

TOQUERVILLE CITY COUNCIL MINUTES

**Work Mtg – 6PM; Executive Session – 6:30 PM (Minutes Separated),
7PM - Public Hearing and Regular Mtg
Held February 12th, 2009, at City Offices, 212 Toquer Blvd.**

Attending: Mayor Ken Powell; **Council Members:** Lynn Olds, Randy Scott, Darrin LeFevre, Paul Heideman, Daren Cottam; ATT. Heath Snow; Mike Vercimak, (Inspection/ Zoning); Doug Gubler (Water Dept); Blaire Gubler (Sewer Dept); P.C Members: Anita Lowe (Chair), Annette Kleinman; Carol Pogue (Recorder); D.C. Young (Website); **Public Attendees:** Stacey Eaton, Mona Lowe, Greg Walker, Bill Patrick, Brig Darger (Board of Adjustments); Will Pogue (Maint.); Daniel & Merry Walsh; Avanel Darrington; Scouts: Dallin Heaton, Michael & Amanda Condie.

6:10PM – Quorum has arrived and Work Meeting is called to order by Mayor Powell.

Item #1: (Water Dept – Doug Gubler (excused tonight); Sewer Update – Blair Gubler. Blair stated the Sewer District had put their new office “out to bid” on the 26th Board Mtg; contractors have picked up the paper – it was announced they would be moving out of the old white church bldg to Berry Springs, up from the Elim Valley Sales trailer. Blair asked if CC had anything else for him? Mayor Powell said the (Sewer Dist) repairs were well done; Blair responded they would be back in one to two years for checks with many other lines. He stated there were two major fixes by the LaVerkin Creek Bridge that were much worse than any in Toquerville.

Lynn Olds questioned whether the Sewer District had communicated with the “Grapevine Proposal” in Leeds; Blair answered that I. Crowe (group) had been to the Board 2-3 times with different proposals about a year ago; they spoke about different angles of drainage and servicing the area but was unclear as to best way.

Blair G. also said the **Cholla Creek Lot Split (Williams)** on the Agenda has been reviewed with the SSD and the easements are in place to service the lots; notation should be on final plat before sign-off that (City) any (future) required improvements should be bonded.

Mayor Powell announced that an Executive Session with Attorney Snow would commence at 6:30 PM; public will be excused and return for the Public Hearing at 7 PM.

Item #2: Planning Commission Update – Chair, Anita Lowe stated that PC had been working “Sensitive Lands” Ordinance and public hearing would be held next week. A copy will be sent to the Council for review prior to CC Meeting next month.

Mayor Powell will call for **Item #3: Attorney Snow Update** after the Executive Session.

Item #4: Council Members were asked if they had any questions or review to any Items on the Regular Mtg Agenda? Response was no.

Item #5: Mayor Powell Update and questions. (a) Table’d Ord. (Dec. Mtg) for Connection to Secondary Water Supply; ATT. Snow confirmed this re-write is ready for Regular Agenda. **(b) Mayor Powell informed the CC that he’d received a letter from (2) residents requesting “closure of the OWF Theme Park proposal” that had come before the City a couple months ago and had pulled this project from the Agenda; therefore, a final motion from CC was never made. He felt that City Council had no interest in the project as it was presented, but felt City would also not “close the door” for future proposals (e.g., travel center, etc.). (c) Ratify CC decision not on Agenda from Jan. 15th Mtg for obtaining TRE Bond Funds from Pulaski Bank;** item is on Unfinished Business. **(d) Fire protection issue with annexation;** Lynn O. reported a meeting will be held next Tuesday for finalizing the presentation on a proposed District with Hurricane Valley, including costs, etc.; the District could be ready to go in the next two to three months with resident support taxes, as other states have done. If this fails, Hurricane Fire will renegotiate the City fees. **(e) Scout Project proposals;** Mayor Powell would like to see a list made for areas throughout the City that would be available when calls come for Eagle Scout projects. He mentioned the following: 1. Trees restored around the water tank where the water system failed – the holes are there and our maintenance people could help with the water. 2. Springs Dr. Pumphouse is still a project; Lynn O. said the McCombs and Curtis boys need to follow up on that.

Work Mtg, 2-12-09, (Cont.)

