

MINUTES  
REGULAR MONTHLY MEETING  
OF THE  
FT. MYERS BEACH BOARD OF FIRE COMMISSIONERS  
TIME: 1:00 PM  
DATE: November 17, 2009  
PLACE: 3043 Estero Blvd., Station 31 Meeting Room  
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, Attorney Roger Benson, Acting Chief Darren White, District members and members of the public.

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

**Pledge of Allegiance**

Moment of silence for our troops

Chairman Scanlon called for a motion to approve the October 20, 2009 regular monthly meeting minutes. Sec./Treasurer Goodacre motioned to approve the October regular monthly meeting minutes. Commissioner Schmid seconded.

Minutes were approved unanimously 5 – 0.

Chairman Scanlon requested Sec./Treasurer Goodacre read the Treasurer's report.

Sec./Treasurer Goodacre read the October 2009 Treasurer's Report for the record.

Sec./Treasurer Goodacre reviewed the summary of bank and investment account activities for month ending October 31, 2009.

**A.** Sec./Treasurer Goodacre asked for approval of department checks #035383 through #035478 for a total of \$109,913.94 for October 2009. Vice-Chairman Reckwerdt motioned to approve the department checks. Commissioner Schmid seconded.  
Department checks for October 2009 were approved unanimously 5 - 0.

**B.** Sec./Treasurer Goodacre noted the CIP account has been closed and no further reporting will be made.

Chairman Scanlon noted approval of the October 15, 2009 special meeting minutes needed to be approved. Chairman Scanlon motioned to approve the October 15, 2009 special meeting minutes. Vice-Chairman Reckwerdt seconded.

October 15, 2009 special meeting minutes were approved unanimously 5 – 0.

**Chief's Report**

Acting Chief White reviewed items on the Chief's Report and the Chief Recommendations for Agenda Items.

Commissioner Schmid asked Acting Chief White to outline the benefits and cost savings to the District by going to the Lee County plan.

Acting Chief White stated that the benefit is an actual cost benefit of approximately \$322,000.00. It will cost the District to get out of the GreatWest plan initially, but there will be a significant savings in the long run to switch to the County plan.

Commissioner Schmid asked what the delay was in the Medical Officer's contract.

Chairman Scanlon stated that would be discussed during the agenda items.

Commissioner Morris asked what the first year of net savings would be if the District switched to the County plan, paying the upfront cost to get out of the GreatWest plan.

Acting Chief White stated the estimated cost to get out of the GreatWest plan would be approximately \$180,000 to \$190,000 with a credit due to the District bringing the total cost to approximately \$140,000.

Commissioner Morris stated five years ago the District was with this plan and asked what has changed that is allowing the District to go back to this plan and if the firefighters are comfortable with this plan as well.

Acting Chief White stated based on the history and his knowledge there was an issue with the prescription plan the County had. To date the County has a comparable plan and it may actually be less of a cost to the employees with the AETNA plan.

Communication continued between the Board and Acting Chief White regarding healthcare.

### **Attorney Report**

Attorney Pringle stated he would like to disclose to the Board and the public that a report has been completed by the investigator hired by the District Attorney Benson, the report has been provided to the District and Board members for review. Attorney Benson is present today and is prepared to discuss the report and answer any questions the Board may have. The report is available to the public as well if requested.

Attorney Hament is also in attendance as the labor counsel who is the primary author of the Chief's contract and is prepared to talk with the Board about the next step process and options the Board has regarding the decision making process.

Attorney Pringle stated the Board will have two topics to determine on item A of new business:

- 1) The investigation itself and the next steps the Board wants to take; and,
- 2) Administrative leave of the Chief and what direction the Board wants to take with the status of leave for the Chief.

Attorney Pringle stated that item B of new business is the actuarial study for the GASB45 requirement. Attorney Pringle stated he has prepared for other districts RFP's and can prepare the same for the District. The service would be through an independent contractor for the District and will go through the normal process as an RFP. Attorney Pringle stated the District has a deadline to get the study completed, so a decision how to proceed will need to be made by the Board.

Commissioner Schmid asked when the report needs to be completed.

Attorney Pringle stated the District has to have it completed in 2010. The report is due by the end of the District's fiscal year, which is September 30, 2010.

Commissioner Schmid asked if Jane Thompson could prepare the report rather than an outside source.

Attorney Pringle stated that no other District has had their inside employee complete the study and Ms. Thompson may not be comfortable doing the study. Attorney Pringle noted he has not seen it done inside by any other District.

Attorney Hament stated that at this time it may be appropriate to have the investigator that the Board chose to review his findings.

Attorney Pringle stated public input could be called for now and then the investigation findings be discussed with new business.

#### Public Input on Agenda Items

FF Troy Mesick DVP District 3 stated that the letter of no confidence to the Chief continues to come up in the newspapers and he wanted to make it clear that the report was done prior to any employees being laid off and it was not retaliatory because of negotiations. The Union willingly came to the table and made over 1 million dollar in concessions.

#### Old Business

- A. Update on Medical Officer Contract** – Acting Chief White stated the contract is still being negotiated and when it is finalized it will be brought before the Board.

Chairman Scanlon motioned to table the Medical Officer Contract update. Commissioner Morris seconded.

Motion approved unanimously 5 – 0.

#### New Business

- A. Investigation of Chief Becker** – Attorney Pringle stated that Attorney Benson and Attorney Hament is present to discuss the report that has been released and to also discuss options available to the Board for decision making purposes.

Attorney Hament stated the Board could ask questions and/or Attorney Benson could do a summary of the report. The Board could then determine what to do in light of Attorney Benson's report.

*Verbatim: Attorney Benson: The first thing I would like to say to you is that I appreciate the opportunity to undertake this very interesting and important project. I got excellent cooperation from everyone that I talked to.*

*Commission Morris – can everybody hear back there?*

*Attorney Hament – can't hear?*

*Attorney Benson: As I was saying, I got excellent cooperation, I had access to everybody that I thought was a source of information all of the stakeholders, and so forth. I think that, I think that there is very little division on the facts themselves. I think that if you took, I think if you took the facts on either side of the controversy and put them into; on the table there wouldn't be a lot of difference. It's the same facts in both closets, it's how they have been stitched together that has caused the controversy, I think. So I don't take up a great deal of time. the important issue from my perspective was the, was the recognition on the Chief's part and the, and the experience of his subordinates that he got tangled up with prescription drugs at a point in time that went on for months and I think there's that there's very little doubt about it. I think your challenge is how are you going to deal with that. Are you going to deal with it as bad behavior and the violation of rules, and period, paragraph end of story or are you going to put it into some other context and I think there several contextual opportunities for you to utilize in making a final decision here. So I went, I went to some lengths to try to address, you know, the specific allegations and again, I don't think it's so much a matter whether they happened or not. I think the challenge, the challenge at least for me was to try to come up with again a sense of proportion and a, and a context in which you could view them and come up with a fair, fair to everybody both sides of the controversy, but a fair and reasoned decision about what to do hear. There's lots of loaded issues and they, these loaded issues are loaded because they promote very powerful emotional responses from people. And you know the difference between an emotional response and a reasoned response is very important. So that, so that was, that was my challenge to try to come up with up with a reasoned evaluation of the facts and also a reasoned evaluation of motivation the reasons why people saw what they did, so. I'm happy to answer your questions.*

*Vice-Chairman Reckwerdt: yes I have a question. Did the Chief violate the administration rules and regulations in your opinion?*

