

**NOTICE IS HEREBY GIVEN**, that the City Council of the City of Twentynine Palms will hold a **CLOSED SESSION** on Tuesday, September 22, 2009 at 5:00 p.m. at City Hall, 6136 Adobe Road, Twentynine Palms, to consider the following:

Closed Session Pursuant to Government Code Section 54956.8 Property Negotiations Conference Real Property Negotiator, City Manager, Michael Tree  
APN's 0623-061-10-11, and 12.

Closed Session Pursuant to Government Code Section 54956.8 Property Negotiations-Conference with Real Property Negotiator, City Manager, Michael Tree, APN's 0623-023-08 and 0623-023-07.

Mayor Klink opened the meeting at 5:00 p.m. Mayor Klink adjourned the meeting to closed session at 5:01 p.m. City Attorney Munoz reported at 5:45 p.m. there was no action taken in the Closed Session.

**TWENTYNINE PALMS CITY COUNCIL/REDEVELOPMENT AGENCY  
REGULAR MEETING  
6136 Adobe Road  
Twentynine Palms, CA 92277  
www.ci.twentynine-palms.ca.us  
Tuesday, September 22, 2009  
6:00 P.M.**

**MINUTES**

- 1.0 CALL TO ORDER** - Mayor Klink re-opened the meeting at 6:00 p.m.  
**PLEDGE OF ALLEGIANCE** – Councilmember Harris led the Pledge of Allegiance.  
**INVOCATION** - City Manager Tree gave the Invocation.  
**ROLL CALL** – The following Councilmembers were present: Cole, Flock, Harris, Spear and Klink.
- 2.0 SPECIAL RECOGNITION AND PRESENTATIONS** - None
- 3.0 ANNOUNCEMENTS**
- 3.1 Mayor Klink announced these proceedings will be televised on Cable T.V., Channel 10, as follows: Monday, September 28, 2009 at 6:30 p.m. and Friday, October 2, 2009 at 6:30 p.m.
- 4.0 PUBLIC COMMENTS**
- Phyllis Lalone, Twentynine Palms, spoke regarding consistency of the zoning codes.
- Anonymous, Twentynine Palms, said he did not feel there was enough wild life in the City to shoot the animals and there was enough food in the grocery stores to supply everyone.
- Lisa Pitts, Twentynine Palms, a member of the General Plan Advisory Committee (GPAC), said the community was talking about the closing of certain county

offices in the Morongo Basin creating a vacuum concerning the un-incorporated area of Joshua Tree. She asked if Twentynine Palms should consider a friendly annexation of Joshua Tree.

## 5.0 COUNCIL COMMENTS

Councilmember Harris said that he attended a Food Festival in Joshua Tree for the Sportsman Club. He said there were twelve restaurants that provided food and for \$10 you could eat from all the different restaurants and he said that there were about 300 tickets sold for the event. He said on Friday he had a meeting in Apple Valley and after that he was going to fly with 1<sup>st</sup> District Supervisor Brad Mitzelfelt to the Marine Base in Twentynine Palms to watch the Governor sign the bill for the veterans.

Councilmember Cole said he attended the League of California Cities Annual meeting last week and the theme he saw was that if the state was not able to fix things at the state level the Cities would have to get together and form a coalition with people who have interest with the funding process.

Mayor Pro Tem Flock said he also attended the League of California Cities Annual meeting as well and a class that stuck out in his mind was the development of downtown areas.

Mayor Klink said it is against the law to talk on your cell phone when driving and although it is not illegal to text and drive it is more dangerous. He said he met with Major General Gerganous and met the new General Brigadier Claridy on Friday and discussed things that were happening in the City and on the base. He wished Major General Gerganous and his wife Janet the best and welcomed General Brigadier Claridy. He wished City Clerk Sherwood Happy Birthday and the City Council and audience sang her Happy Birthday.

Councilmember Harris said he was delivering a gift of art donated by Chuck Caplinger at breakfast tomorrow to Major General Greganous.

