



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

**SEPTEMBER 2, 2010**

**CALL TO ORDER**

Mayor LeMarr called to order the Town Council meeting of the Town of Paradise Valley, Arizona, held at Town Hall 6401 E. Lincoln Drive, on Thursday, September 2, 2010 at 3:00 PM.

**COUNCIL MEMBERS PRESENT**

Mayor Scott P. LeMarr  
Vice Mayor Mary Hamway  
Council Member Michael Collins  
Council Member Paul E. Dembow  
Council Member Pam Kirby  
Council Member Vernon B. Parker  
Council Member Lisa Trueblood

**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  
Budget & Finance Director David Andrews  
Community Development Director Eva Cutro  
Senior Planner Molly Hood  
Information Technology Analyst Robert Kornovich

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**Discussion of NewPath Networks License Agreement**

Mr. Bacon introduced Mike Cavanaugh, CEO of NewPath Networks, Steven Garcia of NewPath, and Chris Percy of AT&T.

Mr. Bacon stated that earlier this year, the Town granted an SUP allowing the applicant to install facilities in the ROW contingent upon approval of a license agreement. NewPath offered an agreement identical to what was approved in Scottsdale. However, the Council directed staff to develop alternative provisions encouraging the applicant to add multiple carriers to the network.

As a result, the Town and NewPath agreed to the following tiered approach to the licensing fees to incentivize NewPath. The amount paid for each antenna node per year would be:

- First Carrier                 \$3,600
- Second Carrier               \$3,000
- Third Carrier                 \$2,700

Additionally, \$540 per year per node would be placed in an escrow account and released to NewPath if a second carrier is acquired within 5 years from the date the DAS network becomes fully operational. If no additional carrier is acquired in the 5 years, all escrow funds would be released to Town of Paradise Valley.

Alternatively, the Town could accept an across the board \$3,183 per node like what was approved in Scottsdale.

He said the fiber to be installed in the Town's rights-of-way is valued on a basis of \$1.88 per lineal foot per year; however, this amount is totally offset by an in-kind contribution of fiber that the Town can use for public safety communications.

He anticipated that the construction schedule would take 6 months from the date of the first permit issued. He said no major roads will be closed during rush hour and a project manager will be assigned to work directly with the Town Engineer to quickly resolve problems.

He stated that NewPath will provide a \$200,000 Letter of Credit and a performance bond of \$230,000 to ensure construction goes smoothly and road patches, landscaping damages and ROW disruptions are quickly remedied. Similarly, he said that asphalt patches and curb cuts will be guaranteed. Additionally, painting and repair of damaged sites, as well as maintenance of trees and other landscaping improvements, will be performed during the life of the agreement. Finally, NewPath will maintain commercial general liability insurance in the amount of \$10 million during the life of the agreement.

The term of the agreement is 20 years with two 5-year renewal options.

There was much Council discussion about the tiered fee schedule provision. Council reconfirmed that it was a major priority to incentivize the applicant to add carriers to the network. It was important to improve service and capacity for all residents, not just those with AT&T. Moreover, it would reduce the chance that other DAS providers or traditional cell tower providers would apply to install additional or competing facilities in the ROW. However, Council was concerned that the proposed provision granting NewPath 5 years to add a second carrier before the fee was reduced was unreasonably long. Council was concerned that the agreement might be considered a failure by the residents if it took 5 years to bring on a second carrier.

Mr. Cavanaugh stated that NewPath's DAS is designed to be a multicarrier system. Their business model is to maximize the number of tenants on the system. He said AT&T is the

anchor tenant on the Scottsdale and Paradise Valley network, but that they are in discussions with Verizon to join the Scottsdale network.

Chris Percy of AT&T added that there are really 7 carriers in the market: AT&T, Verizon, TMobile, Sprint, Cricket, Clearwire, and Lightspeed. The benefit of a NewPath DAS is that it can accommodate known carriers and is adaptable for new technologies. He suggested that given the competition among wireless providers to improve coverage, other carriers will seriously consider joining at least some of the nodes in Paradise Valley.

Council reasoned that if a second carrier on the network is likely then why is the Town dropping below the Scottsdale rate for the second carrier? Maybe the tiered fee schedule should be revisited to focus on adding three or more carriers.

