

**MINUTES OF THE
TOWN COUNCIL
AUGUST 8, 2016**

ITEM 1 CALL TO ORDER

Mayor Bassler called the meeting to order at 6:12 p.m.

ITEM 2 ROLL CALL

Those present were Council Member Poole, Council Member Mann, Council Member Hanselman, Council Member Cockburn, Mayor Pro-Tem Gorman and Mayor Bassler.

ITEM 3 INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG.

Mayor Bassler led both.

ITEM 4 OPEN FORUM

Library Director, Tina Hager reported to the Council that 600 people visited the library in the month of July.

ITEM 5 CONSENT AGENDA.

Council Member Mann move to approve the July 11, 2016 minutes, the July 2016 financial statement and the July Library report. Motion seconded by Mayor Pro-Tem Gorman. Ayes: Council Member Mann, Mayor Pro-Tem Gorman, Council Member Cockburn, Council Member Poole and Council Member Hanselman. Nays: None. Abstentions: None. Motion passed with 5 ayes, 0 nays and 0 abstentions.

ITEM 6 DISCUSSION, CONSIDERATION AND ACTION RELATIVE TO A REQUEST FROM SAM NORWOOD CONCERNING AN EAGLE SCOUT PROJECT IN THE PARK.

Sam Norwood reported that he has been a loud and proud Ponder Lion since 2005. He is known for being the son of the Town Vet. He is presently a scout and trying to become an Eagle Scout. Mr. Norwood needs to complete a project for this. He would like to take land adjacent to the park and make a basketball goal and half court as his leadership project. First he will need the Council's approval, and then he would report it to the scout district office and then complete the project. Mr. Norwood is proposing a 36x36 slab and a durable outdoor goal and estimates that the construction will take approximately 2 days. He will be raising the funds for the project.

Mayor Pro-Tem Gorman moved to allow Sam Norwood to move forward with the 1300 sf basketball court and goal and that he shall consult with Gary Morris regarding the placement of the project in the park area. Motion seconded by Council Member Mann. Ayes: Council Member Mann, Mayor Pro-Tem Gorman, Council Member Cockburn, Council Member Poole and Council Member Hanselman. Nays: None. Abstentions: None. Motion passed with 5 ayes, 0 nays and 0 abstentions.

ITEM 7 CONSIDER AND ACT ON APPROVAL OF AN INTERLOCAL COOPERATION AGREEMENT FOR COMMUNICATIONS AND DISPATCH SERVICES BETWEEN DENTON COUNTY AND THE TOWN OF PONDER.

Mayor Pro-Tem Gorman moved to approve the Interlocal Cooperation Agreement between Denton County and the Town of Ponder for Communications and Dispatch Services. Motion seconded by Council Member Poole. Ayes: Council Member Mann, Mayor Pro-Tem Gorman, Council Member Cockburn, Council Member Poole and Council Member Hanselman. Nays: None. Abstentions: None. Motion passed with 5 ayes, 0 nays and 0 abstentions.

ITEM 8 CONSIDER AND ACT ON APPROVAL OF AN INTERLOCAL COOPERATION AGREEMENT BETWEEN THE TOWN OF PONDER AND DENTON COUNTY FOR PONDER PID NO 1 ASSESSMENT COLLECTIONS.

Mayor Pro-Tem Gorman moved to approve the Interlocal Cooperation Agreement between the Town of Ponder and Denton County for Ponder PID NO 1 assessment collections. Motion seconded by Council Member Poole. Ayes: Council Member Mann, Mayor Pro-Tem Gorman, Council Member Cockburn, Council Member Poole and Council Member Hanselman. Nays: None. Abstentions: None. Motion passed with 5 ayes, 0 nays and 0 abstentions.

ITEM 9 CONSIDER AND ACT ON APPROVAL OF ORDINANCE 16-12, AN UPDATE TO THE PONDER PID NO 1 SERVICE AND ASSESSMENT PLAN.

Mayor Pro-Tem Gorman moved to approve Ordinance 16-12. Motion seconded by Council Member Poole. Ayes: Council Member Mann, Mayor Pro-Tem Gorman, Council Member Cockburn, Council Member Poole and Council Member Hanselman. Nays: None. Abstentions: None. Motion passed with 5 ayes, 0 nays and 0 abstentions.

