

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE EXECUTIVE, REGULAR AND SPECIAL SESSIONS OF THE
FOUNTAIN HILLS TOWN COUNCIL
JUNE 5, 2018**

EXECUTIVE SESSION

Mayor Kavanagh called the Executive Session to order at 4:01 p.m. in the Fountain Conference Room - 2nd Floor, Town Hall.

AGENDA ITEM#1 – VOTE TO GO INTO EXECUTIVE SESSION: PURSUANT TO: (I) A.R.S. § 38-431.03(A)(3), DISCUSSION OR CONSULTATION FOR LEGAL ADVICE WITH THE ATTORNEY OR ATTORNEYS OF THE PUBLIC BODY; AND (II) A.R.S. § 38-431.03(A)(4), 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, IN PENDING OR CONTEMPLATED LITIGATION OR IN SETTLEMENT DISCUSSION CONDUCTED IN ORDER TO AVOID OR RESOLVE LITIGATION [SPECIFICALLY RELATING TO (A) EPCOR’S RATE CASE BEFORE THE ARIZONA CORPORATION COMMISSION; (B) THE RECENT LEGAL DEVELOPMENTS REGARDING PUBLIC RECORDS, (C) THE FOUNTAIN HILLS SENIOR LIVING PROJECT; AND (D) THE COUNCIL VACANCY].

Present for roll call were the following members of the Town Council: Mayor Linda Kavanagh, Vice Mayor Dennis Brown, Councilmember Nick DePorter, Councilmember Alan Magazine and Councilmember Henry Leger (via conference call). Town Manager Grady E. Miller, Interim Town Attorney Mitesh Patel, Senior Planner Marissa Moore, Director of Development Services Robert Rodgers and Bevelyn Bender, Town Clerk were also present.

Councilmember Tolis was absent.

Councilmember Magazine **MOVED** to go into Executive Session at 4:01 p.m. and Vice Mayor Brown **SECONDED**, which **CARRIED UNANIMOUSLY** (5-0).

Senior Planner Marissa Moore and Development Services Director Bob Rodgers left the meeting at 4:49 p.m.

AGENDA ITEM #2 - ADJOURNMENT.

Mayor Kavanagh adjourned the Executive Session without objection at 5:23 p.m.

REGULAR SESSION

• **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Kavanagh called the meeting to order at 5:49 p.m. in the Fountain Hills Town Council Chambers.

• **INVOCATION** – Pastor Ken Brown, Fountain Hills Presbyterian Church

• **ROLL CALL** – Mayor Linda M. Kavanagh requested a roll call.

Present for roll call were the following members of the Town Council: Mayor Linda Kavanagh, Vice Mayor Dennis Brown, Councilmember Nick DePorter, Councilmember Alan Magazine and Councilmember Henry Leger (via conference call). Town Manager Grady E. Miller, Interim Town Attorney Mitesh Patel, Dickinson Wright Law Firm and Town Clerk Bevelyn Bender were also present.

Councilmember Art Tolis was absent.

- **MAYOR'S REPORT**

None.

- **SCHEDULED PUBLIC APPEARANCES/PRESENTATIONS**

- i) The Mayor and/or Council may review RECENT EVENTS attended relating to Economic Development.

None.

CALL TO THE PUBLIC

Mayor Kavanagh asked if there were any speaker cards and Town Clerk Bender answered one request had been received.

Cecil Yates, a former Councilmember, Candidate for Mayor, and 12 year Fountain Hills' resident, thanked the residents of Fountain Hills for the 11years he served as a Planning and Zoning Commissioner and Town Councilmember. Mr. Yates proceeded to update everyone on his recent meetings with the Valley Metro Transit System group and the Greater Phoenix Economic Commission (GPEC).

CONSENT AGENDA

AGENDA ITEM #1 - CONSIDERATION OF APPROVING RESOLUTION 2018-36, ABANDONMENT OF THE 10' PUBLIC UTILITY AND DRAINAGE EASEMENT ON PLAT 107, BLOCK 12, LOT 13 (17017 E. EL PUEBLO BOULEVARD), AS RECORDED IN BOOK 141, PAGE 18, RECORDS OF MARICOPA COUNTY, ARIZONA. (EA 2018-06)

AGENDA ITEM #2 - CONSIDERATION OF RESOLUTION 2018-22, GRANTING A PUBLIC UTILITY EASEMENT AT THE ADERO TRAILHEAD SITE (EAA 2018-01).

AGENDA ITEM #3 - CONSIDERATION OF A BUDGET TRANSFER FROM THE HURF/STREETS FUND TO THE DOWNTOWN STRATEGY FUND FOR THE REPLACEMENT OF THE SUMMER BANNERS, IN THE AMOUNT OF \$12,911.35.

AGENDA ITEM #4 - CONSIDERATION OF RESOLUTION 2018-37, A DRAINAGE EASEMENT AGREEMENT WITH RCS - PARK PLACE 1, LLC. (EAA 2018-04)

AGENDA ITEM #5 - CONSIDERATION OF RESOLUTION 2018-38, A PARKING EASEMENT AGREEMENT WITH RCS - PARK PLACE 1, LLC. (EAA 2018-05)

Vice Mayor Brown **MOVED** to approve the Consent Agenda as listed and Councilmember Magazine **SECONDED** the motion.

A roll call vote was taken with the following results:

Mayor Kavanagh	Aye
Vice Mayor Brown	Aye
Councilmember Leger	Aye
Councilmember Magazine	Aye
Councilmember DePorter	Aye

The motion **CARRIED UNANIMOUSLY** (5-0), by those present.

REGULAR AGENDA

AGENDA ITEM #6 - PUBLIC HEARING REGARDING RESOLUTION 2018-27, APPROVING THE FINAL BUDGET FOR THE TOWN OF FOUNTAIN HILLS FOR THE FISCAL YEAR BEGINNING JULY 1, 2018, AND ENDING JUNE 30, 2019.

