

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE SPECIAL MEETING OF THE
FOUNTAIN HILLS TOWN COUNCIL
AUGUST 13, 2019
REGULAR MEETING**

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE – Mayor Ginny Dickey

Mayor Dickey called the meeting of August 13, 2019, to order at 5:30 p.m.

2. INVOCATION – Pastor Rod Warembourg, Desert Creek Fellowship

Pastor Warembourg gave the invocation.

3. ROLL CALL – Mayor Ginny Dickey

Councilmembers Present: Mayor Ginny Dickey; Vice Mayor Sherry Leckrone; Councilmembers Mike Scharnow, Art Tolis, Dennis Brown, Alan Magazine and David Spelich.

Councilmember Brown said that in light of some new legal challenges that may possibly put the Town at risk, he would recommend that they remove the Public Safety Fee from the agenda.

Mayor Dickey said that she agreed, due to the intention to bring this legal challenge to them, would remove Item 8-C-3, Public Safety Fee, from consideration but still hear the other item.

4. REPORTS BY MAYOR AND COUNCILMEMBERS

A. REPORT on proposed Special Work Sessions.

Town Manager Grady Miller said that they had a number of issues to be discussed during the fall, but have found that schedule-wise it made more sense to include most of them as part of a regular meeting. He said that this also provided more transparency to the public. He then reviewed the schedule for the Work Sessions and Special Meetings. Consensus of Council agreed to the schedule.

Mayor Dickey thanked Councilmember Tolis for his past service as Vice Mayor, noting that based on the practice of rotating the Vice Mayor position, Councilmember Leckrone was designated as Vice Mayor for the next eight months.

Mayor Dickey reported on the testing of the fountain lights, noting that they are looking to do something special with the lighting for the 30/50 celebration.

She reported that on June 26, she along with Councilmembers Brown and Magazine held a Town Talk and those notes were posted on the website.

She reported that she and others on the Council attended the Open House of the Fountain Hills Sanitary District.

She reported that the Economic Development Director went to the Chamber Meeting and reported on economic development news; it was well received.

Mayor Dickey also reported that she went to the High School where Walt Everett talked about a plaque dedicated to his wife and all educators in Fountain Hills that was placed on a recently-launched satellite.

She reported on a previous proclamation for Purple Heart Day and Councilmembers Scharnow and Spelich attended that event. She reported on the Boys and Girls Club's new Cox innovative lab, and that stated that she and Councilmember Scharnow attended the Museum of Time dinner.

5. PRESENTATIONS

- A. PRESENTATION and discussion by Lobbyist Jack Lunsford regarding a lobbying strategy and activities to date while representing the Town of Fountain Hills relating to possible flight path changes to Phoenix Sky Harbor Airport.

Mr. Miller reported that back in June, the Council discussed the changes being proposed to the FAA flight paths by Scottsdale, and directed the Town Manager to contract with a lobbyist to address the Town's concerns. He then introduced Jack Lunsford, who is an outstanding lobbyist who is working with Congressional and State representatives regarding the flight paths.

Mr. Lunsford then gave a brief background, noting that he is an Arizona native with an undergraduate degree in broadcast communications and a Master's in public administration from Arizona State University. He then presented a summary of what has been taking place to date, Exhibit A attached hereto and made a part hereof.

Councilmember Brown asked what Mr. Lunsford believed to be the timeline for this issue. Mr. Lunsford replied that he does not know for sure, but would estimate that they could be looking at up to 18 months. He said that what all of the staff felt was the #1 change was to move all of the flight traffic to the east of the Fort McDowell Yavapai Nation.

He said that right now they are talking about the inbound flights, but that does not take into account the westbound flights turning back east. He said that they will be attending a meeting with the Regional FAA Director and once that occurs they will have more specifics, on which he will report back to Council.

Councilmember Scharnow asked how Mr. Lunsford saw it working with Scottsdale's proposal. Mr. Lunsford said that at the end of the day it is all going to be about compromise. There is significant interest to Paradise Valley and Fountain Hills and they agree that the Scottsdale's proposal is not ideal.

Councilmember Magazine asked why it would take 6-18 months to resolve this. Mr. Lunsford replied that they are negotiating with the federal government. He did not want to give the Council a false promise. If they can do it in a shorter timeframe, they will.

Councilmember Tolis said that this issue came up about ten years ago and at that time there was a discussion regarding the elevation requirements for flying over Fountain Hills. If they are unable to resolve this, he asked if it would be possible to request a higher elevation. Mr. Lunsford replied that it would absolutely be on the table. He said that some people were talking about the elevation issue and the fact that the traffic coming out of the Scottsdale Air Park forced the traffic to stay lower. Until they resolve the FAA issue the elevation will be part of the conversation.

Mr. Lunsford said that he would also be at the Transportation Policy Meeting tomorrow and he looked forward to seeing Councilmembers at the League Conference next week.

6. CALL TO THE PUBLIC

Pursuant to A.R.S. 38-431.01(H), public comment is permitted (not required) on matters NOT listed on the agenda. Any such comment (i) must be within the jurisdiction of the Council and (ii) is subject to reasonable time, place, and manner restrictions. The Council will not discuss or take legal action on matters raised during "Call to the Public" unless the matters are properly noticed for discussion and legal action. At the conclusion of the Call to the Public, individual councilmembers may (i) respond to criticism, (ii) ask staff to review a matter, or (iii) ask that the matter be placed on a future Council agenda.

The following individuals addressed the Council.

Jan Parisian, Fountain Hills resident, opposed the location of the Daybreak Development. She said that the original intent was for a resort at that location, and

that would have welcomed people into the community. She said that the Keystone development location made sense, and they should concentrate their efforts on promoting occupancy in the downtown area, creating a cultural center with the Fountain Hills Theater located there.

