

## Minutes of a Regular Meeting of the Common Council of the Town of Clarkdale Held on Tuesday, March 22, 2005.

A Regular meeting of the Common Council of the Town of Clarkdale was held on Tuesday, March 22, 2005 at 6:00 p.m. in the Men’s Lounge of the Clark Memorial Clubhouse, 19 N. Ninth Street, Clarkdale, Arizona.

**Town Council:**

Mayor	Doug Von Gausig
Vice Mayor	Jerry Wiley
Councilmember	Frank Sa
	Patricia Williams
	Vacancy

**Town Staff:**

Town Manager	Gayle Mabery
Town Clerk	Joyce Driscoll
Town Attorney	Robert Pecharich
Com. Dev. Director	Steven Brown
Deputy Town Clerk	Janet Perry
Police Chief	Pat Haynie

Others in Attendance: Robyn Prudhomme-Bauer, Herb Jackson, Ed Knight, Chris Boothe, Gerald Masar, Susanna Struble, David Ghu, Joan Dwyer, Dennis Edwards, Anke Pirtella, Larry Annen, Randy Boardman, Lisa O’Neill, Bill Seeley, Vilks Warbalow, Hank and Peggy Chaikin, Charles Montgomery, Carolyn Gary, Dave McDonough, Brian Nicoll, Lee and Gail Daniels, Chairperson Stevens and Hank Stevens, Ellie Bauer, Cate Mugasis, Janis Paul, Tom Evans, Mark and Mishi Randall, Marsha Foutz, and Phil and Peg Sarkisian.

**CALL TO ORDER** - Mayor Von Gausig called the meeting to order at 6:05 p.m. and noted that all members were present.

**PUBLIC COMMENT**

*Chris Boothe*, 123 Sunset, apologized for the circus type atmosphere at the last Council meeting. Mountain Gate will alter forever the small-town atmosphere of Clarkdale. Not since the mines closed has such a catastrophic event occurred here. He hopes the Council considers the issues carefully. He requested that the lead content of the soil of Mountain Gate would be looked at during a future meeting. This would have a negative impact for residents.

*Anke Pitrella*, 570 Antelope Drive, thanked the Council for the kiosk in a nice, good location. She

was pleased to see the meeting agenda on it and suggested the Town display the Cliffrose development plat.

**CONSENT AGENDA**

Mayor Von Gausig pulled Item D. Councilmember Sa moved to approve Items A, B and C. Vice-Mayor Wiley seconded and the motion passed unanimously.

Item D - Mayor Von Gausig stated that Judge Dwyer requested this be tabled to April 12<sup>th</sup>.

- A) **RESOLUTION** - Approval of a resolution authorizing the adoption of Building Permit Fee changes.
- B) **RESOLUTION** - Approval of a resolution considering a 2006 Governor’s Office of Highway Safety Plan Grant.
- C) **MEMORANDUM OF UNDERSTANDING** - Approval of a Memorandum of Understanding with Northern Arizona Council of Governments to participate in a Regional Traffic Counting Program.
- D) **AGREEMENT** - Approval of an Intergovernmental Agreement outlining the employment of a Magistrate Court Clerk between the Town of Clarkdale and the Town of Jerome.

**PROCLAMATION** - Approval of a Proclamation naming March 30, 2005 as Verde Canyon Railroad Day. Mayor Von Gausig congratulated the Verde Canyon Railroad. Vice-Mayor Wiley moved to approve the proclamation. Councilmember Sa seconded and the motion passed unanimously.

**REPORT** - A report from the Design Review Board Chair regarding accomplishments, goals, priorities and challenges. Ed Knight, Design Review Board (DRB) Chair, reported on the duties, meeting dates, current vacancy, board members, review procedures, design criteria, site plan review criteria, fiscal year 2004-2005 accomplishments and upcoming projects. He thanked the staff that works

with the board.

Planning Manager Escobar explained the difference between site plan review and design review processes and gave an update on the plant list development.

There was discussion of the board liaison process. It was noted that the DRB reviews commercial and multi-family projects only.

**REPORT – A report by the Town Engineer on the grading permit application for the Mountain Gate development. *Susanna Struble***, from Willdan Engineering, stated they are in agreement that the grading plans are ready to be approved. The plan submittal included a 404 permit and bonding. It is not uncommon for the grading permit to be issued prior to the final plat. It fits within the building code and subdivision ordinance. They are also reviewing submittals for the final plat, which includes final grading plans. She described changes in the grading plans in response to requests the Town made to the developer. The natural flow of the area would be changed to redirect drainage away from the wash on the north boundary of the project towards Deception Wash on the other side of the project. This tipping necessitates retaining walls in some areas. This plan meets all code requirements.

