



**MINUTES**  
 OF THE REGULAR MEETING  
**OF THE CITY COUNCIL**  
 OF THE VILLAGE OF VOLENTE, TEXAS  
**TUESDAY, OCTOBER 21, 2014**  
 7:00 P.M.

**Council Members Present**

Frederick Graber, Mayor  
 Mark Scott, Mayor Pro Tem  
 Judy Graci, Council Member  
 Jan Yenawine, Council Member  
 Ken Beck, Council Member  
 Babs Yarbrough, Council Member

**Absent**

**Others Present**

Tom Buckle, City Attorney

1. Call to order of the City Council.  
 The meeting was called to order by Mayor Graber at 7:03 p.m.
2. Call Roll.  
 Julia Vicars calls roll, all present.
3. Pledge of Allegiance and Reading of the Village Vision Statement.  
 All stood for the Pledge of Allegiance and the Vision Statement was read aloud by Mayor Graber.
4. Citizens/ Public Comments.

Anne Steichen, 15807 FM 2769:

Expresses concern that the whole STR community is being punished based on the bad behavior of one or two STR Operators. Asks the Council to think about the rules in the ordinance.

David Dire, 7621 Debbie Dr.:

Refers to the Administrative Ordinance and the time frame in which the proposed STR Ordinance was made available to the public. Feels the Council is rushing this decision.

Cecil Martin, 7418 Reed Dr.:

References the Vision Statement and expresses concern that the STR Ordinance does not match Volente's ideals.. Wants the Council to focus on enforcement of laws.

Nancy Carufel, Joy Rd:

Against any new ordinance in the Village.

5. Mayor's Report. (Mayor Frederick Graber)

Mayor Graber states that the Short Term Rental work session on Oct 16<sup>th</sup> was very productive and incorporated Citizen input from the Town Hall meeting. Reports that 2014 Community Surveys were sent out to the primary owner and address of record on the Travis CAD database list effective Oct 1, 2014. Recently purchased properties may not have been recorded on the TCAD system. Both the TCAD system and ABOR (Austin Board of Realtors) database have several months of lag time. Residents who feel they should have received a survey, but did not, should contact the Village office. States his pleasure with the progress of the Administrative Ad Hoc Committee and that several of the agenda items tonight had been successfully flushed out through meetings that included Mark Scott, Ken Beck, Kit Hopkins, Barbara Wilson and himself.

6. Financial Reports ( Mayor Pro Tem Mark Scott)

Mayor Pro Tem Mark Scott suggests moving this item to follow Agenda item #17. Council agrees.

7. Staff reports from City Administrator & City Secretary

a. Construction Report

Currently 21 construction projects, some under the old fee standards and some under the new fee schedule.

b. Projects

Under a new program, Capital Metro proposes giving the Village vans for Village resident use.

Continuing to attempt to recoup 30k annually in sales taxes collected by Cap Metro and not returned for Volente use. This should be resolved by the end of the year.

Continuing to recreate templates lost when Joan's computer became infected with the CryptoLog virus

8. Discussion and Possible Action on appointing Julia Vicars, as the Acting City Secretary until a permanent City Secretary is hired. (Mayor Graber)

Mayor Graber states that Julia Vicars was hired as Temporary City Secretary, which requires a formal appointment.

**Council Member Jan Yenawine makes a motion to approve Julia Vicars as Acting City Secretary. Seconded by Babs Yarbrough. Passes by unanimous vote.**

9. Public Hearing on the Variance Requests from Tana Busch, 8114/8116 Joy Road for a variance from the Water Quality and Subdivision Ordinances regarding Non-Point Source Pollution Control Management Performance Standards for the Re-subdivision of 8114 and 8116 Joy Road, Section 32.109 (c) and a variance from the Subdivision Ordinance regarding Statutory Procedures and Zoning Requirements. Reference Subdivision Ordinance, Section 31.1115. (Mayor Graber)

*Babs Yarbrough recuses herself from this agenda item. She will be speaking as the Authorized Agent for the applicant.*

a. Open Hearing

Nancy Carufel, Joy Rd:

Attended BOA meeting on this variance request. Expresses concern that this is a confusing issue for what should be a simple process and needs to be simplified.

