

DRAFT

**Arriba Town Hall
711 Front Street
Arriba CO 80804**

TOWN OF ARRIBA BOARD OF TRUSTEES EMERGENCY MEETING Friday, September 23, 2016

Call to Order Mayor Alex Flores called the meeting to order at 7:30. Roll call for the Arriba Town Board was read and those answering were Troy McCue, Leigh Anna Andersen, Bob Rush and Tom Rush. Lindsey Michal was absent.

Pledge of Allegiance was led by Alex Flores.

Public Audience included: Jerry Norris, Jody Schifferns, Marcella Flores, Dolle Lehrkamp, Darrel Lehrkamp, Justin Lehrkamp, and Jeff Fike.

Approval of Agenda Trustee McCue moved to approve the agenda as written. Trustee Andersen seconded and the motion passed unanimously.

Charges for Park Vandalism Justin D. Lehrkamp told the Board that he would like to make a formal apology for letting his emotions get the better of him when he was at the park and destroying the sign that was on the tires at the park. He said that he will put forth 20 hours of community service and pay whatever fine or fee the Board wants to put on him.

Dolle Lehrkamp said that since the Town doesn't currently have a municipal judge Mayor Flores had asked her to explain a few things. She said that for the past 8 years she has been the municipal judge for Arriba, she is also Justin's mother. She said there were certain things everybody needs to understand about municipal government, she explained the 3 branches of government- legislative, judicial, and executive. The legislative is congress, the executive is the president, the judicial is the supreme court, Arriba is an incorporated municipality so its 3 branches of governments here are legislative is the Town Council, executive is the Mayor and city manager- which in this case are both Alex Flores, and judicial which is the municipal judge and the peace officer. They each have their own individual responsibilities. They each have their own privileges and authorities. The responsibility of the Town Council as the legislative branch is to write the Town ordinances and discuss them and pass them, advise the executive branch. That's why Alex as mayor is not allowed to vote on legislation, because he is not a member of the legislative branch. The executive branch is the mayor and the city manager- in this town because of its size those 2 offices are merged into one person. Alex administers the Town and the town council assists him in this task. The judicial is the municipal judge and the peace officer. According to Town ordinances Alex Flores as the Mayor is also the town

peace officer as long as there is no town marshal. She said that years ago there was a town marshal but right now there isn't one because the town can't afford the salary or a patrol car. So since Arriba is an incorporated municipality that means we are entitled to govern ourselves to the exclusion of Lincoln County. And that means what goes within the jurisdiction, the city limits of Arriba is governed by the Town council.

Jeff Fike said that when he met with Judge Fisher on the very subject of municipal court that in the absence of a municipal court the defacto court for the Town of Arriba is the Lincoln County District Court. Dolle Lehrkamp said that there was a difference in the Lincoln County Court and the District Court. She said that Arriba as a municipality has the right to have a municipal judge. Arriba does not have a municipal judge right now. The reason the Town would need a municipal judge is if someone did not plead guilty to a citation that was issued and wished to appear before the judge to present their case. She said that the municipal judge can also remove a trustee or the town clerk if there was a problem. Right now if someone were to want to appear before a judge for a citation the Town issued it would go to Judge Fisher at the County Court. Jeff Fike said that she was wrong, it would go to the District Court. Dolle Lehrkamp said that there was a difference of opinion here because if this is a court of record then it would appeal to the 18th Judicial Court. If this is a court not of record then it goes to the Lincoln County Court. There has been debate- nobody has established clearly if Arriba is a court of record or a court not of record. She said according to Stan Kimble Arriba is a court not of record because of the size. She said according to Judge Fisher Arriba is a court of record because he doesn't want to deal with Arriba. She said that the Town has jurisdiction to the exclusion of Lincoln County. So if Arriba had a full police force- for instance if you call 911 and they dispatched an Arriba marshal or deputy to your residence then the Town would have full jurisdiction and that means any crime, municipal court is a criminal court so any crime that was committed in the city limits of Arriba which include violations of ordinances all the way up to murder would come before the municipal court. Since Arriba does not have a full-time police force we have limited jurisdiction. So the Town's jurisdiction is over ordinances and misdemeanors, if there's a felony charge it goes to the Lincoln County Sherriff and Lincoln County Court. We have an obligation as the Town to govern ourselves which means we take care of our own citations for ordinances and misdemeanors within the city limits. Dolle went on to talk about the general workings of the Town such as providing water services, filing reports with the state, filing the budget and the audit with the state, holding elections and filing the election results with the state and how if these things weren't done, and Arriba cedes the ability to govern to Lincoln County then the State could un-incorporate the Town and Arriba would be run by the Lincoln County Commissioners. Dolle said that the only person that is allowed by law in the State of Colorado to initiate a legal proceeding is the city manager, no one else can do it, no exceptions. The only person who can issue a citation in a municipality is a sworn in peace officer. Right now the peace officer for Arriba is Alex Flores. He can appoint deputies, he can appoint a marshal. She said that the reason all 3 of those positions is one person is because of Arriba's size. Jeff Fike said that was contradictory to the statute. He said look at ordinance #11, it sets them all up separate. Dolle Lehrkamp said that no, it

