



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

**JUNE 23, 2011**

**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, June 23, 2011 at 4:00 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 arrived at 4:08 p.m.  
Council Member Lisa Trueblood

**STAFF MEMBERS PRESENT**

Town Manager James C. Bacon, Jr.  
Town Attorney Andrew Miller  
Town Clerk Duncan Miller  
Town Engineer William Mead  
Finance Director David Andrews  
Community Development Director Eva Cutro  
Planner George Burton  
Public Works Director Andrew Cooper  
Police Chief John Bennett

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**Discussion of General Plan Update**

Senior Planner Molly Hood reported on the status of the General Plan Update and summarized the elements in the working draft. She said that the General Plan provides guidance for making development decisions by describing long-term goals for the Town's future, as well as, policies to guide day-to-day land use and resource allocation decisions. The Plan is also an expression of citizen preferences and a statement of town policy. It is not, however, a zoning map, a detailed policy for specific properties or areas, or an unchangeable document.

She explained the process developed to update the General Plan and noted that 47 public meetings were held and nine press releases were issued.

She provided an overview of the elements including: Community Character and Housing; Mobility; Open Space and Recreation; Environmental Planning and Water Resources; Sustainability; Public Facilities/Services and Cost of Development; and Land Use & Growth Areas.

She explained that the proposed 2012 General Plan incorporates a new land use concept which employs cross-hatching on the land use map. This will allow land owners whose property is located in a cross-hatched area to develop their property consistent with its current land use designation or develop under the alternate land use designation. For example, the areas known as East Lincoln North (Ritz Carlton property), East Lincoln South (includes Smoke Tree, Applewood, Cottonwoods, Lincoln Medical, and R-43 property), and 56<sup>th</sup> Street & Lincoln (Mountain Shadows) could be developed under the existing R-43 designation or could be developed under the SUP resort land use designation. This would allow for flexibility and save the property owners from having to go through the General Plan Amendment process in addition to the Special Use Permit process or subdivision process. It was noted that the General Plan amendment process requires seven to nine months. By showing these areas as cross-hatched it would eliminate redundant hearings and streamline zoning review and public input.

Mr. Bacon stated that the Council will hold detailed work sessions on each of the General Plan Elements after the summer break. Adoption of the General Plan is scheduled for November and it will be placed on the March 2012 ballot for voter ratification.

### **Discussion of Amendments to the Special Event Ordinance**

Planner George Burton explained that Section 8-8 of the Town Code, regarding Special Events on private property may be overly restrictive as currently written. The Town has received feedback from residents requesting that the Council amend the ordinance to provide greater clarification and managerial discretion to waive setback requirements in certain circumstances. He stated that the code currently requires all temporary structures on residential properties to meet accessory structure setbacks. This requires a 60 foot setback from the front property line and a 20 foot setback from the side/rear property lines on all R-43 properties. He said applicants often are not able to meet these requirements and there is no ability to seek relief.

He recommended the following language be added to the Code:

“The Town Manager, or his designee, may waive any setback requirement set forth in this Chapter for a Minor Event upon written request of an applicant when the applicant demonstrates reasonable cause and no material adverse impacts from the requested waiver.”

Mr. Bacon stated that an ordinance with this proposed language will be scheduled for a vote on September 8, 2011.

**Discussion of Franchise Agreements**

Town Attorney Andrew Miller briefed the Council on utility franchise agreement renewals for APS and Southwest Gas and possible new utility franchise agreements for the two private water companies operating in Town. He said the APS franchise agreement expires in June 2013 and the Southwest Gas franchise agreement expires in February 2015. Franchise agreements require approval by the Council and ratification by the voters at a municipal election. In order to place the agreements on the March 2012 ballot, the Council must adopt the agreements and call the special election by November 14, 2011.

Mr. Miller provided draft copies of the APS and Southwest Gas agreements and suggested that Council review them over the summer break and forward questions or comments to the Town Manager or Town Attorney. On September 8 there will be a detailed discussion of the renewal terms.

Mr. Miller stated that the two private water companies operating in Town, Berneil and Arizona-American, do not have franchise agreements. He said A.R.S. §9-502 appears to require that utilities which operate in the public right-of-way must obtain a franchise agreement. These agreements clarify terms for when Town right-of-way can be entered for water utility improvements, relocations of facilities required by the Town, prior rights issues, and right-of-way repair standards. The Town may also assess a franchise fee.

He noted that Arizona-American does not currently have a franchise agreement with the City of Scottsdale either; however, the city and the water company are in discussions. Responding to a question from Council, Mr. Miller stated that the Council has the authority to set a different franchise fee rate for water than it does for electricity or gas, currently 2%. The Council may even set the rate at 0%.

