

**TAHOE DOUGLAS FIRE PROTECTION DISTRICT
BOARD OF TRUSTEES MEETING
October 19, 2011**

Those Present:

Chairperson Brad Dorton
Trustee RJ Clason (via phone)
Trustee Ann Grant
Trustee Kevin Kjer
Trustee Steve Seibel
Fire Chief Ben Sharit
Assistant Chief Van Ogami
Fire Marshal Mark Novak
Battalion Chief Dave Hekhuis

Captain Jim Antti
Engineer Justin Rossi
Engineer Kevin Crebs
FF/P Ben Pratt
Fire Inspector Eric Guevin
Administrative Assistant Kate Warner
Administrative Aide Carrie Nolting
Guest Bob Cook
Guest Larry Schussel

1. Action Item: *Call to order.*

The meeting was called to order at 4:00 pm by Chairman Brad Dorton.

2. Action Item: *Pledge of Allegiance.*

Pledge of allegiance was led by Bob Cook.

3. Action Item: *Roll call.*

Chairman Brad Dorton, Trustee Ann Grant, Trustee Kevin Kjer and Trustee Steve Seibel were all present. Trustee RJ Clason was present via phone.

4. Action Item: *Public comment.*

There was no comment.

5. Action Item: *Discussion and possible action. Approval of the consent calendar.*

Items:

- a. Approval of agenda.
- b. Approval of Minutes 09/14/11 and 09/21/11.
- c. Approval of Financial Statements 07/31/11.
- d. Job Description – Fire Chief – Revision.

Trustee Seibel moved to approve the consent calendar items with changes noted in attendance (09/21/11). Trustee Kjer seconded the motion. No discussion. Motion carried with a vote of 5-0.

6. Action Item: Consent Items moved forward.

There were none.

7. Presentation: Employee Recognition

Chief Sharit informed the Board that Engineer Brian Zabel had a last minute conflict and could not attend the meeting today; this recognition will be moved to the Retirement Dinner Program on 09/22/11.

**8. Possible Action Item: Sustainable Community Advocates Proposal
Steve Teshara, Principal**

Teshara gave a brief introduction of his work with the Lake Tahoe Chamber; he has been a registered lobbyist since 1979, lives in Round Hill and is a constituent of the TDFPD.

History on the SCA proposal.....the idea originated with Chiefs Brown, Whitelaw, and Pang over their concerns about funding changes to the White Pine program, Round 12 of SNPLMA (no funds) and dwindling funding sources. The three Chiefs invited Teshara to make a proposal and speak to all the Tahoe Basin Chiefs about a collaborative effort; a proposal was developed built around advocacy, information gathering and making sure that the needs of Fuels Management and Wildland Fire Prevention are on the top of the radar for our federal, state and local officials.

Teshara then recapped the work completed in the last 30 days as the project nomination packages for the White Pine Program Round 13 are due shortly.

Proposal is for a scope of professional services for \$500 monthly retainer fee from October 1, 2011 to June 30, 2012 with a 30 day out clause.

Trustee Grant agreed that she has seen the success the Fire Safe Council has had in obtaining grants because they pool their resources and represent all parties, and with funding drying up you really need an advocate out there to secure the funding.

Teshara will represent all districts as one with provisions for specific needs as long as they do not conflict with the good of the group. This is a collaborative effort, to represent the Tahoe Basin Chiefs to advocate in Nevada, California & Washington.

Trustee Siebel said he has a long history with Teshara on projects and feels they have always had good relations. Teshara is known to be informed and involved on what is happening in Lake Tahoe.

Chief Sharit added that the Basin Chiefs have been discussing the lack of funds for some time, and in times of shrinking budgets, we should use Teshara's expertise to expedite the process.

Trustee Clason asked who determines the priority of the projects. Teshara said that each District will determine their own projects and TDPFD currently has a lot of grant experience and education internally to continue to seek funding as well. Projects may in conjunction with others, or specific to this District. Teshara is principally looking for new projects/new sources of funding through legislative advocacy. Teshara will focus on LTRA 2011 moving through Congress; it contains a lot of provisions for some robust projects.

