

MINUTES
REGULAR MONTHLY MEETING
OF THE
FT. MYERS BEACH BOARD OF FIRE COMMISSIONERS
TIME: 1:00 PM
DATE: March 18, 2008
PLACE: Red Coconut Recreation Hall
Fort Myers Beach, FL 33931

IN ATTENDANCE: Chairman John Scanlon, Vice-Chairman Ted Reckwerdt, Sec./Treasurer Betty Goodacre, Commissioner Joe Schmid, Commissioner Carol Morris, Attorney Richard Pringle, Attorney John Hament, Chief Mike Becker, Assistant Chief Larry Evans, Finance Director Jane Thompson, Administrative Director Margaret Banyan, Administration Tammy Peacock, and members of the public. (Commissioner Morris joined during Treasurer's Report).

Meeting called to order by Chairman Scanlon at 1:00 PM

Pledge of Allegiance

Moment of silence for our troops

Approval of Minutes

Chairman Scanlon called for motion to approve the February 19, 2008 regular monthly meeting minutes. Vice-Chairman Reckwerdt motioned to approve and Chairman Scanlon seconded. Minutes were approved unanimously 4-0.

Sec./Treasurer Goodacre read the Treasurer's Report for the record.

Sec./Treasurer Goodacre reviewed the summary of bank and investment account activities for month ending February 29, 2008.

- A. Sec./Treasurer Goodacre asked for approval of department checks 032841 through 032964 for a total of \$441,619.81. Vice-Chairman Reckwerdt motioned to approve the department checks and Commissioner Schmid seconded. Commissioner Schmid questioned the omission of checks 032929 thru 032931. Chief Becker requested Finance Director Jane Thompson to research and respond. Hearing no other discussion, department checks were approved unanimously 5 - 0.
- B. Sec./Treasurer Goodacre asked for approval of Capital Fund Project (CFP) checks 030033 through 030035 for a total of \$221,359.91. Vice-Chairman Reckwerdt motioned to approve the CFP checks and Chairman Scanlon seconded. Hearing no discussion, CFP checks were approved unanimously 5 - 0.

Chief's Report

Chief Becker noted the recognition award presented to a student of Beach Elementary School – Mady Cai Macko for “Doing the Right Thing”. Mady Cai knew what to do when a fire started in her home because of the Firefighter's visit to the school. Mike Dwyer a neighbor of Mady Cai's was also recognized, but was unable to attend the presentation.

Employee service recognitions:

Fire Marshall Collins	25 Years
FF Jones	23 Years
Lieutenant Reno	22 Years
FF Plybon	18 Years
FF Reckwerdt	17 Years
FF Sturtevant	2 Years
FF Vila	2 Years

Chief Becker presented Fire Marshall Collins his 25 year service plaque.

Chief Becker reviewed the Chief's Report and Addendum for February 2008.

- **Construction Update** - Chief Becker gave an update on the construction of Station 33 – noting that construction is ahead of schedule and an early “Opening Date” is expected. Chief Becker noted the 3 change orders which were County required (attached in the “addendum” in the Chief's report). Chief Becker reported the change orders for Station #32 totaled \$8,540.17 and Station #33 totaled \$8,861.63. The change orders were reviewed by Chief Becker and Vice-Chairman Reckwerdt. Chief Becker noted the construction team was present to answer any questions.

Commissioner Morris questioned why the changes were being brought to the Board if it has already been processed and why change orders are being created when the initial agreement stated it was for emergencies or delays in construction use only.

Chief Becker turned the construction update over to Fowler Construction.

Rob Fowler addressed the Board and public. Mr. Fowler stated that the original contract for \$1.863 million had a guaranteed maximum price (GMP) contingency amount included. Fowler Construction had recommended using a contingency; however, the District chose not to include it in the contract. The contract was therefore reduced to \$1.69 million. He explained that excluding the contingency meant that any changes would not be covered by the GMP. He highlighted that the change orders were very low for a project of this nature. To date the necessary changes equate to 1.1 percent of the contract for Station 33 and only .1 percent of the original contract for Station 32. The construction managers and the architect should be recognized for their work in keeping changes very low.

