

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

**REGULAR MEETING
MINUTES – February 26, 2013**

CALL TO ORDER:

Mayor Emick called to order the meeting of the Apple Valley Town Council/Successor Agency at 5:04 p.m.

Roll call was taken with the following members present:

Roll Call

Present: Council Member Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick. Absent: None.

PUBLIC COMMENTS

None.

CLOSED SESSION

MOTION

Mayor Emick announced that there is an immediate need to take action on two items that came to the attention of the Town after the agenda was posted. Motion to add Agenda Item Number 1C - Existing Litigation, Matter Captioned "Trojan Wellness, Inc., et al. v. Town of Apple Valley, et al.," San Bernardino Superior Court Case No. CIVVS 1204476 and 1D - Conference with Legal Counsel – Existing Litigation Pursuant to Government Code Section 54956.9, Subdivision (A), with respect to the following matter: San Bernardino County Flood Control District and the County of San Bernardino v. San Bernardino Associated Governments, San Bernardino County Transportation Authority, City of Upland, et al, San Diego Superior Court Case No. 37-2008-00079230-CU-CO-CTL.

Motion by Council Member Nassif, seconded by Council Member Stanton, and unanimously carried, that there is an immediate need to take action on two items that came to the attention of the Town after the agenda was posted. Motion to add Agenda Item Number 1C - Existing Litigation, Matter Captioned "Trojan Wellness, Inc., et al. v. Town of Apple Valley, et al.," San Bernardino Superior Court Case No. CIVVS 1204476 and 1D - Conference with Legal Counsel – Existing Litigation Pursuant to Government Code Section 54956.9, Subdivision (A), with respect to the following matter: San Bernardino County Flood Control District and the County of San Bernardino v. San Bernardino Associated Governments, San Bernardino County Transportation Authority, City of Upland, et al, San Diego Superior Court Case No. 37-2008-00079230-CU-CO-CTL.

Motion by Mayor Pro Tem Bishop, seconded by Council Member Stanton, and unanimously carried, to adjourn to Closed Session at 5:03 p.m. to discuss the following:

1. Closed Session

- A. Personnel Matters – Government Code Section 564957/Public Employee Performance Evaluation: Title: Town Manager
- B. Negotiations with Real Property Negotiator – Property located at APN 3112-101-01 and 3112-111-41 pursuant to Government Code Section 54956.8 and 54954.5 (b).
- C. Existing litigation, matter captioned "Trojan Wellness, Inc., et al. v. Town of Apple Valley, et al.," San Bernardino Superior Court Case No. CIVVS 1204476
- D. Conference with Legal Counsel – Existing Litigation pursuant to Government Code Section 54956.9, subdivision (a), with respect to the following matter: San Bernardino County Flood Control District and the County of San Bernardino v. San Bernardino Associated Governments, San Bernardino County Transportation Authority, City of Upland, et al, San Diego Superior Court Case No. 37-2008-00079230-CU-CO-CTL.

Upon returning from Closed Session at 6:31 p.m. Mayor Emick announced that there was no reportable action taken.

TOWN COUNCIL REGULAR SESSION

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

OPENING CEREMONIES

- INVOCATION:** The Invocation will be given by Pastor Joseph Valery, Victory in Jesus
- PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance will be led by Mayor Emick.
- PRESENTATIONS:** Recognition of Fire Department Personnel – Apple Valley Fire Protection District
- Presentation to Barb Stanton – Eldon Heaston, Mojave Desert Air Quality Management District (MDAQMD)

PUBLIC COMMENTS

Tom Piper, Apple Valley, stated that he read in the paper about water rights for sale.

APPLE VALLEY CHAMBER OF COMMERCE – BUSINESS RETENTION UPDATE

Mayor Emick announced that due to an unforeseen circumstance, the Chamber of Commerce will not be providing an update at tonight's meeting. He stated that they will be present at the second meeting in March to provide us with an update.

