

MINUTES
REGULAR MONTHLY MEETING
OF THE
FT. MYERS BEACH BOARD OF FIRE COMMISSIONERS
TIME: 1:00 PM
DATE: September 15, 2009
PLACE: 3043 Estero Blvd., Station 31 Meeting Room
Fort Myers Beach, FL 33931

IN ATTENDANCE: Vice-Chairman Ted Reckwerdt, Sec./Treasurer Betty Goodacre, Commissioner Joe Schmid, Commissioner Carol Morris, Commissioner Flip Harby, Attorney Richard Pringle, Chief Mike Becker, Assistant Chief Larry Evans, Finance Director Jane Thompson, District members and members of the public.

Meeting called to order by Vice-Chairman Reckwerdt at 1:00 PM

Pledge of Allegiance

Moment of silence for our troops

Vice-Chairman Reckwerdt noted Sec./Treasurer Goodacre would be present shortly.

Vice-Chairman Reckwerdt called for a motion to approve the August 18, 2009 regular monthly meeting minutes.

Commissioner Morris motioned to approve the August meeting minutes. Vice-Chairman Reckwerdt seconded.

Minutes were approved unanimously 4 – 0.

Vice-Chairman Reckwerdt called for a motion to approve the August 17, 2009 special meeting minutes.

Commissioner Schmid motioned to approve the August special meeting minutes. Commissioner Morris seconded.

Commissioner Schmid requested the following change to the August 17, 2009 special meeting minutes:

- 1) Page 7 on the motion to send a letter to the Union to request the opening of appropriate articles of the contract, vote was 4 to 1, show of votes were not documented. Change noted and will be corrected on the special meeting minutes.

Minutes were approved unanimously 4 – 0.

(Sec./Treasurer Goodacre arrived after approval of the special meeting minutes.)

Vice-Chairman Reckwerdt requested Sec./Treasurer Goodacre read the Treasurer's report.

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

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

- A. Sec./Treasurer Goodacre asked for approval of department checks #035187 through #035283 for a total of \$81,292.76 for August 2009. Commissioner Schmid motioned to approve the department checks. Vice-Chairman Reckwerdt seconded.
Department checks for August 2009 were approved unanimously 5 - 0.
- B. Sec./Treasurer Goodacre asked for approval of CIP check #030092 for a total of \$1,345.00 for August 2009. Commissioner Schmid motioned to approve the department checks. Vice-Chairman Reckwerdt seconded.
The CIP check for August 2009 was approved unanimously 5 - 0.

Chief's Report

Chief recognized employees with years of service:

FF Eric Cook	8 years
Lt. Chris Morgani	8 years
Lt. J.P. Duncan	19 years
<u>DC Tom Edge</u>	<u>30 years</u>
 Total Years	 65 Years

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

Commissioner Harby asked how many calls were received from the AVL trial to date.

Chief Becker stated there have been three calls.

Commissioner Schmid asked if there was a competitive process in obtaining the liability insurance renewal.

Chief Becker stated it was not competitively quoted because at one point the District had a lapse in coverage where they were not covered and the District is also a high risk.

Commissioner Schmid asked why the certificates were not in the employee files.

Chief Becker stated the Dept. of Health requested a list of items from several personnel files. When the files were pulled for these employees, (some being new employees), the certificates were not in the file. Most of the certificates were located prior to the Dept. of Health leaving, and the remaining few certificates were sent to the Dept. of Health immediately after. Chief Becker stated the District is preparing a binder for future inspections.

Commissioner Schmid asked why the Chief wants the extended five months on the AVL trial.

Chief Becker stated more scenarios were needed and the time of year is slow, limiting the calls. Chief Becker noted that the District is trying to look at both the receiving and providing side and the impacts it will have on operations.

Commissioner Schmid asked who the Human Resource complaints were on.

Chief Becker stated there was a complaint on Captain Ed Whiteside and one on Firefighter David Ellner.

Attorney Report

Attorney Pringle noted that Attorney Hament was not present today so he who would assist with any questions the Board may have in regards to the Assistant Chief's contract.

Attorney Pringle noted the policies discussed last month at the meeting will be worked on at a later time.

Commissioner Morris asked if there was a standard policy regarding relieving people from the workforce if they are not under the contract.

