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Cc: cdyrek@cavecreek.org; usama@cavecreek.org

Bcc: TerryLZerkle@aol.com

Subject: October 18, 2010 Town Council Meeting

Date: Thu, Oct 14, 2010 12:10 pm

To: Mayor and Council, Town of Cave Creek, Arizona

Dear Mayor Francia and Council Members:

I wish to formally protest action being taken on Council Agenda item B. 1., Resolution R2010-25 authorizing the execution of a \$1.4M loan agreement with WIFA, scheduled for the Town Council's October 18, 2010 meeting.

As part of the written justification for this item, Resolution R2010-25 references the 2008 Water Master Plan stating that the water lines to be replaced from the proceeds of this loan are recommended in the Water Master Plan prepared by CH2M Hill in 2008.

As I've previously written the Council, the 2008 Water Master Plan, a major policy document, was never vetted at a public hearing before Council providing for public input, inquiry and information. Nor was it ever adopted by the Council.

The only Water Master Plan adopted by the Council occurred April 16, 2007. The various WMP iterations that followed the April 2007 adopted version differ in material respects from what the Council adopted. That includes the July 2007 WMP version that was submitted by Town staff to the Maricopa County Environmental Services Department to satisfy a requirement of a Stipulated Settlement Agreement resulting from a Notice of Violation issued by MCESD to the Town involving Cave Creek's town-owned Desert Hills Water Company.

The Stipulated Settlement Agreement transaction is particularly disturbing and problematic because not only was the WMP version submitted to MCESD by Town staff not adopted by the Council, the Stip Agreement was never taken to the Council for settlement authorization as required by law.

What is the significance of the non-Council adopted WMP submittals to the County? MCESD uses the Town's Water Master Plan for subdivision and water system approvals in Cave Creek and Desert Hills. They see the WMP as an official expression of Town policy. The County grants development approvals under the belief and understanding the Council is fully aware of and committed to funding and constructing the various projects contained in the WMP as they become necessary and that the Town has a Council approved multi-year Capital Improvements Plan in place for doing that (which, as we know, the Town doesn't have).

The cost range of the various projects contained in the non-adopted, non-publicly vetted 2008 Water Master Plan is estimated at \$50.5M - \$108.3M not including design, engineering, permitting, services costs, land acquisition and easements, and legal fees according to the cost estimate accompanying the plan. The cost estimate notes that those items could add another 15% - 25% to the construction costs, which would take the total closer to \$63.1M - \$135.3M. For a small town those are staggering numbers and especially so when considering the astronomical multi-million dollar debt the Town has already taken on for its water companies and the new wastewater treatment plant.

I submit that Cave Creek citizens have a right through a public hearing process to be informed about what's in the WMP, the magnitude of the projected dollar costs and obligations that are being incurred through the Council's actions on the town's citizens, and what the financial plan is for paying for it.

I respectfully ask that Council action be deferred on this agenda item until after the Council has conducted a public hearing and formally adopted the 2008 Water Master Plan with an attendant multi-year CIP detailing the various projects and showing how they are going to be funded.

I will be out of town and unable to attend the October 18 Council Meeting so am requesting that this email letter be made a part of the official record on this agenda item.

Respectfully,

Terry Zerkle
41200 N. Echo Canyon Drive
Cave Creek, AZ 85331

C Terry Goddard, Arizona Attorney General
Jennifer Pollock, Arizona Assistant Attorney General
Richard Romley, Maricopa County Attorney
David Smith, Maricopa County Manager
Joy Rich, Assistant County Manager
John Kolman, Director, Maricopa County Environmental Services Department
Benjamin Grumbles, Director, Arizona Department of Environmental Quality
Sandy Sutton, Interim Director, Water Infrastructure Finance Authority of Arizona

Cave Creek Council approves loan for water upgrades

by Philip Haldiman - Oct 21, 2010 03:25 PM
The Arizona Republic

The Cave Creek Town Council has agreed to take out a \$1.4 million loan to improve the town's water system.

Monday's 7-0 council vote allows the town to close on the loan from the Water Infrastructure Finance Authority of Arizona and eventually begin construction. Designs will probably be finalized next month, with construction beginning after that.

Town utilities manager Jessica Marlow said the current water pipes are too small to provide the volume of water the system needs.

"Most definitely, water pressure will improve," she said "Completing this project will make that better."

As part of the capital improvement project, 14,000 feet of the existing 8-inch water line would be replaced by new piping 16 inches in diameter, providing four times the current volume, Marlow said.

It would extend from a current project that started on Cave Creek Road, between Rancho Mañana Boulevard and Canyon Ridge Drive. The new project would go from Canyon Ridge Drive to Carefree Highway. Part of the project would include piping from Rancho Mañana Boulevard to the town's water-storage tank in downtown Cave Creek, Marlow said. The Walmart set to break

ground in November at Cave Creek Road and Carefree Highway will be able to connect to the new water line.

Financial assistance would come from the Water Infrastructure Finance Authority, an independent agency authorized to finance the construction, rehabilitation and improvement of drinking water, wastewater, wastewater reclamation and other water-quality facilities or projects. Generally, the agency offers borrowers below-market interest on loans for 100 percent of eligible project costs. Marlow said if the new loan is approved, it would be paid over 20 years and it would not affect residents' water rates.

The Water Master Plan in 2008 recommended installation of the new piping. The plan's objective is to provide the town with a comprehensive vision for the long-term water supply needs of the community. Cave Creek resident Terry Zerkle argues that this plan was neither vetted at a council public hearing nor adopted by the council. He opposes the town taking on additional debt without a financial management plan.

"The Cave Creek citizens have a right through a public hearing process to be

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informed about what's in the Water Master Plan, the magnitude of the projected dollar costs and obligations that are being incurred through the council's actions on the town's citizens," he said. "And they deserve to know the financial plan to pay for it."

Marlow said the water plan was submitted to and approved by the Maricopa County Environmental Services Department. She said the council is not required to vote on the plan.

"After discussions with the county and our attorneys, there is no legal requirement for the master plan to be approved or adopted by the Town Council," Marlow said.

DeLank's Act


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Water-tank land to cost Cave Creek \$1.2M

Beth Duckett
The Arizona Republic
Mar 28, 2008 04:31 PM

CAVE CREEK - Cave Creek built a water storage tank partly on land it doesn't own and now plans to buy the property for \$1.2 million.

The town had consent from the property owner to build a "small portion" of the 1.1-million-gallon tank outside its boundaries, said Town Utilities Manager Jessica Marlow.

Herb Thompson and his wife, Julie Kennedy-Thompson, acquired the acre lot last year on Hidden Valley Drive south of Cave Creek Road.

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The lot surrounding the water tank will be used as a storage yard for the public works and utilities departments, replacing a town-leased site near the Cave Creek American Legion, Marlow said.

The Thompsons also own adjoining property.

The Cave Creek Town Council will consider the land acquisition at a special meeting 7 p.m. Monday. The Maricopa County Assessor's Office lists the full cash value of the property at about \$1 million for the 2009 tax year. For the 2008 tax year the value was \$560,000.

In exchange with the Thompsons, the town paid Arizona Public Service Co. to relocate a power line, removing a 20-foot easement that cut the property in half, Marlow said.

Calls to the Thompsons were not immediately returned.

The tank is scheduled to be in operation by May 1, Marlow said.

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MINUTES
SPECIAL TOWN COUNCIL MEETING
TOWN OF CAVE CREEK, ARIZONA
MONDAY, MARCH 31, 2008

CALL TO ORDER: Mayor Vincent Francia called the meeting to order at 6:00 p.m. at the Cave Creek Town Hall, 37622 N. Cave Creek Road, Cave Creek, Arizona.

ROLL CALL: Town Clerk Carrie A Dyrek

Council Present: Mayor Vincent Francia, Vice Mayor Gilbert Lopez, Council Members Kim Brennan, Ernie Bunch, Dick Esser, Thomas McGuire and Grace Meeth (who arrived at 6:13 p.m.)

Council Absent: None

Staff Present:	Town Manager	Usama Abujbarah
	Town Clerk	Carrie A. Dyrek
	Town Engineer	Wayne Anderson
	Director of Planning	Ian Cordwell
	Senior Planner	Larry Sahr
	Town Accountant	Marian Groeneveld
	Utilities Manager	Jessica Marlow
	Town Attorneys	Cliff Mattice/Gary Birnbaum/Scot Claus
	Rural Metro Fire Chief	John Kraetz

EXECUTIVE SESSION: An Executive Session will be held during the Special Council Session for legal matters pursuant to A.R.S. Section 38-431.03 (A) (3) and (4) as follows:

EXECUTIVE SESSION AGENDA

1. Discussion or consultation with the Town's Attorney and legal advice or consultation with the Town's attorneys in order to consider its position and instruct its attorneys regarding the Town's position in pending or contemplated litigation and other matters involving or related to the Town of Cave Creek traffic regulations, pursuant to A.R.S. Section 38-431.03 (A) (3) and (4).

M/Esser, S/Lopez to convene into Executive Session at 6:05 p.m. M/C 6-0 by voice vote with Meeth absent.

Meeth arrived at 6:13 p.m.

PUBLIC SESSION RECONVENED AT 7:06 P.M.

PLEDGE OF ALLEGIANCE Everyone stood and gave Pledge to the flag.

PUBLIC ANNOUNCEMENTS None

CALL TO THE PUBLIC

Charles Spitzer, 6836 E. Continental Mountain criticized management for lack of knowledge and costing Town funds. He claimed they cost the Town by many mistakes.

David Phelps, 39595 N. School House Road requested the Town to provide a public workshop on the State Trust Land annexation. This is not a challenge. He sees some costs ahead and would like to review the pre-annexation agreements in public. **Phelps** also requested a representative from the State Land Department to be present.

REPORTS None

ACTION ITEMS

A. GENERAL AGENDA ITEMS

- 1. COUNCIL DISCUSSION AND POSSIBLE ACTION TO APPROVE RESOLUTION R2008-16 AUTHORIZING THE ACQUISITION OF REAL PROPERTY LOCATED IN THE TOWN LIMITS DESCRIBED IN THE LETTER OF INTENT TO PURCHASE (EXHIBIT 'A' ATTACHED HERETO), AND AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AND ENTER INTO THE PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS CONSISTENT WITH THE LETTER OF INTENT TO PURCHASE ATTACHED HERETO IN EXHIBIT 'A'.**

Kim Brennan recused herself and left the Chambers .

Wayne Anderson, Town Engineer reported. This is a request to buy the parcel of land adjacent to the Neary Tank Site that is under construction at the present time. **Anderson** gave a brief recap of the history of the tank construction and the property there. After the purchase of the Water Company, we were looking for storage tank locations in the Town and elevated sites also for carry-over storage; storage being our number one requirement for Global Water when they owned the company and the Town sought to increase our carry-over storage. The elevated site is at the Rockaway Hills Plant and our plant where the tank is being built there. The in-town site was a little more difficult. The existing Water Treatment Plant has a small storage tank which is old and inadequate and had to be torn down to make way for future expansion.

After a search for land to purchase for a tank for operational use in-town, the ½ acre site used for a public work yard behind the American Legion was considered. We requested the option to purchase that from the American Legion. A price of \$750,000 was quite a bit for that site and their Board decided they weren't interested in selling after all.

Next was a large residential parcel just to the north of the present Water Treatment Plant site; 3 acres with an old house on it. The property owners let it be known they were interested in selling the property. A realtor was employed to verify that and the appraisals ranged between \$650,000 - \$850,000 for that site. We offered the top price of \$850,000 and they countered with one million, seven hundred thousand with no more negotiations.

The adjacent property just to the north of the Water Treatment Plant was looked at. We talked to the owner there and he was at first encouraging and he decided he didn't want to sell.

We then found a "For Sale" sign on the property adjacent to the Neary site and we checked into that one but it was already in escrow. That is the property under discussion tonight. So we have missed the chance to buy that. That was our last option.

We then decided to use the Neary Tank site itself and build as big a tank as we could there. By going 24 feet high and 8 feet deep into the ground, a total of a 32-foot high tank, we could get 400,000 gallons of storage within the confines of the property. That would replace about 100,000 existing and another 100,000 at the Water Treatment Plant so we gain 200,000 additional operational storage over what we had.

We talked to the property owner adjacent to the site to see if we could trade some land in front of the Neary Tank Site for expansion of 11 feet on one side and 16 feet on the other to increase the storage tank size to a million two, which would give us about 900,000 gallons more storage. He was amiable to that so we pursued that option, being under a very tight time constraint to get the tank built and in operation by May 1st. He actually allowed excavation of the property even beyond onto his property to accommodate tank construction. He has been very cooperative and conducive to the job being done quickly.

Anderson requested Larry Sahr to give more details on the property.

Larry Sahr, Senior Planner gave details on the property under discussion this evening. The information he is providing tonight was pulled together earlier today and is based on available public information. There are gaps in the information that are unavailable as it goes back in time to 1955 when a subdivision plat was approved by the County for the Hidden Valley Subdivision. In doing that plat, it was subsequently recorded in June 1955. Track "B" was part of that original plat and constitutes four lots. At the time such a parcel number 211-11-044 assigned to Track "B". Subsequently at an unknown date, that parcel 044 was split into 044 "A" and "B" and again at an unknown time 044 "A" was split into "C" and to 932, which is the tank site. The recording for 932 of the Deed was in December 1958.

In July of 1976 Parcel "B", the upper pieces and part of another piece, were split into parcels "D" and "E". Again, "D" and "E" were subject to a lot line adjustment at an unknown date and they became parcels "F" and "G". Subsequently parcel "C" and "G" were approved on lot line adjustment April 10, 2007 and they were assigned new parcel numbers 211-11-044 H and 211-11-044 J. A quit claim deed for 044 J was recorded April 12, 2007. Over the years a series of lot splits and lot line adjustments have taken place on the property to get to the configuration that we have today at the site.

Anderson continued. During the design build process, which we are in at the present time, it was found that the Town would need all of the Neary Tank site so that the land that we had anticipated trading for the bump-out onto the adjacent parcels would not be available. Also our engineers informed us that we needed 10 feet of clearance around the tank because of the rap process that was used. Subsequently we found that was reduced to 3 feet so it is not as serious a consequence and we have not had any breakage of cables in all the 40 years they have been building these tanks themselves.

The Town did pay for the abandonment of the APS easement through the property as part of our proposal. If we had stayed in the confines of the Neary Tank site we would have a 400,000 gallon tank and we would be looking for another source in Town to supplement that. We would, in actuality, rather have built a tank with a 1.2 million gallon capacity and if we would have been able to purchase the property at the time we had first found the "For Sale" sign on it we would have built that larger tank and probably would have paid 1.2 million dollars for the property, where we are now building a tank on a larger part of the property. In the future we may want to use this property when purchasing for storage for water operations, equipment and materials. The Water Treatment Plant itself is maxed out for use. This is a good location for centralization. We had planned to use the new Waste Water Treatment Plant site but that is five mile away. This is a good staging area in the interim. For now it is being used by the Utilities Department for utilities and equipment storage and also as the public works yard.

