

**TOWN OF PAYSON
TOWN COUNCIL MEETING
MINUTES OF THE SPECIAL MEETING
December 9, 2010**

CALL TO ORDER

Mayor Evans called the meeting to order at approximately 4:00 p.m. at the Town Hall Council Chambers, 303 N. Beeline Highway, Payson, Arizona.

PRESENT: Mayor Kenny Evans, Council Member Ed Blair, Council Member John Wilson, Council Member Richard Croy, Council Member Su Connell, Council Memeber Fred Carpenter, and Vice-Mayor Michael Hughes.

STAFF PRESENT: Debra Galbraith - Town Manager, Tim Wright - Town Attorney, Donald Engler - Police Chief, and Silvia Smith - Town Clerk.

OTHERS PRESENT: Tracie Bailey - Deputy Town Clerk and Sergeant Donald Garvin.

PURPOSE OF MEETING: Disciplinary Appeal of Employee

- 1. Mayor Evans opened discussion/action regarding the disciplinary appeal filed by Donald Garvin on July 1, 2010. Pursuant to Section 4.5.4 of the Personnel Rules, the Council will affirm, reverse, or modify the Findings and Recommendations of the Personnel Hearing Officer dated November 10, 2010. (Council Decision Request filed by Tim Wright, Town Attorney)**

Tim Wright, Town Attorney, explained the Town had in the personnel policy that a person may appeal a finding by the Personnel Hearing Judge. Discipline had been imposed on Lieutenant Don Garvin. The hearing had been held and recommendations had been made. Those recommendations had not been released to the public. The Legal Department had taken the position to make sure the process had been followed.

Mayor Evans asked if the Council could hold an executive session. Mr. Wright responded Council could retire into executive session based on the Town's personnel rules, but that had not been agendized.

Argument by Kim Alvarado, Attorney representing the Town of Payson and Police Chief Don Engler. Ms. Alvarado asked the Council to uphold the recommendation by the Hearing Judge. Ms. Alvarado stated Chief Engler had to run the department the way he saw fit and needed people that he wanted in that position. The Chief had a new vision for the department with more transparency. After becoming Lieutenant there were a series of acts that eroded the Chief's trust in Don Garvin. The Town had invested alot in Don Garvin's career and wanted him to continue to be in the Department, but not as the Lieutenant. Chief Engler wanted to put Mr. Garvin back in his original position.

Argument by Mr. Martin Behn representing Don Garvin. Mr. Behn thanked the Council for hearing him. Mr. Behn stated the Hearing Officer's findings and recommendations were only recommendations and the Council had the final say. There had to be a policy that was violated and an appropriate discipline. The Chief had written a letter of violation

to Don Garvin and asked him if he wanted to appeal this. Mr. Garvin felt that some things were not true.

Mayor Evans noted the exact language was to move to affirm the recommendations by the Hearing Officer. Mr. Wright replied such findings and recommendations shall be in writing and shall be advisory only. Council could say what they want, these are only advisory to the Council.

Mr. Behn noted there was not a Town policy about texting and that failing to self-report was also not required. The rumors that came to the Chief had come to the Chief by an officer who had been passed over for the Lieutenant position. Mr. Behn believed the relationship with DPS had not been undermined. This department had been investigated by the Payson Police Department which hurt the relationship not Don Garvin. Mr. Garvin was a single man he was not out to embarrass the Chief. Mr. Behn believed this did not warrant a demotion. Before this went to appeal it had leaked to the newspaper. Mr. Behn asked the Council to modify this punishment and impose a discipline of a suspension.

Council Member Blair felt it was difficult to believe that there was no date on the application. Mr. Behn believed this was a problem. Mr. Wright explained the Council cannot get into the Town's procedure and could not speak to the evidence. Mr. Behn felt this was problematic and that the Hearing Officer had made a mistake. There was no suggestion that Mr. Garvin interfered with the applicant getting hired.

Council Member Carpenter and Council Member Blair asked for a reply from Ms. Alvarado on these issues. Ms. Alvarado stated the applicant had decided to withdraw the application and was allowed to take back that application then resubmitted the same application. Council Member Carpenter asked Ms. Alvarado to comment on the incident with the DPS Officer. Ms. Alvarado stated these facts are undisputable. The code of conduct and Police Department policies do talk about off duty behavior. This was not someone who had the Chief's trust. The Chief wanted Mr. Garvin to succeed, but needed a person he could trust in that position.

Mayor Evans asked what was the Council's pleasure.

Motion: to affirm the Findings and Recommendations of the Personnel Hearing Officer dated November 10, 2010 upholding the involuntary demotion of Donald Garvin to the position of Sergeant.

Moved by Council Member Ed Blair, seconded by Council Member John Wilson.

Vote: Motion carried 7 - 0

Yes: Mayor Kenny Evans, Council Member Ed Blair, Council Member John Wilson, Council Member Richard Croy, Council Member Su Connell, Council Member Fred Carpenter, and Vice-Mayor Michael Hughes.

ADJOURNMENT

Mayor Evans adjourned the meeting at approximately 4:50 p.m.

APPROVED:

_____ Date: _____

Kenny J. Evans, Mayor

ATTEST:

Silvia Smith, Town Clerk

Certification

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the special meeting of the Town Council of the Town of Payson held on this day the 9 of December, 2010. I further certify that the meeting was duly called and held and that a quorum was present.

DATED this ____ day of _____, 2010.

Tracie Bailey, Deputy Town Clerk