Since Item 8-C was removed, she continued by addressing the public safety fee. She said that she would hope at some point they would explain why they cannot create a separate fund, and explain why the environmental fees have not been collected.

7. CONSENT AGENDA ITEMS

All items listed on the Consent Agenda are considered to be routine, non-controversial matters and will be enacted by one motion and one roll call vote of the Council. All motions and subsequent approvals of consent items will include all recommended staff stipulations unless otherwise stated. There will be no separate discussion of these items unless a councilmember or member of the public so requests. If a councilmember or member of the public wishes to discuss an item on the Consent Agenda, he/she may request so prior to the motion to accept the Consent Agenda or with notification to the Town Manager or Mayor prior to the date of the meeting for which the item was scheduled. The items will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

- A. APPROVAL OF the minutes of the Town Council Special Meeting of May 21, 2019; the Regular Meeting of May 21, 2019; the Special Meeting of June 4, 2019; the Regular Meeting of June 4, 2019; and the Regular Meeting of June 18, 2019.
- C. CONSIDERATION OF Ordinance 19-13 amendment Town Code Section 9-5-3, General Preserve Regulations, to prohibit geocaching, and Section 9-5-5, Golden Eagle Trailhead, to allow bicycles.
- D. CONSIDERATION OF RESOLUTION 2019-40, abandonment of the 10' Public Utility and Drainage Easement at the rear of Plat 604-C, Block 6, Lot 8 (15613 E. Palomino Blvd.), as recorded in Book 165, Page 14, records of Maricopa County, Arizona. (EA2019-12)
- E. CONSIDERATION OF Resolution 2019-41, abandonment of the 10' Public Utility and Drainage Easement at the rear of the Johnson Compound subdivision, Lot 2 (15836 E. Ponderosa Drive), as recorded in Book 1429, Page 12, records of Maricopa County, Arizona. (EA2019-13)
- F. CONSIDERATION OF Resolution 2019-42, abandonment of the 10' Public Utility and Drainage Easement at the rear and east side of Plat 431, Block 1, Lot 7 (17023 Cascade Drive), as recorded in Book 151, Page 43, records of Maricopa County, Arizona, with stipulation. (EA2019-14)

- G. CONSIDERATION OF Resolution 2019-43, abandonment of the 10' Public Utility and Drainage Easement at the rear of Plat 601-A, Block 1, Lot 41 (15927 E. Primrose Drive), as recorded in Book 161, Page 44, records of Maricopa County, Arizona, with stipulation. (EA2019-15)
- H. CONSIDERATION OF participating in a Federal Aid (CMAQ) grant application with the City of Scottsdale to construct a 10' wide Multi-Use Path along the south side of Shea Blvd. from 142 Street to Eagle Mountain Parkway.
- I. CONSIDERATION OF authorizing Mayor Dickey to vote on behalf of the Town regarding proposed resolutions to be considered at the Annual Conference of the League of Arizona Cities and Towns.

Councilmember Scharnow requested that Item B be removed from the Consent Agenda.

Councilmember Magazine **MOVED** to approve Consent Agenda Items 7-A and 7-C through 7-I; **SECONDED** by Councilmember Leckrone; passed unanimously.

- B. CONSIDERATION OF acceptance of Sculpture from Sign Art.

Councilmember Scharnow said that the sculpture is already in the ground and he asked what would happen if six of the Council did not approve it.

Mr. Miller said that this was not staff's desire to have this project handled in this manner. Community Services Director Rachael Goodwin came forward and said that this was not handled in the standard format.

Councilmember Magazine said that this was not the first time that they have had applications not go through the proper channels. He asked if this issue would be addressed when they come back with the overall policy. Ms. Goodwin replied that it will be covered in that discussion.

Councilmember Scharnow **MOVED** to accept the Sculpture from Sign Art; **SECONDED** by Councilmember Spelich; passed unanimously.

8. REGULAR AGENDA

- A. PUBLIC HEARING AND CONSIDERATION OF Ordinance 19-09, a proposed amendment to the Town of Fountain Hills Zoning Map to rezone approximately 16.08 acres generally located on the south side of Palisades Blvd., the east side of Westby Drive, the north side of Avenue of the Fountains, and the west side of La Montana Drive (AKA 16575 E. Palisades Blvd.; APN #176-07-853) from C-2 – Intermediate Commercial Zoning

District and C-2-EO – Intermediate Commercial Zoning District with Entertainment Overlay District to “Keystone PAD” for construction of approximately 147 apartment units. (Z2019-01)

Mayor Dickey opened the Public Hearing.

Senior Planner Marissa Moore reviewed the application through a PowerPoint presentation which addressed:

REQUEST
VICINITY MAP
PUBLIC PLAZA CONCEPT
PROPOSED SITE PLAN
DOWNTOWN AREA SPECIFIC PLAN
OFFSITE IMPROVEMENTS
ELEVATIONS
FLOOR PLANS
DEVIATIONS FROM THE CODE
RECOMMENDATIONS

Ms. Moore said that one thing that came to their attention after they initially met was the stormwater management. Staff wants to coordinate the design and construction of the traffic circle and how it may impact the water flow in that area, so they are requesting that a catch basin be constructed. She said that the applicant was present if they should have any questions.

Councilmember Brown asked if staff was content with the materials demonstrated by the developer. Ms. Moore said that it was unusual in its appearance so they questioned it, but she did not believe that staff was concerned with it; they were content with it.

Vice Mayor Leckrone asked for clarification on the ingress/egress points. Ms. Moore replied that there were entrances off Palisades and Avenue of the Fountains.