*Attorney Benson: Yes.*

*Vice-Chairman Reckwerdt: So, it's a yes, that's what. Also, too, how many hours did you spend on this preliminary investigation, approximately, I'm just you know inquiring about.*

*Attorney Benson: it's more; it's more than 40 hours I believe.*

*Vice-Chairman Reckwerdt: did that give enough time to, to interview all the, I got six, seven pages of stuff here, and I mean going across here it's barely, as long as you think about it, you got all these, you know, different witnesses and like this. Do you have enough time 40 hours to take care of all of these.*

*Attorney Benson: yes, yes.*

*Attorney Hament: Mr. Benson he's called my writing stuff too. Don't worry.*

*Vice-Chairman Reckwerdt: yes, sorry about that.*

*Attorney Hament: actually stuff is kind of tame if you know.*

*Vice-Chairman Reckwerdt: well when you start digging. But still it's very important you know we have to digest this to make sure we're making the right decision when this comes about. That's the only two I have right now.*

*Chairman Scanlon: anybody else have any more questions for Mr. Benson at the moment?*

*Commissioner Morris: Yeah, I have some questions. First of all I had to read this very quickly cause we just got it this morning shortly before we came to the meeting, so I read as fast as I could. But, I just, I would have thought that any investigation there would have been a list of people that you talked to and investigated, reports or things that you looked at maybe to make your decisions and maybe even some details on some of the discussions that you had with some of the different people that you interviewed. Because the only pieces of paper that we ever had before this started was a overview letter from the union and a response from the Chief. I know I've had discussions with many of the union people and they had a whole list of things that went well beyond what oh excuse me and the report from Margaret Banyan okay. But, I had talked to the many, many of the union people and they had a whole list of very detailed quote allegations. But in reading the report I wouldn't have any idea what they were and what it was you looked at because there were only one or two major things that came up okay. The other problem that I have is going back to the comment made by Troy Mesick, it looked in the report like the discussion on financial management just occurred as a result of you know like a retaliation, or because the firefighters had been dismissed. That information was brought to me and maybe some of the other commissioners months and months ago and went back to the budget hearings that occurred back to last year. I don't see that the investigation even looked at any of that, because I'm very concerned about the whole area of money management. I'm not concerned about the result of the report. I'm concerned about whether the investigation investigated what I thought were some of the accusations provided. There are other specific comments that I think the union made to you cause they made them to me and we were hoping that some of this might have come out at the financial meeting that we attempted to have yesterday, that went by the by, but again I don't see that any of this was even addressed in the report. So my concern is that I'm not sure we really addressed the accusations that were being made. I don't care what the result was, I just want to be sure though that people that we feel like we did an investigation and we got the answers to questions that were being raised. I am not comfortable, I will tell you having read the report that those people making accusations at least got their answer for or against what the accusations were. And then my last point is you sort of have two sides, you have like management and you've got you know the workers in the union. I don't see that you talked to any of the commissioners, and I'm asking myself how could you do an investigation if you didn't investigate all the parts of what's out there. When I when Pringle told me, when Attorney Pringle said that the investigation was complete, I said well I know I was out of town so maybe, because I know I was out of town no one had talked to me but he told me that you didn't talk to any of the commissioners and I thought how can you have an investigation report if you don't investigate and talk to all the people that are involved. So, I'm a little concerned about the report of what we've paid for. I have to make that comment.*

*Vice-Chairman Reckwerdt: well I kind of agree too, but the Board did decide to have a preliminary just to check it out so it means the 40 hours that's still not very much time for him to check everything out. And as far as commissioners, that didn't question any of commissioners because I was there many times with the Chief and many times there and witnessed a lot of things going on there. And so but still like always say before, we don't micro-manage the Chief he does that's his job. But still, we were there, I was there at least, I don't know about the rest of you many times and things and witnessed everything. They could they could question me and I would give a truthful answer and I hope all the other participants gave a truthful answer on this too about this, so I'm concerned about this too. This is why we really have to decide as a Board to whether go further on in our investigation or accept the conclusion of what this is and then go to another avenue. Cause we've been*

*through this before there's already two commissioners here that's been through that John Scanlon and myself some time ago had to go through the same procedure. Not investigation but still the Chief was terminated. You have to go with two things either with cause or without cause. The Board had to determine if they have full confidence of the Chief anymore or whether we go through that process. But, this is why we have to make a decision whether we continue this investigation or go another avenue that's what we got attorneys for....*

*Chairman Scanlon: I don't see why the commissioners should be involved in this investigation. Okay the investigation is being made through a letter of no confidence from the union as well as allegations from Miss Banyan. It doesn't include us it includes the labor who wrote the letter of no confidence and includes Miss Banyan who sided with labor or however you would like to determine it to come against the Chief. We decided to do the investigation after seeing the letter. There's no reason for us to be involved in the investigation. We're supposed to be impartial here.*

*Commissioner Schmid one of the accusations one of the accusations that the Chief made a statement to us regarding the fire truck that he the amount of money he spent on a monthly basis was x number of dollars and from the paperwork that I believe the Union gave us it wasn't didn't approach that amount. So I mean it was a statement in there saying the Chief said that the Chief said hey we spent I believe he said like a thousand dollars a month for this vehicle and when we got information from the Union they had a synopsis of the charges for that vehicle and it didn't come up to that kind of money. That's something that directly confronted the commissioners. Now in the investigation you found it did come up what the Chief said. I didn't I only had an opportunity to skim through this thing, so those kind of things I think John would give a flavor of what we've experienced possibly. That would be my problem.*

*Chairman Scanlon: how many times did we how many times did we ask the Chief about something and Miss Thompson isn't here to back it up, he tells you exactly as you said I believe it's about a thousand dollars or whatever the figure may be. Well then you know anyone of us can go in we can talk to Jane, Assistant Chief at the time when we had one, anybody to find out.*

*Commissioner Schmid: well that came up on three different meetings. It was three different. That's three months difference.*

*Chairman Scanlon: I don't recall.*

*Commissioner Schmid: you weren't here.*

*Attorney Benson: I did not understand that I was being called upon to investigate the commission minutes in its capacity as a decision maker for the District. I understood I understood that that you were concerned that there had been allegations of misconduct illegal acts of violation of District rules and that the and that the indictment if you will for bill of particulars was of the, the union's letter and the six page submission by Banyan and then the additional nineteen page submission which identified the series of discreet acts and what I tried to do is categorize it. If the union says it costs this amount of money and the Chief tells you it cost that amount of money, that's your responsibility to figure it out you know and make a wise decision with what to do with the public's money. So, if there are specifics that I did not address that is specifics that are outlined by the union and its letter or Banyan and her roughly you know 25 pages of particulars, I'd be happy to talk to you about that but I*

*think that if you spend the appropriate time reading it that I think I think that you'll find that I at least tried to put them into prospective. If it's a matter of misconduct as I said or illegal acts or violation of rules, I understood that was my mandate that what I was supposed to do not you know whether or not you were getting reliable information on which to make a final administrative decisions on where to spend your money. Do you have some specifics?*

*Commissioner Morris: Yeah, yeah, let me give you a couple specifics okay. As an example in my discussions with the Chief I told the Chief he wasn't utilizing the talents of Dr. Banyan. And that I did not feel we were getting our monies worth okay. Dr. Banyan told me that she also had gone to the Chief and asked him to either put her on part time or give her more to do okay. Now this was long before she was fired okay. But I don't know how many times I had this discussion directly with the Chief. So yes it did bother me then, when all of a sudden we had asked the Chief to do something with her position because she's not being utilized and she asked too and then she's fired. I didn't catch any of this. I got the impression that.*