COUNCIL QUESTIONS

Lopez asked what size tank could be built there within the confines of the original property and was told by someone on staff it would probably reduce it 4,000-5,000 max, which would bring it down to about seven or eight hundred thousand. **Anderson** clarified that it would have reduced it down to about four hundred within the confines of the property.

Esser asked if there were a construction plan sheet showing the tank foot print to which **Jessica Marlow** responded that they have the Maricopa County Assessor's current aerial photograph showing the actual tank being constructed and the lot lines for the site.

Anderson responded to **Esser** that the amount that we needed has been reduced for the cable clearance. We did bump out 11 foot on the one side and 15 feet on the other adjacent property per verbal agreement. The 3 feet that we are down to now is clearance around the tank for maintenance.

McGuire asked about the property that was "for sale". If it was a private sale is it likely that a sale to a municipality would have been done at that price? **Anderson** responded that in searching for land he doubted it seriously since they ran into the \$750,000 for the Legion site, which is much higher than it should be. As for the residential property as soon as they found out it was the Town that was interested, the top comp offered at \$850,000 came back at twice that.

Jessica Marlow, Utilities Manager reported on the construction at the Water Treatment Plant. It is going in full force and we have used all of the available land at that site for constructing the new facilities to expand the capacity of the water treatment plant. That used to be used for

storing materials such as the backhoe for the water system operations. The Neary Tank site is ideally located centrally in the Town core area to be able to store supplies, i.e., piping for replacing lines along Black Mountain, construction supplies and two backhoes used to do line repairs. Currently we are storing some of the supplies immediately behind Town Hall that was laid out for parking. We are also storing materials at the Desert Hills main water office, which is very inconvenient and causes slower response time for the workers responding to line breaks.

The Neary Tank site is conveniently located in an area where many older 2-inch galvanized water lines are always breaking. Storing supplies in that location will help out with the operations of the system.

Esser asked when did you know that if we went from the steel to this sophisticated State-of-the-Art concrete tank that you would probably need a bigger site. If he understood what was looked at 8 to 9 months ago we were still talking steel. It may have fit. This concrete wrapped State-of-the-Art tank is much bigger and this caused the encroachment.

Marlow responded to **Esser** that they could have constructed a concrete tank within the confines of the site if we had to use that site for the tank. However, we wanted to maximize the size of the tank, either concrete or steel, and we were going for the maximum volume tank that we could on that site. That is why we discussed the option with the property owner of encroaching onto the property to maximum the tank site, basically taking the diameter of the storage tank out to the corner of our property and then partially encroaching on the east and south parcel borders, taking the tank into the adjacent property. We could have built a smaller tank on that site but then we would have needed another site for another tank because a 400,000 gallon tank is not nearly what is needed to provide reliable water service for the community and provide adequate storage for fire flow. The entire volume of water from the Water Treatment Plant is going to this tank and then being distributed to the rest of the Town all the way down to Desert Hills.

In response to **Esser**, **Marlow** stated that they decided to make the tank larger when they discussed the option of encroaching on the property with the property owner and he agreed to allow us to do that. He has been extremely cooperative with no complaints, no agreement, no payment, and nothing has been required of us other than the verbal agreement. We have documents that were drawn up by a surveyor that show the area that we planned to encroach on and planned to present to the property owner for a Deed of Gift basically, which has not been executed. We also discussed the option of trading some land but the land we were thinking of was required for electrical facilities at the pumping station. But we did pay to have the APS easement that was cutting the property in half by a 16-foot easement. That easement was removed and relocated, which freed up all that property for construction.

Esser remarked that it was to the benefit of both the property owner and the Town. **Marlow** stated that it had to be relocated so that the tank could be constructed and the Town agreed to pay for that.

Anderson called for **Ian Cordwell** to talk about comparable sales.

Cordwell went over the comps in the packet on page 17 stating that they have listing prices but half of them have a sales price. He then pointed the parcels out on the map for relevance.

<u>Location</u>	<u>List Price</u>	<u>Sale Price</u>
6137 E. Cave Creek Road	\$1,300,000	\$0
60032 E. Cave Creek Road	\$2,500,000	\$0
38424 N. Spur Cross Road	\$2,800,000	\$0
6047 E. Cave Creek Road	\$ 650,000	\$0
6142 E. Cave Creek Road	\$ 450,000	\$ 420,000 – almost ½ acre \$21/sq ft
6012 E. Hidden Valley Drive	\$ 970,000	\$ 750,000 – 14,000 sq ft \$53/sq ft
XXXX E. Hidden Valley Drive	\$1,300,000	\$1,200,000 – not the same zoning
6130 E. Cave Creek Road	\$1,995,000	\$1,950,000 – 16,200 sq ft \$120/sq ft

COUNCIL QUESTIONS

Esser noted that he had looked at all the comps and 3 are active, 1 pending, 4 have been sold. They are characterized as comps but they're not. They are really listings. **Cordwell** responded that this is a list of properties that was available to us through public domain.

Esser stated that he didn't find any of the eight comparable, i.e., #6 referenced as 6000 sq ft with a brand new building on it. That's a major improvement and right there in the Tamarisk Grove not too far from the subject property. **Cordwell** responded that the building has been there for quite some time.

Esser noted that in the Commercial Core there isn't much commercial left to which **Cordwell** agreed. **Esser** stated that in his point of view they are really not comparable. **Cordwell** responded that he would accept that correction as he is not an appraiser.

Marian Groeneveld, Town Accountant reported. She reviewed the financial aspects of the property purchase. The Town budget is 9.5 million dollars for water improvement. They are ending up costing a little more, about 15 million dollars. So Staff will be presenting transfers to Council in the very near future, which we have talked about in the past. These include transferring funds from the Waste Water Enterprise fund to the Water System fund to cover those expenditures and it will also cover the 1.2 million dollars for the Fleming Springs purchase if it is approved.

The Town has a fund in reserve to make this land purchase. In 1999 the Town had very little in reserve, in fact no reserves, paying bills month-to-month and barely getting by with many sleepless nights. Over the last nine years the Town has made a conscious effort to not spend everything we brought in, to set up a reserve for the Town. This will give the Town some stability. The reserve will also give Council the ability to face tough situations, have a little more flexibility in decision making, and hopefully better decisions. We have seen that in the past with the purchase of the Desert Hills Water Company from reserves, and then replaced that with a loan from WIFA. In 2001 we purchased the Phoenix Mine Site for about 1.2 million dollars. At that time we did not have the cash reserves to make that purchase. That was 38 acres

for 1.2 millions dollars, which we had to finance and pay interest and at the time we were criticized that it was too much for that piece of property. In looking back now, 38 acres for 1.2 million dollars was a pretty good deal. We have the money in the reserves for this purchase if the Town Council approves it.

Anderson stated that if we had been able to purchase the property under discussion last year, we probably would have paid 1.2 million dollars and we would be building a larger tank on site. So this is an opportunity to purchase land and solve the problem. The land could be valuable in the future and if in the future we do not need the entire site we can sell off part and probably recoup all or more of the investment. But it ensures that we have a site to use. We can make that decision in the future. If we let it go, time runs, prices go up, things get built, and opportunities disappear.

In closing he brought up the Phoenix Mine site also as having been looked at as an un-necessary purchase by many. We bought a site that was devastated and for 1.2 million dollars it has turned out presently it is probably worth 3 or 4 times that and more importantly it is a real boon to the community and has potential in the near future for the museum site, visitors facility, park and many other uses.

McGuire stated that they have watched with delight to see the spring flowers coming out this year and are also conscious that the remains will be with us for the fire season. How does this purchase affect the safety of the Town in terms of its ability to respond to potential fire emergencies?

Anderson responded that the carry-over storage is definitely a plus and we will have water in the tank available for fire.

Marlow stated the construction of the Neary Tank's size will allow for us to provide better fire protection to the entire Town, which will help the health and safety of the community.

Esser said that we know with the rains, we are going to have fires. Do the fire hydrants work?

John Kraetz, Rural Metro Fire Chief responded to **Esser**. If Frontier Town were to catch on fire, the required gallons per minute that we'd have to flow on that if it was fully involved would be at least 4,000 gallons per minute. With the storage we currently have, plus the demand for the community at the same time, the system can't handle it. It can flow 3,000 at best. That's us competing with the Town users to try to flow water on the fire. So we desperately need it to provide fire protection. When we talk about stuff drying out, it isn't the brush fires we are worried about; it's the brush fires catching buildings on fire. We don't need a lot of water to put out brush fires but we need tons of water to put out a stretcher.

Again, if Harold's caught on fire, the required fire flow is tremendous, well over 4,000 gallons per minute and that's why we have a big tank truck sitting at the station right now, manned all the time because we are afraid we are going to get a fire and the system isn't going to be able to deliver.

Esser directed a question to **Usama Abujbarah** regarding notification of the changes. He was informed of what was happening by the former Mayor and understands that there was a verbal confidentiality agreement with the property owner to make this thing happen. **Esser** asked for a brief explanation as to why the Water Advisory Committee and other members of the Council didn't know about it until a later date.

Abujbarah responded to **Esser** that basically the property owner requested to keep the negotiation confidential until we reached an agreement and after that it was taken to the Council, so that was based on the property owner's request.

PUBLIC COMMENT

Charles Spitzer, 6836 E. Continental Mountain stated that citizens are now faced with the fact that Town Staff, either through deliberate act or ignorance, put a massive structure on someone else's property. Now we have to buy this land, build elsewhere or we have to condemn it. The cost of the purchase, 2.1 million dollars, is minor in comparison to relocating the tank. Why wasn't the land surveyed during the Design Phase made known to the public at that time, before the tank was built? Why did the land owner himself have to learn of this problem less than a month ago by talking to APS surveyors instead of Town Staff? The Town Manager claimed at August 20, 2007 Town Council meeting there was an agreement from the land owner made in an in personal conversation. Who is right? Which of these facts is actually right? Where are the public documents for this public agreement? Governments don't act on hand shakes. Make no mistake, this is an illegal taking of private property at that time, whether it was agreed to by the land owner or not. Why did the Water Advisory Board have to learn about this situation from the public instead of Town Staff? Why did members of Town Council learn about it from the public? Wouldn't you say that this near acre of personal property is over priced? Isn't 1.2 million dollars for a parking lot a lot of money? Are we willing to pay this price because the Town is over a barrel at this point? I can answer why we are paying for the premium; we are paying for the mistakes of Town Staff... How many expensive mistakes have we tolerated given the past history? How many more mistakes are coming? The Town Manager and Town Staff work for the Town, you direct the Town Manager and the Town Staff. The public directs you and the public is asking for these answers.

Ralph Mozilo, 41201 N. School House Road spoke as a citizen who is also the Chair of the Water Advisory Committee. He stated he did not represent the Committee as this purchase was not presented to the committee for a vote to recommend to the Council because of timing issues. He urged the Council to approve the resolution to purchase the property adjacent to the new tank site on Hidden Valley Drive. This Town purchased the Cave Creek Water Company a little over a year ago, knowing it was buying a system with many problems. However the problems far exceeded the Town's expectations. Last summer the people and businesses in this Town suffered outages and shortages Town-wide that in the past had only been experienced in certain areas when the Water Company was under the ownership of **Jay George** and Global Water. The Town has spent the last year working very hard to bring the system up to a condition to put it in a position to meet the high demands of this coming summer. One of the major steps was building two water tanks, one at Rockaway Hills and one at the Neary site. Time is, and was, of the essence in getting these tanks built, filled, and operational by May 1st of this year. Our Town

Manager took the necessary steps to get this done in the most efficient and expeditious manner. In building the Neary tank he received verbal approval from the adjacent land owner to infringe upon his property, in essence before the Town learned that an additional 10 feet was required around the tank to accommodate for any future repairs and maintenance that may be required on the tank. He spoke to the land owner and ultimately made the decision that in the best interest of the Town, the purchase of the land was necessary. He negotiated a letter of intent with the land owner, which is before Council tonight. This letter is clearly not legally binding without your approval.

It is very easy to be a Monday morning quarter-back and criticize the actions taken. You may talk about process, but the issue here is results and the short time frame necessary to get the tanks built and operational. You may argue that you were not kept fully informed throughout the process. Again, **Mozilo** argued that the key is "results." You can blame last year's water outages on Global and the system they gave us when we purchased it. This summer, if there are problems, it is your fault. People will say you had to fix the system...why didn't you? You will be subject to possible law suits by businesses that lose money because they either have to close for lack of water or have to purchase tanks of water to stay open, as Harold's has done. **Abujbarah** is to be congratulated and commended for taking responsibility and doing the job that you pay him to do. Again, he urged Council to approve this resolution and the purchase of this land.

Katya Kincel, 41200 N. Echo Canyon Drive spoke and asked if she had the facts correct. She pointed out her facts one by one. This private property was not legally acquired by the Town prior to tank construction. Under Arizona law this would constitute an illegal property taking by a governmental entity. Was it done knowingly? It is still an illegal taking. If it was done knowingly it would seem this action has potential criminal implications for the person or persons who made the decision and gave the go-ahead to construct the tank on private property without following the law. Now the Town's taxpayers are about to be saddled with unbudgeted and fully unnecessary 1.2 million dollar expenditure to fix this mess. This is simply outrageous and totally unacceptable abuse of fiscal and governmental responsibility. In August, 2007 when Council awarded the contracts for design and construction of the down town tank, her husband stated that night that the Town was trading transparency for expediency in the rush to approve this project. She called on the Town to call the Attorney General's Office to conduct a full and independent investigation to determine what went wrong, the extent of official wrong doing and to advise on what actions are necessary by the Town Council to correct this situation in a proper, legal and fully transparent manner. The Town's government credibility and integrity are at stake on this issue.

Nina Spitzer, 6836 E. Continental Drive stated that this is not just talking about a small town purchasing a small piece of property for a lot of money. We are talking about the people of Cave Creek being faced with the financial consequences resulting from decisions and actions by this Town's staff. She is uncomfortable with that. How did this permanent structure go over property lines without signed documents? Verbal documents are not legal. How come our Town Council members and members of the Water Advisory Board didn't know about this until just recently? There are many questions that need answering. We are counting on our elected officials to do what is necessary to provide us with the facts.

Herb Natker 6850 E. Stevens Road quoted Will Rogers. He once said, "All I know is what I read in the papers." According to the Arizona Republic's March 28th article our Utilities Manager, Jessica Marlow, stated that the Town had consent from **Mr. Thompson** in exchange for the relocation of the power line that bisects this property to build a small portion of the 1.1 million gallon water tank outside its boundaries. Cave Creek built a storage tank partly on the land it doesn't own and now plans to buy the property at 1.2 million. The Administration of the Cave Creek Water Company and its operation, the responsibility of the Utilities Manager, includes the building of the water tank. It is almost unbelievable and certainly unacceptable to learn this information in the newspaper and for the Mayor, Council, and citizens of Cave Creek and general public who read this article. Those of us who voted for proposition 401 and 402 have 1.2 million reasons and concerns about the ability of our Town Management to manage the growth of Cave Creek effectively.

