

MINUTES
TOWN OF QUARTZSITE
REGULAR MEETING OF THE COMMON COUNCIL
TUESDAY, SEPTEMBER 9, 2014, 7:00 PM

CALL TO ORDER: 7:00 p.m.

INVOCATION: Pastor Bruce Swart gave a prayer.

PLEDGE OF ALLEGIANCE: Vice Mayor Jewitt led the pledge.

ROLL CALL:

Present: Mayor Foster, Vice Mayor Jewitt, Council Member Kelley, Council Member Crooks, Council Member Orgeron, Council Member Scott, Council Member Timberlake.

STAFF PRESENT: Skylor Miller, Town Manager; Susan Goodwin, Town Attorney; Tina Abriani, Town Clerk

APPROVAL/AMENDMENT OF AGENDA:

Vice Mayor Jewitt moved to approve the agenda as presented and **Council Member Timberlake seconded** the motion. The vote was unanimous. **Motion Passed.**

PRESENTATIONS; PROCLAMATIONS:

1. **PROCLAMATION – National Alcohol & Drug Addiction Recovery Month – September 2014.**

The Mayor read the proclamation aloud.

CONSENT AGENDA:

- 2-a. **LEDGER OF ACCOUNTS PAID – Consider approval of check series 37848 - 37907, totaling \$149,138.53.**
- 2-b. **MINUTES – Consider approval of the minutes of the Regular Meeting of August 26, 2014.**
- 2-c. **HI JOLLY CEMETERY REGULATIONS – Review and possible approval of an amended Hi Jolly Cemetery Regulations Form to include the placement of flowers as an allowable decorative item.**

Vice Mayor Jewitt moved to approve the Consent Agenda and **Council Member Kelley seconded** the motion. The vote was unanimous. **Motion Passed.**

ADMINISTRATIVE ITEMS:

3. HI JOLLY CEMETERY TRANSFER OF OWNERSHIP FORM – Discussion and possible approval of a new administrative form for the transfer of ownership of gravesites at the Hi Jolly Cemetery.

Dinice Ross of the Cemetery Department explained that currently, when people buy property from the Town, there is no documentation. She stated that since it is a piece of property being sold there must be proof.

Council Member Scott asked if those who already have the plot, should get one the forms. Ms. Ross advised that anyone that owns a plot wants a Transfer of Ownership form, she will get one for them.

The Mayor asked if the document gets notarized once completed. Ms. Ross said they do not.

The Mayor asked the Town Attorney if the transfer of property is involved, should it not be notarized.

Attorney Goodwin stated more review by the attorneys is needed. She advised that this form could be approved with the addition of the form necessary to transfer real property. She stated the Town Attorneys will take the current form and add what is necessary to do that.

Council Member Timberlake moved to approve the form with the addition of the necessary forms for documentation for transfer of ownership on the Hi Jolly Cemetery. **Council Member Kelley seconded** the motion. The vote was unanimous. **Motion Passed.**

4. CONDITIONAL USE PERMIT - Discussion and possible action to approve CUP 14-02: Location: 308 Scott Lane, Quartzsite, AZ, 85346. APN: 306-27-020C. Applicant: Annette King. Request: Conditional Use to comply with Town Zoning Codes for the purpose of establishing an RV park with 14 maximum spaces.

Town Manager Miller introduced the item and advised that Mr. Clifton Ryder is representing the applicant Annette King at the meeting.

Town Manager Miller advised the Town is currently installing the sewer line to Scott Lane; resurfacing of that road will take place once the underground work is completed. Town Manager Miller noted completion is expected in October 2014.

Town Manager Miller stated an RV park is a conditional use of that zone. He advised that typically an RV park must be a minimum of 2.5 acres. The size of this parcel is 1.5 acres.

Town Manager Miller advised that the Planning & Zoning Commission did allow for the reduction and made a recommendation to permit a maximum of fourteen spaces on the 1.5 acres with stipulations.

Town Manager Miller stated before any permits are approved by Planning and Zoning, full engineered drawings and a survey must be performed.

Town Manager Miller read aloud the conditions attached to the recommendation to approve the conditional use permit from the Planning and Zoning Commission:

1. Developer shall connect to the Town's sewer and water lines. All capacity fees shall be paid at time of close of escrow.
2. Any lateral utility lines on private property shall be the responsibility of the lot owners to maintain without the Town assuming dedication.
3. Written proof of Health Department approval shall be required at time of permit application.
4. Engineered drawings including site drainage plan shall be required at time of permit application.
5. Floodplain certificate shall be required at time of permit application.

Council Member Scott asked Town Manager Miller about the conditional use permit used instead of rezoning.

