

TOWN OF WELLTON

Minutes of the NOVEMBER 1, 2013 Work Session Meeting

Mayor James L. Deermer called the work session to order at 6:00PM on Friday, November 1, 2013 and dispensed with the Pledge of Allegiance and invocation. Roll call was taken.

Council Members Present: Mayor James L. Deermer, Vice Mayor Cecilia C. McCollough, Councilmen Alejandro M. Bejarano, Lisa J. Jameson, and Vickie L. Bornt

Staff Present: Interim Town Manager/Public Works Director Joe Grant and Financial Director Ana Flores

Guests Present: William & Anna Lee Phillips, Frank Bornt, Dallas & Laura Self, Lorne Croy, Ken Wilkes, Doug Hoff, Al Krieger, Richard & Janet Delchout, Tony & Tanci Mercer and Victor Frankfather.

Call to the public: No written requests were received so moved on to Discussion and Action Items.

DISCUSSION AND ACTION ITEMS

1. Review Applications for Town Manager.

The Council discussed how they were going to scrub the list of applicants to a 'short list' and then hold interviews. All Council members had reviewed the 18 applications received. Each Council member had developed their own short lists. It was generally discussed on when would be a good time to conduct the interviews. Financial Director Ana Flores suggested that if all Council members had completed their reviews, each could voice their candidate numbers, these could be tallied and the Council would have an idea of the spread of candidates. Councilman Lisa Jameson expressed her impression that there was going to be a discussion by all Council members of what qualities and characteristics we were looking for in the candidates and then each of the candidates would be reviewed and the Council members could indicate what made each a standout in their opinion.

Vice Mayor Cecilia McCollough suggested that we review the candidates for the Deputy Town Clerk first because the position is so critical to the office and the pressing need to fill that position immediately. Mayor Deermer pointed out that the Town Manager is responsible for hiring the Deputy Clerk. Vice Mayor Cecilia McCollough stated that the Deputy Clerk position has been vacant for months and there is a backlog of work. Financial Director Ana Flores commented that if the Council moved quickly with the hiring of a Town Manager, then another couple of weeks would not impact the office that much. Financial Director Ana Flores added that she felt it was crucial for the Town Manager to be involved in the hiring of the Deputy Town Clerk.

Community member Mr. Victor Frankfather asked how many applicants there were and was curious if they had met all the minimum requirements. There were 18 applicants for the Town Manager position and 15 for the Deputy Clerk position. Mayor Deermer indicated he had removed some from his list due to lack of specialized experience. Vice Mayor McCollough said that there were very good candidates. She said there were several that had public administration experience and education. Others had lots of experience in small towns or municipal governments, along with various accreditations. Mr. Frankfather further asked if there were any applicants from Wellton. Vice Mayor McCollough stated that for the Town Manager position, there was one applicant from Wellton, five from Yuma, two from Somerton, the others were from outside the immediate area. Mr. Frankfather asked if the new Town Manager would be required to live in Wellton. Vice Mayor McCollough indicated that would be her preference. Mayor Deermer indicated that the entire Council felt that way.

The Council discussed meeting again before the Regular Meeting on November 5 to review the compiled 'short lists' from each member. Councilman Jameson thought that this discussion would happen this evening. Mayor Deermer said there were too many to go over each applicant. Councilman Bornt suggested that all members give Financial Director Ana Flores their short lists then the Council could determine how everyone fell out and discussions could proceed from there. At that time, Financial Director Ana Flores collected everyone's numbers. Out of the 18 applicants, there were 12 that Council members had indicated interest in. Mayor Deermer asked which applicants had received the most marks. Financial Director Ana Flores said that Applicants #1 (4), #10 (3), and #12 (2), the rest received one mark. Interim Town Manager Joe Grant noted that there was one applicant (#3) that he thought was a well-qualified candidate that didn't receive any marks. Councilman Bejarano indicated that he wanted to give priority to those located in the County. Councilman Jameson believed that the Council was going to decide as a group whether to give priority to local applicants or whether qualifications were more important. Mayor Deermer said that, for him, the qualifications and experience were more important.

