

**MINUTES OF THE
REGULAR MEETING OF THE COMMON
COUNCIL OF THE TOWN OF STAR VALLEY**

**Tuesday, August 18, 2020 at 4:00 pm
3675 East Highway 260, Star Valley, AZ
(Star Valley Town Hall)**

The Agenda for the meeting is as follows:

- PRAYER was offered by Council Member Bobby Davis.
- CALL TO ORDER

- ROLL CALL:

Vice Mayor McKinney X, Council Member Davis X, Council Member Armington X, Council Member Binney X, Council Member Rappaport X, Council Member McDaniel X, Mayor Coon X. **Council Members appeared telephonically.**

- **CONSENT AGENDA ITEMS:**

All items listed under the Consent Agenda will be voted on with one motion. If discussion is desired regarding any Consent Agenda item, that item will be removed from the Consent Agenda and voted on separately.

A. Approval of the minutes from the Regular Council Meeting held on August 4, 2020.

B. Approval of Claims Payable from August 1, 2020 through August 15, 2020 for the General Fund and for the Water Department.

A motion to approve consent agenda items A and B was made by Council Member Davis and was seconded by Council Member Binney.

A roll call vote was taken:

Vice Mayor McKinney X, Council Member Davis X, Council Member Armington X, Council Member Binney X, Council Member Rappaport X, Council Member McDaniel X, Mayor Coon X.

The motion was voted on and passed 7 - 0.

- **DISCUSSION ITEMS:**

1. **Discussion and possible action to accept the canvass of votes and approval of the 2020 Primary Election results. Town Clerk Chapin to make presentation.**

Town Clerk Chapin explained the canvass is the official tally of votes for any given election. The purpose of the canvass is to account for every ballot cast on Election Day, every on-time absentee ballot, every accepted provisional ballot, and every on-time overseas and military absentee ballot. According to Arizona State Statute, stated Ms. Chapin, the governing body holding an election shall meet and canvass the election not less than six days nor more than twenty days following the election.

Town Clerk Chapin reported the Star Valley Primary Election was held on August 4, 2020 and the council packets contain an abstract of the canvass as the complete canvass is hundreds of pages long. Of the 2,221 Star Valley registered voters, a total of 1,253 ballots were cast. Gary Coon ran unopposed and received 658 votes. There were 15 write-in votes for a total of 673 votes cast. Therefore, announced Ms. Chapin, the elected Mayor is Gary Coon. There were two open council positions, reported Ms. Chapin, and a total of 1,163 votes were cast. Bobby Davis ran unopposed and received 581 votes. Belle McDaniel ran unopposed and received 566 votes. There were 16 write-in votes. Therefore, announced Ms. Chapin, the two elected council members are Bobby Davis and Belle McDaniel. Ms. Chapin concluded she is asking council to accept the canvass of votes presented as the official canvass of the 2020 Primary Election, and that council approves the results presented.

A motion to accept the official canvass of the 2020 Primary Election and approve the results thereof for the Town of Star Valley was made by Council Member Binney and was seconded by Council Member Davis.

A roll call vote was taken:

Vice Mayor McKinney Yes, Council Member Davis Yes , Council Member Armington Yes , Council Member Binney Yes , Council Member Rappaport Yes , Council Member McDaniel Yes , Mayor Coon Yes .

The motion was voted on and passed 7 – 0.

2. **First Reading and Public Hearing concerning Ordinance No. O 20-02 captioned as follows: AN ORDINANCE OF THE TOWN OF STAR VALLEY, ARIZONA, RELATING TO THE TRANSACTION PRIVILEGE TAX; ADOPTING “THE 2012-2014 AMENDMENTS TO THE TAX CODE OF THE TOWN OF STAR VALLEY” BY REFERENCE; ESTABLISHING EFFECTIVE DATES; PROVIDING FOR SEVERABILITY AND PROVIDING PENALTIES FOR VIOLATIONS. Finance Administrator Nutt to make presentation.**

Finance Administrator Nutt reported that at the previous meeting council unanimously passed the resolution to approve the “2012-2014 Amendments to the Tax Code of the Town of Star Valley.” The next step in applying those changes, explained Ms. Nutt, is to pass Ordinance No. O 20-02. This evening is the first reading and public hearing. There will be a second opportunity for the public to participate after which the ordinance will be passed by council. It will then be published on the Town website and also in the newspaper to inform any public that may be interested in the changes. This evening, stated Ms. Nutt, she is asking council to consider the ordinance that would move the project forward to the final step. The ordinance has been included in the council packet, informed Ms. Nutt. and since there is no public present she will not be reading the ordinance out loud. Mayor Coon verified there was no public present and closed public comments. There was no further discussion.

