

# **DRAFT**

## **MINUTES OF THE REGULAR MEETING BOARD OF ADJUSTMENT TOWN OF CHINO VALLEY**

**THURSDAY, OCTOBER 10, 2019  
6:00 p.M.**

The Board of Adjustment of the Town of Chino Valley convened for a regular meeting at the Chino Valley Council Chambers, located at 202 N. State Route, Chino Valley, Arizona.

### **1) CALL TO ORDER**

Development Services Director Joshua Cook began the meeting at 6:00 p.m. and announced that since the Board of Adjustments (BOA) had not met since 2015, the current Board needed to elect a Chair and Vice Chair to conduct the meeting. Once the Board approved the 2015 meeting minutes, they would move to the election process.

### **2) PLEDGE OF ALLEGIANCE**

Board Member Beverly Duffy led the Pledge of Allegiance.

Independent Attorney to the Town, Brandon Kavanagh, explained he was independent from the Town's appointed legal firm so that if this matter moved forward and needed legal representation, there would not be a conflict with the Town's legal firm. He explained and guided the Board through the proper procedures.

Beverly Duffy would be the Acting Chair until the Board elected the Chair and Vice Chair positions.

### **3) ROLL CALL**

Present: Beverly Duffy, Board Member; Sandra Tuttobene, Board Member; Michael Ditta, Board Member; Julie Northington, Board Member; Billie James, Board Member

Staff Present: Joshua Cook, Development Services Director  
Brandon Kavanagh, Independent Attorney

### **4) APPROVAL OF MINUTES**

- a) Consideration and possible action to approve April 21, 2015, meeting minutes.

MOVED by Board Member Julie Northington, seconded by Board Member Sandra Tuttobene to approve April 21, 2015, meeting minutes.

AYE: Board Member Beverly Duffy, Board Member Sandra Tuttobene, Board Member Michael Ditta, Board Member Julie Northington, Board Member Billie James

**5 - 0 PASSED - Unanimously**

**5) RESERVATION FOR AGENDA ITEMS**

- a) Consideration and possible action to select a Chair and Vice-Chair of the Board.

Board Members discussed possible nominations for the Chair position. Ms. Duffy stated she did not want to be Chair of the Board.

MOVED by Board Member Julie Northington, seconded by Board Member Beverly Duffy to accept Board Member Sandra Tuttobene for the Board of Adjustment Chair position.

AYE: Board Member Beverly Duffy, Board Member Sandra Tuttobene, Board Member Michael Ditta, Board Member Julie Northington, Board Member Billie James

**5 - 0 PASSED - Unanimously**

Chair Tuttobene asked if there were any volunteers for the Vice Chair position, and Board Member Duffy volunteered for the position.

MOVED by Board Member Julie Northington, seconded by Board Member Billie James to accept Board Member Duffy for the Vice Chair position on the Board of Adjustments.

AYE: Board Member Beverly Duffy, Board Member Sandra Tuttobene, Board Member Michael Ditta, Board Member Julie Northington, Board Member Billie James

**5 - 0 PASSED - Unanimously**

**6) PUBLIC HEARINGS**

- a) Discussion and possible action regarding the appeal of the Zoning Administrator's Interpretation Letter of Section 4.21.F(1) & (2), and 4.21.2.C of the Town of Chino Valley Zoning Temporary Sign Code.

The Board reviewed the proper procedure for the public hearing on the agenda items. Chair Tuttobene stated she would be consistent with other public meeting procedures and allow for three minutes for each member of the public wishing to speak.

Development Services Director Cook discussed the following:

- In May of last year, he had explained to Council that the current code did not contain language that allowed for the renewal of temporary sign permits. He had asked for time to change the code to implement language.
- Tom Payne had requested an interpretation of the code from staff, which staff provided. Mr. Payne was appealing the interpretation.
- Staff could not enforce or interpret the code based on intent or past actions of staff if it were

- not written in code because it would or could be seen as arbitrary and capricious.
- Staff was required to enforce the code as written and could not implement their own beliefs or understanding into the interpretation.
- It was the responsibility and required action of the Planning and Zoning Commission and the Town Council to implement any changes to the language of the code.
- Staff recommended that the Board of Adjustment find that the staff interpretation was correct.

