

# TOWN OF LAKE HAMILTON MEETING MINUTES

## TOWN COUNCIL SPECIAL MEETING

TUESDAY, SEPTEMBER 09, 2014

6:00 pm

Call To Order/Invocation/Pledge/Roll Call –Chair Harris called the special meeting to order at 6:00 pm. The invocation was given by Roberson and pledge was led by Tomlinson. Members present: O'Neill, Roberson, Kehoe, Tomlinson, Chair Harris, Mayor Wagner. Clerk Irvine and Attorney Christman were present.

**MOTION: Kehoe to move item #2 up to #1. Seconded by O'Neill. Discussion: Chair Harris asked what the purpose would be for the move. Kehoe stated that in case people wanted to leave after item number 2 was complete they did not have to stay for the other item. Motion failed on a vote of 2 (Kehoe, O'Neill) for and 3 (Roberson, Tomlinson and Harris) against.**

### Special Meeting Business:

**1. Mayor's recommendation on water treatment operator position:** The Mayor reported that the town received three qualified applicants for the position but one was not able to attend the meeting in order to be interviewed by the Council. Harvey Sims was asked to come forward to be interviewed by the council. Kehoe stated that he is satisfied with his performance and has no other questions. O'Neill stated that he is aware of the records for the plant operation and asked if Harvey could provide some information on how it is running. Harvey reported that he feels it has been running well. O'Neill asked how often he contacts Haines City. Harvey replied that it has been a while since he has needed Haines city assistance and has a high level of comfort with the plant. O'Neill brought up Harvey's reprimand while working for the City of Dundee and asked for more clarification on that issue. Harvey reported that it was a personality conflict with another employee. He spoke badly of that employee in a public place which was overheard and reported back to his supervisor. He stated he respects the decision of his supervisor. Mayor Wagner reported that Harvey never hid that fact. Tom Mace asked if he was fired from Dundee. Harvey replied that he was fired.

Tomlinson asked Harvey how he is with repairs on small pipes and if he has experience on a backhoe. Harvey replied that he is capable of working on small pipes and has not run a back hoe for over five years. Tomlinson commented to Harvey that a lot of people have concerns with his mouth but other than that feels he is doing a good job. Roberson asked Harvey if he had experience with this type of plant. Harvey stated that he has had different experience but that the SCADA has different levels and it needed to be coordinated for the corrective action plant. Roberson asked if he has learned what he needs to know. Harvey stated he has. Roberson asked Harvey if he has made any comments about employees. Harvey stated that he has done that but mainly out of frustration.

Resident Charles Gunter stated that he has concerns with Harvey being fired from his past employee. He also doesn't appreciate his comments that were made in Dundee and Lake Hamilton and questioned how they can trust him not to do something to the water. Harvey replied that he cannot do anything bad to the water per the state rules.

Fred Lenard, NAACP, stated he had concerns with due process. Concerns with comments made about the NE section not caring about that area.

Robert Scott will reserve his statement for later but agrees with Mr. Lenard.

Chair Harris reported that two council members live in the NE section and he has concerns regarding some derogatory statements. Chair Harris read a written statement from Bobby Nicholson, "One day I talking with Harvey and he made a statement that the people in the north east section don't care about there (sic) places. He stated they keep trash everywhere and that we need to just level it down and burn it". Chair Harris stated that another similar statement was received by the Mayor from Mr. Lapley. Chair Harris voices his concerns that the Mayor did not take any action regarding Mr. Sims comments and then he gets statement from Mr. Bobby. The Mayor replied that it is a statement from a work release inmate and she has never seen it. Chair Harris said a full blown investigation should have happened after she received the letter from Mr. Lapley. Harvey Sims addressed the comments and stated that he said if it were his property he would burn it down. O'Neill stated that the task at hand is to conduct applicant interviews.

