

## Grand Junction Rural Fire Protection District

### Minutes of the Regular Board Meeting

August 10, 2004

#### I. CALL TO ORDER

The meeting was held in the Mesa Mall Community Room, 2424 US Hwy 6 & 50 and was called to order by President Steve Grant at 6:35 p.m.

#### II. ROLL CALL – Board Members

Steve Grant, President; Bob McCormick, Treasurer; Vicki Felmlee, Vice President; Tery Dixon, Board Member arrived at 7:00 p.m.

Others Present: Public; media; Larry Beckner, Attorney; and Rhonda Phillips, Scribe.

#### III. APPROVAL OF AGENDA

Vicki Felmlee made a motion to approve the agenda. Bob McCormick seconded the motion. Roll Call. All Ayes. Motion carried.

#### IV. PUBLIC COMMENTS

Bruce Issacson commented that he would like to see the public comment section be moved further down the agenda or perhaps have a public comment section after each agenda item. Steve Grant responded that public comment is on the agenda so that the Board can be responsive with people within the District. He explained that the purpose is to get input from the public as it pertains to the Fire Board rather than have specific agenda items debated. Jack Campbell commented that perhaps rather than using the words “public comments” to use “public comments on communications not on the agenda”. Dale Breckenridge commented that the Board should take public comments after each agenda item if the public has comments or concerns. The Board should serve as a moderator and should keep the comments on track and can stop discussion if it becomes argumentative. Bob McCormick suggested that the public should have the opportunity to comment after specific agenda items. Vicki Felmlee agreed that public comment and discussion should be held after each agenda item as long as they are not being debated or off tangent or off subject. The comments will have to stay within reason and conducive to conducting business. Floyd Keller suggested that the public put their questions or concerns in writing and present it to the President of the Board if they require further explanation.

#### V. ATTORNEY REPORT

- A. Repayment from e.NVIZION: Larry Beckner reported that he spoke with Richard Westfall to see if he had had any further communication from Richard Bruno or anyone from e.NVIZION and was informed that he has not had any such communication within the past weeks. There is no written communication for repayment of funds.
- B. Other: Larry Beckner handed out a draft of the Joint Defense Agreement to the Board and asked that they read through it and call him with any questions or comments. This agreement will be talked about in more detail at the next regular board meeting. Assuming that the present litigation is dismissed without prejudice concerning the tax issue, and if a third party, whether it be a tax payer or some other entity files a claim against the district alleging the tax collection of 2003 for the sub-district were illegally

assessed and illegally collected, then the District and the City would enter into a joint defense on that case. Typically when you have two parties on the same side, they are not really on the same side because you may have issues that are different between the two. You still have issues of confidentiality between the parties. The amount of information shared between attorneys is minimal. The Joint Defense Agreement basically says that we will make every effort to cooperate and coordinate our defense similar to have a unified defense as opposed to two separate defenses. The issue that is addressed in the Joint Defense Agreement says that if there are funds that are deemed by the court to have been improperly collected, and if this District has paid those over to the City, then the City will reimburse those amounts which will be somehow given back to the taxpayers. Another element is the dismissal of the case itself. This district, as the plaintiff, can file and request that this case be dismissed without prejudice, which means that sometime in the future, the case can be re-filed on one or all of the issues presently pending, the District has the right to do so. The other element that is not addressed in the Joint Defense Agreement as far as the dismissal with the court, is the understanding between the City Council and this Board that we will sit down and talk about the actual payment that is owed to the City for the year 2003. At this point, we are dealing with a contract that says that the full amount of money that is collected for sub-district taxes are to be paid to the City on an annual basis. There is no discussion in the contract about any reductions based on the amount of service that was provided for the year 2003. There was no service provided because the firehouse hadn't been built yet. There was training going on and there was a lot of other expense that the City was incurring in order to get ramped-up, but it really wasn't in place at that time. The question becomes, what was the value of the services; what was the actual cost to the City during 2003 and what should be reimbursed. We are not going to tie the dismissal of the case to a resolution of payment for 2003. We are going to get the Joint Defense Agreement in place and get to a point where this Board is comfortable with dismissing the case without prejudice, and then we are going to go into serious discussions about what we will do with 2003 funds.

