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

TUESDAY, APRIL 28, 2015
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, April 28, 2015.

Present: Mayor Chris Marley; Vice-Mayor Darryl Croft; Councilmember Mike Best; Councilmember Linda Hatch; Councilmember Pat McKee; Councilmember Lon Turner; Councilmember Don Wojcik

Staff Present: Town Manager Robert Smith; Assistant Town Manager Cecilia Grittman; Town Attorney Phyllis Smiley; Finance Director Joe Duffy; Police Chief Chuck Wynn; Police Lieutenant Vince Schaan; Police Officer Kevin Giese; Town Engineer/Public Works Director Ron Grittman; Utilities/Recreation Supervisor Chris Bartels; Development Services Director Ruth Mayday; Deputy Town Clerk Liz Hart; Town Clerk Jami Lewis (recorder)

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

Mayor Marley called the meeting to order at 6:00 p.m.

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

2) INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS

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 criticism.

Craig Brown, Yavapai County Supervisor, spoke about the upcoming Route 66 Fun Run.

Lee Paul, resident, spoke against industry and in support of taxing certain business operations.

Lt. Vince Schaan spoke about the Warrant Surrender Day on May 7.

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.

a) Announcement of protest by tri-city veterans.

Mayor Marley reported that the protest was held and the Courier had an article about it.

b) Suggestion to time-stamp agenda amendments.

Mayor Marley reported that original agendas were time stamped, posted versions were not, and the public could request copies of those records.

c) Request for letter of support for Yavapai Regional Transit.

Mayor Marley reported that, as the letter did not need Council's approval, he signed and forwarded the requested letter.

d) Suggestion for Council to prioritize items and listen to each other.

Mayor Marley reported that Council was attempting to do these things.

e) Complaint regarding incident with area business owner and Town employees.

Mayor Marley reported that staff investigated the matter and found that the Town employee had responded to a potentially unsafe condition created by the homeowner, not the business owner.

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.

a) Status reports by Mayor and Council regarding current events.

Councilmember Hatch reported on a NACOG Regional Council meeting and the status of the $2 million Old Home Manor grant.

Vice-Mayor Croft reported on the next Citizens' Academy.

Mayor Marley read part two of the Monthly Mayor's Report pertaining to the wastewater treatment plant.

b) Status report by Town Manager Robert Smith regarding Town accomplishments, and current or upcoming projects.

Mr. Smith reported on the installation of a major flood control improvement on and extension of East Center Street.

c) Report regarding five grant applications for Sagan University for five pass-through grants. (Cecilia Grittman, Assistant Town Manager)

Ms. Grittman reported that Sagan University had processed five additional grant applications for a total amount of $35,000.

d) Presentation regarding Court Services. (Cecilia Grittman, Assistant Town Manager)

Ms. Grittman reported that on February 24, 2015, Council directed staff to research the feasibility of outsourcing the Municipal Court. Per law, the Town had to have its own court or contract with another court in the county. The only two reasonable options were the Prescott Combined Court and Prescott Valley Court, neither of which were interested, nor had the resources, in taking over the Town's.

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.

Council set down item 6a.

a) Consideration and possible action to approve Ordinance No. 15-796, regarding Council Procedures for Addressing Code of Ethics Violations, ratifying Council's approval of the Procedures at its April 14, 2015 meeting, and adopting the Procedures as new Town Code Section 35.05. (Phyllis Smiley, Town Attorney)

Recommended Action: Approve Ordinance No. 15-796 amending Town Code Title III Administration, Chapter 35 Code of Ethics, Section 35.04 Conduct in Public Office and adding new Section 35.05 Code of Ethics Complaints; Filing and Procedures.

Councilmember Hatch stated that the proposed ordinance was highly subjective and political and she would not vote on the item given the pending allegations against her.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Mike Best to approve Ordinance No. 15-796 amending Town Code Title III Administration, Chapter 35 Code of Ethics, Section 35.04 Conduct in Public Office and adding new Section 35.05 Code of Ethics Complaints; Filing and Procedures.

Vote: 4 - 2 PASSED

NAY: Councilmember Pat McKee
Councilmember Don Wojcik
Other: Councilmember Linda Hatch (ABSTAIN)

7) ACTION ITEMS

The Council may vote to recess the public meeting and hold an Executive Session on any item on this agenda pursuant to A.R.S. § 38-431.03(A)(3) for the purpose of discussion or consultation for legal advice with the Town Attorney. Executive sessions are not open to the public and no action may be taken in executive session.

a) Consideration and possible action to adopt Ordinance No. 15-794 rezoning approximately forty (40) acres of real property located at 855 Auction Drive, identified as Assessor's Parcel Number 306-01-009D, from from AR-4 (Agricultural Residential, 4 Acre Minimum) to CH (Commercial Heavy) zoning district, and terminating the Conditional Use Permit issued pursuant to Ordinance No. 05-628 permitting a livestock auction on the property in the AR-4 zoning district. (Applicant: Smyer Livestock, LLC) (Ruth Mayday, Development Services Director)

Recommended Action: Adopt Ordinance No. 15-794, rezoning approximately 40 acres of APN 306-01-009D, from AR-4 to CH zoning district and terminating the Conditional Use Permit issued pursuant to Ordinance No. 05-628.

