

**MINUTES
ORO VALLEY TOWN COUNCIL
REGULAR SESSION
SEPTEMBER 6, 2023
ORO VALLEY COUNCIL CHAMBERS
11000 N. LA CAÑADA DRIVE**

REGULAR SESSION AT OR AFTER 5:00 PM

CALL TO ORDER

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

ROLL CALL

Present: Joseph C. Winfield, Mayor
Melanie Barrett, Vice-Mayor
Tim Bohen, Councilmember
Harry Greene, Councilmember
Joyce Jones-Ivey, Councilmember
Josh Nicolson, Councilmember
Steve Solomon, Councilmember

EXECUTIVE SESSION - 1. Pursuant to A.R.S. §38-431.03 (A)(3) to receive legal advice and consultation of the consultant contract for Town Attorney services with the law firm of Mesch Clark Rothschild, P.C. 2. Pursuant to A.R.S. §38-431.03 (A)(3) to receive legal advice and A.R.S. §38-431.03 (A)(4) - settlement discussions regarding the case of Joplin v. Town of Oro Valley

Motion by Mayor Joseph C. Winfield, **seconded by** Councilmember Harry Greene to go into Executvie Session at 5:03 p.m., Pursuant to A.R.S. §38-431.03 (A)(3) to receive legal advice and consultation of the consultant contract for Town Attorney services with the law firm of Mesch Clark Rothschild, P.C. 2. Pursuant to A.R.S. §38-431.03 (A)(3) to receive legal advice and A.R.S. §38-431.03 (A)(4) - settlement discussions regarding the case of Joplin v. Town of Oro Valley.

Vote: 7 - 0 Carried

Mayor Winfield announced that the following staff would be joining Council in the Executive Sessions: Town Manager Jeff Wilkins, Deputy Town Manager Chris Cornelison, Town Attorneys, Legal Services Director Tobin Sidles, and Town Clerk Mike Standish.

RESUME REGULAR SESSSION AT OR AFTER 6:00 PM

CALL TO ORDER

Mayor Winfield resumed the Regular Session at 6:06 p.m.

ROLL CALL

Present: Joseph C. Winfield, Mayor
Melanie Barrett, Vice-Mayor (attended via Zoom)
Tim Bohen, Councilmember
Harry Greene, Councilmember
Joyce Jones-Ivey, Councilmember
Josh Nicolson, Councilmember
Steve Solomon, Councilmember

1. RESOLUTION NO. (R)23-32, DISCUSSION AND POSSIBLE ACTION TO AUTHORIZE THE TOWN MANAGER TO SIGN, ON BEHALF OF THE TOWN, A RENEWAL FOR THE TOWN ATTORNEY SERVICES CONTRACT WITH MESCH CLARK ROTHSCHILD, P.C.

Motion by Mayor Joseph C. Winfield, **seconded by** Councilmember Harry Greene to authorize the Town Manager to sign on behalf of the Town, a renewal for the Town Attorney services contract with Mesch Clark Rothschild P.C.

Vote: 6 - 1 Carried

OPPOSED: Councilmember Tim Bohen

2. DISCUSSION AND APPROVAL OF SETTLEMENT DIRECTION GIVEN TO THE TOWN'S LEGAL COUNSEL IN EXECUTIVE SESSION REGARDING THE CASE OF JOPLIN V. TOWN OF ORO VALLEY, AND AUTHORIZING THE LEGAL SERVICES DIRECTOR AND/OR TOWN MANAGER TO SIGN NECESSARY DOCUMENTATION

Motion by Mayor Joseph C. Winfield, **seconded by** Councilmember Steve Solomon to authorize the Legal Services Director and or Town Manager to sign necessary documentation related to the case of Joplin V. Town of Oro Valley.

Vote: 7 - 0 Carried

PLEDGE OF ALLEGIANCE

Mayor Winfield led the audience in the Pledge of Allegiance.

UPCOMING MEETING ANNOUNCEMENTS

Town Clerk Mike Standish announced the upcoming Town meetings.

MAYOR AND COUNCIL REPORTS ON CURRENT EVENTS

Councilmember Greene reported that the parking lot for the Oro Valley Community Center had been completed. Councilmember Greene also reported that the multi-use path, on the west side of La Cañada, had been started.

Councilmember Jones-Ivey encouraged involvement and volunteerism for Project Graduation.

Mayor Winfield reported that he had attended the Southern Arizona Arts and Cultural Alliance, *Salsa, Tequila and Taco Challenge event*, where three Oro Valley businesses placed first, second and third for the taco challenge portion of the event.