Mayor Kavanagh opened the public hearing at 5:59 p.m.

Mayor Kavanagh asked if there were any speaker cards and Town Clerk Bender answered none had been received.

Mayor Kavanagh closed the public hearing at 5:59 p.m.

Mayor Kavanagh recessed the Regular Session and convened the Special Session at 5:59 p.m.

SPECIAL SESSION AGENDA

- **CALL TO ORDER AND ROLL CALL** – Mayor Linda M. Kavanagh

Mayor Kavanagh called the meeting to order at 5:59 p.m. in the Fountain Hills Town Council Chambers and requested a roll call.

Present for roll call were the following members of the Town Council: Mayor Linda Kavanagh, Vice Mayor Dennis Brown, Councilmember Nick DePorter, Councilmember Alan Magazine and Councilmember Henry Leger (via conference call). Town Manager Grady E. Miller, Interim Town Attorney Mitesh Patel, and Town Clerk Bevelyn Bender were also present.

Councilmember Art Tolis was absent.

- SPL#1** **CONSIDERATION OF RESOLUTION 2018-27, APPROVING THE FINAL BUDGET FOR THE TOWN OF FOUNTAIN HILLS FOR THE FISCAL YEAR BEGINNING JULY 1, 2018, AND ENDING JUNE 30, 2019.**

Mr. Miller discussed the budget process and requested approval of the Town's final FY2018-19 budget in the amount of \$32,414,866.00 and noted this amount was down from the previous years and had been reduced by approximately \$7M due to the proposed Primary Property Tax being voted down, which affected both revenues and expenditures. Mr. Miller recommended approval.

Mayor Kavanagh asked for Council questions for Mr. Miller or Finance Director Craig Rudolphy and none were initiated.

Mayor Kavanagh asked if there were any speaker cards and Town Clerk Bender answered none had been received.

Mayor Kavanagh requested a motion.

Vice Mayor Brown **MOVED** to approve Resolution 2018-27 and Councilmember DePorter **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (5-0), by those present.

- SPL#2** **CONSIDERATION OF RESOLUTION 2018-34, ADOPTING AND ESTABLISHING THE FY2018-19 BUDGET IMPLEMENTATION POLICY AND APPROVING THE TOWN ORGANIZATIONAL CHARTS, THE FY2018/19 PAY PLAN, THE SCHEDULE OF AUTHORIZED POSITIONS, THE EMPLOYEE JOB DESCRIPTIONS, AND THE FY2018/19 COMPREHENSIVE FEE SCHEDULE.**

Mayor Kavanagh asked for any further discussion or questions for Mr. Miller or Craig Rudolphy and none were initiated.

Mayor Kavanagh asked if there were any speaker cards and Town Clerk Bender answered none had been received.

Mayor Kavanagh asked for a motion.

Vice Mayor Brown **MOVED** to approve Resolution 2018-34 and Councilmember Magazine **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (5-0), by those present.

SPL#3 ADJOURNMENT.

Mayor Kavanagh asked for a motion to adjourn.

Councilmember DePorter made a **MOTION** to adjourn the meeting and Vice Mayor Brown **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (5-0), by those present. The Special Session adjourned at 6:03 p.m.

Mayor Kavanagh reconvened the Regular Session at 6:03 p.m.

AGENDA ITEM #7 - CONSIDERATION OF SELECTING THE WAYFINDING SIGN DESIGN CONCEPT AND AUTHORIZING STAFF TO MOVE FORWARD WITH CONSTRUCTION DOCUMENTS.

Mr. Miller explained the item before the Council involved selecting the Wayfinding Sign design and requesting Council give direction to move forward with the construction documents previously included in the Wayfinding Sign Program scope of work. Mr. Miller recapped that Council had decided during the budget process discussions to push back to later years the signage fabrication and installation adding that the construction documents would be held until funding was available. Mr. Miller pointed out there were two design concepts to consider "A" and "B". Mr. Miller stated that the concepts were presented to the public for feedback at the May 2018 open house on Town Wayfinding signage. Mr. Miller introduced Fountain Hill's Senior Planner Marissa Moore who gave a joint presentation with the assistance from Jennifer Russler, representative with Hunt Design, (PowerPoint presentation available on-line and in the office of the Town Clerk.

Ms. Moore requested Council give staff direction on a design concept preference so Hunt Design could complete the construction documents.

Mayor Kavanagh asked for Council discussion on their preference.

Mr. Miller asked Ms. Russler if during the Open House in May, did the public express a preference and Ms. Russler replied it was divided between "A" and "B" and with some that liked parts of each design. Ms. Russler added that there were very few negative comments on either design.

Councilmember Magazine asked how many residents attended the Open House and Ms. Russler replied 24. Councilmember Magazine asked for clarification as to the cost of phase; Ms. Moore replied the total cost of the contract that included the construction design element was \$95K with fabrication and installation of the entire package @ approximately \$300K and that would include possible phasing and use some existing signage to help keep the cost down.

Councilmember Magazine explained his reasons for not supporting this project. He mentioned public feedback that he had heard that Council had frivolously spent money on this signage and the lagoon project that they had opposed. He stated he could not vote for this project. Councilmember Magazine indicated he wanted to make a motion to deny.

Councilmember DePorter asked for clarification on what the Council was considering and Mr. Miller replied he understood the Council had a split vote previously on this item, but ultimately Council approved the Hunt Design contract to engage the design of monument and Wayfinding Signs along with conducting a public Open House to receive comments from residents and noted these construction documents would be used for estimates for fabrication and installation costs. Mr. Miller said that the Town would be paying for this service even if the project did not move

forward and was placed out two years for the first phase and the following year for the second phase with funding coming from the Capital Improvement Budget.

