

# RECORD OF PROCEEDINGS

## **Informal Meeting Minutes of the Estes Valley Fire Protection District**

**November 20, 2009- 5:30 p.m.**

**Dannels Fire Station, 901 N. St. Vrain Ave., Estes Park, CO 80517**

**Board:** Sue Doylen, Bob Cheney, Frank Theis, Jack Rumley, Bud Duryea

**Staff:** Chief Scott Dorman, Recording Secretary Bowser, Captain Rosenquist

**Also Attending:** Jim Austin, Bruce Walters, Dorothy Dorman, Attorney Dick Lyons, Don Widrig

**Absent:** None

The following minutes reflect the order of the agenda and not necessarily the chronological sequence of the meeting.

**Fire Chief Scott Dorman called the meeting to order at 5:45 p.m.**

### **PUBLIC COMMENT**

None

### **INTRODUCTION OF NEW BOARD MEMBERS**

#### **APPROVAL OF MINUTES**

None Prior

#### **OLD BUSINESS**

None Prior

#### **TRAINING OF THE NEW BOARD- Richard (Dick) N. Lyons, II**

Chief Dorman introduced Dick Lyons, attorney for the Fire District Issue Committee and current acting legal liaison for the Estes Valley Fire Protection District (EVFPD). Dick extended congratulations to the Board for the success of the establishment of the EVFPD.

Board Member Duryea requested clarification on taking meeting minutes. Per Chief Dorman & Attorney Lyons, Recording Secretary Bowser will be responsible for taking minutes unless the Board determines that the elected Board Secretary will assume that responsibility.

As designated election officer, Attorney Dick Lyons provided certificates of election to all Board Members. The Oath of Office is scheduled to take place at the Municipal Building Board Room on November 30<sup>th</sup> 2009 with Judge Brown presiding. Attorney Lyons stated the Board Members are required to take the Oath of Office to uphold the Constitution as per section 1.2 under District Overview. (See attached Orientation and Review document)

Attorney Lyons provided each Board Member, Chief Dorman and Recording Secretary Bowser a copy of his Board Orientation and Review handout in regards to CO State Laws as related to EVFPD as a special district – See attached document. Attorney Lyons stated the EVFPD is a single purpose district and confirmed with Board member Sue Doylen that services include fire and safety...anything related to the provision of emergency services.

Attorney Lyons reviewed the Board Member roles and responsibilities in accordance with Title 32 of the Colorado Revised Statute, discussed Board Orientation and Review handout at length.

Attorney Lyons recommended first official meeting to be held soon after Oath of Office as Board Officers need to be elected to include: President, Secretary, and Treasurer. Not required but attorney recommended: Vice President position.

Board and Attorney Lyons discussed items to resolve before December 15<sup>th</sup> including but not limited to: budget adoption, (Chief Dorman to provide budget itemization document to Board Members on November 23<sup>rd</sup>), mill levy and IGAs. Attorney reviewed sales tax revenues, sales tax monthly compensation, and money to cover expenses in Jan & Feb 2010, parameters of payment under the IGA with the Town and budget repayment with Board.

Board Member Doylen, Board Member Duryea, Board Member Theis, Chief Dorman and Attorney Lyons commented on adoption, parameters and enforcement of Fire Code. Attorney Lyons recommended the EVFPD adopt a Fire Code, with the Town and County to ratify in order to establish one uniform Fire Code in the District. Fire marshal salary was not included in service plan budget as stated by Don Widrig, campaign committee member. Board to determine if fire marshal is needed in future and would need to budget accordingly. Attorney Lyons stated currently under Title 32 statutes, Fire Chief has more authority in regards to inspections.

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Board Member Duryea confirmed with Attorney Lyons that multiple banks may be used for Fire Department and District bank accounts. Also, Duryea requested to insert unified fire district language in permanent IGA (parties recognize obligation to service without distinction or prioritization).

In response to Board Member Theis question(s), Attorney Lyons explained due to District deadlines, his intent was to address the adoption of the bylaws after the election of board officers. He also reviewed meeting parameters (quorum = 3) on Board communication, phone and e-mail correspondence between Board Members and public records.

Board Members, Chief Dorman and Attorney Lyons reviewed bank options, accounting practices, Town services, annual accounting audit. Chief Dorman notified Board the PO Box request is in progress with the Post Office, will keep Board apprised of new PO Box address/location once assigned. Recording Secretary Bowser agreed to provide Board contact sheet to all members per Board Member Duryea request.

