

**TOWN OF APPLE VALLEY  
TOWN COUNCIL/SUCCESSOR AGENCY**

**REGULAR MEETING  
MINUTES – July 9, 2013**

**CALL TO ORDER:**

Mayor Emick called to order the meeting of the Apple Valley Town Council/Successor Agency at 5:05 p.m.

Roll call was taken with the following members present:

Roll Call

Present: Council Member Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

**PUBLIC COMMENTS**

None.

**CLOSED SESSION**

John Brown, Town Attorney, read into the record the facts and circumstances that justify the Closed Session. He stated that they address the concerns surrounding whether or not the possibility that one or more of the concessions at the Apple Valley Golf Course may raise concerns about a gift of public funds.

**MOTION**

Motion by Mayor Pro Tem Bishop, seconded by Council Member Stanton and unanimously carried, to adjourn to Closed Session at 5:08 p.m. to discuss the following:

**1. Closed Session**

- A. Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to litigation pursuant to subdivision (b) of Section 54956.9 (one or more potential cases).

Upon returning from Closed Session at 5:58 p.m., Mayor Emick announced that there was no reportable action taken.

Mayor Emick recessed the meeting of the Apple Valley Town Council until 6:30 p.m.

**TOWN COUNCIL REGULAR SESSION**

**CALL TO ORDER:**

Mayor Emick called to order the regular session of the Apple Valley Town Council at 6:32 p.m.

Roll call was taken with the following members present:

Roll Call

Present: Council Members Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

## OPENING CEREMONIES

### INVOCATION:

The Invocation was given by Carol Vonhelf, Apple Valley Christian Care Center.

### PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance was led by Marc Puckett, Assistant Town Manager, Finance and Administration.

### PRESENTATIONS:

**Employee of the Quarter – Darryl Wright – Grounds Services Worker III**

**Update from Apple Valley Ranchos Water (AVRW) – Mr. Scott Weldy**

## PUBLIC COMMENTS

Chuck and Pat Hanson, Apple Valley, commended the Town of Apple Valley on the Freedom Festival Celebration at Brewster Park. They commented on the Grand Opening of the Life Pointe Church in Apple Valley and thanked Council Member Stanton for her attendance.

Regina Witherspoon-Bell, Today's Woman Foundation, announced that on July 27, 2013 at the Apple Valley Commons there will be an event "Today's Woman Experience". She commented on the events that will be held during the day with the focus on Mind, Body and Spirit.

E.T. Snell, Apple Valley, stated that Victorville still has its dispensaries open and questioned why the Town of Apple Valley closed its dispensaries immediately. He also questioned whether or not Mayor Emick should be allowed to vote on this issue since he is a Pharmacist. He asked the Town Attorney to address this issue.

John Brown, Town Attorney, responded to the concerns expressed by Mr. Snell. He stated that for purposes of California Law, Mayor Emick does not have a disqualifying conflict of interest and can vote on this item.

## COUNCILMEMBER COMMITTEE/COMMISSION PARTICIPATION

Council Member Cusack commented on committee meetings and events that he attended.

Council Member Nassif commented on committee meetings and events that he attended.

Council Member Stanton commented on committee meetings and events that she attended. She also announced the upcoming Women of Distinction Award. She stated that applications for nominations can be found at [www.cook.house.gov](http://www.cook.house.gov).

Mayor Pro Tem Bishop commented on committee meetings and events that he attended.

Mayor Emick commented on committee meetings and events that he attended. He announced that the State of the Town will be held Wednesday, July 17, 2013 in the Conference Center. He also informed the public to contact the Apple Valley Chamber for lunch reservations.

### TOWN COUNCIL ANNOUNCEMENTS

#### **Suggested items for future agenda:**

Mayor Pro Tem Bishop commented on suggested items for future agendas. He recommended that the Council meet with the Town Manager for general information or questions they may have on items on the agenda that could be answered prior to the meeting. He also commented on how local cities operate with respect to requests for future items.

Discussion ensued regarding the process used to place items on the agenda by individual Council Members that was outlined in the Rules and Procedure Manual for the Town Council. The Town Clerk stated that she would make sure each member had a copy of the Rules and Procedure manual for their review.

