

# DRAFT

## MINUTES OF THE STUDY SESSION OF THE TOWN COUNCIL OF THE TOWN OF CHINO VALLEY

**TUESDAY, JUNE 30, 2020  
6:00 P.M.**

The Town Council of the Town of Chino Valley met for a Study Session in the Chino Valley Council Chambers, located at 202 N. State Route 89, Chino Valley, Arizona, on Tuesday, June 30, 2020.

Present: Mayor Darryl Croft; Councilmember Mike Best; Councilmember Corey Mendoza; Councilmember Annie Perkins; Councilmember Lon Turner

Absent: Vice-Mayor Jack Miller; Councilmember Cloyce Kelly

Staff Town Manager Cecilia Grittman; Town Attorney Andrew McGuire (remotely); Public Works

Present: Director/Town Engineer Frank Marbury; Development Services Director Joshua Cook; Assistant Planner Will Dingee; Water Consultant Mark Holmes; IT Manager Spencer Guest (videographer); Deputy Town Clerk Erin Deskins (recorder)

### 1) CALL TO ORDER; ROLL CALL

Mayor Croft called the meeting to order at 6:03 p.m.

The Mayor played a tribute video to the Granite Mountain Hot Shots who lost their lives fighting wildfires in the area.

Councilmember Turner reported that he had been on the UDO Subcommittee for over a year, preparing to meet with Council to discuss the proposed Subdivision Regulation Amendments. He requested that members keep an open mind, make suggestions, and ask questions. The amendments were focused on lot splits and potential changes in the Town's administration of the Town Code. He explained that nothing had changed in the Town Code for years and they were bringing forward proposals for change. Past employees may have misstated the procedure to developers for the development of lot splits that may have conflicted with State statutes. Some lot splits had caused issues for the Town and property owners that were not apparent to the developer, such as lack of road connectivity, drainage issues, and easements that became substandard roads. The Town's duty was to protect the personal property rights of all citizens within the corporate boundary. The role of the Town's zoning administrator was to enforce the Town Code, which included UDO ordinances. The language in the UDO could be confusing and sometimes appeared to have conflicting guidelines. The subcommittee, Staff, and Town Attorney had been in the process of rewriting the code and addressing the structure, eliminating conflicts, and ensuring it adhered to State Statutes. Additional zoning categories had been added and zoning districts had been created to be more coherent with the Town.

The Zoning Administrator, Town Council, and Town Attorney had determined that approval of a lot split that created a street or created more than four lots, was a subdivision and had denied lot splits that presented those criteria, as they would need to go through the subdivision process. The

Town also realized the process for major and minor subdivisions were difficult for subdivisions of one acre or larger and did not fit with the semi-rural environment. The subcommittee had been working on a rural subdivision category that allowed relaxed standards because of the lack of density. The language was being worked through with the UDO Subcommittee and it would be presented at this meeting for discussion.

The Mayor reviewed the procedural process for the meeting.

2) Consideration and discussion regarding Subdivision Regulation UDO Amendments. (Joshua Cook, Development Services Director)

Mr. Cook presented the following:

- The draft language was available on the Town's website in two versions. One was the marked-up version showing the changes, deletions and additions. The other was the clean version with the changes incorporated.
- Staff had met five times with the UDO Subcommittee to discuss regulations and changes; all had been advertised and were open to the public. Several people attended those meetings.

*Subdivision Process - Minor Subdivisions versus Major Subdivisions:*

- The process detailed what was to be submitted to the Town for consideration and review. The current regulations had no difference in the process between the two in regards to submittal and infrastructure requirements.
- They were proposing to reduce the submittal requirements for minor subdivisions, which was ten or fewer lots.
  - A preliminary plat would not be required and it would go straight to Council for final plat and technical review.
  - Drainage, traffic study, and geotechnical submittal information was waived, provided the applicant could submit documentation to the public works director that satisfied any areas of concern based on site conditions of the property.