ITEM 10 DISCUSS, CONSIDER AND PROVIDE DIRECTION TO STAFF CONCERNING WATER SERVICE IMPROVEMENTS FOR PONDER LANE BUSINESS PARK WITHIN THE TOWN'S WATER CCN SERVICE AREA.

Council Member Poole moved to table this item. Motion seconded by Council Member Hanselman. Ayes: Council Member Mann, Mayor Pro-Tem Gorman, Council Member Cockburn, Council Member Poole and Council Member Hanselman. Nays: None. Abstentions: None. Motion passed with 5 ayes, 0 nays and 0 abstentions.

ITEM 11 CONSIDER AND ACT ON AUTHORIZING THE MAYOR TO SIGN A RESOLUTION THAT IS PENDING LEGAL APPROVAL, ACCEPTING THE PARK AND COMMUNITY FACILITIES IN REMINGTON PARK PHASE IV.

Mayor Pro-Tem Gorman moved to approve an Ordinance pending legal approval, accepting the park and community facilities in Remington Park Phase IV. Motion seconded by Council Member Poole. Ayes: Council Member Mann, Mayor Pro-Tem Gorman, Council Member Cockburn, Council Member Poole and Council Member Hanselman. Nays: None. Abstentions: None. Motion passed with 5 ayes, 0 nays and 0 abstentions.

ITEM 12 CONSIDER AND ACT ON A RECOMMENDATION FROM P&Z TO APPROVE THE FINAL PLAT FOR 22.36 ACRES IN THE F. DAVIS SURVEY, ABSTRACT #371, PONDER, DENTON COUNTY, TEXAS. THIS PROPERTY IS LOCATED AT 400 ROBINSON ROAD IN PONDER, TEXAS.

Council Member Poole moved to approve the plat with the conditions that all town water lines are to be shown from the point of access to the meters, Town water line is to be shown to the fire hydrant (owned by the Town), off of Robinson Rd. and utility easements are to be shown regarding above water lines. Motion seconded by Council Member Hanselman. Ayes: Council Member Mann, Mayor Pro-Tem Gorman, Council Member Poole and Council Member Hanselman. Nays: None. Abstentions: Council Member Cockburn. Motion passed with 4 ayes, 0 nays and 1 abstentions.

ITEM 13 CONSIDER AND ACT ON A RECOMMENDATION FROM P&Z, TO APPROVE A REPLAT AND VARIANCE REQUEST FOR LOTS 3 B AND 3 C TO 3B 1, BLOCK 2, PONDEROSA PROPERTIES 1 ADDITION, PONDER, DENTON COUNTY, TEXAS. THIS PROPERTY IS LOCATED AT 254 E. FM 2449.

Mayor Pro-Tem Gorman moved to approve the replat and to not approve the variance to the sidewalk with the conditions set forth by the Town Engineer in a letter dated July 12, 2016 (attached). Motion seconded by Council Member Poole. Ayes: Council Member Mann, Mayor

Pro-Tem Gorman, Council Member Cockburn, Council Member Poole and Council Member Hanselman. Nays: None. Abstentions: None. Motion passed with 5 ayes, 0 nays and 0 abstentions.

ITEM 14 CONSIDER AND ACT ON A RECOMMENDATION FROM THE P&Z, TO APPROVE A FINAL PLAT AND VARIANCE REQUEST FOR THE DIAMOND G ADDITION, LOTS 1 & 2, BLOCK A, PONDER ETJ, DENTON COUNTY, TEXAS. THIS PROPERTY IS LOCATED ON AA BUMGARNER ROAD.

Mayor Pro-Tem Gorman moved to approve this plat and variance request with the conditions set forth by the Town Engineer in a letter dated July 26, 2016 (attached). Motion seconded by Council Member Poole. Ayes: Council Member Mann, Mayor Pro-Tem Gorman, Council Member Cockburn, Council Member Poole and Council Member Hanselman. Nays: None. Abstentions: None. Motion passed with 5 ayes, 0 nays and 0 abstentions.

ITEM 15 CONSIDER AND ACT ON A SPECIFIC USE PERMIT (SUP) REQUEST FOR TIESZEN BUSINESS PARK, BLOCK 2, LOT 3C, 2 ACRES. THIS PROPERTY IS LOCATED AT 258 E FM 2449.

