

Kuna Rural Fire District

PO Box 607, Kuna, ID 83634

Phone (208) 922-1144 Fax (208) 922-1135

Minutes of Commissioners Regular Meeting September 8, 2021

APPROVED: _____ **REVISED:** _____ (see revised version)

Vice Chairman Randall Feaster called the meeting to order at 1:00 pm in the meeting room of Kuna Fire Station #1.

Present were Commissioners: Greg McPherson (via Phone), Rebekah Luther, Randall Feaster, Tim Crawford and Mike Smith. Also present were Chief T.J. Lawrence, White Peterson Attorney Marc Bybee, and Officer of Administration-Secretary-Bookkeeper Krystal Hinkle.

Agenda Approval:

Comm. Crawford moved to accept the agenda as printed and posted. Comm. Smith seconded the motion, motion passed with a unanimous voice vote.

Approval of Minutes: Comm. Crawford moved to approve the Regular Meeting Minutes of August 11, 2021. Comm. Luther seconded the motion, motion passed with a unanimous voice vote.

Appeal Hearing – Cory Barton – CBH Homes Impact Fee Refund Application:

Open Hearing – Comm. Crawford made a motion to open the hearing at 1:13pm. Comm. Luther seconded the motion, motion passed with a unanimous voice vote.

Administrator of Impact Fees Krystal Hinkle testified that the City of Kuna collected Impact Fees on behalf of the district in error. She further testified that she notified CBH immediately to let them know of the error and they needed to submit an application so we could determine who the refund would go to. In the Exhibits submitted, there is the application, and also a copy the Official Action from the Impact Fee Administrator that was provided to CBH and homeowners. The Official Action identifies the Impact Fee statute authorizing and requiring a refund, and that states that it was the Impact Fee Administrators determination that the statute requires refunded impact fees to be provided to the current homeowner of record of the property where the fees were previously paid. The basis of that decision was direction from our attorney and also what is in state statute. The Impact Fee Administrator testified that an address list that she used to determine the current homeowners came from the Ada County Assessors website. When entering the parcel numbers that were provided to the Impact Fee Administrator from the City of Kuna into the Ada County Assessors website, it shows who the current homeowner of record is.

Secretary Hinkle introduced the Exhibits to the acting Chairman –

- Exhibit 1 – Address list
- Exhibit 2 - Building Permits
- Exhibit 3 - Refund Application
- Exhibit 4 - Official Action
- Exhibit 5 - CBH Appeal
- Exhibit 6 - Notice of Hearing
- Exhibit 7 - List of Impact Fees

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Comm. Smith made a motion to accept the Exhibits presented. Comm. Crawford seconded the motion, motion passed with a unanimous voice vote.

Notice Mailed to CBH and all homeowners on 7/28/2021.

Melissa Wilkinson, Director of Construction Services with Corey Barton Homes testified that their standpoint is that they were the owners of record when the Impact Fees were assessed. They are the ones that paid the fees and the fees should go back to Corey Barton Homes because they should have never been charged by the City, it was their error. Wilkinson indicated that she did submit Exhibit 7 that shows a total of fees that should be reimbursed. She testified that it is a substantial amount for a human error.

Attorney Bybee asked Wilkinson if she agreed with Krystal Hinkle's statement that CBH is not a record owner of the subject properties today.

Wilkinson agreed that they are not a record today, but they were record owner when the fees were paid. She also mentioned that the error wasn't found in the 90 days that the statute calls out and CBH wasn't given the opportunity to correct it when they were still the owners.

Hinkle asked Wilkinson when CBH enters into a contract or determines the home price, are the permit fees and impact fees not considered in the final figure?

Wilkinson stated it is assessed based on what CBH normally paid, not what is spent on the house. With the market, it is hard to base the whole hard cost. It isn't an individually lined itemed.

Comm. Luther asked the total dollar amount that needs to be refunded.

Hinkle stated the total dollar amount that would need to be refunded is \$48,825.00.