3. Fire Hydrant upkeep; Annette Kleinman stated the National BSA said these were no longer “approved projects”. 4. Post Office landscaping; Annette K. said she would check on that approval due to private property (leased by the USPS). (5) Darrin LeFevre reminded of another Scout proposal for City of Toquerville sign at the end of Town; S. Eaton had told them where to get the rock for that. S. Eaton said he had talked to the Scout who said he would get back, but he has not called. Anita Lowe offered to work with a Scout on donating a piece of ground on the top of the “s-curve” at the north end of Town. (6) Paul Heideman suggested the trail from Pintura to LaVerkin be looked at again; City could work on the right-of-ways and have the Scouts work on the trail. Lynn O. said there was a study done by a group of students years ago; Annette K. said Toni Foran would be a good contact on that. **(f) FEMA Flood Damage Prevention Ord.;** Mayor reminded Council of their input (they may have more restrictions for City than on the proposal) for the State Regulations on flood damage prevention - specifically for Toquerville.

Mayor Powell called for proposed Scout Project presentation; Dallin Heaton (Troop 1663, TOQ, 3rd Ward) announced his desire to do several projects to beautify the Park and Cemetery; plant a few trees by B-ball Court where the trees are ready and holes dug, and add gravel along the baseball fence. The Cemetery also has some trees and holes ready for planting in new section; would also like to paint some trash cans. Mayor asked him to contact Randy Scott (Councilman – Parks/Cemetery); Mayor also stated there are organizations who will donate matching funds for tree planting and asked Dallin if he had any idea of costs for this project? Dallin said he had raised \$200 for the project along with any donations he could get from the City. Lynn O. said there was some gravel in the City and Dallin should talk to Delos Elison (Maint.). Mayor explained when the Council approves the project, Carol will call him (Dallin could not stay and was excused).

6:35 PM - Mayor Powell dismissed the public for Attorney called Executive Session, due to possible or pending litigation.

7:11 PM - Regular Mtg was reconvened. Flag Salute was given by Darrin LeFere; Invocation by Daren Cottam. Mayor Powell asked for any statements of belief from those in attendance; none were offered. He also asked for any disclosures or conflicts; Darrin L. declared his conflict with Item C.1, Cholla Creek Lot Split, as Engineer on the Project.

Lynn Olds MOTIONed to go out of Regular Meeting and open the Public Hearing; 2nd by Randy Scott; all in favor? Yes.

Item #1 – Lot split on #33, Cholla Creek Subdivision; Lynn Williams (owner). Anita Lowe (PC Chair) pointed out this parcel on a displayed site map, noting sufficient frontage on both facing roads. One half of the parcel (split) is .49 acre, the other is .53; Planning Commission recommends approval with condition of “no additional subdivision for five years from approval”; owner will also supply utilities and completion bond. Approval has been received by Ashcreek Sewer District; easements are all OK for this R-1-20 zoned Lot. Mayor Powell asked for any public comment; Greg Walker stated he owns the adjacent property and hoped it would not change from the full acre, yet understands it is zoned one-half acre. He said, as a neighbor to Williams, he “signed off” but wanted it on record that he “hated to see that closed in”.

Item #2 – Westfield Road Dedication; vacating and altering public road to correct plats and deeds, realigning to specific and equal width throughout. Mayor Powell explained this has been in work for three to four years. ATT. Snow added the County has required an Ordinance (process) to approve this vacating for alignment, and abandonment of other portions back to adjacent property owners. Lynn Olds said there was a portion (Baird property) up one side – was that taken care of? ATT. Snow said there were many signatures on this to obtain, then a City-owned strip and a “quiet title” to complete; there is one piece next to the City strip that appears to be “no man’s land”. The “quiet title” will “give back” to adjacent property owners and straighten property lines.

Maps were displayed to show north and south portions; Mayor explained costs to City in completing this work and the need to get it done (Note: allowing City maintenance and repairs to the roadway). Mayor Powell asked if there were any questions or comments; none were given.

Paul Heideman MOTIONed to close the Public Hearing; Lynn Olds 2nd; all in favor? Yes.

7:28 - Mayor Powell reconvened Regular Meeting and Agenda.

