



TOWN COUNCIL MEETING
6401 E. LINCOLN DRIVE
PARADISE VALLEY, ARIZONA 85253
SUMMARIZED MINUTES
OCTOBER 8, 2009

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, October 8, 2009 at 3:00 PM.

COUNCIL MEMBERS PRESENT

Mayor Vernon B. Parker
Vice Mayor Virginia "Jini" Simpson arrived at 3:07 p.m.
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
Planning & Building Director Eva Cutro
Assistant Police Chief Larry Scott
Public Works Director Andrew Cooper, Jr.
Deputy Town Attorney Steven Zraick
Human Resources Manager Jinnett Hancock
Planner George Burton

Discussion of Cellular Communications and Broadband Service

Mr. Bacon said this is the first in a series of meetings on this topic. The Town's goal is to improve cell service while maintaining high quality aesthetics within the community. There are two ways to accomplish this goal. The first is to review the Town's ordinance on personal wireless service facilities. The second is to explore the use of distributed antenna systems. He said under the Town's PWSF ordinance, there are 31 pre-approved cell site locations. To date, cell towers have only been located at 4 of the sites.

He said distributed antenna systems (DAS) consist of a master unit hub location which may or may not be located in the Town and multiple remote node locations. The node locations contain

antennas that may or may not be stealth. The node locations often are located in the right-of-way. For DAS to operate, a municipality must have an approval system in place which allows the DAS equipment to be placed in its right-of-way. The Town does not presently have such a system in place.

Mr. Bacon introduced Lynne Legarde of Earl, Curley & Lagarde, P.C. representing Newpath Networks. Also present were Mike Kavanagh CEO of Newpath Networks; Stephen Garcia, Director, External Affairs/Land Use for Newpath Networks; and Jerry Fuentes of AT&T.

Ms. Legarde stated that wireless antenna nodes are needed in Paradise Valley because a drive data analysis shows that there are service gaps in Town. AT&T contracted with Newpath to improve coverage in the area using smaller scale, less visually impactful antennas. She said the demands on wireless communication has increased dramatically in recent years and will continue trend upward.

She said DAS antenna nodes are lower in height, use significantly lower power and require minimal ground equipment. Each DAS antenna node can accommodate up to six wireless carriers. Newpath will make its system available to, and intends to attract, other carriers that serve Paradise Valley.

She said Newpath Networks is a privately funded, well capitalized DAS company founded in 2004 that provides wireless network infrastructure nationwide. It operates in over 30 states and has contracts with all major wireless carriers. They specialize in difficult-to-serve locales and sensitive residential areas focusing on community compatible designs. A typical node in Arizona is designed to conceal antennas and equipment inside a variety of structures including a faux Saguaro. Due to Newpath's low power requirements electric service is provided on a non-metered basis so a utility meter box is unnecessary.

Jerry Fuentes of AT&T submitted correspondence from 120 of its Paradise Valley customers reporting gaps in coverage. They are supportive of improvements to the wireless service infrastructure.

Steven Garcia presented various stealth design solutions for rights-of-way including cactus, street posts, and monuments. He said the height requirement for each node depends on typography. However, generally speaking 24 feet is optimum height for a saguaro; 36 feet if street light mounted; 30 feet for a traffic light; and 14 feet for a stop sign. He said 106 node sites have been approved in Maricopa County.

Regarding radio frequency emissions and health safety, Ms. Legarde explained that the FCC safety standard is fifty times below what the scientific community believes could be a potential health risk. She said Newpath DAS facilities are typically 1% of the FCC standard. Because Newpath's facilities are low powered, they are below the level that requires reporting for radio frequency transmission.

Responding to questions from the Council, Newpath stated that the proposed hub will be in a commercial zone on Scottsdale Rd. There are various options for connecting the hub to the nodes including shallow trenching (micro trench 9 inch), directional bore, or utilizations of exiting conduit to pull their own fiber.

Newpath has entered into an agreement with both APS and SRP but SRP still requires meter boxes.