Chairman Feaster asked if there was any other testimony. No one spoke up.

Comm. Smith made a motion to close the record for the proceed of testimony and or evidence. Comm. Luther seconded the motion. Deliberation took place.

Attorney Marc Bybee with White Peterson Law Firm read 67-8211, subsection 2. When the right to a refund exists, the governmental entity is required to send a refund to the owner of record within ninety (90) days after it is determined by the governmental entity that a refund is due.

There is no definition in statute for "owner of record" in 67-8203.

Attorney Bybee stated that there is no dispute between the Impact Fee Administrator and CBH that there is a right to a refund. However, there is a dispute regarding who should receive the refund. He further advised the commission that it is their job to apply the statute at issue (67-

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8211, subsection 2) to the present facts, and the language of the statute states a refund goes to the owner of record.

Comm. Smith asked if the statute only relates to Impact Fees.

Attorney Bybee stated the statute only applies to Impact Fees. The board is called upon to interpret the statute, not to write the statute.

Comm. Smith stated that CBH would have been entitled to it if it was found within 90 days.

Hinkle stated, no, we didn't know there was an error because the City collects the fees on our behalf and the City caught the error and notified us. I contacted attorney Gigray and he had the district send CBH a refund application since they are the ones that paid the fees and the district can't move forward with the process without an application completed.

Attorney Bybee elaborated on the process of the Capital Improvement Plan (CIP) and if funds aren't spent within 10 years, a refund is due. The district wouldn't go back 10 years to find out who paid the fee, the refund goes back to the homeowner of record at the time of the refund.

Comm. Smith asked, at this point, if the next step would go before the City Council if the board agrees with the Administrator of Impact Fees since the mistake was made at the City level.

Attorney Bybee stated that is correct, if someone appeals the decision today.

Comm. Crawford asked Wilkinson if there is a line item in their budgets that show impact fees.

Wilkinson stated it does not.

Comm. Smith made a motion to close the record for the proceed of testimony and or evidence. Comm. Luther seconded the motion, motion passed with a unanimous voice vote.

Comm. Smith stated he would like to give it to CBH, but doesn't want to go against statute.

Comm. Feaster agreed with Comm. Smith.

Comm. Crawford stated he is an advocate for the homeowner and will stick to the statute.

Comm. Smith made a motion to affirm the decision from the Impact Fee Administrator to refund the impact fees to the current homeowner of record. Comm. Crawford seconded the motion, motion passed with a unanimous voice vote.

Comm. Crawford made a motion to continue the hearing on October 13th at 1:00pm for adoption of findings of facts, conclusions of law and order of decision. Comm. Smith seconded the motion, motion passed with a unanimous voice vote.

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Public Input/Special Presentations: None

Financial Reports Presented by Hinkle: Comm. Crawford moved to accept the financial reports and report of fund investments, and to approve disbursement of funds in the amount of **\$189,550.24** the District for payment of bills and payroll as presented. A disbursement of \$0 for the Association for payment of bills. Comm. Smith seconded the motion, motion passed with a unanimous voice vote.

Purchase Order over \$5,000 – None

Summary of Correspondence: None

Staff Reports:

Chief Report – by T.J. Lawrence: Chief Lawrence reported the first meeting with the Levy Committee will take place on the 16th of September. Ben Sterling has been promoted to Driver. All of our Captains will be going to leadership training in November. Chases were ordered this week. Remodel plans have been submitted from Randy Halverfield and a few tweaks were being made. Kuna Deputy Burdoff helped during a fire and the district should recognize him for his assistance.

Local 4165 - Full Time Firefighter Report: None

Association Report: Ben Sterling who is not a current member, but was previously, would like to assist in selling off the assets. The union has a community assistance fund and the association could donate it to the community assistance fund.

Hinkle asked if the district or Union could use the items in the future for Kuna Days or a future barbeque.

Matt Graham stated that Union has no interest in barbeques and their main focus is their gold tournament.