Council Member Jan Yenawine questions the material in the packet, feeling it is incomplete. Concerned Council does not have enough information to make decisions with.

Council Member Ken Beck states he would like for Council to hear the results of both the Board of Adjustments and the Planning and Zoning Commission before discussion on the Variance Request.

- b. Presentation and Recommendation from the Planning and Zoning Commission (Allison Thrash, Chair of Planning and Zoning Commission)

Allison Thrash, chair of P&Z, recognizes this process should be simplified. This property has three lots, and proposes it be combined into one. Combining these lots gets the property closer to the vision of Volente. These lots were subdivided prior to incorporation. Structures and improvements were built prior to incorporation. The applicant recently received a variance from the Board of Adjustments and was granted historical PUEs from Planning and Zoning. The property exceeds the 20% impervious cover limit by 7.4%, but their mitigation went above and beyond what is required. Future buyers and owners will have to abide by the Zoning Ordinances as they stand now. To not approve this application would have created an economic hardship for all parties involved and it is the recommendation of the Planning and Zoning Commission that it be approved by Council.

- c. Citizen / Public Comments

Babs Yarbrough, Agent for the Applicant:

This process was started in April at which point only 1 lot was homesteaded. Applicant wished to combine the lots to take full advantage of the homesteading. The Applicant's septic is approved by LCRA. The utility companies have released easements. The contract on the house is contingent upon the approval of these requests.

David Dire, 7621 Debbie Dr.:

States the expense and lengthy process involved in residents trying to resubdivide small properties into a single large property does not benefit the community.

Carey Witt, Applicant's Engineer:

Water quality has been addressed. The goal for the applicant was to combine three non-conforming lots into one lot, as close to compliance as possible. States this is good for both the Village and the owner; it creates a legal plat and reflects the removal of public utility easements.

- d. Close Hearing

Mayor Graber closes the Public Hearing at 7:43 p.m.

10. Discussion and Possible Action to Approve the Variance Requests from Tana Busch, 8114 Joy Road for a variance from the Water Quality and Subdivision Ordinances regarding Non-Point Source Pollution Control Management Performance Standards for the Re-subdivision of 8114 and 8116 Joy Road, Section 32.109 (c) and a variance from the Subdivision Ordinance regarding Statutory Procedures and Zoning Requirements. Reference Subdivision Ordinance, Section 31.115. (Mayor Graber)

**Council Member Ken Beck makes a motion to approve this package of multiple Variance Requests, to allow the combination of these three lots into one. Seconded by Jan Yenawine. Council Members Jan Yenawine, Judy Graci, Ken Beck, Mayor Pro Tem Mark Scott, all vote in favor. Council Member Babs Yarbrough abstained from the vote, as she is the Authorized Agent for the Applicant.**

11. Public Hearing on 2014-O-11 Ordinance of the Village of Volente, amending the Village’s Zoning Ordinance (Ordinance No. 2004-O-32), codified at Article 30, sections 30.105 and 30.133 of the Village’s Zoning Regulations; providing the definitions of Short Term Rental; defining, regulating and restricting the use of Short Term rental usage in Zoning categories; and providing for legislative findings, purpose, penalty provisions, severability, effective date, and public notice and meeting requirements. (Mayor Graber)

a. Open Hearing

Mayor Graber opens the Public Hearing at 7:50 p.m.

b. Presentation

Council Member Judy Graci explains how LCRA and TCEQ calculate capacity. Details other cities’ treatment of Short Term Rentals, and cites a number of cities that completely prohibit Short Term Rentals (STRs) within R-1 zoned areas. Exhibits a version of the proposed Ordinance that has been edited to provide strict regulations and enforcement as requested by many residents.

Tom Buckle, City Attorney, says that to prohibit STRs the zoning ordinance would have to be amended to directly prohibit any occupancy of less than 30 days. Suggests that the Village of Volente first try regulating Short Term Rentals through the Zoning regulations and if that doesn’t resolve the problems, the Village can take further steps to prohibit them within R-1 zoned areas.

