

1. Agenda

Documents: [AGENDA SEPTEMBER 17.PDF](#)

2. Packet

Documents: [PACKET SEPTEMBER 17.PDF](#)

3. Packet - Addendum

Documents: [ADDENDUM PACKET SEPTEMBER 17.PDF](#)



Town of Chino Valley
MEETING NOTICE
PLANNING AND ZONING COMMISSION

REGULAR MEETING
Tuesday, September 17, 2013
7:15 P.M.

Council Chambers
202 N. State Route 89
Chino Valley, Arizona

AGENDA

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **MINUTES**
 - A. Approval of Minutes for July 16, 2013
5. **RESERVATIONS FOR AGENDA ITEMS**
6. **PUBLIC HEARING**
 - A. Conditional Use Permit 13-002 (CUP13-002) Application by owner Jack Tuls Jr. to vary from allowed fence height.
7. **PETITIONS AND COMMUNICATIONS**
8. **OLD BUSINESS**
9. **NEW BUSINESS**
 - A. The Rules of Order set forth the operating framework for the Commission. Staff has proposed changes to the Rules of Order to make them congruent to the actual operation of the Commission.
 - B. The Planning & Zoning Commission reviewed text amendments to UDO Section 5.5 Subdivision Requirements; Modifications, Appeals, and Enforcement during its work/study session on August 20, 2012. In order to amend the text, the Commission is statutorily required to hold at least one (1) public hearing to take input from the public on the proposed changes.
 - C. The Planning & Zoning Commission reviewed text amendments to UDO Section 4.8 Fences and Walls during its work/study session on August 20, 2013. In order to amend the text, the Commission is statutorily required to hold at least one (1) public hearing to take input from the public on the proposed changes.

- D. State laws governing the placement and removal of political signs within the public right-of-way have been changed; however, the Unified Development Ordinance (UDO) has not been amended to reflect those changes.

10. STAFF REPORTS

11. TOWN COUNCIL LIAISON REPORT

12. PUBLIC COMMENTS

13. ADJOURN

A copy of the agenda and background material provided to the Commissioners is available for public inspection at the Marion Lassa/Chino Valley Library, 1020 W. Palomino Road, Chino Valley, Arizona.

Further details may be obtained by contacting Development Services Department at 1982 Voss, Chino Valley, Arizona (928) 636-4427. The Town endeavors to make all public meetings accessible to persons with disabilities. With 72 hours advance notice, special assistance can also be provided for sight and/or hearing impaired persons at public meetings. Please call 636-2646 (voice), 636-1787 (TDD) or use the AZ Statewide Relay Service at 1-800-367-8939 (TDD) to request an accommodation to participate in this meeting.

In accordance with Chapter 3, Title 38, Section 38-431.02 Arizona Revised Statutes, public notice is hereby given that four (4) or more members of the Mayor and Town Council may be present at this meeting.



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Planning & Zoning Commission Regular

3. A.

Meeting Date: 09/17/2013

CASE DESCRIPTION:

Approval of Minutes for July 16, 2013

ANALYSIS:

RECOMMENDATION

Attachments

Minutes July 16, 2013

TOWN OF CHINO VALLEY
PLANNING AND ZONING COMMISSION
Regular Meeting Minutes
Chino Valley South Campus
202 N. State Route 89
July 16, 2013
6:00 p.m.

1. CALL TO ORDER

2. ROLL CALL

Meeting was called to order at 6:00 p.m.

Members Present: Gwen Rowitsch, Chairperson
Garland Miner, Vice Chairperson
Charles Merritt, Commissioner
Michael Edmonds, Commissioner

Staff Absent: Florence Sloan, Commissioner
Jack Owen, Commissioner

Staff Present: Dennis Price, Planner
Dava Hoffman, Planning Consultant
Mary Brasher, Administrative Technician

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF MINUTES

4A. For consideration, discussion, and possible action regarding the regular meeting minutes of May 21, 2013.

Vice Chair Miner MOVED, seconded by Commissioner Merritt to approve the regular meeting minutes of May 21, 2013.
MOTION CARRIED 5-0

For consideration, discussion, and possible action regarding the regular meeting minutes of June 18, 2013.

Commissioner Merritt MOVED, seconded by Vice Chair Miner to approve the regular meeting minutes of June 18, 2013.
MOTION CARRIED 4-0 Vice Chair Miner Abstained

5. **STAFF REPORT:** None

6. **PUBLIC HEARING:** Chairperson Rowitsch opened the public hearing.

6A: For consideration, discussion and possible recommendation to the Town Council regarding a requested zone change from Commercial Light (CL) to Commercial Heavy (CH). The location of the proposed zone change is 694 N. State Route 89, Chino Valley, Arizona 86323, and further described as Assessor's Parcel Number's 306-23-021X. Owner/Applicants: Resource Holdings II, LP/Timothy J. Coury, Kottke Law Firm.

Dennis Price gave a brief overview of the request to change the zoning for this property from CL to CH for the purpose of offering vehicle towing and storage in addition to the current business. A neighborhood meeting was held on June 26, 2013 with the applicant, owner, staff member, and one property owner in attendance. The request is consistent with the General Plan and the land designation of commercial and will not be detrimental to the health, safety, and general welfare to the residents of the Town of Chino Valley, therefore staff recommends approval of this request with the findings and stipulations as noted in the staff report.

Chris Kottke, representative asked the Commission to recommend approval for this request so that the owner can provide a quality towing service to the current business.

Commissioner McCaullay asked staff why there was no request for landscaping.

Mr. Price responded that landscaping is not a requirement for a request to change the zoning. Because there are no improvements proposed to the building, which is what triggers the landscaping requirement, landscaping is not required.

Commissioner McCaullay asked if landscaping is required for commercial.

Mr. Price stated that landscaping is required for new commercial construction.

Vice Chair Miner commented that he noticed there was screening in the front, but not around the property. One of the stipulations has screening as a requirement and wanted to know if that would be in place prior to vehicles being brought in for storage because he noticed there was a vehicle already there.

Mr. Price indicated that the screening will need to be in place because the code states that the vehicles shall not be seen from adjoining properties. If the requirements of the zone change are not met than the Town Code Enforcement will look into the matter.

Mr. Kottke stated they would comply with the screening requirement.

Commissioner Merritt asked about the requirement for a dust free driving surface.

Mr. Price stated that the UDO requires a dust free surface and that compacted gravel is currently in place on the property, and that is all that is required.

Chairperson Rowitsch opened and closed the public portion of the meeting with no comments heard.

Vice Chair Miner MOVED, seconded by Commissioner Merritt, to recommend to the Town Council approval of the zone change of Assessor Parcel Number 306-23-021X from Commercial Light (CL) to Commercial Heavy (CH) with the findings and stipulations as noted in the staff report. MOTION CARRIED: 5-0

6B. For consideration, discussion and possible recommendation to the Town Council regarding a requested zone change of Assessor's Parcel Number's 306-23-041W, 306-23-041X, and 306-23-041Z from Agricultural Residential 4 Acre Minimum (AR-4) to Single Family Residential 1 Acre Minimum (SR-1) for a total of approximately 15 acres. Said property is located at 851 W. Road 1 North. Owner/Applicant: MD Builders/Martin Messenger.

Dennis Price gave a brief overview of the request to change the zoning on this property from AR-4 to SR-1 for the purpose of increasing the marketability of the parcels. Each parcel will offer potential buyers the opportunity to split the property; however Mr. Messenger must sell the property before any new lots can be created. A neighborhood meeting was held July 13, 2013 with 3 neighbors; a potential purchaser, property owner, and a staff member were present. The request is consistent with the General Plan and the land designation of Medium Density Residential 2 Acres or less, will not be detrimental to the health, safety, and general welfare to the residents of the Town of Chino Valley, therefore staff recommends approval of this request with the findings and stipulations as noted in the staff report.

Mr. Messenger stated that he did not have anything to add and felt that staff covered the request appropriately.

Commissioner McCaullay asked Mr. Messenger if he planned to build homes on the property.

Mr. Messenger stated he was not planning to build homes.

Chairperson Rowitsch opened and closed the public portion of the meeting with no comments heard.

Vice Chair Miner MOVED, seconded by Commissioner Merritt to recommend to the Town Council approval of the zone change of Assessor's Parcel Number 306-23-041W, 306-23-041X, and 306-23-041Z from Agricultural Residential 4 Acre Minimum (AR-4) to Single Family Residential 1 Acre Minimum (SR-1) with the findings and stipulations as noted in the staff report. MOTION CARRIED: 5-0

6C. For consideration, discussion and possible recommendation to the Town Council regarding a requested zone change from "AR-5" Agricultural/Residential (5 Acre Minimum) to "MHP- 4" Mobile/Manufactured Home Park (4 Acre Minimum). The location of the proposed zone change is northwest of Road 4 North/Road 1 West, with a physical address at 1429 Road 4 ½ North, Assessor's Parcel Number's 306-05-030X (Approximately 60.2 Acres). Applicant/Owner: La Vacara Trust
(This item was forwarded from the June 18, 2013 meeting)

Dava Hoffman gave a brief overview of the location of the property and the history of the prior public hearing that was held on June 18, 2013. She stated that at the last meeting the Commissioners found that the zone change was in compliance with the General Plan Medium Density Residential, but also noted that compatibility with the neighbors had to be considered. The site plan showed 4 manufactured home pads near the entry and Commission felt those needed to be relocated, as well as the addition of open space along the western perimeter as ways to buffer the MHP from the existing neighborhood. Commission and the Applicant agreed to postpone the hearing to give the Applicant time to meet with staff to address these issues. Mike Cordovana, Owner/Applicant's representative agreed to this request.

