



**TOWN COUNCIL MEETING  
6401 E. LINCOLN DRIVE  
PARADISE VALLEY, ARIZONA 85253  
SUMMARIZED MINUTES  
MARCH 25, 2010**

**CALL TO ORDER**

Mayor Parker called to order the Town Council meeting of the Town of Paradise Valley, Arizona, held at Town Hall 6401 E. Lincoln Drive, on Thursday, March 25, 2010 at 3:00 PM.

**COUNCIL MEMBERS PRESENT**

Mayor Vernon B. Parker  
Vice Mayor Virginia "Jini" Simpson  
Council Member Bernie Barry  
Council Member Ron Clarke  
Council Member Mary Hamway  
Council Member Pam Kirby  
Council Member Scott LeMarr

**STAFF MEMBERS PRESENT**

Town Manager James C. Bacon, Jr.  
Town Attorney Andrew Miller  
Town Clerk Duncan Miller  
Town Engineer William C. Mead  
Police Chief John Bennett  
Management Services Director Lenore Lancaster  
Public Works Director Andrew Cooper  
Budget & Finance Director David Andrews  
Senior Planner Molly Hood  
Planner George Burton

**ALSO PRESENT**

Planning Commissioner / Council Candidate Michael Collins  
Planning Commissioner / Council Candidate Jim Baker  
Council Candidate Paul Dembow  
Council Candidate Larry Fink  
Council Candidate Lisa Trueblood  
Council Candidate Russ Mosser

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**Discussion of NewPath Networks Statement of Direction**

Ms. Hood explained that NewPath Networks submitted a Special Use Permit application to allow the installation of a Distributed Antenna System (DAS) in the Town's right-of-way. A DAS consists of a fiber-optic backbone that connects a series of antenna nodes that wireless carriers may use to improve system capacity, coverage, voice quality, high speed data, and internet access. The fiber connects to a "hub" which contains the carrier's base station equipment. She said NewPath proposes to install 42 antenna nodes throughout the Town.

She said because this is a Major Special Use Permit application it requires a Statement of Direction from the Town Council to the Planning Commission. A Statement of Direction is intended to provide general guidelines or project parameters for the Planning Commission. It is not a final decision and does not create vested rights to the approval of a SUP. The Council also discussed the Statement of Direction on March 11, 2010 and provided the following feedback:

- Encourage public input
- Explain role of wireless consultant
- Prioritize design preference
- Adjust antenna location before height
- Sole authority & responsibility for r.o.w.
- Financial & business decisions by Council
- RF compliance
- 800MHz capability
- System malfunctions
- Commission review time

There was Council discussion about the consultant's role hired by the Town to review and advise on NewPath's application. Ms. Hood clarified that the consultant has already reviewed the application and provided input on everything but antennae heights. Once Council provides direction on heights and antennae preference, the consultant will advise on the remainder of NewPath's proposal. She said that the consultant will also brief the Planning Commission.

Council clarified that the consultant's role is to provide technical expertise, the Planning Commission's role is to review the zoning implications of the application and make recommendations about minor adjustments to node locations, and the Council's role is to approve node aesthetics and make all financial and business decisions.

Mr. Bacon added that the consultant is evaluating the map developed by NewPath, she is not developing a separate map. The consultant's review will be completed by the time the Planning Commission meets. He said the consultant's review and the Planning Commission's meeting schedule will allow adequate time for public comment prior to the end of Spring.

There was Council discussion about the 800 Mhz provision in the Statement of Direction. There was Council consensus that not enough information is known about the public safety

communications system requirements. They asked that all references to the proposed 800 Mhz capability be removed from the Statement. Council asked the Town Manager to schedule a work session on the public safety communications system and research if there are other DAS systems that have incorporated 800 Mhz capabilities.

Resident David Arkules spoke in favor of NewPath proposal. He asked that the Town give special attention to the esthetics of the equipment.

Steven Garcia, representing NewPath responded that there are multiple options for masking equipment with faux rocks and cacti.

Resident Tom Gates expressed concern about adding visual clutter to the Town.

