

**TOWN OF GILBERT
PLANNING COMMISSION, REGULAR MEETING
GILBERT MUNICIPAL CENTER, 50 E. CIVIC CENTER DRIVE, GILBERT ARIZONA
July 2, 2014**

COMMISSION PRESENT:

**Chairman Jennifer Wittmann
Vice Chairman Joshua Oehler
Commissioner Brigette Peterson
Commissioner David Blaser
Commissioner Carl Bloomfield
Commissioner Kristofer Sippel
Commissioner David Cavenee
Alternate Brent Mutti**

COMMISSION ABSENT:

None

STAFF PRESENT:

**Planning Services Manager Linda Edwards
Principal Planner Catherine Lorbeer
Planner Nichole McCarty**

ALSO PRESENT:

**Town Attorney Michael Hamblin
Town Attorney Jack Vincent
Town Council Member Jenn Daniels
Recorder Margo Fry**

PLANNER	CASE	PAGE	VOTE
NATHAN WILLIAMS	Z14-13	2	APPROVED
NATHAN WILLIAMS	S14-06	4	APPROVED
CATHERINE LORBEER	UP13-07	5	REVOKE

CALL TO ORDER:

Chairman Jennifer Wittmann called the meeting to order at 6:05 p.m.

ROLL CALL

Ms. Fry called roll and a quorum was determined to be present.

APPROVAL OF AGENDA

Chairman Wittmann asked if there was a motion to approve the Consent Agenda.

Planning Commission
Regular Meeting 7-2-14

Vice Chairman Joshua Oehler announced that items 10, Z14-13 and 11, S14-06 would be moved to the Consent Agenda.

A motion was made by Commissioner David Cavenee and seconded by Commissioner Brigitte Peterson to approve the Consent Agenda.

Motion carried 7- 0

COMMUNICATIONS FROM CITIZENS

At this time members of the public can comment on items not on the agenda. The Commission's response is limited to responding to criticism, asking staff to review a matter commented upon or asking that the matter be put on a future agenda.

Chairman Wittmann opened the public hearing and asked if there was anyone present who wished to speak under those terms.

No one came forward.

RECESS PLANNING COMMISSION

Chairman Wittmann recessed the Planning Commission to convene the Board of Adjustment at 6:05 p.m.

Chairman Wittmann reconvened the Planning Commission at 6:10 p.m.

PUBLIC HEARING (CONSENT)

Consent Public Hearing items will be heard at one Public Hearing. After the Consent Public Hearing, these items may be approved by a single motion. At the request of a member of the Commission or Staff, an item may be removed from the Consent Calendar and may be heard and acted upon separately. Other items on the agenda may be added to the Consent Public Hearing and approved under a single motion.

Z14-13: REQUEST TO REZONE APPROXIMATELY 45.85 ACRES OF REAL PROPERTY GENERALLY LOCATED SOUTH OF THE SOUTHEAST CORNER OF VAL VISTA DRIVE AND RIGGS ROAD, FROM APPROXIMATELY 45.85 ACRES OF SINGLE FAMILY - 35 (SF-35) WITH A PLANNED AREA DEVELOPMENT OVERLAY ZONING DISTRICT TO SINGLE FAMILY - 10 (SF-10) WITH A PLANNED AREA DEVELOPMENT (PAD) OVERLAY ZONING DISTRICT.

FOR THE FOLLOWING REASONS: THE DEVELOPMENT PROPOSAL CONFORMS TO THE INTENT OF THE GENERAL PLAN AND CAN BE COORDINATED WITH EXISTING DEVELOPMENT OF THE SURROUNDING AREAS, AND ALL REQUIRED PUBLIC NOTICE AND MEETINGS HAVE BEEN HELD, THE PLANNING COMMISSION MOVES TO RECOMMEND APPROVAL TO THE TOWN COUNCIL FOR Z14-13 a request to rezone approximately 45.85 acres of real property generally located south of the southeast corner of Val Vista Drive and Riggs Road, from approximately 45.85 acres of Single Family - 35 (SF-35) with a Planned Area Development overlay zoning district to Single Family - 10 (SF-10) with a Planned Area Development (PAD) overlay zoning district, subject to the following conditions:

- a. Dedication to Gilbert for Val Vista Drive right-of-way that is adjacent to the Property shall be completed prior to the effective date of this ordinance. Failure to complete dedication prior to the effective date of this ordinance may result in reversion of the zoning to the prior zoning classification.

- b. Dedication of Val Vista Drive shall extend 65 feet from the monument line.
- c. Construction of off-site improvements to Val Vista Drive adjacent to the Property shall be completed prior to issuance of a certificate of occupancy or final approval of any building constructed on the Property or at the time requested by Gilbert, whichever is earlier. If Gilbert constructs the improvements required by this ordinance as part of its capital improvements program prior to development of the Property, Developer shall reimburse Gilbert for its reasonable costs of construction prior to issuance of a certificate of occupancy or final approval of any unit or building constructed on the Property.
- d. Prior to the effective date of this ordinance, Developer shall enter into a Development Reimbursement and Lien Agreement agreeing that Developer will reimburse Gilbert for the costs of design and construction of off-site improvements required by this ordinance if Gilbert constructs the improvements as part of its capital improvements program. Failure by Developer to execute a Development Reimbursement and Lien Agreement prior to the effective date of this ordinance may result in reversion of the zoning to the prior zoning classification. If Developer constructs the improvements, Gilbert shall release Developer from its obligations under the Development Reimbursement Agreement.
- e. At the written request of Gilbert, Developer shall dedicate all necessary easements for the roadway improvements, including easements for drainage and retention and temporary construction easements. Failure to dedicate said easements within thirty (30) days after the date of Gilbert's written request may result in the reversion of the zoning of the Property to the prior zoning classification.
- f. Developer shall create a Homeowner's Association (HOA) or Property Owners' Association (POA) for the ownership, maintenance, landscaping, improvements and preservation of all common areas and open space areas and landscaping within the rights-of-way.
- g. Developer shall record easements to be owned by the HOA for pedestrian, bicycle, multi-use or trail system purposes as determined by the final plat, at the time of final plat recordation, or earlier if required by the Town Engineer. In recognition of the modifications to the underlying zoning regulations set forth herein, such easements shall be open to public access and use.
- h. Prior to final plat approval, Developer shall pay for its proportional share of water and sewer mains benefitting the Property, as required by the Town Engineer.
- i. The Project shall be developed in conformance with Gilbert's zoning requirements for the zoning districts and all development shall comply with the Town of Gilbert Land Development Code, except as modified by the following:
 - 1. The Reserves at Val Vista Planned Area Development (PAD) shall be developed in conformance with the Town's zoning requirements for the Single Family- 10 (SF-10) and all development shall comply with the Town of Gilbert Land Development Code except as modified by the following:

	Proposed Development for The Reserves at Val Vista (Z14-13)
Minimum Lot Area (sq. ft.)	11,900 sq. ft. (22 lots) 12,600 sq. ft. (68 lots)
Minimum Lot Dimensions (ft.)	85' x 140' (22 lots) 90' x 140' (68 lots)

- j. The applicant shall modify the internal street cross-section; per the cross-section detail provided on the Development Plan, noting 33' back of curb public ROW, with 8.5' landscape/ sidewalk easement and 8' PUE. Construction within the 50-foot combined public ROW and landscape/sidewalk easements shall be in accordance with Town standards for public streets.
- k. The developer shall dedicate a thirty-two (32) foot wide public access easement and construct a ten (10) foot wide meandering stabilized decomposed granite trail along the east side of the site.

S14-06: THE RESERVES AT VAL VISTA: REQUEST TO APPROVE THE PRELIMINARY PLAT AND OPEN SPACE PLAN FOR 90 SINGLE FAMILY HOME LOTS (LOTS 1-90) ON APPROXIMATELY 45 ACRES OF REAL PROPERTY LOCATED SOUTH OF THE SOUTHEAST CORNER OF VAL VISTA DRIVE AND RIGGS ROAD IN THE SINGLE FAMILY RESIDENTIAL - 10 (SF-10) WITH A PLANNED AREA DEVELOPMENT (PAD) OVERLAY ZONING DISTRICT.

Move to approve the findings and **S14-06, The Reserves at Val Vista**, approximately 45 acres consisting of 90 single family lots, generally located south of the southeast corner of Val Vista Drive and Riggs Road zoned Single Family – 10 (SF-10) with a Planned Area Development (PAD) overlay, subject to the following conditions:

1. The approval of the Preliminary Plat will be contingent upon Town Council approval of Z14-13: The Reserves at Val Vista on July 31, 2014.
2. The Final Plat for S14-06, The Reserves at Val Vista shall be contingent upon and in substantial conformance with Exhibit 3 as approved by Town Council on July 31, 2014, Exhibit 4 as approved by the Planning Commission July 2, 2014 and Exhibit 5, the Open Space Plan to be approved by the Design Review Board on July 10, 2014.

Chairman Wittmann opened the public hearing and asked if anyone wished to speak on the consent items. Hearing none she asked if there was a motion.

A motion was made by Commissioner Brigette Peterson and seconded by Commissioner Kristofer Sippel to approve the consent agenda.

Motion carried 7 – 0

PUBLIC HEARING (NON-CONSENT)

Non-Consent Public Hearing items will be heard at an individual public hearing and will be acted upon by the Commission by a separate motion. During the public hearings, anyone wishing to comment in support of or in opposition to a public hearing item may do so. If you wish to comment on a public hearing item you must fill out a public comment form, indicating the item number on which you wish to be heard. Once the hearing is closed, there will be no further public comment unless requested by a member of the commission.