President Steve Grant asked about the open records litigation and the potential service upon Rob Dixon. Larry Beckner answered that he has not been pursuing Rob Dixon for the past couple of weeks. No further depositions have been rescheduled at this time. Larry spoke with the City Attorney's office and they suggested that if this District is going to consider going forward with some other major proceeding against the people who were involved with e.NVIZION; (officers, directors, potential shareholders, etc.) that may or may not involve Rob Dixon. The District may have a more powerful case in which to do depositions instead of the open records act. That case would probably be a federal case and there are some rules that would apply that do not apply in the open records case as far as discovery is concerned. Larry reported that he had received information through the DA's office that Rob Dixon is represented by a criminal defense attorney in Denver.

## VI. ACTION ITEMS

- A. Board Vacancy: President Steve Grant reported that Steve Gsell resigned as a member of the Grand Junction Rural Fire Protection District Board of Directors. No member of the board has received a letter of resignation at this time. Tery Dixon reported that she spoke with Steve Gsell on August 9<sup>th</sup>, and he told her that he would be placing his letter of resignation in Steve Grant's post box. Steve Grant reported that he did not check his post box today so it is a possibility that the letter is there. This will be discussed at the next regular board meeting.

- B. Special District Association Conference: Vicki Felmlee reported that there is a three-day conference to be held in Steamboat Springs starting September 22<sup>nd</sup>. She suggested that one person attend this conference. She reported that the cost to attend the conference was \$175 per person if paid before September 3<sup>rd</sup> and \$200 if paid after September 3<sup>rd</sup>. The cost for a hotel is approximately \$90 per night. Vicki mentioned that this conference would be a good opportunity to see if the Board wanted to continue membership with the Special District Association. Steve Grant suggested that one person attend the conference. Bob McCormick voiced that he was not interested in attending the conference. Larry Beckner reported that there will be a conference in Grand Junction next year. He reported that he believed that attending the local conference is more beneficial than the one in Steamboat Springs. Tery Dixon reported that she believed it would be more beneficial to attend the local conference. Tery also reported that the previous board has considered dropping membership to the SDA in the past and reported that the previous board researched belonging to a Fire District Association rather than a Special District Association. Bob McCormick said that he has called the Special District Association in the past for information and found them to be very helpful. Steve Grant suggested that one person attend the conference because he believes that there are benefits to attending the conference including decisions on whether or not to continue membership.

Bob McCormick made a motion to send one member, either Vicki Felmlee or Steve Grant to the Steamboat Springs conference on September 22 – 24<sup>th</sup> not to exceed \$700. Vicki Felmlee seconded the motion. Roll Call. All Ayes. Motion carried.

- C. Phone Number for the District: Vicki Felmlee handed out a Market Expansion Lines report to the Board. She reported that she felt there is some need to get a general phone number for the District. She has done some research on the cost of getting a phone number. The best option that she found was through Qwest with a market expansion line. A phone number can be reserved and channeled into an existing phone with a real person or into a voice mail system that can be accessed by a password. The costs is as follows: \$10 activation fee; .5 cents the first minute and .2 cents every minute thereafter per call. Option one, channeling it into another phone number, for example, if the number is 255-5555 that can then be channeled into Steve Grant's number and no one would know his number. The cost is \$22.00 per month for that service. Channeling it into a voice mail where the line resides with Qwest and there is a password associated with it, would cost \$35.95 per month. There would be a listing in the white and yellow pages of the phone book. This would be an official phone number for the GJRFPD. Steve Grant asked if the District had a demonstrated need for the phone number. Vicki explained that she has had several phone calls regarding the GJRFPD and feels that there is a need for a general phone number for the District. Bob McCormick expressed concern about people calling the general number with an emergency instead of calling 911. Vicki Felmlee responded that they would get a recorded message that would instruct the caller to dial 911 in case of emergency because this is a business phone. Tery Dixon volunteered to research the cost of an actual answering service. This topic will be discussed at the next regular board meeting.