Attorney Pringle stated he is not aware of any policy in place except for the non-bargaining package, but there is not a booklet.

Chief Becker stated there is a policy in place for the non-bargaining unit.

Attorney Pringle restated he was not aware of any such policy.

Public Input on Agenda Items

Former District employee Margaret Banyan addressed the Commissioners, District and public.
Verbatim: Good afternoon Commissioners I'm here to provide public comment

Vice-Chairman Reckwerdt: name please

Margaret Banyan for the record, thank you. I'm here to provide public comment under item C, new business. I'm a former member of the, former employee of the Fort Myers Beach Fire Control District and I was laid off by Chief Becker. I believe in violation of the law for speaking out and for policy law and rule violations. I think at this point I want to clarify that some people may wonder why I am speaking now to the commission after I've been laid off. I want to point out that these are items that I want to talk about that have already been discussed with various members of the district and commissioners, so nothing that I'm going to say now is new and nothing I'm going to say has not already been reported. I understand that there are budget layoffs and I too was a proponent of these layoffs and encouraged the Chief to cut my position or at least give me a halftime position. I am not in support though of retaliation or gross violations of policy by the Chief and that's something that I want to clarify is I realize that the layoffs are, are important and to give up my position or to give up part of my position was something that I was willing to do to keep firefighters on. In the end, I'm quite concerned that the Commission's not fully aware of the Chief's serious violations and exposures that they bring to the District's Commissioners, employees and to the community. The following report will take about 20 minutes to discuss if there's no interruption, and all of what I will tell you today is backed up extensively with documents, e-mails and witnesses. I could not include everything in the verbal report because there's just simply too much to talk about. As an alternative to my verbal comment, I am prepared to provide this in a written format and make it a part of the written record and I'm going to leave that up to the Commissioner's because 20 minutes is a little A typical for public comment, so what would the Commissioner's prefer that I speak it or provide in, it for the written record.

Commissioner Harby: I would like to see it submitted in writing.

Commissioner Morris: Is there a summary that you could do and provide the details? Only because of people sitting in the audience, if if they were looking for your input okay, what I'm saying is.

Margaret Banyan: I have, I have written documents available and I will provide them in the written record. I'm not sure what your preference is because once it's in the written form, it becomes part of the written memory of the District so, that's up to you how you want that delivered in a verbal form of course it gets recorded in the minutes and that's the written record.

Commissioner Harby: in, in the essence of saving time and taking 20 minutes out of a busy agenda I'd just soon you submit it in writing. It becomes a document.

Vice-Chairman Reckwerdt: with that along too you still got about almost two more minutes you can get the highlights if you want to.

Margaret Banyan: oh, there's no way to hit just the highlight, so

Vice-Chairman Reckwerdt all right then

Commissioner Morris: you could give a summary of the points without going into the details and then back it up in writing is what I'm saying.

Margaret Banyan: Well, I suppose I could, I could give that a shot.

Vice-Chairman Reckwerdt that's what I was trying to get, yes, thank you Commissioner Morris

Margaret Banyan: All right, just in, in my experience and my observations, there's several rules and policy and law violations that the Chief has committed in the past year in my experience. And I'm not going to read the rules, but violation of rules 3.14, 4.28 10.01, these relate to use of, of drugs and vehicle operations in the work place. Several witnesses are provided for this as well as documents. Violation of rule 4.7, 4.17 members shall be responsible for performance of their duties and able to do so. Several witnesses and documents support this. In addition, violation of rule 4.15 and 4.23 that reports to false records is also documented and submitted to the Commissioners. Violation of civilian disciplinary procedures the document that the Chief and Attorney Pringle were discussing earlier I've got evidence and backup to demonstrate violations of that procedure as well. There's other acts that have been created violation of policies related to the explorers program. I want to just highlight that the explorer's program requires safety policies in place for the teenagers that are involved. I am not aware of any safety policies nor are any of the firefighters aware that are advisors to the program and these are teenagers that are involved in these programs. There's also several instances of neglect of duty falsification of training reports is one as well as Chief Becker's personal relationship with Jane Thompson has created severe disruptions for the workplace. And, that is also documented in this report. Finally, federal and state law the US equal opportunity the US Equal Employment Opportunity Commission prohibits retaliation against employees for speaking out against these violations as well as the Whistle Blower act in the State of Florida. I want to just submit that on July 15th, I was quote, quote unquote a valued employee who filled a public records request on August 14th and was immediately exclude and pressured thereafter. Was then terminated without caution or notice on August 31, when I inquired about my healthcare benefits on September 2nd, I was told they expired the day before. This all is extensively submitted and documented too in this report as well as many other documents that are included. I want to briefly just say that there's a quote by Edmund Burke and Edmund Burke is credited with saying all that is required for evil to prevail is for good

