

**TOQUERVILLE CITY COUNCIL MINUTES**  
**6PM - Work Mtg; 7PM - Public Hearing and Regular Mtg**  
**Held March 12<sup>th</sup>, 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); D. Gubler & B.Gubler (Water & Sewer Depts Excused); P.C Members: Anita Lowe (Chair), Annette Kleinman; Carol Pogue (Recorder); Pam Jarman (Treasurer); **Public Attendees:** Stacey Eaton, Mona Lowe, Will Pogue (Maint.); Mario Boisvert (Cnty Mosquito Abate); Tom Kuhlman (Hurricane Fire Chief); Clark Fawcett (Hurr. City Mgr); Dave Sanders (Alternative Energy); Rebecca McNeil; Lynn Saeb, Linda Bringhurst.

**6:01PM – Quorum has arrived and Work Meeting is called to order by Mayor Powell.**

Item #1: Water & Sewer Dept – excused tonight:

Item #3: Mayor Powell asked for the PC Update while Chief Kuhlman sets up for the Fire Dept Presentation. Anita Lowe reported the Planning Commission held a public hearing for the “Sensitive Lands” Ordinance last month. The Draft document is turned over to Council Members for review with blanks for correcting; there are various environmentally sensitive areas around TOQ, typically more desert areas with (not only) sagebrush, but some wildlife; these areas are not very buildable with sand blowing “all the time”. Other areas are riparian, with major and minor waterways – dry, but in use when wet; these are identified on FEMA Map flood plains. Our lava areas are protected in the Hillside Ordinance, but there are other areas to be clarified, as re-vegetation percentages listings (to be) corrected and codified throughout. There is also a reference to the “Hillside Review Board”; this Board should be the Planning Commission. There are items we are still working, as design standards, environmentally sensitive submissions, (land) transfers and maintenance violations, etc. We also have protection for peaks and ridges, setbacks, etc.

Lynn Olds asked who designates peaks and ridges? Anita L. explained we’ll use overlay maps with various areas of riparian, desert steppe and hillside. Lynn O. added his concern of the document saying - “protected peaks and ridges on the property shall be shown on final plat”, and believes it should be required on the preliminary plat. Darrin LeFevre agreed it should be part of the construction plans and preliminary process rather than (inappropriately) on the final plat. Anita L. said they could list that under sensitive design options. Darrin L. asked who was doing the maps? Anita said the PC will draft and send to City Engineer. Darrin answered the PC should let CC know - with survey of slopes, rock formation, etc., this expense could be from \$2-6,000. One of my concerns is “pinpointing” areas of ridge line – if we pull that from a photo, the line work on a drawing for entire City is about ¼ inch thick and about 60 ft could be off; how are you getting accurate designations. If there is a “generalized” area as you bring preliminary plans, 4-600 ft could be a lot; Annette Kleinman (PC) asked if there could be a survey match brought in?

Lynn O. suggested we may have another public hearing to get a map displayed, then take another month to complete the corrections for a functioning Ordinance. Darrin L. said he felt with the overlay and the map, they were on the right track and really appreciated all the PC had done. This would help the builder with this process and a map would tell where to build (or not) due to 60 ft error. Mayor Powell asked if we can help with that map? Darrin L. said he could, but not with surveying. Anita L. said this surveying needs to be done when (land is) developed. Anita L. also explained the PC had cancelled the Mtg next week with no items on the Agenda.

Item #6 – Mayor Powell asked for Pam Jarman (Treasurer) to give her update for the TRE (Bond) funds; Pam explained the money had come in and was deposited to the Zions Bank (CC instruction), a new account for \$97,335. The Mayor and I will be discussing the journaling required. Lynn O. asked whether there were areas allowed for spending? Pam stated there were still outstanding engineer and attorney debt – ATT. Snow said the purpose of the Bond is for reclamation; can look at that in the Ordinance. Pam said she had received an e-mail from the owner (Casey Craig) asking what the City would be (legally) using the money for.

Mike Vercimak asked if they would want to lift a moratorium on building permits there? ATT. Snow asked if there was anything to be done for utility connections? Mike V. said it’s all OK, needed only (bond) for Park.

CC Work Mtg, 3/12/09 (Cont.)

ATT. Snow said there was some concern about these funds being used for performance or reclamation; but the property was so far along, this wasn't as reasonable as "finishing it off". Mike V. said they also should be looking at warrantee bond on that project. Lynn O. was concerned about that being "turned loose" to sell lots; who can sell? Mike V. said he felt the appropriate thing to do (if the City were to allow) would be to send Craig a letter that we've received the money, and released to sell; whatever he can do to sell, work with a lender or whatever.

ATT. Snow instructed the need for an engineer's (with Mike V.) walk-through list to Craig of items needing completion – possibly using the money for that. Lynn O. had a concern about ownership – ATT. Snow explained the FDIC loans may be sold to another lender, Casey Craig still owns the property and must be able to work out arrangement for the lot deeds of trust to be able to sell. Pam J. asked if this would apply to any lots already sold? ATT. Snow said yes, if someone already owns that deed and City feels comfortable for them to build with their proof of ownership. Pam J. said we've had builders say they are ready to build on several lots; Darrin L. said they could have those recorded.

Daren Cottam asked if TRE had put fencing around the water tank; Mike V. said he would have to pull the Sunrise notes; they went back and forth with Sunroc on that water tank. He also said he would revisit the "punchlist" and do a walkthrough assessment. Daren C. also said the roadway going up to the tank looks like it has sloughed off in a couple places, we need that access. Paul Heideman asked if the tank had stopped leaking? Daren C. said that's one of the first things to look at and I didn't see any. Darrin L. said there was some seepage down the back. Mike V. stated that was on the punchlist.

Mike V. said he also wondered if Interstate has any claims on this matter; Pam J. answered they (according to Casey Craig, TRE) did have a "sizable lien against the property". ATT. Snow stated the City has no obligation to pay private contractors; the money is to be held by the City for claiming property or finishing improvements.