## 6.0 CITY COUNCIL/REDEVELOPMENT AGENCY CONSENT CALENDAR

All matters listed under the Consent Calendar are to be considered routine by the City Council/Redevelopment Agency and will be enacted by one motion in the form listed. Any item may be removed from the Consent Calendar and considered separately by the City Council under item number 7.0 on the agenda. The public will be given an opportunity to comment on Consent Calendar items prior to the City Council action (roll call vote).

6.1 Waive the Reading of Ordinance and Approve the Reading by Title Only

RECOMMENDATION: The City Council approve the reading by title only of all ordinances and that further reading of such ordinances be waived.

6.2 Warrant Register

RECOMMENDATION: Receive and file registers totaling \$438,627.86.

6.3 Approval of Minutes

RECOMMENDATION: The City Council approve the minutes of the September 8, 2009.

6.4 Chamber of Commerce Report – August 2009

RECOMMENDATION: Receive and file.

6.5 Approval to Award Contract to David Webb Inc. in the Amount of \$82,776 for the Construction and Installation of a Pre-Cast Restroom in Knott's Sky Park.

RECOMMENDATION: The City Council award the restroom project to David Webb Inc., in the amount of \$82,776.

6.6 Approval to Award Contract to Great Western/Game Time Playgrounds in the Amount of \$24,627.64 for the Purchase and Installation of Playground Equipment at Knott's Sky Park.

RECOMMENDATION: The City Council award the Playground Project to Great Western Playground in the amount of \$24,627.64.

6.7 Year-End Budget Adjustment

RECOMMENDATION: The City Council adopt Resolution No. 09-29.

Councilmember Spear abstained from check number 46798 to the San Bernardino County Sherriff's Department on the warrant register under item 6.2 due to possible conflict of interest.

Councilmember Spear requested item 6.4 to be pulled for discussion.

ACTION: On a motion made by Councilmember Spear, approved by Councilmember Cole and carried with a 5-0 roll call vote, the City Council approved the balance of the Consent Calendar as submitted.

**7.0 ITEMS REMOVED FROM CONSENT CALENDAR FOR DISCUSSION OR SEPARATE ACTION AND/OR ADDED AGENDA ITEMS**

6.4 Chamber of Commerce Report – August 2009

RECOMMENDATION: Receive and file.

Councilmember Spear asked how many local businesses were contacted by the Chamber of Commerce during the month of August 2009.

City Manager Tree responded he cannot recall an exact number.

Councilmember Spear asked if an open bid was done for the Pioneer Days buttons.

Jessica Wagner-Shultz responded yes, an open bid process was done and they had one bid return to the Chamber of Commerce by A to Z Specialties. She said the estimate of businesses the Chamber is supposed to be contacting was 30 but she was not sure if all the businesses responded.

Councilmember Spear asked how much money was expended on the productions of the Gateways Community CD.

Ms. Wagner-Shultz responded the Chamber put \$1000.00 towards that project and they had also received money from different organizations to put money into the project.

ACTION: On a motion made by Councilmember Cole, seconded by Councilmember Harris and approved with a 5-0 roll call vote, the City Council approved the remainder of the Consent Calendar.

## 8.0 PUBLIC HEARING

- 8.1 PC 09-52 Consideration of a Variance request to reduce the required front, street and interior side yard setbacks and rear yard setbacks for two (2) adjoining properties described as 6419 and 6421 East Court Way (APNs 0623-023-08 and 0623-023-07); zoned Multi-Family Residential Specific Plan #3  
RECOMMENDATION: Conduct the Public Hearing, consider public comment and adopt the City Council Resolution No. 09-30 finding that the proposal is exempt from further environmental review and that it conforms to the Findings for approval of a Variance.

Community Development Director LaClaire (Director LaClaire) presented a staff report to the City Council. He noted there was a typographical error under the recommendation for the item and said the words "Golf Course" were not supposed to be included in the recommendation.

Mayor Klink opened the Public Hearing.

Bill Taber, Twentynine Palms, spoke in favor of the project.

Phyllis Lalone, Twentynine Palms, requested a letter from the Council stipulating their course of action and asked that they contact her as soon as possible so she can deliver it to the lenders who are proposing to lend money for future use.