Town Manager Miller explained why there is no reason to rezone. He stated there are two types of uses that run with the land, principal permitted uses and conditional uses. He advised conditional uses are appropriate and are allowed; they just require an additional level of review before one can act on it. The applicant is following a lawful procedure to utilize that property for an RV park. The conditional use would go with the land, if approved, when sold.

Council Member Orgeron asked when the applicant is planning to start.

Mr. Ryder stated as soon as possible.

Council Member Timberlake moved to approve the conditional use permit for 308 Scott Lane and **Council Member Kelley seconded** the motion.

Town Manager Miller asked that the motion be changed to state: “an approval as recommended by the Planning and Zoning Commission”.

Council Member Kelley withdrew her second to the motion.

Council Member Timberlake withdrew her motion.

Council Member Timberlake moved to approve the conditional use permit for 308 Scott Lane with the conditions listed by Planning and Zoning and **Council Member Kelley seconded** the motion. The vote was unanimous. **Motion Passed.**

6. ETHICS CODE COMPLAINT AGAINST MAYOR FOSTER – Review of recommendations of Ad Hoc Ethics Committee and possible disciplinary action related to alleged violations of the Ethics Code: use of Town letterhead, failure to sign documents, written attacks on individuals, and written attacks on members of the Town Council.

Town Manager Miller read a summary of the allegations of violations of the ethics code complaint against Mayor Foster:

Consideration of the actions taken by the Ad Hoc Ethics Committee related to allegations of violations of the Ethics Code by Mayor Foster, and possible action. At its meeting of August 26, the Ad Hoc Ethics Committee considered six complaints of violation of the Ethics Policy by Mayor Foster. Complaint No. 2 related to an allegation of acting in excess of his office and was removed as no evidence was presented. Complaint No. 3 related to an alleged open meeting law violation and was postponed for future action. With respect to Complaint No. 1, the allegation is that Mayor Foster’s repeated unauthorized uses of Town letterhead, after having been censured, violated Town Code Section 11-1-4. One such letter was provided to the Committee. The Committee voted to refer the matter to the Town Council for action. With respect to Complaint No. 4, the allegation is that Mayor Foster failed to sign documents in violation of Town Code Section 2-2-6. The loan document of December 2013 was noted. The Committee found that this was a violation and voted to refer the matter to the Town Council for action. With respect to Complaint No. 5, the allegation is that Mayor Foster posted, after the June 20, 2014 Council meeting, an article that attacked several people in writing and this was distributed to the public, in violation of Council Procedural Policy manual, Section IX, Legal and Ethical Standards of Conduct, Item 4, Conduct A and H. The Committee voted to refer this to the full body of the Council for the reprimand or censure, or other action. With respect to Complaint No. 6, related to the Mayor’s Message posted after the June 20, 2014 Council Meeting, it is alleged that he attacked Council Members and the public using his title as Mayor in the signature, in violation of the Council’s Procedure Policy Manual, Section V, Legal and Ethical Standards of Conduct, Item No. 5, Conflict of Interest, H. The Committee voted to find that the Mayor’s Message did violate the Procedural Policy Manual, Section V, Legal and Ethical Standards of Conduct, Item No. 5, Conflict of Interest, H and to refer it to the Council for action.

Vice Mayor Jewitt explained that the Ad Hoc Ethics Committee decided, with the exception of Complaint No. 3 - which is being investigated by the Attorney General's Office, to refer the remainder of the complaints to the entire Council, the Council as a body, for decision of how they should be handled.

Town Attorney Goodwin advised that Complaint No. 2 was removed due to lack of evidence.

Town Attorney Goodwin advised that Mayor Foster has a conflict of interest, being the subject of the complaint, as to the discussion of Council. She explained that while the Mayor may not participate as a member of the Council, he does have the right to address the allegations made against him.

Council Member Timberlake asked if the Council could start with the first complaint and read the applicable sections of the Town Code. She stated after each complaint they should find out what the Council may and may not do in response.

Council Member Timberlake noted that for Complaint No. 1, the Town Code Section 11-1-4 was cited.

Town Manager Miller read Complaint No. 1: The repeated use of Town letterhead after having been censured in violation of Town Code Chapter 11, Offenses, Section 11-1-4, Unauthorized Use of Letterhead. (This violation is listed as a Class One Misdemeanor in the Arizona Revised Statutes.)

Town Manager Miller advised that there are documents that were discussed by the Ad Hoc Ethics Committee that did in fact show that this year the Mayor did use Town letterhead.

Council Member Scott advised that for Complaint No. 2 there was no evidence or insufficient evidence. She went on to say that Complaint No. 3 is being investigated by the Attorney General's Office and there was no recommendation to Council.

