

**TOWN OF YUCCA VALLEY
PLANNING COMMISSION SPECIAL MEETING MINUTES SEPTEMBER 29, 2009**

Chair Goodpaster called the regular meeting of the Yucca Valley Planning Commission to order at 6:00 p.m.

Commissioners present: Chair Shannon Goodpaster, Commissioners Robert Lombardo, Dawn Rowe and Margo Sturges

Commissioner Dennis McKoy requested an excusal due to a family emergency.

Chairman Goodpaster led the Pledge of Allegiance.

APPROVAL OF AGENDA:

Mr. Lombardo moved that the Agenda be approved, which motion was seconded by Ms. Sturges and passed unanimously by voice vote of the Commissioners present.

PUBLIC COMMENTS:

David Mahaffey of Yucca Valley requested support for an application he is about to submit for a weekly science fair. He will be requesting approval for a portable planter in the area which will use recycle wastewater.

PUBLIC HEARINGS: None

DISCUSSION ITEMS:

1. DRAFT PLANT PROTECTION AND MAINTENANCE ORDINANCE

Discussion of the draft Plant Protection and Maintenance Ordinance

Mr. Goodpaster opened the discussion to public comments.

David Mahaffey of Yucca Valley strongly supports the community and anyone who would try to keep the desert scenic.

Ramon Mendoza of Yucca Valley received something that did not look like ORD 140 which contained a list of plants (Section 89.0102). The desert Plum was not listed. In written comments, copies of which are preserved in the meeting file, he requested that Desert Plum, along with its Latin name be included. Joshua Trees are Yuccas. Three varieties of Yuccas exist here. Regarding individual rights of property owners, they have the right to buy land and everything else is part of the permitting process. The property owners have to appeal to a Commission in order to build. If the intent is to protect plants lets do that. Local native trees are not hard to plant if you know what you are doing. Even Creosotes make beautiful plants and you don't have to water them. He would like to see riparian areas in the intent. They should be no build areas.

Eric Mueller of Yucca Valley read portions of the preamble to the General Plan into the record. He stated 100% of the Joshua Trees transplanted at his business have survived for 7 years, presenting 4 photographs, copies of which are preserved in the meeting file. All the Joshua Trees were spade planted by a local expert. He suggested making the developer responsible to spade Joshua Trees and take them to an adoptive site identified in a data base maintained either by the private or public sector.

Bob Stadum of Yucca Valley stated he is a big fan of native plants and regularly hikes in the National Park. He agrees that native plants are best preserved all together for symbiosis. Parks are the perfect place for plants and towns are for people but lets preserve them as much as we can on a voluntarily basis with incentives. Forcing properties to have native plants is un-American. To require new citizens to have native plants when others are not is hypocritical. Forcing these plants on future residents defeats the purpose if we want these plants to be respected, cared for and valued. He encouraged incentives rather than enforcement.

Tasya Herskovits of Joshua Tree commented this has been going on for 3 years because we don't want to make this harder for newcomers, home owners, developers and there is this idea that this ordinance will make this harder. It doesn't and this is not about plants vs. people. It's about enhancing the area for everyone. Having a plant expert to advise the developer will make it easier for the developer and would be help. Many in town have offered to provide this service for little or no cost. It's not about the money it's about preserving our environment for everyone here. It is more respectful to the developer to provide guidance and someone to walk them through the process and offer options.

Robyn Kobaly of Morongo Valley commented she has spent weeks thinking about the issue of a native plant expert which is one of the hardest points in the ordinance. She suggested we call them native plant inspectors and offer training through workshops to anyone regarding the regulations in the ordinance, what the plants look like, if they can be transplanted and how to treat them if they are transplanted. That group of trained individuals could be used as inspectors until/if consultants or contractors go into that business. She suggested a training manual be prepared similar the one Summertree created for Joshua Tree National Park, a copy of which was made available to the Commissioners and is preserved in the meeting file. She will forward suggestions for native plants to be included on the protected list with size and other information.

David Fick of Joshua Tree stated he is representing the Morongo Basin Conservation Association which has 30 to 40 members who live in Yucca Valley. Regarding the loss of 100% of the Joshua Trees reported by Chris Hutchins at the Sept. 22nd meeting, it is good to hear that Mueller Turner saved 7 trees. That shows there is a 50/50 going on with transplanting Joshua Trees and 50% is a lucky survival rate. It' is usually in the area of 27%. The Trees are still missing from the Mesquite 55 development and a new phase for Copper Hills was just approved by the Town Council. The existing Copper Hills hardly has any local native plants. For the last 20 years it has been people first and plants second. If you leave the plants alone they will pretty much maintain themselves. Zoning seems to be a big problem for this Town.

Mr. Goodpaster reported that Bill Dunn requested in writing that his position in favor of the ordinance be recorded and the Commission received written comments from Judy Ruggles, Larry Burge, Tom O'Key and Ramon Mendoza, copies of which are preserved in the meeting file. He closed the discussion to public comments.

With reference to the complete printed staff report provided in the meeting packets and preserved in the project and meeting files, Deputy Town Manager Shane Stueckle presented the project discussion to the meeting.

Mr. Stueckle reported the draft ORD represents pulling together all of the different comments and policy discussion that have taken place since the Town Council initiated this process. Staff would like to focus on this language which is based on land use districts regarding the process and standards for commercial, industrial, multi-family and single family land use districts. Staff requests that the Commission begin with Section 89.0105. Staff will walk completely through that section and then answer questions from the Commission. Questions would include things the Commission likes and/or doesn't like, things missing to be added or included to be removed.

