

**TOWN OF APPLE VALLEY
TOWN COUNCIL/ SUCCESSOR AGENCY**

**REGULAR MEETING
MINUTES – February 11, 2014**

CALL TO ORDER:

Mayor Bishop called to order the regular session of the Apple Valley Town Council at 6:32 p.m.

Roll call was taken with the following members present:

Roll Call

Present: Council Members Emick; Nassif; Stanton; Mayor Pro Tem Cusack; Mayor Bishop.

Absent: None.

OPENING CEREMONIES

INVOCATION: The invocation was given by Pastor Danotra Johnson, Victory in Jesus Bible Faith Center.

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was led by Fire Chief Sid Hultquist

PRESENTATION:

1. Apple Valley Fire Protective District Request for Support for Extension of Measure V, Presented by Fire Chief Sid Hultquist
2. Autism Awareness Presentation/Proclamation – Presented by Kisha McDonald, Gina Schwin-Whiteside and Joel Whiteside.

PUBLIC COMMENTS

Midge Nicosia, Victor Valley Community Services Council, stated that the VVCSC is the oldest non-profit organization in the high desert in operation since 1956. She thanked the Town Council for previous CDBG funding and stated that they had applied for funding for the new funding cycle. She briefly explained to the Town Council and the public the services that the organization provides.

Jerry Laws, Apple Valley, commented on the Calico Mines in Indio. He also announced that he was running for the 33rd Assembly District.

COUNCILMEMBER COMMITTEE/COMMISSION PARTICIPATION

Council Member Stanton commented on committee meetings and events that she attended.

Council Member Nassif commented on committee meetings and events he attended.

Council Member Emick commented on committee meetings and events that he attended.

Mayor Pro Tem Cusack commented on committee meetings and events that he attended.

Mayor Bishop commented on committee meetings and events that he attended.

TOWN COUNCIL ANNOUNCEMENTS

Suggested items for future agenda:

Mayor Bishop, with the consensus of the Town Council, recommended that a future agenda item be prepared for the next Town Council Meeting regarding support for the extension of Measure V – Apple Valley Fire District Tax.

Council Member Stanton, with the consensus of the Town Council, recommended a future presentation be given by Mr. Kirby Brill to discuss water issues in the high desert.

Time, Date & Place for Next Town Council Regular or Special Meeting:

A. Regular Meeting – Tuesday, February 25, 2014 at 6:30 p.m.

TOWN COUNCIL CONSENT AGENDA

Mayor Bishop announced that Council Member Nassif has a remote interest in specific warrants on tonight's commercial warrants dealing with NAPA Auto Parts for the Town of Apple Valley as the owner of NAPA Auto Parts. Therefore, he will be abstaining from voting on the Warrants for NAPA Auto Parts listed under Agenda Item Number 2. Also, Mayor Pro Tem Cusack has a remote interest in specific warrants on tonight's commercial warrants dealing with Apple Valley Communication for the Town of Apple Valley as owner of Apple Valley Communications; therefore, he too will be abstaining from voting on warrants for Apple Valley Communications listed under Agenda Item Number 2.

Mayor Pro Tem Cusack also announced that he would be abstaining from voting on Agenda Item Number 1 since he was not in attendance at that meeting.

MOTION

Motion by Council Member Emick, seconded by Council Member Stanton, to approve the Consent Calendar items numbered 1-5, respectfully.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Emick; Nassif; Stanton; Mayor Pro Tem Cusack; Mayor Bishop.

Absent: None.

Council Member Nassif and Mayor Pro Tem Cusack abstained from voting on specific warrants listed under Agenda Item Number 2.

Mayor Pro Tem Cusack abstained from voting on Agenda Item Number 1.

1. **Approval of Minutes of the Town Council**
 - A. **Regular Meeting – January 28, 2014**

Recommendation:

Approve the subject minutes as part of the consent agenda.

2. December 2013 - Commercial Warrants Schedule

Recommendation:

That the Town Council receive, ratify, and file the Commercial Warrants Schedule as presented.

3. December 2013 - Payroll/Benefits Warrants Schedule

Recommendation:

That the Town Council receive, ratify, and file the payroll/benefits warrants as presented.

4. Treasurer's Report – December 2013 and Schedules of Revenues, Expenditures and Changes in Fund Balance for the Parks and Recreation Fund and the Apple Valley Golf Course Fund

Recommendation:

That the Town Council receive and file the December 2013 Treasurer's Report.

5. Approval of Budget Amendment Number 14-14 Appropriating Calgrip Grant Funds In The Amount Of \$302,445 into the Public Safety Grant Fund for Gang Reduction, Intervention and Prevention Activities

Recommendation:

That the Town Council;

- 1) Approve acceptance of CalGRIP Grant funding in the amount of \$302,445.00, and
- 2) Approve Budget Amendment Number 14-14 appropriating the CalGRIP grant funds in the amount of \$302,445.00 into the Public Safety Grant Fund.

