

**Excelsior Fire District Board
EFD Governing Board Meeting
Wednesday, October 27, 2004**

**24100 Smithtown Rd.
Lower Conference Room
6:30 P.M.**

MINUTES

1. CALL TO ORDER

Chair Skrede called the Board meeting to order at 6:34 P.M.

ROLL CALL

Present: Excelsior Fire District (EFD) Boardmembers: Chair Skrede; Boardmembers Bauman, Bolles (arrived 6:35 P.M.), Hill, and Love

Also: EFD Chief DuCharme; EFD Deputy Fire Chief George; EFD Captains Berglund, and Heiland, and Firefighter Hoo

Also present: Deephaven: Administrator Young; Excelsior: Administrator Whittaker; Shorewood: Administrator Dawson

Absent: None

2. AGENDA APPROVAL

Love moved, Bolles seconded, approving the EFD Board Meeting Agenda as presented. Motion passed 5/0.

3. APPROVAL OF MINUTES

A. September 22, 2004, EFD Board Meeting Minutes

Boardmember Bolles arrived at 6:35 P.M.

Love moved, Bauman seconded, Approving the September 22, 2004, EFD Board Meeting Minutes as presented. Motion passed 5/0.

4. REPORT AGENDA

A. Monthly District Review for August, 2004

Chief DuCharme reviewed the monthly call data by city, noting the total number of calls for the District was 70 for the month of September.

B. Operating Committee Meeting Minutes of October 20, 2004

With regard to the Fire Chief's review, Chair Skrede suggested it would be helpful to include an informal review from the Operating Committee since this group had experience working with the Chief in financial matters.

Bauman moved, Bolles seconded, Approving the Report Agenda as presented. Motion passed 5/0.

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5. MATTERS FROM THE FLOOR

City of Deephaven Mayor Tom Anderson requested the Board consider additional equipment at the East Side Station in Deephaven. He stated he was aware the majority of equipment would be stationed at the West Side Station in the District; however, he was quite concerned about the number of volunteers assigned to the East Station as well as how these eight volunteers could serve the eastern portion of the District adequately in an emergency. He also stated he was concerned the current vehicle being housed at the East Side Station would not adequately hold these volunteers and transport them to an emergency situation. He requested the Board plan an improved recruitment process to ensure a more appropriate number of firefighters be stationed at the East Side Station as well as additional emergency equipment.

IN agreement with Chair Skrede, Boardmember Love stated all Boardmembers shared a mutual concern for the most rapid response; however he was also interested in hearing the perspectives of Chief DuCharme and the Captains of each station on this issue at the next Board meeting.

Mayor Anderson stated this was an important matter of public safety and he thought the Board should address this issue quickly in order to provide the best service to all residents. He went on to state he realized allocation of resources had not been met, but to suggest eight firefighters was adequate to serve the eastern end of the District was not right. The District had not met the original expectations of staffing for the East Side Station and he requested immediate address of this situation.

6. FIRE CHIEF REPORT

A. General Report

With regard to Mayor Anderson's request, Chief DuCharme stated the District had not fallen short on its expectations for the East Side Station, and the District had specifically discussed a proposal for a second apparatus piece for the East Side Station to be made in the Year 2005. He then introduced Deputy Fire Chief George and District Captain Heiland of Station 2(East Side Station). Chief DuCharme noted the District Chiefs would be providing a report as part of a format change within the Fire Chief's report at each Governing Board meeting. In addition, each District Chief would further explain the process regarding firefighters in attendance at the East Side Station. Chief DuCharme noted the following items would be discussed throughout the reports.

- B. East, West, and Navarre Stations**
- C. Operating**
- D. Firefighter Concerns**
- E. Orono Revenue Allocation**

District Chief Heiland explained there were currently thirteen firefighters responding to the East Side Station with two more in training. He noted the experienced firefighting Staff currently working at the station, and the construction on East Side Station was approximately 90% complete at this time.