Item #2 – Hurricane Valley Fire District (HVFD) Funding Presentation, Chief Tom Kuhlman. Chief Kuhlman told of the District being formed in Dec., 2007 by the Washington County Commission; he presented a detailed slide presentation to support the studies, statistics and facts presented. The Department was formed to provide protection to Hurricane, LaVerkin, Toquerville, and Virgin; as well as some unincorporated areas of the County, with the area of protection being approximately 400 square miles. Chief Kuhlman explained, after coming to Hurricane City last year, he had conducted evaluations of time, value, and resources, looking at all aspects. He explained the Fire Dept. has to do three things: to respond to emergency, prepare to respond, and try to prevent those emergencies.

Chief Kuhlman told of the physical requirements for personnel being trained as firefighters; and the City personnel, administration and impacts to the Cities. He explained the political sides for national, state and local levels of professional standards and other Fire Dept agencies they interact with. He spoke of the public "say", patron's opinions, and the responsibility for ethical response; there also is the taxpayer and business response with code compliance and enforcement.

Chief K. explained they had tasked six different groups to participate on the evaluations of: (1) safety; (2) apparatus in the fleet; (3) equipment standards; (4) facility standards and costs; (5) training compliance; (6) communication procedures. As they listened back, they looked at minimal impacts in these areas to move the District forward and have needed funding with minimal impacts, staying as close to the standards and operations we have today.

The HVFD (Hurricane Valley Fire Dist.) would have 64 volunteers, 8 full-time firefighter/paramedic types; 2 part-time, regular firefighters; 1 full-time and 1 part-time administrative assistant. It would be composed of 4 fire stations: 2 in Hurricane, 1 in LaVerkin and 1 in Virgin; a ladder truck and 5 brush engines (one proposed to be housed in Toquerville). He explained the various stations would house several pieces of equipment. Lynn O. asked if they had measured the building in Toquerville? Randy said it could house a 1-ton pick-up. Chief Kuhlman responded that we could probably get volunteer people in this area to staff that and properly train them.

CC Work Mtg, 3/12/09 (HVFD - Cont.)

Chief Kuhlman spoke about the retiring of eleven pieces of apparatus from service; they concentrate finances on more important items; to maintain important response from HVFD, as we are doing today. We will need 73.5 personnel, 5 of which would be chief officers with a Fire Marshall to oversee the interfacing of all areas; my hats off to ex-Chief Campbell for his work.

There will be two Lieutenants at each Station and 55 firefighters; breathing apparatus, equipment, and protective gear will be certified and ready to go; we will use grant money to help with the operational development budget of .3 mil. dollars. Right now, the unincorporated area gives us nothing for fire protection services, even though they're the largest property area. Mayor Powell asked when a brush fire (HVFD) response happens in unincorporated area, who pays for it? Chief Kuhlman responded, all of us do; District was set up (by County), when funded, there was "no money" for those areas.; that's a well known response to everyone. We service from Iron County clear up to the Arizona line.

Randy Scott asked about billing to TOQ for emergency response; Chief Kuhlman said there is no billing; unless there is ambulance transport with supplies. Paul Heideman told of personal experience for several units sent during family emergency, which were very costly; how can that cost be avoided? Chief responded there is a tiered response to calls based on severity or life-threatening circumstances as determined by dispatch calls and questioning the caller.

Chief Kuhlman spoke to the importance of communications and computer information and training. Mayor Powell said that the response "over-kill" could happen, but if they come without enough help – you have a potential lawsuit. Chief told of a TOQ response to a life-threatening call with apparatus and equipment to access the house and transport to hospital and surgery within an hour of the call. The response from dispatch has an international standard of questions to evaluate with this human interface, plus a designated response team with equipment

Paul H. asked when a fire occurs on BLM land, who is the first responder – and do you get to charge them? Chief answered, if it's in our area we do initial response until they get on the scene, where they make judgment whether they need us to stay; the charges can be a "long discussion"; County does not pay, BLM doesn't pay due to unincorporated area. City of TOQ paid \$27,000 last year; and to break those fund sources down, 1.7% of our Budget came from your City, 92% came from Hurricane, and the rest from othr Cities.

With 2000 census numbers, TOQ has just over 7% of population, with housing at 6.5% for this District area. You do about 4% of the call volume; there is much to keep us busy without calls, but this continues to grow at 22% since the new year; currently about 8% and still climbing. Mayor Powell pointed out again the County has a free ride; that somehow we are going to have to start paying our fair share.

Funding costs for proposed District to move forward is just under \$1.9 mil.; revenue offset is approximately \$1.557 mil. – with another offset for transport fees of \$300,000. We have an increased budget requirement of about \$42,000. Funding recommendation is to work with the Boards of the Cities for '09-'10 budgets. The District functions in an Inter-local Agreement, acting as a separate entity and then work out the equities – if Cities want to go that direction. I feel strongly toward levy collection funding with County paying some of the cost – this is transparent to taxpayer and can be sent to the voters for levy funding. Randy S. asked how we get that on a ballot? Chief Kuhlman said this goes to the County, or we could go to individual property owner, who can refuse City taxation and then the Council must decide the level of service and cost. Lynn Olds said even if the public says no, the costs are still there – we'd have to raise the taxes to meet that cost.

Chief said we need to educate the voters and what it means to impact their homes; whatever the outcome, the District functions as determined by individual City voter results, based on individual property or population, along with the County. This is a District financial functioning (per City) – not a different service level.

Chief Kuhlman stated after looking at all these funding evaluations, TOQ is at about 3.9%; all combined at about 7%; Hurricane is 72%; LaVerkin at 16%. At property value, Hurricane is at 92% funding with 72% of property value. TOQ at 2% funding at 7% value; County at 0% funds to 4% overall.

CC Work Mtg. 3/12/09 (HVFD, Cont.)

Paul H. asked if property value was based on residential or all properties. Chief explained he took all the property values in the District with County Maps showing commercial, residential, vacant, etc. – tax based, all property. As you can see, most are funding (other than Hurricane) less than what they're getting out of just the "calls", not counting the other services and disparity.