Attorney Kavanagh explained that the Board discussions were to be held in public as there was no executive session on the Agenda and that he would be available for any questions Board Member's had, but there would be no attorney client privilege in a public meeting. Mr. Kavanagh explained that the Boards interaction with the appellant and staff would be different than members of the public commenting during the public hearing portion of the meeting.

Chair Tuttobene opened the meeting to the public:

The appellant, Tom Payne of Tom's Print & Sign, stated he did not think that three minutes was an adequate amount of time for the appellant to make his case. He requested more time to make his case. Staff stated that if Mr. Payne was the only person speaking, the Board could allow him as much time as necessary. The Board agreed to allow Mr. Payne the necessary time to make his case.

Staff gave the Board a copy of a document provided by Mr. Payne.

Mr. Payne stated the following:

- Elaborated on his background and history in Chino Valley, including being a member of three sign committees for the Town.
- Provided his knowledge on the history of the temporary sign in Town, which began in 2008 during economic down times. The temporary sign permit was originally through a temporary ordinance that was replaced with the adoption of new code that was developed through community outreach and input in 2016.
- He did not think that staff was enforcing the code through the letter of the law.
- The Town's sign permit fees showed temporary signs were \$5.00 per month, not \$5.00 per month per sign.
- He claimed that staff unilaterally added language to the Council resolution, sign application and to the appellant's letter.
- He thought the code allowed for the renewal of temporary signs and the precedent for other permits or subscriptions that were renewable, such as drivers licenses and magazines, was being lost. He thought it was common sense and that if all requirements were met, the permit should be granted.
- He presented a letter signed by previous sign committee members that stated it was the intention of the previous sign ordinance committee to allow for a temporary signage for six months at which time it could then be renewed.
- He discussed previous Town staff information for seeking community outreach for temporary signs.
- Mr. Payne stated that the consequences of the current staff's interpretation were hurting local businesses because business was down and sales tax in the Town was already higher than neighboring cities. Local clubs and churches were unable to notify people of upcoming events. Other towns could fly temporary banners and the Town was losing business to those places.

- He explained the current language was a compromise between the Town and local businesses that allowed for control by the Town and maintained the cleanliness around Town.

Board Members, Staff and the appellant discussed the following:

- Board Members asked why the appellants letter referenced a new temporary sign permit when the meeting dialogue was specific to past permits. Mr. Payne explained it was both and it was dependent on what the individual applicant wanted.
- Board Members asked why the appellant had not brought in the 2017 ordinance that dialogued the reason why the specific chapter was updated and the presentation of Reed vs. Gilbert, AZ. Mr. Payne stated that Reed vs. Gilbert, AZ was a main reason for the update and they were trying to be proactive by taking that into consideration. It did not impact the Town's temporary signs. Mr. Payne stated that Mr. Cook's interpretation that a business could only have a temporary sign for six months of the year was hurting businesses.
- Board Members asked Mr. Payne the meaning of temporary. Mr. Payne stated that temporary was referring to the material of the sign and the sign not being permanently affixed. He stated most businesses only used the temporary signs during business hours, but some did keep them out without removing them.
- Mr. Payne stated that some thought his interest with this was based on profit for his sign business but he stated he made more money from permanent signs and his business did not make most of the generic temporary signs.
- The Board asked what new product Mr. Payne wanted to use instead of what he currently was using. Mr. Payne explained that he was easily bored so liked changing his signs and he wanted to introduce new products that the community needed to know about.
- The Board questioned whether the appellant was doing this for his own personal businesses or if he was doing the appeal for other businesses throughout Town. Mr. Payne stated he believed it was an issue that affected everyone, but he was the most familiar with the process and history.
- The Board asked Mr. Cook if any verbiage was changed from the ordinance as the appellant had claimed. Mr. Cook stated he provided the Board with the exact language that was in the fee schedule and the code. The fee schedule language stated temporary signs were \$5.00 per month, not per application.
- The Board asked if the six months was per year or the life of the business. Staff explained that was where it became confusing and the exact language did not identify the material as the reason for a sign being temporary. The code simply stated that temporary sign permits would be issued for no more than six months. The Board asked if the literal interpretation was only one temporary sign and staff explained that is what the code stated and was the reason staff informed Council that the language needed to be changed. Staff also explained there was some debate as to whether a sign was actually temporary if it could be continually renewed. If the code language was updated, it would eliminate the need for interpretation and Board of Appeal hearings.
- Mr. Payne was asked if a new application was competed upon a renewal of a sign. Mr. Payne stated that a new application was completed.
- The Board asked staff how many other businesses were encountering the same issues as the appellant. Staff explained there had been several businesses asking for temporary sign permits.
- Board Members asked staff the timeframe for updating the language of the code and staff explained the process and hoped to get the process moving quickly once the Council was satisfied with the language.
- Board Members questioned what constituted a permanent sign because they could not find a