Mr. Kavanagh stated that Newpath has a disaster recover plan to guarantee service including additional equipment and local crews. They have experience in California with fire damage. Service level agreements with carriers that allow programs put in place. Council requested that additional information on this topic be provided.

Ms. Legarde announced that Newpath will hold three neighborhood meetings with maps of proposed the sites in order to get input on design. She said Newpath has good track record with working with HOAs and homeowners on designs and locations. They are also willing to take pre-installation and post installation RF measurements if requested for individual sites.

Mr. Bacon stated that Newpath is not the only DAS provider and it would be necessary to offer ROW access to other providers. Furthermore, the Town would require Newpath to provide a map showing all proposed locations to max out service.

Mr. Bacon said there are three ways to allow DAS entry into the right-of-way: revise the Town Code; use a conditional use permit process; or use a Special Use Permit process. There are advantages to the SUP process because all site heights could be approved concurrently whereas CUPs would be approved individually.

The Mayor opened the meeting to public comment.

Cathy Filippone expressed concern about RF emissions and health risks. Newpath responded that there are no emissions from the hub but 15 to 20 watts at the node.

Russ Mosser asked if individual users cost would increase. Newpath responded that they would not.

Janice Stoney asked if AT&T is an investor in Newpath. AT&T responded that they are just partner and DAS customer.

Paul Dembow asked if a limited number of cell towers would provide the same coverage as 48-60 DAS nodes. Newpath responded that it would be necessary to conduct a coverage analysis.

Janet Ingram suggested that the Town hire an expert on RF emissions.

Lisa Parker expressed concern about the health effects of RF emissions

Mr. Bacon concluded by saying the Town desires to improve cell service while retaining its ability to regulate design, maintenance, and fees associated with any proposed cellular service enhancements.

Discussion of Redevelopment Areas

Mr. Miller summarized that the owners of one of the resort properties in Town has been in discussions with a developer who may wish to utilize industrial development bonds (IDB) as a financing tool. Repayment of IDB debt is not the Town's responsibility. However, IDB's cannot be used without a companion authorization from the Town establishing a redevelopment area.

Mr. Miller introduced Gary Birnbaum of Mariscal, Weeks, McIntyre & Friedlander, P.A. and Scott Ruby of Gust Rosenfeld, P.L.C. who have extensive experience with this topic.

Mr. Birnbaum stated the statutory authority to form a slum clearance and redevelopment area are found in A.R.S. §36-1471. It gives every city an opportunity to designate a redevelopment area in their city. The Arizona statutes were enacted in response to the American Housing Act of 1949 which, among other provisions, provided federal financing for slum clearance programs associated with urban renewal projects in American Cities.

In 2003, the title of Article 3 was changed from "redevelopment areas" to "slum clearance and redevelopment". When Scottsdale declared the current Nordstroms triangle a slum there was an uprising. Scottsdale went to the legislature and changed the term to "redevelopment area". It was subsequently changed back to "slum clearance and development".

In Arizona you can only condemn a property for a specific list of uses. Imminent domain is authorized for redevelopment. However, the Federal Appeals Court lists 27 factors to determine if imminent domain is appropriate. The valuation is based on fair price versus fair market price.

He said the first step in establishing a redevelopment project area is for the Town to adopt a resolution by a two-thirds vote that finds that one or more slum or blighted areas exist within the community; AND the redevelopment of such area or areas is necessary in the interest of public health, safety, morals or welfare of the residents. Such action requires advance written notification of real property owners within the boundaries of the area.

A slum is an area in which both of the following are present:

- There is a predominance of buildings or improvements, whether residential or nonresidential in the area; and
- Public health, safety or welfare is threatened because of (a) dilapidated, deteriorated, aging or obsolescent buildings or improvements; (b) inadequate provision for ventilation, light, air, sanitation or open spaces; (c) overcrowding; or

(d) the existence of conditions that endanger life or property by fire and other causes.

