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

TUESDAY, SEPTEMBER 23, 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, September 23, 2014.

Present:	Mayor Chris Marley; Councilmember Mike Best; Councilmember Pat McKee; Councilmember Lon Turner; Councilmember Don Wojcik
Absent:	Vice-Mayor Darryl Croft; Councilmember Linda Hatch
Staff Present:	Town Manager Robert Smith; Town Attorney Phyllis Smiley; Finance Director Joe Duffy; Police Chief Chuck Wynn; Lieutenant Vince Schaan; Officer Deana Winn; Civil Engineer Richard Straub; 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.

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

2) INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS

a) Status update by Russell Duerksen on the "Arizona Sunshine-Prescott 2015" health expo and fair. (Councilmember Best; Mayor Marley)

Mr. Duerksen reported on the status of the event, to be held at Prescott High School on June 17-18, 2015, and spoke about the statistical support needed from the town.

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 his removal from the Planning and Zoning Commission and asked about: (i) not receiving notification per the Unified Development Ordinance and state statute; (ii) the nature of the allegations; (iii) being granted a public hearing; and (iv) receiving a copy of non-redacted executive-session minutes. Mayor Marley stated that once the police investigation was complete, Council will respond to these questions.

Cheri Romley, resident, spoke about roads maintenance issues in Appaloosa Meadows; the Town's lack of response to questions residents posed last year; and the residents' offer to assist the town with funding repairs in the subdivision.

Al Gibbons spoke about noise pollution with regard to Prescott's air traffic and airport expansion plans, and placing an item on the agenda for Council issue an opinion. Mayor Marley related that Councilmember Best was working on this issue.

Dan Carlson, resident, asked for an opportunity to speak on item 7a before it was postponed.

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.

Mayor Marley had nothing to report.

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 reported on the topics discussed during the September 18 study session.

a) Presentation by Finance Director Joe Duffy regarding past donations to the proposed Community Center amphitheater.

Mr. Duffy gave an accounting of donations received from Prescott Newspapers, Inc. and Yavapai-Prescott Indian Tribe for the amphitheater. The funds had been accounted for in the Capital Improvements fund and he recommend moving them to the grants fund and designating them for the project.

Councilmember Turner clarified that the donation from the Tribe was for a raised gazebo.

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

Mr. Smith reported on:

- The September 18 study session and Strategic Plan; and
- The EDA grant status.

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 Councilmember Mike Best, seconded by Councilmember Pat McKee to accept the Consent Agenda items as read.

Vote: 5 - 0 PASSED

a) Consideration and possible action to approve the June 19, 2014 study session minutes. (Jami Lewis, Town Clerk)

b) Consideration and possible action to approve disbanding the Town of Chino Valley General Plan Committee, originally established January 24, 2012. (Liz Hart, Deputy Town Clerk)

c) Consideration and possible action to approve Financial Report for the month ended July 31, 2014. (Joe Duffy, Finance Director)

7) ACTION ITEMS

a) *Continued from September 9, 2014:* Discussion and possible action to address a complaint filed by Vice-Mayor Croft pursuant to Town Code Chapter 35 Code 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.

Mayor Marley reported that as this item had been continued two times already, he was requesting that it be postponed indefinitely until the sponsor elected to bring it back.

Dan Carlson, resident, supported Councilmember Hatch for asking the tough questions, especially when money was concerned.

MOVED by Councilmember Don Wojcik, seconded by Councilmember Mike Best to table the item indefinitely.

Vote: 5 - 0 PASSED

b) Presentation by Pat Walker, Walker Consulting, and discussion regarding the proposed Development Impact Fee Study.

Town Manager Smith reported that Ms. Walker was unable to attend and staff will bring the item back another time.

c) Consideration and possible action to approve change order number 1 to contract with Civil Tec, Inc. for Road 4 South construction staking in an amount not to exceed $3,175.00. Funds to come from Road Impact Fees. (Ron Grittman, Public Works Director/Town Engineer)

Recommended Action: Approve change order number 1 to contract with Civil Tec, Inc. for Road 4 South construction staking in an amount not to exceed $3,175.00.

