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

TUESDAY, DECEMBER 8, 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, December 8, 2015.

Present: Mayor Chris Marley; Vice-Mayor Darryl Croft; Councilmember Mike Best; Councilmember Susie Cuka; Councilmember Jack Miller; Councilmember Corey Mendoza; Councilmember Lon Turner

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; Town Engineer/Public Works Director Ron Grittman; Assistant Public Works Director/Town Engineer Michael Lopez; Utility/Parks and 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.

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

2) INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS

a) Presentation regarding the Aquatic Center's financial and operating results and related information. (Joe Duffy, Finance Director)

Mr. Duffy and Parks and Recreation Supervisor Bartels reported that staff prepared a detailed report of the financial and operating results for the Aquatic Center for the 2015 season with comparisons to prior years and other communities. The report included detailed attendance records and recommendations to improve usage and operating results next season. Key points were:

- *Three year average financials:* $70,000 in income and $208,458 in expenses, for a net loss of $137,619 per year.
- *Attendance:* Decreased 6% in 2015, possibly due to more wetter and colder weather; attendance by rental type should increase in 2016 based on new resources developed.
- *Staff goals:* Continue to explore partnership with the Yavapai Regional Transit; research reasons for decrease in total passes sold; focus on safe swim and lessons; beef up junior lifeguard program; and improve concession inventory and adjust costs closer to market range.
- *Pool enclosure:* Staff projected a cost of $2.7 million to acquire, plus $180,000 for annual maintenance and operations. Other regional facilities that stayed open year round noted a real decrease in attendance during the school year.

Mayor Marley stated that Council will continue to review this in the future.

b) Presentation of the recently completed Chino Meadows Units 2 and 5 Drainage Project. (Ron Grittman, Public Works Director/Town Engineer)

Mr. Grittman reported on the projects included in the Master Drainage Study and presented before and after photographs of the subject project, as well as how it functioned during a recent storm event.

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.

Lee Paul, resident, spoke humorously about his investigation of the mayor's birth certificate.

Sherry Brown, resident, suggested that Council change invocation language that could be offensive to non-Christians.

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) Comments regarding councilmembers' responsibility to obtain facts before making decisions.

Mayor Marley reported that the comments were duly noted.

b) Comments regarding Council setting a precedent if it approved the La Vacara Trust rezone.

Mayor Marley reported that the comments were duly noted.

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.

Mayor Marley read the monthly Mayor’s Report, which pertained to violence in the culture.

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

None.

c) Report on recently corrected scrivener's errors pursuant to Town Code § 10.20 Authority to Correct Scrivener's Errors. (Jami Lewis, Town Clerk)

Mrs. Lewis reported on scrivener's corrections made to Ordinance No. 15-803, Resolution No. 07-839, and Resolution No. 06-809.

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.

Mayor Marley requested the following correction to the October 27, 2015 minutes (item 6c) page 1, item #: "Mr. Arroyo spoke about Oath Keepers, which educated military, law enforcement, firefighters, and first responders on constitutional issues and community preparedness for major catastrophic events~~; and which had been asked to form a security team to assist the Police Department with emergency preparedness~~."

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Mike Best to approve consent agenda items 6a, b, c and d with the amendment.

Vote: 7 - 0 PASSED - Unanimously

a) Consideration and possible action to adopt Resolution No. 15-1071, postponing the effective date of increased sewer fees approved by Resolution No. 13-1005 until July 1, 2016. (Susan Goodwin, Town Attorney)

b) Consideration and possible action to ratify the Mayor's nomination of Councilmember Jack Miller to serve on the Yavapai County Emergency Management Interagency Coordination Committee. (Mayor Marley)

c) Consideration and possible action to accept the October 27, 2015 regular meeting minutes. (Jami Lewis, Town Clerk)

d) Consideration and possible action to accept the November 10, 2015 regular meeting minutes. (Jami Lewis, Town Clerk)

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 accept the Comprehensive Annual Financial Report and the Annual Expenditure Limitation Report for the fiscal year ended June 30, 2015, as prepared by Henry & Horne, LLP, Certified Public Accountants. (Joe Duffy, Finance Director)

Recommended Action**:** Accept the Comprehensive Annual Audited Financial Report and the Annual Expenditure Limitation Report for the fiscal year ended June 30, 2015, as prepared by Henry & Horne, LLP, Certified Public Accountants.