Daren Cottam asked if the District had approached Leeds? Chief Kuhlman said the "stance" of the District was to let us establish first and see if this model will work before we consider any "joint decisions", a year or two down the road. We have faster response and oversight for inspections and hydrants; they have one paid Chief (HVFD has 8 professionals), Leeds has one Station (HVFD- 4 Stations), Leeds has two engines (HVFD- 4), Leeds has two brush engines (HVFD- 5), Leeds has a squad, two ambulances, and (Leeds Chief hopes on a good day) 12-15 volunteers (HVFD has 60+). Leeds provides (Years 2000-2009) at a levy of .47 higher than our proposal.

Chief Kuhlman said he had looked at a business model to provide services (ambulance & fire) for Toquerville, requiring 16 volunteers (min. national standard) with gear; one fire engine, ambulance and brush engine; paying volunteer people \$12./hour; plus minimal equipment, etc.; your minimum cost would be approximately \$241,000 (year one) to maintain your protection, and \$180,500+ (year two) for secure, stable response. The District can offer cheaper costs and efficiency; there is also a gamble using older or used equipment; cost (for most Cities) of participating with the District is much less than doing City departments.

Chief explained we're talking about a levy of .0011; for TOQ, it would be about \$38,242; this would be about \$138 per year for the average home – about \$10 per month. If this goes forward, it will fund from all the County taxpayers, where now it's 92% of the financial burden to Hurricane.

Lynn Olds (TOQ Board Rep.) stated the option now is whether to stay as is or "to sell" to the public; Chief Kuhlman said the levy is "do-able". Next Fire Mtg, (Thurs.), we need to know what the City's position is where your representative will voice what you want to do – do you want to go with the levy, assessments, or different? We, as a District, must educate the taxpayer, explaining what today is, what the change will be, and the impact to them and their homes. We've had some asking if this could go on the ballot in June (levy beginning Jan.); others say it's too fast, what about Nov. (begins a year from Jan.).

Lynn Olds asked the Chief to talk about last District meeting discussion on a "stagger/start" (funding) for the Cities to come up ("easier budget hit") while Hurricane goes down. Chief Kuhlman stated that proposal would move Hurricane down from 92% to 87%, 80%, then 72% over a 3-4 yr period; the Cities could continue that discussion.

Annette Kleinman (PC) asked if the County paid their fair share, and as the taxing authority, could our taxes go up? No, the taxes would be equally applied across the District, so when we do a levy and the Board presents the regional levy for next year, they turn that into the County and everyone in that District pays the same percent. Currently, the HVFD sends a bill to your City Council for the next year to be paid by the General Fund of the City – we don't have the ability to do that with the County. So the only way we get the money from the County, is to have the District include unincorporated as well as incorporated; then when taxes (levy) are collected, their portion (and ours) is sent to the District.

Chief Kuhlman mentioned that most Counties in Utah are protected by Fire Districts, rather than State Statute, as is Salt Lake County. Lynn O. asked at what point the Cities would be up to stagger/start? Tom K. said that could be discussed on Tuesday; could go to vote and adjust with vote – lowering levy proportionately.

Lynn Olds stated that everyone in the District is aware of the economy and the "toughness" of having to go to the people. Chief Kuhlman said the County Commissioner who sits on the Board recommended we just do the assessment and not go to a vote; we don't think that's "transparent" to the taxpayer; the difference is with this (levy) it will educate the public. Mayor Powell said this has been "nice" for Hurricane to carry us for a long time, but not fair. Chief K. also said he had not heard one complaint from Hurricane.

CC Work Mtg. 3/12/09 (Cont.)

Item #7 – Mosquito Abatement – Washington County Rep., Mario Boisvest introduced himself as the new Manager of the Southwest Mosquito Abatement District in St George. He is a Biologist with a Masters in Environmental Science with 15 years experience. We say the Program is yours, you pay for it; we are managing this with the IBM integrated Program; this year we will make some changes and improve the Program; to educate the public and get them more involved. There are three full time people in the County, and we will hire part time students for the summer. Let us know of your concerns, we will come and check for “West Nile” virus with new equip; we have GIS and GPS. We also have more trapping devices – from 12 to 30; this will give us ability, in TOQ, which we’ve not had before.

Mayor Powell asked if there were anyone in attendance who’s had serious problems with mosquitoes? Daren Cottam said Cholla Crk did have some problems with the Richard’s pond. Mario said they would check for larvae there and other areas. With improved Program, the costs will be the same; due to your time, I will come for a formal presentation of entire program next time and will leave my card for you to ask questions.

Item 6(f). Solar Cell Energy Source – Dave Sanders (Red Rock Renewable Energy Rep.); Dave S. explained the solar power emphasis in the news, with renewable energy: geo-therm, wind or solar. We know this area has 300 days of sunshine each year and as we go around the County, we’ve seen suitable sites, as in TOQ. State Legislature has provided an initiative that requires a 20-25% net increase of renewable energy sources in the years ahead. This is endorsed by the Governor, Legislature and Congressman Matheson; what we need is some direction from TOQ. Randy Scott asked how many acres does this require? Dave S. said about 600 for 200,000 panels at each farm site; other areas being explored are in Hurricane, LaVerkin, Apple Valley; question is whether the Council feels this is something that could work within TOQ City limits; if so, we can give you a full presentation.

Lynn Olds asked Mr. Sanders how this would benefit Toquerville? Dave S. explained it would be a joint venture; we’ll generate the power, do the work, and you sell the power; also negotiating the percentage income which would be a tax base. Mayor Powell told of the “Sensitive Lands” Ordinance being discussed tonight; obviously there would be concerns, as he felt this wasn’t pleasing to look at. Dave S. told Council these are 3’ x 3’ x 7 ft tall; not meant to place on visible hillsides, but on flat, out of the way areas, and inaccessible to development.

Paul Heideman told of a company now developing solar panels on highways where cars drive; I think that would work, and is in parking lots as well. Dave S. said nothing is out of the question – we’ll investigate that. Randy asked about security; Dave S. answered yes, this is a public utility and protected as a water source. Mona Lowe asked about the conflict with the Utah power and light? Dave S. said this is to be discussed as well; using the City influence, we could talk to UT Power & Light, which current renewable energy is only about 13% - they must increase that. Randy asked about rates; Dave answered (in talking to Clark Fawcett in Hurricane), UAMPS(?) would be able to spread costs much broader with different sources of energy they purchase - meeting qualifications, etc.