- ✓ When did the Town get consent from **Mr. Thompson** to build a small portion of the water tank on the property?
- ✓ Where is the documentation of this consent, either by Email or notice of the meeting?
- ✓ Why are we paying 1.2 million dollars to build on a small portion of this land?
- ✓ Why and how much did we pay to APS to relocate the power line easement that cut this property in half?
- ✓ Does the Town management have to read these two items, the purchase and also the relocation before P&Z for recommendation and then to the Council for approval? This is due process.
- ✓ When will this Council conduct the necessary oversight to direct the actions of our Town management, which they are ultimately responsible for? You are the Board of Directors.
- ✓ If the Town management can't or won't keep the Mayor, Town Council who are elected representatives informed and prepared, how will the Town manage the annexation of over 5,200 acres?

In summation, the situation boils down to accountability, which means that in leadership roles accountability is the acknowledgment and assumption of responsibility for actions, decisions, policy and the administration implementation in encompassing the obligation to report, explain and be answerable for the resulting consequences.

Ray Veres, 37211 N. Kohuana Place has been listening and when **Councilman Esser** cannot get a straight answer from his own Town Staff, we need to start looking at what is being covered up. First of all, I would wonder about the site plan. Did that site plan at that time show that the tank would go over the property boundaries? You would never encroach on some else's property without some sort of written documentation. I don't know when this verbal agreement was dated or when it took place. When Phoenix Mine site was purchased it was to have been purchased with funds from the Waste Water Management Fund. It was going to be used as a storage tank and now they want to use this site as justification for this purchase. Location, location, location. This neighbor has the Town over the barrel. The dereliction on the part of the Staff of this Town is amazing and you need to look into it and be aggressive about getting answers and following up on those answers. This is too much like a cover up.

Thad Baird, 36638 N. 16th Street thanked the Town for giving him the opportunity to be on the Water Advisory Committee. During the time he has been on he has watched Town Staff and Manager do some phenomenal things, given chores and responsibilities to do pretty much what

he thought was the impossible, and they are still on task and still getting it done by dead lines. Things happen and they are doing a fantastic job.

Brian Moore, 522 E. Desert Ranch, Desert Hills spoke in favor of the purchase and urged the Council to vote in favor of the resolution for acquiring the property for the Neary tank. Our water problems in Desert Hills are well documented and well publicized. Not only being a customer of the Desert Hills system, he is also Board Chairman of the Daisy Mountain Fire District, so water supply has always been a critical nature and concern for us over there. The Desert Hills water system has the capability of producing about a 720,000 gallons per day supply. During the winter time the use is probably around 300,000 gallons per day and in peak times in winter it is up to around 900,000 gallons per day. Unfortunately during the summer time our use goes up to about 2 million gallons per day, far exceeding the capacity of the wells and storage capabilities that we have in Desert Hills. The tanks over here in the Cave Creek system will go a long way to help supply an adequate amount of water as well as for fire situations. This was a very aggressive building schedule to be completed by May 1st to prop up this system as both systems were in pretty severe shape. He urged Council to go forth with the acquisition of the property.

Rich Miller, 38230 N. 1st Street, Desert Hills is a member of the Phoenix Water Department for over 15 years, is on the Water Advisory Board for Desert Hills, holds Department of Environment Quality certifications, Grade 4 in distribution, waste water treatment, waste water collections, and a Grade 3 in water treatment. Without the acquisition of this site and the storage, the experience of last summer won't even be close to what will happen this summer. Not only do we not have an 8 inch line anymore for Desert Hills, but now the Town of Cave Creek is solely responsible for providing water to Desert Hills plus providing water for the citizens here. Desert Hills cannot keep up with itself. You don't have adequate storage here. You should have a minimum amount of storage of the maximum daily usage throughout the year. You are down to about 33% and that includes Desert Hills which has substantially more storage ability than Cave Creek has. This will not only back up Cave Creek but Desert Hills. He urged Council to go forward with this.

Tom Healy, 515 E. Carefree Highway, a Fire Chief in the Daisy Mountain Fire District commended and thanked **Abujbarah** and the Advisory Council for taking the steps they have to try to ward off a very dangerous situation that we have over there with having enough water available to fight fires.

Bill Vale of Harold's offered an alternative site to have your meeting when it is air conditioned. As a business owner of Town he stated that over the last 18 years it has been around \$10,000 in water trucks to keep the place open. He urged Council to do whatever they have to do to keep Harold's open.

George Ross, 5925 E. Hidden Springs spoke on his neighborhood 13 years ago. The fire hydrants at Red Dog Ranch would not produce any water because they had never been inspected and there wasn't enough water flow, etc. We brought this to the attention to the Town Council at the time, and the owner of the water company stated that he would allow it to be inspected but that he would charge each time they inspect every fire hydrant and they will have to do it on a

monthly basis and by the way, my pumps and my pipes do not supply enough water for those fire hydrants. He didn't plan on changing the infrastructure. For 25 years they made no capitol improvements. We will now have the capacity to at least fight some fires in the Town core. We had to approve the system out to the residential but that's only on the agenda to be done. The Municipal Water Company's primary requirement is the health, safety, and welfare of its citizens. Profit margin is secondary. We have years of improvement left with this water company and they are about to make them and that's what a municipal water company does. It improves the infrastructure for its citizens. It is in the best interest of the citizens to move forward with purchase. The Town's financial position has steadily improved over the past eight years and we have the capabilities to do so.

David Phelps, 39595 N. School House Road stated he felt the Town should purchase this property, but he also asked for an investigation of this issue to help remedy the suspicion.

Terry Smith stated that the purchase time is good and this is a reasonable purchase.

COUNCIL COMMENTS

M/Esser, S/McGuire to approve Resolution R2008-16. Esser read the title for the record.

RESOLUTION R2008-16

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAVE CREEK, ARIZONA, AUTHORIZING THE ACQUISITION OF REAL PROPERTY LOCATED IN THE TOWN LIMITS OF THE TOWN OF CAVE CREEK, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED IN THE LETTER OF INTENT TO PURCHASE THE PROPERTY (Exhibit 'A' attached hereto); AND AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AND ENTER INTO THE PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS CONSISTENT WITH THE LETTER OF INTENT TO PURCHASE ATTACHED HERETO IN EXHIBIT 'A'.

Esser stated that water is a critical commodity and the Town has had problems. Since the time when he first heard of this he has been brought into the loop and has been accommodated in every way. He still has a few unanswered questions...who, what, when, where, and why, but we're working on that. In the meantime, we have a willing seller and a willing buyer and the owner of the property is in the back of the room and he has been more than cooperative. We agreed that we needed to fix it. What we are offering tonight is a solution. It was his suggestion that he go with a Letter of Intent. Our Town Attorneys responded immediately and he included an emergency clause in this because **Esser** couldn't abide by any delays. He made a decision to get over his concern about not being in the loop, not being informed, and decided to do the right thing. We heard some folks tonight say this was an illegal taking. It is not. **Esser** has spent 40 years in this business and he knows about inverse combinations, eminent domain, and he has acquired land for public projects for 33 years. As long as you have a willing seller and a willing buyer you don't need attorneys. He is in favor of doing this tonight because it is in the public interest, its safety and welfare.

McGuire spoke that there have been three critical issues: Water, Professional competence of Town Staff and Management, and implication that Council is not responsible. He is very satisfied that the Town is going about this in the right way. He is proud to support it.

Meeth agreed with **Phelps** that the end doesn't justify the means. We knew what we were buying in this water company. Our Code clearly states that our Town Manager shall not attempt to commit the Town Council to any action, plan, or program requiring the official actions of the Town Council. We have no choice. The owner is the victim. Why we are spending 1.2 million on the property and why we have to buy it is another issue and she has a real problem with that. There are so many versions to this story and it's hard to know what version is true. But she does know is that far, far too often she is getting calls from citizens giving information she is unaware of. There is too much going on behind the scene and by the time it gets to Council it's pretty much decided. That means decisions are being made such as to encroach on a piece of property without the public process and without the Water Advisory Board, without the Planning Commission and without Council approval. She has an extreme problem with that and felt that the process is very broken. Regarding this item to purchase a piece of property for 1.2 million dollars she will vote to buy it because we have no choice. We should not be in this position. When **Adam Stein** brings a truck to us to buy, we don't give him \$400,000 and tell him to go buy a truck and bring back the change. We say what is the cost, put it in front of us and we will authorize the money. She will vote for this when we have an appraisal in front of us, when we have an independent investigation as to what has happened here, and when this Council decides to invite the League of Cities and Towns in to talk to us about this process because we have a problem.

Bunch remembered last August when faced with the decision to build a couple water tanks in this Town and had just come through the middle of the summer with a lot of problems. There was a lot of fear, we needed to move fast, we had the water tanks done by May 1st and we are still on target for that. We approved those with about 20% design with other things needing to be done while these tanks were being designed. He doesn't like surprises any more than anyone else in this room. Now we need to have a bigger tank that goes across property lines and we are buying property that we would not have had a problem buying a year ago. He supports this 100%.

Lopez stated that he was troubled by the way it came to Council and troubled by concerns and suspicions by our citizens. That's for another day. He will support it because it's in the best interest of the Town and the citizens and the upgrading of the water company to provide adequate and safe water supply to the community.

Esser asked about a point of clarification for the Town Attorney: In the latter part of the Letter of Intent, it talks about an action that will take place on or before April 7th, page 9, and this gives the Mayor and the Town Manager the ability to act on our behalf. In response to some of **Councilwoman Meeth's** questions, if we approve this tonight, will this come back to Council? Will we get to see the results of the Preliminary Title Report, encumbrances, all the things that could be of interest to us?

Mattice responded that if Council approves this Resolution, you are approving the Letter of Intent that was entered by the Town Manager and then you are authorizing the Mayor and the Manager to authorize the purchase and Sale Agreement and escrow instructions. A sample of that has been provided to you, but that is not the final form. That is something that the seller and the Town would still need to sign that actual agreement for the property which would then transfer Deed of the property to the Town. At that point, it's not necessary for it to come back to Town to be approved the way this is written now. If the Town, in the process will have for example, an ultrasurvey to determine the property lines or inspection, that process is contemplated by the Letter of Intent and will also be required in the purchase and sale agreement. It doesn't mean that it comes back before the Town Council for further approval.

Esser asked if, with all things being equal, we are locked into the 1.2 million dollar purchase price. **Mattice** responded that the way the Letter of Intent is presented, is that it is conditioned upon the Council approval. It is a non-binding document that is subject to the Council to approve it and enter another purchase agreement contemplated as 1.2 million dollars and all the other terms that are customary in the transfer of property.

Francia thanked all those who spoke this evening. There are a lot of things going through his mind but he is going to stay to the Agenda item and that is whether this thing will or will not have his vote. Since it has to do with water and the welfare of this community it is a very easy decision for me.

M/C 5-1-1 by roll call vote with Meeth voting nay and Brennan recusing herself.

2. **COUNCIL DISCUSSION AND POSSIBLE ACTION TO GIVE FIRST READING TO ORDINANCE O2008-01 AMENDING SECTION 92, HEALTH AND SANITATION BY ADDING SECTION 92.20, AIR QUALITY AND FUGITIVE DUST, TO THE CAVE CREEK TOWN CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING PENALTIES FOR VIOLATION, THE NEW REGULATIONS ARE IN RESPONSE TO MANDATES PLACED ON CITIES AND TOWNS BY NEWLY ADOPTED STATE LEGISLATION. (This item is continued from the March 17, 2008 Regular Town Council Meeting.)**

Brennan returned to the dais ay 8:45 p.m.

Cliff Mattice reported. Regulations presented to Council this evening and previously brought before you and continued to tonight's meeting are a series of Regulations to regulate particulate matter. They are mandated by State Statutes and the Town is not alone in adopting regulations like these. There are 19 other municipalities within Area A that have adopted this type of regulation or had regulations in place that allowed for particulate matter regulations. There are approximately five other municipal entities in the process of adopting such regulations and one of them in addition to that is Cave Creek. Not every regulation for particulate matter mandated by the State Statute is in the exact same form or format. We had the Representative from MAG at the last meeting, expressing that she would have someone survey what other cities and towns are doing to respond to House Bill 1552.

[REDACTED]
[REDACTED]
Subject: Scottsdale Republic Apr 15, 2008 - TZ Tank In

Date: Tue, Apr 15, 2008 10:53 am

Scottsdale Republic Letters to the Editor
Letters to the editor from the Scottsdale Republic Opinions page.
Your Views:

Tank action unacceptable

Re: Cave Creek Councilman Thomas McGuire's April 9 My Turn, "Cave Creek reacted appropriately to likely water crisis":

Let's get one thing straight about the downtown water tank issue: No person I'm aware of ever questioned the need for additional storage for the town water system. The issue is about the proper way, the lawful way, and the most efficient and cost-effective way to go about doing it.

Under Arizona law, statutory mechanisms exist for a municipality to take expedited action to gain use of private property for public projects when there is a compelling need to protect public health and safety. Breaking the law and disregarding the law are not among the available options.

Yet that is what the town did.

McGuire's statements provide incontrovertible testimony that he was aware of difficulties before the council vote to purchase the property and that the town manager took time to keep him informed as the situation evolved. It also shows that as an elected official, he had knowledge of governmental wrongdoing and did nothing about it.

Simply unbelievable, indefensible and totally unacceptable public-official behavior!

— **Terry Zerkle**, Cave Creek
Monday, April 14, 2008 at 04:09 PM

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Neary Tank Facts

FACTS:

1. Item B.6. on the August 4, 2008 Cave Creek Town Council Meeting Agenda was Council Discussion and Action to Renew the Contract with the Town Manager.
2. During the Council discussion on this item, Vice Mayor Gil Lopez questioned the Town Manager about the improper taking and use of private property by the Town for the Neary Water Storage Tank. He asked the Town Manager why the land was taken and used by the Town w/o any form of written agreement and w/o getting prior Council authorization.
3. The Town Manager said this was not a proper line of questioning for this agenda item.
4. Town Attorney interrupted Vice Mayor Lopez' questioning saying in effect this line of questioning was close to not being a proper subject for the Manager's review.
5. Vice Mayor Lopez asked how it could be possible to review and renew the Town Manager's contract w/o doing a performance review. He said he considered the taking to be illegal and wanted to know why it was done and why the Council wasn't consulted and informed earlier.
6. The Town Attorney responded with a bunch of gobbly gook, double speak saying that while he wasn't saying the Vice Mayor couldn't ask these questions, the Vice Mayor was close to violating the open meeting law by pursuing a line of questioning which may not have been properly posted relative to this topic. This effectively closed down the Vice Mayor's questioning.
7. Later during the citizen comments on this agenda item, Steve L., Asst Atty Gen'l and member of Cave Creek Planning Commission, spoke extolling U A's honesty and saying what a great friend the TM is to him and what a great job he's doing as TM.
8. Vice Mayor Lopez later during Council discussion on this item converted his questions to statements. He said he felt the Town had engaged in an illegal taking of private property pursuant to direction of the TM, that the Council had not been properly informed by the TM or involved by him, that the Town's Attorneys had not acted properly to protect the Council's and the community's interests in this matter, and that major unbudgeted dollars had to be expended to correct what had been done. The Vice Mayor spoke to other matters involving the TM and the water system that caused him great concern as well such as the massive water outages and system failures that occurred last summer and what caused them.
9. AG's Office twice denied citizens written request for formal investigation of the Town's improper taking and use of private property for the Neary Tank.

