MINUTES OF THE REGULAR COUNCIL MEETING
OF THE TOWN COUNCIL OF THE TOWN OF CHINO VALLEY

TUESDAY, MARCH 26, 2013
6:00 P.M.

The Town Council of the Town of Chino Valley, Arizona, met for a Regular Meeting in the Chino Valley Council Chambers, located at 202 N. State Route 89, Chino Valley, Arizona, on Tuesday, March 26, 2013.

Present:	Mayor Chris Marley; Vice-Mayor Carl Tenney; Councilmember Mike Best; Councilmember Darryl Croft; Councilmember Dean Echols; Councilmember Linda Hatch; Councilmember Lon Turner
Staff Present:	Town Manager Robert Smith; General Services Director Cecilia Watts; Town Attorney Sharon Sargent-Flack; Finance Director Joe Duffy; Town Engineer/Public Works Director Ron Grittman; Town Clerk Assistant Liz Hart (recorder)
Attendees:	Associate Planner Dennis Price, Planning Consultant Dava Hoffman

1) CALL TO ORDER, INVOCATION; PLEDGE OF ALLEGIANCE; ROLL CALL

Mayor Marley called the meeting to order at 6:01 p.m.

Councilmember Best gave the invocation and Mayor Marley led the Pledge of Allegiance.

2) INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS

a) Introduction of new Planner, Dennis Price. (Robert Smith, Town Manager)

Town Manager Robert Smith introduced Dennis Price, the Town's new Planner.

b) Annual report by the Chino Valley Model Aviators.

Rick Nichols, Secretary/Treasurer of the Chino Valley Model Aviators, presented the club's Annual Report and a video of their airfield facility:

- The club currently had 103 members and a facility with a 750 foot long paved runway, two dirt runways, and a cabana.
- They were improving one of the dirt runways and were raising funds to improve the main runway, at a cost of $10,000-$117,000.
- Last year's events and activities included air races, Annual Fun Fly, radio control airplane training, newsletter, and community projects.

3) CALL TO THE PUBLIC

Call to the Public is an opportunity for the public to address the Council concerning a subject that is not on the agenda. Public comment is encouraged. Individuals are limited to speak for three (3) minutes. The total time for Call to the Public may be up to 30 minutes per meeting. Council action taken as a result of public comment will be limited to directing staff to study the matter, scheduling the matter for further consideration and decision at a later date, or responding to speaker remarks.

Jim Klein, resident, spoke about not hearing from the Town on an item he asked about last October regarding Planned Area Developments certain Unified Development Ordinance regulations. Mayor Marley related that Town officials had not been forgotten his request, but they had been addressing more pressing matters.

Bob Luzius, member of the Verde River Basin Partnership, spoke about a presentation of the Northern Arizona Groundwater Flow Model on April 11.

Cory Mendoza, Council candidate, congratulated those who won in the Primary Election.

4) RESPONSE TO THE PUBLIC

Response to the Public is an opportunity for the Mayor to inform the public about how Town officials addressed matters raised during Call to the Public at a previous meeting.

Vice-Mayor Tenney reported on the March 12 Call to the Public comment:

- A citizen spoke on a matter pertaining to the 1999 Windy Valley Plaza area annexation and Council discussions on infrastructure in that area – Mayor Marley addressed that issue at the previous meeting.

5) CURRENT EVENT SUMMARIES AND REPORTS

This item is for information only. The Mayor, any Councilmember, or Town Manager may present a brief summary or report of current events, or ask a staff member to provide the same. Presentation on information requested by the Mayor and Council will be made and questions answered. No action will be taken.

Councilmember Turner reported on a recent Water Advisory Committee retreat and United States Geological Survey report.

Councilmember Hatch reported on the Town's Transit Advisory Committee presenting at a Northern Arizona Council of Governments Economic Development Committee meeting.

Vice Mayor Tenney reported on Congressman Paul Gosar's Chino Valley office being open on March 28, and Congressman Gosar inviting the public to participate with him in the Adopt-A-Highway Program on April 6.

Mayor Marley reported on:

- the Town Clerk's office accepting applications for several public bodies;
- the Kiwanis Auction on Channel 13 being pre-empted by scheduled meetings;

- the Friends of Library raising over $700 for the Library last week;
- an open house at the Shooting Range on April 6; and
- Community Center improvements along Perkinsville being under way.