*Attorney Benson: Would you regard that is an act of misconduct on her, on his part.*

*Commissioner Morris: I'm not talking the result I'm just saying*

*Attorney Benson: No, no, no, I'm asking you whether or not you understood that*

*Commissioner Morris: I think its poor management I think its poor management to have somebody on your books if they're not being properly utilized.*

*Attorney Benson: I did not understand my mandate was to evaluate his, his skills as a manager.*

*Commissioner Morris: Okay let's take this one further, I think one of the major accusations I got from the Union dealt with money management. Not necessarily full legality which which isn't a matter of judgment but money management okay. I could be wrong but I think that's where I think that was almost one of the major things. Now let's talk about money management. Last year at the budget hearings two commissioners stood up and said we are heading for disaster you are spending more than you're bringing in. and the values of the homes is going down, you need to be taking a look and cutting the budgets now. I believe we were told that we didn't have to worry about things and everything was good and then all of a sudden we end up in a disaster situation. So I think all of that dealt with what I felt were the accusations coming. I'm not telling you there that there was fraudulent stuff that took place. But none of this was even addressed. It could have been addressed and dismissed. But it's like I thought those was some of the concerns that had been raised and I just didn't even see any of those. That's just some of the specifics.*

*Attorney Benson: Okay, okay and here's how I saw it. I understood that my responsibilities were to identify the acts of misconduct violations of policy rules and regulations per law and that you had you had controversy with the Chief about budgetary issues and so forth on part of the budget process that by law you're charged with handling and it's also part of the collective bargaining relationship between management and the rank and file. And I told you at the beginning one of the challenges was to put all of these individual items into prospective and what happened in the union's letter and Dr. Banyan's letter was that they were all thrown into a pot and shaken up and if you track carefully the language that was used to describe these various things it was very little care given to identifying the difference between acts of misconduct violations of rules illegality and the sort of stuff you that your charged*

*with figuring out running the fire district here and how much money is he spending is he spending the money in the right place or not. Those are judgment, those are management calls and ultimately I did not understand I was being asked to do a job evaluation.*

*Attorney Hament: In fact if I may that is the word, if I may interject. Look it was a difficult mission, because I do agree with Mr. Benson as I'm reflecting on all the allegations. I don't have them right in front of me now. There's a whole mixture of performance and misconduct. It really was the charge. If you really think about the proper scope magnitude of the charge, the mandate for Mr. Benson is to figure out as Mr. Reckwerdt points out was there violation of rules regulations laws, those kind of things. He just hit the board on the head, which I wanted to interject his job is not to do a performance evaluation. You didn't fire an investigator whether it be Mr. Benson anyway to just go perform an evaluation of his performance. And Commissioner Morris with some of those concerns it got a little grey. Frankly, I think Mr. Benson used good judgment the more I'm thinking about it. If he went and slipped into the whole area that you're addressing now, that you'd like to see more fully addressed. You're talking about a full blown meticulous performance evaluation which is the charge of the Board to do annually. And to be honest with you I think that would have been actually inappropriately. And by the way, you talk about 40 hours, now you're talking about a month and I don't think you wanted him to do that.*

*Attorney Benson: Don't hold me to 40 hours I didn't tally up the time, it's was a rough estimate. I was very surprised at the time.*

*Attorney Hament: Well we were worried about that, we won't hold you to the time....*

*Commissioner Morris: I think, I wasn't trying to say that he should have done a performance evaluation, I was saying the accusations see I thought what it was was that he was going to evaluate the accusations and he might have said there were accusations but these fell in the category of mismanagement, these fell in the category which I'm not going to address.*

*Attorney Hament: If you look at the way he's drafted it, he's really done that in an artful way frankly, the way I read the report.*

*Commissioner Morris: and I guess I just didn't see that.*

*Attorney Benson: I would have done a disservice to you and stepped out of my role and into your role. Because this guys job and his career is at stake, I found one of the most important challenges that I faced was to make sure that I did parse out those things that were properly your responsibility in your annual evaluation of his job performance because you have an employment contract with him and what was alleged to be the basis for firing the guy. And that's what I understood my responsibility to be are these allegations of violation of rules and regulations of immoral unethical conduct of illegal activities sufficiently supported to justify you making a decision to fire this guy for cause. Some of these allegations and I was very clear in here are serious, they are the problem with it, is that if you read it quickly, if you read the Union's letter and Banyan's letter together and read them quickly, you would say to yourself oh my God. And that's why I think motive, perspective the relationships between these people are important in making that decision. Now if you decide at the end of the day that he's not doing the job, it's a job performance issue, different story., But that's not what I understood I was being asked to do, to substitute or offer to you my opinion is he a good Chief or a bad Chief. Is he doing a great job as a Fire Chief or not, in fact that's outside of my valuator. I'm not an expert on whether he's a terrific Fire Chief or not, I am an expert on*

*whether or not the evidence would support you firing the guy for cause because he did these bad things.*

*Vice-Chairman: well you see, this is the problem; I thought the Board for investigations on these allegations, plus the Union so all these allegations here finds where your investigation comes out whether it is true or not true or whether it warrants taking the investigation further on, or cause like your completion says on this contract you find really no violations as far as the contract.*

*Attorney Benson: Well okay, it's not quite that direct, because of the issue.*

*Vice-Chairman Reckwerdt: Well that's not what...*

*Attorney Benson: Okay well that's why I'm here. It's not quite direct a route from one to the other, because there is the issue of prescription drug abuse. You're going to have to deal with that and I think that your labor council can be helpful in framing this in terms of either here's a guy, you know the extremes. I'll put it to you in extremes. On the one hand you got somebody who's addicted to street drugs and driving around in one of your trucks and doing bad things. The other is somebody who has a long history of back problems that there is an original on the job injury and he gets hooked on medicine. Now that's not a good thing, but it's more complicated than just making an up and down he's a good guy bad guy kind of judgment here and I think that there are also legal implication, but John will talk to you about the legal implications of it. But, he's not arguing with that what happened. He would say to you and I had, I don't think there's any doubt about it that he and these are trained observers you know that part of their job responsibility when they show up at an accident scene is to evaluate whether the person's is impaired. I don't think there's any doubt and I didn't here Becker arguing against it oh no I wasn't. What happened is what happened and they saw evidence of that and you're going to have to decide in hindsight looking in that rear view mirror I talked to you about now what are you going to do with this are you going to turn it into a moral into play he's bad he shouldn't have gotten addicted to drugs, he should have stayed at home, so on or so forth, or is this as they've been talking about it in the press lately, is this an opportunity for a lesson learned. And I think and I made it very clear to you I think that the implications of this are very very important as far as the culture of the department is concerned. Because, if, if somebody gets into trouble with alcohol drugs or whatever and there are impediments to utilizing the employee assistance program that's set, their colleagues saying to them look I think you're screwed up, I think you got a problem we need to get you into treatment here and there is this over arching fear that if anybody steps up you know that their career is over. I think that's a long term problem for the department because it's naive for you to think this is the only guy in the history of this department who's had a problem, an addiction problem a substance abuse problem. You know the rest of it, I very directly and candidly saw, as you know none of it rose to the level of misconduct of the sort that would cause you to fire him. If you don't like him the way he does his job, I don't know that. You see him all the time; you get to talk to him all the time.*