Ms. Mayday reported on this request:

- Location. Smyer Livestock was located approximately four (4) miles east of SR 89 and 950 feet south of East Perkinsville Road.
- History. The facility had been operating as a livestock auction since August of 2006, and under a Conditional Use Permit (CUP), Ordinance 05-628, adopted on December 8, 2005. The CUP will expire in December 2016 and any extensions of the CUP could not, under the terms of the original CUP, be extended in increments greater than five (5) years.
- CUP Versus Rezone. The purpose of a CUP was to allow for uses on a given lot or parcel of land in a manner that was not specifically permitted in the assigned zoning district. A CUP placed restrictions or conditions on the use above and beyond those normally required to mitigate its impact on surrounding properties. While it did allow for flexibility in the zoning process, it should not be used to circumvent zoning and land use best practices.
- The heavy truck traffic generated by a commodity-scale livestock auction should have triggered a rezoning of the subject property prior to issuance of a building permit in 2006. The issuance of the CUP created a "spot-using" situation wherein the zoning did not at all match the use, despite the fact that it was allowed by the issuance of a CUP. The use of CUPs in this manner was not a land use best practice.
- While livestock auctions were a conditional use in the AR-4 district, the size and scale of this facility exceeded what one would normally find in a low-density rural residential area. Furthermore, the zoning via CUP had created a hardship for the owner, who could not sell his property because funding entities were not willing to lend on a temporary zoning designation.
- Commercial Zoning. Both Commercial Light (CL) and Commercial Heavy (CH) zoning districts provided uses somewhat similar in nature to the subject property; however, CH allowed for the sale and storage of agricultural commodities as a permitted use. Given the scale and intensity of use of the Prescott Livestock Auction, rezoning the subject parcel to Commercial Heavy better fit the underlying use and resolved the impermanent nature of the existing zoning designation of AR-4/CUP.
- General Plan Compliance. The General Plan Land Use Designation for the property was Future Growth Areas: Industrial/Agri-Business/Contained Planned Community, which supported the CH zoning classification.
- Citizen Participation. There were only three (3) property owners within the required 300-foot notification boundary, all of whom submitted letters stating that they had no objection to the proposed rezoning; therefore, the Zoning Administrator accepted the letters in lieu of a neighborhood meeting.
- Public Hearing. At the Commission's public hearing on April 7, 2015, there were no comments by the public, and the Commission voted unanimously to forward the ordinance for approval.
- Staff Recommendation. By approving Ordinance 15-794, the zoning district assigned to the subject property will match the underlying use and resolve the issues related to using a

CUP as a zoning designation wherein rezoning to a different classification would have been more appropriate. Therefore, staff recommended forwarding the application to Council with a recommendation for approval.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to adopt Ordinance No. 15-794, rezoning approximately 40 acres of APN 306-01-009D, from AR-4 to CH zoning district and terminating the Conditional Use Permit issued pursuant to Ordinance No. 05-628.

Vote: 7 - 0 PASSED

b) Consideration and possible action to adopt Ordinance No. 15-795 amending the Unified Development Ordinance, Chapter 1 Administration and Procedures, by amending Section 1.1 Short Title, Section 1.4 Planning and Zoning Commission, and Section 1.5 Board of Adjustment. (Ruth Mayday, Development Services Director)

Recommended Action: Adopt Ordinance No. 15-795 amending the Unified Development Ordinance, Chapter 1, Sections 1.1, 1.4, and 1.5.

Ms. Mayday reported on this proposal:

- Purpose. Through the 2014 Strategic Plan, Council directed staff to resolve myriad issues inherent in the current version of the Unified Development Ordinance (UDO). The proposed amendments will further clarify the roles and responsibilities of appointees to the Planning and Zoning Commission ("Commission") and the Board of Adjustment (BOA), and better match regulation of these boards to Arizona Revised Statutes. It will also clarify appointment and removal procedures, powers and duties, selection of officers, and other structural matters for the management of these bodies.
- Major Changes Proposed. (i) Memorialized compliance with Town Code Chapter 35 Code of Ethics; (ii) clarified conditions under which commissioners or boardmembers must recuse themseleves; (iii) modified the number of absences by a commissioner or boardmember before removal could be considered; (iv) established an alternate member for each body; and (v) added prohibition of ex parte communications for BOA.
- Public Hearing. At the Commission's public hearing on April 7, 2015, there were no comments from the public, and the Commission voted unanimously to forward Ordinance 15-795 to Council with a recommendation for approval.