men to do nothing. I think that it's important to note that all members of this district, this, I'm not saying anything no one knows, that all rep, all members of this district are responsible to report the truth. And I believe that the Chief should be responsible for his actions as well. But I think that of all of our failure to allow some of these things to go on. It's hard, it's difficult no one likes this including me and I know there's a temptation not to want to deal with these issues or to excuse them away, but you won't be able to hide from a major sexual harassment lawsuit, you won't be able to hide from any other retaliation lawsuits and how many in the end will you tolerate. I know that some of you like Chief Becker and he's a likeable guy I agree, he is. But he's shown you I think that even if we fix some of the policy violations and the lack of policies that there's an inability to follow them. I wonder what you would say to a member of the community or to the court or explain to a parent or a family member that you knew about the issues and you like the Chief, so you let him continue. If you choose to address these issues, I have a summary table of what you can do based on the Chief's contract, I'm sure Mr. Pringle and some of the other attorneys can explain to you your options as well. If you do choose to conduct an investigation, all of what I've told you will be affirmed. I'm sure that the staff will also attest to what they've observed given the state and federal penalties for perjury and destruction of public documents. If you, choose to conduct, to conduct an investigation, I would strongly recommend that your investigator be totally independent and report to only to the commission the Chief has shown me and I think in this document will show you that he will attempt to intervene. So I'm going to thank you for allowing me to speak today and I will be available for questions if you have them when this item comes up on the agenda.

Vice-Chairman Reckwerdt: anymore public input?

Beach resident Fran Meyers noted that she and her husband own the Red Coconut next door and the reason she is here is because she read the article in the Sand Paper from Sept. 11 where Commissioner Reckwerdt relayed the District no longer had support from the community. The article bothered her and she wanted to show her support and the love of the community for the Fire District. The one thing that holds constant and stable is the Beach School and Fire Dept. and the District still has the support of the community and the reason the District doesn't see a lot of the community is that they are trying to keep their businesses open. The community trusts the decisions of the District. The Fire Stations are not a place for politics. We have all been through the politics year after year. After Chief Becker came on board, she felt everyone would be able to get along. Only 25 residents coming in and shouting down the District is only a minority of all that live here and support the District. Ms. Meyers stated she does have concerns about the millage rate being dropped in 2007 at 2.0014 and then again in 2008 to 1.998 while properties were decreasing. We all saw it coming two or three years ago and did the District not see it. Now the community is being told that the District may have to close a station; the administration office; and, lay off more fire personnel and this is not acceptable to us. We are Fort Myers Beach and we are a little different. You are now talking about our safety, our welfare, and that is not acceptable. We do not want EMS to come from Lee County. No one wants them to come here to take care of us. We believe the District is the best and has the best staff and equipment. Ms. Meyers asked that the Union, Chief and everyone come back to the table and come to some kind of agreement and some creative financing. The community that has lived here for a long time does support and love the District and wants the District to come to some agreement and not to lay anymore people off.

Troy Mesick – DVP District 3 – stated for clarification that the AVL has only been running for 15 days. With the six firefighters laid off Station 33 is running a two man truck. For the District to extend to Bonita it is taking away from the residents at the Beach. The union will be sitting down at the table to negotiate later this week with approximately one million dollars in concessions to keep jobs and get jobs back.

Old Business

30 Day AVL Trial with Bonita Springs: Vice-Chairman Reckwerdt stated he does not think the District should go through with the trial with the District being six men short.

Vice-Chairman Reckwerdt motioned to terminate the trial with Bonita Springs and the District. There was no second so the motion failed.