Deputy Fire Chief George explained the average response was between three to four firefighters each time statistically. He also noted the equipment at Station 2 could hold five firefighters and a truck with four experienced firefighters was considered adequate by industry standards to save a burning residential building.. He then went on to explain the required response percentage for each firefighter and noted the current statistics were on target for response to each call. Assistant Fire Chief George stated there were a number of highly experienced firefighters reporting to the

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East Station consistently. He also noted the original intent of the East Side Station was to be a "station house" whose purpose was to house an engine, and that would soon be the case. Furthermore, he stated, this approach was very similar to many other multi-station districts in the country.

Assistant Fire Chief George then noted personnel changes with the West Side Station, explained the Officer Group of the EFD had been working for the past two months on the proposed FY 2006 Capital Equipment Plan and would begin work on the Operating Budget for that year in the near future. He also stated two firefighters had utilized vacation time from their current employers in order to attend a weeklong training school for the EFD. He stated the EFD greatly appreciated the sacrifices being made by these individuals and also appreciated their efforts. Assistant Fire Chief George also stated the weight room at the West Side Station was being utilized and he thanked the EFD for providing this necessity in helping to maintain physical health for all firefighters within the District.

In response to Boardmember Love's question, Chief DuCharme explained he had recently attended an ISO meeting regarding response times and a multi-system approach within a fire district. The ISO meeting defined four firefighters as an engine company. He stated the EFD was set up as a two station approach with Station 2 acting as a "station house" for housing equipment and the West Side Station, as planned, to be the main station for housing equipment and holding training for the District as a whole. He further stated the multi-system approach was planned so that both systems operated as a complement to each other in providing quality service to all residents within the entire District. Also, he thought the East Side station was performing ahead of schedule.

Chief DuCharme then reported on the annual awards dinner for the firefighters, the process for the Officers' groups as it related to preparations for Fiscal Year 2006 Operating Budget, remaining concerns from the firefighters regarding rescue boat project monies requested from the Board, as well as further discussion on the Orono allocations as it related to the Relief Association funding.

Without objection from the Board, Chair Skrede stated a discussion on the Relief Association funding would be part of Item 8A on this evening's Agenda.

Chief DuCharme also apologized for neglecting to include Fire District Captain Berglund as part of the earlier Fire Chief's report. He then introduced Fire District Captain Berglund to the Board.

Captain Berglund stated his duties included the operations of the Navarre Station, also known as Station 3. He went on to explain that station was approximately 95% complete, with twelve firefighters on probationary status with the District. He also stated the Long Lake Fire Department had donated a utility vehicle to be housed at that station, and a rescue truck would be arriving at that Station in December of this year. He went on to thank the Boardmembers and residents of the District as he was grateful for the new stations as well as the work and efforts that went into moving the stations forward in their operations. He noted the firefighters were very thankful for the new stations and had put many volunteer hours of their own into making the Stations operational. Further, he stated there were many new firefighters within the District that also included many hours of training. He noted the opening of the fire stations within the District was a lengthy process, with a great deal of technical expertise required. He stated all firefighters were working very hard, and were very appreciative of the Stations.

Chief DuCharme then reported all trucks were inspected and all pumps certified this past month, with all engines passing the pump testing. He noted Aerial 11 was found to have a problem with

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the brakes requiring full replacement. The Aerial truck was back in service as of October 23, 2004.

Chief DuCharme stated the Relief Association President, Doug Sweeney had set November 3, 2004, and November 10, 2004, as open joint meeting dates for member Councils to hear a presentation and hold discussions on the Relief Association funding and pensions.

7. FACILITIES

A. East Side

Chief DuCharme stated there was nothing further to report on the East Side Station.

B. West Side

Chief DuCharme stated there was nothing to report on the West Side Station at this time.

C. TSP and Kraus-Anderson

Chair Skrede explained the Board had requested a meeting of all parties present this evening to attempt to close out the construction of the East and West Side Public Safety Facilities. He stated the Board had remaining questions for the architectural firm and project manager associated with the construction of these two buildings. He then introduced Nick Ruehl and Tom Schuelke of TSP One Inc, principals of the architectural firm responsible for project design, and John Boerboon, project manager for Kraus-Anderson, and Mark Coudron, Vice President of Kraus-Anderson, the construction company responsible for implementation of design and construction of the two facilities.

