

**TOWN OF YUCCA VALLEY
TOWN COUNCIL MEETING MINUTES
MAY 12, 2009**

Mayor Luckino called the regular meeting of the Town of Yucca Valley Council to order at 5:00 p.m.

Council Members Present: Herbel, Huntington, Mayes, Neeb and Mayor Luckino.

CLOSED SESSION

A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Subsection (a) of Section 54956.9(a), Ronald Green and Sharon Green vs. County of San Bernardino, City of Yucca Valley, Case No. CIVMS 800111, People v. Green, Case No. CIVMS 800326; Center for Biological Diversity vs. Town of Yucca Valley, Town Council of Yucca Valley, Case No. CIVBS 800607; Coalition for Environmental Integrity in Yucca Valley vs. Town of Yucca Valley, Town Council of the Town of Yucca Valley, Case No. CIVSS 810232, Superior Court of California, County of San Bernardino.

B. CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION

Subsection (c) of Section 54956.9, the legislative body is deciding whether or not to initiate litigation.

Mayor Luckino adjourned to Closed Session at 5:01 p.m. and reconvened at 5:15 p.m. with no reportable action taken. The meeting was recessed until 6:00 p.m.

Mayor Luckino reconvened the meeting at 6:00 p.m. with all members present.

Staff Present: Town Manager Takata, Deputy Town Manager Stueckle, Town Attorney Haubert, Community Services Director Schooler, Public Works Director da Rosa, Administrative Services Director Yakimow, Police Lt. Mondary, and Town Clerk Anderson.

PLEDGE OF ALLEGIANCE

Led by Mayor Luckino

PRESENTATIONS, INTRODUCTIONS, RECOGNITIONS

1. Census 2010 Presentation by Ana Hernandez, Partner Specialist

Ana Hernandez, Partner Specialist, advised the Census Bureau is meeting with all communities in San Bernardino County to create awareness of the importance of Census 2010. She requested help from the Council to assist in getting to the people who don't want to be counted and assure them the process is safe, confidential and will be very simple. It was noted it has been proposed that the Town of Yucca Valley work on one end of the Morongo Basin and the City of Twentynine Palms the other.

AGENCY REPORTS

Fire Department

2. Monthly Fire Department Report.

Battalion Chief Oplinger, gave the monthly statistical Fire Department report for April 2009 and reminded everyone to pull to the right and stop when emergency vehicles approach, and to clear vegetation from their homes. This will be a bad fire year.

APPROVAL OF AGENDA

Town Attorney Haubert advised that an item came to the attention of the Town subsequent to the agenda being posted, and there is a need to take immediate action because the Federal Department of Housing and Urban Development (HUD) requires a Town response by Friday, May 15, 2009.

Council Member Mayes moved to add to the Consent Agenda as Item #15A: CDBG-R Notice of Funding – Project Prioritization, as there is a need to take immediate action on this matter, and the need arose after the agenda was posted, and approve the agenda as amended. Council Member Neeb seconded. Motion carried 5-0 on a voice vote.

CONSENT AGENDA

- 3. Approve,** Regular Town Council Meeting Minutes of April 14, 2009 and Special Town Council Meeting of April 28, 2009 as presented.
- 4. Waive,** further reading of all ordinances and read by title only.
- 5. Authorize,** the transfer of remaining funds in the amount of \$128,853 from Fund 541 - Solar Project/Energy Commission to the General Fund, and the inactivation of Fund 541.
- 6. Direct,** staff to communicate the Agency’s intent to rescind the decision regarding payment of the 2008-09 ERAF RDA payment, AB 1389
- 7. Receive and File,** Treasurer’s Report for 3rd Quarter FY 2008/09 and direct staff to transmit the investment report to the California Debt and Investment Advisory Commission (CDIAC).
- 8. Accept,** Malin Way Street Improvements, Town Project No. 8325 constructed by Ficara Paving Company, as substantially complete; authorize Town staff to file the Notice of Completion with the County Recorder; Authorize Town staff to release the Performance Bond in the amount of \$135,774.26; and Authorize staff to release retention monies in the amount of \$14,726.68 due the contractor thirty-five (35) calendar days after

recording of the Notice of Completion.