Mr. Joe Cordovana, current Owner/Applicant representative, submitted a new site plan and met with staff who suggested alternative revisions to provide more buffering and compatibility with neighboring residents. Mr. Cordovana stated he did not wish to make further changes.

Ms. Hoffman showed the three different site plans that have been submitted and the differences between them, re: water tanks, open spaces, MH pad areas, RV and boat storage parking, guest parking and access road. In comparing the original Site Plan presented at the Neighborhood meeting with the second Site Plan, it appeared as if the Applicant was working with the neighborhood to provide some buffering techniques along the west line with a large open space tract and a reduction in the number of MH pads at the west perimeter. Commission had reviewed the second site plan last month and felt there was still a need for more buffering along the west property line. Commission had suggested relocating the 4 pads that are near the entry on the west property line. In contrast, the current, third site plan shows the water storage tanks are relocated just south of the Bumblebee area replacing the large open space tract. There is a larger, elongated tract near the entrance gate; the 4 pads along the west property line remain within 15 feet of the property line and have been enlarged to 7200 sq. ft. from 5400 sq. ft. with the

remaining lots still at 5400 sq. ft. and there have been 3 more of the MH pads added to the west boundary line. Other additions include visitor parking, RV and boat storage, and an additional roadway from the entrance providing direct access into the MHP instead of using the road for the Windmill House on Parcel A.

Ms. Hoffman commented that this property is in the Medium Density Designation and this request does meet that criteria, but the General Plan also talks about the intensity of uses which can include traffic generation, noise levels, and compatibility of uses, density, access, size, bulk and scale of buildings, parking, outdoor lighting, and time of use. The General Plan also has goals and policies and the first goal of the Land Use Element is to preserve the stability and diversity of the Town's existing neighborhoods while allowing for increased density for in-fill purposes. Policy 1.3 states that to ensure that densities that are requested are in conformance with the Future Land Use Map Designations. Policy 1.4 is to ensure that the type and intensity of land use shall be consistent with that of the immediate neighborhood.

Ms. Hoffman stated that when a request is submitted staff looks to the General Plan for comparison and guidance in analysis of the site plan that has been submitted. This current (third) site plan has less open space and more MH pads along the western perimeter than the site plan previously reviewed by the Commission. There is no additional open space on the western side, the large open space tract has been deleted with a smaller tract to take its place containing water storage tank, and the area between the entry and Bumblebee still contains 4 MH pads that are located 15 feet from the west boundary. These same pads have been enlarged but have been reduced in depth from 90 to 80 feet, and 3 additional pads have been located along the west boundary. Based on this, staff cannot recommend approval of this zone change request because the intensity of the land use is not consistent with that of the immediate neighborhood, and is not designed with compatibility of the existing neighborhood.

Chairperson Rowitsch commented that the issue of access has not been addressed and asked if the applicant has submitted any type of traffic analysis to determine the impacts to Bumblebee. Ms. Hoffman stated they have not.

Commissioner Edmonds stated this is not a land locked parcel with access to 4 ½ North and wondered why the encroachment on private property on Bumblebee. Ms. Hoffman stated that Bumblebee is a public road and access is permitted. Commissioner Edmonds asked if they have to go over private property to access it. Ms. Hoffman stated that it abuts the property.

Commissioner McCaullay stated that roads need maneuverability and didn't think that would be possible with large manufactured homes. Ms. Hoffman stated the zoning code stipulates the size and width of roadway and this does meet code.

Chairperson Rowitsch opened the public portion of the meeting.

Joe Cordovana, Owner/Applicant's representative, stated that Dava and the staff have done a wonderful job and thanked everyone but does not look at the plan. He stated he wanted to comply with state and local laws, whatever he needs to do.

Chairperson Rowitsch commented that staff is recommending denial of this zone change because at the last meeting it was discussed the need to lessen the effects of your development on the adjoining properties, specifically those to the west, and more specifically the first 4 or 5 lots when coming into the site. Because these lots are still shown of the site plan Commission has concerns that those lots are too close to the large lot developments next to them. Commission thought the impact to those large lots was too great so the Commission requested that you consider moving those lots somewhere else within the project, yet that is not seen to have been done on the current site plan and asked Mr. Cordovana why those lots are still there and how he intends to mitigate the impact that the Commission believes this will have on the adjoining lots, which the Commission feels is in conflict with the General Plan.

Mr. Cordovana stated he didn't see a problem with leaving them the way they are because it is residential housing next door and he is doing residential housing. He will comply with the Town's requirement of a 15 foot setback on the west side and whatever is needed on the south side. He could not see leaving 5 acres of land empty to accommodate just a couple of people when he has to pay taxes on every inch of it.

Chairperson Rowitsch commented there was a considerable amount of open space on this project and believed that what is being said is that when there are 4 manufactured houses next to one neighboring home, then it is 4 times the intensity to that of the neighbor. This is why staff is stating that this is not consistent to the General Plan.

Mr. Cordovana stated he cannot leave 5 acres empty; it is not feasible because it is too much to maintain.

Commissioner Edmonds asked about the right of way and giving himself an easement.

Mr. Cordovana indicated that they had changed the roadway and it is now on parcel B.

Chairperson Rowitsch opened the public portion of the meeting again.

Several residents spoke and had the following concerns:

- Pad sizes, minimum requirements for each Mobile Home
- Minimum Park Frontage of 100 feet
- Mobile Homes not meeting setbacks

- Two story Mobile Homes
- Minimum landscaping requirements
- Increased flooding
- Encroachment to the properties along the west boundary
- Noise, lighting, traffic
- Decrease in property value
- Decrease to neighboring wells
- Property address is on 4 ½ North and why that isn't the main entrance
- Fire concerns due to high density
- Will Open Space remain Open Space forever?
- Why MHP-4 Zoning instead of SR-1 or similar
- Not enough of a buffer from neighboring residents
- Intensity of use

Residents didn't feel there is a market for more 55+ Mobile Housing due to the fact that Country West MH Park has vacant lots that cannot be filled. There are no amenities for the residents of this community. They are concerned that this is just phase one of a bigger project in the future. Concerns that a development such as this will not be successful because of the property owner's track record of not being able to sustain businesses. There was a feeling that the demographics in the area have changed and that mobile homes are in low demand.

Chairperson Rowitsch closed the public portion of the meeting.

Commissioner Merritt commented that it didn't appear to him that any progress had been made to make this project more compatible with the neighborhood. He felt that access was still an issue.

Commissioner Edmonds concurred with Commissioner Merritt's statement and felt that the project was overly crowded, needed additional buffering, the pads should be a minimum of 7200 sq. ft, and agreed with the recommendation given by staff.

Vice Chair Miner stated that after listening to all the comments, this Commission is tasked with considering a lot of things, but some of the things that have been mentioned do not go into the Commissions decisions. The main issue is that the applicant did not take the Commission's suggestions from the last meeting into consideration, instead have done a reversal and felt that more work needed to be done.

Commissioner McCaullay agreed that he felt the plan has gone backwards and thought the development should utilize the entire 60 acres. This would provide more flexibility and maneuverability. He was also concerned with the dangers the pond may pose, and agreed with the staff's recommendation.

Chairperson Rowitsch stated she would explain the rationale behind what her vote will be so that everyone understands. The Commission is charged with enforcing the land development code and General Plan, which was adopted by the citizens. When looking at these types of request she consults the General Plan and looks to see if a request is compatible. In some ways this request is compatible with the General Plan, re: Medium Density Residential Zoning is compatible for this area. However the things that staff has brought forward in tonight's discussion and the site plan; the way the project is laid out is not compatible with the immediate surrounding neighborhood. She felt the applicant has an opportunity to modify the site plan to make it consistent with the General Plan, but she didn't believe he addressed the issue Commission brought up at the last meeting regarding the affects this high density would have on the immediate adjacent neighbors. She felt staff was absolutely on track, and the latest site plan presented is not consistent with the General Plan. The impact to the neighbors would be things such as four times the traffic level, excessive light and noise. This project would be much closer to the neighbors, than the neighbors are to each other. These neighbors are on 2 to 5 acre parcels leaving a considerable distance from each other, so their impacts to each other are considerable less than what this plan would be to them. For this reason she didn't feel the applicant had met the requirement to have a compatible intensity of use on this particular project due to the way it is laid out. She thought that some of the comments that were made had more to do with subdivision rules rather than mobile home parks. Subdivision lots have to be a specific size and other types of rules than that of a mobile home park. Mobile Home Parks generally have homes very close together, open space that can be a common area for everyone, and just because it is left open and natural does not mean that isn't something that would be desirable by the people who live in that park. The way that this project is laid out results in impacts that are too great to the neighbors to the west, and if the applicant would consider changing the site plan so that those impacts were less she might go for the project because she felt it could be a good project. She stated her vote would not be in favor at this time.

Commissioner Merritt thought that Mr. Cordovana might consider all these comments if he has a desire to move forward with this project.

Mr. Cordovana stated that these are different from a regular house with 3-4 car garages, these will be for 1-2 people at 55+ and he didn't understand some of the comments when this project is just like Country West MH Park. These homes would not be two story but single homes.

