

Draft Minutes
Regular Trustee Meeting
January 16th, 2024
6:00 P.M.

The Village of Capitan Board of Trustees met for a regular meeting on Tuesday January 16th, 2024 at the Village Hall in Capitan, New Mexico at 6:00 PM.

Mayor Davalos Called the meeting to order at 6:00 PM

Roll Call: Mayor Davalos – here, Trustee Shearer – Here (via zoom), Trustee Hair – Here, Trustee Cleckler – Here, Trustee Menix – Here

Item #1 on the Agenda - Employee and Board Introduction

Mayor Davalos - The first item on the agenda, is Employee, and I failed to put Trustee and Employee Board Introductions. We are going to start by introducing ourselves so you know who we are. A little bit of our background. We're not going to go in lengthy but I'd sure like for you to know who we are and if you are out there you can put a face to it. So, Trustee Cleckler, start off with you.

Trustee Cleckler – I am Brian Cleckler for those of you who don't know me. I moved to Capitan probably about 17 years ago, from Ruidoso. I have Oso Grill. I've decided to give back to the community, and see what I can do as a trustee, and try to make the Village to be a bigger and better place to be in.

Mayor Davalos – Thank you. Trustee Menix.

Trustee Menix – Tiffany Menix. I'm a lifer. I'm Third generation here in Capitan. Again, my community means so much to me, and I wanted to give back. I'm a retired school teacher after 25 years. Twenty-three here, I did two in Las Cruces. So that's a little bit of my background.

Mayor Davalos – Thank you. Trustee Hair.

Trustee Hair – Hi! My name is Sherry Hair. I have been blessed to be elected as your representative for the Trustee Board. I appreciate the faith that you have placed in me. I do really consider that important. And looking at addressing your concerns, having the Village of Capitan grow and flourish and be the very best that it can be. I appreciate you having faith in that. Thank You.

Mayor Davalos – Okay, I am your Mayor, Minerva Davalos. I thank you for the community support and placing me in this position. I have retired 20 years Law Enforcement. Started out in Ruidoso Downs and worked my way up to the Sherriff's Office. I worked in the narcotics unit in patrol. I was also here as Municipal Judge. 2013 as the fill in for the Judge when he wasn't here. After that in 2016 I took over and I was here until I ran this past year. So, I was a judge during that time. I enjoyed it. I liked working with the community. There is where I saw the workings of the community here, the administration, and work with some of the people in the community. And that is where I want to be. I want to continue to help, see what we can do, see how we can work together. To find out what you all would like to see, where do we want to go, and I'm here to hear any comments, suggestions. I enjoy what some people have to say. Thank you so much.

Trustee Hair – Madam Mayor, Bobbi.

(Item #1 Continued)

Mayor Davalos – I'm sorry. Trustee Shearer.

Trustee Shearer – I'm not going to try to do this over zoom. I'll pass on this, this time.

Mayor Davalos – Okay, we'll do it the next time when you can make it here. Okay, so. Now we will go to my employees. The people who work for you all. They work for me. I supervise but they work for you all. First of all. Judge.

Judge Bradley – I am Lilly Bradley, and I am your newly elected Judge. I look forward to working with anybody. I have to, or not. Thank you.

Mayor Davalos – Next will be our Village Clerk, Al Cavazos.

Village Clerk Cavazos – My name is Al Cavazos, and I'm the Village Clerk and I've been here for two years. Prior to that I worked for the US Federal Government, the office of the US Small Business Association. I worked with the Legal Department there for the Office of Disaster Assistance, basically working on compliance. Prior to that, I spent 35 years in the banking industry. So, I'm telling my age now, but back in the 1977. I helped Community Re-Investment Act, and Real Estate Settlement Procedures. So, I've been involved in compliance for the majority of my career.

Mayor Davalos – Thank you. My Deputy Clerk Angela Autrey.