*Proposed Two Types Of Subdivisions:*

- Urban Subdivisions were for properties in which lot sizes were under one acre.
- Rural Subdivisions were for all subdivisions one acre or larger.
  - Rural subdivisions would have reduced infrastructure.
  - Two to three lots would require a dust free road surface.
  - Four to ten lots would require a double chip road surface.
  - These streets would be private streets and the Town would never accept the streets as right-of-way unless the property owners brought the street standards up to the minimum dedicated street infrastructure requirements.
  - Reduced infrastructure included sidewalk, curb and street widths. Two to three lots would only be required to have a 20-foot infrastructure width.
- The subdivision regulations had not removed the possibility of land splits not requiring a subdivision or generally-called lot splits. Town staff had been reviewing lot split submittals based on the criteria of a parent parcel being split within the last ten years.

Mayor Croft reviewed how the Town and other cities and towns had handled the business of lot

splits presently and in the past. The Town was aware of the A.R.S. requirements and knew how business needed to be conducted now and into the future and will revise Town policies and procedures accordingly. The UDO Subcommittee, staff, Council, and Town Attorney had spent many hours reviewing documents and listening to comments to develop a draft document. Now they needed constructive comments from Council, Staff, and citizens as the draft document was reviewed and finalized as it passed through Planning and Zoning Commission and Town Council for a final decision.

Councilmembers discussed the fact that the Subcommittee reviewed the information and did the best they could to develop the proposed language with the knowledge and history that they had available. Citizens should provide reasons for any requested changes.

Public Comment:

Allen Foster stated that all this had been reviewed nearly two decades ago, resulting in restrictions to control growth, all of which were later discarded. He has had an open mind and hoped Council would listen to the people in the room. He believed the Town's proposal conflicted with State Statutes and the rest of the state in that lots could be split with an easement. Staff's references appeared to apply to real estate law, not these applications. The Town was presenting some good ideas, but needed to keep people's personal property rights in mind. As a scenario, if he had nine acres and wanted to do a minor subdivision, if he could do an easement, but if he wanted to split his lot three times and give the land to his children, he did not think he would be allowed to do an easement and might need to do a flag lot. Once, he sat on a Town committee, which had one main purposes to eliminate flag lots because they were a nuisance to the Town.

Ryan Roberts related that the bullet points did not cover many things like water supply, easements, and sewer and water requirements. They were missing almost everything needed to determine whether someone was going to do a subdivision. The cost of putting water and sewer into a minor subdivision was so high it was not worth doing. He questioned if the Development Services Director was qualified to determine if an engineer would be necessary for the drainage. He liked several things in the minor subdivision, but it did not apply to people splitting into only two or three lots because the cost of sewer and water was too substantial. Wells and water were not addressed, and he thought this was the front and the sneaky stuff would come after. Staff clarified that it would be the Public Works Director, not the Development Services Director, that would determine the drainage requirements.

Mark Marcinek explained that he bought a three-acre piece of property out at Road 1 West. He will do whatever he needs to do with his 50-feet of road to keep the neighbors happy and keep Chino looking nice, but he was confused about how much it would cost him. He wanted to make things right and have it spelled out so he knew the steps, as it was too vague and not clear enough. Staff explained that the drainage level would be determined by the Public Works Director and depended on the property.

Kasey Rock told Council that he bought two acres in 2018 and at that time, Town Staff had told him he could split it. A year later, he checked in again, and was told he could split it. When he submitted his paperwork in March 2020, he was told by the Town that he could not split it. Staff asked if he had gotten that approval in writing and he pointed out the Staff member who had told that to him. He explained that the three acres right beyond him had been split into three one-acre lots and felt that a precedent had been set in the area. Staff stated his two acres had been a nine-acre piece, and previously was a piece of 18 acres and 32 acres before that. He questioned how far back the Town needed to go. This process started because of an illegal easement, but now

it seemed the easement was not the issue, but that the property had been split multiple times in ten years. He and others had read the A.R.S. and it did not reference a ten-year window. That was from the Department of Real Estate and it seemed it was being used as a box to check for possible collusion. He wanted to see the State Statutes before the Town implemented ten years.

