

## MINUTES

**Central Arizona Fire and Medical Authority  
Central Yavapai Fire District Board of Directors  
CY Regular Meeting**

**Monday, November 27, 2017, 5:30 pm - 6:30 pm**

**Central Arizona Fire and Medical Authority, Administration, 8603 E. Eastridge Drive, Prescott Valley, Arizona**

### **In Attendance**

Darlene Packard; Dave Tharp; Jeff Wasowicz; Laura Mowrer; Matt Zurcher;  
Nicolas Cornelius; Scott A Freitag; Susanne Dixson; Tom Steele; ViciLee  
Jacobs

### **NOTICE OF MEETING**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Central Yavapai Fire District Board of Directors and the general public that the **Central Yavapai Fire District** will hold a meeting open to the public on **Monday, November 27, 2017 at 5:30 p.m.** The meeting will be held at **Central Arizona Fire and Medical Authority, Administration, 8603 E. Eastridge Drive, Prescott Valley, Arizona.** The Board may vote to go into Executive Session on any agenda item, pursuant to A.R.S. §38-431.03(A)(3) for discussion and consultation for legal advice with the District's Attorney on matters as set forth in the agenda item. The following topics and any variables thereto, will be subject to Board consideration, discussion, approval, or other action. All items are set for possible action.

1. **CALL TO ORDER / ROLL CALL OF BOARD MEMBERS**

**Board Chair Packard called the Central Yavapai Fire District Board of Directors' meeting to order on November 27, 2017 at 5:38 p.m. at Central Arizona Fire and Medical Authority, 8603 E. Eastridge Drive, Prescott Valley.**

2. **PLEDGE OF ALLEGIANCE**

**Fire Marshal Chase led the Pledge of Allegiance.**

3. **CALL TO THE PUBLIC**

Those wishing to address the Central Yavapai Fire District Board need not request permission in advance. However, we ask that you complete a Call To Public Form for the record. The Board is not permitted to discuss or take action on any item raised in the Call to the Public due to restrictions of the Open Meeting Law; however, individual Board members may be permitted to respond to criticism directed to them. Otherwise, the Board may direct the staff to review the matter or the matter may be placed on a future agenda. Individuals may be limited to speak for three (3) minutes with a total of 30 minutes allotted for Call to the Public per meeting.

**Board Chair Packard opened the meeting for public comment. There were no comments.**

4. **CONSENT AGENDA**

All matters listed under consent agenda are considered to be routine by the Central Yavapai Fire District Board and will be enacted by one motion. There will be no separate discussion on these items. If discussion is desired, that item will be removed from the consent agenda and will be considered separately for discussion and possible action.

- A. Approve Regular Session Minutes - October 23, 2017
- B. Approve Executive Session Minutes - October 23, 2017
- C. Approve General Fund Financial Statements

- D. Approve Bond Debt Service Financial Statements
- E. Transfer October Revenues from Central Yavapai Fire District to Central Arizona Fire and Medical Authority in the Amount of \$6,272,359.79

**Director Steele asked that Items A, B, and E be pulled from the Consent Agenda.**

**Motion to approve the amended Consent Agenda minus Items A, B, and E.**

**Move: Matt Zurcher Second: Tom Steele Status: Passed**

**Yes: ViciLee Jacobs, Darlene Packard, Tom Steele, Jeff Wasowicz, Matt Zurcher**

**A. Approve Regular Session Minutes - October 23, 2017**

**B. Approve Executive Session Minutes - October 23, 2017**

**Director Steele explained that he has the same explanation for both Items A and B. He stated that he asked for a copy of the audio tapes so he could review it, because it went very quick. He stated that he wears hearing aids, but the sound has been such that he could not understand portions of what had been discussed. For that reason, he asked for these two items to be pulled, because he could not approve them based on his recollection of those meetings and the minutes provided. He stated that he saw the minutes provided, but it is still not adequate for him.**

**Director Jacobs stated that she is in agreement with pulling Items A, B, and E. She explained that after reviewing the Regular and Executive Session minutes several times, she noticed they weren't as accurate as she would like to see especially in the Executive Session; there were things that were mentioned by the Attorney that were not recorded in the minutes. She stated that being part of the Executive Session, it would be inappropriate to discuss at this time.**

**Attorney Cornelius advised that he and Director Steele communicated at length regarding the issue related to review of open meeting and executive session minutes. The issue is that he requested a copy be made so that it could be removed from the facility and reviewed at his leisure at home. There are confidentially clauses that have an impact regarding executive session minutes. Attorney Cornelius explained his process in contacting the the Open Meeting Law Enforcement Team Unit at the Attorney General's office. He spoke with someone at the AG's office at length and they advised that there is no previous instance where that has ever taken place where anyone was allowed to make a recording and leave with it. He explained that any director could request to come into the office and review those things as many times as is necessary and take notes. That was the advice that Attorney Cornelius was given, and he stated that he provided that advice to Director Steele. Regarding open meeting minutes, any board member or even the public can come in and review them. The board member can review the recording, make notes, provide information to the Attorney or staff regarding what changes need to be made, and then that can be done. Attorney Cornelius stated that he does not believe it should be delayed; it needs to be done rapidly so that we can move forward with the record. He suggested that directors try to do that within the month following the issuance of the minutes for approval so that any changes can be included at the next monthly meeting. By law, we can keep recordings for 90 days; we don't want to wait the full 90 days. Attorney Cornelius stated that it's important that directors have the opportunity to review the minutes.**

**Director Wasowicz confirmed with Attorney Cornelius that the public can record open meetings.**

**Attorney Cornelius stated that as far as the executive session portion, he would strongly advise that the confidentially requirements dictate that they should never leave the Agency. Attorney Cornelius explained that he and the Open Meeting Law Enforcement Team representative shared emails, Attorney Cornelius followed up with senior staff, and then he spoke with the representative. Attorney Cornelius also stated that he contacted the State Bar to confirm he wasn't overstepping making this suggestion to the Board.**

Director Steele stated that he read the statutes and it didn't say he couldn't -- it just said it had not been done prior. He stated that he wanted to bring his own recorder in and his own blank tapes so that he wouldn't be taking staff time or the additional cost of the tapes. Director Steele stated that as a sworn board member he is sworn to the oath of protecting the minutes in executive session as well as open session. He stated that he takes the opposite approach; he should have had permission to do it right then and then he could have potentially approved the minutes that were set forth tonight.