Commissioner Morris asked if she could have discussion of the item.

Attorney Pringle clarified there was a motion made; it died for a lack of a second so the Board is still under discussion of the same item and discussion can be entertained by the Commissioners.

Commissioner Morris stated she did not know what the intent of the item was. Commissioner Morris asked Vice-Chairman Reckwerdt if his motion was to stop it immediately or after the 30 day trial period.

Vice-Chairman Reckwerdt stated his motion was to terminate it immediately.

Commissioner Morris asked if the Board takes no action does it end in 30 days.

Conversation continued between the Board.

Commissioner Schmid asked Chief Becker with recent lay off of the six firefighters if it changes the Chief's opinion of the AVL.

Chief Becker stated that it did not. Chief Becker stated that as the District looks at reducing funding to provide services, the District will be more reliant on mutual aid to fulfill its mission. The District needs a good tight mutual aid agreement and this would be a good avenue to establish these agreements.

Commissioner Schmid asked if the Chief is in agreement to keeping the agreement and extending it another five months.

Chief Becker stated yes to a five month extension or a month to month basis until the District understands the full impact of all the changes that are being made.

Vice-Chairman Reckwerdt stated the District has mutual aid with Iona/McGregor, Bonita Springs, for disasters, etc. and he does not understand why the District would provide aid as far down as Lover's Key Condos and as far as Hickory Pass.

Vice-Chairman Reckwerdt asked Attorney Pringle if the 30 day trial has to have another motion to continue.

Attorney Pringle stated that under the minutes of the previous meeting the Board approved a 30 day trial period. When that 30 day trial period expires, if it has not been extended, it will automatically end after the 30 days.

Conversation continued between the Board.

Attorney Pringle stated if a motion is made, seconded and passed to take some action different than the action that was approved last month then the Board will have other occurrences. If no action is taken today to change the action that was taken last month then at the end of the 30 trial, it will automatically end.

No other motions were made.

New Business

- A. Approval of Employment Agreement: Assistant Chief Contract** – Commissioner Schmid motioned to approve the Assistant Chief Contract. Commissioner Harby seconded.

Commissioner Harby asked if the compensation had a typographical error, where it states 127,050.00.

Chief Becker stated that was the original salary proposed three years ago. What the Board has adopted in the budget is a reduction in salary from last year to this year. The contract reflects what the Board has authorized in the budget with the decrease.

Conversation continued between the Board and Chief Becker.

Commissioner Schmid asked if the \$134,326.00 is the correct figure.

Chief Becker stated yes.

Conversation continued between the Board and Chief Becker.

Vice-Chairman Reckwerdt asked if the Board could make changes to the salary in the contract.

Attorney Pringle stated that in section 4 subsection B states the Board reserves the right to increase or decrease the salary at the Board's discretion.

Conversation continued between the Board.

Commissioner Schmid asked if the salary was a competitive rate for the area. Commissioner Schmid noted the Board should look not just at the Asst. Chief, but all salaries and benefits to assure they are competitive and the Board feels comfortable with the pay scale.

Conversation continued between the Board regarding the District pay scale compared to outlying Districts.

Attorney Pringle stated that based on the comments and conversation between the Board, there are several items of consideration: 1) the length of the term of the contract; 2) salary paid under the contract and as a subcategory of that item, some Board members would like to see a salary survey of similar positions in the area, i.e. SW Florida, Collier County. There are other provisions in the contract that relate to benefits, etc. that the Board would need to make a decision on. i.e. section 11.

Attorney Pringle stated the Board has a motion before it to approve the contract. The motion should be further detailed to describe some of the items referenced to if approved today. The motion should also include authorization for the Chairman to sign the contract.

Attorney Pringle stated another choice is to continue discussion of the item until the next Board meeting with some direction to the Chief to collect information requested by the Board.

Commissioner Morris asked if the motion would need to be withdrawn if the Board chose the second scenario.

Attorney Pringle stated yes, if the Board chooses to continue the discussion.

Commissioner Schmid motioned to withdraw the approval of the employment agreement with Asst. Chief Larry Evans.

Attorney Pringle stated that the motion is withdrawn, so now the floor is open for another motion.