#### **Time, Date & Place for Next Town Council Regular or Special Meeting:**

- A. Regular Meeting – Tuesday, August 13, 2013**
  - Closed Session at 5:00 p.m.**
  - Regular Session at 6:30 p.m.**

### TOWN COUNCIL CONSENT AGENDA

Mayor Emick announced that it has come to the attention of the Town that there is an immediate need to take action on an item that arose after the agenda was posted. That item is a "Request for a Special Event Permit Fee Waiver for the Today's Woman Foundation. He stated that a motion was needed to add this item to the agenda as an item that arose after the agenda was posted – Agenda Number 9A - Special Event Permit Fee Waiver for the Today's Woman Foundation.

#### **MOTION**

Motion by Council Member Stanton, seconded by Council Member Nassif, and unanimously carried, that there was a need to add an item to the agenda as an item that arose after the agenda was posted – Agenda Number 9A - Special Event Permit Fee Waiver for the Today's Woman Foundation.

Mayor Emick also announced that Council Member Nassif has a remote interest in specific warrants on tonight's commercial warrants dealing with NAPA Auto Parts for the Town of Apple Valley as the owner of NAPA Auto Parts. Therefore, he will be abstaining from voting on the Warrants for NAPA Auto Parts listed under Agenda Item Number 3. Also, Council Member Cusack has a remote interest in specific warrants on tonight's commercial warrants dealing with Apple Valley Communication for the Town of Apple Valley as owner of Apple Valley Communications; therefore, he too will be abstaining from voting on warrants for Apple Valley Communications listed under Agenda Item Number 3.

Council Member Nassif stated for the record, that for the remainder of the 2013/2014 fiscal year, he will be abstaining from voting on those warrants of payees that meet the significant affect test according to the Political Reform Act.

David Mueller, Liberty Tribune, stated that the Commercial Warrants do not match Mr. Puckett's Treasurer's Report. He also commented on inconsistencies with the payroll, merchandise reimbursement and other fees.

Mr. Mueller also spoke on Agenda Item Number 9. He stated that he did not see the purpose of making those improvements at this time. He commented on proposed funding in the budget for improvements on the corner of Apple Valley Road and Bear Valley Road near the former Nikki's Restaurant Building. He also commented on the negative comments listed in the Daily Press on this issue. He believed the Town was having a difficult time controlling their spending and forcing the community to pay for their errors.

Marc Puckett, Assistant Town Manager, Finance and Administration, commented on the numerous times he has addressed the concerns expressed by Mr. Mueller. He stated that the financial statements are consistent and that they are independently audited by a public accounting firm that prescribes to professional standards that are promulgated by the governmental county standards board. He also noted that our CAFER has received awards in terms of public disclosure of our financial information and is compliant with the professional standards established by the governmental accounting standards board for the past 11 years.

Mr. Puckett felt that based upon this information, Mr. Mueller should be able to understand that the Town's financial statements fully disclose the operations with the Apple Valley Golf Course and that those operations are fully disclosed within the Commercial Warrants, Treasurer's Report, budget document, financial statements and check register. Mr. Puckett reiterated that he has offered repeatedly to meet with Mr. Mueller to review this information; however, Mr. Mueller has rejected those offers.

## **MOTION**

Motion by Council Member Stanton, seconded by Mayor Pro Tem Bishop, to approve the Consent Calendar items numbered 2-9A as amended.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

### **2. Approval of Minutes of the Town Council**

#### **A. Regular Meeting – June 25, 2013**

##### **Recommendation:**

Approve the subject minutes as part of the consent agenda.

### **3. May 2013 - Commercial Warrants Schedule**

##### **Recommendation:**

That the Town Council receive, ratify, and file the Commercial Warrants Schedule as presented.

### **4. May 2013 – Payroll/Benefits Warrants Schedule**

##### **Recommendation:**

That the Town Council receive, ratify, and file the payroll/benefits warrants as presented.