UP13-07; REQUEST TO REVOKE A CONDITIONAL USE PERMIT FOR EAST VALLEY PATIENT WELLNESS CENTER PERMITTING A MEDICAL MARIJUANA DISPENSARY IN THE LIGHT INDUSTRIAL (LI) ZONING DISTRICT, ON APPROXIMATELY 0.8 ACRES OF REAL PROPERTY LOCATED AT 988 S. 182ND PLACE, DUE TO FAILURE TO COMPLY WITH CONDITIONS OF THE USE PERMIT.

Principal Planner Catherine Lorbeer stated that UP13-07 was continued from the June Planning Commission meeting. In July 2013 the Planning Commission approved a Use Permit at this location to authorize a medical marijuana facility where the dispensary would be located on a 0.8 acre parcel in a Light Industrial (LI) zone. A valid certificate is required by code and by the conditions of approval to operate the dispensary and only one valid dispensary certificate is issued in this particular community health analysis zone which is known as CHAA 77. At the June 2014 hearing staff handed out a response that had been received from the state that the certificate supplied by the applicant, Mr. Duke Rodriguez, to town staff, was not recognized as valid by the state. Planner Lorbeer displayed an aerial of the site and noted that it was west of Power Road and north of Nunnelley Road. The question before the Planning Commission was whether there is evidence to support the findings that the applicant has violated one or more of the terms of the Conditional Use Permit. Staff is recommending that UP13- 7 be revoked based on the findings of fact.

Chairman Wittmann stated that they would like to give each person that wished to speak three minutes to state their case. Much of the detail of the case was heard at the June 2014 Planning Commission meeting and the commission would welcome any new information. In the previously held meeting specific direction was given as to what the Commission was looking for at the current hearing. She commented that the opposition and the support side of the issue would be given three minutes each for comment and three minutes each for rebuttal.

Jeffrey Kaufman, Scottsdale, AZ, came forward representing the property owner. Mr. Kaufman stated that his client has approximately \$1 million invested in the property. He commented that he realized that all developers and property owners take their chances to some degree but that his client was opposed to the revocation. Mr. Kaufman said that when they appeared before the Planning Commission previously they were advised that what they wanted to hear was what agreements Mr. Rodriguez and his company had with the alleged holder of the dispensary registration certificate. When looking at the materials that were sent by email, the staff has a totally different issue listed and listed the issue as who holds the dispensary registration certificate which is totally different than what they were advised of previously. Mr. Kaufman said that the previous meeting lasted until past 11 PM and Mr. Rodriguez has prepared the information that they were told that the Planning Commission wanted to hear. There is just no way that that information can be presented in three minutes.

Chairman Wittmann asked if Mr. Kaufman was representing Mr. Rodriguez.

Mr. Kaufman said that he was representing the property owner, Zoned Properties which is a publicly traded company.

Chairman Wittmann asked if Mr. Rodriguez was an officer of Zoned Properties.

Mr. Kaufman responded that he did not believe that he was.

Duke Rodriguez, Scottsdale Arizona, came forward.

Chairman Wittmann asked Mr. Rodriguez if he was authorized to use the current certificate issued by the state for this location. She asked if Mr. Rodriguez could produce some proof of that authorization.

Duke Rodriguez said that he wished to answer the questions that specifically came up at the previous hearing and noted that the format was completely different at that hearing as the timeframe was 20 minutes to state

the case and 5 minutes for rebuttal. He said that they fully anticipated the same format since this was a continuance of the last hearing. He said would do the best that he could with the timeframe of only three minutes. He said that they had provided a snapshot of what has happened to answer the Planning Commissions question “do they have the authority to use the license”. He said that he thought that it would be addressed fairly well but that the issue is certainly more than a yes, no kind of response. Mr. Rodriguez distributed a handout of the information that he had prepared to each Commission Member as well as Town Attorneys.

Chairman Wittmann asked if Mr. Rodriguez had copies of his hand out for the opposition.

Mr. Rodriguez apologized for the fact that he was not going to be able to go over all the information in the three minutes that were allotted. He stated that one of the things in the information packet was that they had made a request to the Town of Gilbert for all of the communications related to this issue from the date of the inception of the process which was April 2013. He noted that they had the Use Permit and the Design Review process involved. Mr. Rodriguez stated that they needed to go through the sequence of what happened from day one with the Town of Gilbert and what the Town of Gilbert understood that they were doing and who they were negotiating with and who was presenting the application as applicant, who is the owner and who held the license. Mr. Rodriguez referred to a two-page document within the packet which was the description that was provided to Town Staff at the 1st planning session which was requested by staff. This description was revised by Town Staff and sent back by staff member Al Ward and corrected. Staff knew from day one that the tenant was East Valley Patient Wellness Group who possessed a dispensary registration certificate for CHAA 77. Staff knew from day one that the owner of the property was Joel Ortega, the developer was Cumbre Investments and the holder of the license was East Valley Patient Wellness Group. This language survived in every document thereafter including the report from staff at that time. Mr. Rodriguez noted that there was also an affidavit from Cathy Sanchez in the packet. He stated that there was never a hijacking of the project as was suggested by a Commissioner as there was never any confusion as to what the process was and who the original awardee for the license was. The record was created long before the dispute arose and the record could not be re-created.

Chairman Wittmann stated that they certainly want to review all of the information; however, she was not sure why it was left until the current meeting to be presented. Typically the information is submitted in advance so that the Planning Commission has ample time to review it.

Mr. Rodriguez said that they attempted to get depositions from the parties involved. When they finally did get depositions the answer to the questions was “no answer”.

Chairman Wittmann asked Mr. Rodriguez if in the information packet that he had given to the Commissioners there was something that he could direct them to that gave him authority to use the certificate.

Mr. Rodriguez replied “absolutely.”

Chairman Wittmann asked which document he was referring to.

Mr. Rodriguez said that under Tab 1 they would see a document from the Department Of Health Services talking about the process of how licenses were issued and how they verified that members had been removed properly and improperly. He read from the document that “the department has discovered in its implementation and administration of the Arizona Medical Marijuana Act the persons who are or claim to be principal officers and directors of dispensaries will lie and forge signatures in documentation submitted to among others the Arizona Corporation Commission for the purpose of getting control over nonprofits.” Mr. Rodriguez said that that was exactly what happened here and the department adopted rules to prevent it. He said that if you had existing members they had to sign off. Every existing member has to sign jointly. The

three original members on Tab 2 of the information packet are Chris Miller, Enrique Fuentes and Alex DeSolar.

Chairman Wittmann asked Mr. Rodriguez if there was something that gave him the authority to use that certificate.

Mr. Rodriguez said that if they go to the last page of the information packet that he had given them there is an affidavit signed by one of the three. He said that the Sanchez's defrauded two of the members and removed them illegally. Those two members filed complaints with the Arizona Department Of Health Services saying that they are the original applicants and that they consent to Duke Rodriguez and or Ultra Health and Cumbre to represent as they had from day one. Two of the three member's affidavits were going to be delivered prior to the current meeting but they couldn't get them because of timing issues. The reason that they couldn't present the information earlier was because the documents were not delivered to them until last week. They didn't have the advance 2 weeks' time to get the documents to the Planning Commission. Mr. Rodriguez said that the Commission needed to have all the information to make a fair decision. He said that the affidavit clearly states that Alex DeSolar said that he was wrongfully removed by the Sanchez's and had never consented to be removed and he consented to Ultra Health having this since day one. Mr. Rodriguez said that the record was not created by him but over an extended period.

Chairman Wittmann asked Mr. Rodriguez how much time he thought that he needed to state his case.

Mr. Rodriguez said that he fully anticipated that this would be like the last format that they could get through the presentation in 20 minutes.

Chairman Wittmann said that they had already discussed his case for 5 minutes and asked if he felt that 15 more minutes would be sufficient to get through the case or did he need a full 20 minutes.

Town Attorney Michael Hamblin stated that Mr. Rodriguez had been talking for 10 minutes.

Mr. Rodriguez commented that he did not think that he had been talking for 10 minutes as he had also been setting up.

Attorney Hamblin said that he specifically turned the clock off every time Mr. Rodriguez was handing out material or setting up and that he had been talking for 10 minutes.

Chairman Wittmann stated that they would give Mr. Rodriguez 15 minutes and would give the same amount of time to the opposing party.

Mr. Rodriguez said that Number Tab 1 is a specific communication from the Arizona Department of Health Services that lays out the requirements on how the owners/licensees are properly identified and how the ownership changes. These are specific guidelines that were adopted because of problems like they were seeing currently. The process not been followed that all of the existing members have to jointly sign off on any change in membership and it must be on the single same document and have the joint consent and signatures of those three. That never happened. There is an affidavit in the packet that says specifically that that member never approved it and was defrauded as well as an additional document from another member, Christopher Miller, which says he was defrauded and he has never revoked his right. Under Tab 2 there is the actual award letter from the state of Arizona identifying those 3 members. Under Tab 3 it can be seen that there are three licenses at stake, Gilbert, Safford and Clifton. All three have the DBA of Ultra Health. All of the requests for those names were signed by the Sanchez's and submitted to the Arizona Department of Health Services. Under Tab 4 is an affidavit that they have attempted to serve Kathy Sanchez repeatedly. Tab 5 is the complaint in Superior Court because the deposition responses asked for were not provided. Tab 6 is the pre-application meeting that was done with staff which mentions the people who attended and includes a sign in sheet of who was represented and Cumbre Investments was represented by Duke Rodriguez.

Everyone knew who the developer was and who the licensee was. Tab 7 contains information given by Patty Hoagland stating that this was the best time of year and she was so excited because they had a great future in Arizona medical marijuana. Tab 8 is a communication from Chris Miller to the state stating that he had been defrauded. The state is investigating his claim. Tab 9 holds the red lines on the construction maps and documents which consistently referred to East Valley Patient Wellness Group and Cumbre Investment Company. Tab 10 includes communications of support for the project. Tab 11 includes Chris Miller's specific complaint about how he was defrauded. Tab 12 contains another proposed agreement from the Sanchez's to Mr. Rodriguez offering X percent of the company. This was a joint venture from day one.

