

MINUTES OF THE TOWN OF FLORENCE COUNCIL SPECIAL MEETING HELD ON FRIDAY, JUNE 21, 2019, AT 4:30 P.M., IN THE FLORENCE TOWN COUNCIL CHAMBERS, LOCATED AT 775 N. MAIN STREET, FLORENCE, ARIZONA.

CALL TO ORDER

Mayor Walter called the meeting to order at 4:31 p.m.

ROLL CALL:

Present: Walter, Anderson, ***Hawkins, Wall, Larsen, ***Cordes, Hughes.
***Councilmember Hawkins and Councilmember Cordes appeared telephonically.

CALL TO THE PUBLIC Call to the Public for public comment on issues within the jurisdiction of the Town Council. Council rules limit public comment to three minutes. Individual Councilmembers may respond to criticism made by those commenting, may ask staff to review a matter raised or may ask that a matter be put on a future agenda. However, members of the Council shall not discuss or take action on any matter during an open call to the public unless the matters are properly noticed for discussion and legal action.

Ms. Doris Goveia, Florence Resident, stated that she and her husband support the Council as the Council has fought for its residents. They do not want their water or land contaminated by the in-situ mining that Florence Copper Corporation wants to do. She stated that it goes bad, water will become contaminated and they will not pay or try to rectify their mistakes.

Ms. Goveia stated that she does not want Florence to look like Globe, Miami or Hayden. She realizes that they do a different type of mining; however, the towns will look similar. She made the following statement: "To all that are for the Florence Copper Corporation, maybe they will pay for you to buy some land and a home in Canada for you on their dollar". She stated that she does not want to recall the Council; without them, the Town would not have a leg to stand on.

Mr. Bob Dobarry, Florence Resident, stated that he asked the Council and Town Attorney who would be financially responsible if the water were to be contaminated and the value of the homes became zero when the in-situ mining discussion first began. He is asking again who is liable and how liable is the Town if contamination occurs. He understands that there is an offer on the table, but it is his opinion that this is why there is the Supreme Court in Washington. He stated that it is the Council's job to protect its citizens. He stated that the mine is not the Town's best interest.

Mr. Bill Tanner, Florence Resident, inquired why the Council is rushing on tonight's action items listed on the agenda. He stated that there was no discussion regarding a settlement at the last meeting. He stated that the Town only provided the public 24 hours notice which does not provide enough time for the public to engage in this issue. Many residents are out of town or predisposed. He requested Council to postpone these agenda items until such time that sufficient notice can be provided to the residents.

NEW BUSINESS

Discussion/Approval/Disapproval of a proposed Settlement Agreement among the Town of Florence, Florence Copper Inc. and TASEKO Mines, LTD. with the condition that this offer to settle on these terms will terminate in 45 days of the date the Agreement is executed by the Town, unless on or before the forty-fifth day, TASEKO Mines, LTD. and Florence Copper Inc. accept, approve and execute the Settlement Agreement.

Mayor Walter read the following statement into the record:

Statement on the Town's Relationship with Florence Copper

At the Town's regular Town Council Meeting on Monday, June 17th, more than a dozen residents stood to voice their concerns regarding Florence Copper mining operations. Some of these residents spoke in favor of the project, and others spoke opposed to the project. There is no easy answer when balancing the concerns of both positions.

Nonetheless, this is the difficult task that the Town Council faces today. The Council understands the strong and wide range of opinions about mining that exist in the community and has long sought various appropriate solutions to the lengthy litigation with Florence Copper (and its associated costs), while also ensuring the health and welfare of the citizens, as well as protection of the unique water resources that exist in the area.

While parties often conduct settlement negotiations under rules of confidentiality, based on the citizen comments expressed on Monday night, the Council has chosen to publicly propose a Settlement Agreement to Florence Copper that seeks to best satisfy the concerns of all our residents. Our offer provides for and facilitates communication. It fosters relationships to ensure that we are part of the process in the future, to work together as partners to safeguard the aquifer, the environment, and our citizens, and to ultimately drop our pending appeals and authorize the extension that Taseko has requested under our existing development agreement. The Town offers this olive branch despite the judge's recent observation that the documents contain "ambiguities allowing reasonable people to differ in their interpretations."

We hope executives with Taseko and Florence Copper view this proposal favorably, and as a means to begin regular and productive conversations with the Town of Florence. To that end, we are also authorizing our executive and legal team to make any necessary arrangements or provisions to reach a positive solution for both entities.

Councilmember Cordes (inaudible due to audio errors)

Councilmember Hawkins (inaudible due to audio errors)

Councilmember Larsen stated that she is comfortable with the settlement offer but would prefer that Councilmember Cordes' questions be answered and inquired if Council can adjourn into Executive Session.