Director Zurcher asked if Director Steele had watched the video. Director Steele stated that he did not attempt to watch the video.

Chair Packard asked for a motion to approve the Regular Session Minutes and the Executive Session Minutes.

Director Jacobs asked if the items could be removed and brought back December 21. She stated that she could come in; she's been ill for 2 1/2 weeks and couldn't come in to review. She said she has time now and would be able to come in a timely manner to review the executive session especially.

Motion to table Items A and B from the Consent Agenda for the next Board meeting.

Move: Matt Zurcher Second: Jeff Wasowicz Status: Passed  
Yes: ViciLee Jacobs, Darlene Packard, Tom Steele, Jeff Wasowicz, Matt Zurcher

E. Transfer October Revenues from Central Yavapai Fire District to Central Arizona Fire and Medical Authority in the amount of \$6,272,359.79

Motion that we approve this transfer.

Move: Darlene Packard Second: Jeff Wasowicz

Chair Packard asked Attorney Cornelius to address the legality of this vote and the Board's fiduciary responsibility.

Attorney Cornelius asked why the agenda item was removed from the consent agenda.

Director Steele stated that his objection is the same as in the past: that Central Yavapai Fire District (CYFD) has very little discretion in all this money that is being spent and as one of the two people that are not being accessed. He stated that he did not receive a copy of CAFMA or Chino Valley agendas and he had no idea what they were going to be discussing tonight. He stated that being left out of all the major purchases kind of makes him feel a little on edge. Being asked to transfer over \$6 mil this month; he asked if that is all they were good for now. Director Steele stated that was his reason for voting nay or abstaining, if that is a better legal answer for Attorney Cornelius.

Attorney Cornelius stated that he was advised by Chief Freitag that the agendas for the other two were attached.

Director Steel stated they were not in his envelope and neither were the department reports.

Director Jacobs agreed she did not receive them.

Director Zurcher stated that on November 21, 2017 at 10:10 a.m., he received an email from Laura that had every agenda on it as well as the Division Report and the Capital Replacement Schedule sent to board members by blind copy.

Attorney Cornelius reviewed the sent email and named all board members for Chino Valley, Central Yavapai, and CAFMA to whom the email was sent. He stated that it included

all agendas for all meetings, the Division Reports, and Capital Replacement Schedule.

Director Jacobs stated that she sent Laura an email stating that she received the CYFD agenda.

Attorney Cornelius confirmed that the item was in email; not BoardPaq.

Director Jacobs stated that they weren't placed in BoardPaq this month.

Administrative Manager Dixson confirmed that they are always sent by email.

Director Steele was adamant that last month the items were in BoardPaq.

Laura explained that every month the agendas and Division Reports are sent via email.

Attorney Cornelius stated he has addressed some of these issues in correspondence to Directors Steele and Jacobs. He advised that an abstention is probably better than a NO vote generally speaking, but the Board should exercise their own discretion. He explained that he disagrees with Director Steele's analysis. When this Board conducted the evaluation of the budget and approved the budget, that is the opportunity to present questions. He explained that the monthly activity simply implements the budget that was previously approved by this Board. He disagrees that all the Board is doing is moving money. Attorney Cornelius advised that the issues related to a NO vote creates substantial legal issues for CAFMA, because it does not have the funding to provide fire and emergency services. If the funding is delayed, first you are in breach of the contract, a breach of fiduciary duties; second it creates problems for all the things that get paid with that money including: employee salaries, worker's comp and other health insurance benefits, PSPRS, vendor payments, rent, utilities, fuel, etc. Attorney Cornelius advised that it creates a potential risk for the Agency and potential risks for individuals who vote that way because you may be taking yourself out of your qualified immunity.

Director Steele stated that he voted against the budget and believes Director Jacobs did also. He asked if he and Jacobs were in violation of the law for voting against the budget.

Attorney Cornelius stated that they were not.

Director Steele asked why they were in opposition if they voted no to the transfer as a matter of conscience for the taxpayers of this fire district.

Attorney Cornelius advised that the budget was approved by the agency by a majority vote; contracts have been put in place, and that is where the liability arises. He stated that is a function of the contract, and he believed that both Directors Steele and Jacobs signed the original CAFMA contract and that Director Jacobs made the motion for approval. Director Jacobs disagreed. Attorney Cornelius explained that when CAFMA was created, there is a contract between CYFD and Chino Valley Fire District (CVFD) to provide funds so that fire and medical services are provided in both districts. If that is unfunded, if there is some vote taken in violation of the terms of the contract, that is where the problem arises. It creates liability not only to the individuals that are getting direct payments such as vendors, employees, etc, but it also creates problems with state and federal government that oversee wage and hourly payments. There can be liabilities that arise whereby it's not only the amount that people are supposed to be paid, but sometimes twice that amount or three times that amount in penalties if they don't receive those payments. That is separate and apart from a breach of contract.

Attorney Cornelius advised that the obligation is different when the contract is in place, and the budget has been approved by both agencies whether there was a no vote or not. He advised that if the money is not transferred due to a no vote, the liability will accrue at that moment. He stated that this does not mean that the contract can't be changed. If the Board chooses to move forward, then there is a discussion with CVFD to see if they agree to the changes. If they do not agree, the contract is what it is, and either you look to breach the contract or it stays in place and we are bound by the terms of the agreement

the same as any other contract.

Director Steele stated that the three-two vote is still going to approve the funds transfer to CAFMA. He stated that he is making a personal vote, because he still had a duty to the fire department and the taxpayers of CYFD.

Director Jacobs addressed Attorney Cornelius and stated that she disagreed with his legal interpretation and she is not going to be intimidated by his legal explanation. She stated that she is going to vote no and will continue to vote no until they get some resolve that they have been asking for since the inception of CAFMA.