PUBLIC HEARINGS

6. Appeal of the Planning Commission's Approval of a Request to Amend Condition of Approval No. 35 Of Tract Map No. 14582, Requiring a Two Hundred (200)-Foot Building Setback from San Bernardino County Flood Control District Right-of-Way by Allowing a Seventy-Five (75)-Foot Setback.

Carol Miller, Senior Planner, presented the staff report as filed with the Town Clerk.

Mayor Bishop opened the public hearing at 8:00 p.m.

Arthur Pena, Appellant, presented his appeal before the Town Council. He commented on speaking to the San Bernardino County Flood Control on this matter and the reasoning why they prefer a 200 foot setback for safety. He presented numerous letters and memorandums from various entities supporting his reasoning for the appeal. He also presented pictures that he believed supported his claim of erosion.

Mayor Pro Tem Cusack commented that he visited the site. He shared his observations of the area with the Council.

Mayor Bishop also stated that he visited the site and viewed the condition of the riverbed and the area of the proposed setbacks.

Victoria Pena, Apple Valley, commented on the Planning Commission meeting that was held to discuss this item. She expressed concern regarding the request for the homeowners to sign a waiver if they purchased property in the area. She believed that this was releasing the Town from liability which she felt meant that they realized this was a dangerous area.

Bob Johnson, Apple Valley, expressed concern regarding storms that could cause damage to the homes.

Dana Courtney, Apple Valley, read a letter on behalf of Ms. Louise Harsha who was unable to attend the meeting. The letter expressed concern regarding future flooding of homes. Ms. Courtney respectfully requested the Town Council consider the information provided by Mr. Pena.

Council Member Nassif asked questions of Mr. Johnson regarding the damage of the flooding when the storm occurred.

Mr. Johnson stated that although the water did not come over the bank, he believed it was very close and could possibly exceed the berm if the flooding occurred again.

Gar Brewton, Owner, commented on the opposition expressed from the Flood Control District and whether or not the homes would be safe if built. He briefed the Town Council and the public on the history of the project and the basis for the Flood Control to establish the policy of the 200 foot setback.

Marty Teal, Professional Civil Engineer, commented on statements made by the applicant and the public regarding this item.

Jay Martin, Certified Engineer Geologist, commented on statements that were made by the appellant, that he felt were incorrect.

Mr. Brewton indicated that flood control recommended an erosion test be performed. He stated that researchers from various universities stated that erosion tests could be done but a conclusion could not be reached.

Mr. Pena rebutted the statements made by the applicant.

Brad Miller, Town Engineer, commented on Mr. Teal's expertise in this matter. He believed that he was qualified to make the recommendations that he did as far as the proposed setbacks. He commented on the slope erosion and stated that based on the recommendations from the experts, the proposed homes are not in danger in neither the 100 nor 500 year floods.

There being no additional requests to speak, Mayor Bishop closed the public hearing at 9:20 p.m.

Ms. Miller stated that if the Town Council recommended approval of staff's recommendation, to include approval of Resolution No. 2014-06, that was also included in the staff report.

The Town Council Members commented on their assessment of the area in question and the need to rely on the experts to assist the Town Council in understanding the situation.

MOTION

Motion by Council Member Nassif, seconded by Council Member Stanton, to

1. Find that pursuant Section 15061(b)(3) of the California environmental Quality Act (CEQA), that the amendment is not anticipated to have any direct or indirect impact upon the environment, as it has been determined that the proposed request is Exempt from further environmental review.
2. Find the Facts presented in the staff report support the required Findings for approval and adopt the Findings for Tract Map No. 14582 Amendment No. 3.

3. Approve Tract Map No. 14582 Amendment No. 3, subject to the Conditions of Approval as approved by the Planning Commission on December 18, 2013.
4. Adopt Resolution No. 2014-06, A Resolution of the Town Council of the Town of Apple Valley, California, Approving Tract Map 14583 Amendment No. 3, A Request to Amend Condition of Approval No. 35 of Tract Map No. 14582, Requiring a Two Hundred 200-Foot Building Setback from San Bernardino County Flood Control District Right-of-Way by Allowing a 71-Foot Setback.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Emick; Nassif; Stanton; Mayor Pro Tem Cusack; Mayor Bishop.

Absent: None.

7. **Resolution 2014-04, a Resolution of the Town Council of the Town of Apple Valley, to Record Delinquent Utility Fees and Costs and Code Enforcement Fees Against Real Property Located in the Town of Apple Valley and Directing That Said Assessments Constitute a Lien Upon Said Properties**

Mayor Bishop opened the public hearing at 9:31 p.m.

Marc Puckett, Assistant Town Manager, Finance and Administration, presented the staff report as filed with the Town Clerk.

There being no requests to speak, Mayor Bishop closed the public hearing at 9:32 p.m.

MOTION

Motion by Council Member Nassif, seconded by Council Member Emick, to adopt Resolution No. 2014-04, confirming delinquent utility fees and costs against real property located in the Town, and directing that said assessments constitute a lien upon said properties.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Emick; Nassif; Stanton; Mayor Pro Tem Cusack; Mayor Bishop.

Absent: None.