Council Member Timberlake stated she wanted Town Code's Chapter 11, Section 11-1-4 read aloud.

Town Attorney Goodwin announced that the citation is wrong but what the Code Section states is: the Mayor shall not use Town letterhead in any correspondence without the express approval of the majority of the Common Council.

Council Member Timberlake asked Town Attorney Goodwin what options the Council has regarding Complaint No. 1.

Town Attorney Goodwin stated the Council may censure, and since it is a misdemeanor under the code, it could be referred for prosecution to the Magistrate's Office. The Council may also restrict travel on Town expense.

Council Member Scott asked which class of misdemeanor the violation is.

Town Attorney Goodwin advised it is a Class One Misdemeanor.

Council Member Timberlake advised that a class one the highest classification of misdemeanor.

Council Member Timberlake said since censure didn't work last time, and travel is not expected for some time, she recommends it be forwarded for prosecution.

Town Attorney Goodwin explained that for Complaint No. 1, the prosecution would have to determine if there is probable cause.

Council Member Scott asked if the Mayor, having been censured before, did continue to use Town letterhead without authorization by the Town Council.

Council Member Kelley advised that the latest letter from the Mayor on Town letterhead is dated June 20, 2014.

Council Member Timberlake asked that she be advised of Complaint No. 4 and Section 2-2-6.

Town Attorney Goodwin advised that at the Ad Hoc Ethics Committee meeting the incident cited was the loan document.

Town Attorney Goodwin read aloud Section 2-2-6 – Failure to Sign Documents – The Mayor shall sign any ordinance, resolution, contract, warrant, demand or other document or instrument requiring the Mayor's signature within five calendar days from the date the Common Council took action requiring the Mayor's signature or from notification by the Town Manager or the Town Manager's designee that such document requires the Mayor's signature. Failure to sign any ordinance, resolution, contract, warrant, demand or other document or instrument requiring the Mayor's signature within five calendar days from the date the Common Council took action requiring the Mayor's signature or from notification by the Town Manager or the Town Manager's designee that such document requires the Mayor's signature shall constitute nonfeasance and shall be referred to the Town Prosecutor for possible criminal or civil prosecution or both criminal and civil prosecution. If any ordinance, resolution, contract, warrant, demand or other document or instrument requiring the Mayor's signature remains unsigned after five calendar days from the date the Common Council took action requiring the Mayor's signature or from notification by the Town Manager or the Town Manager's designee that such document requires the Mayor's signature, the Vice-Mayor or if the Vice –

Mayor is unavailable, any council member may sign such ordinance, resolution, contract warrant, demand or other document which when so signed shall have the same force and effect as if signed by the Mayor.

Council Member Timberlake clarified by asking if the Mayor's signature doesn't necessarily mean that he agrees with it; it just means it is what the Council as a whole voted on.

Town Attorney Goodwin said that is correct.

Council Member Scott clarified by asking if it is part of the Mayor's job to sign.

Town Attorney Goodwin said that is what the Code Section states.

The Mayor made a comment. He asked the Town Clerk if he did sign the document in question and write the word 'veto' over it.

The Town Clerk replied that he did.

Council Member Timberlake asked Town Attorney Goodwin if the 'veto' voids the Mayor's signature.

Town Attorney Goodwin advised that the word 'veto' left open the question, for purposes of the document, as to whether there was a signature. She explained that the Town Attorneys' interpretation was that it was not an approving signature by the Mayor.

Town Attorney Goodwin reminded everyone that is the subject of litigation right now.

Council Member Orgeron stated the question is: "Is he required to sign the document and did he sign the document?" Council Member Orgeron advised that the answer is yes or no. Council Member Orgeron stated that if he did sign the document, then the Council should move on to something else.

Town Attorney Goodwin stated the issue of the Mayor's veto power is the subject of litigation. She advised that the Town Attorneys' interpretation of what happened was that it was not an approving signature.

Council Member Timberlake asked the Town Attorney if it is not correct that nowhere in the code does it say that he is to do an approving signature, it just says that he is to sign.

Town Attorney Goodwin advised that is correct.

Council Member Timberlake stated she agreed with Council Member Orgeron in thinking that there was not a violation of the Code. Council Member Scott stated she too agreed with Council Member Orgeron.

Vice Mayor Jewitt clarified by stating that Complaint No. 4 goes no further.

Council Member Timberlake stated that is her opinion unless someone else has a different opinion, it would go to a vote, but that would be her opinion.

Council Member Timberlake announced the next item as Complaint No. 5, Policy and Procedure Manual, Section 9 Legal and Ethical Standards of Conduct, Item 4 Conduct, A & H.

