

TUSAYAN TOWN COUNCIL MEETING

6 pm

July 14, 2010

Zuni Room

Best Western Squire Inn

74 State Route 64, Tusayan, AZ

MINUTES

Call to order

By Vice Mayor Bryan at 6:01 pm and Pledge of Allegiance

Roll Call

Members in Attendance:

Mayor Pete Shearer (by telephone)

Vice Mayor Greg Bryan

Councilmember Al Montoya

Councilmember Clarinda Vail

Councilmember Ann Wren

3. Call to the Public for Items Not on the Agenda.

Joseph Fortenberry, 19 Buck Lane, Tusayan, Arizona invited council members and the public of a town hall meeting on July 26, 2010 at 6 pm presented by the group Because We Live Here regarding housing options. Mr. Fortenberry also commented on Mayor Shearer's article in the Grand Canyon-Williams Newspaper.

Bill Fitzgerald, 549 Camper Village Lane, Tusayan, Arizona asked if there was any more information on the Kotzin 40 acres.

John Reuter, 561 Cougar Drive, Tusayan, Arizona wanted to thank the council for the job they are doing. Mr. Reuter asked if an item can be put on the agenda for proposed zoning and housing.

Cecily Maniaci, 469 State Route 64, Tusayan, Arizona asked when the council would be discussing the Town's financial status which is on the agenda for this evening.

4. Presentation by Sharyl Allen, GC School Superintendent, on the town park potential partnership through an IGA

Sharyl Allen, 1496 Ponderosa, Grand Canyon, Arizona presented information on the 80 acres the school district has purchased in Tusayan for the need for a school district park. Ms. Allen stressed the need for the Tusayan Planning and Zoning Department to work in collaboration with Grand Canyon School District to utilize the land. Vice Mayor Bryan asked how the Town of Tusayan can help and Ms. Allen requested working together on a budget and requesting public volunteers. Mayor Shearer added that he would like to introduce this at Town Hall Meetings and to work on an IGA with the School District.

Ms. Allen introduced the new Principal, Mr. Mark Cooper, from Cottonwood, Arizona.

16. Discussion and possible action regarding creation of a Tusayan Town Fire Ordinance

Fire Chief Rob Evans discussed the need for a Fire Ordinance for the Town of Tusayan. Introduced Robert Blasi, 26 Flame Flower Loop, Tusayan, Arizona, Group Fire Prevention Specialist of the Forest Service to discuss the statistics of fires in the area. Currently there is no IGA with the Forest Service for coverage of Tusayan but Mr. Blasi is willing to work on an IGA with the Town of Tusayan. Currently the County Sheriff's office can enforce any infractions of the fire restrictions. Mayor Shearer wanted to thank the Tusayan Fire Department and the Forest Service for working with the Council to keep the community safe. Vice Mayor Bryan asked to put this on the Agenda for the July 28, 2010 council meeting to work on a Resolution that would be applicable to us. Councilmember Wren to work with Sheriff's Department to check with them about concerns or issues they may have with regard to the Resolution.

5. Administrative/Treasurers Report

Teresa Weigel, Town Clerk, advised there are three companies that have paid their \$10 Business License. Vice Mayor Bryan advised we will be sending out a letter to the other businesses in the area asking them to acquire a business license. Vice Mayor Bryan will send out the list of businesses he currently has and have council members add to it. Vice Mayor Bryan reported that the Town of Tusayan has \$12,166.62 in the bank. Vice Mayor Bryan will find out what fund that money came from. We currently have \$144,574.27 in expenses and he advises that we should pay the Liability Insurance. Vice Mayor Bryan questioned the amount of the legal fees from the Town Attorney – Clarke Hill and requested that a review of this bill be put on the Agenda for July 28, 2010. Expenses not on this list are training costs for Al Montoya, Pete Shearer and Greg Bryan. Councilmember Vail asked to include the newspaper costs also and make them a priority. Vice Mayor Bryan will have a completed list for the July 28, 2010 council meeting.

6. Discussion/Possible Action on setting up a Highway User Funds Special Account

Mayor Shearer informed the council of the need to set up a separate account. Vice Mayor Bryan advised that a separate account is not necessary but a separate ledger account needs to be set up to be able track money coming in and going out.

7. Approval of June 23, 2010 Public Hearing Minutes and June 23, 2010 Council Meeting Minutes

Councilmember Wren motioned to approve the June 23, 2010 Public Hearing Minutes. Councilmember Montoya seconded the motion. The approval of the June 23, 2010 Public Hearing Minutes passed unanimously.

Councilmember Vail motioned to approve the June 23, 2010 Council Meeting Minutes. Councilmember Wren seconded the motion. The approval of the June 23, 2010 Council Meeting Minutes passed unanimously.

8. Discussion and possible action regarding policy for Business Licensing/Town Clerk's Report and update

Town Clerk has created a receipt for the Business License and we encourage all businesses to pay the \$10 fee. Tusayan Legal Council has prepared a draft letter to send out a friendly reminder to the businesses. Legal Counsel to send the letter to Vice Mayor Bryan who will see that it is sent out.

9. Discussion and possible action regarding Planning and Zoning Policy

Mayor Shearer asked to have this discussed at the Town Hall meeting as to whether the council should review all Planning and Zoning applications or create a separate Planning & Zoning Committee from the public to review applications. Discussion of Planning & Zoning to be put on the Agenda for the first Town Hall meeting.

10. Discussion and possible action regarding Town Hall Meeting

a. Community Garden Grant

b. Housing Committee

c. Street Light Update

The first Town Hall meeting will be held August 4, 2010 at 6:30 pm at the Best Western Squire Inn. Clayann Cook has expressed a willingness to help facilitate the meeting. Vice Mayor Bryan will confirm with Ms. Cook. Bill Fitzgerald asked to have a Meet Your Candidate night but was advised that it would be inappropriate for the Town to put this on. Chief Evans asked if the fire department can be included in presenting the fire policy when discussing planning & zoning for housing and developments. John Dillon asked if some extra attention press-wise to get the word out. Councilmember Vail asked if we could do a mass email to get the word out. Joseph Fortenberry asked for an open forum for the meeting. Barbara Hancock volunteered to get copies made to distribute. Ben advised the businesses to get the word out to all their employees. Add Planning and zoning and update about school park.