Trustee Grant had experience with Teshara's work on the Tax Override, where there was a short time line for the event & Teshara delivered. He added that Districts who can leverage local funding with State and Federal funding will be more successful.

Chairman Dorton asked about insurance. Teshara will provide a copy of his Commercial Liability, which is not less than 1 million dollars and his auto liability for \$300K. Dorton also inquired about two additional provisions:

#10 - Attorney fees provision – which was requested by the attorney; and

#11 – States the law is interpreted in the State of Nevada and in Douglas County.

Chief Sharit said that these additional provisions are being used by all the Fire Chief in their agreements. Chairman Dorton also asked if an option for mediation should be added. Trustee Grant said an option for mediation is a legal option in the State of NV and does not need to be added.

Motion was made by Trustee Clason to approve the proposal as presented. The motion was seconded by Trustee Siebel. No discussion. Motion carried 5-0.

**9. Presentation: *Open Meeting Law*
 *Wayne Carlson, NPAIP/PACT Executive Director***

The minutes below are additional comments the speaker gave during the powerpoint presentation, information on the powerpoint slides was deliberately omitted, please refer to the slide presentation for all the information.

Speaker Carlson distributed two documents:

- a. In *Search of Civility*, published by the National Association of Counties in June 2010 expressing their concern about civility in the public forum and situations where the public comment or the discussion on the topic gets out of control.

- b. *Open Meeting Law* presentation.

The Open Meeting Law has been in place for some time, and it is updated periodically by the Nevada Legislature. The purpose of the Law to let the public know what you (the Board) are doing since you were elected to carry out their business.

Public Body:

Small committees (at least 2 members) established by the Board are covered by the law. However, if the Fire Chief wants to get citizen advice from a group of residents or his staff, he can do so, because they are not a public body.

AB59:

The Attorney General's office is not on a witch hunt, but they do need to investigate issues. Public Body members must be mindful of themselves and each other, and stop any potential violations because a new civil penalty of \$500 per member is now in place.

Example: At a recent county meeting, there was a power outage that dropped the Tahoe feed, a break was taken to allow for repairs to be made. During the break, two Commissioners were visiting, a third Commissioner joined them (3 of 5) and they realized that they had now created a quorum and backed out. It was that awareness that was key; if anyone of the three realizes there may be an issue, they must stop it. The violation was reported, but they were not sanctioned for it because they took immediate action, and there was no intent.

Chairman Dorton questioned the promotional ceremony slated for the weekend; the Board of Directors typically sits at the same table. Is that a violation? It depends on the forum: a social setting is okay, at the Board meetings it is not. It was clarified that even if there is a Board meeting, and there is a break, regardless of the topic of conversation (the weather) they could be in violation of the Open Meeting Law.

Two Trustees can talk outside the Board Meetings (no quorum) that is okay. Either of them can speak to another Board Member, but may not convey what was discussed by the first two members, or you have created a deliberation for a decision (walking quorum).

Clarification on a recent situation: Before the Board meeting, everyone was outside viewing the newly purchased fire engine. Carlson said it was likely a "gathering" and not a violation, but if there was any discussion in that gathering regarding anything related to the public body for the purpose of taking action or for the purpose of deliberating towards action – that is a grey area and risky. General discussion about the attributes of the new equipment is okay.

George Taylor in the Attorney General's office can be contacted for an opinion at any time. Polling the rest of the Board before you get to the meeting, so you don't have to discuss it in public where there is going to be a difference; that polling would be a violation of the Open Meeting Law. So you can talk to a couple of people, but you have to keep what is said to yourself if you are talking to a third person. The third person creates the quorum and the deliberation must be in public.

Trustee emails cannot be "blast emailed" to everyone else. Don't do it, you are then soliciting a quorum. Send it one person only and be very careful, it is very easy to forward it on in error.