Councilmember Wall stated that this issue was too sensitive for her to discuss.

Councilmember Hughes stated that she sees the settlement agreement as a starting point for negotiations only.

On motion of Vice-Mayor Anderson, seconded by Councilmember Hawkins, for the approval of a proposed Settlement Agreement among the Town of Florence, Florence Copper Inc. and TASEKO Mines, LTD. with the condition that this offer to settle on these terms will terminate in 45 days of the date the Agreement is executed by the Town, unless on or before the forty-fifth day, TASEKO Mines, LTD. and Florence Copper Inc. accept, approve and execute the Settlement Agreement.

Roll Call Vote:

Vice-Mayor Anderson: Yes
Councilmember Hawkins: Yes
Councilmember Wall: Yes
Councilmember Larsen: Yes
Councilmember Cordes: No
Councilmember Hughes: No
Mayor Walter: Yes

Motion carried: Yes: 5; No: 2

Resolution No. 1704-19:

Mayor Walter read Resolution No. 1704-19 in its entirety, which read:

RESOLUTION NO. 1704-19

RESOLUTION OF THE TOWN OF FLORENCE, PINAL COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE TOWN OF FLORENCE'S APPEAL CHALLENGING THE VALIDITY AND ISSUANCE OF THE RULE 54(b) JUDGMENT ENTERED ON JUNE 7, 2019 BY JUDGE BRODMAN IN CASE NO. CV2015-000325 ADDRESSING DECLARATORY RELIEF, DECLARATORY JUDGMENT AND EMINENT DOMAIN ("LAWSUIT"); AUTHORIZING THE FULL PROSECUTION/LITIGATION OF THE APPEAL, AND THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION AND DECLARING AN EMERGENCY.

WHEREAS, at issue in the Lawsuit (Case no. CV2015-000325) is whether Florence Copper, Inc. ("FCI") has a right to maintain and expand nonconforming uses or structures related to mining on the subject property (the "Property"). The Town of Florence asserts that a 2007 Zoning Ordinance for the Property adopted at the request of the previous property owner replaced, superseded, and rescinded the 2003 Planned Unit Development Plan for the Property and, as a result, the right to mine the Property is lost; and

WHEREAS, a trial to the Court was conducted December 5th through the 13th, 2018. The trial judge heard live witness testimony, videotaped depositions and reviewed exhibits; and

WHEREAS, the trial judge also considered two sets of cross motions for summary judgment in the Lawsuit; and

WHEREAS, the trial judge determined that the actions of a prior owner of the Property and the Town's rezoning actions in 2007 did not eliminate or abandon in-situ mining rights of the owner established by the 2003 Development Agreement and the Town is not entitled to an order finding the 2007 rezoning effective and enforceable by the Town to prevent in-situ mining within the mine overlay area; and

WHEREAS, the trial judge concluded that merely amending the zoning did not change rights in the development agreement, even when the zoning amendment was requested by the property owner; and

WHEREAS, the trial judge awarded attorneys' fees to Florence Copper Inc. in the amount of \$1,700,000 and costs in the amount of \$32,365.55; and

WHEREAS, the trial judge entered final judgment in this matter on June 7, 2019, which becomes final if not appealed by July 6, 2019; and

WHEREAS, Counterclaims filed by Florence Copper Inc. against the Town of Florence are still pending in CV2015-000325, and failure to appeal the Rule 54(b) Judgment will impair the Town's ability to defend itself against the Counterclaims.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Florence, Arizona, that:

Section 1. The execution, filing, delivery, and the full prosecution/litigation of the Town's appeal challenging the validity and issuance of the Rule 54(b) Judgment in the Lawsuit, and notices, filings, certificates, pleadings, correspondence, proceedings, agreements and other documents as may be necessary or convenient related thereto is approved and authorized, including but not limited to the Notice of Appeal attached hereto as **Exhibit "A"**.

Section 2. The Mayor, the Town Manager, the Attorneys for the Town and other officers of the Town, on behalf of the Town, are authorized and directed, without further order of the Mayor and Common Council of the Town, to do all such acts and things, including the full prosecution/litigation of the appeal, and to execute, file and deliver all such notices, certificates, filings, pleadings, correspondence, proceedings, agreements and other documents as may be necessary or convenient to be executed, filed and delivered on behalf of the Town, to evidence compliance with, or further the purposes of, all the terms and conditions of this Resolution and the consummation of the transactions contemplated by, and as may be necessary to carry out the terms and intent of, this Resolution.

Section 3. All actions of the officers and agents of the Town which conform to the purposes and intent of this Resolution and which further the Town's rights with respect to the appeal as contemplated by this Resolution, whether heretofore or hereafter taken, are ratified, confirmed and approved.

