

MINUTES
TOWN OF QUARTZSITE
SPECIAL MEETING OF THE COMMON COUNCIL
FRIDAY, JUNE 20, 2014, 3:30 PM

CALL TO ORDER: 3:30 p.m. by Mayor Foster

INVOCATION: Prayer offered by Audrey Berger.

PLEDGE OF ALLEGIANCE: Led by Council Member Orgeron

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; Tina Abriani, Town Clerk; Susan Goodwin and Patricia Ronan, Town Attorneys, appeared telephonically.

APPROVAL/AMENDMENT OF AGENDA: Vice Mayor Jewitt moved to accept the agenda as presented and Council Member Crooks seconded the motion. The vote was unanimous. **Motion Passed.**

ADMINISTRATIVE ITEMS:

- 1. LITIGATION AND SEWER IMPROVEMENT DISCUSSION – The Town Attorney will provide an update in the matter of Foster v. Quartzsite, et al., CV2013-00115. The Town Council will discuss the memorandum of June 18, 2014, a summary of meetings with Town staff, USDA and WIFA which occurred on June 11, 2014, submitted by the Town Manager and implications of same. Discussion of the impacts of the case on water treatment plant improvements, potential solar projects and economic growth in the Town.**

The Mayor recused himself from the discussion. He stated he is a party to the litigation and should not be part of the discussion.

The Mayor submitted a letter to Town Manager Miller, dated June 20, 2014, to be read into the record.

Town Manager Miller read the Mayor's letter into the record. The letter stated its purpose is to clarify the Mayor's position on the litigation over the wastewater treatment plant loan. In the letter, the Mayor advises his opposition is not to the project or the loan, but to the rate structure that has been applied to repay the loan. The letter goes on to say the Mayor offered an alternative method of repayment that would lessen the impact on the utility customers, as well as asking for a complete review of the expenses

of the utility department in an attempt to determine if there are any ways to reduce the cost of operation. The letter closes with the statement that no serious consideration was given to his requests.

Council Member Timberlake noted the Mayor's letter was written on Town letterhead. She stated the Mayor was instructed not to write on Town letterhead.

Council Member Crooks directed Town Manager Miller to check with the attorneys regarding the illegal use of the Town's letterhead.

Attorney Patricia Ronan, via telephone, then spoke regarding the litigation in the matter of *Foster v. Quartzsite*. She clarified that the litigation is about the scope of mayoral powers. Specifically, the litigation stems from an emergency resolution that was passed last December. Six members of the Council voted for it and the Mayor voted against it. The Mayor believes, pursuant to Article 9 of the Arizona Revised Statutes, that he has authority to veto emergency measures and other resolutions. The Superior Court in Lake Havasu City, Arizona, disagreed with the Mayor and dismissed the entire case.

The Mayor has since appealed, arguing that he does have a veto right. Attorney Ronan said the emergency measure was passed by the majority of the Council and met all other legal requirements for an emergency measure. Under the legal requirements, the resolution should have become effective immediately; but for the issue of who has to sign the emergency measure. The Vice Mayor signed the emergency measure before a Temporary Restraining Order was served. The emergency measure dealt with the USDA grant and loan, which would allow funding for the expansion of the wastewater treatment plant.

Attorney Ronan said the emergency measure did not deal with rates. The Mayor may withdraw the appeal. The reason the wastewater treatment project is being stalled is because, until there is a final decision from the Court, or until the Mayor withdraws his appeal, the USDA and WIFA will not allow the Town to draw upon the funds, because there is pending litigation.

Council Member Crooks asked for clarification on an emergency measure that was passed by six members of the Council. She asked if the emergency basis made the referendum null and void because an emergency measure is referendum-proof. Town Attorney Ronan stated that was correct.

Town Attorney Ronan concluded the overview of the litigation and its connection with the wastewater treatment plant issue.

Town Manager Miller read the memorandum he wrote to the Mayor and the Town Council into the record. It included a summary of meetings, between the Town of Quartzsite, and the USDA and the Town and WIFA, which occurred on June 11, 2014.

USDA representatives acknowledged that the loan and matching grant had taken years to coordinate. They stated the ongoing litigation of *Foster v. Quartzsite* has prevented the loan agreement transaction from closing and that until the litigation is resolved, the USDA loan cannot be closed. WIFA representatives made it clear that, no funds will be released, as long as the *Foster v. Quartzsite* litigation is pending.

Vice Mayor Jewitt asked the attorneys if the people taking continuous recordings of the meetings from the front row were permitted to do so.

Attorney Ronan stated if those recording the meeting are not disrupting the meeting, they may continue to record.