The Attorney was directed to follow developments in Scottsdale regarding franchise agreement discussions with Arizona-American so that Paradise Valley can be consistent.

**Motion and vote:** Vice Mayor Hamway moved to go into executive session at 4:50 p.m. Councilmember Trueblood seconded the motion which passed by a vote of 7 – 0.

**EXECUTIVE SESSION**

- a. Legal advice from Town Attorney regarding joint planning and zoning area options, its affect on rezoning processes, and de-annexation procedures as authorized by A.R.S. §38-431.03.A.3; and current and future development agreements with Five Star Development Resort Communities, 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 development agreement with Potomac Hotel Limited Partnership and/or MTS Land LLC related to Mountain Shadows Property and potential future development agreements related to the Mountain Shadows Property as authorized by A.R.S. §38-431.03.A.4; and legal advice regarding redevelopment zone laws as authorized by A.R.S. §38-431.03.A.3.
  
- c. The Town Council may go into executive session at one or more times during the meeting as needed to confer with the Town Attorney for legal advice regarding any of the agenda items listed on the agenda as authorized by A.R.S. §38-431.03.A.3.

**RECONVENE FOR REGULAR BUSINESS MEETING**

**CALL TO ORDER**

Mayor LeMarr reconvened the meeting of the Town Council at 6:09 P.M.

**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, Jr.  
Finance Director/Assistant Town Manager David Andrews  
Community Development Director Eva Cutro  
Planner George Burton

**PLEDGE OF ALLEGIANCE**

Mayor LeMarr led the Pledge of Allegiance.

**PRESENTATIONS**

There were no presentations.

**CALL TO THE PUBLIC**

Resident Robert Rasmussen stated that the Proposed General Plan is not general because it includes many specifics.

Jerry Van Gasse reported that the Phoenix Park Board meeting today was cancelled. He stated that the Park Board considered assessing a parking fee at the Echo Canyon trailhead but it was denied. He announced that someone is now offering a shuttle service to the trailhead.

**MAYOR / COUNCIL / MANAGER REPORT**

Councilmember Collins announced that the final General Plan Advisory Committee meeting will be held on Monday, June 27 at 4:00 p.m. He said GPAC will forward the document to the Planning Commission. He recognized Senior Planner Molly Hood for all her work on the General Plan.

**CONSENT AGENDA**

- a. Minutes of Town Council Meeting June 9, 2011**
- b. Cancellation of July and August Council Meetings**  
*Recommendation:* Cancel the July 14, July 28, August 11, and August 25 Regular Town Council meetings.
- c. Rejection of Bids for Solid Waste Removal Services**  
*Recommendation:* Reject all bids received for the solid waste services contract and re-bid the contract at a later date.
- d. Award of Contract for Custodial Service**  
*Recommendation:* Award the custodial services contract for Fiscal Year 2011-2012 to The Facility Group in an amount not to exceed \$29,341.
- e. Approval of Purchase of Two Replacement Pickup Trucks for the Public Works Department**  
*Recommendation:* Approve the purchase of two Chevrolet pickup trucks at a cost not to exceed \$64,000.
- f. Adoption of Resolution Number 1239; Authorizing Intervention in Arizona Corporation Commission Docket Number W-01303A-11-0101 Regarding the Sale of Arizona Water Works Company Sale of Shares of Common Stock to EPCOR Water (USA), Inc.**  
*Recommendation:* Adopt Resolution Number 1239.

**g. Approval of Property, Liability, and Excess Land Use Liability Insurance Coverage and Workers Compensation Insurance**

**Recommendation:** Approve property, liability, and excess land use liability insurance coverage and workers compensation insurance.

Mr. Bacon summarized the items on the Consent Agenda.

Items 10d, 10e, and 10f were removed for separate discussion.

**Motion and vote** – Councilmember Parker moved to approve items 10a, 10b, 10c, and 10g. Vice Mayor Hamway seconded the motion which passed by a vote of 7 – 0.

**10d. Award of Contract for Custodial Service**

**Recommendation:** Award the custodial services contract for Fiscal Year 2011-2012 to The Facility Group in an amount not to exceed \$29,341.

Council noted that the lowest bid was significantly less than the other bids and less than the current contract. Public Works Director Cooper responded that he conducted a reference check on the lowest bidder and confirmed with the owner that they would honor the bid.

Council also requested improved oversight of the custodial services contract at Kiva Elementary School Athletic Field.

**Motion and vote:** Vice Mayor Hamway moved to award the custodial service contract to The Facility Group for FY 2011/2012 in an amount not to exceed \$29,341. Councilmember Parker seconded the motion which passed by a vote of 7 – 0.