Mayor Pro-Tem Gorman moved to table this item until a site plan is submitted. Motion seconded by Council Member Mann. Ayes: Council Member Mann, Mayor Pro-Tem Gorman, Council Member Cockburn, Council Member Poole and Council Member Hanselman. Nays: None. Abstentions: None. Motion passed with 5 ayes, 0 nays and 0 abstentions.

ITEM 16 HEAR, CONSIDER AND ACT ON AN EMPLOYEE APPEAL TO TERMINATION CONCERNING NATHAN MOORE IN ACCORDANCE WITH CHAPTER 7-08 OF THE TOWN OF PONDER PERSONNEL ADMINISTRATION AND REGULATIONS MANUAL.

Mr. Moore's legal counsel stated that Mr. Moore would like to invoke his right to have the hearing in open session.

Chief of Police Robert Genova reported to the Council that Officer Moore was involved in an investigation at another department. As a result of this, Chief Genova received statements that Officer Moore had written to the other department. In the statement, he revealed that he had used the state database to retrieve driver's license information on a person out of state. It is a violation of policy to do that when you are off duty. It is also a violation of the Department of Public Safety regulations to use that database when you are off duty. Obtaining the driver's license information itself is not criminal but it is held in such a high regard by DPS that they expect it to be treated in high regard. As a result of this Chief Genova reported that he terminated Officer Moore.

Town of Ponder legal counsel, Ben Stool clarified that the investigation that Chief Genova spoke about was not one that Officer Moore was participating in when he retrieved the driver's license information or as part of the agency conducting the investigation. Chief Genova said that this was correct and that he was a witness in the said investigation and that it was not part of his duty as a Ponder Police Officer to run this driver's license or access the database through the county. Chief Genova stated that it was not a part of his job as a Ponder Police Officer to access that database in this circumstance and that it was the job of the department conducting the investigation.

Lance Wyatt spoke to the Council on behalf of Officer Nathan Moore who was sitting down to his right. Mr. Wyatt stated that he would like to start with this, in the Town of Ponder's discipline and appeal procedures, in Chapter 7, it references a few things in 7-01. One thing is that it is the intent of the discipline and appeal procedures to safeguard the rights of all

employees and to insure that all employee actions are judged by fair and equitable standards and to require that all rules are applied in an equitable basis. Mr. Wyatt said that is one of the things that they are here to discuss with the Council. He said that he believes that the Council needs to know a little more about the circumstances and that essentially what you have Nathan Moore doing is receiving information by telephone from his former spouse and what the situation is is that they have just realized that their daughter may be in a situation where she is in jeopardy to some degree because of internet or text message communications. He said that his client Nathan asked for any identifiers of this individual. He received a name and a birth date. He also stated that his client has not at all walked away from the fact that he made a phone call to Denton County dispatch to attempt to confirm that information so that he would be able to provide information to the law enforcement agency in Denton where he resides. Mr. Wyatt stated that he was a Police Officer for 16 years and that the Council has common sense. He asked what do you need to tell an agency when you call in to report an incident and stated, you need to know who, what, where, why and when. That these are essentially the things that you need to tell a Policeman so that they can start an investigation. He said that Mr. Moore was trying to figure out if this person was really a person. His client did not try to act on the information in any way, he did not try to hide it. He actually told dispatch to send it to him to his department email. He wasn't trying to be deceitful. He was only trying to confirm who so that he could provide it to the investigating department. Mr. Wyatt handed out a few documents. He handed the appeal letter and a letter to the Mayor. He referenced 7-04 and said in a nutshell it talks about in an appeal of someone who is terminated, demoted or suspended, the hearing will be conducted by the Town Council for a termination, demotion or suspension shall proceed as follows, that the Town representative will be allowed to make a presentation for the Town's case, detailing the reason for the disciplinary action invoked. Such presentation may include witnesses or other documentation supporting the disciplinary action invoked. After the Town's presentation, the employee shall be permitted to make any statements, or produce any documentation on the employee's behalf. Then, ultimately the Council will make a decision to amend, sustain or reverse the action as they determine is just and equitable. He handed the Council the termination letter from Chief Genova that sets forth the basis for his termination. Paragraph 2 on page 1 said that this is a violation of the Ponder PD General Order, Section 2.4, accessing the NCIC/TCIC regional databases. As stated in Section 8, abuse of databases could include criminal prosecution or dismissal from the Ponder Police Department and that the Chief goes on to say that this is a misuse of TLETS. Then the Chief quotes the DPS Policy. He read this aloud and stated that his client in no way did anything other than follow that. He stated that he shared the information with the Denton PD. He stated that his client was asked did you share that with your ex-spouse, and he replied no, only the Police Department. The policy states that the DPS holds driver's license information in the same regard as criminal history information and requires agencies to regard it with the same level of protection as required for CHIs. There is no evidence whatsoever that this information was disseminated to anyone other than law enforcement. His client did not seek vehicle registration information. He also referenced the TLETS manual that says that all law enforcement agencies subscribing to TLETS are reminded that the system has been designed exclusively for the use of agencies conducting the lawful duties in their respective jurisdictions and between agencies as required. He said that he believes there is nothing wrong with the actions of his client sharing this information with another agency and that he made no effort to hide this. Mr. Wyatt handed out the Ponder PD Policy. He asked that they look at the effective date of August 1, 2012. He said that under section 1, under the course of law enforcement duties, that his client's actions were under official law enforcement duties, not for personal use. Section 3 for example, he said that this document was adopted from another Police agency, because LPD computers was referenced in the document. Section 4, Off duty requests says that the employee must contact the off duty watch commander for permission and that the Town of Ponder does not have one of those. He asks where does this leave a Town of Ponder employee. His client told him that when he is working he is the only human being working for