Item A. Consent Agenda for (1) approval of Mtg Minutes for: CC Exec. Session for 12-11-08; Regular Mtgs for 1-8-09 and 1-15-09; and (2) City Expenditures for January. **Daren Cottam MOTIONed to approve the Consent Agenda; 2nd by Paul Heideman; all in favor? Yes, unanimously.**

Item B. – Unfinished Business

- (1) **Ordinance 2009.01, Requiring Connection, where capable, to TOQ Secondary Water Irrigation.** Mayor Powell explained this was Tabled from Dec.'08 and Jan.'09 Council Mtgs; answering a public question, Mayor replied, the City only has so much water left in the Springs. We must then purchase from the Water District and with our Secondary System, we require all Subdivisions to hook up, but individual residents don't have that requirement. **If they don't (hook up), State law requires TOQ to supply 800 gals (culinary) per day; with secondary hooked up, we supply 400 gals per day.** This gives more water hookups along with saved revenue; is also saving culinary reserve.

ATT. Snow addressed a Lynn O. concern, requiring connection then having Water System rates change; we sent the District a copy and they commented about **keeping control of price rates through the TOQ Secondary System Board.** We did require (on this Ord.) that the District make hookup changes through them and not the City; that every parcel in a Subdivision will be required to have one hook-up from developer. The City may also have ability to review and waive the requirement of secondary, per request of geographical handicap, etc.; Lynn O. said (example) as in Toquer Estates or at Anderson Junction. Mayor stated that **those who sit on the Water Board are citizens of Toquerville** – he has sat on it himself; he also asked for any further discussion – no response.

Lynn Olds MOTIONed to approve ORD2009.01, Required Connection to Toquerville Secondary Water Supply; 2nd by Daren Cottam; all in favor? Yes, unanimously.

- (2) **Ratification of CC approval made on Jan 8th Mtg for Bond from TRE Development.;** to be placed at the City Zions Bank Account. ATT. Snow explained the ANB Bank default and failure, was taken to federal receivership; funds were transferred to Pulaski Bank and by notification from Casey Craig (TRE owner), we've sent a letter to request City funds for cashier's check to deposit. **Paul Heideman MOTIONed to ratify Jan. Mtg CC decision for petitioning Pulaski Bank to obtain City Bond (TRE) funds and deposit in City Zion's Bank Acct.; 2nd by Lynn Olds; all in favor? Yes.**
- (3) **Request for CC "closure vote" to the proposal from OWF Theme Park in November, '08. The Item was pulled from the Mtg Agenda.** Mayor Powell addressed the public, stating that he went to the community for interest on (what he felt) was a huge change to the So. Utah area and Toquerville. Mayor had asked Planning Commission to address this massive project, then decided Council was also to get involved with the process; decision was made and CC went to the people for opinions, not a vote; I accept the responsibility for that decision. There are still people in the community who want "closure" on this item; I believe the motion can state the City has no interest in accepting this theme park project as presented to Toquerville; Lynn O. stated we could listen if they were to come back with another project, as a travel center, we would entertain that. Daren Cottam stated he felt this was made clear at last meeting; but Mayor said he also felt this would "ease the minds" of some residents requesting this.

Paul Heideman MOTIONed to approve this OWF "closure" vote by CC showing no interest in bringing the OWF Theme Park to Toquerville as originally presented; Lynn O. would like to add (as stated by Mayor Powell – reading from text), that CC had asked citizens to evaluate the pros and cons of the Park and to submit individual letters in favor or opposition of the OWF proposal with the majority of one side or the other (being a position) of whether the CC would consider issuing a letter of support to OWF. **It was never discussed to take this popularity vote to the Council and vote based on those numbers. Paul H. MOTIONed to add these comments along with a thank you to the citizens of the Town ; 2nd by Lynn Olds; all in favor? Yes, unanimously.**

Mayor Powell asked if there were any other comments from the public? Brig Darger asked if there was a letter from OWF explaining why they pulled out, or did they just perceive the lack of support. Mayor Powell asked if there was a letter sent? Carol stated there was a statement read at CC, and reported by the press correctly. Comments were then made of Hurricane City entertaining the OWF proposal at this time.