Councilmember Tolis said that he thinks that a project like this in the downtown area is an excellent use of space in line with having a vibrant downtown. He asked what they were calculating for the average rental rates and if it was taxed as residential or commercial. Additionally, he said that with previous projects they have approved it based on the development agreement covering contingency costs to ensure that the Town is compensated for all of the expenses. He asked if they could legally incorporate a deed restriction in these types of developments so they do not turn from rental into private condos.

Finance Director David Pock said that it would be a rental tax at 1.6%. He did not believe they would be able to charge a commercial rate. Mr. Arnson added that his understanding is the tax is based on the nature of the use versus what it is zoned.

Mr. Miller noted that there have been numerous occasions for a development agreement and they do collect \$5,000 for a development agreement to help compensate the expenses. Ms. Moore noted that there is no development agreement with this particular development.

Councilmember Scharnow said that he liked the project and the concept; he thought it would do well in that location. His issue is the parking. He said that it seems that staff is comfortable with the parking as proposed, but he is not. He said that 308 parking spaces are required and they are only providing 302, with 36 of those on Westby with parallel parking. He cannot see that working and does not think it will be enough. He is also concerned with the depth of the parking spaces.

Ms. Moore said that it is not uncommon for developers to ask for changes in parking. She said that over time she has looked at the parking chapter and thinks that it needs to be revised. The applicant does not want their residents to not having parking. She said that one thing to consider is that it is required to provide 1.5 spaces for a one-bedroom apartment. They are providing 2 spaces across the board, and it is not unheard of to have parking on streets. As a planner looking at parking, staff feels confident with what they are requesting.

Councilmember Scharnow also indicated concern if some of the units have short-term rentals, especially over the holidays; he did not see parking on Westby working and he did not like the aspect of parking on La Montana.

Mayor Dickey asked staff to discuss what use is permitted in the zoning. Ms. Moore said that everything in the downtown area is in the C-2 zone which allows restaurants, auto sales, etc. It is a very broad zoning category. The C-3 zone allows even more, almost getting into the industrial uses.

Mayor Dickey asked about the intersection of Westby and Avenue of the Fountains, which had previously been addressed by residents in that area. Town Engineer Randy Harrel came forward and said that they are in the process of studying that intersection. The entrance to this development is farther down on the Avenue, but they do have a sidewalk crossing at that location.

Councilmember Scharnow said that another concern he had was that there were no garages to units and he had read that some units have parking

spaces up to 500 feet away. Ms. Moore said that this was discussed at the Planning and Zoning Commission Meeting and the developer addressed it. Vice Mayor Leckrone said that she had a similar concern.

Brennan Ray, representing the applicant, came forward. He said that he was excited to be there. He said that although it is a unique, innovative type of development for Fountain Hills, it is not new to the Valley and the state. He said that the concept started in Tucson in the 1990's.

He said that they have worked hand in glove with the staff and it does meet the Town's criteria. He said that they appreciated the Planning and Zoning Commission's recommendation for approval and they were proud to be coming forward with both of the recommendations.

With regard to the rental rate, and providing a legal disclaimer that as an attorney, there are not rules and regulations, these homes will range from \$1,400 for a one bedroom to up to \$2,200, with the average rate around \$1,700 per residence. He said that they are an Arizona-based, family-owned business that has been in business for over 30 years. In over 30 years, they have never not completed a subdivision, even during the recession.

With regard to the possibility of these converting to owned properties in the future, Keystone does do single-family residences, but they are entering into this market because it is gaining a lot of traction throughout the valley. He said that there are many things that come into play in converting something like this into ownership properties, such as utilities, meters, easements, platting, etc. He said that there is no intention to convert this property.

With regard to the parking, Mr. Ray said that parking regulations and surrounding development data was provided to them by staff, so they have the historical data for the Town. Having worked on a number of these throughout the valley, they are looking at what is required, it is usually around 1.7 to 1.8 spaces in terms of parking spaces per unit; they are parking this at 2.0 per unit and they think that is more than appropriate.

He said that the farthest unit from parking stalls is 210 feet, so he was not sure where that number (500') came from. Additionally, residents moving into this know what they are getting into. They are making improvements along Westby which will help facilitate the added parking spaces.

Councilmember Tolis said that he really liked the project and would be in favor of it. His objective is to bring more commerce to the downtown area, and when they bring in 147 units, he sees that as a positive.

Mr. Ray said that there is no homeowners association in this development. The ability of short-term rental is still being studied, but that would be monitored through the actual leases. He said that it has been his experience in the past that people that choose to live in this type of facility like a 12-month or 2-year lease because they have four walls of freedom, with each a stand-alone unit, and each has a private rear yard as well as common areas.

Councilmember Tolis asked if a performance bond would be required. Mr. Miller said that performance bonds are usually required for public improvements. For something like this, they would usually require a letter of credit.

With regard to phasing, Mr. Ray said that Phase 1 will include all of the offsite improvements along Avenue of the Fountains, Westby and Palisades, including installation of the perimeter landscaping and theme wall. Then the internal construction commences. He said that they will build it like a single-family subdivision. They will build one part and then release those for rent.

Further discussion was held on whether they could be leased short-term with the recent changes in the law.

Councilmember Spelich said that he received seven e-mails on this item. Five were in favor, but had concerns with parking, and two negatives who had heard it was Section 8 public housing. Mr. Ray said that Section 8 is a very complicated process; there are no plans for Section 8 housing.

Councilmember Brown said that it seems like every new project they do battles on parking and the Town's calculations. Ms. Moore said that it is something they have talked about in-house; they are trying to figure out what the balances are. Councilmember Brown said that he did not have a problem with the parking count after seeing the other numbers.

Mayor Dickey closed the Public Hearing.

