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

TUESDAY, AUGUST 26, 2014
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, August 26, 2014.

Present:	Mayor Chris Marley; Vice-Mayor Darryl Croft; Councilmember Mike Best; Councilmember Pat McKee; Councilmember Lon Turner; Councilmember Don Wojcik
Absent:	Councilmember Linda Hatch
Staff Present:	Town Manager Robert Smith; General Services Director Cecilia Grittman; Town Attorney Phyllis Smiley; Officer Gary Bruso; Town Engineer/Public Works Director Ron Grittman; 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 6:01 p.m.

Vice-Mayor Croft gave the invocation; Mayor Marley led the Pledge of Allegiance.

2) INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS

a) Town of Chino Valley and the Chino Valley Chamber of Commerce Business Appreciation Program. (Cecilia Grittman, General Services Director)

Tracie Schimikowsky, Chamber CEO, recognized new businesses and long-time business, Chino Heating and Cooling.

b) Presentation regarding the Town co-sponsoring a free health care day in the quad-cities in June 2015. (Councilmember Best; Vice Mayor Croft)

Russell Dirkson, Steve Salsberry, and Lou Fitting requested the Town's co-sponsorship of a two-part service project in the quad-cities area, to take place in June 2015, offering free medical and dental care for those in need and local beautification projects.

Mayor Marley stated that Councilmember Best would serve as the Town's liaison on this matter.

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.

Robert McCaullay, resident, spoke about citizens having a right to speak on agenda items.

Mike Sturdy presented a custom-made gavel to Mayor Marley.

Lee Paul, resident, offered some musings about tumbleweeds.

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) The Town's legal authority to build the Road 1 East extension across current easements and proof that such easements had been dedicated.

Mayor Marley reported that the Town's legal authority came from an intergovernmental agreement approved on November 12, 2013 and Council's declaration of right-of-way on June 10, 2014. Also, the Town received a written inquiry about the same topics; as the town attorney was not paid to provide legal advice to third parties, the requestor would need to contact his own attorney.

b) The reasoning used to propose infrastructure expansion between Road 2 North and Road 3 North instead of other available areas.

Mayor Marley reported that the designated area was recommended by the citizens' bond committee based upon input from various professional entities.

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.

Mayor Marley read his monthly mayor's report, which pertained to water and personal stewardship. He also reported on volunteer hours at the public library and the FFA Corn Dinner on September 6, 2014.

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

Mr. Smith reported on:

- Donated funds for the Community Center amphitheater being placed in a segregated fund;
- The town being awarded the $275,000 housing rehabilitation grant; and
- WIFA agreeing to finance the proposed GO bond projects and approving a $1.478 million grant for the same.

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 Darryl Croft, seconded by Councilmember Mike Best to approve Consent Agenda items 6a and 6b.

Vote: 6 - 0 PASSED

a) Consideration and possible action to approve the May 27, 2014 regular meeting minutes. (Jami Lewis, Town Clerk)

b) Consideration and possible action to approve the June 5, 2014 study session minutes. (Jami Lewis, Town Clerk)

7) ACTION ITEMS

a) Consideration and possible action to approve an Accountability Contract between the Town of Chino Valley and the Chino Valley Chamber of Commerce in the amount of $45,000. Funding source: $38,000 to come from Non-Departmental outside agency line and $7,000 to come from Contingencies. (Robert Smith, Town Manager)

Recommended Action: Approve an Accountability Contract between the Town and the Chino Valley Chamber of Commerce in the amount of $45,000.

Mr. Smith reported that this item was continued from August 12, 2014, wherein Council reviewed the contract and asked Town Attorney Smiley to make some modifications and bring it back for review and approval.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to approve an Accountability Contract between the Town and the Chino Valley Chamber of Commerce in the amount of $45,000.

Vote: 5 - 1 PASSED

NAY: Councilmember Pat McKee

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Mike Best to move up item 7e.