11. Discussion and possible action regarding Planning and Zoning Policy for private car sales

Mayor Shearer would like to have all policies in one document instead of an ordinance dealing with each item. Councilmember Vail asked if these were currently under the Coconino County Planning and Zoning rules. Vice Mayor Bryan asked if the Town Legal Council could research the Coconino County Planning and Zoning as to whether this issue is in the current rules and regulations.

12. Discussion and possible action for posting of Town Manager/Town Clerk

Councilmember Vail volunteered to put together a job description for a Town Manager/Town Clerk. Mayor Shearer said Dennis Wells will work with Councilmember Vail on Friday to help put together a job description. Councilmember Montoya volunteered to help with the job description. Councilmember Vail asked to present finished job description to Town Legal Council to make sure job description is within the law. Interim Town Clerk Teresa Weigel advised the council that she will only be able to volunteer until Mid-August and asked Al Montoya and Greg Bryan to check with the volunteers that are interested in the position of Town Clerk.

13. **Discussion and possible action on Policy on Purchasing and Fiscal Policy**

Vice Mayor Bryan offered to research other communities and borrow their policy for payments. Mayor Shearer asked if we could authorize the payment of the newspaper at the next board meeting. Vice Mayor Bryan asked if we could also pay the Liability Insurance and will put on next Agenda.

14. **Discussion and possible action to create a website now or utilize the Arizona League of Cities and Town's website to fulfill new requirement**

Vice Mayor Bryan advised there is a minor charge to link with the Arizona League of Cities and Towns. Vice Mayor Bryan found a volunteer to create a town website, John Dillon. John Dillon said the costs to create would be fairly nominal and Vice Mayor Bryan will come back to the July 28, 2010 meeting with costs for an independent website and a link to the Arizona League of Cities and Towns and the pros and cons of both.

15. **Open Meeting Law Refresher Course—Cameron Williams**

Cameron Williams provided information on the basics of Arizona Open Meeting Law (attached). Mr. Williams specifically advised council that emailing a quorum of the council becomes an open meeting. All email addresses can be opened by the public and view all emails.

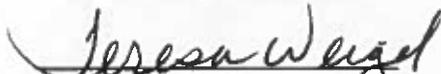
17. **Set Agenda Items for Next Meeting**

Town Clerk/Manager update, fire ordinance, approval of warrants for newspaper and insurance, website and set a tighter parameter for legal expenses. Mayor Shearer advised that hiring a Town Manager would cut down on legal expenses.

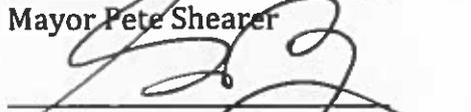
18. **Adjournment**

Vice Mayor Bryan motioned to adjourn the meeting. Councilmember Vail seconded the motion. The motion passed unanimously to adjourn the meeting at 7:36 pm.

Respectfully submitted,

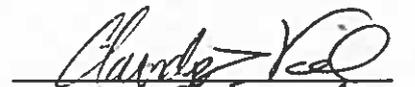

Teresa Weigel, Town Clerk

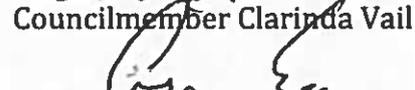

Mayor Pete Shearer


Vice Mayor Greg Bryan


Councilmember Al Montoya

Dated: 7-28-10


Councilmember Clarinda Vail


Councilmember Ann Wren

July 14
~~June 23~~, 2010

Town of Tusayan
Accounts Payable Ledger

Liability Insurance

Full year Premium 4/15/10 – 4/14/11	\$4,478.00
Current amount due 4/23/10	\$1,119.50

Legal Fees

Litigation firm – Moyes Sellers & Sims

May 10, 2010 billing through 4/28/10 including expenses	\$32,071.51
June 10, 2010 billing 5/28/10	\$10,626.11
July 12, 2010 Billings 6/29/10	<u>\$ 4,907.50</u>
	\$ 47,605.12

Town Attorney – Clarke Hill

May 24, 2010 billing through 4/30/10	\$33,968.00
June 7, 2010 billing 5/3 – 31, 2010	\$26,436.91
July 12, 2010 billing	<u>\$32,086.24</u>
	\$ 92,491.15

TOTAL ACCOUNTS PAYABLE AS OF 7/14/10	\$144,574.27
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**ORDER
STAGE 1 FIRE RESTRICTIONS
KAIBAB NATIONAL FOREST**

Pursuant to 16 U.S.C. 551, and 36 CFR § 261.50(a), the following acts are prohibited on all National Forest System lands within the Kaibab National Forest, in the following counties within the state of Arizona: Coconino and Yavapai. The restricted area is depicted on the attached map, hereby incorporated into this Order as Exhibit A, B, and C.

PROHIBITION:

1. Building, maintaining, attending or using a fire, campfire, charcoal, coal, or wood stove, except within a developed recreation site; **36 CFR § 261.52(a)**.
2. Smoking, except within an enclosed vehicle, building, or a developed recreation site; **36 CFR § 261.52(d)**.

EXEMPTIONS:

1. The use of petroleum-fueled stoves, lanterns or heating devices providing such devices meets the fire underwriter's specifications for safety is allowed.
2. Persons with a Forest Service permit specifically authorizing the prohibited act or omission.

AREA DESCRIPTION:

This area affects National Forest System lands within the exterior boundary of the Kaibab National Forest.

PURPOSE:

This Order is necessary to protect public health and safety due to the fire danger.

