that he was the CEO of the District.

Chief Kilpatrick: The BOD has made it quite clear to me that they do not consider me to be an executive level manager. I do not have signing authority that would be comparable to an executive level manager, I have been micromanaged by the BOD on issues that no executive level manager would be faced with. The BOD has made it quite clear that they want to play the tune to which I march, be heavily involved in operations and make sure I don't step out of line with \$2,500. From all of my readings of the IRS rulings of exempt vs. non-exempt employees, typically exempt employees make in excess of \$100,000 per year. Secondly the tasks that the exempt employee is expected to perform play a great deal into whether the employee is executive level management or simply a title of executive level management, who does a whole lot of minor tasks that would typically be performed by non-exempt employees. In my job I sweep the floors, I clean the toilets, I clean the sinks, I do the dishes, I open and close the doors every night, I answer the telephone every time it rings just like a secretary, I do many, many tasks in my job as secretarial tasks, stenography tasks that not would be executive level tasks. They are non-exempt tasks that would be performed by hourly employees who are qualified for overtime under the Federal guidelines. Therefore I felt that since my salary was not as high and my tasks were fairly menial in fair measure, that I was not really an exempt employee, regardless of what you want to call me. It is not up to the BOD to arbitrarily decide if I am an exempt employee. It is to treat me as an exempt employee if that is what you want me to be. If you treat me as a non-exempt employee that is what I become.

Director Bartlett; As you stated there were five employees through June 30th yet through July and into August you still are charging overtime.

Chief Kilpatrick; I still make less than \$100,000 per year and I still perform menial tasks.

Director Bartlett; Well at this rate you will make a \$100,000 per year.

Chief Kilpatrick; That is certainly not my intent, I would like to get to the point where I work a 40 hour week.

Director Bartlett; It looks like that is exactly what you are attempting to do. Since you record your own salary and this began the middle of June. I don't look very favorably on this, this looks like money that is being taken from the District. Because you think you deserve something more than a

\$65,000 a year salary. I have a Major problem with that. Are we still in Executive Session?

Chief Kilpatrick and Director Smith; We never went into Executive Session.

Motion by Director Bartlett that because of the Chief's handling of his own salary by feeling that he has the right to have additional pay over and above what he had negotiated that he be terminated, today. Seconded by Director Courim.

T. J. Carney; We had a discussion with the Chief that two weeks notice was a requirement. On either side. Two weeks notice would anticipate being with pay.

Motion to Amend by Director Bartlett; I will amend my motion to allow two weeks notice. Second Director Courim.

Director Smith; Discussion?

Chief Kilpatrick; In my defense I did not make this decision of exempt/non-exempt for myself alone. I felt the rest of the staff is entitled to overtime pay.

Director Courim; I am concerned that you changed compensation structure without coming to the BOD. You have the right to sign checks up to that amount but you don't have the right to change compensation structure. I am also concerned that the checks you have signed for Health Insurance compensation have gone directly to you and not to a Health Insurance provider. I believe that put's the District at risk.

Chief Kilpatrick; I did check with the accountant on this and she felt it was a perfectly appropriate non taxable benefit.

Director Bartlett; On audit, the IRS would have a problem with it.

Director Smith; Chief did you have a discussion with Director Bartlett on this matter?

Chief Kilpatrick; No

Director Smith; Chief did you have a discussion with any other Board Member on this matter?

Chief Kilpatrick; No, other than it would be discussed on my June 28th performance review and it never was discussed.

Director Courim; Did you bring it up to the evaluation committee?

Chief Kilpatrick; No I didn't.

Director Courim; Have you brought it up to put it on the Agenda for the BOD meetings?

Chief Kilpatrick; No I didn't.

Deputy Chief Ahern; I would like to make a comment that the morale in the department is not very good right now and I cannot see where this would help it. I will voluntarily resign my position as Deputy Chief and remain as a firefighter.

Director Smith: Are you resigning as Deputy Chief?

Deputy Chief Ahern; Yes, if the Chief is dismissed.

Director Courim; I have had a discussion with our Legal Counsel about this, it is a misappropriation of funds. I feel that these are funds that have been taken away from the District without the BOD having the chance to reevaluate this. It seems that you have every intention of going forward with the same perspective. How do we fulfill our fiduciary responsibility when we have a Chief who has no qualms about paying himself what he thinks he deserves?

Director Robinson; Since this is new to me it puts me in the situation of thinking if there was any other solution and I honestly have not come up with a solution. I am sitting here thinking about something of which I have learned in the last five minutes.

Director Bartlett: It's disturbing to me that we have given you the power over the employees and that you have decided that you want to enrich yourself by doing these things. I now know that we will have additional non-reimbursable medical expense for the rest of the year, that the BOD did not approve. One thing about prior Administrators of the District was that they were honest. I checked them, but they were honest. If there was something that was done they had backup for it, if there was something that needed to be done they came to me before and they got my approval before anything happened. You had something into the BOD, you did not ask us a second time to look into it, you just decided it was time I got paid. Approximately \$1200 to cover the first six months of the year. Then I going to claim overtime, at time and a half because of five employees, and when we are at four employees and your logic goes away, you claim

straight time. If I don't look at this payroll it continues on, if we find this at the end of the year it is already gone.

Director Robinson; Was the medical reimbursed retroactively since January?

Chief Kilpatrick: Yes.

Director Smith: Chief Kilpatrick did you submit any timesheets?

Chief Kilpatrick: Yes, every two weeks.

Director Bartlett; The BOD has allowed the Chief to approve his own timesheets. A timesheet was submitted that showed straight overtime and was then crossed out and labeled time and a half. No one was consulted.

Director Smith; Any more discussion?

Call for vote on the motion and amendment by Director Bartlett to terminate the Chief with two weeks paid notice. Passed 3-0 with Director Smith abstaining.

Director Smith; I will have someone independently look at the things Director Bartlett has looked at and look at other things that may be found in support of the Chief to retain his employment. I will also work with the State so we have an Acting Chief by tomorrow.

Chief Kilpatrick; Do you want me to continue to report to work for the next two weeks?

Director Smith; No.

Motion to Adjourn by Director Courim, second by Director Bartlett. Passed 4-0.

Meeting adjourned at 8:05 P.M.

Next regularly scheduled Board meeting is September 21, 2010.

The following Directors have reviewed and acknowledged the minutes:

Dick Bartlett

Steve Close (excused at 7:19 p.m.)

Julie Ann Courim

David Robinson

Patrick Smith