Attorney Hamblin said that he misunderstood the Chairman's instructions and that at the last break he only added 5 minutes to the clock.

Chairman Wittmann stated that Mr. Rodriguez had 10 additional minutes.

Mr. Rodriguez asked if he could save those 10 minutes for the rebuttal as he was sure there would be comments that they would like to respond to. He commented that this process was in the court and more complicated than they thought and was not simply about a Use Permit but about a lot of people who work very hard for one specific property and they want the Planning Commission to change the rules.

Commissioner Sippel asked if in reference to a promissory note that Mr. Rodriguez had provided them, was there a signed one.

Mr. Rodriguez said that they never signed that deal because it was their deal and the percentage was too low for the amount of work that he was doing. There was no purpose in signing a deal with the Sanchez's because they were not the rightful owners.

Commissioner Blaser asked if there was anything signed indicating that Mr. Rodriguez had the right to utilize the license. He said that was just a yes or no question.

Mr. Rodriguez said that he had in affidavit by the member that authorized him to use the license.

Chairman Wittmann asked if there was somewhere in the affidavit that gave him the authority to act on behalf of the certificate.

Mr. Rodriguez said that the member referenced UP13-07 and did not know the exact language to use but was basically saying that Mr. Rodriguez was his business partner and represents them in the development of this property and represented them in obtaining UP13 - 07 and that they consented to it. Mr. Rodriguez's planned to present the same type of document from Chris Miller in the near future and they had not been able to locate the 3rd member. All three would be consenting to Mr. Rodriguez, Ultra Health or Cumbre Investments having the authority to be the developer of this property and to obtain UP13 - 07 and to apply the license to it.

Commissioner Cavenee said that in reading the affidavit it appears that Mr. Rodriguez was apparently in negotiation for an agreement but the person writing the affidavit then acknowledges that they are no longer a member of that group so they don't have a right to make those negotiations. He said that he was having trouble seeing it with any validity.

Mr. Rodriguez said that is what the court wants to resolve. There is no denying who the original members are and as long as the original members state that they never gave up their rights they cannot simply be banished off the license.

Commissioner Cavenee asked how this weighed into the last meeting where they saw a document from the state that specifically acknowledged the Sanchez's as the holder of that certificate and specifically denying any relationship with Mr. Rodriguez's group.

Mr. Rodriguez responded that that was not what the state said.

Commissioner Cavenee said that he read it and that is what it said.

Mr. Rodriguez said this was prior to the department setting up the proper procedure and that it said that currently it lists these individuals. They are not taking sides as to who are the right individuals. The same question could have been asked who "were the original approved licensees" and they would have to tell you the following people. They only confirm what the records say currently. He said that the Commissioner was making a huge leap of faith to assume that just because they said this is what the current record establishes that that is the fact of what may finally be resolved. They do not take a position as to who is in the right and who is in the wrong.

Commissioner Cavenee said that their point, as the Planning Commission, is that the stipulation with the Use Permit is that the holder of the Use Permit currently has access to the registration for the CHAA and that is what they are evaluating and what Mr. Rodriguez was telling him was that currently he doesn't. That is what he just heard.

Mr. Rodriguez said he didn't say that. The stipulation that they have right now with the Town of Gilbert is very specific. There are stipulations that are in writing that the town granted a Use Permit on certain conditions. Those conditions had been met up until 30 days ago. Those conditions were solid and supported by all parties until 30 or 45 days ago. You can't rewrite the last 12 months. There is a stipulation that upon Certificate of Occupancy they will deliver a license from the state blessed by the state whoever the owner is and if they don't the Town does not have to issue a certificate of occupancy.

Commissioner Cavenee commented that a Use Permit has been issued on the case. It is out there ready to take affect the minute that the facility opens. The reason for the current hearing is that it is the Commissions responsibility to revoke that permit if it does not comply with all of the stipulations. The stipulations must be met at all times and that is why they are concerned with the here and now. If the stipulations are not met the Use Permit must be revoked.

Mr. Rodriguez said that he meant no disrespect; however, if the facts are laid out they believed that all conditions have been met to date. The parties remain in negotiation and this could be resolved. The Commissioner was having a "what if" that wasn't real. Not one fact has changed. Is one party trying to get a stronger negotiating position, maybe? But in the end there is one specific written condition in the approval and that is that the Use Permit cannot be triggered until they deliver a Certificate of Occupancy and they cannot get a C of O until a license is delivered and hung. If it doesn't get a license it doesn't open. He said that they needed to let the process continue.

Chairman Wittmann asked if Mr. DeSolar was a member or authorized officer of East Valley Patient Wellness Group LLC.

Mr. Rodriguez responded that he has attested to the fact that he is and was removed 1 month ago.

Chairman Wittmann said that if he was removed he is not currently a member.

Mr. Rodriguez said not if he was removed improperly. The courts will decide if he was removed improperly.

Chairman Wittmann asked if Mr. Rodriguez had an amendment to the LLC agreement that removed him.

Mr. Rodriguez said it was never signed by those members. Alex did not remove himself. He would have to sign the amendment to remove himself and he did not do that. He said if all three members removed themselves who appointed the new members?

Chairman Wittmann asked if he had a copy of the LLC agreement for this entity.

Mr. Rodriguez said that they never signed one. He referred to Tab 5 of his information packet and read from page 34 of the deposition of David Sanchez.

Attorney Hamblin noted that the answer portion of the question and answers took another 9 minutes. He asked what time limit the clock should be set for the opposing party.

Chairman Wittmann said that they should be given equal time and to set the clock for 25 minutes.

Chad Hester, Wallin-Hester, Gilbert Arizona, came forward. Mr. Hester said that the 1st question that was asked of Mr. Rodriguez was “does he have an agreement.” Mr. Rodriguez spent the last 25+ minutes explaining all the reasons why he feels that he has an agreement. Mr. Hester said that the easiest way to answer the Commissions question was to refer back to what Mr. Rodriguez said in a deposition in a case that he gave under oath November 8, 2013 in a lawsuit that he is involved in currently. In that deposition on page 21 Mr. Rodriguez was asked if he was working for East Valley Patient Center at the time that he presented the lease. Mr. Rodriguez responded “no.” Line 9 states, “you had no relationship with East Valley Patient Center, correct” and Mr. Rodriguez answered “Sir, you keep trying to drive me to a comment that I was working for them and working for them has a specific meaning in my mind, to be employed by them, to have a contractual relationship, I had none.” Mr. Hester said that on November 8, 2013 Mr. Rodriguez testified under oath that he had no contractual relationship with East Valley Patient Center.

Chairman Wittmann asked if East Valley Patient Center Inc. was a different company then East Valley Wellness Group LLC.

Mr. Hester said that it was the same company and that a different attorney took the deposition and there was some confusion from the attorney asking the questions between LLC and Inc. but if they read the entire deposition it is very clear that that it is the same entity that they are referring to.

Chairman Wittmann said that an incorporated business is very different than an LLC. She asked if there was somewhere in the deposition that that is clarified.

Town Attorney Jack Vincent pointed out that it was clarified on page 24, lines 18-20.

Chairman Wittmann asked if they were certain that they were talking about the same entity.

Mr. Hester responded that they were certain that they are talking about East Valley Patient Wellness Center LLC. Mr. Hester said that the question that was asked of Mr. Rodriguez was a simple one. The question was “do you have a contract?” He has yet to produce a single contract despite approximately an hour of questioning of Mr. Rodriguez between this hearing and the last one he is yet to provide any indicator that he has a contract. Mr. Hester said that in terms of the affidavit of Alex DeSolar which Mr. Rodriguez brought up in his presentation, on page 57 there is some clarification which took place in the deposition as well. A copy of the affidavit was displayed and it was pointed out that it does say the East Valley Patient Wellness Group LLC. Throughout the deposition it appears that it was understood between the parties that Mr. Rodriguez understood that they were asking him about the East Valley Patient Wellness Group LLC. As of November 2013, under oath, Mr. Rodriguez is telling an attorney under record that he does not have any contract with them. That means there is no contract with respect to development or doing anything other than simply finding a property which he was acting on as Cumbre Investments. No one ever instructed him to put the property in his name and no one ever asked him to spend millions of dollars. At the last hearing Mr.

Rodriguez repeatedly said we have done this and we have done that. The applicant is Cumbre and that is it. There is no Ultra Health in this process nor is there a Zone Properties in this process. Cumbre does not have a right to possess the license and the Arizona Department of Health Services does not recognize Cumbre or Ultra Health as having a license only recognizes East Valley Patient Wellness Group LLC. Mr. Hester displayed a business card that he received from his client were at one point Mr. Rodriguez was representing himself as CEO of Zone Properties. An FCC filing On Zone Properties was displayed and it was pointed out that one of the shareholders was Duke Rodriguez who at the time of the filing in June 2014 was a 9.29% owner of Zone Properties. Mr. Hester said that he just wanted to clarify that there have been a lot of things stated that quite frankly appear to be incorrect. Mr. Hester displayed a copy of the Assignment of Membership Interest by Alex DeSolar which was dated effective April 1, 2013. This document was essentially Mr. DeSolar acknowledging his removal from the company.

Commissioner Cavenee asked why Mr. DeSolar didn't sign the document as it appeared that it was signed by someone else.