IMPLEMENTATION:

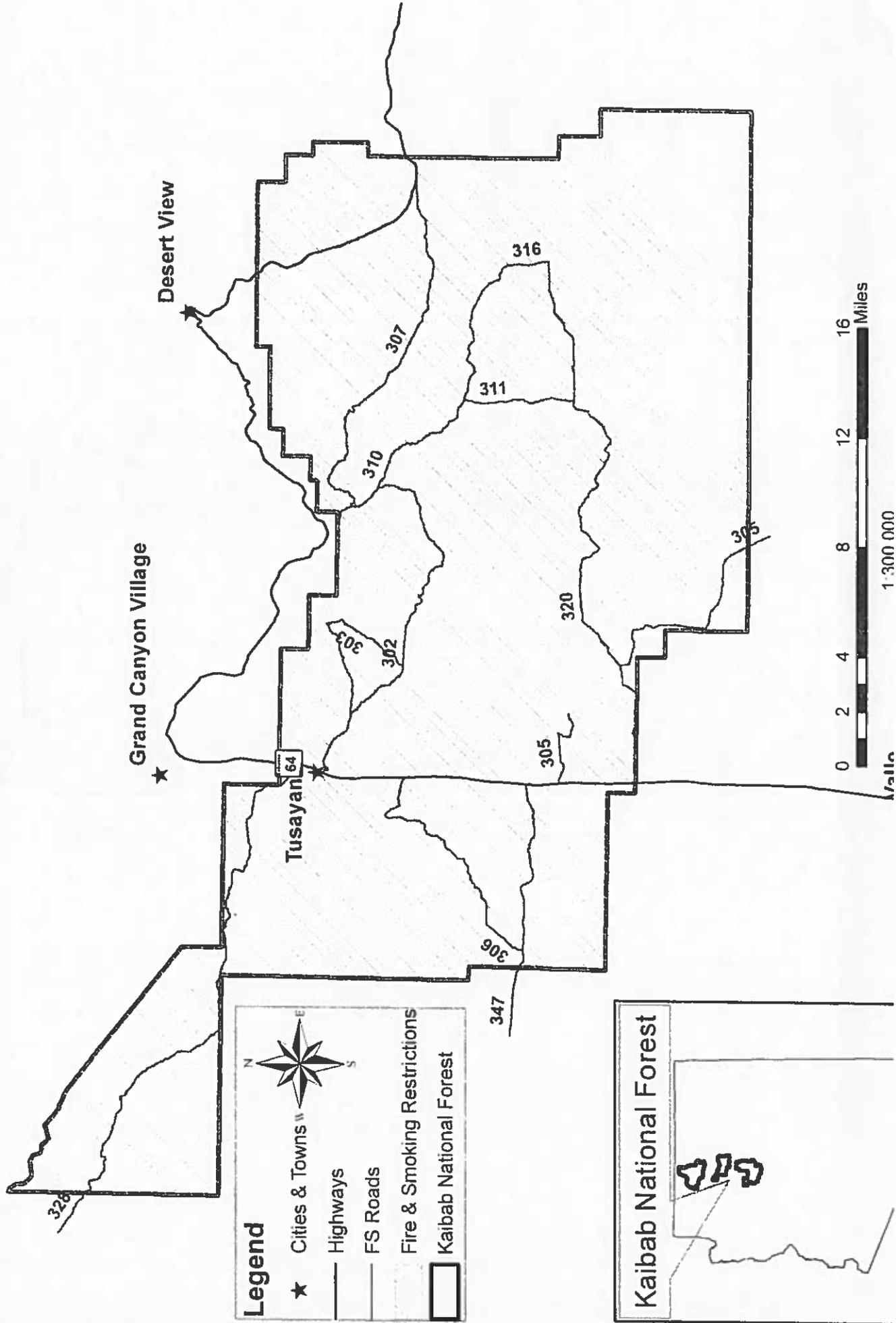
1. This Order will be in effect when signed and shall remain in effect until August 21, 2010 or until rescinded, whichever occurs first.
2. This Order rescinds, replaces and supersedes any previous Orders prohibiting the same acts covered by this Order in that area addressed in Exhibit A, B, and C.

Done at Williams, Arizona, this 23rd day of June, 2010

/s/ Michael R. Williams
MICHAEL R. WILLIAMS
Forest Supervisor
Kaibab National Forest

Violations of these regulations is punishable as a Class B misdemeanor, by a fine of not more than \$5000 for an individual or \$10,000 for an organization, or imprisonment for not more than six (6) months or both; 16 USC § 551, and 18 USC §§ 3559 and 3571.

Exhibit B: Ord # 07-10-03-F
 Kaibab National Forest Fire Restriction
 Fire and Smoking Restrictions



When recorded, please return to:
BOARD OF SUPERVISORS
Clerk of the Board
219 East Cherry Avenue
Flagstaff, AZ 86001-4695

COCONINO COUNTY BOARD OF SUPERVISORS

RESOLUTION 2010-37

**A RESOLUTION IMPOSING A BAN ON OPEN FIRES ON
PRIVATE AND PUBLIC LANDS IN THE
UNINCORPORATED AREA OF COCONINO COUNTY**

WHEREAS, Ordinance 2000-09 authorizes the County Board of Supervisors to impose a ban on open fires on private and public lands in the unincorporated area of Coconino County; and

WHEREAS, ARS §26-311 authorizes the County Board of Supervisors to declare that an emergency exists and to impose all necessary regulations to preserve peace and order in the unincorporated areas of the county; and

WHEREAS, ARS §26-307 authorizes counties to make, amend, and rescind orders, rules, and regulations necessary for emergency functions not inconsistent with orders, rules, and regulations promulgated by the governor and to suspend any regulation or law in conflict with said county orders, rules, and regulations; and

WHEREAS, ARS §49-501 prohibits open burning in unincorporated areas of the county, with certain broad exceptions; and