Item C. – New Business

- (1) **Review proposed Lot Split for L. Williams**, Amending the Cholla Creek Subdivision; PC recommends approval; Mayor asked for any further discussion? **Paul Heideman MOTIONed to accept the Lot Split and Amended Plat to Cholla Creek with all conditions as noted by PC; 2nd by Daren Cottam.** Carol P. asked how the Amended Plat is handled. ATT. Snow said they do watch that carefully to not affect any other portion of the plat; Daren LeFevre stated that the Mylar is with the owner being signed, then PC Chair, and to Attorney, City, etc., and then recorded. Daren Cottam asked about the Subdivision sign-off by all lot owners; ATT. Snow answered in place of all signatures, they can go to publishing on property and public hearings. Mayor asked for a final **vote with Motion and 2nd; all in favor? Yes, unanimously.**

Mayor asked the recorder to note that Councilman LeFevre has been excused for a previous appointment.

- (2) **Review and accept proposed Westfield Road Dedication and ORD.2009.02, showing vacating and altering of certain portions of public road to correct plats and deeds.** Mayor asked for any comments; Merry Walsh (resident on Westfield Rd) asked if this involved any properties, as sidewalks, that we need to be notified. Mayor explained this has been a problem for years of not defining property lines – and not being dedicated, this was never finalized (until now). Paul H. stated all landowners titles were effected; Darrin L. said yes, and this did not have anything to do with safety issues; strictly for a legal right of way access. ATT. Snow said we will “strike that portion of the recital”.

Avanell Darrington (public) asked if that part with the Sunset Rd was dedicated; Darrin L. said there was a road dedication map that was done years ago for Sunset and portions of Westfield Rd. on record with the County. **Lynn O. explained this dedication is with portions north and south of Lake Lane down to the bridge. Darrin L. said the south portion has been an easement for many years** from the Darringtons; this just solidifies that. Mayor asked if there were any further comments?; none were given.

Darrin LeFevre MOTIONed that we accept this Dedication and adopt ORD.2009.02 , striking the “public safety” reference verbiage, for certain portions of Westfield Rd, vacating and altering public road for correcting plats; 2nd by Paul Heideman; Mayor asked if there were any further comments? Lynn O. stated, yes, is there any legal question for those who’ve not signed? ATT. Snow explained all have signed and agree to dedicate to the City those portions that need to be widened; by the Mayor signing Plat, Ordinance accepted and plat recorded, this will abandon those portions that are too wide back to the property owners. Mayor Powell stated **we have a Motion and Second, all in favor? Yes, unanimously**

- (3) **Review and accept ORD.2009.02, FEMA Damage Prevention, minimize public and private losses due to flood conditions in specific areas of Toquerville.** Mayor asked if the Council had read this for any input? (Carol said she had delivered copies about 8-10 days prior). ATT. Snow said this is a “one size fits all” type of Ord.; I’ve reviewed for Enterprise City, and made several changes to fit a smaller City; it also requires a map to adopt with this for certain areas; Lynn O. said (example) south Westfield was shown as “flood plain” (where DC Young lives). DC stated his property was in the “flood way” as shown in the ’03 Flood Map; The ’08 map is clarifying the actual location of Ash Creek and corrections go to Mortgage Companies for their restrictions and accuracy, as well as property owners will not have that burden of proof and costs. **Lynn Olds MOTIONed to TABLE this Ordinance to allow more review time; Paul Heideman 2nd the Motion; all in favor? Yes, unanimously.**

- (4) **Review for consideration and possible denial of Babylon Valley Annexation Petition (Owners: Eaton / Lowe).** ATT. Snow explained to the public that this annexation was filed with the City for annexation of an area adjacent to Toquerville. **There was a Protest filed by Leeds Town and the Fire District (SSD) during the allotted protest period.** Under the Annexation Statute, the City governing body (City Council) at the next meeting, can reject an annexation petition based on a protest; if not, the County must convene a Boundary Commission to hear the protest.

CC Mtg. 2-12-09 (Cont.)

This is on the Agenda to allow the Council to reject or to “table” – then it goes to the Commission. As City Attorney, I am in conflict and will advise TOQ to retain “conflict counsel” to write the legal response to this Protest and represent the City interest at the Commission Hearing. Lynn Olds stated he would like to support the group here (in TOQ).

