

**Minutes of a Special Meeting of the Common Council of the Town of Clarkdale
Held on Tuesday, February, 26, 2008**

A Special Meeting of the Common Council of the Town of Clarkdale was held on Tuesday, February 26, 2008, at 6:00 PM. in the Men’s Lounge of the Clark Memorial Clubhouse, 19 North Ninth Street, Clarkdale, Arizona.

Town Council:

Mayor Doug Von Gausig
Vice Mayor Jerry Wiley

Councilmember Patricia Williams
Councilmember Curtiss Bohall
Councilmember Frank Sa

Town Staff:

Town Manger Gayle Mabery
Public Works Director Steve Burroughs
Finance Director Carlton Woodruff
Town Clerk Kathy Bainbridge
Interim Utility Director Ron Doba

Assistant Town Manger Janet Perry
Community Development Director Sherry Bailey
Police Chief Pat Haynie
Attorney Robert Pecharich
Attorney Kurt Dawn

Others in Attendance: Robyn Prud’homme-Bauer, Ellie Bauer, Angie Smith Mahape, Thomas Beauty and Norman Smith – Yavapai-Apache Nation, Mary Gauaway, Charlie Scully, Vic Viaengo, Josh Stackhouse, Charles Libkie, Bill Bounce, Mannuel Trujillo, Kenny Porter, Bill Regven

CALL TO ORDER - Mayor Von Gausig called the meeting to order at 6:00 PM and noted that all Council members were present.

PUBLIC COMMENT – Mayor Von Gausig informed the audience that the council could not reply to comments on items that were not on the posted agenda per state law. The Council is interested in the public’s comments, but may not be able to respond other than to offer clarification or direct staff. There was no public comment at this time.

CONSENT AGENDA. The consent agenda portion of the agenda is a means of expediting routine matters that must be acted on by the Council. All items are approved with one motion. Any items may be removed for discussion at the request of any Council Member.

Resolution Acceptance of Quick Claim Deed of Tract A, Black Hills Estates, Unit 2 – Approval of Resolution # _____ for a Quick Claim Deed accepting Tract A from Yavapai County Flood Control District.

Approved Resolution # 1253

Vice Mayor Wiley moved that the consent agenda be accepted as submitted, seconded by Councilmember Sa, passed unanimously.

The order of the agenda was changed while the Council waited for Thomas Beauty and Norman Smith of the Yavapai-Apache Nation to arrive.

RESOLUTION DECLARING THE “WATER CODE” A PUBLIC RECORD – Discussion and consideration of a resolution declaring, as a public record, those certain documents filed with the Town Clerk and entitled “Water Code”

Ron Doba, Interim Utilities Director, presented the “Water Code” to Council and requested the document be declared a Public Record. Adoption of this resolution allows the Water Code to be kept on file by the Town Clerk for public viewing in lieu of publishing the entire code in the local newspaper. The Water Code was revised after the worksession the Council had in review of the draft ordinance.

Vice Mayor Wiley questioned 19-3-1 regarding the statement of water being supplied to property or equipment through meter only, except for commercial sprinkler-type fire suppression systems. He wondered where the cost of the water was covered for fire suppression. Mr. Doba replied that typically water suppliers do not charge for water used for fire suppression.

Mayor Von Gausig reported that there was a proposed amendment to the ordinance in 19-3-7, Abandonment of Existing Wells. The section dealt with property owners abandoning their existing well in order to join the municipal water supply system. The procedure for abandonment can be very expensive. In an attempt to give the public both the incentive to join the Town system and abandon the well, an amendment was drafted to give the property owners the choice either to abandon their well per DWR regulations or render the well unusable for any domestic or irrigation purposes and grant the Town permission to use as a monitor well.

The Mayor opened the meeting to public comment and *Robyn Prud’homme Bauer* wondered what incentives there were for people to abandon their well to join the Town system and what the benefit for doing so was. With the cost being very prohibitive, the majority of property owners will probably will only abandon their well and join the Town system if they are having problems with that well. Access to the abandoned well on private property was also questioned, which would be addressed in a water service agreement.

