

Town Council Special Meeting
Town of Paonia, Colorado
October 12, 2012

RECORD OF PROCEEDINGS

A Special Meeting of the Town Council held Friday, October 12, 2012 was called to order at 9:05 a.m. with the Pledge of Allegiance. Those present were Mayor Pro-Tem Corinne Ferguson, Trustees Brian Ayers, Eric Goold, Ross King, Amber Kleinman and Larry Wissbeck; and Town Clerk Barbara Peterson. Mayor Neal Schwieterman was absent.

Mayor Pro-Tem Ferguson determined a quorum was present and proceeded with the meeting.

New Business

Executive Session

Trustee Wissbeck moved to go into executive session for discussion of specialized details of security arrangements or investigations under C.R.S. Section 24-6-402(4)(d). Trustee Ayers seconded. Mayor Pro-Tem Ferguson noted that due to the ongoing investigation, the 2011 audit is being presented in executive session. The Town has not received confirmation that the case has been turned over to the Assistant District Attorney. Mayor Pro-Tem Ferguson noted that even if the case has been turned over, an investigation is still considered open until judgment is issued. Karen Fogg thinks that what the Town is doing is illegal and the statute overrides the District Attorney's request to not disclose details of the case. Mayor Pro-Tem Ferguson indicated it was explained to her by the Town Attorney and the Mayor that the statute does allow for discussion in executive session. Trustee Goold is opposed to having the executive session, as the information should be made public. Trustee Ayers thinks the discussion may affect the investigation, but the audit should be filed with the State on Monday. Mayor Pro-Tem Ferguson stated that until the audit is released, it is considered work product. Ms. Fogg said the audit is not an open investigation. Mayor Pro-Tem Ferguson noted there is information regarding the alleged embezzlement that is under open investigation. Bill Crank asked what would change on the audit between now and Monday and for what purpose? Trustee Goold indicated that nothing should change. In response to Ms. Fogg, Trustee King noted that he had requested to see the audit before it was filed for a chance to view before it was submitted to the State. Mayor Pro-Tem Ferguson noted that normally, the audit is presented to the Finance Committee who then presents it to Council at a regularly scheduled meeting. Trustee Wissbeck felt the overriding aspect is the interest in the audit by Council and the public to air out the theft, deception and lack of oversight. Trustee Wissbeck understands the legal system prefer matters under investigation be kept confidential and they may be in conflict and could cause deleterious effect on the outcome of a trial. Mayor Pro-Tem noted that in order for the Town to move forward with the budgeting process, the Town needs to get correct numbers from the audit. Motion was brought to a vote and failed with Trustees Ferguson, Kleinman and Wissbeck voting "aye" and Trustees Ayers, Goold and King voting "nay". Mayor Pro-Tem noted the audit review would then be addressed at the committee level. Ms. Fogg asked if the audit was presented at the next meeting if the public would be subject to redacted numbers. Trustee King moved to present the audit in open session. Trustee Goold seconded. Discussion called for a conversation with the Mayor, Attorney, or both.

9:26 a.m. Meeting recessed.

9:43 a.m. Meeting reconvened.

Mayor Pro-Tem Ferguson presented the alternative that the Finance Committee could review today and Auditor Pete Blair would come back on Tuesday for a complete Council presentation on Tuesday. Trustee King rescinded his motion and moved to have the 2011 Audit presented at this meeting this morning. Trustee Goold seconded. Trustee Wissbeck noted the Council might be constrained on discussion regarding the investigation of theft and oversight. Mayor Pro-Tem Ferguson noted that should any discussion arise regarding the investigation, the meeting would be closed. Trustee Goold indicated that it was only attorney advice and Council does not have to follow it. Mayor Pro-Tem Ferguson noted she is not an attorney, nor is she law enforcement, but based on her judgment of the request, she will not do anything to compromise the investigation, if possible. Trustee Ayers felt Council should heed the advice and guidance of legal counsel. Trustee Goold thought it interesting that neither the Mayor nor Attorney Briscoe were present today and would like to know why not. Trustee Wissbeck was unsure how a vote on this motion would affect the discussion if the presentation would be limited and not cover the portion of the open investigation.

9:50 a.m. Meeting recessed.

9:58 a.m. Meeting reconvened.

Mayor Pro-Tem Ferguson noted speaking with the mayor. More information may or may not affect or interfere with the information for the investigation. Trustee Wissbeck is aware that discussion may prohibit or limit discussion of the audit. The figures speak for themselves. Trustee Goold is not afraid of the discussion. Mayor Pro-Tem Ferguson noted that executive sessions are not enjoyable and prefers to not conduct business that way, but there are legal reasons for proceeding in that direction. Ms. Fogg felt that Attorney Briscoe might not be giving the best advice. The 2010 audit has been released and releasing the 2011 audit should not be a big deal. Trustee Kleinman felt that if the Finance Committee met with the auditor and the audit will be presented at the next meeting, which seems like a good way to proceed. Motion was brought to a vote and failed with Trustees Goold, King and Wissbeck voting "aye" and Trustees Ferguson, Ayers and Kleinman voting "nay". Mayor Pro-Tem Ferguson directed the Finance Committee to meet with the auditor today and a full presentation to Council will happen at the next meeting. Trustee Wissbeck noted the audit would be public information once the auditor files it with the State Auditor. Trustees King and Goold indicated they wanted a copy of the audit the minute after the audit was filed with the State Auditor. Trustee King voiced his opinion that he spoke with Attorney Briscoe concerning a possible tainted jury and noted they could apply for a change of venue if necessary.

10:08 a.m. Meeting adjourned.

Mayor Pro-Tem, Corinne Ferguson

Town Clerk, Barbara J. Peterson