

BIG WATER TOWN COUNCIL

MEETING MINUTES

Wednesday July 19, 2023

60 N Aaron Burr, Big Water, Utah 84741

Work Session 6:30 PM

Meeting 7:00pm

WORK SESSION-

1. CALL TO ORDER- No Work Session had

2. DISCUSSION ON AGENDA ITEMS – Time is given for the Mayor and Council Members to discuss items on the agenda.

3. ADJOURN – N/A

MEETING

1. CALL TO ORDER – 7:13pm

2. ROLL CALL – In attendance: Councilman Vince Olson, Jim Lybarger, Levi Banfill, and Mayor David Schmuker; Absent: Councilwoman Jennie Lassen.

3. PLEDGE OF ALLEGIANCE – Mayor David Schmuker leads pledge of allegiance

4. STATEMENT OF CONFLICT – No conflict

5. APPROVAL OF JUNE MINUTES – Motion to approve: Vince Olson, Second Levi Banfill, Jim Lybarger aye, Mayor David Schmuker aye. All aye, motion passed.

7. MAYOR, COUNCIL AND DEPARTMENT REPORTS –

- **Mayor:**
- **Fire Chief:** Robert Barnett “We got DNR wildland grant \$8700.00 we are going to purchase 5 radios for wildland. Our second quarter emergency responses and the invoice that I send to the hospital was really good. Big Water is now taking about one quarter of the calls. So we’re doing really well. We’ve almost tripled our call rate.”
Mayor David Schmuker- “Thank you very much for what you do sir.”
- **Marshal:** Russ Johnson- “We are in the process of implementing a policy manual, which is something we’ve never had. It is surprisingly harder than I would’ve thought. Please lock your doors. There has been an increase in petty theft. Facebook is not the place to report a crime. Dispatch number is 435-644-4900, and that’s a great way to get ahold of me but most of the time if I’m not available they will send a Sheriff’s Deputy.”

Mayor David Schmuker- “Thank you for your work and everything you do. I realize that people don’t know where you’re at or see you here or there or whatever, but you’re always around and thank you so much.”

- **Treasurer:** Peggy Short- “Nothing major to report. We have a new budget and there is money to spend but we don’t get our tax money until November so the coughers are a little bit tight so I’d like to remind all the department heads that we can’t spend it all at once.”
- **Planning & Zoning Administrator:** Denise Wood- “This month we’ve had 1 complaint, currently I have been following up with previous complaints and just continuing with previous complaints. Cory, our building inspector, is working on his certifications. He has also been helping me with updating the Fee Schedule with me. P&Z has been working really hard updating ordinances and the P&Z book. We are still working on updating the municipal fee schedule so next month you will see a preliminary of that. There are a lot of things that haven’t been covered very well. Things cost us more than we are charging for it. And, again I want say thanks to the ladies in the office, they do a wonderful job and help me out a lot.”

8. Open Meeting, Ethics, and Election Training With our Attorney- Justin Wayment – I’m from the government and I’m here to help. 52-4-102 Training on Open Meetings. The government is for the people. Meetings are for the people. The 14th Amendment states that the government can’t take or deprive you property, your liberty or your life without due process. The procedural process is so you, the public, knows what’s going on. If there’s ever a question whether a meeting should be open or closed, you should always defer to open. Is the government an efficient entity? No, but it is here for you. It’s not designed to be efficient. Open meetings and being open to your people is the key issue. It is unproductive to send out unsigned documents on the internet or however that criticize your leaders or criticize town policies. If you’re going to do that put your name on it because you can’t or don’t you are not being open. What is a meeting? A meeting is when a quorum is present, so if there’s enough people here that there is a quorum, there is now a meeting, so then it needs to be open. The second part of that is if you’re doing town business, or, if you’re not doing town business then open meeting do not kick in. If there is a gathering such as church or something like that where there are enough people to technically have a quorum, but no town business is taking place then the open meeting laws don’t kick in. We should have a regular location, which you guys do, you have a great town hall. Meetings agendas should be posted at least 24 hours in advance. The agenda should state enough stuff in there that you as a resident should be able to know what the meeting is about and what will be discussed. The exception is emergency meetings which should be posted as soon as possible. If it’s not on the agenda, you cannot take action, you cannot vote on it. Minutes- Need to be sufficient, need to have the date, the time and the place, needs to have the names of the council that are present and the names that are absent. The substance of the matters that are discussed and decided by the public and that may include a summary of the comments. A record of how individuals vote— now that doesn’t mean she has to say that they all vote yes if they do, she can put “unanimous vote” because everyone knows what that means. But if one votes no or abstains then that should be recorded in the minutes. We vote no if we don’t agree with it, we abstain if we have a conflict of interest. If you have a conflict of interest, you can still vote, if you believe you can make a good decision regardless of your conflict of interest. Unless you could gain financially from the decision, then you should abstain. I would also recommend you use microphones, and televisions to put documents up for the public to see. Pending minutes need to be marked as “Draft Minutes”. You have three business days to have draft minutes available to the public if requested. That is the same with the recording, three business days for it to be available for the public if requested. It doesn’t mean the minutes or recording have to be made by then, but if someone comes in to request it you need to have it to them within a reasonable amount of time. If they want to GRAMA it, you have ten days to get it to them.