9. **Approve**, purging the Town's Planning and Code Compliance Inactive/Out-of-Date Records in accordance with Resolution No. 04-14.
10. **Approve**, proposed Release and Settlement Agreement between the Town of Yucca Valley and the County of San Bernardino related to the litigation entitled: *Town of Apple Valley, et. al. v. County of San Bernardino*, in which the Town of Yucca Valley is a plaintiff, and authorize the Mayor, Town Manager, Town Attorney, and Town Clerk to sign all necessary documents. WDA Agreement.
11. **Receive and File**, AB 1234 Reporting Requirement Schedule for the month of April 2009.
12. **Receive and File**, Monthly Capital Projects Status Report, Fiscal Year Budget 2008/09 and 2009/10.
13. **Approve**, Resolution No. 09-13 directing the Assessment Engineer to prepare a report describing any new improvements or any substantial changes in existing improvements in the assessment districts listed in the Resolution and file such report with the Town Clerk for submission to the Town Council.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, DIRECTING THE TOWN ENGINEER TO CAUSE AN ENGINEER'S REPORT TO BE PREPARED FOR ASSESSMENTS TO BE LEVIED WITHIN EXISTING ASSESSMENT DISTRICTS DURING THE 2009-2010 TAX YEAR

14. **Amend**, 2008/2009 and 2009/2010 FY Budget, appropriating \$160,000 of Local Transportation Fund (LTF) revenue for the 2009 Seal Coat Project, adopt Resolution No. 09-14, amending the Measure I 2 Year Plan for FY 2008/2009 and 2009/2010, and authorize staff to advertise the Town-Wide 2009 Seal Coat Project.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, ADOPTING THE TWO-YEAR CAPITAL IMPROVEMENT PROGRAM FOR 2008/2009 THROUGH 2009/2010

15. **Ratify**, Warrant Registers in the amount of \$546,603.43 for checks dated April 10, 2009 through April 24, 2009. Ratify Payroll Registers in the amount of \$503,085.30 dated April 3, 2009 through April 17, 2009.

Council Member Mayes requested to remove Item 15A which was added to the Agenda.

Council Member Mayes moved to adopt Consent Agenda Items 3-15. Council Member Huntington seconded. Motion carried 5-0 on a roll call vote.

AYES: Council Member Herbel, Huntington, Mayes, Neeb and Mayor Luckino
NOES: None
ABSTAIN: None
ABSENT: None

15A. CDBG –R Notice of Funding – Project Prioritization

Community Services Director Schooler advised the Town received notice from the County’s Community Development and Housing Department (CDH) that \$1,988,326 of American Recovery and Reinvestment Act of 2009 funding is available to the County and its Cooperating Cities through the CDBG program. It is estimated the Town’s Share will be \$50,370, which must be allocated to a project that will be “shovel ready” within 120 days from the date the funds become available. Because of the tight deadlines imposed by HUD, the Town must respond by designating a priority project by Friday, May 15, 2009. The Town has already approved “on hold” CDBG projects at this time consisting of the replacement of Community Center doors to improve ADA accessibility and the installation of handicapped-accessible parking and sidewalks at Desert Christ Park. The Community Center Doors project would be the best fit for completion with CDBG-R funding.

Mayor Luckino advised that adding an item to the agenda at the last minute is not typical procedure, but the urgency of this item requires it, and we need to obtain as many stimulus dollars as possible.

Council Member Mayes moved to designate the Community Center Doors project as the priority project for use of the Town of Yucca Valley’s share of the American Recovery and Reinvestment Act of 2009 (CDBG-R) funding, and direct staff to comply with the requirements for implementing the project and receiving CDBG-R funds. Council Member Huntington seconded. Motion carried 5-0 on roll call vote.

AYES: Council Member Herbel, Huntington, Mayes, Neeb and Mayor Luckino
NOES: None
ABSTAIN: None
ABSENT: None

PUBLIC HEARINGS

16. Appeal 04-08 of Site Plan Review 04-08, Car Quest

Council Member Huntington advised he acted on this item as a Planning Commissioner and left dais.