Chair Packard called for a vote to transfer the funds

**Yes: Darlene Packard, Jeff Wasowicz, Matt Zurcher**  
**No: ViciLee Jacobs,**  
**Abstained: Tom Steele**  
**Status: Passed**

5. VOTE TO GO INTO EXECUTIVE SESSION

- A. Legal Advice Pursuant to A.R.S. §38-431.03(A)(3) and Instruction to District Legal Counsel Pursuant to A.R.S. §38-431.03(A)(4) Re: Training Center Drainage

**Motion to adjourn into Executive Session at 6:02 p.m.**

Move: Matt Zurcher Second: Tom Steele Status: Passed

Yes: ViciLee Jacobs, Darlene Packard, Tom Steele, Jeff Wasowicz, Matt Zurcher

6. OLD BUSINESS

**Chair Packard reconvened into Public Session at 6:22 p.m.**

- A. Discussion and Possible Action Related to Training Center Drainage Issues

**Chair Packard confirmed that Attorney Cornelius has his direction.**

- B. Discussion and Possible Action Related to Board Size and Appointment Under the CAFMA Joint Powers Authority (JPA) and Possible Changes to the Related Intergovernmental Agreement (IGA)

Director Steele stated that these documents were circulated. He started reading the document.

*"Concerns on the Validity of the Joint Powers Agreement as it Pertains to ARS Title 48, Chapter 5 and Recommended Changes to the Joint Powers Agreement*

*Under Section I. **Creation of the Authority**. The parties (CYFD and CVFD Boards) have created a separate legal entity known as the Central Arizona Fire and Medical Authority (CAFMA). It was our understanding that CAFMA was going to be a management oversight of the fire districts or as it was explained an "Umbrella over the two fire districts". This would only require one Fire Chief, one Human Resource Manager and allow the shuffling of Battalion Chiefs between the two Fire Districts to save personnel costs. We never anticipated that the two fire districts were going to be dismantled and combined in their entirety into CAFMA or that the Fire District Board members that were not on the CAFMA Board would be stripped of their autonomy under ARS 48-805. It is our belief that ARS 48-805.01 does not allow the consolidation of the CYFD and CVFD into one organization CAFMA without first getting the approval of the citizens in the Fire Districts by conducting an election as outlined in ARS 48-802.F & G, ARS 48-820 and ARS 48-822. The only reason we voted for this process was to save money, however the unforeseen consequences in*

*the consolidation of both Fire Districts now promotes us to reconsider our decision. We cannot understand how two Fire District Boards can exist when they have no Fire District to oversee since their personnel, equipment, facilities, property, PSPRS retirement payments, insurance, workers compensation, etc. have all been transferred to CAFMA. So in essence, voters are electing Fire District Boards that have no Fire District and at least five board members are stripped of their autonomy under ARS 48-805 and merely pass money to operate CAFMA without being allowed any operational oversight as outlined in ARS 48-805."*

Director Wasowicz asked who "we" is as there is no signature on the document.

Director Jacobs stated that she has an amended copy that states the document was authored by Tom Steele and ViciLee Jacobs. (\*\*See note at bottom of agenda item)

Director Steele stated it was a joint research effort.

Director Jacobs stated that they worked on it despite her illness and it took them quite some time to get through this.

Director Jacobs continued to read the document.

*"Under Section I.A **Nature of Authority**. This section clearly states that the Authority is a separate legal entity organized pursuant to Arizona Revised Statutes 48-805.01. It also states that the Authority will observe and comply with statutes and laws applicable to the fire protection district. Does this include conducting the election to get the approval of property owners in both fire districts as outlined in ARS 48-802F & G, ARS 48-820 and ARS 48-822? In the Fire Chief's Division Report of March 21, 2017, he states, "Our Intergovernmental Agreement (IGA) and accounts have been vetted by our legal counsel, the county attorney, several assistant attorney generals as well as others. Based on their findings in concert with relevant statute no legal issues exist related to the finances of CAFMA." We are requesting that you identify the names of the aforementioned legal authorities who provided their opinions and findings due to our issues of concern brought forth in this document."*

Director Jacobs stated that she has been asking for names for months and she has not received them in writing.

Director Steele continued reading.

*"Under Section II. **Governance**. A. Board of Directors of the Authority. The governing body of the Authority shall be appointed Board of Directors, in which all administrative and legislative power of the Authority is vested under ARS Title 48, Chapter 5. Based on this provision, the five Board members not assigned to CAFMA are stripped of their administrative and legislative power under the Authority. Under sub-section II.A.1 **Number**. The Board of Directors. The Board of Directors shall be comprised of five (5) Directors. Each Director shall be entitled to cast one vote on any matter that comes before the Board. We believe this section should be revised to (7) Directors based on provisions in ARS 48-803 which allows a Fire District that exceeds fifty thousand in population to have a 7 member Board. Since CAFMA has just under 90,000 in population, they should go to a 7 member Board that is represented by the two Fire Districts based on percentage of budget and population. This is founded on appropriate representation based on taxation principals. Since CYFD contributes 84% of the budget and 80% of the population they should have 5 Directors for CAFMA. Since CVFD has contributes 16% of the budget and 20% of the population they should have 2 directors for CAFMA. This would equate to 70% representation for CYFD and 30% representation for CVFD. The current Fire Chief believes that the CAFMA Board should represent a partnership between the two Fire Districts and we wholeheartedly respectfully disagree with his assessment."*

Director Jacobs continued reading.

*"Under sub-section II.A.2. **Appointment.** Based on the appointment process each of the two Fire Districts submit their Chairman and Clerk as representatives. They in turn elect the fifth member from the Fire District that makes the largest financial contribution to the JPA. This has not been followed in the past and continues not to be followed since the CVFD Chairman has never served on the CAFMA Board. Why have you failed to follow your own policy? There also should be some latitude to rotate all District Fire Board members to insure that they have served on the CAFMA Board at least half of their term, if they desire to serve. This action could resolve the matter of stripping Fire District Board members who do not serve on CAFMA of their autonomy. The current CAFMA Board appointment process disenfranchises the voter in both of the Fire Districts because the person/s they are voting to oversee the Fire District may be stripped of their autonomy and have no power to administer the provisions of ARS 48-805 if they are not appointed to CAFMA. Another consideration would be to create a district system similar to the Yavapai County Board of Supervisors to insure that the voter has representation on CAFMA. The current CAFMA Board has two directors from Chino Valley, two from Prescott Valley and one from Dewey/Humboldt. There is no director to represent the Prescott addresses located in the County, which could be as many as 25,000 in population."*

Director Steele continued reading.