Vice Mayor McCollough commented that we had received more applications than we had expected and even though we had all read through them, there may have been details that were missed. She suggested that the Council meet prior to Tuesday's meeting and go over our short lists again to ensure we've covered everyone. Councilman Bejarano agreed that each Council member should review the applications again and then discuss on Tuesday. Councilman Bornt suggested that the Council meet at 5:00 PM on Tuesday to discuss in detail all the applicants who received a vote.

Financial Director Ana Flores asked if any applicants who were in attendance at this meeting would be able to speak. Mayor Deermer noted that there was one applicant present and asked if there were any others. Yuma Mayor Al Krieger took to the podium and spoke of many of his various contacts and his accomplishments as Yuma Mayor that would make him an asset to the Town of Wellton as its Town Manager. Community member Mr. Victor Frankfather considered that Mayor Krieger's speaking was inappropriate, it was like an interview. Another community member thought that it was unfair to the other applicants. Mayor Krieger concurred and sat down.

2. Review Applications for Deputy Town Clerk.

Financial Director Ana Flores got the short lists of all the Council members. A question from the floor was why, if the Town Manager selects the Deputy Town Clerk, was the Council going through the applications? Mayor Deermer explained that the Council would review and make recommendations for the Town Manager to consider. Vice Mayor McCollough felt that it is important for the Council to be involved with this position. Interim Town Manager Joe Grant pointed out that the Deputy Town Clerk also serves the Council. Financial Director Ana Flores reported the tally of marks received for the Deputy Town Clerk applicants: Candidate #4 (5), Candidate #1 (2), Candidate #8 (2), Candidate #2, (1) Candidate #3 (1), Candidate #11 (1) and Candidate #12 (1).

3. Discussion regarding Dallas Self's proposal on Gila Ranch Road.

Mr. Self explained the road in question is Avenue 25 and Gila Ranch Road, and Avenue 24 and County 13th Street. In 2011, the Council voted to accept the assignment of the road. The remaining question was what was reasonable maintenance of the road. Mr. Self volunteered that service but felt that it was the town's responsibility to accept the maintenance of the road to a minimally-required passable level. Mr. Self has discussed the topic with Interim Town Manager Joe Grant. Mr. Self proposed that he pay the town an amount of \$3500 yearly for the Town of Wellton to maintain the road along Avenue 25 and Gila Ranch, and Avenue 24 and County 13th Street to a minimal standard of passable. The agreement would be binding to Mr. Self and his heirs until such time that an improvement district could be created to cover all property owners who would benefit; or until such time that the road is paved; or until funds become available for the maintenance. Mr.

Self is in discussion with Mr. Wayne Benesch regarding establishing an improvement district. Mr. Self said he had talked with other property owners out there who would be willing to make a yearly contribution for maintenance.

Mr. Anthony Mercer expressed his main concern for the road was safety as he has children. There's a lot of heavy, military equipment/vehicles regularly traveling on the road. The August rains created a total mess and it was dangerous. Mr. Mercer expressed that he would also contribute funds for maintenance.

Interim Town Manager Joe Grant has recently researched the issue. He found where the Town Council had approved to accept the road, however, in talking our Counsel said there is no public benefit. There is a constitutional gift clause in the State of Arizona that a city cannot gift developers things that do not come back with equal value. Interim Town Manager Joe Grant also stated that the minimal standard of a road is not just passable, by the General Plan and our code is that of a standard paved road. Interim Town Manager Joe Grant talked with Mr. Roger Patterson of the County and was told that Yuma County will not accept a road that is not paved. To pave, by Mr. Self's own engineers' estimate, the road would cost \$3.3M or more. If the Town of Wellton were to accept the road, in essence it would be gifting Mr. Self \$3.3M and the only return would be the prospect of sale of lots which would bring in citizens. However, the Arizona Supreme Court just had a ruling that those kind of projected sales cannot be factored into the equation. It has to be viable, measurable, contractual data. In other words, a water plant, a sewage treatment plant, a business that is going to bring 100 jobs; something that is substantial; the prospect of future sales does not apply. The Town of Wellton is not legally capable or able to accept the road. Mr. Self asked if the maintenance standard was the required standard or that of another town. Interim Town Manager Joe Grant answered that that is the Yuma County standard.