Mr. Hester said that the document was signed by the attorney-in-fact based on a Power Of Attorney signed in 2012. The scope of the Power Of Attorney was written "as to be able to make all business and governing decisions in all matters pertaining to East Valley Patient Wellness Group LLC." He said that the document was executed on August 13, 2012. It was notarized June, 2013. Mr. Hester pointed out that there were currently no claims by Alex DeSolar to have his membership interest return to him. Mr. Hester commented that the current hearing was not a court and they were not present to instruct on the law nor instruct or provide witness testimony and have the Planning Commission determine the truth and validity of witnesses. What they are present to do is answer the very simple question of "does Duke Rodriguez have the authority to operate and use the East Valley Patient Wellness Group license correctly issued by the Arizona Department of Health Services." He does not. Mr. Hester said that at the last hearing a member of the Commission made the comment that this was something that was done last minute because the license was about to expire. If they look at the timeline, they would see that this process began in early January 2014. The original approval was given in July or August 2013 so this process was only a 4 or 5 month process before the Sanchez's and East Valley Patient discovered what was taking place and that the alleged joint venture was not working out. That is why the Sanchez's went to Planner Al Ward and eventually came before this panel to determine if they could revoke the permit. They wanted the permit revoked because their license was attached to it. There is no agreement in place between East Valley Patient Wellness and Zone Properties, Cumbre Investments, Ultra Health or Duke Rodriguez. Mr. Hester pointed out that if there really was an agreement and if this was something that was so clear-cut Mr. Rodriguez would produce a signed agreement. The correct decision would be to revoke the Conditional Use Permit.

Vice Chairman Oehler asked to see the letter that was sent by Planner Al Ward in January, 2014.

Mr. Hester commented that the letter sent by Mr. Ward was in response to the Sanchez's inquiry about moving the Use Permit to another location. Mr. Ward's letter stated that they would need to have the original Use Permit revoked and reapply. That is what began the process. He noted that the Sanchez's have renewed their license and it does not expire until August 2015. He displayed a copy of the renewed license.

Commissioner Blaser asked why it had the same address.

Dane Nielson, Wallin-Hester, stated that they had requested a zoning verification in order to submit to Arizona Department of Health Services for them to change the address but the Town, with what was going on, would not verify that particular parcel.

Town Attorney Jack Vincent commented that there is a form that the applicant must submit to the state in order to have the address changed on the certificate. The form that the municipality needs to sign off on, that the proposed location would meet the requirements for a dispensary. The proposed location was within the 1320 feet of where the current permit is issued, therefore, the Town could not sign off on that form.

Mr. Nielsen said that for that reason they must keep this same address until the issue is resolved.

David Sanchez, Tempe Arizona, came forward. Mr. Sanchez said that he would like give a snapshot timeline of what happened in terms of the removal of members. He said that he and his wife Kathy were the original owners, who started the entire process in January, 2010. There were no other individuals involved. They wanted to do an agreement with Chris Miller who agreed to be included on the application with the intent and contract knowledge that he would be donating a certain amount of money to each license that was awarded to them. When the license was finally awarded Chris Miller informed them that he could no longer perform the financial responsibility. The lottery was held in July 2012 and they gave him until January 2013 to see if he could secure the required funds to legitimize his percentage and be involved with the dispensary. Mr. Miller had originally funded some of the pre-licensing costs but could no longer participate and asked if he could just get some of his money back. Mr. Sanchez said that he was welcome to; however, they would have to wait until some of the dispensaries were profitable. Mr. Sanchez received a call from Mr. Miller in December 2013 and Mr. Miller said that he was really hurting for money and was there anything that he could do. Mr. Sanchez told Mr. Miller that if he was willing to sign back all of his interest to the company Mr. Sanchez had some funds available and he could make a payment to him. In January 2014 they went to a local bank and Mr. Miller signed the agreement back, it was notarized and Mr. Sanchez made a payment to him. Mr. Sanchez said that regarding Alex DeSolars, he was brought on as a medical director only and Mr. DeSolars was aware of that from day one. Dr. Enrique will be replacing Dr. Alex DeSolars as their medical director for the dispensary. Mr. Sanchez said that when he went to the Arizona Department of Health Services to assess the application process he was told that everybody that was on the application had to be a board member and/or principal officer. It wasn't until after the lottery process happened that Arizona Department of Health Services informed Mr. Sanchez that the medical director did not have to be a principal officer or board member. The reason that they had to get a power of attorney for Alex DeSolars was because originally Mr. Miller couldn't perform and Dr. DeSolars was never a board member. Mr. Sanchez went back to the Arizona Department of Health Services and asked what they needed to do and he was told to get a signed letter by the individuals and bring it back to them. Mr. Sanchez said that Mr. DeSolars would state under oath that he was never a member. It was only after the Sanchez's told Duke Rodriguez that they did not want to do a partnership with him that he sought out Chris Miller, Mr. DeSolars and even Dr. Enrique.

Kathy Sanchez, Gilbert Arizona, came forward. Ms. Sanchez said that she had been working on this program for over 4 years and that she hired Mr. Rodriguez as a realtor. She said that she felt like she was being held hostage and he was trying to take advantage of her and that she requested that the Conditional Use Permit be revoked.

Chairman Wittmann invited Mr. Rodriguez to come forward. She asked specifically that Mr. Rodriguez provide some sort of documentation that shows that he has some sort of written agreement signed by all parties to utilize that certificate.

Duke Rodriguez came forward. Mr. Rodriguez said that the original owners were the people that got the license which is on the record. He said that you cannot have front people represent on the license. It is not legal. He said that the Sanchez's cannot be the original owners. In terms of the license that was re-issued to August 2015, the reason that it says 988 South is because that is the only approved site and the state knows it and they are not going to change it until the matter gets resolved. Mr. Rodriguez said that Mr. DeSolar did not consent to have his name removed, the Sanchez's said that he was taking too much time and that they had to get it and as soon as Alex realized he revoked it immediately. He didn't sign it. Mr. Rodriguez said that Chris Miller got into legal problems and is serving time because of his relationship with David Sanchez. The document that was provided relating to Chris Miller was signed by Kathy Sanchez May 19, 2014. How could the document be signed a year later revoking it back to April 1, 2013. He signed that document under coercion. Mr. Rodriguez said that he was portrayed as being party to a case and that he was not a party to the case but was a witness who was brought in to ask about what happened. The reason the case is there is because this party is after the Sanchez's on a property on power road unrelated to this case. It was a different

entity and a different property unrelated to this issue and it is being used out of context. This has nothing to do with the property in Gilbert. In terms of the property on Power Road, Mr. Rodriguez said that he had no agreement. Mr. Rodriguez said that they went on to talk about East Valley and who paid for the land. He told the Commission to ask them who paid for the land, architect and documents. Mr. Rodriguez pointed out that the license was renewed to August 2015 so they had that amount of time to resolve the issue. He said that he was not the CEO of Zone Properties but that they had an overeager employee who ordered cards believing that he knew the corporate structure and said that he was the CEO. He said that they need to ask the question "why didn't they put their name on the application." The reason why has to do with the raid on their home and drug conditions. You can't be an owner if you have a bankruptcy. He said that the Planning Commission is not the court. He said that he respected their role and he understood their question about a license and a contract but the rightful owners are those three individuals and they consented and cooperated and worked with Cumbre and Ultra Health. They are fully aware of what was being done to them and they are not giving up a valuable asset freely.

Chairman Wittmann said that she would ask Mr. Rodriguez the question one last time, did he have some sort of joint venture agreement or document that he could supply that shows he has some authorization to use that certificate other than the affidavit.

Mr. Rodriguez said that he would supply a document

Chairman Wittmann said no, she was asking for it now not later as they had asked for it last month.

Mr. Rodriguez said that they have been reluctant to provide the information because they want to provide it in court. If they give the Commission everything they are giving up their case and they are not going to do that. The Planning Commission is not the court and they had to protect their interests.

Chairman Wittmann said that the Planning Commission has duties as well and that they have requested information that Mr. Rodriguez has not supplied.

Mr. Rodriguez said that he believed that they have supplied everything that the Commission asked for and that they were not given the time to answer all the questions.

Chairman Wittmann said that they have a book that was supplied by Mr. Rodriguez and documentation that he had submitted to staff and an affidavit that he had supplied on that date. Where is that document? She asked if Mr. Rodriguez had a document that gives him authorization to use that certificate.

Mr. Rodriguez said that he believed without any limitation that the affidavit states properly that the contract by the members gives specific authority to Ultra Health and its related parties to operate the development of that location and that license on that property. He said they are not asking to operate the license. They are the developer. They are not asking to be the operator.

Chairman Wittmann said that she looked up the Arizona Department of corporations Commission and pulled up the entity name, the LLC. Mr. Alec DeSolar is not listed as a member of that LLC.

Mr. Rodriguez said that if they pull up the history they will see that he was the original member otherwise a fraud has been perpetuated. Go through the entire cycle of documents and see if he ever consented to the removal. It doesn't make it factually correct just because his name isn't on it.

Mr. Hester said that Mr. Rodriguez just said something that was very key and important to understand. He said "we will" get that contract signed with the original members. That in itself is evidence that there is no agreement. There is no agreement for him to develop, operate, own or any of those other things. He does not have an agreement with East Valley Patient Wellness Group to do anything other than find them property. Mr. Rodriguez seems to be confused about just because somebody is an original member of a company it

does not mean they can't sell, assign or transfer their ownership interest in that LLC. He is trying to say that once a member always a member and that is not the case as companies are bought and sold all the time and membership interests are transferred. The issue that they need to focus on is that East Valley has maintained ownership of this license which has never been transferred among parties.

David Sanchez, Tempe Arizona, said that the reason that a lot of his answers were "no answer" on his deposition was that he was instructed by his legal counsel to answer that way. He said that the lawsuit was for an eviction lawsuit on a Tempe property and had nothing to do with Gilbert. His attorney instructed him not to reply to anything that doesn't apply to the eviction. That is why there were "no answer" responses. Mr. Sanchez said his attorney didn't want to give away his case either. Mr. Sanchez said that if Alex and Chris were owners why they didn't go get the license renewed. The reason is because the Arizona Department of Health Services does not recognize them and would not have accepted their application.

Chairman Wittmann closed the public hearing.

Vice Chairman Oehler said that it would have been helpful if they would have had all the information and more time to review it. He said that he did not see any document that told him that Mr. Rodriguez had a contract with anyone and so he would be in favor of revoking the Use Permit.