Councilmember Tolis **MOVED** to approve the request to rezone the property to Keystone PAD with a requirement that a catch basin be constructed in Avenue of the Fountains as recommended by the Town Engineer and subject to the following conditions: 1) ensure compliance with the Keystone Development Plan approved with this PAD except as modified below; 2) ensure compliance with all of the Town's adopted codes, requirements, standards and regulations, except as specifically stated and approved in the Keystone PAD Development Plan; and 3) review and acceptance of the detail design of the clubhouse and associated amenities by the Development Services Director; **SECONDED** by Councilmember Brown.

A recess was held from 7:13 p.m. to 7:19 p.m.

Mayor Dickey noted that during the break it was requested that Councilmembers speak directly into the microphone so the audience could hear them.

Due to an error in the staff report, Mr. Arnson asked that they restate the motion.

Councilmember Tolis **MOVED** to approve Ordinance 19-09 to approve the request to rezone the property to Keystone PAD with a requirement that a catch basin be constructed in Avenue of the Fountains as recommended by the Town Engineer and subject to the following conditions: 1) ensure compliance with the Keystone Development Plan approved with this PAD except as modified below; 2) ensure compliance with all of the Town's adopted codes, requirements, standards and regulations, except as specifically stated and approved in the Keystone PAD Development Plan; and 3) review and acceptance of the detail design of the clubhouse and associated amenities by the Development Services Director; **SECONDED** by Councilmember Brown; passed 6-1 with Councilmember Scharnow casting the dissenting vote.

- B. PUBLIC HEARING AND CONSIDERATION OF Ordinance 19-04, application by Sixth Street Enterprises, Inc., DBA Nature's AZ Medicines for amendment to Sections 24.03.B & C.4 of the Fountain Hills Zoning Ordinance to extend the permitted hours of a medical marijuana dispensary to allow operation between the hours of 8:00 AM to 10:00 PM daily and allow for delivery of products. (Z2019-05)

Development Services Director John Wesley reviewed the application, noting that staff looked at surrounding communities and what they and the state permitted. He said that most of them allowed for more hours than has been requested with this application. They looked at the impact of the current facility and did not find any reports from it. He said that the other change is for delivery of product, which is permitted by the State statutes. He said that staff is supportive of the changes and the Planning and Zoning Commission had one recommendation that the delivery hours be the same as the hours of the store.

Councilmember Tolis asked if the Town was collecting sales tax from their revenues. Staff replied that they were. Councilmember Tolis said that from his background in banking, it was his understanding that they were not able to bank with FDIC, and asked if that had changed.

The applicant, Mark Steinmetz, replied that the laws have changed. He said that it is highly regulated and they perform a full audit as part of their license renewal process. He said that they are required to report daily sales to the bank, which is FDIC insured, as part of the cash management process. Mr. Steinmetz said that it would just be employees making deliveries in unmarked vehicles.

He said that since he first won this location, they have applied and won applications in Maryland, Pennsylvania, Connecticut and Massachusetts. He said that when they bought the building in Phoenix, it was one of the highest crime rates in that area, but he built it like a bank with bulletproof glass and security.

Mr. Steinmetz was asked how they determine who manages these facilities. He replied that they promote from within; they have well over 400 employees around the country. Between their cultivation facilities and stores, their employees have health plans and benefits, and there are over 5,000 agents in the program today.

Discussion was held on the hours of operation being requested along with hours of deliveries. Vice Mayor Leckrone and Councilmember Spelich both said that they toured the facility previously and did not support the proposed changes.

Councilmember Spelich said that any resident in Fountain Hills could get to their location within ten minutes, and asked why they needed to provide delivery services.

Mr. Steinmetz said that evenings are important for his customers because it is often used for pain and sleeping at night. He said that there are a lot of people that cannot leave their homes. He said that the alternative is for them to get a caregiver and that license alone is \$350 a year. It is a major hassle for family members to go through that process.

Mr. Steinmetz said that cannabis is not highly addictive and in states that have approved its use, they have seen usage numbers reduced.

Councilmember Brown said that Mr. Steinmetz will recall his final decision previously, and he will stand by that. He sees the need and knows the need, and has acquaintances that use it, but he does not see anyone being out that late to get it.

Mr. Steinmetz said that he has been working these hours for six years and state law allows 7 a.m. to 10 p.m. He said that Sun City operates 7 a.m. to 10 p.m. Last year he was President of their Association, and they are at an extreme disadvantage.

Mr. Steinmetz said that their patients love them. The licenses are movable and perhaps he will consider moving his location to somewhere more accessible. He said that all he is asking for is to be treated as a legitimate business.

Councilmember Tolis said that Mr. Steinmetz comes across very professional and it is clear that he has a reputation to uphold, with ventures in other states. He has visited the store as well and it is very secure. He said that his father had pancreatic cancer and could not say more positive things about it from a medical aspect. He does not see any reason why they should say no in Fountain Hills. He is not opposed to this. He said that when it becomes legalized, it will be game over with these issues and that is something they will have to address at that time.

Councilmember Scharnow asked if the Phoenix dispensary could deliver in Fountain Hills. Mr. Steinmetz said that they could, but economically it would not be viable as it would cost a fortune.

Councilmember Scharnow said that he has been on the Fountain Hills Coalition for over nine years after he had been witnessing first-hand the effects of drugs on children. He said that extending the hours would make their job more difficult. He said that although the medical marijuana passed overall on the ballot, Fountain Hills voters rejected it. He realizes that attitudes have changed, but the fact remains that previous councils have already extended hours and he does not see the need to extend them even further.

As for delivery, Councilmember Scharnow said that it was opening Pandora's box. Too many things can and will go wrong.

Mr. Steinmetz said that there is a lot that has taken place since he first came before Council. The fact is that dispensaries do not put drugs on the streets in the hands of teens. He said that he lost his son to a drunk driver, but he has found that prohibitions do not work. Wherever medical marijuana was legalized, teen use went down 17% in Arizona. He said that there is a huge teen alcohol problem. When it was regulated, teen use went down and crime rates fell.