Section 4. If any section, paragraph, clause or phrase of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or phrase shall not affect any of the remaining provisions of this Resolution. All orders, resolutions and ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, resolution or ordinance or any part thereof.

Section 5. The immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety, particularly to immediately preserve the Town's rights with respect to the appeal of the Rule 54(b) Judgment in the Lawsuit, and an emergency is hereby declared to exist, and this Resolution shall be in full force and effect from and after its passage by the Mayor and Common Council of the Town and it is hereby excepted from the referendum provisions of the Constitution and laws of the State of Arizona.

Councilmember Hawkins (inaudible due to audio errors)

Mr. Clifford L. Mattice, Town Attorney, stated that this item is a resolution which means it is an official act of the Town Council, if approved, authorizes the lawyers working on the case, on behalf of the Town, to file an appeal. The appeal is because of the recent decision by the trial court. The trial court, in their decision said that he interpreted the development agreement in favor of the mining interest to allow mining there as a non-conforming right under the 2003 Development Agreement.

Mr. Mattice stated this resolution appeals the decision by the trial judge. When that is appealed, it goes to the Arizona Court of Appeals for a panel to make a decision and look at what the trial judge did. The Town is required to take action on an appeal within 30 days of the judge's decision. The judge entered his decision on the zoning issue on June 7, 2019. The Town needs to file their appeal, if Council so chooses, no later than July 6, 2019 with the Court.

Mr. Mattice stated that the resolution authorizes the lawyers to file the appeal. It is also an emergency provision which means that this resolution is not subject to referendum or challenge.

Councilmember Hawkins (inaudible due to audio errors)

Mr. Brent Billingsley, Town Manager, stated that the Town has a limited time frame in which to do the appeal. The time frames do not align in terms of the settlement offer providing for 45 days. There is not enough time to wait for a positive answer. The Town is in a position if they are going to act in this capacity, they need to act now. The third portion is the fact that if the Town does not act in this manner, the Town will have difficulty defending themselves against the counter claims that the copper company has filed against the Town.

Councilmember Hawkins (inaudible due to audio errors)

Mr. Billingsley stated that if the offer is accepted, the Town would immediately rescind their appeal.

Councilmember Hawkins (inaudible due to audio errors)

Councilmember Cordes (inaudible due to audio errors)

Mayor Walter stated that they can adjourn to Executive Session if need be.

Councilmember Cordes (inaudible due to audio errors)

On motion of Councilmember Larsen, seconded by Councilmember Hughes, and carried (7-0) to adjourn to Executive Session.

On motion of Councilmember Wall, seconded by Vice-Mayor Anderson, and carried (7-0) to adjourn from Executive Session.

Ms. Cathy Bowman, Attorney for Simms Murray, which represents the Arizona Municipal Risk Pool and the Town, when the Town is sued. She stated that with respect to the copper case, there are two parts:

- One is the claim that the Town brought against Florence Copper
- Seven counterclaims where Florence Copper is suing the Town

Ms. Bowman stated that when the case first started, Florence Copper asked that judge separate the cases and that the case go forward on the zoning matter, which was described in the resolution, and that the counter claim be stayed. They would wait for the results of the claim that the Town brought against Florence Copper before they go forward with the claims that Florence Copper filed against the Town.

Ms. Bowman stated that she was the lawyer that came last year on the counterclaims. These claims are still pending. Florence Copper is still suing the Town in those seven counterclaims. The Town hopes to resolve that as part of the settlement agreement, but right now the Town has whatever exposures that may exist with those seven counterclaims.

Ms. Bowman stated that if they do not file the Notice of Appeal everything that the judge decided in the first case will pass over, all of the legal decisions and factual findings will pass over and be the same in the counterclaims as the Town tries to defend themselves against that. There are aspects, legally and factually that the Town does not agree with that impact these counterclaims, which is part of the reason that the Notice of Appeal is necessary.

Ms. Bowman stated that in the Settlement Agreement itself, if the parties reach a settlement, and as part of the settlement, the counterclaims are dismissed; then the Notice of Appeal will be dismissed. The settlement terms lay that out. Also, should the Council for any reason, regardless of settlement, regardless of the position of the parties decide in the future that the Council wants to rescind the Notice of Appeal, the Notice of Appeal can be withdrawn. The Town only has until July 6, 2019 to file the Notice of Appeal and the court has ruled that if the Town files the appeal there will be no trial on the counterclaims until the Court of Appeals decides the legal issues that the Town raised in the first part of the case.

Ms. Bowman stated that in that case, when the counterclaims come, the Town will have a ruling from the Court of Appeals that tells us whether or not the judge was correct in his ruling.

Mayor Walter stated that once it comes down to settlement negotiations, Council will need to bring to the floor once an agreement is reached.