*Vice-Chairman Reckwerdt: what you say about the contract that you said down here about his contract is that he really hasn't violated his contract, but it also in the contract you still have labor rules and regulations I think that added to this contract that really violates that and that's part of the contract and I think that's a force we'll have to reckon with.*

*Attorney Benson: The outcome in any contract, the outcome is not inevitable.*

*Attorney Hament: You can go through options in a minute. Actually you have several options.*

*Chairman Scanlon: I don't mean to interrupt, but for those who don't have a copy of this I would like Tammy to read the conclusion instead of going through all seven pages.*

*Tammy Peacock: read first paragraph of conclusion. I don't feel comfortable reading this.*

*Attorney Hament: do you want me to do it. What accent do you want me to use. Attorney Hament read the conclusion of Attorney Bennett's summary.*

*Chairman Scanlon: thank you Mr. Hament. Does anybody have any other questions for Mr. Benson*

*Sec./Treasurer Goodacre: I don't have a question, I just want say that Mr. Benson, I thought you did a very good job. You were not asked to look after a budget you were not asked to look after money situations you were asked to go at and look at things that we set aside and I think you did a very good job of that.*

*Commissioner Morris: And I guess my question is because I unfortunately do not have the contract in front of us that we gave to you while I thought the Board was doing and this might be my misunderstanding because I just thought what they were saying is let's just take the allegations made by the Union by Dr. Banyan and the response from the Chief and put those together and in a package and do an investigation. I think what I thought what was going to happen is that the investigation is, I don't think we said investigate whether we should fire the Chief or not, I don't think that was ever part of the contract that we put out there. So I obviously thought that it would say here's a list of allegations and we found that they weren't even true, these allegations fell into a category of mismanagement, these fell into a category of misconduct or these did not fall into any of those categories, they were like ridiculous these fell into a category of legality. But what I thought is because when someone comes before the Board and make all these allegations we don't know what's true or what isn't. So, I thought the purpose of the investigation was to evaluate the accusations and then either say they don't exist or they fell into this category and then the bottom line might be that none of these allegations and what was told in my opinion would warrant firing. So it wasn't the result I just think that my misunderstanding was I thought we had asked you and maybe we didn't do that do to evaluate the allegations and then come up with a conclusion.*

*Attorney Benson: Well, let me use an example that your colleague used as an example that talked about the repair. I, my task was to determine what that meant in terms of Becker's employment contract. What I concluded was it was a controversy about the reliability of the competing numbers. And I'm not at a position to go to the Union and audit the records and then go to Becker and audit his records from the county's standpoint and then say to you okay Commissioner here's the right answer, that's your job. But, in my experience; I have been an Attorney for 36 years, my background is a labor employment law, I've been on all three sides, I've worked for the god and the angels, I worked for unions I worked for management is that that's the sort of controversy that you that what they pay you the big bucks for. You know management's going to say potato the union's going to say patoto and they can throw it in your lap and that's what you're paid to do is to decide which is the more reliable data what's the best way to use the public's money, what's the best way to accomplish the departments mission. These things were all jumbled together in an indictment that made clear that this guy needs to go. There was no way for me to read either the Unions letter or Banyans letters and draw any other conclusion. These were demands that you get rid*

*of this guy and here's why. Here's an example; he screwed up on the repair cost on this vehicle. He was at a meeting and then he said he had someplace else to go and somebody saw his truck parked in front of the gym and on and on and on. Well you're all old enough to know that some of that stuff is not entirely reliable. It is very easy to ascribe to antidotes like that, all kinds of motives; innocent motives, evil motives, illegal motives and my job was to try to sort it out for you so that if when you make your decision about keeping him or not keeping him you have a way a framework in which to appreciate and understand each of these allegations. Some of them were serious. For an example; the business about the explorer scouts riding in a department vehicle exposing you to liability because they were not seat belted. If you read the allegation carefully, you'll see Becker wasn't there, somebody complained about it, it went up the chain of command and somebody else made a poor judgment. Is that a teachable moment, we don't go anywhere. So I'm not suggesting that Becker didn't learn some important things about his performance that he didn't learn some important things about the way he was being perceived by the rank and file and his fellow employees. But again, you're going to have to make the decision about whether or not cumulatively each of these items if you take my recommendations or not how I've identified them do they together create a mass sufficient to firing him or not. I'm not suggesting that I got everything, I tried very hard to take each and every item that Banyan talked about and the Union talked about and touch on it. About the misconduct the problems with him having an romantic relationship with somebody who on the organizational chart is a straight line, there are no jogs in it. If you read my, I said to you that are a number of ways to relate this and when you analogize their romantic relationship to somebody in local government here being married to a woman who acts in sex roles. So, it's important for you to do that so ultimately you make a wise and fair decision; because it has big implications. It has big implications for Becker it also has big implications for the way your department runs in the future.*

*Commissioner Morris: I totally agree with your comment about the letter from the Union was so general and vague that there was no way and the answer from the Chief was just as general and vague which is why we said we can't make a judgment. I think my personal concern and as a commissioner and to support the taxpayer is that if 33 people sign a letter that I want to know what's behind it. I could not tell that from the letter itself, it was too broad and there's no way you could have known that either. So then I guess I thought the idea was we would look into the specifics and we'll just take this case right here that he mentioned about the ambulance. I thought the specific allegation wasn't that the Chief had one set of data and the Union had a different. I thought the allegation from the Union was that the Chief had presented the Board with incorrect information to make a decision. I thought that was the allegation. I'm not saying that that's true or not.*

*Attorney Benson: Okay, but as far as evaluating I guess for what it is, it's either not doing the job very well, can't run an adding machine, doesn't understand basics of budgeting, can't read a spreadsheet or knew the answer was wrong and then for his own reasons told you a big fat one. So for me that was my job was to see whether or not there was evidence of misconduct that is he knew it was wrong and he floated it out there to you hoping you would go with him instead of the Union and all I saw was very conventional differences of the sort that you must be confronted with all the time. I mediated accidents involving city buses. Everybody agrees there's 12 people on the bus including the driver and there's 16 lawsuits that result. That's the sort of stuff that you guys have to deal with all the time.*

*Vice-Chairman Reckwerdt: Also too, when we had the motion, really when we hired your company it was this is what we really need to find out whether it's true or not true in regards to the fire truck.*

*Attorney Benson: What, I can't see what you've got.*

*Vice-Chairman Reckwerdt: This is all the allegations, with the fire truck.*

*Attorney Benson: That's Banyan*

*Vice-Chairman Reckwerdt: This is Banyan, yes. This is the main thing I thought we were going to have investigated to make sure these things were truth, or not truth what your professional opinion would be what we do with your report right here. This is the report.*

*Attorney Benson: I hate to say it, let me just be very blunt. That's your job, not my job. I don't that's the sort of thing you delegate. Would you hire an expert to come in and tell you look at the budget numbers and say to you that well the ambulance cost this and not that the Union's correct and the Chief is full of it.*

*Vice-Chairman Reckwerdt: I wasn't referring to that I was referring to this right here this is Banyan report it's got all the list of the things the violations....*

*Attorney Benson: If you look through mine, you'll see that I touched on every single one of them, and if I didn't my bad.*

*Vice-Chairman: That's what the preliminary investigation is it's not just preliminary it's not a full investigation.*

