

Grand Junction Rural Fire Protection District

Minutes of the Regular Board Meeting

July 27, 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 Stephen 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 7:15. Absent, Steve Gsell, Board Member.

Others Present: Public; media; Bruce Mills, District Auditor; Larry Beckner, Attorney; and Rhonda Phillips, Scribe.

President Steve Grant reported that Board member Steve Gsell will be submitting his letter of resignation. This matter will be on the agenda for discussion at the next regular board meeting.

III. APPROVAL OF AGENDA

President Grant requested that the comments from the Fire Chief be moved up on the agenda to item number 5. Bob McCormick requested that the issue of liability insurance be added to the agenda under discussion items and will be letter B. Vicki Felmlee requested that the special district association be added to discussion items and will be letter D. Bob McCormick made a motion to approve the agenda with the above listed additions. Vicki Felmlee seconded the motion. Roll Call. All Ayes. Motion Carried.

IV. PUBLIC COMMENTS

A. Jack Campbell reported that he has been going through the District records. He asked about a bank account at Alpine Bank that shows a balance of \$360,000 that was opened by Tery Dixon and Rob Dixon. Jack questioned the signature authority on the account and asked where that money came from and if the account was still open. Bob McCormick answered by saying that the account was opened with the original escrow money. He informed Jack that he would look into the account and get back with him with further detail.

B. Comments from the Fire Chief: Chief Beaty reported that the fire station has been receiving many compliments and has proved it's worth. The station is doing very well with response times. He will send the June report to the members of the board.

V. APPROVAL OF MINUTES

A. June 22, 2004 Regular Board Meeting: Bob McCormick made a motion to approve the June 22, 2004 Regular Board Meeting minutes. Vicki Felmlee seconded the motion. Roll Call. All Ayes. Motion carried.

B. June 20, 2004 Special Meeting: Bob McCormick made a motion to approve the June 29, 2004 Special Board Meeting minutes. Vicki Felmlee seconded the motion. Roll Call. All Ayes. Motion carried.

VI. TREASURERS REPORT

A. Financial Status of District: Bruce Mills handed out the General Purpose Financial Statements to the board as prepared through July 27, 2004 and explained entries.

B. Approval of July Payables: Bob McCormick informed the board that the prepayment for copies at Office Depot is no longer available. Bob McCormick presented payables for this month. Steve Grant suggested paying Collins, Cockrel & Cole \$15,000 in good faith rather than pay the entire balance due of \$30,144 until Tery Dixon has had the opportunity to look over the entire bill. Bob McCormick made a motion to approve July payables totaling \$53,639.37. Vicki Felmlee seconded the motion. Roll Call. All Ayes. Motion carried.

C. July 31 payment to the City of Grand Junction: Steve Grant reported that he has had conversations with the Mayor of Grand Junction and he has in turn spoken with the City Council. A payment of \$1,267,000 is due to the City on July 31. The District does not have the funds available at this time to pay the entire balance in full. The City of Grand Junction is willing to work with the District on the payment arrangements. Until the District has had an opportunity to get the past audits complete, the money that is being held by the County Treasurer will not be released. The State Auditor informed Steve Grant that there is no provision for a partial release of the funds. Steve Grant made a suggestion to pay the City of Grand Junction a partial payment at this time until the audits are complete. A payment in the amount of \$500,000 will be made to the City of Grand Junction on July 31st. The remaining balance will be paid when funds are released from the County Treasurers office.

Bob McCormick made a motion to pay the City of Grand Junction \$500,000 now and commit the balance as soon as the County Treasurer releases funds. Tery Dixon seconded the motion. Roll Call. All Ayes.

VII. ATTORNEY REPORT

A. Open Records Litigation: Larry Beckner reported that this case has been resolved between the City and the District. The City is satisfied that they have received all of the documents that the District has in its possession. The reason that the case has not been dismissed is that the City and the District would like to have questions answered by Rob Dixon in reference to records. Depositions have been scheduled for July 28, 2004 with Mr. Dixon but the Process Server has not been able to locate Rob Dixon, therefore, the depositions will be rescheduled. This case will remain open at this time for Larry Beckner to pursue further investigation.

