

MINUTES OF THE SPECIAL PLANNING AND ZONING MEETING OF THE TOWN OF CHINO VALLEY

**November 17, 2015
6:00 P.M.**

The Planning and Zoning Commission 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.

1) CALL TO ORDER

Chair Rowitsch called the meeting to order at 6:00 pm.

2) PLEDGE OF ALLEGIANCE

Commissioner Bacon led the Pledge of Allegiance.

3) ROLL CALL

Present: Chair Gwen Rowitsch; Commissioner Gary Pasciak; Commissioner Annie Lane;
Commissioner Michael Bacon; Commissioner Chuck Merritt; Commissioner Florence Sloan; Alternate Claude Baker

Staff Ruth Mayday, Development Services Director; James Gardner, Associate Planner;
Present: Amy Lansa (recorder), Town Clerk Assistant

4) MINUTES

There were no minutes.

5) STAFF REPORTS

There were no staff reports.

6) PUBLIC HEARING

- 0)** Consideration and possible action to hold a public hearing on proposed amendments to the text of the Unified Development Ordinance ("UDO") regarding adopting additional limitations on Medical Marijuana land uses in the Town of Chino Valley, including medical marijuana dispensaries, off-site cultivation facilities, and infusion facilities; and continue the item to a Regular Meeting on December 1, 2015 to hold an additional public hearing to provide citizens with another opportunity to provide comments regarding the proposed amendment.

Director Mayday again reviewed the history of the Medical Marijuana (MMJ) issue in the Town of Chino Valley from 2010 to present.

Town Council directed that Planning & Zoning Commission review suggested language and make recommendations to Town Council regarding potential amendments to the Uniform Development Ordinance (UDO) regarding the manner and placement of MMJ facilities.

The process going forward will be to have another public hearing on December 1, 2015. The earliest this matter would go before Town Council would be January 12, 2016.

Director Mayday stated that there are a number of properties that are zoned industrial and identified their locations on a map of the Town of Chino Valley. In addition, Director Mayday corrected information provided at the November 3, 2015 meeting that the site she identified as Old Home Manor was actually Jim Fletcher's gravel pit where AZ Organics recently purchased 40 acres for another facility.

Non-conforming use

Director Mayday explained that the MMJ facilities that are already established would continue operation as a non-conforming use as set forth below:

Non-conforming use (UDO §2.1): "A structure or land which was lawfully established and maintained prior to the adoption of this Ordinance, or any amendment thereto or any annexation to the Town, which does not conform to the use regulations for the district in which it is located."

PROP 207 Private Property Rights Protection Act

Director Mayday outlined PROP 207.

PROP 207 Private Property Rights Protection Act

- *If the existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law enacted after the date the property is transferred to the owner and such action reduces the fair market value of the property the owner is entitled to just compensation from this state or the political subdivision of this state that enacted the land use law."*
- *This state or the political subdivision of this state that enacted the land use law has the burden of demonstrating that the land use law is exempt pursuant to subsection B.*
- *The owner shall not be required to first submit a land use application to remove, modify, vary or otherwise alter the application of the land use law to the owner's property as a prerequisite to demanding or receiving just compensation pursuant to this section.*

"If a land use law continues to apply to private real property more than ninety days after the owner of the property makes a written demand in a specific amount for just compensation to this state or the political subdivision of this state that enacted the land use law, the owner has a cause of action for just compensation in a court in the county in which the property is located, unless this state or political subdivision of this state and the owner reach an agreement on the amount of just compensation to be paid, or unless this state or political subdivision of this state amends, repeals, or issues to the landowner a binding waiver of enforcement of the land use law on the owner's specific parcel."

In order to add or change regulations the town staff and the town attorney have to carefully

evaluate any changes to land use regulations so they do not violate Prop 207 and cost the Town a lot of money.

Arizona Department of Health Services Regulations and Arizona Revised Statutes

Director Mayday stated that there is very little guidance from the Arizona Department of Health Services regarding the manor and placement of cultivation facilities. She provided details on Arizona Department of Health Services regulations and Arizona Revised Statutes.

AZDHS Regulation 9-17-306 Changes to a Dispensary Registration Certificate

- A. A dispensary may not transfer or assign the dispensary registration certificate.
- B. A dispensary may change the location of the:
 - 1. Dispensary:
 - a. Within the first three years after the Department issues the dispensary's registration certificate, to another location in the CHAA where the dispensary is located; or
 - b. After the first three years after the Department issues a dispensary registration certificate to the dispensary, to another location in the state; or
 - 2. Dispensary's cultivation site to another location in the state.

