

MINUTES OF THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF PINETOP-LAKESIDE, ARIZONA, HELD APRIL 1, 2010 AT 7:00 P.M. IN THE TOWN COUNCIL CHAMBERS.

Mayor Smith called the Regular Meeting to order at 7:00 p.m. Roll call was taken as follows:

<u>ROLL CALL:</u>	<u>Present</u>	<u>Absent</u>		<u>Present</u>	<u>Absent</u>
Mayor Luke Smith	<u>X</u>	<u> </u>	Stephanie Irwin	<u>X</u>	<u> </u>
Vice Mayor Rich Crockett	<u> </u>	<u>X</u>	Kim Webb	<u>X</u>	<u> </u>
Woody Biscoe	<u>X</u>	<u> </u>	Leslee Wessel	<u>X</u>	<u> </u>
Norris Dodd	<u>X</u>	<u> </u>			

STAFF PRESENT:

Sherwood Eldredge, Chief of Police; Rosemary Rosales, Town Attorney; Lu Anne Frost, Town Clerk; and Paul Esparza, Community Development Director.

ITEM NO. 2, PLEDGE OF ALLEGIANCE AND INVOCATION:

The Pledge of Allegiance was said, followed with an invocation by Councilman Webb.

ITEM NO. 3, CALL TO THE PUBLIC:

Mayor Smith explained the rules for Call to the Public. Mayor Smith read sections from Town Code Chapter 2.04.210 regarding decorum in Town Council meetings.

Lon Dorsay referred to the Attorney General’s lawsuit. He stated this matter has been swept under the rug by the Town, and said the newspaper article downplays the seriousness of one of the most outrageous, illegal, damaging, and costly lawsuits that has ever been filed in the White Mountains. He referred to Town Code Chapter 2.08, and said they hired the Town Manager about 5 years ago, and pay him \$100,000 to get very efficient, professional administration. He stated one of the responsibilities of the Town Manager is to have the highest degree of efficiency in the overall operation of the Town government. He said the Code reads, the Manage must keep the Council fully advised as to the financial conditions and needs of the Town, and to provide whatever reports to the Council as it may deem necessary. He said it shall further be his or her duty to see that no indebtedness is incurred or expenditures made in violation of the Arizona Constitution, the state budget law, and the Arizona Revised Statutes. He stated, even though it was not pointed out in the public article in the Independent, the lawsuit specifically says there were various illegal actions taken by the Town and V Mountain, and its predecessor, entering into no bid contracts, and thereby creating a monopoly, were made knowingly and in direct contravention of Town procurement rules, laws and regulations. He said the communications entered into, on one or more contracts, consisted of conspiracies to restrain interstate trade. He read the legal definition of a conspiracy.

Wes Alderson thanked the Council for not having as many executive sessions, having retreats locally, and their desire to turn a stressful legal battle into a positive effort by government and citizens to float a better economic situation. He stated the indictment severely tested the voters

trust in their government. He said the great ideas the Advertising & Promotion Committee comes up with to jump start the economy need to be proceeded by these things. He said the Town Auditor, required by the Attorney General, must truly be an outsider. He said what is now a bad situation for business would be made worse by any sort of socialistic government housing and tent vendors on Highway 260. He stated the local businesses were hurt most by the illegal contract process because it wasted hard earned tax money, and asked why they have heard nothing from them about the situation. He asked, in view of criminal and moral conduct, why the Town does not do a background check on all potential government employees. Mayor Smith asked the Town Attorney for clarification if the Town was indicted on anything. Rosemary Rosales stated there were no criminal actions brought against the Town, and said it was a civil complaint. Mayor Smith asked if the Town conducts background checks on potential employees. Ms. Rosales stated she believed the Town does fingerprinting and background checks. She stated a background check was conducted when she was hired. Lu Anne Frost confirmed that background checks are conducted on all potential employees.

Jim Beck stated in this past Tuesday's edition of the Arizona Republic there was an article headlined, "County Pays to Find Ways to Save Cash." He said the article explained how Maricopa County saved about \$7 million dollars through the open bidding process and lowered expenditures by 20%. He said according to the Attorney General's lawsuit, from June 2004 through May 2008, the Town paid V Mountain almost \$3 million for road services. He said the lawsuit states the Town Managers, including Mr. Udall, were aware of and knowingly participated in these illegal contracts. He said using the Republic article as an example; the Town of Pinetop-Lakeside may also have saved 20%, simply by obeying the law and following the open bidding process. He said based on the \$3 million spent during the current Town Manager's employ, this could have potentially saved the Town \$600,000, but was recklessly lost. He said everyone sitting on the Council cares for the Town or they would not be serving, but sitting as a governing body of a Town assigns them each grave responsibilities that are rooted clear back to the foundation of this country. He said to truly serve correctly in their capacity, sometimes requires making hard choices. He stated it demands their loyalty to the founding principles of American government. He then read from the writings of Thomas Payne. He stated when a crime is committed by those in government a consequence should be paid. He said regardless of the good work each of the Council Members may accomplish during their term of office, if they renew any contracts of those named in the lawsuit; they are telling the world that they can break laws in Pinetop-Lakeside; they could lose the Town hundreds of thousands of dollars; they could bring shame upon them; they may dishonor the people and their taxes; and instead of being punished, they would be rewarded. He said that would be the only thing the Council would be remembered for. He asked them to consider this and not become a Council without principle and low regard for law and justice. Mayor Smith asked if any individuals were named in the recent lawsuit. Ms. Rosales stated no individuals were named, but said positions were referenced.