The energy resource of carbon emission reduction industry - UT Code 54-17-602, has set a target for Utah’s municipal investor-owned and cooperative utilities, to provide 20% of their adjusted retail sales from ...?? ?? .non-p ??.... energy resources by 2025. Darrin LeFevre commented that St George has solar power in now; it seems like many communities are trying to go (this direction); obviously, we can’t keep doing what we’re doing by destroying the environment. A solar panel is quiet, has little impact – am thinking of the Boulder City (NV) Farm, about 4,000 acres. Randy Scott also told of a several hundred sq mile wind farm north of that one. Darrin L. also stated he would rather have this than a coal-burning place. Mayor Powell stated this is an opportunity to consider away from “sensitive lands” in Toquerville.

Dave S. asked if he could bring a full presentation? It appears there is a provision in your zoning for conditional use on power or public utility. If possible, we would like to have a joint meeting with Planning Commission on this. Annette Kleinman (PC) asked (based on the cost) if we can benefit; if you come, we need to see those numbers showing how; Lynn Olds added that (gaining revenue) money isn’t always what TOQ is concerned about.

CC Work Mtg, 3/12/09 (Cont.)

Dave Sanders, Renewable Energy (Cont.), said they would work with TOQ to make this an attractive area; this (venture) would be putting people to work also. Annette K. said she understood that divulging acres being negotiated is prohibited, but she is concerned about the location and whether it would be acceptable before coming to present. **Dave S. said he would let the Council know that area when he leaves tonight.**

Item #6(d). – Becky McNeil (TOQ resident) is working with American Monument of Ogden. As a resident and knowing how many people have commented about the need for a place to sit along the roadsides in the Cemetery, she has obtained this offer to bring to Council. The Company is proposing a program whereby they will donate a \$2,200 colored stone bench to the City Cemetery or the Park, wherever the Council would like to have it. Becky M. brought pictures of the bench, adding that American Monument will allow families or Scout donation fundraisers to purchase these benches at a very low rate of \$1,000. They will put the name and “donated by” on each bench - whether in the Park or Cemetery. **Mayor Powell said to meet with Randy Scott and designate where it would be located.** Becky added that the Company would ask for flyers to be in the City Office; Carol P. stated that the advertisements should be placed on the public boards to not have conflict with private companies supported by the City.

Item #6(c). – Attorney Heath Snow Update for Babylon Valley Annexation Petition; ATT. Snow told Council Members they would find a notice from the Washington County Boundary Commission for a Hearing to be held on Monday, 30<sup>th</sup> March at 2PM. I also spoke to the Mayor about an alternate Counsel to represent the City; my first choice is Mike Day of Durham, Pinnegar Law Firm who represent Washington City. He has done a lot of work representing Cities in appellate matters; and in suits with Utah Local Gov’t Trust (TOQ Insurer). They recently were involved in a Boundary Commission Hearing with a five-year proceeding over land around the new Airport. They’ve confirmed today after checking for conflicts with all Attorneys in their office; and are sending an engagement letter for retainment. I suggested they contact Lynn Olds and Darrin LeFevre (Council Members) to get up to speed with all issues (Annexation Petition), so they may prepare response to “Protest” and Board Hearing by March 30<sup>th</sup>.

Mayor Powell said he had confirmed with Petitioners (Eaton/Lowe) that “Protest” Attorney charges for TOQ is their expense; and the City would obtain the most reasonable and qualified Attorney we could. He also asked ATT. Snow what that (Attorney acceptance) process is tonight. ATT. Snow explained **Council can motion to authorize the Mayor to execute a special service agreement, with a letter outlining the understanding and acknowledgement to the Petitioners (Lowe/Eaton) for payment of the Attorney.** Lynn Olds said we need to gather information and meet with Attorney for direction we’re going. ATT. Snow agreed and said they need to get something to submit to Boundary Commission at least four or five days before the Hearing; this is the 12<sup>th</sup> March and we need to move this along. Lynn Olds told the Council he had spoken to Mayor Trudy (Leeds) who had asked him if there was any chance of “negotiation” on the issues; after discussion, she told Lynn O. they would have to go to the Commission. **Mayor Powell said they would ratify this decision at Regular Mtg.**

Item #5. – Planning, Zoning / Staff Update; Mike Vercimak told Council that the Habibians and Lava Hts were in the City to visit with the Mayor and a Council Member; is there any thoughts or direction for Staff from that mtg? **ATT. Snow said they need a new Conditional Use Permit for approval.** Mike responded that they are seeking “considerable expansion” to the operation – a couple new buildings, etc.; **explaining they are also looking at other things – Fire Chief Kuhlman is looking at emergency accesses, hydrants, sprinklers, etc..** Mayor Powell spoke to Habibians about the law being followed per our Ordinances, and that City Council would not “second guess” the Staff as they apply this law. Lynn Olds also stated they discussed the number of youth and additions, then explained they must address the Conditional Use with Staff. ATT. Snow explained this happened in Virgin (youth facility) with same expansion issue; we looked at it closely and if they want that expansion, it must follow process of conditional use. Mike V. said one anticipated building is not on the premises; ATT. Snow added this may require retrofit, etc. Lynn O. said they were planning to remove the “old” house and add big “multi-purpose, theatre-type” structure; **ATT. Snow added they can bring in a set of plans for review; conditions may need to be mitigated for impacts.**

CC Work Mtg, 3/12/09 (Cont.)

Randy Scott asked if this (Youth Home expansion) wouldn't require the road to be widened and expanded to accommodate this; also asked about resident concerns. Lynn O. said the discussion started with that road issue and the concerns of the City with a potential "bussing" of extra kids into the area; we expected them to address that. Mayor Powell also stated there were to be no added youth from original plans; Paul Heideman said he heard they were planning to rotate them, and 16 are to be living there. Mike V. said the Staff needed to be on the "same page" as the Council.