Organizational Transfer of Fire Services Plan copies were provided to the Board members. Chief Dorman reviewed basic time line for EVFDP 2009 deadlines. Attorney Lyons confirmed district map has already been filed with the Larimer County Assessor's office.

Board Members discussed EVFPD meeting schedules and agendas: 1<sup>st</sup> official board meeting to be held after the Oath of Office on Monday, November 30<sup>th</sup> at Town Hall. Budget meeting scheduled for Wednesday, December 2<sup>nd</sup> at 5pm at Dannels Fire Station. Notice of Budget meeting to be published Trail Gazette. Chief Dorman recommended the regularly scheduled permanent meetings be held at a time in which general public would generally be able to attend.

Meeting adjourned 7:58 p.m.

A handwritten signature in cursive script, reading "Connie Bowser", is written over a horizontal line.

Connie Bowser, Recording Secretary

Richard N. Lyons, II  
Jeffrey J. Kahn  
John W. Gaddis  
Bradley A. Hall  
Steven P. Jeffers  
Anton V. Dworak  
Adele L. Reester

**Lyons Gaddis Kahn & Hall**  
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Eve I. Canfield  
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Daniel F. Bernard  
Senior Counsel

Catherine A. Tallerico  
Special Counsel

## BOARD ORIENTATION AND REVIEW

1. **DISTRICT OVERVIEW.** The District is a special district (a quasi-municipal government), organized under the statutes of Colorado, and is considered a political subdivision of the State.
  - 1.1 As a governmental entity, the District must operate within its enabling statutes. If the statute does not confer a specific power, then the District probably lacks that power. Only those powers that are incidental to the express statutory grants of power will be “presumed” to exist.
  - 1.2 As a governmental entity, it must operate consistent with the constitutional limitations (e.g., due process, equal protection, First Amendment issues, etc.)
  - 1.3 District has defined boundaries for taxation, voting, and service purposes. Boundaries can be adjusted by inclusions and exclusions, pursuant to formal statutory procedures and the entry of a court order that is then recorded and filed with the assessor and the state.
2. **DISTRICT BOARD OPERATIONS.**
  - 2.1 **Individual powers.** A director has no individual legal powers/authority unless specifically authorized by statute or by the Board through formal motion/resolution (e.g., to sign a document, attend a meeting, form a subcommittee, etc.).
  - 2.2 **Bylaws.** Board is authorized to adopt bylaws and previous boards have done so.
  - 2.3 **Attendance.** Statute provides a penalty for non-attendance: office deemed vacant after 3 un-excused absences (unless temporary illness/disability). Board must state in the minutes whether an absence is excused, and must approve absences due to “temporary mental or physical disability or illness.”
  - 2.4 **Notice.** Three-day (now clarified to mean 72 hours!) notice must be posted in three public places in the District (plus at the County Clerk’s office) for all meetings, (can leave posted if it is regular meeting) and if a special meeting, each director must be informed of the special meeting and its specific purpose, and special notice must be posted. In addition, state law requires ALL governmental entities to post a notice/agenda 24 hours in advance (at the place designated by the Board each January for posting of meetings).
  - 2.5 **Executive Sessions.** All official business of the Board must be conducted at a public meeting. All meetings are either “regular” or “special” and there is no statutory provision for a closed session like “study” sessions. All meetings must be open to the

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public. However, the Board can go into an executive session (closed to the public) upon a motion stating the purpose of the executive session, citing to the exact statutory authorization, and the subject matter with as much detail as possible without jeopardizing the nature of the executive session, duly seconded, and approved by a two-thirds affirmative vote. No formal action can be taken in an executive session. Any formal action taken in an executive session is deemed void by law. After the session, the Board reconvenes the public meeting, and takes whatever action is necessary. Executive sessions can only be called for one the following purposes (cite, Sec. 24-6-401(4), CRS, using one of the specific subparagraphs):

- a. The purchase, acquisition, lease, transfer, or sale of any real or personal property.
- b. Conferences with the Board's attorney to receive *specific* legal advice.
- c. Matters that are required to be kept confidential by federal or state law.
- d. Details of security arrangements or investigations, including defenses against terrorism.
- e. Determining positions relative to matters that are the subject of negotiations and instructing negotiators.
- f. Personnel matters regarding specific employees (as opposed to discussions of personnel policies), unless the session will include an employee who is the subject of the session and who requests an open meeting. NOTE: can not go into executive session to discuss another board member or to discuss the selection or appointment of a new board member.
- g. Consideration of any documents protected by the Open Records Act (e.g., test questions/answers; real estate appraisals etc.)
- h. Discussion of individual students where public disclosure would adversely affect the person or persons involved.