TOWN MANAGER'S REPORT ON CURRENT EVENTS

Town Manager Jeff Wilkins reported that the Oro Valley Community Academy would commence on October 10, 2023. Mr. Wilkins also shared a video as part of the Town's new video series called "Behind the Scenes". The video series will highlight various operations within Town departments.

ORDER OF BUSINESS

Mayor Winfield reviewed the order of business and stated the order would stand as posted.

INFORMATIONAL ITEMS

There were no informational items.

CALL TO AUDIENCE

Oro Valley resident Doug Dalby voiced his concerns regarding the proposed Oro Valley Church of the Nazarene rezoning request.

Oro Valley resident Tricia Tozier voiced her concerns regarding the proposed Oro Valley Church of the Nazarene rezoning request.

Oro Valley resident Anthony Ferrara voiced his concerns regarding the proposed Oro Valley Church of the Nazarene rezoning request.

Oro Valley resident Tim Fagan voiced his concerns regarding the proposed Oro Valley Church of the Nazarene rezoning request.

Oro Valley resident Marc Martinez voiced his concerns regarding alleged harassment that he had received from neighbors concerning his property and home.

Oro Valley resident Tim Tarris voiced his concerns regarding the proposed Oro Valley Church of the Nazarene rezoning request.

Oro Valley resident Curt Riesberg voiced his concerns regarding the alleged non-dark sky issues in Rancho Vistoso.

Mayor Winfield requested that staff follow-up with Mr. Riseberg regarding his concerns with a streetlight shining in his backyard.

Oro Valley resident David Deivert voiced his concerns regarding the proposed Oro Valley Church of the Nazarene rezoning request.

Oro Valley resident Devin Smith voiced her concerns regarding the proposed Oro Valley Church of the Nazarene rezoning request.

PRESENTATIONS

1. Proclamation - Constitution Week

Mayor Winfield proclaimed the week of September 17 through the 23, as Constitution week in the Town of Oro Valley.

Ms. Penny Simon-Nielsen accepted the proclamation on behalf of the El Presidio Chapter, of the National Society Daughters of the American Revolution.

2. Proclamation - Diaper Need Awareness Week

Mayor Winfield proclaimed September 18 through the 24 as Diaper Need Awareness Week in the Town of Oro Valley.

Ms. Yvette Sykes, Interim CEO of the Arizona Diaper Bank, accepted the proclamation.

CONSENT AGENDA

A. Minutes - July 19, 2023

B. Resolution No. (R)23-33, authorizing and approving the transfer of Vistoso Trails Nature Preserve conservation easement assignment from The Conservation Fund to Archeology Southwest

Motion by Mayor Joseph C. Winfield, **seconded by** Councilmember Steve Solomon to approve Consent agenda items (A) and (B).

Mayor Winfield recognized representatives from the Conservation Fund and Archeology Southwest for their stewardship of the project.

Vote: 7 - 0 Carried

REGULAR AGENDA

3. PUBLIC HEARING: DISCUSSION AND POSSIBLE ACTION REGARDING A PROPOSED 1,649 SQUARE FOOT DRIVE-THRU RESTAURANT LOCATED IN THE CANADA CROSSROADS SHOPPING CENTER AT THE SOUTHWEST CORNER OF LAMBERT LANE AND LA CANADA DRIVE. THE ITEMS INCLUDE:

ITEM A: CONDITIONAL USE PERMIT

ITEM B: CONCEPTUAL SITE AND LANDSCAPE PLANS AND REVISED MASTER DEVELOPMENT PLAN

ITEM C: CONCEPTUAL ARCHITECTURE

Senior Planner Kyle Packer presented item #3 and included the following:

- Zoning, History and Master Development Plan (MDP)
- Item A: Conditional Use Permit
- Item A: Conditional Use Permit - Compatibility
- Item A: Conditional Use Permit - Distance and Time Requests
- Item B: Development Plan and Landscape Plan
- Item C: Conceptual Architecture
- Review Criteria
- Public Participation
- Summary and Recommendations

Applicant Rory Juneman, representing the property owner, continued the presentation and included the following:

- Tropical Smoothie Cafe - Conditional Use Permit
- Location Map
- Current Development Plan
- Original Site Plan & Architecture
- Summary of Design Changes
- Updated Site Plan
- Parking, Traffic & Circulation
- Drive-Thru Stacking
- Drive-Thru Location
- Drive-Thru Screening
- Kiosk Speaker
- Enhanced Landscaping & Seating
- Trash and Loading
- Renderings
- Viewsheds
- Residential Setback
- Drive-Thru Demand Increasing
- Request CUP Approval

Mayor Winfield opened the public hearing

The following individuals spoke in support of item #3.