Village Deputy Clerk Autrey – I'm Angela Autrey. I worked here for 3 years. I was a Court Clerk with the Magistrate Courts in Lincoln County for 8 years, and worked with all of the Judges. I was the DWI Lincoln County Court Clerk. When I came here, I was the Floater. That's what they called the position. I tried to learn every part of the Village I could possibly learn. I went out with the guys, they showed me everything. I tried to do inventory on everything, to know about everything. My job here, basically I'm HR. I am here to help everybody. I'm here to help all of the employees. I try to do my best and I hope I'm doing a good job. If there is any kind of question, they come to me for the question, I answer it. If I don't know it, I find it. So that's pretty much my job.

Mayor Davalos – Thank you. Finance Officer, LeAnne Brasher.

Finance Officer Brasher - I'm Le Anne Brasher and have been a bookkeeper for over forty years. I worked for a property management company for 20 years before I came to New Mexico. I was responsible for all account receivable and account payable. I did payroll and reporting to the State and the IRS. Among submitting year end financials to their accountant for filing yearly taxes. I have been the Village of Capitan finance officer since February 2022. I take my job seriously as working for the people of the Village of Capitan. Since I started with the Village of Capitan, I have separated various funds into their own bank accounts so that the funds are not co-mingled and are more manageable. Such as the, Fire, Lodger's Tax, Smokey Bear Enterprises, Water and General Funds. With council approval, we have invested over a million dollars. Which has yielded over \$40,000.00 in interest. We have taken the CD that was with Washington Federal and turned it into a Public Funds money market. Still with Washington Federal. At the time it was only making .6% in interest. Now it is making 2.98% interest which has yielded over \$6,000 to date. With this particular CD, it can be closed or drawn on at any time without penalties.

Additionally, the Water Fund had a CD with City Bank which was in the amount of \$109,000.00 and was making .65% in interest. This CD is now making 5%, which has yielded \$1,014.00 to date in interest.

(Item #1 Continued)

The finance office has a lot of responsibility's in doing monthly and quarterly reporting, besides the daily reconciling of income and expenses. I make sure that all taxes are being reported correctly, the previous finance officer was paying Gross Receipts Tax on the Water, Sewer and Trash receipts to the New Mexico Tax and Rev Dept twice under two different tax percentages. I have managed to get a refund from the NM Tax and Rev Dept. of over \$24,000.00.

I am responsible for making sure payroll is accurate and all leave sheets have been submitted for any time off. QuickBooks had a problem with the classifying of some payroll taxes. I have since then figured out the problem and made the necessary adjustments. Part of that responsibility is also the biweekly reporting of taxes, keeping track of Health Insurance, AFLAC, PERA and other Retirement. We no longer have the need of an outside service for our payroll.

I have maintained oversight on the daily deposits, which are now being approved in triplicate. All cash deposits go to Washington Federal in Ruidoso once a week and are dropped in the overnight box. All check deposits are done through the Washington Federal secure website, VIA, Remote Deposit Capture. The customers canceled checks are then kept in a safe and logged when they are to be destroyed.

Washington Federal will be doing an audit on these procedures.

When the Budget is approved by the council I input and report the information to the Local Government Budget Management System. (LGBMS). LGBMS has changed the reporting system this year and I took the required training for the new budgeting system. Last year I took the LGBMS training and the required Procurement training. Recently, I have enrolled into accounting and financial classes that are being held by Michael Steinenger, which was with the New Mexico Department of the Finance and Administration.

I have worked with Angela and the auditor to get all information that she has required. Myself and Angela also, worked closely with CARR RIGGS and INGRAM providing them the information needed to get the accounting corrected for the FY20-21 audit. We discovered there was missing information and information being inputted incorrectly, which took Angela and I many hours of work to find and or correct these mistakes. Since then the reporting in QuickBooks has been updated to have the same reporting classes as LGBMS.

Due to the mess in the finance office, I have made notebooks for easy access to information. Such as Payroll, Investments, Bank Statements, etc.

Thank you.

Mayor Davalos – Thank you. We have Administrative Assistant, Janiece Wall.

