

**GRAND JUNCTION CITY COUNCIL
MINUTES OF THE SPECIAL MEETING**

March 22, 2004

The City Council of the City of Grand Junction convened into regular session on the 22nd day of March 2004, at 5:34 p.m. in the City Auditorium. Those present were Councilmembers Harry Butler, Cindy Enos-Martinez, Bruce Hill, Dennis Kirtland, Bill McCurry, Gregg Palmer, and President of the Council Jim Spehar. Also present were City Manager Kelly Arnold, Acting City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Jim Spehar called the meeting to order. He announced the purpose of the Special Meeting to be discussion of the Rural Fire District payment of contract.

Acting City Attorney John Shaver advised that that afternoon he received a voicemail message from the Fire District's attorney that the District intends to remit the balance of the money to the court registry. No additional details were provided including when or other particulars. Mr. Shaver said that he infers from the message that there will not be a payment or a creation of an independent third party escrow. He described the registry – under Colorado Rule of Civil Procedure 67, parties to an action may file with the court registry for purposes of safe-holding or securing, much like an escrow, but it would contemplate the filing of some sort of an action, either a declaratory judgment action, which is an action which construes the rights and responsibilities of parties to a contract, or under Rule 7d, an action on stipulated facts. He would suspect it would be in the form of a declaratory judgment, but doesn't know enough details to know that with certainty.

Councilmember Palmer asked who would ask for such action. Mr. Shaver replied it would likely be the District because the nature of depositing in the registry is that there would have to be something that the court would be determining so the District would have to allege facts as to why the money would be deposited in the registry. Councilmember Palmer inquired if the deposit would be in the full amount. Mr. Shaver said it would be his assumption that it would be the full payment less the \$160,000 already paid.

Councilmember Palmer inquired if the shortage from the first payment is included. Mr. Shaver said that this is the way the amount outstanding has been calculated. The total amount outstanding is \$433,334. Councilmember Palmer asked if Mr. Shaver can determine what amount is for the existing contract and what amount is due from the sub-district contract. Mr. Shaver deferred to Fire Chief Beaty or City Manager Arnold for that information. The agreement does call for payment in full for all monies that are owed. Councilmember Palmer explained the reason he is asking is that the District is raising an issue on monies collected for the sub-district based on the elected Assessor's opinion and that should not affect the monies due on the base contract. Councilmember Enos-

Martinez stated that it is unknown what the District is basing their opinion on because they are not offering an explanation. Mr. Shaver added that the City is advised from the County Treasurer the amount of monies collected and remitted to the District. The contract with the District says the District is obligated to remit all monies paid to them by the Treasurer to the City. That is why the City feels the terms of the contract have not been met. Regarding the question of authority of imposition of the tax as posed by the letter from the County Assessor is a different question. The question is the remittance of the payment under the contract and the question that the District is suggesting that the taxes should never have been collected, a statutory question, is a separate matter.

Council President Spehar said there is no purpose in debating that at this meeting but rather the Council should see what comes out of the action proposed by the District. Mr. Shaver concurred noting that some action will need to be filed for the District to file the funds with the court registry.

Council President Spehar asked Mr. Shaver about timing once the action is filed. Mr. Shaver said that if the District has a complaint ready to go, it could just be a matter of a few days that the court could receive the complaint, schedule a hearing and open the registry account.

Councilmember Hill asked about what action it would take from the City Council to get it to go forward. Mr. Shaver said he thinks the District will go forward with an action.

Councilmember Palmer inquired about the District not meeting one of the three demands posed by the City Council the previous Friday; does depositing the funds in a court registry meet the requirement of depositing funds in an escrow account. Mr. Shaver replied that he thinks it is progress but whether it satisfies the Council's demands would be their call.

Councilmember Palmer asked about a time frame on the Council's request under the Freedom of Information Act. Mr. Shaver replied the State Statute talks about a reasonable time, usually three business days, unless there are exceptional circumstances due to the extent of the request or special circumstances such as the records are being photocopied out of town for archival purposes or some other truly exceptional circumstances. Councilmember Palmer said then within 72 hours the City should have some information. Mr. Shaver said yes, both under State Law and under contract provisions that mirrors the State law. If the District responds that the records are too voluminous to produce, they must set a date and time when the records will be available, presumably within seven days.

Councilmember Palmer inquired if there would be any advantage to the City going forward with a court action. Mr. Shaver replied there is no advantage to who files first. The difficulty with any litigation such as this is that he would not have anyway to respond

until he sees what the District files. Finally, Councilmember Palmer asked if the legal costs incurred by the District would have any affect against the funds that are owed. Mr. Shaver replied the legal costs would be paid out of the District revenues, not necessarily these funds in question. The expectation is that the City would be paid in full, aside from the tax question.