Senior Engineering Project Manager Straub reported that:

- On November 12, 2013, the Town entered into a professional services contract with Civil Tec for construction staking of the Road 4 South Project right-of-way.
- Later, Deep Well Ranches asked the town to help them establish and stake a fence line along their portion of Road 4 South, as they did not know where to put their fence.
- The additional staking was not included in Civil Tec's scope of work, thus requiring a change order.

Councilmember Turner, Town Manager Smith, and Councilmember Best added that:

- Initially, during negotiations with Deep Well, the town contemplated installing said fence, but asked Deep Well to do it so they would be sure to get what they needed. Deep Well agreed, but asked the town to show them where to put the fence, so staff reconfigured the right-of-way to create that line.
- As the town and Deep Well did not discuss staking in their negotiations, staff believed this was a reasonable request.
- The work was done around March 2014, and it was found during a recent audit that the change order had not been taken to Council.

Council comments:

- Some questioned the reason for the town doing the work, necessitating a change order, and not bringing it to Council immediately.
- As change orders went, $3,000 was a low amount.

MOVED by Councilmember Mike Best, seconded by Councilmember Lon Turner to approve change order number 1 to contract with Civil Tec, Inc. for Road 4 South construction staking in an amount not to exceed $3,175.00. 3-2 with cmw and cmm voting no.

Vote: 3 - 2 PASSED

NAY: Councilmember Pat McKee
Councilmember Don Wojcik

d) Consideration and possible action to approve change order number 1 to contract with Civil Tec, Inc. in an amount not to exceed $9,464.00 for additional engineering services on the Center Street and Road 4 South projects. Funds to come from Road Impact Fees. (Ron Grittman, Public Works Director)

Recommended Action: Approve change order number 1 to contract with Civil Tec, Inc. in an amount not to exceed $9,464.00 for additional services on the Center Street and Road 4 South projects.

Senior Engineering Project Manager Straub reported that:

- On December 11, 2012, the town contracted with Civil Tec Engineering for development of partial construction plans for Road 4 South, Center Street, and Peavine Trail Road.
- It was later determined that a Stormwater Pollution Prevention Plan (SWPPP) was needed for the Road 4 South due to the terrain, which had not been included in Civil Tec's original scope of work.
- Secondly, in an effort to keep the Center Street project within acceptable budget limits and to address neighborhood issues with the new road, staff shifted the road and decided to include a small median east of Road 1 East on Center Street, rather than relocate APS electric power poles.
- Thirdly, staff had tried to save money on Center Street by not including geotech review, as they expected to blast through rock. However, only soft dirt was found, rendering the original plan in violation. This required a change, as well.

MOVED by Councilmember Mike Best, seconded by Councilmember Lon Turner to approve change order number 1 to contract with Civil Tec, Inc. in an amount not to exceed $9,464.00 for additional services on the Center Street and Road 4 South projects.

Vote: 3 - 2 PASSED

NAY: Councilmember Pat McKee
Councilmember Don Wojcik

e) Consideration and possible action to award the bid to and approve the construction contract with Capital Improvements, LLC, in an amount not to exceed $352,720.00 for the base bid and $90,540.00 for the alternative bid for a project total of $443,260.00 for construction of the box culvert at Center Street and the Santa Cruz Wash. Funds to come from Capital Improvements Funds. (Ron Grittman, Public Works Director/Town Engineer)

Recommended Action: Award the bid to and approve the construction contract with Capital Improvements, LLC, in an amount not to exceed $352,720.00 for the base bid and $90,540.00 for the alternative bid for a project total of $443,260.00 for construction of the box culvert at Center Street and the Santa Cruz Wash.

Senior Engineering Project Manager Straub reported that:

- As part of the strategy to avoid litigation associated with Cortez Enterprises, the town committed to Deep Well Ranches that three roads would be constructed: Road 4 South extension to the east, Center Street from Road 1 East to Railroad Avenue, and Peavine Trail Road from Center Street to Road 4 South. The subject box culvert was the first construction project needed to extend Center Street east to Railroad Avenue.
- On December 11, 2012, the Town awarded the design contract to Civil Tec Engineering to allow these projects to be constructed under the "in-house" designation. As the box culvert construction did not lend itself to being constructed with existing town staff, Civil Tec developed a full construction document that allowed the town to bid the project.
- Staff reviewed the bids received on September 4, 2014 and determined Capital Improvements, LLC, as the lowest responsible bidder. The bid for rip-rap was done as an alternative because staff did not know if there would be enough funds for it.
- Due to the price of concrete, this project was $50,000 under estimates. Town forces will do the excavation.