The Mayor's Report pertained to responses he received from State Senator Steve Pierce and House Ways and Means Committee Chair Debbie Lesco relating to the Governor's TPT Task Force recommendations, and he asked staff to post these letters on the Town's website.

6) CONSENT AGENDA

All those items listed below are considered to be routine and may be enacted by one motion. Any Councilmember may request to remove an item from the Consent Agenda to be considered and discussed separately.

MOVED by Vice-Mayor Carl Tenney, seconded by Councilmember Linda Hatch to approve Consent Agenda items 6a, b and c.

Vote: 7 - 0 PASSED - Unanimously

a) Consideration and possible action to approve the February 26, 2013 Regular Meeting minutes. (Jami Lewis, Town Clerk)

b) Consideration and possible action to accept resignation of Billie Messaros, Dolores Morgan and Don Wojcik from the Senior Center Advisory Board, effective February 15, March 8, and March 21, 2013, respectively. (Jami Lewis, Town Clerk)

c) Consideration and possible action to amend Policy Number 605, "Overtime: Non-Exempt Employees," from the Town of Chino Valley Personnel Policy dated September 12, 2002 to include Amendment 2 of the Memorandum of Understanding between the Town of Chino Valley and the Chino Valley Police Officer's Associaton, dated February 26, 2013. (Cecilia Watts, General Services Director)

7) ACTION ITEMS

a) Consideration and possible action to adopt Resolutuion No. 13-1009, declaring the "Chino Valley Unified Development Ordinance Section 4.25: Wireless Communications Facilities" as a public record and adopt Ordinance No. 13-767 repealing the current Section 4.25, and adopting the new "Chino Valley Unified Development Ordinance Section 4.25: Wireless Communications Facilities" by reference. (Robert Smith, Town Manager)

(This item was heard after item 7e but is retained here for clarity.)

Acronym used in this item:
UDO (Unified Development Ordinance)

Town Manager Robert Smith reported that:

- Wireless services benefitted the entire community, as there was a strong correlation between robust wireless services and economic health, as evidenced by wireless service subscribers continuing to increase despite the economic downturn and the State of Arizona creating a broadband project to stimulate activity and connectivity in outlying areas.

- The Town's Wireless Telecommunication Code in the UDO, which had not been updated in many years, created several unintended consequences that needed to be addressed for the Town to enjoy robust wireless communications services. It restricted the wrong kinds of things, did not address overall visual impacts of such facilities, lacked the flexibility to allow for practical solutions, and lacked incentives and an administrative process.
- The proposed UDO revisions in Ordinance 13-767 will enhance the Town's ability to manage the manner and placement of wireless communications facilities and encourage maximum data coverage and service with minimal visual impact, as well as provide some flexibility for creativity, an administrative permit process for fully compliant proposals in low risk situations; and a Conditional Use Permit process for any proposals that represent significant impacts or variance from code requirements.
- If approved, the new Section 4.25 will become effective 30 days from its passage, pursuant to Section 36.04 of the Town Code.
- The Planning and Zoning Commission recommended that the maximum height for administrative approvals in Section 4.25, subparagraph E(6)(a)(1) be amended from 100 feet to 80 feet.

Council asked about safety from earthquakes and lightning, the tower servicing other carriers, and how building permit costs were calculated. Mr. Smith and Scott September, Senior Site Acquisition Manager with AT&T, related that:

- Each tower was engineered for the local geography and grounded by a halo ground ring.
- AT&Ts grounding standard was based on the National Electric Code and they exceeded the minimum standard.
- The current code, as well as the amended code, required colocation.
- Building permits were calculated by valuation.

There was no public comment.

MOVED by Vice-Mayor Carl Tenney, seconded by Councilmember Mike Best to adopt Resolution No. 13-1009, declaring the "Unified Development Ordinance Of The Town, Section 4.25, Wireless Communications Facilities" as a public record and adopt Ordinance No. 13-767 repealing the current Section 4.25, and adopting the new "Unified Development Ordinance Of The Town, Section 4.25, Wireless Communications Facilities" by reference, as amended.