Exemptions:

- Associations of Fire Chiefs or Associations of Fire Board Members meetings are considered social gatherings and as a rule are ok. You can sit together and converse, as long as you do not deliberate towards a decision. It's actually advised that at these functions members do not to sit together to network and meet other people to widen your resources. Most importantly do not deliberate.
- Attorney discussion and deliberation can be held in a closed meeting, for threatening or pending litigation. This is limited to a verbalized or formal threat, not just Board issues, and it is considered a "non-meeting". If a meeting is held in the attorney's office, the entire Board can be present.

Decisions by Boards:

Example: This comes out of a Clark County case, where there was a large box retailer asking for approval on a project, and so many of the Trustees were absent or had conflicts and abstained from voting that the final vote ended up a 3-2 vote. The public was outraged that three Trustees were allowed to make that big of a decision. So now, the requirement is that, if you are an elected Board, you must have a quorum, the majority of the positions on the Board to vote. If a quorum is not present, the topic has to be deferred to another meeting where a quorum will be available.

Agenda and Notices:

Example: Agenda Item #1: Road Closure (too general) – should state enough complete information that a resident would know whether or not it concerns them, and if they would want to comment. Be specific - which road, what date & time, and why.

No action can be taken on Public Comment items, as those are intended for items not already on the agenda. Action can only be taken on items on the agenda as "Possible Action".

Off site meeting locations – the notice must also be posted at that location as well as the normal posting locations (i.e. the Tahoe Court Room meeting last September).

Avoid general items.

Example: A school board had an agenda item that stated "Closed Personnel Session" on all their agendas. The habit in the past was that at each meeting the Chairman would ask if anyone had a "closed personnel item"; with a response, then they would enter closed session. It was a small town, and at one meeting a person announced an issue, and they went into closed session. The person speaking had a loud voice and everyone not in the closed session could hear her talking. She was complaining about several of her co-workers and someone filed a complaint. It cost the Board \$10,000 to defend themselves. The issue was that none of the people she was complaining about had been noticed, because it was a generic agenda item. The Board was told not to do it again, but they simply did not understand the intent of the law.

It should have been posted as to whom it was about, and that person(s) must also be noticed to have the opportunity to attend.

The law states that if you have a website, you must also post there. If you do not have a website, it does not apply. It is encouraged that under staff reports that be specific as well, just so that residents who may have a concern know what will be discussed. Example: Board report (too general) vs. Board report on upcoming events (more specific). For the purpose of transparency be specific, to the extent that you know.

Emergency Meeting:

You must declare the emergency, and be specific and put it in the record. Disaster – flood, landslide, toxic spill etc.

Example: City of Wells had an earthquake. They called an emergency meeting, followed by several other emergency meetings to deal with the situation. They did not have to notice the public; they did have to keep a record of the meeting topics and discussions. Once the crisis had been addressed, they continued to have meetings every couple of weeks, but they were then able to notice those meetings. Discussion at these meetings must be limited to emergency issues only; you cannot discuss other Board business.

Document Availability:

Access must be provided, 1 copy to the public.

Example: A new organization had a meeting packet that was 450 pages long, and everyone was directed to download it from the website. The Legislature determined that this was not acceptable. One public copy must be available for viewing at the location of the meeting. Confidential information can be excluded.

Closed Personnel Sessions:

1. Personnel -*“For Character, alleged misconduct, professional competence, physical or mental health of the person”*. Viewed as a negative, but can be a positive. Fire Chief’s review is public. Appointments to elected or appointed positions must also be done in public. The person subject to the closed session can request it be public.

Example: Board wanted to remove the City Manager, he requested an open session and all his supporters showed up to speak on his behalf. It backfired on the Board, because they could not take action against so much public support.

The purpose of a closed session is to gather information and clarify facts. Action would require and additional agenda item:

Item #1- Closed Personnel Session – Engineer John Black, and then

Possible Action Item #2 – The Results of the Closed Personnel Session – John Black (open session).

Site the character statement from NRS to be safe.