5. **Treasurer's Report – May 2013 and Schedules of Revenues, Expenditures and Changes in Fund Balance for the Parks and Recreation Fund and the Apple Valley Golf Course Fund**  
**Recommendation:**  
That the Town Council receive and file the May 2013 Treasurer's Report.
6. **Acceptance of Work, File Notice of Completion, and Release of Retention for the Protective Wall Project at AD#3A Sewer Lift Station No. 1**  
**Recommendation:**  
That the Town Council:
1. Accept the work of the contractor for the work performed at the AD#3A Sewer Lift Station No.1 to install a Protective Wall; release the total retention in the amount of \$2,338.75.
  2. Direct the Town Clerk to file a Notice of Completion for the contract work, notify surety and to exonerate contract bonds.
  3. Direct the Finance Director to release retained funds 30 days after the filing of the Notice of Completion, or notify contractor's escrow account holders to release the withheld retention funds provided no claims are filed against the contractor or Town.
7. **Resolution No. 2013-28, Approving the Levy and Collection of Assessments for Fiscal Year 2013-14 within the Apple Valley Village Property and Business Improvement District (PBID)**  
**Recommendation:**  
That the Town Council adopt Resolution No. 2013-28, Approving the Levy and Collection of Assessments for Fiscal Year 2013-14 within the Apple Valley Village Property and Business Improvement District (PBID).
8. **Claimant – David Servantez**  
**Recommendation:**  
Reject the claim from David Servantez
9. **Award of Contract for the Apple Valley Road and Town Center Drive Improvements – Project No. 2013-03**  
**Recommendation:**  
Award a contract to Cooley Construction, Inc. in the amount of \$90,865.70 for the Apple Valley Road and Town Center Drive Improvements – Project No. 2013-03, subject to "Approval as to Form" by the Town Attorney and "Approval as to Content" by the Town Manager.
- 9A. **Special Event Pwermit Fee Waiver for Today's Woman Foundation**  
**Recommendation:**  
That the Town Council approve a special event fee waiver not to exceed \$500 for the Today's Woman Foundation.

**10. Extension of Interim Urgency Ordinance No. 447 for an Additional 10 Months and 15 Days to Continue for this Period the Temporary Amendments to the Town's Development Code Clarifying the Scope of the Town's Regulation of Medical Marijuana Dispensaries in Compliance with Federal and State Law and California Case Law.**

Mayor Emick opened the public hearing at 7:42 p.m.

John Brown, Town Attorney, presented the staff report as filed with the Town Clerk.

Brigitte Rath, Higher Standards Wellness Clinic, commented on her clinic in the Town of Apple Valley. She requested the members of the Council visit her clinic to see how it is operated. She respectfully requested that this issue be put to a vote of the people

Janet Snelling, Apple Valley, stated that she started using medical cannabis about 14 months ago due to arthritis and depression. She commented on the numerous medications that she has taken over the past 30 years. However, now that she takes medical cannabis it has greatly improved her quality of life.

John Smith, Apple Valley, stated that when he receives a prescription, he takes it to a pharmacy. He believes that with medical marijuana, the issue should be handled through a medical association such as the AMA.

E. T. Snell, questioned again why the Town of Apple Valley closed down all of its dispensaries. He stated that he understood some of the concerns of the Council regarding dispensaries and felt there is a need to see how other communities are handling this issue.

Council Member Nassif commented on the input that he had received from members of the public. He read a letter from Priscilla Papke, for the record, regarding this issue which summarized the concerns some residents have regarding the number of medical marijuana dispensaries in Apple Valley as well as the lack of regulations on medical marijuana dispensaries.

There being no additional requests to speak, Mayor Emick closed the public hearing at 7:50 p.m.

Lori Lamson, Community Development Director, announced that the Planning Commission will hold the first workshop on August 7, 2013 on this issue.

**MOTION**

Motion by Mayor Pro Tem Bishop, seconded by Council Member Nassif, to hold a public hearing and adopt, by four fifths vote, the attached ordinance extending the Town's interim forty-five (45) day urgency ordinance clarifying the scope of the Town's prohibition of medical marijuana dispensaries (MMD) to: (a) expressly prohibit facilities or offices that handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative, receive any financial compensation or donation for the marijuana, or give vouchers or other indicia of membership to new members of these MMDs and (b) expressly prohibit mobile or off-site delivery of marijuana independent from these facilities or offices for an additional period of ten (10) months and fifteen (15) days, to May 27, 2014.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

**11. A Resolution of the Town Council of the Town of Apple Valley, California, Amending and Establishing Specified Fees for Town Services**

Mayor Emick opened the public hearing at 7:54 p.m.

Marc Puckett, Assistant Town Manager, Finance and Administration, presented the staff report as filed with the Town Clerk.

Council Member Nassif questioned the fee increase for Special Events and Pigeon Permits.

Council Member Stanton questioned how actual costs are determined for various projects.