Administrative Assistant Wall – Hi, I'm Janiece Wall. I moved here in in 1980 when I was around 5 years old. Went to school here in Capitan K-12. I've gone to school with some of your kids and some of you a little bit. We moved back in 2012. I'm the Administrative assistant to the Clerk and Deputy Clerk.

Anything I can help them out with I do. I've been learning about Capitan more and more every. Thank you.

Mayor Davalos – Thank you. Our Water Clerk, Charlene Williams.

Water Clerk Williams – I am Charlene Williams. I've been here six years now, as of last month. I take care of the water department. I'm responsible for setting up the hand-helds for the guys take out to do the reads. They bring it back to me. I input it in the computer to do the billing. I print out the bills, send them out. I am responsible for collecting any payments on those bills. Catching any mistakes that I can. We have over 860 bills now. So, we are growing. I am also responsible for helping Johnathan LaMay, take care of the cemetery. I am the one that does the paperwork when I sell a cemetery plot. As well as getting him information on opening and closing a plot if there is a burial. There're tons of stuff involved with the water department.

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Mayor Davalos – Thank you Charlene. We have our Clerk Assistant and also our Smokey Bear Enterprise Clerk. Smokey Bear Enterprise is our gift shop that you see across the road over here and she's done a good job. Peggy.

Clerk Assistant/Smokey Bear Enterprise Clerk Mayson - Hi. I have my bachelor in business and science administration from the University of Phoenix. I have processed paperwork for the Dial Cooperation for over 15 years. I also processed paperwork at the headquarters for Bar S Foods. Those are just the big companies. I also do the ordering for Smokey Bear Enterprises, as well as selling the product. I am very pleased to say, on Sunday, we had over \$600 in sales.

Mayor Davalos – Great, thank you Peggy. Our Water Utilities Department Supervisor, Steve Osborn.

Water Department Supervisor Osborn – I'm Steve Osborn. I started here with the Village of Capitan in the 1996. I worked about 12 years. Then I left and was the supervisor for Alto. Just shy of 12 years. I have been back for 4. So, I'm trying to get the water flowing, and safe and in compliance.

Mayor Davalos – Thank you Steve. Street Department Supervisor Johnathan LaMay.

Street Department Supervisor LaMay – I am Johnathan LaMay. I've been in Capitan for 29 years in the Village. I take care of all the roads from right-a-way to right-a-way and any problems, I try to take care of.

Mayor Davalos- That's to include our snow plowing in the winter time. You are up early and getting that done when ever we do have bad weather. Salt and so on and so forth. Thank you, Johnathan. Chief Randy Spear.

Police Chief Spear – Randy Spear. I moved here in 1978 from Roswell. Went to work here until 1990. Then I worked for Ruidoso Police Department. I worked there for 16 years. I advanced from Patrolman up to Sergeant. Then I came back to here. I've been in Law Enforcement for a little over 45 years now.

Mayor Davalos – Thank you Chief. We have Peggy Wilson who is a volunteer for the Village here. She does some of our grant writing and she is also one of the Lobbyist who is going to help us out with funding.

Lobbyist/Grant writer Wilson – I'm Peggy Wilson. I've lived here, not quite 2 years now. We are new. I volunteer doing grant writing for the Village and for a lot of the other community organizations. Like Smokey Bear Museum. I wrote a grant for them for the upcoming Smokey Bear Birthday Celebration. I am your Lobbyist. I am a Lobbyist from the State of Nevada. 45 years working all the elected officials and trying to keep them aware of who we are, what we need, and strictly on a Volunteer basis so. I love this place. It's fun.

Mayor Davalos – Thank you Peggy.

Item #2 Approval of the Agenda

Mayor Davalos – I do have an amendment. If you will look at #12, we are going to have to put a hold on that one.

Okay do we have an approval on the agenda?

Trustee Cleckler motioned to disapprove the agenda. Trustee Menix seconded the motion.

Discussion:

Trustee Cleckler – I move to disapprove it.

Mayor Davalos – Disapprove?

Trustee Minex- I second it.