Nathan Lewellen was asked to come forward for an interview with the council. Kehoe stated that he read his application and is impressed with his credentials. Kehoe feels he would make a great candidate. O'Neill asked about his short term of service with Polk County and asked why he was fired after only four months. Nathan replied that he was not fired but that he resigned his position and would prefer not to go into it at this time. O'Neill asked him what his level of comfort with a large water treatment plant is. Nathan replied that his familiar with the concerns happening in the town. He explained his technical and management skills. He stated he is familiar with the rules for water treatment plants. Tomlinson stated that O'Neill covered most of his questions except the one about running a backhoe. Nathan replied that yes he can work a backhoe. He gained experience in Avon Park with that and other equipment and he has passed the written CDL test but has not taken the driving portion. Roberson felt that he is well qualified but asked if he would accept a lower wage than what he requested on his application. Nathan replied that he felt what he asked for is a fair wage for his skills. Harris asked if he would be able to keep the water quality with the H2S system being done. Nathan replied that he has no experience with that system but would follow the SOP and is willing to do a plant tour and develop a plan for fixing problems. Harris asked what Nathan's relationship was with Mike Stripling. Nathan replied that he was not his direct supervisor but he had a good working relationship with him. Harris asked about him using Alex Bramen as a reference for the same job they both applied for. Nathan replied that he has known Alex for years.

Chair Harris asked if anyone has signed in to speak on this topic. There were none.

Mayor Wagner reviewed Alex Bramen's application and interview and felt that Mr. Lewellen has an edge over Mr. Bramen. O'Neill feels comfortable with Mr. Lewellen. Tomlinson stated that Mr. Bremen still works part-time. Roberson reported that she likes Mr. Lewellen.

**MOTION: Roberson/O'Neill to hire Mr. Nathan David Lewellen.**

**Discussion: Mayor Wagner asked who would train him. Would the council authorize keeping Mr. Sims to train him? Clerk Irvine asked about the wage. Mr. Lewellen reported that he would accept the job for \$16.40 an hour and start on Monday. The Mayor was authorized to retain Harvey Sims for one week to train Nathan. Motion carried 5-0.**

**2. 120 Day council review on J.D. Johnson's performance:** Attorney Christman provided the Council information on this item and explained it is not an appeal of the Mayor's recent action to suspend Mr. Johnson. This is a performance review only. Chair Harris laid out the process for comments during this topic. Clerk Irvine read the Mayor's memo dated September 9, 2014 into the record:

MEMORANDUM

September 9, 2014

To: Town Council

From: Marlene M. Wagner, Mayor

Subj: Job Performance of J.D. Johnson

Mr. Johnson's job performance for the last one hundred-twenty days

1. On May 14, 2014, Mr. Johnson and I had a meeting. He agreed he would benefit from Supervisory classes. He said he would look into it. I requested that he and all maintenance personnel be signed up for CDL classes by June 15th.
2. On May 22, 2014, J.D. and I met and he said he was going to check into Supervisory classes and CDL classes, and I told him I was trying to get him with Haines City for some training. I also told him that he needed to do personnel performance evaluations. He has done one on Mr. Miller.
3. On June 6, 2014, I met with J.D. and reminded him that I need all vehicles checked weekly for regular maintenance and any needed repairs.
4. I scheduled a meeting with J.D. and Mr. Pense on June 13, 2014 concerning CDL classes. J.D. did not show up. I got a copy of the CDL handbook and had it copied and given to all Public works employees to study.
5. I scheduled a meeting with J.D. for June 17, 2014, he did not show up.
6. I met with J.D. on June 20th and 30th to discuss scheduling of grass cutting and other maintenance activities.
7. On August 1, 2014, I met with J.D. and asked him about the flag incident. I told him that I was not happy with his treatment of our flag and that I had to think about what I would do in the way of discipline for his lack of judgment.
8. I met with J.D. on August 11, 2014 and asked him if he would let Harvey Sims give him some training in the Water Treatment Plant. He said Okay, but he would rather have Haines City personnel train him.
9. J.D. listened to a webinar on supervisory training that he Town Clerk ordered. I have not heard anything from him about it.
10. J.D. went and shadowed a Haines City employee at their Water Treatment Plant for one day. I asked him what he learned and he said that he already knew most of what they did.