A blighted area is one in which sound municipal growth and the provision of housing accommodations is substantially retarded or arrested in a predominance of the properties by any of the following:

- Defective or inadequate street layout;
- Faulty lot layout;
- Unsanitary or unsafe conditions;
- Deterioration of site or other improvements;
- Diversity of ownership;
- Tax or special assessment delinquency;
- Defective or unusual conditions of title;
- Improper or obsolete platting; or
- Existence of conditions that endanger life or property by fire and other causes.

Once a municipality has found the existence of a slum or blighted area in the community, it can undertake a "redevelopment project" to acquire slum or blighted properties, demolish structures, construct or reconstruct streets, utilities and improvements, and sell or lease land in those areas for residential recreation commercial industrial or other use, retain for public use.

For a redevelopment project to be undertaken, the municipality has to adopt a redevelopment plan. The municipality itself may prepare the plan, or any public or private person or agency can submit the plan.

The Plan must contain:

- The boundaries of the project area;
- A map of existing uses and conditions of the property;
- The proposed uses of the property within the project area;
- Site improvements and additional public utilities required to support the new land uses;
- Cost of acquisition and preparation for redevelopment, and estimated proceeds from disposal of property to redevelopers;
- Proposed method of financing.

Special findings required for a "blighted" area (residential designation) must contain:

- A shortage of housing of sound standards and design, adequate for family life, exists in the municipality;
- The need for housing accommodations has been, or will be, increased as result of the clearance of slums in other areas under redevelopment;
- The conditions of blight in the area, and the shortage of decent, safe and sanitary housing, cause or contribute to an increase in and spread of disease and crime, and constitute a menace to the public health, safety, morals or welfare; and

- The development of the area for predominantly residential uses is an integral part of, and is essential to, the program of the municipality for the elimination of the slum or blighted area.

The designation of an area as a slum or blighted area terminates ten years after the initial designation, unless substantial action has been taken to remove the slum or blighted conditions.

The municipality may repeal the redevelopment plan but there are Prop 207 concerns if the redeveloper has vested rights.

A municipality may create a “slum clearance and redevelopment commission” to exercise the powers of the municipality with respect to the designation of areas as slum or blighted, and the approval of a redevelopment plan for a redevelopment area.

A municipality can issue bonds to finance the redevelopment project. These bonds are payable solely from income derived from the redevelopment project.

Prop 207 might be implicated if property value is diminished by establishment of a redevelopment area but there is no case law yet on this matter. It is advisable to obtain a Prop 207 waiver from the property owners. Adjacent property owners do not have a Prop 207 claim.

The study to determine if slum or blight exists may be done by the municipality or by a third party.

Attorney Scott Ruby addressed industrial development bond financing. He said these bonds are issued by an industrial development authority for authorized projects whose debt service is normally paid and secured by the project’s revenues. Projects eligible to be financed include any commercial enterprises, including facilities for office, recreational, hotel, motel, and service uses of the facilities and which are located in a “designated area”.

If a redevelopment area has been established, it is possible to issue bonds secured by various revenues in the jurisdiction but not with the general fund or ad valorem taxes. However, municipalities can have a General Obligation Bond election for redevelopment financing purposes.

He said there is no federal tax on state and local obligations with some exceptions.

He said it is possible for an industrial development authority (IDA) to issue bonds for a project in a different municipality or county. Any IDA can come in and finance a project with the exception of multifamily residential.

Motion and vote – Council Member Clarke moved to go into Executive Session at 5:42 P.M. Kirby seconded the motion with passed by a vote of 7-0.

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.

- b.** Discussion and consultation with the Town Attorney regarding pending or potential litigation and current and/or future development agreement with **Potomac Hotel Limited Partnership and/or MTS Land LLC and/or HB Equities related to Mountain Shadows** as authorized by A.R.S. §38-431.03.A.4 and legal advice **regarding redevelopment zoning laws** as authorized by A.R.S. §38-431.03.A.3.

- c.** Consideration of **appointments to the Planning Commission** as authorized by A.R.S. §38-431.03.A.1.

RECONVENE FOR REGULAR MEETING

CALL TO ORDER

Mayor Parker reconvened the meeting of the Town Council at 7:00 P.M.