Mr. Steinmetz said that Congress just passed a law allowing dispensaries to run and operate without DEA interference. He said that it was the Cole Memorandum and it passed by a 2/3 vote. If the Council cared about the kids, they should learn about this.

Councilmember Magazine said that he had coffee with Councilmember Scharnow last week and he had pulled out a copy of the minutes where

Councilmember Magazine voted against extending the hours the first time it came before Council. He said that he has not heard anything really that persuades him to think that extending the hours further will cause any problem. He said that bars are open until 2:00 a.m. He favors the change.

Councilmember Tolis said that what is weak is when they see someone that needs this that is desperate. It is the residents that need this, not a high school student.

Mayor Dickey said that one of the biggest items is its legality and approval by Department of Health Services to operate from 7:00 a.m. to 10:00 p.m. and allowing for delivery. She said that there have been no issues in Fountain Hills and this looks to be a legal business. She does not dispute that children should not have it.

The question of whether the Council thinks it is profitable, they do not do that with any other business. She said that she does not see the justification in not approving the request.

Vice Mayor Leckrone said that from her perspective, just because these hours are not as loose as is allowed, does not hold weight. Councilmember Spelich said that to have the Council compared to being a drug cartel or not having the knowledge is offensive.

The following individuals address the Council on this issue:

Doug Hebert, member of the Fountain Hills Coalition and retired DEA employee for 27 years, reminded everyone that Congress has not removed medical marijuana as a Controlled Substance 1; it is still against federal law. It is still against the law for federal employees, airline pilots, etc. to use it. He does not grasp how patients traveling from out of town enhance his quality of life in Fountain Hills.

Discussion was held on the issue of kids getting ahold of marijuana and it is occurring because the cardholders are selling it through the market.

Shelly Mowrey, Scottsdale resident, said that a new study shows that those teens living near a dispensary increases the likelihood of them obtaining it by 33%. That is a bigger increase for Maricopa County and for Fountain Hills. If that trend continues, they will have record high marijuana use and illegal diversion of legal marijuana is alive and well. One out of three teens get their marijuana from a medical marijuana cardholder.

She said that when Mr. Steinmetz came before the Council before, he said that he would not be back. She was requesting that the application be denied.

Pam Aguilu, Fountain Hills resident, said that she got addicted because of chronic pain. She stopped using opiates in November 2012 and has been told by so many people she should get a medical marijuana card. She does not want to take that chance because she put herself and her family through hell. She said that cardholders get edibles and share them with families and friends. She said that they need to keep a lid on this. Having delivery and later hours is a very bad idea.

Faith, a Fountain Hills resident, said that Fountain Hills is not a university town like Tucson or Tempe. It is not big and congested. She appreciated the meeting being opened today with prayer. She said that Fountain Hills is a community where a lot of people come to heal. They have a lot of handicapped and seniors and when the Council considers anything, they should consider them. There are many patients for which home delivery would be a huge blessing.

Joanne Richards, Fountain Hills resident, said that she is a certified family recovery coach. She would be very interested in knowing what the percentage is that is receiving medical marijuana for chronic pain, end of life issues, depression, etc. She said that her sister has one in Maine and it is legal to grow their own there. She never has to leave the house and her children get access to all of it. One has been arrested twice. They all use it recreationally. She doesn't want those using on the roads at night getting more. Perhaps it is a bigger issue and those with cards need further assessment.

Frank Doolittle, Fountain Hills resident, said that he worked at General Motors and there was a man there for 25-30 years who had cancer. They gave him six months to live and he lived 20 years past that using marijuana and cocaine. His friend got on cocaine and marijuana and he became useless. He is against it.

Dushawn John submitted a written comment card in opposition to the ordinance.

Councilmember Tolis said that Fountain Hills does have a great Coalition and he respects Shelly and all of its members.

Councilmember Magazine said that he has listened very carefully. He has heard a lot of concerns about people getting it and going to work, children getting a hold of it, but he does not see that adding two hours makes a difference.

Mr. Wesley noted that there was a typographical error on the staff report and it should be Ordinance 19-14 (not 19-04).

Mayor Dickey closed the public hearing at this time.

Councilmember Magazine **MOVED** to adopt Ordinance 19-14; **SECONDED** by Mayor Dickey; motion failed 2-5 with the remainder of Councilmembers casting the dissenting votes.

C. PUBLIC HEARING AND CONSIDERATION OF REVENUE OPTIONS:

(1) Hold Public Hearing

Mr. Miller stated that back during the Retreat they were able to get through the process by identifying a unique one-time revenue source for the current year they are in. At the April 18, 2019, meeting Council directed staff to get ready to further consider a public safety fee and a revenue report was done and posted on the website. They extended the amount of time until the August 13, 2019, meeting for transparency purposes.

At this time, Finance Director David Pock came forward and provided a PowerPoint presentation that addressed:

BUDGETED EXPENDITURES PER CAPITA (for east valley communities – did not include enterprise funds)
SAME FOR WEST VALLEY
FUND BALANCE DEFINITIONS
FIVE YEAR FINANCIAL FORECAST

They were able to balance this year's budget but there will be a shortfall for the next four years.

PROPOSED INCREASE OF TRANSACTION PRIVILEGE (SALES) TAX

He noted that the majority of communities with lower sales tax have a primary and secondary property tax.

ORDINANCE 19-12

Proposed increase of .3%

STAFF'S RECOMMENDATION

Mr. Miller said that during the budget process the Town Council decided to suspend the environmental fee. They have about \$1/2

million funding needs for the environmental fund. They will have to come forward for a budget transfer of about \$800,000.