Vice Chair Miner MOVED, seconded by Commissioner Merritt to recommend to the Town Council denial of the zone change of Assessor's Parcel Number 306-05-030X from AR-5 Agricultural Residential 5 Acre Minimum (AR-5) to (MHP- 4) Mobile/Manufactured Home Park (4 Acre Minimum) for the reasons stated above.

MOTION CARRIED: 5-0

7. PUBLIC COMMENTS:

Ronald Maines asked about communications with Commission members. He stated that Council members have email address that the public can use to communicate with them. Currently if a citizen wishes to communicate with Commission members it must be submitted to Development Services and forwarded to them. He asked if it was possible for the Commission to have email available to citizens.

Chairperson Rowitsch stated that Commission would pass that on to staff and let them determine what is permitted.

8. ADJOURN: 7:15 p.m.

Chairperson

Date:

Planning & Zoning Commission Regular

6. A.

Meeting Date: 09/17/2013

Conditional Use Permit 13-002 (CUP 13-002) Variance from maximum fence height.

CASE DESCRIPTION:

Conditional Use Permit 13-002 (CUP13-002) Application by owner Jack Tuls Jr. to vary from allowed fence height.

LOCATION:

2148 N. Road 1 East

FACTS:

1. Applicant: Jack Tuls, Jr. Charlie Arnold, Agent.
2. Owner: Jack Tuls, Jr. .
3. Parcel Number. 306-14-008M
4. Site Area 26.67 acres
5. Existing zoning: Commercial Light/Agricultural-Residential (CL/AR).
6. Intended Use. Increase fence height from the six foot (6') maximum allowed by the UDO to a maximum of ten feet, six inches (10'6"). Fence shall be constructed of eight feet (8') of chain link fence, with approximately one (1) to two and one-half (2'6") of three strand barbed wire on top.

ANALYSIS:

Please see attached Staff Brief.

TECHNICAL REVIEW:

Staff has thoroughly reviewed the technical aspects of this application, including its compliance with state regulations and statutes. Furthermore, Staff has consulted with adjoining property owners, other staff members, and the Town Attorney in evaluating the merits of this case.

RECOMMENDATION

Based on the findings provided in this brief, Staff recommends that the Commission forward Conditional Use Permit 13-002 (CUP13-002) submitted on or about June 20, 2013 by Jack Tuls Jr, to Town Council with a recommendation of denial.

Although the recommendation from Staff is one of denial, should the Commission decide to forward the application to the Town Council with a recommendation of approval, Staff strongly recommends it be sent subject to conditions to ensure compliance with Town, State and Federal laws.

The Unified Development Ordinance of the Town of Chino Valley sets forth the regulations governing Conditional Use Permits in Section 1.9.3. Of particular importance is the latitude given to the Commission to recommend and the Council to impose "specific conditions or requirements pertaining to the site or the operation of the requested use". (1.9.3 (D)) Staff recommends the CUP be granted only if stipulated by the following conditions for CUP13-002:

1. The applicant shall obtain a building permit from the Town of Chino Valley prior to constructing any fence. There shall be no work performed on this site without an appropriate permit.
2. Prior to submitting an application for a building permit or other work on this site (pursuant to an approved CUP on this matter), the applicant shall:
 - A. Provide written certification from the State of Arizona Department of Health Services that the fence as

approved in this CUP will meet the requirements set forth in Title 9, Chapter 17 of the Arizona Administrative Code and Title 36, Chapter 28.1 of the Arizona Revised Statutes; and

B. Provide written certification from the State of Arizona Department of Health Services that all requirements set forth in Title 9, Chapter 17 of the Arizona Administrative Code and ARS Title 36, Chapter 28.1 (Arizona Medical Marijuana Act) have been met; and

C. Secure all final inspections on the existing greenhouses; and

D. Chip seal or pave all parking and drive areas traversed by vehicles as required in The Town of Chino Valley UDO 4.22.4 (B)(2) no later than October 15, 2013; and

E. Apply for and obtain and maintain at all times while operating the greenhouse facility a valid business license with the Town of Chino Valley.

3. The portion of the fence facing Road One East shall be constructed in such a manner that the barbed wire portion of the fence is not visible from the public right-of-way, and landscaped in such a manner as to minimize the visual impact to the surrounding properties. Applicant shall submit a landscaping plan to the Zoning Administrator for approval; survivability of said landscaping shall be guaranteed and maintained by applicant. No Certificate of Occupancy shall be issued until all landscaping is in place. Failure to maintain the required landscaping may result in revocation of the Conditional Use Permit.

4. Any change in design, location, height, material, construction, or other factor to the proposed fence shall require a separate Conditional Use Permit; and

5. There shall be no occupation of greenhouses or any cultivation activities on the site unless and until a Certificate of Occupancy is issued by the Building Official of the Town of Chino Valley.

6. This Conditional Use Permit shall not become effective if the owner does not, within 6 months of the date of approval of this Conditional Use Permit, do the following:

a. Fully comply with all of the conditions set forth herein; or

b. Receive all required approvals from the Arizona Department of Health Services and the Town of Chino Valley; or

c. Construct the fence as permitted and other improvements as required by this Conditional Use Permit.

Failure to comply with the conditions set forth in the Use Permit are a Violation of the UDO, for which the applicant is subject to any and all enforcement actions available to the Town under law, including but not limited to those set forth in Sections 1.10 and 1.11 of the UDO (Enforcement and Penalty); Section 108.4 of the International Building Code as adopted (Work without permits); and Title XI of the Code of Ordinances of the Town of Chino Valley (Business Regulations).

OPTIONS: 1) Motion to forward application CUP13-002 to Town Council with a recommendation of denial.

2) Motion to forward application CUO13-002 to Town Council with a recommendation of approval as conditioned herein

3) Motion to refer item back to staff for further review.

ACTION: Motion to forward application CUP13-002 to Town Council with a recommendation of denial. VOTE.

Attachments

Staff Report

Site Location Map

CUP13-002 Site Plan

STAFF BRIEF

Application

Before Commission is an application by Jack Tuls Jr. for a Conditional Use Permit (CUP13-002) to install a security fence eight (8) feet in height with an additional two feet (2') of bracketing and three (3) strands of barbed wire. The subject property is located at 2148 N. Road 1 East, also known as Assessor's Parcel 306-14-008M.

The subject property is currently zoned Commercial Light/Agricultural Residential (CL/AR); because this is a mixed zoning classification, regulations for both apply. The subject parcel is 26.67 acres. The standards in AR-5 (Agricultural/Residential; Five acre minimum) would apply as well as those in CL (Commercial Light). Commercial Greenhouses are not a use by right or by Conditional Use Permit in AR-5 zoning classifications, but are a use by right in the CL classification with a minimum of ten (10) contiguous acres, which is the case with this application. Since the use is permitted by right in one of the applicable zoning districts, it is permitted on this property.

The owner is requesting a CUP to allow the installation of approximately 1,800 lineal feet of chain link fence within the confines of the property for the "continued benefit of the agricultural use" The proposed chain link fence will be eight (8) feet in height with an additional one to two and one half (1-2.5) feet of three (3) strand barbed wire and an electronic gate.

Section 4.8, subsections A and B of the Unified Development Ordinance govern the height, materials, and design of fencing in all zoning classifications:

- A. *Height. No wall or fence shall be more than six (6) feet in height provided that fences exceeding the above heights may be allowed when a Conditional Use Permit has been secured for such purposes. When deciding on a Conditional Use Permit request, the Commission shall ensure that fences shall not cause a visibility hazard or nuisance.*
- B. *Materials and design. Fences and walls in all Zoning districts shall be constructed of wood, woven wire, masonry, iron or steel of conventional design. Fences or walls of other than specified materials, or other than conventional design shall be allowed only by Conditional Use Permit.*

The proposed fence will be set back from North Road One East to reduce visibility, hazard and/or nuisance. The fence is located wholly within the applicant's property with the exception of the western portion where the fence will be constructed on the property line; the applicant is the owner of the adjoining parcel. Additionally, the property west of the site is zoned Commercial Heavy (CH); therefore, buffering is not required.

On July 17, 2013, a neighborhood meeting was held in Town Council Chambers, located at 202 North State Route 89, Chino Valley, Arizona. The applicant notified twenty-two (22) landowners within 300' of the boundary of the subject property. Of those notified, fifteen (15) attended the neighborhood meeting. Others in attendance include the applicant, Charlie Arnold, agent/associate of the applicant, and Dennis Price, Planner for the Town of Chino Valley. At that meeting, the applicant stated that the purpose of the fence was to enclose the existing greenhouses and a proposed third greenhouse for the purposes of growing medical marijuana.

Consideration of this request was originally scheduled for August 6, 2013; however, there was not a quorum of the Planning and Zoning Commission. The item was postponed to the September 3, 2013 meeting; due to the Labor Day holiday, there would be no quorum of the Planning and Zoning Commission either. Therefore, the public hearing was postponed until the September 17, 2013 meeting.