Town Manager Miller read Complaint No. 5 aloud: the Mayor's Message posted after the June 20, 2014 meeting, Mayor Foster attacked several people in writing and distributed the letter to the public.

Council Member Timberlake asked that Section 9, Item 4, A & H of the Policy and Procedure Manual be read aloud. Town Attorney Goodwin read it aloud: A. Council Members shall refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the Town Council, boards, commissions, committees, staff or the public. H. Council Members shall respect and adhere to the council-manager structure of Town of Quartzsite Town Government as provided in State law, and the Town Ordinances. Council Members shall support the maintenance of a positive and constructive environment for residents, businesses, and Town employees.

Council Member Scott asked if that would be subject to reprimand or censure, but not criminal consequences.

Town Attorney Goodwin stated that is her interpretation as well.

Council Member Timberlake asked the Town Attorney if the Council could restrict travel. Town Attorney Goodwin it is within the Council's prerogative.

Vice Mayor Jewitt stated the issue of the Mayor's right of freedom of speech has been discussed. The Vice Mayor stated it is the Mayor's right as an individual to criticize; but, when he signs as the Mayor, he is speaking for the Town and the entire Council.

Council Member Timberlake asked for clarification as to how the Mayor signed the letter.

Vice Mayor Jewitt stated the Mayor signed 'Ed Foster, Mayor' to his signature on the Mayor's Message.

Council Member Scott stated there are two options, reprimand and censure.

Council Member Timberlake stated the Council could also restrict travel outside on official business.

Council Member Timberlake asked what Complaint No. 6 is.

Council Member Orgeron stated that is signing with the title of Mayor.

Council Member Timberlake asked that the Policy and Procedures Manual Section 9, Item 5, Conduct, H. be read aloud.

Town Attorney Goodwin read aloud the Policy and Procedures Manual Section 9, Item 5, Conduct, H.: To the best of their ability, Council Members shall represent the official policies and positions of the Town Council. When presenting their personal opinions or positions publicly, members shall explicitly state that they do not represent the Council, or the Town.

Town Manager Miller stated his interpretation and understanding of the restricting Town travel would be for the Town to provide compensation for that travel and would not restrict use of his title. The Town would not book a room, pay mileage or per diem.

Council Member Timberlake stated her recommendation would be to restrict travel funds.

Vice Mayor Jewitt asked if there is a limit and for how long on the restricted Town travel.

Council Member Scott suggested that the restriction include: "without approval of Council," as he may need to attend some events on Town business.

Vice Mayor Jewitt stated he thinks that as long as the Council approves, he is entitled to reimbursement.

Council Member Timberlake suggested a six month to a year Town travel restriction, with the condition that he has no violation.

The Mayor asked to make a comment. He stated he has never turned in a receipt for reimbursement, other than for the state convention, during his four years of involvement with politics with the Town of Quartzsite. He stated it is a moot point that is being discussed.

Council Member Timberlake said that if the Council lists the restriction, at least it is there.

Council Member Scott said she doesn't believe censure is the way to go. She said it has happened twice and hasn't changed anything. She said it seems to be a waste of time.

Town Attorney Goodwin stated the Council could possibly restrict travel funds and or reimbursement for the Mayor for a period of six months without prior approval of the Council.

Council Member Timberlake said as for Complaint No. 1, she thinks it should be referred for possible prosecution.

Council Member Scott stated she does not like to be in the position to have to take action against the Mayor of our Town.

Council Member Timberlake stated that also on Complaint No. 1, she would like to see the Mayor turn over all letterhead and all correspondence that he sent on letterhead.

Council Member Scott asked what if he doesn't.

Vice Mayor Jewitt said if the Council refers the matter for prosecution, the Court can order the Mayor to turn over the letterhead documents.

Council Member Timberlake asked if the Town Hall is receiving copies of anything being sent out on letterhead.

Town Manager Miller stated the only one that has occurred since he, the Town Manager, has been here, is dated June 20, 2014.

Council Member Scott stated the burden is on the state to prove that the Mayor has been doing this.

Council Member Timberlake moved (*verbatim*), in regards to the Ad Hoc Committee on Complaint No. 1, repeated use of Town letterhead after censure, that we refer that for prosecution an in regards to all complaints, 1, 5, and 6 that we do a six month restriction on travel reimbursement pending no further future violations before an Ad Hoc Committee.

Council Member Scott stated she thinks the Council should separate the complaints because one is more of a civil violation and one is for a criminal violation.

Town Attorney Goodwin stated the appropriate process for a future violation would be for it to go to the Ad Hoc Ethics Committee.