Mayor Dickey noted that the FTE per capita does not include police and fire personnel. The per capita public safety costs are in the packet and while they will not be discussing the public safety fee, they are very much connected to why they are looking at getting more revenue. She said that their #1 priority of the Town is to keep their residents safe.

Mayor Dickey said that the Town pays MCSO for services; they can make changes to the services provided if they want to focus on things. The taxpayers in Maricopa County pay for a myriad of things.

She thanked Councilmember Spelich for making them take a second look at what they do collect money on and what exactly they are getting versus what they are paying for.

She said that she feels bad that they do not have an opportunity to talk about a public safety fee. For those residents who have lived in Fountain Hills for a long time, before 1989 they paid a primary property tax for the Fire Department. In 2002, the last time the sales tax was raised, they eliminated the primary property tax. She said that sales tax is not something she would normally be advocating for, but their options are limited.

The following individuals addressed the Council:

Pam Aguilu, Fountain Hills resident, said that having a sales tax is important to any municipality. In order to have a sales tax based economy, they need more retail. She said that they need to be a little more creative with this issue. She is very much an advocate for taxing empty retail space. She said that any increase in sales tax is going to hurt the people they do not want to hurt.

Frank Doolittle, Fountain Hills resident, said that there is a problem with accountability. There is no accountability of contractors.

Mike Sabatini, Fountain Hills resident, said that he had a 30-year career as a government employee, with 10 years in executive management. He understands the challenges and commended the Council for making the tough decisions. Personally, he said that he supports the increase and would have supported the other as well.

Sheryl Ptak, Fountain Hills resident, thanked the Mayor and Councilmembers. She had sent a letter to them, but she wanted to

say that they need to support the Town financially. Property tax should not be a dirty word. They have lived in Fountain Hills for over 35 years and raised their children there. They have a small home-based business and was one of the founding families since the 1970's. They all need to own this. It is unrealistic to think that these funds should be there if the are not going to contribute to them.

She said that at this point the choice is a sales tax increase, but it will not cover everything. They will support the increase and would like to move forward again with a property tax question. If the Primary Property Tax could pass, they could eliminate this increase.

Dennis Thompson, Fountain Hills resident, said that he was alarmed with the onset of the environmental fee, but was shocked to learn about the serious financial position the Town was in. He learned that the statutes mandate what a town can do. Scottsdale and Phoenix are charter cities; Fountain Hills is not. He is in favor of a Primary Property Tax, as it is the most reliable means of addressing the revenue needs. Their tax burden is low compared to the Midwest and Valley cities. They need to do a better job of explaining it.

Councilmember Tolis asked Economic Development Director James Smith if he has had an opportunity to meet a lot of the merchants in Town and had a discussion on how the Town can help them. He asked if there have been any comments made about this proposal. Mr. Smith said that he had not been able to do that. He has been part of a Chamber meeting, but with the loss of staff in his area he has not been able to do that.

Mayor Dickey closed the public hearing.

Councilmember Tolis said that there is a perception among the public that the Town is spending money frivolously. He would encourage them to look at the last three years and see what has been cut and what they have done to try and increase revenues in the community. He said that he came here to increase the sales tax revenues. They need to increase commerce and create an economic driver. They should work with the Fort McDowell Yavapai Nation in tourism. They do not have the demographics or a year-round population to support an increase in sales tax.

He said that if anyone in the room went back and reviewed an article on buildersonline.com about water features and that is when he talked with Grady Miller and the former Town Manager about the concept of a crystal lagoon. He said that the Town Manager made the decision, after Council discussion, to spend money for the study

to determine whether the sales tax revenue would be increased with such a feature.

He suggested that they read the report. Maybe the community does not want the traffic or the state trust land to be developed, but it will never develop without a vibrant downtown. He agrees that they need to fight the bullies. He met with everyone that wanted a Primary Property Tax asking if they could do it. He said that they cannot sustain the long-term needs of the community. He is against the sales tax increase as it sends the wrong message regionally to where Fountain Hills is going. They need to reduce it by a small amount, not increase it. He said that they need to go back to the people and let them decide how much they are going to be taxed.

Mayor Dickey asked how they can fill commercial space when they cannot afford to keep up the level of services they have right now. There have been many suggestions made, but they all take staff to do it. She said that this increase does not touch the big capital items like the liner in the lake and the \$4 to \$6 million a year needed for roads. She said that they are not going to solve those issues with a sales tax increase, but they cannot build a downtown immediately and reap the benefits either.

She said that they have a responsibility right now to figure out a way to address public safety that is going up every year and infrastructure that needs attention. If someone can figure out how to cut \$2.5 million every year that is what is needed immediately. She said that they are past blaming on the lagoon issue. They are at the point where they cannot go forward without immediate revenue assistance. She said that next year their budget is going to look a lot different.

Councilmember Tolis said that they need to tell the people in the community what the Town's bond rating is and let them know what they are going to spend the money on. The majority of the people he knows will say yes if it is in writing and has an ending date. He said that the more they use bonds the rating goes down so they have to choose how they use it.

Councilmember Magazine said that status quo does not mean they are surviving; it means they are falling farther and farther behind. He said that they are short \$1 million a year. Inflation alone eats up some of it and they have been cutting every single year. They have a list 15 pages long of all of the things they have not been able to do in town and that does not include roads.

At this time, Mayor Dickey reopened the Public Hearing so the following individuals could speak:

Timothy Lynch, homeless resident, said that he tried to arrange a least but did not have the money to get into it. From a simple standpoint, the unoccupied retail space could occupy 10-15 cots and community service could benefit the community. He said that his wife was diagnosed with schizophrenia and he had to raise three kids. He is an empty nester without a nest. The community needs to look at this further to help the homeless.

