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

TUESDAY, SEPTEMBER 25, 2012 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 25, 2012.

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 Tom Kack; Finance Director Joe Duffy; Police Commander Mark Garcia; Town Engineer/Public Works Director Ron Grittman; Utilities Supervisor Chris Bartels; Associate Planner David Nicolella; Town Clerk Assistant Liz Hart; Town Clerk Jami Lewis (recorder)
Attendees:	Human Resources Analyst Tiffany Resendez

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

Mayor Marley called the meeting to order at 6:03 p.m.

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

2) INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS

3) CALL TO THE PUBLIC

Tom Payne with the Chino Valley Area Chamber of Commerce spoke about a going away party for Ab Jackson, Chamber CEO, on September 26, and the Freeman Farms Pumpkin Festival, to be held every weekend in October.

4) RESPONSE TO THE PUBLIC

Mayor Marley reported on the Town's response to the previous Call to the Public comments:

- Michael Edmonds, Windmill House Conditional Use Permit – This matter will be addressed under item 7a.

5) CURRENT EVENT SUMMARIES AND REPORTS

Mayor Marley reported that:

- Council will hold two public hearings regarding Home Rule on October 9 at 6:00 p.m. and October 18 at 6:00 p.m.
- At a previous Council meeting, Town Magistrate John Walker had requested an opportunity to revisit his staff's compensation as developed by ____ [consultant], and Council had received several requests for a report on the result. He reported that the consultant stated in a letter that he stood by his original recommendation.
- The Prescott and Prescott Valley Councils held a joint meeting on their Big Chino water importation project, resulting in mutual consent to drill monitoring wells in the Big Chino Basin to monitor the aquifer and develop a model study prior to importation.
- The Town was sending a survey to registered voters with questions on programs, services, funding, and cutting costs versus raising revenues; and he urged citizens to have a say in the Town's future by responding to the survey.

a) Recognition of the Chino Valley Recreation Foundation for contributions to summer aquatics and recreation programs. (Cecilia Watts, General Services Director)

On behalf of the Parks and Recreation Department and Aquatics Division, Ms. Watts recognized the Chino Valley Recreation Foundation for contributing $2,300 in scholarships for swim lessons, $500 for local schools to visit the pool at the end of the season, and $2,000 to the Recreation Department for winter recreation programs.

6) CONSENT AGENDA

MOVED by Vice-Mayor Carl Tenney, seconded by Councilmember Linda Hatch

Vote: 7 - 0 PASSED - Unanimously

a) Consideration and possible action to accept resignation of Candy Blakeslee from the Board of Adjustment effective September 11, 2012. (Jami Lewis, Town Clerk)

7) ACTION ITEMS

a) Consideration and possible action to repeal Ordinance No. 11-754, revoking the Conditional Use Permit for the Windmill House, located at 1460 W. Road 4 North and identified as Assessor's Parcel Number 306-05-030W and a portion of 306-05-030X. Owner: Joe Cordovana, Trustee of the LaVacara Family LLC. (David Nicolella, Associate Planner)

Councilmember Echols recused himself at 6:15 p.m. due to a conflict of interest, as he had previously managed the Windmill House.

Acronymn used in this item:
CUP (Conditional Use Permit)

Mr. Nicolella reported that:

- The owner of the Windmill House, Joseph Cordovana, was unwilling to dedicate right-of-way along the subject property's Road 4 North frontage, which was required as a condition in Ordinance 11-754, the CUP for the Windmill House's operation.

- The dedication should have occurred prior to active use of the CUP and staff's many efforts to work with Mr. Cordovana on the dedication were unsuccessful.
- On August 16, Mayor Marley and staff met with Mr. Cordovana, who stated that he would not dedicate the right-of-way unless the Town processed a new rezoning application for him, waived the associated application fees, and ensured that the rezoning action was successful. The Town could not fulfill that request.
- One September 4, 2012, the Planning and Zoning Commission voted to recommend that Council revoke the CUP due to non-compliance with the Ordinance's stated condition.
- Late this afternoon, it was brought to staff's attention that a new Ordinance was needed to repeal the current one, and Ordinance 12-762 had been drafted for that purpose.

Council asked about provisions in the Ordinance for a time limit on the dedication or a change of circumstances. Mr. Nicolella and Town Manager Robert Smith related that the Ordinance did not include such provisions and the Town did not take an aggressive stance to obtain the dedications, as most land use applicants enacted required dedications fairly quickly after approval. This situation was unusual in that the CUP was for an ongoing activity, and the usual triggers—new applications for zoning, business licensing, or building permit—did not apply until the lessee of the Windmill House left and Mr. Cordovana was required to obtain a new business license.

Council and the public asked more questions about options for the dedication and CUP. Mr. Nicolella, Mr. Smith, and Town Attorney Tom Kack related that:

- Mr. Cordovana originally agreed to the dedication, and it was a condition of getting the CUP. Without it, Mr. Cordovana would have no right to the conditional use, unless Council amended it.
- If Council continued the CUP, Mr. Cordovana had the right to cancel it in writing, which staff had already requested.
- The CUP could not expire because Mr. Cordovana was still operating the business and without the CUP, the use was not justified.
- Once the CUP was repealed, it could not be reinstated.
- Regardless of any of the above, Mr. Cordovana could start over and submit an application for other land uses.
- There were several similar permitted uses in the AR-5 zoning district.