August 7, 2008

**MINUTES
REGULAR TOWN COUNCIL MEETING
TOWN OF CAVE CREEK, ARIZONA
MONDAY, AUGUST 4, 2008**

CALL TO ORDER: Mayor Vincent Francia called the meeting to order at 7:05 p.m. at the Cave Creek Town Hall, 37622 N. Cave Creek Road, Cave Creek, Arizona.

ROLL CALL: Town Clerk Carrie A. Dyrek

Council Present: Mayor Vincent Francia, Vice Mayor Gilbert Lopez, Council Members Kim Brennan, Ernie Bunch, Dick Esser, Thomas McGuire and Grace Meeth

Council Absent: None

Staff Present:	Town Manager	Usama Abujbarah
	Town Clerk	Carrie A. Dyrek
	Director of Planning	Ian Cordwell
	Senior Planner	Larry Sahr
	Utilities Manager	Jessica Marlow
	Utility Technical Assistant	Dave Adams
	Town Attorney(s)	Gary Birnbaum and Cliff Mattice
	Town Marshal	Adam Stein

PLEDGE OF ALLEGIANCE Everyone stood and gave Pledge to the flag.

PUBLIC ANNOUNCEMENTS None

CALL TO THE PUBLIC

Jim Peirce, 35849 N. 61st St. Carefree talked about Stagecoach Pass Estates. He went through some of its history and stated that it is a mess; it looks like a dump.

Terry Smith, 39825 N. 26th Street stated that real estate signs had popped up on many homes and businesses. He doesn't want to lose the Town to "sameness" one business at a time. He would like the Mayor and Council to meet and fund a publicist to promote the Town's character and uniqueness.

Ralph Mozilo, 41201 N. School House Road spoke as Treasurer of the Cave Creek Film and Arts Festival; a 501(C)(3) non-profit organization. The Town funds \$60,000 each year. He asked Council to agendaize Council Policy #42 to amend the policy to add their organization to the list of Community Contracted Services. He will make a written request to the Mayor.

Joe Dano showed his support for the Town.

REPORTS

Lopez still thinks there is too much material here. He is proud of the Council and everybody seems to have gone through this and understands all of it. He is reluctant to accept something that he doesn't understand. There are 118 pages, we were handed this sometime around Tuesday and maybe if you don't pick up your packet right then you cut it down to 3 or 4 days over the weekend and he would like to have more time to read through it more carefully and understand and digest it and be able to ask pertinent questions. He doesn't feel he is able to do that.

Esser asked for clarification. The current Ordinances in the Guidelines are identical?

Cordwell responded that there are many parts that are identical.

Esser asked if at a later date, we change the Ordinances will it change the Guidelines. **Cordwell** responded yes, after the Ordinance is changed. Any change will go through the normal process.

M/C 5-2 by roll call vote with Lopez and Meeth voting nay.

Council recessed at 9:41 p.m.

Council reconvened at 9:53 p.m.

6. COUNCIL DISCUSSION AND ACTION TO RENEW THE CONTRACT WITH THE TOWN MANAGER.

Birnbaum stated that this is discussion for renewal of the Town Manager's contract that was entered into in 2006.

Town Manager had nothing to add.

COUNCIL QUESTIONS

Lopez had a statement to make so people can understand where the questions are coming from. He addressed that the Town Manager ensures that the Town maintains the highest possible standards of public service. Regarding the Neary Tank Construction, the Town approved the construction of a 1.2 million gallon water tank, which encroached significantly on someone else's property without legal authority or ownership. Will you explain how this took place? How did we construct the water tank and encroach on someone else's property without their permission and without legal ownership.

Abujbarah responded that this had been explained before several times and if you want the details **Marlow** will give more details.

Lopez responded that he wanted the answers from the Town Manager and he did not want technical answers, just general information as to how you perceive that it's legal for the Town to build a huge structure on someone else's property without ownership and without any authority to do so, and without it coming to Council.

Abujbarah stated he is here to discuss the contract. If the Vice Mayor wishes to discuss the Neary Tank site I think this is an issue that we need to discuss in a future agenda, but here we are

not discussing the Neary Tank. If you want to go over the legalities of the Neary Tank site and the sequence of events and what is and what isn't correct we need to agenda an item for that.

Lopez argued that **Abujbarah's** performance is germane to a renewal of the contract and asked if that is what the Manager was suggesting. **Abujbarah** stated that **Lopez** is misunderstanding his answer. His performance is germane to my contract, for sure, but you are asking if the construction of the Neary Tank site was legal. This is completely a different issue and we should discuss it if you like in details but the question is about the performance. The Neary Tank was constructed, the Council approved the construction of the tank, and the Council allowed the construction of it and Council approved that.

Lopez continued by saying you are saying that the Town Council approved the construction of the Neary Tank on property we didn't own? **Abujbarah** responded that we must be careful of what we say here exactly. I'm saying that the Council approved the construction of the Neary Tank on August 20, 2007. When the Council approved the construction of the Neary Tank it was clear that the property adjacent to the tank was acquired by a new property owner. And we talked to him so if that is the question; the answer is "yes."

Lopez asked if simply talking to the property owner gives the Town authority to construct that Tank on his property. **Abujbarah** said he answer is "yes." **Lopez** said that's amazing. **Abujbarah** said yes.

Lopez asked for clarification from legal on that. How we can construct something on somebody's land without any authority, without it coming to the Council and the public and understanding that we are doing this and for discussion and approval. He said he was dumbfounded.

Birnbaum responded that there is a fine line in a contract situation and especially when it comes to personnel issues. It is even more difficult to delineate that line between what is appropriate under what we have agendized and what isn't appropriate. He is not saying **Lopez's** questions are inappropriate, but he is saying that we have to be very careful about trying to limit the discussion to what is reasonably related to the Manager's performance related to the contract vs. getting into substantive and procedural issues related to other items that are not agendized. In response to the question **Birnbaum** stated that he didn't think any discussion so far that has occurred is inappropriate, he just thinks the further we get into discussions about particular incidents, matters, whatever that relate getting deeper into those types of facts or procedures and reviewing that kind of matter that moves further in the spectrum away from what is related to the performance of the Manager under the contract. There is a spectrum between what is appropriate for discussion in renewal of the contract and that's the Manager's performance. The more we get into details of individual matters or incidents, was the tank constructed, was a truck ordered, the more we get into those specifics we could be deviating from what is agendized. **Birnbaum** stated he was not prepared to give a rundown on all the different procedures and factual incidents that occurred with a particular tank site. He can't do that right now.

Lopez stated that in that case he felt this item should be continued until we can do an evaluation before we approve a contract. Because how can you approve a contract without evaluating performance?

M/Lopez, S/Brennan to continue this item to a date certain to give time to agendize this correctly so that we can evaluate the performance before we consider renewal of a contract.

M/F 4-3 by roll call vote with McGuire, Esser, Bunch and Francia voting nay.

Francia stated that **Lopez** still had the floor to which he responded that he was speechless.

Esser directed his question to the Town Attorney and asked in his view to clarify for him the nature of a performance evaluation and what you can and can't discuss. You've just indicated that the Vice Mayor had gone far afield with his questions about a specific event and we evaluate this man only every two years. So how do we do that? Do we give a grade, or do we say he has achieved results expected?

Birnbaum responded that there is debate amongst communities in the Valley on how to evaluate a Town Manager. He isn't aware of how it's done in every community. Some have evaluation forms for Council to fill out, others have Executive Session discussions, and there are different ways to handle it. So there isn't one particular way to handle it. Quite frankly the contract between the Town and the Manager does have a provision in it that allows for an evaluation process that can occur, believe the reference is in March, so that does contemplate evaluation prior to the contract being at the end of its term. So is there a definite answer to give as to what you can and can't ask? No, there isn't and there are different ways to evaluate but all he is trying to say that as the Council gets into discussions and we have already had one previous discussion tonight about Open Meeting agenda issues so that we are sensitive to those as we should be. It is harder to feel comfortable that we are staying within an Agenda item when we are not in a purely evaluation context. We've agendized a contract. He believes there is some latitude to get into different matters in trying to relate to the performance of the Manager related to those matters but as we get into more details, it removes us from the performance of the Manager and get into the chance that we have now walked away further from what is agendized.

Esser stated the reason he voted no on the motion to continue is that his contract technically expired on March 31st. So the man is working without a contract. He would like to resolve it this evening. **Birnbaum** said he understood.

Francia stated that he felt there was a simplicity that is required and being asked of Council that's in our Agendas. It is saying what action is needed by Council and it's a motion to renew the contract with the Town Manager. It can't be any more simple than that.

PUBLIC COMMENTS

Charles Spitzer, 6836 E. Continental stated that he could not support a contract renewal for the Town Manager for numerous reasons. During the Neary Tank building the Town stated that he had obtained verbal agreement with the adjacent land owner for temporary use of his private property during construction. It's a violation of Section 107.12 - The Uniform Standard Specifications for Public Works Construction published by MAG to not obtain temporary construction easements accepting liability on behalf of the Town. This tank was built partially upon adjacent private property. The Town Manager knew it and approved of this action for more than 6 months prior to the Town's eventual 1.2 million dollar non-budgeted land purchase.

The purchase of this land was brought before Town Council without outside appraisal. This violation of A.R.S. 41-79102 resulted in a windfall profit for the land owner at Town and taxpayer expense. The Town Council approved the Master Work Plan in 2007 and since then there have been three newer versions dated July 2007, Feb. and July 2008 produced under the aegis of the Town Manager. Earlier tonight the procedure for acceptance of these different versions was presented. Those steps on that power point slide were not followed either. All three of those different plans were not reviewed by Town Council and were not reviewed by the Water Board.

During the building of the Rockaway Hills Tank numerous promises by Town Manager and Staff were made to the neighborhood as to Tank appearance landscaping, berming heights and local water pressure. These promises were not kept.

Over the past two years the Town Manager has either caused or approved violations of A.R.S. Revised Statutes and is in violation of Section 2.2 is current contract and Town Code Section 31.25, Section I states that he must not do so. By approving his contract tonight, the Town Council is condoning this behavior as accepting future similar behavior. The Town Manager must take responsibility for all of these decisions and promises made by him and his Staff. He has failed to do so. Town Council must hold him accountable for these failings and must indicate by their vote that the ends do not justify the means.

Judy Bruce on behalf of **Carole Perry** (absent), 7162 E. Stevens Road stated she was here as President of the Film and Arts Festival and on behalf of Carole Perry and other members of her Board and urged Council to renew **Usama's** contract. Without him and his forward thinking and courage there would never have been a Cave Creek Film and Arts Festival.

Jim Bruce, 7162 E. Stevens Road stated he hadn't been in Cave Creek as long as some of the people who were here when **Abujbarah** was hired so he doesn't know all the politics when hiring occurred, so he can only speak to the past six years that he has lived in the Town. The first year he met **Abujbarah** he also met the Mayor and a couple Council people who came to a neighborhood meeting at Stage Coach Village. He had a quick introduction into local government, Planning and Zoning and all sorts of things. He was amazed at that time that although the Town Manager and the Mayor and some of the Town Council didn't seem to be in total agreement with him that they had the time to come to his home and listen to our ideas and thoughts concerning what that project should be.

Since that time while living here the Water Company has been purchased and it appears that we made great strides in solving our water problems. We have a water treatment plant being constructed, we're in the process of annexing more open space to enjoy, one of the reasons they moved to Cave Creek. We're looking in the future to better fire protection, tax revenues, commercial properties in some of the annexed land, and all of that will help the citizens. And don't forget the Film and Art Festival.

Probably most importantly is from my experience on Planning and Zoning he found we had the hardest working, loyal, and most professional Staff of any Town that he has seen. All of the above would not have occurred if **Abujbarah** were not the Town Manager. A very good friend has recently said that any decisions that occur concerning the Town are very easy to make. At

property here since the late 80's, as well as living here. If you don't renew his contract you are making a mistake, not just for him, but for yourself. He is the reason you are successful. Do it.

Bob Williams, 36190 N. Creek View Lane talked about working with **Abujbarah** as a volunteer from time to time about 7 years on various issues...water, waste water, Carefree Highway etc. and he knows the man very well. He described the Town Manager that he knows is brutally honest, perhaps too brutal sometimes and he thinks that might make some people uncomfortable. He's professional, responsible, and decisive in all his activities, not always tactful but always there. He's highly motivated, a self starter who obviously you have to hold back once in awhile as opposed to a bureaucrat who has to be urged to get anything at done. He's a sound leader and manager, his staff performance proven over the last nine years. **Mohr** is right; he is totally dedicated to the Town as opposed to those who are principally dedicated to themselves and have their own agenda. He doesn't always agree with **Abujbarah's** decisions but we can disagree and move on. He's made mistake but who in this room hasn't? Only problem is that his are more visible and that is the only difference. He is exactly the kind of person, the high performance organizations want in every position. He repeated those words and asked, "So what is the problem here?" He believes problems are weak managers, weak leaders, and those who never manage anything always have trouble dealing with a high energy, self-starting individual. Weak leaders and managers always prefer a garden variety bureaucrat who they can manipulate and micro-manage to accomplish their own agenda. He gave his definition of a bureaucrat. A bureaucrat is someone who believes that process is a product, they are going to grind everything forever, they are going to keep it in the churn forever and they will make sure that nothing meaningful ever comes out the other end. A bureaucrat will never take a risk and rarely makes a decision. Can you image where this Town would be water-wise if we had a bureaucrat sitting here? We would die of thirst and the Town would burn down before you had any water. Cave Creek needs **Abujbarah** as Town Manager, not some bureaucrat who can be micro-managed and manipulated for personal agendas. He thinks if we lose **Abujbarah** we will lose the Staff and the Town will be set back at least five years and leave a new Council with the almost impossible task of trying to replace this very competent Town Manager, this very competent Staff with people at your current salaries. He urged Council to enthusiastically renew **Abujbarah's** contract

Steve Lamar, 5028 E. Desert Hills Drive stated that **Abujbarah** is his friend and he rarely agrees with him but he is a friend of mine because he is a good person. He's a friend of mine because he is intellectual and has integrity. He's a friend of mine because in a small part, like me, but in a big part, like him, he has dedicated himself to this Town and that is foremost. **Lamar** stated that he was not here talking for **Abujbarah** because he will be snatched up in heartbeat if you don't extend this contract. **Lamar** is here for the Town of Cave Creek and the citizens here who have seen stability and have seen the person execute the vision and the risk you all need to take. You all were willing to take the risk and buy that Water Company and it wasn't without a whole lot of debate. You all were willing to risk, what at the time many thought was silly, a preservation annexation that has turned out to be a point of light nationally. And **Abujbarah** is the person who has executed that policy and decision. The truth is the real rub is a natural and understandable tension between folks on the Council who are the policy setters and a Town Manager who is charged with executing that policy, who is a hard charging, self starting, and visionary man. And there should be a natural and healthy tension there because if you all weren't control freaks you wouldn't be doing this. Those of us who volunteer and worked with and around **Abujbarah** will have personal issues but this Town and collectively

this Council has recognized that this is not a hobby anymore, that running this Town is a serious business and we are in very unfriendly times for municipal vote and municipal governments. There's no time left for micro-managing, for petty agendas, there is just no time left for it. There has to be healthy give and take between execution and the policy and he suggested that those folks on the Council who are willing to see that as this Town is dynamic and grows are the ones that are going to be rewarded with the kind of reward you were going to get at the voting place in the history of this Town because you have a Manager who can execute the visions and the risks you are willing to take if you will just accept it and work together.