Chair Skrede then noted several months of correspondence and meetings had provided the background for these remaining questions, as well as requests for detailed documentation related to the project and a discussion of the increased General Conditions associated with the changes in construction. Several specific change orders had been requested as well as a thorough accounting of the issues unresolved at this point. He suggested the Board move forward by utilizing the letter from TSP One, Inc, dated October 19, 2004 and TSP reference numbers, as a guide for discussion this evening.

With regard to reference #5, Mr. Ruehl explained the original design had shown the existing watermain placed in the driveway of the Shorewood Public Works Department. A verbal discussion was held in the field and the drafter moved the line in error to the south end of the lot. After the bidding process and during the time of construction, it was discovered the trench was located on the neighbor's property, and the site was restored, and drawings corrected. Mr. Ruehl explained, as with any project, mistakes were always a possibility and often a reality. To that end, his firm, since the beginning of the project had provided a 5% contingency plan for the owner. This contingency plan had been reduced to 4% at the request of the owner in the budgeting process. Mr. Ruehl went on to explain this contingency plan was considered within the industry "norms" and included items typically covered in various projects. He stated this change would then have been covered under the contingency plan as an appropriate use of those monies.

Boardmember Hill questioned whether it was normal practice to have a survey done of project properties. Mr. Schuelke stated it was an original intention for this project; however, the firm was clearly aware there was a watermain along County Road 19 for use at the southerly end of

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the property for this project. It was very late in the project when the anticipated exact location of the watermain was not in its supposed position.

Boardmember Bolles stated he had considerable experience in the construction business through his professional career, and all contractors were considered responsible for the work performed as part of a project. Specifically, when a contractor made an error than the responsibility for the error belonged with that contractor and the contractor was responsible for payment to correct the error. He stated he thought architects had the same responsibility. While it was true, people made mistakes, he did not believe all costs should be passed along to the owner for payment to correct the errors.

Mr. Ruehl stated his firm had supplied good and prudent work in the architectural responsibilities of this project. Within the architectural standards definitions, there existed a defined phrase of "standard of care." He explained this standard of care was not perfection, and his firm had been very careful to define this standard in all its contracts as a certain amount of risk an owner would carry for the project. If the owner chose to transfer the risk, than a contract would require an additional charge for that risk. This transferal of risk was not established in this project contract, so there were tolerances allowed. He stated the change order totals for this project were less than 2% of the overall cost. This percentage was considered well within the standard of care for the industry. He also stated this project was considered very successful relative to the costs for the project, and the number of change orders considered small with other projects in his experience. He further stated at the end of the project, all change orders would be well within the budget, and his firm had previously assumed responsibility for a number of items on the project.

Boardmember Love stated the cost to providing a survey would have approached the amount of the cost to repair this mistake.

Boardmember Bolles stated the apparent lack of attention to detail had been an ongoing concern of his throughout the duration of the project, and he thought at times there was not enough factual information provided for the Board to make an intelligent decision.

With regard to TSP reference #16 related to the warranty on the roof, Mr. Schuelke explained the EFD had received communications regarding the warranty in a letter from a representative of the roofing company explaining that if damage was incurred from the shingles as part of a "hot roof design" than the roof would not be covered under warranty. Boardmember Bolles questioned the responsibility of the EFD as owner due to the design as well as any premature failure of the roof. Mr. Schuelke stated this issue had been brought to the attention of the building committee and it was his understanding that the responsibility would be borne by the owner of the project.

Chair Skrede requested a copy of the letter from the roofing company and the warranty associated with the roof be provided to the Board to further explore options associated with the issue.

Regarding TSP reference #34, Mr. Ruehl explained a structural engineer had been present on site during construction and had added various structural supports as needed to complete necessary parts of the project.