Oro Valley resident Edward Yunkherr
Sumit Patel

The following individuals spoke in opposition of item #3.

Oro Valley resident Ann Rogan

Mayor Winfield closed the public hearing.

Motion by Councilmember Steve Solomon, **seconded by** Councilmember Harry Greene to approve the Conditional Use Permit for the proposed drive-thru restaurant located in the Canada Crossroads Shopping Center, subject to the conditions in Attachment 1, based on the finding that the request complies with all applicable zoning code review criteria.

Attachment 1 - Conditions of Approval

1. An automatic gain control must be installed as part of the menu board speaker to prevent any inadvertent increase in noise decibels that exceed Zoning Code standards.
2. Noise thresholds may not exceed the levels established in the Noise Impact Study.

3. Hours of operation for the drive-thru limited to 6am to 10pm.
4. No signage copy on the west side of the subject pad may be visible from on-site properties to the west.
5. No drive-thru signage copy may be visible to on-site properties to the south. The menu-board shall be oriented and screened by screen wall and landscaping as depicted on site plan dated July 2023.
6. A small tree species with low mature canopy will be selected for all trees north of the building to protect mountain views as seen from the restaurant patio to the northwest of this project.
7. The use is limited to drive-thru businesses that require no more vehicle stacking capacity than represented in the application. If the stacking capacity is significantly exceeded by any business, the CUP is subject to reconsideration by Planning & Zoning Commission and Town Council.

Discussion ensued amongst Council and Staff.

Vice Mayor Barrett requested the following amendment to the main motion: There will be no pedestrian or employee walking routes or crosswalks within the drive through lane, except at the vehicle entry and exit points. The southern and western area in between the parking curb and the screen wall top will be vegetated at maximum capacity as determined by the Planning and Zoning Administrator, in order to create a colorful garden presence as viewed from the adjacent restaurant outdoor dining areas, and while preserving functionality as determined by the Planning and Zoning Administrator and Town Engineer, the order kiosks must be moved closer to the pick-up window to enlarge order kiosk approach cueing capacity.

Discussion continued amongst Council, staff and the applicant.

Motion by Vice-Mayor Melanie Barrett, **seconded by** Councilmember Tim Bohen to approve the following amendment to the main motion: There will be no pedestrian or employee walking routes or crosswalks within the drive through lane, except at the vehicle entry and exit points. The southern and western area in between the parking curb and the screen wall top will be vegetated at maximum capacity as determined by the Planning and Zoning Administrator, in order to create a colorful garden presence as viewed from the adjacent restaurant outdoor dining areas, and while preserving functionality as determined by the Planning and Zoning Administrator and Town Engineer, the order kiosks must be moved closer to the pick-up window to enlarge order kiosk approach cueing capacity.

Discussion continued amongst Council and staff regarding item #3.

Motion by Vice-Mayor Melanie Barrett, **seconded by** Councilmember Tim Bohen to approve the following amendment to the main motion: There will be no pedestrian or employee walking routes or crosswalks within the drive-thru lane except at the vehicle entry and exit points. The southern and western area in-between the parking curb and the screen wall top will be vegetated at maximum capacity as determined by the Planning and Zoning Administrator, in order to create a colorful garden presence as viewed from the adjacent restaurant outdoor dining areas. While preserving functionality as determined by the Planning and Zoning Administrator and Town Engineer, the order kiosk must be moved closer to the pick-up window to enlarge order kiosk approach queuing capacity.

Vote: 7 - 0 Carried

Motion by Councilmember Steve Solomon, **seconded by** Councilmember Harry Greene to approve the Conditional Use Permit for the proposed drive-thru restaurant located in the Canada Crossroads Shopping Center, subject to the conditions in Attachment 1, based on the finding that the request complies with all applicable zoning code review criteria.

Attachment 1 - Conditions of Approval

1. An automatic gain control must be installed as part of the menu board speaker to prevent any inadvertent increase in noise decibels that exceed Zoning Code standards.

2. Noise thresholds may not exceed the levels established in the Noise Impact Study.
3. Hours of operation for the drive-thru limited to 6am to 10pm.
4. No signage copy on the west side of the subject pad may be visible from on-site properties to the west.
5. No drive-thru signage copy may be visible to on-site properties to the south. The menu-board shall be oriented and screened by screen wall and landscaping as depicted on site plan dated July 2023.
6. A small tree species with low mature canopy will be selected for all trees north of the building to protect mountain views as seen from the restaurant patio to the northwest of this project.
7. The use is limited to drive-thru businesses that require no more vehicle stacking capacity than represented in the application. If the stacking capacity is significantly exceeded by any business, the CUP is subject to reconsideration by Planning & Zoning Commission and Town Council.