3. Discussion and possible action regarding the responsibility of law enforcement on Highway 260. Town Attorney Grier will explain the Town's legal position, the DPS legal position, and what it means.

Town Attorney Grier stated he has new information and it's important for the Town to move on this issue tonight. At the last council meeting, reported Mr. Grier, council voted for him to proceed forward with a law enforcement services contract with the Town of Payson. He has not been able to do so at this point, in part, because of letting their tumultuous election settle down, but more importantly because the negotiation terms of the contract haven't been decided. The first offer from the Town of Payson, reported Mr. Grier, without law enforcement patrol on Highway 260, was \$328,140.00. Mr. Grier stated he began to question the duties of the Highway Patrol on State Highway 260 and who has responsibility to both patrol and investigate accidents.

Town Attorney Grier reported he first started to communicate with Lisa Wahlin, General Counsel for the Department of Public Safety ("DPS") who said the Town has primary responsibility, with the sheriff as secondary responsibility, and then DPS as third. He asked her to provide the legal basis for this argument. Ms. Wahlin did provide Attorney General ("AG") opinions, reported Mr. Grier, which baffled him because none of them said DPS didn't have responsibility. Pursuant to statute *41-1743 Duties of the highway patrol*, read Mr. Grier, "The highway patrol shall patrol the highways of the state, both day and night, and enforce the laws of the state." The AG opinions, explained Mr. Grier, went to giving concurrent jurisdiction. Mr. Grier stated he asked Ms. Wahlin to provide a statute or case law that is on point that says that DPS doesn't have responsibility. Ms. Wahlin could not and at that point he became suspicious.

Town Attorney Grier reported he then contacted Christina Werther, General Counsel with the League of Cities. She reviewed the AG opinions and agreed there was nothing on point that DPS didn't have the responsibility to patrol and investigate accidents on the state highway. With his permission, Ms. Werther posted a question on the city/town attorney list serve. The first responses were from other small towns who basically said they have just always done it. Mr. Grier then read a portion of the response from the Assistant Chief Counsel of the Public Safety Section of the City of Phoenix. She is saying, explained Mr. Grier, that DPS's argument is wrong and the language of the preemption isn't on point and doesn't trump the language of their duty.

With a statutory reading, explained Town Attorney Grier, the use of shall and may is very important. When a statute says "shall," that means "they have to," and when a statute says "may," it has discretion. Of course *41-1743* says that "they have to," pointed out Mr. Grier. Mr. Grier reported a second response was received from Eric Thornhill with the City of Phoenix Legal Department. Mr. Grier read his response: "This local police vs DPS argument only seems to be an issue in smaller towns where a State Highway runs right through town – Star Valley, Page, and Apache Junction (although not so small) from the email responses. Historically (going back decades), the Phoenix Police Department has conducted traffic enforcement and investigated collisions on city streets and DPS has done the same on interstates and freeways. Phoenix officers will use the freeways going from place to place but do not conduct traffic enforcement. This has never been an issue between DPS and the Phoenix Police Department."