**EXAMPLE:** *" I move that we go into an executive session pursuant to Sec. 24-6-401(e) to determine our position relative to the counteroffer made by the XYZ Co. regarding the contract for its services, and to instruct our Chief regarding such contract negotiations."*

**NOTE:** Failure to follow the statutory requirements of the Open Meetings Act may result in the invalidity of the action taken: "No resolution, rule, regulation, ordinance or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of [the Open Meetings Act.]. (Sec. 24-6-402(8), CRS) **IMPROPER ACTION IS STATUTORILY DEEMED VOID, NOT MERELY VOIDABLE!**

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- 2.6 **Minutes.** Minutes must be made and kept for all meetings, including executive sessions which also must be electronically recorded (except for matters subject to attorney-client privilege). Minutes of regular meetings are permanent records! Electronic records of executive sessions are not made public but are kept separately, and can be destroyed after 90 days if no challenge is made that the session was illegal.
- 2.7 **Meetings.** Meetings are for conducting the District's business and affairs, not for listening to the public's input on each and every item or issue. However, we suggest including in the agenda an item called "*public comments*" and allowing the public to comment at that time (but set time limitations) thus allowing the Board to conduct its business without interruption. (Public hearings are sometimes required (e.g. inclusions/exclusions) and are not subject to this rule.)
- 2.8 **Voting and other procedural matters.** Voting may be by voice vote. The Chair/President also must vote. Directors cannot choose to not vote by abstaining whenever they face a difficult issue! Can only abstain when there is a conflict of interest, and then must refrain from discussion on that issue as well as abstaining from vote. Action taken by the board should be my **formal motion**, motion seconded, and a vote taken, and minutes reflect "It was moved and seconded that\_\_\_\_\_. The motion carried unanimously (or by a vote of \_\_\_to\_\_\_)". Formal written **resolutions** often needed for authorizing continuing actions, real estate matters, etc. Informal **consensus** of the board should also be stated in the minutes as a record of Board approval of actions taken or to be taken by administration. (e.g. "The General Manager reported that\_\_\_\_\_. It was the consensus of the Board that the General Manager continue to \_\_\_\_\_.")
- 2.9 **Conflicts of Interest.** Holding public office is a "public trust" and duties must be discharged for the benefit of the public, and not for private gain or interest. A director cannot receive any compensation in any form from the District other than the director's fee for attending Board meetings.] Statutory ethics code now prohibits certain actions. A local government official (elected or appointed) **shall not:**
- a. Disclose or use confidential information acquired during the course of official duties for personal interests;[NOTE: discussions in executive session should always remain confidential.]
  - b. Accept a gift of substantial value that tends to improperly influence a reasonable person.
  - c. Engage in financial transaction with a person whom you supervise or perform an official act affecting a business in which an interest is held or which you serve as consultant, agent, etc.
  - d. Be a party to, or interested in, a contract with the District.
  - e. Purchase property from the District unless at public auction/bid.