Vote: 7 - 0 PASSED - Unanimously

b) Consideration and possible action to adopt Ordinance No. 13-766 approving a Conditional Use Permit for a wireless communication tower, 99 feet in height, proposed for construction on the east side of State Route 89 at 2655 N. State Route 89, approximately 600 feet north of Road 3½ North, identified as Assessor's Parcel Number 306-14-021C. Applicant: Clear Blue Services/AT&T; Property Owner: Mannix Holdings LLC. (Dava Hoffman, Planning Consultant)

Acronyms used in this item:

CUP (Conditional Use Permit)
FCC (Federal Communications Commission)
MHz (megahertz)
UDO (Unified Development Ordinance)

Dava Hoffman, Planning Consultant, reported that:

- The requested wireless communications tower would be located on the southeast corner of a one-acre parcel, zoned CH (Commercial Heavy), that contained three commercial buildings. Commercial-zoned properties were adjacent on all sides and across State Route 89.
- The applicant requested a 99-foot height to best serve the area and to avoid a proliferation of multiple lower towers. The mono-pole tower, along with equipment shelters, will be contained within an eight-foot high concrete block wall with stucco finish and accessed by a paved driveway.
- Currently, with limited exceptions, a CUP was required for wireless towers and antennas and the maximum height of any tower was 65 feet. As the new code In Ordinance 13-767 extended the maximum height requirement to 199 feet, and as the applicant requested a 99-foot tower, said application had to be considered through the prism of the new UDO Section 4.25.
- As the subject Ordinance could not become effective until after Ordinance 13-767 became effective, a stipulation was incorporated into Ordinance No. 13-766 to that effect.
- At a public hearing held on February 19, the Planning and Zoning Commission recommended approval of this proposal, subject to approval of Ordinance 13-767, and the effective date being 30 days after adoption of the new code.

Scott September, Senior Site Acquisition Manager, AT&T Mobility, Desert Southwest reported that:

- In the last five years, AT&T had experienced a 20,000% increase in data usage while losing 70,000 land line subscribers per month.
- In most places, AT&T was allocated an 800 MHz frequency, while in Arizona it was allocated 1900 MHz, which did not travel well and required more towers than Verizon and the other major carriers.
- The FAA did not require any lighting on the proposed tower.

Adam Brixius with Clear Blue Services, reported that:

- AT&T currently had 43 sites in Yavapai County, with one at Chino Valley High School and one just north of the Town.
- As wireless carriers were mandated by the FCC to provide continuous coverage and locating services for emergency service personnel, this tower was needed for AT&T to comply with its FCC license.
- A 99-foot tower was needed to meet the engineering specifications, as well as to allow for colocation of one to three other carriers. The proposed tower will extend coverage beyond Road 6½ North, fill in the gaps to the east and west boundaries, and reach out to the Town's industrial overlay.
- The subject site was selected as a result of site engineering, finding a willing landlord, and geographic suitability, with the proposed site offerig the least intrusive option.

Public comment:

Kate O'Connor-Masse, resident, asked if some creativity could be applied to the tower's appearance, as it would be in her property's line of sight and neighboring properties were homes and farms, not commercial. She also related that she did not receive notification of the neighborhood meeting pertaining to the proposal.

Council discussed: screening the nearby residences, lessening the tower's visual impact, and leaving these matters up to staff and AT&T to work out.

Mr. September stated that AT&T would entertain any reasonable suggestions from staff with regard to the pole and landscaping, such as painting the pole.

Town Manager Robert Smith noted that the new code did not permit lighting on towers, paint tended to be difficult to maintain, and there were better visual elements that could provide the least impact to the entire town.

Council recommended that Ms. O'Connor-Masse contact Mr. Smith to keep in touch on the issues important to her.

MOVED by Vice-Mayor Carl Tenney, seconded by Councilmember Lon Turner to adopt Ordinance Number 13-766 approving the Conditional Use Permit for a wireless communication tower, ninety-nine feet (99') in height, for Assessor's Parcel Number 306-14-021C, with the stipulation that the effective operation-date of this Ordinance Number 13-766 is conditioned upon the effective operation of Ordinance Number 13-767, regarding amendments to the Town Unified Development Ordinance, Section 4.25, pursuant to Town Code Section 36.04 and any other applicable law or ordinance.