*Attorney Benson: But I did touch on all of them.*

*Vice-Chairman Reckwerdt: So as far as the other thing as far as the ambulances, or the budget concerns we have with the Chief and on down the line, that's our problem, not yours.*

*End of discussion.*

*Attorney Pringle: Mr. Chairman if I may the next step in the process that Mr. Hament and I discussed was after the report is reviewed by Mr. Benson then what should we as your attorney's then do and what we came to was a conclusion that as I often times I do I try to provide you with options and choices and describe what your decision making can involve and then you make the decision. So we went through some thoughts about what the options are. As labor council Attorney Hament, I think has a better ability to present the options, we discussed them, I'll be glad to answer any questions about them that you may have for me or Mr. Hament can as well. But, we've talked about some options and he has these here that he can present to you or if you can just jump into questions or.*

*Chairman Scanlon: Why don't we have him present the options first.*

*Attorney Pringle: that is what I suggest.*

*Attorney Hament: We see three options right now. If we've missed something I guess our discussions will get us to it but I think there's three.*

*Option 1: Terminate the investigation. No formal charges have been brought, there are allegations. We've done what you might call an informal phase of an investigation. We had to*

*follow the firefighters bill of rights because of Chief Becker's status and that was done. We just had a presentation with the result. So option 1 is to terminate the investigation proceed no further and to put the Chief back to duty. He's been on administrative paid leave ever since I don't know what day it was, whatever day it was. But you have been paying him with taxpayer dollars paying benefits. We've had a couple other cases since my tenure here and I know the longer it goes when you're paying using taxpayers dollars for paying benefits when someone's not providing services, it gets dicier. I think Commissioner Morris you had very strong feelings one case when we had someone out on administrative leave. That was due for other reasons, but probably not healthy as far as the use of taxpayer dollars. I don't know how long it's been.*

*Commissioner Morris: last meeting*

*Attorney Hament: Whatever time it was. So option 1: If you feel comfortable you can terminate the investigation and put him back to work and go from there.*

*Option 2: Terminate the investigation, but, but impose some conditions, require some things, and I've been brainstorming with Attorney Pringle, by the way don't forget Attorney Pringle we represent you folks as a whole not individually but as a whole, don't represent the Chief, haven't said one word to the Chief. What kind of things, by the way as a labor lawyer, I'm not as old or tenured as Mr. Benson. Maybe I am old, I don't know, I know I look younger, but I deal with these kind of things all the time and there are some things you could do if you want to terminate. If you feel what you've heard doesn't warrant going forward but you'd feel a little more comfortable imposing conditions to what we call conditions of employment here's some ideas for you. And this was taken into account since I read the report. As you can see the investigator that you've engaged; he has most troubling to the outcome here is that abuse of prescription medication to solve the pain problem from the back which it appears is all over. However, here's some things I've had clients do before you put someone back to work that's had this sort of problem, and there are many variations on this problem but don't forget there is a major distinction that you have to keep in mind, there's no evidence at all that we have Chief Becker that's ever used illegal drugs. We're talking about, by the way Attorney Benson do we have any evidence that he used someone else's medication which is a very common problem in the United States, we haven't seen any of that. So that's very important because that's real bad if you're using someone else's prescription medication but we do have someone apparently getting hooked on his own. So one possibility is I think the District still have an EAP, right, still in effect. EAP's are perfect for those kind of situations. Ideally, that would have been addressed better with the EAP at the District that's what they're set up to do. One of the big things with the EAP does is address drug issues.*

*Commissioner Morris: what does that stand for.*

*Attorney Hament: Employee Assistance Program, EAP. One thing that I think would be actually a recommendation to the Board if you like this approach is to require the Chief before you put him back, if you decide to terminate the investigation you feel comfortable you can do that, but before putting him back to duty is to get him to get to this EAP and get a fitness for duty, if they'll do it, the EAP, or a specialist just to give you a comfort level. He says he did it what cold turkey, Mr. Benson.*

*Attorney Benson: Eventually, back in February.*

*Attorney Hament: Oh, so that early, way back this year.*

*Attorney Benson: And there was no antidotal evidence of periods of being impaired after that. It seems like it was during a period of time roughly August of 08 til February of this year and it's also roughly consistent with his treatment regiments with his pain doctor.*

*Attorney Hamant: 2 to 11, so we've got three quarters of a year where he may have been everything's fine it's all solved but if you have strong feelings about going way back looking through the rear view mirror as this report shows sort of interesting analogy but and you want some comfort level one possibility is to get him to go to the EAP or some specialist get a fitness for duty so you have a comfort level, it really is solved. You're not going to just take his word for it, or the word of the investigator so to speak. Another possibility, you might just want to defer to an EAP and a specialist about any recommendations. They may see something, or they may say well or you may feel let's have him drug tested randomly for six months, another possibility. But I do think it is striking and significant that this problem may have been may have gone away three quarters of a year ago. Usually you've got a more imminent problem where it's more recent. And then if you decide to terminate the investigation but you'd like to get that extra comfort level, some kind of fitness for duty, or an EAP visit or a specialist recommendation, you might want to hold off putting him back to work until that's done. I suppose that could be done rather quickly assuming there's no complication there. If indeed the investigator is accurate and he sees there is no evidence of any further problems for about three quarters of a year that could probably be done very very quickly and assuming it's an okay fit for duty that's option 2. Option 1 terminate the investigation goes back to work clean. Option 2 terminate the investigation but we want to impose some conditions for continued employment we liked to get a fitness for duty comfort level from a specialist or EAP. Option 3 if you're uncomfortable if you feel so strongly that you're not satisfied now, you can go into another phase and I would call a formal inquiry, formal investigation pursuant to the firefighter bill of rights. Now it gets a little complicated. First, this Board, you're going to be thoughtful and well conceived about it. You're going to have to decide what formal charges to file. I could help you with Richard. You have to decide what topics what subject matter you want to charge him with or about. Then we're going to have to go to the rules and regulations of the District and so forth and fit him into those, I've helped you with that other employees, but you'll have to the only way for Richard and I to file formal charges for you is to know what your concerns are. You'd have to reach conclusions based on this report. I don't think it's going to be that easy. It's going to be complicated, but it's certainly possible, then that propels us into a formal investigation. You can take the formal charges and charge him with it and put him under tape recording. Then presumably Mr. Benson would conduct what we call a formal interrogation part that's in the state law a form of firefighter's bill of rights. And he would, to be honest with you, it's kind of funny, he's probably just going to repeat what he's done with Becker but it's under the firefighter bill of rights and with a tape recorder. Now if you decide to go that route, you have another decision to make and that is whether to continue the Chief on administrative leave or to bring him back while he's undergoing that formal. Then of course you would then have another Board meeting the investigator would come back with the results of the formal. The formal by the way could actually involve interviewing other witnesses. Mr. Reckwerdt you talked about perhaps a fuller investigation of certain issues, Commissioner Morris talked about it. That's up to the Board, you could expand. Then, the Board you have addressed the outcome of the formal investigation you just heard the outcome of the informal then you'd have the formal and then of course you would have to decide what to do at that point. You'd have to go through your options again. Those are the three options that I see. You think I missed anything. I'm not sure there's another straight forward option. Maybe the Board wants to start talking about what your thinking is and try to move toward an action some motion some*

point. You're probably going to have to take some action on these options. By the way maybe you have another option.