Senior Planner Kirschmann gave the project description and advised the applicant is requesting the Council to remove Conditions of Approval (COA) numbers 28 and 29. Condition 28 states “pay an in-lieu fee of \$30,320 for future widening of SR 62 along the

project's frontage" and Condition 29 states "pay an in-lieu fee of \$27,190 for future construction of a median island along the project frontage". In accordance with the General Plan, staff recommended the payment of fees instead of actual construction due to the small amount of frontage on SR 62 and existing surrounding improvements. The Planning Commission concurred with staff and approved the conditions. The Town's Economic Development Element of the General Plan identifies goals, policies and programs. Program 5.B states "residential, commercial and industrial development proponents shall be responsible for their fair share of on and off-site improvements required to support the development proposal. Improvements required may include, but are not limited to, street construction and signalization, utility extensions, drainage facilities, parks and other facilities". At the Town Council Meeting of January 26, 2009 the Council requested that staff look at options available. One option is for the Town and applicant to enter into an agreement requiring future payment. However, if the applicant or future property owner fails to comply with the conditions of the agreement the Town may be required to take additional action to enforce the agreement and collect funds. Another option is to require the full, legally defensible Development Impact Fees of \$15.74 per square foot for traffic fee. It was noted that, based on the total new square footage, the fee would be \$154,881.60, which is \$97,371.60 more than the conditions required estimated construction costs. The impact fee is much higher because it takes into consideration the total impact the development will have Town wide, and the conditions of approval for construction costs consider only improvements adjacent to the project. At the previous meeting it was also suggested that the RDA may be able to provide some form of assistance, and if it is the desire of the Council, it may be requested that this policy issue be forwarded to the Agency.

Town Manager Takata advised that any project using Measure I money has to have an amount from the Developers, so the Town is not able to use RDA Funds. The issue will have to be worked out by the Town Attorney.

Council Member Neeb commented in the past there was a program where the Developer matched the funds the RDA was providing and suggested that as a possibility.

Mayor Luckino opened the Public Hearing

Bob Doremus, Applicant, advised when he filed the appeal he was not asking Council to finance the in lieu fee, he was looking for a policy change, stating it is unfair. If he made no improvements and the highway was widened the easement would have been taken from him by eminent domain, and he would receive the fair market value of the property. He noted he is already paying about \$159,000 in fees, banks will not finance in lieu fees, and utilities will not give estimates. He is being asked to put in money for improvements that may not be made, and requested to be able to donate the land. Mayor Luckino questioned how the fees relate to the construction costs. Mr. Doremus advised he is spending about \$1,300,000 for construction.

Ramon Mendoza, Yucca Valley, commented that the Town fought hard to be able to

start charging impact fees, and should be collecting them.

There being no one else wishing to speak, Mayor Luckino closed the Public Hearing

Council Member Neeb questioned the possibility of property dedication for the highway and if it can be factored into the fees. Deputy Town Manager Stueckle advised that Caltrans does not have the necessary easements. Appraisers the Town has worked with find reduced costs for the right of way portion of the property than for the developable portion. He advised that the action approved by the Planning Commission requires that the applicant pay in-lieu fees instead of constructing the improvements, and there is also a condition that the applicant dedicate the easement.

Mayor Luckino commented regarding the need for a bigger funding mechanism to be able to widen the highway, and not by putting barriers on development along the highway.

Council Member Mayes commented that the two parcels to the east appear to be split in half, and questioned if the applicant would have to pay the same amount of fees if this parcel were split. Senior Planner Kirschmann advised it would depend on when the lot was split.

Council Member Neeb commented that if the General Plan build out rate were lowered there would be no need to build the Highway to 6 lanes and the improvements would not be needed. He noted if the funding isn't collected incrementally, all the citizens will be paying for the developments on the highway. He was hoping for funding to assist the applicant.

Council Member Herbel questioned if the value of the easement in today's market can be applied toward the in-lieu fee.

Mayor Luckino recommended the appeal should be approved, and place a future item on the agenda to look at funding the widening.

Council Member Herbel questioned if the proposed Planning Commission discussion regarding whether or not certain sized projects should be required to go through the entitlement process or be required to construct certain offsite improvements would affect the project. Deputy Town Manager Stueckle advised he does not see that process being completed for 6 to 9 months and is not a resolution for this issue.