the Town of Ponder. He said that his client did not use the car equipment to gather the information. He called into dispatch on a recorded line and asked for the information and given the information and was not trying to deceive or hide the fact of who he was. His client in his letter of appeal is seeking to have this disciplinary action overturned and that he be reinstated to his position here with the Town of Ponder PD and asks that this disciplinary action and the finding of him violating the policies that the findings be changed to non-sustained, unfounded or exonerated. One of the things during the course of looking into it, he talked to one of the former Police Officers from Ponder. He talked to this person who gave him an affidavit about his history with the Chief of Police. He handed the affidavit to the Council and noted the third paragraph that says Roger Hooten was providing the affidavit to address things that happened during his tenure with Ponder PD involving the Chief and his use of TLETS. He provided that the Chief on one occasion asked him to check his nephew to see if he had warrants and that it was not done for law enforcement purposes and that the Chief directed him to use the MDC to run a driver's license check on his son and heard the Chief use the phone to call in a driver's license check on his son. He said those things were done to allow his son to complete a personal history statement that requires employers, addresses, wrecks, driving history for the last 10 years. He stated that his client should not be held to any higher standard than the department head and that if you are going to lead then you should set a standard. Mr. Wyatt again stated that Nathan did not violate at a minimum, the spirit of what DPS has set forth. It is his contention that his intentions did not go beyond what the standard is set by DPS, most departments or the Feds. The bottom line is that Nathan was terminated from his job, given a general discharge, which should not be done before 7 days after no appeal is filed, but if there is an appeal you are not supposed to submit it. He stated that the occupation code should have told the Chief that and that they have filed an appeal on the F5 discharge to the Texas Commission on Law Enforcement. He stated that his client recognized that he could have done it in a different way and that there is a method to deal with something like this, he should have counseled Nathan. He then said that he would answer any questions of the Council.

Mayor Bassler asked if Nathan Moore was acting on his personal behalf on as an on duty Police Officer. Mr. Wyatt replied that he was off duty from the Ponder Police Department.

Council Member Mann stated that we do not have an off duty watchman and that it would be considered the Chief of Police. He asked if Nathan asked the permission of the Chief. Mr. Wyatt replied no.

Council Member Poole asked how all of this came about. Mr. Wyatt replied that when the Chief received the investigative report from the Denton Police Department he became aware that this had occurred. Mr. Poole then asked why there was an investigative report. Mr. Wyatt replied that it related to a criminal investigation being conducted by the Denton Police Department. Mr. Poole asked if it involved the Ponder Police. Mr. Wyatt replied that only in the respect that it involved Nathan Moore. Mr. Poole asked how the Chief found out about the investigation. Mr. Wyatt said that he believed that Nathan reported it to the Chief who placed Nathan on administrative leave pending the investigation by the Denton Police Department. Mr. Poole asked if the Chief requested the documents or did they just show up out of the blue one day. Mr. Wyatt said that he presumed that once the investigation was concluded that the information was forwarded to the Ponder PD.