The legal question, stated Town Attorney Grier, has been floated to every town and city attorney in the State and we have yet to have a response from any attorney that says the Town has the responsibility to patrol and investigate accidents on the State Highway. In fact, the two opinions from the City of Phoenix Legal Department say DPS is wrong and they do have the responsibility. Mr. Grier stated that has been his position from the very beginning. He thinks it is a correct position that DPS has the responsibility to patrol and investigate accidents on State Highway 260 that runs through the

incorporated limits of the Town of Star Valley. Queried Mr. Grier, why is this important? Mr. Grier answered he needs to be able to negotiate a contract with the Town of Payson and he needs to know what terms council would like him to negotiate. There is a significant difference to provide patrol or not provide patrol on Highway 260. The offer from the Town of Payson to patrol Highway 260 is \$397,957.00 versus to not patrol Highway 260 is \$328,140.00, reported Mr. Grier. It's a \$69,817.00 difference per year. Projected out to ten years it is a significant savings with the choice of terms of contract. Mr. Grier stated it is his recommendation to negotiate a contract with the Town of Payson for a lesser amount that doesn't include patrol on Highway 260.

In further research that he did, reported Town Attorney Grier, there was a case called McDonald v. City of Prescott. Explained Mr. Grier, the City of Prescott has patrolled State Highway 69 that runs through part of the city. A motorcyclist hit a piece of metal in the highway and sued the City of Prescott saying that the city had responsibility to remove the piece of metal because they patrolled the highway. In trial court, it was found the City of Prescott did not have the responsibility and the case was dismissed. McDonald appealed and the appeals court found that the city did, in fact, have responsibility. The moral of that story, stated Mr. Grier, is if you patrol the highway out here you can have a similar liability. The McDonald case sets a nasty precedence that exposes the Town of Star Valley to a liability just by virtue of patrolling the highway.

Queried Town Attorney Grier, what do we really accomplish by patrol of the highway? Are we slowing traffic? What are we asking the Town of Payson for? Mr. Grier stated his position is the Town has tried everything it can to make Highway 260 a safer highway. As council knows, the Arizona Department of Transportation ("ADOT") very soundly says it is not the Town's highway and they will dictate what the speed limits are, where the signage is, if the Town can have a stop sign, stop light or round-about. Mr. Grier stated he does not think the patrol of the State Highway buys the Town anything other than \$69, 817.00 in increased cost with the law enforcement contract with the Town of Payson. Mr. Grier concluded he does think it's important to ask Payson to respond to an accident if DPS isn't available, and then turn the accident investigation over to DPS once they do respond. This way the Town doesn't have the issue of an accident and nobody responding.

Town Attorney Grier disclosed he needs negotiation direction right away to get the law enforcement contract in place with the Town of Payson. His recommendation is to simply send a letter to the Director of DPS that the Town is not going to provide law enforcement on State Highway 260. If constituents have questions about something on Highway 260, stated Mr. Grier, the Town can tell them that DPS and ADOT have jurisdiction on the highway and the Town can provide the constituent with the numbers of the directors of DPS and ADOT. Mr. Grier reiterated he is confident in the Town's legal position that DPS does have responsibility on the State Highway. That comes from the legal issue being floated to every city and town attorney in the State, as well as their general counsel, the general counsel at the League of Cities and no one providing the Town any sort of legal theories, statute, case law or AG opinion to the contrary, concluded Mr. Grier.

Mayor Coon stated the Town's position is clear and seems to be solid. Mayor Coon then asked council if they have any discussion, comments or questions. Council Member Rappaport stated she has a question and asked if DPS will cover 260 completely, with the exception of Payson responding to an accident and then referring it over to DPS. "That's correct," responded Town Attorney Grier. Council Member Rappaport stated it's pretty clear the Town wants to have law enforcement and she is all for negotiating a contract since the Town is not really on contract. As an elected body, commented Council Member Binney, council duties are to their constituents and their concerns and financial well-being. The Town has an obligation to force DPS to do their job, a job which they are paid to do. This savings, stated Council Member Binney, will provide the Town \$80,000.00 more a year to do more projects for the

community. This is a slam dunk and the Town Attorney should negotiate with the Town of Payson for police protection, concluded Council Member Binney. Council Member Davis stated he agrees.

Vice Mayor McKinney stated he is in full accord with Council Member Binney. Council Member Davis stated he would like to verify who is going to show up for an accident. Within the contract with the Town of Payson, answered Town Attorney Grier, part of the terms will be that Payson responds if DPS is unavailable, then Payson turns the accident over to DPS. It is something the Town will, in all fairness, have to pay for. The Town needs to cover that liability by having that as part of the contract with the Town of Payson. Mr. Grier reported he's weighed all possible liabilities with this legal issue, and he sees no other liability other than what Council Member Davis mentioned, which will be covered in the contract with the Town of Payson.