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- 2.10 **Reporting of Gifts.** A Board member must report any gift having a value of \$50 or more that is given to them by virtue of being a board member.
  - 2.11 **Service as an Employee.** Except for the director's fee for attending meetings, board members cannot receive any other funds from the District and cannot be employed by the District.
  - 2.12 **Appointments.** If vacancy occurs, board must appoint a replacement within 60 days of the vacancy and if an appointment is not made, the county commissioners may then appoint a replacement. The appointee serves only until the next election and then, if he/she chooses to run for that seat, runs for the remaining term of that seat (if that seat is up, then for four years).
3. **BUDGET RESTRICTIONS.** The District is restricted by state statute and by the state constitutional provision known as Bruce/TABOR. Bruce/TABOR imposed the following on all governments:
- 3.1 **Limitation on Revenues (from all sources):** Can only be increased by the sum total of the percentage of CPI increase and the percentage of growth in actual (not assessed) valuation from new construction. Thus, if \$100,000 spent in 2003, and CPI increased by 2% and growth increased by 5%, then government could raise and spend \$107,000 in 2004 (2% +5% = 7% increase). **THIS CAN BE DE-BRUCED.**
  - 3.2 **Limitation on Tax revenues:** Can only be increased by the sum total of the percentage of CPI increase and the percentage of growth in actual (not assessed) valuation from new construction; OR by the existing statutory 5.5% limitation, *whichever is more stringent.* **THIS CAN BE DE-BRUCED.**
  - 3.3 **Revenues in excess of these two limitations must be refunded:** Refund is made in the following year, *unless* voters approve a specific or continual revenue change ("de-Brucing"). **THIS CAN BE DE-BRUCED.**
  - 3.4 **New taxes and mill levy increases over the prior year's mill levy—both require voter approval. THIS IS NOT SUBJECT TO DE-BRUCING. VOTERS MUST APPROVE OF TAX INCREASES.**
  - 3.5 **Any debt (multi-year financial obligation) requires voter approval unless it is annually subject to board's discretionary appropriation, or unless board specifically reserves enough funds to cover the obligation in future years. Note: lease-purchase agreements which contain a "subject to annual appropriations clause" are legally deemed to NOT be "multi-year financial obligations." THIS CAN NOT BE DE-BRUCED.**
4. **DE-BRUCING.** Voters can allow government to exceed, keep, and spend revenues from all sources or from specific sources (e.g., just non-tax sources). Simply put: voters are asked to excuse the government from the limitations of paragraphs 3.1, 3.2, and 3.3 above. AG has ruled that voters can approve a waiver of the 5.5% limitation as well as de-Bruce. Even if de-

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Bruce and voters waived 5.5%, no tax increase (no higher mill levy) or no new debt without separate voter approval!

5. **ENTERPRISE STATUS.** TABOR exempts enterprises from its restrictions/limitations. An enterprise is defined as a governmental business/operation that receives no more than 10% of its cash revenues from any government. Most water and/or sanitation districts have established enterprises because they can operate from service revenues instead of tax revenues. A fire district could segregate its ambulance service into an enterprise if it could be self-sustaining (or subsidized less than 10% with tax dollars). Implementing statutes prohibit enterprises from levying taxes. Those that do levy taxes for general operating purposes do so under a "governmental" fund/function, and then transfer those funds (or a portion thereof) to the enterprise fund, keeping the amount less than 10% of total revenues [thus using taxes to supplement operations].
6. **TERM LIMITS.** Board members cannot serve more than two consecutive terms of office. Terms are consecutive unless they are separated by at least four years. District voters may eliminate or modify these limitations.
7. **LIABILITY LIMITED.** Liability can arise in one of three ways: under common law doctrines of *tort liability* (e.g., negligence, intentional torts, etc.); under state or federal *statutes* (e.g., prohibitions regarding discrimination or for environmental damage); and from *contractual rights* (e.g., when a contract is breached by one of the parties). The following are some limits on liability:
  - 7.1 Board members enjoy qualified immunity under the common law: discretionary actions taken in the course of the performance of public duties are normally protected.
  - 7.2 The Colorado Governmental Immunity Act protects the District (as an entity) and its employees (defined to include both paid employees and volunteers) and elected officials from tort claims arising from personal injury or property damage except for those claims that are permitted to be asserted by the statute. The three main exceptions to the Act's protections and which are applicable to special districts are: claims arising from the dangerous condition of public buildings, and claims arising out of the operation of governmental vehicles which are not running "hot" under an emergency, and claims arising from the operation/maintenance of a water system.
  - 7.3 The Act requires the District to defend the individual employee/official unless he/she intentionally caused the injury or property damage.
  - 7.4 Even if the Act does not offer immunity, it limits claims to \$150,000 per person and \$600,000 per occurrence (but each person limited to \$150,000).
  - 7.5 The District maintains insurance to protect it and its employees/officials from most claims asserted under various federal and state statutes. In addition, because the Board collectively must act in these areas, there is minimal chance for individual directors to be held individually liable absent malicious, intentional conduct.