ITEM NO. 4, CONSENT AGENDA:

The consent agenda consisted of Minutes of the Work Session and Regular Meeting of March 18, 2010; the Check Register for February 2010; a Liquor License Application for El Farol Restaurant; and Resolution No. 10-1117 declaring that Document known as "Town Code Chapter 16.20 Mountainside Development, Chapter 17.92 Landscaping Regulations, and Chapter 17.96 Forest Health and Fire Protection" to be a Public Record.

COUNCILMAN DODD MOVED THE COUNCIL APPROVE THE CONSENT AGENDA AS PRESENTED. COUNCILMAN BISCOE SECONDED THE MOTION AND IT CARRIED UNANIMOUSLY.

ITEM NO. 5, COUNCIL DECISION REQUEST FOR AWARD OF BID FOR TOWN AUDIT SERVICES FOR FISCAL YEAR 2009-2010, FISCAL YEAR 2010-2011, AND FISCAL YEAR 2011-2012:

Chief Eldredge stated there were 7 proposals sent to various CPA firms, and said 2 bids were received. He stated the low bid was the same firm the Town currently uses, but said it came in \$5,000 less and includes the procurement audit required by the Attorney General. He stated it is the recommendation of the Audit Committee to hire the firm of Hinton Burdick Hall & Spilker, PLLC. Councilwoman Irwin stated this bid came in \$5,000 less than what the Town paid for the audit last year. She stated it is a 3-year contract. She stated references were made earlier as to independent auditors, and said auditors by the standards they ascribe to, are by definition independent. She stated this firm is from outside the area, and said they have prepared the Town's financial audit for the past 5 years, and have worked very well with the Town. She stated they would also be doing the procurement compliance audit. Ms. Rosales stated there was language in the request for proposal that was approved by the Attorney General's Office before it went out. Councilwoman Wessel asked if the second bidder was from Arizona. Councilwoman Irwin stated they were, but said their price was almost double.

Mr. Alderson stated they appreciate the fact the Attorney General is forcing the Town government to hire an outside auditor to ensure the recent illegal contracts are not repeated. He stated there are a couple of problems; and said this is yet another cost the taxpayers will have to bear. He said if things were legal from the start then they would not have had to pay a heavy fine and they would have not had to pay for an outside auditor. Councilwoman Irwin stated the Town is required by law to have a financial audit on an annual basis. She said the cost for the audit is something the Town has had every year since incorporation. She said this bid for the financial audit also included the Attorney General's request for compliance with procurement auditing. She said an audit is not an additional cost, but said it is an ongoing cost the Town has every year. Councilman Dodd stated he has heard concerns expressed as to why the auditor did not find the issues with procurement, and said they are auditing the Town's books and the financial transactions. He said they were not doing a procurement audit, which is what the Attorney General is requiring in the consent agreement. He said they expanded the scope to include procurement. He said if they had been looking at procurement in the past, maybe this issue would have come out earlier. Mayor Smith confirmed the Town was required to pay \$5,000 to reimburse part of the Attorney General's costs; and said the audit is \$5,000 less.

Mr. Dorsay stated the White Mountain Independent article written by the Town Attorney and Mayor mentions there is a hope of transparency on the issues now; and said in the interest of transparency it would be nice if the Town would have a package available for any citizen that wants to see what is going on. He stated there were no individual names in the lawsuit, but said it specifically refers to the current Town Manager as entering into a conspiracy. He said there was no indictment, but said the consent judgment specifically indicates the Attorney General reserves the right to file any further proceedings, whether civil or criminal, based upon what occurred.

COUNCILWOMAN WESSEL MOVED TO AWARD THE CONTRACT FOR AUDIT SERVICES FOR FISCAL YEARS 2010, 2011 AND 2012 TO HINTON BURDICK HALL & SPILKER, PLLC AND THAT A CONTRACT BE SIGNED WITH THE FIRM FOR THOSE SERVICES. COUNCILMAN WEBB SECONDED THE MOTION AND IT CARRIED UNANIMOUSLY.