Commissioner Morris asked Mr. Fowler to explain the generator system and noted her concern of the expense of the equipment.

Mr. Fowler stated that the generator system was the most economical and efficient generator to both handle the station's needs and meet county code requirements.

- **Investigations** - Chief Becker updated the Board on the investigation, noting that all personnel involved have returned to work and would ask the Board to defer any questions to Attorney Hament.

Chief Becker also reported that the drug inventory and forms were in the packets and could be reviewed later.

- **Moran Lawsuit** - Chief Becker stated that Attorney Hament was in communication with Ed Moran's attorney and Mr. Moran has chosen to stay on the District healthcare plan. Attorney Hament also sent a letter to Bill Lees with the same option to stay on the District's healthcare.
- **Johnson Engineering Negotiations** - Chief Becker noted that negotiations with Johnson Engineering are progressing and asked that it be tabled to the next board meeting due to recent communications that have not yet been evaluated.
- **Engine RFP** – Chief Becker noted that the purchase was proceeding and the team would be visiting the manufacturing site next month.
- **Signalization for Station #33** - Chief Becker noted that research was still being done on the signalization and asked the Board to consider other options due to the signal expense of approximately \$150,000. Chief Becker will continue to research and make a recommendation at next meeting.
- **Personnel Changes** - Chief Becker reported on personnel changes and noted that the CRO position had been advertised.
- **Chief Evaluation** – Chief Becker reminded the Board that the Chief's evaluation is due in April and he is very interested in their feedback.
- **SBA** – Chief Becker summarized his report on the SBA and noted that the SBA remains a fundamental tool to meet District needs.
- **Budgetary Transfers** – Chief Becker reported that the Board had been given the correct copy of the budget and noted that any preliminary budget drafts should be discarded.

Chief Becker reiterated the remaining items on the Chief's report with no additional comments.

Chief Becker then summarized his Addendum as follows:

- **Construction Change Orders** were reviewed.
- **Engine Committee RFP** - Chief Becker stated of the three RFP requests that went out, only two manufacturers responded, Sutphen and KME. The recommendation by the Engine committee is to go with Sutphen. Chief Becker requested the Board move forward with the recommendation.

Chief Becker reiterated the remaining items on the Addendum to the Chief's report with no additional comments.

Discussion

Commissioner Morris questioned the process of Chief's evaluation and how it applies to the Sunshine Law.

Attorney Hament asked if the Board and the Chief had established protocol for presenting the evaluation to the Chief.

Attorney Pringle stated that the normal procedure would be to discuss in a public meeting as an agenda item.

Attorney Hament suggested the Board members fill out the evaluation and discuss at the April meeting, allowing Chief Becker to follow-up with a presentation at a later date.

Attorney Hament noted Commissioner Morris' concern of the Sunshine Law and the breach if given individually to the Chief.

Attorney Pringle noted that the Board can share individual evaluations with the Chief, but the Chief cannot compile each to make one evaluation.

Vice-Chairman Reckwerdt referenced the signalization of Station 33. He reported that DOT would come assess the area and advise the District as to what is required. He reported that DOT is not required to pay for installation of a signal.

Commissioner Schmid asked if the ambulance purchase had changed any from the original cost.

Chief Becker noted there was no change in the original cost.

Commissioner Morris questioned the payment plan for the engine.

Chief Becker requested that the Board choose a vendor first, then negotiate the terms.

Chairman Scanlon requested update on the three missing checks.

Chief Becker noted that the missing checks were voided checks that had been omitted.

Chairman Scanlon called for a motion to approve the three missing checks from February report. Vice-Chairman Reckwerdt motioned for approval of the missing checks and Schmid seconded. Approved unanimously 5 - 0.