MOVED by Councilmember Don Wojcik; seconded by Councilmember Pat McKee to slash the alternate and apply those funds to chip sealing roads.

Town Attorney Smiley advised that as repaving roads was not on the agenda, Council could only vote on slashing the alternate.

Mr. Straub added that as the Corps of Engineers approved all such work, removing it from the bid would require the Corps' approval. If the rip-rap was not done now, it would result in increased stormwater velocity and erosion and require that it be done later by town forces, which were already overburdened.

MOVED by Councilmember Don Wojcik, seconded by Councilmember Pat McKee to amend his motion to just slash the $90,000.

Vote: 2 - 3 FAILED

NAY: Mayor Chris Marley
Councilmember Mike Best
Councilmember Lon Turner

MOVED by Councilmember Mike Best, seconded by Councilmember Lon Turner to award the bid to and approve the construction contract with Capital Improvements, LLC, in an amount not to exceed $352,720.00 for the base bid and $90,540.00 for the alternative bid for a project total of $443,260.00 for construction of the box culvert at Center Street and the Santa Cruz Wash.

Vote: 5 - 0 PASSED

f) Consideration and possible action regarding review, feedback, and possible revision of the 2014 Strategic Plan. (Ruth Mayday, Development Services Director)

Recommended Action: Review, receive feedback, and possibly revise the draft Strategic Plan and forward it to the October 14, 2014 agenda for adoption.

Ms. Mayday reported that:

- Council met with facilitator Lance Decker on December 11 and December 27, 2013 to develop a Strategic Plan that would create a single unified document representing the broad policies of the Council, and prioritize those policies so they could be implemented in a manner that best served the community.
- Staff reviewed notes with the facilitator, compiled a draft document and on several occasions, presented it to Council for review and consideration. Council's most recent review was on September 18, 2014. Staff was now submitting the final draft for comment prior to proposed adoption on October 14, 2014.

Council recommended no changes.

g) Consideration and possible action to authorize the Mayor to sign all documents related to the submittal of the Economic Development Administration Public Works Grant Program (EDAP). (Ruth Mayday, Development Services Director)

Recommended Action: Authorize the Mayor to sign all documents related to the submittal of the EDAP grant application.

Ms. Mayday reported that:

- This funding will be used to install infrastructure at Old Home Manor (OHM) to provide local economic and employment opportunities. By providing construction-ready sites, the Town will be in a better position to attract new employers to the area and provide additional land for expansion of existing businesses.
- Once submitted, the EDA will review the economic conditions analysis to determine the required match amount. The Town's previous application qualified for a 50% match, but EDA staff recommended that the Town base its submittal on the high level of underemployment in the region, which may raise the town's eligibility for more assistance. If the required match exceeded the town's available funding, the town would not be obligated to accept the funds.
- The total grant amount from the federal side was $1,535,868. The town was requesting a 25% match-- The minimum match was 20%., of which $85,000 would come from the town, $250,000 from an Arizona Rural Economic Development grant and another $177,000 from Arizona Department of Housing state special projects.
- Once the EDA set the match amount, staff will bring that and the contract to Council for acceptance or denial.

MOVED by Councilmember Mike Best, seconded by Councilmember Lon Turner to authorize the Mayor to sign all documents related to the submittal of the EDAP grant application.

Vote: 5 - 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.

Mayor Marley recessed the regular meeting at 7:03 p.m.

a) Pursuant to A.R.S. Section 38-431.03(A)(3) for discussion or consultation for legal advice with the Town Attorney regarding waiving the attorney-client privilege on on the following documents: 1. Memorandum from Town Attorney to Planning & Zoning Commissioners re: Conflicts of Interest on Zoning Matters, dated August 15, 2014; 2. Email from Phyllis Smiley to Planning Commissioners re: Planning Commissioners and Arizona Conflict of Interest Laws, dated June 18, 2013; 3. Email from Dava Hoffman to Mary Brasher forwarding previous email; 4. Email from Michael Edmonds to Phyllis Smiley dated June 18, 2013; and ~~4~~ 5. Email from Phyllis Smiley to Robert Smith and Dava Hoffman re: P & Z Conflict of Interest, dated June 18, 2013. (Phyllis Smiley, Town Attorney)

b) 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)

c) *Continued from September 9, 2014:* 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)

