

RECORD OF MINUTES
Elk Creek Fire Protection District
Regular Board Meeting
January 25th, 2024, In person and via Zoom

1. Call to Order at 6:00PM

1. The regular monthly meeting of the Board of Directors of Elk Creek Fire Protection District (ECFPD) was called to order by Vice President Dominique Devaney at 6:52 p.m. on Thursday, January 25th, 2024. The meeting was held in both physical attendance and via Zoom virtual meeting pursuant to statutory notice.

2. In physical attendance were Vice President Dominique Devaney, Treasurer Sharon Woods, Secretary Melissa Baker and Director Chuck Newby. President Greg Pixley participated via Zoom. Also attending in the Boardroom were Chief Jacob Ware and District Attorney John Chmil.

2. Agenda

1. The agenda was reviewed by all Board members in attendance. Item a. under New Business, Fire Chief Contract Discussion was moved to the first item of Old Business. Approval of the Oct. Mins was added to the Agenda. Purchase of a used apparatus was added to New Business. Motion was made by Secretary Melissa Baker to approve the agenda with the revisions and additions and seconded by Treasurer Sharon Woods. The motion passed unanimously.

3. Minutes of the October and December Meeting Minutes

1. Motion was made by Treasurer Sharon Woods to approve the October minutes as written. The motion was seconded by Secretary Melissa Baker. There was discussion about the addition of Director Newby's comments. Vice president Dominique Devaney called for a roll call vote
Woods - Aye
Baker - Aye
Newby - No
Pixley - Aye
Motion passes 3 to 1

2. The meeting minutes from the December 2023 Regular Board Meeting were reviewed. President Greg Pixley made a motion to accept the December 2023 meeting minutes. The motion was seconded by Secretary Melissa Baker. The motion passes with 3 yays and one abstention.

4. Financial Matters

1. Treasurer Sharon Woods presented the Treasurer's Report which included a review of funds, bills for payment, financial summary, and other revenue and

expenses. Information on the monthly financial activities of the District is contained within the Treasurer's Report and is on file with the District. A motion to approve the District's December expenses as presented by Treasurer Sharon Woods was made by Secretary Melissa Baker, seconded by Treasurer Sharon Woods and was approved unanimously.

5. Chiefs Report

1. Chief Ware presented his report to the Board of Directors, which included updates on call volume, average response time, incident summary, training, and prevention. Information on the full report is contained within the Chiefs Report and is on file with the district. Call volume was down for 2023 which is a trend seen from other districts.

2. The Annual Operational Report from the Conifer Wildland Division was shared with the Board. The Report is on file with the District.

6. Public Comment – Matters before the Board

1. Citizens commented on the civility of Board meetings for the betterment our firefighters, fellow Board members and the Community, requested the Board to focus on long range planning for the District, provided an update on the Secretary of State campaign violations, and requested an alternative plan for the District from those who did not agree with consolidation.

Citizens who provided public comment include: Barbara Moss Murphy, Paul Olson, Al Leo and Philip Koch.

7. Director Comment - Motion to Resend and Expunge from the Record: The December 14, 2023 Resolution for Public Censure of Elk Creek Protection District Board Member Chuck Newby - The full motion is included as Appendix A. There was not a second on the motion so the motion does not hit the floor for discussion.

8. Old Business

Fire Chief Contract

1. Treasurer Sharon Woods has reviewed the contract but has questions. Vice President Dominique Devaney and Treasurer Sharon Woods will meet with HR Director John Zeugschmidt to hammer out a few items and it will be included in the board packet for February.

9. New Business

1. The replacement of the yellow 1998 smel type 1 engine (Big Bird). Chief Ware proposed that the District purchase a used Engine for the short-term from Platte Canyon. The plan would be to sell the used engine when the new one arrives. Treasurer Sharon Woods made a motion to spend up to \$30,000 for the purchase of a used short-term engineer. The motion was seconded by Director Chuck Newby - The motion passes unanimously.

10. Public Comment – New Topics of Discussion

1. Citizens made comments in support of a Conifer intuitive similar to ECARES which allows seniors to live at home. In Evergreen this initiative is run by three paramedics. Additional citizen comments included concern about the proposed Bike Park specifically related to special events and ingress / egress for Shadow Mountain Road, concern about Board member conduct and support of the Censure measure, a clarification that there is anger over board member behavior not over failed consolidation efforts, concern over allegations made about the December Board of Directors meeting, concern over the “fair use” of the District’s trademark logo and appreciation for the approval to purchase the used engine.

Vice President Dominique Devaney clarified that legal counsel has been consulted and has provided their opinion. A discussion was held between Chief Ware, Board President Greg Pixley and legal and it was determined for the best interest of the district, the use of the District logo would not be pursued legally. The decision was a fiduciary decision for the District.

In addition, Vice president Dominique Devaney made a Point of Clarification to the objectors to the Bike Park - we hear from you, we recognize there are dramatic concerns related to the Bike Park, but the District does not get a vote on land use.

Citizens who provided public comment include: Barbara Moss Murphy, Paul Olson, Al Leo, Missy Winefeldt, Andy Fulham, Philip Koch and Fleet Mechanic Adam Hojnowski

11. There being no further business to come before the Board at this time the meeting a motion was made by Treasurer Sharon Woods and seconded by Secretary Melissa Baker to adjourn at 7:45 p.m. Motion passed unanimously.