- D. Renewal of Liability Insurance: The current insurance coverage renewal is August 14<sup>th</sup> but there is a 30 day grace period. The current premium is \$1,938 and the premium for next year is \$1,985. Bob McCormick handed out an outline on current coverage limits and the amounts for each. Tery Dixon reported that she called Jerry Hamilton with Home Loan Insurance and he is interested in giving the District a quote on liability insurance. Mr. Hamilton has requested that the District provide him a copy of the current coverage and he will provide a detailed report on coverage and cost. Larry Beckner reported that he has spoken with VFIS, the District's underwriter, in reference

to the fidelity coverage and has received a lengthy packet to fill out and return to them. The maximum fidelity bond coverage is \$9,000 for the District. They require a criminal investigation before they will pay on a fidelity bond. The only other area for possibility of recovery is the management liability. Larry has requested information on this coverage. Larry pointed out that there are several things on the current policy that may not be needed such as general liability. The management liability is something that should be retained as well as the fidelity bond. President Steve Grant asked Bob McCormick to speak with the current liability insurance carrier with a new quote as well as a comparison quote from Home Loan on the cost of general liability, management liability and fidelity liability. This item will be discussed at the next regular board meeting.

## VII. DISCUSSION ITEMS

- A. By-Laws Committee Report: Vicki Felmlee reported that the by-law committee will have a draft of the by-laws to present to the Board the last meeting in September.

## VIII: OTHER ITEMS

President Steve Grant stated the Board wants to conduct items in public as visible as possible. However, we are now at the point of perhaps filing a claim against e.NVIZION and the Board must discuss all alternatives. The Board will discuss as much as possible in open session, but may adjourn into Executive Session for further discussion.

Vicki Felmlee read the following: Mr. Chairman, I move that this board adjourn into an executive session for the purpose of conferring with our attorney to receive legal advice on specific legal questions pursuant to C.R.S. 24-6-402(b) and pursuant to C.R.S. 24-6-402(e) concerning negotiation matters and concerning matters related to the pending litigation on to the validity of the sub-district tax collected in 2003 and other matters pending in that litigation; and concerning the pending litigation on the Open Records request; and concerning the desirability of filing either state or federal claims against e.NVIZION and its affiliates, officers, agents and owners and against Robert Dixon. Tery Dixon seconded the motion.

Steve Grant read the following: Hearing a second, I will open the matter to discussion. I will note that it takes a 2/3 vote to move into executive session, that we may not discuss any matters except those permitted under Sections 24-6-402(b) and (c); that we may not adopt any proposed policy, resolution, rule or regulation nor may we take any "formal action" in the executive session; and since these matters concern attorney-client privileged communication, no record will be kept of the executive session but a statement will be made by our attorney after the meeting that all matters discussed constituted attorney-client privileged material and a signed statement from the chair of the executive session that the discussion of the unrecorded portion of the session was confined to the topics for which the executive session is authorized to be held. Is there further discussion? Hearing no further discussion I will call for the question. The motion on the floor is to adjourn into an executive session to consider matters described in Section 24-6-402(b) and 402(c) of the Colorado Open Records Act. In order for this matter to pass, it requires a 2/3-majority vote.

Steve Grant asked for Larry Beckner to give a brief overview of the Board's options. Larry Beckner responded that the first option is to do nothing. The other option is for the Board to take an action against individuals and entities who may have violated investment criteria to see if we can put pressure on those people to pay us back the money that is owed or reduce the claims or judgments and to seek collection activities as a judgment creditor. There are a number of theories that the Board may want to pursue in trying to chase down potential liable parties. It is very easy to file a claim in Grand Junction for mismanagement of money, taking money and