Associate Planner Robert Kirschmann stated Sec. 89.0105 address new commercial, industrial, multi and single family residential projects. A survey of existing regulated native plants required in 0105(a) specifies the Native Plant Permit Application which includes a requirement for a survey. (b) address what needs to be contained in the documentation: botanical and common name, precise location, trunk or stem diameter, height, health or condition including identification if it will not be likely to survive and why, and the proposed disposition of the regulated native plant. It also establishes the plant size as no smaller than 24 x 36 inches unless otherwise approved by the Planning Division.

Letter (c) discusses transplanting off-site and on-site stating: All regulated native plants identified in the regulated native plant survey as likely to survive transplanting shall be made available for adoption or shall be transplanted on-site as part of the projects' landscaping plan. Maximum utilization of the plants likely to survive transplanting is suggested. Others likely to survive transplanting but not used in the landscaping shall be made available for adoption, which is letter (d), for a period of 60 days. If not adopted within the 60 days the plants can be destroyed, section (e). Native Plant tags are addressed in section (f) requiring: Prior to commencement of any land disturbing activity, regulated native plants shall be identified by use of a tag affixed to the plant. Tags shall be color-coded as follows: (A) Blue: remain in native location, (B) Green: transplant on-site, (C) Orange: available for adoption, (D) Yellow: transplant off-site, and (E) Red: destruction permitted. Tags shall remain on the plants during land disturbing activities and shall be affixed so as to not harm the tree.

Section (g) requires on-site signage to provide notice to the public that plants will be available for adoption from this site including contact information for the developer.

He requested that the Commissioners discuss the provision of the ordinance addressed to this point and provide direction to staff.

Mr. Lombardo asked how the public would contact the landowner regarding adoption. Mr. Kirschmann replied the sign requirement includes a contact phone number be on it. Contact information is also to be included in the notice posted in the newspaper, or they can contact Community Development.

Mr. Lombardo asked if it would be more expeditious to have a list of people who want to adopt provided to the developer by the Town. That could reduce the 60 days to a shorter time frame. It's a burden to hold up a project 60 days for a plant that may not be wanted. 60 days may be excessive.

Ms. Sturges asked if the Commissioners could discuss each issue point by point. Mr. Stueckle replied staff was just going to suggest that.

Ms. Sturges reported that she and Ms. Rowe met with Robyn Kobaly and 2 contractors to discuss issues about this ordinance. The suggestion was made at that meeting to consider a sliding scale basing the length of waiting period on the number of plants to be destroyed. With a small number of plants it would be a shorter waiting period, longer periods for more plants.

Mr. Lombardo stated he likes that kind of idea in conjunction with a list of people who want the plants.

Ms. Sturges stated one of the contractors commented at their meeting that no one is allowed to go on the property to remove plants until they reach a certain point.

Mr. Kirschmann replied that once you have a native plant permit issued it can be removed. The contractor may have been concerned about the liability of people going on the property.

Ms. Rowe asked if plants can be removed the minute the plans are submitted. Mr. Kirschmann replied once a native plant permit is approved all the plants could be removed all at one time. Ms. Rowe requested and received confirmation that the 60 day waiting period would begin when the native plant permit is approved.

Mr. Goodpaster asked if the native plant permit would coincide with the approval of plans. Mr. Kirschmann replied the native plant plan is required as part of a development submittal. It needs to be updated prior to the issuance of grading plans and will be approved with the grading permit.

Mr. Goodpaster commented it is not necessarily the approval of plans, so the adoption period could start a little sooner. Mr. Kirschmann commented the issue with that would be if a native plant permit was issued and no grading plan is approved. That lot could potentially sit vacant for a while.

Ms. Sturges commented on the differences between the draft ordinance presented at the August 11, 2009 meeting and this draft ordinance. Mr. Goodpaster replied the August 11th document was a working draft and changes are made between drafts. Ms. Sturges asked who made the changes. Mr. Lombardo replied they were based on the input from the Commission. We came up with a matrix that combined commercial, multi-family and large residential development into the same thing because of they are kind of the same for grading and drainage. In that process they loose a lot of the plants.

Mr. Goodpaster asked if plants will be allowed to be stockpiled before they leave the property. What will happen if someone can't remove the plants they want until two weeks later? Mr. Kirschmann referred to Section 89.0109(b) which states: Native plants that are proposed to be removed shall be transplanted or stockpiled for future transplanting wherever possible. In the instance of stockpiling and/or transplanting the permittee shall have submitted and received approval of a native plant maintenance plan.

Ms. Sturges commented if stockpiling breaks or bruises plants and they won't then have a chance for survival, stockpiling may not be the best way to go. A plant manual showing appropriate transplanting methods has been suggested, or perhaps plants from one project can go directly to another project that is ready to receive and plant them.

Mr. Goodpaster commented that could be in practice but not for the design of the ordinance. It could work but is not something that needs to be addressed in the ordinance. There is going to have to be stockpiling if they are going to be reused on the property.

Mr. Goodpaster reopened the discussion to public comments.

Ramon Mendoza stated we have gotten into dealing with all plants being the same, and we're dealing with all development projects as if they were the same, and they aren't. 60 days may be too much for Joshua Trees without maintenance. How you maintain them makes a difference. You can't just take a Joshua Tree to a new site and assume it will survive.

Tasya Herskovitz stated you can't just put the plants in a big pile; they have to go into pots if they are going to survive. Having someone there to help guide through the process could really help all these little details.

Bill Shack III of Yucca Valley stated he would like a list of who wants the plants because the sooner they can get them out and replanted the better. Give them a call. The plants will be identified by color ribbons and they are using Archie Reiser as their expert.

Mr. Goodpaster closed the discussion to public comments. He stated he understands that this is volatile. Public input is appreciated and has been taken at numerous meetings. He cannot continue to reopen the discussion because the Commission is going to try to come to some sort of resolution that is the best for everyone. Every project is different and that is what is so difficult about these ordinances.

