

MINUTES OF THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF PINETOP-LAKESIDE, ARIZONA, HELD APRIL 15, 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>	_____	Stephanie Irwin	<u>X</u>	_____
Vice Mayor Rich Crockett	<u>X</u>	_____	Kim Webb	<u>X</u>	_____
Woody Biscoe	<u>X</u>	_____	Leslee Wessel	<u>X</u>	_____
Norris Dodd	<u>X</u>	_____			

STAFF PRESENT:

Kelly Udall, Town Manager; Rosemary Rosales, Town Attorney; Lu Anne Frost, Town Clerk; and Sherwood Eldredge, Chief of Police.

ITEM NO. 2, PLEDGE OF ALLEGIANCE AND INVOCATION:

The Pledge of Allegiance was said, followed with an invocation by Vice Mayor Crockett.

ITEM NO. 3, CALL TO THE PUBLIC:

Mayor Smith explained the rules for Call to the Public

Don McMasters stated the primary goal of the Wild West Rendezvous is to have an assisted living facility for Autistic children. He stated another goal is to work with the business people to promote Pinetop-Lakeside and the White Mountain region. He said there are merchants from other communities who have participated. He stated this year's event would be held on July 24, which he said is also the National Day of the Cowboy, Pioneer Days in Snowflake, and the White Mountain Roundup. He stated they would have the pancake breakfast on Saturday, and said they would again be robbing the Wells Fargo Bank. He stated they have increased their advertising in the Valley. He stated the photo shoot for the poster picture would be this Saturday at The Lion's Den at 4:00 p.m. He stated on July 24th the variety show and mock hanging would be held from 12:00 to 3:00, and at 3:00 p.m. they would have the annual pig roast at the Chuck Wagon. He said the International Cowboy Bean Eating Contest would be held at 5:30 p.m., and said they hope to have it sanctioned by the Guinness Book of World Records this year. He said on Sunday they would be promoting Cowboy Church with the Mountain Saddle Band.

Jim Beck said he privately met with the Mayor and Council. He said the Council should have as much information as possible when making important decisions, and stated he brought information to the Town Council's attention about the Town Manager's resignation from his previous position. He stated it is important for the citizenry to be aware that the Mayor, Town Council and Town Attorney have been informed of this incident. He stated the public's eye is upon them tonight.

Lon Dorsay stated Woodland Lake Park has been the goal of the Town for the last several years. He stated his wife has spent the last several weeks organizing a 5K Walk for Save Our Park. He stated this has been discussed in numerous Council meetings. He stated everyone knows they want to preserve open space for Woodland Park. He said there may be some disagreement about how it would be financed, but said every survey has shown that close to 80% of the citizens and at least 50% of businesses indicate preservation of Woodland Park. He said he was recently shown plans that were apparently organized and inspired by Mr. Udall, as Town Manager, with an unknown developer. He said those plans show extensive development of the Park; which he said is absolutely against the Town. He said 85% of the sales tax is generated from people outside of Pinetop-Lakeside, who do not come to see the Dollar General store or Circle K; and said they sure do not want to go to the lake, which is the jewel, if it is covered with heavy development. He said this is an insult to the Town and the Council. He said this is the typical insolence that occurred with the V Mountain bidding situation. He said this cannot go on. He stated he understands none of the Council knew about this, and said if that is correct, proper action should be taken against the people that propagate these back room deals that only help developers.

Paul Barrio asked if it is a violation of Town policy for a Town employee to use Town computers to visit websites that promote pornography. Rosemary Rosales stated that is against Town policy.

Wes Alderson thanked the Council for paying attention to the background checks on tent vendors, especially the Council Member who suggested a vendor with a background of child pornography is unwelcome in Pinetop-Lakeside. He said the various downsides of tent vendors far outweigh any possible economic benefit they might bring.

Joe Russell read the definition of audit. He stated from 1994 to 2008 means there were 14 years of checking Town accounts and financial records, and said it is strange the auditor did not notice a string of checks to the same contractor for the same type of contracts. He asked if the information was purposely hidden, and said maybe the auditor was a friend. He stated with everything that has happened recently, the Mayor has verbally challenged the citizens to do a recall, and has said he would be the first to sign. He challenged the Mayor to turn in his resignation to save the Town money and time. He said he thinks the people should accept the challenge and file a recall.

ITEM NO. 4, CONSENT AGENDA:

The consent agenda consisted of Minutes of the Work Session and Regular Meeting of April 1, 2010; a Liquor License Application for Kumamoto and The French Connection; and the Check Register for March 2010.