WHEREAS, counties have authority under ARS §11-251.05 to adopt ordinances necessary or proper to carry out the duties, responsibilities, and functions of the county and to prescribe punishment by fine or imprisonment, or both, for the violation of the ordinance, not to exceed the maximum limitations for a Class 1 misdemeanor; and

WHEREAS, a very high fire danger exists in Coconino County based on persistent high winds, increased red flag fire warnings, high temperatures, and the increasingly high Energy Release Component, a measurement of the fuel moisture, relative humidity, and temperature, as determined by the U.S. Forest Service; and

WHEREAS, the Coconino National Forest, the Kaibab National Forest and the Prescott National Forest have implemented State 1 fire restrictions effective Wednesday, June 23, 2010, due to high very fire danger and deemed the restrictions are necessary to protect public health and safety and prevent human-caused wildfires; and

WHEREAS, the City of Flagstaff has implemented Stage 1 restrictions effective Wednesday, June 23, 2010, implementing fire restrictions within the City of Flagstaff limits; and

WHEREAS, recent wildland fires have exhibited extreme fire behavior resulting in the evacuation of community residents; and

WHEREAS, the Coconino County Emergency Services Manager and Coconino County Sheriff recommend that the Board of Supervisors take action to prohibit all open burning in unincorporated areas of the County during the times of high and extreme fire danger; and

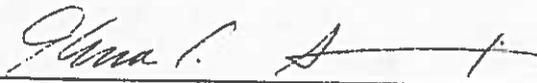
WHEREAS, penalties for violations shall be enforced under the same conditions and procedure as set forth in ARS §13-3903 and set forth in Ordinance 2000-09;

NOW THEREFORE BE IT RESOLVED that the Coconino County Board of Supervisors hereby imposes a ban on all open fires, campfires, fireworks, and other pyrotechnic displays on private and public lands in the unincorporated County, effective June 25th at 1:00 pm, until such time as the fire danger subsides. Excepted from this ban are petroleum-fueled stoves or lanterns, enclosed charcoal barbeque grills operated in residential yards, and special events specifically approved by the Board of Supervisors.

BE IT FURTHER RESOLVED that this Resolution 2010-37 imposing a ban on open fires shall be lifted at such time as the U.S. Forest Service lifts its restrictions on smoking and campfires outside developed recreation sites on Federal lands.

DATED this 25th day of June, 2010.

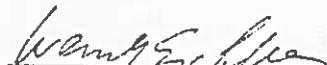
COCONINO COUNTY BOARD OF SUPERVISORS



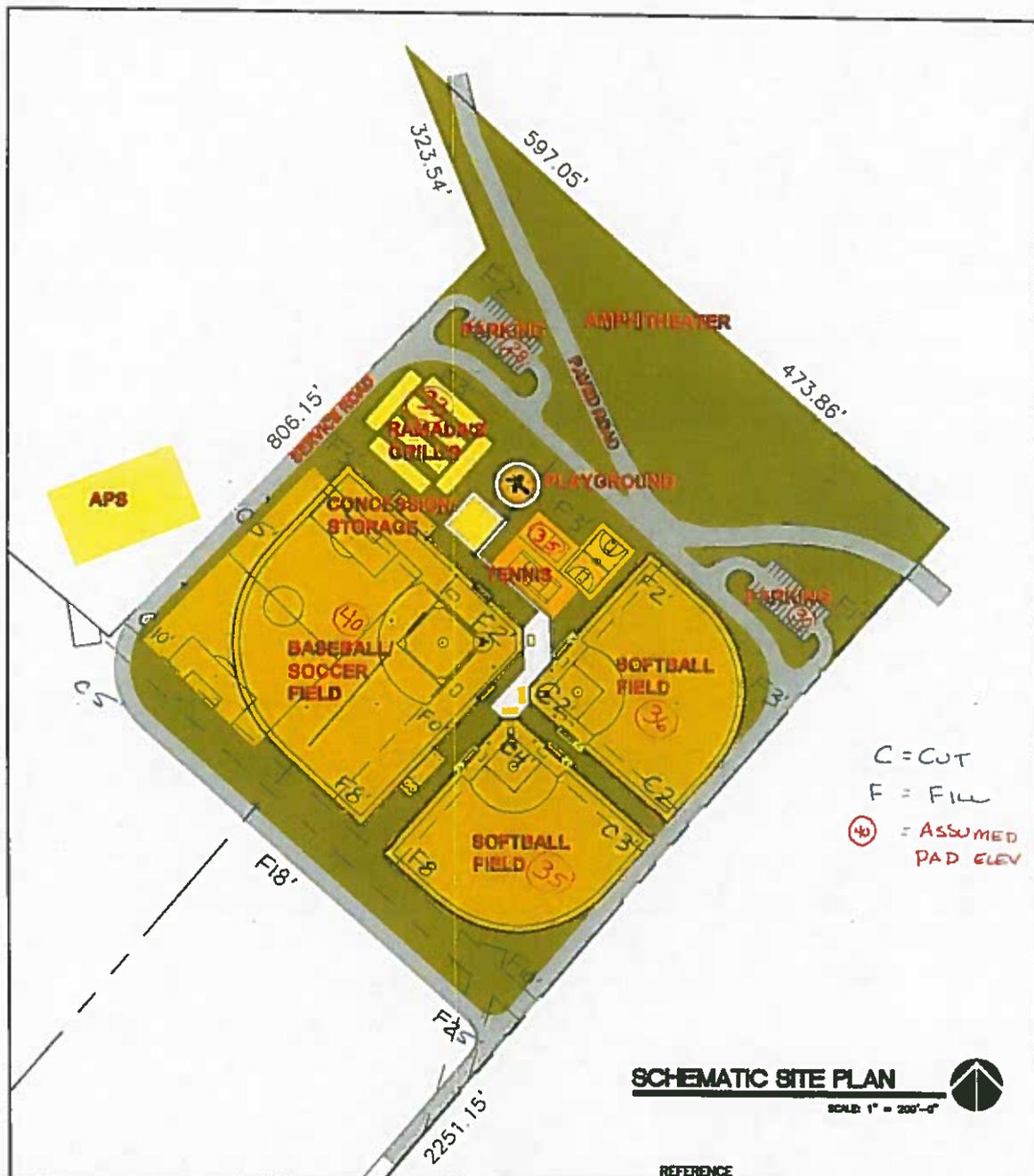
Elizabeth C. Archuleta, Chair

ATTEST:

APPROVED AS TO FORM:


Clerk of the Board

Deputy County Attorney



SCHEMATIC SITE PLAN
SCALE: 1" = 200'-0"

REFERENCE

 HIDA ARCHITECTS, LLC.	HDA ARCHITECTS, LLC 459 N. Gilbert Road, Suite C-200, Gilbert, AZ 85294-4737 Tel: (480) 539-8800 Fax: (480) 539-8608		
	PROJECT NAME	DRAWN BY	DATE
	GRAND CANYON SCHOOL DISTRICT COMMUNITY PARK		02/16/10
DRAWING NAME	JOB NUMBER	DRAWING NO.	
SCHEMATIC SITE PLAN	0919		

5-18-2010

Tusayan Site Mtg

5-18-10

Grading = #s in RED or Elevations

Have to do erosion control

3' fill easy from maintenance

18' settlement issues; erosion = future problems!

How Can we Work w/ the Contours of the Land?

How can we lay this out differently to w/ the topography?

Engineers look @ trees on survey along w/ grading; Vegetation & Fee for That Study!

ARIZONA OPEN MEETING LAW

All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.

A.R.S. § 38-431.01(A)

Key factors in Arizona's Open Meeting Law:

1. Meetings must be open (with certain exceptions such as executive sessions).
2. Advance notice of public meetings must be provided to the public through appropriate postings.
3. Agendas limit what may be discussed and minutes of the proceedings must be kept.
4. An open call to the public may be made during a public meeting. "At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action." A.R.S. § 38-431.01(H)
5. Meetings held in violation of the Open Meeting Law may lead to nullification of action, removal from office and civil fines.

Item for Consideration:

Attorney General Opinion No. I05-004, dated July 25, 2005 (copy attached). The Arizona Attorney General issued an opinion relating to email and other electronic communications, and the relationship such communications have with the Arizona Open Meeting Law.

"When members of the public body are parties to an exchange of e-mail communications that involve discussions, deliberations or taking legal action by a quorum of the public body concerning a matter that may foreseeably come before the public body for action, the communications constitute a meeting . . ."

"E-mails that board members or staff generate pertaining to the business of the public body are public records. Therefore, the e-mails must be preserved according to a records retention program and generally be made available for public inspection."

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION

by

TERRY GODDARD
ATTORNEY GENERAL

July 25, 2005

No. 105-004
(R05-010)

Re: Open Meeting Law Requirements and
E-mail to and from Members of a Public
Body

To: Donald M. Peters, Esq.
Miller, LaSota & Peters
722 East Osborn Road, Suite 100
Phoenix, Arizona 85014

Pursuant to Arizona Revised Statutes ("A.R.S.") §15-253(B), you submitted for review your opinion to the president of the Washington Elementary School District ("District") Governing Board ("Board") regarding electronic mail ("e-mail") communications to and from members of the Board and Arizona's Open Meeting Law ("OML").

This Opinion revises your analysis to set forth some parameters regarding e-mail to and from members of a public body and is intended to provide guidance to public bodies throughout the State that are subject to the OML. *See* Ariz. Att'y Gen. Op. 198-006 at 2, n.2.

Question Presented

What are the circumstances under which the OML permits e-mail to and from members of a public body?

Summary Answer

Board members must ensure that the board's business is conducted at public meetings and may not use e-mail to circumvent the OML requirements. When members of the public body are parties to an exchange of e-mail communications that involve discussions, deliberations or taking legal action by a quorum of the public body concerning a matter that may foreseeably come before the public body for action, the communications constitute a meeting through technological devices under the OML. While some one-way communications from one board member to enough members to constitute a quorum would not violate the OML, an e-mail by a member of a public body to other members of the public body that proposes legal action would constitute a violation of the OML.

Analysis

The OML is intended to open the conduct of government business to public scrutiny and prevent public bodies from making decisions in secret. *See Karol v. Bd. of Educ. Trs.*, 122 Ariz. 95, 97, 593 P.2d 649, 651 (1979). “[A]ny person or entity charged with the interpretation [of the OML] shall construe any provision [of the OML] in favor of open and public meetings.” A.R.S. § 38-431.09. In addition, devices used to circumvent the OML and its purposes violate the OML and will subject the members of

the public body and others to sanctions.¹ See e.g. Ariz. Att’y. Gen. Ops. 199-022, n. 7; 175-7. These principles guide the analysis of the use of e-mails by members of a public body. E-mail communications to or from members of the public body are analyzed like any other form of communication, written or verbal, in person or through technological means.

A. An Exchange of E-mails Can Constitute a Meeting.

1. A Meeting Can Occur Through Serial Communications between a Quorum of the Members of the Public Body.

All meetings of public bodies must comply with the OML.² The OML defines a “meeting” as:

the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action.

A.R.S. § 38-431(4).

The OML does not specifically address whether all members of the body must participate simultaneously to constitute a “gathering” or meeting. However, the requirement that the OML be construed in favor of open and public meetings leads to the conclusion that simultaneous interaction is not required for a “meeting” or “gathering”

¹ A.R.S. § 38-431-.07 (A) provides for penalties for violating the OML against not only members of the public body, but also against “[a person] who knowingly aids, agrees to aid or attempts to aid another person in violating [the OML].”

² A “public body” subject to the OML includes:
the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivisions. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body.

