

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE REGULAR SESSION OF THE
FOUNTAIN HILLS TOWN COUNCIL
JANUARY 19, 2017**

REGULAR SESSION

* **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Kavanagh called the meeting to order at 6:30 p.m. in the Fountain Hills Town Council Chambers.

* **INVOCATION** – Rabbi Mende Lipskier, Chabad of Fountain Hills.

ROLL CALL -

Present for roll call were the following members of the Town Council: Mayor Linda Kavanagh, Vice Mayor Nick DePorter, Councilmember Alan Magazine, Councilmember Cecil Yates, Councilmember Dennis Brown, Councilmember Art Tolis, Councilmember Henry Leger. Town Manager Grady E. Miller, Town Attorney Andrew McGuire and Acting Town Clerk Nancy Walter were also present.

* **MAYOR'S REPORT**

i) **THE MAYOR WILL READ A PROCLAMATION DECLARING FEBRUARY 9, 2017 AS PONY EXPRESS DAY IN THE TOWN OF FOUNTAIN HILLS.**

Mayor Kavanagh read the proclamation (available on line or in the office of the Town Clerk) declaring February 9, 2017, as Pony Express Day in the Town of Fountain Hills.

ii) **THE MAYOR WILL READ A PROCLAMATION RECOGNIZING PASTOR DON LAWRENCE FOR HIS CONTRIBUTIONS TO THE TOWN OF FOUNTAIN HILLS.**

Mayor Kavanagh read the proclamation (available on line or in the office of the Town Clerk) recognizing Pastor Don Lawrence for his contributions to the Town of Fountain Hills. Mayor Kavanagh stated that Pastor Lawrence would be retiring from the Christ's Church of Fountain Hills and would give his last sermon on January 29, 2017.

* **SCHEDULED PUBLIC APPEARANCES/PRESENTATIONS**

Mayor Kavanagh introduced Town Manager Miller who reported on the Town's nomination for their public arts collection as part of the "Governor's Annual Arts Award" program. Town Manager Miller explained along with the support given by the Cultural and Civic Association and the Town there was a good chance of placing in the competition held at the May gala in Phoenix.

i) **THE MAYOR AND/OR COUNCIL MAY REVIEW RECENT EVENTS ATTENDED RELATING TO ECONOMIC DEVELOPMENT.**

Mayor Kavanagh reported that in his opening speech, Governor Ducey spoke during the 53rd Legislative Session and called for a renewed effort to bring back the movie industry to Arizona. Mayor Kavanagh noted that during their last Maricopa Association of Governments (MAG) Economic Development meeting there was a presentation by "Sneaky Big Studios" a world class production studio located in Scottsdale. Mayor Kavanagh also mentioned that during the production of a segment of "Waiting to Exhale" starring Whitney Huston, some residents of Fountain Hills participated in the filming.

Mayor Kavanagh expressed excitement that "Apple" had proposed to expand their plant and capabilities located in Mesa, Arizona by producing high-tech manufactured finishing products.

CALL TO THE PUBLIC

Mayor Kavanagh asked if there were any requests to speak and Acting Town Clerk Walter answered there were no requests received.

CONSENT AGENDA

AGENDA ITEM #1 - CONSIDERATION OF APPROVING THE TOWN COUNCIL MEETING MINUTES FROM JANUARY 5, 2017.

AGENDA ITEM #2 - CONSIDERATION OF APPROVING A FAIR/FESTIVAL LIQUOR LICENSE APPLICATION FOR GRAND CANYON WINERY, INC. (CHARLES MARTINET) TO BE LOCATED ALONG THE AVENUE OF THE FOUNTAINS, IN CONJUNCTION WITH THE FOUNTAIN HILLS FINE ART AND WINE AFFAIRE, FROM 10:00 AM TO 5:00 PM DAILY, FROM MARCH 24, 2017, THROUGH SUNDAY, MARCH 25, 2017.

AGENDA ITEM #3 - CONSIDERATION OF APPROVING A SPECIAL EVENT LIQUOR LICENSE APPLICATION FOR THE VETERANS OF FOREIGN WARS POST #7507 (BORIS BILOSKIRKA) FOR THE PROMOTION OF A FUND RAISER TO BE HELD AT TWO LOCATIONS: (1) AT VERDE RIVER DRIVE AND (2) PM SAGUARO BOULEVARD, BETWEEN PAUL NORDIN PARKWAY AND AVENUE OF THE FOUNTAINS, FOUNTAIN HILLS, AZ, IN CONJUNCTION WITH THE FOUNTAIN HILLS GREAT FAIR FROM 10:00 AM TO 6:00 PM DAILY, FRIDAY, FEBRUARY 24, 2017, THROUGH SUNDAY, FEBRUARY 26, 2017.