Analysis

Ordinarily, pursuant to Arizona state law, requests for relief from the application of a zoning regulation are considered as variances rather than CUP's. As the request is to deviate or vary from the 6' standard set forth in the UDO, this action should be properly considered as a request for a variance and should be heard and decided upon by the Board of Adjustment, as set forth in ARS 9-462.06:

Board of Adjustment

G (2): Hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to such conditions as will assure that the adjustments authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

However, the language in UDO Section 4.8 (A) allows for circumvention of the variance process as set forth in Title 9 of Arizona Revised Statutes.¹

Section 1.9.3: Conditional Use Permits sets forth the requirements and standards for the issuance of said permit. Specifically, Subsection (A) states that any action taken by Council must be preceded by a recommendation by the Planning and Zoning Commission, and the motion to approve be based on a finding that the authorizing of the Use Permit:

1. Will not be materially detrimental to persons residing or working in the vicinity adjacent to the property, to the neighborhood, or to the public welfare; and
 2. That the proposed use is reasonably compatible with uses permitted in the surrounding area.
- The burden of proof satisfying these requirements rests with the applicant.

¹ An amendment to the UDO is anticipated to correct this misuse of conditional use permits which, pursuant to state law (ARS 9-462 are for the purpose of permitted uses on a conditional basis:

C. All zoning regulations shall be uniform for each class or kind of building or use of land throughout each zone, but the regulations in one type of zone may differ from those in other types of zones as follows:

1. Within individual zones, there may be uses permitted on a conditional basis under which additional requirements must be met, including requiring site plan review and approval by the planning agency. The conditional uses are generally characterized by any of the following:
 - (a) Infrequency of use.
 - (b) High degree of traffic generation.
 - (c) Requirement of large land area.

Ordinarily, the issue before the Planning and Zoning Commission would not be whether the use located inside the fence perimeter is acceptable to the neighbors or meets zoning requirements, but rather whether or not the fence itself meets the standard set forth in the UDO. Because the antecedent use invokes the requirement for the fence height and materials in this case, the antecedent use should be considered.

At the neighborhood meeting on July 17, 2013, the applicant stated that the purpose for this fence was to meet the Arizona Department of Health Services regulations set forth in Chapter 17, Medical Marijuana Program, as well as those set forth in Title 36, Chapter 28.1 (Arizona Medical Marijuana Act) of the Arizona Revised Statutes. These statutes and regulations set forth a number of standards that must be met by the applicant in order for the licensing authority to approve any application for a cultivation facility. Among those requirements are:

1. Five hundred feet (500') of separation between a cultivation site and a public or private school that existed before the date the dispensary submitted the initial dispensary registration certificate application. (R9-17-321(A)) (ARS §36-2804 (B)(1)(b)(ii)).
2. Cultivation of marijuana must take place in an enclosed, locked facility (ARS§36-2806 (E)). Enclosed area, when used in conjunction with "enclosed, locked facility" which as defined by R9-17-101(16) requires a ten foot (10') solid wall constructed of metal, concrete, or stone that prevents any viewing of the marijuana plants, and a 1-inch thick metal gate.

On Tuesday, August 27, 2013, staff requested of applicant's agent Charlie Arnold, via email, verification of state approval of the project to determine whether the fence as proposed met the state requirements, and whether the location of the cultivation site met the state's requirements. To date, staff has not received any verification of an application or certification approved by the State of Arizona for a cultivation site. Without such verification, Staff is reluctant to recommend approval to the Planning Commission.

On September 3, 2013, Staff received a letter from Paul Bjorklund, Trustee, Bjorklund Trust, opposing the CUP. Mr. Bjorklund stated in his letter that the Trust has, since 1970, operated a private residential and day school (The Intermountain Center) on a parcel of land that abuts the subject property. The UDO does not define "private school", "private residential school", or "private day school". However, A.R.S. §15-101(19) sets forth the definition of "Private School" thusly: "a nonpublic institution where instruction is imparted." Staff contacted the Town Attorney, who agreed that as the use of the facility is described by Mr. Bjorklund and on the Intermountain Center website, the Intermountain Center does, in fact, meet the state definition of a "Private School".

Staff then emailed the applicant's agent on the same date, stating that the fence application could not go forward as there was no evidence that the project met the state's separation requirements set forth in ADHS regulations and state statute. Staff further stated that if the applicant wanted to take the CUP forward without consideration of the purpose for the fence he could do so, and reiterated the standards set forth in the UDO for said permit. Further, staff requested that the applicant or the applicant's agent explain why, absent the end use of a medical marijuana cultivation facility, this specific site required an eight foot (8') chain link fence with an additional one to two and one-half feet of barbed wire (1 – 2.5'). During a phone conversation on or near that same date, the agent stated that it was for additional security due to vandalism. Staff then contacted the Chino

Valley Police Department to determine the frequency and extent of the vandalism suffered by the property owner. To date, the CVPD has received no reports of vandalism or theft at the subject property.

On Wednesday, September 4, 2013, Staff received an email from agent Charlie Arnold stating that in the opinion of both the agent and the applicant, the determination of whether or not the cultivation site met the standards set forth by the state in both ADHS regulations and ARS was entirely up to the state and not the Town of Chino Valley. He further requested that the public hearing go forward on September 17, 2013, with Mr. Arnold and the applicant, Jack Tuls, assuming full risk of the outcome of said hearing.

Findings and Recommendations

The Planning and Zoning Commission is now being asked to consider recommending approval of approximately 1,800 lineal eight foot (8') chain link fence with an additional one to two and one-half feet (1-2.5') of three (3) strand barbed wire and an electronic gate, for a total fence height of approximately ten feet, six inches (10'6") without consideration of an end-use. The application states that the site contains greenhouses for agricultural production, and that the proposed use is appropriate in the intended location because the existing use is already approved asking (sic) approval for a fence within the property. The applicant is requesting an affirmative recommendation from the Planning and Zoning Commission so that he may construct the fence as described in his application for a Conditional Use Permit (CUP13-002) received June 20, 2013. The applicant is entitled to a public hearing at the date and time specified in the statutorily required notification.

Findings

As previously stated in this analysis, Section 1.9.3 of the UDO sets forth the requirements that must be met: that the activities undertaken as a result of issuance of the CUP will not be materially detrimental to persons residing or working in the vicinity adjacent to the property, the neighborhood, or the public welfare; and that the proposed use is reasonably compatible with uses permitted in the surrounding area. The burden of proof satisfying these requirements rests with the applicant.

Staff finds that the installation of an 8 foot (8') high chain link fence with an additional one to two and one-half (1-2.5) feet of barbed wire in and of itself has not been justified in light of the evidence provided by the applicant; the fundamental burden of proof required by UDO § 1.9.3(2) and the standards set forth in ARS § 9-462 have not been met. Further, Staff finds that the installation of said fence is not justified for the purposes of enclosing a medical marijuana cultivation site as Staff believes the fence does not meet the requirements set forth in the state regulations for such an enclosure and the applicant has not provided the determination by the state regulating authority (requested by Staff) that the fence as proposed in the application is suitable for its intended purpose. The applicant also has not provided (as requested by Staff) an opinion from the regulating state authority stating that the Intermountain Center does not, in fact, meet the definition of "Private School" as set forth in ARS §15-101.

Recommendations

Based on the findings provided in this brief, Staff recommends that the Commission forward Conditional Use Permit 13-002 (CUP13-002) submitted on or about June 20, 2013 by Jack Tuls Jr, to Town Council with a recommendation of denial.

Although the recommendation from Staff is one of denial, should the Commission decide to forward the application to the Town Council with a recommendation of approval, Staff strongly recommends it be sent subject to conditions to ensure compliance with Town, State and Federal laws.

The Unified Development Ordinance of the Town of Chino Valley sets forth the regulations governing Conditional Use Permits in Section 1.9.3. Of particular importance is the latitude given to the Commission to recommend and the Council to impose "specific conditions or requirements pertaining to the site or the operation of the requested use". (1.9.3 (D)) Staff recommends the CUP be granted only if stipulated by the following conditions for CUP13-002:

1. The applicant shall obtain a building permit from the Town of Chino Valley prior to constructing any fence. There shall be no work performed on this site without an appropriate permit.
2. Prior to submitting an application for a building permit or other work on this site (pursuant to an approved CUP on this matter), the applicant shall:
 - A. Provide written certification from the State of Arizona Department of Health Services that the fence as approved in this CUP will meet the requirements set forth in Title 9, Chapter 17 of the Arizona Administrative Code and Title 36, Chapter 28.1 of the Arizona Revised Statutes; and
 - B. Provide written certification from the State of Arizona Department of Health Services that all requirements set forth in Title 9, Chapter 17 of the Arizona Administrative Code and ARS Title 36, Chapter 28.1 (Arizona Medical Marijuana Act) have been met; and
 - C. Secure all final inspections on the existing greenhouses; and
 - D. Chip seal or pave all parking and drive areas traversed by vehicles as required in The Town of Chino Valley UDO 4.22.4 (B)(2) no later than October 15, 2013; and
 - E. Apply for and obtain and maintain at all times while operating the greenhouse facility a valid business license with the Town of Chino Valley.
3. The portion of the fence facing Road One East shall be constructed in such a manner that the barbed wire portion of the fence is not visible from the public right-of-way, and landscaped in such a manner as to minimize the visual impact to the surrounding properties. Applicant shall submit a landscaping plan to the Zoning Administrator for approval; survivability of said landscaping shall be guaranteed and maintained by applicant. No Certificate of Occupancy shall be issued until all landscaping is in place. Failure to maintain the required landscaping may result in revocation of the Conditional Use Permit.
4. Any change in design, location, height, material, construction, or other factor to the proposed fence shall require a separate Conditional Use Permit; and

