

**TOWN OF YUCCA VALLEY
TOWN COUNCIL MEETING MINUTES
DECEMBER 1, 2009**

Mayor Luckino called the regular meeting of the Town of Yucca Valley Council to order at 5:40 p.m.

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

CLOSED SESSION

- 21. 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, 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.

- 22. Government Code Section 54956.8, Conference with Real Property Negotiators.**

Property: APN 586-031-36, 594-031-09 & 23, 595-041-34 & 35; 55100 Martinez Trail
Blue Sky Golf LLC/Town of Yucca Valley
Shane Stueckle, Real Property Negotiator
Real Property Negotiations

Property: APN 595-162-08 & 09 South West corner of Joshua Lane and Twentynine Palms Outer Highway
Town of Yucca Valley/Yucca Valley Redevelopment Agency
Andrew Takata, Real Property Negotiator
Real Property Negotiations

Mayor Luckino adjourned to Closed Session at 5:40 p.m., returned at 5:50 p.m. and announced there was no reportable action taken.

Mayor Luckino recessed the meeting to 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, Administrative Services Director Yakimow, Community Services Director Schooler, Police Capt. Miller, and Town Clerk Anderson.

PLEDGE OF ALLEGIANCE

Led by Mayor Luckino

AGENCY REPORTS

Hi Desert Water District

1. Monthly Wastewater Treatment System Update.

No one available to give the report.

APPROVAL OF AGENDA

Council Member Huntington Moved to approve the agenda. Council Member Neeb seconded. Motion carried 5-0 on a voice vote.

CONSENT AGENDA

2. **Approve**, Regular Town Council Meeting Minutes of November 17, 2008.
3. **Waive**, further reading of all ordinances (if any in the agenda) and read by title only.
4. **Receive and File**, the Treasurer's Report for 1st Quarter FY 2009-10 and direct staff to transmit the investment report to the California Debt and Investment Advisory Commission (CDIAC)
5. **Receive and file**, the AB 1234 Reporting Requirement Schedule for the month of November, 2009.
6. **Approve**, award of contract for the reconstruction of Fortuna Avenue from San Andreas Road to Santa Barbara Drive, Town Project No. 8351 to Palm Canyon Contractors, Inc. in the amount of Two Hundred Seventy One Thousand Five Hundred Forty One Dollars (\$271,541.00); establish a \$27,150 contingency and \$5,000 administrative costs and authorize the Town Manager, Town Attorney, and the Mayor to sign all necessary documents; and authorize the Town Manager to expend the contingency if necessary to complete the project.
7. **Ratify**, Warrant Registers in the amount of \$485,592.95 for expenses dated November 20, 2009. Ratify the Payroll Registers in the amount of \$174,827.14 dated November 13, 2009.

Council Member Neeb moved to adopt Consent Agenda Items 2-7. 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

REORGANIZATION OF TOWN COUNCIL

8. Selection of Mayor

Town Clerk Anderson accepted nominations for Mayor.

Council Member Neeb moved to nominate Council Member Mayes to serve as Mayor for 2010. Council Member Herbel seconded. Motion carried 5-0 on a voice vote.

9. Selection of Mayor Pro Tem

Mayor Mayes accepted nominations for Mayor Pro Tem

Council Member Neeb moved to nominate Council Member Herbel to serve as Mayor Pro Tem for 2010. Council Member Huntington seconded. Motion carried 5-0 on a voice vote.

10. Presentations

Mayor Mayes presented Council Member Luckino with a plaque thanking him for his services as Mayor last year.

Community Services Director Schooler presented a gift basked from the Community Services staff.

Town Manager Takata presented several mementos depicting Council Member Luckino's year as Mayor.

Council Member Luckino stated it has been honor to serve as Mayor over the past year, and thanked his wife and family for their support.

DEPARTMENT REPORTS

11. Fiscal Year 2008-09 Comprehensive Annual Financial Report

Administrative Services Director Yakimow reported that each year the Town is required to have an audit of its financial statements. The audit covers fiscal year July 1, 2008 through June 30, 2009 and was conducted by Rogers, Anderson, Malody and Scott, LLP,

a firm of independent CPA's appoint by and reporting to the Town Council. The purpose of the audit is to state an opinion with regard to the accuracy of the Town's financial statements and results of operations. Additionally, if the Town participates in major federal programs with expenditures in excess of \$500,000, the Town is required to complete the Single Audit Report on Federal Award Programs, pursuant to federal guidelines identified in the U.S. Office of Management and Budget (OMB) Circular a-133. The Town was not required to complete a Single Audit Report for the fiscal year ending 2009.