Ms. Bowman explained that any settlement would be voted on publicly, so the public can see the Town's position.

On motion of Councilmember Wall, seconded by Vice-Mayor Anderson, to adopt Resolution. No. 1704-19: a Resolution of the Town of Florence, Pinal County, Arizona, approving and authorizing the Town of Florence's appeal challenging the validity and issuance of the Rule 54(b) judgment entered on June 7, 2019 by Judge Brodman in Case No. CV2015-000325 addressing declaratory relief, declaratory judgment and eminent domain ("lawsuit"); authorizing the full prosecution/litigation of the appeal, and the taking of all other actions necessary to the consummation of the transactions contemplated by this resolution and declaring an emergency.

Roll Call Vote:

Councilmember Wall: Yes

Vice-Mayor Anderson: Yes

Councilmember Hawkins: Yes

Councilmember Larsen: Yes

Councilmember Cordes: Yes

Councilmember Hughes: Yes

Mayor Walter: Yes

Motion carried: Yes: 7; No: 0

CALL TO THE PUBLIC

Ms. Karen Shoppell, Florence Resident, inquired what the financial exposure may be with regards to the seven counterclaims.

Mayor Walter referred Ms. Shoppell to speak with the Town attorneys regarding financial exposure of the seven counterclaims.

Mr. Robert Shoppell, Florence Resident, inquired what will be discussed in the settlement negotiations.

Mayor Walter referred Mr. Shoppell to the Settlement Agreement within the agenda packet.

Mr. Bill Tanner, Florence Resident, stated that he is delighted that the Town is in discussions for a settlement with Florence Copper. He asked that the Town enter into those negotiations with good faith and the negotiations will resolve any differences that may exist. He stated that he hopes that she has heard the people's voices that they are tired of paying the legal bills. He stated that it is time to move on, unite and do what is right by the people of the Town of Florence.

Mr. Bob Heaber, Florence Resident, stated that he has been in a community where the water goes bad, and it is a travesty. He does not understand why Florence is negotiating. He does not know how to legally get them to leave. He does not know how the Town can get a stay in court so that enough public input can be put in. There is approximately 40% of the Florence residents gone. He had no clue this was going on until a neighbor told him. He understands that this affects the Anthem and Sun City communities as well as those that live north of those communities. He stated that there is a great responsibility on the Council's part to not roll over.

Mr. Heaber stated that the mine is a personal threat to him. He does not want it near him or his grandkids. He stated there is no fix if the water goes bad. They are a foreign company and they will leave when things go bad.

CALL TO THE COUNCIL – CURRENT EVENTS ONLY

Vice-Mayor Anderson stated that he attended the Planning and Zoning Commission Meeting and commended them for a job well done. He stated that they helped resolve an issue with homeowner and the property line. He stated that the staff does an excellent job in taking care of the community.

Mr. Hawkins (inaudible due to audio errors)

Councilmember Larsen thanked everyone who attended the Council meeting and voiced their opinion. She came onto the Council with a curiosity and open mind wanting to hear the public's opinion and wanting to take action once she was able to form her own opinion on that matter. She hopes that after tonight's Council meeting, there will be unification as a Town as they work the common sense approach to work together. She hopes to find a fair balance between the public's concerns and their safety and well-being. The Council is trying to look after the public's best interest.

Councilmember Cordes (inaudible due to audio errors)

Mayor Walter stated that she attended the Pinal Partnership Meeting in which a panel of Mayors presented to those in attendance what is happening in their respective areas.

Mayor Walter stated that tonight's meeting has been very personal and involved process. She did extensive research when she first found out about the copper mine, which was several years ago. She has the interest of everyone's health and safety and making sure that the Town's aquifer is able to continue to provide suitable drinking water for generations to come.

Mayor Walter stated that the Town has put a settlement on the table. They have talked about communication and she feels that the Town has communicated with the public. She stated that it is her goal to ensure that everyone knows what is being discussed. Her hopes in future negotiations is that they continue to discuss this on the floor.

ADJOURNMENT

Council may go into Executive Session at any time during the meeting for the purpose of obtaining legal advice from the Town's Attorney(s) on any of the agenda items pursuant to A.R.S. § 38-431.03(A)(3). One or more members of Council may appear for part or all of the meeting including Executive Session telephonically.

On motion of Councilmember Hawkins, seconded by Vice-Mayor Anderson, and carried (7-0) to adjourn the meeting at 5:42 p.m.


Tara Walter, Mayor

ATTEST:


Lisa Garcia, Town Clerk
Deputy Town Clerk

I certify that the following is a true and correct copy of the minutes of the Florence Town Council meeting held on June 21, 2019, and that the meeting was duly called to order and that a quorum was present.


Lisa Garcia, Town Clerk
Deputy Town Clerk