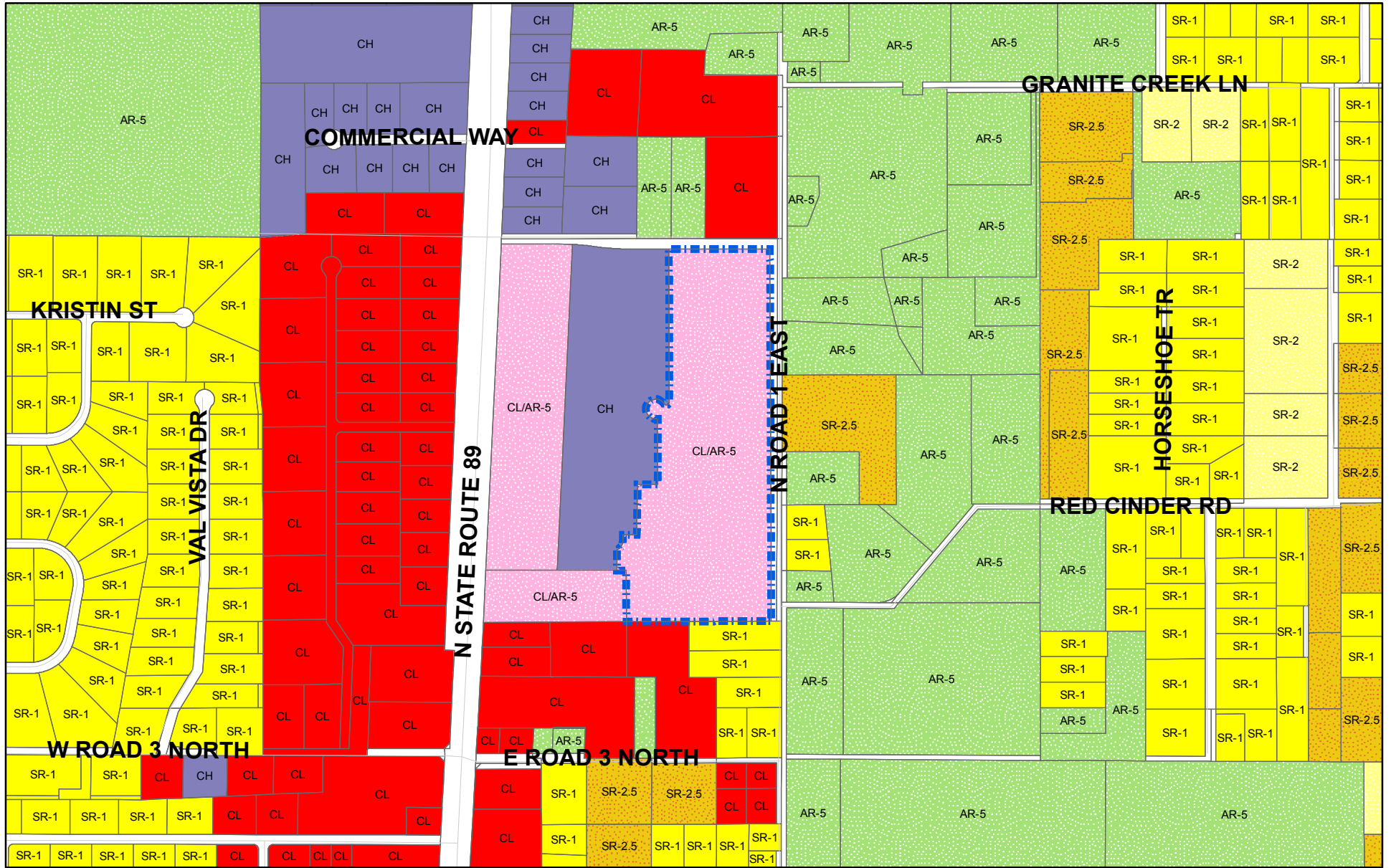
5. There shall be no occupation of greenhouses or any cultivation activities on the site unless and until a Certificate of Occupancy is issued by the Building Official of the Town of Chino Valley.

6. This Conditional Use Permit shall not become effective if the owner does not, within 6 months of the date of approval of this Conditional Use Permit, do the following:

- a. Fully comply with all of the conditions set forth herein; or
- b. Receive all required approvals from the Arizona Department of Health Services and the Town of Chino Valley; or
- c. Construct the fence as permitted and other improvements as required by this Conditional Use Permit.

Failure to comply with the conditions set forth in the Use Permit are a Violation of the UDO, for which the applicant is subject to any and all enforcement actions available to the Town under law, including but not limited to those set forth in Sections 1.10 and 1.11 of the UDO (Enforcement and Penalty); Section 108.4 of the International Building Code as adopted (Work without permits); and Title XI of the Code of Ordinances of the Town of Chino Valley (Business Regulations).

CUP 13-002



Town of Chino Valley
1920 West Palomino Road
Chino Valley, AZ 86323
(928) 636-2646 FAX (928) 636-2144

Legend



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1 inch = 700 feet



The Town of Chino Valley assumes no responsibility for errors, omissions, and/or inaccuracies in this mapping product.

SURFACE SECTIONS

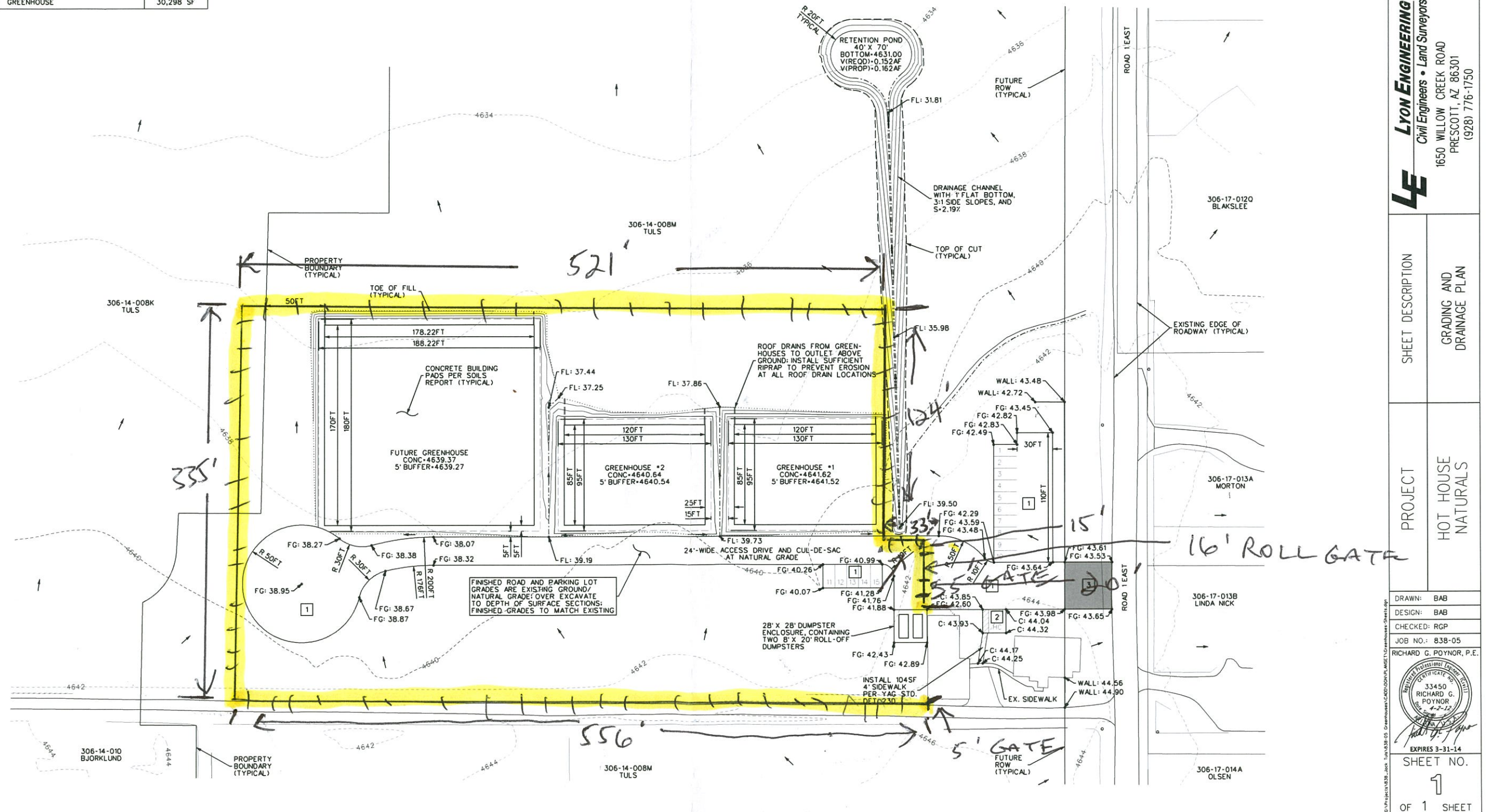
1	6" COMPACTED A.B.
2	CONCRETE PAD PER SOILS REPORT
3	SINGLE LAYER CHIP SEAL ON 6" COMPACTED A.B.

NOTES:

PARKING SPACE 1-15 DIMENSIONS ARE 10' X 20'

HC PARKING SPACE DIMENSIONS ARE 15' X 20' WITH 5' X 20' AISLE

-----	EXISTING CONTOURS - 2' INTERVAL (TYPICAL)
=====	PROPOSED CONTOURS - 1' INTERVAL (TYPICAL)
- - - - -	DRAINAGE FLOWLINE



Planning & Zoning Commission Regular

9. A.

Meeting Date: 09/17/2013

Planning & Zoning Commission Rules of Order

CASE DESCRIPTION:

The Rules of Order set forth the operating framework for the Commission. Staff has proposed changes to the Rules of Order to make them congruent to the actual operation of the Commission.