Kenny Porter, an operator of major well drilling outfits in the Verde Valley, was present in the audience. Councilmember Bohall questioned an average cost for drilling a successful well. Mr. Porter answered, depending on the area, costs could be \$8,000 - \$20,000. Abandonment of a well that was drilled up to code when you get the driller that actually drilled the well, costs could be \$1,500 which could go much higher with any complications.

Public comment was closed.

Vice Mayor Wiley moved to adopt Resolution #1254 that declares the “Water Code” document be a Public Record as amended and be kept on file by the Town Clerk, seconded by Councilmember Sa. Approved unanimously.

**YAVAPAI-APACHE NATION PRESENTATION OF LOCAL REVENUE SHARING
Presentation of a revenue distribution from the Yavapai-Apache Nation.**

Proposition 202 passed by Arizona voters in 2002, specifies various guidelines for new gaming compacts between the State of Arizona and the respective Indian tribal nations in the state. A key

provision of Proposition 202 is the sharing of gaming revenue with the state. The stipulations for gaming compacts also permit each individual Indian tribe to retain and administer a portion of the revenue. Specifically, the compacts permit an Indian tribe to make 12% of its total annual contribution to “cities, towns, or counties for government services that benefit the general public, including public safety, mitigation of the impacts of gaming, or promotion of commerce and economic development.”

Chairman Thomas Beauty and Vice Chairman Smith, Yavapai-Apache Nation, presented the Town with a check for \$46,368.75. The requested distribution from the Yavapai-Apache Nation is: 40% - Clarkdale-Jerome School District for education and tutoring programs, 25% - Town priority, 25% - Chamber of Commerce, and 10% - Clarkdale-Jerome School District for athletics program. Mayor Von Gausig accepted the check and thanked the Yavapai-Apache Nation for their continued support of the Town of Clarkdale.

WATER CODE ORDINANCE - Discussion and consideration of adopting by reference a document entitled “Water Code” on file as a public record with the Town Clerk, as an Ordinance creating Chapter 19, Article 19-1 through Article 19-10 and renumbering the Drought and Water Shortage Preparedness Plan from Article 19-1 to Article 19-11, and reserving Article 19-12, of the Town Code of the Town of Clarkdale; Providing for Severability; and Repealing Conflicting Ordinances.

Ron Doba, Interim Utilities Director, presented the “Water Code” Ordinance to Council. This ordinance is adopting the “Water Code”, which was made a public record, as amended, through the Resolution by the previous agenda item. The new Water Code has been crafted by Willdan Engineering under contract with the Town of Clarkdale. The Council has received presentations in the past on the Code and has provided input to Willdan Engineering. The most recent presentation was by Mr. Grant Anderson on January 8, 2008. The Code was modified by Willdan to address the Council’s comments.

Councilmember Bohall moved to approve Ordinance #305 that establishes the “Water Code” Chapter 19, Article 19-1 through Article 19-10, renumbering existing Article 19-1 to Article 19-11 and reserving Article 19-12, seconded by Vice Mayor Wiley. Approved unanimously.

RESOLUTION DECLARING THE “REIMBURSEMENT AGREEMENT” A PUBLIC RECORD – Consideration of a resolution declaring as a public record those certain documents filed with the Town Clerk and entitled “Reimbursement Agreements” Chapter 21, Town of Clarkdale - Town Code.

Ron Doba, Interim Utilities Director, presented the “Reimbursement Agreement” to Council and requested the document be declared a Public Record.

Councilmember Bohall moved to approve Resolution #1254 that declares the “Reimbursement Agreement” document be a Public Record and be kept on file by the Town Clerk, seconded by Vice Mayor Wiley. Approved unanimously.

REIMBURSEMENT AGREEMENT ORDINANCE - Discussion and consideration of adopting by reference a document entitled “Reimbursement Agreement” on file as a public record with the Town Clerk, as an Ordinance creating Chapter 21, Article 21-1 through 21-8, of the Town Code of the Town of Clarkdale; Providing for Severability; and Repealing Conflicting Ordinances.

Ron Doba, Interim Utilities Director, presented the “Reimbursement Agreement” Ordinance to Council. This ordinance is adopting the “Reimbursement Agreements” Chapter of the Town Code, which was made a public record through the Resolution by the previous agenda item. The new Code has been crafted by Willdan Engineering under contract with the Town of Clarkdale. The Council has received presentations in the past on the Code and has provided input to Willdan Engineering. The most recent presentation was by Mr. Grant Anderson on January 8, 2008. The Code has been modified by Willdan to address the Council’s comments.