Respectfully submitted,

Greg Pixley – President

Dominique Devaney – Vice President

Sharon Woods – Treasurer

Melissa Baker - Secretary

Charles Newby - Director

Appendix A

**ELK CREEK FIRE PROTECTION DISTRICT
MOTION TO RESCIND AND EXPUNGE FROM THE RECORD:
THE DECEMBER 14, 2023 RESOLUTION FOR PUBLIC CENSURE
OF
ELK CREEK FIRE PROTECTION DISTRICT BOARD MEMBER CHUCK NEWBY**

January 25, 2024

BACKGROUND OF THE MOTION: At the October 13, 2023 Elk Creek Fire Protection District (Elk Creek FPD) Board of Directors Meeting, I was accused of illegal, unethical, and self-seeking conduct in multiple areas by Elk Creek FPD Members and Affiliates. Not one of these allegations has proven true. I was then further accused of illegal, unethical, and self-seeking conduct by Elk Creek FPD Members and Affiliates at the December 14, 2023 Elk Creek FPD Board of Directors Meeting—and once again, not one of these allegations has proven true.

The accusations and defamation directed at me culminated in actions taken at the December 14, 2023 Board of Directors Meeting where four members of the Elk Creek FPD Board of Directors improperly passed a resolution of censure consisting entirely of false allegations of improper conduct.

In addition, while conveying their displeasure, Elk Creek FPD Members did not afford me the right of due process—no prior notice was given to me, no process for findings-of-fact was followed, and certain board members willfully stifled my attempts to speak in my own defense—and, after both meetings, my physical safety was threatened by a few Elk Creek FPD Affiliates.

Finally, independent of whatever differences we may have, and the false accusations made against me, the kind of uncivil and at times vitriolic behavior directed at me, though it may not be unlawful, must cease for us to work together to best serve our community.

Therefore, I offer the following motion in good faith:

MOTION TO RESCIND AND EXPUNGE FROM THE RECORD THE DECEMBER 14, 2023 RESOLUTION FOR PUBLIC CENSURE OF ELK CREEK FIRE PROTECTION DISTRICT BOARD MEMBER CHUCK NEWBY:

- (1) **WHEREAS**, regarding the resolution allegation that Director Newby violated District Bylaw 3.2 (h) Director Conduct, which relates to "*board votes on an issue*": The subject board vote was to direct that two ballot measures proposing fire district consolidation be referred to the voters for a YES/NO decision. Subsequent to that August 2023 board vote, Director Newby did not take any action to impede the implementation of that board action.

- (2) **WHEREAS**, regarding the resolution allegation that Director Newby violated District Bylaw 3.2 (i) Director Conduct, which relates to the issue that "*individual directors have no authority to speak for the Board of the District*": With respect to the proposed fire district consolidation ballot election campaign, as in all other matters, at no time did Director Newby ever claim to speak either on behalf of the board or as a board member.
- (3) **WHEREAS**, regarding the resolution allegation that Director Newby violated District Bylaw 3.7 Performance of Duties, which relates to the issue that "*directors are prohibited from taking personal advantage of a situation or disadvantage the District*": With respect to the subject ballot election campaign, as in all other matters, neither did Director Newby take advantage of the situation to gain personal advantage nor did he ever act to disadvantage the District.
- (4) **WHEREAS**, regarding the resolution allegation that Director Newby violated the Campaign Practices Act, specifically Colorado Law § 1-45-118 by using the logo/ name of the District which relates to the alleged "*use of District resources for political campaign purposes thereby putting the District at risk for allegations of campaign finance violation*" during the subject ballot election campaign: The logo/name of District was used by the Save Elk Creek Fire Issue Committee under the federal copyright/trademark legal doctrine of fair use, which explicitly allows such usage. Importantly, the Colorado Secretary of State considered this allegation against the committee but found that it was without merit, therefore, the District was never put in danger of violations of law.
- (5) **WHEREAS**, regarding the resolution allegation that by "*campaigning or otherwise speaking against the District's proposed consolidation*", Director Newby violated his duty to the District: In accordance District Bylaw 3.2 (c) Director Conduct, the primary duty of a director is to "*meet the needs of the constituents of the District*". At all times during the subject ballot election campaign, Director Newby exercised his free speech rights guaranteed under the constitutions of the United States and the State of Colorado, through the Save Elk Creek Fire Issue Committee in his capacity as a private citizen, to speak to the community regarding the possible negative consequences of the proposed fire district consolidation.
- (6) **WHEREAS**, the December 14, 2023 resolution of censure against Director Newby was planned, written, and its passage predetermined in secret meetings among four Elk Creek FPD Board Members in the absence of any due process whatsoever—the resulting board action constitutes a violation of District Bylaw 4.8 Procedure, which directs that the board must proceed in accordance with Robert's

Rules of Order. Therefore, being out of order in the absence of due process afforded all members of a body as required under Robert's Rules of Order Newly Revised 12th Edition Chapter XX, Disciplinary Procedures, the December 14, 2023 resolution of censure against Director Newby is illegitimate.

- (7) WHEREAS, the December 14, 2023 resolution of censure against Director Newby was devised planned, written, and its passage predetermined in secret meetings among four Elk Creek FPD Board Members, these actions alone constitute a violation of the due process rights afforded all United States citizens under Section 1 of the Fourteenth Amendment to the Constitution of the United States, are contrary to the Laws of the United States, and, therefore, make the December 14, 2023 resolution of censure against Director Newby illegitimate.

Now Therefore, the Elk Creek FPD Board of Directors resolves that the December 14, 2023 resolution of censure against Director Newby is hereby Rescinded and that the Record is Ordered Expunged of the Subject Resolution.

[End of Motion]

/s/ CF Newby

Director, Elk Creek FPD

