

MINUTES OF THE SPECIAL MEETING OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, HELD AUGUST 31, 2009, AT 12:00 P.M., AT THE CITY COUNCIL CHAMBERS BUILDING, 826 NORTH MAIN STREET, COTTONWOOD, ARIZONA.

CALL TO ORDER AND ROLL CALL

Mayor Joens called the regular meeting to order at 12:00 p.m. Roll call was taken as follows:

COUNCIL MEMBERS PRESENT

Diane Joens, Mayor
Karen Pfeifer, Vice Mayor
Tim Elinski, Council Member
Linda Norman, Council Member
Darold Smith, Council Member

COUNCIL MEMBERS ABSENT

Duane Kirby, Council Member
Terence Pratt, Council Member

STAFF MEMBERS PRESENT

Doug Bartosh, City Manager
Kyla Allen, Executive Assistant to the City Manager
Steve Horton, Esq., City Attorney

Marianne Jiménez, City Clerk
Tim Costello, City Engineer

ITEMS FOR COUNCIL DISCUSSION, CONSIDERATION, AND POSSIBLE LEGAL ACTION

AWARD OF BID FOR THE APRON PAVEMENT PROJECT AT THE COTTONWOOD AIRPORT

Mr. Costello stated this project has been pending while the City waited to receive a grant. The project was for sealing and pavement maintenance of the 11 acres of apron area at the Cottonwood Airport. The grant would be a typical non-primary entitlement grant from the Federal Aviation Authority (FAA). It would pay for 95 percent of the work. There would also be a 2.5 percent grant from ADOT Aeronautics. The City's share would be 2.5 percent. The product to be used was unusual and this would be its first use in Arizona though it had been successfully used in other states. It resembled a slurry seal without asphalt. The main components were a thermo-plastic resin and coal tar. It had great color retention and would retain its black color. It was waterproof and fuel proof and it offered a good friction value. The project went out to bid in June. The low bidder was Cactus Asphalt. The figure did not allow additional work under a proposed additive alternate as the maximum grant amount was only sufficient to cover the base bid. The grant was expected to be received next week. The project would then commence quickly, as the emulsion must be put down before October.

Council Member Smith stated his support of the project.

Mr. Aleck Gradijan, Chairman of the Airport Commission, stated a year ago the Airport Commission established this as its number one priority for preservation of existing

infrastructure. This product was to be put over the existing surface, which was unique. It was critically needed to preserve the existing apron surface.

Mr. Horton stated the commitment for funding was pretty solid. Mr. Costello had been contacted by the FAA that the money was on its way. Since there was no written confirmation of this, he suggested the Council make the award of the contract contingent upon actual receipt of funds from the FAA.

Council Member Smith moved to award the contract for the apron pavement maintenance to Cactus Asphalt in the amount of \$443,320 for the base bid with the contingency that we actually get the money from the FAA for it. Council Member Norman seconded the motion, which carried unanimously.

EMPLOYMENT AGREEMENT WITH MR. STEVE HORTON FOR THE POSITION OF CITY ATTORNEY

Mr. Bartosh stated at the last Council meeting Mr. Horton was offered the position of City Attorney, contingent upon reaching mutual agreement regarding an employment contract. The Council authorized Vice Mayor Pfeifer, Council Member Norman, the City Clerk, and himself to negotiate a contract. The contract has been attached to the Council packets for consideration, discussion, and approval, if appropriate.

Vice Mayor Pfeifer stated contracts from the City of Flagstaff were used as models. Compensation amounts and benefits for similarly sized cities were checked and used as a guide for salary and benefits. Mr. Horton has worked with the City for ten years and the knowledge gained thereby justified the offer.

Council Member Elinski asked if the benefits were on a par with what was offered for other positions in that range.

Vice Mayor Pfeifer stated they were in line with what was offered all employees.

Council Member Smith asked if Mr. Horton would primarily telecommute from his home.

Vice Mayor Pfeifer stated there would be telecommuting, but he was only an hour away and could come to Cottonwood whenever needed.

Council Member Smith stated he was curious about the car allowance and whether it was standard.

Council Member Norman stated it was basically for travelling here, in town, and going to meetings where his presence was required. It was not for commuting.

Vice Mayor Pfeifer stated it was standard for other employees as well.

Mayor Joens asked if there had been discussion whether he would be in town at least one day a week.

Mr. Bartosh stated it was in the contract.

Ms. Jiménez stated that Section 14 read “The employee shall regularly attend meetings of the City Council and shall also attend other meeting as directed or requested to do so by the Mayor, City Manager, City Clerk, or other managerial employee of the City and employee shall also work in the City at least one full day a week.”

Mayor Joens stated that would allow physical access which was her main concern. She was pleased the committee did state there would be no other employment or pay while employed under this contract so that his focus would be solely the City.

Mr. Horton stated he did currently have other commitments and clients. He would wind down his practice over a maximum of a 90 day period. Also, he currently served one small school district which he asked be exempt from the rule of no other employment.

Mayor Joens asked how many hours a week that work would take.