11. On August 11, 2014, I told J.D. that he needed to attend FEMA classes and check with the Town Clerk for assistance in scheduling. I told him I would like all the training he has received written down and given to me. I have not received it.

12. On September 2, 2014, Mr. Johnson failed to follow the established chain of command for reporting an infraction by an employee of the Town. He made an unsubstantiated accusation against another employee without first informing me and allowing me to handle the alleged situation in the proper and legal manner.

13. On September 2, 2014 at a regular meeting of the Town Council, a Council Member stated that he observed two Public Work employees on the side of Detour Road. He said, "They were lounging on the mowers for longer than a break period and had attracted other people on four wheelers to their location."

14. On September 3, 2014, I directed him to release the inmate know as Bobby and not to allow him to return to the Town. On September 4, 2014, against my direct order, Mr. Johnson allowed him to return and ride with Ernest Wormley doing some outside maintenance work.

In my judgment as Mayor and supervisor of Mr. Johnson, he does not have the skills to lead and supervise the department. Even Council Chairman Harris stated at a public meeting that, "It seems like we have a problem in the Public Works Department."

End of memo.

Mayor Wagner reported that Mr. Johnson does not have the skills to supervise the public works department. Chair Harris asked the Mayor to clarify if she was asking for him to be terminated. Mayor replied she was not. Councilmember Roberson stated that the Mayor was provided direction to provide J.D. with specific information to help him.

Chair Harris read the following (copied from documents submitted at the meeting): Special Meeting Notes

Establish Robert Rules of Order and the statement Mr. Barrett O'Neal made "Chief, if anyone, citizen or employee make loud outburst tonight we want them removed from the chambers."

\*JD JOHNSON AGAIN; was my response when I heard he was suspended, I know it seems like we are protecting Mr. Johnson, but it seems like he is the only one getting written up, but on numerous occasion in this chamber council members, employees, and residents states he works harder than anyone here. So I say "wow, I can't believe we are going through this again and it hasn't been 6 months since the last incident." If you research the minutes, you will see I made the statement "this was going to happen again, if we didn't keep the buffer between employees and the Mayor." Now, we have an update to the charter that will take this away from the council members.

In the 120 days we were supposed to be getting Mr. Johnson some help, so I spoke with Mr. Strickland about Mr. Johnson shadowing him to learn day to day tactics on how to supervise public works; he agreed to it. I informed the Mayor about it and told her to call Mr. Strickland; instead of her calling him about the job shadowing, she asked "Mr. Strickland to write a letter stating Mr. Johnson was not competent enough to run the plant," Mr. Strickland would not write the letter, because he said "Mr. Johnson was an excellent worker." The counsel was also informed by Mr. Leonard that Haines City wrote a letter stating "they did not want to work with Mr. Johnson" so I met with Mr. Jonathan Evans and Mr. Mike Strickland of Haines City and they both said "that was not true." Mr. Evans stated "if any of their employees wrote such a letter or made a statement of that sort, they would face disciplinary

actions.” I spoke with Mr. Evans a week later after he spoke with his employees and he stated “that statement was not true.” I wanted to have them come to the special meeting tonight, but I did not want to ruin ours or my professional relationship with them as a Town Commissioner or JROTC Instructor by placing them in our messy business.

So, with that being said “are we going to continue to harass Mr. Johnson until he is no longer the supervisor for the Public Works Department, until he is fired, or until Marlene Wagner is no longer the Mayor? Mayor Wagner, I don’t know who is your advisor or who maybe encouraging you to continue to harass Mr. Johnson; either they want to see the Town of Lake Hamilton sued, remain in the negative light with the media, or do not want you to remain as the Mayor; but one thing I do know for sure, they can’t be your friend. Because, this is ridiculous that we are here again taking up valuable time for something that is counter-productive, when we can be doing something for the citizens that is productive; and here is why I made that comment.