April Bryant, Yucca Valley, realtor assigned to one of the properties said the property is bank owned. She said she has sold the property twice and she is unable to sell it because of the issues with the variances. She said she did not know how the current owners could be held responsible for something that happened prior to their purchasing the property. She encouraged the Council to grant the variances so the owners do not lose more than they have already lost.

Jamie Avels, Twentynine Palms, asked the Council to deny the variance and enforce the Development Codes. He provided the City Council with a letter for the Council to review information; he read a portion of the letter to the Council pointing out the unlicensed contractor was not following the City codes. He said the unlicensed builder did not follow the approved plans, did not follow the Building Departments planning review check list, and did not follow the General Plan and Development Codes, and he said he would not conform to the setbacks. He said he would like the variance denied.

Phyllis Lalone, Twentynine Palms, said she knew where Mr. Avels was coming from, but she said the mistakes that have been made could be corrected in the future, without having to make people who are living there right now suffer.

Mayor Klink closed the Public Hearing.

Councilmember Spear asked the City Attorney if there was another mechanism involved were the City can hold the original contractor negligent and liable in the building of the structures and recoup money from him in a lawsuit so the third parties do not suffer.

City Attorney Munoz responded that one of the homeowners involved did sue the builder because of the issues that are being discussed. He said the party that had sued prevailed and received a judgment of several thousand dollars. He said part of the City's expectations was that the eaves were going to be put on the garage with some of that money, but that did not happen. He said he was not sure there was any meaningful recourse that could be taken at this time which was part of the problem.

Mayor Pro Tem Flock said he agreed with Mr. Avels.

Councilmember Spear asked of those 16 residents if the City has determined any of those were built prior to the implication of the current code.

Director LaClaire said they were all built prior to the incorporation of the City or records are missing.

Councilmember Spear said this would mean those properties should have been under the County code not the City code. He asked what opportunity the City has to hold the owner accountable. He said the City has reasonable expectations for the owner to comply with what the City has asked the owner to do and bring their garage into compliance and address the eaves in question.

City Attorney Munoz responded the Planning and Code Enforcement Staff are actively communicating with the owner to let them know the City expects the owner to take care of that. He said there are things that can be filed to prevent the owner from selling the property at 6421 East Court Way.

**ACTION:** On a motion made by Mayor Pro Tem Flock to approve Resolution No. 09-30, seconded by Councilmember Harris, the City Council denied Resolution 09-30 with a 2-3 roll call vote (Cole, Klink and Spear no).

Councilmember Spear suggested for 6419 East Court Way be approved for the variances, and not approve the variances for 6421 East Court Way. He said he feared once the go was given the people will leave the property as is and not be forced to fix it.

Mayor Klink said if the owners want to sell the house they need to bring it up to code and in the meantime they cannot sell it until that is done.

City Attorney Munoz said he could modify the condition to file a code enforcement action tomorrow on the corner property and they will not be able to sell it. He said by furcating would be splitting the properties in two the City Council can take two separate actions on the properties. He said first a motion would be considered to grant the variance for the 6419 property then they might consider a second motion for the property at 6421 and with that property could there be a condition that the variance does not become effective for 60 days. If the eaves had not be fixed to the satisfaction of the Planning Director after 60 days the variance becomes void without any further action. He said if they are fixed then that variance becomes effective.

Director LaClaire said the owner of the property did know the builders were involved in the construction of the property and during that process were made aware of problems that had come up. It was after that they sued their builder for not correcting those errors.

**ACTION:** On a motion made by Councilmember Spear, seconded by Mayor Pro Tem Flock and carried with a 4-1 (Cole no) roll call vote, the City Council approved the 6419 East Court Way variance as submitted by staff.

On a motion made by Councilmember Spear, seconded by Councilmember Harris the variances of 6421 East Court Way are approved with the condition that within 120 days the eaves on the garage be repaired and the steps be replaced.

Mayor Kink re-opened the Public Hearing.

Mayor Klink closed the Public Hearing.

Councilmember Spear withdrew the previous motion.