AZDHS Regulation 9-17-321 Physical Plant

A. A dispensary or a dispensary's cultivation site shall be located at least 500 feet from a private school or a public school that existed before the date the dispensary submitted the initial dispensary registration certificate application.

B. A dispensary shall provide onsite parking or parking adjacent to the building used as the dispensary.

C. A building used as a dispensary or the location used as a dispensary's cultivation site shall have:

- 1. At least one toilet room;
- 2. Each toilet room shall contain:
 - a. A flushable toilet;
 - b. Mounted toilet tissue;
 - c. A sink with running water;
 - d. Soap contained in a dispenser; and
 - e. Disposable, single-use paper towels in a mounted dispenser or a mechanical air hand dryer;
 - f. At least one hand washing sink not located in a toilet room;
- 3. Designated storage areas for medical marijuana or materials used in direct contact with medical marijuana separate from storage areas for toxic or flammable materials; and
- 4. If preparation or packaging of medical marijuana is done in the building, a designated area for the preparation or packaging that:
 - a. Includes work space that can be sanitized, and
 - b. Is only used for the preparation or packaging of medical marijuana.

D. For each commercial device used at a dispensary or the dispensary's cultivation site, the dispensary shall:

- 1. Ensure that the commercial device is licensed or certified pursuant to A.R.S. § 41-2091,
- 2. Maintain documentation of the commercial device's license or certification, and
- 3. Provide a copy of the commercial device's license or certification to the Department for

review upon request.

Arizona Revised Statutes

ARS 36-2804

C. The department may not issue more than one nonprofit medical marijuana dispensary registration certificate for every ten pharmacies that have registered under section 32-1929, have obtained a pharmacy permit from the Arizona board of pharmacy and operate within the state except that the department may issue nonprofit medical marijuana dispensary registration certificates in excess of this limit if necessary to ensure that the department issues at least one nonprofit medical marijuana dispensary registration certificate in each county in which an application has been approved.

Planning Associate Gardner summarized the proposed amendments as follows:

- Dispensaries allowed only as a conditional use in Industrial Zoning Districts.
- Cultivation and infusion facilities allowed only as a conditional use in Industrial Zoning Districts.
- Cultivation facilities will be allowed only as an accessory use to a dispensary, and will be required to be on-site.
- Five-hundred foot distance between cultivation, infusion, or dispensary facilities and
 1. any school, public or private any public park, public building, or public community center
 2. any drug or alcohol rehabilitation facility or correctional transitional housing facility
 3. any residential zoning district
- Restrict the total square footage of a medical marijuana cultivation facility to 3,000 square feet.

Questions and comments from the Commissioners included the following:

- Whether the regulations were the same as having a liquor license and whether the requirement of 500 ft. from a church could be added to the proposed amendments.
- The requirements to dispense MMJ should be at least as tough as for a liquor license.
- Confirmation that by attaching the cultivation facility to the dispensary it provides more of a limitation.
- Reminded staff to add to proposed amendment that the 500 ft. limit should be measured from property line to property line, excluding the right-of-way.
- Confirmation that the proposed amendments have been reviewed by legal counsel.
- Town legal counsel has advised that if the proposed amendments are put into effect that the Town may be approached by property owners with claims for compensation based on Prop 207.
- Director Mayday explained how the proposed amendments would affect facilities already in operation as well as any future grow facilities that may open in Chino Valley.
- Town Council would have several options if faced with a Prop 207 challenge, including to grant a waiver currently operating facility a waiver.

Commissioner Rowitsch opened the public hearing at 6:26 pm.

Nine people expressed their concerns about MMJ. Speakers included Fred Ruebhausen, John & Peggy Trout, Jackie Eckart Stokes, Mark Hopkins, Debbie Crow, Gene Wolcott, Chad Nanke and Todd League. Their comments are summarized as follows:

- MMJ is a gateway drug and leads to use of other drugs.
- Marijuana is a very destructive drug.

- There are studies that show MMJ is not beneficial.
- Some MMJ card holders use the card to purchase MMJ and then sell the product to others.
- How will having multiple grow facilities affect potential homebuyers and prospective businesses?
- The first thing people will see when they drive into Chino Valley will be a large MMJ facility.
- When MMJ is processed there is a strong odor.
- Wait until the FDA grants approval of MMJ and let the FDA manage the drug at the federal level.
- Wanted to confirm that one of the proposed amendments would limit grow facilities to 3000 sq ft.
- Residents do not want the stigma of Chino Valley becoming known for MMJ cultivation.
- Residents do not want to live next to a MMJ cultivation facility.