Council discussion included the following issues:

1. It looks like there was a strong attempt to maintain the natural contours.
2. Suggestion that Willdan staff meet with Community Development staff to discuss the project and communicate throughout the project to make sure the project is built in compliance with all requirements.
3. Inquiries about cut and fill along the wash on ht north boundary of the project. Response that heavy excavation is only on about 15% of the project.
4. Visibility of proposed retaining wall adjacent to the wash on ht north boundary of the project.
5. The wall will not be very visible from 11<sup>th</sup> Street and would be softened by commercial development on the other side of the wall.

When standing on the northwest corner, the view would be looking down on the wall.

6. There is a 2/1 slope on the northeast side and that drainage will be mitigated by vegetation. The slope would be about ten feet high.
7. Dirt from cuts would be filled on the same site.
8. Retaining walls between houses would be much like upper Clarkdale.
9. Technical review for the final plat has already begun and that final plat is expected to come before the Council in 4-6 weeks.

Town Attorney Pecharich noted that a retaining wall is necessary to divert water from Hollow Reed Road. It is necessary to carry drainage to Deception Wash. It meets or exceeds Town regulations. It meets or exceeds technical standard.

Empire Construction previously requested and extension of construction hours. *Brian Rhoton*, Empire representative, stated they would like to limit the operation of track equipment and backhoe beacons throughout the project from sunrise to sunset and do equipment maintenance from sunset to 9 p.m.

Mr. Rhoton stated they started the process two years ago. They received zoning and the preliminary plat about one year ago. Since that time they got a 404 permit requirements, biology and archeological reviews all cleared and/or addressed. They met all requirements issued one and a half months ago. They received storm water pollution prevention plan permit. Empire operates with industries best standards of practice. Three weeks ago they were granted an ecological award. They are very sensitive to these issues and are not here to destroy the community. They went to great pains to purchase and develop property to meet the community standard.

Mayor Von Gausig opened the item to public comment. He noted that there was a lot of public comment at the previous meeting and asked that those comments not be restated and stated that

speakers would be held strictly to five minutes.

Town Attorney Pecharich noted that speakers are required to stick to the agenda item, which is the engineer's report.

**Hank Chaikin**, 215 Hollow Reed Road, stated he recognizes the concessions Empire has made. From a personal view, he thinks they have done an outstanding job on how they have addressed drainage in the Hollow Reed area. He wants to hear from the Engineer regarding the sight wall adjacent to the Hollow Reed Road area and that grading must be in compliance with the preliminary plat.

Town Manager Mabery clarified that the preliminary plat retaining walls were originally planned for these and now there is not retaining wall.

Ms. Struble stated that issue would be addressed in the final plat and is not part of the grading permit.

**Chris Boothe**, 123 Sunset Blvd., asked whether the 404 environmental impact study showed lead in the property.

Ms. Struble stated she feels the 404 is applicable to the grading permit. She did not recall any reference to lead, but the 404 would not address that.

**Tom Evans**, 1 Hollow Reed Lane, stated that it was mentioned in the engineering report that the application was reviewed by ADEQ through the county. ADEQ in Flagstaff has not seen this. He stated he would like to be sure ADEQ is reviewing this permit because lead in the soil is a concern. Water to mitigate dust could have arsenic in it. If any arsenic that is present endangers health, who will be liable?

Ms. Struble stated that ADEQ had delegated this to the county. The applicant has met all requirements.

Town Attorney Pecharich stated that the party who is negligent is liable.

**Marsha Foutz**, 313 Main Street, suggested putting a copy of any plans in the library. She asked what is amount of time between grading and replanting to hold dust down or if grading is one phase and it won't be built on for a long time.

Ms. Struble stated that all permanent slopes would

be mulched as they are graded. It is hard to not grade the entire site at one time. They will have bonding that can be held to ensure landscaping is done. She will look at areas that are rough graded as the project progresses.

Mayor Von Gausig closed public comment.

Vice-Mayor Wiley recalled an issue regarding tire burning at the Cement Plant 15-18 years ago. They had the state health department address it and they commented that by the time someone prepares the site, the lead is harmless and it does not metabolize so there would be no health concerns.