M/McGuire, S/Bunch moved to renew the contract with the Town Manager

McGuire stated that many astute citizens have spoken so much on both sides and the side he comes down is clearly for strong, creative management.

Bunch stated he had been in business for about 32 years and he never got rid of anybody because he didn't agree with him, he got rid of him because he didn't produce. Bunch stated that he evaluates the Manager on a monthly basis. Every time he sees something that he has done, achieved, or something that somebody didn't like and look at the outcome of it, maybe they didn't like it but overall it was good for the Town. He can't imagine allowing personality conflicts to make a decision on something as important as leadership of this Town.

Meeth stated that unlike the the Town Manager's ardent supporters I didn't call anyone and ask them to be here tonight...not a person because this is not a popularity contest. This is about performance. She talked to the Town Manager ten years ago and we were extremely good friends and we were extremely good friends about the first five years that he was Town Manager. When it came that I couldn't get answers from him I didn't like that and it bothered me. When I would be in his office and as soon as a citizen left, according to the Town Manager, every citizen is either a NIMBY or it's not in their back yard or they don't live in Town. The disregard for our citizens and the fact that they have inquiries and they care about things is proven with this Town Manager. And that's one of the things that did our friendship in.

The other things were all process, i.e., she and other Council members have repeatedly in public and in private, asked for financial accounting water and waste water, particularly on water. We get loans to approve for 6,620,000; 5,500,000, and we have no clue how much of the project is done, how much still needs to be done, what we are going to need in the future so when we were about \$35 or \$40 million into it we kind of got a clue. So we started saying, "Next time we get a loan bring us accounting of where we are, because we kind of want to know." It never comes and she has asked many times for it and she has asked the Mayor and the Town Manager. When you are on the Council you get the information **Abujbarah** wants to give you, when and if he wants to get it to you.

When I was a brand new Council person a couple of very knowledgeable people in our community took **Dean Brewer** and me out and explained to us what the Town Manager's role was and what the Councilpersons role was. That was probably pretty good because at the time I had stepped into the Town Manager's arena. Since then she has been to numerous workshops on this and on the Open Meeting Law, etc. You've got the Town Manager here and the Council here and the only place they touch is to hand off information I have inquired about issues and when he doesn't want to give me answers he calls me a micromanager. That's kind of hard to do

to me if you don't communicate with that person, but somehow I micromanage. If a citizen wants to know something but he doesn't want to tell them then they are a NIMBY and they don't count. This is very bad practice and Abujbarah and I have talked about this in private before.

Regarding this whole Water Master Plan thing I personally think it is a travesty that what we approved last April was 35 pages, a Water Master Plan. What is at the County being used for approvals and denials today is about yea thick. And this isn't just colored pages he threw in. He threw in Gold Mountain. Now people in the Town talked exclusively about if we want Continental Mountain in our Town, in our water service area. Her impression was that the answer was no. But did any of the things in this new Plan, which doesn't even resemble the Plan that Council approved, come in the public process? Did they go to the Water Advisory Board? No. Did they go to the Commission? No. Did they go to the Council? No. Essentially, the Council wrote a paragraph, handed it to the Town Manager, and he wrote a book and published it. As a citizen, she would think everyone would have a problem with that. If you had a clue of what is being used as a policy document right now that has never been in this Council Chambers, before a Board Commission, or this Council, you would be appalled. These are my problems. This is not called micromanaging, this is called, "We want answers and we want to be part of the process."

As to this whole Neary Tank debacle, she went in and sat down with him and said, "This is your one chance to say Thank God, I'm not a Councilperson." You could have said, "Look, the tank is too big for the piece of property." It's not my decision; I don't have to worry about it. Your Town Councilperson figured it out, do you want it bigger, do you want it wider, what do you want to do? She asked him why he wasn't putting it on Councils' shoulders where it should have been because it was a policy decision, why did he decide to go ahead and just encroach on a piece of property. She didn't get an answer. So what's really happened since about 10 years ago when she fought to get this man this job, and now? Yes, Town Hall is much different and yes, this Town has gone forward and I'll say what they did with the Water Company is absolutely unbelievable but it happened in the face of the process, in the face of everything that should be happening in this Town that is open government, and it's just too laughable that there would be an item on here tonight on Open Government about a letter she put in a box if you knew the things that are going on in here. All she wants is answers, all she wants to know is, "Are we balancing?" "How much do we have to build?" But apparently as a Councilmember, she is not entitled to that and neither is the rest of the Council. That means you are not entitled to it. She has taken time to go back over two years worth of Minutes and can tell you the Town has borrowed over 65 million dollars for the Water Company. That's not bad, she voted for the 50 million and she knows things have gone up since they voted for it. What she wants to know, as a citizen, not a Councilperson, is "How much more do we need?" "Where can we cut costs?" "What is phasing of things?" But we're not going to get that information and when she doesn't get information that we've asked for repeatedly, she gets suspicious.

My other point about this Water Master Plan thing is that she doesn't think what we did was perfectly legal, but she's not a lawyer. Her problem with it is "Was it right?" OK you can walk a fine line and how much time did Staff spend telling us tonight how they had no obligations to put in the process. That's fine if legally they had no obligation. What was the right, ethical, and moral thing to do? To tell the people of Cave Creek this is your Water Master Plan which does not include Rockaway Hills, it has a tank at Spur Cross, it doesn't include an extension road to Cahava Springs, and it doesn't include an extension of Fleming Springs which is in direct

violation of our General Plan. The Water Master Plan should not conflict with the General Plan but I'm sure no one on this Council knows this because we haven't seen the Water Master Plan. Now to take a document that has never been through the public process and have approvals done on it is very wrong. And anybody who doesn't think that's wrong not only doesn't believe in process but has a little too much faith in one person. This is not about personalities, who does and does not like who. This is about doing the right thing with the correct process.

Esser stated that he had listened to what the people have said. He has been here for 21 years. In that 21 years he went through a series of Town Managers and a situation that almost embarrassed him. We made the headlines a lot as being the Town too tough to govern. But things got better. We're not perfect. **Abujbarah** and I had two conversations that were border-unprofessional. One was over the Neary Tank site. When it was over we both apologized. He heard folks tonight talk about what this Town was like and how difficult it was to get anything done, or in some cases it was too damn easy and over the last 8 years he has come to know **Abujbarah** and his staff, who in his opinion are as good as you are going to get. He remembers when **Councilwoman Meeth** was delighted because we bought the Water Company, because we bought Desert Hills. One of her comments was, "Well I guess we're now in the water business." I didn't think so, was scared to death and even asked our Staff if they knew what they were getting in for; did they really understand the mountain they had to climb. Well folks, they climbed it. So while **Esser** still has concerns and needs clarification as to policy and implementation, he has chosen to support the Town Manager because he really doesn't think the Town can do any better. One thing **Esser** knows for sure is that this is the wrong time to make a change, so he is in favor of supporting an extension on his contract.

Lopez stated that he wasn't able to ask questions because that what the process was and the Attorney said it wasn't agendaized and it will take a little while, if you will allow me. I will turn that information into statements rather than questions because it's the only way he can let you know why I think it is important to me and the community. He has an agenda, he had an agenda when he came here 9 years ago and it was to serve the Town honorably, honest, open, with integrity. One of my campaign statements was "Integrity is not a word but a way of life." And you folks honored me 5 times by electing me and 3 of those times, with the most votes. Maybe you were racial-profiling and that's how he ended up like that. But that's his agenda and trying to get ahead here was what he was trying to get at with the Neary Tank. So there won't be questions – they will be statements.

- ✓ I said we built this water tank by encroaching on a piece of property. That is, in his view, illegal and he thinks that he cannot perceive any attorney would tell you that it's OK. I don't know how it took place. You didn't have permission from the Town Council and if you didn't need it then that means that we can obligate the Town and the Council to something that is either going to cost the Town a lot of money or we're going to get sued over it. And neither one of those never took place.
- ✓ When I asked the Town Manager why he hadn't advised us he said, "I did." And he pulled out some Minutes from August of 2007 and what he had said at that time to advise the Council, the Town and the community, was that "The Neary Tank site was very important and it was important to measure from the outside because of the property size." And he maintained that the new owner of that property agreed to give the Town some additional property so we could have the size of tank we needed. Well that gift turned into 1.2 million dollars out of our coffers.

- ✓ One of his questions is, the Town Attorney, our attorneys, we pay them a lot of money to keep us out of legal problems and he feels that certainly the Town Attorney knew what was going on. He would have thought that they would have had a conversation with the Town Manager as to its legality and if it wasn't legal they were obligated to come to the Council and let us know. That didn't happen so Lopez has a tough time understanding that encroaching on someone's property and building a huge structure without permission and without a written agreement is legal. That's a stretch.
- ✓ It wasn't in the budget. Was there an emergency? Perhaps but what created it?
- ✓ The Cave Creel Water is another issue. We were in a position some years back to acquire the Cave Creek Water Company, probably for something less than 10 million dollars. That turned into a 20 million dollar purchase with Global instead of Cave Creek. As we know we experienced massive water outages last summer. He kept wondering why those things occurred. Cave Creek Water Company operated that thing for 25-30 years, Global for a couple, he's been in Cave Creek for 12 years and he can count on one hand the number of outages that he even remembers and none were more than a couple hours. But when the Town touched that Water Company everything went haywire. He kept asking, "What did we do to cause that?" And he kept hearing, "Nothing. Everything is just the way it was." He doesn't think that's true because we don't get 160 psi water line that bursts from pressure because you didn't do anything to it. Managing that Water Company required knowledge of the system and personnel that knew how to operate it and we didn't have any of that and there's a reason for it. So was it a lack of planning? Was it inexperience of the system? Was it because of old plumbing? But it operated OK, not great, OK. Was it lack of storage? Lack of cooperation from Global? Or what? And whatever those reasons were the decisions that were made to take over that Water Company without any kind of transition period that allowed the Town to allow the people that knew this system to operate it, even if we had to eat a little 'crow' in the process, it would have certainly helped the community by not having those massive outages.
- ✓ I have two pieces of correspondence. One was an inquiry from one of our voters about Global when the Town accusing Global of deliberating taking away critical records and documents and that's why we couldn't find pumps, shutoffs, sensors, etc. that Global had not given these to us. He thought our Town Attorneys ensured that something was written in the contract.
- ✓ When the Town purchased the Water Company it wasn't exactly a friendly takeover. This is quoting one of the Staff members. *"When Global Water took all their records with them we had no maps to find water lines, we had no maintenance records to show where the problems are. This is one of the reasons why Cave Creek has so many problems since Cave Creek took over the Water Company."* Residences and businesses have been out of water for 11 times in six months since we took over from Global. And indeed if Global had those maps, please return them to us. Here was the answer from the President of Global Water, Mr. Hill. *"Thank you for the inquiry. I am shocked to have learned that the statements at the Town Cave meeting. I have never met this person and would suggest that none of my staff has ever met them either."* The Town insisted on no-turnover of the operation and that means when we wanted Global out and we were going to take over we had Arizona American maintain or run the system they did not know the system, they reduced the staff when they came in to run the Water Company and it turned into a disaster. If someone sitting here tells me that the massive outage that happened last summer is inconsequential, so be it. But there are many folks that don't believe it was.

- ✓ The Town and their contractors were informed on numerous occasions that Global had boxes of records, bios, maps, and system information available to them at their Deer Valley office where they still sit. This was written in October of 07. He doesn't know if they are still there but will try to find out. Global has been storing boxes of information since that acquisition but we were told by Staff and principally by the Town Manager that Global just wouldn't give us the records.

So there are two things that could have been better and if the material was available we should have gone to get it. If they suggested that we should have a different transition period, we were neophytes and should have listened to somebody. These comments don't just come from **Trevor Hill**. **Lopez** has talked around the Town with those who know water and systems and who have said that the Town was not prepared to take over this Water Company and they didn't do anything that would solve that problem. They just jumped into it. We jumped into it and it was a disaster, people didn't know how to run it and that's understandable. It's a cranky old system with so many goodies in it that you don't know where they're at or how to run it and they just created lots of problems. If that is OK with everybody? Who am I to say that it should have been different?

We were briefed by the Town Manager about the Desert Hills Water Company. It was 2.5 million dollars, 1700+ customers making it half a million dollars clear a year. That's a smoking deal. We are now apparently according to the Town Manager's numbers, giving them 500,000 gallons daily. **Lopez** would like to know what the profit margin is now and whether giving them 500,000 gallons daily is even legal. He will try to pursue that in time.

Lopez thinks the staff has done a magnificent job in getting the equipment and water system upgrades to the point that they have but there was a claim from the Town Manager that we had an emergency and that was why we had to build that Neary Tank as quickly as we did. The emergency was caused by the Town itself. But what's the point of arguing.

There are some other things that go in this Town. There are many folks that used to be volunteers and supporters of the Town and they are really supportive, but they won't come to Town anymore for various reasons. First, they're disenfranchised, not listened to, and if they talk too loud they end up on the list. **Councilwoman Meeth** is on the list and **Lopez** will be after tonight. This list comes about when the Town Manager in his office during times when he meets with members or a member of the Political Action Committee and discusses who might be their next target and it is usually people on the Council or people in the community that make too much noise so that they can mischaracterize them, impugn their integrity and just make them not want to come here anymore.

Mayor Francia made a comment and **Lopez** responded that the truth hurts. Absolutely, and if it wasn't I wouldn't be here telling about it but if you want to keep ignoring it or want to ignore it have at it. But that's what this Town is turning into. If you don't believe me that's your loss, that's the Town's loss. **Lopez** stated that he had more to share if you are interested in it.

Brennan stated she appreciated everything that had been said tonight. She appreciates all the praise, the recognition, all the accomplishments that have been named. She wanted to point out that the concerns that have been voiced and ridiculed are also valid. Nobody elected us to be a rubber stamp community. We were supposed to think for ourselves. We were supposed to

represent this Town, to be able to create policy, and lead without being afraid of being criticized or marginalized. We expect a certain amount of dart throwing and punches to come our way when we stand here and do this. But tonight is like a circus, an orchestrated circus where nobody should speak out against anything. We should just 7/0 say, "Yahoo" when there are concerns. I love **Abujbarah** and she respects him to no end, she thinks he is magnificent, incredibly intelligent and insightful. He tends to act alone instead of seeking out counsel, instead of his to bring on somebody from the old water company early. Those kinds of things lead to situations don't feel good, don't look good. She is not saying we should throw out the Town Manager but we should have a review process and the ability to bring up concerns, issues, things we've heard that need to be addressed, and we really should have an open forum to do that. Tonight isn't the time to do that. She would have much preferred an Executive Session and the Council would ask the questions and then come before the public. The culture of name-calling and ridicule is not right and she would like to see that end, especially in this room and on a professional level and all the dealings with each other. She would really appreciate that and she will support the Town Manager tonight but she does want a professional review with this Council where can sit down and really talk without worrying about being micromanagers or agendas. She is trying to do her job as she understands it. Uphold the democratic process, be fair and honest, that's what she wants.

