



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

**SUMMARIZED MINUTES
NOVEMBER 6, 2008**

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, November 6, 2008 at 4:05 PM.

COUNCIL MEMBERS PRESENT

Mayor Vernon B. Parker
Vice Mayor Ron Clarke
Council Member Brian Cooney
Council Member Mary Hamway arrived at 4:41 p.m.
Council Member Pam Kirby
Council Member Scott LeMarr
Council Member Virginia "Jini" Simpson

STAFF MEMBERS PRESENT

Town Manager James C. Bacon, Jr.
Town Attorney Andrew Miller
Town Clerk Duncan Miller
Town Engineer William Mead
Planning & Building Director Eva Cutro
Chief of Police John J. Bennett
Public Safety Director John D. Wintersteen
Public Works Director Andrew Cooper, Jr.
Deputy Town Attorney Steven Zraick
Senior Planner Molly Hood

Update on Montelucia

Mr. Bacon announced that the first item on the agenda is an update on Montelucia which opened this morning. He said it became clear this Spring that Montelucia would need to construct mechanical screening to mitigate noise generated from mechanical equipment. Crown Development submitted plans for noise attenuation which have been reviewed by an outside sound consultant.

Mr. Bacon introduced Bruce Wardin of WCA who reviewed the plans. Mr. Bacon stated that in addition to reviewing the plans, Mr. Wardin was asked to review the Town's noise ordinance and give recommendations on ways to improve and clarify the ordinance.

Mr. Bacon summarized Crown Development's screening and sound mitigation plans:

- The mechanical screen height will be 7.5' with noise attenuation material
- The Town's consultant suggested that additional noise attenuation material be applied to the reflective wall of the lodge
- The consultant determined there is a reasonable expectation that the amended application will meet or beat the Town Code's maximum allowable noise level
 - dB of 56 from 7:00 a.m. to 10:00 p.m.
 - dB of 45 from 10:00 p.m. to 7:00 a.m. and on all Sundays and legal holidays

Based on that feedback the town entered into an agreement with Crown to achieve noise mitigation. It provides for the following:

- The term of the agreement is 12 to 18 months
- The resort agrees to meet Town Code requirements
- The Town's noise meter will be used to take measurements
- The resort commits to modify installations if standards are not met
- The resort agrees to establish a fund for compliance efforts
- The agreement has been signed and recorded

If these measures fail to meet the Town's noise regulations, installation of the following items will be required:

- Significant increase in height of the mechanical screens required (at least an additional 2.5' for a total height of 10')
- Removal of equipment from the roof would need to be evaluated

Mr. Wardin made the following observations about the Town's noise code:

- Codes that stipulate "Hard Numbers" rarely serve the entire community equally.
- Ambient levels vary significantly in Paradise Valley depending on the test location.
- The Town has outgrown the Code. The current Code's "hard numbers" are much too low and cannot be achieved throughout the entire Town.
- If the "hard numbers" serve the worst case and are made too high, the very quiet areas may suffer.

- A Code that is complaint driven and analyzed on an individual basis, comparing the level of intrusion to the existing ambient level at a particular location is the fairest method.

He made two specific recommendations to the Town Noise Code.

- Ambient Noise should be properly defined.
 - Ambient noise is the averaged sum of all normal noise contributions to a particular place of measurement over a stipulated period of time. Ambient noise varies greatly with different measurement locations. Ambient Noise is not intrusive noise.
- Intrusive Noise.
 - Unwanted noise that is measured at the same location that the ambient noise was measured. The unwanted noise becomes “intrusive” and subject to concern or penalty if the “intrusive noise” level exceeds the normal “ambient” level by (the amount to be determined) or more

Mr. Wardin stated that the key to any noise ordinance is measuring the difference between the ambient and the intrusive noise. Ordinances with hard numbers are not as equitable and difficult to enforce. As an example, according to his measurements even with all the mechanical equipment turned off the noise was still higher than the code allows. He stressed the key is measuring the intrusive noise above ambient noise.

He said the mitigation plans submitted by Crown will meet the Town Code. He noted that the ambient level is lower closer to the resort and greater as you move away from the resort because the resort buildings itself block noise.