literal definition. Staff explained that permanent signs were defined in the Sign Standard section with each type of permanent sign being defined, but permanent and temporary were not specifically defined.

- The appellant claimed that the code permit fee was for the aggregate signs, not a per sign application fee and that was not reasonable for a small town. Board Members asked Mr. Payne if an applicant should be allowed to apply for several temporary sign under one \$5.00 fee. Mr. Payne stated the permit would only be for one sign in the six-month period and this really affected only new businesses because established businesses did not need to put up temporary signs.
- Board Members questioned staff if there was an application limit for temporary signs. Mr. Cook stated that they went by the letter of the code which stated the limit was for four in a six-month period.
- Mr. Payne stated that one of the goals of the sign ordinance was to fix the business unfriendly reputation by making the temporary sign ordinance simple and easy to understand. He stated that everyone understood what the intention of the code was until Mr. Cook took his job and stated it was wrong. Mr. Cook disagreed and stated his two predecessors also thought there were issues with the sign code but since they were temporary, they were not able to address the issues.
- Some Board Members did not blame staff because they also interpreted the code similarly, but they also understood the stance of the appellant. They thought Council needed to come in and update the language to reflect the wishes of the Town and the Community.

MOVED by Board Member Sandra Tuttobene, seconded by Board Member Beverly Duffy to close the public comment session.

AYE: Board Member Beverly Duffy, Board Member Sandra Tuttobene, Board Member Michael Ditta, Board Member Julie Northington, Board Member Billie James

**5 - 0 PASSED - Unanimously**

Board Members, Staff and the Attorney discussed the following:

- The appeal filed by Mr. Payne as well as the documents provided by staff and the appellant.
- Members brought up prohibited signs and the lack of a definition for both permanent and temporary signs.
- Board Members discussed their interpretation of the code and reviewed the reasons that staff and the UDO were rewriting the sign code. Interpretations and topics included:
  - Providing businesses only one opportunity per year to have a temporary sign did not promote growth or vitality for the Town.
  - The code did not specifically prohibit the number of temporary sign applications, and if an application followed the law and the definition of a sign, the sign was good.
  - The \$5.00 fee schedule was unclear.
  - Signs could not be changed on a weekly basis because each application and permit covered a specific scope and detail of what was being done.
- Attorney Kavanagh stated it was unusual for an overall general interpretation of code to be appealed. Most appeals were in regards to a specific application that the Board reviewed based on the facts of the application and if it fit the requirements. It was legally very odd that an overall interpretation policy was being appealed. The overall interpretation was the job of the Town Council. If people wanted a change in the overall interpretation, the Council needed to take that into account through legislative action.
- The Attorney explained to the Board that if they determined the application was successful or unsuccessful, the Board would need to have a vote. If the appeal was unsuccessful

because the Board thought it was the job of the Council to handle those type of issues on an overall basis, that could be reflected in the motion. If the Board wanted to grant the appeal of the interpretation, there would be an open legal question about whether the Board had the authority to substitute their interpretation in place of the Council.