*"Under sub-section II.3. **Removal.** The JPA allows a Director to be removed from CAFMA "with or without cause", whenever in its judgement the best interests of the Authority will be served thereby. Why would a Director be removed from CAFMA "without cause"? Under sub-section II.C Duties of the Board The duties of the Authority Board of Directors shall be set forth in the Authority Board Policy Manual, as amended from time to time. The CAFMA Board has never developed a CAFMA Board Policy Manual and is currently using the CYFD Board Policy Manual. The Fire Chief's contract requires him to update policy matters to insure compliance. Under sub-section II.D.2. Removal we would question why someone would be removed from the CAFMA Board without just cause?"*

Director Jacobs continued reading.

*"Under sub-section IV. **Assignment of Assets, Debts, Property and Personnel.** To carry out the Authority's obligations to provide fire rescue and emergency services on behalf of the Parties, the Parties hereby assign to the Authority, beginning July 1, 2016, their assets, debts if any, property and personnel as more specifically provided in this Article IV. Based on the provisions outlined in ARS 48-802F & G, ARS 48-820 and ARS 48-822, we are unsure that the 10 Fire District Board members have the authority to enter into this agreement without conducting the election to get the approval of property owners in both fire districts." Under sub-section IV.A. **Assignment of Existing Assets and Debts.** As previously stated, based on the provisions outlined in ARS 48-802F & G, ARS 48-820 and ARS 48-822, we are unsure that the 10 Fire District Board members have the authority to enter into this agreement without conducting the election to get the approval of property owners in both fire districts. Under sub-section IV.B. **Personnel.**"*

Attorney Cornelius interrupted to address ARS 48-820 and ARS 48-222 statutes and stated that those refer specifically to consolidations or mergers.

Director Jacobs stated that we have consolidated; there is no resemblance of a fire district from Central Yavapai. She asked if we see a fire truck from Central Yavapai or a fire station or where are the personnel under their budget.

Attorney Cornelius continued and stated that ARS 48-820 and ARS 48-822 are specifically related to consolidation or merger. This is a separate statutory entity; there are multiple joint powers authority statutes in Arizona Revised Statutes; they appear in all the special taxing district sections; they appear in multiple other sections. The same language that appears in this statute is cloned in all of those other JPA sections. This is a stand-alone legal entity; it is not a consolidation or merger.

Director Jacobs stated that it is a consolidation.

Attorney Cornelius disagreed and stated that Director Jacobs' questions arising from her being unsure whether the Boards had approval to do this statutorily; they absolutely did. They have absolute authority to create an entity under ARS 805.01; no question at all. With regard to how it is operated or how board members are appointed, those are issues that are open for discussion. Anyone that disagrees with how the JPA was created, there is a process called a Declaratory Judgment Action and they can go forward. He stated that he would be happy to take that step and this agency would be happy to pursue its attorney fees and costs for having to address that specious argument.

Attorney Cornelius advised that under ARS 805.01 an election is not required. The statutory sections related to 820 and 822 requiring an election used to be only if there was a non-unanimous vote. It was a two-step process - unanimous vote or election. That statute has been changed; it no longer requires a unanimous vote. Under 820 or 822 if a majority agrees to do it, it no longer requires the election. That issue is past tense; it is not a legal basis for arguing that the creation or the organization related to the JPA is in any way illegal. If you think there is a basis, file the suit, we'll have the discussion in front of the judge and we will collect our attorney's fees and costs thereafter.

Director Jacobs continued with her position and continued reading.

*"Under sub-section IV.B. **Personnel**. As previously stated, based on the provisions outlined in ARS 48-802F & G, ARS 48-820 and ARS 48-822, we are unsure that the 10 Fire District Board members have the authority to enter into this agreement without conducting the election to get the approval of property owners in both fire districts. Under sub-section IV.B.1. **Fire Chief**. Prior to the creation of the Authority, under the IGA the CYFD Board had oversight of the Fire Chief as their only employee. Under the current agreement, only the CYFD Board members that are appointed to the CAFMA Board have that authority. Therefore, those Board members that are on the CAFMA Board have supervisory oversight of the Fire Chief for performance evaluations, pay increases, etc. Consequently, five elected Board members are stripped of their autonomy. Based on the provisions outlined in ARS 48-802F & G, ARS 48-820 and ARS 48-822, we are unsure that the 10 Fire District Board members have the authority to enter into this agreement without conducting the election to get the approval of property owners in both fire districts. Under sub-section IV.C. **Pension Funds**. Based on the provisions outlined in ARS 48-802F & G, ARS 48-820 and ARS 48-822, we are unsure that the 10 Fire District Board members have the authority to enter into this agreement without conducting the election to get the approval of property owners in both fire districts."*

Director Steele continued reading.

*"Under sub-section V.A **Creation of Single, Integrated Fire Authority**. Based on the provisions outlined in ARS 48-802F & G, ARS 48-820 and ARS 48-822, we are unsure that the 10 Fire District Board members have the authority to enter into this agreement without conducting the election to get the approval of property owners in both fire districts. Under sub-section V.D **Transfer of Authority and CYFD Assets, Property, Personnel and Pension Funds**. Based on the provisions*



outlined in ARS 48-802F & G, ARS 48-820 and ARS 48-822, we are unsure that the 10 Fire District Board members have the authority to enter into this agreement without conducting the election to get the approval of property owners in both fire districts. Under subsection V.E. **Transfer of Authority and CVFD Assets, Property, Personnel and Pension Funds**. Based on the provisions outlined in ARS 48-802F & G, ARS 48-820 and ARS 48-822, we are unsure that the 10 Fire District Board members have the authority to enter into this agreement without conducting the election to get the approval of property owners in both fire districts. Under sub-section VII. **Term and Termination** A. Term Based on the provisions outlined in ARS 48-802F & G, ARS 48-820 and ARS 48-822, we are unsure that the 10 Fire District Board members have the authority to enter into this agreement without conducting the election to get the approval of property owners in both fire districts. Under sub-section VII.C. **Future Consolidation with a Non-Party/Expansion of Agreement to Others**. Based on the provisions outlined in ARS 48-802F & G, ARS 48-820 and ARS 48-822, we are unsure that the 10 Fire District Board members have the authority to enter into this agreement without conducting the election to get the approval of property owners in both fire districts.