LOCATION:

.N/A

FACTS:

N/A

ANALYSIS:

In reviewing the Rules of Order for the Planning and Zoning Commission (the Rules), it became clear that they were out of date. References were made to the Zoning Ordinance rather than the Unified Development Ordinance; Agenda items had been changed or deleted without amending the Rules; and both typographical and grammatical errors needed correction.

Those items have now been corrected in the attached version of the Rules of Order; a two-thirds (2/3) vote in the affirmative is required to change the Rules as amended.

TECHNICAL REVIEW:

Staff and Commissioners reviewed and commented on the proposed changes to the Rules of Order during the August 20, 2013 Work/Study session. The changes have been incorporated into Attachment 2 to this item.

RECOMMENDATION

Staff recommends adopting the Rules of Order as amended.

OPTIONS:

- 1) Commission may adopt the Rules as amended
- 2) Commission may decline to adopt the Rules as amended
- 3) Commission may refer the matter back to staff for further amendment and consideration at a later date, .

ACTION: Motion to adopt the Rules of Order for the Planning and Zoning Commission as amended. VOTE.

Attachments

Amended Rules of Order

RULES OF ORDER
OF THE
CHINO VALLEY PLANNING AND ZONING COMMISSION

SECTION 1: CODE OF ETHICS

Commission members occupy positions of public trust and shall strictly adhere to both the spirit and the letter of the laws of the State of Arizona pertaining to conflict of interest.

In addition to matters of pecuniary interest, Commission members shall refrain from making use of special knowledge or information before it is made available to the general public and shall abide by the Code of Ethics set forth in the Town of Chino Valley Code of Ordinances, Chapter 35.

SECTION 2: RULES OF ORDER

The rules of order for the Planning and Zoning Commission shall be in writing and available to all interested citizens.

The rules of parliamentary procedure contained in Roberts Rules of Order, Newly Revised. (Current edition), shall govern the Commission in all cases to which they are applicable, provided they are not in conflict with these Rules of Order, The Chino Valley Town Code, the Chino Valley Unified Development Ordinance or the Arizona Revised Statutes.

SECTION 3: COMMISSION MEETINGS

- A. Regular and Special Meetings: The Commission shall hold regular and special meetings according to the provisions of the Town Code and the laws of the state of Arizona. Commission meetings shall be conducted in accordance with the procedures set forth in these Rules of Order unless a motion to suspend the rules is first passed by majority vote of the Commission.
- B. Regular Meetings: Regular meetings shall be held on the first and third Tuesday of each month unless there is a majority vote of the members attending to change a meeting date.

- C. Special Meetings: Special meetings may be held as required by the business of the Commission, on the request of the Council, at the request of three Commission members or on the call of the Chairman.

SECTION 4: AMENDMENT OF RULES

The rules of Order may be amended by a two thirds (2/3) vote of the members of the Commission. Standing rules and Special Rules may be amended by a majority vote of the members of the Commission.

SECTION 5: PRESIDING OFFICER

The Chairman of the Commission shall preside over all meetings of the Commission, or in his absence the Vice-Chairman, and shall serve as Parliamentarian. In the absence of the Chairman and Vice-Chairman and a quorum is present, any member may call the meeting to order and then request a member be elected, by majority vote, to chair the meeting.

SECTION 6: CONDUCT OF MEETINGS

The Chairman shall preserve order and decorum and decide all questions of order, subject to appeal by the Commission.

- A. Members of the audience may speak only when addressed by the Chair or a member of the Commission.
- B. All remarks by the audience shall be directed to the Chair, to the Commission as a whole, or to a Commissioner in response to a question.
- C. No member of the staff, audience, or Commission shall enter into any discussion either directly or indirectly, without having first obtained the floor by permission of the Chair.
- D. The Chair shall have the authority to preserve decorum in meetings and all members of the Commission, staff and audience are expected to conduct themselves with courtesy and consideration for others. Any person making personal, impertinent, slanderous or unauthorized remarks, or who becomes boisterous shall be removed by properly authorized persons at the request of the Chair.

SECTION 7: CONSIDERATION OF PETITIONS

All petitions submitted to the Commission or the Zoning Administrator in the regular course of business shall be considered in accordance with the laws of the State of Arizona and the Town Code of the Town of Chino Valley.

Unsigned communications or petitions, including newspaper articles or clippings, shall not be introduced in the minutes of the Commissions meetings.

SECTION 8: AGENDA REQUEST

- A. Prior to Wednesday noon of the week preceding a regular Commission meeting, a written request to appear on the agenda must be submitted to the Zoning Administrator. The request must state the topic to be presented, possible Commission action being requested, estimated length of time of presentation, and the name and phone number of the individual (s) making the request and presentation. Only agenda items that can be legally acted upon by the Commission will be considered for presentation to the Commission.
- B. Written support material for agenda items must be submitted to the Zoning Administrator no later than 12:00 noon the Thursday before the Tuesday meeting at which the agenda item will be heard.

SECTION 9: COMMISSION PACKETS

- A. Commission packets will be available to the Commission members no later than the close of business on the Thursday prior to any Commission meeting. A public packet will be available for review at the Chino Valley Public Library no later than twenty-four (24) hours prior to the Commission meetings. In an emergency situation, staff support material and/or an amended agenda will be available to the Commission members and public no later than twenty-four (24) hours prior to a meeting.

SECTION 10: AGENDA FORMAT AND POSTING

- A. The Zoning Administrator shall prepare the Commission agenda according to the adopted format and shall cause the agenda to be posted no less than twenty-four (24) hours prior to a Commission meeting in no less than three (3) public places within the Town, as designated by the Town Council.
- B. The agenda format for a regular meeting will be as follows unless a motion is made to change the order:

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. MINUTES
5. STAFF REPORT
6. PUBLIC HEARING
7. DISCUSSION ITEMS
8. PUBLIC COMMENTS
9. ADJOURN

C. The agenda format for a work/study will be as follows unless a motion is made to change the order:

1. CALL TO ORDER
2. ROLL CALL
3. DISCUSSION ITEMS
4. PUBLIC COMMENTS
5. ADJOURN

D. In conjunction with each agenda item a suggested action be taken will appear.

For example:

Discussion only
Discuss and Possible Action
No Action
Postpone to a time certain

SECTION 11: STANDING RULES OF ORDER

A. Regular and Special Meetings shall be scheduled to convene at 6:00 p.m. on the date specified unless otherwise dictated by a majority vote of the members present. In the event of an emergency due to lack of quorum, meetings may be delayed up to one hour.

B. The Chairman shall vote on all issues or which he does not have a conflict of interest.

C. The Chair may move and second motions.

D. The member making the motion may move to amend the motion or any member may move to amend the motion (Subsidiary Motion).

E. All main motions and subsidiary motions shall require a second.

- F. Open discussion, without members first obtaining the floor, may be held upon a majority vote of the members present, or at the discretion of the Chair.
- G. Members shall extend the common courtesies of conversation to each other during open discussion and shall refrain from redundancy.
- H. Members shall conduct themselves with the utmost courtesy toward the public, staff and each other.

SECTION 12: STUDY SESSIONS

- A. Study sessions of the Commission are for the purpose of studying specific topics or problems which shall be conducted under the following SPECIAL RULES OF ORDER:
 - 1. The Commission shall meet in study session at a time predetermined by a majority vote or consensus of the members.
 - 2. The primary purpose of the study session shall be the exchange of information.
 - 3. Members of the public shall be permitted to speak at study sessions, with the permission of the Chair

SECTION 13: PUBLIC HEARINGS

- A. Burdon of Proof: Burdon of proof is upon the proponent. The more drastic the change or the greater the impact of the proposal, the greater is the burden of proof that it conforms to the applicable elements of the General Plan and to applicable provisions of the Town of Chino Valley Unified Development Ordinance, and especially to the specific criteria set forth for the particular type of decision under consideration.
- B. Rules of Procedure: Formal rules of evidence shall not apply.
 - 1. Written exhibits, visual aids, affidavits, maps and the like may be submitted as part of the evidence. Any signed writing presented to, or received by, any member of the Commission or by any other Town agency or official outside the public hearing, may be received as argument and placed in the record, but will not be considered as part of the information except that signed writing received at the office of the Zoning Administrator prior to the opening of the

public hearing shall be included as part of the information in that hearing will be considered as argument.

2. All evidence received by the Commission shall be retained and preserved and shall be transmitted to an appellate body in the event an appeal is filed in accordance with the Town of Chino Valley Unified Development Ordinance. True copies of original information may be substituted for original documents.
3. All evidence and argument shall be as brief as possible, consistent with full presentation.
4. Redundancy shall be avoided.
5. Each person presenting information or argument shall be permitted to complete his presentation without interruption, except by the Chair to enforce the rules of procedure.
6. Discussion of personalities shall be avoided to the extent possible in making a complete presentation.
7. No person present shall engage in applause, cheers or other vocal or outward expressions of approval or disapproval, agreement or disagreement. If any person persists in such conduct after warning by the Chair, such person may be expelled from the hearing.
8. The Chair has complete authority to enforce these provisions to assure that a fair hearing is held, including the authority to expel from the public hearing and to bar from further appearance at the public hearing any person who willfully violates any one or more of these provisions.