2. Board Trustee - "*Character, alleged misconduct...*" issues must also be conducted in an open forum.

Example: A newly elected City Councilman propositioned a woman on tape in an meeting session. His action violated the personnel policy, if a staff member had done that they would have been disciplined under the policy. So what do the other Trustees do? The decision was made to have the Council formal censure him on the reprimand record.

3. Decisions/actions taken in closed session are void.

Example: City and casino issue, there was a threat of litigation. The City met with their attorney, and they deliberated. Went one step too far, and they took action. The Attorney General's office determined no intent, but declared there action void and they had to put it on the next meeting agenda and vote again.

4. Quasi-judicial function does not allow Trustees to go out and independently investigate a situation. The Board serves as a jury to hear the evidence and testimony and make a decision. Trustees are constrained here to remain objective on the evidence that is presented by the parties. Just like a jury, they do not go out and investigate themselves.
5. Vacancies on the Board must be discussed in an open forum.

Deliberations:

Example: If during the Public Comment section, someone makes a suggestion, "Hey, you should do this..." and the Trustees start to engage in a conversation about the pros and cons of what had been suggested, you are deliberating. So at that point, as an elected official/Board Trustee, you need to recognize, or your attorney or staff needs to point out that you are deliberating and you need to stop and put that point on a future agenda for deliberation and possible action.

Action:

Always in public; cannot be done in a closed session.

Public Comment:

Foul or abusive language, and/or threats can be stopped by the Chairman. Trustees need to set the tone and not abuse public speakers as well. Statements not relevant to the Fire Board can be stopped.

Examples: Complaints about the School District, reading pages out of a book and the topic was not relevant to Board business.

In situations where a lot of speakers have signed up to speak, the Chairman can request subsequent speakers that if they agree with the previous speaker to state their name and that they agree with the previous speaker. They are welcome to add new information, but please do not repeat that has already been said. It is the Chairman's responsibility to monitor the comments and control the length of the meeting.

AB257:

Public Comment – must be on the agenda either at the beginning and the end of the meeting or on every “Possible Action” item.

Minutes & Recording:

Board Trustees should refrain from saying “so moved” and be very specific on their motions, so the official record is accurate. Any documents to be added to the minutes need to be given to the clerk. Certified court reporters are not used in most cases. Closed meeting minutes are CONFIDENTIAL information; Trustees cannot leak out what has been said, even if you are unhappy about the comments of your fellow Trustees.

Criminal Sanctions:

Example: A Commissioner was removed from office on a three member board, because she asked another Commissioner who to put on the agenda for dog catcher. The problem developed when they had a deliberation, and as soon as he responded to her “Put John on the agenda for dog catcher.” There was a decision and a quorum because they were 2 members of the 3. So to avoid that she could have said I need an agenda item for the “Selection of a new Dog Catcher”.

A Union agreement is not public record until it is approved and adopted by the Board. A contract in draft is not a public record. You will want to have negotiated the contract points in closed session, to avoid disagreements in public. Public members are not allowed to attend contract negotiations, they are closed. Employment contracts are public once adopted as well.

Sharing of informational items, news articles and such through email should be done with caution. Trustees can send it one to one, but not a collective distribution. Collective distribution changes the conversation to a public conversation about that topic. It was recommended that Trustees send the information to the staff (Fire Chief) and ask the staff to distribute it to the board as an “informational” item or place it in the board packet as an “informational” item.

10. Possible Action Item: *Approval of Fire Chief Contract*

Trustee Clason thanked Chief Sharit for his thoughtful input and to Trustee Siebel who took over the bulk of the project when Clason had to leave town unexpectedly.

Trustee Grant clarified that the newly approved job description noting the 35 mile residency requirement would be replaced in the contract.

Trustee Kjer acknowledged the Trustees negotiating the contract and Chief Sharit's patience.

Trustee Siebel added that he feels the delay has produced a document which can serve us well into the future.

Chairman Dorton presented two specific items for discussion:

Item #4C: Termination and Severance Pay - which allows 4 months aggregate salary. He feels that severance pay should not be in any employment contracts, because as public employees retirement plans are provided.