Vote: 6 - 0 PASSED

b) (i) Public Hearing regarding application from Richard Bicker Jr., for the Agent Change and Acquisition of Control of an existing Series 9 (Liquor Store) Liquor License for Liquor Barn, located at 315 Business Park Drive #5, Chino Valley.
(ii) Consideration and possible action to either allow or protest the change of ownership of the Series 9 Liquor License for Liquor Barn to the Arizona Department of Liquor Licenses and Control. (Jami Lewis, Town Clerk)

Recommended Action:
(i) Hold Public Hearing.
(ii) Take no action; OR Protest the acquisition of control of Liquor Barn's Series 9 Liquor License.

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

Mrs. Lewis reported that:

- Richard Bicker, Jr. had applied with the state for an agent change and acquisition of control of the Series 9 (Liquor Store) Liquor License for Liquor Barn.
- A.R.S. § 4-203(F) provided that the Council may protest such acquisition of control within sixty days based on the capability, reliability and qualification of the person acquiring control.
- The Police and Planning Departments reviewed the application and offered no comments. Staff posted the establishment with the necessary notices and received no written arguments in favor of or in opposition to the application.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Mike Best to open the public hearing.

Vote: 6 - 0 PASSED

No one from the public spoke.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Mike Best to close the public hearing.

Vote: 6 - 0 PASSED

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to approve the application from Richard Bicker Jr., for the Agent Change and Acquisition of Control of an existing Series 9 (Liquor Store) Liquor License for Liquor Barn.

Vote: 6 - 0 PASSED

c) Consideration and possible action to rezone approximately 438 acres located in Section 6, Township 15 North, Range 1 West from Single Family Residential, Two (2) Acre Minimum (SR-2) to Industrial (I). (Ruth Mayday, Development Services Director)

Recommended Action: Approve rezoning the subject property from Single Family Residential, Two Acre Minimum (SR-2) to Industrial (I).

Ms. Mayday reported that in accordance with the Settlement Agreement ("Agreement") reached between Cortez Enterprises ("Cortez") and the Town on or about March 6, 2014, Cortez submitted an application for a zoning change from Single Family Residential, 2 Acre Minimum (SR-2) to Industrial (I), and a parallel application for a Conditional Use Permit (CUP) to operate a portable asphalt batch plant on the subject property.

<u>History</u>

- In the early 2000s, the Town annexed approximately 35 sections of land, including approximately 438 acres that was owned by Cortez. Along with the annexation, the Town entered into a Pre-Annexation Development Agreement (PADA) with Cortez, which set forth a number of obligations assigned to both the Town and Cortez, including the acquisition of right-of-way for the eastward extension of Road 4 South, and a commitment to rezone the subject property from Single Family Residential, 2 Acre Minimum (SR?2) to Industrial (I) for the purposes of mining and processing sand and gravel products, a batch plant for the manufacture of concrete, and an asphalt plant, among other uses. Both the PADA and Ordinance 476 (Annexation 2001?01) were approved by Council on September 27, 2001.
- On November 12, 2001, the subject property was rezoned from Yavapai County's RCU-2A to the Town's Single Family Residential, 2 Acre minimum (SR?2) upon the adoption of Ordinance No. 482. While the County's RCU-2A zoning classification allowed mining operations as a use by right, the Town's SR-2 zoning did not permit mining as a use by right or conditional use permit (CUP), thereby requiring the property owners to rezone the property to a zoning classification that allowed the proposed use as a matter of right.
- At the time of annexation, the appropriate zoning classification for the proposed uses would have been I?1, which at that time, required a CUP for the sand and gravel mining as well as the asphalt and concrete plant uses. That classification was amended in 2002 upon adoption of Resolution 629 and Ordinance 494 to allow hot mix (asphalt) and concrete plants as well as quarries and mines as uses by right in the Industrial zoning district.
- On November 8, 2006, Council approved Resolution 812 and Ordinance 678, replacing the Zoning Code with the current Unified Development Ordinance (UDO), which instituted a single Industrial I zoning district that provided for quarries and mines with associated batch plants, concrete plants, and similar uses as permitted uses, while "hot mix" (asphalt) plants became conditional uses.