Mr. Duffy reported that Henry & Horne, LLP was retained by the Town to complete the audit for the fiscal year ended June 30, 2015. The audit was complete, and the Finance Subcommittee reviewed the final reports on December 2, 2015. This was the Town's first audit with Henry & Horne and he commented on its quality.

Marilyn Mays, Partner with Henry & Horne, stated that this was the smoothest first-year audit of her career and she reported on the audit findings. Key points were:

- *Auditors' Report on financial statements:* The Town's financial statements were fairly presented in accordance with generally accepted accounting principles; and there were no reported significant deficiencies, material weaknesses, or material non-compliance.
- *Significant accounting policies and issues:* There were no instances of difficulties, uncorrected misstatements, or disagreements with management; there was one accounting change pursuant to GASB 68, which pertained to ASRS liability; and the Expenditure Limitation Report was issued timely.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Jack Miller to accept the Comprehensive Annual Audited Financial Report and the Annual Expenditure Limitation Report for the fiscal year ended June 30, 2015, as prepared by Henry & Horne, LLP, Certified Public Accountants.

Vote: 7 - 0 PASSED - Unanimously

b) Consideration, possible public hearing, and possible action to adopt Ordinance 15-805 to rezone approximately 16.44 acres from AR-5 (Agricultural/Residential, 5 acre minimum) to CL-PAD (Commercial Light - Planned Area Development Overlay) and MR-PAD (Multifamily Residential; Planned Area Development Overlay).

Recommended Action:
(i) Hold public hearing if required;
(ii) Adopt Ordinance No. 15-805 rezoning approximately 6.55 acres generally located within APS 306-05-031N from AR-5 (Agricultural/Residential, 5 acre minimum) to MR-PAD (Multi-family Residential, Planned Area Development) and approximately 9.7 acres from AR-5 to CL-PAD (Commercial Light; Planned Area Development) as stipulated.

Mayor Marley reviewed the public hearing procedure.

Ms. Mayday presented an overview of this item:

Proposal

Rezone 16.25 acres from Agricultural/Residential 5 Acre Minimum (AR-5) to:
(i) 9.7 acres to Commercial Light Planned Area Development (CL-PAD), and (ii) 6.55 acres to Multifamily Housing, Planned Area Development (MR-PAD).
Applicant LaVacara Trust ("the Trust") also proposed to restrict the number and

type of uses that would be allowed by right in the CL-PAD zoning district. The sewer system selected will determine how many units would be allowed. The subject application represented the second attempt by the Trust in as many years to change the zoning for the 16.25-acre parcel, where the Windmill House, a single casita, and a "Western Town" were located.

Background/Chronology

- *2003-2006* – The Town issued a five-year Conditional Use Permit for the Windmill House, which opened for business in 2006.
- *2009* – The Planning and Zoning Commission ("Commission") recommended denial and Council approved a rezone and minor General Plan amendment (mGPA) for Senior Living /JC Estates on 170 acres. The two-year deadline for related stipulations lapsed in 2011.
- *2011* – The Trust applied for an mGPA, zone change, and CUP on 28 acres. Council: (i) approved reversion of the 2009 zoning back to AR-5 and the mGPA back to Medium Density Residential, 2 acres or less; (ii) denied the 2011 rezone and mGPA request; and (iii) approved a new 15-year CUP to allow continued operation of the Windmill House.
- *2014-2015* – Council denied a rezone of the subject parcel by a supermajority vote of five in support, one in opposition, and one absent. The Trust filed a lawsuit against the Town based on several perceived issues with the 2014 application, and Commission and Council actions. The Court granted summary judgment in favor of the Town.
- *2015* – The applicant had contended that he should not be required to dedicate additional right-of-way, as he had dedicated 25 feet of right of way along West 4 North, North 1 West, and West 5 North in the 1990s, which was required for the project he proposed at that time. That project and dedication did not include the density and intensity of use now proposed by the Trust. However, Mr. Cordovana, acting as Trustee for the Trust, recently agreed to dedicate the additional 25 feet of right-of-way that had been the basis for the previous revocation of both PAD zoning and CUP requests.