Town Manager Miller read the summary portion of the memorandum:

1. The Town is seen as a weak project partner by WIFA because of the litigation.
2. WIFA will not encourage or otherwise fund any projects with Quartzsite while the litigation continues.
3. WIFA is unlikely to fund or participate in future projects with Quartzsite if the wastewater treatment plant project fails.
4. WIFA will withdraw the funds in two years if the project is not complete.
5. USDA is not going to provide any further grant money for the project, despite the rising costs.
6. WIFA will require a second application to provide any additional loans for the project to cover the rising costs. Success in obtaining additional loans will be heavily dependent on the Town's ability to show strong leadership and successfully moving the existing project forward.
7. Even projects with unanimous Council support, strong community support, excellent managerial oversight, significant cost-saving opportunity, energy efficiency and positive environmental impact are unlikely to receive any WIFA support unless the wastewater treatment project (WWTP) proceeds and succeeds.
8. Due to continued rising costs in construction, the delay in the construction for the WWTP will create further challenges to our rate structure. The additional cost most likely will be funded through WIFA for a shorter term (20 years) than USDA provides (40 years). In addition, we continue to see significant deterioration in the WWTP infrastructure that will require capital expenditures in the near future. These expenditures, once completed, will no longer be available for grant reimbursement and will be funded solely by loans, if possible.

Vice Mayor Jewitt asked the attorneys where the Council proceeds from this point. Town Attorney Ronan explained the item on the agenda allows discussion of the litigation, the implications of the memorandum and direction to staff.

Council Member Timberlake asked that the matter be opened for public discussion.

Vice Mayor Jewitt replied that the Council should discuss the item first and then open it for public discussion.

Council Member Crooks asked, since the Mayor did file an appeal, what is the expectation of how long the appeal process will take in court.

Attorney Ronan replied that the appeal will be fully briefed by mid-August, 2014. Either party may seek leave to have oral arguments, which would be granted or denied by the Court and will be scheduled by the Court of Appeals in Phoenix. It typically takes six to nine months for the Court of Appeals to have a ruling.

Council Member Crooks said the Town cannot possibly meet any of the deadlines.

Council Member Crooks stated, to date, this litigation has already cost the Town \$17,600. She asked the attorneys for a brief analysis of what the appeal process will additionally cost the Town.

Town Attorney Ronan advised it could range from half of what has already been spent to an equivalent of what has already been spent. This was only a rough estimate.

Council Member Kelley stated the Council heard that the reason for the litigation is that the Mayor didn't know from where the loan was coming. After that was clarified, a list of demands was presented to the Council, to drop the litigation. Council Member Kelley stated the sewer rates had to be raised as they were not raised in past years.

Vice Mayor Jewitt stated the rates do need to be adjusted. The sewer treatment system and the water system, under Arizona law, are to be self-supporting and they have not been.

Council Member Timberlake read aloud one paragraph from Town Manager Miller's memorandum: "The Town Attorney said the Town took the project so seriously that six of the seven members of Council approved it on an emergency basis. The litigation is not about the project per se, but instead about the Mayor's authority to veto the emergency measure." She asked the attorneys if what she read is correct.

Town Attorney Ronan replied, yes.

Vice Mayor Jewitt asked the attorneys what the Council can do about the situation.

Town Attorney Goodwin advised the attorneys know of no way out of the situation other than to resolve the litigation.

Town Attorney Ronan stated the Mayor made a settlement offer that was rejected.

Town Attorney Ronan stated the Mayor could withdraw the appeal or withdraw his position that he would veto this specific emergency measure. If he took either position, it would allow the Town to move forward today.

Council Member Kelley asked if the Mayor's settlement offer could be made available to the public.

Mr. Miller excused himself from the meeting to get a copy of the settlement offer made by Mayor Foster.

Vice Mayor Jewitt advised the copies of the settlement offer are being made for the members of the public.

Council Member Crooks asked the attorneys if Mayor Foster's settlement offer could be read into the record.

Council Member Scott asked if other projects are on hold because of what is seen as instability of the Town's government.

Town Manager Miller replied ADEQ has set a capacity limitation for the Town. Some projects can be done. The wastewater treatment plant is a lynchpin for future development for the Town. So, if the Town cannot get this done in a timely manner, the Town is looking at some serious implications.

Town Manager Miller explained why the memorandum and the meeting came to be. He stated that he took the opportunity to meet with Town staff, the USDA and WIFA to get himself up to speed with the situation and to get everyone on the same page. Based on the information received, he felt it warranted a memo to the Town Council. Town Manager Miller went on to explain that several members of the Town Council have concerns regarding this matter and that is why the meeting is being held.

Vice Mayor Jewitt asked Town Attorney Goodwin if the settlement offer could be read into the record.

Attorney Goodwin replied, yes.