Mr. Goodpaster requested discussion of the 60 day adoption period.

Mr. Lombardo stated he thought it should either be a sliding scale or a lesser amount of time. Mr. Goodpaster asked if a sliding scale is feasible. Mr. Kirschmann replied if that is the direction of the Commission.

Mr. Stueckle restated the comments from the Commission as: If there are 1 to 10 plants on site available for adoption it could be 5 days, if there are 10 to 30 plants it could be 30 days. He requested confirmation from the Commission that is the type of sliding scale under discussion.

Ms. Sturges referenced the ordinance from Scottsdale, AZ, and replied it would be along those lines, fewer days for fewer plants and more time for more plants. That wouldn't tie up the contractor unnecessarily.

Mr. Goodpaster read the scale from the Scottsdale ORD as: One to five protected native plants to be destroyed, fifteen days. There is a difference between being adopted out and being destroyed.

Ms. Rowe replied they were bringing thoughts to the table. She requested and received confirmation from staff that if the plants are not adopted within the time period then they can be destroyed.

Mr. Goodpaster commented we would probably find more than 60 native plants on any project. Mr. Lombardo agreed that would happen with 20 plants on the list. We may want to modify the

number of plants on the list. The time frame is the constraint and unnecessary burden to the contractor.

Ms. Sturges stated we want to remove the burden from the contractor for small numbers of plants and increase the amount of time when more plants are involved so most of them can be adopted.

Mr. Goodpaster stated this provides sort of an incentive for people to adopt out or bring the plants back onto the property by design because there is only a 15 day waiting period if 5 or fewer plants are to be destroyed.

Mr. Lombardo agreed it is an incentive to adopt out or save as many as possible to shorten the waiting period. That idea makes more sense.

Mr. Kirschmann commented that incentive is included in the draft ordinance because if you adopt out or relocate all of the trees back onto the site in two weeks then you don't have to wait. If there are no plants left to be adopted it would be understood they would not have to wait the full 60 day period.

Ms. Rowe asked what would happen if someone commits to adopting plants but cannot pick them up for 45 days. That could drag out the process for the full length of time. Mr. Goodpaster replied the intent is to get the plants adopted. If someone commits to taking the plant the project would not be held to the standard of 60 days.

Ms. Rowe asked if the plant has to be physically removed within the 60 days or just commit to adopting within the 60 days. Mr. Stueckle replied the goal is the conservation by either transplanting back on site or adopted/transplanted off-site. The way this draft is written is that anything deemed likely to survive transplanting remaining at the end of the 60 day adoption period on the 61st day can be destroyed.

Ms. Rowe commented that puts the developer in the business of negotiating who can get on and off his job site the quickest so his job may proceed. Mr. Stueckle replied that is definitely a possibility.

Ms. Rowe stated she would like to see no more than 30 days then because that's a huge burden for a developer to have a list of people who want to adopt, scheduling around them for meetings and no-shows. If the plants are truly that desired, 30 days is a reasonable time to ask of the developer and the community will make it happen in 30 days.

Ms. Sturges commented there has to be some incentive for the developer and there is no down side if no one shows up.

Mr. Lombardo stated waiting for 60 days is a disincentive if he can get it done in two weeks or the next day.

Ms. Sturges asked if there would be a point value assigned to the number of Joshua Trees and plants. How many Joshua Trees are we talking about for a housing tract and would it be different for larger residential.

Mr. Lombardo stated that is why we should go to something simpler like 10% of the plants on the property need to be relocated back onto the property.

Mr. Goodpaster replied he never liked that idea because certain projects could be laid out for it and others couldn't. The goal is to preserve as many as possible, whether they are brought back onto the project or adopted out. Obviously it is much cheaper to bring them back on than adopt them out. It is most ideal to bring them back on. He requested further discussion of the 60 day adoption period.

Mr. Lombardo asked if 60 days is fair. Mr. Goodpaster replied he thinks it is. Ms. Sturges replied if you are not going to use a sliding scale then it has to be 60 days. Mr. Goodpaster commented he likes the sliding scale because it is a real incentive to adopt out or bring back as many plants as you can and it will get the project going quicker. If you only have one plant that needs to be destroyed you only have to wait 15 days and the maximum would be 60 days.

Ms. Rowe asked what's wrong with 30 days. Mr. Goodpaster questioned the current practice for this in Town. Mr. Lombardo replied 60 days and it has been a complaint from public comments. Ms. Rowe stated if these plants are so desired we should be able to complete an adoption process within a month. Mr. Goodpaster stated he could agree with that.

Mr. Kirschmann commented as a practice 60 days has been implemented on new development projects as a condition of approval.

Mr. Lombardo commented there are three of us who say 30 days. Mr. Goodpaster replied yes, so that would be a consensus.

Ms. Sturges commented on a larger project you are talking about a lot of plants. Mr. Lombardo replied on larger projects it's a lot of dollars every month.

Ms. Rowe commented this is from the point of the native plant permit being approved. There's a lot of preplanning that goes into this and they know which plants are going to be available. Mr. Shack said he is willing to take phone calls today and he probably knows now which plants have been identified. They can start that process earlier.

Ms. Sturges stated as long as those plants are tagged and inventoried that could jump start the adoption period.

Ms. Rowe requested and received confirmation that when staff receives the native plant plan and the trees are all marked, that is the initial submittal stage from the engineer.

Ms. Sturges asked when the sign would go up and if that was in the draft ORD. Mr. Kirschmann replied the ordinance says: On-site Signage Required. All projects approved for transplanting. So once they are approved the sign can go up.