Lori Lamson, Director of Community Development, answered questions of Council regarding proposed increases in Planning fees. Ms. Lamson also stated that Park Development Impact Fees, Storm Drain Fees and Sewer Impact Fees are not addressed in this item.

Discussion ensued regarding the level of subsidy for various projects.

David Mueller, Liberty-Tribune, stated that various Council Members stated they would not increase fees or taxes when they were running for election. He now believes that they are changing their position. He expressed a concern regarding the proposed fee increases that are listed within this report.

Carlos Rodriguez, Chief Executive Officer, BIA Baldy View Chapter, distributed a document that listed the jobs creation initiative. He commented on the information that was presented to the Town Council and respectfully requested that the select fees listed in the distributed attachment not be increased at this time.

There being no requests to speak, Mayor Emick closed the public hearing at 8:31 p.m.

Council Member Nassif stated that he would support staff's recommendation at this time.

Mayor Pro Tem Bishop thanked Mr. Rodriguez for his attendance and comments at this meeting. He believed that the proposed fees are fair and well placed.

Council Member Cusack stated that it was unfortunate that the Town did not address this issue previously which would have possibly prevented the 6% increase for some items. He believed that it was necessary for us to make the changes at this time but requested that an annual study be conducted to prevent this type of increase from occurring in the future.

Council Member Stanton believed that the Town Council had a role to be leaders within the community so that the Town is not faced with unfortunate situations. She stated that she believes she, as well as the Town Council members, are fiscally responsible members.

Council Member Nassif stated that this item has been previously brought before the Town Council; however the Council decided to forego the increase which has led to this problem.

John Brown, Town Attorney, commented on recovering the reasonable cost for providing service. He clarified, for the benefit of the Council and public, the sources used to capture the difference between what is not recovered.

**MOTION**

Motion by Council Member Nassif, seconded by Mayor Pro Tem Bishop, to adopt Resolution Number 2013-29, a Resolution of the Town Council of the Town of Apple Valley, California, amending and establishing specified fees for Town services for Fiscal Year 2013-2014.

Vote: Motion carried 5-0-0-0

Yes: Councilmember's Cusack; Nassif; Stanton; Mayor Pro Tem Bishop; Mayor Emick.

Absent: None.

**LEGISLATIVE MATTERS**

**12. Selection of Town Council Voting Delegate and Voting Alternate to League of California Cities' 2013 Annual Conference**

**MOTION**

Motion by Mayor Pro Tem Bishop, seconded by Council Member Cusack, and unanimously carried, to nominate Council Member Scott Nassif as voting delegate and Council Member Barb Stanton and Mayor Emick as voting alternates representing the Town of Apple Valley at the League of California Cities' 2013 Annual Conference.

**REPORTS, REQUESTS AND COMMUNICATIONS**

**BUSINESS OF THE COUNCIL**

**13. Development Impact Fee Discussion**

Lori Lamson, Director of Community Development, presented the staff report as filed with the Town Clerk.

Council Member Stanton commented on the fee comparisons between the Town of Apple Valley and surrounding communities.

Ms. Lamson answered questions of Council Member Stanton regarding single family permits pulled.

Ms. Lamson, at the request of Council Member Nassif, briefed the Town Council and the public on the history of this issue and the impact fees that were last increased in 2007.

Discussion ensued regarding cost per lot size and if the lot size has an impact on Apple Valley fees.

Carlos Rodriguez, BIA Baldy View Chapter, respectfully requested the Town Council schedule a workshop and give this issue the due diligence that it deserves.



Council Member Stanton commented on the information given by Mr. Rodriguez including the information provided by John Husing, Economist. She agreed with the comments made by Mr. Carlos Rodriguez, to have a workshop to further discuss this issue.

Council Member Nassif stated that the information provided by Mr. Husing includes a recommendation to allow smaller homes and a decrease in lot sizes so that more houses can be built. Council Member Nassif felt this would mean losing the ability to maintain the community as it is today. He also felt that having a workshop would not be helpful at this time.

Council Member Nassif spoke in favor of lowering school fees.

Council Member Cusack felt the fees should remain as they are currently listed.

Mayor Pro Tem Bishop also agreed with the comments made by Council Member Nassif and Council Member Cusack. He also recommended that these fees be revisited annually.

Mayor Emick also agreed that the fees should remain the same.

Council Member Stanton recommended that the Town Council discuss having a workshop to further discuss this matter as requested by the BIA. She commented on the benefits of holding a workshop.