Boardmember Bolles questioned an issue of tolerance related to a handrail on the project. He stated he believed many parts of the project could have been completed as bid, and the additional expense associated with the changes were unacceptable in this case.

Mr. Ruehl stated bids would have been higher should the contractor have decided to include these changes at the beginning of the project, and once a contractor was on site, the contractor was charged with providing the work in the best interest of the owner.

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With regard to TSP reference #52, Mr. Ruehl stated this matter was still pending due to a problem with the sub-contractor for the installation of an intake louver.

Boardmember Bolles requested a copy of the drawing related to the change order for this issue. Mr. Ruehl stated he had followed the prescribed protocol for this matter in that the Board would not need review of this drawing, however, if protocol should be changed, he was certainly happy to do so.

Boardmember Love stated, while he respected Boardmember Bolles request to review the copy of the drawing for this matter, he wondered if the 2% contingency was accurate in the project. Chief DuCharme responded affirmatively. Boardmember Love stated the Board did adopt a policy whereby change orders were handled administratively if under \$15,000. He stated he also believed a 2% contingency was realistic on public and private projects. Further, this project was meeting that contingency, had been reviewed by the Operating Committee and he believed it the role of this Board to review as well.

In response to Boardmember Hill's question, Mr. Boerboon explained the louver should be installed, and this item ready to close out within two to three weeks time.

Chair Skrede then directed the discussion toward the issue of General Conditions.

Mr. Ruehl stated there was an error in his letter to the District, dated October 19, 2004. He corrected the error on the third page, noting the sum of the Kraus-Anderson General Conditions and Fee for the West side Facility was approximately 8.8% of the base construction costs and was well within normal range seen in the marketplace. The sum of the General Conditions and Fee for the East Side Station was approximately 16.4% of the base construction costs. He apologized for these errors in this document, noting all documentation submitted had been received by TSP.

Mr. Boerboon stated there would be no additional General Conditions placed for the West Side from Kraus-Anderson.

Chair Skrede stated he could accept the General Conditions amount to the end of February of 2003, when the first revision date stated the project would be completed in June of 2003. However, he stated he was still uncertain as to the necessity of the increased General Conditions amount added after that point in time.

Mr. Boerboon explained Kraus-Anderson had proceeded with the understanding that if the project was to extend past February 2003, the Board was to have been notified. He stated that notification did take place at that time. He went on to explain there was a problem that would not allow the parking lot to be placed until June of 2003. He stated all parties working on the project were trying to have construction proceed as fast as possible at that point in time, and the site was under construction continuously until June 2, 2003. Mr. Boerboon also stated notification had been sent to the Board on several occasions notifying the District of the change in completion date due to weather, soil, etc.

Chair Skrede stated he remained quite concerned as it was difficult to ascertain the amount of work completed in March, April, and May that would generate such a large General Conditions amount. He also stated he was quite concerned because this delay caused the project to lose economies of scale due the projects not being constructed at the same time.

Chair Skrede recessed the meeting at 8:20 P.M. and reconvened the meeting at 8:30 P.M.

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Boardmember Hill requested clarification on the budget worksheet for the project as it related to the 2% contingency shown for the project. Mr. Ruehl explained the 2% contingency specified referred to architectural design issues, and the overall contingency amount was 4.17% for the total project.

Shorewood Economic Development Authority (EDA) Executive Director Dawson explained the budget worksheet was a guide for costs incurred and anticipated as the project progressed. The project costs were anticipated at \$8,000,000.00 with a 4% contingency of \$320,000.00. As the project progressed, the project cost became approximately \$10,000,000.00 without a change in the contingency, so the contingency amount became \$320,000.00, or approximately 3% of the entire project for architectural and construction contingency issues. He also went on to explain the EDA had anticipated additional interest income from the bonds, however, due to market conditions, this anticipated additional income actually resulted in a \$40,000 loss for the contingency, thus leaving approximately \$280,000.00 for an overall contingency for the project.