Commissioner Blaser said that they had been tasked by staff to determine whether Mr. Rodriguez or Kathy Sanchez is named on the license and who has the right to operate under the license. They had heard a lot of things that should have been reserved for the court and for litigation. It comes down to one issue and that is whether Duke Rodriguez or any entity that he is a part of has the right to utilize the license. That document was requested and not received. The Planning Commission has a duty to respond to the complaint and he would be in favor of revoking the Use Permit.

Commissioner Sippel said that last month he was one of the Commissioners who were in favor of continuing the case in order to get additional information for two reasons. One had to do with the license that was about to expire and so he was questioning the timing. A month later the Sanchez's have provided the extension. Another thing that they had requested was some sort of documentation showing that Mr. Rodriguez had some sort of connection. Commissioner Sippel said that he did not feel that they have been provided that proof and so with the information of the renewal of the license and not having proof of some sort of connection with Mr. Rodriguez he would be in favor of revoking the Use Permit.

Commissioner Cavenee said that what speaks most to him was Mr. Rodriguez's deposition where he said that he was not speaking specifically about the Gilbert case but in fact on the very next page after he states that he has no connection or contractual relationship With East Valley Patient Wellness Group he says specifically that he is talking about Gilbert. There are too many things that very specifically say that he does not have a relationship and they have seen nothing that suggests that he has a current relationship to operate this license which is a violation of the Use Permit requirement. Commissioner Cavenee said that he would also vote for revocation.

Commissioner Peterson said that she agreed with her fellow Commissioners and would be in favor of revocation.

Commissioner Bloomfield said that he would also vote in favor of revocation.

Chairman Wittmann said that after numerous attempts and requests they were not provided with information from those who currently manage and operate East Valley patient wellness group LLC that provides Mr. Rodriguez was some sort of right to utilize a certificate issued by the state and that she would be in support of revocation.

A motion was made by Commissioner David Cavenee and seconded by Commissioner Brigitte Peterson to move that Conditional Use Permit UP13-07 be revoked because the evidence or lack of evidence supports the conclusion that the applicant has failed to comply with the condition of the permit to provide proof that the proposed dispensary is state approved, certified and registered with the Arizona Department Of Health pursuant to Arizona Revised Statute Title 36 and Chapter 28.1 and the proposed dispensary does not comply with all Town of Gilbert codes as well as all requirements identified under article 4.5014 of the Land Development Code is required on the conditions of the permit. Given this lack of evidence and additional evidence in the form of depositions and of the certificate the revocation is proposed.

Motion carried 7 – 0

Make the Findings of Fact and Revoke UP13-07: A Conditional Use Permit for East Valley Patient Wellness Center permitting a Medical Marijuana Dispensary in the Light Industrial (LI) Zoning District, on approximately 0.8 acres of real property located at 988 S. 182nd Place.

ADMINISTRATIVE ITEMS

Minutes – Consider approval of the minutes of the Study Session and Regular Meeting of June 4, 2014.

A motion was made by Commissioner Kristofer Sippel and seconded by Vice Chairman Joshua Oehler to approve the minutes of the Study Session and Regular Meeting of June 4, 2014.

Motion carried 7 – 0

Chairman Wittmann recessed the regular meeting at 7:55 PM

Chairman Wittmann reconvened the regular meeting at 8:00 PM

Open Meeting Law Training - Michael Hamblin, Attorney

A presentation was given by Town Attorney Michael Hamblin on Open Meeting Law which included the following information:

PART I. ARIZONA OPEN MEETING LAW

It is the policy of the State of Arizona that the public's business will be conducted in public. The State Legislature has adopted a law known as the "*Open Meeting Law*" applicable to public bodies and public officers. The following are typical questions asked about the Open Meeting Law.

1. *What is the Open Meeting Law?*

The policy of the State is that the public's business should be conducted in public. The Open Meeting Law contains the rules that public bodies have to follow to assure that this policy is carried out.

2. *Is my board/commission/committee a "public body" under the Open Meeting Law?*

Planning Commission
Regular Meeting 7-2-14

Yes. All boards, commissions and committees appointed by the Mayor or the Council are "public bodies" governed by the Open Meeting Law. According to the Attorney General's office, a public body also includes a committee appointed by the Manager if it is the intention that the committee will provide recommendations to the Council. On the other hand, a committee appointed by the Manager to provide advice only to the Manager would not be a "public body." If a Department Director appoints a committee to research and advise him or her, the committee is not a "public body."

3. *What is a meeting?*

Any time a quorum of the public body discusses, proposes or takes legal action related to municipal business, a meeting is being held. "Legal action" includes collective decisions, commitments or promises of the public body and is not necessarily a formal vote. A series of gatherings of less than a quorum can result in a meeting, especially if a consensus is reached. The gathering of the quorum may be held with one or more members participating by telephone or video conferencing. A meeting may also result from discussions had by-mail if a quorum is involved and a "discussion" is taking place about municipal business. Great care should be taken in the use of e-mail to be sure you do not violate the Open Meeting Law.

4. *If my board/commission/committee is going to have meeting, what do we have to do?*

The law requires that public bodies of the municipality must file a statement with the Clerk or Mayor's Office stating where public notices of their meetings will be posted and on the internet if the municipality has an internet site. The law also requires that the public body "shall give such additional public notice as reasonable and practical as to all meetings." In addition, meetings may not be held without at least 24-hours' notice to the members of the public body and to the general public. In Gilbert, notices of meetings are posted at the following locations:

- ~ Gilbert Municipal Center, 50 East Civic Center Drive
- ~ Heritage Annex, 119 North Gilbert Road
- ~ Southeast Regional Library, 775 North Greenfield Road.
- ~ Perry Branch Library, 1965 East Queen Creek Road

An agenda must include the date, time and place of the meeting. It must also include an agenda of matters to be discussed or decided at the meeting or information on how the public may obtain a copy of the agenda.

There is an exception for an "actual emergency," in which case the meeting may be held without the required 24-hour notice so long as the notice is posted within 24-hours declaring that the emergency meeting has been held. In that case, the notice must include a discussion of the specific matter consider/decided at the meeting. There are very few circumstances that qualify as "actual emergency" and unless a flood or fire is racing through the municipality that absolutely requires your board, commission or committee to hold a meeting related to that flood or fire, you probably do not have an

emergency that would qualify under the Statute.

5. *Can we discuss matters not on the agenda?*

No, unless there is "actual emergency" (see above).

6. *May there be a "communications from citizens" on the agenda?*

Yes, but the member of the public who is speaking is only allowed to address the public body on an issue within the jurisdiction of the public body. The public body may not discuss the matter raised by the member of the public but, at the conclusion of the open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter, or may ask that a matter be put on a future agenda.

7. *May the agenda include an item permitting individual members of the board/commission/committee to make a statement or report (without discussion) at the end of the meeting?*

Yes. The law does permit the public body to include on the agenda an item to "Report on Current Events" by the chair, board/commission/committee member, and Department Director [or other principal staff person in charge of the board/ commission/committee]. At that time, the individual may make a report to the public and public body. However, the public body may not discuss or take legal action on the matter unless the matter has also been listed on the agenda.

8. *Does my board/commission/committee have to keep minutes of the meetings?*

Yes. Your board/commission/committee must take minutes.

9. *What has to be included in minutes?*

For meetings other than executive sessions (see below), minutes must include:

- a. The date, time and place of the meeting.
- b. The members of the public body recorded as either present or absent.
- c. A general description of the matters discussed.
- d. An accurate description of all legal actions proposed, discussed or taken and the names of members who propose each motion. The minutes shall also include the names of the persons, as given, making statements or presenting materials to the public body and a reference to the legal action about which they made statements or presented material.

The minutes must be open to public inspection three working days after the meeting. If there is a recording, the recording can be made available and the written minutes can follow later.

10. *Do our minutes have to be posted on a website?*

Yes, for municipalities with a population of more than 2,500 persons and that have an internet site. A statement showing the legal actions taken by the public body must be posted within 3 working days following the meeting. Draft minutes meet this requirement. Approved minutes to city or town councils must be posted within 2 working days after approval.

11. *Can my board commission committee meet in private?*

Yes, if it is for one or more of the specific purposes listed in the statute for which public bodies may meet in private. Those purposes are:

- a. Discussion of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of the public officer, appointee or employee. Generally, your board/commission/committee will not have these discussions since you have no jurisdiction to appoint, promote, demote, or take other employee actions.
- b. Discussion of records exempt by law from public inspection.
- c. Discussion or consultation for legal advice with the attorney or attorneys of the public body.
- d. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, pending or contemplated litigation or settlement discussions conducted in order to avoid or resolve litigation.
- e. Discussion with the public body's representatives regarding negotiations with employee organizations regarding salaries, salary schedules and compensation.
- e. Discussion for international or interstate negotiations or with members of a tribal council of an Indian reservation located within or adjacent to the municipality.
- f. Discussions with the public body's representatives regarding its position on the purchase, sale or lease of real property.

Most executive sessions of your board/commission/committee will be for the purpose of receiving legal

advice.

12. *If we have an executive session, do we have to keep minutes?*

Yes. However, minutes are kept confidential except from members of the public body that met in executive session and officers, appointees, or employees who are the subject of discussion if the executive session was held for personnel reasons.

13. *Can I use email to communicate with my fellow board members?*

Yes, but with caution. Use of email can constitute a meeting when the email proposes legal acts or when there is an exchange of facts and/or opinions if it is foreseeable that the topic may come before the board for action. For example, the Attorney General's Office cautioned that even a single email-without any responses-could violate the Open Meeting Law if the email is sent to a quorum of the public body and proposes legal action. Moreover, if a majority of the board responds to an email. It can constitute action for an illegal meeting. Be careful in responding to all and of chain emails. Use of emails in this manner can constitute a meeting which has not been properly noticed.