Scott Manno, Rogers, Anderson, Malody and Scott, LLP, presented the audit findings, noting that an unqualified opinion was rendered on the financial statements, which is the highest opinion available. He noted there are many cities and special districts that are not in as good shape as the Town is, and noted that the Government Finance Officers Association (GFOA) recommends that, at a minimum, a city have no less than 2 months in reserves. The Town has 6 months, and has done a good job of reining in its expenditures.

Town Manager Takata noted that the Town's books have increasingly improved since Administrative Services Director Yakimow came on board. He also recognized the Department Heads and their staffs for the work they have done to keep the budget in line.

Council Member Neeb moved to receive and File the FY 2008-09 Comprehensive Annual Financial Report. Council Member Huntington seconded. Motion carried 5-0 on a voice vote.

12. Approval of Animal JPA Payment Transfer and Adoption of Related Reimbursement Resolution.

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, EXPRESSING OFFICIAL INTENT REGARDING CERTAIN CAPITAL EXPENDITURES TO BE REIMBURSED WITH PROCEEDS OF OBLIGATIONS

Administrative Services Director Yakimow advised the Town Council has identified the need for a permanent animal shelter facility. To meet this need, the Town has worked with San Bernardino County to develop a Joint Powers Authority to provide for the financing, planning, design and construction of an animal shelter facility. As part of the JPA formation agreement, the Town has committed to funding one half of the construction costs of the facility, currently estimated at \$3.5 million. In total, the Town is committed to an initial contribution of \$1.75 million. The JPA is ready to move forward with the initial phases of the project, and has requested initial funding contributions from both the Town and the County in accordance with the JPA agreement.

Accordingly, staff is recommending the first payment of \$437,500 to the County Treasurer who will place the funds in trust for the JPA. The funding is included in the

current year budget, and the County is prepared to make a similar payment at the same time. In addition there is a proposed resolution allowing the Town to secure external financing for all the payments if necessary. The adoption of the resolution does not commit the Town to securing the external financing, rather it indicates that it is the Town's intention to issue obligations, and allows the Town to be reimbursed for prior related expenditures if the financing does in fact occur. The attachment to the resolution identifies other potential projects that may be included in the supplemental financing.

Council Member Huntington commented that, as a JPA member, he welcomes the funding so the Town and County can get started with some architectural work and get going on the project.

Council Member Herbel commented she is also on the JPA and that it is exciting to see that the Town is going to have a new shelter.

Council Member Herbel moved to authorize the payment of the Town's first Animal JPA Shelter Project contribution payment in the amount of \$437,500 to the County Treasurer and adopt Resolution No. 09-41 expressing official intent regarding certain capital expenditures to be reimbursed with proceeds of obligations. Council Member Neeb seconded. Motion carried 5-0 on a roll call vote.

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

13. Appointment of Alternate to SANBAG

Town Clerk Anderson reported that Council Member Neeb is the SANBAG representative and normally attends the meetings, but there is a need to replace Council Member Luckino as alternate, due to his time limitations with his job.

Council Member Neeb advised that Council Member Luckino is fully occupied during the day and attending the monthly board meeting in San Bernardino and the Desert Mountain Measure I meeting in Apple Valley requires a half day if not more.

Council Member Neeb moved to appoint Council Member Huntington to act as alternate to SANBAG. Council Member Luckino seconded. Motion carried 5-0 on a voice vote.

POLICY DISCUSSION

14. Medical Marijuana Dispensaries, Direction to Planning Commission and Staff

Deputy Town Manager Stueckle gave the background of the issue, noting at the last

meeting the Council asked staff to bring back the item for direction to staff and the Planning Commission. The Planning Commission had originally directed staff to return with a prohibition at their March 3rd meeting, then on August 25th the “Commission directed staff to amend the ordinance to allow dispensaries within town boundaries.

William Green, Yucca Valley, spoke in support of a ban on dispensaries.

Lori Green, Yucca Valley, encouraged Council to stop delaying the decision on the matter, noting this should not be a compassion issue, it is a land use issue. Zoning does not allow for selling of marijuana. She also recommended rules for the facility if it remains, such as closing when children are present and not having a physician on sight.