AGENDA ITEM #4 – CONSIDERATION OF APPROVING A FAIR/FESTIVAL LIQUOR LICENSE APPLICATION FOR CELLAR 433 (JOHN MCLOUGHLIN) FOR THE PROMOTION OF A FUND RAISER TO BE HELD ON AVENUE OF THE FOUNTAINS, IN CONJUNCTION WITH THE FOUNTAIN HILLS FINE ARTS AND WINE AFFAIRE, FROM 10:00 AM TO 5:00 PM DAILY, FROM FRIDAY, MARCH 24, 2017, THROUGH SUNDAY, MARCH 26, 2017.

Mayor Kavanagh requested a motion on the consent agenda items as written.

Councilmember Yates **MOVED** to approve the Consent Agenda as listed and Councilmember Magazine **SECONDED** the motion.

A roll call vote was taken with the following results:

Vice Mayor DePorter	Aye
Councilmember Magazine	Aye
Councilmember Leger	Aye
Councilmember Tolis	Aye
Councilmember Yates	Aye
Councilmember Brown	Aye
Mayor Kavanagh	Aye

The motion **CARRIED UNANIMOUSLY (7-0)**.

REGULAR AGENDA

AGENDA ITEM #5 – CONSIDERATION OF RESOLUTION 2017-01, ABANDONING WHATEVER RIGHT, TITLE, OR INTEREST THE TOWN HAS IN THE CERTAIN PUBLIC UTILITY AND DRAINAGE EASEMENT LOCATED AT THE REAR PROPERTY LINE OF PLAT 602A, BLOCK 1, LOT 36 (15524 E. CAVERN DRIVE), AS RECORDED IN BOOK 161, PAGE 42, RECORDS OF MARICOPA COUNTY, ARIZONA. (EA2016-07)

Town Manager Miller explained that this type of item would routinely be addressed on the consent agenda but due to concerns expressed by a resident, Town Engineer Randy Harrel placed the abandonment for discussion and Council's consideration.

Mr. Harrel stated that neighboring resident Greg Hathaway requested to address Council concerning the requested abandonment even through it was declared that the abandonment was standard with all utility companies issuing their approval along with Town staff's determination that the drainage easement was no longer needed. Mr. Harrel confirmed that staff's recommendation was to approve Resolution 2017-01.

Mr. Harrel asked if there were any speaker cards and Acting Town Clerk Walter stated none were received.

Mayor Kavanagh asked if Mr. Greg Hathaway was in attendance to speak. Mr. Hathaway was not present to address the Council.

Councilmember Leger asked what was Mr. Hathaway's concern and Mr. Harrel answered that Mr. Hathaway believed the abandonment would allow the owner to put a masonry wall at the property line which he believes is not in keeping with the neighborhood and its aesthetics. Mr. Harrel stated he explained to Mr. Hathaway that his objection was not relevant to a public Utility Easement/Drainage Easement abandonment request.

Councilmember Leger asked if the properties were located in a homeowner's association and Mr. Harrel answered that it may be located in the Neighborhood Property Owners' Association (NPOA). Councilmember Leger pointed out that if this property was held under one of these restrictive bodies, this issue could then be addressed by them.

Mayor Kavanagh asked if there was further discussion or questions from Council, otherwise, she requested a motion.

Councilmember Brown **MOVED** to approve Resolution 2017-01, abandonment of the public utility and drainage easement at 15524 E. Cavern Drive (Plat 602A, Block 1, Lot 36), with stipulations and Councilmember Yates **SECONDED** the motion, which **CARRIED UNANIMOUSLY (7-0)**.

AGENDA ITEM #6 – CONSIDERATION OF AN AGREEMENT OF SALE, BETWEEN THE TOWN OF FOUNTAIN HILLS AND FOUNTAIN HILLS THEATER, INC., FOR SALE OF THE COMMUNITY THEATER PROPERTY.

Town Manager Miller explained the process of sale used in this request with one-bid received from the Fountain Hills Theater and had staff's recommendation for acceptance of the Theater's purchase agreement since capital improvements exceed the appraised value of the property.