Director Jacobs continued reading.

"Under sub-section VIII. Miscellaneous. A. **Party Inclusions and Exclusions**. Based on the provisions outlined in ARS 48-802F & G, ARS 48-820 and ARS 48-822, we are unsure that the 10 Fire District Board members have the authority to enter into this agreement without conducting the election to get the approval of property owners in both fire districts.

"In closing, at the time the JPA was approved by the CYFD and CVFD Board members, we were told by Attorney Cornelius (who represents all three Boards) that this was a "New Animal that has never been done in this State before and we can make changes as we go." Therefore, these are recommended changes to the JPA that should be pursued for consideration. However, before these changes are pursued, we would like to conduct the required election as outlined in ARS 48-802.F&G so our constitutions will determine the direction we take on the future of CAFMA."

This document was authored by Thomas Steele Director of CYFD and ViciLee Jacobs Director of CYFD.

Director Jacobs provided a closing statement: "As an elected official, I took an oath to uphold the Constitution and the laws of the State of Arizona. That is what I am doing here today. Once again, I continue to bring forward concerns surrounding the formation of CAFMA and how it relates to state law. As it stands currently, all taxpayers in CYFD will continue to have tax increases to support CAFMA while Chino Valley Fire District tax levy is at it's maximum and will not see an increase to support CAFMA. Central Yavapai Fire District and Chino Valley Fire District taxpayers have been disenfranchised and never have had the opportunity according to the Arizona Revised Statutes Title 48 Chapter 5 to conduct an election so the taxpayers can have a vote to consolidate the two fire districts. Chief Freitag has said, with Attorney Cornelius being present, "he knew that taxpayers would never pass it, so this is what we are going to do". I continue to question Attorney Cornelius representing all three boards; that's nothing new to him. I've got emails to support that and feel as though we were deceived by not informing the Board members at the April 2016 meeting the provisions in the law that requires the vote of the taxpayers. That 10 board members do not, and I repeat, they do not have the authority to vote to disenfranchise the taxpayers their right to vote, and I am standing with the taxpayers. Every one of these firefighters that are in here, they also are the taxpayers within either one of the fire districts and could be financially responsible for it as well.

Chair Packard called for a motion.

Attorney Cornelius stated that this all seems to arise from an analysis which is mistaken, erroneous from the get go. He stated that the Director is characterizing a statutory provision enacted by legislature in multiple sections as something which it is not. You're claiming that it's a consolidation or merger; it's neither.

Director Jacobs asked where is CYFD? Where are the personnel? Where are our fire stations? She stated it's consolidated under CAFMA.

Attorney Cornelius stated that we didn't consolidate. He explained that a consolidation would be an entirely different entity; it would require the disappearance of one fire district entirely to be consumed into the other and one of the boards would be completely dissolved. He explained that in a merger, the boards would become a combined entity and some portion of those board members are actually disenfranchised; that is, removed. As an elected official of this agency, they are authorized to review the budget; they are authorized to review changes to the Policy Manual; they are authorized to review purchases, transfers of funds, all of those things are within your privy; there has been no disenfranchisement. Attorney Cornelius pointed out that there were three board members here today that were present when the JPA was put in place; you all voted. He confirmed that Directors Jacobs, Steele, and Packard were on the Board.

Attorney Cornelius stated that what he is hearing today is a request to change the Board to comport with a statutory section that doesn't apply and a suggestion that if the Board was changed in composition, that would resolve your concerns. He asked if the board didn't have the authority to do this and you're unsure about it, how does changing the composition of the board at CAFMA impact that in any way. He advised that CYFD has always had a majority on the CAFMA Board. He stated that the Board can address changing the Board makeup if they want to do it. He reminded the Board that it's a contract with another party and they would need to also agree. Attorney Cornelius advised the Board to provide him with instructions if they wanted to move forward and he would have the discussion with Chino Valley. He also advised that he placed his concerns related to conflict of interest in writing and it was signed by both CYFD and CVFD Boards. He explained that the JPA states if there is a conflict between the two, he no longer represents Chino Valley; he represents CYFD.

Attorney Cornelius advised that he has asked for concerns in writing many times with no response. He reiterated that if he is presented with concerns, he will discuss them.

Attorney Cornelius addressed the questions about attorneys that approved the JPA. He advised that they did not approve it; they reviewed the plans with regard to the financial structure being appropriate; are they admissible and acceptable under law. That was through the County Attorney's office.

Director Jacobs stated that she requested those names.

Attorney Cornelius stated he had no idea who that person was.

Director Jacobs asked how Attorney Cornelius could say this has been vetted.

Attorney Cornelius advised that he had discussions with people at the Attorney General's office who represent PSPRS, the worker's comp unit. He clarified that the AG's office has taken the position with him in verbal conversation and in writing that they do not represent fire districts and will not opine. He stated that he learned earlier today that two District 1 representatives actually filed a written request in May 2017 for the AG's office to opine. Attorney Cornelius stated that he has been told many times - he understands Director Steele had many

conversations as well - they will not opine. If someone wants to pursue it, there are legal methodologies for doing that. There is no reason for us to be spinning our wheels; there's no reason as Directors that you should have a sense that you're unsure whether what is taking place is correct or incorrect. He directed the Board to follow their legal obligation and rights and proceed.

Director Jacobs asked if Attorney Cornelius was not in agreement to allow the taxpayers to vote.

Attorney Cornelius advised that the items presented today do not legally require an election. It would cost each of the fire districts tens of thousands of dollars if Directors want to proceed with an election. He also advised that there are substantial delays. He doesn't believe there is any basis for going through that process without a finding from a judge that the entity is in fact problematic. Attorney Cornelius advised that the Board may make a motion, someone second it, and then if the motion doesn't carry, then that's one resolve. If it does carry then there is another.

Chief Freitag explained that Director Jacob's statement regarding his statement that the public would not vote for a consolidation was unclear for the public in the room. He clarified that he had said they would not vote for a consolidation because the tax rates were too disparate; Chino's tax rate is \$3.25 and Central was lower. He stated that in order to move forward with a legal consolidation of the two entities, the mill rates would have to be exactly the same. There is no way that CYFD taxpayers would vote to increase their tax rate and at the same time decrease Chino Valley.