C. ORDER OF PROCEEDINGS

1. The Chair will state the case and call the public hearing to order. No public hearing shall be called to order unless the applicant or authorized representative is present, or the Town of Chino Valley has written permission to hold the hearing in the applicant's absence. The Chair may establish the time allowed for presentation of material, information, individual comment or total time allowed for public portion of hearing.
2. Any objections or jurisdictional grounds shall be noted in the record.

3. Any abstentions or disqualifications shall be determined. Members shall announce any conflicts of interest.
4. Any pre-hearing contact with an applicant or agent thereof by a member of the Commission concerning the hearing item by a member of the Commission must be disclosed prior to any public discussion.
5. Presentation of staff report. Staff may also present additional information whenever requested by the Chair of Commission members, or when allowed by the Chair during the proceedings.
6. The Commissioners may view the area in dispute, or proposed, for the purpose of evaluating the proposal but shall state the place, time, manner and circumstances of such viewing for the record. Any such visits must comply with the open meeting law where applicable.
7. Presentation of information by the applicant or those persons representing the applicant.
8. Presentation of evidence or inquiries by those persons who support the proposal.
9. Presentation of evidence of inquiries by those persons who oppose the proposal.
10. Presentation of evidence or inquiries by those persons who do not necessarily support or oppose the proposal.
11. Rebuttal may be presented by persons who have supported or opposed the proposal. The scope of material presented during rebuttal shall be limited to matters which were brought up during the course of the hearing. Rebuttal shall be the first presented by the applicant or his representative, by those supporting the proposal and then by those opposed to the proposed change. The Chair shall limit rebuttal to avoid repetition and redundancy.
12. At the close of presentation of information and rebuttal, the Chair shall declare that the public hearing is closed upon the majority vote of the Commission, and no further evidence shall be received except in response to specific questions directed to staff or one of the parties to clarify earlier evidence.

13. Once the public hearing has been closed, it shall be reopened only upon a majority vote of the Commission and only after a reasonable showing that:

- a. There is evidence which was not reasonably available at the time of the hearing that is now available to the person seeking to reopen the hearing, and
- b. The evidence is factual, substantial, and material.

D. CONSIDERATIONS: Following the hearing, the Commission shall take action on the matter under consideration according to the Unified Development Ordinance of the Town of Chino Valley

- 1. All motions for acceptance or denial shall include specific reasons and/or findings of fact.
- 2. All votes by public hearing item shall be by Roll Call.

Planning & Zoning Commission Regular

9. B.

Meeting Date: 09/17/2013

Text Amendments to UDO Section 5.5 Subdivision Regulations; Modifications, Appeals and Enforcement

CASE DESCRIPTION:

The Planning & Zoning Commission reviewed text amendments to UDO Section 5.5 Subdivision Requirements; Modifications, Appeals, and Enforcement during its work/study session on August 20, 2012. In order to amend the text, the Commission is statutorily required to hold at least one (1) public hearing to take input from the public on the proposed changes.

LOCATION:

N/A

FACTS:

N/A

ANALYSIS:

During review of the Unified Development Ordinance (UDO) Staff discovered certain provisions in Section 5.5 were unclear as to application and intent, while other provisions contravene state statutes.

At the August 20, 2013 Work/Study session of the Planning and Zoning Commission, Staff presented proposed amendments to the text of this portion of the UDO for discussion and comment by Commission. The suggested changes would clarify language in regards to application and intent, and strike those provisions that are in direct conflict with state statutes.

A final draft of the proposed amendments are included as Attachment 2.

TECHNICAL REVIEW:

Staff reviewed the subject portion of the UDO and its compliance with several provisions of ARS 9-462.06, reviewing the proposed text amendments with the town attorney prior to proceeding with consideration of the changes at the August 20, 2013 Work/Study session of the Commission. At the Work/Study session, Commission discussed the proposed changes and reached consensus on their final form.

RECOMMENDATION

Staff recommends initiating a Public Hearing for the purposes of taking public comment on the proposed text amendments to Section 5.5 Subdivision Requirements; Modifications, Appeals, and Enforcement. Said Public Hearing will be noticed in conformance with the requirements set forth in ARS9-462.03 (4) and (5)(a). The Public Hearing shall tentatively be scheduled during the regular meeting on October 15, 2013.

OPTIONS:

- 1) Motion to initiate Public Hearing on the proposed text amendments to Section 5.5 of the Unified Development Ordinance
- 2) Motion to decline to initiate a Public Hearing on the proposed text amendments to Section 5.5 of the Unified Development Ordinance
- 3) Refer item back to staff for further review and consideration at a later date

ACTION: Motion to initiate a Public Hearing to take public comment on proposed text amendments to UDO section 5.5 Subdivision requirements; Modifications, Appeals, and Enforcement, during the October 15, 2013 regular meeting of the Planning and Zoning Commission. **VOTE.**

Attachments

Staff Brief UDO 5.5 text amendments

Proposed Text Amendments UDO Section 5.5



Town of Chino Valley
Development Services Department
1982 N. Voss Drive #203
Chino Valley, AZ 86323
928-636-4427
www.chinoaz.net

Planning and Zoning Commission Staff Brief

Date: September 17, 2013

- ☐ Discussion Only X Discuss and Possible Action: *Initiate Public Hearings*
☐ No Action ☐ Postpone to Time Certain: _____

Attachments: Revised Text 5.5 Modification and Enforcement of Subdivision Regulations

During the August 20, 2013 Work/Study Session of the Planning and Zoning Commission (P & Z), Staff and Commissioners discussed revisions to Section 5.5 of the Uniform Development Ordinance (UDO) that set forth standards for modification of subdivision plats and enforcement mechanisms for violations of said regulations.

Staff has attached the revised language presented at that meeting for final review and suggests consideration of initiating public hearings for the purposes of taking public comment on the text amendments. In order to meet statutory publication requirements, Staff further suggests that the public hearing be held on October 15, 2013 during the regularly scheduled P & Z meeting.

ACTION : Commission may make a motion to initiate a Public Hearings to take public comment on proposed text amendments to Section 5.5 of the Unified Development Ordinance; make a motion not to initiate a Public Hearing ; refer item back to staff for further review



Town of Chino Valley
Development Services Department
1982 N. Voss Drive #203
Chino Valley, AZ 86323
928-636-4427
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Planning and Zoning Commission Staff Brief

Date: September 17, 2013

- ☐ Discussion Only X Discuss and Possible Action: *Initiate Public Hearings*
☐ No Action ☐ Postpone to Time Certain: _____

Attachments: Revised Text 5.5 Modification and Enforcement of Subdivision Regulations

During the August 20, 2013 Work/Study Session of the Planning and Zoning Commission (P & Z), Staff and Commissioners discussed revisions to Section 5.5 of the Uniform Development Ordinance (UDO) that set forth standards for modification of subdivision plats and enforcement mechanisms for violations of said regulations.

Staff has attached the revised language presented at that meeting for final review and suggests consideration of initiating public hearings for the purposes of taking public comment on the text amendments. In order to meet statutory publication requirements, Staff further suggests that the public hearing be held on October 15, 2013 during the regularly scheduled P & Z meeting.

ACTION : Commission may make a motion to initiate a Public Hearings to take public comment on proposed text amendments to Section 5.5 of the Unified Development Ordinance; make a motion not to initiate a Public Hearing ; refer item back to staff for further review

Planning & Zoning Commission Regular

9. C.

Meeting Date: 09/17/2013

Text Amendments to UDO Section 4.8 Fences and Walls

CASE DESCRIPTION:

The Planning & Zoning Commission reviewed text amendments to UDO Section 4.8 Fences and Walls during its work/study session on August 20, 2013. In order to amend the text, the Commission is statutorily required to hold at least one (1) public hearing to take input from the public on the proposed changes.

LOCATION:

N/A

FACTS:

N/A

ANALYSIS:

During the August 20, 2013 Work/Study Session of the Planning and Zoning Commission (P & Z), Staff and Commissioners discussed revisions to Section 4.8 of the Uniform Development Ordinance (UDO) that set forth standards for fences and walls. The requested changes have been made, along with three (3) other modifications suggested by staff.

The proposed text amendments will bring this section of the UDO into conformance with the requirements set forth in Arizona Revised Statutes, and provide a more reasonable approach to fence heights allowed by right.

TECHNICAL REVIEW:

Staff and Commission have reviewed the proposed amendments, which have been incorporated in the draft version attached to this item as Attachment 3.

RECOMMENDATION

Staff recommends initiating a Public Hearing for the purposes of taking comment on the proposed text amendments to UDO Section 4.8 Fences and Walls. Said Public Hearing will be noticed in conformance with the requirements set forth in ARS9-462.03 (4) and (5) (a). The Public Hearing shall be scheduled during the regular meeting on October 15, 2013.

ACTION: Motion to initiate a Public Hearing to take comment on proposed text amendments to UDO Section 4.8 Fences and Walls on October 15, 2013. VOTE.

Attachments

4.8 Staff Brief

Staff Brief W/S 4.8 Fences and Walls

Proposed Text Amendments 4.8 Fences and Walls



Town of Chino Valley
Development Services Department
1982 N. Voss Drive #203
Chino Valley, AZ 86323
928-636-4427
www.chinoaz.net

Planning and Zoning Commission Staff Brief

Date: September 17, 2013

- ☐ Discussion Only ☒ Discuss and Possible Action: *Initiate Public Hearings*
- ☐ No Action ☐ Postpone to Time Certain: _____

Attachments: Revised Text 4.8 Fences and Walls

During the August 20, 2013 Work/Study Session of the Planning and Zoning Commission (P & Z), Staff and Commissioners discussed revisions to Section 4.8 of the Uniform Development Ordinance (UDO) that set forth standards for fences and walls. .