14. *Can I express my opinion to the news media or discuss an issue with the public if I know other board members may read or hear my comments?*

Yes. The Open Meeting Law does not prohibit a member of a public body from voicing an opinion or discussing an issue with the public either at a venue other than a public meeting or through news or social media outlets so long as (1) the opinion or discussion is not principally directed at or directly given to another member of the public body, and (2) there is no concerted plan to engage in collective deliberation to take legal action. Additionally, the Attorney General's Office has released an opinion that a meeting does not occur when members of the public body merely hear or read a comment made by another member of the public body in the media.

15. *What happens if my board/commission/committee violates the Open Meeting Law?*

The first thing that happens is that any action you took in violation of the Open Meeting Law is null and void.

The second thing that happens is that the Attorney General or County Attorney's Office may investigate a complaint alleging a violation of the Open Meeting Law and conduct an investigation. The Attorney General or County Attorney has broad powers to inspect all documents, require any person to submit a report or make a statement and issue investigative demands for production of documents. If a public body or an officer refuses, the Attorney General or County Attorney may go to court to get an order for

enforcement.

Upon a finding that a public officer has violated the Open Meeting Law, a court may impose a civil penalty not to exceed \$500 for each violation against the person who violates the article or knowingly aids, agrees to aid or attempts to aid another person in violating the Open Meeting Law. If the court determines that a public officer intended to deprive the public of information, a court may remove the public officer from the office and shall assess him with all costs and attorney fees awarded to plaintiff in pursuing the action.

The municipality may not expend public monies to retain legal counsel to provide legal services to the public body or an officer unless the public body takes legal action at a public meeting to approve the expenditure.

PART II. CONFLICT OF INTEREST

1. *How do I know if I, as a member of a public body, have a conflict of interest?*

The first question you have to ask is whether, in any matter that comes before your board, commission or committee, you have a "pecuniary" interest in the outcome. A pecuniary interest is any matter where you stand to gain or lose something of value from the decision.

2. *If I determine I have a pecuniary interest in a decision, then what?*

You need to determine whether your interest is a "remote interest." A remote interest is any of the following:

- a. The interest of a non-salaried officer of a non-profit corporation.
- b. The interest of a landlord or tenant of the contracting party.
- c. The interest of an attorney of a contracting party.
- d. The interest of a member of a non-profit cooperative marketing association.
- e. The ownership of less than three percent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock options, from the corporation does not exceed five percent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five percent of his total annual income.

- f. The interest of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.
 - g. The interest of a recipient of public services generally provided by the incorporated city or town, political subdivision or State department, commission, agencies, body or board of which who is a public officer or employee on the same terms and conditions as if he were not an officer or employee.
 - h. The interest of a public school board member when the relative involved is not a dependent or a spouse.
 - 1. The interest of a public officer or employee or that of a relative of a public officer or employee unless the contract or decision involved would confer a direct economic benefit or detriment upon the officer, employee or his relative of any of the following:
 - 1. Another political subdivision;
 - 2. A public agency of another political subdivision; or
 - 3. A public agency except if it is the same governmental entity.
 - J. The interest of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of the trade, business, occupation or profession or class of persons.
3. *If I determine that my pecuniary interest does not fit into one of the above exceptions, then what?*

If your pecuniary interest does not fit one of the above exceptions, then you have a "substantial interest." *If the interest fits into one of the above exceptions, you do not have a conflict of interest.*

4. *If I have a substantial interest in a decision or matter coming before my board! commission/committee, what should I do?*

You must not take part in' any discussion or action involving that matter. You do not have to resign from the board/commission/committee However, you must "make known" your substantial interest in the public records. The Clerk has a form for you to fill out that you will keep on file (Exhibit 1). You must disclose on that form the substantial interest that you have that resulted in the conflict of interest.

5. *What happens if I violate the conflict of interest laws?*

Any person affected by the decision of the public body may commence a civil suit in Superior Court for the purpose of enforcing the law. The Court may award reasonable attorneys' fees to the prevailing party. Intentionally or knowingly violating the conflict of interest laws is a Class VI Felony. Recklessly or negligently violating the conflict of interest laws is a Class I Misdemeanor. A person found guilty might be required to forfeit his public office.

PART III. PUBLIC RECORDS

1. What is a public record?

The State Legislature has not defined the term "public record." However, Arizona courts have articulated three alternative definitions:

a. A record made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information to the public or to serve as a memorial of official transactions for public reference.

b. A record that is required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done.

c. Written records of transactions of a public officer in his office, which is a convenient and appropriate method of discharging his duties and is kept by him as such, whether required by express provisions of law or not.

2. What is the general process for producing public records?

Public records must be produced promptly after a request. The Custodian of records will review each request to determine if the records are exempt from disclosure or should be produced. Consultation with legal counsel may be necessary to determine whether certain documents are exempt from disclosure. If the records will be produced, it is important to remember that certain information must be redacted prior to production. See the Town Attorney for more information about redaction.

3. Are email or other electronic messages public records?

Mere possession of a document by a public officer or agency does not determine whether it is a public record. A document wholly personal in nature is not a public record. However, emails received or sent by you are public records if they relate to your duties as a member of a public body. In general, you should assume your emails are public records, even if they are prepared on your personal computer. Familiarize yourself with the Town's Electronic Equipment and Services Policy and Town procedures for the preservation and retention of public records when using Town issued electronic equipment and services.

4. *When might the Town deny a request to view a public record?*

Public inspection of governmental records may be denied when: (1) the record is made confidential by statute; or (2) strong countervailing considerations exist that outweigh the public policy favoring disclosure. Privacy interests and governmental security interests must be considered. A party may appeal a denial to the Superior Court under A.R.S. § 39-121.02, et seq. The court may award attorney fees and other legal costs that are reasonably incurred in legal action if the person seeking inspection of the public records has "substantially prevailed" in the case.

PART IV. ELECTRONIC EQUIPMENT

1. *Does the Town have any official policies I need to follow when using electronic equipment and services provided by the Town?*

Yes, the Town adopted an Electronic Equipment and Services Policy on August 2, 2012. A copy of the Policy Statement is included with these materials in Exhibit 2.

2. *Can I use electronic equipment and devices provided by the Town for my personal use?*

Electronic equipment and services provided by the Town are tools for conducting Town business. It is the Town's policy that the use of these tools must be solely for Town-related purposes, such as to review agenda materials, research relevant topics, obtain information, and conduct Town business.

3. *Can I download applications onto my Town-issued electronic devices?*

Town Policy prohibits users from downloading any application, software, or electronic equipment that is not for the sole purpose of conducting Town business. The Town will periodically update electronic equipment and devices with applications and software as may be reasonably necessary and appropriate to perform Town related duties. Any software downloaded becomes the property of the Town and may only be used in ways that are consistent with licenses and copyrights.

4. *Are the items I store on my electronic devices private?*

No. You have no expectation of privacy with respect to the use of electronic equipment and services. The Town reserves the right to inspect all files stored on electronic equipment or monitor provided services.

5. *Are there standards for how I must conduct myself when using electronic devices and services provided by the Town?*

Yes, in general you should remember that all electronic messages are traceable to the Town and will impact the reputation of the Town. You must accordingly refrain from

making any false or defamatory statements in any Internet forum and from committing any other acts which may expose the Town to liability. You must not send any message of an obscene, libelous or vulgar nature. You must refrain from downloading files from untrustworthy sources or files that may contain viruses or hostile applications that could damage the Town's systems. You must not use your electronic devices in any way that might violate the Open Meeting Law, including using messaging services during Town meetings. What should you do? You should always identify yourself honestly, accurately, and completely at all times. Refer to the Electronic Equipment and Services Policy in Exhibit 2 and the Code of Ethics in Exhibit 3 for further information about how to appropriately use Town electronic equipment and services.

PART V. CODE OF ETHICS

1. Why do we have a Code of Ethics?

The Town adopted a Code of Ethics on August 2, 2012. The Code is attached in Exhibit 3. It was enacted with the express purpose of establishing standards of conduct for Gilbert's public officials in order to maintain public confidence in the integrity of Gilbert's public officials and to instill public trust through the actions, words and deeds of Gilbert's public officials.

2. How does the Town's Code of Ethics relate to State requirements governing the conduct of public officials?

The requirements of the Code of Ethics are in addition to and are intended to compliment the requirements of State law governing the conduct of Public Officials.

3. What are the responsibilities of public service?

In general, public officials must maintain themselves to the highest standards of integrity and honesty. Public officials must treat all members of the public and fellow colleagues with respect, courtesy, concern and responsiveness. Public officials must handle all issues and citizens with fairness, impartiality and respect. For example, public officials must divide time reasonably among potential speakers at a public meeting and listen to different points of view. Simply by keeping an open mind and actively listening to the concerns of a citizen you communicate to the community that Gilbert values all of its residents.

Meeting attendance is also important. Absence from meetings should be avoided if at all reasonably possible. Similarly, a public official should not abstain from voting on a matter before his or her public body unless he or she has a conflict of interest or believes he or she may have a conflict of interest or a personal interest that precludes a fair and impartial decision.

Public officials must adhere to the open meeting and conflict of interest laws.

Planning Commission
Regular Meeting 7-2-14

Public officials must also protect confidential information as required or permitted by law. Attendance at ethics training is required at least once per term. The Code of Ethics sets forth further requirements that should be reviewed by every public official serving on a council, board, commission or committee. Questions about this policy should be presented to the Town Attorney's office (in writing if time permits).

4. *What should I do if someone wants to give me a gift or benefit or do some kind of favor for me?*

Public officials must disclose in writing any (1) gift, benefit or favor received with a value in excess of \$50.00 or (2) any gifts, benefits or favors with a combined value in excess of \$50.00 within a six month period from a person with a financial interest in business with the Town or in a matter which may come before the public body. The written disclosure must come within two business days of receipt. If the gift is *immediately* donated to Gilbert or a bona fide charity it does not have to be disclosed.