Mr. Bacon responded that the \$3,600 figure for one carrier is higher than Scottsdale. The purpose was to bring on additional carriers as soon as possible. Starting with the higher fee and going below Scottsdale was a way to further the Town's goal. It is likely that a second carrier will be added to the system but a third and fourth may be more difficult.

Responding to a question from Council, Mr. Cavanaugh stated that the Scottsdale / Paradise Valley DAS network would be the largest in the country. He restated that it benefits NewPath to add multiple carriers to their DAS. He stated that they have four carriers on a 24-node system.

### **Discussion of Energy Efficiency & Conservation Block Grant Projects**

Ms. Hood stated that Council authorized the Town to apply for the Energy Efficiency & Conservation Block Grant in November to help offset the cost of installing a photovoltaic system on the Town's campus. The Town applied for, and was awarded, \$106,869 for the purposed installation of a 129kW photovoltaic system. The total project cost was \$800,000. The balance of funding was to be divided between the Town and APS. The Town was going to apply for an APS incentive totaling \$320,000. The Town's contribution totaled \$373,131. Unfortunately, the APS money is not available due to a high demand for conservation project funding.

The federal grant funding is still available and the Town can amend its application for other eligible projects. She suggested the following eligible projects:

- 12 HVAC replacements
- 42+ street light replacements
- 2 solar hot water heater installations

She said Council authorization to amend the application would be required.

There was Council consensus to authorize the Town Manager to proceed with an amendment to the Town's EECBG application for three new projects including 1) 12 HVAC replacements; 2) 42+ street light replacements; and 3) 2 solar water heater installations.

Secondly, Council directed the Court Design Committee to study the installation of a photovoltaic system on the new court building to accommodate a minimum of 50% of the building's energy needs.

Staff also requested direction on whether to include the original photovoltaic project in the capital improvement budget for FY 2011-12 through FY 2013-14. Council did not take a position.

### **Discussion of Hillside Committee**

Mr. Bacon stated that when the Hillside Committee was created in 1973, many of the councilmembers were familiar with land use issues and it was reasonable to expect councilmembers to serve on the Hillside Committee. Since that time, there has been a more diverse knowledge base among councilmembers. As a result, not all members have a comfortable knowledge of development standards which may limit their effectiveness on the committee. In consequence, a suggestion has been made to either integrate Hillside Committee functions with the Planning Commission or leave the structure in place but staff the Committee with Commissioners. The citizen member of the committee would also be impacted.

If the Council decides not to change membership on the Committee then the rotation schedule must be discussed and there must be training for new councilmembers to be effective participants in the meetings.

Mr. Bacon suggested that if Council decides a change is necessary, there should be a joint meeting with the Planning Commission to discuss membership and implementation. He recommended that membership appointments be made concurrently with appointments to other committees, particularly appointments to the Planning Commission.

Mr. Miller advised that changing committee membership and duties would require amending the Zoning Ordinance with the appropriate notices and public hearings. Development of an appeal process would also be necessary.

Council agreed to hold a joint meeting with the Planning Commission to discuss the idea. It was suggested that the Commission should be given the opportunity to develop a recommendation.

**Discussion of Information Technology Applications Including Paperless Agenda, E-Government, and other Communications Technology Options**

Mr. Bacon stated that Council directed staff to evaluate the Town's technical services for efficiencies and advancements in technology applications. He asked for Council feedback on implementing more robust and contemporary information and communications technology.

Mr. Andrews suggested the possibility of distributing Council meeting packets and correspondence electronically. There was no consensus to eliminate hard copies of the Council packet. It was suggested that packets could be printed double-sided on recycled paper. Council asked staff to investigate what technologies other municipalities are using to deliver meeting information.

Mr. Andrews stated that the Town does not accept credit/debit card transactions. He said the Municipal Court has only recently started accepting credit card payments. The Town has opposed offering credit cards as an option in the past because of the service fees. There was Council consensus to investigate offering credit cards. It was agreed that service fees are the cost of doing business and providing improved service.

Council also discussed improvements to audio visual equipment at Town Hall. There was no interest to install interactive whiteboards, videoconferencing equipment, or digital signage. However, there was interest in replacing the portable projector in the Council Chambers with flat screen monitors. There was also Council interest in video streaming of meetings and integrating social media like Facebook and Twitter with the Town's current citizen communications strategy.