Council Member Mayes questioned the precedent that would be set if the Council approved the application without Condition 28 and 29. Town Attorney Haubert advised that answer is yet to be seen. Council wouldn't be changing policy, just taking action that may cause future appeals. Council Member Mayes moved to approve the project, removing Condition 28 and 29. Mayor Luckino seconded.

Council Member Herbel made a substitute motion to allow the applicant the option to make a future payment at the time of widen the highway. Motion died for lack of a second.

Upon questions regarding how to obtain payment in the future, Town Attorney Haubert advised there could be bonds or a covenant recorded on the property, but any form would require agreement of the applicant.

Council Member Herbel made a substitute motion to bring the issue back when staff can bring forward more information. Motion dies for lack of a second.

Original Motion failed 2-2-1 on a Roll Call Vote.

- AYES:** Council Member Mayes and Mayor Luckino
- NOES:** Council Member Herbel and Neeb
- ABSTAIN:** None
- ABSENT:** Council Member Huntington

Council Member Neeb commented that if the Council decides the Town is not going to impact developers along the highway and is going to pass on costs to the whole community, there should be discussion about that. He was in hopes that there could have been some economic stimulus money.

Mayor Luckino reopened the public hearing and questioned if it would be a detriment to the applicants project if the Council brings the issue back to try to hammer out a policy. Mr. Doremus advised that it would not, noting he likes the suggestion of offsetting the fees with the cost of the land.

Mayor Luckino closed the public hearing.

Upon further discussion, Council Member Mayes moved to continue the matter to the June 9th Town Council Meeting. Council Member Herbel seconded. Motion carried 4-0-1 on a voice vote with Council Member Huntington absent.

DEPARTMENT REPORTS

17. Flood Plain Management Ordinance, Request from State Department of Water Resources for Ordinance Update, Introduction.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, REPEALING AND REENACTING CHAPTER 8.04 OF TITLE 8 OF THE TOWN OF YUCCA VALLEY MUNICIPAL CODE RELATING TO IMPLEMENTING THE POLICIES AND PROCEDURES FOR THE FEDERAL EMERGENCY MANAGEMENT AGENCY NATIONAL FLOOD INSURANCE PROGRAM

Senior Planner Kirschmann reported on May 6, 2008 staff met with California Department of Water Resources (CDWR) regarding implementation of the program. Issues discussed included construction in the flood zones, new construction processes, the Town’s ordinance and its implementation. All the issues identified by the agency have been addressed with the exception of updating the Town’s ordinance to reflect changes in the State’s Model Ordinance. The ordinance presented has been reviewed and approved by CDWR. In conformance to the new model ordinance, staff has revised sections 8.04.042(C)(2-3) and 8.04.055(A). Section 8.04.042(C)(2)(a) adds the requirement that a letter of map revision (LOMR) be completed for projects which will cause changes in the base flood elevation and that this information is provided to FEMA within six months of project completion. Section 8.040.42(C)(2)(b) requires that a LOMR be approved by FEMA prior to the Town issuing any building permits for flood control projects. Section 8.040.42(C)(3) requires written notification to FEMA of any Town boundary changes. Section 8.04.055 affects areas designated as “Floodways” and was revised to require certification by a registered professional engineer or architect that: “the cumulative effect of the proposed development, when combined with all other development, will not increase the water surface elevation of the base flood more than one foot at any point within the Town.” In addition, staff proposed changes to establish conformity and consistency in the ordinance by revising Section 8.04.053(B)(1) to match Section 8.04.050(C)(1), which will require both stick built and manufactured homes to be elevated at least one foot above the base flood elevation.

Dave Mahaffey, Yucca Valley, commented regarding requiring loop systems to adapt for the water going through the properties and allowing the property owner to collect and use that water.

Margo Sturges, Yucca Valley, questioned the reduction of elevation from two feet to one foot.

Mayor Luckino questioned if the Town is in compliance with the CDWR regulations the recommended changes are approved. Deputy Town Manager Stueckle advised that the changes are in compliance with FEMA regulations.

Town Clerk Anderson read the title of the ordinance.

Council Member Mayes moved to approve the recommended changes and introduce the Ordinance. Council Member Huntington seconded. Motion carried 5-0 on a roll call vote.