Item #8 Professional Development – and his concern that it should be fire related or management related, and may need to be clarified. He added that he does not feel either will be an issue (with Chief Sharit), but requested some discussion on the topics.

Trustee Siebel said that the severance was reviewed carefully, Chief Sharit currently has a severance clause in his Battalion Chief contract and it did not seem right to go backwards on that item. The board can review it for future positions, but for this particular individual it is appropriate.

Trustee Clason agreed with Chairman Dorton in theory, in many cases the severance packages are used as a safety net should there need to be a change in management. He also agrees that with the current B/C contract containing the severance provision, it needs to be included. It is not intended that when you get promoted from position A to B that you should lose any security in the move. He supports the contract as it is now.

Trustee Clason suggested that the Fire Chief make the Board aware of any absence in advance, and trusts Chief Sharit's judgment to select professional development conferences and programs that will be in the best interest of the District.

Trustee Grant felt that the terms in the agreement of "professional development" and "for the good for TDFPD" cover it adequately.

Trustee Siebel agreed with Grant, stating that the Board unanimously voted Ben Sharit as Fire Chief and has placed their trust in his judgment.

Public Comment:

Question from Guest Schussel asked if other B/C or A/C positions currently have the severance provision. Chief Sharit only had knowledge of his own personal contract, not those of other Chiefs made with the Fire Chief. His B/C contract provided 3 months' severance. Schussel pressed on that though the Board was approving severance for this contract, they need to decide if they are approving it forward for perpetuity or make a change at some point. He said he was concerned that Board should address a decision. Schussel said the Board was not likely to change current contracts, but should look into the matter.

Guest Cook stated that, as a tax payer, he feels the amount that has been negotiated provides the needed protection and security to the Department. He feels the Chief and the Department both need the protection and security and feels it serves as a deterrent to make wise decision. If the Board were to decide that they don't like the Fire Chief's performance, for whatever reason, and decide to remove the Fire Chief, severance clauses force a chance to go back and decide whether it is really worth it or not. It has happened to a previous Fire Chief here, and as a previous Board Member I was not happy with that decision and that is why the previous Chief (LeFever) had that provision in his contract. He did not know the B/Cs had that clause and he considers that a separate issue.

Trustee Siebel clarified that the severance clause is "without cause", naturally there could be situations where there would not be severance "with cause".

No further comment for discussion. Trustee Grant moved that Board approve the employment contract between the TDFPD and Ben P. Sharit for the position of Fire Chief. Trustee Siebel seconded the motion. No discussion. Motion carried 4-0. Trustee Grant asked why the Chairman did not vote. He stated that as Chairman, his vote is a tie breaker vote, therefore he abstained.

11. Possible Action Item: Appointment of the Fire Chief

Trustee Kjer made the motion to appoint Benjamin P. Sharit as Fire Chief. Trustee Grant seconded the motion. No discussion. Motion carried 5-0.

**12. Item: Review of Monthly Expenditures
Chief Ben Sharit**

Questions:

- Grant Thornton is a payment (2/3), balance will be due at the close of the audit.

| Date | Check # | Payee | Amount | Fund | Reason |
|------------|---------|--------------------|-----------|------------------|---|
| 09/20/2011 | 52858 | Fire Fest 2011 | \$500 | General | Annual contribution |
| 09/20/2011 | 52865 | PRS, Inc | \$1331.68 | Special Services | Rope rescue equipment |
| 09/20/2011 | 52873 | Steve Fletcher | \$360.00 | Enterprise | ACLS instructor |
| 09/27/2011 | 52890 | Kevin Green | \$526.33 | Enterprise | Reimbursement-expenses paid delivering ambulance for re-chassis |
| 10/04/2011 | 52904 | Costco-Carson City | \$1640.17 | General | Classroom AV Equipment |