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 Mead
Assistant Police Chief Larry Scott
Planning & Building Director Eva Cutro
Public Works Director Andrew Cooper, Jr.
Municipal Court Director Jeanette Wiesenhofer

PLEDGE OF ALLEGIANCE

Mayor Parker led the Pledge of Allegiance.

PRESENTATIONS

Recognition of Eileen Rasmussen

Mayor Parker recognized Eileen Rasmussen for her 22 years of service to the Town on the occasion of her retirement. Municipal Court Director Jeanette Wiesenhofer accepted the proclamation on behalf of Ms. Rasmussen.

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 September 10, 2009**
- b. Appointment of Member(s) to the Planning Commission**
- c. Approval of Human Services Agency Funding**
Recommendation: Authorize the Town Manager to distribute FY2010 human services funding to the agencies listed in the action report, in the total amount of \$45,350.
- d. Appointment of Members to the Human Services Funding Committee**
Recommendation: Establish a Human Services Funding Committee and appoint Councilmembers Mary Hamway and Pam Kirby; and authorize the Town Manager to appoint staff support.
- e. Approval of Special Event Liquor License for Kachina Country Day School**
Recommendation: Approve the Special Event Liquor License application for the Kachina Country Day school, subject to the stipulations in the action report.
- f. Authorization of Town Participation in and Administrative Support for the Town of Paradise Valley Fifth Annual Classic Car Show**
Recommendation: Authorize Town participation in and administrative support for the Town of Paradise Valley Veteran's Appreciation Vintage Car Show to be held Saturday, November 14, 2009.

Mr. Bacon summarized the items on the Consent Agenda.

Items b, c, d, and f were removed for separate discussion.

Motion and vote – Vice Mayor Simpson moved to approve items 11a and 11e. Council Member Clarke seconded the motion which passed by a vote of 7-0.

- f. Authorization of Town Participation in and Administrative Support for the Town of Paradise Valley Fifth Annual Classic Car Show**
Recommendation: Authorize Town participation in and administrative support for the Town of Paradise Valley Veteran's Appreciation Vintage Car Show to be held Saturday, November 14, 2009.

Former Mayor Ed Winkler thanked the Council for its continued support of the car show. He introduced Donna Adams representing the Arizona Military Relief Fund which will receive all of the proceeds from the event this year.

Motion and vote- Council Member Clarke moved to approve item 11f. Vice Mayor Simpson seconded the motion which passed by a vote of 7-0.

c. Approval of Human Services Agency Funding

Recommendation: Authorize the Town Manager to distribute FY2010 human services funding to the agencies listed in the action report, in the total amount of \$45,350.

Resident Dorothy Smith encouraged the Council to distribute the full budgeted amount to the various human services organizations and not to reduce funding this year as recommended in the action report. She also requested that the Council consider budgeting more for human services support in future years.

Council responded that the budgeted amount was developed last December. Since then revenue has not met expectations and it is prudent to reduce expenditure where possible.

Motion and vote – Vice Mayor Simpson moved and Council Member Hamway seconded the motion to authorize the Town Manager to distribute FY 2010 human services as follows with the exception that funding will not be disbursed unless a specific request is made by the agency in writing:

○ Anti-Graffiti Hotline	\$ 500
○ Area Agency on Aging	\$10,000
○ Beatitudes Center D.O.A.R.	\$ 5,000
○ Constitution Commemoration Committee	\$ 750
○ Maricopa County Animal Control	\$ 500
○ Northwest Block Watch Coalition	\$ 500
○ American Cancer Society Relay For Life	\$ 5,000
○ Scottsdale Prevention Institute	\$18,000
○ Southwest Center for HIV/AIDS	\$ 500
○ United Way	\$ 4,100
○ <u>Valley Fever Center For Excellence</u>	<u>\$ 500</u>
○ Total	\$45,350

The motion passed by a vote of 7-0.

d. Appointment of Members to the Human Services Funding Committee

Recommendation: Establish a Human Services Funding Committee and appoint Councilmembers Mary Hamway and Pam Kirby; and authorize the Town Manager to appoint staff support.