Current Proposal and Public Process

- Ms. Mayday reviewed: (i) UDO 1.9.4 PAD Overlay District permitted uses, approval procedures, and requirements; (ii) the project's relation to the General Plan; and (iii) staff's proposed stipulations.
- *October 2015, Neighborhood meeting:* Public reaction to the proposal was mixed, but more favorable than previous meetings.
- *November 3, 2015, Commission public hearing:* Two members of the public spoke in opposition and one spoke in favor of the project. Commissioners (i) discussed the stipulations attached to the proposed rezoning; (ii) recommended additional stipulations related to traffic impact analysis, a second public hearing before Council, preliminary development plan, and buffering and screening; and (iii) voted to recommended approval by a 5-0 vote.
- *Staff recommendation:* Staff found that approving the proposed rezoning will: (i) be of benefit to the property owner and the Town; (ii) provide a means by which the Windmill House could be reopened; and (iii) expand the availability of a variety of housing choices in the Town in accordance with the General Plan.
- *Stipulations:* The Development Plan must be approved by Council, and a Town business license will not be issued unless and until a dedication of right-of-way was made by the applicant, accepted by Council, and recorded at the County. Of the five stipulation recommended by the Commission, only the one pertaining to screening and buffering was in the proposed ordinance.

- *Supermajority vote requirement:* The applicant created a new parcel, eliminating all but three property owners within 150 feet proximity, none of which filed a protest.

Town Attorney Smiley advised that she discovered just prior to the meeting that the ordinance in the agenda packet was not the correct version and some of the stipulations were in error; specifically, the applicant would need to submit a site plan, not a development plan.

Mark Sveda, attorney for the applicant, reported that:

- There was a scrivener's error in the packet and ordinance related to the subject property's acreage, which should be 16.25 acres, not 16.44 acres. This land included a lake, the Windmill House, and a new development.
- The applicant originally proposed 16 acres of commercial, but due to public opposition, developed the concept to add the multi-family housing as a buffer.
- The zone change would give the Trust the ability to develop the property, provide jobs, add to the tax base, and allow the Windmill House to reopen full-time. If Council approved the item, the Trust will need to determine sewer service specifications, which dictated that there would most likely be less than 95 units.
- The applicant: (i) did not believe a traffic impact study was appropriate, as the property density was as yet unknown; however, he will update the previous study once that was determined; (ii) did not agree to age restrictions at this point; and (iii) contended that previous ordinances approved by Council with time limits did not give him time to develop and violated his equal protection rights.

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

Vote: 7 - 0 PASSED - Unanimously

Ron Maines, resident, opposed the proposal, citing lack of a development plan and apartments being an incompatible land use.

Robert McCaullay, resident, opposed the matter, citing lack of access and possibly triggering Prop 207 claims due to impacts on property values.

Lee Paul, resident, spoke in favor of the restaurant; opposed the rest, citing incompatibility with surrounding low density uses; and suggested that the applicant propose this project for his property on the highway at Road 3 North.

Holly Wolcott, resident, speaking also on behalf of Gary Grindstaff Trust, opposed the item due to probable increases in traffic, noise, crime, and complaints.

Mayor Marley recessed the meeting at 7:56 p.m. and reconvened the meeting at 8:09 p.m.

Chuck Ellsbury, resident, opposed the proposal, as it would detract from the area and there were too many unknowns.

Debbie Novelski, resident, opposed the request, as it would set a zoning precedence; the project would negate water conservation; and it was not reasonable.

Shamus Evans, resident, opposed apartments in a low-density neighborhood and using Road 4

North for alternative transportation due to safety reasons.

Mike Bacon, resident and Planning and Zoning Commissioner, spoke about the lack of a development agreement, a 55+ age restriction mitigating the negative impacts of apartments, and the commercial area lacking visibility in the community.

Frank Strassell, resident, supported the Windmill House, but opposed apartments and the western town due to noise, lack of specifics, and the lot line change.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Jack Miller to adjourn the public hearing and return to the regular meeting.