McGuire stated that he has had many sessions with **Abujbarah**. He has sought answers and sometimes it takes awhile for him to understand those answers. He is very pleased.

Francia commented that half the people are asleep and half are trying to go to sleep. Council needs to move forward on the Agenda. He will give it to the press but not tonight. Twenty citizens spoke this evening and he doesn't look at any of them as ardent supporters of anybody. You are citizens of this community and you spoke from your heart no matter which way. You're not some sort of pawns out there that show up because the Town Manager calls you and begs you to speak on his behalf. This situation has been going on for awhile. He has come to this conclusion: The Buddha once said that he had encountered some people along the road he could not help. **Francia** said he was not the Buddha and will not be him in this lifetime. He is a Mayor of a Town and he makes mistakes daily. But he does know there is nothing he can say that will change the minds of **Councilwoman Meeth** or **Vice Mayor Lopez** and he doesn't think there is anything that **Abujbarah** could say to them. It is the Mayor's hope that meaningful communication will take place and perhaps some sort of understanding can be reached because he doesn't feel anyone is arguing that the man's heart is not in the right place for this community. The argument seems to be that while he is acting in the best interest of the community he makes decisions that you don't agree with.

M/C 5-2 by roll call vote with Meeth and Lopez voting nay.

7. COUNCIL DISCUSSION AND ACTION TO APPROVE A DROUGHT PREPAREDNESS PLAN FOR THE TOWN OF CAVE CREEK.

Because of the lateness of the hour Mayor **Francia** asked that this item be continued.

M/Bunch, S/Esser to continue Item #7 to September 15, 2008. M/C 7-0 by voice vote.

From: Anna Marsolo <annamarsolo@yahoo.com>
 To: terryizerkle@aol.com
 Subject: ~~ross's guest editorial 2005 on water buyout~~
 Date: Tue Jan 20 2009 9:35 am

--- On Tue, 1/23/07, Anna Marsolo <annamarsolo@yahoo.com> wrote:

From: Anna Marsolo <annamarsolo@yahoo.com>
 Subject: ross's guest editorial 2005
 To: annamarsolo@yahoo.com
 Date: Tuesday, January 23, 2007, 12:24 PM

The glitzy ads and mailers claim that the town will spend \$30 million or more in the purchase of the Cave Creek Water Company (CCWC). Mr. Phelps and Global know this to be a fallacious figure. The purchase price of the CCWC has been estimated to be \$6.5 million. This figure has been a line item in the town's budget for the past three years and was determined by a market value assessment. This process was necessary because the CCWC refused to allow the town to examine their books or their plant and equipment. However, in filing for eminent domain, Cave Creek will pay what Global paid plus a 10 to 15 percent profit. The Corporation Commission has just announced that Global acquired the CCWC for \$2.4 million (if the courts are gracious, the price will be \$2.8 million); this is a far cry from the "liar, liar pants on fire" figure of \$30 million.

By opposing Proposition 402, Mr. Phelps is attempt-

ing to force the town to spend more of the citizens' money than is necessary. He describes the town as a "beast" and says if he can injure the town financially he can "starve the beast." Quite an attitude for a former councilman and a citizen of the town. Why would he do this? Jealousy and spite are words that immediately come to mind. Why would he use foul language in official correspondence with the town? Immaturity is the only explanation. None of these attributes are desirable in a leader and certainly not in a public official.

Why? Why? Why? Some people may feel this is a personal attack; it is not. It seems that Mr. Phelps enjoys being in the spotlight even when he is harming the town. But, he is not in charge; the voters are in charge. They have spoken once and will speak again no matter how much money Mr. Phelps and Global spend opposing Proposition 402. He and his power broker bosses cannot subvert our democratic system.

Vote Yes on Proposition 402.

Why? Why? Why?

Be a PS3 game guru.

Get your game face on with [the latest PS3 news and previews at Yahoo! Games.](#)

From: terryizerkle@aol.com
To: terryizerkle@aol.com
Subject: Fwd: Note to Carol Sowers
Date: Mon, Apr 7, 2008 10:35 am
Attachments: Carol_Sowers_itr.doc (31K)

-----Original Message-----

From: terryizerkle@aol.com
To: robert.leger@arizonarepublic.com; beth.duckett@arizonarepublic.com; jennifer.dokes@arizonarepublic.com
Cc: charlie.spitzer@stratus.com; mishepston@cox.net
Sent: Mon, 7 Apr 2008 10:35 am
Subject: Note to Carol Sowers

I was rummaging through my Cave Creek file when I came across a hard copy of the attached note I sent to Carol Sowers a little over a year ago. Fortunately I had kept it as a Word doc.

Given all the non-transparent activities engaged in by the Town over the past several months including the most recent land acquisition episode, this note now appears, unfortunately, to have been somewhat prophetic. Anyway, thought it was interesting and wanted to share it with you. For me it has particular relevance since the Town's most recent actions came to light so close to Open Government/Freedom of Governmental Information Week.

Incidentally, the Cave Creek Councilman who told me what appears on p.2 of the note was Tom McGuire.

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*Carol Sowers was a reporter for the
Scottsdale Republic.*

March 16, 2007

Hello Carol,

Please excuse the informality of this note. I want to provide you the back up information I used for my comments at the March 5 Cave Creek Town Council meeting when the Council approved the agreement to purchase the Cave Creek Water Company, which I supported verbally at the meeting and still do. Included is an analysis I prepared of the Cave Creek water system purchase based on a February 15, 2007 report titled "Cave Creek Water System Financial Analysis" prepared for the Town by CH2MHill. A copy of the February 15 CH2MHill report is enclosed as is an email dated February 23 from Tom McLean of CH2MHill to the Cave Creek Town Manager and Town Engineer regarding the status of the Cave Creek Water System Master Plan, which is in process of being prepared and currently does not exist. I'm also including a copy of a March 6 letter I sent to the Mayor and Town Council following the March 5 meeting.

Initially, it was not my intent to do anything with this material including my March 6 letter other than send it to the Town expressing lingering concerns I had related to the Water Company purchase. However, a conversation with one of the incumbent Cave Creek council members at the polls on Election Day caused me to rethink that position.

The council member in question approached me after I had voted and said he had received and read my letter which he considered lambasting the Council. I told him that was not my intent, but that I did want to be on record regarding what I considered to be legitimate concerns about the business model the Town was using to finance the purchase and operations of the system and about the acquisition process itself. I said it was my hope the Council would consider taking some corrective action. I explained to him that subsidizing the water company particularly the operating costs with General Fund tax money was not a sound business practice and that subsidizing non-resident customers, who comprise 25% of the total customer base, using the Town's General Fund tax revenues simply made no sense. I told him that while I appreciated the Town Manager meeting with me and providing me verbal information about the Town's business model and technical reasoning for purchasing the system, the process, in my opinion, was lacking overall transparency. The information a citizen could access as to why the Town was paying so much more for the system than was originally told the residents, the technical analyses that had been performed to determine the condition of the system, and the financial model being used to cover the acquisition and operations cost of the water system was in bits and pieces, disjointed, lacking consistency, often contradictory, in some instances non-existent, and simply not readily available to the public. I explained that governmental transparency and accountability are two hallmarks of the democratic process in the absence of which we don't have democracy. I said that in a democracy the government's business is the people's business and citizens have a right to be informed, in fact have a duty to become informed about important public policy issues and decisions, and that the government has the duty to provide all relevant information necessary for citizens to be fully informed.

His retort, and this is what really concerned me and caused me to rethink what to do with the letter I had written to the Town Council, was that the Town needed to be selective on the information it provided to the public because if the Town provided all the information it had on a given issue, the citizens may not agree with the Council's position and reasoning for making certain decisions. For him he said, determining what information to make available to the public is a political decision. He also said that the principle of governmental transparency is just a theoretical concept, that it is politics which determines what information to provide. He also said we don't have democracy in this country, we have capitalism (as though capitalism is a form of government) and there is no such thing as equality. Admittedly, I'm paraphrasing the conversation here, but this is pretty close to what was actually stated.

On Wednesday this week I sent him copies of the **Arizona Republic's** March 11 editorial titled "Let the sunshine in" and March 13 My Turn column by David Bodney titled "Property of the people."

I don't feel all the Cave Creek Council members believe as this particular member apparently does. However, the general lack of transparency involving the Water Company purchase was sufficient enough to cause me to express concern verbally to the Council at their March 5 meeting and again via my March 6 letter. Both of these events occurred prior to my conversation with this particular member. It was, however, this particular conversation that became the tipping point for sharing my letter with someone other than just the Council.

Feel free to share this letter and the enclosed materials with your editors. I'm really not asking that you do anything at this time, but you may want to file this letter and the enclosed material away for retrieval later. I have a feeling, which I hope turns out not to be accurate, that because of the way this is rolling out, this issue is not yet over.

Sincerely,

Tel: 480-518-6138

Email: TerryLZerkle@aol.com

APR 18, 2007 article pulled from Desert Advocate website

Friday, October 26, 2007

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Cave Creek e-mail flap raises questions

P&Z member Bob Moore asked to resign

by Brian DiTullio

CAVE CREEK – An inquiry of town council members by Mayor Vincent Francia could be construed as a violation of the state's Open Meeting Law, according to two media attorneys.

The questionable action of the mayor stems from an e-mail sent by Planning and Zoning commissioner Bob Moore to Sonoran News reporter Curtis Riggs on March 22. That e-mail detailed a Cave Creek staff meeting concerning streetscape improvements in the town core.

In the e-mail, Moore says the staff was "falling over themselves to 'fess up'" to problems with the project. "They want to get the message out to the public and merchants that they 'screwed up' (not my words) and are seeking forgiveness," states Moore.

Town Manager Usama Abujbarah then sent an e-mail to Moore on March 26 stating, "Although our staff meetings are not secret, we still need to conduct these meetings in a trustful and honest environment. Because of this inappropriate and misleading e-mail you are not invited to the budget meetings. You lack both trust and honesty so please don't attend our meetings any more."

Abujbarah told The Desert Advocate on April 16 he did not remember who forwarded Moore's e-mail to him and that he had already deleted it.

A copy of Moore's e-mail shows Riggs as the only recipient, and Moore confirmed Riggs was the only person he e-mailed.

According to Francia, he requested P&Z chair Bob Williams speak to Moore, as the town council had "lost confidence" in Moore. However, Moore says he was contacted by Williams on April 5 and at that time asked to quietly resign.

Upon being asked about Moore's e-mail, Francia said Moore took some quotes from the meeting out of context. "I don't understand why he did that. It did not seem appropriate to me," said the mayor, adding his agreement that the meetings are not private but that detailing a staff meeting to the press did not demonstrate "good common sense."

→ The mayor then said he contacted council members about the matter but "not to lobby, just to get a feeling" and stressed "no one asked for (Moore's) resignation."

"If Bob Williams asked for his resignation, he did so on his own," Francia stated. "I just asked him to speak with Moore on the issue."

Williams refused to discuss with The Desert Advocate his conversations with Moore and Francia, claiming those discussions were private.

→ Regardless of Francia's intentions, Arizona Newspapers Association attorney Dan Barr, of the firm Perkins, Coie, Brown and Bain, said Francia's contacting council members was "absolutely" a violation of Arizona's open meeting law. "It's taking action concerning a town officer. The whole purpose of the phone calls was to solicit an opinion."

Media attorney John Moody, with Miller, Lasota & Peters, agreed with Barr. "That sure sounds like a violation to me."

→ Upon inquiry, three of six council members—Kimberly Brennan, Ernie Bunch and Grace Meeth—confirmed they were in fact contacted by the mayor.

Brennan, who was present at the March 22 town staff meeting, said, "The way (the meeting) came across in Bob's e-mail wasn't nice," adding her belief that Moore put a negative spin on what she felt was "an open, honest conversation."

Councilman Gilbert Lopez declined to comment, but Bunch said: "Either you want to be an activist or you want to be part of the planning commission."

Not all council members were upset with the e-mail exchange.

"He's a public figure passing along information to a reporter, and now we want him to resign?" Meeth said. "Politics is perception, and it looks like we're punishing him for daring to run against us."

→ According to Councilman Dick Esser, "I was not involved in the decision," indicating he only found out about the resignation

request after the fact. However, Francia stated he did contact Esser, due to Esser's friendship with Moore.

Councilman Thomas McGuire also stated he was not contacted about the situation and had been out of town on vacation at the time.

Moore, who said he preferred not to comment further at present, was a candidate for town council in last month's election but was unsuccessful. The entire sitting council was returned by voters for another two years.

"It looks very vindictive on our part," said Meeth, adding there have been more egregious violations by town officials in the past that have not resulted in resignation requests.

Email The Reporter

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25 Easy Street PO Box 1380 | Carefree, AZ 85377
480.488.1204 | 480.488.6248 Fax

~~August 24, 2007~~

Honorable Vincent Francia, Mayor
and Members of Town Council
Town of Cave Creek
37622 N. Cave Creek Road
Cave Creek, AZ 85331

Re: Water System Integration; WIFA Loans

Dear Mayor Francia and Council Members:

~~Water System Integration~~

Did I hear correctly this past Monday evening at the Cave Creek Council Meeting that the Town is planning on integrating the Cave Creek Water System with the Desert Hills Water System? My notes of the meeting reflect this is what the Town's engineering consultant said at the meeting.

In conversation I had with the Town Manager this past March prior to the Town's purchase of the Cave Creek Water Company, he told me the two systems were going to be operated independent of one another. This included acquisition, system improvements, operations, and operations costs. Each system was to pay its own way 100% and remain independent of the other.

If the systems are now to be "integrated" as stated at the meeting, will the Desert Hills company be making a recurring, on-going financial contribution to the Cave Creek Water Company to help pay for and offset the capital improvement and operations costs of the Cave Creek system from which the Desert Hills customers will benefit? The reason this is important, as I pointed out in previous correspondence to you at the time the Town purchased the CC water company, is because the Town has chosen to subsidize the purchase, improvements, and operations of its water system with General Fund tax revenues. Because there is currently no rate differentiation for charges to non Cave Creek resident customers for water service from what Cave Creek residents pay, the Town not only subsidizes its resident customers, it subsidizes non resident customers as well using Cave Creek tax revenues. Currently non resident customers comprise approximately 25% of the Cave Creek Water Company's customer base, according to the Town's numbers. Subsidizing these non resident Cave Creek customers using General Fund tax revenue is in and of itself an egregious practice.

However, unless the Town factors in the value of the benefit to Desert Hills water customers and charges that system some reasonable amount to help pay for and offset costs to the Cave Creek water system, the effect will be to extend Cave Creek's General Fund subsidy to Desert Hills water system customers as well. This would be a totally irrational and irresponsible addition to an already flawed financial practice and policy.

So again I ask, what is the Town's plan with respect to the subsidy matter? Do the Mayor and Council intend to subsidize Desert Hills water system customers in the same manner as they are subsidizing Carefree and other non Cave Creek resident water customers presently?