Mr. Bacon stated that measurements will be taken throughout the year including the summer when all the equipment is running and during different atmospheric conditions. The measurements will be taken at the same position, with the same equipment, and at the same time of day.

Responding to a question from the Council, Mr. Bacon stated that the esthetic improvements are being done concurrently with the screening and were given 8 weeks to accomplish it.

Andrew Miller announced that code enforcement will be discussed at the next work session. The noise ordinance will be included in that discussion. Staff will provide research on various codes from around the state. Staff will bring forward some minor changes to clarify some definitions.

Discussion of Council Committees

Mr. Bacon stated that there are many committees operating in the Town providing valuable advice to the Council. In recent months, questions have been raised about mission and goals of five of those committees including Hillside Building Review, Water Committee, Fire Station Design Oversight Committee, Employee Compensation Committee and Code Update Study Group. The purpose of tonight's discussion is to determine what, if any, changes should be made to those committees.

Hillside Committee –

The Council discussed their concerns with the Hillside Committee including membership, quorum, and the committee's authority to request design changes.

The Code states that planning commissioners and councilmembers serve for one-year on a rotating basis. However, in practice commissioners and councilmembers only serve for two month intervals. It is often difficult to find substitutes to maintain a quorum.

There was discussion regarding the qualifications of committee members and that perhaps Councilmembers should not serve on the committee in favor of members with architectural or engineering backgrounds. However, there was a concern that the Hillside Committee may over reach and require more of applicants than what is permissible by law. Councilmembers are a moderating influence and better informed regarding legal liability.

It was agreed that a separate work study session on Hillside Committee is needed.

Water Committee-

Mr. Bacon said that the Water Committee was created in 2003 to monitor fire flow improvements. The committee's mission has since expanded. He suggested that the Council redefine the committee's mission.

There was Council discussion about expanding the mission of the committee to include all public infrastructure. However, such a mission may be too broad as water and sewer involve different disciplines.

It was agreed that Staff will develop options and a mission statement for the Water Committee. One option will include review of Phoenix sewer and Phoenix water improvements. Councilmembers Hamway, Simpson and Kirby volunteered to serve on the Water Committee.

Eliminated Committees

There was council consensus to dissolve the Fire Service Committee, Code Update Committee, and the Employee Compensation Committee.

Discussion of Special Use Permit Process

Mr. Bacon stated that the Council asked for a review of the Special Use Permit Process. This material will ultimately be referred to the Planning Commission before it comes to Council for consideration and adoption.

He said this is an effort to do several important things:

- Limit authority of the Town Manager regarding administrative reviews of SUPs
- Increase discretion of the Planning Commission on Minor Amendments
- Present a Town Council Statement of Direction to shape and streamline Planning Commission discussion on Major Amendments
- Provide a Town Council Statement of Public Benefit on all SUP approvals

Ms. Cutro suggested developing four SUP categories.

1. Administrative which would require staff pre-application and town Manager decision. The criteria to determine if it is administrative include:
 - does not increase intensity, use, or square footage by more than **5%** over the existing square footage, increase the number of units or structures, or decrease setbacks;
 - does not have an adverse effect upon adjoining properties by being visible, audible, or otherwise perceptible from adjacent properties with the exception of temporary cloth shade structures;
 - does not change in any respect any stipulations governing the issuance of the original special use permit; and,
 - does not change vehicular or emergency circulation or the required parking or loading space;
2. Minor amendments which require staff pre-application and a decision by the planning commission. The criteria to determine if the application is minor include:
 - does not increase square footage by more than **15%** over the existing square footage;
 - does not change or add uses;
 - does not have an adverse effect upon adjoining properties;
 - does not change the character of the existing special use permit (need to better define)
 - may change signage or lighting visible off-site

3. Mid-Major amendments would require staff pre-application a 45 day Town Council preview, a planning commission recommendation and a Town Council decision. The criteria for mid-major would be:
 - increases square footage up to **40%** of the existing square footage; said increases to be cumulative for each amendment adopted over a consecutive three year period;
 - changes or adds uses;
 - is visible, audible or otherwise perceptible from off-site;
 - results in perceptible increase in traffic and/or parking

4. Major amendments would require staff pre-application, a 45 day Town Council preview, Planning Commission recommendation, and a Town Council decision. Major amendment criteria include:
 - Any amendment which is not an administrative, minor, or mid-major amendment.