Vice Mayor Jewitt read aloud Mayor Foster's letter regarding an Offer of Settlement, dated April 9, 2014.

The letter conveyed that in exchange for the Town of Quartzsite's agreement to the following, the Mayor will withdraw his veto and dismiss the appeal:

1. Vote to abolish the Quartzsite Police Department.
2. Enter into an Intergovernmental Agreement with the La Paz County Sheriff's Office to provide a Quartzsite Metro Squad to patrol Quartzsite, saving the Town approximately \$500,000 per year.
3. Dedicate the funds saved by abolishing the Quartzsite Police Department to the HURF loan and the prospective USDA loan for a period of six years.
4. Agree that the sewer rates be restructured to be based strictly on a volumetric rate based on water usage.
5. Payment of Mayor Foster's legal fees and costs in full.

The settlement offer stated its expiration date was Friday, April 25, 2014 at 5:00 p.m. and was signed by the Mayor's attorney, Julie LaBenz of Churchill and LaBenz.

Council Member Timberlake noted that the \$500,000 per year cost savings does not include what the Town would have to pay La Paz County for services in Quartzsite.

Council Member Kelley noted La Paz County's response time is known in Quartzsite. She asked why the Town would do away with a good thing, its own police force.

Council Member Orgeron stated what the Town is looking at is about the veto power and leads to the water and sewer revitalization. He asked what abolishing the Police Department has to do with that.

Council Member Timberlake stated there is no way around raising the rates.

Council Member Kelley moved to open the item to public discussion and **Council Member Timberlake seconded** the motion. The vote was unanimous. Motion Passed.

Joyce Snyder stated she has lived in Quartzsite since 1980. She said, as far as abolishing the law enforcement, it took an hour and a half to get help in the past, before Quartzsite had a police department. She can't see how stopping this project can help anything.

Douglas Gilford addressed the Council saying he would like more facts and less hearsay from the Council Members.

Norm Simpson, resident and business owner, assured the Council that the RV Park owners want to get the situation resolved as badly as the Council does. He stated his sewer rates went up about 300% three years ago. He asked the Council what happens if the parks cap their sewer connections.

Elmer London, resident and property owner stated he wants to see the Town move forward, not backward. He resents the fact that the Mayor says the majority of the citizens of Quartzsite are opposed to this. He does not believe that. He stated he wants to be the first one to say, "Let's ask for his resignation."

Jenny Mills, owner of Al's RV Park, stated that going from a 255 horsepower system of a one leach field, one bed system to a two unit system that will produce a 190 horsepower system. This is 65 horsepower less than we have now. She expressed concern over what will happen when the Town grows and it has such low horsepower to support more sewage.

Vice Mayor Jewitt, stated the horsepower was put in twenty years ago, when the plant was built. The upgraded sewer treatment plant splits the giant treatment lagoon into two separate ones.

Town Manager Miller stated the proposed system will be energy efficient. It will add capacity at a reduced horsepower amount. Capacity with the proposed system would almost double.

Council Member Timberlake noted the new system allows for repairs in the off season because the Town is only using half of it at a time.

Marilyn McFate stated she worked for the Sheriff's Department. She compared the experience of Quartzsite residents now to when they waited for the Sheriff's Department to respond to calls. She stated people feel far more secure with this Police Department because they will arrive quickly. She stated people were hurt, raped or killed because they had to wait for help.

Pam Kasby moved to Quartzsite a year ago from Three Dreamers RV Park, out of Brenda. One of the main reasons she came to Quartzsite was because of the lack of help from the Police Department available in her area. She asked why we are not letting the Council and the Town Manager do their job and asked, "Is the Mayor God, does he have one word, and then everything shuts down?"

Council Member Timberlake responded the people always have a right and they always have control over their elected officials through the recall process and voting.

Jennifer Jones, resident, stated that it was the Council Members and not the Mayor who caused the litigation. She stated the Council should have let the loan agreement go to a voter referendum and let the people show what they think of the matter. She spoke regarding legal fees used to sue the County over the task force; the billable hours for the Town Engineer, whom she said is legally responsible for the state of the water and wastewater systems, to meet with the USDA or WIFA, and to file an amended 208 Plan, which she stated the Town Engineer has not done. She said the memorandum summarizing the meetings with Town staff and USDA and WIFA contained numerous false statements. She also spoke about WIFA loan documents.

Barbara Cowell, resident since 1969, a property owner and former Council Member, stated this is about the Mayor. When she was on the Council, they formed an ad hoc committee because of the Mayor's continuous disregard for the law of the Town. She thinks something should be done to rectify his position, either by voting him down or silencing him through legal proceedings. She advised that people say to her, as a real estate agent, that they would love to buy property in Quartzsite; but, they are scared of the politics.