Phillip Morris, Joshua Tree, spoke in opposition to a ban on dispensaries noting there are a number of severely ill people in need of the marijuana and if there is not a dispensary up here it would require people up to drive to Palm Springs.

Lee Morgan, Landers, commented that without marijuana his wife would weigh 100 lbs. in stead of 110. He indicated he is mad that the issue is coming up again and advised he will bring a law suit against the Council if the right decision is not made.

Mike Smalley, Yucca Valley, commented that people of California voted to legalize medical marijuana and there has to be a place to access that safely and at a reasonable price.

Alice Thacker, Joshua Tree, advised she is a medical marijuana patient, and can not use 99% of the other pharmaceutical remedies. If the moratorium on dispensaries continues, there continues to be a monopoly and high prices.

DJ Ross, Owner, commented it is clear from the staff report that the Council has been given biased information and fails to address all the positives.

Terry Millan, Morongo Valley, commented all people here before the Council have a legitimate reason to choose their civil rights for cannabis.

Barbara Souder, Yucca Valley, commented she has post traumatic stress syndrome, and can not function without using medical marijuana and without it her life would be intolerable.

Raymond Foss, Yucca Valley, agreed that medical marijuana needs to be regulated, but requested that Council not take away a person’s right to choose. If people want it they will find it.

Fritz Koenig, Yucca Valley, spoke in opposition to a ban noting the Council wasn’t at the Planning Commission meeting to see the dozens of elderly infirm people in pain

trying to get by a few more days. He noted he hasn't heard any alternative offer and what he did see in the Council package is biased.

Kim Minard, Yucca Valley, commented regarding working as a volunteer at CAMS and invited anyone to come see the facility.

Councilmember Luckino commented this is a very difficult issue, noting he is compassionate and understands, because he has a son in a wheel chair who has seizures, is on daily medication and can't sleep at night so through the years they have tried many different things for comfort. The problem is not with those who are legitimately using medical marijuana, it is the abuse. When it comes down to choices it is a land use issue and where it is appropriate for this type use. Abuse is going to occur regardless of placement. He believes there needs to be prohibition of dispensaries here in Yucca Valley. He questioned if there is liability exposure to the Town. Town Attorney Haubert advised there is not.

Council Member Huntington noted the discussion is a land use issue. In any city that has come out with an ordinance allowing dispensaries there have always been regulations regarding distances from other type facilities etc. A dispensary in a location limits other types of businesses in that location, and if the Town allows one to exist it should allow additional dispensaries to exist which creates additional burdens. Prop 215, SB 420 and the Attorney General's guidance has no provision requiring these facilities to be store front dispensaries. The issue is beyond the Council to solve, the State has to solve the problem before we can deal with it on the local level. He suggested the issue might be placed on a ballot.

Council Member Neeb commented this is a tough issue and his hope is that the existing facility would be in another area, and that there was time for the state to sort this out. As far as crime is concerned, criminals would like the Town to ban it so it would create more business for them. He does not like the dispensary where it is and would like the moratorium to continue so that some of these issues can be sorted out.

Council Member Herbel commented regarding SB 420 and Prop 215 and advised that guidelines provide that persons can be designated as primary care givers with identification, and it is her understanding that the use of medical marijuana is for serious medical conditions such as AIDS, anorexia, cancer, etc. She noted the issue here in Yucca Valley is complaint driven because the facility is next to a dance studio and parents are concerned. When the parents were asked if they would back down if the dispensary were moved, all but one said yes. This issue is before Council because Mr. Ross would not move that dispensary from its location. This is about land use and living with our neighbors. Mr. Ross is not sensitive to the community values and complaints, and has been insensitive to parents concern about their children's well being.

Mayor Mayes advised he has been struggling with this issue and in the past few weeks has seen articles stating that minors could receive marijuana for ADHD, and that the American Medical Association has asked that marijuana be taken off the narcotic list. He does believe this is a land use issue, but doesn't think the Town can separate what the drug is. He stated the goal for Council tonight is to provide direction to staff and he has heard one member state they were in favor of complete prohibition, one state if one is allowed the Town would have to allow multiple dispensaries, and one state the existing facility is not in a good location.