| | | | | | |
|------------|-------|---------------------------|------------|-------------------|---|
| 10/04/2011 | 52906 | Floppy's | \$2279.87 | General/Fire Safe | Chief workstation; service contract; toner |
| 10/04/2011 | 52908 | George Echan | \$1480.00 | General | Legal fees-Ruvo gate |
| 10/04/2011 | 52909 | Matt Brown | \$85.45 | General | Reimbursement-gas paid for strike team assignment |
| 10/12/2011 | 52932 | Grant Thornton | \$15900.00 | General | Audit |
| 10/12/2011 | 52933 | Harrah's Lake Tahoe | \$1510.57 | General | Promotions/Retirement dinner |
| 10/12/2011 | 52935 | James Antti | \$38.43 | General | Reimbursement-meals for crew on strike team |
| 10/12/2011 | 52941 | Petroleum Maintenance Inc | \$1731.02 | General | Maintenance on gas tanks at 3 stations |
| 10/12/2011 | 52943 | Steven Prather | \$31.06 | General | Reimbursement-lunch paid Engineer Exam proctors |

13. Discussion: *Fire Chief's report on previous month's activities.*

Service Recognition

- Engineer Greg Peterson 26 Years of Service
- Engineer Bob Child 26 Years of Service
- Captain Tim Allison 16 Years of Service
- FF/P Fred Parson 16 Years of Service

Alarms for September 2011

Total – 156 alarms, prior year had 126.

Eleven fires were reported...Glenbrook structure fire, a couple nuisance fires at Round Hill shopping center, and checks on wildland fires/controlled burns.

Investments

- TDFPD purchased 4 CDs @ \$200,000 each with maturity dates in April 2012 as per Board direction. A fifth CD is pending.
- Money market account balance \$2,086,817 and Investment accounts at \$4,708,939 as of the end of September.

We have conducted a review of the US Bank accounts and have made changes resulting on a \$2100 savings in bank fees. Possible changes may occur with our Wells Fargo accounts, we are still negotiating. Annual account reviews will be conducted each September.

Attachments

- Intent to retire letter from Assistant Chief Van Ogami on November 10, 2011 with 32 years of service.

- Intent to retire letter from Engineer Roger Stockton on September 29, 2011 with 23 years of service.
- Intent to retire letter from Captain Randy Flynn on November 5, 2011 with 32 years of service.
- Firehouse Dinner thank you – from Chase International Office.
- NV PERS investment history generating a return of 21%, the funds long term investment history (28 years) is an average of 9.6% for the past 25 years.

Trustee Kjer asked for investigation information on the Glenbrook fire. Chief Novak updated that they were not able to determine an actual cause and the investigation is closed.

Chairman Dorton acknowledged the retirements, the good community outreach from the Firehouse Dinner & Fire Fest, and public education with the preschool. He acknowledged two thank you emails for the Zephyr Crew.

14. Possible Action Item: Public Comment.

There was no comment.

15. Discussion: Confirm next regular meeting on Wednesday, November 30 @ 4:00 pm, possible agenda items

Possible agenda items:

- Grant Thornton Audit Results
- Summary of Existing Employment Contracts (all non-union) (tentatively on December 14)
- Severance package policy (potential action in the future)
- Employment Agreements (agenda in the next 3 months)

Chief Sharit requested time to review the contracts himself before the Board puts it on the agenda for an action item. He needs time to address priority issues – audit, comprehensive budget, hiring/testing/promotions, insurance bidding and to establish his new team. There is not sufficient time in the next 30 days.

Contracts will be emailed to Trustees prior to the meeting.

Concern was expressed that the Board needs to know where there is potential exposure (other severance agreements) in the employment contracts and the desire to address the policy going into the New Year.

December Meeting was confirmed on December 14.

16. Action Item: Adjourn.

A motion was made by Trustee Seibel to adjourn the meeting. Trustee Grant seconded the motion. No discussion, motion carried 5-0.

The meeting was adjourned at 6:40 pm.

This meeting was recorded on audio tape.

Kate Warner
Administrative Assistant
Tahoe Douglas Fire Protection District