Mayor Coon questioned if this would eliminate cops sitting alongside on Cornerstone or someplace waiting for a speeder. "Yes," responded Town Attorney Grier. As part of the contract the Town does not want the Town of Payson to patrol the 260. Anything off of the State Highway within the incorporated areas of the Town of Star Valley is the Town's law enforcement job. Council Member Davis stated he thinks the Payson PD will be first responders on everything. Mayor Coon responded when it goes into dispatch it is handled by first available and that would probably be Payson Police Department. Council Member Davis commented DPS just doesn't respond because they have limited manpower and he thinks the Town will be stuck with Payson PD responding no matter what.

Town Attorney Grier stated that DPS needs to respond. They are better funded and have the statutory responsibility. DPS hasn't responded because towns and cities have never called this issue before. The Town is standing up and saying that DPS has the responsibility and the Town is not going to do it just because it has always done it. That is the position the Town is taking, concluded Mr. Grier, and we are putting DPS on notice to do their job. Council Member Davis stated he's all for it and will definitely support it. Mayor Coon stated it is correct that DPS is never the first one to show up. He thinks it is because they are spread out quite a ways and they have always assumed it is not their primary responsibility. Council Member Davis stated he is all for eliminating that from the contract. Council Member Armington stated he's on board. Council Member McDaniel states she's on board as well.

A motion to direct the Town Attorney to negotiate with the Town of Payson to provide law enforcement, minus any duties on Highway 260, except for a compensated mutual aid agreement, was made by Council Member Binney and was seconded by Council Member Armington.

A roll call vote was taken:

Vice Mayor McKinney Yes, Council Member Davis Yes , Council Member Armington Yes , Council Member Binney Yes , Council Member Rappaport Yes , Council Member McDaniel Yes , Mayor Coon Yes .

The motion was voted on and passed 7 – 0.

4. Discussion and possible action concerning the deannexation of an area that was previously annexed by the Town.

Town Manager Grier explained that the initiative to look at deannexation came from the increased cost of the law enforcement contract with the Town of Payson because of the annexed area. He first started to look at whether or not the benefits of the annexation outweigh the liability of the cost of law enforcement. Some council members had questions as to whether this includes the area behind the Knolls. "It does not," clarified Mr. Grier. The deannexation only includes the area that was annexed in 2009, which is basically from Lion Springs to Preacher Canyon. An important point to make, stated Mr. Grier, is that this is forest service land. Maybe some think this is Town of Star Valley land and that

maybe the Town is giving up something. This is forest service land and certainly if you pose the question to the forest service they will tell you it is federal lands.

Town Manager Grier stated he started to do a legal analysis of the benefits of the annexed property since the Town already knows the liability is the increased cost of the law enforcement contract. In a prior meeting, reported Mr. Grier, Council Member Davis queried does the Town control growth by having the land annexed. Mr. Grier responded he does not think so and he thinks it is very, very unlikely that the land will ever be developed. As forest service property, explained Mr. Grier, the only way a developer will be able to acquire that land is through a federal land exchange and federal land exchanges don't happen very often.

Town Manager Grier reported he contacted the district ranger of the Tonto National Forest, who told him there hasn't been any inquiries and nothing afoot as far as any interest in that property. He further said, if there was any interest in that property, it would be a minimum of two years before anything could happen. That is a tremendously optimistic narrow time-frame, stated Mr. Grier. Any federal land would have to go through either an environmental impact statement or environmental assessment which is more likely in a time frame of ten years. In a practical sense, it is really hard for an investor to commit that type of money at the slow moving pace of the forest service.

In his analysis, stated Mr. Grier, the Town is in a worse position with the annexed area because a future developer could require certain services such as law enforcement and infrastructure. Something a developer couldn't do if the area were not annexed. The Town is in a better position if the area is deannexed, stated Mr. Grier. It's important to note, added Mr. Grier, that commercial development brings in revenue, while residential development has no revenue source because the Town does not have a property tax. It is only an expenditure burden and the Town would have to put a property tax in place to cover the expenditure and the cost of a residential development.