Councilmember Leger asked what the appraised value of the property was and Town Manager Miller reported approximately \$269K and with the consideration to the theater's in-kind capital improvements to the facilities, staff believed their investment was much higher than reported of \$577K.

Councilmember Leger asked what were the deed restrictions and Town Attorney McGuire answered that the property would be required to operate as a community theater for a 15 year period following sale ensuring the use would continue. Town Attorney McGuire added that in the future Council could lift the restriction if they deem it reasonable.

Councilmember Leger asked about the payment of closing costs and Town Attorney McGuire assured they would be paid by the Fountain Hills Theater.

Councilmember Tolis asked if the Town could receive a tax write-off or any other benefit if they donated the property to the theater and Town Manager Miller answered the Town was a tax exempt organization. Town Attorney McGuire added that this property was previously gifted to the Town from MCO Properties and staff stated in their Request for Proposals (RFP) that all property improvement costs would be considered as part of the purchase price through an open bid process since the Town could not give property away.

Mayor Kavanagh asked if there were any speaker cards and Acting Town Clerk Walter answered none were received. Mayor Kavanagh asked if there was further discussion or questions from Council, otherwise, she requested a motion. Councilmember Yates **MOVED** to approve a purchase agreement authorizing the sale of Town Property at 11445 N. Saguaro Boulevard to Fountains Hills Theater, Inc. and Vice Mayor DePorter **SECONDED** the motion, which **CARRIED UNANIMOUSLY (7-0)**.

AGENDA ITEM #7 – CONSIDERATION OF RATIFYING THE TOWN MANAGER’S EMERGENCY PROCUREMENT RELATED TO REPAIRS TO THE FOUNTAIN LAKE AERATION SYSTEM AND AUTHORIZING THE TOWN MANAGER TO EXECUTE CONTRACTS RELATED TO THE REPAIRS IN AN AMOUNT NOT TO EXCEED \$203,000.

Town Manger Miller explained the reason for the emergency action involves Council’s concerns that the June deadline for repairs would be after the time the lake odors would rise due to the accumulation of algae. Town Manager Miller stated that it was determined through the procurement policy that the repairs to the Fountain Lake aeration system could be expedited reducing the time of completion to eight to ten weeks. He then introduced Community Services Director Mark Mayer who continued the discussion.

Mr. Mayer explained that upon choosing a contractor from a short list of qualified contractors the aeration system would then be expedited with Council’s approval. Mr. Mayer noted the lake would receive four new compressors, 16 new dual dome diffusers, 10 new horizontal movers to move the algae out of the coves, allowing the water to turn-over in one day compared to the current seven day turnover which is a 700% improvement. Mr. Mayer pointed out there would be electrical cost savings and less wear and tear on the motors with the new system.

Councilmember Yates asked about the limited bidding process and Mr. Mayer explained that through the emergency declaration, this process could be accelerated. Councilmember Yates clarified that the vendor had already been chosen and Council was approving the action and Mr. Mayer agreed and added the proposed bid was substantially lower than previously quoted. Town Manager Miller pointed out that there was an allocation of \$203K for this project, which the bid was substantially lower than previously stated and this allows for funding for issues not anticipated during the project. He noted staff would then have the pre-construction availability to fund those project issues with Council’s approval this evening and help expedite the project.

Councilmember Yates mentioned that an estimate previously discussed and presented was \$250K and Mr. Mayer stated the original estimate was \$125K with the next higher bidder a little higher at \$165K, which was substantially less than the second qualifying bid.

Councilmember Magazine asked what the definition of an emergency was and Mr. Mayer answered a breach or compromise of a public facility and noted the wording was broadly stated. Town Attorney McGuire added that the last revised amendment of the procurement code and procurement rules now contained the definition that included “danger to public facilities” as an exception where the Town Manager could take action when it was above his authorization limit and then the Manager’s action would be later ratified by Council. Councilmember Magazine proposed that staff should be careful in the future on declaring an emergency.

Councilmember Magazine asked how much of the odor would be eliminated with this upgrade and Mr. Mayer answered it depended on the weather and added the lake consultant stated the Town should see at the least a substantial reduction in odor along with cost savings by not running the system at night. Councilmember Magazine noted that people would then see this emergency action was in the community’s best interest.

Vice Mayor DePorter questioned the long-term solution for the lake odor and Mr. Mayer responded that the system was exactly what the consultant recommended and was not a minimum solution.

Town Manager Miller pointed out there were three other system upgrades recommended and the Town would need to address them in the future. The first would be a whole new control system in the pump house. The second one would be to store water directly from the Sanitary District for grass irrigation, and, thirdly, chemically treat the lake water completely, which would eliminate the odor.