Vote: 7 - 0 PASSED - Unanimously

c) Consideration and possible action to adopt Resolution No. 13-1008, declaring and adopting the results of the primary election held on March 12, 2013. (Jami Lewis, Town Clerk)

The staff report by Town Clerk Jami Lewis stated that the March 12 primary election had a 34.7% turnout. As all the candidates for mayor and council received more than one-half of the total number of valid ballots cast, Chris Marley was elected as Mayor, and the three Council candidates with the most votes—Linda Hatch, Pat McKee, and Don Wojcik—were elected for Council. Thus, a general election runoff was not necessary, and the new Mayor and Council will be seated on June 11, 2013.

MOVED by Vice-Mayor Carl Tenney, seconded by Councilmember Dean Echols to adopt Resolution No. 13-1008, declaring and adopting the results of the primary election held on March 12, 2013.

Vote: 7 - 0 PASSED - Unanimously

d) Consideration and possible action to approve the Arizona Department of Administration General Accounting Office Interagency Service Agreement, for the Arizona Open Books Transparency Project. The Town did not budget for this expense in the current fiscal year; $2,000 will be paid this fiscal year from the Professional Services line in the Finance Department and $3,000 will be budgeted next fiscal year. (Joe Duffy, Financial Director)

Finance Director Joe Duffy reported that:

- The subject agreement pertained to the state's Transparency Project, outlined in A.R.S. 41-725, which required the state to establish and maintain a website containing a comprehensive database of receipts and expenditures of state monies. The law also required that municipalities provide financial information in the state's database.
- Staff had determined that the most cost effective way for the Town to comply was to go through the Arizona Department of Administration-General Accounting Office (ADOA) and upload the Town's data to the Arizona Open Books website. The Town's accounting software provider, had developed an application to export the Town's data to the website, and staff will start uploading its data on April 1.
- The ADOA will provide the local government data hosting, publication, and support services, and had established an initial setup fee of $2,000, an initial annual fee for operation of $3,000, with an ongoing annual operating fee of up to $2,000.

MOVED by Vice-Mayor Carl Tenney, seconded by Councilmember Dean Echols to approve the Arizona Department of Administration General Accounting Office Interagency Service Agreement.

Vote: 7 - 0 PASSED - Unanimously

e) Presentation, discussion and possible action regarding development of a Council Code of Ethics. (Robert Smith, Town Manager)

(This item was heard after the Consent Agenda but is retained here for clarity.)

MOVED by Vice-Mayor Carl Tenney, seconded by Councilmember Darryl Croft to move up item 7e.
Vote: 7 - 0 PASSED - Unanimously

Mayor Marley explained that he was proposing changes to two Town Code sections relative to Ethics and Conduct, and Town Manager responsibilities. In light of a recent allegation by a citizen that a councilmember had questioned an employee's performance in an intimidating manner, as well as a statewide attention on ethics, he desired that town citizens and employees would know that: (i) elected officials will treat them with dignity and respect; (ii) employees and public officials were on the same team; and (iii) verbal, emotional or physical abuse of Town employees by elected officials will not be tolerated.

Council discussed possibly postponing the item to give the new Council the chance to draft its own ethics policy, and due to a possible lack of clarity in Section 31.02 with regard to communications between councilmembers and employees who were also Town residents. Conversely, reasons to take action now were that the proposed amendments improved the code, no matter who was seated on the Council and the new Council could change it if they wanted to; and the language in Section 31.02 only addressed the standard chain of command.

MOVED by Councilmember Linda Hatch, seconded by Vice-Mayor Carl Tenney, to postpone this item until the new Council was seated and had time to review other model codes.

Vote: 2 - 5 FAILED

AYE: Vice-Mayor Carl Tenney
Councilmember Linda Hatch

Mayor Marley reviewed the proposed amendments. Council discussed the proposed employee complaint process in Section 35.04(D):

- The proposed changes did not modify the Town's current complaint process, which provided that complaints from employees about councilmembers would go to the town manager, who was to bring them directly to the mayor and or vice-mayor, unless they were named in the complaint.
- As the town manager reported to Council, they generally believed that he should have no additional role in the current process.

MOVED by Vice-Mayor Tenney, seconded by Councilmember Croft, to remove the town manager from lines 2-3 of paragraph (D).