Vote: 7 - 0 PASSED - Unanimously

Council and the public asked about the following topics; staff's responses follow:

- *Apartments:* These would be located along the southern portion of the property. The UDO limited building height to 35 feet. The Town could not enforce a 55+ requirement—that had to come from the applicant.
- *Proposed commercial establishments:* These would be located near the western town and would be open to the public; and with a PAD, the Town could stipulate permitted uses.
- *Windmill House uses:* The applicant's desire to open the restaurant full-time would be discussed during the site plan review process.
- *Access:* The applicant could use a branch off the former entrance that was inside the new lot line, and this will be discussed during the site plan review process.
- *PAD:* The Trust did not need to break the proposed development into two separate issues, as a PAD allowed the property to be considered as a whole and how all proposed components will work together.
- *Wastewater:* Theoretically, there was no limit to a septic system's size. It was conceivable that a large septic could serve 95 apartments, and it will have to be determined if there was enough room on the property for that.
- *Legal issues:* Ms. Smiley did not believe the neighbors would have causative action with regard to Prop 207, nor would Council's approval of the rezone set a precedent.

Council discussion:

- *Reasons to support:* The Town could not stop change; most constituents appeared to support the Windmill House; Mr. Cordovana's projects were well done and could cause property values to increase; and the Town had a responsibility from past actions to allow the Windmill House to continue.
- *Reasons to oppose:* Most constituents did not appear to support the commercial portion; the project would be more conducive on the commercial corridor; Council setting a moral or ethical precedent; a general opposition to higher densities without the ability to recover effluent; and Council was responsible to the people who designed the General Plan and those who voted for it.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Corey Mendoza to adopt Ordinance No. 15-805 rezoning approximately 6.55 acres generally located within APS 306-05-031N from AR-5 (Agricultural/Residential, 5 acre minimum) to MR-PAD (Multi-family Residential, Planned Area Devt) and approximately 9.7 acres from AR-5 to CL-PAD (Commercial Light; Planned Area Development) as stipulated with any amendments or corrections to document.

Vote: 5 - 2 PASSED

NAY: Mayor Chris Marley
Councilmember Susie Cuka

c) Consideration and possible action to adopt Resolution 15-1069 for the purpose of applying for an Arizona Game and Fish Shooting Range Development Grant for the purpose of constructing and operating a trap shooting range. (James Gardner, Associate Planner)

Recommended Action: Adopt Resolution 15-1069, approving a grant application for an Arizona Game and Fish Shooting Range Development Grant for the purpose of constructing and operating a trap shooting range.

Ms. Mayday reported that staff desired to apply for a $50,000 grant, with an in-kind match, to develop a trap and skeet range. The Town had applied for and received such funding numerous times in the past.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Jack Miller to adopt Resolution 15-1069, approving a grant application for an Arizona Game and Fish Shooting Range Development Grant for the purpose of constructing and operating a trap shooting range.

Vote: 7 - 0 PASSED - Unanimously

d) Presentation, discussion, and possible action to direct staff to publish a Notice of Intention to Amend Municipal Wastewater Fees and Charges Related to Disposal of Septage at the Town of Chino Valley Wastewater Treatment Plant and set a public hearing date on the adoption of said fees; along with a brief presentation on the status of the plant. (Mayor Marley & Ron Grittman, Public Works Director/Town Engineer)

Recommended Action:
(i) Set a public hearing date for January 26, 2016 and to direct staff to publish the Notice of Intention to Amend Municipal Wastewater Fees and Charges Related to Disposal of Septage at the Town of Chino Valley Wastewater Treatment Plant not less than 20 days before January 26, 2016; and/or
(ii) Direct staff to further investigate the feasibility of receiving septage at the wastewater treatment plant.

Mr. Grittman stated that Mayor Marley requested a briefing on this matter and reported that:

- After February 2012, the company performing operation and maintenance (O&M) of the wastewater treatment plant ceased accepting septage due to what was believed to be the receipt of septage that caused a dire impact on the plant.
- Since the Town took over O&M of the plant in April 2015, staff had brought the plant up to industry standards and was proposing to accept septage again, as it was a source of income and local haulers had requested it. They proposed to update the new septage fee to $0.13 per gallon.

- Staff also believed that septage reception, projected at $550,000 in three years, will provide the necessary funding to support future plant O&M activities and equipment upgrades.
- Staff intended to modify the Town's previous septage regulations to provide protection to the plant, and develop an agreement that each septage hauler must execute prior to being permitted to dump at the plant.

Town Attorney Smiley advised that upon approval, staff would publish a notice of intent and set a public hearing date for January 26, after which Council could approve the new rate.

Council asked staff to:

- research other entities with a similar type of plant that accepted septage;
- provide price comparisons with other municipalities; and
- contact haulers to: (i) get letters of intent that they would agree to the new parameters; and (ii) obtain the estimated gallons to be dumped.