With respect to major amendments, the application will come to the Council first for approval of guidelines and then they will be referred to the Planning commission.

For administrative reviews, Council suggested that the criteria should limit the Town Manager to 5% or a 1,500 square feet change, whichever is less. Mr. Bacon added that there must be staff recommendation and a written response from Manager which will be provided to the Council.

Responding to a question from the Council, Mr. Miller stated that a mid-major amendment may be subject to referendum but only for that portion being amended.

Ms. Cutro stated that the Planning Commission will review this as soon as possible and provide a recommendation to Council in approximately 3 months.

Motion and vote – Councilmember Simpson moved to go into executive session at 6:13 p.m. Vice Mayor Clarke seconded the motion which passed unanimously.

EXECUTIVE SESSION

- a. Discussion and consultation with Town representatives regarding **roadway abandonment request in the vicinity of 62nd Street and Mockingbird Lane** as authorized by A.R.S. §38-431.03.A.7.

- b. Discussion and consultation with Town Attorney regarding **development agreement with PV Resort Associates LLC and agreements with potential developers regarding Mountain Shadows Resort** as authorized by A.R.S. §38-431.03.A.4 and legal advice from the Town Attorney as authorized by A.R.S. §38-431.03.A.3.

- c.** Discussion and consultation with Town Attorney regarding the following pending or threatened litigation as authorized by A.R.S. §38-431.03.A.4.

CURRENT LITIGATION:

1. Michael Tyson
2. Martin Dugan and Tiffany McCreary
3. Paul and Madeline Lazarus
4. David and Joo Cantor Claim
5. Jerald P. Underdahl
6. James Tavernetti
7. Rural/Metro

PENDING OR POTENTIAL CLAIMS:

7. Mr. and Mrs. William Trefethen and Mr. and Mrs. Jon Wiggins
8. Joe Warren

CALL TO ORDER

Mayor Parker reconvened the meeting of the Town Council at 7:05 P.M.

COUNCIL MEMBERS PRESENT

Mayor Vernon B. Parker
Vice Mayor Ron Clarke
Council Member Brian Cooney
Council Member Mary Hamway
Council Member ~~Elect~~ Pam Kirby
Council Member Scott LeMarr
Council Member Virginia "Jini" Simpson

STAFF MEMBERS PRESENT

Town Attorney Andrew Miller
Town Clerk Duncan Miller
Town Engineer William Mead
Police of Chief John J. Bennett
Planning & Building Director Eva Cutro
Public Safety Director John D. Wintersteen
Public Works Director Andrew Cooper, Jr.

PLEDGE OF ALLEGIANCE

Stuart Newell of Brophy College Preparatory led the Pledge of Allegiance.

PRESENTATIONS

Recognition of Don Sandoval for Clean Air Campaign Award

Mayor Parker recognized Building Inspector Don Sandoval for receiving the Valley Metro 2008 Clean Air Award in the Outstanding Carpooler category for organizations with 50-149 employees.

CALL TO THE PUBLIC

Terry Jull asked that a police officer be assigned to the corner of 56th Street and Doubletree Ranch Road during the Cherokee School drop off and pick up times. He also asked council to consider limiting the number of garbage providers in the Town.

MAYOR / COUNCIL / MANAGER REPORT

There were no reports.

CONSENT AGENDA

a. Minutes of Town Council Meeting October 23, 2008

b. Report on Investments

Recommendation: Receive and file the report.

c. Approval of Appointment of Co-Liaison to the Scottsdale Convention and Visitor's Bureau

Recommendation: Appoint Councilmember Mary Hamway Co-Council Liaison to the Scottsdale Convention and Visitors Bureau.

d. Authorization of Town Participation and Administrative Support for the 2009 Relay for Life

Recommendation: Authorize Town participation and administrative support for the 2009 Relay for Life.

e. Approval of Contract Amendment for Fire Stations #1 and #2 Change Orders

Recommendation: Approve a contract amendment covering Change Orders not to exceed \$71,784.63 for Fire Station #1 and \$65,251.30 for Fire Station #2 totaling \$137,035.93.

f. Approval of Lease Purchase for Planning & Building Department Vehicles

Recommendation: Approve the lease purchase of two 2008 Ford Escape hybrids form Five Star Ford for the Planning and Building Department in an amount not to exceed \$47,757.

g. Approval of Special Event Liquor License for Phoenix Rotary 100

Recommendation: Approve the Special Event Liquor License application for the Phoenix Rotary 100, subject to the stipulations in the Action Report.