Bert Day stated the settlement letter from the Mayor's lawyer is strictly blackmail by the Mayor to get his way. She advised the Town definitely needs to keep the Police Department here in Town.

Terry Frausto, citizen of the community, stated, from the paperwork presented, that she sees someone focused on himself and not the community. She sees someone blackmailing the Town and Council and every person in the Town that is a voter. She said it is oppression and people are afraid of retribution, such as being put on his website.

Jeff Gilbert resident and former Chief of Police, stated it was nice to hear the community still supports the Police Department. He spoke regarding the incident in which the Mayor of San Marino threw a bag of dog excrement into his neighbor's walkway earlier this month and was caught on video. That Mayor later apologized and resigned. Jeff Gilbert directed his next comments to the Mayor: stop throwing your bags of dog excrement, apologize, resign and take responsibility for your actions or role up your sewer hose and leave Town the same way you came in.

Jean Winters, resident since 1997, RV park owner, stated there was never a ten-year sewer freeze. She said her sewer rates have always gone up. She explained the reason the RV park owners having backed Mayor Foster is that the Council could not come up with an economical way for the RV parks to support this loan. She went on to say the RV park owners do not mind paying their share; but, when their profits decreased to the point where they had no revenue they got upset. She stated it is the residents of the Town that will foot the bill, not the RV parks and not the snowbirds because they are leaving. She stated no one has asked to talk to the RV park owners and view their facts.

Michael Peyonga, resident in the Arroyos, here for three years, stated the issue is the lawsuit and what can be done about it. He said you do not dance with the devil and that is what the Town is dealing with here. He spoke to the RV park owners and advised that they made a bad choice in supporting Mr. Foster because they thought he could resolve their problems, but he does not have a solution. He said all the money the Town has had to spent over the years, could have been spent wisely on marketing this Town for the RV owners. He advised the boomtowns in Canada and North Dakota are selling many RVs. He stated the RV owners backed the wrong guy because there is no revenue without water.

Elmer London spoke again. He stated the people come here because of the sunshine and the warm winters. They have to go somewhere for that or start a new town.

Terry Frausto spoke again. She said the problem is the way it has come about; we can do this peacefully with the RV parks; it was not necessary to do this. She said it was the wrong way to approach it, with anger and a lawsuit.

Jennifer Jones spoke again. She stated there is a way to finance this since the Council is clearly at an impasse. She advised that the Mayor made an offer to settle and the Council made no counteroffer and no good faith effort to negotiate. She explained the Town could float a bond initiative, where the people would vote on it, to pay to upgrade and expand the system. She suggested that the Council wait for the election by which the people will speak about what they want.

Helen Peyonga, resident for about three years in Quartzsite, stated the main problem she has seen is the infighting that has occurred. She said that it has impacted the business here, the school she teaches at and every relationship she has seen in this Town. She advised that everyone is forgetting what our founding father, George Washington, lived by, "I do not ascribe evil motives to anyone." No progress will be made if everyone continues to accuse and point fingers.

Council Member Crooks, after hearing the displeasure of the residents, asked the attorneys if, realistically, the Town has the ability to charge the Mayor with nonfeasance or malfeasance.

Town Attorney Goodwin responded by stating no law that has been broken. A general law city does not have the ability to impeach an elected official. The remedy is a recall, if there is a desire to remove an elected official.

Council Member Kelley asked if at this time recall is the only answer the Council has. Vice Mayor Jewitt replied, at this time, yes; that is what the attorney said.

Town Manager Miller stated in his memorandum that staff would be seeking direction from Council as to the appropriate direction for solar projects in the future. It will be an agenda item in the future.

Council Member Crooks asked that this Special Meeting Item to be put on the Regular Council Meeting Agenda for next Tuesday, June 24, 2014. She explained the reason for her request is that residents that were unable to attend the daytime meeting may be able to attend the evening meeting.

Council Member Timberlake referenced the Mayor's letter on Town letterhead, that is illegal, by noting that it stated the majority of the citizens of Quartzsite are opposed to the project. She advised that is not what she heard from the majority of the citizens in the audience.

Council Member Crooks and Council Member Timberlake asked the matter of Mayor Foster using Town letterhead be reviewed.

Council Member Orgeron moved to adjourn and Council Member Crooks seconded the motion.

Vice Mayor Jewitt thanked everyone out in the general public area for making their voice heard.

ADJOURNMENT: 5:06 p.m.

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Special Meeting of June 20, 2014, of the Town Council of Quartzsite, Arizona, held on June 20, 2014.

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

DATED this 8th day of July 2014

Tina M. Abriani, Town Clerk

On behalf of the Common Council

Approved:

Michael Jewitt, Vice Mayor