Interim Town Manager Joe Grant did mention that Avenue 25 is another issue. The Town does maintain it to a minimum. It was bladed after the storm. He did agree that the road is in terrible shape. He stated that the military vehicles have added to the damage and when the Town talked to the military about getting some assistance, the Town was told that it was the Town's problem. The Town is currently looking at different options to provide more maintenance.

Mayor Deermmer asked Interim Town Manager Joe Grant to provide Mr. Self with copies of the information regarding the constitutional gift clause and Arizona Supreme Court ruling.

Mr. Self asked, for clarification, if it is illegal for the Town to accept assignment of the road. Interim Town Manager Joe Grant said that in the road's current state, the answer is yes. However, if the road were paved, that would be a different issue.

More discussion followed. Interim Town Manager Joe Grant indicated that it was not so much an issue of the road, it's the matter of the Town giving a contractor something and not receiving something of equal value back. Mr. Self said that the Town would be receiving an annual cash award for maintenance. Interim Town Manager Joe Grant pointed out that \$3,500/year was not substantial compared to a \$3.3M road.

Councilman Bejarano understands the gift clause but felt that there are other people living in the area that would benefit. Interim Town Manager Joe Grant pointed out that the majority of people live on the first mile of road, out past that there are 3 or 4 people (24 landowners). Councilman Bejarano apologized for this issue dragging on so long. He did not want to dismiss the issue so casually because the Town had annexed the property. Interim Town Manager Joe Grant stated that annexation does not obligate the Town to put roads in. Mr. Self pointed out that the Town did vote to accept assignment of the road in March 2011. Interim Town Manager Joe Grant said that the Town could not be forced to do something that was illegal. Mr. Self said that he was not trying to force anyone to do anything, he is just trying to maintain an existing dirt road to a reasonable standard and is willing to pay for it. Interim Town Manager Joe Grant stated that he understood

Mr. Self wanted the Town to take over the road so that he could sell his lots. Mr. Self indicated that there are 23 other property owners out there who cannot develop anything until the Town accepts the assignment of the road. All they're asking for is to have a dirt, gravel road maintained. Mr. Self stated that without assignment of the road by the Town of Wellton, 2,058 acres of land cannot be subdivided; none of it. The Arizona Dept of Real Estate requires a public notice and requires that the Town of Wellton accept assignment of the road before they will issue a public notice. In the absence of that, there are over 2,000 acres of land that is barren, that cannot be developed. Mayor Deermer stated that if the Town of Wellton acted, it would be in violation and they would come down on us. Mr. Self was amazed that at no point was it ever brought up that the road would have to be paved. Mr. Self asked Mayor Deermer if he was aware of it. Mayor Deermer said that the information Mr. Grant researched shows that the Town cannot do it. The information was from Risk Management and provided by League of Arizona Towns and Cities.

Another property owner asked about who actually owns the road. Part of it belongs to BLM but farther out it is private road. The individual asked about the legality of putting a gate across the road and hiring someone to maintain their road for them. Interim Town Manager Joe Grant indicated they could do that, in fact, Mr. Self has been maintaining the road himself and he went on to say that it was their road and they could do what they wanted. Specifically, the road they were speaking of is Gila Ranch Road, not Avenue 25. They could even gate it off and have a gated community. She indicated that when they bought their property, that they had given up an easement for the road and she was wondering who the easement went to. Mayor Deermer said that it probably went into the County. Interim Town Manager Joe Grant checked with BLM who indicated that portion from Avenue 24 to Avenue 20 is BLM's easement right of way. Mr. Grant has asked the County about the road from 24 around the corner to 25 and they are researching it. Councilman Bejarano asked Interim Town Manager Joe Grant if he knew what year the land was annexed in and Interim Town Manager Joe Grant replied that he believed that it was 2007.