Lynn Olds asked Mike V. if there was a direction for the TRE Project? Mike V. said he felt the best way would be to pull the "punch list" to find out what is complete or not. I can bring to next CC Mtg or call the Attorney. Darrin LeFevre stated this is going to bring costs of engineering and attorney fees without any (building) applications; are we to bill Casey Craig after he's put in this position? Mayor Powell asked ATT. Snow if some of the funds obtained with the Bond could be used? ATT. Snow said engineering costs can be part of the Bond use; Darrin L. also stated the owner could be getting to a place where these lots may be sold. ATT. Snow said this would be a health and safety issue, as the Park and public improvements partially completed; this is a platted subdivision and when this is sold and ready to build, we must have assessment to complete needed sewer, water, etc., before building permits are requested; the money needs to be used wisely, after assessment is made. Lynn O. asked who instigates – City or Project owner? ATT. Snow said we will determine what needs to be completed (including engineering to assess the priorities) and use that Bond money accordingly. Paul Heideman said mainly we would be looking at City maintenance items, as the Water Tank.

Mike V. explained, as he recalled three main issues: (1) the (Sunrise Engrg concern of the integrity on the water tank allowing us to backfill; (2) the improved second access through the Stratton Gravel Pit, which at one time had another access that sits over the WCWD easement in place; (3) improvements to the Park at Phase I, of which I remember in the Development Agreement, this was a little "fuzzy" – this may be a key issue to get done – because Phase II may never happen. ATT. Snow added after the Engineer gets an assessment and estimate of costs, then CC can determine which is most important for the use of Bond money.

Mayor Powell asked if there had been any contact with Casey Craig to find out if he's able to "step up" and retrieve this Project? Mike V. said that is a question for ATT. Snow if we need to notice him about execution of the Bond. ATT. Snow said we need to provide accounting; Mayor Powell added that we have to spend when it comes to the health and safety issues. Lynn O. said the Tank needs to be functional, then hold (money) until "we get closer". Daren Cottam also said the Park will be a waste until someone is living there; Mike V. added perhaps they could pave that area and if we can get this worked out, the City would be in a much better position with a few homes in there using the water, etc.. Paul Heideman said the water tank seems to be the priority.

**8:05 PM – Mayor Powell called a 2-minute break before convening the Regular Council Mtg.** Flag Salute was given by Randy Scott; Invocation by Paul Heideman; time for Statements of Belief were offered to attendees – none were given. Mayor Powell asked for Conflicts or Disclosures? None were given by Council Members. **Lynn Olds MOTIONed to convene the Public Hearing; seconded by Randy Scott; all agreed.**

8:09 PM – Mayor Powell announced the opening of Public Hearing for DISCUSSION AND REVIEW OF THE SENSITIVE LANDS, ORD.2009.05; purpose is to identify and protect environmentally sensitive lands in the City and to promote the public safety and welfare by providing appropriate and reasonable controls for the development of such lands.

Darrin LeFevre started the Council discussion with a request to see a map showing sensitive lands; Lynn Olds added he would also like to see a map, that he had comments for the Planning Commission noted on his copy. Annette Kleinman (PC) asked for all those copies to be handed in for them to review. Paul H. spoke for the Council and said they appreciated the time and energy put into this. He went on to give his review - at the end of the "General Statement" – it has this Ordinance taking "precedence" over the Land Management Code – I'm questioning if we can do this. The explanations are getting "wordy"; i.e. – "promoting public safety" (how?); I haven't seen "boulders rolling down the Creek" killing anyone; generally – engineering standards can take care of some of this.

Paul H. (continued review) also has issue with “protect and preserve” (under item #2) – natural and visual resources; the way this is written, I question how the Town is going to pay and penalize people for this (sensitive land) being on private property? They will not be able to build as much, which (to me) is equivalent to a “taking” – just to preserve and make it look nice; if it’s buildable, we can’t require the landowner to pay for this. Annette K. said ‘sensitive’ items listed are not to be built on – you set them aside – build-out just coming close perhaps. Paul H. added when they build, they move those boulders out of the way, just as you do rock. Annette said we’re talking house size boulders you cannot move. Mayor Powell added – the question is what designates a “large boulder”.

Paul H. said this also states “cost of design, infrastructure, and development can be higher in cost”, due to environmentally sensitive area and because of the land configurations; this can more than double our impact fees. The “Sensitive Lands” should be giving owners incentives to preserve these areas, rather than take their ownership rights away; which it appears to do that. Anita Lowe (PC Chair) stated on the last page it does address incentives.

Paul H. said in Table A, once you reach certain areas, you have a reduction of land you can build on – increasing open space; in our LMC, we gave them incentives by reducing the density requirements so they would make open space and cluster; I think we should follow the same guidelines. Annette K. said there are areas for allowing smaller lot sizes. Paul H. asked if this table also allows for lot sizes? Lynn O. said this is allowing for percentage of N.L.AS(?) required.

Darrin LeFevre commented that when the Sensitive Land Ord. talks about visual resources – what’s beautiful to me may not be beautiful to you; Paul H. agreed, saying that’s why you can’t legislate beauty, as it says you ask for buildings to be “earthtone”, etc. My imagination went to south of Hurricane and the airport village where there’s adobe homes – to me they are ugly – to others are beautiful; we don’t need that in an ordinance. I don’t think you can tell others - you have nice “sensitive land” and if it’s buildable, you will pay (for others) to enjoy that beauty. You can’t take the landowners rights to develop that to it’s fullest extent – they need incentives to make the Town beautiful.

Annette Kleinman said to remember if it’s really “sensitive land” – it’s probably not buildable; we’re not asking them to give up land for a house or lot – if not buildable, we want “natural”. Darrin L. asked if this “sensitive lands” was to be an overlay on the entire City? Annette K. said yes; Darrin L. added there are areas out there that are just not sensitive; such as the old “racetrack” – that’s not sensitive – except maybe for lizards; and what has the Land Management Code done for the last twenty years? I agree what Paul is saying, we’re opening ourselves for a lawsuit – as happened in Gunlock not too long ago – regarding a “visual” taking, We need to put something in – as Hurricane, NOT placing a “blanket” over the entire City; which I don’t believe should happen. Mike V. commented he thought the PC intended the overlay was to go over a project, you could tell what was going through the area, and then zone criteria applies.

