

**MINUTES OF THE STUDY SESSION MEETING
OF THE TOWN COUNCIL OF THE TOWN OF CHINO VALLEY**

**TUESDAY, MAY 24, 2022
5:00 P.M.**

**CHINO VALLEY COUNCIL CHAMBERS
202 N. STATE ROUTE 89, CHINO VALLEY, AZ**

Present: Mayor Jack Miller; Vice-Mayor Annie Perkins; Councilmember Tom Armstrong; Councilmember Eric Granillo; Councilmember Cloyce Kelly; Councilmember John McCafferty; Councilmember Lon Turner

Staff Present: Town Manager Cindy Blackmore; Town Attorney Andrew McGuire (remotely); Assistant to the Town Manager Terri Denemy; Development Services Director Laurie Lineberry; Administrative Services Director Joe Duffy; Public Works Director/Town Engineer Frank Marbury; Senior Planner Will Dingee; Planner Bethan Heng; Audio Visual Technician Lawrence Digges; Deputy Town Clerk Sara Burchill; Town Clerk Erin N. Deskins

1) CALL TO ORDER; ROLL CALL

Mayor Miller called the meeting to order at 5:00 p.m.

2) Discussion regarding Messenger Lane drainage (Frank Marbury, Public Works Director / Town Engineer)

Public Works Director/Town Engineer Frank Marbury presented the following:

- This had been brought to the attention of staff and Council several times as a concern and through complaints.
- Staff had found an engineer to perform a drainage analysis.
- The most recent area of concern was at 475 Messenger Lane (first house on the corner). There had also been complaints from the Snyder's on Messenger Lane (third house from the corner).
- The issues were due to the way the area drained.
- A review of how the water drained from the high points to the culvert that crossed Road 1 North to the low points where the water drained, was provided. The water drained to the north. The outlet of the pipe was directed at 475 Messenger Lane. The water flowed across Messenger Lane at the tip of the cul-de-sac and in between the Snyder house and their garage. The Snyder's had their garage flood previously. The water went through a backyard behind 475 Messenger Lane and through the culvert. The lots had been created by a rezone and lot splits. The development was not part of a subdivision and had no construction plans.
- Based on available information, staff believed the 18 - 20-inch iron pipe culvert was put in place in the early 1990's. The house at 475 Messenger Lane was constructed in 2014.

- The development's zoning was established in 2013 (Ord. 13-772) and had six zoning stipulations attached. One stipulation required a minimum finished floor elevation to be set by an engineer and reviewed by the Town engineer. A records request for that information had been filed by the homeowners, but the Town did not have a record of that home elevation being reviewed by the engineering department. Staff could not say for sure that one did not exist, but they did not have record of it.
- Martin Messenger of MD Builders was the signatory and the applicant for the rezone and the applicant on the building permit for the subject house. They should have at least had notice of the elevation requirement.
- Messenger Lane had been built through a settlement between the Town and MD Builders, in which MD Builders graded the road and based the road with gravel. The Town chip sealed the road around 2017. The road was dedicated to the Town.
- Lyon Engineering and Survey studied and surveyed the area. The house's finished floor was approximately six inches above the low point of Road 1 North and the garage was only a half inch above the road. The house was built a foot above existing grade, which was typical, but it also should have been built a foot above the road grade, which it was not. This was significant because of the way the water topped the road.
- The Lyon's study showed that the existing culvert did technically meet Town code because the code required that a 100-year flood event could not overtop a road by more than one foot. There was a 1% chance of a 100-year event happening.
- In their study, the engineers also predicted that 475 Messenger Lane could see water in it with a storm event as small as a ten-year event.
- The engineers determined that by adding additional culverts, the risk of flooding the house could be lowered. The engineers also determined that there was very little risk to the property structures to the north even if more water was released through the area.
- The engineers predicted that a two-year storm was three inches below the house's finished floor elevation and the 100-year storm was six inches above the finished floor elevation.
- All of the options given to address the issue let the same amount of water through the culverts, but the culverts themselves were different sized pipes: 15-18 inch pipes; 10-24 inch pipes; and 6-30 inch oval shaped pipes. These should keep water out of the living structure, but there could still be water in the garage. The prices would vary with the different pipes. The engineer estimates were between \$70,000 and \$100,000.
- Back in 2017, the Council approved a priority list of flood control projects through use of the County flood control money that was shared with the Town. The list originally had approximately four projects and there were two projects remaining from the list:
 - Cemetery Draw at Chino Meadows II, which had flood waters ranging from one to three feet. The project would carry water to the Santa Cruz wash. It was the next project on the list for project design and would begin in the next fiscal year. It would most likely require federal approval because it would change the way water went into the wash, which was federally regulated. The first step would be to have a design concept and get federal approval.
 - Chino Wash crossed Reed Road and Road 5 North. The floodplain crossed both roads and was closed every monsoon season. This was an expensive multi-year project.
- It was up to Council to determine the priorities and where the money would go.