B. Sub-District Tax Collection Litigation: Larry Beckner reported that this case is on hold until the Board and the City Council decide what direction they want to take. There are no hearings pending. We have entered into another extension of time to allow the City time to file an answer. Steve Grant reported that he and Larry Beckner met with John Shaffer, the attorney for the City, and Bruce Hill, the Mayor. Steve Grant came away from the meeting with a positive feeling that the City is in a position to be able to have a reduction of the fees that are owed. Even though the fire station hadn't

been built, there were a certain number of services that have been provided to both the sub-district and the district as they ramped up for the new station to be opened. Bruce Hill discussed the matter with the City Council and they will look at the costs that they incurred ramping up and to deduct those costs from the amount that the District collected. They estimate that we would get a ballpark figure of \$30,000 or possibly more. That is the current state of the negotiations. Larry Beckner reported that at this stage the case is primed for each party to file briefs with the judge to determine whether the tax was properly collected from 2003. Larry Beckner has been discussing this issue with the City Attorney's office and has determined that perhaps this case should be moved forward to a dismissal without prejudice. That means that the case could be filed again. This means that we are not resolving the ultimate issue before the court, we are just saying that we are going to reserve those issues in case we decide that they have to be raised again in the future. What we have asked the city to do is to assure us that if there is a litigation filed in the future, and if the court rules that those taxes were improperly collected, that the City will pay that amount back to the District because otherwise the District doesn't have any money to return to the taxpayers. The City agreed. The other issue is the cost of moving forward with the case if it is filed. We could file a joint defense agreement, which means that the City and the District would take the same position if any third party lawsuit was filed and that position would be that the tax was properly collected. Filing in this manner would significantly reduce attorney fees.

Bob McCormick made a motion that the District instruct Larry Beckner to dismiss the pending litigation, without prejudice, if the City agrees to enter into a Joint Defense Agreement in the event of a third party lawsuit with the District, and agrees to refund to the District any amount that the court may order was improperly collected for sub-district taxpayers. Vicki Felmlee seconded the motion. Roll Call. Three (3) ayes. Tery Dixon, no. Motion carried.

C. Repayment from e.NVIZION: President Steve Grant reported that he has spoken with Richard Westfall and found that communication between Mr. Westfall and Mr. Bruno, in New York, has been severed. Mr. Bruno has not responded to any of Mr. Westfall's correspondence. Mr. Westfall notified Steve Grant that recovery of \$620,000 plus interest is slim. Mr. Westfall will continue to contact Mr. Bruno and will report back to Steve Grant when he knows any further information. Larry Beckner reported that since e.NVIZION is a company based in New York, any action against them would have to be filed in New York. He informed the board that he is not licensed to practice law in New York. It now becomes a question of practicality as to whether the District wants to pursue a company that has over a million dollars of judgments against them from other creditors. If we do get a judgment, we will have to stand in line behind all of the other creditors. It becomes a question as to how much money the district wants to spend to pursue this action. The District has other options such as pursuing members who were on the Board when the decisions were made for those investments. Under Colorado Statutes, Title 24, which is a statute that says that if you are a public entity, you must invest your resources, in accordance with the requirements of this statute. The statute starts out by saying that you can invest in the following funds for a period for up to 5 years if the assets are either direct obligations of the United States Government or are guaranteed by the United States Government. So you can have treasury bonds, treasury notes, treasury bills and that sort of thing. Or if there are other types of debt obligations that are guaranteed by the federal government, then those are the primary areas where the statute says that you must invest your money. There are several other possibilities for investments as outlined by the statute. Each one state that you can make investments only if those investments are among the highest rated investments by recognized rated agencies. You are very restricted as to what you are permitted to invest your public funds in. The statute then says that elected officials who, in the good faith performance of their duties, comply with these investment standards shall not be liable for any loss resulting from those investments. It implies that if you do not meet the investment standards in good faith, then there may be liability. The next issue talks about a person who sells or causes to be sold to a public entity, any kind of an

