

**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 it's 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