Council, Town Attorney, and staff discussed the following:

- This was the developer's responsibility but was being considered by the Town because there was no record found of an engineer's certificate. This was the classic example of

why the Town developed subdivision regulations. It prevented the developers of lot splits from not following the requirements of the Town's development regulations.

- Legal Council did not know if the Town had a cause of action to go after Mr. Messenger. Any recourse would need to be through the property owners.
- It was unclear if the Town ensured zoning requirements were met. It was the builder's responsibility to meet the stipulations, even if the Town missed getting the record from them. Presently, the Town engineer and the building department now worked together to ensure that all requirements were being met.
- When the original project went through the Planning and Zoning, it had been questionable from the beginning. The subject property may have been the first property that Mr. Messenger built, and it was believed that there was a Town document that required buyer disclosure regarding the lot splits. Legal Council would need to research the issue further and the information could be provided to the property owners.
- Staff thought that when approval was granted through the building permit, the house was one foot above the existing grade, but the grade was lower than the road.
- The Town had options, varying from what they were compelled to do and what they were able to do. Any Town project would not be lot to lot, but a public works project that dealt with the larger issue could be considered. Projects could be analyzed, and priorities determined. The Council could voluntarily take on this project that dealt with the larger issue, not the single home.
- The culverts might protect the individual house, but there was still the issue of water running through the other properties. The Town could see if there was a project that could divert the water, as long as it did not negatively affect other properties. It would be similar, but a larger project than the Chino Meadows project. The funneling of the current water flow was not done by the Town.
- Members thought it was Mr. Messenger's responsibility and that the Town should not have to go reverse engineering or create a drainage plan for the subdivision. The homeowners should unite and go after the developer to complete what was required.

Public comment:

- Randy Stufflick – They had done extensive research on the road that was built in 1990. The natural flow used to go where the culvert was across the road. When the road was completed, it was raised up and the natural flow was moved to the west 160-feet on Messenger Lane. Now his entire property turned into a lake until the water moved 150 feet to the lowest part of the road. Someone had already moved the natural flow of water. The water on their property with 1.5 inches of rain had drowned their septic system and pushed water back into the tank, causing problems. They had videos of what was happening. The culvert was in the natural flow of water, but the raised road had caused the natural flow to move. He had talked with Brian Thompson with the State, and he had explained that the area was a 44-acre watershed, and that an 18 inch pipe could not keep up with the flow of water. The water lifted all his ties (house ties) and it was a disaster. The neighboring property had created their own problems but were now pushing all the water into the ditch going in front of his house instead of taking the natural flow in the middle where it should go. They had Class C soil, and water ran right over the soil, so it came down fast and hard.
- Beth Allsup – owned a home on Messenger Lane. She had the Ordinance signed by the Town in 2013. It said on the ordinance that prior to the issuance of any building permit, a stamped engineered drawing providing the minimum finished floor elevation shall be submitted to the engineering division for review and approval. This was what could not be found. She questioned how they knew it was done by the Town and she thought it was a legality issue. They did not want to get to that point. They wanted help from the Town. They did not think they would get help from Mr. Messenger. They had

reached out to him with questions, and he was friendly, but would never respond back with the information. She thought the ordinance was a legally binding document that had been signed by Mayor Chris Marley. She had not received any disclosures for the property.

Council, Town Attorney, and staff discussed the following:

- There was nowhere else that the engineered documents could be stored. Staff explained that there were court cases that held the builder responsible for code violations, even if the Town missed it. It was a set legal precedence. The Town's remedies would not be what the current property owner would want as a solution and would not affect the person that built the property and left it.
- There were no engineer records or designs for the road. Staff thought it was possible that the road had likely been a farmer's dirt road that had been used as a water catchment. When it was paved, they had chip sealed over what had been there. Staff thought the natural flow was through the culvert. The road's low point and location was offset from the culvert. In a 100-year flood situation, there would be water everywhere over the road and it would be inundated.

3) ADJOURNMENT

MOVED by Councilmember Lon Turner, seconded by Councilmember Cloyce Kelly to adjourn the meeting at 5:41 p.m.

AYE: Mayor Jack Miller, Vice-Mayor Annie Perkins, Councilmember Tom Armstrong, Councilmember Eric Granillo, Councilmember Cloyce Kelly, Councilmember John McCafferty, Councilmember Lon Turner

7 - 0 PASSED - Unanimously

Jack W. Miller, Mayor

ATTEST:



Erin N. Deskins

Erin N. Deskins, 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 24th day of May, 2022. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 28th day of June, 2022.

Erin N. Deskins

Erin N. Deskins, Town Clerk