Mitesh Patel, Interim Attorney explained that before Councilmember Magazine could make a motion the main motion for consideration must be addressed and then a secondary motion could be made.

Mayor Kavanagh asked for a motion on the design package “A” or “B”.

Councilmember DePorter asked if there was a difference in the final construction costs between “A” and “B” and Ms. Russler replied they were approximately the same in costs. Councilmember DePorter stated he liked design “B” with no changes and said he wanted the Council to stop the spending funds on this project and shelve it.

Vice Mayor Brown stated his preference for design “B” because the design looked statelier and was a better design.

Councilmember DePorter **MOVED** to approve construction design package “B” and Vice Mayor Brown **SECONDED** the motion.

Councilmember Leger stated he was fine with the design.

Mayor Kavanagh also liked design “B”.

Mayor Kavanagh asked if there were any request to speak and Town Clerk Bender replied none had been received.

Mayor Kavanagh asked for discussion from Councilmembers and none was initiated.

Mayor Kavanagh asked for a roll call vote with the following results:

Mayor Kavanagh	Aye
Vice Mayor Brown	Aye
Councilmember DePorter	Aye
Councilmember Magazine	Aye
Councilmember Leger	Aye

The motion **CARRIED UNANIMOUSLY** (5-0), by those present.

Councilmember Magazine **MOVED** to open the agenda item for reconsideration and Councilmember DePorter **SECONDED**.

Mayor Kavanagh asked for a roll call vote with the following results:

Mayor Kavanagh	Nay
Vice Mayor Brown	Nay
Councilmember DePorter	Aye
Councilmember Leger	Nay
Councilmember Magazine	Aye

The motion **FAILED** (3-2), by those present.

Councilmember Magazine added for the record that he was opposed to moving ahead on this item indefinitely. Mayor Kavanagh reiterated that the construction design documents had already been approved and included in the Hunt Design contract and would be used in the future to obtain future fabrication and installation costs.

Mayor Kavanagh thanked Ms. Russler for her presentation.

Mayor Kavanagh explained that one staff report during agenda item #8 and would cover agenda items #8, #9 and #10, with public comments received during agenda item #9.

AGENDA ITEM #8 - CONSIDERATION OF RESOLUTION 2018-04, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED THE "FOUNTAIN HILLS SENIOR LIVING PLANNED AREA DEVELOPMENT" (PAD). (CASE# Z2017-14)

Mayor Kavanagh noted that this item was to declare this document a public record only.

Marissa Moore, Senior Planner gave the presentation with a brief overview of the project.

Mayor Kavanagh requested a motion declaring "Fountain Hills Senior Living Planned Area Development" (PAD) a public record.

Vice Mayor Brown **MOVED** to declare Resolution 2018-04 a public record and Councilmember DePorter **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (5-0), by those present.

AGENDA ITEM #9 - PUBLIC HEARING TO RECEIVE COMMENTS ON ORDINANCE 18-03, AMENDING THE TOWN OF FOUNTAIN HILLS OFFICIAL ZONING DISTRICT MAP FOR APPROXIMATELY 5.74 ACRES GENERALLY LOCATED AT THE NORTHWEST CORNER OF SAGUARO BOULEVARD AND TREVINO DRIVE FROM HEMINGWAY PLANNED AREA DEVELOPMENT (PAD) TO FOUNTAIN HILLS SENIOR LIVING PAD (CASE# Z2017-14)

Mayor Kavanagh opened the Public Hearing at 6:42 p.m.

Mayor Kavanagh requested the applicant's presentation.

Nick Wood, Snell and Wilmer Law Offices, Phoenix, Arizona, representing CA Ventures stated he sent an email to the Town requesting additional time for Jason Ebe, a partner in his law firm, to make a presentation before Mr. Wood spoke and for the record. Mayor Kavanagh gave permission for Mr. Ebe to speak.

Jason Ebe, Chandler, Arizona and a litigation partner with Snell and Wilmer Law Offices, spoke to the legal aspect aside from the zoning cases and noted witnessing in respect to agenda item #7 that demonstrated why lawyers needed to be present and spoke to the Ordinance language as well as State and Federal Law. Mr. Ebe noted that in his letter to Council, there were significant concerns about violations that already been observed in the Town's own ordinance and likely that potentially the Town was violating State and Federal Laws depending on Council's actions on this application.

Mr. Ebe addressed the Town's Ordinance that involved this application and the indefinite motion to "Tabling" the item was in error and not "Untabling" prior to Council's regular meeting, Council denied the application without the benefit of a public hearing and had violated CA Venture's rights and for failure of their rights that Council put in place for themselves, which could not be undone at this time, because that "untabling" was not advertised before tonight's meeting. Mr. Ebe stated the opinion that this project should have never been returned to the Planning and Zoning Commission (P&Z) and the Council never referred the application back to the P&Z Commission for additional review, rather someone at the Town simply elected to schedule this project for the May 24, 2018, P&Z Commission meeting.