Councilmember Hill asked if the District's attorney is present. Mr. Shaver stated Mr. Siddeek is not present. Councilmember Hill suggested that the board members present be allowed to address the City Council. Council President Spehar asked the two present if they would like to speak.

Jerry Clark, a Board member, said they have every intent of cooperating with the City. Again the question of the 2002 additional tax is in question. The Board is not clear on it and they cannot get a clear definitive answer at this time. Back in February, the Board put the funds in an escrow account through their counsel at that time. Since the City was not comfortable with that arrangement, they discussed over the week-end considering federal registry for the funds until they can get a clear definitive answer on that issue.

Councilmember Hill questioned the Board's position that besides providing fire protection they feel it is their job to determine the legality of tax collected. He felt it is out of their jurisdiction. He expressed concern about the citizens outside the boundaries of the City that the Council is responsible for fire protection. He questioned the City continuing to build the fire station and not being compensated for it. At some point those funds will be taken from the City's other capital projects and programs. He keeps hearing words like "intend" but it is not getting cleared up. It is not the job of the City Council to decide whether taxes are owed or paid, they were paid. If the Rural Fire District Board passes the monies collected on to the City, then if there is a question later and it is determined that the taxes should not have been collected, the City will make sure they get returned.

Councilmember Enos-Martinez stated that the money doesn't belong to the Rural Board, it belongs to the taxpayers. The money was collected and if the County Assessor doesn't think they should have been collected, he should have addressed it at that time. If that is what the Rural Board is basing their decision on, she is having a hard time giving them more time and then more time again. Councilmember Enos-Martinez said they can't stop delivering service to those people, yet they still aren't being paid even for that service being provided. She is running out of patience.

Councilmember Kirtland agreed with Councilmember Hill on the citizens that the Council is responsible to. The Council looks at the community as a whole, and many Councilmembers went to a number of community meetings on the formation of the sub-district, and they are committed to making sure a fire station gets built out there. The City has delivered, the station is under construction and firefighters have been hired and trained. The voters in the sub-district put their confidence in that. The decision on the

legality of the collection of tax should be decided somewhere else. The monies should be remitted so the City can continue the construction. People take the Council to task on many things, the Council needs to make some hard choices. He hoped that as elected officials, the Fire District Board and the City Council are working for the best interest of the citizens and the right choices will be made, and that is paying that money. If the taxes need to be remitted back, the City will take care of that.

Councilmember Butler encouraged the Board to ask themselves if they are working for the best interests of the citizens in the Redlands; that they need to work on integrity and be honest in this situation. They are not dealing with their own money but the money of the citizens.

Councilmember McCurry agreed.

Council President Spehar noted that the Council will know something in the next couple of days and he doesn't see any harm in seeing what develops this week. With the open records request, something should be known by Wednesday. Hopefully, the Acting City Attorney will be able to speak with the District's Attorney more directly in the next couple of days. He understands Council's concerns, especially with the funding of the construction. Mesa County has put money into the construction and grant funding has been received from the State. It would be difficult to go back to the State for additional funding when one of the main partners is not participating. However, he is not willing to halt construction, they have people and equipment in place. He advocated seeing how this shakes out and having another discussion once a clearer understanding as to where the money is now. He is willing to give the District this week to respond.

Jerry Clark, District Board member, appreciated the Council going forward with construction noting that this is no personal ploy by any member of the Board. They were moving forward with full payment when they received the letter from County Assessor questioning the legality of the collection of the taxes for the year 2002.

Councilmember Hill questioned Mr. Clark's position on the charge of the District, with tax collection being out of their jurisdiction, and said they should follow the contract, passing those monies along. Mr. Clark based his concern on TABOR limitations, that once the money was returned to the tax assessor, how could they recoup. Councilmember Hill said the Board can ask the question to the Assessor on the legality but still remit the monies to the City. Mr. Clark read a section of the contract about remitting the monies to the City "unless prohibited by law".

Mr. Clark stated the Board is not trying to sandbag the matter. The Board has previously asked the City for assistance but received no response. Council President Spehar said he appeared twice before the Board and advised them of the City and County Attorney's opinion that it is legal. Mr. Clark said the Board has confirmed with the County Assessor

that his opinion as stated in his letter is still his opinion. Council encouraged Mr. Clark to approach the County legal staff about the District Board's concerns. Mr. Clark said he has only served on the District Board for 6-7 months and agrees the communication between the two bodies has not been ideal and he hopes to resolve that.

Council President Spehar said he hopes things move forward. He asked that the Board facilitate further discussions between the Acting City Attorney and the District's Attorney. He referred to the Open Records request. Mr. Clark said those records are in the office of the auditor.