Ms. Rowe asked if we could require the signage to go up sooner than the adoption process. Mr. Kirschmann replied it would be at the Commissions discretion as far as time. Something to consider, with the economy the way it is, would be how long that sign could sit up there, will it be maintained, could it become an eyesore.

Ms. Sturges questioned who would pay the cost of the adoption. Mr. Kirschmann replied the ORD does not specify the cost and that's up to the developer to work out.

Ms. Rowe suggested that we suggest to the developer rather than regulating that they post a sign and that they might want to advertise this sooner than later to facilitate this process.

Mr. Goodpaster suggested the advertising period could be set at 60 days and the adoption period would be 30 days from approval of the native plant permit.

Mr. Lombardo stated the city should be encouraging people to get on a list for adopting plants and then the developer goes to that list and says I want to get rid of these plants come get them.

Mr. Goodpaster stated the advertising is just a mechanism to get the word out for the adoption period. There is nothing wrong with advertising.

Ms. Lombardo replied as long as advertising doesn't become a burden or delay tactic its fine. But it would be better to provide a list of adopters to the developer and encourage people to be on that list.

Ms. Rowe asked if the Commission was finished with the adoption period discussion. Mr. Goodpaster commented it could be advertised for 60 days with a sign up with a 30 day adoption period from approval of the plant permit. Ms. Sturges asked if that is a 90 period then. Mr. Goodpaster replied it would be 30 and 30. Ms. Sturges commented there is no down side to the developer just sitting back if people don't show up. Ms. Rowe replied we have heard from the community that they want these plants. Mr. Lombardo commented if you remove all regulations some people would save plants and some wouldn't. Ms. Sturges asked if at the end of 60 days there are still 400 Joshua Trees left should we just burn them.

Ms. Rowe asked if the ORD states when the signage will commence. Mr. Kirschmann replied it says all project approved for transplanting. So once the native plant permit has been approved is the way it is worded today. Ms. Rowe asked how the ORD could be worded to allow a longer time period so the developer can put the sign up earlier.

Mr. Kirschmann replied staff will have to work on some language and figure out how to do that. It's going to be very difficult for the developer to put the sign up 30 days prior to the permit being issued because he won't know when the permit will be issued. Staff will work on some language to allow that sign to be posted prior to the permit being issued.

Mr. Goodpaster commented it doesn't have to be exactly 30 days before the permit is approved. Ms. Rowe commented it is just to allow the greater public to know of a potential adoption.

Mr. Kirschmann suggested that the signage and notice could be posted in conjunction with the submittal of the native plant package. Mr. Lombardo commented that makes sense.

Ms. Rowe commented at that stage in the process they've been through a Development Review Committee. Mr. Lombardo commented they've already plotted all of the trees and the locations. Can we all agree on that? The other Commissioners responded yes.

Ms. Sturges requested that the Tract number and north orientation of the plant which will help with survivability be marked on the plant tags. Mr. Kirschmann replied even permanent marker will fade in the sun and since the tags are not nailed into the plant they could blow off but that information could be included. It is not required by the current draft ORD.

Mr. Goodpaster commented the tags are just to explain which plants are going and where. When the plant is transplanted orientation is addressed. Mr. Kirschmann stated Orientation is dealt with in section 89.0109(b) states approval of transplanting must take into consideration the plant's original and transplanted physical orientation, prevailing wind direction, soil type of the original and transplanted locations, and other related attributes which may affect the successful transplantation of the native plants in question.

Mr. Lombardo commented more information will help later in knowing where it came from, how it survived and other useful information. Mr. Kirschmann stated the tags are typically biodegradable so if they blow off they don't harm the environment.

Mr. Lombardo asked if metal tags with a punch could be used. Mr. Kirschmann replied it is not clear if that would harm the plant but is at the Commissions discretion. Ms. Sturges stated she believes metal tags are used in Scottsdale. Mr. Lombardo replied that could harm the plants and would be more expensive.

Ms. Sturges questioned how the plants would be tracked. Mr. Goodpaster replied that is covered by the maintenance plan.

Ms. Sturges asked if we have tracked the plants in the past. Mr. Kirschmann replied when a native plant application comes in, say for a tract there is a native plant survey that has been conducted by a native plant expert. The local experts typically don't have CAD or the ability to put those into any other software programs. The survey is sent to the engineer or architect working on the project. They superimpose the native plant information onto the tract map to show the areas which will be disturbed for streets, the proposed houses, walls, etc. The trees are assigned a number on these plans. Using different symbols and numbers on the plans current location, if it will be destroyed, transplanted on-site or off-site. If on-site the plan they will have another symbol showing the relocated spot. For plants going off-site, typically the plan will show the address where the plants are going.

Mr. Goodpaster commented the tag system as defined will suffice. It tracks which plants are going to be destroyed, which will be put back on the property and which are going to be adopted out. The maintenance plan designates the other information. Mr. Lombardo stated the tag system is fine with him. MS. Sturges stated if we can discuss the information on the tags later she is good with the colors.

Ms. Rowe asked if the Commission was finished with the time limit issue. Mr. Goodpaster replied staff is going to work on it and come back with different language.

Mr. Goodpaster requested discussion of separating new commercial and industrial. Ms. Rowe requested clarification of separating commercial, industrial and multi-family residential from single family residential. We can't expect the small businesses to have the same requirements as the large commercial developments. Nor do we want to see the large developments destroy all the native plants.