Staff has attached the revised language presented at that meeting for final review and suggests consideration of initiating public hearings for the purposes of taking public comment on the text amendments. In order to meet statutory publication requirements, Staff further suggests that the public hearing be held on October 15, 2013 during the regularly scheduled P & Z meeting.

ACTION : Commission may make a motion to initiate public hearings on October 15, 2013 to take public comment on proposed changes to Section 4.8 of the Unified Development Ordinance; refer item back to staff for further review, or decline to take action.



Town of Chino Valley
Development Services Department
1982 N. Voss Drive #203
Chino Valley, AZ 86323
928-636-4427
www.chinoaz.net

Planning and Zoning Commission Staff Brief

Date: August 20, 2013

- | | |
|--|--|
| ☐ Discussion Only | ☐ Discuss and Possible Action |
| ☐ No Action | ☐ Postpone to Time Certain |

Proposed Amendments to the Unified Development Ordinance (UDO) 4.8: Walls and Fences

Paragraph A of the existing UDO limits heights in all zoning classification to 6 feet in height, but allows for the height standard to be exceeded with a Conditional Use Permit (CUP). The use of a CUP in this context clearly circumvents the duties and responsibilities of the Board of Adjustments as set forth in ARS 9-462.06 (G) (2) et. seq.

Staff recommends a maximum fence height of six (6) feet in residential districts, except in required front yards, where the maximum fence height shall not exceed four (4) feet. Further, in no case shall any fence interfere with visibility for traffic safety. For commercial and industrial zoning classifications, the fence height shall not exceed eight (8) feet in height.

Any request to exceed the maximum fence height would require a public hearing before the Board of Adjustments, in compliance with the public hearing requirements set forth in ARS9-462.04. Staff has prepared a concurrent amendment to Section 1.5.3 to include the reference to ARS.

Paragraph B of this portion of the UDO currently permits issuance of a CUP to allow use of materials other than those set forth in the first sentence (wood, woven wire, masonry, iron, or steel) or for fences that are "other than conventional design". As with the language in Paragraph A, the use of a CUP in this context is in circumvention of the duties and responsibilities of the Board of Adjustments set forth in ARS 9-462.06 (G)(2)et. seq.

Staff recommends striking the second sentence in its entirety.

Paragraph E states that no fee shall be charged for CUP's concerning fences. As previously discussed, the CUP cannot be used to circumvent state statute. The recommended text amendments in Paragraph A and B eliminate the need for a reference to a CUP for fences.

Staff recommends striking Paragraph E in its entirety.

Paragraph E replacement language

Staff also recommends that language be included that would subject non-conforming fences to the regulations set forth in Section 4.2: Non-Conforming Uses and Structures.

The suggested language is as follows:

E. Any fence not in conformance with this ordinance as of the date of amendment shall be considered a non-conforming fence and shall be subject to the regulations set forth in Section 4.2 Non-Conforming Uses and Structures. The burden of proof shall be on the property owner.

4.8 Walls and Fences

- A. No wall or fence in a residential or agricultural zoning classification shall exceed 6' in height, except that fences in required front yards shall not exceed five feet (5') in height.
- B. No wall or fence in a commercial or industrial zoning classification shall exceed 8' in height. When such fences abut a residential zoning classification, they shall be set back ten (10') from the property boundary and landscaped in accordance with the requirements set forth in UDO Section 4.26 Landscape Requirements. The finished side of the fence and the required landscaping shall face the residentially zoned property.
- C. In no case shall a fence or wall be designed or constructed so as to interfere with visibility for traffic safety.
- D. Materials and design. Fences and walls in all Zoning districts shall be constructed of wood, woven wire, masonry, iron, steel, or other materials of conventional design.
- E. Electrical fences. Electrical fences shall be allowed only in those zone districts where the keeping of livestock is allowed and shall be clearly posted on all property corners and no more than 200 feet apart on all lot lines where such fences are erected.
- F. Swimming pools. Any swimming pool eighteen (18) inches or more in depth and/or eight (8) feet or more in width or diameter shall be fenced in compliance with ARS §36-1681 and the most recently adopted International Residential Code (IRC) that regulates fencing for pools, spas, and similar devices or structures.
- G. Any fence not in conformance with this ordinance as of the date of amendment shall be considered a non-conforming fence and shall be subject to the regulations set forth in Section 4.2 Non-Conforming Uses and Structures.

Meeting Date: 09/17/2013

4.21.7 (C) Political Signs Text Amendments

CASE DESCRIPTION:

State laws governing the placement and removal of political signs within the public right-of-way have been changed; however, the Unified Development Ordinance (UDO) has not been amended to reflect those changes.

LOCATION:

N/A

FACTS:

N/A

ANALYSIS:

Arizona Revised Statutes 16-1019 regulates the placement of political signs, among other things. These regulations have changed within the past three (3) years, however, the Unified Development Ordinance has not been updated to reflect those statutory changes.

At the regular meeting of the Chino Valley Town Council held on September 10, 2013, the discrepancies between the regulations set forth in state law and the UDO were discussed (Agenda item 7 d) by council. Staff was then directed to review the relevant portions of UDO and ARS, and forward recommended language for correcting the UDO.

Staff offers the amendments to UDO 4.21.7 (C) as delineated in Attachment 1 to bring it into compliance with ARS 16-1019.

RECOMMENDATION

Staff recommends the Commission initiate public hearings for the purpose of taking public comment on proposed amendments to the text of Section 4.21.7 (C): Sign Regulations, Temporary Signage, Political.

Options:

- 1) Motion to initiate public hearings for the purpose of taking public comment on proposed amendments to the text of the Town of Chino Valley's Unified Development Ordinance Section 4.21.7 (C) Sign Regulations, Temporary Signage, Political.
- 2) Motion not to initiate public hearings for the purpose of taking public comment on proposed amendments to the text of the Town of Chino Valley's Unified Development Ordinance Section 4.21.7 (C) Sign Regulations, Temporary Signage, Political.
- 3) Motion to refer the item back to staff for further study.

Action: Motion to initiate public hearings for the purpose of taking public comment on proposed amendments to the text of the Town of Chino Valley's Unified Development Ordinance Section 4.21.7 (C) Sign Regulations, Temporary Signage, Political. VOTE.

Attachments

4.21.7 (C) Political Signage

C. Political signs:

1. Signs pertaining to an election shall not be displayed earlier than sixty (60) days prior to an election and shall be removed within ~~ten (10)~~ fifteen (15) days after the specific election to which they refer. The Town may impose a bond requirement for political signage to help insure the prompt removal of all political signage as required by this Ordinance.
2. Signs shall ~~not~~ be placed in ~~any portion of the public right-of-way.~~ in full conformance with ARS16-1019 as amended.
3. Prior to installation, approval shall be obtained from the owner of the property on which political signs will be placed.

ADDENDUM

The following Revised Text for 5.5 (as it would appear in the UDO) replaces the duplicate staff brief on page 35 of the Planning & Zoning Commission packet for September 17, 2013.

Revised Text (as it would appear in the UDO)

5.5 Modification and Enforcement of Subdivision Regulations

5.5.1 Modification

A. Modification of Standards

Council may modify standards set forth in Section 5 Subdivision Regulations as they apply to a particular property when there exist unusual conditions of topography, land ownership, adjacent development or other circumstances which would not be able to be addressed to best serve the interests of the citizens of the Town if the requirements set forth in Section 5 Subdivision Regulations were strictly applied.

B. Modification of Final Plat

The Community Development Director may approve, or refer to Council, the following minor modifications to the Final Plat:

1. Lot line adjustments that do not create new lots or reduce the size of any lot below the minimum for that district.
2. Minor changes related to public safety, infrastructure alterations, adjustments, or conflicts, or a documented change in conditions.
3. Minor changes of a technical or typographical nature.

No other change, erasure, modification, or revision shall be made on or of any final plat after approval by the Council unless the Council first approves any proposed alteration; and any alteration shall be void unless approval thereof is endorsed upon the final plat by council.

5.5. 2 Enforcement

- A. Any person, as principal, owner, agent, tenant, employee, or otherwise found violating this Ordinance, or violating or failing to comply with any order or regulation made hereunder, shall be guilty of a civil violation punishable as provided in this Ordinance. Such person shall be deemed guilty of a separate offense for each and every day during which any such violation or failure to comply with these regulations is committed, continued, or permitted. All remedies provided herein shall be cumulative and exclusive. A finding of guilty or responsible and punishment of any person hereunder shall not relieve such person from the responsibility to correct prohibited conditions. In addition to the other remedies provided herein, any adjacent or neighboring property owner who is damaged by the violation of any provision of this Ordinance may institute any action in law or equity to prevent or abate such violation.
- B. Any division of real property contrary to this Ordinance is hereby declared to be a public nuisance and the Town Attorney may, upon order of Council, or on his own initiative, immediately commence all necessary actions or proceedings for the abatement, enjoinder, and removal thereof in the manner provided by law; and may take such other lawful steps as may be necessary, and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate, enjoin, and restrain any person from violating this Ordinance.