using it for personal uses; taking public money and investing it in areas where the statute does not allow those investments to be made and just go for a strict recovery of the money that was improperly invested. Those causes of action really do not give the Board a lot of leverage. The Board is also dealing with the fact that multiple defendants are in New York. Larry suggested that a better venue would be a federal court. A federal court judgment in the state of Colorado is enforceable in any state. We also have the ability to issue subpoenas in New York and require them to appear in Colorado to give testimony. We would have the ability to issue discovery requests and have them respond to us in New York. We also have a RICCO claim. The statute is worded broadly enough to allow us to go after people for a lot of things. There are several advantages to a RICCO claim. First, it is a federal act. When you violate the federal act in New York, you are also violating it in Colorado or anyplace else in the United States. The second thing is that the RICCO claim is based on criminal statutes. State law is applied to the RICCO claim with respect to the state criminal code in determining whether it is a violation of the federal act. Under the RICCO claim, you can get either a civil claim going for recovery of the money or you can get a criminal action going for criminal penalties or you can get both. They do not have to be in the same action. The next thing is that if you are able to prevail in a RICCO claim, you get not only your attorney's fees, costs, expert witness fees and investigation fees as a part of your recovery, but you are also entitled, under some circumstances, to get damages. The next issue is that many of the judgments that come under RICCO are not dischargeable in bankruptcy. What we are trying to do is get our money back. In a relatively short time, Richard Westfall's office in Denver will be prepared to file this federal case. Since the federal case would be held in Denver, Larry recommended that Mr. Westfall handle this case. The fact that a case is filed doesn't mean that you have to pursue it. We do not yet know who the named defendants will be, but it possibly will be e.NVIZION, OTC America, principals of those companies, etc. Companies don't engage in RICCO acts because companies do not commit crimes. It is the principals of the companies who commit the crimes. They are the ones that are responsible under the RICCO act. We would go after the company to make sure that you have a judgment that may be collectible against the company's assets. We would also go after any of the principals that you believe were involved in this particular transaction. We can go back and look at any of the principals that were involved in the past 3 ½ years. We may also want to look at some of the investors because if those investors had ties to the money here and they were the ones who were calling the shots, they may have liability under the act as well. It says, "it is unlawful for any person employed by, associated with any enterprise, to knowingly conduct or participate directly or indirectly with such enterprise who have had a pattern of racketeering. It is also unlawful for any person to conspire or to violate any of the provisions of the code." The provisions are as generic as simply participating in activities that result in a criminal act. There may be a large number of defendants in such a case.

Steve Grant read the following: Hearing no further discussion I will call for the question. The motion on the floor is to adjourn into an executive session to consider matters described in Section 24-6-402(b) and 402(c) of the Colorado Open Records Act. In order for this matter to pass, it requires a 2/3 majority vote. Roll Call. 3 Ayes, Bob McCormick opposed. Motion carried.

Dismissed into executive session at 8:10 p.m.  
Returned to open session at 8:22 p.m.

Larry Beckner reported that during the executive session he and the Board discussed only matters that are subject to the attorney-client privilege.

President Steve Grant read the following: As a result of the discussions in executive session, I would like this Board to direct our attorney to do several things.

1. Continue to keep open the Open Records litigation and determine if he thinks it is feasible to continue to try and contact Rob Dixon to take his deposition and to report back to this board at the next meeting.
2. Continue to meet with the City on the tax case to seek a dismissal without prejudice and to enter into a joint defense agreement, and to advise the City, as I have the Mayor, that the Board is prepared to meet and discuss the cost reductions for the 2003 sub-district expenses.
3. To authorize Richard Westfall to proceed with the filing of the federal lawsuit against e.NVIZION and its agents, officers, directors and against Robert Dixon to try and collect the balance of the District funds.

I do not believe a formal resolution is required on any of these matters and simply seek the consensus of the board to direct our attorney to do the above.

IX: ADJOURN

Bob McCormick made a motion to adjourn the board of directors meeting. Tery Dixon seconded the motion. The meeting adjourned at 8:30 p.m.

APPROVED AND ADOPTED THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004.

\_\_\_\_\_  
Stephen P. Grant, President

Attest: \_\_\_\_\_  
Robert W. McCormick, Secretary