Chairman Scanlon called for a motion to approve the Chief's Report and Addendum. Vice-Chairman Reckwerdt motioned. Schmid seconded. Chief's report approved unanimously 5 - 0.

Attorney's Report

Attorney Pringle stated that his review of the two RFP's for the fire pumper met the proposal requirements. Both were very similar in legal sufficiency and he saw no collusion involved. Attorney Pringle noted that if the Board approved, Chief Becker and Attorney Pringle would go forward with the vendor.

Attorney Pringle noted that he had received a response regarding the Johnson Engineering (JEI) invoice.

Commissioner Morris asked if Attorney Pringle had prepared the letter for JEI.

Attorney Pringle stated he sent a letter to President Morrison asking for JEI to provide justification for the invoice. Attorney Pringle received response from JEI on 3/17/08. Attorney Pringle would review and bring the documentation to the next Commission meeting.

Attorney Hament stated he had four items to present to the Board.

Attorney Hament updated the Board on the communications with Mr. Moran's attorney. Attorney Tischler responded with instruction for the District to maintain Mr. Moran's health coverage. Attorney

Hament requested that the Board give permission for Hament to reiterate our position. Attorney Hament noted that despite their interpretation of the August 9th, 2005 meeting notes, our position has not changed and he is not aware of any contracts renegotiated, other than of Assistant Chief Evans.

Attorney Hament updated the Board on former employee Carrie Morningstar. Ms. Morningstar has sought an attorney to file a discrimination claim. Attorney Hament requests the Board's authorization to respond to Morningstar's attorney.

Attorney Hament also updated the Board on the Medical Officer Jeff Jones investigation. An internal and external investigation was completed and found no theft or misuse of drugs. The finding highlighted an absence of procedures and record keeping. Attorney Hament noted that a new "Acting" Medical Officer had been appointed, Captain Ed Whiteside. Jeff Jones had been moved to operations.

Attorney Hament noted that the discrimination investigation had been completed by an outside investigator. For these individuals, there was no finding of discrimination or harassment. However, there were findings of certain violations and policies. The three personnel were found guilty of policy violations were disciplined. Copies of the violations have been placed in their personnel files. Attorney Hament also noted that Chief Becker would be scheduling diversity training.

Vice-Chairman Reckwerdt noted his concern again about tax payer monies paying for administrative leave during the investigation.

Commissioner Morris questioned why the violations were put in the personnel files if the investigation found no discrimination.

Attorney Hament restated to the Board that caution should be used while discussing any merits regarding the discrimination claim. Attorney Hament reminded the Board that the purpose for administrative leave was to get the accused out of the workplace so an unfettered, unintimidating investigation could take place.

Commissioner Morris questioned if the Board had the right to take action if they do not agree with the process with regards to the administrative leave.

Attorney Hament deferred to Attorney Pringle for response.

Attorney Pringle restated that it would not be best to tie management's hands for these kinds of decisions. These are difficult allegations and could result in a major lawsuit. Attorney Pringle stated that there was no legal prohibition on imposing personnel matters. However, to he asked that the Board not take away the Chief's right to determine the course of action to follow with such issues.

Public Input

Citizen Dick Warner of Estero provided public input.

Chairman Scanlon restated the agenda items:

- **JEI Invoice** – Attorney Pringle requested to table to next month. Chairman Scanlon motioned to table to next month. Vice-Chairman Reckwerdt seconded. Approved unanimously 5 – 0.
- **Signalization** – Chief Becker requested 30 more days to give recommendation to Board. Chairman Scanlon motioned to table to next month. Vice-Chairman Reckwerdt seconded. Approved unanimously 5 – 0.

- **RFP for Engine** – Chief Becker requested the Engine Committee to present their recommendation to the Board.

FF/EMT Joe Reed stated that based on the bids that were received; Sutphen's equipment was proven to provide the best safety and service to the District.

Commissioner Morris asked how a vendor would demonstrate their product if it had not previously been used in the area?