Trustee Cleckler – Yea, Due to violations of the Open Meetings Act.

Mayor Davalos- Okay.

(Item #2 Continued)

Trustee Shearer – Mayor, I second that motion.

Mayor Davalos – That's a third motion, we have a second already. Um, can you... tell....

Trustee Cleckler – Yea, this is what I pulled off of the Open Meetings Act. The Open Meetings Act requires that the public business be conducted in full view of the public and the public has access to proceedings and the decision-making policy. Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting 72 hours prior to the meeting. This ensures interested members of the public are given reasonable notice about the topics the body plans to discuss address at the meeting. The public body should avoid describing agenda items, this is where it comes,

agenda items in general, in broad or vague terms that might be interpreted as misleading to the public about the business the public body intends on transaction. This is especially important consideration when the public body intends on acting on agenda item. These are the pages 16 to 17 of the Open Meetings Act. By putting out this agenda that doesn't have names of appointed people. Actually, the agenda says that we are just swearing them in now. It doesn't say... It makes it sound like to the public, they have already been appointed and accepted. We are just swearing them in. So, right there. Also our City ordinance states that we have the Chief of Police, the Village Clerk, and the Financial Office. So, when you have on here the Deputy Clerk. In our ordinances it is a hired position, it's not an appointed position. So, that's wrong. I do understand the importance of this meeting and the budget items that has to be discussed by January 31st. So, we need to take care of this but if one person in this audience or from the Village of Capitan goes to the State and says, they don't agree with this agenda because of the Open Meetings Act that we have there, the meeting becomes null and void. We have to have an approved agenda that is legal compared to the Open Meetings Act.

Mayor Davalos – Okay

Trustee Cleckler – I do have right here, a letter that I wrote. I did contact, tried contacting you Mayor, on Thursday evening. We had a meeting Thursday afternoon before the Village Closed. Thursday evening afterwards, I tried calling you and texting saying, please let's get together, discuss the meeting before the 72 hours prior happens. I received nothing from you. Not knowing what to do, I did contact the Village Attorney and I have a letter right here from him, that he sent to the Village of Capitan and the Village Clerk stating, you need to please get this taken care of before the 72 hours are up so we can take care of it. And I never heard anything to try to fix it. I do want this meeting. I want it to happen. But, if somebody dis approves this at the State Level, we've wasted our time.

Mayor Davalos – Okay, when was that letter sent?

Trustee Cleckler – This right here?

Mayor Davalos – Yes

Trustee Cleckler – Here is a copy for you right here. It is from Zack Cook, to the Village of Capitan saying, please take care of this by 6:00 p.m. on Saturday. And I do know that the Village Clerk was here Saturday, working. Or his car was here.

Village Clerk Cavazos – That's wrong. My car was not here. I was out of town.

Trustee Cleckler – I don't know, like I said.

Village Clerk Cavazos – So, that's a mis statement.

Trustee Cleckler – Okay well. Like I said, I know there was a grey pickup like yours out back. It may not have been yours.

Village Clerk Cavazos – It couldn't have been mine. I wasn't here.

Mayor Davalos – Okay. Attorney Cook.

Attorney Zach Cook – Yes ma'am.

(Item #2 Continued)

Mayor Davalos – I see that this was sent out on Saturday January 13th. Which is a day that no one is working on that day. What is your opinion as to our responsibility to answer something that comes in on a day that we are not working, and as soon as we come into work, we find this? Which was this morning.

Attorney Zach Cook- Sure. So, on Saturday Trustee Cleckler contacted me. He sent me a copy of the agenda, and called me about the concerns about the potential lack of reasonable specificity on the agenda. As required on the Open Meetings Act. I took a look at the agenda and said that he may have a point. So, I contacted Al and we discussed it. I don't remember if I called Al then sent an email, or sent the email and then called Al. Bottom line is Al is explained to me, what he thought your thinking was as the Mayor. I said, well okay I would feel comfortable making that argument to the Attorney General, because it's essentially a violation of the Open Meetings Act. Nobody goes to jail, they just make a complaint to the Attorney General's office and they can make a determination and say, "Hey, you blew it on the Open Meetings Act. Go back and do that again." So, what Al explained to me, I thought well maybe there's not case law that has been decided on similar facts.