Vice Mayor Wiley moved to approve Ordinance #306 that establishes the “Reimbursement Agreement” as Chapter 21 of the Town Code, seconded by Councilmember Williams. Approved unanimously.

The order of the agenda was changed in order to address the Mountain Gate agenda items.

UPDATE MOUNTAIN GATE SUBDIVISION – Informational update and discussion regarding Empire Construction’s – Mountain Gate Subdivision.

Town Manager Mabery reported that the Town Attorney has still received no response from Empire to his letter dated February 5, 2008 or to follow up phone calls after the letter was sent. The Town Attorney has started to get telephone calls from home/land owners in Mountain Gate. The Town Attorney represents the Town of Clarkdale as an organization, and not individual residents, and he cannot provide any legal guidance for home/land owners in Mountain Gate. The Town Attorney’s staff is suggesting that any home/land owners who do call him directly secure their own legal counsel.

Attorney Pecharich reported that he has continued checking with the Bankruptcy Courts in California, and finds no verification that Empire has filed for Chapter 11 Reorganization. There are bonds that have been posted by the developer and there are many unfinished items that are required to be finished by the Developer Agreements with the Town. Developer Agreements are recorded and go with title to the property so that Empire or any subsequent owner of the property would be responsible for the obligations due the Town under that Agreement. The lender to Empire, Indy Mac Bank who owns the land, has given a Notice of Trustee Sale, which is a foreclosure proceeding for non-payment of their loan for Empire. It should not affect titled property sold to owners, but will affect property that Empire still owns. The date of the sale is April 29th which means that Empire either needs to complete their informal reorganization by refinancing and go back into business or they will file something with the bankruptcy court before that date in order to avoid the trustee sale. The attorney will advise the town if a filing is recorded before the sale.

Community Development Director Bailey attended the February 19th Mountain Gate Community Association meeting. There was confusion regarding where each one of the home owners stood and

what they could do as a group or individually. The Home Owners Group provided the homeowners a list of subcontractors for each lot for warranty work. The homeowners were interested in knowing the Town's position and that they were not alone. They were informed that the Town would be going through the priority process and would be asking them for feedback on the priority three items which are items that are not immediate public safety issues, but items that homeowners want to be completed.

MOUNTAIN GATE DEVELOPMENT BONDS – Consideration of directing staff and the Town Attorney to proceed to file claims against the bond companies for obligations due to the Town of Clarkdale under the Development Agreement between the Town and Empire Residential Construction for the Mountain Gate Subdivision.

Town Manager Mabery informed the Council that the Town Staff and the Town Attorney have been working to identify the outstanding infrastructure issues and development agreement obligations that relate to the Mountain Gate subdivision. Town Attorney's advise is for the Council to direct staff and the Town Attorney to complete the punch list as much as possible, and move forward with a claim against the bond companies associated with the Mountain Gate project.

At this point in the evaluation, it appears that, although the bonds will not be in an amount sufficient to complete all remaining infrastructure in the project, we should be able to address the most critical needs in priority levels one and two and some of level three priority with the money available in the bonds.

Part of the assessment of the outstanding infrastructure issues and development agreement obligations consists of prioritizing those obligations from most to least critical. Priority levels have been established along with phases. The list is in excess of one hundred items, which has been identified into priorities from one to three, with one being the highest priority for completion and three being the lowest.

Mayor Von Gausig wanted to make sure that everyone in the subdivision is aware that the Town would be soliciting information regarding the level three priority items, not just a few representatives of the Home Owners Association.

The Town has remaining bonds from Arch Insurance in the amount of \$450,572, Bond Safeguard Insurance Company in the amount of \$139,514, and Bond Safeguard Insurance Company in the amount of \$1,710,000.

Vice Mayor Wiley moved and seconded by Councilman Sa to direct staff and the Town Attorney to proceed to file claims against the bond companies for obligations due to the Town of Clarkdale under the Development Agreement between the Town and Empire Residential Construction for the Mountain Gate Subdivision. Motion carried unanimously.

WORKSESSION WITH PLANNING COMMISSION - Worksession between the Town Council and the Planning Commission to discuss the Smart Growth Checklist and Form Based Codes.