Mr. Horton stated, most weeks, none. There would only be small and special projects. Such work would not impact the discharge of his duties here.

Vice Mayor Pfeifer stated that was covered in Section 15.

Mayor Joens asked what the chances were that he might be in court in litigation for a week with this other client.

Mr. Horton stated he would not accept a litigation matter for them. He only advised on such things as agreements and did research projects for them.

Council Member Smith stated we should hire him temporarily and go out for a bid. That was the way he thought it should be done.

Vice Mayor Pfeifer stated this was more like hiring from within. He was already working for the City and doing the same job. Most likely, other applicants would file in vain. This was the person we wanted to employ since there would be no local conflict of interest as there would be with local attorneys. Many didn't have civil law experience which was what was most needed.

Council Member Elinski stated he agreed generally with Council Member Smith regarding the need to put professional services out for bid, but in this instance he believed that making this decision regarding Mr. Horton was in the Council's best interest.

Mr. Bob Oliphant, of Cottonwood, stated he had two points. By its action today the question

was raised whether the Council was going back on what some perceived as a promise to the citizens of the community made at the January 8, 2008, Council meeting. At that meeting there was discussion how to proceed after the resignation of the then City Attorney, Mr. Guthrie. At the conclusion of that meeting, the Mayor made the following motion: "I move to contract all the City's legal service with Mangum, Wall, Stoops and Warden for such time until we can raise our salary to invite qualified applicants for civil and prosecution. It is an interim step." The motion was seconded by Vice Mayor Pfeifer and passed by everyone here today with the exception of Mr. Smith. Was this a promise made to the citizens? Was it a policy established by the Council? It was a simple failure to take the fiduciary opportunity that exists. The Council was moving forward without testing the actual market for qualified applications. The Council could not accurately determine the market today for this position in this town without doing three things. First, it must advertise the position. Second, it should access the qualifications of the respondents to the advertisement. Third, it should accurately analyze and arrive at what the current market was for this position in this city at this point in time.

Mayor Joens stated that while the two absent Council Members could not vote, they had previously expressed their support for hiring Mr. Horton.

Ms. Jimenez stated that Mr. Kirby today had expressed to her he was in favor of the award of bid to Cactus Asphalt and for the approval of the agreement and appointment of Mr. Horton to the position of City Attorney.

Council Member Smith stated Mr. Oliphant's point was very interesting. He asked what would be done about it.

Mayor Joens stated people could point at statements made a year or two ago and say circumstances would never change but they do. She did not agree with Mr. Oliphant. History was an extremely good indication of the future. We have had some challenges and some nightmares. Now we had somebody we knew who had the ability, knowledge, and tenure for the job. It would take anyone, no matter how good they were, several years to get on board with what has happened in our history. Mr. Horton has that history and is ethical. She did not know what could be wished for that would be better. With others, in the end, you would not know what you were getting. With Mr. Horton, you were getting the best.

Council Member Elinski stated the previous decision to stay with Mangum, Wall, Stoops and Warden was primarily based on our comfort with dealing with Mr. Horton. The opportunity which has arisen was one that was difficult to pass up. Circumstances had changed.

Council Member Norman stated since the Mayor's statement was made, there had been a new fiscal year with precise budgeting for legal services. Offering this contract to Mr. Horton would save money over contracting out legal services.

Vice Mayor Pfeifer stated Mr. Oliphant used the word "promised" but she did not remember a promise in that motion. It was a statement at a time of great change when many needs

had to be met. Mingus Union High School and others have put ads in the paper in a similar process even though they already knew who they were going to hire. We should not be a bait and switch government just because it could be perceived a certain way by some.

Mayor Joens stated the citizens of Cottonwood deserved the best, and the best was Mr. Horton.

Vice Mayor Pfeifer stated we will be able to put out for bids for the prosecutor's position and other services Mr. Horton needed, which were likely to be obtained locally, saving money by not using the services of Mangum, Wall.

Council Member Smith stated there was a new school superintendent and judge who had moved here. He felt the City Attorney should live in the city and not telecommute. If the City Attorney was here he would be more accessible than by phone.

Council Member Elinski stated he did not at first like the idea of telecommuting, but there were benefits to it. Being here opened the attorney up to a lot of distractions. The best work he could do would be in the quiet of his home office.

Mr. Horton stated he had 10 years of private practice experience. The lion's share of what he was paid to do was read, write, and think. To give the best counsel required privacy. He had found that in a busy office, even behind closed doors, there were many distractions. Working from his office allowed communication by e-mail at all hours, all days, and got the City a better product. He was available personally on demand, if needed.

Vice Mayor Pfeifer stated telecommuting had already proven to work well while Mr. Horton worked for Mangum, Wall.

Council Member Norman moved to approve the employment agreement with Mr. Steve Horton for the position of City Attorney. Vice Mayor Pfeifer seconded the motion which carried unanimously.

ADJOURNMENT

Council Member Smith moved to adjourn. The motion was seconded by Mayor Joens, and carried unanimously. The special meeting adjourned at 12:40 p.m.

Diane Joens, Mayor

Marianne Jiménez, City Clerk