8. **Adopt Resolution No. 2014-05 - A Resolution of The Town Council of The Town of Apple Valley, California, Establishing Specified Program Fees For Certain Park and Recreation Services for the 2013-14 Fiscal Year**

Mayor Bishop opened the public hearing at 9:33 p.m.

Ralph Wright, Parks and Recreation Manager, presented the staff report as filed with the Town Clerk.

There being no requests to speak, Mayor Bishop closed the public hearing at 9:34 p.m.

MOTION

Motion by Council Member Nassif, seconded by Council Member Stanton, to adopt Resolution No. 2014-05, A Resolution of the Town Council of the Town of Apple Valley, California, Establishing Specified Program Fees for Certain Park and Recreation Services for 2013-2014 Fiscal Year.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Emick; Nassif; Stanton; Mayor Pro Tem Cusack; Mayor Bishop.

Absent: None.

LEGISLATIVE MATTERS

None.

REPORTS, REQUESTS AND COMMUNICATIONS

BUSINESS OF THE COUNCIL

9. **Introduce Ordinance No. 459 - An Ordinance of The Town Council of The Town of Apple Valley Amending Chapter 11.68 Use of Park And Recreation Facilities of The Apple Valley Municipal Code.**

Ralph Wright, Parks and Recreation Manager, presented the staff report as filed with the Town Clerk. Mr. Wright explained the process to educate the public in an effort to enforce this ordinance.

The Town Council each expressed their support for this item and thanked staff for their research on this item.

Council Member Nassif commented on e-cigarettes.

John Brown, Town Attorney, stated that his interpretation of the Ordinance would include e-cigarettes.

MOTION

Motion by Council Member Nassif, seconded by Council Member Stanton, to waive the reading of Ordinance No. 459 in its entirety and read by title only.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Emick; Nassif; Stanton; Mayor Pro Tem Cusack; Mayor Bishop.

Absent: None.

La Vonda M-Pearson, Town Clerk, read the title to Ordinance No. 459.

MOTION

Motion by Council Member Nassif, seconded by Council Member Emick, to introduce Ordinance No. 459 amending Chapter 11.68 Use of Park and Recreation Facilities of the Apple Valley Municipal Code.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Emick; Nassif; Stanton; Mayor Pro Tem Cusack; Mayor Bishop.

Absent: None.

10. Discussion of Churches and Assembly Uses located in Commercial Zones

Lori Lamson, Director of Community Development, presented the staff report as filed with the Town Clerk.

Discussion ensued regarding churches that are located within the community.

COUNCIL MEMBER STANTON WAS EXCUSED FROM THE DAIS AT 9:52 P.M.

Pastor Lee, Apple Valley, commented on a building that his church desires to occupy. He commented on the benefits that church assemblies bring to communities.

COUNCIL MEMBER STANTON RETURNED TO THE DAIS AT 9:56 P.M.

Council Member Nassif commented on churches and assembly uses in commercial zones. He felt that although it may change the dynamics, they have similar uses as other commercial buildings. He also noted that a church would have the ability to apply for a conditional use permit for special events such as banquets, which is a process already in place with the Town.

MOTION

Motion by Council Member Nassif, seconded by Council Member Emick, to forward this item to the Planning Commission to proceed with a Development Code Amendment, and then bring it back to the Town Council for consideration.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Emick; Nassif; Stanton; Mayor Pro Tem Cusack; Mayor Bishop.

Absent: None.

TOWN MANAGER'S COMMENTS & LEGISLATIVE UPDATE

Frank Robinson, Town Manager, commented on a new bill that was introduced regarding massage therapy. He also commented on SB731 that passed in 2008 which was a voluntary program that took control away from local jurisdictions and AB1439 dealing with sweepstakes which include internet cafes.

Mr. Robinson also commented on a ballot measure in the state of California called California Jobs and Initiative Act which is a measure to try and revitalize the redevelopment act.

Mr. Robinson announced that the Mid-year budget will be on the next Town Council agenda. He also announced that the Washington trip with members from the City of Victorville and possibly the County of San Bernardino has been scheduled from May 4, 2014 through May 6, 2014.

Mr. Robinson also commented on upcoming events including the State of the County, City County Conference, and the Annual Furball.

DEPARTMENTAL REPORTS AND BUSINESS:

STAFF REPORTS

CORRESPONDENCE

CLOSED SESSION

11. Closed Session:

Motion by Council Member Nassif, seconded by Council Member Emick, and unanimously carried, to adjourn to Closed Session at 10:08 p.m. to discuss the following:

Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to litigation pursuant to paragraph (3) of subdivision (d) of Section 54956.9 (one or more potential cases).

Upon returning from Closed Session at 11:40 p.m., Mayor Bishop announced that there was no reportable action taken.

ADJOURNMENT

Mayor Bishop announced that the Town of Apple Valley will be closed on Monday, February 17, 2014 in observance of Presidents Day.

Motion by Council Member Nassif, seconded by Mayor Pro Tem Cusack, and unanimously carried to adjourn the meeting of the Apple Valley Town Council at 11:41 p.m.

Art Bishop, Mayor

La Vonda M-Pearson, Town Clerk