Chair Skrede stated that in previous meetings with Kraus-Anderson the District had requested General Conditions information related to the West Side Station. This letter was never received, and Chair Skrede stated he was extremely disappointed this letter had never been received by the EDA as promised, and this inaction proved the exact reason why the letter had been requested in an attempt to determine allocations of the remaining General Conditions.

Mr. Coudron stated that letter had been provided to the EDA in a meeting with Chief DuCharme, and EDA Executive Director Dawson on August 9, 2004, and sent to the Board on August 18, 2004. He stated he appreciated being able to be present at this meeting this evening in order to understand the outstanding issues and continue to work through remaining concerns. Mr. Boerboon stated he believed this letter had been sent to the Chief of the EFD and Chief of the South Lake Minnetonka Police Department (SLMPD), as well as EDA Executive Director Dawson, and Mr. Schuelke of TSP One, Inc.

Chief DuCharme stated he personally had been frustrated after the August meeting Mr. Coudron spoke of previously. He stated he thought Kraus-Anderson understood the needs of the District, and the need for information to be presented to the Board to close out the project in a timely manner, however, once the letter was received, it had seemed as though Kraus-Anderson had "closed the door" on further dialogue regarding these remaining issues. He stated once the box of documents detailing General Conditions had been delivered to Staff; it was not realistic for Staff to review until TSP One, Inc., had done so as established in the protocol for the project.

Mr. Coudron stated a request had been made for Kraus-Anderson to respond in writing to areas of concern and this action had indeed taken place. He went on to state that nowhere in the document did Kraus-Anderson say no further communications would take place. Mr. Coudron stated the action of delivering the documentation was one of fulfilling a request for information. He stated he and Mr. Boerboon were present this evening and were fully willing to continue any discussion necessary. The documentation supplied was given in consideration of issues discussed and had been delivered in a good faith effort to bring the project to a close. He also noted an arbitrary discount of over \$28,000.00 had been included as a result of discussions on the project.

Chair Skrede thanked Mr. Coudron and Kraus-Anderson for the discount. He stated the request for documentation was to have a small group audit the General Conditions aspects of the project and make a recommendation to the Board for additional review. He stated there was frustration felt by many since the monies were unable to be allocated. He also stated additional frustration remained over a General Conditions amount believed to be approximately 60% over original estimates for the project.

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Boardmember Hill questioned what actions had taken place since August 18, 2004, related to the documentation supplied by Kraus-Anderson. Mr. Ruehl stated the box of documentation had been delivered to Executive Director Dawson's office. Mr. Ruehl and Executive Director Dawson reviewed the documents, allocated the General Conditions, had remaining questions, and went to Kraus-Anderson with these questions. Kraus-Anderson provided answers, and communications had been continuing with Kraus-Anderson since that time. Mr. Ruehl went on to state these communications had been going on, however, the Board would not have been aware as the communications process involved working through the building team.

Discussion ensued with Boardmembers regarding a process to be followed in trying to allocate the General Conditions aspect of the project.

Hill moved, Love seconded, Directing a process of review as followed:

- 1. Kraus-Anderson would provide detailed line item explanation of General Conditions with changes and fees as the project moved forward throughout the entire construction process.**
- 2. TSP One, Inc. would review this explanation.**
- 3. The Operating Committee and Shorewood EDA would then review the explanation.**
- 4. Chief DuCharme of the EFD and Chief Litsey of the SLMPD would also review the explanation,**
with any questions being asked by any party as this review process progressed, with final review, discussion and disclosure by the EFD Governing Board. Motion passed 5/0.

Boardmember Love thanked all persons present for participating in discussions this evening that allowed the process to be formulated. He anticipated the process outlined would yield productive results.

Mr. Ruehl stated this project had been extraordinary since its inception, in attempting to bring five cities together to work on a single project. He noted due to the large number of people involved in the process, it had been difficult to satisfy all of the people involved all of the time, especially since the Boardmembers and expectations changed throughout the construction project process. Overall, he stated he believed the project to be successful, people would be very pleased, and he stated he was proud to have been part of such a project. He stated it seemed as though the costs for the project were close to, or on, budget, however, if there were still questions, his firm was committed to providing answers in order to close out the project.