**AGREEMENT – Consideration of a grading agreement with Empire Residential Construction L.P. regarding the Mountain Gate development.**

Councilmember Sa stated he had not changed his mind. After the last meeting, another meeting was held when the engineers spoke with them. With this grading plan, portions with significant cuts covers only about 15% of the project. He stated the plan is not as big a monster as we thought it was. The grading permit, when the work is done constitutes more than 75% of what the subdivision would look like. For those who cannot read plans, the plans are well within all requirements. Most grading has little impact and this project complies to most of the Town's wishes. The Council lives here and must live with whatever is done. He recommends they permit Empire to start grading and reminded the public that public comment will also be received during the final plat consideration.

Town Attorney Pecharich stated the development agreement was approved by a previous contract that states that if they develop by our standards, then the Town will let them develop. This Council's responsibility to citizens has added additional conditions. If the Council has the developer wait until final plat to grade, the Council would not have the ability to ask for these additional controls and requirements. The Town will not have this capability at the final plat. The Town engineer has approved the plan and states that the plans meet all requirements. Additional conditions incorporated in the revised agreement could not be required in the final plat.

Mayor Von Gausig opened public comment.

**Mark Randall**, 102 South 15<sup>th</sup> Street, stated he was encouraged with Willdan working on this project. Are their standards in place on how much water to be put on the property and how is that monitored to control dust and what are the repercussions of non-compliance? Dust is a big thing that people are concerned about. He was concerned that EPA standards for particulate matter be monitored. It is a fallacy of logic that early grading would save water. Is the Town ready to monitor this project and certify testing? Does the Town have sufficient staff and engineering support to adequately supervise? Community Development Director Brown stated they have discussed the inspection process and certifications required from the developer. Willdan will carry out inspections as needed and at critical points. If a dust complaint occurs, staff would contact the project foreman. Staff would also monitor the amount of dust in the air. Staff has the authority to halt grading if the contractor does not comply.

Town Attorney Pecharich noted the paragraph in the agreement that inspections are once a day by the developer engineer during grading. There are progress reports also. The developer is to pay for the Town Engineer inspections.

Ms. Struble stated that before they start they would have a pre-construction meeting to discuss the requirements and expectations. The developer has to keep the soil moist to meet compaction standards.

Mr Rhoton explained how track-out areas are done to prevent material from tracking dirt onto the road.

**Marsha Foutz**, 313 Main Street, stated she has not heard anything about using effluent for dust control.

Mayor Von Gausig stated that the limiting factor on using effluent is the availability of trucks to haul all the water, so he assumes they will use both effluent and potable water.

Mr. Rhoton stated they would be using both effluent and water from their well.

**Chris Boothe**, 123 Sunset Blvd., noted that sunrise is 5:15 a.m. If the grading permit passes does it

exempt the contractor from noise complaints?

Town Attorney Pecharich stated that the noise ordinance is still in place.

**Peggy Chaikin**, 215 Hollow Reed Lane, expressed appreciation in the protection of the Hollow Reed area and the trade off of grading to move drainage to Deception Wash. She is happy Empire is going along with changing the construction times. She would like to see the grading hours as six to six instead of sunrise to sunset. If possible can the mulching be installed in patches be done as soon as possible after grading? She inquired about what additional controls are in the grading permit that would not normally be required.

Town Attorney Pecharich read the following from the agreement:

*Paragraph 3. AJ*

3. *Developer, prior to implementation of grading, shall complete each of the following requirements:*

A. *Developer shall submit a full set of sediment and erosion control plans to the Town, for review and comment by the Town Engineer. The sediment and erosion control plan shall be developed by a licensed landscape architect. and shall be maintained in good, functional order throughout the duration of any grading activities permitted by this Agreement.*

B. *Developer shall resolve all issues regarding adequate public services, if any, and off-site easement acquisitions, to the satisfaction of the Town. Developer shall obtain any permits required by any other governmental jurisdictions, including but not limited to, Yavapai County Flood Control and the U.S. Army Corps of Engineers.*

C. *Developer shall complete and file with the Town a final Soils Investigation Report, which shall provide recommendations for earth work and retaining wall design, for review and consideration by the Town.*

D. *Developer shall complete a Phase III Drainage Report and file same with the Town for review and consideration.*

E. *Developer shall provide an estimate for the full amount of the entire site grading and sediment and erosion control measures.*

F. Developer shall post a security bond or other financial assurances acceptable to the Town in an amount sufficient to cover the full cost of the entire site grading and sediment and erosion control measures.