Mr. Stueckle replied agreement appeared to be reached at the April 21st meeting regarding new commercial and industrial development, small or large, multi-family and small lot single family. Small lot was not clearly defined in prior discussions. The range was from ½ acre to 2 acres. For new commercial, industrial development, multi-family and small lot single family, consensus was that grading of the entire site would occur and no regulated native plants would remain in their original locations. The ones deemed not likely to survive transplant would be authorized

for destruction. For the remainder deemed suitable for transplantation, some would be brought back into the project the others would be made available for adoption. The ORD does not specify any specific number or percentage that has to be brought back onto the property. Nor does it specify a minimum amount that has to be adopted. It says those that are not being destroyed or reincorporated onsite have to be made available for adoption. After the meeting on April 21st staff originally thought there would be a differentiation between small residential lot subdivisions and larger lot subdivisions. The question was: is there a specified amount of land on the large lot subdivisions that the Commission wants to see remain untouched. The direction staff heard from the Commission was no. Therefore, staff merged everything together.

Ms. Rowe commented she remembers the conversation being about horse corrals.

Ms. Sturges commented on discrepancies in the comparison matrix. Mr. Stueckle stated staff apologizes if the Commission feels the matrix is in error, asking how the Commission would like the issues stated in the ordinance and what the regulations should say. Staff has returned with an ORD that requires maximum utilization and would be happy to incorporate any language as clearly defined as the Commission can make it.

Mr. Goodpaster replied the questions on the matrix referred to "all" plants. The Commission said no to "all." You can't say all and the intent of the ORD is to save as many as possible. If we don't like "all" and we don't like "most", staff is asking what do we want?

Mr. Lombardo suggested, for simplicity, we just make it 5 native plants on every piece of land whether it's a ¼ acre lot or a 50 acre parcel. If people want more they will have more. Should we force people to have plants they don't want? We should include education materials about the value of native plants and that they are desired in the community. Ms. Sturges replied if it's five or none she would go for five.

Mr. Goodpaster recessed the meeting at 7:30 pm. The meeting reconvened at 7:42 pm.

Mr. Goodpaster stated he believes staff's interpretation of the discussion on April 21st was correct and requested Commission comments.

Mr. Rowe replied staff clarified it and her recollection is the same. Mr. Lombardo replied we did lump them together.

Ms. Sturges asked if we are going to try to establish a percentage which she believes the developers could live with. Mr. Lombardo commented that would be the easiest way to do it and divide it by type. Residential lots should not have as big a requirement as commercial. He recommended 10% of the plants have to be saved but then asked what happens if all the trees were giant and couldn't be transplanted. Ms. Sturges stated it could be a percentage of the plants that are likely to survive. She recommends 25%.

Ms. Rowe questioned the Section under discussion.

Mr. Stueckle replied it would potentially be Section 89.0105 (c) which states in part: Transplanting Off-Site and On-Site: All regulated native plants identified in the regulated native plant survey as likely to survive transplanting shall be made available for adoption or shall be transplanted on-site as part of the projects' landscaping plan. He believes Commissioner Sturges is discussing a percentage that would either be brought back in, transplanted offsite or both. Ms. Sturges replied correct.

Ms. Rowe questioned 100% of the plants. Mr. Stueckle replied it is currently written that 100% of those likely to survive shall be made available for adoption.

Mr. Goodpaster stated this is a "best effort" clause and the percentage for each job is going to be different. This was the previous discussion we had about how to bring a specific number of plants back in with lot-line to lot-line development. Ms. Rowe stated she would ask again; if the demand for adoption is so great for these plants why is this an issue?

Ms. Sturges replied the percentage would not apply to plants not likely to survive transplanting. Mr. Goodpaster commented this would get into a mandate and he is not in favor of that. Ms. Rowe commented in the Scottsdale ORD it is an incentive to the builder to have them adopted out. She is happy with the language as it is rather than assigning a percentage or number.

Ms. Sturges asked if we are saying get rid of them all. Mr. Goodpaster replied that is not being said, we are saying the purpose and intent of this ORD is to save as many as possible. He does not believe that should be by establishing a number but through incentives. Ms. Sturges suggested that we put a dollar amount on them. Mr. Goodpaster replied that is not an incentive that's a fee. Ms. Rowe commented the inspiration is they get out of their waiting period sooner if they are all adopted out and there are none to be destroyed.

Mr. Stueckle replied that is one incentive and staff would comment on another potential incentive. Mr. Kirschmann stated one of the early drafts of the ordinance allowed for minor modifications to standards of up to 20% in set-backs to accommodate native plants on site. The Commission may want to discuss that concept. If a large Joshua Tree was located on a parcel that would have to be removed, this would give a minor modification to the setback so the building could be located to preserve and protect that plant in place.

Mr. Goodpaster stated we discussed giving some relief from set backs, design guidelines or lot sizes as an incentive. That would be more important to include in the ORD rather than a set number or percentage of plants. He would rather see the project redesigned to protect ancient plants.

Mr. Lombardo stated he has trouble with that because the community is saying they want native plants kept here and be visible. He favors something simple like 5 or 10 plants being kept on the property and they could be small plants appropriate to the area. We should require every home or project to have a landscape design. Mr. Goodpaster commented that is adding regulations by stating a number. We are closer on board with the way the ORD is designed now. He is not in favor of a percentage or set number of plants.

Ms. Sturges stated she just heard from 2 contractors that they would and could live with 25%. Mr. Lombardo stated having a known number takes a burden off staff. If you have 400 plants you save 10% or 40 plants and the cost is limited by not having a native plant expert or transplanting 400 plants. Ms. Sturges commented you could have more if you wanted.

Mr. Goodpaster commented that is the complete antithesis of the intent to save as many as possible in this ORD. Mr. Lombardo and Ms. Sturges disagreed stating it is a minimum. More plants can be saved if you want to. Ms. Sturges stated she is in favor of establishing a minimum.