Town Manager Grier explained that one of the reasons he doesn't think the Town will see commercial development is because there is a glut of commercial property still available in Payson, which makes commercial development east of Star Valley not very enticing. Mr. Grier reiterated he sees no real benefit of the annexed land and only sees a liability with it, especially the liability of the additional cost of law enforcement. The deannexation will put the Town in a better negotiation position with the Town of Payson, concluded Mr. Grier.

Mayor Coon asked council if they had any other questions or comments. Council Member Davis stated he supports the deannexation. Council Member Binney commented there is a huge liability, if the Town keeps the annexed area, for whatever crimes are committed out there. The Town has no reason to not deannex this piece of property, concluded Council Member Binney. Discussion followed concerning the boundaries of the deannexation.

A motion to instruct the Town Attorney to move forward with the deannexation process was made by Council Member McDaniel and was seconded by Council Member Davis.

A roll call vote was taken:

Vice Mayor McKinney Yes, Council Member Davis Yes , Council Member Armington Yes , Council Member Binney Yes , Council Member Rappaport Yes , Council Member McDaniel Yes , Mayor Coon Yes .

The motion was voted on and passed 7 – 0.

5. Discussion and possible action regarding the appointment of Board of Adjustment Committee Members.

Finance Administrator Nutt reported the Board of Adjustment is a committee that deals with two issues when it comes to the zoning code of Star Valley. It is a five person board and the Town is

currently seeking five members to be appointed to the board as members have either reached the end of their term or moved out of the area. Ms. Nutt explained the Board of Adjustment deals with granting zoning variances due to hardship and any terminology in the zoning code that appears vague. They are a decision making committee and not a recommending committee. The Board of Adjustment has the authority to make the decision on disputed zoning code terms and also to issue variances due to hardship.

The Town has five individuals who have expressed an interested in being appointed to the board, reported Ms. Nutt. Ms. Nutt then provided brief background information on Vern Leis, Matt Highstreet, Pat Woolsey, Christine Johnson and Tony McNeeley. Though this committee doesn't meet often, added Ms. Nutt, it will be a three year appointment. Ms. Nutt then requested council to approve the five appointees presented. Mayor Coon asked for confirmation that they are all residents of Star Valley. "That is correct," responded Ms. Nutt. Vice Mayor McKinney commented it seems to be a nice balance in age, gender and social position. He thinks it's a good selection and he's for it.

A motion to appoint Vern Leis, Matt Highstreet, Pat Woolsey, Christine Johnson and Tony McNeeley as committee members of the Star Valley Board of Adjustment for a term of three years was made by Council Member Davis and was seconded by Council Member McDaniel.

A roll call vote was taken:

Vice Mayor McKinney Yes, Council Member Davis Yes , Council Member Armington Yes, Council Member Binney Yes , Council Member Rappaport Yes , Council Member McDaniel Yes , Mayor Coon Yes .

The motion was voted on and passed 7 – 0.

- **COMMENTS FROM THE PUBLIC**

During this portion of the meeting, members of the public may address the Town Council on items that are not on the printed agenda. Any remarks shall be addressed to the Council as a whole and not to any individual member. Speakers are limited to three (3) minutes per person unless additional time is granted by the Mayor. The Council may not discuss or act upon matters raised during public comments.

The Mayor opened up this portion of the meeting for public comment. There was no public in attendance and the Mayor closed this portion of the meeting.

- **ADJOURNMENT**

A motion to adjourn the meeting was made by Council Member Davis and was seconded by Council Member Binney.

The motion was voted on and passed 7 – 0.

APPROVED:

Gary Coon, Mayor

Date: _____

ATTEST:

Edie Chapin, Town Clerk

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the Town Council of the Town of Star Valley held on the 18th day of August 2020. I further certify that the meeting was duly called and held, and that a quorum was present.

Dated this 25th day of August 2020.

Edie Chapin, Town Clerk