I am a 20 year retired veteran; I have fought for that American Flag and have lost friends in combat fighting for that American Flag. I watch people night in and night out walk during the National Anthem at high school football games and sitting, talking, or wearing hats during professional sports live on television; the Chief even witness today, that people do not know protocol when it comes to the American Flag.

I want you all to understand; I will not do some of the things that others do to the American Flag, because I know almost everything there is to know about the Presentation of the American Flag. But, until Congress pass a law, you can’t punish or hold a person accountable for how they respect or disrespect it. Just like we can’t hold the Republican or US Citizen accountable for what they say about President Barack H. Obama.

JD Johnson Suspension is a direct violation of his Constitutional Rights, because no law has been broken and you the Mayor have placed him on a 14 day suspension. I know the VFW and other veterans are upset; but this is their personal preference about how they respect the American Flag. I still believe this is something that should not have ever made it to the newspaper and should have been handled in house. I spoke with you Mayor and Mr. Leonard about this, before it ever hit the newspaper and you still commented on it in the newspaper. Sometimes “No Comment” is the best answer to the media; I learned that lesson 2 years ago on the article “Sweeping Changes” when they quoted things I did not say.

1. Here is a little history: The first Federal Flag Protection Act was passed by Congress in 1968; but it was overturned by the Supreme Court of the United States whom this Flag represents by a 5-4 vote in the case Texas v. Johnson, 492 U. S. 397 (1989) as unconstitutional restrictions of public expression and how ironic the person we are trying to punish tonight last name is Johnson; it was argued on March 21, 1989 and decided on June 21, 1989. This is how it started, during the 1984 Republican National Convention in Dallas, Texas; Mr. Johnson participated in a political demonstration to protest the policies of the Reagan administration and some Dallas-based corporations. After a march through the city streets, Johnson burned an American flag while protestors chanted. Because of his fight after his arrest, the law was overturned.

a. The House of Representatives responded again in 1990 and lost again 5-4 in United States v. Eichmann, 496 U. S. 310 (1990).

b. Then from 1995-2005 it was passed by the House of Representatives, but not confirmed by the Senate.

c. It failed again on June 26, 2006 5-4 with support from the Republican Party.

d. Last I checked, the US Constitution supersedes all state or local laws. The Town of Lake Hamilton and the Mayor is currently under an EEOC Complaint by Mr. Johnson and now it seems like we are about to violate his Constitutional Rights.

2. President Obama – is the leader of the Worlds’ Number One Super Power - the United States of America, and Government Officials should have respect for him, right? But, look at how the Republicans and other US Citizens continue to degrade him. There is nothing that can be done about it, because it is freedom of speech and expression which is their constitutional right. Mr. Phipps create images of President Obama, other political figures, and judges because his son was killed. Look how he expressed himself and nothing could be done about it. (Distribute Picture of Mr. Phipps Hanging President Obama).

3. The word “desecrate” - means to deface, damage, or otherwise physically mistreat in a way that the actor know it will seriously offend one or more persons likely to observe or discover his actions; but Mr. Johnson did no such thing, he was in seclusion in the Town of Lake Hamilton barn and a picture was taken and sent to the Mayor by a disgruntle employee whom Mr. Johnson had written up a few days before. Mr. Johnson had no knowledge of what he had done and you can tell by the quote he placed in the newspaper “what’s the big deal.” A person that knows what he is doing would not have made such a statement; when someone know what they are doing, more than likely they would addressed a political issue, war, military conflict, or something derogatory towards the United States of America. Mr. Johnson had no knowledge of what he was doing, like half of the personnel in this chambers, who have no knowledge about how to retire, store, light in darkness, fly in signs of distress, or how to destroy the American Flag if it is tattered. My stance tonight is that we should not be here again dealing with this issue or harassing Mr. Johnson. So my recommendation is that we re-instate Mr. Johnson and start to look at the Mayor’s attitude and behavior toward Mr. Johnson. Some people respect the flag more than the respect God and I can tell by some of the derogatory comments received in the emails and phone calls to me (Mr. Johnson should be given a lesson in the proper retirement of a US Flag by a couple of very large veterans that actually care about this nation, preferably at the end of their combat boots). What happened to love? The flag can’t get you into Heaven and I guarantee some of those people who sent email and called me really don't honor the flag or America as their email may suggest.