*Chairman Scanlon: Personally, if Mr. Benson's has put; put in 40 hours on this or there abouts, I'm not holding it to 40. We've already spend \$11,000 of taxpayers money on this investigation it's far too much, it probably shouldn't have happened to start with. I think we should terminate the investigation and with conditions of random drug testing done by the medical officer. That's my opinion.*

*Commissioner Schmid: I personally feel we should have had the investigation and I totally support the expenditure of the money. I agree with you on the second point of your comments, to terminate the investigation and have the Chief go through some series of tests, which we agree on, either if it's a fitness for duty thing or have him checked whatever we feel comfortable with every month for six months or however comfortable the five of us feel. My recommendation would be go with number two. I think we got enough information from the report which I think was very well done. It has given us a insight about the Chief's actions and we take it from there.*

*Chairman Scanlon: Actually, I would like to restate what I said in that first part. I mean if I would have been here I would have voted, well I did vote to do the investigation so it needed to be done.*

*Commissioner Schmid: It had to be done.*

*Chairman Scanlon: Right, once you have the allegations something like that needs to be done. I just think we've spent enough money doing it.*

*Commissioner Schmid: I agree with you that's why I vote for the termination of the investigation.*

*Commissioner Morris: I think we ought to finish, terminate the investigation, I don't that we have to do the drug the EAP right now but I think we ought to set something up to assure ourselves for the future if we do the random type thing. But, I think we have another situation. It bothers me as a commissioner if I have 33 people that are unhappy I think I still have to answer that and I obviously misunderstand what the investigation was supposed to be. I thought it was going to at least look at those things so we could put them to bed. We haven't done that. So I think what is going to have to happen, I agree with terminating the investigation, putting the Chief back on duty, etc. etc. I think we the Board are going to have to look at some of these accusations and if we want to say job performance, then we're going to have to dig in and do a lot better job so that we can go back to the Union and say no you're absolutely wrong or yes some of this is happening. But I think we're now going to have to all of us really take a look and maybe get with the Union get a detailed list of whatever their concerns are because I don't want to have 33 people that are unhappy working for this district. So I will support terminating, I don't want to spend anymore of the District's money, I'm not sure the results told me anything, but we had to do it, so that would be my opinion.*

*Vice-Chairman Reckwerdt: I'm in favor of terminating the preliminary investigation but also to as far as putting the Chief back from administrative leave with pay that probably would be since the investigation is over, but with conditions on there as a Board should discuss what conditions when he comes back on. What he's going to say, what he's going to commit to us*

*and down the line too since we do have it says in the preliminary the contract really is not violation but still we got rules and regulations that's what we have to take into consideration. Now we go further in that cause we've been involved before with another Chief. If we don't have confidence in our Chief, and when you don't have confidence in our Chief, I'm not talking about the Union. As I always tell them, I work for the District, not the employees not the Union not the Administration but the District as a whole. But when this came up like this I know some of the other people were unhappy that we had the investigation, we have to as a Board, this is what we had to do when we have these allegations. If we come back later and we didn't do it we could be in serious trouble. But, also, too when we got on down the line we may have next meeting, special meeting discuss what we're going to do with the Chief, whether we're going to keep him or another avenue with the Attorney's presented to us before is that we can terminate without a cause because we're not happy with him. He's not doing the performance that we hired him for that means the Board has to do its obligation as far as termination. But if the Board decides not to then the Chief will stay in there, like probation, he could come out good, clean up his act, go forward have a good relationship with the Union, the Board, District that's another thing the Board can come across as far as I'm concerned. All right I'll have to go along with the Commissioners about the termination, as far as the investigation to terminate.*

*Sec./Treasurer Goodacre: I agree with the ideal of terminating the investigation. I think that probably everybody would be happy if we went to the EAP and had an evaluation once or even testing once in a while. I don't think we have any problems with that but I think everybody would be happier if we do that.*

*Attorney Hament: If I may, what you could do, I would feel better for you that you do something like that along those lines and also for precedent for dealing with other employees. If the EAP will do it or a specialist require a fitness for duty he's fit to come back, problem solved; no problems. And maybe let them recommend, see if he's okay 100 percent, having him go through testing at this late date, if it's literally been solved for three quarters of a year I'm not sure it makes much sense. I wouldn't recommend that for any employee. So you might just want to defer and ask the EAP or the specialist if the EAP won't do it and say look we'd like for you to meet with the Chief evaluate and see if the problem's solved if he's fit for duty fine, if you have any other recommendations such as ongoing testing maybe defer to them to do it. If they don't have any concerns and they don't think it's necessary why would the Board want to do it. It may not make sense.*

*Sec./Treasurer Goodacre: I would think that as soon as we have some kind of EAP or something give him a clear he would come right back to work. We shouldn't have to wait another while to go on with it.*

*Attorney Hament: I think it could be done immediately.*

*Sec./Treasurer Goodacre: Yes, I think that's what we should do.*

*Vice-Chairman Reckwerdt: I have another question for the Attorney.*

*Attorney Hament: I just learned something from the Chief. You're currently doing annual physicals right now that includes testing by the way. That's right you do it every year. But this of course you'd want to do something special to get a special evaluation to make sure. I think the EAP might be able to do it or if they won't I'm sure there's someone a round, a specialist.*

*Chairman Scanlon: EAP will do that.*

*Attorney Hament: I would hope so. I don't see why it couldn't be done immediately.*

*Chairman Scanlon: EAP you just need to call up and make an appointment.*

*Attorney Hament: We have to get this to the Chief, in writing or whatever, we'll figure that out. Mr. Pringle we'll figure that out. Probably someone needs to do a motion along those lines.*

*Chairman Scanlon: I'd like to make a motion to terminate the investigation as well as terminate the administrative leave and put conditions on to be named later such as EAP.*

*Sec./Treasurer Goodacre: Seconded.*

*Attorney Hament: Excuse me, what do you mean later.*

*Communication continued on the EAP timeframe.*

*Attorney Hament: Could I just help a little. Why not just say require an evaluation by the EAP or specialist and obtain a fitness for duty before being put back to work and any other recommendations such as random testing if agreed. If that makes sense.*

*Commissioner Morris: I don't think that's what we were trying to get to. I mean I don't think that anybody, if he's been clean for six months, I think what we were saying is that periodically we want to do random testing or checking. I think we were saying terminate and put him back to work.*

*Communication continued on the EAP process and timeframe of coming back to work.*

*Chairman Scanlon: I'd like to rescind the motion I just made and reword it. I'd like to make a motion to terminate the investigation, to terminate the Chief's administrative leave, to put him back to work starting tomorrow and within a month to have an EAP evaluation back to us by the next meeting. EAP doesn't take that long. It's an hour counseling session. You go there and speak; I'm not sure about what kind of credentials that person holds. Some type of a health professional.*

*Commissioner Morris: I'll second.*

*Commissioner Schmid: I don't feel, I would rather have him tested and then start him up. I think you call it a fitness letter, or something like a fitness for duty, I would like to see that done immediately, as soon as possible and if that goes back that he's clean then I would agree to start him to work.*

*Communication continued between the Board about the timeframe of the fitness for duty.*

*Chairman Scanlon: I'll rescind that once again for the third motion. I make a motion to terminate the investigation, to terminate the Chief's administrative leave and put the Chief back to work as soon as he receives a fitness for duty letter from a health professional.*