Eight people spoke in support of MMJ, including employees, president, officers, an attorney and neighbors/landlords of MMJ facilities already located in Chino Valley.

Jeff Tice, CPA and president of Salubrious Wellness Clinic in Tempe and the cultivation facility on Road 1 East.

- Salubrious Wellness has a “culture of compliance” and complies with the Arizona Dept. of Health security requirements including 48 cameras & motion sensors, lasers, high fences, electronic access and dual man traps.
- The facility employs 19 people and provides health insurance. Each month the facility pays \$100,000 for salaries, supplies and other economic benefits to the community.
- All employees have to undergo background checks and possess a dispensary agent registration card.
- The 2 cultivation facilities in Chino Valley have spent \$2.7 – 3 million dollars to the local community and employee over 50 people.
- The facilities have added value to the community and property taxes have increased
- MMJ facilities provide economic benefits to the Town of Chino Valley instead of the money going to Mexico.

Kate O’Conner Masse and husband, Mike Masse are the landlords and neighbors of the cultivation facility on Road 1 East. They provided information regarding MMJ and encouraged formation of a study group comprised of industry professionals, development services staff and local residents that are opposed to MMJ to calmly address each issue of concern.

- Barrows Neurological Institute and Mayo Clinic are conducting clinical trials using MMJ.
- The FDA granted fast-track status for MMJ to treat seizure disorders in children.
- The plant has 400 different compounds but only 10 have been identified.
- The unemployment rate in Chino Valley is 6%. There have been many local residents apply to work at the facilities.
- Several graduates of the Yavapai College horticulture program are employed at the facilities.
- The facilities have used local contractors, electricians, plumbers, fencing and heating/cooling companies.
- Because the products are ingested very few chemicals are used during production. The waste products are great for use as mulch. The plants use 1 gallon per plant per day.
- Once plants mature they are processed and leave the facility within 1-2 days

Attorney Paul Conant represents landowners that rent to a cultivation facility in Chino Valley.

- He wanted the Commissioners to be aware that Prop 207 is a real issue and should be carefully considered.
- He has litigated cases all over the state involving Prop 207.
- Extended an invitation to Commissioners to tour the cultivation facility but wanted them to be aware that they would be accompanied at all times and would be photographed while onsite. All photographs are saved electronically on a hard-drive.

John Morgan is an educator and veteran whose comments are summarized as follows:

- No big businesses have opened or re-located to Chino Valley in years.
- If the Town acts too quickly they may be on the fast track to litigation that would be potentially dangerous to town's economics.
- Encouraged community members to become educated and not rely on Facebook for accurate MMJ information.
- Directed people to the National Institute of Health website for correct information regarding MMJ.

Other people who spoke in support of MMJ were Perry Stone, Nickie McCormick and Megan Carr. Their comments are summarized as follows:

- Whenever possible the facility tries to do business in Chino Valley, even though it may cost more than buying materials in Phoenix.
- The climate and available workforce make Chino Valley a good location to grow MMJ.
- The facilities are in non-descript buildings and most residents have no idea that MMJ is being grown.
- The facilities have complied with all Town requirements and have a good relationship with local police.
- MMJ has helped to reduce or cure epileptic seizures, PTSD, and ease pain in cancer patients. Salves made from MMJ help with pain and inflammation.

Chair Rowitsch closed the public hearing at 7:45 pm.

MOVED by Commissioner Chuck Merritt, seconded by Commissioner Michael Bacon to table any recommendations that this board might have to the December 1, 2016 meeting to discuss this item further.

Vote: 7 - 0 PASSED - Unanimously

7) NON-PUBLIC HEARING ACTION ITEMS

There were no non-public hearing action items.

8) DISCUSSION ITEMS

There were no discussion items.

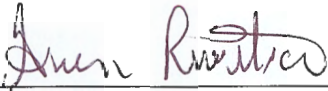
9) PUBLIC COMMENTS

There were no public comments.

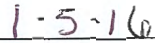
10) **ADJOURN**

MOVED by Commissioner Chuck Merritt, seconded by Commissioner Michael Bacon to adjourn the meeting at 7:47 pm.

Vote: 7 - 0 PASSED - Unanimously



Chair Gwen Rowitsch



Date