Mr. Ebe continued to explain that the P&Z Commission agenda, over the applicant's objections, and it was unclear if the P&Z Commission hearing was properly given notification to the general public, as required by the Town's Ordinance. Both the P&Z boundaries and the P&Z districts were replaced with new boundaries or a new zoning district that prohibited Council from sending the application back to the P&Z Commission. The May 24, 2018, P&Z Commission action was not authorized by Town Council and the application never could be referred to the P&Z Commission by Council because there was no change or modification to the district boundary or zoning district classification. Once the applicant went back to the P&Z Commission there was a lack of findings and even if the P&Z Commission had obtained jurisdiction to re-hear the application, the action taken by the P&Z Commission on May 24, 2018, violated the Town's Ordinance and should be considered void. The Town's Zoning Ordinance required, as well

as the State Law, that the P&Z Commission make a recommendation that includes their rational for the recommendation and the action taken on the May 24, 2018 and it did not include any form of rational for the Commission's decision, either by the P&Z Chairman or the person on behalf of the P&Z Commissioner, or by the individual P&Z Commissioner or most importantly by the maker of the motion. Without that rational it would be impossible for Council as well as the applicant or public at large to fathom the Commission's thinking behind the recommendation or understand why the P&Z Commission recommended denial or a significantly smaller project and that the P&Z Commissioner's had previously and unanimously approved, which the reason that such findings are a requirement and mandated by the Town's Ordinance and by Arizona Law. Due to the illegal manner that the P&Z Commission heard the case, together with the failure of the P&Z Commission to follow State and local laws, the P&Z Commission's actions on May 24, 2018, must be deemed void and disregarded by the Council. Mr. Ebe continued that at this time the changes to the application made in response to both the explicit direction of the Mayor and Council have now reduced the intensity of the project to the point the application was no longer a major amendment to the existing Hemingway PAD, rather the current application proposed a project that meets a minor amendment criteria as found in the Town's Ordinance. Now that the application meets the criteria as a minor amendment, administrative authority was grounded to the Town Manager or his designee.

Mr. Ebe continued that the Town's failure to follow applicable law in processing CA Venture's application and the P&Z Commission's reversal of its unanimous recommendation after CA Venture had satisfied all the requirements for approval constitutes under the law "arbitrary and compricious" actions, which threatens to deprive CA Venture of its constitutionally protected property interest under 42 United States Code § 1983 and pointed out this would be a Federal case. CA Venture's constitutionally protected property interest in their application permit, were well established and CA Venture could seek relief against the Town under section 1983 Civil Rights Act, potentially the Fair Housing ACT and other laws and as Council knew, representatives for CA Venture submitted a public records request to the Town Clerk last week to find out how all this transpired and to determine whether there was potential violations among other things involving State Open Meeting Laws. In the event that the Town Manager or his designee failed to properly approve the application under the authority granted, under the Town's Ordinance regarding the minor amendment or as an alternative the Town Council, violated CA Venture's rights by revoking or attempting to revoke the underlining Hemingway's PAD of 2015, the applicant currently attempted to amend and by failing to approve the application or by taking any other further improper actions to the use of the subject land, CA Venture would promptly avail itself of all remedies available to the law and equity including significant monetary damages against the Town and any individual who had been compliant with any violation of the law or CA Venture's rights.

Mr. Ebe noted Councilmember Magazine's comment in respect to agenda #7 earlier, not wanting to spend frivolously the Town's limited resources and Mr. Ebe had no doubt that the Town Attorney could advise Council what it typically costs to defend a Federal Law suit along with exposure of damages. Mr. Ebe stressed that the outcome did not have to end this way and hoped it did not and appreciated Council's attention and consideration.

Vice Mayor Brown asked if it was customary for developers to come to Fountain Hill's and if they get shut down, want to sue the Town because there are a lot of other ways to handle this project and he stressed he hated to be threatened because the Town had a right to say "no" to a project. Vice Mayor Brown indicated that he disagreed with everything Mr. Ebe said and noted that everyone in Town had worked with CA Ventures and it was the citizens of Fountain Hills that created an extremely strong opposition to this project. Vice Mayor Brown noted the work completed on the Park Place project located on the Avenue of the Fountains did not create a 10th of the opposition as this project and noted that if CA Venture believed Council should not listen to the citizens, they were wrong.

Councilmember Magazine agreed with Vice Mayor Brown's comments and stated he read the letter sent by CA Venture representatives very carefully and he also did not react to intimidation and it would not have any effect on his vote.

Mr. Patel, Interim Town Attorney, requested Councilmembers not address the content of the letter due to legal issues that would be addressed at the appropriate time.

Mayor Kavanagh requested Mr. Wood continue with CA Venture's presentation. Nick Wood presented a PowerPoint presentation (available on-line and in the office of the Town Clerk) and stated the Hemingway project was initially

approved in 2015 by the Town's P&Z Commission and was also approved by Town Council. Mr. Wood continued that the current project proposed was significantly less in size, scope, intensity and then spoke of the challenges that included ingress and egress of the project for emergency vehicles and the previously proposed large buildings mostly backing up to the Town streets and mentioned the prior plan was very poor, but was still approved by the P&Z Commission and Town Council. Mr. Wood explained that an amendment was then presented to the previous plan making it a more conventional project and was approved by the P&Z Commission with stipulations. In February 2018 Council "Tabled" the project and directed the developer to meet with surrounding neighbors and address their questions and concerns, which they did and held five neighborhood meetings dated March 19, March 26, April 9, April 25 and May 10, 2018, with 15 to 20 residents that attended the meetings involving 2-1/2 to 3 hours per meeting to look at the plan and redesigning the project in response to those comments and concerns. Mr. Wood noted that the three-story building was eliminated and was reverting back to the previous 25 feet PAD and designed one-story buildings for one-half of the project; reduced the unit number from 157 to 130 and redesigned the elevation and architecture after receiving Council's comments that the design was inappropriate and would not fit into Fountain Hills, adding an extensive cost to the project. Emergency vehicle entrance was addressed with enhanced elevation and larger trees were requested and added to shield the surrounding neighbors along with redesigned landscaping to address neighbor's views from their backyards. The developer was also asked to widen Trevino Drive by 10-feet and this was agreed to and the Independent Living area of the project was eliminated to allow for less traffic.