<u>Lawsuit</u>

- Difficulties arose regarding acquisition of right?of?way for the Road 4 South extension, and after mutually agreeing to extensions of time to acquire said rights-of?way in 2004, 2005, and 2006, Cortez initiated legal action against the Town in December 2006. The parties had been in litigation until February 28, 2014, when both sides agreed to work towards a resolution.
- The Town and Cortez entered into a Provisional Settlement Agreement on March 6, 2014. Among other things, the Agreement obligated Cortez, on or before April 7, 2014, to apply for I zoning and a CUP for the proposed sand and gravel operation, concrete batch plant, and asphalt plant as originally proposed in the PADA.

<u>Rezone and CUP Proposals</u>

- Rezoning the subject property from SR-2 to I will permit the use set forth in the Industrial

(I) zoning district as first contemplated in the Pre-Annexation Development Agreement and the subsequent Settlement Agreement.

- The mining and concrete plant are permitted uses; the asphalt plant will require issuance of a CUP as a separate action (item 7d).
- Cortez will develop its own access from the subject property to the extension of East Road 4 South through normal administrative processes. Those areas of the site disturbed by the permitted operation will be remediated upon cessation of the mining and related activities by removal or reuse, as appropriate, of all materials, waste, and fines piles. Disturbed areas will be graded to maintain positive drainage. Remediation of the other disturbed area(s) upon which the asphalt batch plant sits will be addressed in the CUP.
- Surrounding parcels to the north, east, and west were within Town boundaries and were zoned SR?2. As the public right?of?way terminated at the northwest corner of Section 6, Township 15 North, Range 1 West, access to the adjacent lands was somewhat limited. Additionally, no utility infrastructure was currently available to support residential development in this area. However, there was an ample supply of other lands more suitable for immediate residential development than that surrounding the subject property. The south boundary of the subject parcel was shared with an unincorporated portion of Yavapai County that carried a RCU?2A (Residential, Conditional Use; 2 Acre minimum) zoning classification. The County employed this classification as a "holding" district for property that was not yet planned for development and generally used as grazing land.
- The proposed uses in the application were supported by the 2003 General Plan, as well as the 2013 General Plan Update draft, adopted by Council on May 13, 2014. The previous plan originally designated the subject property as Industrial Overlay and Low Density Residential; it was amended on March 24, 2005 upon the adoption of Ordinance 598 to designate the subject property as an Industrial Overlay?Amended Area. The 2013 General Plan designated the subject property as a Future Growth Area: Industrial/Agri?business/Contained Planned Community.

Public Process

- Cortez filed the rezone and CUP applications on March 19, 2014.
- Per the UDO's citizen review process, notification letters were mailed on June 18, 2014. The Arizona State Land Department requested a more detailed site map; staff received no other comments or requests by the July 3, 2014 deadline.
- On August 5, 2014, the Planning and Zoning Commission held a public hearing and voted unanimously to forward the application for rezoning the subject parcels to Council with a recommendation for approval.

Reasons for Staff Recommendation

- This site was ideal for a mining operation and concrete batch plant as it was located approximately 1.75 miles from the nearest residentially zoned property; the bottom of the wash at the site was at 4,840 feet elevation, and the boundary of the property was at 4,860 feet, further containing noise and dust generated by said activities. Recent completion of the East 4 South extension provided road access in close proximity to the site.
- The location of the hot mix asphalt plant, approximately 1.75 miles from the nearest residential area, will minimize noise and odors generated by said use. Access to the site off East Road 4 South via a privately owned and maintained road will minimize traffic impacts on Town streets and roads.
- It was in the public's interest to resolve the long-standing suit between the Town and

Cortez; by rezoning the subject property to Industrial and granting the CUP request, the applicant will be able to realize the uses first contemplated in the PADA.
- The location of the hot mix asphalt plant ensured that said activities will have minimal impacts on the surrounding zoning districts, lands that were currently undeveloped and lacked infrastructure necessary to support residential development at this time.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Pat McKee to approve rezoning the subject property from Single Family Residential, 2 Acre Minimum (SR-2) to Industrial (I).