Councilmembers, Staff, and citizens discussed the following:

- Councilmembers asked if they needed to start with what the existing code stated because the rules had been in place since 2006 with only minor changes.
- *A.R.S. Title 9.* Staff and Council explained per Title 9, if the purpose for dividing the land or lands was for financing sale or lease into four or more lots, tracts or parcels of land, it was a subdivision. Two or more lots, tracts, or parcels of land with a new street (Town Code defined a street as an easement), was considered a subdivision. This rule in A.R.S. Title 9 had been copied and pasted into the UDO. This rule appears to be in perpetuity and the parent parcel did not reset. Once a property was split under that regulation, any further split would constitute a subdivision. The ten-year rule that was proposed was so that the Town actually had a date, otherwise almost every other property in Town had fallen into a subdivision. The way the code had been written in the past made it impractical for citizens and the ten-year rule was meant to help, not hinder.
- *A.R.S. 32-2101.* Staff explained that the ten-year rule was found in A.R.S. 32-2101 in the Department of Real Estate Section, not in Title 9, so municipalities were not bound by the rule. The Department of Real Estate, in order to determine if there was an intent to subdivide, would look at any division of land over ten years. In some areas in Town, lot split after lot split proved there was an intent to subdivide. The land split not requiring a subdivision was such a small section in the Town Code that it implied it should not be the rule but the exception. That had not been followed in the past. In Title 9, there was no reset for property to become a parent parcel. Using the ten years, Staff was trying to follow what the Department of Real Estate used so that the determination would have a reasonable time frame. Town Attorney McGuire stated that Staff had done a good job explaining the process and the ten-year interpretation was a means to put a framework around the current law so that it made sense for Town.
- *10-year rule.* Allen Foster stated Town Staff had not been consistent, in that he was told the ten year rule was from Title 9. He had suggested the Town use Dewey-Humboldt as a reference for their regulations and use five years instead of ten; and Staff told him the Town did not want to use Dewey as their reference. Council clarified that the current code stated that once something was split, it could no longer be split without being a subdivision. Ryan Roberts said that no one else throughout the State agreed with Town's interpretation of State Statutes. He recommended making sure everything was clearly written, that it be less than ten years, and that the Town look at what the rest of the state was doing in regard to lot splits.
- *Parent parcel definition.* Ryan Roberts questioned where the term 'parent parcel' came from and expressed concern about paraphrasing State Statutes because the meaning changed. Staff explained that the term 'parent parcel' was not mentioned in the Town Code, but the definition eluded to it when it referenced improved or unimproved land or lands.
- *Lot splits.* Darelyn Rock questioned whether her two acres of land that had been split before could not be split again. Staff explained that her property had been part of a larger split and had issues with the required lot frontage. There should have been a subdivision created. Lot splits were not specific to owners, but to land.
- *Current issues.* Council explained that despite what previous Staff and Council had failed to enforce, the population of Town was growing and now there were drainage and public safety issues. The present Council and staff were now trying to correct the situation. Council understood there were individual cases that needed to be worked out and they desired to

clean up the language so it was clear and easier to understand. They were sure the individual issues could be worked out between Council, Staff, and the Town Attorney. Going forward, they would consider the comments including the ten-year timeline as mentioned by citizens. Council encouraged the citizens to read the proposed language and thought they would be happy with what was suggested.