Council then questioned how they could address such complaints. Town Attorney Sharon Flack stated that if Council sought legal advice, they could address them in executive session, but some circumstances could dictate that discussions be held in open session.

MOVED by Vice-Mayor Tenney, seconded by Councilmember Croft, to amend the motion to add that such complaints be addressed by Council within 60 days after receipt of the complaint.

Vote: 7 - 0 PASSED

MOVED by Vice-Mayor Carl Tenney, seconded by Councilmember Darryl Croft to approve Town Code Sections 31.20 and 35.04 as proposed and amended.

Vote: 7 - 0 PASSED - Unanimously

8) EXECUTIVE SESSION

Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the Town's attorneys on any of the above agenda items pursuant to A.R.S. § 38-431.03(A)(3).

a) Council may vote to hold an executive session pursuant to A.R.S. §§ 38-431.03(A)(1) to discuss the employment, assignment, appointment, promotion, demotion, dismissal, and/or salaries of the office of town attorney. (Mayor & Council)

MOVED by Vice-Mayor Carl Tenney, seconded by Councilmember Darryl Croft to go into executive session for item 8a at 8:43 p.m.

Vote: 7 - 0 PASSED - Unanimously

Mayor Marley reconvened the meeting into open session at 9:01 p.m.

b) Consideration and possible action regarding the employment, assignment, appointment, promotion, demotion, dismissal, and/or salaries of the office of town attorney.

MOVED by Councilmember Darryl Croft, seconded by Councilmember Mike Best that the Town retain Curtis, Goodwin, Sullivan, Udall, and Schwab, PLC for legal services.

Vote: 7 - 0 PASSED - Unanimously

c) Council may vote to hold an executive session pursuant to Arizona Revised Statutes § 38-431.01(A)(3), discussion or consultation for legal advice with the attorney or attorneys of the public body, and/or § 38-431.01(A)(4), discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding issues concerning water transportation/pipeline transaction privilege taxes due to the Town from the City of Prescott, including but not limited to *City of Prescott v. Town of Chino Valley* , Case No. CV 46161, Yavapai County Superior Court, Order Confirming Apportionment Formula and Apportionment Schedule filed June 21, 1996, and negotiations to settle disputes regarding the same. (Mayor Marley; Vice-Mayor Tenney)

MOVED by Vice-Mayor Carl Tenney, seconded by Councilmember Linda Hatch to go into executive session for items 8c, d, e and f at 9:02 p.m.

Vote: 7 - 0 PASSED - Unanimously

Mayor Marley reconvened the meeting into open session at 9:48 p.m.

d) Consideration and possible action regarding issues concerning water transportation/pipeline transaction privilege taxes due to the Town from the City of Prescott, including but not limited to City of Prescott v. Town of Chino Valley, Case No. CV 46161, Yavapai County Superior Court, Order Confirming Apportionment Formula and Apportionment Schedule filed June 21, 1996, and negotiations to settle disputes regarding the same.

Council took no action on item 8d.

e) Council may vote to hold an executive session pursuant to Arizona Revised Statutes § 38-431.03(A)(3), discussion or consultation for legal advice with the attorney or attorneys of the public body regarding pending litigation concerning Complaint for Foreclosure of Right to Redeem (Tax Sale), *Becker Holdings, LLC v. Hall; Denney; Fitzgerald All-State Bail Bonds, LLC; CitiFinancial, Inc.; Town of Chino Valley; Ross Jacobs; Yavapai County Treasurer* , Case No. CV 2013-00180, Yavapai County Superior Court, pertaining to real property located at 1831 Yvonne Way, Chino Valley, Arizona. (Sharon Sargent Flack, Town Attorney)

See item 8c motion.

f) Consideration and possible action regarding pending litigation, Case No. CV 2013-00180, Yavapai County Superior Court, pertaining to real property located at 1831 Yvonne Way, Chino Valley, Arizona.

Council took no action on item 8f.

9) ADJOURNMENT

Mayor Marley adjourned the meeting at 9:49 p.m.

Carl Tenney

Carl Tenney, Vice-Mayor

ATTEST:

Jami C Lewis

Jami C. Lewis, Town Clerk

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the Town Council of the Town of Chino Valley, Arizona held on the 26th day of March, 2013. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 23rd day of April, 2013.

Jami C Lewis

Jami C. Lewis, Town Clerk