Ms. Rowe asked if they are ok with no ORD other than to say Copper Hills Phase 3 has to save 5 plants. Mr. Goodpaster agreed that is where the discussion is going. Mr. Lombardo replied or some percentage, at least there will be trees on it. Make a big effort for education and a minor effort for regulation. Put a number on it and cluster the densities.

Mr. Goodpaster asked how that would be applied to commercial development. Mr. Lombardo replied they are going to level the land to build. It is not intended to be a plant sanctuary. Let them adopt out what they can.

Mr. Goodpaster asked if we are talking about separating commercial from residential. Mr. Lombardo said he would do that. Ms. Sturges agreed. Mr. Goodpaster commented this may not be settled tonight and requested a firm number of plants.

Ms. Rowe clarified that we are discussing all plants deemed to be transplantable being put up for adoption or used on site. It is the developer's choice to use on site or put up for adoption. Most of the developers want to keep them on site because it is less expensive. Is it the percentage of un-adopted plants that we are discussing? Mr. Goodpaster replied it is the transplantable plants. He believes the discussion is to put a percentage on the total number of transplantable plants. Ms. Rowe replied that is more regulation. Mr. Lombardo replied yes but we are simplifying. Let them know that x amount have to stay on the property.

Mr. Stueckle suggested the Commission decide if they want the ORD to mandate that there will be native plants in the landscaping at the conclusion of the project. The ORD currently says maximum utilization. When plans would be submitted they would have to show a good effort of putting native plants back into the project design.

Ms. Sturges replied yes, drought tolerant plants. Mr. Goodpaster stated he agrees because maximum utilization forces them to create a design to bring the plants back in.

Mr. Stueckle commented the ORD states maximum utilization of the existing regulated native desert plants shall be reincorporated into all of these new projects: commercial, industrial, multi-family residential and single family residential. The ORD says the plants can be removed, the site can be graded and then undefined maximum utilization back into the project to bring back the community character. Does the Commission want to go further in mandating what appears back into these development projects?

Mr. Goodpaster commented with maximum utilization, as the project goes through the planning process with native plant plans, they show where the plants are going back on the site. They still go through the review process so if there isn't some sort of maximum utilization the project will be turned down. If you set a standard of 5 plants or 25%, maximum utilization could be reversed. You may get a developer who will do the minimum because that's all they have to do.

Ms. Sturges commented with maximum utilization all the decision basis goes to staff. That has been a frustration voiced because there is nothing in black and white and they have to come to the Planning Commission. The plans may have to be revised and then they go through the process again. We're looking for a black and white percentage or a number. Mr. Lombardo agreed that there should be some easy to define minimum number which is the basic and then we educate to get the maximum amount that is possible. Adoption should be an option. Ms. Sturges commented a set minimum or sliding scale makes it more fair and it's up to the builder to do more if they want.

Mr. Goodpaster commented we probably aren't going to get anywhere on this tonight because he and Ms. Rowe are on the opposite end. He suggested they move to the next topic.

Mr. Lombardo asked Ms. Rowe to explain her position more fully asking if there is a way to compromise. Ms. Rowe replied she agrees that people, unfortunately, will only rise to the minimum. The concern for maximum utilization is part of the developer and staff conversations during the native plant permit process and that is part of the education process. Each project is different and she is against adding the 10%. Mr. Lombardo asked if it was too big or small a burden. Ms. Rowe replied it could be either way.

Mr. Lombardo clarified that the 10% could either be brought back on or adopted. Mr. Goodpaster commented we are not going to get there tonight.

Ms. Sturges requested that the discussion be reopened to the public. Mr. Goodpaster reopened the public hearing.

Tim Humphreville of Yucca Valley stated we already have commercial guidelines that say you have a certain percentage of landscaping. It's very simple to say 25% or 50% of that landscaping has to be native plants. And then there could be a sliding scale for residential properties based on acreage.

Mr. Goodpaster replied that is not what's being discussed. We are discussing 25% of all the plants on that project deemed to be transplantable being required to come back on.

Mr. Humphreville replied he knows that's not what is being discussed but that is his suggestion.

Ms. Rowe asked if those requirements are in the commercial guidelines now. Mr. Stueckle replied commercial landscaping is established mostly in the parking code. The suggestion made by the speaker is not within the philosophy of this ordinance which is the preservation or conservation of the native plants here. The approach could be an easy solution but it doesn't fit with the reason the Town Council started this dialogue.

Ms. Rowe commented Mr. Lombardo's suggestion addresses what he wants it to look like but the intent is to save what exists. There is a difference in those meanings.

Mr. Lombardo stated he understands now and that clarification made it clear. But the end result is what stays in the landscaping and is healthy. He doesn't understand the regulations and expenses that go into manipulating these plants when the end result is a parking lot with some plants in it.

Ms. Rowe replied planning staff is offering setback variances to keep those plants. Mr. Lombardo replied that is more applicable to residential than commercial. Ms. Sturges commented they should be separated.

Mr. Goodpaster commented the core issue is the maximum utilization which is how it is worded. Ms. Sturges replied but that is at the discretion of staff.

Mr. Goodpaster requested that staff move on to the next section.

Mr. Stueckle reported the second section staff would like discussed is in-fill residential which is in Section 89.0106. Mr. Kirschmann reported this section states in part: A Regulated Native

Plant Permit Application shall be submitted to the Planning Division at the time of filing building or grading permit applications for development of infill residential lots unless exempt by section 89.0103(b). And:

- (c) The Regulated Native Plant Documentation shall contain the following information.
 - (1) Printed Photographs depicting the proposed native plant that is to be removed or transplanted. The photographs must clearly show the location, size of the subject plant, and its surroundings. At minimum, the surrounding area photographs shall include two different views of the subject plant.
 - (2) A Plot Plan is required in order to show location of regulated native plants proposed to be removed, transplanted, or retained in its native location.
- (d) A signed affidavit that the property owner(s) agrees to the proposed removal or relocation of regulated desert native plants from the property.
- (e) The property owner may attempt to retain as many regulated native plants in their native location as possible. The property owner may also attempt to transplant or relocate as many regulated native plants as possible on-site.
- (f) Those regulated native plants identified in the Permit Application to not remain on site following development, and which are not incorporated into a projects' landscaping plan, may be available for adoption to the general public at the property owners discretion.