Annette K. asked ATT. Snow to comment whether this could have precedent over the rest of LMC Ordinance. ATT. Snow said if you have a more specific Ordinance, it has control over a vague portion of the Ordinance; normally, more specific provisions will control. The clause of a trump for “specific” over “general” provisions could be added for those sections.

Mayor Powell asks who decides what “visual” beauty or “sensitive” really is? ATT. Snow said some Cities will drop back to basic “slopes” or “waterways”, etc. to keep general aesthetics. Mayor Powell added that some have feelings of this becoming “anti-growth”. Annette K. said “Sensitive Lands” will give us the opportunity to say to the new developer, let’s look at this together. Mayor Powell added that most will see they cannot build on top of some sensitive areas; Darrin L. said yes, but there will be owners who want to build around it, and my “heartburn” comes when we tell them they can’t build within 300 ft of those (sensitive) features; perhaps they can’t build a home, can’t sell or fence it off – just to enjoy it, as many of us have enjoyed because property owners have allowed it. Now we’re trying to restrict - by saying what they CAN do; after looking at other City Ordinances, you can see (as Attorney pointed out) it could become a matter of where the next lawsuit is.

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Annette K. said we do have areas, as Devils Hole, Babylon Valley, and Toquer Falls, that we need to put some protection objectively, and take it out if we can't make it enforceable. Paul H. said the LMC gives those protections already; this may be more applicable for those who want to annex their land into the City, but those who own land in the City should not have their rights taken away. Mayor Powell agreed that the government can be too involved in our lives, but some are not responsible.

Daren Cottam told of a recent trip to the "Grand Staircase" where the whole southern part of the State is protected; yet private landowners have rights to develop. We have 1-200 acres protected now and they want to build it so people can use and enjoy – not necessarily a park. Paul H. said he sees some good things in the Ordinance to encourage the developer.

Darrin L. told how this Ordinance is difficult to write and PC has taken a lot of time to develop; **if CC doesn't like portions, they need to return marked-up copies to them so they can re-write.** Annette K. commented the major protected areas are there, but this must be written for the "one person" who might come along; Paul H. asked, do we punish everyone for that one person? Annette K. said we're not punishing anybody; you can develop your land – as long as you don't "flatten out a wash", strip out the land and cause sand to blow; it is not punishing to ask them to come in and discuss building a house in one place and leaving open space.

Paul asked about the developer who does not need open space with 100% buildable land – he has constitutional rights. Mayor Powell added, the Ordinance can look for incentives to keep open space, as the LMC states. Annette K. answered that open space may not be required, but (if so) should not be considered punishment. Mayor Powell also told how one owner may have land for ten houses and you say only two are allowed due to sensitive lands – that's dollars and cents. Annette said you look at each piece of land, evaluating that which cannot be disturbed.

Lynn Olds said he thought we would be surprised to know how little sensitive lands would come up that is outside "flume holler", "Ashcreek corridor", "black hills" and "red ledges"; you may get "sandy knoll", but I don't think you'll find too many areas outside the Hillside Ordinance. If this "Sensitive Lands" is written to protect the "Shivwit milk bench" and the "sand paper bush", we don't want that. Mike V. said we need to look at this in a positive way too; if someone came with a piece of property with drainage yet we leave it natural; so in lieu of that we'll build a ten acre Park. Their property may be useless to them, but with exchange, they're getting something. Darrin L. asked if that wasn't already in the LMC as a PUD (Planned Unit Development)? Mike V. added that with the LMC, there is the Hillside Ord.; adding as Paul spoke of the developer issues, you must look down the road, as we have twenty homeowners in Hurricane today looking to the City for relief of collapsible soils – not going to the developer who's made the money and gone. It's the City who ends up listening to and mitigating the problems.

Darrin L. said that isn't specifically a sensitive lands issue; Paul added, well it is in one way - with more requirements to the owners/contractors, and creating costs for those lots, making it harder to sell them; as when Lynn O. mentioned last month that we need to temporarily cut our impacts to encourage builders. If we do this (sensitive lands), our lots and impacts will increase. Annette K. also told how Coral Canyon development has maintained value by keeping the hillsides. Darrin L. said they have left most to appear undisturbed, although altering their areas; and in our "Shangra-la" area, if Litchfield were to sell, it could not be made legal or could they build (sensitive lands) with the plantings, etc.. It seems we're trying to protect, but we can do this in reclamation plans, etc. Daren Cottam used TRE (Cholla) Project as an example - possible nice build-out with Park one day.

Mayor Powell stated it appears the Council will not approve this as is, nor are we going to work everything out tonight; we can have another work meeting – getting together to decide what is acceptable and legal – there have been good comments and discussion. Annette K. added the Planning Commission needs those marked up copies to be turned in.

**Lyn Olds MOVED TO ADJOURN Public Hearing; seconded by Randy Scott; all in favor? Yes, unanimously.**

**8:40 PM – Mayor Powell reconvened the Regular Mtg;** he asked for review of Consent Agenda.

**Daren Cottam MOTIONed to accept the Consent Agenda;** Lynn O. stated there were corrections to the Annexation Minutes for Attorney, will give to Carol. Randy Scott had a question about the noting of the SID payment being called “**sales tax**” (Carol noted for Pam to make journal change) **the Motion was seconded by Randy Scott; all in favor? Yes, unanimously.**

B. Unfinished Business; Item (1) final approval for D. Heaton Scout Project for “Park Cemetery Beautification Project” (trees, gravel and paint). Mayor Powell stated he had been approved last meeting – need to ratify the approval. **Paul Heideman MOTIONed to accept the Project and authorize \$250. from the City; seconded by Daren Cottam; Roll Call vote was taken; all attending Members voiced an AYE vote.**

Item (2) FEMA Damage Prevention ORD.2009.03; Mayor reminded Council if this is not completed, we lose the FEMA support; proposed Ordinance from FEMA was to be added upon, not to be less restrictive by the City. ATT. Snow said in Art. 3, Sec. B, the FEMA Map for TOQ needs a date; Darrin L. (FEMA Admin.) said this is 9<sup>th</sup> April, 2009. Darrin L. also told of a LaVerkin study that could possibly change our Block on this Map during the next six months. Mayor Powell asked ATT. Snow for opinion to accept by deadline; ATT. Snow said one question is whether PC has reviewed this? Carol P. stated this was assigned through the CC, to Darrin LeFevre as Administrator.