9) ACTION ITEMS RESUMED

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

Mayor Marley reconvened the regular meeting at 8:10 p.m.

a) Consideration and possible action to waive the attorney-client privilege on on the following documents: 1. Memorandum from Town Attorney to Planning & Zoning Commissioners re: Conflicts of Interest on Zoning Matters, dated August 15, 2014; 2. Email from Phyllis Smiley to Planning Commissioners re: Planning Commissioners and Arizona Conflict of Interest Laws, dated June 18, 2013; 3. Email from Dava Hoffman to Mary Brasher forwarding previous; 4. Email from Michael Edmonds to Phyllis Smiley dated June 18, 2013; and 4. Email from Phyllis Smiley to Robert Smith and Dava Hoffman re: P & Z Conflict of Interest dated June 18, 2013. (Phyllis Smiley, Town Attorney)

Recommended Action: Waive the attorney-client privilege on the following documents: 1. Memorandum from Town Attorney to Planning & Zoning Commissioners re: Conflicts of Interest on Zoning Matters, dated August 15, 2014; 2. Email from Phyllis Smiley to Planning Commissioners re: Planning Commissioners and Arizona Conflict of Interest Laws, dated June 18, 2013; 3. Email from Dava Hoffman to Mary Brasher forwarding previous; 4. Email from Michael Edmonds to Phyllis Smiley dated June 18, 2013; and 4. Email from Phyllis Smiley to Robert Smith and Dava Hoffman re: P & Z Conflict of Interest dated June 18, 2013.

Ms. Smiley reported that:

- The Council, as the town attorney's client, held the attorney-client privilege on certain memoranda and email communications between the town attorney and staff. The subject documents had been requested by the Chino Valley Police Department, who was conducting an investigation into alleged conflict of interest violations by certain Council appointees.
- Arizona Rules of Professional Conduct of Attorneys, Rule 1.6 prohibited an attorney from revealing information, including communications between attorney and client, unless the client gave informed consent (with certain exceptions, none of which apply in this case) and waived the privilege.

Council discussed enabling transparency, cooperating with the Police Department, and the subject documents not appearing to contain information that might need to be restricted.

MOVED by Councilmember Mike Best, seconded by Councilmember Lon Turner to waive the attorney-client privilege on the following documents: 1. Memorandum from Town Attorney to Planning & Zoning Commissioners re: Conflicts of Interest on Zoning Matters, dated August 15, 2014; 2. Email from Phyllis Smiley to Planning Commissioners re: Planning Commissioners and Arizona Conflict of Interest Laws, dated June 18, 2013; 3. Email from Dava Hoffman to Mary Brasher forwarding previous; 4. Email from Michael Edmonds to Phyllis Smiley dated June 18, 2013; and 5. Email from Phyllis Smiley to Robert Smith and Dava Hoffman re: P & Z Conflict of Interest dated June 18, 2013.

Vote: 5 - 0 PASSED

b) Consideration and possible approval of the 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)

Council requested that:

- Fann provide complete maintenance records for the wastewater treatment plant for the entirety of its service;
- such records be certified as complete and accurate;
- the records to be provided in sufficient time for Council's review; and
- interested councilmembers be permitted to tour the plant.

MOVED by Councilmember Lon Turner, seconded by Councilmember Mike Best to approve the 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 with the addition of a 9.1.3 that the town is to receive complete maintenance records from the inception of the plant until now, for review previous to signing the contact with sufficient time to review, and these will be given with a certification from the operator that has been in charge that they are all true and correct.

Vote: 5 - 0 PASSED

10) ADJOURNMENT

MOVED by Councilmember Pat McKee, seconded by Councilmember Mike Best to adjourn the meeting at 8:20 p.m.

Vote: 5 - 0 PASSED

Chris Marley, Mayor

ATTEST:

Jami C. Lewis, Town Clerk

<u>CERTIFICATION:</u>

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 23rd day of September, 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