It was the consensus of the Town Council that this item be received and filed.

#### **14. Report on Commercial Scale Photovoltaic Projects**

Carol Miller, Senior Planner, presented the staff report as filed with the Town Clerk.

Council Member Stanton thanked staff for the report as requested. She asked questions regarding these types of projects in Apple Valley and whether or not there is a glare from the solar fields.

Discussion ensued regarding the potential glare, setbacks, and chain link fencing.

Lori Lamson, Director of Community Development, explained that the Town Council has the option of forwarding this item to the Planning Commission as an initiation of a Development Code Amendment to address the issues surrounding setbacks and chain link fencing.

John Smith, Apple Valley, expressed concern regarding the reflection and glare from the solar panels. He commented on the project in the triangle that affects his property.

Mayor Pro Tem Bishop wants to make sure that Mr. Smith is notified of Planning Commission meetings when this issue is addressed. He clarified, for the benefit of the Council and public that the project being referred to is in the county and not the Town of Apple Valley.

Mr. Smith also stated that the residents protested this project with the County; however, their concerns were ignored.

Council Member Stanton responded to the concerns expressed by Mr. Smith. She stated that although she is in favor of the new industry, she would not like to see any business operate too

closely to development. Council Member Stanton recommended that staff take the item back to the Planning Commission for further review.

John Brown, Town Attorney, commented that the only way to prevent these types of projects from continuing is to grant a moratorium.

Ms. Lamson stated that she believed the project needs to be operational in order to evaluate and address any concerns or make recommendations. She also responded to the concerns expressed by Mr. Smith regarding the galvanized support beams. Ms. Lamson explained to the Council that once in operation, the Planning Commission would have the opportunity to evaluate and, if necessary, make an amendment to the Ordinance.

Discussion ensued regarding the maximum height requirements.

David Mueller, Liberty Tribune, requested to know whether or not the FAA was consulted.

### **MOTION**

It was the consensus of the Town Council to receive and file the report and direct the initiation of a Development Code Amendment.

## **15. Discussion on Private Alleys**

Brad Miller, Town Engineer, presented the staff report as filed with the Town Clerk.

Council Member Cusack commented on ways to possibly manage the upkeep of private alleys in the Town of Apple Valley.

Mayor Pro Tem Bishop recommended that property owners be held responsible for maintaining the private alleys. If they do not comply, repairs could be made and the property owners billed for the cost of improvements. He also commented on the alleys being used by the Fire District for public safety.

Mr. Miller explained the difference between a private alley and a Public Utility Easement. He stated that the easements are not public utility right of ways.

Discussion ensued regarding the cost to bring the alleys up to the point where the Town would maintain them or the cost for an assessment.

John Brown, Town Attorney, questioned whether or not the Town would be willing to accept an offer in which the Town, with the cooperation of the property owners, would form a benefit assessment district to maintain those roadways. He also explained that the Town Council can also inquire as to whether or not there is an interest in granting appropriate easements to enable the Town to exercise the formation of a benefit assessment district.

### **MOTION**

It was the consensus of the Town Council to come back with information on what it would cost to upgrade the alleys to standards, identify all the property owners, and establish a meeting.

## **16. Discussion of Cancellation of Town Council Meeting of July 23, 2013**

Frank Robinson, Town Manager, presented the staff report as filed with the Town Clerk.

La Vonda M-Pearson, Town Clerk, announced that any public notices that were previously scheduled for July 23, 2013, will be continued to the meeting of August 13, 2013. She also stated that appropriate notices for the public will be made.

**MOTION**

Motion by Mayor Pro Tem Bishop, seconded by Council Member Nassif, and unanimously carried to cancel the meeting of July 23, 2013.

**TOWN MANAGER'S COMMENTS & LEGISLATIVE UPDATE**

Kathie Martin, Marketing and Public Affairs Officer, commented on the success of the Freedom Festival with an estimated 10,000 individuals attending the event.

**DEPARTMENTAL REPORTS AND BUSINESS:**

**STAFF REPORTS**

**CORRESPONDENCE**

**ADJOURNMENT**

Motion by Council Member Nassif, seconded by Mayor Pro Tem Bishop, and unanimously carried to adjourn the meeting of the Apple Valley Town Council at 10:10 p.m.

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Curt Emick, Mayor

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La Vonda M-Pearson, Town Clerk