Mr. Wood continued that all construction traffic would enter from the south from Trevino Drive onto the site to help eliminate traffic; delivery trucks and employee parking was addressed along with desert landscaping planned to fit with the surrounding Fountain Hills area. The projects entrance and garbage collection was addressed and major deliveries into the project. The developer moved the buildings back a significant distance to buffer the neighbors and maintained all resident activities would be internalized. Mr. Wood mentioned these items were addressed and were minor to the original approvals with less dense and intense creating a great project.

Mr. Wood presented slides of the project as it would be seen at completion and incorporated the neighbor's comments for this high-end project.

Mr. Wood stated that there were additional developer's stipulations they request to be added if Council approved the Hemingway project as part of the approval, as follows:

1. All deliveries with the exception for residential move in/move out activities to the project would be limited to the loading area on the southside of the building with access on Trevino Drive, as shown on the PowerPoint exhibit "A" to keep trucks away from the neighborhoods and would be included as a provision in vendor contracts for service.
2. All service activities including trash collection shall be limited to the loading area to the southside of the building exhibit "A" and would be included as a provision in vendor contracts for service.
3. Construction traffic would be limited to Trevino Drive as shown in PowerPoint exhibit "B" and the use of Monterey Drive and Burkemo Drive for construction traffic was prohibited and would be included as a provision in vendor contracts for service.
4. Upon completion of site grading and site construction of parking spaces and associated drive isle, construction parking would be provided on site.
5. The access drive located at the northwest corner of the site that provided access to Burkemo Drive shall be limited to emergency vehicles only and shall be gated and closed at all times.

Mr. Woods pointed out these were amendments to the PAD approved in 2015 that involved a smaller less intense project and issues were addressed that were not addressed previously and plans were adjusted to the project as requested. Where in February 2018 Council could have denied the application and the developer would have walked away, but at Council's request, CA Venture did not do that and ultimately costs them a tremendous amount of money and time.

Mr. Wood asked Town Council to approve the project with the developer's additional stipulations.

Mayor Kavanagh asked for Council questions for the developer or Ms. Moore and none were initiated.

Mayor Kavanagh asked for speaker cards and Town Clerk Bender stated the following:

***The citizens listed below did not wish to speak:**

*Michelle Krook and Wendy Miller were both against the project.

***The following speakers spoke in opposition of the project.**

*Joanne Meehan, Peter Gray, Ted Bell, Jane Bell, Tom Lindsey, Dawn Burstya-Meyers, Pete Mills, Alynka Zyrmont, Mary Lou Gray, Brian Zub, Mary Lou Robinson, Larry Meyers, all Fountain Hills residents.

Reasons for the opposition:

Stereotyped Senior Nursing Home, Strategic Plan objectives, C-1 Zoning and not in compliance with the General Plan, PAD justification graphics, building height, 50% of buildings over 25 feet in height, signage, variances, occupancy, impacts to home, dark sky impact, increased traffic, parking insufficient, possible future apartments concerns, currently a very busy corner, wrong place for Senior Living facilities, attended meetings only two people liked and many did not, lighting for handicap parking, devalue neighbor's property values.

Mayor Kavanagh requested a five minute break at 8:02 p.m.

Mayor Kavanagh reconvened the meeting at 8:15 p.m.

Mayor Kavanagh asked for questions from Council for Ms. Moore.

Mayor Kavanagh asked about the number of parking spaces provided and she mentioned concerns expressed involving the Fountain View Village facility parking and the lack of spaces available for staff that caused staff to park in the Senior Taco Restaurant parking lot. Ms. Moore replied she was not aware of the Fountain View Village issue, but could address the Hemingway proposed parking plan. Ms. Moore explained that the Town's parking regulations required 33 spaces for this project and the developer provided more spaces by providing a traffic study, but no parking study was required of them, but the issue could be addressed.

Mayor Kavanagh asked if there was a sidewalk provided in the plan for residents to use and Ms. Moore replied 'yes' from Saguaro Boulevard to Monterey Drive.

Mayor Kavanagh addressed the lighting and how it related to the Town's "Dark Sky Ordinance" and if the light would affect the surrounding neighbors and Ms. Moore replied in the PAD stated no height requirement, but lighting would be addressed during the building permit process, along with a required photometric plan showing where the light would fall in a site plan.

Mayor Kavanagh inquired about the height of the buildings and the tiered walls being measured from the existing grade and Ms. Moore replied by using one of the PowerPoint slides and pointed out that the slides shown were conceptual renderings and stressed the plan must meet Town Codes. Ms. Moore continued that it was common for any wall purposed to not exceed 6 feet from existing grade with a cut-in of a maximum of 24 feet with a total of 54 feet in height and this project's buildings could be 49 feet in height.

Mayor Kavanagh acknowledged Mike Sullivan, Architect for the Hemingway project, who stated the two-story buildings noted at the corner of Saguaro Boulevard would be approximately 25 feet to the height of the wall for a two-story building. Mayor Kavanagh asked how tall was the building and Mr. Sullivan replied 27 feet to the ridge...maybe 30 feet at the entrance. Mr. Wood added that would be at natural grade and that could be stipulated, if Council requested.

Mayor Kavanagh asked for Councilmember's questions.

Councilmember Leger stated that after listening to the testimony from both sides and reflecting on Council's last meeting, Council did not vote to approve the project, but voted to continue the project. Councilmember Leger complimented the developer on the great deal of effort made. Councilmember Leger stated that he heard remarks that the project had the residents' support, but after the comments this evening, he questioned if that was the case. He stated the opinion that the developer was attempting to force the project on this proposed site and the question was if this was the right project, at the right location. Councilmember Leger acknowledged that everyone had worked to fit this project, but it just did not work and it was also inconsistent with the voters approved General Plan.

Mayor Kavanagh closed the Public Hearing at 8:28 p.m.