FF/EMT Reed noted he has driven both vendors equipment and based on maneuverability, breaking maneuverability, speed, compatibility, Sutphen outranks KME's product.

Commissioner Morris asked if the product was worth \$30,000 more than KME's?

EMT Reed noted that the increased cost was justified with Sutphen's 15 – 20 years apparatus durability.

Commissioner Schmid noted his concern of the additional \$30,000 price for Sutphen.

Sec./Treasurer Goodacre commended the Engine Committee and stands by their recommendation.

EMT Reed noted that the committee looked at the trucks, warranties, durability, etc. and the additional cost from Sutphen was warranted based on their research.

Chief Becker requested the Board to approve Sutphen as vendor.

Chairman Scanlon motioned to approve Sutphen as vendor. Vice-Chairman Reckwerdt seconded. Approved 3 to 2.

Scanlon motioned to give Chief Becker and Attorney Pringle the approval to negotiate with Sutphen as the 1st choice and rank KEM as number two. Vice-Chairman Reckwerdt seconded. Approved 3 to 2.

Commissioner Schmid suggested that the Board allow KME to do an oral presentation to address concerns.

Scanlon motioned to allow Chief Becker and Attorney Pringle to contract a price with Sutphen. Vice-Chairman Reckwerdt seconded. Motion approved unanimously 5 - 0.

- **Attorney General Procurement Opinion** – Attorney Pringle indicated the item to seek Attorney General Opinion on procurement by statute had been tabled last meeting and was now coming up under old business.

Chairman Scanlon motioned to drop this item. Vice-Chairman Reckwerdt seconded. Chairman Scanlon noted the cost the District would incur to continue.

Commissioner Morris questioned the cost.

Attorney Pringle stated that the cost could be minimized if a letter was written asking several questions regarding our obligations with procurement.

Chief Becker questioned the benefit to the District to seek the Attorney General's opinion on procurement versus the cost incurred in professional services fees.

Attorney Pringle noted his discussion with the Board in past meetings regarding Statute 287 and 255 and their application to the District. Attorney Pringle noted that competitive selection of a contractor or of professional services would satisfy Statute 287.055 and Statute 255.20. Attorney Pringle's summarized what question would be asked of the Attorney General – "Are we following the statutes on procurement and are we subject to anything else for procurement other than what Attorney Pringle has advised – and is Attorney Pringle correct?"

Commissioner Morris expressed concern that the District has determined that a lot of procurement statutes do not apply to us and unless we seek an opinion as to why it doesn't apply to us, then we have not followed Florida statutes.

Chairman Scanlon asked if Commissioner Morris had conferred with Attorney Saunders regarding this issue.

Attorney Pringle made reference to Statute 255.20. He noted the District had complied with the statute in the request for qualifications for the two construction projects. He also noted that the District also complied with Statute 287.055. Attorney Pringle noted in the future the District would have to comply with both statutes in the competitive selection process for new construction projects depending on the cost of the project. He reiterated that both statutes could apply, noting that some provisions do apply in Statute 287, but not all provisions. Attorney Pringle noted that the process was conducted as required by law for the current construction projects. Attorney Pringle noted that he had also replied to Commissioner Morris regarding other "low-bid" questions in the past.

Commissioner Morris stated she did ask Attorney Pringle questions on low-bids but believed that he did not reveal Statute 255.20.

Attorney Pringle noted again that Statute 255.20 and Statute 287.055 both apply, but other sections do not apply, pursuant to chapters 191 and 89.

Commissioner Morris noted she was not provided with the chapter that reflects this.

Attorney Pringle stated that he had, in fact provided copies of 255, but would again provide copies.

Commissioner Schmid confirmed Attorney Pringle's statement and noted that he felt confident in the process used.

Attorney Pringle noted that his goal was to never do anything legally to jeopardize the District, but to represent the District to the best of his ability. He also noted that throughout the process of the RFP for construction, no contractor or architect objected or questioned the District's management of the process.