Public Comment:

Patricia McKee, resident, spoke against repealing the CUP and enforcing it as written, as repealing it would allow Mr. Cordovana to apply for other uses that might conflict with the surrounding neighborhood.

Council Discussion: As staff followed the proper procedure and did what they could to resolve the issues, and Mr. Cordovana was clear that he would not dedicate under the CUP, Council generally believed there was no reason not to revoke it. One Councilmember recommended that staff provide time limits in future land use Ordinances to avoid situations like this.

MOVED by Vice-Mayor Carl Tenney, seconded by Councilmember Darryl Croft to approve Ordinance No. 12-762, repealing Ordinance No. 11-754 and revoking the CUP with Windmill House due to non-compliance with the condition of approval for right-of-way property along the Road 4 North frontage.

Vote: 7 - 0 PASSED - Unanimously

Councilmember Echols returned to the dais at 6:37 p.m.

b) Consideration and possible action to adopt Personnel Policy No. 755, "Supplemental Benefit Plan (SBP) for Public Safety Employees," effective August 2, 2012. (Cecilia Watts, General Services Director)

Ms. Watts reported that:

- The Legislature enacted A.R.S. § 38-961 requiring political subdivisions that employed a public safety employee on a full-time basis and meeting certain criteria to have in place a supplemental benefits plan for public safety employees injured in the line of duty to the extent that they could not perform the functions of the position and were receiving worker's compensation benefits.
- Currently, an injured employee would receive 2/3 salary through worker's compensation and the rest through sick leave. The new law changed in thta the Town: (i) was now responsible for the remaining 1/3 of the salary; (ii) was now to pay the approximately 9.35% employee portion of public safety retirement; and (iii) could no longer use the employee's leave balances.
- The Town could establish injury standards for plan eligibility, as well as exclusions; however, staff recommended that the Town's Worker's Compensation carrier determine eligibility for worker's compensation and the Supplemental Benefit Plan.
- In the event a public safety employee was to qualify for the plan and be paid benefits for the full six months, the total amount of additional Town funds required would be between $2,000 and $2,600, depending on the salary range of the employee. The Police Department budget would likely be able to absorb the additional expense; otherwise Contingency Funds would be used.
- Staff desired to make this additional benefit available for all employees, as the statute did not disallow it; but, based on the Town's claims history for the last two years, staff was reluctant to recommend this benefit without an assured funding source.

MOVED by Vice-Mayor Carl Tenney, seconded by Councilmember Linda Hatch

Vote: 7 - 0 PASSED - Unanimously

c) Report and possible discussion regarding an Open Meeting Law violation and guidelines for Council communications with regard to the Open Meeting Law. (Tom Kack, Town Attorney)

Acronym used in this item:
OML (Open Meeting Law)

Mr. Kack reported that he had two OML issues on which to report.

- A former employee filed numerous complaints against the Town regarding possible OML violations. The state attorney general investigated the matters and found the following: (i) On May 19, 2009, Council held an executive session to discuss

furloughs, layoffs, and reductions in pay and hours. As no specific employees were discussed, no notice was given to employees giving them the opportunity to hold the meeting in public. In addition, there were no minutes for this meeting, as the employee designated to take minutes did not submit them and had since left the Town's employ. (ii) A meeting held in April 2010 was properly held, but had a citation that had been improperly used; and this meeting also had no minutes for the same reasons as the above meeting.

- The other OML issue pertained to Council communications. He had been asked to clarify and provide guidelines to Council on oral or electronic communications outside of meetings. These guidelines would be not just for Council, but for all the Town's public bodies, and he will provide them at the next meeting.

Council asked for him to provide samples along with the guidelines. Mr. Kack stated that he had some good examples from the attorney general.

Councilmember Hatch commented that ultimately, Councilmembers and public body members were responsible for their own actions, and they could obtain advice from the state ombudsman.

d) Consideration and possible action to approve the August 2, 2012 joint study session minutes. (Absent: Councilmembers Echols and Turner) (Jami Lewis, Town Clerk)

MOVED by Vice-Mayor Carl Tenney, seconded by Councilmember Darryl Croft

Vote: 5 - 0 PASSED

Other: Councilmember Dean Echols (ABSTAIN)
Councilmember Lon Turner (ABSTAIN)

8) EXECUTIVE SESSION

a) 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 a pre-annexation development agreement that is the subject of pending litigation,*Cortez Enterprises v. Town of Chino Valley* , CV 2006-1407, Yavapai County Superior Court. (Mark Drutz, Town Attorney)

MOVED by Vice-Mayor Carl Tenney, seconded by Councilmember Linda Hatch to go into executive session at 6:49 p.m.

Vote: 7 - 0 PASSED - Unanimously

Mayor Marley reconvened the meeting into open session at 7:52 p.m.

Council took no action on item 8a.

9) ADJOURNMENT

MOVED by Mayor Chris Marley, seconded by Councilmember Darryl Croft to adjourn the meeting at 7:52 p.m.

Vote: 7 - 0 PASSED - Unanimously

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 25th day of September, 2012. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 11th day of September, 2012.

Jami C. Lewis, Town Clerk