AGENDA ITEM #10 - CONSIDERATION OF ORDINANCE 18-03, AMENDING THE TOWN OF FOUNTAIN HILLS OFFICIAL ZONING DISTRICT MAP FOR APPROXIMATELY 5.74 ACRES GENERALLY LOCATED AT THE NORTHWEST CORNER OF SAGUARO BOULEVARD AND TREVINO DRIVE FROM HEMINGWAY PAD TO FOUNTAIN HILLS SENIOR LIVING PAD.

Mayor Kavanagh asked for additional Council discussion.

Vice Mayor Brown **MOVED** to deny Ordinance 18-03 amending the Town of Fountain Hills Zoning Ordinance, Zoning District Map for the Saguaro/Trevino Isle.

Vice Mayor Brown stated the developer did a great job accommodating what the Town had asked of them, and being in the construction business, he felt it was ridiculous to threaten the Town before they voted to approve or disapprove and over a technicality of how the process was handled and added this was one of the most ridiculous actions he had ever seen and would vote to deny the project.

Mayor Kavanagh asked for a second to the motion, Councilmember DePorter **SECONDED** the motion.

Mayor Kavanagh asked for Council discussion.

Councilmember Magazine thanked the developer for listening to the citizens and making sufficient changes, creating a much better project. Councilmember Magazine repeated a statement from the staff report and was also heard from one of the citizens who spoke this evening.

"The Town had adopted a General Plan with specific goals and objectives where the proposal met some of, but was generally inconsistent with the General Plan".

Councilmember Magazine stated that in his view the Town too often ignored the General Plan and although he felt rezoning was appropriate in some circumstances he also believed the Town had granted them too often and too many along with too many waivers and variances. Councilmember Magazine added that citizens rely on the General Plan and existing zoning and if we are going to ignore the plan and zoning, why have the plan. Councilmember Magazine said he would absolutely support the citizens.

Councilmember DePorter stated he needed to hear the public's comments to finalize his decision and mentioned that Mr. Gray had stated earlier an overwhelming and compelling argument that this project does not fit this site and he would not support the project.

Mayor Kavanagh thanked the applicant for all their work on this project along with the Town's citizens who expressed their opinions involving many visits to her office, which she appreciated and stressed that Councilmembers read every communication received with careful consideration. Mayor Kavanagh also thanked Town staff for their hard work to move this item forward quickly to be heard and for accommodating everyone as fairly as possible. Mayor Kavanagh remarked that the Strategic Plan should be to improve the quality of life and that what had moved her were the arguments and comments she heard from her colleagues. She also thanked everyone for being respectfully and for the different speakers.

Vice Mayor Brown requested the Mayor to allow him to change his previous motion?

Vice Mayor Brown restated his motion. Vice Mayor Brown **MOVED** to not approve Ordinance 18-03 and Councilmember DePorter **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (5-0), by those present.

AGENDA ITEM #11 - CONSIDERATION OF RESOLUTION 2018-31, GRANTING A ONE YEAR EXTENSION TO THE HEMINGWAY PLANNED AREA DEVELOPMENT ZONING DESIGNATION APPROVED BY ORDINANCE 15-05 AND SPECIAL USE PERMIT SU2015-06 TO ALLOW AN ASSISTED LIVING FACILITY ON 5.75 ACRES LOCATED AT 9700 N SAGUARO BLVD. AKA APN# 176-10-811. (CASE SU2015-06)

Mr. Miller stated that he and Town Attorney Patel had found a complication regarding agenda item #11 and requested Mr. Patel explain what the issue was and how it would be addressed.

Mr. Patel stated that after re-reading Ordinance 2015-05 the recommendation was if the Town were going to be extending or reverting it would occur at a public hearing and staff had not identified the Public Hearing on the agenda as a public hearing even though notice had gone out, so staff was recommending “withdrawal” this item at this time, so staff could comply with the public hearing requirements. Mr. Miller reiterated that staff was “withdrawing” agenda item 11 and Mr. Patel added the public would be able to speak when this item was re-agenized.

AGENDA ITEM #12 - CONSIDERATION OF THE FIRST AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT C2017-087, WITH THE CK GROUP, FOR THE DESIGN OF AVENUE OF THE FOUNTAINS AT LA MONTANA INTERSECTION DESIGN PHASE - 2018, IN THE AMOUNT OF \$36,000.00.

Mr. Miller explained that the amendment involved extending CK Group’s current professional agreement to provide a new design to help improve the safety around the intersection located at La Montana and Avenue of the Fountains with work mostly directed in front of the Post Office since there have been issues where drivers make U-turns, wrong-way drivers and other issues that need addressed. Mr. Miller pointed out this was Council’s selected option and stated Public Works Director Justin Weldy was present to answer Council’s questions on this item.

Vice Mayor Brown questioned if the mock-up would be placed at this site in advance so as to try out the design before placing the changes permanently. Mr. Weldy replied that mock-ups would be placed to demonstrate changes, but the modification to westbound Avenue of the Fountains approaching the Post Office driveway would be constructed permanently.

Mayor Kavanagh asked for additional questions for Mr. Weldy and none were initiated.

Mayor Kavanagh asked for speaker cards and Town Clerk Bender stated none had been received

Mayor Kavanagh requested a motion.

Councilmember Magazine **MOVED** to approve Contract Amendment No. 1 (PSA Contract No. C2017-087); to the CK Group, Inc., for the design of “Avenue of the Fountain s at La Montana Intersection Design Phase – 2018” in the amount of \$36,000 and Vice Mayor Brown **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (5-0), by those present.

AGENDA ITEM #13 - CONSIDERATION OF PROFESSIONAL SERVICE AGREEMENT C2018-104, BETWEEN THE TOWN OF FOUNTAIN HILLS AND SUNRISE ENGINEERING, INC. FOR THE FOUNTAIN HILLS BOULEVARD CONCEPT DESIGN STUDY (SHEA BOULEVARD TO CRYSTAL RIDGE DRIVE), IN THE AMOUNT OF \$69,000.00.