ITEM NO. 6, ORDINANCE NO. 10-337 REPEALING “TOWN CODE CHAPTER 16.20 MOUNTAINSIDE DEVELOPMENT FOREST HEALTH AND FIRE PROTECTION, CHAPTER 17.92 LANDSCAPING REGULATIONS, AND CHAPTER 17.96 FOREST HEALTH AND FIRE PROTECTION, AND ADOPTING NEW TOWN CODE CHAPTER 16.20 MOUNTAINSIDE DEVELOPMENT, CHAPTER 17.92 LANDSCAPING REGULATIONS, AND CHAPTER 17.96 FOREST HEALTH AND FIRE PROTECTION”:

Paul Esparza stated this item was first presented to the Council a couple of months ago. He commended the Forest Health Committee for their hard work. He stated the Committee was asked to identify work programs to gain compliance with the Forest Health and Fire Protection Ordinance, and said the forest demonstration site across from the Library has been completed and would be used to educate the public. He said the downed trees would be used at the Nature Center site. He stated the Town was able to take over the State Fire Assistance Grant from Lakeside Fire. He stated staff has identified priority areas within the Town that need attention first. He stated there were three chapters of the Town Code requiring amendments. He then summarized the changes to the Town Code beginning with the Forest Health and Fire Protection Chapter. He stated the Committee feels comfortable with the proposed changes.

Councilman Dodd stated the Committee focused on the civil sanctions associated with non-compliance, but said it was clear they would defer to the Town Attorney as she was looking at the relationship to the rest of the Town Code. He said they are now focusing on criminal penalties. He stated the Forest Health Committee is a very dynamic group, and said he does not want to lose them. He asked if that body could still have a role in the enforcement, as they would serve as an independent body to validate the need for certain enforcement to take place, and said it removes any potential for the Town to be accused of arbitrary or capricious enforcement. Ms. Rosales stated that could be done if they changed the language back to the way it was. She stated under 17.132, which is the enforcement section of the Zoning Code; Forest Health already had criminal penalties. She said if they make it a Class 1 Misdemeanor, then it goes through the court for citation purposes. She stated the only civil part would be abatement, and said even with abatement the Town would still have to go to the Magistrate Court and individuals would have their due process through that court. She said if that was the case they would not need an administrative body, such as the Forest Health Committee or the Council, to hear their due process concerns. She said it would be redundant and not necessary, unless they changed it back to a civil process. She stated this streamlines the process and allows staff to take civil action through abatement, but said if the Town can not afford abatement or people are not doing what they need to, and the Town feels it is a public health issue, they can be immediately cited into criminal court and then the individual would still have time to come into compliance. She stated there is language included that the Court could dismiss the complaint at its discretion. Mr. Esparza continued by summarizing the other changes to these Town Code chapters.

Kevin Birnbaum stated he saw a notice of a public hearing at the post office, which indicated the peddler's license issue would be discussed at this meeting, but said he did not see anything on the agenda. Ms. Rosales stated the initial intent was to notice the public that they were going to make revisions to the peddler's code and to other code sections. She said that posting should have been amended. She stated staff believed they were going to bring that issue to the Council, and said they have to post the hearings a number of days in advance. She said when staff realized they were not going to have that on the agenda the posting should have been amended. Mr. Birnbaum asked if that discussion would be coming up. Ms. Rosales stated it may or may not. Mayor Smith asked how far in advance they have to post public hearings. Mr. Esparza stated 15 days, but said there is also a one week lead time to the newspaper. Councilman Biscoe stated if they are going to put it on an agenda, it should be done as soon as possible.

Mr. Beck stated there was discussion about a legacy tree protection program where the trees would be identified, marked and recorded. He stated that is a very good idea, but said he has not heard anymore about it. Councilman Dodd stated that was something the Open Space Committee was working on. He agreed it would be something good to take up. Mayor Smith stated a legacy tree would probably not be included in defensible space.

COUNCILMAN DODD MOVED TO ADOPT ORDINANCE NO. 10-337 REPEALING “TOWN CODE CHAPTER 16.20 MOUNTAINSIDE DEVELOPMENT FOREST HEALTH AND FIRE PROTECTION, CHAPTER 17.92 LANDSCAPING REGULATIONS, AND CHAPTER 17.96 FOREST HEALTH AND FIRE PROTECTION, AND ADOPTING NEW TOWN CODE CHAPTER 16.20 MOUNTAINSIDE DEVELOPMENT, CHAPTER 17.92 LANDSCAPING REGULATIONS, AND CHAPTER 17.96 FOREST HEALTH AND FIRE PROTECTION.” COUNCILWOMAN WESSEL SECONDED THE MOTION AND IT CARRIED UNANIMOUSLY.

ITEM NO. 7, CURRENT EVENTS BY TOWN MANAGER:

This item was discussed during the work session.

ITEM NO. 8, TOWN COUNCIL CURRENT EVENT REPORTS ON ALL COUNCIL APPOINTED COMMITTEES, COMMUNITY ORGANIZATIONS AND AFFILIATES:

This item was discussed during the work session.

The Regular meeting adjourned at 7:50 p.m.

Dated this 8th day of April 2010.

PINETOP-LAKESIDE TOWN COUNCIL

/s/ Lu Anne Frost, Town Clerk

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the Town Council of the Town of Pinetop-Lakeside, Arizona, held on the 1st day of April 2010. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 8th day of April 2010.

/s/ Lu Anne Frost, Town Clerk