Councilmember Harris asked if it was a requirement that Southern California Edison place a meter on each parcel and are they able to be read from the street and does Edison have access to them. He wanted to know if this was an issue that needed to be looked at, separating the meters on the two properties.

City Attorney Munoz responded Edison indicated that this was fine and there are easements in place that make this work legally.

Mayor Klink re-opened the Public Hearing.

Ms. LaLone asked if the two pieces of property have been separated.

Mayor Klink responded yes.

**ACTION:** On a motion made by Councilmember Spear, seconded by Mayor Klink and carried with a 5-0 roll call vote, the City Council continued the 6421 East Court Way variance to the City Council meeting on November 24, 2009.

## **9.0 REPORTS, REQUESTS AND COMMUNICATIONS**

### **9.1 Chamber of Commerce Financials**

RECOMMENDATION: The City Council provides directions as deemed appropriate.

City Manager Tree presented a staff report to the City Council. He said he received a letter from the Chamber of Commerce (Chamber) indicating they would like to withdraw their request to terminate their contract with the City.

Mayor Klink said he was disappointed to see the letter from the Chamber of Commerce to withdraw their contract from the City. He said in the past years the City has held a great relationship with the Chamber.

Jay Corbin, Twentynine Palms, said he is a member of the Chamber and that the community needs the City and the Chamber to work together.

ACTION: On a motion made by Councilmember Cole, seconded by Mayor Pro Tem Flock and carried with a 5-0 voice vote, the City Council accepted the Chamber of Commerce's retraction.

Councilmember Cole moved the City Council enthusiastically support the Chamber and formally indicate this to them in a letter signed by all who agree upon it.

Councilmember Harris said the City is hurting themselves by cutting off the Chamber and he said they do a tremendous job.

Mayor Pro Tem Flock said it was time to move on from this issue.

Councilmember Spear said there are certain ethical bars that should be adhered to and he has a problem with this flawed contract.

City Attorney Munoz said the City has a new contract with the Chamber that has specific requirements in it. He said that specific requirements have to be met and accounted for, he said General Fund money is being given to the Chamber for general promotional purposes.

ACTION: On a motion made by Councilmember Cole, seconded by Mayor Pro Tem Flock and carried with a 4-1 (Spear no) roll call vote, the City Council approved to enthusiastically support the Chamber of Commerce and formally indicate that to them in a letter from the City Council signed by all members of the City Council who agree with it.

ACTION: On a motion made by Councilmember Cole, seconded by Mayor Pro Tem Flock, carried 4-1 (Spear no) that any further request of City staff time beyond the usual contract monitoring time involving the Chamber of Commerce be brought to the City Council for approval prior to any efforts being expended.

9.2 Discussion of Options for the Removal of Graffiti on Private Property

RECOMMENDATION: The City Council receives the staff report and provides direction to staff as deemed appropriate.

City Attorney Munoz presented a staff report to the City Council.

Councilmember Harris said he raised this issue due to graffiti on the air conditioner on a building downtown and on a wall of another building containing profane language which was visible from the Highway. He said staff went to the business and asked the graffiti be removed because it was visible. He said if they do not remove the graffiti a penalty should have to be paid or the City should have the authority to remove the word immediately. He said he does not want to have to wait seven days to have the graffiti taken care of as is stated in the staff report.

Director LaClaire said the annual business license renewal notices will be sent out soon and the waiver material will be sent out with the notices. He said the City will be giving them out to new business license applicants as well.

City Attorney Munoz said situations are dealt with on a case by case basis.

The City Council directed staff to seek voluntary compliance vice the police powers of the City.

## **10.0 LEGISLATIVE/COUNCIL/REDEVELOPMENT**

### **10.1 Planning Commission Appointment**

**RECOMMENDATION:** The City Council Appoints Mr. Bill Easter to the Planning Commission until December 31, 2009.

City Manager Tree presented a brief staff report to the City Council.

The City Council requested staff inform the applicants of Mr. Easter's re-appointment to the Planning Commission.

**ACTION:** Councilmember Cole, seconded by Mayor Pro Tem Flock and carried with a 5-0 roll call vote the City Council re-appointed Mr. Bill Easter to the Planning Commission for the unexpired term.