Mr. Miller introduced Director Justin Weldy who gave a brief presentation on this item.

Mr. Weldy explained that the concept design study would give staff the necessary information, if Council decided to move forward with the widening of Fountain Hills Boulevard from Pinto Drive to Crystal Ridge Drive.

Mayor Kavanagh asked for speaker cards and Town Clerk Bender stated none had been received.

Mayor Kavanagh requested a motion.

Vice Mayor Brown **MOVED** to approve Professional Services Agreement No. C2018-104, with Sunrise Engineering, Inc. for the “Fountain Hills Boulevard – Concept Design Study” (Shea Boulevard to Crystal Ridge Drive) in the amount of \$69,000 and Councilmember Magazine **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (5-0), by those present.

AGENDA ITEM #14 - CONSIDERATION OF THE FIRST AMENDMENT TO COOPERATIVE PURCHASING AGREEMENT C2017-115 BETWEEN THE TOWN OF FOUNTAIN HILLS AND CLIMATEC, LLC, FOR SECURITY CAMERA INSTALLATION AND SERVICE, FIRE SUPPRESSION INSPECTIONS, AND ALARM MONITORING IN THE AMOUNT OF \$192,930.64.

Mr. Weldy presented information in the staff report for Climatec, LLC, as a continuation of a Council approved Capital Improvement Project.

Mayor Kavanagh expressed that she was glad for the camera installation to deter vandalism.

Mayor Kavanagh asked if there were any speaker cards and Town Clerk Bender stated none had been received.

Mayor Kavanagh requested a motion.

Vice Mayor Brown **MOVED** to approve the first amendment to C2017-115 between the Town and Climatec, LLC for security camera installation and service, fire suppression inspections and alarm monitoring in the amount of \$192,930.64 and Councilmember DePorter **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (5-0), by those present.

AGENDA ITEM #15 - CONSIDERATION OF THE FIRST AMENDMENT TO COOPERATIVE PURCHASING AGREEMENT C2017-064 BETWEEN THE TOWN OF FOUNTAIN HILLS AND FLUORESCO SERVICES, LLC, FOR THE REPLACEMENT OF ILLUMINATED STREET NAME SIGNS, IN THE AMOUNT OF \$69,795.70.

Mr. Weldy explained this contract was to upgrade the remaining traffic intersection with illumination of street sign name faces that currently were in very poor condition and the materials were outdated. Mr. Weldy added that the project would be completed by the end of the current fiscal year June 30, 2018.

Mayor Kavanagh asked for speaker cards and Town Clerk Bender stated none had been received.

Mayor Kavanagh asked for Council discussion or questions.

Vice Mayor Brown asked if the new sign faces met the “Dark Sky Ordinance” and Mr. Weldy replied they did.

Mayor Kavanagh asked for a motion.

Councilmember Magazine **MOVED** to approve the first amendment to Cooperative Purchasing Agreement (C2017-065.1) with Fluoresco Services, LLC and Councilmember DePorter **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (5-0), by those present.

AGENDA ITEM #16 - CONSIDERATION OF THE THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT C2012-129 WITH SUNRISE ENGINEERING FOR DESIGN AND CONTRACT

DOCUMENT MODIFICATIONS REQUIRED BY ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) FOR THE FOUNTAIN HILLS BOULEVARD SHOULDER PAVING PROJECT, IN THE AMOUNT OF \$33,000.00.

Mr. Weldy presented information in the staff report for the third amendment to Sunrise Engineering contract and it was due to unforeseen changes and mandates by ADOT that increased the cost by an additional \$33,000.

Mayor Kavanagh asked for speaker cards and Town Clerk Bender stated none had been received.

Mayor Kavanagh asked for Council discussion or questions and none were initiated.

Mayor Kavanagh asked for a motion.

Councilmember DePorter **MOVED** to approve Amendment #3 to Professional Services Agreement C2012-129 with Sunrise Engineering in the amount of \$33,000 for the Fountain Hills Boulevard Shoulder Paving Project and Vice Mayor Brown **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (5-0), by those present.

AGENDA ITEM #17 - DISCUSSION WITH POSSIBLE DIRECTION TO STAFF REGARDING THE ACCEPTANCE OF TWO KINETIC SCULPTURES ENTITLED PHOENIX OF LEAVES AND MEDIUM DOUBLE SWIRL TO BE PLACED WITHIN THE PARK PLACE DEVELOPMENT.

Rachael Goodwin, Community Services Director, gave the presentation and included pictures of the sculptures in a PowerPoint presentation (available on-line or in the office of the Town Clerk).

Mayor Kavanagh asked if the sculptures parts moved and Ms. Goodwin replied both moved with the wind. Ms. Goodwin mentioned the sculptures were donated by Bart Shea in fulfillment of the required one-percent Public Art Fee and would include an agreement that the private property owner would be responsible for installation and maintenance the art pieces located on his property.

Mayor Kavanagh asked for Council discussion or questions.

Councilmember DePorter asked if the public would have access to the sculptures and Ms. Goodwin replied “yes”, but the pieces would be on private property.

Councilmember Magazine asked when would the pieces be installed and Ms. Goodwin replied she did not know, but the pieces were on site.

Mayor Kavanagh asked if these art pieces would be considered part of the Fountain Hills art collection and Ms. Goodwin replied it was the intention that the art would be part of the collection and an agreement would be made for the purchaser to maintain including insurance.

Mayor Kavanagh asked if there were any speaker cards and Town Clerk Bender stated none had been received.

Mr. Miller suggested Council only approve the sculptures in their motion and direct the manager to execute an agreement with Park Place to address maintenance.