G. Developer shall pay a grading application fee to the Town. The fee shall be based upon the combined total of cut and fill volumes. Developer shall pay a separate fee for plan review. The Developer shall provide to the Town an accurate estimate of quantities, reviewed and approved by an engineer licensed within the State of Arizona, which estimate shall bear the engineer's seal verifying accuracy.

H. Developer shall pay to the Town a retaining wall application fee. This fee shall be based upon the current applicable fees for the Town of Clarkdale, for construction of retaining walls, and shall be paid at the time of issuance of the grading permit.

I. Developer shall pay the Town's total cost for the plan reviews and inspections related to the Grading Plan and installation and maintenance of sediment and erosion control measures.

J. Developer shall comply with the inspection procedure of the Town as follows:

1. Developer's engineer, or the engineer's project representative shall be present on the site for the purposes of inspection of work being undertaken. Developer's engineer, or the engineer's project representative shall be present at the site for sufficient time to conduct inspections and assess compliance with the plans and specifications for each element of the construction, which shall be no less than once a day, when grading is in progress.

2. The Town Engineer shall be entitled to make periodic inspections during construction of the project, as frequently as determined appropriate by the Town, in the Town's sole discretion.

3. The Developer's engineer, or the engineer's project representative, shall be responsible for submitting weekly progress reports to the Town Engineer. The weekly progress reports shall include the results of all tests taken during the preceding week.

4. Developer shall be responsible for paying the Town's total costs incurred for inspections by the Town Engineer during the course of the work permitted

under this Agreement. Invoices submitted by the Town Engineer shall be submitted to the Developer and payment remanded to the Town within thirty (30) days of mailing by the Town.

4. After any approvals by the Town, Developer shall schedule an all day pre-construction meeting for the grading only permit. The Town may require additional meetings at the issuance of the final permit.

5. No reduction of any security posted to the Town shall occur until after the full site development permit is issued, and then only in the amount as reasonably determined appropriate by the Town.

6. If Developer incorrectly begins work on any item not covered under this Agreement, such as utility line installation, then Developer shall pay a double fee penalty pursuant to the Town Code of the Town of Clarkdale, and shall immediately stop work when ordered to do so by the Town.

7. Developer accepts all risk and liability for proceeding to grade the Property at this time. Developer shall hold the Town harmless and indemnify the Town from any adverse conditions, which may arise as a result of Developer proceeding at this time, including re-grading or otherwise changing the Property as may be required by the Town.

8. This Agreement does not represent a finding by the Town that any grading and site work as set forth in the Grading Plan conforms with all aspects of the land use approval and conditions. Therefore, the Town may make future changes or requirements of the Developer for the final Grading Plan, and such changes as required by the Town shall be at the sole expense of Developer. Developer shall modify the grading, if the Town, in the Town's sole discretion, requires modification to the grading, as a condition of final approval.

Town Manager Mabery stated that these provisions are not currently contained in Town Code. Many of these provisions are in excess of a normal grading permit.

Town Attorney Pecharich stated that citizens have been asking for more control and these stipulations accomplish that.

*Lee Daniels*, 1880 Wildflower Lane, extended his

appreciation for presenting this information and that he got most of his questions answered. It was informative.

*Janice Paul*, 1 Hollow Reed Lane, concurred with the sunrise to sunset in general. Would like to see the times defined.

*Hank Chaikin*, 215 Hollow Reed Lane, asked how the contractor is dealing with the site wall.

Mr. Rhoton stated they are willing to work with the Chaikins to construct site walls in whatever location the Chaikins desire. This will be addressed in the final plat.

Councilmember Sa moved to approve the At Risk Grading Permit, with the following stipulations:

1. Empire construction shall execute the At Risk Grading Permit Agreement prior to being executed by the Mayor for the Town of Clarkdale.
2. Prior to any construction authorized by the At Risk Grading Permit Agreement, Empire Construction shall have posted an executed bond in the form approved by the Town Attorney, in the amount of the estimate for grading, retaining wall construction, and sediment and erosion control measures.
3. Prior to any construction authorized by the At Risk Grading Permit Agreement, Empire Construction shall have paid to the Town of Clarkdale for the grading, retaining wall building permits and plan reviews totaling \$114,223.38.
4. Grading hours to be from sunrise to sunset for track equipment and back-up beeps from backhoes.