Dion Boffo, Fountain Hills resident, said that he appreciated so much the discussion on raising funds. Coming from a community back east that went through a similar situation, Fountain Hills has a tremendous amount of resources and does a lot of things well. Making a transition from being under the gun, they have to move from maintenance mentality to an innovative mentality. He thinks that Fountain Hills is a great place to make that transition. They need to decide what kind of town they want to be.

Councilmember Tolis said that he spoke with four respected business owners who said that the sales tax increase was not a huge deal, but it is the perception.

Written comments in support of the increase were submitted by Dave Long and Kathleen Butler.

Mayor Dickey closed the Public Hearing.

- (2) CONSIDERATION OF Ordinance 19-12 relating to the transaction privilege tax; amending the Town Tax Code by increasing the rate of taxation by three tenths of one percent (0.3%); designating an effective date; and providing for severability.

Councilmember Magazine **MOVED** to approve Ordinance 19-12; **SECONDED** by Vice Mayor Leckrone; passed 5-2 with Councilmembers Spelich and Tolis casting the dissenting votes.

- (3) CONSIDERATION OF Resolution 2019-38 adopting and establishing a fee for the purpose of funding public safety expenses.

Item removed from the agenda at the beginning of the meeting.

- D. CONSIDERATION OF approving the Fifth Amendment to the Professional Services Agreement with Sunrise Engineering, Inc., for post-design

modifications to plans for shoulder paving on Fountain Hills Blvd. (Pinto Drive to Segundo Drive)

Public Works Director Justin Weldy gave a brief review of this request, noting that along with the motion recommended, they would need to include the reauthorization of the capital project using funding in the contingency for this year.

Councilmember Brown said that this has been in the capital plan for many, many years and asked how they could still be going on the fifth amendment. Mr. Weldy said that it was ramped up and due to a large reduction in staff they were not able to give comments. By the time they got it to 65%, ADOT had changed their environmental clearance requirements. They had to ask for subsequent amendments to that and ask for additional funding.

Councilmember Brown asked if this would be the last amendment. Mr. Weldy said that it would be the last amendment for design.

Mr. Miller added that it is an additional \$30,000 approving an amendment to pay for services that included curb and gutter, which were not part of the design.

Councilmember Brown **MOVED** to approve the Fifth Amendment to the Professional Services Agreement with Sunrise Engineering, Inc., for post-design modifications to plans for shoulder paving on Fountain Hills Blvd. (Pinto Drive to Segundo Drive) and reauthorize the capital project 6053 by using funds in the contingency for this year; **SECONDED** by Councilmember Scharnow; passed unanimously.

E. DISCUSSION regarding the Fountain Hills Boulevard Shoulder Widening Project.

Mr. Weldy explained that in the past they had six utilities that said they were okay with the clearing for this project. After the initial bid and construction was underway, three of the dry utility companies were found to be in direct conflict. It would have had a detrimental impact on this project to have moved them or they would have had to pay to do it themselves.

In working with ADOT, they agreed to the redesign and to make some changes. As that went forward and ADOT negotiated on the Town's behalf, the engineer and Public Works Director believed the change would be about \$20,000 and, in good faith, ADOT said to move forward.

Afterwards they found that the change order was going to be more than that and as a result it would be more than the 10% of the contract total, so ADOT

felt they had to cancel the project. As part of that cancellation there is a convenience-cancelling clause.

Mr. Miller said that they learned about this about three weeks ago and have been trying to figure out the delay. They had a meeting with the ADOT project engineer and contractor. They had been led to believe (as seen in the letter in the packet) that with the timeline and with the change orders putting in curb and gutter, they would still be on both sides of the street.

As outlined in the letter, there continued to be issues slipping in terms of the budget. He said that the contractor is a Fountain Hills-based company. This project should not have happened this way and it all started with the utility companies not being upfront about the proposed project in the beginning.

Mr. Miller said that from the Town Engineer, they believe that approximately 75% of the drainage issues experienced every year have been taken care of with the one side of improvements. Right now they have not figured out the close-out cost. They believe it is near the total contract. Staff will be presenting to Council a menu of options, but right now they do not have those final numbers.

Councilmember Scharnow said that his concern is that most people think it reflects back on the Town and that concerns him. He is concerned about the long-term viability of widening to where it should be—four lanes, bike lanes, etc. If they are going to be asked to spend more money to finish the other side and left with a two-lane road, he thinks that is going to prolong the improvements. It is unfortunate.

Mr. Miller said that the traffic volumes and counts do not justify the two lanes in each direction. They did only at the build-out of the state trust lands.

He said that the Governor signed part of the budget package that provides money to each city and town in the state. He said that they believe that just doing the other side of the street will be around \$785,000 and they will not get the grant money back.

Mr. Weldy said that the purpose of this agenda item was to bring the Council up to date.

F. CONSIDERATION OF Ordinance 19-10 to comply with recently enacted State law mandating hands-free use of cellular phones while driving.

Mr. Arnson said that this item had come to Council previously, but since then he has worked with the Vice Mayor and they have worked out those concerns.

Vice Mayor Leckrone said that she was previously wrong in her understanding. After reading the 11-page bill she saw on the last page that it does permit a Town to adopt the mirror of the state law and not be subjected to the warning period.

Councilmember Brown **MOVED** to adopt Ordinance 19-10; **SECONDED** by Councilmember Spelich; passed unanimously.