Council Member Judy Graci adds that this Ordinance is not meant to punish all Operators for the bad behavior of a few. Responsible STR Operators who are not causing problems should be minimally affected by this Ordinance. By putting this Ordinance into place, Volente has a means to regulate and enforce regulations upon those who, through their actions, require enforcement.

Council Member Babs Yarbrough comments that in looking through this revision some details that were eliminated at past meetings have been included again. Opposed to items that step too far into the private business dealings of a Short Term Rental Operator.

Council Member Ken Beck states that a Public Hearing is open and specific discussion of revisions should be held until Agenda item twelve.

c. Citizen / Public Comments

Kristi Belote, 15805 Buddy:

Commends Council for their progress on the Ordinance but suggests waiting to take action until the Community Survey results are back.

David Dire, 7621 Debbie Dr.:

Asks Council to consider giving STR Operators a chance to self-regulate and deal with only the issues at hand; noise, trash, and parties are the issues, not septic systems and taxes. Adds that a lot of the problems Council is speaking to could be better solved with a Nuisance Ordinance, rather than a STR Ordinance.

Cecil Martin, 7418 Reed Dr.:

States that because of Volente's location and landscape, tourism is destined to happen. Believes that the community is not opposed to STRs because he feels the community is against more government involvement. Adds that the problems are not STR problems but instead Noise and Nuisance problems. Spoke to the need for citywide regulations and stated that if those were in place, we might not be where we are today. Agrees we need to approve common ordinances in place in most General Law villages, but doesn't think that means moving forward with this.

Nancy Carufel, Joy Rd.:

Asks that Council give STR Operators and their Code of Conduct a chance. Worries enforcement will not be possible since Volente has no means of immediate enforcement or an active court.

Allison Thrash, 15100 FM 2769:

The Code of Conduct looks good, but relying on neighbor-to-neighbor interactions to resolve issues puts us right back to where we are now. The issue of enforcement is a serious issue, and needs to be addressed. Suggests adding to the Short Term Rental Ordinance times that outdoor noise are permitted and times that outdoor noise would have to end. Reminds the public that amendments to Ordinances are possible, so as time goes on this Ordinance, if passed, may change.

Linda Attwood, 16515 Jackson St:

Feels most residents are opposed to STRs. Expresses concern for septic systems in the area and the health issues that come along with blown septic systems.

Kit Hopkins, 15943 Booth Circle:

States she moved to Volente because of a desire to live in a residential community, never thinking that a Short Term Rental could potentially be next door. Adds that Council should be concerned about angry residents when an Ordinance is not enforced and it impacts a resident's property rights and enjoyment of Volente.

Carey Witt, 7328 Reed Dr.:

Would like to see STRs only in commercial zoning and out of R-1. Adds that immediate enforcement will not be possible until Volente has a police force.

Barbara Wilson, City Administrator, references emails from Residents who could not attend.

Estimates that 60 residents have emailed in since the start of discussions on a Short Term Rental Ordinance. Says the clear majority of those that emailed in do not want STRs at all, but if that is not possible, then they request that STRs be regulated strictly.

- d. Close Hearing  
Mayor Graber closes the Public Hearing at 8:38 p.m.

12. Discussion and Possible Action to Approve Ordinance 2014-O-11 of the Village of Volente, amending the Village's Zoning Ordinance (Ordinance No. 2004-O-32), codified at Article 30, sections 30.105 and 30.133 of the Village's Zoning Regulations; providing the definitions of Short Term Rental; defining, regulating and restricting the use of Short Term rental usage in Zoning categories; and providing for legislative findings, purpose, penalty provisions, severability, effective date, and public notice and meeting requirements. (Mayor Graber)

Mayor Graber reminds the residents in attendance that all discussion is now Council and Staff only.

Council Member Jan Yenawine, states that he is a big proponent of property rights and that the impact of STRs on neighbors is what is being discussed, not an Operators right to run a business. Feels STR Operators have been self-serving with no concern or acknowledgement of other residents, the wells, or the health and safety issues that have arisen. A Code of Conduct is great, but not enforceable. By law, an Ordinance is required for enforcement. This Ordinance should not be difficult to comply with. Issues from Short Term Rentals have been ongoing for a year, and Operators have not yet stopped the issues. Council is now forced to put an Ordinance in place to resolve these issues and protect residents.