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

ITEM NO. 5, MAYOR'S PROCLAMATION OF APRIL 30, 2010 AS "ARBOR DAY":

Mayor Smith proclaimed April 30, 2010 as "Arbor Day" in the Town of Pinetop-Lakeside, and urged all citizens to plant trees to gladden the hearts and promote the well being of present and future generations.

ITEM NO. 6, MAYOR'S PROCLAMATION OF APRIL AS FAIR HOUSING MONTH:

Mayor Smith proclaimed April as Fair Housing Month in the Town of Pinetop-Lakeside, and urged all citizens in the community to comply with the letter and spirit of the Fair Housing Law.

ITEM NO. 7, MAYOR'S SPOTLIGHT ON BUSINESS – LAKE OF THE WOODS:

Mayor Smith presented Janet Pierson, and Skip and Peggy Preiss of Lake of the Woods with the Spotlight on Business Award for April, and thanked them for their generous contributions to the community of Pinetop-Lakeside.

ITEM NO. 8, PRESENTATION OF CERTIFICATES OF RECOGNITION FOR BUDGET PREPARATION TO L. KELLY UDALL, TOWN MANAGER, AND J. KENT BROOKSBY, FINANCE DIRECTOR, BY THE GOVERNMENT FINANCE OFFICERS ASSOCIATION OF THE UNITED STATES AND CANADA:

Mayor Smith presented framed certificates to Kelly Udall and Kent Brooksby, and congratulated them for their achievement. Mr. Brooksby stated he is honored by this recognition. He said he tried to get this award for nine years, but said until Mr. Udall became the Town Manager there was no support to get the award. He said Mr. Udall's leadership and support were the driving force for this award. He said he has pushed the Town staff to do better, be better and accomplish more.

Mr. Beck stated this is a ploy and its intended objective is almost pathetic. He said while the budget preparation might be deserving of applause, this award and its position on the agenda should not confuse the public or the Council into believing the Town Manager is deserving of much more than a piece of paper. He said when speaking about the Town Manager and any monetary discussions, they would always be reminded of the recent Attorney General's anti-trust lawsuit against the Town. He said it clearly states the Town Manager has the fiduciary obligation to ensure that Pinetop-Lakeside's public funds were expended lawfully. He said it also states the Town Manager is responsible for the conduct of each of his subordinates in connection with the Town's procurement activities. He said when discussing any of the Town's financial responsibilities they might say the buck stops at Mr. Udall's desk. He stated in Count Two of the lawsuit it states "by knowingly violating the procurement requirements, the Town officers unlawfully expended the Town's public funds, exposed the Town to potential risk, and failed to ensure maximum return for the public funds spent." He said the business community should be especially outraged. He said they would never know how much of their taxes the Town might have saved had the Manager and others simply obeyed the law. He said because of the Manager's failure to comply with the law, they would never be sure what the budget could have been; but said he would wager the Government Finance Officer's Association did not have a clue regarding the Town Manager's fiduciary failures. He said if they had, such an award may

have been reconsidered. He said this display candy coats the Town Manager's office and is just a pretty façade, meant to hide the real truth of the matter.

ITEM NO. 9, RESOLUTION NO. 10-1112 RENEWING THE EMPLOYMENT AGREEMENT BETWEEN THE TOWN AND L. KELLY UDALL, TOWN MANAGER. PURSUANT TO A.R.S. § 38-431.03(A)(1) THE COUNCIL MAY VOTE TO ENTER INTO EXECUTIVE SESSION TO DISCUSS THIS ITEM:

Vice Mayor Crockett excused himself at this time due to a conflict of interest.