Acting City Attorney Shaver read a letter into the record, dated December 4, 2003 for the County Assessor (attached). The letter states two reasons for questioning the year the tax was to be collected. The only direct conversation Mr. Shaver has had with the District's Attorney referred specifically to the new law that went into effect in mid-2002 that related to inclusion of property into a district, that is a year must pass before tax can be collected on property added to a District.

Tery Dixon, District Board member, said she has had several conversations amongst board members, and read notes based on those discussions as follows: "In the spirit of cooperation, the Grand Junction Rural Fire Protection District comes before you to correct misinformation that has been disseminated by Mayor Spehar during Council's attendance at the regular scheduled board meeting of March 19th. Referencing the District Board's decision of December 12th, to calculate future payments to the City of Grand Junction according to the base agreement alone, President Gsell hand-delivered to the City on March 12 a letter of transmittal explaining the District's payments to date. This letter explained the escrow account, asked for cooperation in determining the legality of collecting the 4.904 sub-district mill levy revenue in 2003 and a joint meeting to resolve any differences. On February 24, the District wired transferred \$160,000 to the City to satisfy the base contract calculation as supplied by one of several worksheets from Chief Beaty. To date the District has not received a receipt, acknowledgement nor response to this communication. Paragraph 5 of the contract provides for the imposition of this sub-district taxes and payment to the city unless prohibited by law. The issues raised by the County Assessor regarding the propriety of the 2003 sub-district taxes are legally credible and having been raised, required proper consideration. Because the City has no responsibility to the taxpayers on this issue if it is wrong, it is easy for it to opine that the District should collect the taxes and pay the City. The District believes a more considered course of action is needed. The District has established a separate deposit account for all revenue derived from the sub-district 4.904 mill levy collected in 2003. Until the legality issue is determined, the District believes the disputed funds may belong to the taxpayers and it is most inappropriate for the City to bill for those funds and for the District to dispense them. The District would be happy to explore an interpleader action whereby the City, the County Assessor and any interested taxpayer can make their argument to a judge who can decide the issue. Regarding the City's request for financial data, the

District will respond to the request as provided by the Public Records Law and the contract. It should be noted that the District's finances have been audited annually without incident, a clean opinion rendered and the appropriate report filed with the Secretary of State in accordance with Section 29-1-603, C.R.S. Therefore for the City to infer that the District views its fiduciary responsibilities casually is disrespectful and unprofessional. For a period of approximately six months, the District has requested specific financial data to support the City's billing of the District for Station 5 operations during a period the station has not even existed. Although some data has been received as of January 24th, the specificity has not been offered. To fulfill our fiduciary responsibilities to our taxpayers, we must have a proper accounting of operation's costs associated with Station 5 to ensure that the County Assessor's concerns can be met that the payments are used only for purposes authorized by the taxpayers. The District expresses its disbelief that after rejecting and unreasonably conditioning the District's request to meet to discuss these matters, the City Council showed up unannounced and without requesting to be on the agenda for the District Board of Directors March 19th meeting. While a similar discourtesy would not be tolerated by the City Council, it is more disturbing that the City Council apparently chose to ignore the Open Meetings Law by failing to post its public meeting with the District Board. Counter to the new City logo of serving the community together, the District believes actions speak louder than words. However, the District is still willing to logically resolve outstanding issues with the City should the City be a willing participant. Towards these comments, I've listened to comments from all of the Councilmembers. Cindy, to address your concern that perhaps our issue should be with the County regarding the legality what we have endeavored to do was come as a joint interested grouping as suggested in this letter with the City, the County and the District to in fact get a legal judgment regarding this issue of collecting the taxes. It has nothing to do specifically with either the County Attorney's opinion, the City Attorney's opinion nor the District's Attorney opinion because they are all just that, opinions, they are not legally binding. There is no legal precedent for the issue that has been posed. I, today, spoke with County Assessor Curtis Belcher because at our Friday night meeting, Mayor Spehar said that once Mr. Belcher was presented with the findings by both the City and the County Attorney, he agreed with your opinion in that instance and it was perfectly alright to collect the taxes. When indeed Mr. Belcher does not feel that way, he feels it was still wrong to collect it, he is not an attorney, he said he was actually pressured by the City and the County Attorney to go ahead and put on the levy. His department was ill-prepared to not only set the boundaries but put the mill levy in effect and during this same time frame I would also like to call attention, in case the City didn't know it, that again Mesa County did this, it wasn't the City, but Mesa County disallowed a similar fire district to go in effect in Gateway within the same time frames that we are talking about. One of the differences is that they did have services being rendered but because the time frame for formation of the district was inappropriate to comply with the Statute and therefore the County Commissioners chose not to allow even to go to an election, whereby because maybe we were all just trying to be magnanimous, I'm not really sure, but when you visit with everyone in hindsight, the overall opinion is we