9. COUNCIL DISCUSSION/DIRECTION to the TOWN MANAGER

Item(s) listed below are related only to the propriety of (i) placing such item (s) on a future agenda for action or (ii) directing staff to conduct further research and report back to the Council:

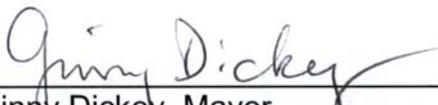
None

10. ADJOURNMENT.

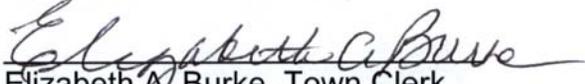
Councilmember Magazine **MOVED** to adjourn; **SECONDED** by Councilmember Tolis; passed unanimously.

The Special Meeting of the Fountain Hills Town Council of August 13, 2019, adjourned at 9:46 p.m.

TOWN OF FOUNTAIN HILLS


Ginny Dickey, Mayor

ATTEST AND PREPARED BY:


Elizabeth A. Burke, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Special Meeting held by the Town Council of Fountain Hills in the Town Hall Council Chambers on the 13th day of August, 2019. I further certify that the meeting was duly called and that a quorum was present.

DATED this 3rd day of September, 2019.

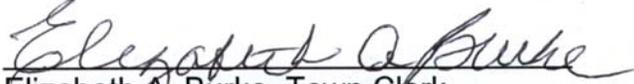

Elizabeth A. Burke, Town Clerk

EXHIBIT 'A'

Memo

tLg

To: Grady Miller, Town Manager; Town of Fountain Hills
From: Jack Lunsford, Consultant; The Lunsford Group
Date: 8/13/2019
Re: Professional Services Update – Flight Path from Sky Harbor

The following is an interim summary of the work performed by The Lunsford Group (tLg) during the initial several weeks of our PSA Agreement in support of the Town of Fountain Hills' (Town) efforts to address its concerns regarding flight path activity from Sky Harbor International Airport.

Initial Assessment

- Briefing meetings were held with the Mayor Dickey and Town Manager Miller so that tLg could begin assessing the issue, researching historical information and the current situation, and building a strategy in support of the Town.
- Brief conversation was held with Scottsdale Mayor Jim Lane, followed by outreach to Scottsdale Government Relations staff. tLg suggested to Scottsdale that building a coalition of support among affected cities/towns and tribal nations would provide a stronger, collective voice to convey our concerns to Congress and FAA. Scottsdale offered to convene the parties.

Meetings in Washington DC

- During the week of July 22nd tLg met with key members of the Arizona delegation on behalf of the Town to express both our concerns with the FAA's proposed changes to the eastern flight paths (Next Gen) and share our position of support for either 1) the status quo prior to Next Gen or 2) "Scottsdale's *Preferred* Modification to FAA Concept 1". We specifically opposed "Scottsdale's *Acceptable* Modification to FAA Concept 1".
- Key Arizona congressional members were both aware of the flight path situation and willing to assist, making various suggestions to address matter.
 - Sen. Martha McSally has had talks with Scottsdale and is clear on Fountain Hills' position. She was pleased when told of pending efforts to form a coalition of support, suggesting a possible Delegation Letter endorsing our collective, consensus position.

- Sen. Krysten Sinema referenced a meeting she'd had the previous day with the FAA Administrator, indicating she told him the "flight path was her #1 issue". She expressed to **tLg** that "she would like to see a coalition" of support formed; she believes that would strengthen our voice(s) and provide strength for her efforts. The Senator also mentioned she would be meeting with the FAA Administrator again soon and that she would reiterate the growing position in the East Valley. **tLg** has specific direction from her to work with her general counsel on this matter. (Note: Current **tLg** Vice President Erin Lunsford has moved to Washington DC and is joining the staff of Sen. Sinema.)
- Rep. David Schweikert, as a resident of Fountain Hills and a representative for District 6 for more than a dozen years, is more aware of the history of the flight path developments than any other member of the delegation. As such, he asked that **tLg** work closely with both his chief and deputy chief of staff to keep him informed of any coalition positions. (Note: **tLg** had already met with the deputy chief prior to Washington DC meetings.)
- Rep. Greg Stanton, as Mayor of Phoenix, led the successful lawsuit against the FAA on the westbound flight paths, so he has a nearly equal understanding of the complexities of the flight path issue. (Note: **tLg**'s Jack Lunsford served as Special Assistant to Mayor Stanton during the time of the City's legal action against the FAA.) Our visit with Stanton was brief due to his other commitments, but we conducted a thorough briefing with his chief of staff.
- **tLg** met with every other member and/or staff of the Arizona delegation except for Rep. Andy Biggs. Even though these other members don't represent the Fountain Hills & surrounding areas, in each briefing we included mention of the flight path issue so that they were aware of Fountain Hills' position and a pending coalition in case a Delegation Letter was proposed and circulated to our delegation.

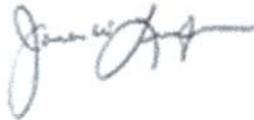
Ft. McDowell Yavapai Nation Briefing

- Mayor Dickey & Town Manager Miller convened a meeting with the Ft. McDowell Yavapai tribal leadership upon **tLg**'s return from Washington DC. **tLg** provided a briefing which resulted in interest from the tribal leadership to participate in an upcoming meeting of government relations staff from the various communities. The purpose of the meeting is to determine commonality of interest and whether a coalition of support was viable.

Flight Path Meeting

- Staff and/or contractor representatives from the following communities attended this initial meeting: Scottsdale (as convener at the request of **tLg**), Fountain Hills, Paradise Valley, SRP-MIC, Ft McDowell Yavapai Nation, and Phoenix Sky Harbor Aviation Department. The discussion centered around 1) sharing of current information, 2) whether there could be agreement among the parties that could/would develop into a coalition of support and, if so, 3) next steps.
- Agreement was reached to move forward with 1) an update briefing to our principals, 2) further investigative meetings with key players such as the FAA, and 3) determine if other parties would be interested in participating in a coalition of support.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "James A. ...".