Mr. Beck stated he had a private meeting with Vice Mayor Crockett, wherein Vice Mayor Crockett asked him what he did not like about the Town Manager. He said the list is long. He said at a TRACKS meeting last week it was announced that Mr. Udall had recently partnered with developer, Stewart Gene and his architect, to build a master plan which would develop 445 acres of Woodland Lake Park. He said the drawings are complete and include a seven phase development scheme. He said the Town Manager is well aware that to acquire the Park is the people's number one priority, yet he ignored the people's wishes by allowing these plans to be drawn. He said Mr. Udall is fully aware of the people's initiative process underway to acquire the entire park, yet in quiet he moved forward with these plans. He said by doing so, Mr. Udall has demonstrated he has absolutely no respect for the people who are desperately trying to save the Park. He said Mr. Udall has also disrespected Stewart Gene and his architect, since this plan could never succeed, and said he would face opposition this Town has never seen. He said another amazing fact is Mr. Udall proceeded forward without the knowledge or approval of the Mayor or Council. He said when he told the Mayor about these plans a few days ago; the Mayor could not believe Mr. Udall had done this. He said the Manager has often shown arrogance and contempt of the people. He said Mr. Udall did not include the Planning & Zoning recommendation in the Council's information packet on the Woodland Road/Settler Lane rezoning project. He said Mr. Udall selected members of the General Plan Advisory Committee, whose purpose is to examine the current General Plan and make suggestions for a new revised plan. He said Mr. Udall's GPAC was predominantly comprised of hand picked, special interest stakeholders who might reap financial awards from their decisions. He said once again some of the Council Members were not aware of such a committee. He said Pinetop-Lakeside's revenues were at an all time high between 2007 and 2008, yet said he has seen no significant Town improvements during those high revenue years. He said this contract renewal increases Mr. Udall's annual salary by \$15,000, while the Manager lays off good Town employees, cuts pay, asks the police to go on furloughs and work skeleton crews; and all the while complaining the Town is broke. He said through the actions and deeds of Mr. Udall over the years, he has little doubt that his intent for the Town is in direct opposition of the majority of the people. He said if they retain the Manager they would soon lose the Park, eliminate the last remaining open spaces and the small town atmosphere. He said those are the primary reasons visitors come here and why people live here. He said they must find ways to redevelop the dilapidated and blighted areas with new growth. He said they must revitalize the business sector and stimulate the job market. He said those goals could be achieved without destroying the most precious assets. He said they could be achieved by seeking out a contemporary, progressive; visionary thinker that values the natural forested Town and its citizens; but said unfortunately Mr. Udall has demonstrated that his abilities and interests do not fall into that realm. He said he believes as long as Mr. Udall is in place they would experience turmoil and discontent. He urged the Council to rethink the importance of their vote.

Mayor Smith stated terms of the contract are decided by the Council. Councilman Dodd asked for clarification on the draft amount stated in the contract, and said there is some confusion on that. Ms. Rosales stated the amount listed in the contract is \$.08 off what the Town Manager's salary would be if he had not taken the furlough. She stated he did take the furlough and that reduces his salary about \$6,000. She said in order to negotiate the contract it should be based on his salary without the furlough. She said it would be the amount listed less \$.08.

Mr. Russell stated he is in opposition of the renewal of Mr. Udall's contract. He stated the recent lawsuit is enough grounds for non-renewal. He stated the Manager's action violated not only two state laws, but said he also violated Chapter 2.08 of the Town Code. He said the Town has no recourse but to enact Section 2.08.050, Removal from office for cause, which he said means the Manager committed a violation of federal, state or local laws, regulations or policies, the Town Code, the Town's Employee Manual or other Town policies. He said the new contract gives the Manager a \$13,809 pay increase. He said that is an increase from his current salary of \$101,806 to \$115,677 per year. He said the Manager receives an auto allowance of \$500 per month, and a cell phone allowance of \$100 per month. He said if they add all that together the Manager's annual salary could be \$122,877, plus other perks he receives, which he said would push it even higher. He said the Town is on a 4-day work week and talked about furloughs and layoffs at the Police Department. He said they already laid off two secretaries and the Code Enforcement Officer. He asked how they could pass this contract in good conscience. He said the filling of this position should be taken away from the Council and put in the hands of the citizens. He said he thinks the people would like to see the Manager resign or no contract offered by the Council. Mayor Smith stated under the Council/Manager form of government the Council always hires the Manager.

Mr. Alderson stated he just legally served papers at 8:21 p.m. to the Town. He stated it is not personal, it is a legal issue. He said they are demanding Councilwoman Wessel excuse herself from this item. Mayor Smith stated if he submitted it in writing it would have to remain in writing, and said he would not allow him to take the time to reiterate. Ms. Rosales stated it is an e-mail. Mr. Alderson stated it is not an e-mail. He said the items he wants to state are not contained in the service. Mayor Smith stated if there is a complaint filed it must be done in writing and not at the podium. Mr. Alderson stated there is a complaint, but said when the illegal contracts were awarded to Excellex, the Town Clerk, who was at that time Leslee Wessel, signed them. He said since Mr. Udall failed to perform his fiduciary responsibility by allowing the contract to be continuously awarded this should be taken into consideration in his contract renewal. He said Ms. Wessel's link to Excellex also links her to Mr. Udall's renewal. He said the Attorney General's documents clearly state they may pursue further legal action which may also include Councilwoman Wessel as a defendant or a witness, also linking her more closely to this agenda item. He said therefore she should not vote or participate in any discussion as called for by Arizona Law, and said she should leave the building. He said if she does not excuse herself it would render the vote invalid, would cause a lawsuit to be triggered, and would cause the Town to be in violation of the Open Meeting Law. He said they should stick to the law when it comes to these issues. He said it is time to stop special deals being cut in backroom closets, and get on with bigger, better, more prosperous times in Pinetop-Lakeside. Ms. Rosales stated what she has in her possession is an e-mail, and said there is no complaint. She said the other document she received was in regard to Vice Mayor Crockett, which was a copy of an e-mail sent to someone else. She stated the primary test for a conflict is substantial interest, which is