Vote: 6 - 0 PASSED

d) Consideration and possible action to authorize issuance of a Conditional Use Permit for operating a portable asphalt plant on approximately 438 acres located in Section 6, Township 15 North, Range 1 West. (Ruth Mayday, Development Services Director)

Recommended Action: Approve issuance of a Conditional Use Permit for the operation of a portable asphalt plant on approximately 438 acres located in Section 6, Township 15 North, Range 1 West.

(Item 7c provides the background and overall history of this item.)

Ms. Mayday reported that:

- In accordance with the Settlement Agreement reached between Cortez Enterprises ("Cortez") and the Town on or about March 6, 2014, Cortez submitted an application for a zoning change from Single Family Residential, 2 Acre Minimum (SR-2) to Industrial (I), and an application for a Conditional Use Permit (CUP) to operate a portable asphalt batch plant on the same approximately 438 acres, located in Section 6, Township 15 North, Range 1 West.
- On August 5, 2014, the Planning and Zoning Commission held a public hearing and voted unanimously to forward the application for a CUP on the subject parcels to Council with a recommendation for approval.
- Staff supported issuance of a CUP, as it was congruent with the previous General Plan adopted by Town Council on June 6, 2003 and the current 2013 General Plan adopted by Town Council on May 13, 2014, which designated the subject property for industrial uses, among other things.
- Conditions of approval were related to: remediation of disturbed areas on the site of the asphalt hot mix plant; completion of a Phase 1 Environmental Impact Assessment; CUP term of 50 years from date of approval; regulatory jurisdiction with regard to reclamation; and required regulatory approval.
- Enforcement of environmental issues was under the purview of ADEQ, but if staff observed anything amiss, they will report it.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to approve issuance of a Conditional Use Permit for the operation of a portable asphalt plant on approximately 438 acres located in Section 6, Township 15 North, Range 1 West.

Vote: 6 - 0 PASSED

e) Discussion and possible action to address a complaint filed by Vice-Mayor Croft pursuant to Town Code Chapter 35Code of Ethics Section 35.04 Conduct in Public Office paragraph (D). (Mayor Marley; Vice-Mayor Croft)

Recommended Action: Call upon Councilmember Hatch to publicly apologize to Ms. Schimikowsky, President/CEO, Chino Valley Area Chamber of Commerce, and to refrain from conversing in an intimidating manner when discussing Town business with visitors and staff.

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

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Pat McKee to postpone this item to the next meeting.

Vote: 6 - 0 PASSED

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.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Pat McKee to recess the regular meeting and go into executive session that will not be open to the public at 6:52 p.m.

Vote: 6 - 0 PASSED

Mayor Marley reconvened the regular meeting at 7:27 p.m.

a) Pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town Attorney in order to consider its position and instruct the Town Attorney regarding the Town's position regarding a Settlement and Release Agreement that is the subject of negotiations related to the Construction Manager at Risk Contract between the Town of Chino Valley and Fann Contracting, Inc. dated June 12, 2003 and all amendments thereto. (Robert Smith, Town Manager)

Mayor Marley reported that Council took no action.

b) Pursuant to A.R.S. § 38-431.03(A)(1) for discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of the Town Attorney. (Councilmember Hatch; Councilmember McKee; Councilmember Wojcik)

Mayor Marley reported that Council took no action.

9) ACTION ITEMS RESUMED

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

10) ADJOURNMENT

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Mike Best to adjourn the meeting at 7:27 p.m.

Vote: 6 - 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 26th day of August, 2014. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 28th day of October, 2014.

Jami C. Lewis, Town Clerk