### **Discussion of Amendments to Article XXIV, Walls & Fences**

Mr. Burton described a list of proposed minor changes to the Walls & Fences Article of the Zoning Ordinance. He said the amendments do not make any substantive changes to the Code, but are necessary to clarify existing language and correct inconsistencies in how the Code is applied.

The proposed amendments included:

1. Modify regulations for 3 foot high walls.
2. Clarify language on front yard setbacks for R-10 Zoning.
3. Clarify stacking requirements.
4. Modify Section 2407 (Retaining Walls).
5. Clarify Setbacks for Driveway Columns/Entry Gates.
6. Clarify language regarding side/rear wall connections to non-conforming walls.

Responding to a question from the Council, Mr. Burton stated that none of the amendments are controversial. There were no public comments during the Planning Commission process and the Commission voted unanimously to forward the ordinance to Council with a recommendation for approval.

Responding to a question from the Council, Town Attorney Miller stated that the proposed changes will not cause Prop 207 concerns. The ordinance simply clarifies existing code sections and interpretive history.

There was Council discussion about requiring perimeter walls to be constructed before the main structure. The possible advantages would be that the construction site would be screened from the neighborhood and it might improve "track-out" on the streets. However, it may be difficult to enforce because not all houses have walls or developers may simply not include a wall plan with the original application and add one later. It would also be a change in policy from the Code adopted in 2004.

There was Council consensus to send Ordinance 619 back to the Planning Commission to consider an amendment to require construction of perimeter walls and installation of exterior landscaping prior to construction of the main structures.

### **Discussion of Residential Alarm User Permit**

Mr. Bacon reviewed the legislative history behind the adoption of amendments to the Town's Alarm Code, specifically the requirement for all properties in Town with an alarm system to register with the Town. He said the Alarm User Permit is needed in order to obtain homeowner/emergency contact information accessible to dispatchers. He said not all monitoring companies have current information. This can cause problems and complaints from neighbors when audible alarms sound for long periods of time. The information is also useful to contact homeowners in non-emergency situations. Further it insures that only licensed companies have confidential information on residential alarms in Town.

Responding to a question from the Council, Mr. Bacon stated that the Town requires customers on the Town's Alarm Monitoring System to also submit an Alarm User Permit even though the Town already has the information in order to maintain a level playing field between public and private service providers.

Chief Bennett added that the requested information is helpful for officers responding to an alarm call. The more information officers have about the property the faster they can assess the situation. He stated in other communities, alarm user permits also ask for information on hazardous materials, firearms, and dogs on the property.

There was Council discussion that if the main purpose behind the Alarm User Permit was neighborhood complaints about alarm sirens, the Town should cite the homeowner under the nuisance noise ordinance and not require permits.

There was Council consensus to make the permit optional both for the Town's customers and customers monitored by private companies. Alarm owners who pay the \$20 permit fee would be allowed two false alarms with now charge. Otherwise the first false alarm would cost \$100.

**Motion and vote** – Councilmember Hamway moved to go into executive session at 4:23 p.m. Vice Mayor Simpson seconded the motion which passed by a vote of 7-0. 4:23

**EXECUTIVE SESSION**

- a.** Discussion and consultation with Town Attorney **regarding pending or potential litigation and/or potential contract negotiations with NewPath Networks, LLC** as authorized by A.R.S. §38-431.03.A.4; legal advice **regarding the Tele-communications Act** as authorized by A.R.S. §38-431.03.A.3; and discussion and consultation with Town representatives concerning potential negotiations for the purchase, sale, or lease of in various locations as authorized by A.R.S. §38-431.03(A)(7).
  
- b.** Discussion of **Town Attorney performance review** as authorized by A.R.S. §38-431.03.A.1.

**RECONVENE FOR REGULAR BUSINESS MEETING**

**CALL TO ORDER**

Mayor Parker reconvened the meeting of the Town Council at 5:05 P.M.

**COUNCIL MEMBERS PRESENT**

Mayor Vernon B. Parker  
Vice Mayor Virginia "Jini" Simpson  
Council Member Bernie Barry  
Council Member Ron Clarke  
Council Member Pam Kirby  
Council Member Scott LeMarr

Council Member Mary Hamway was not present.