doesn't, it says very clearly that the Mayor is the peace officer in the absence of a town marshal. Jeff Fike agreed that it does say that. Dolle Lehrkamp said that in the Colorado revised statutes it says that in a municipality of this size the city manager and the mayor are the same person.

Jeff Fike circulated a picture of a sign posted at the park that says "Anyone who causes damages to Town Property will be persecuted to the fullest extent of the law."? Jeff Fike asked if this was the policy. Dolle Lehrkamp said that it is the policy, but what happened in this case was that 2 Town Board members called Mike Becker, the maintenance man, and reported that someone had observed Justin doing the damage to the park, and they informed Mike Becker that he needed to call the Lincoln County Sherriff's department and file charges on behalf of the Town of Arriba against Justin. Dolle said out of everything that I've just told you- what is wrong there? The first thing is that Lincoln County does not have jurisdiction over park vandalism. The Town does. Number 2 is that the Town maintenance officer does not have the authority to initiate a legal proceeding- the only person who does is the City Manager. Jeff Fike said that Dolle was so far wrong. Dolle Lehrkamp said that if this case goes to Lincoln County it will be thrown out because they are out of jurisdiction and the officer did not follow proper police procedure by accepting the complaint from the Town maintenance officer. She said in order to fix this and make it legal Justin needs to be cited from the Town of Arriba with whatever ordinances he has violated as well as criminal mischief which is a 2nd degree misdemeanor under the Colorado code. She said in municipal court for the first defense your maximum that you can fine somebody is \$300, the maximum that you can send someone to jail is 30 days, that can only be done by a municipal judge but you can fine them through the citation. She said it is perfectly legal and proper to insist that he pay restitution for the cost of the sign and a fine up to \$300 and the community service which Justin has already volunteered to do which would be specified and supervised by the town maintenance man.

Trustee Steinsiek asked what the second offense fines are. Dolle Lehrkamp said second offense goes up one level of magnitude, the fines go up to \$600, and the jail time goes up to 60 days in jail. She said that the maximum a municipal court can fine anyone is \$1000, and the most a municipal court can send someone to jail for is 90 days. She said but the Town of Arriba has to pay the room and board to the Lincoln County Sherriff's Department if anyone is sent to jail. She said that the last time she checked it was \$65 a day.

Trustee Steinsiek asked if there was any possibility of probation within a municipal court case. Dolle said yes, there was.

Trustee Tom Rush asked about traffic control. Dolle Lehrkamp said that if Arriba had a marshal it would be dealt with by them and the municipal judge. Since the town does not have a marshal then it is up to the Town Council if they wish to allow the Lincoln County

Sheriff's Department to operate within the city limits of the Town of Arriba for traffic violations.

Trustee Tom Rush asked so there's nothing we can do, and we let the kids in Arriba drive however they want?