Mr. Rhoton agreed that during the grading activity there would be no track equipment or backhoe beeping from 6 a.m. or sunrise, whatever is later, until sunset. Vice-Mayor Wiley seconded and the motion passed unanimously.

**PUBLIC HEARING - A hearing to receive public input on Cable One, Inc.'s request to continue to provide services within Clarkdale town limits.**  
Town Clerk Driscoll presented the staff report.

*Dennis Edwards* from Cable One thanked the staff for their work.

Town Attorney Pecharich noted the difference between franchise agreement, which are exclusive, and license agreements, which are non-exclusive. He noted that the statute makes little difference between them.

*Mark Randall*, 102 South 15<sup>th</sup>, stated that the gas company issue of taxing the tribal nation a while ago. Is it legal fundamental law to impose taxes on the reservation?

Town Attorney Pecharich stated the license agreement requires a fee to the Town, not a tax on the reservation.

Mr. Edwards stated they are required to negotiate separately with the nation. In response to a question why the Internet is excluded, he stated that the law excludes Internet services from being taxed.

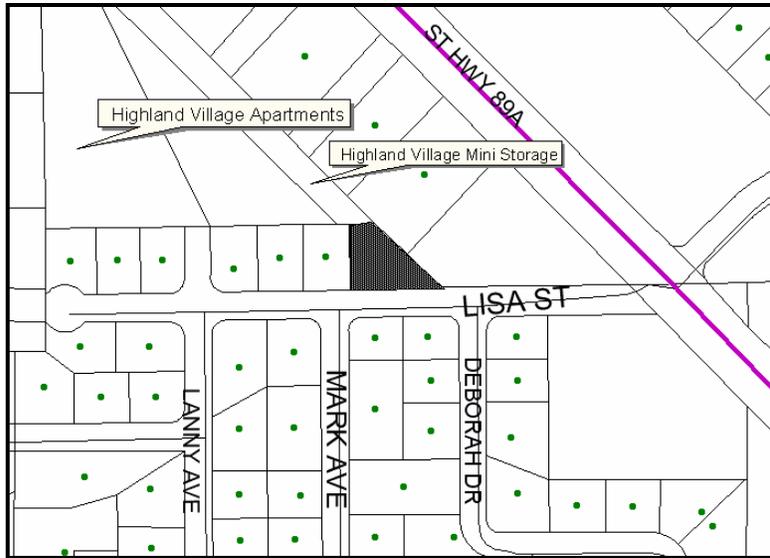
**RESOLUTION** - Consideration of adopting a resolution approving a license agreement with Cable One, Inc. to operate and maintain a cable television system in the Town of Clarkdale.

Councilmember Sa moved to approve Resolution #1136, approving a contract with Licensing Agreement with Cable One, Inc. Councilmember Williams seconded and the motion passed unanimously.

**PUBLIC HEARING** - A hearing to receive public input on a rezoning of Lot 1, Foothills Terrace subdivision, assessors tax parcel #406-21-016 from R1-Residential to C-Commercial. Planning Manager Escobar presented the staff report. She noted that staff sees the benefit of the proposal regarding fire safety and does not feel that the zoning change is detrimental.

Town Attorney Pecharich stated that the Planning Commission has been looking at neighborhood commercial issues. Would this parcel fit the proposed Neighborhood Commercial zoning?

Planning Manager Escobar stated the Planning Commission has not made that determination yet regarding this parcel.



Councilmember Williams stated it would be better to have another driveway through this lot. Town Attorney Pecharich suggested the Council anticipate in the stipulations that neighborhood commercial may be applicable.

Planning Manager Escobar stated that staff would support a stipulation that there would be access through the parcel.

**Randy Boardman**, 1300 Mark Ave, stated he was around when the apartments were first proposed and a lot of citizens wanted a second access, but the Town did not require it. He stated he is representing his neighbors against the zoning change. He feels that the neighborhood commercial zoning should be developed before this zoning change is made. Lisa is a busy street now.

**Charles Montgomery**, 1200 Lanny Lane #13, stated he originally went to see Planning Manager Escobar for a variance and she said he was only able to accomplish what he wanted by a zoning change. He wants to build a house and eventually have the house owner own the mini-storage and possibly have a home office. This provides a buffer, transitional use between the residential and commercial uses. He does not feel this impacts Lisa Street. This lot is the only lot attached to ownership of the mini-storage for twenty years. He noted that he has no immediate plans to sell the business.

Planning Manager Escobar concurred with the

applicant that traffic impact on Lisa is minimal.