Council Member Neeb commented all the discussion that has gone on back and forth from the beginning has been that the existing facility is in a horrible spot. He questioned if there is a mechanism that could be put in place so that the facility could be ordered to move in a period of time or be closedown. Town Attorney Haubert commented if the Council decides that certain locations were appropriate for medical marijuana dispensaries, the facility may be able to relocate to those zones. Council Member Neeb questioned if there is a way to move this one and still have until November 23, 2010 to consider where the Town is going. Town Attorney Haubert advised he does not think the Town can compel the facility to move, but if they were willing and could enter into an agreement, it is possible. Council Member Neeb advised he does not want additional dispensaries, but would like to give the issue more time.

Council Member Herbel questioned how the County views dispensaries as far as legality. Capt. Miller advised that the Sheriff's Department is actively opposed, and that the County is drafting ordinance to prohibit dispensaries in the County area.

Council Member Luckino supports prohibition not knowing how long this is going to take. He noted the Council has discussed this issue for one year, and he feels it is appropriate to look at additional regulatory issues in the interim for the existing facility.

Council Member Neeb commented Council has been told if we want to pull the plug on the dispensary we have to give it a year or longer. Town Attorney Haubert advised the Town has a moratorium in place so no new facility can start up and the existing facility can't expand. With regard to what can be done about the existing facility, he advised that a use that preexists a zone change is either grandfathered in or is amortized over time. He noted that this issue is unusual and is not federally allowed. The legal question hasn't been answered yet.

Council Member Herbel questioned how many dispensaries should be allowed if the Town allows them within its limits, and how something like that is decided.

Mayor Mayes commented that the Council is talking about this being a land use decision, and noted there are mobile businesses that don't operate in a physical location. He questioned if marijuana can be dispensed out of a truck or van? Town Attorney Haubert advised if the Town prohibits dispensaries, they would be prohibited Town wide.

Mayor Mayes polled the Council and questioned if there should be an ultimate prohibition; should the existing facility be allowed to stay or amortized, and if dispensaries are allowed, is there a number that could be placed, and whether or not they should be allowed in commercial or industrial areas.

Council Member Neeb questioned if any of those questions continue the moratorium with this facility moving to another location. He is not interested in expanding the number of facilities in town, and the question is getting the facility away from where children congregate. He noted that things that get sorted out over time come to a better solution.

Council Member Luckino stated yes on prohibition and, as far as amortization, he would give a 3 months time frame from when the ordinance is passed.

Mayor Mayes stated that Council Member Huntington talked about this going to the ballot, and questioned if the Council would want to do that in June.

Council Member Huntington commented if the Town allows one facility we have a monopoly in the community, and questioned if a franchise agreement is desired. Also, if San Bernardino County passes an ordinance prohibiting dispensaries in the county he does not want to be the only community in the county that has one. He thinks the ballot issue may be viable for the June primary.

Council Member Neeb advised he would support a ballot issue in the June primary.

Council Member Luckino stated he is opposed noting it is an additional cost. The Council Members were all elected and should make the decision. He wants to act on this as quickly as possible.

Council Member Neeb commented it is probably cheaper to pay ballot costs than legal fees, noting there are costs either way.

Upon further discussion all Council Members stated there should not be more than 1 dispensary and the existing facility should not stay at the present location. With regard to the question as to whether the dispensary should be moved to a different location in Town under different rules and regulations, Council Member Neeb stated it should be moved in a short period of time and the 11/23/10 moratorium should still be the deadline to sort out how far the Town is going to go.

Town Attorney Haubert commented that the important thing for tonight is for the Council to decide on giving direction to the Planning Commission. He noted that the direction so far is that a majority of the Council wants a Town wide prohibition but are questioning what to do with the existing facility.

Mayor Mayes commented that there are other things that have to be pounded out.

Town Manager Takata advised that staff has heard the Council wants prohibition and does not want a medical marijuana dispensary in town, noting the issue will be forwarded to the Planning Commission who will work through the other areas that arise prior to prohibition. They will look at the whole situation including amortization of the existing facility.