Chief Freitag mentioned that Director Steele or whoever wrote the document made the statement stating that Chief Freitag believes that CAFMA should represent a partnership between the two parties. Chief Freitag clarified that his statement was that the two boards agreed that they wanted a representation of partnership; that was not the fire chief. The Fire Chief simply restated why the boards made the decision. Chief Freitag stated that his statements are completely out of context in both the writing and Director Jacob's statement.

Attorney Cornelius advised that it implicates the whole analysis - there are all kinds of questions. If you review the original documents that were presented to this agency, there was a lot of discussion in open meetings over the course of 18 months about consolidation or merger. He stated that his legal advice on the record was neither, because of the difference in the tax rate. There was no way to bring those together in such a manner that would be fair to the taxpayers of this fire district for the very reason that the Directors mentioned. Attorney Cornelius advised that the only way to get some kind of economy of scale was to consider the JPA methodology which has been used by others, not just fire districts.

Director Jacobs stated that she is hearing the Attorney Cornelius is not going to entertain or agree to go to the vote of the people so that they have a say on your fire district and what you are saying also is that you found a loophole in the law.

Attorney Cornelius stated that he did not.

Chair Packard asked if the taxpayers in the audience would be willing to pay \$75,000 to vote on something that doesn't require a vote.

Director Jacobs asked where the \$75,000 came from.

Director Packard stated that is the cost of an election.

Director Steele reminded everyone that due to the 2010 Census, state law said that Yavapai County had exceeded the number for three county supervisors and they had to increase to five. He stated that there were multiple battles on how the districts were going to be drawn so that there could be 5 districts. He stated that had to go to a vote of the people. There was no difference in any taxation issues at all. Director Steele stated that he finds it extremely difficult that the State of Arizona would allow this to go on with the disparity there is between the two taxing districts. This could only complicate itself in the future as like Black Canyon City, Mayer, other fire districts that are up against their limits are drawn in and we become the cash cow for even more districts. There has to be something wrong with that.

Chair Packed asked for a motion.

Motion that our position paper be accepted as read and authored by both Director Jacobs and myself.

Move: Tom Steele

Chair Packard stated it is accepted.

Director Zurcher asked for Director Steele to provide the specific action he is requesting of the Board.

Motion that the Board vote on whether they accept the premise that this in some respect an invalid organization, CAFMA is an invalid organization because it has never gone to a vote of the taxpayers in the respective districts.

Move: Tom Steele Second: ViciLee Jacobs

Director Zurcher stated that he started to research this and read items that were in his paperwork that many people had received over two years ago. He read from a document titled Blending of Chino Valley Fire District and Central Yavapai Fire District into One Agency Analysis and Recommendation. The recommendation of senior staff of both fire districts is that Chino Valley and Central Yavapai Fire District enter into an IGA, intergovernmental agreement, to form a fire authority with start date of July 1, 2016. He stated that from what he learned in his training as a fire district director in Glendale is that this is one of the monumental things a fire district does--enter into IGAs.

Director Zurcher continued and stated that a third option would be a joint powers authority. The options were continuing under the current JMA at the time, a full legal merger, and the third option as the JPA, joint powers authority in which two fire district create a third party that takes over the operations of the individual fire districts. There are a number of options for appointing fire authority board members. One option is to have even numbers appointed from each fire district board. For a five member fire authority board each fire district appoints two members, the four fire authority board members then choose a fifth member from either CVFD or CYFD fire boards. Another option is to base the number of fire board authority board members on geographic size and/or population. With this option, the larger/more populous fire district would have three persons appointed. Once approved by the fire authority board, the individual fire district boards would meet to approve the fire authority budget. As separate legal entities, CVFD and CYFD would not only retain their separate tax rates, but also their individual FDATs which is fire department assistance tax dollars.

Director Zurcher continued reading and stated that under a joint powers authority, two legal entities divest their operational and administrative obligations to a new overarching third legal entity--the fire authority. The mechanism that creates this third party entity is an intergovernmental agreement or IGA. In this case CVFD and CYFD still exist as taxing authorities; however, a third agency, Central Arizona Fire and Medical Authority, becomes the employer. Employees of the two entities are transferred to the new entity. Chino Valley Fire District and Central Yavapai Fire District respectively would no longer have employees. The individual fire districts retain taxing and bonding authority based on previously established geographic boundaries. In addition, the fire districts retain the responsibility for electing board members. The administrative staff of the fire authority handles all financial transactions related to those fire district elections. A fire authority does have a clause or pathway for dissolution; however, once combined it is very difficult to separate the two. As with anything, we do not enter this arrangement with the idea that we will not be successful. The benefit of this arrangement is that under a fire authority, the mill rates remain separate, and both agencies retain their FDAT dollars.

Director Zurcher stated that the draft budget was created by combining the projected budgets for CVFD and CYFD. After factoring the cost savings from combined health care savings, worker's comp savings, PSPRS actuarial savings, and cost avoidance, the JPA budget is shown to be less than the combined budgets of both departments as separate entities under the current JMA.

Attorney Cornelius advised that there was complete and full disclosure contrary to Director Jacobs' suggestion that, quote, "I found a loophole" or that there were material misrepresentations or omissions. He advised that there were none; all of these things were disclosed in black and white over the course of months. The Directors had an opportunity to review it; it was presented to multiple local organizations including the County Board of Supervisors, state legislative personnel, the County treasurer's office, PSPRS. I think copies went to the AG's office; he asked Chief Freitag for the number of presentations.