A.R.S. § 38-431(6).

within the OML. “Public officials may not circumvent public discussion by splintering the quorum and having separate or serial discussions. . . . Splintering the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss a topic that is or may be presented to the public body for a decision.” *Arizona Agency Handbook* § 7.5.2. (Ariz. Att’y Gen. 2001) Thus, even if communications on a particular subject between members of a public body do not take place at the same time or place, the communications can nonetheless constitute a “meeting.” See *Del Papa v. Board of Regents*, 114 Nev. 388, 393, 956 P. 2d 770, 774 (1998) (rejecting the argument that a meeting did not occur because the board members were not together at the same time and place)³; *Roberts v. City of Palmdale*, 20 Cal. Rptr. 2d 330, 337, 853 P. 2d 496, 503 (1993) (“[A] concerted plan to engage in collective deliberation on public business through a series of letters or telephone calls passing from one member of the governing body to the next would violate the open meeting requirement.”)⁴

2. Discussion, Proposals and Deliberations Among a Quorum of a Public Body Must Occur at a Public Meeting.

A “meeting” includes four types of activities by a quorum of the members of the public body: discussing legal action, proposing legal action, taking legal action, and deliberating “with respect to such action[s].” A.R.S. § 38-431(4). Three of these activities necessarily involve more than a one-way exchange between a quorum of members of a public body.

³ Like the OML, Nevada’s open meeting law defines a “meeting” as a gathering of a quorum of members of the public body. Nev. Rev. Stat. 241.015(2).

⁴ This Office declines to follow *Beck v. Shelton*, 267 Va. 482, 491, 593 S.E.2d 195, 199 (2004) because of differences between Arizona’s law and Virginia’s. In *Beck*, the court concluded that “the term [‘assemble’] inherently entails the quality of simultaneity.” Further, the court observed that “[w]hile such simultaneity may be present when e-mail technology is used in a ‘chat room’ or as ‘instant messaging,’ it is not present

For example, the ordinary meaning of the word “discuss” suggests that a discussion of possible legal action requires more than a one-way communication. *See Webster's II New College Dictionary* 385 (1994) (defining “discuss” as “to speak together about.”) Likewise, the term “deliberations” requires some collective activity. *See Ariz. Att’y Gen. Op. 197-012, citing Sacramento Newspaper Guild v. Sacramento Bd. of Supervisors*, 69 Cal. Rptr. 480, 485 (App. 1968) (reversed on other grounds). “Deliberations” and “discussions” involve an exchange between members of the public body, which denotes more than unilateral activity. *See Ariz. Att’y Gen. Op. 175-8; Webster's* at 390 (“exchange” means “to take or give up for another”; “to give up one thing for another”; “to provide in return for something of equal value.”) Finally, “taking legal action” in the context of the OML requires a “collective decision, commitment or promise” by a majority of the members of a public body. A.R.S. § 38-431(3); *Ariz. Att’y Gen. Op. 175-7*.

Unlike discussions and deliberations, the word “propose” does not imply or require collective action. Webster’s defines “propose” as “to put forward for consideration, discussion, or adoption.” *Webster's II New College Dictionary* at 944. A single board member may “propose” legal action by recommending a course of action for the board to consider. For example, the statement, “Councilperson Smith was admitted to the hospital last night” is not a proposal, but “We should install a crosswalk at First and Main” is a proposal. Thus, an e-mail from a board member to enough other members to constitute a quorum that *proposes* legal action would be a meeting within the OML, even

when e-mail is used as the functional equivalent of letter communication by ordinary mail, courier, or facsimile transmission.” *Id.*, 267 Va. at 490, 593 S.E. 2d at 199.

if there is only a one-way communication, and no other board members reply to the e-mail.⁵

3. An Exchange of Facts, as Well as Opinions, Among a Quorum of Members of a Public Body Constitutes a Meeting within the OML, if it is Reasonably Foreseeable that the Topic May Come Before the Public Body for Action in the Future.

Arizona's OML does not distinguish between communication of facts or opinions. An exchange of facts, as well as opinion, may constitute deliberations under the OML. See Ariz. Att'y Gen. Ops. I97-012, I79-4; I75-8.⁶ The term "deliberations" as used in A.R.S. § 38-431 means "any exchange of facts that relate to a matter which foreseeably might require some final action . . ." Ariz. Att'y Gen. Op. I75-78; see also *Sacramento Newspaper Guild*, 69 Cal. Rptr. at 485 (deliberation connotes not only collective discussion, but also the collective acquisition and exchange of facts preliminary to the final decision).

Of course, the OML applies only to an exchange of facts or opinions if it is foreseeable that the topic may come before the public body for action. See *Valencia v. Cata*, 126 Ariz. 555, 556-57, 617 P.2d 63, 64-5 (App. 1980); Ariz. Att'y Gen. Op. 75-8. The scope of what may foreseeably come before the public body for action is determined

⁵ It might be argued that because the definition of meeting refers to a gathering of a quorum at which *they* discuss, propose or take legal action, the definition only applies to proposals made by a quorum or circumstances in which more than one person actually makes a proposal. That interpretation, however, is inconsistent with the ordinary meaning of the word "propose" and with the process for proposing legal action for consideration by public bodies. It is also contrary to the directive that the OML be construed broadly to achieve its purposes.

⁶ Unlike Arizona, some states permit exchanges of information among a quorum of a public body outside of public meetings. See Fla. AGO 2001-20, 2001 WL 276605 (Fla. A.G.) ("[C]ommunication of information, when it does not result in the exchange of council members' comments or responses on subjects requiring council action, does not constitute a meeting subject to [Florida's sunshine law]). As in many other states, Florida's open meeting law is known as its "sunshine law."

by the statutes or ordinances that establish the powers and duties of the body. *See* Ariz. Att'y Gen. Op. I00-009.