4. Finally, I have one question for the Mayor. Should another employee see what’s in another employee discipline file? If not, why does Mr. Leonard keeps a file on Mr. Johnson and why is he writing these letter for you? He is another employee just like Mr. Johnson. I know he is writing them, because he told me so, and he tried to use the analogy of the Military; but he is not the Vice Mayor, Town Manager, or a Town Commissioner; so why is he able to see another employee disciplinary file and assist you with writing disciplinary actions for Mr. Johnson or any employee for that matter. I would tell the council and citizens why he do it; but we already have enough negative unwanted publicity in this town now.

\*Before I ask the council what is there will and pleasure on this issue; allow me to make you aware of one fact.

From January till today, there have been 10 – 15 articles mentioning Mr. Johnson or myself in some way\*

What’s the will and pleasure of the Council? End of Harris notes.

Mayor Wagner reported that she met with Mr. Johnson regularly and he signed those meeting notes.

Councilmember O'Neill explained what his expectations were for the 120 job review. He reported that he feels Mr. Johnson was trained properly by Envisors but feels he did not grasp the training. Equipment was not maintained. The 120 days was for retraining. He feels that there is no management of the department. Mr. Johnson does not have a congenial attitude with his manager (the mayor) and it is an ongoing challenge. O'Neill stated that whatever your manager ask you to do you do it and he feels that Mr. Johnson has not lived up to this. To say the Mayor has not tried is not a fair statement. The current situation shows a lack of judgment. The person who took the photo is not at fault. He stated that in other business Mr. Johnson would have been terminated and feels Mr. Johnson not suited for a supervisor roll.

Councilmember Roberson stated that she does not feel Envisors trained Mr. Johnson properly. Mr. Crews stated he is a good worker. She thinks the Mayor did not take the initiative. She reported that Mr. Johnson has not been treated fair since he has been here as a supervisor by employees or the Mayor. Regarding the flag she thinks the one who did not follow protocol needs discipline.

Councilmember Tomlinson stated that he has been one of Mr. Johnson's biggest backers, but the information shows that he was not attending meetings with the Mayor. Feels he is not a leader.

Councilmember Kehoe stated that he feels Mr. Johnson is not leader material. He sees no leadership in the public works department, sees embarrassment to our town because of the flag. Mr. Kehoe has serious questions on Mr. Johnson's employment with the town.

Chair Harris stated that he will address O'Neill's comments, give the VFW commander an opportunity to speak and then will address some further items again.

Regarding training, Chair Harris stated he spoke with Steve and Asma about Mr. Johnson's training and was not given the proper training. He called the Mayor and Mr. Leonard and developed a team. Regarding management, Chair Harris does not think there is a good relationship between the Mayor and J.D. Feels an HR buffer is needed. This process makes a mockery of the town. When there is personality conflicts there will be no fair treatment. Stated that only he and J.D. have been brought before the council.

Byron Hamilton, Commander, VFW Post 4289 Winter Haven, addressed the Council regarding the flag incident. He stated that veterans are supposed to be covered by the flag not cover the flag. He handed out information on "The Moving Tribute". He stated that he received many calls regarding the incident and takes issue with the comment from Mr. Johnson that it was "no big deal" and he has not issued an apology for his actions. We all make mistakes; we are here to forgive if asked.

Claude Homes, N.E. Coalition, stated he has worked with J.D., the citizens know him, and when you look at the facts, it painting a bad picture for the town. J.D. has commented to him about the employees he is supposed to supervise and stated that you can only work with what you are given.