Due to the fact that an agenda had not been posted for the Planning Commission, the meeting was opened to public comment at which time the Planning Commission Chair reported for the Planning Commission. A quorum of the Planning Commission was not present.

Community Development Director Bailey reported that the state adopted the Growing Smarter legislation on August 21, 1998. Growing Smarter Plus legislation became effective on May 18, 2000. Growing Smarter legislation provides comprehensive land use planning and zoning reforms including the acquisition of open space. This legislation was intended to give residents of Arizona cities, towns, and counties a number of tools to shape growth in their own communities, such as the right to vote on general plans and restrictions on how general and comprehensive plans can be amended. Both acts required reforms to local planning and zoning laws for municipal, county, and State land including mandatory rezoning conformance with general plans and more effective public participation in planning.

In 2007 the Growing Smarter Guiding Principles were adopted which gave further guidance to towns and cities on future development and handling growth issues. The Governor and the Growth Cabinet Advisory Board have now developed a proposed checklist which is a valuable tool for a community to use to conduct a self-assessment on meeting the goals of the Growing Smarter legislation. Communities were asked to review the checklist and provide comments back to the Growth Cabinet Advisory Board by March 3, 2008.

Planning Commission Chairperson Bayless and Commissioner Regner presented the comments the Commission would like to include in their comments back to the Growth Cabinet Advisory Board.

1) If the items on the checklist are important "Growing Smarter" issues then all communities, regardless of size, should be encouraged meet all of the guidelines. This checklist should be considered a communities chance to assess itself and the efforts the communities have taken. Regional approaches to solutions, particularly for smaller communities should receive recognition.
2) How are the score card answers evaluated and verified? 3) Sustainability items were not a measureable issue, and they should be.

The Community Development Department will draft a comment letter and send it to the Growth Cabinet Advisory Board by March 3, 2008.

Community Development Director Bailey informed the Council that the Town moving towards a more Form Based Code approach which will meet the guiding principles guidelines. Section II of the Smart Growth Checklist assesses the Preservation of Community Character. Form Based Codes and the regulations and standards associated with them are a way to designate the appropriate character of development rather than only distinctions in land-use types. Mayor Von Gausig questioned how the design review function was affected by form based codes. Community Development Director Bailey replied that you have your districts, standards and formats but you encourage specific approaches or design elements and that goes to design review and the applicant has the responsibility to propose their design and support how it meets standards. There will be different zones in the community and form based codes will be used for infill. Future designs will have to have a positive impact on the surrounding area.

WORKSESSION - A worksession to discuss and update the Council on a section of the Centerville Road connection going through the Centerville neighborhood.

Steve Burroughs, Public Works Director, updated the Council on the proposed connection of Centerville Road from Hwy 89A to Broadway. As part of the Mountain Gate development, Centerville Road has been constructed to their South property line adjacent to the Centerville Community. Also as part of Mountain Gate Subdivision Agreement, Empire was obligated to construct the connecting road once the Town had secured the needed property within the Centerville Community. This extension of Centerville Road will connect from Mountain Gate property line passing through the Centerville Community to the new road alignment ADOT is constructing as part of the Highway 89A widening project.

Public Works Director Burroughs reported that this was a review of connection options for the Centerville Road as it passes through the Centerville Community. Road costs would approximately \$225,000 - \$255,000. Option "A" alignment impacts four properties and would have approximate additional costs of \$220,000. Option "B" alignment impacts of one property with close proximity to a second with approximate additional costs between \$125,000 - \$130,000. Option "C" alignment impacts one property with a greater distance from others with an approximate additional cost of \$175,000. There would be additional costs for land purchase also. Mountain Gate would be responsible for the construction costs and the Town would be responsible for land acquisition costs. The Council directed Public Works Director Burroughs to pursue Option "C".

FUTURE AGENDA ITEMS – Listing of items to be placed on a future council agenda.
Verde River Basin Partnership Intergovernmental Agreement

ADJOURNMENT - With no further business before the Council and without objection the meeting adjourned at 8:45 PM.

APPROVED:

Doug Von Gausig, Mayor

ATTESTED:

Kathy Bainbridge, Town Clerk

SUBMITTED:

Walt Good, Deputy Town Clerk