Chief Tharp stated that he understands that the Directors are trying to say that this entity is not legal. He explained the ramifications of their insinuation. PSPRS and their in-house counsel, who was present at a meeting when we met with Director Smoot also agrees that the JPA is a legal entity. He explained that the Directors are insinuating that many organizations are in collusion with us such as A.S.R.S., Arizona State Retirement; the Yavapai County Treasurer's office, who directed our IGA toward the Yavapai County Attorney's office with Sheila Polk, because they created multiple accounts under the JPA. And they issued warrants; we can have a credit line through this organization. He continued and listed the Elections Department, the Assessor's office, the Arizona Department of Revenue--not only the taxing entity in giving us a Arizona Income Tax ID number, but also the TPT, transaction privilege tax. The Child Support Clearing House and courts recognize us. We are not talking about just this Agency; we are not just talking about this statute; we are talking about state wide agencies and county wide agencies that are all supportive of this organization and that they are all, as the Directors stated, basically being duped by a loophole. He stated that he is shocked that all of these agencies that we vetted a year and a half ago. He explained that when we went to ASRS, we also had to go to Social Security Administration and talk to them about becoming this JPA. There are multiple governmental agencies that have had to vet this process and recognize us as an actual subdivision of the State of Arizona before they would issue us tax id numbers, privilege tax numbers, etc.

Attorney Cornelius added titles of vehicle, real estate.

Director Steele stated that a lot of these organizations mentioned were probably no more than a clerk rubber stamping it because it looked like it had been approved by some other official with a law degree. He reminded everyone of the statements that had been made tonight--We are unsure that the ten fire district board members have the authority to enter into this agreement without conducting the election to give the approval of property owners in both fire districts. He explained that was the basis of their argument. He stated that they do not have lawyers representing them now to compete with Mr. Cornelius or what's been established. He stated that he knows how the votes have gone in the last year and he has a feeling that this needs further vetting if not going to a higher authority. He stated that he isn't saying that this is illegal, we are just questioning this. He stated that he wasn't calling anyone thieves, liars, or otherwise unreputable people, because they are not.

Director Zurcher clarified with Attorney Cornelius that the Board has every legal authority to enter into IGA's. Attorney Cornelius advised that they do.

Director Steele stated that is one attorney's opinion.

Attorney Cornelius disagreed.

Director Zurcher also disagreed and stated that another attorney presented training in Glendale this year and he had stated that creating IGAs was fundamental of fire districts.

Director Jacobs stated that we are talking about the joint powers agreement, which is different than the IGA.

Director Zurcher stated that the IGA created the JPA.

Attorney Cornelius advised that the joint powers agreement is the IGA.

Director Jacobs stated that she believes they made it clear on where they stand and she did not believe a resolution could be reached at the meeting based upon Attorney Cornelius' legal interpretation. Director Jacobs stated that there is no semblance of CYFD fire district or Chino Valley Fire District; there is no fire truck with the name on the side, there are no personnel under our budget that says we are still a fire district and the taxpayers have still a voice on how their money is going to be spent. She stated that's her point; there is no fire district except the taxpayers from CYFD and Chino vote for representation on CYFD and Chino Valley Fire District. That is the only semblance we have besides passing up the money, and yes, we did have input on the budget, but she voted the budget down. She explained that it's one thing to vote on the budget to pass it, but then to see how people are spending it and not have input on that. She stated that she previously stated that even in the white papers, she read this before in front of CAFMA's call to the public, that all board members would have input at each meeting.

Attorney Cornelius stated that they have had the opportunity to speak and have input. He stated that he's hearing that they are not getting their way; that's different from having input. He clarified that Director Steele mentioned one attorney. Attorney Cornelius advised that he had not set up all the JPA's in the state; he only set up two. There are other attorneys that have set up several. There's another attorney that set up another fire district JPA. He stated that he was requested to provide a copy of this particular model; there are changes, but the JPA statute has not only been applied in the context of this agency as a fire district, but Copper Canyon and North Valley down in northwest Phoenix which now has multiple parties. They have other counsel that has represented them in those matters; it's not just one lawyer. He advised that there are legal methodologies and they could pursue them.

Director Jacobs stated that Attorney Cornelius had told them that this was a new animal, and they could make changes as they go.

Attorney Cornelius advised that they could make a motion and the Board could approve it.

Director Packard reminded the Board that Central Yavapai Fire District and Chino Valley Fire District are still a taxing authority. That is our whole reason. Director Packard stated that Director Jacobs made the motion for the original agreement and Director Steele was a signer. She assumed that they both understood what they were agreeing to.

Director Steele stated that he misunderstood the agreement. He explained that he hadn't realized until the last budget was passed for Fiscal Year 2018 that they were going to be the cash cow for CAFMA since Chino Valley Fire District, unfortunately, is at the state mandated limit for their taxing authority. That set off all kinds of alarms with him. He stated that it's either legal or it's not and he thinks there needs to be a higher authority to rule on it. He thinks the taxpayers of Central Yavapai Fire District are being taken to the cleaners on this and would be more so if we were to bring other limited fire districts into the authority. He stated that he is working for the taxpayer as well as providing necessary funds for the fire department to do it's excellent job.

Director Zurcher referenced the analysis document and stated that the combined projected budgets for CYFD and CVFD, after factoring the cost savings from combined healthcare savings, worker's comp savings, PSPRS actuarial savings and cost avoidance, the JPA budget is shown to be less than the combined budgets of both departments or districts as separate entities under the current JMA. He stated that he had conversations with staff. We had an independent, third party certified public accountant and auditors review the books; we are saving the taxpayers money.

Director Steele stated that is why they had agreed to join with Chino Valley in the joint agreement IGA to share the administrative cost, and we were without a fire chief. We agree to have the umbrella of administration that would save the taxpayers of Central Yavapai Fire District. He asked if we were supposed to give it all back with the higher net assessed value in Central Yavapai Fire District and also contribute to future additions; he was opposed to that. He believes the taxpayers would stand on their ear if they knew that was the case and stated that they have to find out about this one way or another.

Attorney Cornelius advised that there are no current consolidations or mergers before this Board with any other entity and none have been proposed since the course of his time working for this agency since 2012.

Director Steele stated that he had heard Attorney Cornelius mention more than once that it was a possibility.

Attorney Cornelius advised that is a possibility, but nothing is planned; no discussions have taken place, there are no documents, nothing has been presented to this Board.

Director Zurcher asked that this topic not be brought back up for the foreseeable future after the Board votes on this, and they can pursue the correct legal course, because he is tired of hearing this malarkey month after month. He stated that he would like to move forward, and he stated that the Agency continues to do great things on behalf of both fire districts.

Chair Packard asked if there was a motion on the floor that the Board declare this organization invalid.

