

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

**December 1, 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 Lane 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: Robert Smith, Town Manager; Phyllis Smiley, Town Attorney; Cecilia Gritman,
Assistant Town Manager; Amy Lansa (recorder), Town Clerk Assistant;

4) MINUTES

- a)** Consideration and possible action to approve the November 3, 2015 regular meeting minutes.

MOVED by Commissioner Chuck Merritt, seconded by Commissioner Michael Bacon to
approve the November 3, 2015 minutes.

Vote: 7 - 0 PASSED - Unanimously

5) STAFF REPORTS

There were no staff reports.

6) PUBLIC HEARING

- a)** 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; to provide citizens with another opportunity to

provide comments regarding the proposed amendments.

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

As to the use of Medical Marijuana in Arizona:

- The voters of the state of Arizona approved Proposition 203 50.1:49.9 in 2010.
- Arizona Revised Statutes Title 36, Public Health and Safety, Chapter 28, Controlled Substances Prescription Monitoring Program, Article 1, General Provisions, Chapter 28.1, Arizona Medical Marijuana Act sets forth statutory regulation of Medical Marijuana in the state of Arizona.
- §§ 2803 directs the Arizona Department of Health Services to adopt rules further regulating Medical Marijuana in Arizona.

As to the regulation of manner and placement in Chino Valley:

- The Town Council sitting in 2010 discussed amendments to the UDO and declined to amend the UDO, deciding instead to impose the state's lone separation requirement of 500' from public and/or private schools.
- In 2013, Town Council directed staff to research and make recommendations to Council regarding the manner and placement of medical marijuana uses.
- In December of 2013, after notification in accordance with ARS 9-462.04, Town Council adopted Ordinance 13-779, regulating the manner and placement of Medical Marijuana uses within the Town of Chino Valley.

As to the regulation of Marijuana by the Federal Government:

- Possession and use of marijuana in the US has been illegal since 1937. Marijuana was classified as a Schedule 1 drug (no medical use/high probability of addiction) in the 70's.
- The Department of Justice is precluded by the 2014 Appropriations Bill from using its funds to enforce federal laws regarding marijuana in states that have legalized it (Rohrabacher-Farr Amendment; MAMM v. USDOJ).
- The US Attorney General's office has reprioritized enforcement, focusing its efforts on keeping it out of the hands of minors, stopping resulting cash flow to gangs, cartels, etc., among other things, and not on those in compliance with state MMJ programs.

Whether we like it or not, the following are *facts*:

- Non-conforming use is defined in UDO Chapter 2, Definitions, §§ 2.1 Meanings of Words and Terms as follows: "A structure or land which was lawfully established and maintained prior to the adoption of this Ordinance *or any amendment thereto* or annexation to the Town which does not conform to the use regulations for the district in which it is located." (emphasis added)
- A text amendment to the UDO can change the legal status of a structure or property from a legal, conforming use to a legal, non-conforming use.
- UDO Chapter 4, General Regulations, §§ 4.20.4 Expansion of a Non-conforming Use states: "No non-conforming building, use of building or use of land shall be expanded on (sic) in any way that enlarges or reinforces the non-conformity."

As to the Private Property Rights Protection Act:

- The Private Property Rights Protection Act (Proposition 207) was overwhelmingly approved by the voters in Arizona in 2006.
- Arizona Revised Statute Title 12, Courts and Civil Proceedings, Chapter 8, Special

Actions and Proceedings Relating to Private Property sets forth the legal framework for protections under this Act.

- The Act requires just compensation for diminution of value resulting from “enactment or applicability of any land use law after the date the property was transferred to the owner...”
- PROP 207 requires relief to property owners whose property values are diminished by land use laws adopted after they have acquired real property.

Medical marijuana is a legal use in Arizona.

ARS 9-462.01 enables the town to regulate land uses in within the corporate boundary of the town.