Mr. Bacon summarized the consent agenda.

Mayor Parker removed Item 11e.

Councilmember Kirby removed Item 11f.

Motion and vote – Vice Mayor Clarke moved to approve to the Consent Agenda with the exception of items 11e and 11f. Councilmember LeMarr seconded the motion which passed by a vote of 7-0.

e. Approval of Contract Amendment for Fire Stations #1 and #2 Change Orders

Recommendation: Approve a contract amendment covering Change Orders not to exceed \$71,784.63 for Fire Station #1 and \$65,251.30 for Fire Station #2 totaling \$137,035.93.

Mayor Parker asked for an update on the fire station project and if the Council should expect more change orders in the future. Mr. Wintersteen stated this is the first time a change order has been brought to the Council on the fire station project. He said the Council raised the limit for change orders over the summer from \$200,000 to \$250,000 as a precaution.

The majority of the change orders are the result of APS. The plans were provided to APS in November but the Town was informed that APS does not review plans until after contracts are awarded. Once the contract was awarded, APS came up with many changes like the need for Phase 3 power. After many discussions with APS they gave the Town an ultimatum to make the changes or APS would not connect the stations to power.

Mr. Wintersteen said that there will be other change orders including flag poles and a retaining wall at fire station #1. At the very end of construction there will also be allowance items that could result in credits.

There was Council discussion about kitchen appliances. Mr. Wintersteen responded that fire stations require commercial equipment. The brands and models selected are consistent with those used in other Phoenix fire stations and are safe to install in the station's kitchen cabinetry.

Mr. Bacon reassured the Council that Mr. Wintersteen and the architect/project managers meet every week to discuss change orders and construction progress.

Motion and vote – Councilmember LeMarr moved to approve item 11e. Vice Mayor Clarke seconded the motion which passed by a vote of 7-0.

f. Approval of Lease Purchase for Planning & Building Department Vehicles

Recommendation: Approve the lease purchase of two 2008 Ford Escape hybrids form Five Star Ford for the Planning and Building Department in an amount not to exceed \$47,757.

Responding to a question from Councilmember Kirby, Mr. Cooper said the vehicle warranties have expired. He also stated that the vehicles being replaced have odometer readings of 53,550 miles and 44,922 miles. The Council suggested that because the mileage is so low the Town should investigate buying the extended warranty instead of replacing the vehicles.

The Council also asked if the replacement vehicles will be hybrids. Mr. Cooper responded that hybrids are recommended because catalytic converters in hybrids built after 2004 do not require as much time to warm up and burn fuel efficiently unlike the 2001 hybrids being replaced. The Town did not realize the expected fuel savings with the older Toyota Prius's because building inspectors only use them for short trips. The catalytic converters never reached the optimum operating temperatures.

Mr. Bacon asked to withdraw the item and bring it back Council with more information about extended warranties.

PUBLIC HEARINGS

There were no public hearings.

ACTION ITEMS

Consideration of Ordinance Calling for the Direct Election of the Mayor

Mr. Bacon stated that the Council has discussed direct election of the mayor on several occasions. He said the next step is for staff to prepare an ordinance calling for direct election and setting an election date. He said specific direction from the Council is needed to prepare the ordinance. A series of five questions was provided to Council.

Resident Dorothy Smith spoke in opposition to direct election of the mayor. She noted that the majority of mayors who attended the work study session were opposed to changing the mayor selection process.

Former Mayor David Hann said he was out-of-town when this topic was discussed in work session. He said he was opposed to direct election of the mayor.

Mayor Parker announced that votes on the five questions would be by roll call vote.

- 1. Does the Council want to adopt an ordinance providing for the direct election of the mayor and submit the question to the voters for ratification?**

Motion and vote – Councilmember Hamway moved to direct staff to prepare an ordinance calling for the direct election of the mayor. Councilmember Cooney seconded the motion which passed by a vote of 4 – 3.