COUNCILMEMBER COMMITTEE/COMMISSION PARTICIPATION

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

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

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

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

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

TOWN COUNCIL ANNOUNCEMENTS

Suggested items for future agenda:

Council Member Stanton requested a report be prepared regarding a feral cat program

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

- A. Regular Meeting – Tuesday, March 12, 2013 – Council Chambers**
Closed Session at 5:00 p.m.
Regular Session at 6:30 p.m.

TOWN COUNCIL CONSENT AGENDA

Council Member Stanton requested, with the consensus of the Town Council that Agenda Item Number 6 be pulled from the Consent Calendar.

MOTION

Motion by Council Member Stanton, seconded by Mayor Pro Tem Bishop, and unanimously carried to approve the Consent Calendar items numbered 2-5, and that item number 6 be pulled for discussion.

Vote: Motion carried 5-0-0-0

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

Absent: None.

- 2. Approval of Minutes of the Town Council**
 - A. Regular Meeting – February 12, 2013**

Recommendation:

Approve the subject minutes as part of the consent agenda.

- 3. Fee Waiver Request For The American Cancer Society Relay For Life On May 4 - 5, 2013**

Recommendation:

For good cause shown, and finding a waiver will serve a public purpose, approve the waiver of the Facility Rental Fee of \$4,353.13.

4. Dedication of Town Property for Public Right-of-Way

Recommendation:

Authorize the dedication of a Town owned strip of land (750 square feet) along Highway 18 for Public Right-of-Way.

5. Acceptance of Work, Notice of Completion and Release of Retention for the Kasota Road Improvements, Town Project 2012-09

Recommendation:

That the Town Council:

1. Accept the work completed as part of the Kasota Road Improvements for a total cost of \$127,898.48.
2. Direct the Town Clerk to file the Notice of Completion for the contract work.
3. Direct the Finance Director to release retained funds 30 days after the Notice of Completion has been filed, provided no claims are filed against the contractor.

PULLED FROM THE CONSENT CALENDAR

**6. Yucca Loma Bridge Contract Amendment #9 of the Yucca Loma Bridge Contract Agreement, in the Amount of \$229,600.00, for Additional Design, Right-of-Way Services, Parkland Conversion Coordination, and Construction Support
(Successor Agency)**

Brad Miller, Town Engineer, provided an update to the Town Council and the public on the status of the Yucca Loma Bridge project.

MOTION

Motion by Council Member Nassif, seconded by Council Member Stanton, to approve the Yucca Loma Bridge Project Contract Amendment # 9 with Dokken Engineering, the project's design contractor, in the Not-to-Exceed amount of \$229,600.00, subject to "Approval as to Form" by the Town Attorney and "Approval as to Content" by the Town Manager.

Vote: Motion carried 5-0-0-0

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

Absent: None.

PUBLIC HEARINGS

7. Appeal of The Planning Commission's Decision Regarding A Review And Amendment Of Development Permit No. 2006-016 Of Thirty-Five (35) Single-Family Residential Homes For Minor Architectural Revisions And To Reduce The Square Footage Of The Remaining Twenty-Three (23) Single-Family Residences. The Subject Site Is On Approximately Twenty (20)-Acres of Land with a Zoning Designation of Residential Single-Family (R-SF) With the Approved Tentative Tract No. 16134

Mayor Emick opened the public hearing at 7:24 p.m.

Doug Fenn, Senior Planner, presented the staff report as filed with the Town Clerk. He commented on changes within the plan regarding square footage when garages are included.

He read a portion of a statement as submitted by the appellant regarding the reduction in size for the proposed homes.

Discussion ensued regarding the aesthetics for the existing homes compared to the new proposed homes.

Sean Brown, Appellant, presented his appeal to the Town Council. He explained the concern that the residents had regarding the proposed development as well as disputed myths that individuals had about the residents. He expressed concern regarding the reduction in square footage, lack of notification of proposed change to residents as required by code, incorrect square footage presented to residents of actual livable space, lack of adequate explanation of adjacent (transition) property, the fact that the original permit for this project had expired and lack of compatibility of existing and proposed homes. He questioned, and Mr. Fenn confirmed, that there would be no wood fencing within this project.