Chair Harris asked if Mr. Johnson could retain his wage if not a supervisor. Agrees things in town should be different. Asked J.D, if the will and pleasure of the council, to maintain his wage but step down as supervisor. J.D. replied that he would like to keep his pay and position.

Councilmember Roberson felt that with that question Mr. Harris just slapped J.D. in the face, feels he was just humiliated and that J.D. deserves the pay.

John Myer reported on federal law related to desecration of the flag. He also stated that J.D. is a good worker and perhaps it would work to demote him and have him work his way back up.

Tom Mace told the council they are missing the other player and should look at Miller who blew the whistle. Why was the flag taken down over two months ago? Miller paid no attention to it after it was taken down.

O'Neill stated that they have received two written statements from the employees about what they did with the flag. Kehoe stated that Mr. Johnson has not filed an appeal on the current suspension. Clerk Irvine reported that she did receive a request from J.D. for an appeal but is waiting for more information from him on the request.

O'Neill stated that J.D. is dedicated, but looking at his skill level is the supervisor the right position? Ninety-nine percent of the issues are not related to the flag.

**MOTION:** Kehoe moved demote Mr. Johnson to a non-supervisory position at \$18.00 an hour. O'Neill seconded the motion.

**Discussion:** Charles Gunter stated that during the 120 day the Mayor did not do what she was supposed to. He said he has a petition to recall the Mayor. Ernest Wormely, former employee, stated that every morning they received a list of what they were to do for that day. He also stated that the Mayor sometimes did not meet with J.D. when they were scheduled to meet. He discussed comments from other employees Miller and Sims and Irvine and Leonard. He stated that J.D. is a leader, he has written people up. The punishment issued should be fair. If anyone stand up to the Mayor there is retaliation. Councilmember Tomlinson stated that he worked for the town for eight years and was fired for less. Mr. Leonard (not Planner Leonard) stated that he has been at several meetings but never one like this. Perception is a mighty thing, what is perceived is what makes a difference. He cautioned people to watch their body language. He thinks there is a bigger problem than J.D. and the flag. He has helped the town in the past and is willing to reach out again. He is not telling the town to give anyone a job. Randy Martin, past council and mayor for thirty years stated that in the past the employees were under appreciated. Feels J.D. is not getting credit for what he is doing. The mayor recommends action to the Council the council acts on that recommendation. Mr. Scott addressed the council about his past prejudices, and stated that he has now found no fault in what happened to his people back then. He appreciates being able to help. He finds J.D. commendable and we need to work together.

Mr. Johnson addressed the council. He stated that he is a good worker. Said the Mayor has been at him since Harvey was hired. What supervisor would get out and work with their employees. He would not stay for \$18 an hour. J.D. stated he is sorry about the flag. Won't do it again. Stated the things the mayor wrote up about him are mostly lies. He will work like he has in the past but won't stay for that wage.

Larry Favorite stated that J.D. does a good job but has too much on his plate. Don't cut his wages he is worth more than anyone of you.

**Kehoe amended the motion to demote Mr. Johnson to a lower position at \$19.00 an hour. O'Neill seconded the amendment. Roll Call vote: Tomlinson-nay; Roberson-nay; O'Neill-aye; Kehoe-aye; Harris-nay. Motion failed 2-3(Tomlinson, Roberson, Harris).**



**MOTION: Kehoe/O'Neill to demote Mr. Johnson in the public works department to a non-supervisory position at the current pay. No discussion: Roll Call: Roberson-nay; Tomlinson-aye; O'Neill-aye; Kehoe-aye; Harris-nay. Motion carried 3-2(Roberson, Harris).**

**MOTION: Kehoe/O'Neill to adjourn at 8:30. All voted in favor.**

ATTEST:

  
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Sara K. Irvine, Town Clerk

  
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Chair Person Ralph N. Harris