Chairman Scanlon called for a vote to drop this item. Vice-Chairman Reckwerdt seconded.
Approved 4 to 1

- **Moran letter** – Chairman Scanlon motioned to give Attorney Hament authorization to write letter. Sec./Treasurer Goodacre seconded. Approved unanimously 5-0.

Attorney Pringle requested to change the order of business and discuss item “D” under New Business.

- **Authorization to Use Impact Fees for Debt Service** - Attorney Pringle noted that the Board needed to write a request to the County to use the impact fees for debt services.

Chairman Scanlon motioned to give Attorney Pringle authorization to write a letter to the County requesting the use of the impact fees for debt services. Vice-Chairman Reckwerdt seconded. Approved unanimously 5 - 0.

Attorney Pringle was excused.

- **Lee County Sports Authority Fee Waiver** – Jeff Mielke from Lee County Sports Authority (LCSA) requested a fee waiver for the Beach Soccer event to be held in August at Fort Myers Beach.

Sec./Treasurer Goodacre questioned why the request was for the District to fund which would in turn be a cost to the taxpayers.

Chairman Scanlon suggested that LCSA request service from Lee County EMS.

Chairman Scanlon motioned to deny the fee waiver for LCSA. Vice-Chairman Reckwerdt seconded. Request denied unanimously 5 - 0.

- **Procurement of AED’s** – Chief Becker requested the purchase of four AED’s from Philips.

Chairman Scanlon motioned to approve the purchase of the four AED’s. Sec./Treasurer Goodacre seconded. Approved unanimously 5 - 0.

- **Procurement of Firewall Hardware** – Chief Becker restated the request is to replace the current firewall to support CAD system to allow real time access to CAD system.

Chairman Scanlon motioned to approved purchase of new firewall hardware. Sec./Treasurer Goodacre seconded. Approved unanimously 5 - 0.

- **Drug Inventory Review** – Chief Becker stated that in the Board’s packet there are three sheets for the drug inventory. Chief Becker noted that he has reviewed the forms and their utilization to the process and feels the system will allow accuracy for the drug inventory.

Commissioner Morris questioned the tracking methods for all medications.

Chief Becker reviewed the process of the inventory tracking forms.

Commissioner Schmid noted his recommendation to change the keys so only two people would have master keys to the medications.

Chief Becker stated that this has been done. Only Captain Whiteside and Assistant Chief Evans hold the keys.

Chief Becker stated Administrative Director Banyan created the inventory worksheets and assures the accuracy of the medications inventoried on a monthly basis.

- **Morningstar Possible Lawsuit** - Chairman Scanlon motioned to authorize Attorney Hament to respond to Morningstar's attorney regarding suit. Sec./Treasurer Goodacre seconded. Approved unanimously 5 - 0.

Other Business

Reports from Union Representatives

Lt. Duncan from District 3 noted the difficult time that the District had during the investigations. He expressed Union support for the Chief during the investigation and felt he did an excellent job. Lt. Duncan also wanted to offer to the Board the opportunity to ride with department to see the significance of the work that is done on a daily basis.

Remarks from Commissioners

Commissioner Schmid thanked the Engine Committee for their diligence in the RFP process and supports their efforts.

Commissioner Morris also thanked the Engine Committee. Commissioner Morris noted that she was not here for the minute's approval, but suggested we follow "Robert's Rules" when doing the minutes.

Sec./Treasurer Goodacre recognized Collins for his 25 years of service and all others recognized, and also commended the Engine Committee for their hard work.

Vice-Chairman Reckwerdt recognized all employees with noted years of service. Vice-Chairman Reckwerdt wanted to voice his concern again about the investigation allowing administrative leave with pay, costing taxpayer's money.

Chairman Scanlon wanted to congratulate all employees with noted years of service and the Engine Committee for their hard work.

Public Input

Citizen Charlie Louck with the Observer provided public input.
Ken Wallace with Wallace International provided public input.

Adjournment

Call for adjournment of meeting.
Meeting adjourned at 4:10 PM on March 18, 2008