Council Member Babs Yarbrough, can sympathize with residents who feel like there may have been other ways to solve this issue but approves of the latest version of the proposed Ordinance. Understands that lack of communication between the public and Council may have been an issue, but adds that Council has worked hard to try to make both sides happy. Mentions cleaning up some definitions in the proposed STR Ordinance, and asks what the risk of lawsuit would be if this Ordinance were to be passed.

Tom Buckle, City Attorney, responds that a lawsuit can be filed by anyone but since Council has come up with reasonable regulations the risk is limited.

Council Member Ken Beck states that he is also a proponent of property rights. That being said, community rights override property owner's rights in some cases. The challenge becomes finding a compromise between the two. In favor of managing STRs, not banning them, which is why he participated in meetings with STR Operators. Agrees that throughout the year long process in which STRs have been discussed there could have been improvements made with communications between Council and the Community. Believes more edits need to be made to the proposed Ordinance before taking action. Worries that taking action now may be hasty, with Council members changing in one month's time. The dynamics of the community do not allow the luxury of time for STR Operators to self-regulate so the need arises for both STRs to self-police and for Council to move forward with an Ordinance. Adds that enforcement will be a top priority of the incoming Council, and a plan will be made of how to enforce Ordinances and utilize the Municipal Court.

Mayor Pro Tem Mark Scott says that he agrees with a lot of Council Member Yenawine's statements. Believes enforcement can be done through citizen complaints and witness testimony. Adds that the current Council has put in a lot of work on this Ordinance, so it would be best suited to make a decision now, with the current Council. Asks of Attorney, Tom Buckle, the enforceability of Operators Code of Conduct.

Tom Buckle, City Attorney, responds that the Code of Conduct cannot be enforced. It can, however, be given to applicants of a STR Operator permit for review. And Operators themselves can form a committee, like a Chamber of Commerce, to assist with regulating and policing themselves. It is in Operators' self-interest to have all Operators remain complaint. If the regulations are not working with a specific Operator, and the Operators Committee could not get them to comply, then other actions

would need to be taken. The Operators Committee and the Village of Volente could work together to ensure that Operators are meeting the required regulations.

Council Member Judy Graci details the edits she made to the proposed Ordinance. Adds that enforcement is available for this Ordinance by using Code Enforcement. Is in favor of having STRs get together and manage themselves, but STR Operators come and go. These are the parameters in which the STR operators should abide, and it needs to be on the books to be enforceable.

Tom Buckle, City Attorney, commends Judy for re-wording the Whereas clauses and asks the Council to consider substituting her clauses into the proposed Ordinance.

Council Member Judy Graci asks that Council look at the number of allowed guests, feeling that the number agreed upon during their work session was too high.

Council Member Babs Yarbrough thanks Judy for her hard work. Thinks that Council should stick with the number of guests per bedroom agreed upon during the work session. Approves of Tom's suggestion that The STR operators work side by side with the Village of Volente to enforce this ordinance adding that scrutiny amongst the Operators to protect their own business will be the Village's best ally.

Discussion occurs amongst Council on the specific details of the proposed Ordinance and the edits to be made.

**Mayor Pro Tem Mark Scott makes a motion to adopt the Ordinance language from the work session with the addition of edits to the whereas clauses and addition of the words "conditional use" as well as addition of a posted address, leaving the number of occupants as was worked out in the work session, and adding "general health and welfare" to line 38. Seconded by Jan Yenawine. Motion carries with votes of approval from Council Member Jan Yenawine, Mayor Pro Tem Mark Scott and Council Member Judy Graci. Council Members Ken Beck and Babs Yarbrough vote no.**

13. Discussion of Draft Nuisance Ordinance. (Council Member Judy Graci)

Council Member Judy Graci expresses the need for Council to have a Nuisance Ordinance on the books. This is a simple ordinance with just the definition of Nuisance.