Ben Stool asked about the original request to Denton County dispatch. He said that he was understanding that this request was about someone Nathan's daughter was communicating with over the internet or cell phone. Mr. Wyatt said correct. Mr. Stool asked if Nathan Moore's daughter was living or staying in Ponder. Mr. Wyatt said no. Mr. Stool said so if there was some potential criminal offense concerning Officer Moore's daughter then the matter was with

the Denton Police Department. He stated that the Denton PD was capable of getting the information themselves that Officer Moore took upon himself to get. This was something that any other private citizen could not get for themselves.

Mayor Bassler asked if there was any evidence that backs up Officer Hooten's affidavit. Mr. Wyatt replied that he did not have documents from TLETS to back this up and added that this is an affidavit of fact.

Chief Genova stated that he did have his nephew ran because he was wanted and he was in Lewisville and he was going to have him arrested by Lewisville. His son was working as a reserve for Ponder and was declined for another job for his driving record and not only did he run his son, he ran everyone on the Ponder PD to make sure that they were insurable. Also, Nathan did contact the Chief and let him know before the Denton PD did and when Denton completed their investigation they turned it over to Ponder to conduct out internal investigation. Chief Genova also stated that in this situation, Officer Moore was not acting as a police officer, though he was, he was not acting in an official police capacity. The case was not his to investigate and Denton can get the same information as Officer Moore. At that stage in the investigation, Nathan was a witness and that was all.

Mayor Pro-Tem Gorman asked if Officer Moore was off duty when he made the call for information. Chief Genova stated that yes he was off duty.

Ben Stool asked the Chief if the problems that were occurring concerning Officer Moore's daughter were outside of the Town of Ponder. The Chief replied yes, they were outside of the Town of Ponder. Mr. Stool also stated that as it happens, on the agenda tonight there was an interlocal agreement that dealt with TLETS and it does require TCIC/NCIC classes and asked the Chief if one of his reasons for his decision because of the jeopardy to the Ponder PD with misuse of this information. The Chief stated that it was because it could cause the Ponder PD to lose their access if found in violation of their policy.

Mr. Wyatt asked the Mayor if he could address the fact that his client brought to his attention that the investigation of the Denton PD, that his daughter was staying with a mother-in-law that lives within the Town of Ponder and that there were communications at that time with the suspect and his daughter.

Council Member Cockburn stated to Officer Moore that he believes that he used very bad judgment and that he should have let Denton PD handle it and not take anything into his own hands and that if he was a witness, he was going behind everyone's back to get information.

Council Member Mann stated to Officer Moore that he used misjudgment and that he did not handle this procedurally and that is exactly why he was suspended.

Council Member Cockburn stated that he would like to know what the circumstances were behind Roger Hooten giving an affidavit and that he believes that he could have found a better person to get an affidavit from.

Mayor Pro-Tem Gorman moved to deny the appeal concerning Nathan Moore. Motion seconded by Council Member Cockburn.

Mayor Pro-Tem Gorman stated that when you are off duty you are prohibited from gathering this information from TLETS and jeopardizing the Town of Ponder's right to have access this information.

Mayor Bassler stated that there is a reason for the ethical lines that you cannot cross. He stated to Nathan Moore that there are consequences for his actions.

Council Member Poole stated that he takes a different view on this. He said that we are kidding ourselves if we say that we wouldn't do the same thing. He said that this is done all the time. He has in fact had it done for him. Mr. Poole stated that you can go online and get the same information and this does not warrant termination. Mayor Bassler said he understood what Mr. Poole was saying, but that it does not make it right. Mr. Poole said that you have the law and the spirit of the law and that Mr. Moore did break the law but not the spirit of the law.

Ayes: Mayor Pro-Tem Gorman and Council Member Cockburn. Nays: Council Member Poole, Council Member Hanselman and Council Member Mann. Abstentions: None. Motion fails with 2 ayes, 3 nays and 0 abstentions.

ITEM 17 ITEMS TO BE PLACED ON THE NEXT AGENDA.

Budget
Tax rate

ITEM 18 ADJOURN.

Council Member Poole moved to adjourn at 7:53 p.m. Motion seconded by Council Member Hanselman. Ayes: Council Member Mann, Mayor Pro-Tem Gorman, Council Member Cockburn, Council Member Poole and Council Member Hanselman. Nays: None. Abstentions: None. Motion passed with 5 ayes, 0 nays and 0 abstentions.

APPROVED:

John Bassler, Mayor

Date

ATTEST:

Sheri N. Clearman, City Secretary