Votes—When there are votes again they should be counted if there’s a decent. Now there are certain votes that should be always voted on by roll call. Roll call votes, when it’s a vote like that instead of the Mayor saying your name and then you say aye, you just say your name--- aye or nay, and then you start at one end or another and go down the line. What things require a roll call vote? Ordinance, resolution, or closed session. To go into closed session you need to have a roll call vote and 2/3 votes are required. Here’s the proper procedure to go into a closed session; you make a motion, a second, a second, then you do a roll call vote, aye if you have 2/3 vote then you can go into a closed session. Once you’re in closed session turn off any recording of the meeting, and then restart as the new “closed session recording”. Then once you open up, you go around the room and have everyone announce their

presence. Who can be in a closed session? Anyone the Mayor sees fit. What can you go into closed session for? Land purchase, Legal issues, personnel issue, security issues etc. I want to clarify something I have taught wrong for years. You can go into closed session to discuss the mental wellbeing of anyone, not just employees. Anything that loses the town's ability to make a good financial deal can constitute a closed session. When you're going to record is there any time in a closed session that you're going to turn that recording off? There is one time, and the Mayor has to sign a paper, and that is when you're discussing an employee issue you turn the recording off. The Mayor signs a verification that it was an employee issue. When it talks about purchasing land, that also deals with leasing land, exchanging land, and now water rights would be a part of that and any other purchase, not just property. For example, if you want to purchase a fire truck, you can go into closed session for that, because when it comes to anything dealing with the town losing its ability to barter or bargain or get the best bang for their buck, you can go into a closed session. Same with water, and water has become an issue now because you can exchange water, but before under the constitution you could not sell water, once you own it, you can never give it back, but now you can exchange water under certain circumstances, so water becomes one of these as well. Investigative proceedings, if the Marshal needs to report to the council, that's not something you can do in an open meeting, so that needs to be done in a closed session. If you're going to injure a business in the form of something like a trade secret being exposed, you can go into closed session. You have to state the date time and place of meeting. The names of the members present and there should be a discussion about confidentiality, so when you go into a closed session, what do you have to do? Are you allowed to talk about it outside the closed session? No. But in court a judge can tell you you're going to talk about it. It's a class B misdemeanor to speak of closed session proceedings unless it is ordered by a judge or future council members vote to reverse the closed session and make it public. Next week this council could vote to make the closed session public. The council would just have to motion to open up closed minutes to public and with a majority vote in an open meeting. There's only one motion you can make in a closed meeting, and that is to come out of the closed meeting. So, if you're have a closed session for some reason you may want to have another line item on the agenda to say "Vote on matters of the closed meeting," or "Action on closed session." When you're in closed session, no off topics, no off topics, no off topics! If you're not talking about town business, there's no harm no fowl. Site visits, start out here, if you're going to do a site visit you put it in the record what you're doing, where you're going and someone take minutes while you're out there, just in handwriting, you don't need to record it. Electronic meetings: you have to have a base, so you still have someone here for it to be open for the public to come and listen. You can also provide websites where people can listen in. New rule as of 2023 for Electronic Meetings—You have to do roll call, if there's a vote you have to do roll call vote, so if a councilman is participating electronically, it can be recorded properly. Enforcement of meeting: if someone is disrupting the meeting, and the term is "Significantly compromises the meeting," the Mayor can excuse them. I would suggest 3 chances. Being disruptive on the council board. If someone wants to sue for violation of the rules they have 90 days to do that, not 91, they have 90 days. If it's a bonding issue you have 30 days because the bonds go active after 30 days, because you have huge financial ramifications there, you have 30 days. If you violate open meeting laws, it is a class B misdemeanor, and you can be removed from the board because it's a violation of office. Emergency meetings try for 24 hour notice but if you cannot you post as soon as reasonable, if you can't even do that you post afterwards and explain why you couldn't get it posted. When we make decisions, we need to make them for the right reasons, and we need to do the best interest of the town, and in an open manner. You sit on the board to do the people's business, and to build a monument not to yourself but to this town and if you're on this board for your own accolades or you're on this board for popularity, then you're on it for the wrong reasons. You should be on this board to do what is in the best interest of the town, and in an open manner. Certain decisions you make may make a difference way out in the future. The decisions you make now can affect the future in positive or negative ways. You need to be wise with your decisions. It can affect generations to come. We try make decisions now to positively impact the future, not negative.

Election Law—I can't find anywhere a dos and don'ts. You do have to report your donations, and anything over \$50 cannot be anonymous. You may not use any town email, phone, or any property of the town to do campaigning. You cannot do campaigning while doing gov. work hours. Paid or unpaid. You can't come to a Town Council meeting while on the town council board and campaign during the meeting. If any of you work for the federal government, you need to look into the rules because they have certain rules for that. You can't put signs on city property. If you can't win fairly, then you shouldn't win.