4. Applying OML Principles to E-mail.

Few reported decisions discuss when the use of e-mail violates a state's open meeting law. In *Wood v. Battle Ground School District*, 107 Wash. App. 550, 564, 27 P. 3d 1208, 1217 (2001), the Washington Court of Appeals held that the exchange of e-mail messages may constitute a meeting within Washington's Open Public Meetings Act. While the court held that "the mere use or passive receipt of e-mail does not automatically constitute a 'meeting'," it concluded that the plaintiff established a *prima facie* case of "meeting" by e-mails because the members of the school board exchanged e-mails about a matter, copying at least a quorum and sometimes all of the other members. The court said, "[T]he active exchange of information and opinions in these e-mails, as opposed to the mere passive receipt of information, suggests a collective intent to deliberate and/or to discuss Board business." 107 Wash. App. at 566, 27 P. 3d at 1218.

Although the Washington Open Public Meetings Act is not identical to the OML, like the OML, it broadly defines "meeting" and "action," and includes the directive that the law be liberally construed in favor of open and public meetings. 107 Wash. App. at 562, 27 P. 3d at 1216. The holding of the court in *Wood* and its attendant analysis are, therefore, persuasive.

The available case law and Arizona's statutory language indicate that a one-way communication by one board member to other members that form a quorum, with no further exchanges between members, is not a *per se* violation of the OML. Additional facts and circumstances must be evaluated to determine if the communication is being

used to circumvent the OML. A communication that proposes legal action to a quorum of the board would, however, violate the OML, even if there is no exchange among the members concerning the proposal. In addition, passive receipt of information from a member of the staff, with nothing more, does not violate the OML. *See Roberts*, 20 Cal. Rptr. 2d at 337, 853 P. 2d at 503 (receipt of a legal opinion by members of a public body does not result in a meeting.); *Frazer v. Dixon Unified Sch. Dist.*, 18 Cal. App. 4th 781, 797, 22 Cal. Rptr. 2d 641, 657 (1993) (passive receipt by board members of information from school district staff is not a violation of the open meeting law).⁷

There are risks whenever board members send e-mails to a quorum of other board members. Even if the first e-mail does not violate the open meeting law, if enough board members to constitute a quorum respond to the e-mail, there may be a violation of the OML. In addition, a quorum of the members might independently e-mail other board members on the same subject, without knowing that fellow board members are also doing so. This exchange of e-mails might result in discussion or deliberations by a quorum that could violate the OML. Because of these potential problems, I strongly recommend that board members communicate with a quorum about board business at open public meetings, not through e-mails.

B. Hypotheticals Illustrating the Use of E-mail.

The analysis of the OML and e-mail is theoretically no different than analyzing other types of communications. To provide additional guidance, this Opinion will address

⁷ This office has also opined that, in the context of a Call to the Public, passive receipt of information does not constitute a meeting. Ariz. Att'y Gen. Op. 199-006.

OML applications to specific factual scenarios.⁸

- a. E-mail discussions between less than a quorum of the members that are forwarded to a quorum by a board member or at the direction of a board member would violate the OML.
- b. If a staff member or a member of the public e-mails a quorum of members of the public body, and there are no further e-mails among board members, there is no OML violation.
- c. Board member A on a five-member board may not e-mail board members B and C on a particular subject within the scope of the board's responsibilities and include what other board members D and E have previously communicated to board member A. This e-mail would be part of a chain of improper serial communications between a quorum on a subject for potential legal action.
- d. A board member may e-mail staff and a quorum of the board proposing that a matter be placed on a future agenda. Proposing that the board have the opportunity to consider a subject at a future public meeting, without more, does not propose legal action, and, therefore, would not violate the OML.
- e. An e-mail from the superintendent of the school district to a quorum of the board members would not violate the OML. However, if board members reply to the superintendent, they must not send copies to enough other members to constitute a quorum. Similarly, the superintendent must not forward replies to the other board members.
- f. One board member on a three-member board may e-mail a unilateral communication to another board member concerning facts or opinions relating to board business, but board members may not respond to the e-mail because an exchange between two members would be a discussion by a quorum.
- g. A board member may copy other board members on an e-mailed response to a constituent inquiry without violating the OML because this unilateral communication would not constitute discussions, deliberations or taking legal action by a quorum of the board members.
- h. An e-mail request by a board member to staff for specific information does not violate the OML, even if the other board members are copied on the e-mail. The superintendent may reply to all without violating the OML as long as that response does not communicate opinions of other board members. However, if board members reply in a communication that includes a quorum, that would constitute a discussion or deliberation and therefore violate the OML.

⁸ These hypotheticals assume that the e-mails are not sent by board members or at a board member's direction with the purpose of circumventing the OML and that any unilateral communications do not propose legal action.

- i. A board member may use e-mail to send an article, report or other factual information to the other board members or to the superintendent or staff member with a request to include this type of document in the board's agenda packet. The agenda packet may be distributed to board members via e-mail. Board members may not discuss the factual information with a quorum of the board through e-mail.

C. Measures to Help Ensure that the Public Body Conducts Its Business in Public.

Although it is not legally required, I recommend that any e-mail include a notice advising board members of potential OML consequences of responding to the e-mail.

Possible language for a notice for e-mails from the superintendent or staff is as follows:

To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other members of the public body. Members of the public body may reply to this message, but they should not send a copy of the reply to other members.

Language for e-mails from board members could be the following:

To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other board members and board members should not reply to this message.

Although the OML does not require the above notice, such notification may serve as a helpful reminder to board members that they should not discuss or deliberate through e-mail.