Ms. Sturges requested clarification of the additions and deletions from previous draft ordinances. Mr. Kirschmann replied there have been so many drafts that would not be possible this evening. Mr. Stueckle replied from this point forward future draft ordinances will be marked to show changes and the changes will be dated.

Ms. Rowe questioned the differences between this draft and the current ORD. Mr. Kirschmann replied this ordinance puts current practices in writing. There are no set specific regulations today regarding the native plant permit.

Ms. Rowe questioned a previous project that went to the Town Council regarding removing a Joshua Tree to install a swimming pool because of setback issues. How does this help that person? Mr. Stueckle replied current regulations apply to backyards. One of the weaknesses of the current ORD which created many situations like the one described was the lack of identification of a "land disturbing activity." Current regulations say you can't move anything unless there is land disturbing activity. You can't move a Joshua Tree to put in a pool, play area, baseball batting cage, etc. because there is no land disturbing activity. If there is no construction or building permit we are not issuing a native plant permit. This language is written to address the typical issues staff hears regarding an existing single family home and allows for the issuance of a native plant permit to remove the native plant for those types of activities.

Ms. Rowe asked if the application fee is the same for in-fill as for the larger projects. Mr. Kirschmann replied there is no fee for native plant applications.

Mr. Stueckle commented in terms of application materials you have to have a survey and provide all the other information. In this draft it is a one page application identifying the types of plants and then the photographs. Mr. Kirschmann replied the printed application is the same for

all projects today and in the proposed ORD. The materials and work that needs to go into the application vary significantly. For commercial and larger residential projects you have to have a survey prepared, large format maps and others. For single family in-fill the draft only requires a plot plan and a photograph.

Mr. Stueckle pointed out that for single family in-fill this draft says if you own a $\frac{3}{4}$ acre lot, build a 3,500 sf house with an attached garage, have a shop in the back, paved drives and sidewalks, a pool and batting cage for the kids you grade this lot line to lot line and you are not required to keep any native plants on-site. There is no differentiation between that lot and a 10 acre parcel based upon lot size.

Ms. Sturges commented that could be a loophole for developers to say they were going to put in corrals, grade it all and then say they changed their minds.

Mr. Goodpaster commented the discussion began with the smaller lots where you have to grade it all. The larger lots should have had some kind of a standard and we should address that.

Ms. Rowe commented she does not see clear cutting of in-fill lots as she drives through Town.

Mr. Goodpaster commented practice on in-fill lots is that plants are saved. As stated in the draft it doesn't have to be done and they could be leveled.

Mr. Lombardo stated we are trying to keep a bare minimum on the lots instead of allowing clear cut lots. Let's make it a small number of plants or a percentage. Leave a path or corner of undisturbed area using a plot plan with a landscape design so it's not just a barren piece of land with a house on it. It doesn't matter if the plants come from the lot or are bought from a nursery.

Ms. Sturges stated she would like to require saving more plants on larger lots of $\frac{3}{4}$ or 1 acre.

Mr. Stueckle commented there was previous discussion by the Commission that discussed the issues of topography on lots of 1 or 1 $\frac{1}{2}$ acres. It was suggested that the line be drawn at 2 1.2 acre lots. Up to 2.49 acres would be the small classification. 2.5 acres and above would be the larger classification.

Mr. Goodpaster commented to give background, when retention basins are required it becomes more difficult for the smaller lots. Mr. Lombardo commented we're allowing up to 2.49 acres to be cleared. Ms. Sturges suggested it be set at 1 acre.

Ms. Rowe stated she had to have a plot plan and tag the plants where the house was to be built on a 1.5 acre parcel and the rest of the plants stayed. She was only allowed to grade where the house was going. We saved a lot more than 5 plants. Mr. Lombardo commented it wouldn't be a burden then. Ms. Sturges stated we have to have it in writing. Ms. Rowe commented the purpose of this ordinance is to save as many as possible which is the current practice in Town.

Mr. Stueckle commented in some peoples minds it is not currently in practice. Some individuals feel the purpose and intent is not being fulfilled because too many plants are being removed. Others comment we want something in black and white so we know when we walk in the door what it's going to take to get a permit. There are people who don't like the terminology maximum utilization and want the code to say if you do A, B, C & D you get a permit and you proceed. Planning ordinances are not always black and white and they often allow a great deal of discretion from the decision making body, be that staff, Town Council or the Planning

Commission. The issue is not to make it easier for staff. The issue the Commission is struggling with is what is the best way to regulate the retention of the community character and the conservation and preservation of the plants that exist here naturally? All this language comes down to how are we going to either preserve or conserve the regulated native plants.

Mr. Goodpaster commented if this ORD was in effect they would not be allowed to blade the whole ½ acre lot to build a 1,500 sf house if native plants were on the lot. They would still have to have a reason to remove a plant from a back corner.

Mr. Stueckle noted the ordinance says: A Regulated Native Plant Permit Application shall be submitted to the Planning Division for removal or relocation on or offsite when the property owner is proposing improvements to the property including swimming pools, swing sets, horse arenas, other animal keeping activities, basketball courts, tennis courts, recreational or other vehicle parking, accessory structures, and other uses typical to single family residences. If there is a family of 6 with 9 vehicles who want to park them in the backyard but have to remove 37 Joshua Trees to do that, would they be allowed to do that from a ½ acre lot?