ATT. Snow said FEMA approached all the Cities and we had the question of how does this get adopted – as Ordinance through the LMC, governing the use and management of land. **Our (ATT.) position is to treat this like any amendment to the LMC, requiring a Public Hrg.** Mayor Powell and Darrin LeFevre said they too, did not get that; ATT. Snow said the FEMA people are really not looking at the City compliance and Municipal Code. If someone challenges these restrictions, claiming it wasn’t properly adopted... Anita Lowe stated this needs a 10-day notice. **Mayor Powell asked Carol to get copies of the FEMA information to the PC people; will have this moved to the 26<sup>th</sup> March (Thurs) and call a joint Special Meeting for the PC/CC to address this.** **Lynn Olds MOTIONed to TABLE the FEMA ORD.2009.03 to a combined PC/CC Special Mtg on 26<sup>th</sup> March; seconded by Paul Heideman; all in favor? Yes, unanimously.**

C. New Business; Item #1. Review and possible approval of Sensitive Lands Ordinance ORD.2009.04; Mayor Powell asked for a Motion. **Lynn Olds MOTIONed to Table this Ordinance for the Planning Commission to bring a map for review by Council; seconded by Paul Heideman; all in favor? Yes, unanimously.**

Item #2. Review and possible proposed Fire District Funding presented by Chief Tom Kuhlman; Lynn Olds said he would be attending a District Mtg next Tuesday and would like to know which direction the Council wants to go – tax levy or what? Randy Scott said the tax levy; Mayor Powell said this levy would get the County to pay their fair share. **The recommendation to the District is for a tax levy; no further action needed.**

D. No requests for Agenda Items to next month’s Mtg were made.

E. Mayor Powell asked for the Department Reports

1. Economic Development / Water; Lynn Olds has covered previously.
2. Cemetery / Park / Maintenance; Randy Scott said everything is OK, but he has another item to discuss with the Council regarding legal issues. His comment was that our legal budget has (for several years) been \$18,000, yet we’ve never kept to that, is way over; why can’t we raise our fee to \$40,000 or \$50,000 to whatever our budget is allowed and that is all they get. Mayor Powell asked ATT. Snow if CC can carry on some discussion with this lawsuit; ATT. Snow answered as long as you do not talk strategy. Mayor Powell continued, saying he’s been in touch with Bill Ronnow and he is willing to go on with the “fight” (“billboards” lawsuit) and monthly payments – how much per month, we’d have to work out. The only other option is to “put the signs up”. Randy re-stated, “we never stay within the budget”; Ronnow was gone (SLC Attorney Christensen, Jensen Firm was working for TOQ) and now we’re up to \$55,000 and more; Heath Snow is within the budget but can’t represent us due to conflict. Why can’t attorneys work for \$40-50,000 per year? ATT. Snow commented that his Firm’s 1099 report stayed at about \$20,000 this past year; attending mtgs, giving advice and acting for the City on a weekly/monthly basis.

If you're talking about open lawsuits or being sued, that's outside of anyone's control or knowledge; and you may plan to increase the budget in anticipation. We are committed to staying where we're at. Lynn O. also said City is being reimbursed for some costs from ATT. Snow that are billed out to others.

Mayor Powell said unfortunately they must spend time in court, as he had for many years in police work. If someone sues, there are motions to bring and we must answer until they exhaust their findings. We've asked why can't we go to trial – if we lose, they get their signs; it's obvious they are “milking” the City to break us. But, they can't just refuse to answer; Randy asked why we can't counter sue for frivolous lawsuit? Mayor answered this is not, according to..... Mike Vercimak commented he thought they had already asked for “summary judgment”; ATT. Snow added that Attorneys could not....(inaudible).

Randy S. continued that his point is why can't we retain for \$40-50,000 per year and that cover all? Lynn O. stated this did not cover civil lawsuits. ATT. Snow said you retain a full-time “in-house” Attorney, as LaVerkin has done after spending a lot of money “outside”; the in-house will need \$100,000 per year. You may find someone (retired or?) who's willing to work 20 hours per week on a salary type position. Washington City has hired Durham, Pinegar Firm because they're big enough; one Attorney handles all the utility issues, another sits with City Council. This is costing them \$12-15,000 / month and I'm wondering why they just don't hire one person to do full time; but they like the firm to provide additional resources rather than one full time. Randy's point is well taken if you can find someone to work for \$20-30,000 a year, on a 20 hrs per week basis.

Randy Scott said again, we've been unable to get rid of Ronnow; Mayor Powell reminded him that he also voted to keep Ronnow and finish this out. Randy S. said that has carried on for two years; Mayor added we have spent all this money and now we're just going to give them the signs? Lynn O. stated he felt, along with the Council, that we're disgusted with all the costs; but for someone to take care of Toquerville, staying within budget, being accessible, and take care – we're pretty well served (with ATT. Snow). CC remembers when the agreement was made and no one wanted to “roll over”; so we “bit the bullet” knowing it was going to cost us – and a lot of money, as Ronnow said then. Randy S. feels if we hire someone to fix the problem, and they can't do it, we need to find someone else. Mayor Powell asked if he (Randy) knew how long it would take to get someone “up to speed”. Randy S. commented that it sounds like he's answering letters every month and he should be able to take care of it. Mayor Powell said his complaints are duly noted; and Mayor also wishes this would all “go away”; we'll talk in Executive Session later about ATT. Ronnow's suggestions. Carol P. asked if the question can be asked about “summary judgment”.