9. POSSIBLE CLOSED SESSION – Legal Issues; Land purchase; Personnel business; or items as described under Utah State Code Utah Code 52-4-205

Levi motions to go into closed session to discuss pending litigation, Jim Lybarger seconds, Mayor David Schmuker aye. Vince Olson is asked by the Mayor to excuse himself. Vince Olson is excused.

8:47pm UT Motion to return to regular meeting made by Levi Banfill, Jim Lybarger seconds, Vince Olson aye, Mayor David Schmuker aye. Mayor states that we gave our Attorney Justin Wayment permission to move forward in the matter.

10. CITIZEN COMMENTS (Each citizen that chooses to do so is given a reasonable amount of time to comment) –

Tom Ranuea – There were a lot of citizens that were here that are not here now. I propose to have closed sessions either at the beginning of the meeting or the end of the meeting to have the meat of the meeting happen when we have the most citizens here to be a part of the meeting.

Hyrum Short – Since you didn't have a work session, would it be possible to ask questions throughout the meeting agenda items? Mayor—Yes, we will consider that.

11. OLD BUSINESS

- a) **Discussion & Possible Action on Approving DRAFT “Big Water Town Development Standards Manual”— Tabled @ July 10th P&Z meeting to allow more time for review.**
Tabled
- b) **Discussion and Update on Highway 89 Turn Lane Project** – Mayor we had a pre-construction meeting here last week. It was a very good meeting. We had several important parties attend this meeting including UDOT, our Engineer Leif Conley, the person doing the testing on the materials, Shane Ramsey with UDOT who is our area supervisor and takes care of our roads summer and winter. Start date is August the 14th. Traffic control will be involved, they were here as well. It should be finished mid to late October. Katie has been working on contribution fund requests and has requested the amount we are allotted to request at this time. The town has committed \$100,000.00 to contribute to this project and we should be good with that unless there are unexpected overages. We have secured Rec and Trans funds of \$25,000.00 so with the \$75,000.00 from the county the total is \$100,000.00 from Kane County.
- c) **Discussion and Possible Action on Approving/Adopting Updates to the Big Water Personnel Policies & Procedures Manual with amendments from June meeting** – Levi Banfill motions to adopt Big Water Policies & Procedures, Vince Olson seconds, Jim Lybarger aye, Mayor David Schmuker aye. Motion passed.
- d) **Possible Action on Approving Resolution 2023-08 to Adopt the Updated Big Water Personnel Policies & Procedures Manual with changes from June meeting** – Levi Banfill motions to adopt, Vince Olson seconds, Jim Lybarger aye, Mayor David Schmuker aye. Motion passed.

12. NEW BUSINESS

- a) **Discussion and Possible Action on Adopting Resolution 2023-07 Big Water Municipal Regular Scheduled Meeting Dates from August 2023 – August 2024**— Levi Banfill motions to adopt, Vince Olson seconds, Jim Lybarger aye, Mayor David Schmuker aye. Motion passed.
- b) **Discussion and Possible Action on Big Water Fire Department Cooperative Wildfire System agreement with the Division of Forestry Fire and State Lands— Kane County Fire Warden, Spencer Rollo will be in attendance to discuss and provide information.** Warden Rollo's representative had to leave. Chief Robert Barnett—This is an cooperative agreement with state wildfires, so if a wildfire starts on unincorporated private property and comes into the town, the state will delegate that fire as a state fire and it won't cost us a dime. It is kind of like a insurance policy is what it is, with that there is a price to it and that something they would have to figure out depending on the feasibility of that happening. So if we go out on the highway and respond to a wildfire they would count those hours and it would come off cost. The guy that was here told me it would be about \$2-250. Its not a big expense. Vince Olson—How much does this cost us? Chief—Its like other insurances and they will give a quote based on a feasibility study that is done for liability and risks. My biggest concern is all the brush we have.

Tabled

- c) **Discussion and Possible Action on Revamping Big Water Town Park—Discussion on quotes provided.** Two quotes were provided, one, BigT did a park in Kanab. We are not voting on this tonight; we need to go out and find funding for. This is on our CIB list. There are options to look over and make some decisions later. We will look for funding through the solar panel people, CIB, and parks and rec. Vince Olson- Would there ever be a time where we would have concessions down there, like hot dogs, slushies etc.? Mayor—That's not part of this deal but its something we could look a t in the future.

Levi Banfill motions to move forward for looking for funding to revamp the Big Water Town Park, Jim Lybarger seconds, Vince Olson aye, Mayor David Schmuker aye. Motion Passed.

13. POSSIBLE CLOSED SESSION – Legal Issues; Land purchase; Personnel business; or items as described under Utah State Code Utah Code 52-4-205

14. FINANCIAL REPORTS – There is nothing out of the ordinary. There was a larger check written as it is annually for our insurance payment. Vince Olson motions to adopt the financial reports, Levi Banfill seconds, Jim Lybarger aye, Mayor David Schmuker aye. Motion passed.

15. ADJOURNMENT – Vince Olson motions to adjourn, Levi Banfill seconds, Jim Lybarger aye, Mayor David Schmuker aye. Motion passed.

Adjourned @ 9:10pm UT