unlawful investment, and if that person knew or should have known that the investment was not lawful, then that person is liable for any loss including interest and attorney fees and other costs of recovery. Mr. Beckner is also pursuing information about the insurance coverage for the District. There are two possibilities under that insurance coverage. Each board member is covered with a fidelity bond call a Position Bond, which is for \$1,000. The Treasurer is covered for \$5,000. In order to recover under the bond you have to show that there was criminal misappropriations of funds by the Board members. This would usually be an embezzlement type of situation. There is another insurance policy that is management liability coverage. Larry has made a formal claim under this policy but has not received a packet from the insurance company to answer specific questions and submit specific documents. He will report his findings at future meetings. Richard Westfall has prepared a claim against e.NVIZION based in part on a RICCO claim. A RICCO claim is a federal racketeering cause of action. Colorado has enacted it's own form of the RICCO Claim and it is called the COCCA, the Colorado Organized Crime Control Act. It allows for criminal penalties and civil penalties if individuals engage in organized crime. Organized crime can be one or more person or individuals who carry out more than one act that constitutes a list of crimes under the State of Colorado. The civil remedies allow for recovery of what you have lost, triple damages, plus recovery of all attorney fees and any cost including investigation fees that you might incur in recovering those dollars. Steve Grant said that this item would be on the agenda for the next regularly scheduled meeting.

VIII. ACTION ITEMS

A. Letter of Engagement for 2001 Audit: Bob McCormick reported that the Letter of Engagement was located in the packet handed out to all board members. Bruce Mills is working hard to get the 2001, 2002 and 2003 audits done by August 31, 2004.

Bob McCormick made a motion to approve the Letter of Engagement with Bruce Mills, PC, to do the 2001 audit for the fire district as outlined in his Letter of Engagement and authorize the chairman to sign such letter. Vicki Felmlee seconded the motion. Roll Call. All Ayes. Motion carried.

B. District By-Laws Committee: Vicki Felmlee would like to have a motion with the proposed amendments from the last meeting regarding the resources that the committee can use. It is just a housekeeping issue.

Vicki Felmlee moved that a by-law committee be appointed and authorized to prepare a draft set of by-laws/rules and regulations for the fire protection district to be presented to the board for approval as follows: Members to include Vicki Felmlee, Chairman, Steve Gsell, Jack Campbell and two others to be added when we get the names; to use the Beckner Model as a starting point in utilizing models from the Department of Local Affairs and the Special Districts Board Members Manual and other resources the committee deems necessary. Bob McCormick seconded the motion. Roll Call. All Ayes. Motion carried.

Vicki reported that the committee has met several times and has an outline that they are working on for the by-laws. They are hoping to present a preliminary document to the board at the second meeting in September as well as have recommendations for actions that the board will want to consider as we go into the future.

C. Renewal of liability insurance: Bob McCormick reported that he handed out the summary of coverage of liability insurance. That is a break down of the district's liability insurance. On the back page of that, you will find the premium for each of the categories. The total premium this past year, which concludes August 14 of this year, was \$1,938. If we take the same coverage that is included here, it will cost approximately \$2,100. Bob would like to have further discussion, when time permits, to go into more detail about the insurance coverage. This item will be discussed at the next

regularly scheduled meeting.

IX: DISCUSSION ITEMS

A. Special District Association: Vicki Felmlee reported that the District belongs to the Special District Association of Colorado. Our dues of \$1,650 are up in December. There is going to be an annual meeting in Steamboat Springs, Colorado in September that costs \$175 to attend. Vicki recommended that Steve Grant attend this meeting along with another board member. This matter will be discussed at the next meeting.

X. ADJOURN

Vicki Felmlee made a motion to adjourn the board of directors meeting. Bob McCormick seconded the motion. The meeting adjourned at 9:15 p.m.

APPROVED AND ADOPTED THE _____ DAY OF _____, 2004.

Stephen P. Grant, President

Attest: _____
Robert W. McCormick, Secretary