Staff responded to Council's questions on the following topics:

- Sect. 1.5.1(A)(2). "Actual expenses" was defined as those expenses incurred in connection of their duties. This was not a change from the current language.
- Sect. 1.4.4(A). The alternate member did not count as a member of commission, unless there was an item wherein a member declared a conflict.
- Sect. 1.4.4(C). Town Code Chapter 35 Ethics language regarding conflict of interest was stronger than state law and covered appearance of conflict as well. This UDO section reflected Robert's Rules pertaining to a duty to vote, unless there was a conflict or appearance of conflict of interest. Declaring an appearance of conflict was up to each individual.
- Sect. 1.5.5(B). "Relative" referred to A.R.S. Title 38 Chapter 3 Article 8.
- Arizona Agency Handbook. Staff did not refer to this document in drafting the amendments.
- Sect. 1.5.8. Commissioners served at the will of the Council and did not have a property right in their position.

- A.R.S. 38-501(B). The definition of "public officer" in this statute might be more restrictive than those of boards and commissions. Staff would have to research that, but did not believe any of the proposed amendments violated state law.

Councilmember McKee suggested that there might be an inconsistency between Sect. 1.5.8 and A.R.S. 38-501(B). Mayor Marley asked Councilmember McKee to provide details to Ms. Smiley so that Ms. Smiley could research it.

MOVED by Councilmember Pat McKee, seconded by Councilmember Linda Hatch to postpone this until we get some clarification on this.

Vote: 3 - 4 FAILED

NAY: Mayor Chris Marley
Vice-Mayor Darryl Croft
Councilmember Mike Best
Councilmember Lon Turner

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to adopt Ordinance No. 15-795 amending the Unified Development Ordinance, Chapter 1, Sections 1.1, 1.4, and 1.5.

Vote: 5 - 2 PASSED

NAY: Councilmember Linda Hatch
Councilmember Pat McKee

c) Consideration and possible action to direct staff to amend the grant application submitted to the Arizona Game and Fish Department (AZGAF) for improvements at the shooting range. (Ruth Mayday, Development Services Director)

Recommended Action: Authorize the Development Services Director to reach an agreement with AZGAF regarding an alternate use of the grant funds.

Ms. Mayday reported that:

- In 2014, staff submitted an application to Game and Fish for parking improvements at the shooting range. Rather than funding projects in their entirety, AZGAF awarded smaller grants to more communities. As a result, the Town's award of $16,500 would fund only three parking stalls and was not adequate for the proposed project.
- Staff considered alternatives to the initial project, and the only one that would not require more than $16,500 to complete was to continue to excavate the 200 meter range, which the Town was contractually obligated to construct.
- As AZGAF was willing to consider an alternative use of the funds, staff suggested that the monies be used to further excavate the 200 meter shooting range. The Town had 18 months to use the funds.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Mike Best to authorize the Development Services Director to reach an agreement with AZGAF regarding an alternate use of the grant funds to extend 200 meter range.

Vote: 7 - 0 PASSED

d) Consideration and possible action to approve Amendment #3 to Memorandum of Understanding between the Town of Chino Valley and Chino Valley Police Officers Association, effective July 1, 2015. (Cecilia Grittman, Assistant Town Manager)

Recommended Action: Approve Amendment #3 to Memorandum of Understanding between the Town of Chino Valley the Chino Valley Police Officers Association, effective July 1, 2015.

Ms. Grittman reported that:

- Pursuant to Town Code Chapter 33, the Chino Valley Police Officers Association (CVPOA) submitted nine items for consideration for fiscal year 2015/16 pertaining to compensation, insurance costs, uniform allowance, shift differential pay, education assistance, 80 hour pay period exemptions, hours of work for canine and motor officers, holidays and vacation leave, and uniform allowance.
- Town management believed it could honor seven of the nine areas requested in fiscal year 2015/16, as some of them were simple administrative changes only, having no financial impact.
- The two areas that management did not believe it could honor in fiscal year 2015/16 were shift differential pay and education assistance. The first was estimated to be around $20,000 per annum and benefited only a small subset of the employees. Regarding the second, the Town had been unable to fund the latter for all employees for at least five years and management preferred to be in a position to fund this benefit for all employees, not just those of the Police Department. The Town had, however, funded conferences, certification classes, and required training necessary for specific positions, and will attempt to continue to do so as budgets allowed.