Mayor Davalos- May I ask a question at this time?

Attorney Zach Cook – Yes, ma'am.

Mayor Davalos – Can it be for you, specifically, which is the item that you feel that I did not give information that you need?

Trustee Cleckler – Well, when we had our, when I met with you Thursday evening, I asked you the list of appointments, what was going on? And you said, that you will give them to us at the meeting. I don't think it's fair for me to decide in a spur of the moment. Which I still haven't received a list. It's spur of the moment. If somebody has a job or doesn't have a job. I need to look at that. I need to know qualifications, I need to know what's going on and you said that it was your choice, you can do what you want to do.

Trustee Menix – That's item 10.

Mayor Davalos – Hang on.

Trustee Menix – And according to our ordinance...

Mayor Davalos – Hang on, hang on. You have to be recognized. I'm sorry. Okay, we are going to keep order here. Okay, go ahead Tiffany.

Trustee Menix- I sent you an email the moment I got this agenda, and I told you that it was against our ordinance and the State Statute. Our Ordinance says, "Appointment. At the organizational meeting of the governing body, the Mayor shall submit, for the confirmation by the governing body, the names of persons who shall be employed to fill the appointive offices." Also, when we were in Santa Fe, I asked the lawyer, do we have to follow previous precedence? He said, "Absolutely." Previous precedence shows, we hire everybody one at a time. I have a copy of the agenda in 2022 when Mrs. Hair came on the board, when Al came on, and who ever else. Anyway, I have copies here and I brought copies for the audience if they want to see it. (tosses copies to the front of the table)

Mayor Davalos – Okay

Trustee Menix – Well, I'm sorry. The people need to know! I told you I'm running for the people.

Mayor Davalos – Okay, hang on. Hang on, hang on.

Trustee Menix – So, I'm just telling you why.

Mayor Davalos – You don't have to throw it out there.

Trustee Menix – Okay, well I'm just telling you, those are for the audience.

Mayor Davalos – Okay. Attorney Cook. Is this something that needs to be discussed in executive session or can we go ahead?

Trustee Cleckler- Point of Order. We can't have..

Trustee Menix- No!

(Item #2 Continued)

Mayor Davalos – Hang on. Hang on. I am asking for legal opinion here.

Attorney Zach Cook – Mayor, I don't believe that there is any exception to the Open Meetings Act that will allow you to go into an executive session on this.

Mayor Davalos- Okay

Trustee Shearer- Mayor, you're forgetting, you have a motion on the table and a second.

Mayor Davalos- Yes ma'am, I do. Once there is a motion when discussion has started, I do not need a second.

Trustee Menix – We made the motion, it's not for discussion.

Mayor Davalos- Hang on. (two trustees' talking at the same time)

Trustee Shearer – It's my understanding, you need to vote before (in audible)

Mayor Davalos- Pardon me?

Trustee Shearer – I believe you need to vote before you can go any further.

Attorney Zach Cook – I think you are on further discussion after the second. So, you are still discussing the issue.

Mayor Davalos – Okay. From what I understand at the training we took this last week, that discussion begins before a second is brought up. Then it continues, you don't need a second.

Trustee Menix- I seconded it as soon as Brian said it.

Mayor Davalos- Yes you did.

Trustee Menix – So, it's been seconded.

Mayor Davalos – So, it's been seconded. So, hang on a minute.

Trustee Shearer – But Mayor, you still have to call the vote.

Trustee Hair – Madam Mayor, may I be recognized please?

Mayor Davalos – Yes ma'am go ahead.

Trustee Hair- My understanding is, that we can still discuss this information. Is that correct? (looks at Attorney Cook)

Attorney Zach Cook – There was a motion, there was a second and Mayor called for further discussion. Which I don't know that, that ever ended.