Ben sterling will work with the Chief and Krystal on a proposed plan to handle the assets and bring it before the board.

Attorney Report: Bybee indicated that Gigray has been helping with the Impact Fee Refund process, the Emergency Access for Falcon Crest, Impact Fee Adv. Committee due to HB 189, Public Records Request from Gammels attorney and Draft Legislation for Ordinance Authority.

Officer of Administration Report by Krystal Hinkle: Hinkle reported everything is on the agenda.

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Administrator of Impact Fees by Krystal Hinkle: Hinkle reported that the current fund totals \$2,029,645.79 thru July.

Old Business:

State Fire Commissioners Report: Annual Conference is coming along, but there is discussion about moving it to a virtual conference.

Ada County City EMS System (ACCESS) Update:

Executive Session Board of Commissioners Regular Meeting of August 11, 2021– The Commissioners, upon a unanimous roll call vote, went into the executive session, pursuant to Idaho Code Section 74-206 (1) (a) to consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need and (b) to consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent and (f) to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation. The executive session commenced at 2:11 p.m. In attendance were all the members of the Board of Commissioners, Chief T.J. Lawrence, Krystal Hinkle and legal counsel Wm. F. Gigray, III and Marc Bybee. Krystal Hinkle was appointed as secretary to take the minutes of this executive session. Information was then exchanged among the Commissioners in attendance, Chief T.J. Lawrence, Krystal Hinkle and Legal counsel regarding the subject matters of the executive session. At 2:45 p.m., Chief Lawrence was asked to leave the exec. session. A motion was made by Commissioner Mike Smith and seconded by Tim Crawford to come out of executive session which motion passed unanimously at 2:59 p.m.

Open session resumed and Chairman Feaster reported that information was received in relation to the announced purpose for going into executive session and no action was taken by the Commissioners.

New Business:

Discuss and Consider Resolution Approving the Dispatch Agreement with Ada County - Comm. Smith made a motion approving Resolution 2021-30 approving the Dispatch Agreement with Ada County. Comm. Luther seconded the motion, motion passed with a unanimous voice vote.

Discuss and Consider Resolution Approving the Bundle Billing Agreement with Ada County - Comm. Smith made a motion approving Resolution 2021-31 approving the Bundle Billing Agreement with Ada County. Comm. Crawford seconded the motion, motion passed with a unanimous voice vote.

Discuss and Consider Resolution Approving the Business Assoc. Agreement with Ada County - Comm. Smith made a motion approving Resolution 2021-32 approving the Business

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Associates Agreement with Ada County. Comm. Crawford seconded the motion, motion passed with a unanimous voice vote.

Discuss and Consider Resolution Approving the Stationing Agreement with Ada County - Comm. Smith made a motion approving Resolution 2021-33 approving the Stationing Agreement with Ada County. Comm. Crawford seconded the motion, motion passed with a unanimous voice vote.

Discuss and Consider Resolution Approving the Destruction of Records - Comm. Smith made a motion approving Resolution 2021-34 approving the Destruction of Records. Comm. Crawford seconded the motion, motion passed with a unanimous voice vote.

Discuss and Consider Resolution Approving the Temporary Emergency Access Easement Agreement with M3 Companies for Falcon Crest - Comm. Smith made a motion approving the temporary emergency access easement agreement. Comm. Luther seconded the motion, motion passed with a unanimous voice vote.

Discuss and Consider Attorney Representation – With Gigray moving to California, the board wanted clarification on who would be at the meetings in the future.

Mark Bybee indicated that he would be physically at our meetings, but Bill Gigray will still help a lot remotely.

Commissioner Open Discussion – Commissioner Feaster would like the Levy Committee to have a proposal at our next board meeting for a Consulting Firm.

Commissioner Crawford moved to adjourn the meeting. Commissioner Luther seconded the motion, motion passed with a unanimous voice vote.

Meeting adjourned at 3:31 p.m.

Respectfully submitted,

Krystal Hinkle, District Secretary

Greg McPherson, Chairman