Trustee Bob Rush asked what about the tickets the sheriff has issued for traffic violations in town in the past? Has there ever been a formal deal that officially appoints Lincoln County for having jurisdiction on the streets in town?

Dolle Lehrkamp said that there was when she was the municipal judge for Arriba. She said that she had contacted the Lincoln County Sheriff's Department and asked them to take control of the traffic in the city limits. She said she didn't think it was ever rescinded.

Jerry Norris said that he has read in several of the Town's ordinance that the ordinances shall be enforced by the Lincoln County Sheriff's Department. He said that his observation is that the Town doesn't have the 3 branches of government set up. He asked if Arriba is actually a functioning government right now? He said because the constitution says we have to have the 3 branches to be a legal government.

Mayor Flores said that in the past the Town has gone without a municipal judge. He didn't know if there was ever a time limit that the Town had to have one or appoint one. Trustee Bob Rush said hadn't the Town stated on record that the county court would serve as the municipal judge until that time. Mayor Flores said that the Board has discussed in the past people that could serve as the municipal judge for Arriba.

Trustee Tom Rush asked what they were going to do tonight- separate the street controls?

Mayor Flores said no, he wanted to accept Justin Lehrkamp's apology and the 20 hours of community service and not file charges. He said that was what he wanted to do. He asked what the Board wanted to do. Trustee McCue said that he supported that. Trustee Steinsiek said that her concern was that it was Justin's second offense in one week, at the meeting on the 12th Trustee Andersen had said she had seen him doing doughnuts in the park, so that is two offenses in one week.

Trustee Tom Rush asked is the Board going to split the street control and property control and let the sheriff do street control? Or are we just not going to have any street control in Arriba? He asked who is going to give tickets for speeding in Arriba? Mayor Flores asked who does it now? Trustee Tom Rush said the sheriff's department. Trustee McCue said he didn't see any problem with that. Trustee Tom Rush said that Dolle was saying they can't do that. Dolle said no, that is what she had called and requested them to do when she became municipal judge. If it was never rescinded it should still be in effect since Arriba does not have a marshal. Trustee Bob Rush said so kids can tear up property but they can't speed. Dolle Lehrkamp said no, the Town is in charge of the government. Mayor Flores said we're not saying it's okay what Justin did. He said he was totally against what

Justin did, but he is totally for what Justin is trying to do. Trustee Tom Rush asked if what Justin wants to do is enough. Mayor Flores asked the Board what they want to do.

Trustee Steinsiek asked if whatever the Board decides here does Justin still have to appear in court? Mayor Flores said not if the Town drops the charges against him, and instead cites him through the Town of Arriba. Trustee Steinsiek said what concerns her is Justin sorry just because he got caught? Justin Lehrkamp said that he was sincerely sorry and this was a very bad mistake that he made and he intends to no do anything like that again. Mayor Flores asked what Justin thought the Town should do if he ever does do it again? Justin said press charges, and he might get put on probation. Mayor Flores said he might even do a night in jail. Trustee Steinsiek told Justin that when things like this go on his record (this incident won't) it makes life impossible. Mike Becker said that he would like the opportunity to work with Justin with the community service. Trustee Andersen said that everybody has done stuff when they were young, but it's when younger kids are around watching and have the potential to get hurt that it gets dangerous, and that stuff stays with you for life. Mayor Flores told Justin everybody is here because they care.

Trustee McCue commented that most County Commissioners would rather not have to take control of a town, they would rather have that municipal government in place.

Trustee Steinsiek said that it needs to be on the Agenda to get a municipal judge. The Board agreed.

Trustee Tom Rush suggested publicizing to the public who controls what in Arriba as far as streets and public property go.

Trustee Bob Rush said that whatever the Board decides for punishment tonight needs to be the basis from here on in how the Board handles these things. The Board can't treat every kid separate, no matter who the parents are.