Tom Buckle, City Attorney, adds that this Ordinance is common in other municipalities and has been upheld in the courts.

Council Member Ken Beck states that he would feel more comfortable adding this as an amendment to the Noise Ordinance with the addition of the hours in which outdoor or amplified noise would be allowable. States that the hours in which loud noise takes place seems to be more important than the level of noise to the public. Also, the level of noise is difficult to prove and prosecute but the hours are clear cut and enforceable.

Council Member Babs Yarbrough expresses concern for there not being a measurable way to determine if noise is out of control.

Tom Buckle, City Attorney, responds that the decision is up to a judge and jury to determine if the noise is unreasonable.

Kristi Belote, 15805 Buddy:

Asks Council how loud noises would be enforced and what would be required for a complaint.

Tom Buckle, City Attorney responds that the noise level would have to be within reasonability. Council cannot infringe upon people enjoying their property within reason. Prosecution would require multiple complaints, deemed reasonable by a prosecutor.

Allison Thrash, Chair of Planning and Zoning, states that she is in favor of this being added to the Noise Ordinance as it pertains to property rights. Decibel meters would not be easily applied to our topography so using complaints and other means as evidence makes more sense for Volente.

Mayor Pro Tem Mark Scott says neighbor to neighbor interaction can be a huge tool with enforcing this. Adding that residents should use this as a means to resolve issues and not in a malicious manner. Council Member Jan Yenawine responds that one complaint will not result in a court case. It's going to take several people complaining to show that there was a nuisance. There are protocols the prosecutor has to follow before it goes to court.

Council Member Ken Beck adds that reasonability by a reasonable adult comes into play. This is not meant to restrict normal residential activities, such as lawn maintenance.

14. Discussion and Possible Action to Approve the Investment Policy for the Village of Volente. (Mayor Pro Tem Mark Scott)

Mayor Pro Tem Scott delivers the presentation of the Investment Policy. Minor changes were proposed and agreed upon.

**Council Member Jan Yenawine makes a motion to adopt the Investment Policy with the changes Mayor Pro Tem Mark Scott has made. Council Member Ken Beck seconds. Carries unanimously.**

15. Discussion and Possible Action to Approve the Job Description of the City Secretary Position. (Mayor Graber, Mayor Pro Tem Scott & Council Member Ken Beck)

Council Member Ken Beck states that the drafting of this job description has been worked on for quite a while and it takes the duties required and spreads them out over several brackets. Details the proposed job description. Adds that this job description is general and can be edited to become more specific as needed. There should be a revision date added to the description.

Mayor Graber asks if Certificates, Licenses and Registrations (on page 5) is listed as preferred, but is not necessary?

Council Member Ken Beck affirms that these are not necessary, but are preferred.

**Jan Yenawine makes a motion to approve the Job Description for the City Secretary position. Council Member Babs Yarbrough seconds. Carries unanimously.**

16. Discussion and Possible Action to Repeal Ordinance 2011-O-122, related to the Personnel Policy Manual adopted in April, 2011, and Replacing it in its entirety with Approval of Ordinance 2014-O-12; adopting the Personnel Policy Manual of the Village of Volente; and providing for legislative findings, purpose, savings clause; severability, public notice and meeting requirements, and an effective date. (Mayor Graber, Mayor Pro Tem Scott & Council Member Ken Beck)

Council Member Ken Beck states the current personnel manual was passed in 2011 but was not labeled properly which resulted in some confusion on the policies in place. Research has been done and PTO shows that there are 10 days for 13-36 months of employment. Vacation and sick time are separated. Most companies now combine them together and call them PTO. Other than that, the Personnel Manual is complete and up to date.

Mayor Graber adds that since Kit Hopkins worked closely on this, he would like her input to be heard.

Kit Hopkins adds that most corporations allow a prorated amount for an hourly employee if that employee is part time. Full time hourly employees receive the same PTO time as a salary employee.

Council Member Ken Beck asks for another week to ensure that the Personnel Manual is up to date and no other edits are necessary.