MOVED by Councilmember Susie Cuka, seconded by Vice-Mayor Darryl Croft to set a public hearing date for January 26, 2016 and to direct staff to publish the Notice of Intention to Amend Municipal Wastewater Fees and Charges Related to Disposal of Septage at the Town of Chino Valley Wastewater Treatment Plant not less than 20 days before January 26, 2016; and direct staff to further investigate the feasibility of receiving septage at the wastewater treatment plant.

Vote: 7 - 0 PASSED - Unanimously

e) Consideration and possible action to cancel the professional services agreement with Civil Tec Engineering, Inc., for the preparation of engineering construction plans for the Old Home Manor Industrial Park project, in the amount of $175,120.00. (Ron Grittman, Public Works Director/Town Engineer)

Recommended Action: Cancel the Professional Services Contract with Civiltec Engineering, Inc., for the preparation of engineering construction plans for the Old Home Manor Industrial Park project.

Mr. Grittman reported that:

- On August 11, 2015, the Town entered into a professional services agreement with CivilTec Engineering regarding engineering documents for the Road 4 North roadway extension and water and sewer lines extension to the Old Home Manor Industrial Park.
- The oversight professionals at the Economic Development Agency (EDA) would not accept this scope of work and agreement because of the age of the Town's statement of qualifications (SOQ).
- The agreement provided that the Town could terminate it with 10 days written notice at any time and was required to pay CivilTec for services rendered under the agreement up until the date of termination. As Town staff had not directed CivilTec to move forward with any billable activities, termination of the agreement will have no financial impact.
- Staff subsequently advertised a new SOQ for this project and will bring this item back on January 26 to start the project again.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Mike Best to cancel the Professional Services Contract with Civiltec Engineering, Inc., for the preparation of engineering construction plans for the Old Home Manor Industrial Park project.

Vote: 7 - 0 PASSED - Unanimously

f) Consideration and possible action to appoint applicants to fill vacancies on the Planning and Zoning Commission. (Jami Lewis, Town Clerk)

Recommended Action: Appoint applicants to the Planning and Zoning Commission per the Appointments Subcommittee's recommendation.

Mrs. Lewis reported that:

- The Council Appointments Subcommittee met on November 9, 2015 to review applications for the Planning and Zoning Commission and Board of Adjustment.
- Council's appointment of Corey Mendoza to the Council left a vacancy on the Commission. Staff received five applications for the position, including one from the current Alternate Commissioner. These two positions, as well as two other Regular positions, will also be expiring on January 31, 2016.
- The current vacancy on the Board of Adjustment was for the Alternate position. Staff received two applications.

The subcommittee recommended the following:

Planning & Zoning Commission

- Appoint Claude Baker, the current Alternate Commissioner, to the Regular position with term ending January 31, 2016.
- Appoint Julie Van Wuffen to the Alternate position with term ending January 31, 2016.
- Extend four positions, whose terms will expire in January 2016 through their next terms if staff received no applications other than from the current incumbents.

Board of Adjustment

The Subcommittee made no recommendations at this time, preferring to appoint a more qualified candidate.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Corey Mendoza to appoint Claude Baker, the current Alternate Commissioner, to the Regular position with term ending January 31, 2016; and appoint Julie Van Wuffen to the Alternate position with term ending January 31, 2016.

Vote: 7 - 0 PASSED - Unanimously

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 Mike Best to adjourn into executive session at 9:24 p.m.

Vote: 7 - 0 PASSED - Unanimously

a) Consideration and possible action to recess the public meeting and hold an executive session pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town Attorney in order to consider the Town's position and instruct the Town Attorney regarding the Town's position in pending litigation or in settlement discussions conducted in order to avoid or resolve litigation in the matter of Town v. JNJ Construction, Inc. (Phyllis Smiley, Town Attorney)

Recommended Action: Recess the public meeting and hold the executive session.

Mayor Marley reconvened the regular meeting at 9:34 p.m.

9) ACTION ITEMS RESUMED

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

None.

10) ADJOURNMENT

MOVED by Councilmember Jack Miller, seconded by Councilmember Corey Mendoza to adjourn the meeting at 9:34 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 8th day of December, 2015. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 12th day of January, 2016.

Jami C. Lewis, Town Clerk