Mayor Kavanagh asked if the disc players' hooks placed in the water would damage the new system and Mr. Mayer assured her that the contract called for the system to be located far enough away and not an issue.

Mayor Kavanagh asked if there was further discussion or questions from Council, otherwise, she requested a motion.

Mayor Kavanagh asked if there were any speaker cards and Acting Town Clerk Walter answered none were received.

Councilmember Leger **MOVED** to approve the ratification of the Town Manager's emergency procurement related to repairs to the Fountain Lake aeration system and authorize the Town Manager to execute a contract and related services not to exceed \$203K related to repairs to the aeration system and Councilmember Yates **SECONDED** the motion, which **CARRIED UNANIMOUSLY (7-0)**.

AGENDA ITEM #8 – DISCUSSION WITH POSSIBLE DIRECTION TO STAFF RELATING TO ANY ITEM INCLUDED IN THE LEAGUE OF ARIZONA CITIES AND TOWNS WEEKLY LEGISLATIVE BULLETIN OR RELATING TO ANY ACTION PROPOSED OR PENDING BEFORE THE STATE LEGISLATURE.

Town Manager Miller explained that the State Legislature was in session and this agenda item would allow Council to review the League of Cities and Towns bulletin including their analysis of the bills and their impact to the Town. This would allow Councilmembers to request an item from the bulletin to be placed on the Town Council agenda for further discussion and when necessary could request staff research the issue prior to the meeting. Town Manager Miller also mentioned that at the direction of Council a letter could be written and submitted to the League expressing support or lack of support.

Mayor Kavanagh added that continued regular phone calls on Mondays into the League would continue with Town Manager Miller and her to discuss the week's new issues.

AGENDA ITEM #9 – COUNCIL DISCUSSION/DIRECTION TO THE TOWN MANAGER.

i) None

AGENDA ITEM #10 - SUMMARY OF COUNCIL REQUESTS AND REPORT ON RECENT ACTIVITIES BY THE MAYOR, INDIVIDUAL COUNCILMEMBERS, AND THE TOWN MANAGER.

Mayor Kavanagh stated she attended the 53rd Legislative Session with Gary Lvov, a former business person of the year, for the swearing in of Senator John Kavanagh and listened to Governor Ducey's budget plan.

Mayor Kavanagh stated that she attended the East Valley Chamber of Commerce Alliance Breakfast along with Governor Ducey, FH Chamber CEO Scott Soldat-Valenzuela, and several business owners and board members. She acknowledged that the Fountain Hills Chamber of Commerce is a member of the East Valley Chamber of Commerce Alliance.

Mayor Kavanagh mentioned a ribbon cutting for a new Fountain Hills business "Gym for Dogs" located at the Plaza Fountainside.

Mayor Kavanagh welcomed the Consulate General of the Republic of Poland from Los Angeles, Mariusz Brymora and his wife Grazyna, to Fountain Hills with a tour followed by another great tour with Captain Letourneau and Lieutenant Overton and stated they expressed their appreciation for these tours.

Mayor Kavanagh spoke at the "Tribute for Sheriff Joe Arpaio" and his wife Ava fundraiser for the "Extended Hands Food Bank" at the Community Center. Speakers included Senate John Kavanagh, Dave Iverson, Steven Seagal, Dr. C.T. Wright, Captain Jerry Sheridan, and Master of Ceremony Mike Broomhead.

Mayor Kavanagh expressed her excitement for the opening of the Town's Community Garden and noted that all the current beds had sold out with a second phase to be created in the future. She thanked Dr. Jyoti Patel, who spearheaded the project, along with the many volunteers, corporate sponsors, and the Town.

AGENDA ITEM #17 - ADJOURNMENT

Councilmember Yates **MOVED** to adjourn the meeting and Vice Mayor DePorter **SECONDED** the motion, which **CARRIED UNANIMOUSLY (7-0)**. The Regular Session adjourned at 7:08 p.m.

TOWN OF FOUNTAIN HILLS

By _____
Linda M. Kavanagh, Mayor

ATTEST AND
PREPARED BY:

Nancy Walter, Acting Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Session held by the Town Council of Fountain Hills in the Town Hall Council Chambers on the 19th day of January, 2017. I further certify that the meeting was duly called and that a quorum was present.

DATED this 2nd day of February, 2017.

Nancy Walter, Acting Town Clerk