**Council Member Ken Beck makes a motion to postpone the Personnel Manual at this time until further research is done on the issue of paid time off. Seconded by Council Member Jan Yenawine. Carries unanimously.**

17. Discussion and Possible Action to Approve a Resolution to Adopt the following administrative policies:
- a. The Financial Controls and Spending Policy
  - b. The Authorized Signatory Policy
  - c. The Expense Reimbursement Policy

Council Member Ken Beck details the modifications to the Administrative Ordinance that allow trips and training by Council and staff. Expense reimbursement applies to both Council and staff.

Mayor Pro Tem Mark Scott adds that these changes help with addressing how bills are paid and puts all the policies in writing so there is no question.

**Council Member Ken Beck makes a motion to approve by resolution the three above mentioned policies. Seconded by Jan Yenawine. Carries unanimously.**

#### AGENDA ITEM #6:

Discussion and Possible Action to Approve the closing of the unaudited 2013/2014 Fiscal Year and acknowledge a Net Loss of \$14,285.97 due primarily to not acquiring the \$25,000 Grant Funding that was anticipated when the Annual Budget was adopted.

(Mayor Graber, Mayor Pro Tem Scott)

Kit Hopkins, 15943 Booth Circle:

There's \$6,500 revenue not included, from mixed beverage and sales tax revenue, that has come in since these reports were created.

Mayor Pro Tem Mark Scott goes over line by line the financial reports with differences between expected and actual.

Barbara Wilson, City Administrator, points out there is an increase in property tax being disputed, so there was a delay in revenue.

Council Member Ken Beck is impressed with the shape that the budget is now in, and expresses thanks to those who worked on it.

**Council Member Jan Yenawine makes a motion to approve the unaudited 2013/2014 Fiscal Year, as a preliminary report. Seconded by Council Member Ken Beck. Carries unanimously.**

18. Discussion and Possible Action to Approve the appointment of a new General Assembly Representative for Capital Area Council of Governments. (Mayor Graber)

Barbara details the dues needed for this and the benefits to enrolling. It is a Council action because an elected official has to be voted in.

**Mayor Pro Tem Mark Scott makes a motion to appoint Council Member Ken Beck as Volente's General Assembly Representative for Capital Area Council of Governments. Council Member Jan Yenawine seconds. Carries unanimously.**

**The Staff and Mayor present the following agenda items (19 thru 24) to be considered as consent items by the City Council to be enacted by one motion. If a citizen or City Council Member requests discussion on an item, it will not be approved on consent, it will be moved to the end of the agenda and considered at that time. City Council Members may add additional items to be considered for the consent agenda.**

19. Approval of Correction to Original Agenda item for the September 23, 2014 meeting in which Rhett Scudder was listed as moving to place one on Planning and Zoning Commission. Correction should read that Rhett Scudder is moving to place two on the Planning and Zoning Commission. (Staff)
20. Discussion and Possible Action to Approve appointing Scanlan, Buckle & Young as City Attorney for the Village of Volente and authorizing the Mayor to sign the contract for provision of legal services. (Mayor Graber)
21. Discussion and Possible Action to Approve designating the Hill Country News as the Village newspaper for public notices and other related matters. (Mayor Graber)
22. Discussion and Possible Action to Approve appointing TRE Engineering, Marc Dickey as the City Engineer and authorizing the Mayor to sign the contract for provision of engineering services. (Mayor Graber)
23. Discussion and Possible Action to Approve appointing Neffendorf, Knopp, Doss and Company, P.C. as the Village Auditor and authorizing the Mayor to sign the contract for provision of auditing services. (Mayor Graber)
24. Discussion and Possible Action to Approve the Re-Appointment of Denise Thrash, Esq. as Municipal Judge for the Village of Volente. (Mayor Graber)

**Council Member Jan Yenawine makes a motion to approve items 19-24. Seconded by Council Member Ken Beck. Carries unanimously.**

25. Adjourn.  
The meeting adjourns at 10:34 p.m.

**Approved on this 18<sup>th</sup> day of November, 2014.**

Signed:

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Frederick Graber, Mayor

Attest:

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Julia Vicars, Acting City Secretary