Attorney Cornelius asked for the motion to be reread.

Director Jacobs stated that no one said it was invalid.

Administrative Assistant III Mowrer read the motion: that the Board accept the premise that CAFMA is illegal, because it never went to an election; seconded by Jacobs.

Director Jacobs stated that it never went to the taxpayers to make a decision if they wanted to do that. She stated that she is not saying it's illegal; the taxpayers have a right to vote.

Attorney Cornelius asked for the motion to be made again.

Chair Packard asked Director Steele to state the action he would like the Board to take.

Director Steele stated that he wanted the Board to accept the proposition that they presented that there is a possibility, due to the fact that the taxpayers of the two districts have not approved this, that the creation of CAFMA needs to be re-examined.

Motion that our recommendation that the foundation for creating CAFMA may be flawed and that it ignores the vote of the people.

Moved: Steele

Chair Packard asked for a roll call vote.

Second: Jacobs

Director Wasowicz stated that all other motions had been withdrawn and asked for the motion to be reread.

Administrative Assistant III Mowrer stated that it was not typed.

Director Jacobs stated that's what is wrong with our minutes.

Administrative Manager Dixson informed that Board that we will need to listen to the audio recording and stated that Director Steele's motions were not the same.

Motion that the origin of CAFMA be re-examined.

Motion: Steele Second: Jacobs

Chair Packard asked for a roll call vote.

Director Wasowicz stated that the motion doesn't do anything -- re-examined by who, when, where. He asked if a third party was to be hired.

Director Steele stated that not being an attorney, he is at a loss to state it in simple terms other than the header on the paper which is quite extensive.

Motion that the JPA creating CAFMA should be examined by the Attorney General's office of the state of Arizona.

Attorney Cornelius advised he did not believe the motion would be enforceable, because he has asked in writing, email, and telephonically and they have refused and two District 1 Representatives submitted that request in writing as of May and it is his responding that there has been no response.

Director Jacobs stated that's because they sent it to the Solicitor General, not the AG's office.



Attorney Cornelius stated that as he understood, it was submitted to the Attorney General's office. The Solicitor General is located in the Attorney General's office. The Solicitor General would not review such a thing, they handle matters related to appeals.

Director Wasowicz stated that the motion is asking that a request be sent to the Attorney General. He asked if the Attorney General chooses not to act on it, does that satisfy the motion; we cannot control what the Attorney General will or will not rule on.

Attorney Cornelius advised that he has done that on several occasions.

Chief Freitag confirmed that had been done.

Attorney Cornelius advised that before the entity was put in place, he was requested to do that by the then sitting Board and he made that request. He advised that the Attorney General's office would not opine as they do not represent fire districts.

Director Zurcher asked Director Steele if he wanted to move to implement changes that were set forth in this document specifically with regard to questions of validity, Board size, etc.

Director Steele stated that is only a portion of it.

Director Zurcher encouraged Director Steele to provide a more detailed motion with regard of the changes they would like implemented. He mentioned that Directors Steele and Jacobs had outlined validity, board size, etc.

Chief Freitag asked if Director Steele could make two motions since he stated that didn't cover everything, and it might help to clarify.

Director Steele withdrew his motion.

Motion that the Fire Board takes into consideration the recommendation and changes to the joint powers agreement that we have set forward in this meeting as a document for our board meeting today and as outlined some of the items in here that we have outlined is what we would like to have recommended changes.

Motion: Jacobs Second: Steele

Director Wasowicz asked for clarification. He stated that he read and considered the document. He asked if the yes vote would be that they considered it.

Director Jacobs stated that they are looking for changes such as an increase the board size and to go to the vote of the public.

Director Zurcher recommended each bullet point as a separate motion.

Attorney Cornelius advised that the motion could be completed as one document; these are the requested changes and this Board can vote whether they want to consider implementing those changes, and agrees to open discussions with Chino Valley. Attorney Cornelius suggested a Yes or No vote: Does this Board want to consider changes as suggested by Directors Steele and Jacobs.

Chair Packard asked for a roll call vote.

Director Wasowicz asked for the motion to be read.

Administrative Assistant III Mowrer read the motion: that the Fire Board take into consideration and recommendations on the JPA that we have set forward on this document and recommendations outlined in this document; made by Jacobs, seconded by Steele.

Director Wasowicz conducted a roll call vote.

Director Steele: Yes

Director Jacob: Yes

Director Zurcher: No

Chairman Packard: No

Director Wasowicz: No

Chair Packard stated the motion does not pass.

**\*\*The text provided in this section, indicated in italics, was copied from the document received on November 22, 2017 at 8:00 a.m. from [vljacbos1@gmail.com](mailto:vljacbos1@gmail.com). Director Jacobs stated during the meeting that the document had been amended; therefore, an email was sent to Director Jacobs requesting the amended document. As of the time of publication of these minutes, staff has not received an amended document.**

## 7. NEW BUSINESS

### A. Discussion and Possible Action Regarding Board Meeting Location

**Chair Packard asked Director Steele to proceed with his concerns as he requested the item.**

**Director Steele stated that he recalled they had to discuss the time and date of the December meeting.**

**Director Jacobs added that members would be required to be out in the cold in Chino Valley and suggested maybe moving the meeting to Prescott Valley.**

**Chief Freitag stated that he has directed staff to provide space in Station 61 bay area if needed. He explained that if this Board changes the meeting locations, special meetings would have to be held for CAFMA and Chino.**

**Director Zurcher made a suggestion that meetings might be held at Chino Valley Town Hall. Chief Freitag stated that could be discussed.**

**Chair Packard directed staff to address these other items.**

## 8. ADJOURNMENT

**Motion to adjourn meeting at 7:26 p.m.**

**Move: Matt Zurcher Second: Jeff Wasowicz Status: Passed**

**Yes: ViciLee Jacobs, Darlene Packard, Tom Steele, Jeff Wasowicz, Matt Zurcher**

Signature indicating approval on next page.

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Clerk / Date

**Signature Page For: 2017 11 27 Central Yavapai Minutes-Approved.pdf - Central Yavapai Fire District Board of Directors - CY Regular Meeting - 1/22/2018**



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Jeff Wasowicz , Board Clerk      01/23/2018