WIFA Loans

In 2005 Town residents approved borrowing up to \$50.0 million from the Water and Infrastructure Finance Authority of Arizona to be used for acquiring the Cave Creek Water Company and for wastewater system improvements.

By the most recent accounting as reported in an August 22 **Desert Advocate** article, the WIFA loans actually applied for by the Town at this time total approximately \$65.9 million. Is this a correct amount? If so, this exceeds by \$15.9 million the authority granted by a vote of the Town residents. By what authority or change in the law did the Mayor and Town Council exceed the \$50.0 million voted by Town residents? My personal experience with municipal bond elections is that a city can not exceed the bond borrowing authority granted by residents at an election. Assuming the Town has the authority, when did the Town plan on informing Town residents that costs had risen this much? Town Hall sources tell me there is more yet to come. Is this true? If so, how much more? As a sidebar, cost increases of this magnitude with more still yet to come carry the potential to force the Mayor and Town Council to consider water rate increases in the near future that would make the current 24% water rate hike proposal in Carefree seem like a drop in the bucket, no pun intended. Where is the money coming from to repay these loans? What's the repayment schedule? What are the assumptions underpinning the repayment schedule? What has been done to test and verify these assumptions? What is the back up plan if these financial assumptions don't hold true? What mechanism does the Town have in place for monitoring assumptions, making course corrections, and tracking revenue against projections? Where can I obtain the Town's written plan in which all of this is pulled together and spelled out? Is there a written plan? I'd really like to see and review it, and am requesting the opportunity to do so.

I respectfully request a reply to the questions raised in this letter.

Sincerely,

Terry Zerkle
41200 N. Echo Canyon Drive
Cave Creek, AZ 85331
Tel: 480-518-6138
E-mail: TerryLZerkle@aol.com

c. Usama Abujbarah, Town Manager
Carrie Dyrek, Town Clerk

Stephen Owens, Chair, Water and Infrastructure Finance Authority of Arizona
Judy Navarette, Executive Director, Water and Infrastructure Finance Authority
Debra K. Davenport, Arizona Auditor General
Tom Seemeyer, Editor, The Desert Advocate
Don Sorchych, Publisher & Editor, Sonoran News
Phil Boas, Editorial Page Editor, Arizona Republic
Jim Gold, Editor, Scottsdale Republic
Brian DiTullio, Reporter, The Desert Advocate
Beth Duckett, Reporter, Arizona Republic

From: Spitzer, Charlie <Charlie.Spitzer@stratus.com>

To: Vincent Francia <vfrancia@tur Paradise.net>; Dick Esser <essergulch@msn.com>; Ernie Bunch <ebb3@prodigy.net>; Gilbert Lopez <glopezcasa@msn.com>; Grace Meeth (Business Fax) <IMCEAFAX-Grace+20Meeth+40+2B1+20+28480+29+20488-8271@stratus.com>; Kim Brennan <kimberlybrennan@msn.com>; Tom McGuire <cavecreekdigital@msn.com>

Subject: Friday Massacre

Date: Tue, Nov 4, 2008 12:58 pm

Greetings

As recently as last week, the Town Manager has been quoted in the Scottsdale Republic as stating that town finances are in good shape for this year. This has been orally stated in multiple Town Council meetings over the past months. The town is now faced with the actions of last Friday.

<http://sonorannews.com/archives/2008/081029/FrntPgHardTimes.html>

For over a year in multiple Call To Public requests, I have been asking for public accounting of town financial data, disseminated on a monthly or at least quarterly basis. This would match the public accounting that other local cities routinely provide to their citizens.

When will this be done? Have you been provided this information in private meetings?

If so, why hasn't it been made public? If so, did you not see this coming and attempt to control costs, or were you misled by Town staff as apparently the newspaper was two weeks ago?

If not, why has it not been provided to either you or the public? Why haven't the requests by the Town Council for this data at public meetings been fulfilled?

You, as the Town Council, have a fiduciary responsibility for managing town finances. Since this aspect drives almost every decision you make as Town Council, it becomes one of the most important tasks you undertake as a Councilperson. Failure in this aspect lets every town citizen and business down.

Regards,
Charles Spitzer
Cave Creek, AZ



G.M. CLEMENT

& ASSOCIATES, INC.

December 17, 2008

Via Facsimile and US Mail

Mayor Vincent Francia
Town of Cave Creek
37622 North Cave Creek Road
Cave Creek, Arizona 85331

Dear Mayor Francia,

Before I was a Town resident, I spent five years working for the preservation of this Town and acquisition of Spur Cross Ranch, all as a Board Director and volunteer with the Friends of Spur Cross. As you recall it was my research that identified the proposed Spur Cross Ranch development lacked the necessary water rights, which was pivotal to prevention of the development proceeding. More recently, my firm performed under contract the annual Carefree Sub-Basin water resource analysis for this Town, the Town of Carefree, the City of Scottsdale, and the Desert Forest Golf Course.

I am writing this letter to express my concern about the personal attacks on Dr. Bill Allen, regarding his caution about State Land Department land annexation and provision of water to those properties. Dr. Allen is a well recognized expert on water rights and water acquisition in Arizona, and he knows more about these topics than probably all of the Town's citizens combined, including me. It is unbelievable that individuals who have minimal understanding of the complexity of Arizona water rights question the motivation of Dr. Allen. **I hold his knowledge in great respect, and I listen when Dr. Allen speaks about these issues because he knows what he is talking about.**

The Town and some of its elected and non-elected officials have a pattern of nasty, vindictive attacks on individuals they don't agree with. Rather than debate the merits of the issue, they fall to the lowest levels of human behavior. It personally disgusts me, and as a consequence of my own experience with the Sound Committee and other issues, I have chosen to no longer participate with or provide my expertise to this Town. You, as the Town Mayor, have an obligation to set the tone and provide leadership to this community. The leadership to set a civil tone, to conduct public meetings without harassment of speakers, to prevent personal threats against people and their property, has been sorely lacking. If you have chosen the role of leader of this community, then please take that role and perform it with responsibility.

Finally, I strongly recommend that rather than attack the messenger, the Town sit down and understand Dr. Allen's cautions so that the Town can be prepared for the annexation in a thoughtful, frugal and responsible manner. It is obvious that the Town is headed for a serious financial correction, just as other governments throughout Arizona. The costs of acquisition of the Cave Creek Water Company and associated capital improvements grossly exceeded the Town's estimates. Let's not be caught in the same situation with the land annexation.

Sincerely,



Gail Clement, P.G.

cc. Cave Creek Town Council
Cave Creek Planning and Zoning Commission

From: terrylzerkle@aol.com
To: terrylzerkle@aol.com
Subject: Scottsdale Republic Editorial - January 10, 2009
Date: Sun, Jan 11, 2009 12:43 pm

Cave Creek's plan to raise sales tax is irresponsible

Every city and town in Arizona is struggling through an economic downturn that is forcing unpleasant decisions. They're cutting services and laying off employees.

Few, if any, have taken the irresponsible approach the Cave Creek Town Council adopted this week when it took the first step to raise the sales tax half a percentage point to 3 percent from 2.5 percent. The council will make a final decision Jan. 20.

A yes vote would tie Cave Creek for the highest sales-tax rate in the Valley. It also sends the wrong message from town leaders to residents: You may have to tighten your belts, but we're only willing to do so much. We'll tap you for the rest.

The worst thing to do in a recession is to raise taxes. Sure, this may put Cave Creek at the same high sales-tax level as Carefree, but that's nothing to be proud of. Raising the sales tax when everyone else is cutting, cutting, cutting will only encourage residents to make the short drive into Phoenix or Scottsdale for their shopping. They may not save that much, but principle is important.

The council's initial vote for the sales-tax increase was 5-1, with only Vice Mayor Gilbert Lopez having the sense to say no. Residents should flood the other council members with objections, so when the council meets Jan. 20 the vote will be to instruct staff to make up the difference in other ways.

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From: terryizerkle@aol.com

To: annamarsolo@yahoo.com

Cc: hrnat@aol.com; charlie.spitzer@stratus.com

Subject: Re: Herb Natker had it right; town officials ignored

Date: Mon, 23 Feb 2009 5:31 pm

Attachments: CC_@_for_Republic_forum.doc (26K)

Hi Anna,

My assessment leads me to conclude they subsidized the Water Fund from the get go using General Fund reserves. They started off with a structural imbalance between recurring revenue and recurring expenses that only became worse over the past two fiscal years as they took on an ever increasing debt load and as the economy tanked. The Town has incredibly high fixed costs at this point which cannot be serviced by the existing revenue stream even after dumping in General Fund monies, nor will it be self correcting. The Water Fund is literally broke financially as demonstrated conclusively by last year's Comprehensive Annual Financial Report, which shows a \$2.7M shortfall. A lot of this is covered in the Financial Condition Analysis report I prepared and gave to the Town the week before last. I found no evidence the Mayor and Council took any corrective action during the 2007-2008 Fiscal Year. An even bigger problem is they continued the financial practices driving this dysfunction into the current fiscal year. At this point I suspect they have drained all accounts dry of reserves, thus resulting in the Mayor's announcement in January the Town is in financial crisis. As a practical matter they have been in crisis for the past two fiscal years and engaged in deficit budgeting in the Water Fund making up the difference with General Fund revenue. As I pointed out in the Analysis Report I prepared and gave to the Council and Town Manager at the time of the CCWC purchase and in a March 6, 2007 letter to the Mayor and Council, using General Fund revenue to subsidize the operating costs of the water utility is "not a good business practice. It is a slippery slope, one that the Town would be better off not going down." They went down the slope anyway and the rest is history.

Attached are some questions it would be nice to get some straightforward answers to - either tonight or before the election.

Terry

—Original Message—

From: Anna Marsolo <annamarsolo@yahoo.com>

To: annamarsolo@yahoo.com

Cc: hrnat@aol.com; terryizerkle@aol.com; charlie.spitzer@stratus.com

Sent: Mon, 23 Feb 2009 3:30 pm

Subject: Herb Natker had it right; town officials ignored

Saturday Jan 30, 2007 /ARIZONA REPUBLIC HEADLINES :

MIDYEAR MARKET'S REBOUND IS STALLED: New figures show building permits in metropolitan Phoenix fell to their lowest level last month since January. So far, single-family permits are 22 percent behind 2006's pace.

Hi guys,

We have all known for two years about the housing/building slump, growth being slowed to a snail's pace and sales receipts being down. I am sending you attachments regarding the town officials' attitude toward concerns in January 2007(same date as the Republic headlines above) regarding the debt service in relationship to purchasing the Global Cave Creek Water company.

Cave Creek resident Herb Natker hit *the nail on the head* back in early January, 2007. The attachment - official approved council minutes - will show Herb's prediction back in 2007 when he asked the question of Mayor and council " The cost to operate only leaves \$500,000 in cash flow. A debt service of 2.8 million per year and the \$500,000 to help defer that will still be a debt service

According to the financial numbers in the Town's FY2008 Comprehensive Annual Financial Report, the Town Water Fund literally went broke last fiscal year losing \$2.7M, placing the Town's financial future in extreme jeopardy.

For the incumbents:

1. Why haven't the Mayor and Council publicly acknowledged the reality that the Water Fund went broke last fiscal year, and the Town was engaged in deficit budgeting?
2. Why wasn't corrective action taken last fiscal year to fix the problem?
3. Why did the Town not reveal before January 2009 it was in financial crisis when it was clear from the Town's own financials it was in crisis for all of last fiscal year?
4. Why did the Mayor and Council majority approve entering into a WIFA loan for \$22.9M in late November 2008 knowing that the Town was in acute financial crisis?
5. How close is the Town to having to file for bankruptcy reorganization?
6. What is the Council's plan for moving the Town from financial crisis to recovery and stability, and how does the Council intend to involve citizens in developing recommendations to ensure the financial future of the Town and in giving that process full transparency?

For the non-incumbent candidates:

1. What is your plan of action for moving the Town from financial crisis to recovery and stability? What would be the first things you would do to accomplish this if elected?
2. What protections would you put into place to avoid a financial meltdown recurrence?

From: terryizerkle@aol.com
To: philip.haldiman@arizonarepublic.com; robert.leger@arizonarepublic.com
Subject: Fwd: Cave Creek - Oct. 21, 2010 Article re WIFA Loan
Date: Fri, Nov 12, 2010 2:24 pm

Phil,

I did additional research on what I wrote to you on Nov. 10. Reportedly, the transfer from the Water Funds balances is not \$1.4 million as I wrote, but is over \$1.0 million.

It was confirmed that a new line is to be designed and built from the downtown Neary Tank to Rancho Manana Blvd. as referenced in your article. However, the 16" water line down Cave Creek Road to Carefree Highway has already been built. It is not part of the "new project" to be built as apparently you were told by Ms. Marlow.

Everything else remains as I wrote to you in my Nov. 10 email.

Interestingly, the pipeline project from the Neary Tank to Rancho Manana Blvd. means Cave Creek Road is going to be torn up again, and just shortly after it received an entirely new surface.

Terry

-----Original Message-----

From: terryizerkle@aol.com
To: philip.haldiman@arizonarepublic.com; robert.leger@arizonarepublic.com
Sent: Wed, Nov 10, 2010 8:11 pm
Subject: Cave Creek - Oct. 21, 2010 Article re WIFA Loan

Hi Phil,

I recently had occasion to read the Oct. 21, 2010 article you wrote reporting on the Cave Creek Town Council meeting of Oct. 18 wherein the Council approved the \$1.4 million WIFA loan for the 16" water line down Cave Creek Road. I had not seen the article before.

Your article reads as though the 16" water line down Cave Creek Road has yet to be designed and built. The article states, "Designs will probably be finalized next month, with construction beginning after that." The article also states, "The new project would go from Canyon Ridge Drive to Carefree Highway."

While unintentional on your part, those statements and others in the article are very confusing and misleading. The 16" water line down Cave Creek Road referenced in your story was already 100% built and the costs for the line incurred by the Town prior to the Oct. 18 Council meeting, the date on which Council took action approving the loan.

Ostensibly, the WIFA loan proceeds will be used to either pay some portion of the costs the Town already incurred for the line or to reimburse the Town for those costs, or some combination thereof. The point is the 16" line down Cave Creek Road referenced in your story was not a prospective project, something to be built in the future as reportedly stated by Ms. Marlow. This project had already been built, the costs already incurred.

The primary reason for the Town having built the water line to Carefree Highway at this time rather than later as called for in the non-publicly vetted, non-Council adopted 2008 Water Master Plan was to subsidize, benefit and serve the WalMart development and probably also the Bullington property. Normally developers at their expense bear the cost of pulling a public water line to their property, especially when construction of the extended public line is advanced so that it is earlier than what would be the otherwise programmed time frame as determined by overall service area demand. The non-Council adopted 2008 WMP doesn't call for the 16" line down Cave Creek Road to be constructed until 2030. Please see pp. 41-42 (Table 4-8 and Figure 4-75, Project #25) of the Plan. Make no mistake. This is a straight up development subsidy of enormous magnitude, and the ratepayers of the Cave Creek and Desert Hills water companies have been saddled with the tab.