Mayor Powell said he would like the City to meet with all parties concerned (Protests to Babylon Valley Annexation), to work something out, before incurring unnecessary expense to anyone involved. **Lynn Olds feels if the City were to deny the Petition, it would bring immediate re-petitions and more protest; there would still be expense down the road.** If we take “no action”, notify the Boundary Commission and discuss with Leeds. Mayor Powell has talked to Mayor Trudy (Leeds) and she also would like to avoid the Commission; the concern is to avoid repetition.

Lynn O. said he also wants the petitioners (Eaton/Lowe) to know the costs of Attorney, etc., will go to them; City does not have the funds to absorb these costs. Mayor Powell informed the public that petitioners came to the City and requested the annexation; the City did not go to them. Annette Kleinman (PC) asked if there is a list of property owners involved in this protest? ATT. Snow explained there are property owners adjacent to our petitioners, who would like to see portions of the property going to Leeds rather than TOQ.

Lynn Olds explained the area is in Section Nine (9); there are two (2) small pieces (north and south (protesters) would like to connect those pieces with the government land and annex all to Leeds. Paul Heideman stated the City would have more control to do nothing tonight. Stacey Eaton (Petitioner) went to the map to point out the areas in discussion; he explained he and the Lowes had gone to the other group (MSH) and discussed their wishes for property annexed to Leeds; Eaton / Lowe did not agree.

Darrin LeFevre said as a 2nd Class County, these private owners do not have a legal protest; it has to come from the Fire District and the Town of Leeds. Mayor Powell agreed and asked for any further comments or discussion? None were given. **Lynn Olds MOTIONed to declare a “take no action” on this Babylon Valley Annexation Petition; 2nd by Darrin LeFevre; all in favor? Yes, unanimously.**

A. City Council Department Reports

- 1. Economic Development / Water Department;** Lynn Olds reported nothing new.
- 2. Cemetery / Park / Maint. Dept;** Randy Scott is excused tonight.
- 3. Culture & Recreation;** Paul Heideman told of the “group boys” helping clean the Creek and City Street ditches for flood control. He asked if City could donate some shovels for their use – they do go to other Cities as well. W. Pogue (Maint. Dept) said he would deliver two shovels to Paul H. home.

Paul H. spoke of Miss Toquerville Pageant coming; first meeting with Committee will be Feb. 19th at the City Office. The Pageant will be held on April 20th at the Hurricane HS. Age for girls to enter is 14 yrs and not out of High School.

- 4. Streets;** Daren Cottam reported his attendance at the Transportation Expo in St. George; there are lots of transportation needs in our areas. They didn’t talk of the “bypass road” (TOQ), but of other projects. **They’ll spend a few years fixing the I-15, two exits in Leeds; they will add a third lane going up the “black ridge” by 2014.** TOQ belongs to the RPO (Regional Planning Org.) and we have meetings every two months. I’m on the Technical Committee and the Mayor on the Executive. The State has planned out activities to improve the Highway System throughout the Valley and to Highway 17; they will widen all of that – less expensive then doing a “bypass”. Carol asked if they plan a “chip/seal” out here. Daren C. said they were planning last summer; didn’t get that turn-lane up to the Toquer Estates, so they held off. Also wanted a turn-lane in main section of Town – will be safer but will narrow the shoulders; they want our support and I think it’s a good idea.

There is a meeting with UDOT (annual visit) on Mar. 25 with the entire County at the Courthouse; 9-11AM for elected officials and staff. Earlier, UDOT took 3.9 bil dollars of transportation projects off the board due to economy; some have been put back on, as Hwy 9 in Hurricane. Mike Vercimak said he'd heard the Government Legislature was interested in releasing some of those projects.

Daren C. reported **the B&C City Funds are being saved to do minor repairs and set aside money for Westfield Rd reconstruct.** We have some Impacts (approx. \$200,000) and hope to fix some lines and storm drains, etc.. Our Engineers gave us 4 mil costs around the City (Trans. MP); I estimate Westfield fix is \$800,000 to 1 mil., plus purchasing right-of-way unless we can get owners to donate. In turn, to their advantage, we would improve their road.

Lynn O. also asked Council if they had any comments on his "write-up" for the road going through Lichfield area. We'll have ATT. Snow review this and I'll get it back to the owners. Daren C. said we know Lynn O. has put a lot of work into this part of the "bypass" road and appreciate his efforts.