based on pecuniary or proprietary interest. She stated they are only in violation if there is an actual substantial interest.

Mayor Smith adjourned the meeting to allow Attorney Rosales and Councilwoman Wessel to discuss this issue.

Mayor Smith reconvened the regular meeting.

Councilwoman Wessel stated she was the Town Clerk from 1984 to 2005. She stated the Excellex contract was legally awarded in 1983, and was signed by her as Town Clerk. She said she did not then, and does not now, have any direct or indirect pecuniary interest in that contract. She stated the Town Clerk, nor the Town Clerk's office, were named in the lawsuit. She stated as the Town Clerk she had no fiscal responsibility for the contract. She stated there may be a perceived conflict, but said she does not believe she has a conflict, and said she would remain in her seat as a Council Member tonight.

Roger Toronto stated he supports the renewal of the contract for the Town Manager. He said he has known Mr. Udall since he moved here and during that time has had nothing but positive experiences. He said he has spent a career judging people's character, and said he believes Mr. Udall to be an honest, upright individual. He said he finds it hard to believe the allegations being made. He said there is a process to be followed, and said if there are legitimate allegations they could be aired in such a manner as both sides would have an opportunity to present whatever evidence and witnesses they may have.

Chuck Waldo stated as a former Council Member he felt compelled to speak. He said the attacks and innuendos are unprecedented and uncalled for. He implored the Council to do what they feel is right and not be pressured by accusations and threats. He said he served on the search committee when Mr. Udall was hired. He said he called the Town Mr. Udall used to work for and said the accusations alluded to are not true. He said as for Mr. Udall's performance, he has found him to be very professional and always doing the right thing. He said he has not been involved for the past three years, but said when he was on the Council he felt Mr. Udall was above reproach. He said Mr. Udall has had to make some difficult decisions. He said the Council must consider there are things to be gained and things to be lost. He said if they did not renew the contract and put out a search for a new manager, the process could take 3 to 6 months. He said the search would use taxpayer dollars to advertise, review applications, and sit through interviews; and said there would be moving costs. He said because of the attacks from a very small vocal group of people this Town has a bad reputation. He said he does not think anyone worth their salt would take the job for under \$200,000. He said he supports the Council and said they have been very patient. He said this group says they represent the people, but are made up of a lot of people who do not want to run for the Council, only criticize. He said a large majority of the citizens support what the Council and Manager are trying to do.

Robert Ingels stated the Town is changing. He said there are some things to be proud of, and some with work ahead. He said as they face the decision tonight, the integrity and responsibility they have to show would be difficult. He said as they change and grow they need new leadership. He said their job as policy makers is to help the Town attain the goals the community has set. He said they have seen the Library go from providing services six days a week to four days a week. He said the 4/10 schedule has saved the community \$18,000, but said

due to holiday pay the savings may not be that high. He suggested they offer the Manager a month-to-month contract, while assessing the needs of the community. He said this is an opportunity to make a change that would help the community and the citizens grow together.

Mr. Dorsay stated he has read the Town Manager's job description, and said there is almost nothing in it that he has not violated. He said Mr. Udall is to keep the Council fully advised of the financial condition and needs of the Town at all times. He said it is the Manager's duty to see that no indebtedness is incurred or expenditure made in violation of the Arizona Constitution, the State Budget law, and the Arizona Revised Statutes. He stated Mr. Udall has violated every one of those. He referred to the Attorney General's lawsuit and said the fines and experts involved could have cost the Town \$500,000. He said the State allowed the Town to plead guilty and enter into a consent agreement. He said some of the things the Town Manager is accused of are conspiracies. He read the definition of a conspiracy. He asked why Mr. Udall would sign the consent agreement if he thought he was innocent of the charges. He said he did that to get out from under the responsibility of being prosecuted. He said the Manager's contract specifically provides for termination for cause. He said according to the lawsuit, the Town and Mr. Udall have violated everything. He stated Mr. Udall does not relate to this Town. He stated Mr. Udall is in violation of every Town desire to have a small town atmosphere; and said he has worked consistently with every developer who came to Town. He said they would not know what was going on until the next PUD came along to destroy another neighborhood or meadow, and said the people living in that area had to file a referendum. He said that has cost hundreds of thousands of dollars in legal fees. He said Mr. Udall's salary in addition to the \$120,000 mentioned, includes another \$34,000 in benefits. He said Mr. Udall gets about \$150,000, which is almost equivalent to the Town Manager in Bend, Oregon, who he said has a \$200,000,000 budget compared to this Town's \$10,000,000 budget. He suggested they put ads in the newspaper and see how many competent people apply.