Councilman Jameson said that she had read through the information Interim Town Manager Joe Grant provided. Interim Town Manager Joe Grant had asked if the Town had an obligation to put infrastructure in due to annexation. He read the information provided to indicate that infrastructure could be put in if development was anticipated. Councilman Jameson asked if Interim Town Manager Joe Grant believed that there wasn't anticipated development and he countered and asked her if she believed there was going to be development. Councilman Jameson said that we were killing any development if we didn't do this. She then went on to read from an email from Mr. Sims: "On or before the date the governing body adopts the ordinance annexing territory, the government body shall have approved a plan, policy or procedure to provide the annexed territory with appropriate levels of infrastructure and services to serve anticipated new development within ten years after the date when the annexation becomes final pursuant to subsection D of this section." Interim Town Manager Joe Grant said that there already was growth on the first mile of Avenue 25.

Mr. Self had one last question: If it was illegal to accept assignment of the road, why did the board vote in March of 2011, unanimously, to accept the assignment of the road? Mayor Deermer replied it was because the Council was not aware of the Gift Clause. This came down from Risk Management. The Gift Clause says that if you bring in a big business with a 100 people coming in, and it directly benefits the Town, that it makes sense to put that in. Mr. Self said the requirement, that in order to maintain a road, it has to be paved. Interim Town Manager Joe Grant said that in order for the Town to accept a road, it has to be at the Town's standards. The standard in the General Plan is that they are paved.

A community member brought up the unrelated subject of the long-range plan for Coyote Wash 3 in regards to the Town taking over the road. It is a growing community. Coyote Wash 3 is assessed a 3% tax to cover infrastructure improvements. He stressed the importance of having a plan in place. Councilman Jameson stated that she believed that Phase 3 had been discussed and Mr. Rinehart had

said there was a limit to the percentage of tax to be assessed. However, there were not enough houses to cover to costs that would enable to Town to pay for those improvements initially. Interim Town Manager Joe Grant did recall that there were not enough houses there at the time.

Mr. and Mrs. Mercer both expressed their concerns over the condition of the portion of Avenue 25 that they live at and also noted the number of military vehicles that have traveled on the road. Interim Town Manager Joe Grant noted that the military vehicles do not tend to drive slowly and even noted many people tend to drive faster over the rutted roads trying not to bottom out only to make the roads worse. Interim Town Manager Joe Grant noted that when the new Town Manager starts to work, he will be able to devote total attention to Public Works projects. Councilman Bornt noted that out at YPG, there had been a lot of success using the Marine Corps Engineer Units to do projects as part of their training exercise and perhaps the Town could look into getting some military support on the road through that process. Mr. Frank Bornt also suggested that the Town could prohibit the military from driving their tactical vehicles on the roads unless they provided some support in upkeep. Interim Town Manager Joe Grant indicated that past attempts to involve the military had been unsuccessful.

• **Future Agenda Items**


- 1. The museum, continuing expenses versus lack of membership, activities, or funds.

• **Other Reports**

None

• **Staff Reports: None**

Adjournment: Motion made by Councilman Bejarano and seconded by Councilman Bornt to adjourn. Meeting was adjourned at 7:16 PM.



James L. Deermer, Mayor

ATTEST:



Joseph Grant, Interim Town Manager

CERTIFICATION:

I hereby certify that the forgoing minutes are a true and correct copy of the special meeting held November 1, 2013 and the meeting was duly called and posted and that a quorum was present.



Joseph Grant, Interim Town Manager