Commissioner Schmid motioned to discuss salaries in general, including administration, with a survey due prior to the next meeting and discuss the Asst. Chief's contract at that meeting. Commissioner Harby seconded.

Commissioner Morris asked Attorney Pringle if the only salaries the Board can discuss is the Chief, Asst. Chief and administration.

Attorney Pringle stated there is a motion to continue the discussion of the Asst. Chief's contract at the October Board meeting and there's also a desire to have a comparison done of other Asst. Chief's salaries in the area.

Motioned approved unanimously 5 – 0.

Commissioner Morris motioned to bring up and open up a discussion of the other salaries including the Chief's and administration.

Vice-Chairman Reckwerdt stated Commissioner Morris did not need to make a motion, it could just be added to the agenda for next month.

B. Ratification of Article 25 – Commissioner Schmid motioned to ratify Article 25. Commissioner Morris seconded.

Vice-Chairman Reckwerdt asked Attorney Pringle to review the article so the Board understands the new concessions.

Attorney Pringle reviewed the contract with the concession of a no cost of living increase for the 2009 - 2010 year.

Motion approved unanimously 5 – 0.

C. Chief Becker's response to Commissioners on Union's Letter of No Confidence – Chief Becker stated as requested from the previous Board meeting he prepared a letter to the Board

addressing the allegations of the Union. Chief Becker noted he complied with the request of the Board with a written letter to the Board.

Commissioner Morris motioned to call for a full and impartial investigation of Chief Becker of all allegations made against Chief Becker. Vice-Chairman Reckwerdt seconded.

Vice-Chairman Reckwerdt reiterated that the investigation should be unbiased.

Attorney Pringle restated that the motion is intended to implement section 17 of the Chief's contract which says that in order to commence an investigation of allegations of misconduct or unsatisfactory job performance the Board has to take action to initiate the investigation. Attorney Pringle noted that Attorney Hament has provided independent and impartial legal counsel for the District in the past.

Vice-Chairman Reckwerdt stated he did not want the same group that handled the last investigation of the District labor matters.

Commissioner Harby asked Attorney Pringle what kind of dollars the District would be looking at in spending.

Attorney Pringle stated it he could not guess at that figure, but it would be a considerable amount of money.

Motion approved 3 to 2.

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

- D. CIP Fund Budget Amendment** - Sec./Treasurer Goodacre asked if she could combine the two motions.

Attorney Pringle stated since they were two separate items they should be motioned separately for the record.

Sec./Treasurer Goodacre motioned to approve the CIP Fund Budget Amendment. Commissioner Morris seconded.

Motion approved unanimously 5 – 0.

- E. Authorization to close CIP Bank Account** - Sec./Treasurer Goodacre motioned to approve the authorization to close the CIP Bank Account. Commissioner Morris seconded.

Motion approved unanimously 5 – 0.

Reports from Union Representatives

FF Troy Mesick DVP District 3 – stated the union is going back to the table to negotiate the contract to save the taxpayers' money; keep firefighters; and, try to get the six firefighters back. FF Mesick stated one concern is that an investigation is happening with one of the union members with an

outside source currently and that employee was put on administrative leave and it should be applied to anyone else in the District that is being investigated.

DC Tom Edge DVP District 15 – restated the union is going back to the table with the intent to bring back the laid off firefighters.

Remarks from Commissioners

Commission Morris no comment.

Commissioner Schmid stated he would like to thank the union for the concession on Article 25.

Sec./Treasurer Goodacre congratulated the employees with years of service and thanks the union for coming back to the table with the District to open discussions.

Commissioner Harby stated he is disappointed with Dr. Banyan's comments and he was not interviewed by her. Congratulations on the employees with anniversaries and thanks to the union for opening up talks next week to hopefully bring our firefighters back to work.

Vice-Chairman Reckwerdt noted the District has been around for a long time and this is the first time there has been a crisis of this magnitude. Vice-Chairman Reckwerdt stated that he looked for the Chief's plan before the layoffs and has not received any information on that, or information on possible closing on any of the stations. Vice-Chairman Reckwerdt noted the stations need five personnel at each station and he wants to see a plan to run the stations with fewer personnel.

Public Input

None

Adjournment

Call for adjournment of meeting.

Meeting adjourned at 2:35 PM on September 15, 2009