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- 7.6 No insurance carrier issues insurance coverage for contractual claims.
- 7.7 Recommend adopting an "indemnification policy" for all employees, volunteers, officers and agents who are sued for damages arising out of the good-faith performance of their authorized duties (excluding intentional torts or criminal behavior).
8. **NEW FACILITIES.** Special districts can locate new facilities on any property regardless of county or municipal zoning restrictions, but must go through a process known as "location and extent review" to allow that governmental entity an opportunity to address the exact location and extent of the building/facility, and to impose reasonable conditions such as landscaping, access, siting, etc. Some counties have adopted regulations under the "state interest" statute known as 1041 regulations. Under that statute, districts cannot over-rule the county's decision because certain operations/activities are deemed of "state wide interest." For example, building a new reservoir would be subject to 1041 review rather than location and extent review.
9. **INTERGOVERNMENTAL AGREEMENTS.** If two governmental entities both possess the same legal powers, they may enter into contracts with each other. These contracts are called intergovernmental agreements ("IGAs"). IGAs can cover a multitude of issues, such as providing mutual aid/assistance in the event of emergencies. If an IGA forms a new entity (with representation on that new entity's board consisting of reps from each entity) it is known as an "authority." Regionalization to reduce the duplication of services is often accomplished through the creation of authorities and as a first step towards consolidation.
10. **POWER OF EMINENT DOMAIN.** The District possesses the power of eminent domain and dominant eminent domain (trumps another entity that only has eminent domain powers) to acquire property needed for its operations.
  - 10.1 The statute prohibits the use of eminent domain to acquire water rights.
  - 10.2 Normally, the District utilizes the public rights of way or easements dedicated for use by utilities, but occasionally an easement is required across private property and condemnation can be utilized if negotiations fail. By law, the District may only pay "fair market value and reasonable settlement costs" for property interests (easements or full title).
11. **FINANCING.** Non-enterprises can issue general obligation bonds and revenue bonds. Enterprises can only issue revenue bonds that pledge repayment from the District's future revenues. In addition to bonds, the District is eligible for certain revolving loans and grants from various state agencies but these grants/funds can exceed the revenue limitations unless de-Bruce'd.
12. **CONSTRUCTION CONTRACTS.** All construction contracts for work or materials, or both, involving \$60,000 or more must go out to public bid unless a design-bid process is used (and then the Board can send out requests for proposals to qualified bidders). Board is not

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required to take the lowest bid, and may take the bid that is in the “best interests” of the district.

13. **PENSION ISSUES.** A district must maintain accurate records for volunteer pension purposes. For a year of service to be counted towards retirement, the volunteer must meet a statutorily imposed requirement of 36 hours of training each year. It is up to the district to determine what constitutes training—some districts allocate the total hours between formal classroom and hands-on responses/calls, other meetings, etc.
  - 13.1 Full pension awarded after 20 years of service and reaching 50 years of age.
  - 13.2 Partial pension may be awarded between 10-20 years of service and reaching 50 years of age, at discretion of board if fund is actuarially sound, on a prorated basis. Thus, if board establishes 10 years, then ½ pension can be granted. If 12 years, then 12/20ths or 3/5ths can be granted, etc.
  - 13.3 If service is all after 1977, then the pension amount is prorated among each district/municipality for which he/she served at least 5 years. Thus, if 20 years, and 14 years were with one district and 6 with another, then the one district would be responsible for 14/20ths and the other 6/20ths. If any portion of the service was before 1977, then the last district served pays 100%.
14. **FLSA vs. VOLUNTEER PENSION ISSUES.** The Fair Labor Standards Act (FLSA) prohibits a district from requiring or allowing a paid firefighter to also volunteer his/her time to the district when off-duty. Such time is counted, per FLSA, for purposes of calculating over-time (FLSA applies to districts employing 5 or more employees).
15. **COMPENSATING VOLUNTEERS.** A volunteer, under Colo. pension laws, is a firefighter who renders service without compensation being paid for that service. Recent statutory changes now explain that “compensation” does not include:
  - 15.1 reimbursable expenses (e.g., mileage, damaged clothing, meals while on duty, etc.); lost salary/wages from his/her normal job;
  - 15.2 pension payments or benefits;
  - 15.3 receiving benefits under an IRS qualified service award program (i.e., an IRS deferred compensation 457 plan);
  - 15.4 payments from federal moneys (paid either directly or through the district) for temporary emergencies/incidents; OR
  - 15.5 “nominal fees or benefits paid on a per-call basis or as part of an annual merit or recognition award program or other incentive award program.” NOTE: the “cap” on all payments is the FLSA “20% of what a paid firefighter would be paid” rule