Vote: 6 - 1 Carried

OPPOSED: Councilmember Tim Bohan

Motion by Councilmember Steve Solomon, **seconded by** Councilmember Josh Nicolson to approve the Conceptual Site and Landscape Plan and Revised Master Development Plan for the proposed drive-thru restaurant located in the Canada Crossroads Shopping Center, based on the finding that the proposal complies with all Zoning Code criteria.

Vice Mayor Barrett requested an amendment to include; all plans must be updated to reflect new item (A) conditions. Councilmember Solomon accepted the amendment, seconded by Councilmember Nicolson.

Motion by Councilmember Steve Solomon, **seconded by** Councilmember Josh Nicolson **FINAL MOTION AS AMENDED**, to approve the Conceptual Site and Landscape Plan and Revised Master Development Plan for the proposed drive-thru restaurant located in the Canada Crossroads Shopping Center, based on the finding that the proposal complies with all Zoning Code criteria. All plans must be updated to reflect new item (A) conditions.

Vote: 7 - 0 Carried

Motion by Councilmember Steve Solomon, **seconded by** Councilmember Harry Greene to approve the Conceptual Architecture for the proposed drive-thru restaurant located in the Canada Crossroads Shopping Center, based on the finding that the request complies with all applicable Zoning Code criteria.

Vote: 7 - 0 Carried

Mayor Winfield recessed the meeting at 8:09 p.m.

Mayor Winfield reconvened the meeting at 8:21 p.m.

4. PUBLIC HEARING: DISCUSSION AND POSSIBLE ACTION REGARDING TWO ITEMS RELATED TO THE PROPOSED ANNEXATION OF APPROXIMATELY 36 ACRES AT THE SOUTHWEST CORNER OF LA CAÑADA DRIVE AND W MOORE ROAD

ITEM A: ORDINANCE NO. (O)23-02, EXTENDING AND INCREASING THE CORPORATE LIMITS OF THE TOWN OF ORO VALLEY, ARIZONA, PURSUANT TO THE PROVISIONS OF ARIZONA REVISED STATUTES, TITLE 9, CHAPTER 4, ARTICLE 7, AND AMENDMENTS THERETO, BY ANNEXING A CERTAIN TERRITORY CONTIGUOUS TO THE EXISTING LIMITS OF THE TOWN OF ORO VALLEY

ITEM B: ORDINANCE NO. (O)23-03, APPROVING A TRANSLATIONAL REZONING FROM PIMA COUNTY SUBURBAN RANCH (SR) TO TOWN OF ORO VALLEY R1-144 (LARGE-LOT

RESIDENTIAL)

Management Analyst Karl Shaddock presented item #4 and included the following:

- Process: Possible Annexation and Subsequent Rezoning
- Item A: Annexation Criteria
- Item A: Annexation Considerations
- Item A: Annexation Process
- Item B: Translational Rezoning

Paul Oland of Paradigm Land Design LLC, and representing the property owner, continued the presentation and provided a review of the proposed annexation.

Mike Jones of Insight Homes was present and available to answer any questions.

Mayor Winfield opened the public hearing.

The following individual spoke in support of item #4.

Oro Valley resident Sheri Butman

Mayor Winfield closed the public hearing.

Motion by Councilmember Steve Solomon, **seconded by** Councilmember Harry Greene to approve Ordinance No. (O)23-02, extending and increasing the corporate limits of the Town of Oro Valley, Arizona, pursuant to the provisions of Arizona Revised Statutes, Title 9, Chapter 4, Article 7, and amendments thereto, by annexing certain territory contiguous to the existing limits of the Town of Oro Valley, known as the 36-acres at the southwest corner of La Cañada Drive and W Moore Road annexation area.

Vote: 7 - 0 Carried

Motion by Councilmember Steve Solomon, **seconded by** Councilmember Harry Greene to approve Ordinance No. (O)23-03, the translational rezoning of the entire property from Pima County SR to Town of Oro Valley R1-144

Vote: 7 - 0 Carried

FUTURE AGENDA ITEMS

No future agenda items were requested.

ADJOURNMENT

Motion by Mayor Joseph C. Winfield, **seconded by** Councilmember Josh Nicolson to adjourn the meeting at 8:38 p.m.

Vote: 7 - 0 Carried

Michelle Stine, MMC
Deputy Town Clerk

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular session of the Town of Oro Valley Council of Oro Valley, Arizona held on the 6th day of September 2023. I further certify that the meeting was duly called and held and that a quorum was present.

Michael Standish, CMC
Town Clerk