Teresa Brown, Apple Valley, spoke in support of the appeal. She commented on the need for larger homes for professionals who will be searching for larger homes in Apple Valley.

Jamie Dan, Apple Valley, spoke in support of the appeal. She expressed concern regarding the smaller square footage for the proposed new development.

April Gower, Apple Valley, commended the builder for his desire to build new homes in Apple Valley. She commented that the twelve Desert Home Estates took sixteen months to fill. She believed in that area over 5000 homes are between the livable space of 1500 and 4500 square feet.

Richard Rorex, Apple Valley, commented on people wanting to restrict the building of homes due to fear. He believed that there was no legal reason not to allow the homes to be built.

Kerri Leon, Agio Real Estate, believed that the value of the property would be changed if the square footage was dropped.

Keith Dan, Apple Valley, expressed support for the appeal. He stated that as a doctor, he was told that other residents were also professionals who wanted to locate in an upscale neighborhood.

David Faylor, Evergreen Homes, LLC, stated that he has built approximately 700 homes in the Town of Apple Valley. He thanked the Planning staff for their assistance in this project. He commented on the various elevations prepared by Evergreen Homes for this project that were designed to be comparable to the existing Branding Iron project.

Council Member Stanton asked questions of Mr. Faylor regarding the square footage of the smallest home and the number of garages provided.

Mr. Faylor noted that the smallest home is 1945 square feet, without the bonus room. He clarified the various options to include two or three car garages. He explained that if a buyer chooses the bonus room, it will result in a two car garage.

Discussion ensued in an effort to clarify whether or not homes would be allowed to have three car garages and a bonus room.

Mr. Brown rebutted statements made by the developer. He commented that all of the current homes have three car garages and therefore two car garages are not consistent. He explained that the applicant is stating that he can't go wider when developing the homes, but the homes can go deeper.

There being no additional requests to speak, Mayor Emick closed the public hearing at 8:59 p.m.

RECESSED MEETING

Mayor Emick recessed the meeting of the Apple Valley Town Council at 9:00 p.m.

MEETING RECONVENED

Mayor Emick reconvened the meeting of the Apple Valley Town Council at 9:27 p.m.

Council Member Cusack stated that it has been clarified that each unit will be allowed to have three car garages.

MOTION

Council Member Stanton made a motion to continue this item for two weeks until each item could be clarified and verified.

Motion failed due to a lack of a second.

Council Member Nassif explained his previous vote on the Vista del Sol project and commented on the difference between this project and the Vista del Sol project. He also stated that he believed the actual square footage of a home does not dictate the quality of a project.

Council Member Stanton asked for additional clarification from staff regarding this project.

Mr. Fenn stated that all homes will consist of three car garages.

Council Member Cusack believed that the houses were consistent with the surrounding development.

Mayor Pro Tem Bishop thanked the Council Members for their comments. He stated that he believed homes that have different looks were more appealing and he believed that these homes were built to above standards and therefore supported the project.

Mayor Emick commented on living in the Town of Apple Valley and also living in a neighborhood where the homes are of different sizes and aesthetics which he believed was an attraction for the Town of Apple Valley.

John Brown, Town Attorney, believed that based upon the information presented at the meeting that has been called into question by the appellant, he felt that there was a need to call for a Closed Session which has occurred after the agenda was posted.

MOTION

Motion by Council Member Nassif, seconded by Council Member Stanton, and unanimously carried, that there was an immediate need to add an item to the agenda after the agenda was posted. Motion to add the following:

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

MOTION

Motion by Council Member Nassif, seconded by Council Member Stanton, and unanimously carried, to adjourn to Closed Session at 9:50 p.m. to discuss the following:

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

Upon returning to Closed Session at 10:04 p.m., Mayor Emick announced that there was no reportable action taken.