Council Member Timberlake withdrew her motion and **moved** that on Complaint No. 1, repeated use of Town letterhead after censure without express approval of Council be referred for possible prosecution.

Council Member Crooks seconded the motion.

The Mayor stated that the Council, some months ago, passed an indemnification clause and unless this motion has within it a motion that Town staff engage Ms. Julie LaBenz, his attorney, as conflict attorney in this matter, then he will be in Superior Court tomorrow with Ms. LaBenz getting an injunction against this action and the Town will spend thousands of more dollars on this.

Council Member Orgeron advised that the Mayor look at what the indemnification clause says; it says it applies when one is acting within the scope of his/her office.

The Mayor called for a roll call vote.

Roll Call Vote: Motion Passed (summary: Yes = 6, No = 0, Abstain = 1).

Yes: Council Member Crooks, Council Member Kelley, Council Member Orgeron, Council Member Scott, Council Member Timberlake, Vice Mayor Jewitt.

Abstain: Mayor Foster.

Council Member Timberlake moved regarding Items 5 and 6, that the Council put a restriction on reimbursed travel without prior Council approval for six months.

Council Member Crooks seconded the motion. A roll call vote was ordered.

Roll Call Vote: Motion Passed (summary: Yes = 6, No = 0, Abstain = 1).

Yes: Council Member Crooks, Council Member Kelley, Council Member Orgeron, Council Member Scott, Council Member Timberlake, Vice Mayor Jewitt.

Abstain: Mayor Foster.

COMMUNICATIONS:

Announcements and Reports from the MAYOR on current events.

None.

Announcements and Reports from the COUNCIL on current events.

None.

Reports from the TOWN MANAGER to the Council.

None.

COMMUNICATIONS FROM CITIZENS

Hal Davidson, citizen of Quartzsite, spoke regarding the Quartzsite Business Chamber's destruction by a storm. Mr. Davidson asked that the Council help by possible waiving the fees for any necessary permits.

Town Manager Miller stated the Town has spoken with representatives from the Chamber of Commerce. He advised there are other organizations that want to assist the Chamber. He noted the Chamber is a very important part of the community and the Town wants to assist in any way possible.

Jennifer Jones commented on the outcome of the primary election; money spent on personal vendettas; the voters' recreation to the Town's actions as illustrated in the primary election; indemnification; and the Town's deficit and legal fees.

Vice Mayor Jewitt responded to Jennifer Jones' criticism of him.

Council Member Orgeron responded to Jennifer Jones' criticism.

Audrey Berger asked for clarification regarding sewer hook-ups. She stated she understands there can be no more sewer hook-ups.

Town Manager Miller stated there are no extensions to the existing sewer line.

Ms. Berger asked about the Scott Lane RV park that will be hooked up within a year.

Town Manager Miller explained Scott Lane was already part of the original calculation that was approved by ADEQ.

Audrey Berger asked what the two big cement tanks are for in an RV sales lot behind her.

Town Manager Miller stated it is his understanding that those are temporary containment tanks that were approved by ADEQ because they could not hook to the Town sewer.

Pastor Bruce Swartz spoke of an article in the September and October issues of the Highroads magazine by the AAA about Quartzsite and the sites to see here. A copy of the article can be found in the Library.

There will be a fourth annual Walk with the Past to be held on November 1, 2014. This year it will honor those that were and are in the military. If anyone would like to volunteer, please see Dinice Ross of the Cemetery Department in the Library.

Burt Day spoke of the people of the Town believing that if the La Paz County Sheriff's Department takes the place of the Quartzsite Police Department, property taxes will be raised.

The Mayor responded that the Sheriff has no way to affect the Town of Quartzsite taxes at all. They cannot individually assess Quartzsite.

Shanana Rain Golden Bear congratulated Carol Kelley and her team of volunteers for the wonderful event on Labor Day. She advised that

Halloween is coming up and a group of concerned citizens have come together to work on a wonderful event. There will be a meeting tomorrow at 4:00 p.m. at the Community Bible Church. She asked that people join them with ideas and that they bring clean milk jugs which are being collected at the Senior Apartments. She spoke of people treating each other in a good way.

Vice Mayor Jewitt moved to adjourn this meeting and Council Member Kelley seconded.

ADJOURNMENT: 8:18 p.m.

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of September 9, 2014, of the Town Council of Quartzsite, Arizona, held on September 9, 2014.

I further certify that the meeting was duly called and held and that a quorum was present.

DATED this 23rd day of September 2014

Tina M. Abriani, Town Clerk

On behalf of the Common Council

Approved:

Ed Foster, Mayor