*Commissioner Morris seconded.*

*Motion approved unanimously 5 – 0.*

*Attorney Hament: Could I just mention one more thing. You folks seem to be concerned of many things, but a lot of it is performance related as you've been talking about with the investigator. There must be an evaluation. I think annually you evaluate him. Of course we've had many a discussion about your method of evaluating him, but I think that's maybe coming up soon, or you might want to try to accelerate it. Maybe that's a great time for a forum where you address performance and all these little varied concerns, big, little whatever. Because I think a lot of this is performance.*

*Commissioner Morris: I'm going to get, I'm going to address this one now. I want to make something for a future, proposal for a future meeting. Because I don't think we answered the concerns of the Union, which I think we need to do. Because we did not have our meeting yesterday that was going to address some of their concerns but a lot of other issues that dealt with the financial management side. We need to have a meeting, a special meeting and that meeting should be looking at the specific concerns of the Union financial expenditures that have occurred, financial expenditures that are planned, cuts that we can make and evaluate that entire area, I think they all roll together. And we need to have a special meeting to do it and all the right people need to be there and that's my motion.*

*Commissioner Morris: I wanted a special meeting with all the correct players. Purpose is evaluate Union concerns, and take a look at some financial expenditures that have been made, and the future financial expenditures planned in the budget.*

*Vice-Chairman Reckwerdt: And we can add to that agenda on a special meeting for other items, rules and regulations from the Chief and discuss on down the line.*

*Communication continued between the Board about the time of the meeting.*

*Attorney Pringle: You can adjourn to a time and date certain, which is the same as which is not a conclusion of the meeting it is a recessing of the meeting.*

*Chairman Scanlon: I'll second that.*

*Commissioner Schmid: I agree with everything that Carol brought up about going over the financials and going line item by line item and having the right people there. I personally don't feel like we should open this whole thing all over again, the Union letter and Margaret Banyan's letter. I'm comfortable with what the report is here, and I agree that I would like to satisfy the Union and the questions they have, but to me I'd like to put it to bed. Personally that's what I'd like. I stand behind Carol in her request to go through line items by line items and have the Union here with it, which I appreciate their involvement with it. I don't want to open up Margaret's letter again, and the Union's letter again and go through that thing. We made a decision; I think we should just put it to bed. We can bring up points that he broke, violated laws and he did a lot of things that he shouldn't have done. But I think it behooves the five of us to put that down in his evaluation form and grade him on what we think he did. I think we've hashed enough myself.*

*Attorney Hament: By the way, If I may as your labor lawyer, it would be inappropriate to do what you're talking about doing. Because that's tantamount to reopening an investigation.*

*You got to be careful and steer clear and go some other direction that probably dwells on performance. You start going back to all these allegations and all that, you're really reopening an investigation, it's really improper.*

*Chairman Scanlon: I'm going to rescind my second.*

*Commissioner Schmid: You can bring that to a vote if you want to John.*

*Chairman Scanlon: No, listening to what the Attorney said and your input and about reopening the investigation, I don't feel comfortable, other parts of the motion I did feel comfortable with, but I'm going to rescind my second right now unless Ms. Morris wants to do..*

*Commissioner Morris: I didn't talk about the Banyan stuff or anything like that I was just said concerns that had been, financial concerns that had been expressed by the Union. I think we as a Board the lawyer said the same thing. He said that's a matter for the Board, that wasn't a matter for him to look into. That's fine. So I'm not redoing the investigation but there are still concerns out there and we as a Board have an obligation to at least evaluate, and those concerns are financial related. So that's all.*

*Chairman Scanlon: So your concerns are just regarding finance, nothing to do with a no confidence letter, Margaret and so on and so forth.*

*Commissioner Morris: No I think in the letter they had indicated financial type concerns. And, so I'm saying, I think we need to take a look at the whole financial aspect and make sure that everybody's comfortable with what we have done and what we plan to do from a financial management standpoint.*

*Chairman Scanlon: Okay not that I understand your motion a little bit better.*

*Commissioner Morris: No I'm not going into the Banyan stuff.*

*Chairman Scanlon: I'll second that then.*

*Attorney Pringle: Mr. Chairman I've tried to write quickly, I'm not sure I've caught it all.*

Attorney Pringle restated the motion: To discuss financial expenditures that have occurred, financial expenditures that are planned, financial adjustments that can be made to the budget, financial concerns that have been raised and to have all the stakeholders present and a part of the discussion of the special meeting so there is interaction among everyone.

Vice-Chairman Reckwerdt stated he still has concerns with rules and regulations, and violations as a part of the investigation.

*Vice-Chairman Reckwerdt: I would like to ask the attorney since you're a labor attorney and all. If no action has been taken against the Fire Chief where he has committed violations of the dept. rules and regulations, what happens in the future if any employee of the District is disciplined by the Fire Chief for the same violation. Does it put the District in discrimination by being .....*

*Attorney Hament: That's a good point you raise, that's why I urged you to get a fitness for duty and so forth. I would start looking ahead to other employees that might have analogous kind of circumstances, although it's not fair to treat one similarly situated differently from another. I think the key point in responding to your situation is I think the way you've handled the Chief is appropriate. Believe me if I thought it was very bad, we're supposed to protect you. I would have spoken up personally, I'm sure Mr. Pringle would. I think we're protected as far as a precedent in other cases. These things are looked at case by case. You have looked at Chief Becker as an isolated case and you've made your best decision based on the facts of this case. If we have another case in seven months somebody else and Chief Becker has to look at that employee, if I'm involved I'll help him but we'll look at the facts of that case, it may be a little different, Commissioner. But at this point you seem to be slipping back to wanting to address some violation of rules and regulations that you addressed with Mr. Benson. I think you voted now to put this aside now, you're bringing him back, you've got a condition, he needs a fitness for duty. I think now it seems to me the Board's looking in a different direction. We're going to look at performance issues and one of the highlights is going to be management of finances. And that's probably the best way to approach things like this now.*

*Commissioner Morris: But Commissioner Reckwerdt is bringing up a good point. I think the point is that for whatever reason the investigation did not do what some of us that is was going to do. Maybe that was discussions between our lawyer and him and maybe it was the way the contract was written. But it did not do that and he said it was not appropriate for him to do it, that was something that belongs to the Board.*

*Attorney Hament: The performance evaluation.*

*Commissioner Morris: Right, so I think where he's coming from is there have still been accusations that deal with quote performance. Has he done things that are not correct within the rules and regulations? Not necessarily a legality type thing but maybe things that might be inappropriate that made somebody lose their confidence in him as a Chief. I don't think there's anything which keeps us from evaluating at any point and time; forget about the investigation, that's out of the way; those things which might be concerns which then you would use in your performance evaluation. So I don't think there's anything wrong in our looking at those, I don't think its...*

*Vice-Chairman Reckwerdt: Then the Board has to go out and bring another decision you have another decision we can make if that doesn't work out and if it does work out, then we have adjustments to make and we go from there.*

*Commissioner Morris: And let's just say you that you evaluated ten things that we're saying and you say you know what I think an awful lot of these are correct they're not reason to legally have an action, but I think I want to terminate him without cause because I don't think it's a good Chief or something. I think that's where he is coming from that you have the capability to do that at any point and time. And that is our responsibility period. I don't think that affects what we're doing.*

*Vice-Chairman Reckwerdt: We could always bring it up on the Chief's report, I mean the Commissioner report.*

*Attorney Pringle: Mr. Chairman if I may. I just want to motion that there's a motion on the floor, but just to try to close the boxes that I believe that have been opened. The decision*

*today to terminate the investigation has no affect on the Board's ability to perform a performance evaluation that's in the future. And, number two the investigation that has occurred is as relates to past activities. So the performance evaluation that occurs in the future is wide open the Board has the ability to do that as they have in the past or using another method, because there's been discussions about it. The other thing is you do have Mr. Chairman motion that is open that needs finalized.*

*Chairman Scanlon: Anybody have anything else on Ms. Morris' motion.*

*Chairman Schmid: Could you repeat the motion Mr. Pringle?*

Attorney Pringle restated the motion: To hold a special meeting to discuss and possibly make decisions on financial expenditures that have occurred; that's discussion but not decision making, financial expenditures that are planned; that's decision making, financial adjustments that can be made to the budget; that's decision making, financial concerns that have been raised; that's discussion and decision making, and you want to have all the stakeholders present and a part of the discussion of the special meeting so there is interaction among everyone.