Mr. Bacon stated that he would investigate pricing and staffing costs associated with flat screen monitors, video streaming, and social media.

**Motion and vote** – Council Member Kirby moved to go into executive session at 5:00 p.m. Vice Mayor Hamway seconded the motion which passed by a vote of 7-0.

**EXECUTIVE SESSION**

- a.** Discussion and consultation with Town Attorney **regarding pending or potential contract negotiations with NewPath Networks, LLC** as authorized by A.R.S. §38-431.03.A.4 and discussion and consultation with Town representatives concerning potential negotiations for the purchase, sale, or lease of Town-owned property in various locations as authorized by A.R.S. §38-431.03(A)(7).

- b. Discussion and consultation with the Town Attorney regarding pending or potential litigation and current development agreement with **Potomac Hotel Limited Partnership and/or MTS Land LLC related to Mountain Shadows** as authorized by A.R.S. §38-431.03.A.4 and legal advice **regarding zoning laws** as authorized by A.R.S. §38-431.03.A.3.
- c. Discussion and consultation with the Town Attorney regarding pending or potential litigation as authorized by A.R.S. §38-431.03.A.4 and legal advice as authorized by A.R.S. §38-431.03.A.3 regarding **potential litigation by property owners in the vicinity of 74<sup>th</sup> Street and Sage Drive.**
- d. Legal advice from Town Attorney as authorized by A.R.S. §38-431.03(A)(3) regarding **selection and appointment process for members of Town Boards, Commissions, and Council.**
- e. Discussion and consultation with the Town Attorney regarding pending or potential litigation as authorized by A.R.S. §38-431.03.A.4 and legal advice as authorized by A.R.S. §38-431.03.A.3 regarding **Initiative Petition Application filed by Arizona Citizens Against Photo Radar INI 10-01.**
- f. Discussion and consultation with the Town Attorney regarding pending or potential litigation as authorized by A.R.S. §38-431.03.A.4 and legal advice as authorized by A.R.S. §38-431.03.A.3 **regarding Underground Utility District Number 6 contribution refund requests.**

Mayor adjourned executive at 7:00 pm

**RECONVENE FOR REGULAR BUSINESS MEETING**

**CALL TO ORDER**

Mayor LeMarr reconvened the meeting of the Town Council at 7:06 P.M.

**COUNCIL MEMBERS PRESENT**

Mayor Scott P. LeMarr

Vice Mayor Mary Hamway

Council Member Michael Collins

Council Member Paul E. Dembow

Council Member Vernon B. Parker

Council Member Lisa Trueblood

Council Member Pam Kirby 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.

Community Development Director Eva Cutro

Budget & Finance Director David Andrews

**PLEDGE OF ALLEGIANCE**

Council Member Parker led the Pledge of Allegiance.

**PRESENTATIONS**

There were no presentations.

**CALL TO THE PUBLIC**

There were no public comments.

**MAYOR / COUNCIL / MANAGER REPORT**

There were no reports.

**CONSENT AGENDA**

- a. Minutes of Town Council Meeting July 8, 2010**
- b. Minutes of Town Council Work Shop July 9, 2010**
- c. Approval to Reschedule Town Council Regular Meetings for September and October 2010.**  
*Recommendation:* Approve the Town Council regular meeting schedule for September and October 2010 as follows: September 16, October 7, and October 21.  
*Staff Contact:* Duncan Miller, Town Clerk, 480-348-3610
- d. Approval of Special Event Liquor License for Phoenix Country Day School for an Event on October 16, 2010.**  
*Recommendation:* Approve the Special Event Liquor License for Phoenix Country Day School subject to the stipulations in the Action Report.  
*Staff Contact:* Duncan Miller, Town Clerk, 480-348-3610
- e. Approval of Special Event Liquor License for Christ Church of the Ascension for an Event on October 23, 2010.**  
*Recommendation:* Approve the Special Event Liquor License for Christ Church of the Ascension subject to the stipulations in the Action Report.  
*Staff Contact:* Duncan Miller, Town Clerk, 480-348-3610
- f. Approval of Appointments to the Human Services Funding Committee, Water Utility Committee, Court Design Committee, and Appoint Council Liaisons to the Scottsdale Convention and Visitors Bureau and the Historical Advisory Committee**  
*Recommendation:* Approve appointments to Council Committees as listed in the Action Report.  
*Staff Contact:* Duncan Miller, Town Clerk, 480-348-3610
- g. Adoption of Notice of Intent to Increase Wastewater Rates and Hold a Public Hearing on October 21, 2010**  
*Recommendation:* Adopt Notice of Intent to increase wastewater rates and set a public hearing for October 21, 2010.