The Board discussed when Justin would do the community service. Mayor Flores said since Justin is in school it would need to be after school or on Saturdays, but it would have to depend on Mike's schedule also since Justin will be working under Mike's supervision. Trustee Bob Rush asked if any other kids come up wanting to do community service will the Board grant them the same leniency for getting it done after school and on weekends? The Board agreed that anyone that is school age should be dealt with this way, if they're not school age it would be dealt with differently, or if its summer then school age kids would have during the day to get it done. Jeff Fike asked if the Board was going to have an emergency meeting to decide things like that too. Trustee Steinsiek said that the Board is doing what it needs to do right now, but the Town will move forward with a municipal judge selection and then move on from there. If there is a municipal judge in place the judge would handle things like this.

Jerry Norris asked what the qualifications were for a Municipal Judge. Dolle Lehrkamp said that for a municipal judge in Colorado you have to have a bachelor's degree, you do

not have to be a member of the bar, it does not matter what the bachelor's degrees is in. Dolle said that in 8 years of being a municipal judge she never had anybody that was cited by the Town to come in and voluntarily apologies to the Board and to offer to do more than was asked of them. She didn't think it was going to be an issue that the Town has in the future because if any other young people are cited she would highly doubt that they would come in and handle it the same way.

Trustee Tom Rush asked who has control of the streets. The Board agreed that the Lincoln County Sheriff's Department does since that was never rescinded. Trustee Tom Rush said so if a kid was given a ticket on the street by the sheriff the kid is going to Hugo to court and the Town can't stop it. The Board agreed that this was right. The Town could only take control if the Town had a marshal and rescinded Lincoln County's control.

Dolle Lehrkamp said that there was a summons written to Justin that has not been submitted to the County Court because they wanted to see how the Town council wished to deal with this because the Town of Arriba has jurisdiction, so the deputy is waiting until 3 pm tomorrow to submit the summons. Darrell Lehrkmap commented that the deputy said he couldn't find any witnesses. Trustee Tom Rush said that there was a witness but he wasn't going to say his name because he didn't want to be involved. Trustee Andersen said that it really didn't matter because Justin Lehrkamp confessed that he did it.

Trustee Steinsiek said that her opinion was that Justin did confess, he did come forward, so she thought a fine of \$200 should be charged because this was his second offense that someone saw, plus the cost of the sign, and 20 hours community service.

Trustee Tom Rush said that he didn't think Mike Becker should have to do the community service on Saturday, but Mike does need to be there when Justin does it. He said if Justin has to miss a half day of school for a few weeks that's part of it.

Justin Lehrkamp said that school gets out at 3:30 every day. The Board agreed that he could do an hour a day of community service after school, and then any day school is out that is not a weekend and not a holiday for Mike Becker. Trustee Steinsiek said that Mike Becker needs to fill out a report of what they did and for how many hours. Trustee Steinsiek said that if there was ever a second offense the fine will go up.

Trustee McCue made a motion that the Board's recommendation to Mayor Flores as the Town Manager is to accept the agreement of 20 hours community service from Justin Lehrkamp, a \$200 fine, and the actual invoiced cost of the signs that were damaged, plus freight. Community service will be worked out with Mike Becker after school and any school holidays. Trustee Andersen seconded and the motion passed unanimously. The fine and fees will be paid within 30 days. The community service should be completed by the end of 2016.

Dolle Lehrkamp said that Town needed to call the deputy tomorrow around 3pm to drop the charges against Justin. She said that Mike Becker will need to keep a log of the community hours worked and when it is completed sign off on it and submit it to the Town Clerk to sign off on.

Adjournment Trustee Andersen moved to adjourn the meeting, Trustee McCue seconded and the motion carried unanimously. Mayor Flores adjourned the meeting at 8:11pm.

Submitted by: Josie Hart, Arriba Town Clerk

Signed by:

Mayor Alex Flores

Approved by the Board on:

Town of Arriba
Board of Trustees Emergency Meeting
Friday September 23, 2016
7:30pm

Sign In Sheet

Jenny Norris
Jody Schifferns

Dale McIntosh
Justin McIntosh

Jeff Fike