PROP 207/ARS §§36-2803 requires relief to property owners whose property values have been diminished by land use laws adopted after they have acquired real property

Federal Policy: Regulation of *interstate* commerce, regulation of drugs via FDA, enforcement of federal law

State Policy: Regulation of *intrastate* commerce, enforcement of state laws

Voter Mandates: Private Property Protection Act; Legalization of Medical Marijuana

Local Policy: Manner and placement of land uses deemed legal in the state of Arizona.

Chair Rowitsch opened the public hearing at 6:21 pm, and limited each speaker to 3 minutes.

During the public hearing the commission heard 31 people state their concerns and comments, 22 of which were opposed to MMJ. Eight people spoke in support of MMJ including attorneys Paul Conant and Ralph Pew.

Land use attorney, Ralph Pew stated that the matter facing the commission is a land use issue. Currently there is an ordinance in effect that allows for the cultivation of MMJ. The proposed changes in the ordinance potentially diminish the value of property of those currently operating and who expect to expand their facilities.

In order to ensure the rights of exiting growers, Mr. Pew suggested that the commission consider recommending to Town Council either a Development Agreement (DA) or a Protected Development Rights Plan (PDR Plan). Both the DA and PDR Plan are established in the Arizona Revised Statutes.

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

Chair Rowitsch requested that Director Mayday review the seven (7) proposed amendments to the UDO as well as the ordinance currently in effect regarding MMJ.

Town Manager Robert Smith informed the Commission that a Town Council Study Session was scheduled for December 10, 2015 to review the proposed amendments to the UDO.

After taking public comment, discussing the matter, and receiving input from Director Mayday and Town Attorney, Phyllis Smiley, the Commission recommended the following seven (7)

options to Town Council for further consideration and possible action.

1. Allow cultivation facilities on site only (attached to a dispensary).
2. Remove cultivation and infusion facilities from Conditional Uses in AR-36, AR-5, and AR-4 zoning districts.
3. Remove cultivation, infusion and dispensary facilities from permitted uses in CL, CH, and I zoning districts: require a Conditional Use Permit
 - a. Require a Conditional Use Permit for any medical marijuana facility in Industrial districts only.
 - b. Require a Conditional Use Permit for any medical marijuana facility in Commercial Heavy and Industrial districts only.
 - c. Require a Conditional Use Permit for any medical marijuana facility in Commercial Light, Commercial Heavy and Industrial districts only.
4. Require 500' feet separation from churches (in addition to already specified uses).
5. Measure separation from property line to property line.
6. Exclude public right-of-way from measurement of separation.
7. Limit size of cultivation facilities to 3,000 square feet (or another specific size limit).

The Commission also recommended that Town Council consider the Development Agreement (DA) or a Protected Development Rights Plan (PDR Plan).

MOVED by Commissioner Michael Bacon, seconded by Commissioner Chuck Merritt that the Commission make a recommendation to forward all seven (7) options including 3. a., b., and c., for consideration and possible action by Town Council regarding Ordinance 15-806.

Commissioner Bacon and Commissioner Merritt amended the motion to add two additional options for the Town Council including a potential Development Agreement (DA) or a Protected Development Rights Plan (PDR Plan).

Vote: 7 - 0 PASSED - Unanimously

7) NON-PUBLIC HEARING ACTION ITEMS

There were no non-public hearing items.

8) DISCUSSION ITEMS

There were no discussion items.

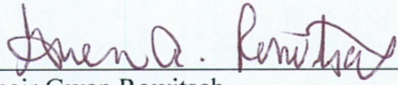
9) PUBLIC COMMENTS

There were no public comments.

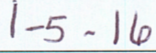
10) ADJOURN

MOVED by Commissioner Chuck Merritt, seconded by Commissioner Gary Pasciak to adjourn meeting at 8:37 pm.

Vote: 7 - 0 PASSED - Unanimously



Chair Gwen Rowitsch



Date