- 5. Subdivisions; Darrin LeFevre said the affordable housing in Almond Hts area is moving along and is a great learning project for the schools involved, but felt there should have been some CC&Rs as to the outcome.** Mayor Powell said he would like the Staff to bring such projects to the CC in the future; many in the City have been concerned about their completion look. Mike V. explained these homes met all codes; Anita Lowe (PC Chair) said CC&Rs don't have anything to say about codes.

Lynn Olds asked ATT. Snow **how legal it would be to have a drop of Impacts for six months? We could keep our inspections, permit fees, sewer, and District costs; this could give an incentive** for builders – start and finish dates and no illegals on the job. This might bring more interest to builders in TOQ; Mayor Powell and for business also.

ATT. Snow said it would be the **same process as adopting amounts to change or temporary reduction; in my opinion, you would be short-selling yourself for the future.** Lynn O. – We've budgeted only 11 permits per year; ATT. Snow added but you're also holding funds for impacts to parks, etc. You must amend your Ordinance that requires those collections to allow this; when you analyze and find you may have to raise – this can allow you to "phase" these changes, but you must go to public hearing, etc.

Mike Vercimak said **Hurricane did this, along with St George; we were praised and getting the ball rolling – both dropped the Impacts but really didn't help.** We did find that a basis had to be established for changing the fees (by Law) – the Capital Facilities or Infrastructure plans; you had to be consistent and use a valid basis. Hurricane actually reduced the fees by previous calculations being made over 40 yrs – so we amended the Ord. to assess annually, according to indexing by using construction costs. We also ran into the Conservative District and Sewer District. Because TOQ isn't paying District yet, you have that ability to omit that part and with lots available, along with the economy, this may be good for TOQ. Paul Heideman feels there's a problem with citizens paying now for improvements in the future; the price can be different. Daren C. agrees with Mike V.; he also feels when foreclosures and homes hit the market, we can't change.

Brig Darger (public) asked how the TRE status? ATT. Snow – The loan failed with their bank, loan is serviced by the FDIC, possibly being sold to another bank. We're waiting to see if the lots are able to be sold; and Lynn O. mentioned they also have to gain approval from the City before building.

- 6. Planning / Zoning / Staff;** Mike Vercimak reported Dept is slow; have had a couple conditional uses with Staff Projects.

Mayor Powell asked if there were any further updates? Attorney and Mayor Powell had concluded their reports earlier; Mayor called for adjournment.

8:28 pm – Paul Heideman MOTIONed to adjourn CC Mtg; 2nd by Darrin LeFevre; all in favor? Yes.

ACTIONS AND ASSIGNMENTS Review before March CC Meeting

1. Mayor Powell – Babylon Valley Annexation - City to meet with all parties concerned to discuss Protests.
2. Carol Pogue – (a) “Sensitive Lands” copy will be sent to the Council for review prior to CC Meeting next month. (c) Springs Dr. Pumphouse - McCombs and Curtis boys need to follow up on this Scout Project; (d) Miss Toquerville Pageant first meeting with Committee will be Feb. 19th at City Office; (e) Review tabled and other items for next Agenda; (f) D. Heaton Scout Project approval; call when complete.
3. Annette Kleinman – Scout Projects: Post Office landscaping; Annette K. said she would check on that approval due to private property (leased by the USPS).
4. Mike Verimak – (a) L. Williams Lot Split – Sewer Dist. asked notation should be on final plat before sign-off that any required improvements should be bonded; (b) Mayor Powell would like Staff to bring projects (as the “low income housing” at Almond Hts area) to the CC for review in the future.
5. Maintenance Dept – Will Pogue to donate two shovels to “group boys” who’ve cleaned for the City.
6. ATT. Snow – (a) Westfield Rd. Dedication Ord. - A legal right of way access; strike the “safety” portion of the recital; (b) Lichfield area road proposal review.

The Minutes of the Feb. 12th, 2009 Toquerville City Council Work, and Regular Meetings will be presented for review and approval in the Mar. 12th, 2009 City Council Meeting:

Approved: _____ Dated: _____
R. Ken Powell, Mayor

Attested: _____
Recorded and Typed by Carol Pogue, City Recorder