**Vilks Warbalow**, 241 Lisa, stated he lives on Lot 2 and the amount of traffic on that road is really horrible and it gets difficult to get onto the road. He thinks that there will be two lots on the current lot and it will be a congested area. He stated he was speaking for his son, Peter, who is out of town. He clarified that a residence is allowable in a commercial zone.

**Randy Boardman**, 1300 Mark Ave., stated he might be okay with the change if he puts a commercial business there. What will that traffic impact be? Will neighbors have a say on what type of business and how would this affect neighboring home resale values? Are they going to put more mini-storage units on this property? The apartments have not been a pleasant buffer between the single family and commercial. He does not want to see something like a convenience store on the property.

Planning Manager Escobar mentioned possible property uses and possible stipulations on the zoning approval.

There was discussion on past vandalism issues.

**ORDINANCE - Consideration of an Ordinance changing the zoning map of the Town of Clarkdale, rezoning Lot 1, Foothills Terrace subdivision, assessors tax parcel #406-26-016 from R1-Residential to C-Commercial.**

Discussion included the following issues:

1. Access is important for safety and to reduce traffic on Lisa.
2. Possible stipulation requiring access through the property.

Mr. Montgomery stated he is not comfortable with losing a current right to just build a house without having to provide access.

Mayor Von Gausig moved to table this item to April 26, 2005. Councilmember Williams seconded and the motion passed unanimously.

**PECK'S LAKE - A discussion about ongoing and future plans for Peck's Lake.** Mayor Von Gausig stated he has been talking with other entities about opening Peck's Lake.

Discussion included the following issues:

1. This is an opportunity to use volunteer labor.
2. Staff does not have time for this issue, so Mayor Von Gausig has agreed to work on it.
3. Next step is to talk to Phelps Dodge.
4. Proposal that lease include all of Peck's Lake.
5. Would need in-kind donations and funds to make it possible.
6. Clarification of what signage would be needed.
7. Security challenges.
8. Phelps Dodge would need to remove the dirt berm.
9. This needs to go to the Parks and Recreation Commission with Mayor Von Gausig attending.

Without objection, the Council agreed to take Item 15, a worksession on impact fees, next.

**WORKSESSION - A worksession to discuss impact fees.** Community Development Director Brown presented the staff report. Discussion included the following issues:

1. The approach staff has used to figure service levels of parks.
2. In favor of impact fees.
3. Economic development is enhanced through impact fees.
4. Impact fees give more negotiating power with developers because the Town can offer credits against impact fees.
5. The Town levies the maximum amount in property taxes already. To raise more requires going to a bond issue.
6. Cities do not get great benefit from property taxes.
7. Staff does not have time to do a study.
8. Worksession with town engineer and to provide proposal to do study. It is necessary to have a study to justify the fees.

Town Attorney Pecharich left the meeting at 9:35 p.m.

**BUDGET WORKSESSION - A worksession on**

**the fiscal year 2005 - 2006 budget including the Capital Improvements Plan portion and the allocation of the construction sales tax revenues.**

Finance Director Gilboy presented the staff report.

Discussion included the following issues:

1. Computer purchases come out of equipment budgets for each department.
2. ¼ % sales tax for Fire District equipment and 1% construction tax will be discussed during the budget process.
3. Summary of local sales tax history.
4. Projected sales tax at fiscal year end is approximately \$65,000 more than budget.
5. The discussion at the time the construction sales tax was enacted was to use the money for capital improvements, specifically the wastewater treatment plant at this time.
6. Reviewed scenarios of what the effects of using the 1% construction tax on wastewater treatment plant project and the correlating user fees.

The Council agreed with the staff recommendation regarding the 1% construction sales tax to draft an ordinance to allocate the construction sales tax to CIP and debt service projects.

**GENERAL PLAN EDUCATION - A presentation on the Environmental Planning portion of the General Plan.** Community Development Director Brown reviewed the environmental planning portion of the General Plan.

**FUTURE AGENDA ITEMS**

Councilmember Williams - Roundabouts on Highway 89A. Town Manager Mabery - ADOT is initiating a public input process.

**ADJOURNMENT -** With no further business before the Council, and without objection, the meeting adjourned at 10:20 p.m.

**APPROVE:**

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Doug Von Gausig, Mayor

**ATTEST:**

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Joyce Driscoll, Town Clerk

**SUBMIT:**

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Charlotte Hawken, Admin. Assistant