Councilmember Magazine agreed with Mr. Miller’s statement and **MOVED** to approve the two sculptures and to direct the Town Manager to execute an agreement with the Park Place, LLC owner regarding maintenance of the pieces and Vice Mayor Brown **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (5-0), by those present.

AGENDA ITEM #18 - CONSIDERATION OF AUTHORIZING STAFF TO APPLY FOR THE DIAMONDS BACK YOUTH FIELD BUILDING GRANT FOR BALL FIELD RECONSTRUCTION AT FOUR PEAKS PARK.

Community Services Director Rachael Goodwin addressed the Council regarding the Capital Improvement Four Peaks Park Renovation project and explained the project did not include funding to renovate the existing ball fields. Ms. Goodwin pointed out that outside funding was required and the “Diamonds Back” Youth Field Grant was one potential option and without matching Town funds needed, and the grant was based on need and project concepts. Ms. Goodwin was requesting Council give their approval to apply for the grant before July 31, 2018 and award status would be known on November 18, 2018.

Mayor Kavanagh asked if there were any speaker cards and Town Clerk Bender stated none had been received.

Mayor Kavanagh asked for Council discussion or questions.

Councilmember DePorter expressed that this was great and applauded Ms. Goodwin’s attention to available grants for the parks.

Mayor Kavanagh requested a motion.

Councilmember DePorter **MOVED** to approve a grant application request for staff to apply for and accept the “Diamonds Back” Youth Field Building Grant, and take any and all steps necessary, if awarded and Vice Mayor Brown **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (5-0), by those present.

AGENDA ITEM #19 - CONSIDERATION OF AN AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT C2018-15 BETWEEN THE TOWN OF FOUNTAIN HILLS AND WILLDAN FINANCIAL SERVICES, FOR THE BIENNIAL AUDITS OF THE TOWN’S DEVELOPMENT FEES, IN THE AMOUNT OF \$12,000 WITH THREE ADDITIONAL ONE-YEAR RENEWALS.

Finance Director Craig Rudolphy reviewed the information in the staff report that related to the required biennial audits of the Town’s Development Fees. Mr. Rudolphy requested Council’s approval.

Mayor Kavanagh asked if there were any speaker cards and Town Clerk Bender stated none had been received.

Mayor Kavanagh asked for Council discussion or questions and none were initiated.

Vice Mayor Brown **MOVED** to approve the professional services agreement C2018-015-1 and Councilmember DePorter **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (5-0), by those present.

AGENDA ITEM #20 - CONSIDERATION OF A THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT C2015-107.3 BETWEEN THE TOWN OF FOUNTAIN HILLS AND AL HOLLER & ASSOCIATES, TO INCREASE THE CONTRACT BY \$12,000.00 (FROM \$174,000.00 TO \$186,000.00) FOR AUDIT SERVICES DURING THE 2018-19 FISCAL YEAR.

Mr. Rudolphy reviewed the information in the staff report related to the Professional Services Agreement with Albert Holler, who the Town had a long standing relationship with and was well recognized by the Department of Revenue as one of the better independent auditors. Holler and Associates audits the Town’s business sales tax transactions and recently involved in the pursue of property owners who rent out their properties to create a current database by mailing out approximately 1,400 letters identifying rentals in Fountain Hills and requesting current information on their property and that rentals were registered with a valid TPT license and paying the proper taxes. Mr. Rudolphy mentioned that staff had already received phone calls stating that rental homeowners did not like the tax and refused to pay and Mr. Holler and Associates would assist the Town in the pursue of those property owners through the Department of Revenue to collect the rental tax due to Town. Mr. Rudolphy requested Council’s approval.

Mayor Kavanagh stated most of the rental property owners do pay the tax and the other ones who decided not to pay should pay up to be fair. Mayor Kavanagh asked if there were any speaker cards and Town Clerk Bender stated none had been received. Mayor Kavanagh asked for Council discussion or questions and none were initiated. Mayor Kavanagh requested a motion.

Councilmember Magazine **MOVED** to approve the third amendment to Professional Services Agreement and Councilmember DePorter **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (5-0), by those present.

AGENDA ITEM #21 - COUNCIL DISCUSSION/DIRECTION TO THE TOWN MANAGER.

ITEM(S) LISTED BELOW ARE RELATED ONLY TO THE PROPRIETY OF (I) PLACING SUCH ITEM(S) ON A FUTURE AGENDA FOR ACTION OR (II) DIRECTING STAFF TO CONDUCT FURTHER RESEARCH AND REPORT BACK TO THE COUNCIL:

Councilmember Magazine thanked Cecil Yates for his service as Councilmember and stated that he had enjoyed serving with him.

Mayor Kavanagh stated her appreciation that for his following-up on the work that he started and hoped he would still lend the Town a hand with his contacts.

AGENDA ITEM #22- SUMMARY OF COUNCIL REQUESTS AND REPORT ON RECENT ACTIVITIES BY THE MAYOR, INDIVIDUAL COUNCILMEMBERS, AND THE TOWN MANAGER.

- 1) None.

AGENDA ITEM #23 – ADJOURNMENT

Mayor Kavanagh asked for a motion to adjourn.

Vice Mayor Brown **MOVED** to adjourn the meeting and Councilmember Magazine **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (5-0), by those present. The meeting adjourned at 8:50 p.m.

TOWN OF FOUNTAIN HILLS

By _____
Linda M. Kavanagh, Mayor

ATTEST AND
PREPARED BY:

Bevelyn Bender, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Executive Session held on the Second Floor of Town Hall and the Regular and Special Sessions held by the Town Council of Fountain Hills in the Town Hall Council Chambers on the 5th day of June, 2018. I further certify that the meeting was duly called and that a quorum was present.

DATED this 26th day of June 2018.

Bevelyn Bender, Town Clerk