Mr. Bacon summarized the items on the Consent Agenda.

**Motion and vote** – Vice Mayor Hamway moved to approve the Consent Agenda as submitted. Council Member Parker seconded the motion which passed by a vote of 6-0.

**PUBLIC HEARINGS**

There were no public hearings.

**ACTION ITEMS****Adoption of Resolution Number 1224 Regarding NewPath Networks License Agreement**

Mr. Bacon stated that on July 8, 2010, the Town Council issued a Special Use Permit for NewPath Networks to install facilities in the right-of-way to improve coverage and capacity for multiple wireless service providers. Over the Summer, the Town negotiated a license agreement with Newpath for use of the ROW. He stated that the negotiations focused on the Town's desire to maximize the number of carriers on the network.

Mr. Bacon summarized the proposed agreement. He said the term of the agreement is 20 years with two 5-year renewal options.

Annual license payments would be based on the number of nodes and number of wireless carriers using the network. NewPath would pay the Town the following amounts for each antenna node per year:

- \$3,600 for the first carrier
  - Additionally, \$540 per node per year will be placed in an interest bearing escrow account for 5 years. If a second carrier is added within 5 years the funds held in escrow will be paid to Newpath. If a second carrier is not added within that time the funds will be paid to the Town.
- \$3,000 for the second carrier
- \$2,700 for three or more carriers

The fiber to be installed in the ROW is valued at \$1.88 per lineal foot per year; however, this amount will be offset by an in-kind contribution of fiber to the Town for public safety communications.

Regarding construction scheduling, Mr. Bacon stated that no major road closings will be allowed during rush hour and that NewPath shall designate a project administrator to coordinate with the Town Engineer. He anticipated that the construction schedule would be 6 months from the date of the first permit issuance.

He explained that NewPath will provide a \$200,000 Letter of Credit and performance bond of \$230,000 to ensure the construction goes smoothly and road patches, landscaping damages and ROW disruptions are quickly remedied. At termination, the letter of credit and bond can be used to remove any NewPath equipment that is still in the ROW.

Regarding the maintenance provisions, he said all asphalt patches and road cuts will be guaranteed; painting and repair of damaged nodes will be required during the life of the

agreement; and trees and other landscaping improvements will be maintained by NewPath for the length of the agreement.

NewPath will also maintain commercial general liability insurance in the amount of \$10 million during the life of the agreement.

Mike Cavanaugh, CEO of NewPath Networks, stated that NewPath has been working with the Town for 2 years on this project. He said NewPath is anxious to get started. He thanked the Town for its consideration and urged approval of the agreement.

Resident Liz Clendenin spoke in favor of the agreement. She appreciated the tiered fee approach to encourage addition of multiple carriers to the system.

**Motion and vote** – Vice Mayor Hamway moved to adopt Resolution Number 1224 authorizing the Town Manager to execute a license agreement between the Town of Paradise Valley and NewPath Networks with the following amendments to Section 3.2:

- NewPath shall pay the Town \$3,600 per year for each node for the first carrier on the DAS. Additionally, \$417 per node shall be deposited in an interest bearing escrow account for a period of 36 months
- If NewPath adds a second carrier within 36 months, the funds held in escrow shall be returned to NewPath and the per-node fee shall be reduced to \$3,183. If NewPath does not add a second carrier the funds held in escrow shall be paid to the Town
- If NewPath adds 3 or more carriers, the per-node fee shall be reduced to \$2,900

Council Member Trueblood seconded the motion which passed by a vote of 6-0.

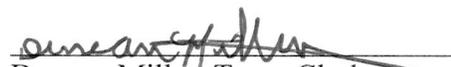
**ADJOURNMENT**

**Motion and vote** – Vice Mayor Hamway moved to adjourn. Council Member Dembow seconded the motion which passed by a vote of 6-0.

Mayor LeMarr adjourned the meeting at 7:20 p.m.

  
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Scott P. LeMarr, Mayor

ATTEST:

  
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Duncan Miller, Town Clerk