It is also important to remember that e-mail among board members implicates the public records law, as well as the OML. E-mails that board members or staff generate pertaining to the business of the public body are public records. *See Star Publ'g Co. v. Pima County Attorney's Office*, 181 Ariz. 432, 891 P.2d 899 (App. 1994); *see also Arizona Agency Handbook* § 6.2.1.1 (Ariz. Att'y Gen. 2001). Therefore, the e-mails must be preserved according to a records retention program and generally be made available

for public inspection. A.R.S. §§ 39-121, 41-1436. Although the OML focuses on e-mails involving a quorum of the members of the public body, the public records law applies to any e-mail communication between board members or board members and staff. Public bodies might consider maintaining a file that is available for public inspection and contains any e-mails sent to and from board members. Ready access to this type of information helps ensure compliance with the legislative mandates favoring open government.

I encourage all public bodies to educate board members and staff concerning the parameters of the OML and the public records law to ensure compliance with these laws. E-mail is a useful technological tool, but it must be used in a manner that follows the OML's mandate that all public bodies propose legal action, discuss, deliberate, and make decisions in public.

Conclusion

E-mail communications among a quorum of the board are subject to the same restrictions that apply to all other forms of communications among a quorum of the board. E-mails exchanged among a quorum of a board that involve discussions, deliberations or taking legal action on matters that may reasonably be expected to come before the board constitute a meeting through technological means. While some unilateral e-mail communications from a board member to a quorum would not violate the OML, a board member may not propose legal action in an e-mail. Finally, a quorum of the board cannot use e-mail as a device to circumvent the requirements in the OML.

Terry Goddard
Attorney General

450529

TUSAYAN TOWN COUNCIL SPECIAL HEARING

Immediately Following Public Hearing
July 14, 2010
Zuni Room
Best Western Squire Inn
74 State Route 64, Tusayan, AZ

Minutes

Call to order

by Vice Mayor Greg Bryan at 5:15 pm

Roll Call

Members in Attendance:

Mayor Pete Shearer (telephonically)

Vice Mayor Greg Bryan

Councilmember Al Montoya

Councilmember Ann Wren

Members Not in Attendance:

Councilmember Clarinda Vail

Discussion and possible action regarding resolution for Home Rule ballot initiative to be on November 2nd election for it to become effective July 1, 2011

Vice Mayor Bryan advised council of Resolution No. 2010-07-14-01 proposing an alternative expenditure limitation. Councilmember Wren motioned to pass Resolution No. 2010-07-14-01. Councilmember Montoya seconded. The motion passed unanimously.

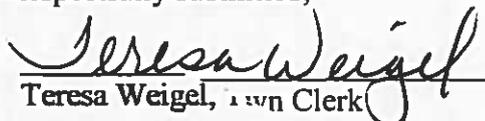
Resolution No. 2010-07-14-01 was passed and adopted and three copies will be available in the Council Offices.

Council further discussed a need to charge for submissions. Councilmember Wren asked Town Legal Council if the price can be changed at a later date. Town Legal Council advised this item would need to be on the agenda for the July 28 Agenda.

Adjournment

Vice Mayor Bryan motioned to adjourn the meeting. Councilmember Wren seconded. The motion passed unanimously at 5:24 pm.

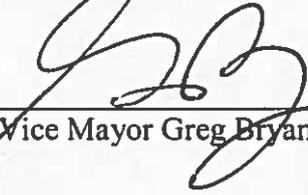
Respectfully submitted,


Teresa Weigel, Town Clerk

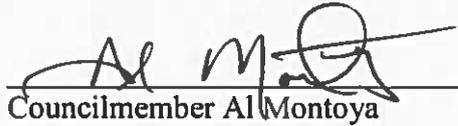
Dated: 7-28-10



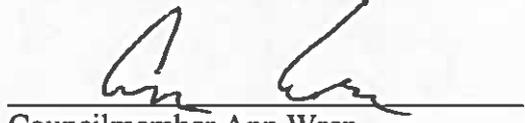
Mayor Pete Shearer



Vice Mayor Greg Bryan



Councilmember Al Montoya



Councilmember Ann Wren

TUSAYAN TOWN COUNCIL PUBLIC HEARING

5:00 pm
July 14, 2010
Zuni Room
Best Western Squire Inn
74 State Route 64, Tusayan, AZ

Minutes

Call to order

by Vice Mayor Greg Bryan at 5:01 pm and pledge of allegiance

Roll Call

Members in Attendance:

Vice Mayor Greg Bryan

Council member Al Montoya

Council member Ann Wren

Members Not in Attendance:

Mayor Pete Shearer

Councilmember Clarinda Vail

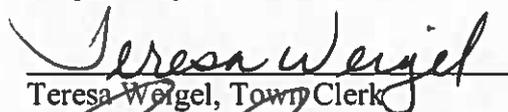
There were two members of the public present at the meeting and neither had any questions. Council members discussed whether the Town of Tusayan should charge for the published comments which must be received by August 4, 2010. Town Legal Counsel suggested there be a minimum charge to make sure the public provides substance in their comments.

Town Legal Counsel explained Flagstaff's choice for Permanent Base Adjustment instead of the Home Rule Option.

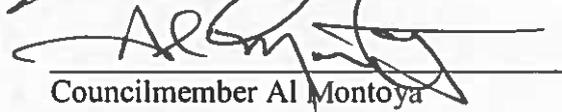
Adjournment

Councilmember Montoya motioned to adjourn the public hearing at 5:11 pm. Councilmember Wren seconded the motion. The motion carried unanimously.

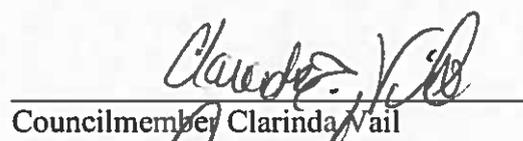
Respectfully submitted,

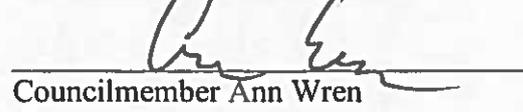

Teresa Weigel, Town Clerk


Vice Mayor Greg Bryan


Councilmember Al Montoya

Dated: 7-28-10


Councilmember Clarinda Vail


Councilmember Ann Wren