Mr. Lombardo stated this is where a percentage or number of plants would at least give you a bare minimum. Ms. Rowe commented we have a preserve and National Park to save those plants. We're talking private property rights in Town. Not all native plants are aesthetically pleasing to everyone. Mr. Lombardo stated it is totally within our right to say they have to have a landscape plan and preserve some of the plants.

Mr. Goodpaster and Ms. Rowe disagreed totally. We cannot tell anyone how to decorate their yard. Ms. Sturges asked how can we protect the native plants. Ms. Rowe replied we have protected them in the millions of acres in the National Park and preserves. Ms. Sturges stated that has always been the argument so we don't have anything here that has wildlife, aesthetics or Joshua Trees. Ms. Rowe replied you can't see them if they are in a back yard and if she wanted to park a camper back there that should be her right. Ms. Sturges asked is we are saying backyards are off limits. Mr. Lombardo stated he doesn't care where you put the 5 plants, backyard, side yard or front yard. He just wants vegetation.

Mr. Goodpaster commented it is really difficult on the smaller lots, whatever that means, but the broader discussion with the Town Council was for more regulations on larger lots. The larger lots need to be separated out from the rest. Ms. Sturges agreed.

Ms. Rowe asked if we put what is in practice in writing what would that say. Mr. Kirschmann replied this ORD provides more clarification by specifically listing the types of uses for which native plants can be removed subject to a native plant permit.

Ms. Rowe commented were having two different discussion regarding in-fill because they are all lumped together. Mr. Goodpaster commented it all needs to be together because they are all single family in-fill lots. All of these issues will come up with a single family home. Ms. Sturges stated she feels there should be different regulations on the larger size lots.

Ms. Rowe stated some people will bring this application after the home is built and they just want to add a swimming pool later. They are not allowed to remove them when they build the house but can remove them later. How are we going to maintain the balance of native plants? Can we put that in writing? Ms. Sturges commented the ORD says may be made available and that is not clear.

Ms. Rowe requested clarification from staff.

Mr. Stueckle described the issue as: could a creative designer show the necessity to grade lot line to lot line on a 2 acre parcel to build what they want to build. The answer is yes. Staff is not going to be in the position to say you don't have to build it that way you could build it some other way. That is not staff's role. What staff is trying to communicate is that while it may not happen on every lot and it may not be the common practice it is possible. On in-fill development in the past we have seen the lot get scraped absolutely clean with a few plants transplanted from the front all the way to the back. The seller did not see it as desirable to have the plants there so they moved them to the back. Without a minimum standard we want to acknowledge there may not be anything left there. As a common example on larger lots, horse arenas and large equestrian barns, drive ways for trucks with horse trailers, there is not a lot of undisturbed area left on those sites.

Ms. Rowe commented a lot of people move here because it is an equestrian community. Where is the balance of property rights? Mr. Lombardo commented that's where his 5 plant plan comes in.

Mr. Goodpaster commented this is an important section and we need to think about it. Ms. Rowe requested input from surrounding cities. Mr. Goodpaster replied we did that at the joint Town Council – Planning Commission meeting. And that's where the 2.5 acre number originated and that number would be appropriate for Yucca Valley. We need to determine what is going to be important for Yucca Valley.

Ms. Sturges requested that it be recorded in the record that she is uncomfortable with this Ord regarding single family in-fill on lots 2 acres or less and we need to address the larger lots with a different approach. Ms. Rowe commented in the Rural Living designations most of the zoning is 2.5 acres. Consensus was in favor of the 2.49 acres and less for small lots and 2.5 acres and above for larger lot sizes.

Mr. Goodpaster stated the core question for the larger lots is are we going to require a certain percentage of that lot to remain undisturbed. That would be the purpose of having that differentiation between the two. Mr. Lombardo commented notice should be given to the public that we are going to talk about percentages on lots 2.5 acres and larger to get input from the community on what percentage should be left undisturbed.

Mr. Goodpaster stated this is where he could see a sliding scale. One for 2.5 to 5 acres and another for parcels over 5 acres. Ms. Rowe commented if someone came forward with a non typical house on 2.5 acres it could come before the Commission and then it's a case by case basis. Mr. Lombardo commented that uncertainty adds uncertainty in planning and makes it difficult to do if you don't know what the fees are.

Mr. Goodpaster stated that could make it difficult when you bought land because it could change over years in interpretation. Something has to be put in black and white. He would like to review the minutes from the joint session and look at what was discussed and the thought process between the two sizes and what was determined to be appropriate.

Mr. Stueckle commented the meeting has been going on for 3 hours and suggested that the study session discussion be continued to the regular Planning Commission meeting on October 13, 2009.

Ms. Rowe commented in visiting with Robyn Kobaly she learned a lot about native plants and she will have clarifications for the native plant list.

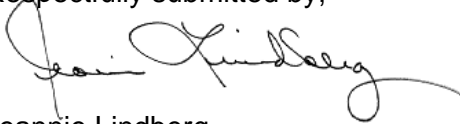
Ms. Sturges suggested that the plant guide have a number system assigned so people would know which plants grow easily, which is easy to transplant, etc. Regarding the native plant list and the CA Native Plant Act, the cat's claw is protected. She asked if it is ok for us to not include it on our list.

Mr. Goodpaster continued the discussion to the meeting of October 13, 2009.

ADJOURNMENT

The meeting adjourned at 9:05 pm.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "Jeannie Lindberg", written in a cursive style.

Jeannie Lindberg
Administrative Assistant III