**STAFF MEMBERS PRESENT**

Town Manager James C. Bacon., Jr  
Town Attorney Andrew Miller  
Town Clerk Duncan Miller  
Police Chief John Bennett  
Public Works Director Andrew Cooper, Jr.  
Town Engineer William C. Mead  
Planning & Building Director Eva Cutro  
Budget & Finance Director David Andrews

**PLEDGE OF ALLEGIANCE**

Mayor Parker led the Pledge of Allegiance.

**PRESENTATIONS**

There were no presentations.

**CALL TO THE PUBLIC**

The Mayor asked for unanimous consent to move public comments to the end of the meeting.

**MAYOR / COUNCIL / MANAGER REPORT**

There were no reports.

**CONSENT AGENDA**

**a. Minutes of Town Council Meeting March 11, 2010**

**b. Authorization to Purchase a Police Patrol Vehicle**

**Recommendation:** Authorize the purchase of a 2010 Chevrolet Tahoe for the Police Department at a cost of \$30,038.

**c. Approval of Special Event Liquor License for Habitat For Humanity**

**Recommendation:** Approve the Special Event Liquor License for Habitat For Humanity Central Arizona, subject to the following stipulations: only those people authorized by law be allowed to dispense and/or consume alcoholic beverages; consumption shall be limited to the premises as indicated in the application; and Section 10-7 Control of Excess Noise be observed.

**d. Approval of Special Event Liquor License for Montessori Academy**

**Recommendation:** Approve the Special Event Liquor License for Montessori Academy, Inc., subject to the following stipulations: only those people authorized by law be allowed to dispense and/or consume alcoholic beverages; consumption shall be limited to the premises as indicated in the application; and Section 10-7 Control of Excess Noise be observed.

**e. Approval of Resolution Number 1212 Certifying the Results of the March 9, 2010 Primary Election**

**Recommendation:** Adopt Resolution Number 1212 certifying the results of the Primary Election held on March 9, 2010.

Mr. Bacon summarized the items on the Consent Agenda.

**Motion and vote** – Councilmember LeMarr moved to approve the Consent Agenda as submitted. Vice Mayor Simpson seconded the motion which passed by a vote of 6-0.

**PUBLIC HEARINGS**

There were no public hearings.

**ACTION ITEMS**

**Approval of NewPath Networks Special Use Permit Statement of Direction**

Mr. Bacon stated that the Council discussed the NewPath Network's Statement of Direction at length in the work session. Based on Council direction, references to designing a system incorporating 800 Mhz was eliminated.

Responding to a question from Council regarding inclusion of a map showing DAS node locations, Ms. Hood stated that it was not necessary as the map is part of the SUP application. Moreover, the node locations cannot change significantly without completely changing the entire system.

Lynne Lagarde, attorney representing NewPath Networks, said she was pleased with the Statement of Direction. She noted that Paradise Valley is the first community to retain a consultant to advise on a NewPath application. She thanked the Council for its consideration and asked that the Town move as quickly as possible on this application.

**Motion and vote** – Councilmember LeMarr moved to approve the following NewPath Networks Statement of Direction which was seconded by Councilmember Clarke and passed by a vote of 6-0.

***SUP-10-4  
NewPath Networks  
-Statement of Direction-  
March 25, 2010***

*On March 2, 2010, with the Town's authorization, NewPath Networks, Inc. submitted a Special Use Permit application to allow utility poles in the Town of Paradise Valley right-of-way. The proposed Distributed Antenna System ("DAS") consists of a fiber-optic backbone that connects a series of antenna nodes.*

*Section 1102.3 of the Town's Zoning Ordinance states the Town Council must issue a Statement of Direction for the Special Use Permit application within 45 days of the first staff presentation. In this case, the Statement of Direction must be issued on or before April 24, 2010.*

*The Statement of Direction is not a final decision of the Town Council and does not create any vested rights to the approval of a Special Use Permit. Any applicant for a Special Use Permit shall not rely upon the matters addressed in the Statement of Direction being the same as those that may be part of an approved Special Use Permit.*

*Therefore, the Town Council issues the following Statement of Direction for SUP-10-4, NewPath Networks:*

- *The Town encourages better wireless service within the Town of Paradise Valley.*