- AYES:** Council Member Herbel, Huntington, Mayes, Neeb and Mayor Luckino
- NOES:** None
- ABSTAIN:** None
- ABSENT:** None

FUTURE AGENDA ITEMS

Council Member Herbel requested an amendment to the Old Town Specific Plan to allow for uses such as a beauty salon. Council Member Mayes agreed

Council Member Herbel requested staff look into partnering with Joshua Tree National Park to have a sign placed on SR 62 to indicate where Black Rock campground is. Town Manager Takata advised that staff is already looking into the issue.

Council Member Herbel requested that the Council look at possibility of renaming SR 62 to “Joshua Tree National Park Highway 62”.

Council Member Mayes requested Council discuss how to deal with the small Mom & Pop shops along SR 62. Mayor Luckino and Council Member Huntington agreed.

PUBLIC COMMENT

William Hampton, Landers, commented regarding being let go by the Morongo Unified School District.

Ramon Mendoza, Yucca Valley, invited Council to a presentation at the Community Center on Wednesday, May 20, 2009, from 3:00 p.m. to 4:30 p.m. regarding innovative ways to protect the ground water.

Margo Sturges, Yucca Valley, commented against the Town borrowing from the Redevelopment Agency to purchase the golf course. Suggested the Town clean up the Phelps property and water the plants.

STAFF REPORTS AND COMMENTS

Town Manager Takata advised he has now been employed with the Town for five years.

Council Member Mayes requested an update of what is coming out of Sacramento. Town Manager Takata advised the Department of Finance has been talking about taking funds from Cities and Towns, and the Governor will be preparing two May Revise Budgets. Administrative Services Director Yakimow added that even if the propositions are successful the State will still be hurting, and it is likely they will be borrowing from the Cities and Counties in accordance with Prop 1A. Town Manager Takata added these are issues the Town will have to deal with financially, noting there are reserves, but interest bearing monies will have to be used.

MAYOR AND COUNCIL MEMBER REPORTS AND COMMENTS

18. Council Member Huntington

Reported regarding attendance at the Solid Waste Advisory Task Force meeting noting

that AB 479 and SB 5 have passed in committee and is an attempt to increase recycled materials to 60% in 2015 and 75% by 2020. It will also increase the tipping fee from \$1.40 to \$3.90 per ton with the money to come back to jurisdictions. New waste delivery dollars have been calculated and will increase \$1.15 per ton. The Mojave Desert Solid Waste JPA reported regarding a study of trash going into landfill for a time showing that 50% of trash going into landfills is wet waste of some kind which is compostable, and of the remaining 50% all but 15% had a recycle value of some kind.

19. Council Member Neeb

Reported regarding attendance at the grand opening of the Morongo Basin Transit Authority transfer site on Yucca Trail and congratulated MBTA and David Falossi for having his artwork placed at the station.

Requested that staff commented on the suggestion that the Town take care of the Phelps property. Town Manager Takata advised that is private property, so unless the Town has permission to be there or there is a violation of a Town ordinance, it can not intervene. If there is a violation the Town could have the property cleaned and the owner would be billed for the costs. In addition the Town working on the property could be considered a gift of public funds.

20. Council Member Herbel

Reported regarding attendance at a tour of the PG&E Facility with the Mojave Desert Air Quality Management District, where they explained how they are cleaning up the Chromium 6.

Reported regarding attendance at the Economic Development Committee for the Gateway Communities.

Reminded everyone it is getting hot out and to make sure pets have plenty of cool water and a cool place to rest.

21. Mayor Pro Tem Mayes

No reports

22. Mayor Luckino

Reported regarding participation in the National Day of Prayer last week and advised he would like to give the invocation at the Council Meetings if there is no clergy present.

Wished everyone a belated happy Mothers Day.

YUCCA VALLEY TOWN COUNCIL MINUTES

May 12, 2009

Congratulated David Falossi for having his artwork chosen for the Morongo Basin Transit Authority transfer station.

ANNOUNCEMENTS

Next Town Council Meeting, Tuesday, May 26, 2009.

ADJOURNMENT

There being no further business, the meeting was adjourned at 7:36 p.m.

Respectfully submitted,

Jamie Anderson, MMC
Town Clerk