Boardmember Bolles complimented Mr. Boerboon on the use of a spreadsheet provided with Change Order #3, as it was very complete.

Chair Skrede, on behalf of the Board, thanked all parties involved for attendance, input and efforts in bringing the project to this point.

D. Consideration of Construction Invoices

Chief DuCharme explained the only invoice submitted in this cycle had been received from the City of Deephaven for reimbursement of the landscaping of the East Side Facility.

Love moved, Bauman seconded, Accepting the Invoices and Making Payment to the City of Deephaven in the amount of \$10,704.50 for reimbursement of landscaping of the East Side Facility. Motion passed 5/0.

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8. OTHER BUSINESS

A. Old Business

Chair Skrede stated the firefighters had requested additional discussion and action on the revenues from the Orono contract, specifically related to impacts on Relief Association funding.

Boardmember Hill requested and received clarification regarding State Aid contributions to the Relief Association as well as additional information shared by Mr. Sweeney at a recent EFD Board meeting.

Hill moved, Bauman seconded, Approving a Transfer of Funds from the Orono contract in the amount of \$65,000.00 to the Excelsior Firefighters Relief Association (EFRA) for Fiscal Year 2004.

Boardmember Love stated he wanted to be certain the firefighters had been heard on this matter, and he requested feedback from those present this evening.

Firefighter Trustee Hoo stated this allocation was desirable to the firefighters and he believed all firefighters would be in favor of this action and quite happy to see this action take place.

Captain Berglund stated the firefighters wanted to be certain the proposal presented was carried out in terms of awarding allocations to EFRA as discussed at the onset of the Orono contract. He stated this action was exactly what had been requested, and he was certain it would be greatly appreciated by the firefighters if approved.

Motion passed 5/0.

B. Fire Chief Review

1. Schedule and Format

Discussion ensued by the Board regarding the best method for gathering and disseminating information to the Chief regarding his annual performance review. All Boardmembers agreed it would be beneficial to have input from the Operating Committee, since this group worked with the Chief in financial matters. Discussion further ensued regarding how best to gather information from firefighters in an equitable manner.

Deputy Fire Chief George suggested the firefighters provide information to the three elected trustees to the Board as it had proven to be a good established channel of communication for the firefighters.

Discussion then ensued regarding how to include the firefighter's comments in an objective manner. Boardmember Bauman stated he thought it important that all firefighters were heard. To that end, he suggested the use of a checklist with an invitation for all firefighters to participate anonymously.

After a bit of discussion, the Board agreed to meet in Executive Session to provide a thorough review of the Fire Chief's performance and then meet with Chief DuCharme at a later date to be able to dialogue directly regarding the review. Chair Skrede stated Boardmember Hill would disseminate the forms utilized for last year's review to Boardmembers and the Operating Committee members. Firefighters would provide input through the trustees. With the agreement of Chief DuCharme, the Board agreed to meet on Wednesday December 1, 2004, to conduct the Fire Chief Review.

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C. Orono Revenue Allocations

This item had been discussed under Item 8A.

Boardmember Bauman stated he thought it important to contact all City Councilmembers directly regarding attendance at the Relief Association meetings to held November 3rd and November 10th of this year as it would be beneficial for all to understand the impacts of the Orono Revenue Allocations upon the pensions of the firefighters.

Boardmember Love stated he appreciated the new format presented at this meeting in the Fire Chief's report.

Chief DuCharme stated he would prepare a list of projects and anticipated costs for each project to present to the Board at the next EFD Governing Board Meeting.

9. NEXT MEETING

Chief DuCharme stated the next meeting of the EFD Governing Board would take place on Wednesday, November 17, 2004, at 6:00 P.M. at the West Side Station.

10. ADJOURNMENT

Love moved, Hill seconded, Adjourning the EFD Governing Board Meeting of October 27, 2004, at 9:50 P.M. Motion passed 5/0.

RESPECTFULLY SUBMITTED,

Sally Keefe,

Recording Secretary