- Staff attempted to explain to the Board the different motions that could be made and was interrupted by Mr. Payne, stating he was out of order.
- The Board discussed their ability to make a decision regarding Mr. Payne's appeal based on staff's interpretation, with a recommendation to the Council to address any misrepresentation or omissions made of the actual UDO. The Town Attorney explained that the Board of Adjustment did not sit in place of the Council. Changes to the UDO code was under the purview of the Council. If the Board decided that as the language currently existed, the appeal was either successful or unsuccessful, that is what the Board would do but the Board did not have the authority to substitute their decision in place of Council. They could only interpret what existed and decide how that applied to an application before the Board on Appeal.
- The Attorney explained that there was no application before the Board to review because it was either pending or denied. If there was an application, the Board could make a decision on that particular application, but it would not change the existing language. He stated that most the discussion at the meeting was regarding the interpretation about the meaning of the code, and the Board had not necessarily agreed with the interpretation, which was an issue. The Town could not have legislation in place that required the people who helped draft the legislation explain the meaning behind that legislation. The concerns presented seemed to be businesses in Town expressing how they needed the code to read, which was not something the BOA could decide. Those were issues that belonged in front of the Council because it applied beyond any particular application.
- Board Members expressed confusion about their duties in regards to making a decision on the application. The Town Attorney explained that typically the Board would be making a decision on an application, but Mr. Payne was asking the BOA to interpret the code globally in a certain way. There was no application but instead two sides dueling back and forth about the interpretation of the code.
- Board Members commented that Mr. Cook should have provided the application for the appeal, but Mr. Kavanagh explained the appellant was appealing the interpretation, not an application.
- A Board Member discussed past appeals that were based on an application and the Board was able to make a decision, but this appeal was based on an interpretation. It was the feeling of some Board Members that the appeal needed to go directly to the Council.
- Staff reviewed the code language that gave the BOA the authority to make a decision regarding an appeal but the Town Attorney clarified the intent of the code for the Board.
- The Board asked the Attorney if there would be a lawsuit if they made a decision on the application. The Attorney explained he could not answer the lawsuit question but that the BOA decision would only apply to Mr. Payne and could not be used by any other party.
- Mr. Payne's application specifically stated he was appealing the interpretation of the code. A Board Member stated that by approving Mr. Payne's appeal, the Board would be agreeing to his interpretation.
- The Attorney explained the best way for the Board to make a motion regarding the application and any potential recommendation made to the Town Council.

MOVED by Board Member Michael Ditta, to vote that Mr. Payne's interpretation of the code was correct and he should be allowed to have his application approved for his temporary sign. Attorney Kavanagh questioned which temporary sign and which application would be approved.

MOVED by Board Member Sandra Tuttobene, seconded by Board Member Michael Ditta to agree that Mr. Payne could apply for a new temporary sign permit to advertise new products and services that his company has recently added based on the letter of the law as it was currently written.

AYE: Board Member Sandra Tuttobene, Board Member Michael Ditta, Board Member Julie Northington, Board Member Billie James

NAY: Board Member Beverly Duffy

**4 - 1 PASSED**

MOVED by Board Member Sandra Tuttobene, seconded by Board Member Michael Ditta that the Board make a decision to reference all staff prepared information and submit it to Town Council for important consideration of revising the UDO based on appropriate language, missing information, omissions, to help clarify what is or is not appropriate as soon as possible.

AYE: Board Member Beverly Duffy, Board Member Sandra Tuttobene, Board Member Michael Ditta, Board Member Julie Northington, Board Member Billie James

**5 - 0 PASSED - Unanimously**

**7) UNFINISHED BUSINESS**

**8) NEW BUSINESS**

Mr. Cook wanted to setup a regular schedule to go through training on the zoning ordinances and protocol so the meetings could run smoothly. The Board agreed and requested the next meeting take place in January.

**9) ANNOUNCEMENTS**

**10) PUBLIC COMMENTS**

*Members of the public may address the Board of Adjustment on items not on the printed agenda. State your name for the record and please observe the time limit of 3 minutes. Be advised that the Board cannot/will not respond to your comments at this time.*

Cory Mendoza – requested that any BOA training that took place be between the Town Manager and the Board to avoid future bias with staff.

William Nichols – CBD Connection – Asked if he would be able to turn in an application on the upcoming Monday. The Board directed staff to contact Mr. Nichols.

**11) ADJOURNMENT**

MOVED by Board Member Sandra Tuttobene, seconded by Board Member Beverly Duffy to adjourn the meeting at 7:43 p.m.

AYE: Board Member Beverly Duffy, Board Member Sandra Tuttobene, Board Member Michael Ditta, Board Member Julie Northington, Board Member Billie James

**5 - 0 PASSED - Unanimously**

Submitted: October 21, 2019.

By: *Vickie Nipper, Deputy Town Clerk*

Approved: \_\_\_\_\_, 2019.