15. 2011 Federal Legislative Priorities, Town Council Policy Direction

Deputy Town Manager Stueckle advised that next week the Legislative Committee, consisting of Mayor Mayes and Council Member Neeb, is going to be meeting with Congressman Lewis via teleconference. One of the areas that will be discussed during the teleconferencing is the Town's program and project priorities for 2011. The Town Council has commonly focused its federal legislative requests into traffic safety improvements to State Routes 62 & 247, wastewater treatment and reclamation, regional flood control facilities, Southside Neighborhood Park, transportation facility improvements, energy conservation and conversion, regional animal shelter and multi-use trails system. South Side Neighborhood Park, West Burnt Mt. Basin/Long Canyon Basin/Channel, SR 62 public lands highways discretionary fund and Safe-T Lue, solar projects and wastewater have received funding in prior years. He noted the transportation bill has been kicked back and forth for number of months and is up for reauthorization but it is unclear if that will happen. The Congressman Lewis did submit a request for \$6.5 million for the Town from the reauthorization bill. Congressman Lewis has also requested city input on the WRDA bill which provided funding for the Long Canyon channel. Staff felt that, based upon the length of time for the current project to get through and the level of matching funds required that are not available at this time unless from the General Fund, now would not be the appropriate time to request funding for flood control improvements.

Margo Sturges, Yucca Valley, commented there is great frustration that the sewer system not moving forward, and feels that the Council is ultimately responsible for the Town, including safe drinking water. Council needs to be more proactive.

Council Member Neeb commented that some of the requests require a 50/50 match and if the Town is not fully committed to putting in 50% maybe the Council needs to thin out the list.

Mayor Mayes commented that he knows the Town had one flood control facility that we had received some money for but found it difficult to come up with our part of the match, however he does not think the list should be shortened because we never know where the pots of money are going to come from. This is a solid list and does say what the Council has wanted for legislative priorities.

Council Member Neeb moved to approve the list is the Council’s federal priorities going out to 2011. Council Member Herbel seconded. Motion carried 5-0 on a voice vote.

FUTURE AGENDA ITEMS

Council Member Luckino requested that the Council look at a purchasing policy, and noted he would like to see an amendment to the Town’s purchasing policy to give local preference when able. Administrative Services Director Yakimow stated that issue is on the department’s current work plan.

Mayor Mayes stated that, with an area on the agenda for “Future Agenda Items” he does not feel it is appropriate to have the Mayor able to place items on the agenda without coming to the Council first through this portion of the agenda.

PUBLIC COMMENT

None

STAFF REPORTS AND COMMENTS

Town Manager Takata commented that due to the State’s budget issues the \$5,000 the Town was receiving from CRV has been cut to \$490 this year. He noted that these funds were used for the Town’s Earth Day activities.

Community Services Director Schooler advised that the Christmas tree lighting ceremony will be on Saturday, December 5th at 6:00 p.m.

Council Member Neeb requested that Capt. Miller comment regarding the number of accidents occurring on SR 62 lately. Capt. Miller advised that fatalities have increased and most causes are speed, right of way violations and alcohol related. There is no one particular factor, but the highway is very busy. He reminded everyone to be careful and drive defensively, adding that the Highway Patrol is doing a terrific job writing citations.

MAYOR AND COUNCIL MEMBER REPORTS AND COMMENTS

16. Council Member Luckino

Thanked the Council for giving him the opportunity to be Mayor for the past year.

Wished the Lighting Football team luck this week

Welcomed Lt. Boswell

17. Council Member Huntington

Congratulated Mayor Mayes and Mayor Pro Tem Herbel on their new offices

Congratulated Administrative Services Director Yakimow and his staff for the audit findings.

Welcomed Lt. Boswell

18. Council Member Neeb

Thanked staff for all the hard work on the audit.

Congratulated Lt. Boswell.

Thanked Council Member Luckino for his hard work and the job he did this past year.

19. Mayor Pro Tem Herbel

Thanked Council Member Luckino for the job he did as Mayor and congratulated Mayor Mayes.

Thanked Administrative Services Director Yakimow for a job well done.

Wished everyone happy holidays and encourage all to be careful.

20. Mayor Mayes

Thanked Council Member Luckino for serving last year as Mayor noting it was not always easy.

Commented there is something special about being able to be the Mayor in the Town where you grew up.

Congratulated Mayor Pro Tem Herbel

Congratulated Council Member Huntington for moving up a seat on the dais.

ANNOUNCEMENTS

Next Town Council Meeting, Tuesday, December 15, 2009.

ADJOURNMENT

There being no further business the meeting was adjourned at 8:10 p.m.

Respectfully submitted,

Jamie Anderson, MMC
Town Clerk