5. *Can I attend other public meetings?*

Yes. Members of boards, commissions & committees may attend meetings of other public bodies. Town Councilmembers may also attend meetings of other public bodies but individual Councilmembers must accurately describe the positions of Gilbert to such public bodies.

6. *Should I report suspected violations of the ethics policy? If so, what procedure should follow?*

Yes, you do have an obligation to report violations. Interference with the duty to disclose violations is prohibited. Reports shall be made to the Town Clerk. The Town Clerk will forward a copy to the members of the public body and the Town Attorney. The Town Attorney will either prepare a recommendation or request an independent investigation. Recommendations shall be filed with Town Clerk. The matter may be placed on the Council agenda for action. Open Meeting Law Violations may be directly reported to the Attorney General's Office or County Attorney.

7. *How will the Town enforce this policy?*

The Council intends that violations of the Code of Ethics be treated fairly and expeditiously. The Council shall review the report and recommendation at a regular or special Council meeting. If the Council determines that a Code of Ethics violation has occurred, the Council may impose penalties. Minor infractions may be informally resolved and the Council may choose to simply educate those in violation. Public officials may be disciplined for more serious violations. In addition to other penalties provided by law, the members of a public body may vote to censure another member who violates the Code of Ethics. A member who may be censured shall not vote on the matter but may explain actions. Censure requires a vote of 5 members' of the public body.

TOWN OF GILBERT
PUBLIC OFFICER DISCLOSURE

Name of Public Officer:

The matter or decision under consideration by the public body:

DISCLOSURE OF INTEREST

A conflict of interest exists if you or a relative has a pecuniary or proprietary interest, directly or indirectly, in this matter. A "relative" includes your spouse; children and grandchildren; parents and grandparents; brothers and sisters, as well as their spouses; and your spouse's parents, brothers, sisters and children.

To avoid any possible conflict of interest under A.R.S. 38 - 501 et seq., I will refrain from participating in any manner in the matter identified above.

Date

Signature of Public Officer

Describe the interest held by you or your relative:

DISCLOSURE OF BIAS OR PREJUDICE

Bias or prejudice exists if you have strong feelings of bias for or against either a party of an issue of fact in this matter, or strong feelings of bias due to facts which you have learned which are outside those presented to the Council; and these feelings will influence your decision regardless of the evidence.

I am biased or prejudiced for or against either a party or an issue of fact in the matter identified above and I am unable to render a fair and impartial decision based exclusively on the evidence presented. Therefore, I will refrain from participating in any manner in the matter identified above.

Date

Signature of Public Officer

Describe the bias or prejudice you hold in this matter:

POLICY STATEMENT

SUBJECT: Electronic Equipment and Services Policy for Elected and Appointed Officials and Members of Boards, Commissions and Committees

WHEREAS, the Town of Gilbert ("Town") provides electronic equipment and services to elected and appointed officials and members of Town boards, commissions and committees ("Users") for the purpose of performing Town work efficiently and effectively; and

WHEREAS, use of electronic equipment and services will assist "Users" in the efficient performance of their public duties and thereby improve service to the public; and

WHEREAS, the Town Council desires to outline procedures which set forth the conditions for use of electronic equipment and services by Users.

NOW, THEREFORE, the following policy is hereby established:

1. Each User shall comply with this policy when using electronic equipment and services provided to such User.
2. Each User shall use a Town issued email account when electronic equipment or services require the creation of user accounts (iTunes accounts, Drop Box accounts, etc.) that will be used to send official Town documents, including without limitation Town Council agendas, staff reports, and the like.
3. Electronic equipment and services provided by the Town are tools for conducting Town business. The use of such tools will be solely for Town related purposes, such as, to review Council, Board and Commission agenda materials, research relevant topics, obtain useful information for Town related business, and conduct business communications as appropriate. All of the Town's computer systems, including electronic equipment and services provided to Users, are public property. All documents, files, and email messages are subject to the Arizona Public Records Law, and are considered the property of the Town of Gilbert. Users shall comply with Town procedures on preservation and retention of public records when using Town issued electronic equipment and services.
4. Users shall comply with the copyrights, software license provisions, and property rights of the Town. All existing Town policies will continue to apply to use of the Internet and to use of E-mail, including but not limited to those that deal with misuse of Town resources, sexual harassment, information and data security, and confidentiality.
5. Electronic equipment and services activity will be traceable to the Town of Gilbert and will impact the reputation of the Town. Users shall refrain from making any false or defamatory statements in any Internet forum and from committing any other acts which could expose the

Town to liability. Users shall not download files from sources which may be untrustworthy nor shall Users open and read files attached to E-mail transmissions unless they originate from a trustworthy source. Downloaded files and attachments may contain viruses or hostile applications that could damage the Town's systems. Users will be held accountable for any breaches of security caused by files obtained for non-business purposes.

Planning Commission
Regular Meeting 7-2-14

6. There is no expectation of privacy with respect to the use of electronic equipment and services. The Town reserves the right to inspect all files stored on electronic equipment or monitor provided services in order to assure compliance with this policy. Users do not have any privacy right in any matter created, received, stored in, or sent from or with any Town electronic equipment or services and the Town Manager may institute appropriate practices and procedures to assure compliance with this policy.
7. Users shall not download any application, or software to electronic equipment that are not for the sole purpose of conducting Town business. Electronic equipment will be equipped and periodically updated with such applications and software as may be reasonably necessary and appropriate to perform Town related duties. Any software or data (E-mail messages, files, etc.) downloaded via the Internet into the Town systems become the property of the Town, and may only be used in ways that are consistent with licenses or copyrights.
8. Users shall not send any messages of an obscene, libelous, vulgar, or defamatory nature. Users shall not use any messaging service during any Town meeting and Users will not use the iPad in any way that might violate the Open Meeting Law.
9. Users shall not use the electronic equipment or services for operating a business for personal gain, sending chain letters, soliciting money for religious or political causes, or any other purpose that does not relate to Town business activities.
10. Users shall not use the electronic equipment and services to deliberately propagate any virus or other hostile computer program or file, to disable or overload any computer system or network, or to circumvent any system intended to protect the privacy or security of another user.
11. In using the electronic equipment and services, Users shall identify themselves honestly, accurately and completely at all times.
12. Users shall return their electronic equipment to the Mayor / Council Assistant, Secretary of the Board or staff liaison when their term and service for the Town of Gilbert has ended or upon request by the Town Manager. The electronic equipment will be wiped clean of any and all information upon return of the electronic equipment to the Mayor/Council Assistant, Secretary of the Board or staff liaison.
13. Users shall notify the Town's Office of Information Technology help desk immediately in the event that electronic equipment is lost or stolen so appropriate action can be taken to protect the Town's information and services.

POLICY STATEMENT

SUBJECT: Code of Ethics for Members of the Town Council and Boards,
Commissions and Committees

PURPOSE AND ETHICS STATEMENT

The Town of Gilbert is a clean, safe and vibrant community that values trust, honesty, personal responsibility, professionalism, service and accountability. Members of the

Planning Commission
Regular Meeting 7-2-14

Town Council and its boards, commissions and committees ("Public Officials") have an obligation to the residents of Gilbert, its customers and its partners to uphold the highest standard of ethics.

The purpose of this Code of Ethics is to establish standards of conduct for Gilbert's Public Officials in order to maintain public confidence in the integrity of Gilbert's Public Officials and to instill public trust through the actions, words and deeds of Gilbert's Public Officials. The requirements of this Code of Ethics are in addition to and are intended to complement the requirements of State law governing conduct of Public Officials.

POLICY

1. *Responsibilities of Public Service.* Recognizing the special responsibilities of serving Gilbert and its citizens and customers, Public Officials shall maintain the highest standards of integrity and honesty and shall treat all members of the public and fellow colleagues with respect, courtesy, concern and responsiveness.

- 1.1 Fairness and Respect. All issues and citizens shall be handled with fairness, impartiality and respect. Public Officials have an obligation to treat all citizens fairly, such as by dividing time reasonably among potential speakers on an issue at a public hearing or meeting, by having an open mind on issues presented, and by being willing to listen to different points of view.

- 1.2 Meeting Attendance. It is the responsibility of Councilmembers to attend Council meetings and the responsibility of other Public Officials to attend meetings of their respective board, commission or committee to which they have been appointed in order to fairly conduct the business of Gilbert. It is also the responsibility of Public Officials who have been appointed as voting members representing Gilbert on other boards, commissions or committees to attend meetings of those boards, commissions or committees. Absence from meetings should be avoided if at all reasonably possible.

- 1.3 Abstaining from Voting. A Public Official should not abstain from voting on a matter before his or her Public Body unless he or she has a conflict of interest or believes he or she may have a conflict of interest or a personal interest as set forth in Paragraph 3.4.

2. *Open Meeting Law.* The intent of the open meeting law is to assure that government is transparent and that the public's business is conducted in public.

- 2.1 Compliance with Open Meeting Law. Public Officials shall comply with the open meeting law of the State of Arizona and shall not attempt to circumvent the requirements of the open meeting law.

2.2 Polling. Practices such as polling individual members to reach a decision outside a public meeting is prohibited.

2.3 Serial Meetings. A discussion among less than a quorum may lead to a violation of the open meeting law if eventually a quorum is involved in the discussion. This is a violation of the open meeting law and is prohibited. For example, if three members of the Council discuss a matter that is before the Councilor may come before the Council for discussion or action, and one of those members discusses the matter with another member of the Council, a serial meeting has been held without notice and agenda required by the open meeting law. Serial meetings may occur through telephone conversations, written correspondence, e-mail or other means of communications about a matter of Town business.

2.4 Use of Staff or Others. Use of Gilbert's staff or others to promote discussion among other members of the Public Body to circumvent the purposes of the open meeting law is prohibited.