Aye – Cooney, Kirby, Parker, Simpson

No – Clarke, Hamway, LeMarr

- 2. What will be the mayor's term of office?**

- a. 2 years**

- b. 4 years**

Motion and vote – Councilmember Clarke moved that the ordinance regarding direct election of the mayor set the term of office to be 2 years. Councilmember LeMarr seconded the motion which passed by a vote of 5-2.

Aye – Clarke, Cooney, Hamway, Kirby, LeMarr
No – Parker, Simpson

3. When will the election be held?

- a. May 2009
- b. September 2009
- c. November 2009
- d. March 2010
- e. May 2010

Motion and vote – Councilmember Simpson moved that the ordinance regarding direct election of the mayor be placed on the ballot in November 2009. Councilmember Cooney seconded the motion which passed by a vote of 4 – 3.

Aye – Cooney, Kirby, Parker, Simpson
No – Clarke, Hamway, LeMarr

4. When will direct election of the mayor become effective?

- a. 2010
- b. 2012
- c. 2014

Motion and vote – Councilmember Simpson moved that the ordinance, if approved by the voters, goes into effect in 2010. Councilmember Cooney seconded the motion which passed by a vote of 4 – 3.

Aye – Cooney, Kirby, Parker, Simpson
No – Clarke Hamway, LeMarr

Council asked for clarification if the Ordinance could take effect in March 2010 if the election is held in November 2009. Town Clerk Miller responded that the canvass of the November 2009 election would be held near the end of November 2009. Council and Mayor candidate packets must be available for distribution around November 15, 2009.

Motion and vote – Councilmember Cooney moved to reconsider the motion to hold the election in November 2009. Councilmember Hamway seconded the motion which passed by a vote of 6 – 1 with Councilmember LeMarr voting ‘no’.

Motion and vote – Councilmember Simpson moved to hold the election in September 2009. The motion was seconded by Councilmember Kirby and passed by a vote of 4-3.

Aye – Cooney, Kirby, Parker, Simpson

No – Clarke, Hamway, LeMarr

5. How shall vacancies in the office of mayor be filled?

a. Appointed from among the Council

b. Appointment of a “qualified elector” of the Town

Motion and vote – Councilmember Kirby moved that the ordinance provide for vacancies in the office of mayor to be filled by appointment from among the Council. Councilmember Cooney seconded the motion which failed by a vote of 3 – 4.

Aye – Clarke, Cooney, LeMarr

No – Hamway, Kirby, Parker, Simpson

Mayor Parker recognized former Mayor Hann. Mayor Hann stated that if the voters approve this ordinance it is possible that the Council could appoint an unelected resident mayor. Councilmembers, on the other hand, are elected.

Motion and vote – Councilmember Simpson moved that the ordinance provide for vacancies in the office of mayor to be filled by appointment of a “qualified elector” of the Town. The motion died for lack of a second.

Motion and vote – Councilmember Hamway moved to reconsider the vote to fill vacancies in the office of mayor by appointment from among the Council. Mayor Parker seconded the motion which passed by a vote of 5 – 2 with Councilmembers Clarke and LeMarr voting ‘no’.

Motion and vote – Councilmember Simpson moved that the ordinance provide for vacancies in the office of mayor to be filled by appointment from among the Council. Councilmember Hamway seconded the motion which passed by a vote of 5-2.

Aye – Clarke, Cooney, Hamway, Kirby, Simpson

No – Parker

Abstain - LeMarr

Mr. Bacon clarified that the votes just taken direct staff to prepare an ordinance for consideration by the Council. If the Council adopts the ordinance then the question of direct election of the mayor will be placed before the voters.

Council requested that the ordinance state that the election will be a special election and list the estimated cost of the election.

ADJOURNMENT

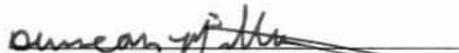
Motion and vote Councilmember Simpson moved to adjourn. Councilmember Kirby seconded the motion which passed unanimously.

Mayor Parker adjourned the meeting at 8:34 p.m.



Vernon B. Parker, Mayor

ATTEST:



Duncan Miller, Town Clerk