MOTION

Motion by Council Member Cusack, seconded by Council Member Nassif, to:

1. **Determine** that, based upon the State Guidelines to Implement the California Environmental Quality Act (CEQA), this project is within the scope of the approved Mitigated Negative Declaration that was adopted by the Planning Commission for Tentative Tract Map No. 16314 on May 19, 2004; therefore, no additional evaluation is necessary;
2. **Find** the Facts presented within the staff report for the Council hearing of February 26th, including the information within the Planning Commission's report from January 16, 2013, reflecting the public and Commissioner's comments at the hearing, and the record as a whole as discussed by the Council, and support the required Findings necessary to approve, Development Permit No. 2006-016; Amendment No. 1; and
3. **Deny** the appeal of Development Permit (DP) 2006-016; Amendment No. 1, upholding the Planning Commission's approval of the proposal.

Vote: Motion carried 5-0-0-0

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

Absent: None.

LEGISLATIVE MATTERS

8. Vacancy on the Parks and Recreation Commission

MOTION

Motion by Council Member Nassif, seconded by Mayor Pro Tem Bishop, and unanimously carried, to appoint Mr. Pat Duran to the Town of Apple Valley Parks and Recreation Commission.

REPORTS, REQUESTS AND COMMUNICATIONS

BUSINESS OF THE COUNCIL

9. Fiscal Year 2012-2013 Mid-Year Budget Review

Marc Puckett, Assistant Town Manager, Finance and Administration, stated that due to the late hour, at their request, he would offer to present this report at the next meeting.

Frank Robinson, Town Manager, recommended that the Town Council act to adopt the Budget Amendment as discussed within the staff report. The Mid-Year Budget Review will be brought back to the Town Council at the next meeting.

MOTION

Motion by Mayor Pro Tem Bishop, seconded by Council Member Nassif, and unanimously carried, to adopt the attached Budget Adjustment number 13-22.

Vote: Motion carried 5-0-0-0

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

Absent: None.

10. Approve Participation in Solicitation of Proposals for Professional Services to Conduct a Public Safety Joint Powers Authority (JPIA) Feasibility Study

Frank Robinson, Town Manager, presented the staff report as filed with the Town Clerk. He explained that the City Managers will act as the facilitators of this study.

Tom Piper, Apple Valley, asked for additional information on this item.

MOTION

Motion by Council Member Nassif, seconded by Mayor Pro Tem Bishop, and unanimously carried, to approve a staff recommendation to participate with the Cities of Hesperia, Adelanto and Victorville in the solicitation of proposals for professional services to conduct a Public Safety Joint Powers Authority (JPA) feasibility study.

11. Unauthorized Removal of Recyclables

Jim Andersen, Code Enforcement Manager, presented the staff report as filed with the Town Clerk.

Tom Piper, Apple Valley, commented on the need for some residents to surf through cans for recyclables in order to make a living.

This was a receive and file item only. There was no action taken.

TOWN MANAGER'S COMMENTS & LEGISLATIVE UPDATE

Frank Robinson, Town Manager, provided an update to the Town Council on various legislative bills including SB1 also known as Redevelopment 2.0 and AB 229. He stated that SB 1 would allow cities and counties to create an authority to promote economic development. AB 229 would authorize the creation of an infrastructure and revitalization financing district with voter approval, authorize the creation of the district for up to 40 years and the issuance of debt with a final maturity date of up to 30 year and authorize a district to finance projects in redevelopment project areas and former redevelopment project areas and former military bases. He stated that he would continue to monitor these bills and keep the Council informed.

Mr. Robinson also provided some highlights on the progress of the 2013 ICSC Recon event that will be held in Las Vegas. He stated that the first High Desert collaborative representation is less than three (3) months away.

DEPARTMENTAL REPORTS AND BUSINESS:

STAFF REPORTS

CORRESPONDENCE

ADJOURNMENT

Motion by Council Member Stanton, seconded by Council Member Cusack, and unanimously carried to adjourn the meeting of the Apple Valley Town Council at 10:33 p.m.

Curt Emick, Mayor

La Vonda M-Pearson, Town Clerk