2.5 Open Meeting Law Violations. Notwithstanding the reporting process set forth in paragraph 7.4, reports of violations of the open meeting law may be made directly to the Attorney General's office or the County Attorney's office.

3. *Conflicts of Interest.* The purpose of the conflict of interest laws is to prevent self-dealing by Public Officials and to remove or limit any improper influence which might bear on a Public Official's decision. A conflict of interest occurs when (i) a Public Official or a relative of the Public Official has a pecuniary interest in a matter that may come before the Public Body during the Public Official's term of office on which the Public Official sits and that interest is not a remote interest as defined in ARS Section 38-502(10), or (ii) or when the Public Official has an interest that results in the Public Official not being able to act

impartially on a matter before the Public Body. "Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.

3.1 Compliance with Conflict of Interest Laws. Public Officials shall comply with the conflict of interest laws of Arizona. If a Public Official is not sure he or she has a conflict of interest on a matter before the Public Body of which the Public Official is a member, the Town Attorney should be contacted. Requests related to conflicts of interest are confidential; however, official opinions of the Town Attorney are required by law to be a public record.

3.2 Disclosure of Conflict of Interest. If a Public Official has a conflict of interest, he or she shall disclose that fact as soon as possible by filing a statement with the Town Clerk setting forth the nature of the conflict of interest. The Public Official shall not participate in any manner as a Public Official in the matter.

3.3 Loyalty. Public Officials have an obligation to put the interest of Gilbert over personal considerations and to make the public's interest their primary concern.

3.4 Personal Interests. Occasionally a Public Official may find that he or she has a personal interest in a matter, even though a conflict of interest would not exist under the conflict of interest laws. Public Officials are encouraged to adhere to strongly held ethical values which are exercised in good faith and to refrain from discussing or voting on a matter if he or she believes the personal interest precludes making a fair and impartial decision.

3.5 Gifts. Public Officials shall disclose in writing to the Town Clerk any (i) gift, benefit or favor received with a value in excess of \$50.00 or (ii) any gifts, benefits or favors with a combined value in excess of \$50.00 within a six month period, from a person with a financial interest in business with the Town or in a matter which may come before the Public Body. The written disclosure shall be made within two (2) business days of receipt of the gift, benefit or favor or multiple gifts, benefits or favors totaling \$50.00 in value within a six month period. If the gift is donated to Gilbert or a bona fide charity, it does not have to be disclosed; provided however, that the gift is donated immediately upon receipt.

4. ***Confidential Information.*** Gilbert is committed to maintaining an open and accessible government intended to engender trust and confidence from the public, while at the same time protecting confidential information as required or permitted by law.

- 4.1 Disclosure of Confidential Information. Public Officials shall not disclose confidential, privileged or protected information, unless authorized by the majority vote of a quorum of the Councilor is required by law to do so.
 - 4.2 Public Officials shall not use confidential, privileged or protected information to advance the financial or other private interest of himself or herself or others.
5. *Town Council Relations with other Public Bodies and Agencies.* The Town Council may attend meetings of other Public Bodies of Gilbert or other governmental agencies. Individual Councilmembers shall accurately describe the positions of Gilbert to such Public Bodies and governmental agencies.
6. *Code of Ethics Training.* It is important that training be made available to Public Officials in order that the purposes of this Code of Ethics may be successfully implemented.
 - 6.1 Training. Public Officials shall attend at least one training session per term regarding the regarding this policy.
7. *Procedures.* It is important that procedures for reporting violations of this Code of Ethics be clearly understood and followed.
 - 7.1 Questions. Questions about this Code of Ethics, a conflict of interest, or other ethical problem should be presented to the Town Attorney's office. If time permits, requests should be in writing to the Town Attorney. If the ethical issue arises during a meeting, rather than risk an inadvertent violation of the law, the safest course of action is simply to declare that a conflict may exist that prevents the Public Official from participating.
 - 7.2 Obligation to Report Violations. Public Officials have a duty to report if another Public Official is violating laws or this Code of Ethics.
 - 7.3 Interference with Duty to Disclose Violations. Public Officials shall never attempt to use their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any person with the intent of interfering with that person's duty to disclose improper activity.
 - 7.4 Reporting Process. Reports of alleged violations of this Code of Ethics shall be made to the Town Clerk, whether such report is by a member of the public, an employee or a Public Official. Upon receipt of an alleged violation, the Town Clerk shall forward a copy to the members of the Public Body and to the Town Attorney. The Town Attorney shall either prepare a recommendation to the Public Body or request an independent

investigation. Recommendations of the Town Attorney or the independent investigator shall be filed with the Town Clerk. The Town Clerk may place the matter on a Council agenda for action by the Council.

8. **Enforcement.** The Council intends that violations of this Code of Ethics be treated fairly and expeditiously.

8.1 Council Action. The Council shall review the report and the recommendation at a regular or special Council meeting. The report and the recommendation shall be a public record. If the Council determines that a Code of Ethics violation has occurred, the Council may impose penalties in accordance with Paragraph 8.2.

8.2 Penalties. It is the intent of the Council to educate, and where necessary, discipline Public Officials who violate this Code of Ethics. In addition to other penalties provided by law, the members of a Public Body may vote to censure another member who violates this Code of Ethics, provided that (i) the member who may be censured shall not vote on the matter but may explain his or her actions, and (ii) censure shall require a vote of five (5) members of the Public body. This paragraph does not prevent informal resolution of minor infractions, such as immediate corrective action of the alleged misconduct.

Parliamentary Procedures

Or, How to use the fundamentals of Robert's Rules of Order.

Why Use Parliamentary Procedures?

- Common rules for running meetings
- Help meetings to be orderly and constructive
- Without rules, chaos prevails
- The Town Council says you will use them
- Parliamentary Procedures is one of the tools for providing structure to meetings.
- You will learn how to do the following:
 - How to make a motion, second and vote
 - How to amend a motion
 - How to call for a vote
 - How to properly question the direction of the discussion.

Planning Commission
Regular Meeting 7-2-14

Starting a Meeting

- Your Chair will call the meeting to order.
 - All actions should go through the Chair
 - Opening and closing a meeting does not require a motion by the board.
 - All actions by a Board require a proper motion and a vote
 - What is the process?
 - One of the board members makes the motion ...
 - "I move the Board approves this item "Or "I make a motion to approve "
 - A second is then required
 - Once a motion is on the floor, the only topic that can be discussed is the motion or the amendment.
 - For most groups, a lengthy discussion takes place first so the motion can be framed
 - Then, either a Board member will ask the Chair if they are ready for a motion or the Chair can ask for a motion to be made.
 - Once the second is received, the Chair can ask for any additional discussion. If there is none, the Chair will call for the vote to approve or disapprove the motion.
 - "All those in favor signify by saying Aye"
 - "All those opposed, same sign" or "All those opposed signify by saying Nay."
 - The motion maker has to vote for the motion; the person who seconds it does not.
 - The Chair announces the vote, "The Motion passes 7 to zero"
 - The Chair can make motions or second them, and the Chair votes.
- ij/
- What happens if there is no second?
 - The Motion dies and no action is taken. The Chair then goes on to the next item.

- Or, a new motion is proposed
- Following discussion and it is apparent some additional changes need to be made to the motion, how do you proceed?
- The Chair can ask the original motion maker to include the additional changes in the motion.
- If the person who seconded the motion agrees, the vote goes forward.
- An amendment to the original motion can be made.
 - "I move to amend the motion to"
 - A second is required. If there is no second, the amendment dies.
 - With a second, discussion takes place on the amendment only
 - After discussion ends, the amendment is voted
 - Then, a vote is taken on the original motion
- During the discussion, all members and the Chair need to be vigilant about the direction the discussion is going.
- If a member has declared a conflict, that member cannot take part in the discussion or the motion.
- To be efficient and productive, everyone needs to stay on track.
- Legal Counselor Staff will help with this.
- If the discussion takes off on a tangent, what is the proper way for moving back?
- Call for a "Point of Order"
- This is the proper way to serve notice that the discussion is headed away from the motion.
- The Chair will then bring, or should do so, the board back to the motion on the floor.
- If the discussion has gone on for a long time, one or more members may have forgotten

what the motion actually is.

- It is appropriate to have whoever is taking minutes to read back the motion before voting.
- If there is further discussion, that is okay.
 - “ Call for the Question”
 - When the discussion seems to continuing without purpose, this is the proper way to bring the discussion to a close.
 - Without interrupting someone, you ask the Chair for the floor, and state, "Mr. /Madame Chair, I would like to call for the question" - What you have just done is asked that a vote be taken without further discussion.

COMMUNICATIONS

Report from the Chairman and Members of the Commission on current events.

Chairman Wittmann announced that the “Fire in the Sky Fireworks” and activities would be held at Central Christian Church and also at Gilbert Youth Soccer Complex. The fireworks begin at 9 PM.

Commissioner Peterson encouraged everyone to look at the Town of Gilbert website to see what the rules are for using fireworks. She thanked staff for sending them the updates on the Gilbert and Guadalupe road improvements. She commented that the Gilbert Transportation Plan is still in draft form and the Town is asking that anyone who wishes to provide comments go to Gilbertonthemove.com where comments will be received through July 15, 2014. The primary election is on August 26, 2014 and the early ballot is available now \ on the Town of Gilbert Clerks page.

Report from Council Liaison

None

Report from the Planning & Development Services Manager on current events.

Planning Services Manager Linda Edwards introduced Brent Mutti the current Alternate Planning Commission Member. Ms. Edwards announced that there are two new senior planners on the Town’s planning staff. The annual back to school drive is in full force and all fire stations are accepting school supplies. The Greenfield Road sewer line is repaired and Greenfield Road is open.

ADJOURNMENT

Chairman Wittmann adjourned the meeting at 9:00 p.m.

Chairman Jennifer Wittmann

ATTEST:

Recorder Margo Fry