Motion approved 4 to 1

Chairman Scanlon – Aye  
Vice-Chairman Reckwerdt – Aye  
Sec./Treasurer Goodacre – Nay  
Commissioner Schmid – Aye  
Commissioner Morris – Aye

Communication continued between the Board on the date of the special meeting.

Chairman Scanlon motioned to have the special meeting Thursday, December 17<sup>th</sup> at 10:00 AM.

Motioned approved unanimously 5 – 0.

*Commissioner Morris: And I'd like to ask everybody who has specifics that they want to bring up whatever at the meeting, so let's do it ahead of time so that we can get all this stuff on the agenda and that goes for any of the Union, financial aspects that you want to bring up, and I'll try to make a list. If we all do that at least it will help.*

*Attorney Hament: Can I just urge the Board please don't dive back and do another investigation that's just been completed to the specific allegations because it really would be inappropriate. You just terminated it, to do it again, you start up again, and it starts to look like an investigation of the specific allegations think about it it's common sense, it's not right. But in the context of an evaluation about certain things, that makes sense.*

*Commissioner Morris: In order to do an evaluation you have to look into a lot of stuff. So that's what we're doing.*

*Attorney Hament: It can get a little grey.*

*Communication continued between the Board.*

*Commissioner Schmid: I'd like to make a motion that we do a performance evaluation of the Chief and have it available at the next meeting.*

*Communication continued between the Board on the last performance evaluation done on the Chief.*

Commissioner Schmid asked Tammy Peacock to look at the last evaluation that was done on the Chief. If the Board can't do it by the December meeting it should be done by January. Commissioner Schmid stated it was the Board's job to do it and that is what the taxpayer's pay them to do.

Communication continued between the Board and Attorney Hament on the performance evaluation.

Chairman Scanlon stated the performance evaluation would be put on the agenda for the next meeting.

- B. Actuarial Study for District – GASB45 Requirement** - Attorney Pringle stated generally through an independent contractor the District needs to have the actuarial study done. Attorney Pringle can put together an RFP to find a firm to perform the function. The Board can then decide who they want to use to do the study.

Commissioner Schmid asked if it would go to more than one vendor.

Attorney Pringle stated it would go out in the paper and he would contact other vendors which do this study.

Commissioner Schmid asked if the District auditor could do the study.

Attorney Pringle stated the District auditor is prohibited from doing the study since they do our auditing.

Chairman Scanlon motioned for Attorney Pringle to put together the RFP for the GASB45. Sec./Treasurer Goodacre seconded.

Motion approved unanimously 5 – 0.

### **Reports from Union Representatives**

FF Mesick DVP District 3 stated it was interesting that there was rules and regulations that were violated and doesn't see how if you violate rules and regulations you're not disciplined for it. The insurance numbers that are going around are different for AETNA and GreatWest and everyone should sit down and get to the true numbers and the policy itself.

### **Remarks from Commissioners**

Commissioner Morris – none.

Commissioner Schmid – I would like the District to send a letter to Attorney Benson thanking him for his efforts and the good job he did and thanks to Lieutenant White for filling in.

Commissioner Morris – noted she did have something to say – just for the record that a decision was made that the District is under a freeze control, noting someone resigned yesterday, and anything that would happen to hire or fill in the blocks would have to come back to the Board for a Board decision and officially the District is under a freeze control.

Chairman Scanlon – noted he don't know if that's the Board decision.

Commissioner Morris stated that the Chief established when Chairman Scanlon was not in office. The Chief said the District had frozen everything. The way it was set up a replacement is still new. Commissioner Morris stated she didn't make the rules but it came before the Board and if any changes are made it needs to come before the Board.

Chairman Scanlon stated that it will need to be researched.

Communication continued between the Board.

Sec./Treasurer Goodacre – none.

Vice-Chairman Reckwerdt stated some people have criticized the District for doing the investigation, but it is the Board's duty to look into it. As for as the whistle blower issue that came up it is up to the Board and make the decision whether to go forward or not.

Chairman Scanlon stated he is glad the investigation is over and wants the District to move on.

### **Public Input**

Beach resident David Saunders asked how to get a copy of Benson's contract, the allegations and Benson's report. Mr. Saunders asked if the Chief will be present for the allegation meeting the Board is having with the Union and will both sides be available.

Chairman Scanlon noted everyone involved would be in attendance.

Beach resident David Saunders asked what the purpose for the actuarial study.

Attorney Pringle stated the government accounting services requires the District to get an idea of retirement benefits to be paid to retirees and future benefits that will be paid out.

Beach resident David Saunders stated if it is apparent that if the Chief and the Board are closely working together why didn't the Board know of these allegations.

Chairman Scanlon stated the Board does not micro-manage the staff and the firefighters have confided in some of the commissioners.

Beach resident David Saunders stated he did not know how long this has been going on didn't understand how the Board could not know what was going on.

Beach resident Bob Miller stated he disagrees with the comment and employees don't go directly to the board of directors, they go to management. Mr. Miller stated he thinks the District is doing a good job and he thinks the District is working accordingly to the investigation and has handled it very well and commends the Board for their actions.

Beach resident Al Agathen stated he is the CERT team leader and the CERT team has seen major cuts in their funding from the District and also by Lee County which he understands. Federal government has also made cuts to the citizen core that CERT falls under. The CERT team is filing for a 501C3 which is in the process now. The Yucatan will hold a fundraiser for the Fort Myers Beach CERT team only, the last Sunday of November and hopes everyone will come out to support the CERT team.

Beach resident Pat Smith stated that the discussion today has just strengthened the need to evaluate the Chief's performance on a regular performance whoever the Chief may be. This was discussed more than a year ago. In a professional setting it should be done on an ongoing basis. Ms. Smith stated the Board should get some of this down now and the Board will know what needs to be worked on, particularly in this situation with allegations of rules and regulations. Ms. Smith stated that there had been conversation over a year ago about illegal drug use and it is a huge liability.

Beach resident Flip Harby stated that the bylaws that was presented to the last Chair states that the Chief be evaluated on an annual basis, but he feels the Board is doing nothing with the bylaws at this time. Mr. Harby stated the Board has in the past received the vehicle expense log on a monthly basis and it was up to the Board to review. Mr. Harby stated he doesn't know the drug abuse policy for the District but does understand that the union has to be notified if drug testing is required and if that is the case, he thinks the District should go to random drug testing.

### **Adjournment**

Call for adjournment of meeting.

Meeting adjourned at 3:12 PM, November 17, 2009