Motion and vote – Vice Mayor Simpson moved and Council Member Hamway seconded the motion to approve item 11d. The motion passed by a vote of 7-0.

11b Appointment of E. Louis Werner to the Planning Commission

Motion and vote – Council Member Clarke moved to re-appoint Louis Werner to the Planning Commission for the term October 1, 2009 to September 30, 2012. Council Member LeMarr seconded the motion which passed by a vote of 4-3.

Yes	No
Parker	Simpson
Clarke	Barry
Hamway	Kirby
LeMarr	

11b Appointment of James Baker to the Planning Commission

Motion and vote – Council Member Clarke moved to re-appoint James Baker to the Planning Commission for the term October 1, 2009 to September 30, 2012. Council Member LeMarr seconded the motion which passed by a vote of 7-0.

PUBLIC HEARINGS

Consideration of Resolution Number 1198 Declaring the 2009 Tax Code Amendments a Public Record and Ordinance Number 616 Amending the Town Tax Code

The Town Clerk stated that the Town adopted, and is governed by, the Model City Tax Code. In February the Model City Tax Code Commission approved certain minor changes to the tax code and recommends approval of those changes by each model city tax code jurisdiction. He said this year's amendments are minor in nature and mostly make technical corrections and conforming changes. The fiscal impact is minimal if any.

The first amendment clarifies an existing exemption regarding development fees. The second amendment adds a tax exemption for the leasing of solar energy devices. This was inadvertently left out of last year's code amendments which provided tax exemptions for solar energy devices in other parts of the code. The third amendment makes a technical correction to the out-of-state sales provision of the code by eliminating a potential conflict with the interstate commerce clause of the constitution.

Mayor Parker opened the public hearing. There were no public comments.
Mayor Parker closed the public hearing.

Responding to a question from the Council, Mr. Miller confirmed that the amendment regarding development fees simply clarifies what is covered by the exemption and that the Town already exempts taxation of its one development fee.

Motion and vote – Council Member LeMarr moved to adopt Resolution Number 1198 and Ordinance Number 616. Council Member Hamway seconded the motion which passed by a vote of 7-0.

Consideration of Approval of Liquor License Person Transfer and Interim Permit for El Chorro Lodge

The Town Clerk stated that El Chorro Lodge, located at 5550 E. Lincoln Drive, requests a liquor license person transfer from Joe F. Miller to H. J. Lewkowitz, agent, Santor Restaurants, LLC and interim permit.

He said state law requires the Town conduct a public hearing to receive comments on whether issuance of the liquor license is in the best interest of the community. Notice of the application was posted on the applicant's premises for 20 days in accordance with state law. The Town did not receive any arguments in support of or opposition to the application. There are no violations on file with the Arizona Department of Liquor Licenses and Control against the property. The Paradise Valley Police Department and the Planning & Building Department reviewed the application and found no reason to oppose it.

Mayor Parker opened the public hearing. There were no public comments.
Mayor Parker closed the public hearing.

Motion and vote – Council Member Clarke moved to forward the application for person transfer and interim permit from Joe F. Miller to H. J. Lewkowitz, Agent, SANTOR Restaurants, LLC d.b.a. El Chorro Lodge to the Arizona Department of Liquor Licenses and Control with a recommendation for approval. Vice Mayor Simpson seconded the motion which passed by a vote of 7-0.

ACTION ITEMS

There were no action items.

ADJOURNMENT

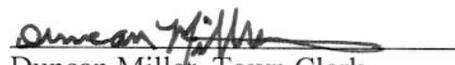
Motion and vote – Vice Mayor Simpson moved to adjourn. Councilmember Hamway seconded the motion which passed unanimously.

Mayor Parker adjourned the meeting at 7:29 p.m.



Vernon B. Parker, Mayor

ATTEST:

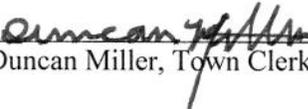

Duncan Miller, Town Clerk

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 8th day October 2009. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 22 day of October, 2009.





Duncan Miller, Town Clerk