Trustee Hair – So, really, calling for a vote at this particular time....

Attorney Zach Cook – You, know eventually people get tired of listening to the conversation, and want to call the vote, then that's.... you know.

Trustee Hair – What I would like to state is, will there be the ability for us to move forward on important items that need to be done if we strike that particular number, agenda item?

Trustee Cleckler- Mayor, City ordinance....

Trustee Shearer – Sherry, if I could answer....

Mayor Davalos – Hang on, hang on. Bobbi, hang on. (Mayor motions back to Trustee Cleckler)

Trustee Cleckler – Our city ordinance state statues state, that within in two weeks after we come into office, we have to have an organizational meeting. So, we are already in violation of having an organizational meeting right now. So, we can't push that back for another meeting. Before we do anything, we have to have the organizational part of it.

Trustee Hair – So, let's you know

Mayor Davalos- Hang on.

Trustee Hair- I'm sorry.

Mayor Davalos – (pauses a moment) Okay, on the item that you are stating that we have to have the organization meeting, two weeks is what I believe you said, from the election. I called on that and I believe.... Al, were you there on that, or Angela, I don't recall? We called to find out about that organization meeting. We called Lincoln County, to the Elections Clerk over there. What we were told

(Item #2 Continued)

was that, that was no longer applicable. It was there for elections that was held that we, the Village, was the one that held that election. But since it was combined with other County elections, School board elections and so on, at that time that became a void. That we did not because we looked into that because I was concerned about having that meeting, and that's what we were told. That's why the organizational meeting was not brought on, we didn't have that organized. So, that is what I found out about that one there.

Trustee Cleckler- But what about City or State Statues on it, on our ordinances? Forget about the County.

Mayor Davalos- Okay, well the County has to abide by the State Statutes.

Trustee Cleckler – So, you are saying the County is not.....

Mayor Davalos- Okay

Trustee Cleckler- I mean, if the County has to abide by the State. Why didn't you call the State?

Mayor Davalos- My mistake. I didn't. But, I depended on the knowledge of the Elections Clerk in Carrizozo. Who I believe have this information and have the knowledge on that.

Trustee Cleckler- I mean, from the training we had, the first thing we were supposed to do, when we take office, is have the organizational meeting. We can't do anything until we have that meeting.

Mayor Davalos- Okay

Trustee Cleckler – But, like I said, this to me is not a valid agenda, because of Item 10. Because it's not free and clear on what's going on and what your intentions are.

Mayor Davalos- Okay, so I want to go back... and I did not want to bring this out but.

Deputy Clerk Autrey – I'm not sure you should, honestly.

Mayor Davalos- Okay. So, we go to a vote? (looking at Deputy Clerk)

Deputy Clerk Autrey- That's up to you. (Inaudible)

Mayor Davalos- Okay

Deputy Clerk Autrey – That should be done in an executive session, and we didn't have time to put that on the agenda.

Mayor Davalos – Correct

Deputy Clerk Autrey – Because you are speaking (Inaudible)

Mayor Davalos – So at this point, vote.

Attorney Zach Cook – Vote, call the question. Have a vote on the motion.

Mayor Davalos – Okay. So, would you repeat your motion?

Trustee Cleckler- I move that we disapprove the agenda because it does not fallow the Open Meetings Act.

Mayor Davalos – Okay, there is a motion to disapprove, and a second, to disapprove the agenda. Go ahead and take a roll call.

Roll Call: Trustee Hair – No, Trustee Cleckler –

Trustee Cleckler – So by saying no, am I agreeing on the agenda? Or am I agreeing....

Mayor Davalos – You made the motion.

Trustee Cleckler- Yes, yes. I say yes.

Village Clerk Cavazos – Trustee Menix – Yes, Trustee Shearer – Yes, to disapprove.

Mayor Davalos - Meeting is adjourned.

Adjournment:

Meeting adjourned at 6:32 PM.

Minerva Davalos, Mayor, Village of Capitan

Attest:

Al Cavazos, Village Clerk

DRAFT