

**TOWN OF PAYSON  
TOWN COUNCIL MEETING  
MINUTES OF THE SPECIAL MEETING  
May 19, 2011**

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

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

**OTHERS PRESENT:** Gaye Stidham - Deputy Town Clerk, Steve DeHaan - IT Manager, Toni Balestrere - Paralegal II, Diane Stoyer - Legal Office Manager, Charlene Brown - Police Secretary, Albert Hunt - Street Operations Manager.

**PURPOSE OF MEETING**

1. Mayor Evans opened the discussion/action regarding the disciplinary appeal by Tonia Erin received on April 6, 2011. 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 May 2, 2011. (Council Decision Request filed by Tim Wright, Town Attorney).

Attorney Wright explained the employee disciplinary appeal procedure. There would be no public comments. Mayor Evans reminded the Council this was an employee matter and not a court of law so it would be less formal. However, he asked for typical decorum from those present. He asked if there were any questions from the Council concerning the process or procedures.

Council Member Blair asked if it was proper to ask questions of the Town Manager or Ms. Erin. Attorney Wright responded that it was proper within the Council's discretion as long as it related to the specific facts that are presented. He added that the questions before them was did Ms. Erin commit these acts that are alleged and what is the appropriate discipline. Attorney Wright described the different burdens of proof used in criminal and civil proceedings: beyond reasonable doubt, clear and convincing and a preponderance of evidence. In these proceedings, the preponderance of evidence is the standard and he asked the Council to think of it as a scale as they weigh the facts before them.

Manager Galbraith read a prepared statement. It is attached and a part of these minutes. She asked the Council ratify the termination of Ms. Erin.

Tonia Erin made a statement saying she did nothing wrong. She asked the Council to uphold the recommendation of Judge McDaniels to reinstate her.

Mayor Evans agreed the process needed improvement since it's creation in the 1990s.

Council Member Carpenter asked if Council was required to take final action at this

meeting. Attorney Wright said the Personnel Manual was not explicit in its time frame other than the matter would need to be resolved in the next 18 days. In theory, Council could recess and meet again later. Mayor Evans disputed the need or ability to table or recess the matter.

Council Members Carpenter and Blair questioned Ms. Erin.

Council Member Carpenter asked if the Council could consider new information. Attorney Wright explained the personnel manual was not explicit, he believed Council could consider anything related to the charges. He stated that the fundamental charge was that she made access where she was not authorized to be.

Council Member Croy asked Ms. Galbraith concerning her evidence of another party's involvement.

Council Members Blair and Wilson asked Ms. Erin questions.

Mayor Evans asked questions of Ms. Erin.

Council Member Carpenter asked what the procedure would be if they voted to uphold the hearing officer's recommendations. Attorney Wright explained Ms. Erin would be reinstated as of her termination date, March 28, 2011, placed back into her position before termination. Staff would need to figure out the issues of who she would work for.

Council Member Connell voiced her support to reverse the hearing officer's findings and uphold the termination.

Mayor Evans asked questions of Mr. DeHaan.

Council Members Carpenter, Blair and Croy asked questions of Mr. DeHaan.

Council Members Blair and Carpenter and Mayor Evans asked additional questions of Ms. Erin.

Council Member Carpenter and Vice-Mayor Hughes asked Mr. DeHaan additional questions.

Mayor Evans explained that since August, 2010, once access was denied, the problem should have been solved since the reason for Ms. Erin trying to make access was no longer there.

**Motion:** to affirm the Findings and Recommendations of the Personnel Hearing Officer dated May 2, 2011.  
Moved by Council Member Ed Blair, seconded by Council Member John Wilson.

Vote: Motion failed 3 - 4

Yes: Council Member Ed Blair, Council Member Fred Carpenter, and Council Member John Wilson.

No: Mayor Kenny Evans, Vice - Mayor Michael Hughes, Council Member Su

Connell, and Council Member Rick Croy.

**Motion:** to reverse the Findings and Recommendations of the Personnel Hearing Officer dated May 2, 2011.

Moved by Council Member Su Connell, seconded by Council Member John Wilson.

Council Member Blair said it was interesting that Mr. DeHaan said that denials always override access. Therefore, that means she wasn't denied access. He said he agreed with McDaniels' findings.

**Vote:** Motion carried 5 - 2

Yes: Mayor Kenny Evans, Vice - Mayor Michael Hughes, Council Member Su Connell, Council Member Rick Croy, and Council Member John Wilson.

No: Council Member Ed Blair, and Council Member Fred Carpenter.

Mayor Evans said this confirms his feelings that we need to find a more civil way to proceed with HR disciplinary actions and adjourned the meeting at approximately 5:21 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 19 of May, 2011. I further certify that the meeting was duly called and held and that a quorum was present.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_

Gaye Stidham, Deputy Town Clerk

Town Statement for T. Erin Appeal decision to Council - Debra A Galbraith, Town Manager  
May 19, 2011

In August 2010 it was discovered that Ms. Erin had complete access to my Outlook account (email and calendar). How she got this access and how long she had it is unknown. Somehow another person was aware of some emails that I received and/or sent. This person made it clear to the person I was having email exchanges with, that she knew what was in those emails. I believe that Ms. Erin was involved in passing those emails or the information in them to others. Ms. Erin did not have permission to have access to my emails or calendar, or to pass any information therein to anyone else. When it was brought to my attention, in August 2010, I asked the IT Manager to remove all Ms. Erin's access to my Outlook account.

On March 14, 2011, it was noted that Ms. Erin had made an attempt to access my Outlook account again. That attempt, as well as further attempts on March 16 and March 23 failed. Each attempt was made after I left the office.

In the Appeal Hearing, Ms. Erin states that she had access to my calendar on those days and that she was merely checking my calendar. Her access to my Outlook account, which includes the calendar, was removed in August 2010. She was never given permission to have access to my calendar, although she states that I had given her permission. If this were true and she suddenly found she could not get in to the calendar, why didn't she mention it the first time her attempt failed (March 14), rather than keep trying to access the calendar on two more occasions? **The fact remains that she did not have permission to be in my calendar, which she clearly states she was in.**

**I believe that she did not have access to my calendar and the attempts made in March were an effort on her part to figure out how to get back into my Outlook account without authorization from me.**

I believe she accessed my Outlook account in 2010, and attempted again March 2011, to assist a friend.

It has also recently been discovered that Ms. Erin had complete access to the Payroll system. I assume that the last Incode (HR/Finance software) system administrator gave her that access. I am unclear as to why Ms. Erin would need access to the payroll system and all the confidential information in that system.

By the nature of their jobs, IT professionals have to be trusted to stay within the bounds of having only the access they need to do their jobs. They cannot cross the line and implement or accept access to technology areas that they do not belong in. I believe that Ms. Erin crossed that line and for the security of the Town's technology integrity and confidentiality, I terminated Ms. Erin when this behavior began for the second time in March of 2011.

The IT field can be very confusing to someone who has not studied or worked in that field. While the Appeal Hearing Officer made his decision based on data that he believed should have saved, it is difficult

to understand all the intricacies of the technology field. The fact remains that if that data had been available and it showed that she was in my calendar at the times these unauthorized attempts were made, it would only serve to further prove that she was in an account she did not have permission to be in.

I ask that the Town Council reverse the decision of the Appeal Hearing Officer and ratify the termination of Ms. Erin as of March 28, 2011.