- *Staff approvals/denials.* Ryan Roberts questioned why the 10-year rule was being used if it was not in the code. Staff explained he had provided all his letters for lot splits to the Council for either approving or denying along with justifications for the decisions. Council stated they had seen Mr. Cook's letters of approval and denial, all of which cited the code for reasons justifying the decisions. Attorney McGuire pointed out that the Town of Dewey-Humboldt used the term "parent parcel" and that the Town was trying to put something in place that would not need a lot of interpretation. The text was in draft form and the Town wanted input on whether the language was reasonable and if not, what would make it reasonable. Dust control and drainage regulations were carved out of the State Statute, so those could not be changed or modified.
- *UDO text amendment adoption.* Tom Armstrong noted that the Town was breaking new ground by using a standard with a timeframe. He asked about the timeframe to get the new language finalized. Council said that there would most likely be another meeting within two to three weeks, and folks should bring comments to the table for consideration. Council was hoping that subdividing property would no longer be a bad thing. Attorney McGuire recommended reading the clean version of the rewrite because the redline copy was difficult to read due to the large number of changes.
- *Streets/easements.* Staff explained that the moment a street or easement was created by a split of two or more lots, it became a subdivision. The same process would be followed whether a street or easement was created for either a three-lot or nine-lot division of land. The Town did not care whether an easement, private street, or public street was created for access. The only way to get around this rule would be to create a flag lot, for which the code had separate provisions.
- *10-year rule.* A Councilmember asked if the 10-year regulation had been imposed before Mr. Cook was brought in. Mr. Armstrong, Planning and Zoning (P&Z) Commissioner stated that had never been brought before P&Z. A question was asked if current properties with applications could be grandfathered because it appeared the process would be timely. Mayor Croft stated that Staff was working from current guidelines and those questions could be brought to the UDO Subcommittee for a Council recommendation. Staff had been enforcing the 10-year timeline. Attorney McGuire explained this was being done because the current code was open ended and had no timeline, so the 10 years was giving a more reasonable timeline, rather than using the whole 50-year incorporation period. The question for Council was what the right number would be for the Town.
- *Water resources.* Water Resources Consultant Mark Holmes explained that the Arizona Department of Water Resources (ADWR) considered six or more units a subdivision. If six or more lots or pads would be sold, they would look at assured water supply (AWS) requirements. The Town was not the regulatory overseer, as the Town deferred to ADWR. There were several things required by the State to get the 100-year AWS. There was a considerable cost to getting the certificate of AWS.
- The Town was also in the Prescott Active Management Area, which had very limited water supplies and was currently in overdraft, and had the highest regulatory laws and requirements. There was also a lot of history with dry lot subdivisions within the County and Town. There were AWS requirements if a dry lot subdivision was proposed, and if the developer was successful in getting the Town's approval to move forward, the State would still require several things such as physical availability under the proposed land for 100 years of wells being drilled for each one acre or larger type of parcel and proving the water table would not drop 400 feet below land surface. Also required was a safe drinking water

quality test through a test well or existing well. If safe drinking water standards were not met, the dry lot subdivision would not be allowed. All three requirements needed to be met. A groundwater model was also required, which was very expensive. There was an analysis being conducted to quantify the water because the water in Town was extremely limited. Some lots on the west side had gone completely dry and had to haul water, and that was forever.

- A councilmember was concerned about water and the only way to get the water back was through the sewer and getting water credits for the Town. It would come to the point where land splits could not happen because of lack of water. The aquifer lost three to four feet each year. Attorney McGuire added that ADWR operated by their own standards and would not consider 10-year Department of Real Estate Standards. Allen Foster believed the Town was disenfranchising the smaller sub-divider because of the cost.

### 3) ADJOURNMENT

MOVED by Councilmember Lon Turner, seconded by Councilmember Mike Best to adjourn the meeting at 7:37 p.m.

AYE: Mayor Darryl Croft, Councilmember Mike Best, Councilmember Corey Mendoza, Councilmember Annie Perkins, Councilmember Lon Turner

**5 - 0 PASSED - Unanimously**

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Darryl L. Croft, Mayor

ATTEST:

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Jami C. Lewis, Town Clerk

### CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the Town Council of the Town of Chino Valley, Arizona held on the \_\_\_\_\_ day of \_\_\_\_\_, 2020. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Jami C. Lewis, Town Clerk