3. Culture and Recreation Update; Paul Heideman said Miss Toquerville is coming along. The Beautification Chairperson is also in place. Randy S. reported the Solid Waste people will give us six large containers when you give us a date – one time only.
4. Streets Update; Daren Cottam reported the bid for “chip/seal” on Hwy 17 is coming in the spring; Lynn O. asked if we've heard on the striping, etc. ; Daren said we've asked for center lane – we don't know about shoulders and turn lanes. Mayor said the County would help do that if City would buy the material for chip & seal; Lynn O. said they need the manpower and don't do that any more.
5. Subdivisions; Darrin LeFevre has a question for Carol P (Recorder) – what is the proper procedure for putting someone on the Agenda?; Dave Sanders (alternative power presentation) came to me for that, knowing I was with this Dept., could he have called you directly? Carol answered either way, you have privilege to ask for anyone to be put on; Darrin L. continued that when he asked to have him on the Regular Agenda, it was placed under Mayor's update and on the Work Mtg. (with his name also) when he asked for it to be on the Regular Mtg. Carol P. stated that she misunderstood as to Mr. Sanders presentation – presumed (mistakenly) Darrin would introduce him. When going over Agenda with the Mayor (knowing the Hurricane Fire District presentation was on), and the Meeting was lengthy with the HVFD (Fire Dept), it was decided that the (presentations) were better positioned for not holding people over to Regular Mtg , including Pam Jarman, Becky McNeil, Mario Boisvest (Mosquito) and Dave Sanders. Darrin also stated that it seems most times he asks, it doesn't go where he thought it was to go – perhaps it is communication.

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Mayor Powell said we need to make sure if it's any kind of action that it gets placed on the Regular Mtg; he also said as long as he's been Mayor there is always some Council Members unable to be updated before meetings; therefore, the Work Mtg was brought to help with questions and updates. Somehow, the Work Mtg seems to get larger and larger; maybe we need to decide how much to keep on this meeting; we need to shrink it down to keep at about an hours time, allowing us to start on time with Regular Mtg; Darrin L. asked if we could not have presentations on Regular Mtg? I really don't want to see anything on the Work Mtg, it's just for review of the Agenda. Mayor Powell agreed this time will be kept to help us better understand what's coming on the Regular Agenda. Paul suggested there be a time limit by each agenda item.

Mayor asked for Item 7.(e) – Office Hours Proposal; Carol P. explained with Budget cuts, she would like to also cut the office hours. With two people working 6-8 hrs per day, we get about 12 to 16 hrs of work time from 9 to 4 PM; Leeds is working 3 people for 4 days, closes office at 1 PM. The important times are during the first two weeks of the month with CC Mtg and Utility billing; we could close at noon during that time to accomplish our work, not answer the phone (or door) unless we know we need to (caller I.D.) We tested with a sign on the door to “put your payment in the box”; this really helped with door closed, to complete the work for those first two weeks, it will also help with hours spent outside of office to get work done; Pam and I help each other all we can.

Paul H. suggested staggering times during the day for coverage of phones, etc.; or opening every other day; Carol responded she believed the people would never remember hours; uninterrupted time is still a problem with phones, answering questions and information requests. Randy S. asked what hours do you have now? Answer is 9-4 PM, and we stay to finish whatever we need to do. Lynn O. commented that you (office) know what needs to get done and the time you need; you evaluate what time it takes. Carol reminded of daily work, new (and old) year files, budget, lots going on; and if the Bldg Dept picks up we can modify hours. Mayor Powell commented the office staff is working more than hours turned in. Paul H. says we'll leave it up to the Mayor; Carol said the Mayor suggested to run by the Council first; Mayor responded he would talk further with office staff for his decision.

Annette Kleinman reported the assignment she had to check on acceptable Scout Project of landscaping around the Post Office, which is lease property; the answer is yes because it is a “long-term lease”. Mayor said he had asked Glade P. (Postmaster) about that and he thought this would be a good idea as long as we have permission.

**9:20 PM – Mayor Powell asked to convene an Executive Session for “legal issue discussion”;** attendees were dismissed to allow Council discussion with Attorney Snow; the Meeting will be adjourned immediately following.

NOTE: Executive Session Minutes will be reviewed and approved by the Attorney and members in attendance, for April Mtg.

**9:47 PM – Mayor Powell reconvened the Regular CC Mtg and asked for a motion to adjourn;**

**Paul Heideman MOTIONed to reconvene CC Mtg; 2<sup>nd</sup> by Randy Scott, who then MOTIONed to adjourn the Council Meeting; 2<sup>nd</sup> by Lynn Olds; all in favor? Yes.**

ACTIONS & ASSIGNMENTS

1. Mayor Powell – (a) Review Office hours change request; (b) Boundary Commission ATT. Retainment; Review “Billboard” .
2. Council Members - “Sensitive Lands” Ordinance – review, add/correct, return to Office for PC ASAP – they will have another public hearing for LMC Amendment in April.
3. Carol Pogue – (a) Wrong notation on check; “sales tax” (Carol noted for Pam to make journal change to SID Payment; (b) FEMA ORD. needs PC Review & Pub. Hrg to Amend LMC; copies of FEMA to PC and call a joint Special Meeting for the PC/CC on 26<sup>th</sup> Mar (Thurs).; (c) Animal Ord. – needs LMC Amend. R-1 Zones); (d) Agendas -“Work Mtg” time kept to help understand “Regular Agenda”; time limit to items.
3. Pam Jarman – (a) D. Heaton Scout Project (\$250) approved.
4. PC – Update “Sensitive Lands” Doc.: (a) “Hillside Review Board” to be the Planning Commission. (b) Map? Survey of slopes, rock formation, etc.; expense (\$2-6,000) needs prior approval from CC;
5. ATT. Snow – (a) Call ATT. Ronnow for “Billboard” Update.

The Minutes of the March 12<sup>th</sup>, 2009 Toquerville City Council Work, and Regular Meetings will be presented for review and approval in the April 9<sup>th</sup> 2009 City Council Meeting:

Approved: \_\_\_\_\_ Dated: \_\_\_\_\_  
R. Ken Powell, Mayor

Attested: \_\_\_\_\_  
Recorded and Typed by Carol Pogue, City Recorder