Police Officer Jeff Pizzi, CVPOA President, spoke about how officers acquired uniforms and components and stated that they were requesting additional funds for these to address price increases and a desire for more professional uniformity in the department.

Council pointed out an inconsistency with regard to the provision of Arizona Revised Statute (A.R.S.) Manuals. Officer Pizzi clarified that statute books were now going to be provided electronically rather than to each member. Town Attorney Smiley recommended striking language which stated that each Group member will receive an A.R.S. Manual.

Staff responded to questions about the following topics:

- CVPOA Membership. Membership was not required, but all staff members still reaped the benefits of negotiations with the Town.
- Motorcycle Maintenance. Motorcycle maintenance was more labor intensive as motorcyles could not be driven through a car wash.
- Protective Vests. These had to be replaced every five years. Old ones were used for temporary purposes and for training.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to approve Amendment #3 to Memorandum of Understanding between the Town of Chino Valley the Chino Valley Police Officers Association, effective July 1, 2015, with the modification on page 57(A).

Vote: 7 - 0 PASSED

e) Consideration and possible action to determine policy regarding Council/Attorney interaction. (Chris Marley, Mayor)

Recommended Action: Direct staff to draft policy as discussed.

Mayor Marley reported that the Town budgeted $12,000 per month for legal expenses, yet expenses in February were $15,989 after the town attorney wrote off $3,000, and in March it was $14,454. He desired to start a discussion on ways to reduce these expenses. One way to do this would be to establish a gatekeeper policy.

Councilmember Hatch noted that Mayor Marley had a list of questions and answers from the League addressing this issue in a clear and concise manner, and it would be helpful to have that document to review and discuss. Per that document, all councilmembers should have access to the attorney.

Council discussed:

- The town manager or mayor acting as gatekeeper.
- Council reviewing the attorney's invoices.
- Staff discussing large-scale items, such as the wireless communications improvements, with Council first.
- Criteria to use before contacting the attorney.
- Staff providing all the data needed to make a decision on a future agenda.

MOVED by Mayor Chris Marley, seconded by Vice-Mayor Darryl Croft to postpone this to a later meeting.

Vote: 7 - 0 PASSED

f) Consideration and possible action to waive attorney-client privilege on a letter from Town Attorney Phyllis Smiley, dated March 12, 2015, entitled "Communications Requesting Town Funding for Attorney for Councilmember Hatch." (Mayor Chris Marley)

Recommended Action: Waive attorney-client privilege on a letter from Town Attorney Phyllis Smiley, dated March 12, 2015, entitled "Communications Requesting Town Funding for Attorney for Councilmember Hatch."

Councilmember Hatch moved that to achieve full and fair disclosure related to this matter, Council should also waive all privilege for the following documents: (i) request of Linda Hatch for attorney fees in this matter originally submitted to the town manager; (ii) email sent to all councilmembers by town manager improperly describing the request as a personal request; (iii) email from Linda Hatch to town manager complaining about the mischaracterization of this request; and (iv) all privileged attorney-client documents and responses which Ms. Smiley had drafted regarding any aspect of the charges, including those concerning any aspect of the magistrate court; and (v) Ms. Smiley's fee of each of these items.

Ms. Smiley advised that the agenda item was specific to only the one letter and this motion could not be made at this meeting.

Councilmember Turner asked Ms. Smiley if this was in the Town's best interest. Ms. Smiley advised that it was a decision for Council to make.

MOVED by Councilmember Linda Hatch, seconded by Councilmember Pat McKee to table this until all the related documents could be brought forward at the same time as this one document; otherwise it does not give the public a fair view of what is going on.

Vote: 3 - 4 FAILED

NAY: Mayor Chris Marley
Vice-Mayor Darryl Croft
Councilmember Mike Best
Councilmember Lon Turner

MOVED by Vice-Mayor Darryl Croft, seconded by Mayor Chris Marley to waive attorney-client privilege on a letter from Town Attorney Phyllis Smiley, dated March 12, 2015, entitled "Communications Requesting Town Funding for Attorney for Councilmember Hatch."

Vote: 4 - 3 PASSED

NAY: Councilmember Linda Hatch
Councilmember Pat McKee
Councilmember Don Wojcik

8) EXECUTIVE SESSION

Council may vote to recess the Regular Meeting and hold an executive session, which will not be open to the public, for the following purposes.

9) ACTION ITEMS RESUMED

After the Executive Session, Council will reconvene the Regular Meeting.

10) ADJOURNMENT

MOVED by Councilmember Lon Turner, seconded by Councilmember Mike Best to adjourn the meeting at 7:20 p.m.

Vote: 7 - 0 PASSED

Chris Marley, Mayor

ATTEST:

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 28th day of April, 2015. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 26th day of May, 2015.

Jami C. Lewis, Town Clerk