By paying for all or some portion of the already constructed water line retroactively from the proceeds of the Oct 18 WIFA loan or even paying for some new line using those proceeds, the Town can move forward with its dubious plan to transfer \$1.4 million from Water Funds balances to the General Fund to subsidize recurring General Fund expenses and projected deficits during Fiscal Year 2010-2011. I was told previously part of these Water Funds transfers will also be used to help pay certain costs associated with the construction of the new Wastewater Treatment Plant.

<http://mail.aol.com/32843-111/aol-1/en-us/mail/PrintMessage.aspx>

11/18/2010

What essentially is taking place is that planned revenue surpluses from last year's water rate increases that were supposed to go to help fund a limited number of infrastructure improvements to the Town's water systems as represented by Town officials at the water rate increase hearing are instead being siphoned off to subsidize recurring costs in the General Fund and circuitously to subsidize development.

Due to a continuous pattern of irresponsible, non-transparent financial management and the absence of any long-term strategic budget planning, the Town is essentially broke and robbing Peter to pay Paul. In point of fact, the Town's action to have already built and incur the cost of the water line down Cave Creek Road or even to pay for some new line left the Council with essentially no choice but to approve the WIFA loan so that Water Funds balances could be freed up to be transferred to the General Fund. I was told by a reliable source that the Town Manager told the Council that projected General Fund deficits for FY 2010-2011 could not be covered nor could the Town make it through the FY without the transfer of these Water Funds surpluses to the GF.

Under separate cover I'm forwarding you a copy of the email letter I sent to the Mayor and Council on June 29, 2010 questioning the efficacy and propriety of the Council through the budget approval process authorizing the transfer of \$1.4 million from Water Funds balances to subsidize recurring General Fund expenses and to cover projected GF deficits. I wrote that the Council's action in authorizing this transfer was in effect a **non-voter authorized tax**. What makes this situation even more egregious is that 25% of the customers (almost 600) of the Cave Creek water system and 100% of the customers (approx 1,700) of the Desert Hills water system are non-Cave Creek residents. They are totally disenfranchised politically in terms of elected representation from having any say or recourse in these matters. At least Cave Creek citizens can have a say at some point through the election process and their vote for Council members, if and when the totality and realization of what is occurring is ever made transparent and known to them.

Even something as simple as a Council adopted multi-year Capital Improvements Program detailing specific projects and marrying them up with known or at least reasonably reliable revenue forecasts would provide some level of fiscal transparency and insight for citizens as to what can be expected and when. This is to say nothing of the value it would add in assisting the Council make informed, fiscally prudent short and long-term resource allocation decisions regarding its capital assets. As it is right now, the Town is totally winging it, and citizens are paying dearly for this slip shod way of conducting the public's business. Citizens will pay even more in the future if these shoddy practices are allowed to continue.

I also encourage you to obtain from Robert Leger and read the unsolicited Financial Condition Analysis report I provided the Mayor and Council on Feb. 12, 2009. I gave a copy to Robert shortly after giving it to the Council. Please also read the exhibits. Admittedly, it's pretty boring stuff but will provide insight and background on how the town got to the upside/down position it is in financially. It also provides strategies and recommendations for how the Town could go about getting out of the financial quagmire it is in.

Please feel free to give me a call if you have questions.

Terry
480-437-9103

January 29, 2009

A. Mgr prohibited from making policy or binding Council.

§ 31.25 MANAGER.

- (I) *Policy-making prohibited.* The Town Manager shall not exercise any policy-making or legislative functions nor attempt to commit or bind the Town Council to any action, plan, or program requiring the official action of the Town Council.

B. Use of non-Council approved WMP for official decision purposes thus binding Council.

1. June 5, 2008 letter to Jennifer Pollock, Asst AG re use of non-Council approved WMP for official decision purposes. Closes out citizen involvement. Binds Council.
2. August 3, 2008 letter to Jennifer Pollock re submittal of non-Council approved WMP to MCESD. Contrary to ARS planning statutes, AZ Constitution, state law, and Town code.
3. September 12, 2008 letter to County manager David Smith re submittal of non-Council approved WMP to MCESD. Council has not seen version of WMP submitted to County or committed to funding projects contained in that document. As professionals, you and know staff can't make policy or commit Council to fund projects.
3. November 29, 2008 letter to Mayor and Council re non-Council approved WMP cost estimate summary. WMP presented to MCESD and represented as official Town policy. County of belief Council committed to funding future projects, had approved multi-year CIP. Had authorized entering into August 32, 2007 stipulation agreement. Use of non-Council approved WMP for official approval purposes binds Council to future expenditures, disenfranchises citizens.

ICMA Code of Ethics With Guidelines

The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in May 1998. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in July 2004.

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
 2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.
- Guideline*
Advice to Officials of Other Local Governments. When members advise and respond to inquiries from elected or appointed officials of other local governments, they should inform the administrators of those communities.
3. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.

Guidelines

Public Confidence. Members should conduct themselves so as to maintain public confidence in their profession, their local government, and in their performance of the public trust.

Impression of Influence. Members should conduct their official and personal affairs in such a manner as to give the clear impression that they cannot be improperly influenced in the performance of their official duties.

Appointment Commitment. Members who accept an appointment to a position should not fail to report for that position. This does not preclude the possibility of a member considering several offers or seeking several positions at the same time, but once a *bona fide* offer of a position has been accepted, that commitment should be honored. Oral acceptance of an employment offer is considered binding unless the employer makes fundamental changes in terms of employment.

Credentials. An application for employment or for ICMA's Voluntary Credentialing Program should be complete and accurate as to all pertinent details of education, experience, and personal history. Members should recognize that both omissions and inaccuracies must be avoided.

Professional Respect. Members seeking a management position should show professional respect for persons formerly holding the position or for others who might be applying for the same position. Professional respect does not preclude honest differences of opinion; it does preclude attacking a person's motives or integrity in order to be appointed to a position.

Reporting Ethics Violations. When becoming aware of a possible violation of the ICMA Code of Ethics, members are encouraged to report the matter to ICMA. In reporting the matter, members may choose to go on record as the complainant or report the matter on a confidential basis.

Confidentiality. Members should not discuss or divulge information with anyone about pending or completed ethics cases, except as specifically authorized by the Rules of Procedure for Enforcement of the Code of Ethics.

Seeking Employment. Members should not seek employment for a position having an incumbent administrator who has not resigned or been officially informed that his or her services are to be terminated.

4. Recognize that the chief function of local government at all times is to serve the best interests of all of the people.

Guideline

Length of Service. A minimum of two years generally is considered necessary in order to render a professional service to the local government. A short tenure should be the exception rather than a recurring experience. However, under special circumstances, it may be in the best interests of the local government and the member to separate in a shorter time. Examples of such circumstances would include refusal of the appointing authority to honor commitments concerning conditions of

employment, a vote of no confidence in the member, or severe personal problems. It is the responsibility of an applicant for a position to ascertain conditions of employment. Inadequately determining terms of employment prior to arrival does not justify premature termination.

5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.

Guideline

Conflicting Roles. Members who serve multiple roles--working as both city attorney and city manager for the same community, for example--should avoid participating in matters that create the appearance of a conflict of interest. They should disclose the potential conflict to the governing body so that other opinions may be solicited.

6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.
7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

Guidelines

Elections of the Governing Body. Members should maintain a reputation for serving equally and impartially all members of the governing body of the local government they serve, regardless of party. To this end, they should not engage in active participation in the election campaign on behalf of or in opposition to candidates for the governing body.

Elections of Elected Executives. Members should not engage in the election campaign of any candidate for mayor or elected county executive.

Running for Office. Members shall not run for elected office or become involved in political activities related to running for elected office. They shall not seek political endorsements, financial contributions or engage in other campaign activities.

Elections. Members share with their fellow citizens the right and responsibility to vote and to voice their opinion on public issues. However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state or federal offices. Specifically, they shall not endorse candidates, make financial contributions, sign or circulate petitions, or

participate in fund-raising activities for individuals seeking or holding elected office.

Elections on the Council-Manager Plan. Members may assist in preparing and presenting materials that explain the council-manager form of government to the public prior to an election on the use of the plan. If assistance is required by another community, members may respond. All activities regarding ballot issues should be conducted within local regulations and in a professional manner.

Presentation of Issues. Members may assist the governing body in presenting issues involved in referenda such as bond issues, annexations, and similar matters.

8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

Guidelines

Self-Assessment. Each member should assess his or her professional skills and abilities on a periodic basis.

Professional Development. Each member should commit at least 40 hours per year to professional development activities that are based on the practices identified by the members of ICMA.

9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.
10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

Guideline

Information Sharing. The member should openly share information with the governing body while diligently carrying out the member's responsibilities as set forth in the charter or enabling legislation.

11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions pertaining to appointments, pay adjustments, promotions, and discipline.

Guideline

Equal Opportunity. All decisions pertaining to appointments, pay adjustments, promotions, and discipline should prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, political affiliation, disability, age, or marital status.

It should be the members' personal and professional responsibility to actively recruit and hire a diverse staff throughout their organizations.

12. Seek no favor; believe that personal aggrandizement or profit secured by confidential information or by misuse of public time is dishonest.

Guidelines

Gifts. Members should not directly or indirectly solicit any gift or accept or receive any gift—whether it be money, services, loan, travel, entertainment, hospitality, promise, or any other form—under the following circumstances: (1) it could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties; or (2) the gift was intended to serve as a reward for any official action on their part.

It is important that the prohibition of unsolicited gifts be limited to circumstances related to improper influence. In *de minimus* situations, such as meal checks, some modest maximum dollar value should be determined by the member as a guideline. The guideline is not intended to isolate members from normal social practices where gifts among friends, associates, and relatives are appropriate for certain occasions.

Investments in Conflict with Official Duties. Member should not invest or hold any investment, directly or indirectly, in any financial business, commercial, or other private transaction that creates a conflict with their official duties.

In the case of real estate, the potential use of confidential information and knowledge to further a member's personal interest requires special consideration. This guideline recognizes that members' official actions and decisions can be influenced if there is a conflict with personal investments. Purchases and sales which might be interpreted as speculation for quick profit ought to be avoided (see the guideline on "Confidential Information").

Because personal investments may prejudice or may appear to influence official actions and decisions, members may, in concert with their governing body, provide for disclosure of such investments prior to accepting their position as local government administrator or prior to any official action by the governing body that may affect such investments.

Personal Relationships. Members should disclose any personal relationship to the governing body in any instance where there could be the appearance of a conflict of interest. For example, if the manager's spouse works for a developer doing business with the local government, that fact should be disclosed.

Confidential Information. Members should not disclose to others, or use to further their personal interest, confidential information acquired by them in the course of their official duties.

Private Employment. Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties.

Teaching, lecturing, writing, or consulting are typical activities that may not involve conflict of interest, or impair the proper discharge of their official duties. Prior notification of the appointing authority is appropriate in all cases of outside employment.

Representation. Members should not represent any outside interest before any agency, whether public or private, except with the authorization of or at the direction of the appointing authority they serve.

Endorsements. Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements, whether or not for compensation. Members may, however, agree to endorse the following, provided they do not receive any compensation: (1) books or other publications; (2) professional development or educational services provided by nonprofit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest.

Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.

From: terryzerkle@aol.com

To: vfrancia@tur Paradise.net; glopezcasa@msn.com; kimberlybrennan@msn.com; ebb3@prodigy.net; essergulch@msn.com; cavecreekdigital@msn.com

Bcc: TerryLZerkle@aol.com; jerry@whitmoreco.com; annamarsolo@yahoo.com; beth.duckett@arizonarepublic.com; robert.leger@arizonarepublic.com; mjshepston@cox.net; Chiefhydro@aol.com; HRNAT@aol.com; ramco@qwest.net; dlphelps@q.com; krietsema@earthlink.net; nina@amug.org; charlie.spitzer@stratus.com

Subject: Town of Cave Creek - Financial Condition Analysis report

Date: Thu, Feb 19, 2009 3:26 pm

Dear Mayor Francia and Council Members:

Last week I delivered an unsolicited Financial Condition Analysis report dated January 2009 to Town Hall addressed to the Mayor & Council, Town Manager, and Town Clerk.

If you have not yet received a copy of that report, I suggest you request a copy or at least read the one submitted.

Among other things, the report provides a listing and analysis of the factors that led to the Town's financial crisis. It was much more than the bad economy and occurred over a longer period than the last 2-4 months, closer to the last 2+ years.

The report also suggests Next Steps on pp. 24-25 for moving beyond crisis and toward financial recovery and stability.

The Postscript to the report on p. 26 summarizes key information in the Town's FY2008 Comprehensive Annual Financial Report for the fiscal year that ended June 30, 2008. The CAFR showed the Water Fund was broke financially and lost \$2.7M for the year, that the Town was drawing down General Fund reserves to cover shortfalls in the Water Fund, that the Town was in financial jeopardy, and that it appeared the Town was literally going broke.

Drawing down General Fund reserves to cover shortfalls in the Water Fund is a flawed municipal financial practice. It is a sign the Town is engaged in deficit budgeting, which for a municipality is the sure road to financial hell.

The Town's dismal financial performance throughout FY 2007-2008 begs the questions: Why didn't the Mayor and Council take corrective action during the last Fiscal Year? Why did the Mayor wait until seven months into the current fiscal year to announce the Town was in financial crisis?

Clearly, the Town was in extreme financial stress and headed for meltdown for the better part of two years. The effects of this meltdown could have been substantially mitigated with early, timely corrective action by the Mayor and Council.

As I wrote to the Mayor and Council in a letter dated December 3, 2007, *"Receiving a written financial condition update report and making it available to the public is essential to responsible fiscal stewardship and oversight by the Town's elected leaders. Finances, after all, are at the heart of Town government. Nothing gets done without them. Moreover, from strictly a policy perspective, nothing is more critical to the successful functioning of Town government and keeping it on course and out of trouble than the Council keeping its fingers on the Town's fiscal pulse. In terms of accountability to citizens, high level financial monitoring, while carried out in concert with staff, is a uniquely exclusive Council oversight and fiduciary responsibility which cannot be delegated in totality to others. If the Town's finances head south, it is the Council that is accountable to the public. Not knowing the Town's financial condition is not an excuse relieving the Council of accountability and responsibility for knowing. Simply stated, it is the Council's duty to know, to have systems in place for assuring that they do, and for making this information readily available to the public."*

Sincerely,

Terry Zerkle

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February 12, 2009

Hon. Vincent Francia, Mayor
and Members of Town Council
Usama Abujbarah, Town Manager
Ms. Carrie Dyrek, Town Clerk
Town of Cave Creek
37622 N. Cave Creek Road
Cave Creek, AZ 85331

Re: Town of Cave Creek - Financial Condition Analysis

Transmitted herewith is an unsolicited Town of Cave Creek financial condition analysis report which I prepared. I hope you find this report and the Next Steps suggested on pp. 24-25 useful in moving the Town from financial crisis to recovery and stability. I would also draw your attention to the Postscript on p.26.

Sincerely,

Terry Zerkle
41200 N. Echo Canyon Drive
Cave Creek, AZ 85331