- *All DAS antennas and the associated fiber backbone shall be located in the Town right-of-way. The Town has the sole authority and responsibility over the right-of-way.*
- *The Town welcomes and encourages public input during the Special Use Permit review process. Neighborhood notification shall be maximized during the Special Use Permit process and throughout the construction process via mailings, postings, newspaper notices, neighborhood meetings, and one-on-one resident meetings when necessary. In addition, the NewPath application materials shall be made available on the Town's website.*
- *The Town has retained a consultant to review the application and make recommendations to staff, the Planning Commission and Town Council. The consultant will evaluate the proposed DAS including but not limited to the number, placement, and height of antenna nodes, and RF compliance.*
- *Existing vertical elements in the Town right-of-way such as stand alone street lights and traffic signals shall be utilized for antenna installations to the greatest extent possible provided the proposed additional height on the existing vertical element does not significantly interfere with view corridors for public property. Otherwise, the faux cactus or another design alternative shall be used. The street-sign alternative should be absolutely minimized.*
- *The antenna heights proposed by NewPath Networks in the Special Use Permit application dated March 2, 2010 are acceptable but each proposed antenna node location needs to be assessed individually with site adjustments made as deemed necessary to best blend the proposed antenna node with the surrounding area. Existing view corridors for public property, the surrounding landscape, topography, proximity to existing residences, and speed limits, etc. shall be taken into consideration. In circumstances necessitating an adjustment, the Commission and staff shall adjust antenna location before height. The Council believes it is much easier to adjust the position of an antenna rather than the antenna height as antenna height adjustments may affect the entire DAS network.*
- *Antennas shall be situated in locations that maximize the effectiveness of the DAS and provide the most benefit for the community as a whole. Disputes regarding antenna locations shall be mitigated to the maximum extent possible, but all parties must understand that excessive negotiation and antenna shifting becomes counter-productive to the overall process. The Town has the sole authority and responsibility over the right-of-way and the Town Council will ultimately approve each antenna location.*
- *The proposed antenna nodes shall blend with existing landscaping. In those locations where there is little to no landscaping present, additional landscaping shall be installed by NewPath so as to create a better blended antenna installation.*
- *The manufacturer and design (insert here once identified) of each antenna node shall be stipulated to ensure the highest quality and most aesthetically pleasing installation. Staff*

*and the Planning Commission shall make a field trip to view existing NewPath installations in the City of Scottsdale to assist with their evaluation of the various antenna design alternatives.*

- *The Planning Commission and staff shall understand and respect that the financial and business decisions between the Town and NewPath fall under the Town Council's purview and are not related to the Commission's Special Use Permit discussion. The Planning Commission should not discuss right-of-way lease issues such as payments, maintenance, liability, etc.*
- *The NewPath DAS shall comply with all Federal Communications Commission (FCC) requirements for radiofrequency (RF) public exposure safety. NewPath shall submit documentation of compliance. Receipt of the compliance documentation shall negate the need for any discussions related to RF compliance.*
- *Antenna or system-wide malfunctions are not the concern of staff, the Planning Commission or Town Council. Any DAS malfunction is the sole responsibility and concern of NewPath Networks.*
- *The NewPath system shall be designed to accommodate a minimum of five carriers at build-out.*
- *The Planning Commission is expected to complete its review and hearing process within the 90 days provided in Section 2-5-2.D.1 of the Town Code. The 90 day review period shall expire July 6, 2010.*

*As per Section 1102.3.C.3.c of the Zoning Ordinance, at any time during the review process, the Planning Commission may request clarification and/or expansion of this Statement of Direction based on additional information that has evolved.*

**CALL TO THE PUBLIC**

There were no public comments.

**ADJOURNMENT**

**Motion and vote** – Councilmember Clarke moved to adjourn. Vice Mayor Simpson seconded the motion which passed by a vote of 6-0

Mayor Parker adjourned the meeting at 5:15 p.m.



Vernon B. Parker, Mayor

ATTEST:



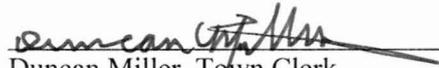
Duncan Miller, Town Clerk

**CERTIFICATION**

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the Paradise Valley Town Council held on then 25<sup>th</sup> day March 2010. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 8 day of April, 2010.



  
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Duncan Miller, Town Clerk