shouldn't have been collecting the tax until 2003. As indicated by my fellow board member Mr. Clark, we will be placing these funds into court jurisdiction to satisfy everybody's concern that perhaps the District might do something with it, I don't know what the District would do with them but we'd be more than happy to do that and we would truly like to move ahead as quickly as possible and invite the City and the County to join us in determining the legality of this issue. Its.. from the standpoint that there is no legal precedent, I guess it is very reminiscent to me of the fact that there was no legal precedent of the City's annexation policies ten...eleven years ago and the City kind of set their own methodology. I would hope that in this case that all parties concerned again, the City, the County and the District, can work together so that we can get this issue resolved and the payments can continue to flow in an expeditious manner to the City to provide for the services that the constituents are receiving. I would like to again point out, however, that by completing the payment for the base contract we are paying for the services that we currently get and that we did receive in 2003. I thank you for your time."

Councilmember Enos-Martinez asked how soon can the Council expect the matter to go before a judge and get this matter settled. Ms. Dixon said she would have no idea without asking, according to the State Statutes any tax matters are to be expedited. Councilmember Enos-Martinez clarified that she is asking if the District Board has directed their legal counsel to get the action to the court. Ms. Dixon said they are, they are asking for the City and the County to join them but they have not received any communication from anyone that they would be willing to do that.

Council President Spehar reiterated that getting the two Attorneys in discussion should be the first step and Ms. Dixon said she would call their attorney in the morning and give him those instructions. She added that there was additional legislation that went into effect after the sub-district was formed and there is question as to whether the new law applies to this district.

Councilmember Hill asked who made the decision to put the monies into the court registry rather than making payment to the City or setting up an escrow account. Ms. Dixon said the Board. Mr. Hill asked if that was at the March 19th meeting. Ms. Dixon said no, this was what the Board had decided after receipt of Mr. Belcher's letter, that they put the funds into escrow and the Board determined that until any other question came up, they would place it in a completely separate account so they could track it with Alpine Bank and they discussed the parameters for an escrow account and then discussed it with their counsel and were told at the time that until there is further question, as long as the funds were 100% trackable and not being co-mingled there would be no problem, but at this point since they are going to proceed ahead with a declaratory judgment, they will go ahead and place the funds with the court registry if that meets with everyone's satisfaction. Councilmember Hill asked if they made these decisions in a board meeting. Ms. Dixon said they decided it in increments. First to separate the funds, which they did, then to keep it there and if they reached a stalemate then they would go ahead and

transfer if questions arose regarding that, so yes the Board has made those decisions. It did not happen this last Friday. Councilmember Hill asked if it happened prior to Friday and Ms. Dixon said yes. Councilmember Hill asked if that would be reflected in the Board's minutes. Ms. Dixon said yes, which the minutes are all in draft form; they have not been formally approved by the Board.

Council President Spehar recommended that the Council wait for the two Attorneys to discuss the matter directly and it is his opinion that filing the funds with the court registry is as good as an escrow account. He would like the matter to move forward and get resolved.

Acting City Attorney Shaver stated for the record that he and Mr. John Siddeek, the District's counsel, have had a good working relationship. Councilmember Enos-Martinez urged expeditious resolution.

There being no further action, Council President Spehar adjourned the meeting at 6:33 p.m.

Stephanie Tuin, MMC
City Clerk



cc: Don Gappi
Kelly Arnold
sm 1/8/04



Mesa County Assessor

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December 4, 2003

Memo of Understanding Redlands Sub Fire District

TO: Redlands Sub Fire District Board

FROM: Curtis Belcher
Mesa County Assessor

The Assessor's Office interpreted the wording of the 2002 ballot creating the Sub District to read "imposition of an additional ad valorem property tax rate of 4.904 mills, commencing January 1 2003 and continuing thereafter" as implementing for 2003 and collectable 2004.

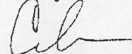
The City of Grand Junction insisted that the intent in the ballot language was for implementation in 2002 and revenue in 2003.

This office contacted the districts attorney in Denver and reaffirmed our stance and interpretation of the Ballot language. Mr. Cole sided with the City and stated the intent was for revenue to begin in 2003 and to certify a 2002 levy.

This office sought advice from the County Attorney on November 27, 2002. We were instructed to create the district and certify value to them and put it on for 2002. The decision was based on the language "to collect retain and spend all tax revenue collected from such property tax and all other revenue received from any source commencing January 1, 2003 and continuing thereafter". This language is in the text of the ballot for Referred Measure 5E November 2002.

Colorado Revised Statutes requires a May 1 dead line to allow for the creation of the district and the verification of taxpayers within the effected area. This statute would require a November ballot approval to go thru the statutory district creation time frame which starts with May 1 of the following year. Also the general understanding in taxation is that you cannot levy a tax for services that do not exist.

Sincerely


Curtis Belcher