Sharman Toronto thanked the Council for their service in the difficult job of leading the Town. She spoke on behalf of Mr. Udall and the renewal of his contract, and said she has known him and his family since they moved here. She stated she teaches piano to his children and finds him beyond reproach.

Trisha Merrill stated Mayor Smith grew up in the same neighborhood as her family. She stated she and her husband have lived here for 30 years. She stated she was born in McNary and was raised in Show Low, and said she appreciates the type of people she was raised by and grew up around. She said she is also grateful for freedom of speech, and for freedom to disagree in the public square. She stated she disagrees with the editorials printed recently in the local paper. She said she does not agree with those who wrote them, or with what they said. She said those attacks were personal and not civic. She said she sees this as an attempt to destroy an individual and to damage a family. She said as a Council they cannot fall in line with this and listen to a small minority. She said she believes a majority of the citizens are satisfied with the Town Manager. She said she thinks Mr. Udall is a good Town Manager, and said she believes his contract should be renewed.

Mark Jacobs stated he thinks the personal attacks are inappropriate, and come out of frustration. He said he has pleaded with the Council before to address it and not ignore it. He said there is a larger group that does not want this Town to become Flagstaff, Prescott, Phoenix, etc.; but said there is just as big a group who want that. He said he does not see much compromise. He said

there are issues with Mr. Udall, and said he thinks a change in that office is necessary and warranted. He said the \$7,000,000 proposed to build a new Town Hall would be nice, but said it is not necessary. He said Pinetop-Lakeside spent in administration almost as much as Show Low, without the population. He urged the Council to consider delaying their vote and start investigating these allegations. He said they should stop dismissing it, and not force votes, recalls, referendums, and initiatives. He said they should listen and then report back to the citizens. He said it is up to the Council to sort through it and stand by Mr. Udall or not. He said if they have to decide something, his choice would be non-renewal. He said the lawsuit is real and they need to consider it. He said they need to consider what happened to an ex-Mayor who made a mistake; and consider what is best for the Town. He said they should listen and not rush into a decision.

Kevin Birnbaum asked for the definition of recusal. Ms. Rosales stated conflict of interest which is normally defined as a pecuniary or proprietary interest either direct or indirect. She said the legal threshold is substantial interest. Mr. Birnbaum asked about Vice Mayor Crockett's recusal. Ms. Rosales stated the Vice Mayor established a conflict with Mr. Udall last June because at that time he was the financial advisor for the Town Manager.

COUNCILWOMAN IRWIN MOVED THE COUNCIL ENTER INTO EXECUTIVE SESSION AT 8:32 P.M. TO DISCUSS THIS ITEM. COUNCILMAN BISCOE SECONDED THE MOTION AND IT CARRIED UNANIMOUSLY.

Mayor Smith reconvened the regular meeting at 10:26 p.m.

COUNCILWOMAN IRWIN MOVED THE COUNCIL ADOPT RESOLUTION NO. 10-1112 RENEWING THE EMPLOYMENT AGREEMENT BETWEEN THE TOWN AND L. KELLY UDALL, TOWN MANAGER, WITH THE MODIFICATIONS THAT THE CONTRACT BE EFFECTIVE FOR 1 YEAR, THAT THE TOWN PROVIDE THE MANAGER WITH 120 DAYS WRITTEN NOTICE IN THE EVENT OF NON-RENEWAL, DELETING THE EXECUTIVE LEAVE CLAUSE, AND SETTING PERFORMANCE EVALUATIONS QUARTERLERY AT A TIME AND PLACE SET BY THE COUNCIL. COUNCILMAN WEBB SECONDED THE MOTION AND IT CARRIED 4-2 WITH COUNCILMEN DODD AND BISCOE OPPOSED.

The Regular meeting adjourned at 10:28 p.m.

Dated this 26th 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 15th day of April 2010. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 26th day of April 2010.

/s/ Lu Anne Frost, Town Clerk