### **10.2 Downtown Specific Plan Update and Status Report and, Redevelopment Area Phoenix Project Status Report**

**RECOMMENDATION:** The City Council receive and file the status reports and provide direction to staff and the consultant as appropriate on each.

Director LaClaire presented a staff report to the City Council.

Mark Brodeur, PMC, spoke to the City Council regarding the Downtown Specific Plan and presented a power point presentation.

Frank Spevacek, RSG, presented the Downtown Phoenix report update to the City Council.

### **10.3 Update on the HWY 62 Rehabilitation and Street Improvement Project**

**RECOMMENDATION:** The City Council receives the staff report and provides direction as appropriate.

ACTION: On a motion made by Mayor Klink seconded by Councilmember Spear and carried with a 5-0 voice vote, the City Council tabled item 10.3 to the October 13, 2009 regular City Council meeting.

- 10.4 A request from Mr. Paolo Ficara to abandon and remove a Deed Restriction placed upon seven (7) properties by the City of Twentynine Palms to restrict the use of said property for use as a Golf Course open to the public.  
RECOMMENDATION: Retain or remove the Deed Restriction for those properties referred to as the "Back 9" as would best serve the City of Twentynine Palms.

City Manager Tree recused himself from this item due to possible conflict of interest.

Director LaClaire presented a staff report to the City Council.

Mayor Pro Tem Flock asked when the property was sold if it was one piece of property.

Director LaClaire responded no, it was not one piece of property but one group of properties.

Councilmember Spear asked if the back nine was never a golf course and today is still not a golf course how the City can assume now that the intent of the Council at that time was to have a golf course that did not exist.

Paolo Ficara, Jr., co-owner of the golf course in 1997. He said he does not want their land not to get foreclosed on. He said they are not asking to change the zoning or remove the restriction and the Council recognizes that their property is not an operational golf course and they do not have any ownership interest in the operational golf course. He said they just want to be clear that if the existing golf course defaults on the deed restrictions for whatever reason that their land does not get pulled into that. He said it is not their intent to develop anything on the back nine, especially within the next two years.

Paolo Ficara, Sr., said the City Council should accept what they are asking.

City Attorney Munoz said the Ficara's did a fabulous job with the golf course. He said the deal was if the existing nine holes were not maintained than the entirety of the property would go back to the City. He said the City would then have the opportunity if they wanted to; to build eighteen holes.

Mayor Pro Tem Flock suggested if the deed restriction was maintained and the wording was changed to where it does not have to keep the golf course open but to say it will not be used for any other purpose but a golf course then the City is not giving up the deed restriction.

Mr. Ficara, Jr., asked if it was the City's intent to develop the back nine. Councilmember Cole responded no, that was not the issue. He asked where the Ficara's would help the City.

Mr. Ficara, Jr., responded they would sell the back nine property for a great deal.

**ACTION:** On a motion made by Mayor Pro Tem Flock, seconded by Councilmember Spear and carried with a 5-0 roll call vote, the City Council agreed to modify the restriction to separate the two groups of properties and maintain the deed restrictions on both properties and to make the deed restriction on the back nine appropriate for that property and authorize the Mayor to sign and change the wording so it is appropriate for the property.

City Manager Tree returned to the Council Chambers.

- 10.5 Alternate Workweek Discussion  
RECOMMENDATION: The City Council receives the staff report and provides direction to staff.

**ACTION:** On a motion made by Mayor Klink, seconded by Councilmember Spear and carried with a 5-0 voice vote, the City Council tabled item 10.4 to the October 13, 2009 regular City Council meeting.

#### **11.0 FUTURE COUNCIL INITIATED ITEMS**

Councilmember Spear said he would like to discuss the possibility of holding a study session to discuss the merits or non merits of open air shooting of large caliber weapons in the City limits of Twentynine Palms.

#### **12.0 CLOSED SESSION-** None

#### **13.0 ADJOURN-** Mayor Klink adjourned the meeting at 9:35 p.m.

Respectfully Submitted,

Charlene L. Sherwood MMC, City Clerk