**10e. Approval of Purchase of Two Replacement Pickup Trucks for the Public Works Department**

**Recommendation:** Approve the purchase of two Chevrolet pickup trucks at a cost not to exceed \$64,000.

Council asked for clarification regarding the decision to replace one of the ½ ton pickups with a ¾ ton pickup. Mr. Cooper responded that a ¾ ton truck would be more appropriate for its assigned workload. It is anticipated that the vehicle will not have to be replaced as soon and have a lower maintenance cost.

Responding to a question from Council, Mr. Bacon explained that the vehicles would be purchased using savings from the capital budget. The Town was able to reduce its matching contribution to the ARRA Federal Stimulus street resurfacing project. That savings will be used to finance the vehicle purchase.

**Motion and vote:** Councilmember Collins moved to approve the purchase of two new Chevrolet pickup trucks for the Public Works Department at a cost not to exceed \$64,000. Vice Mayor Hamway seconded the motion which passed by a vote of 7 – 0.

**10f. Adoption of Resolution Number 1239; Authorizing Intervention in Arizona Corporation Commission Docket Number W-01303A-11-0101 Regarding the Sale of Arizona Water Works Company Sale of Shares of Common Stock to EPCOR Water (USA), Inc.**

**Recommendation:** Adopt Resolution Number 1239.

Council asked for clarification on the Town’s long term strategy. Mr. Miller responded that this resolution simply gives the Town standing in the ACC hearing regarding the sale of Arizona American Water. The Resolution does not authorize the Town to take a position. Once the filing becomes more complete, the Water Utility Committee will review the materials submitted to the docket and make a recommendation to Council.

**Motion and vote:** Vice Mayor Hamway moved to adopt Resolution Number 1239. Councilmember Kirby seconded the motion which passed by a vote of 7 – 0.

**PUBLIC HEARING**

**Consideration of Montelucia Resort & Spa Liquor License Transfer**

Town Clerk Duncan Miller stated that Montelucia Resort & Spa, located at 4949 E. Lincoln Drive, requests a liquor license person transfer from Andrea Dahlman Lewkowitz, agent, EHN Y Montelucia Resort, LLC to Andrea Dahlman Lewkowitz, agent, ML Hotel Operating Co., Inc.

The Montelucia Resort & Spa and its associated operations were sold to ML Hotel Operating Co., Inc (d.b.a. KSL Resorts) on May 20, 2011. Pursuant to the sale, the series #6 liquor license must be transferred to the new operator.

Although liquor license applications are filed with the State, which has the primary responsibility for reviewing the application and conducting background checks on the owners and agents, A.R.S. §4-201 requires that the Town Council hold a public hearing to receive comment on whether or not the 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 this application.

The Paradise Valley Police Department reviewed the application and found no reason to oppose it. Additionally, the Community Department had no objections to the application insofar as issuance of a liquor license is consistent with the Special Use Permit for this property.

Mayor LeMarr opened the public hearing.

Resident Robert Rasmussen questioned if the new owner was familiar with the noise complaints filed by Montelucia neighbors and if those complaints were considered as part of the application review process.

Andrea Lewkowitz, Agent for ML Hotel Operating Co., introduced herself and thanked Council for its consideration. She said the new owners are committed to becoming engaged in the community and working with neighbors to resolve any issues.

Mayor LeMarr closed the public hearing.

**Motion and vote:** Vice Mayor Hamway moved to forward the liquor license application from Andrea Dahlman Lewkowitz, agent for ML Resort Holdings, LLC for Person Transfer and Interim Permit to the Arizona Department of Liquor Licenses and Control with a recommendation for approval. Councilmember Trueblood seconded the motion which passed by a vote of 7-0.

### **ACTION ITEMS**

#### **Authorization for Town Manager to Execute a Lease Purchase Agreement with Motorola Inc. for 25 Mobile Radios at a Total Cost of \$177,129.56**

Mr. Bacon requested authorization to purchase 25 mobile police radios from Motorola at a cost of \$177,129.56. The radios would be lease purchased with payments due in FY 2012 – 13 and FY 2013-14.

Chief Bennett explained that the Police Department's current mobile radios are 20 years old and are not able to monitor Scottsdale Police or Phoenix Fire Department. He said there were two recent criminal incidents in which it was difficult to coordinate a police response with neighboring departments. The new radios will provide seamless interoperability between agencies.

Responding to a question from Council, Mr. Bacon stated that the lease could be paid for with revenue from either the Fire Service Fee or sales tax. The Fire Service Fee rate design includes funds for the emergency communications project. It was anticipated that purchase of these radios would be a portion of those project costs. He said ultimately the Council will decide in 2012 how to budget for this lease payment.

**Motion and vote:** Councilmember Kirby moved to authorize the Town Manager to execute a lease purchase agreement with Motorola, Inc. for 25 mobile radios at a total cost of \$177,129.56. Councilmember Parker seconded the motion which passed by a vote of 7 – 0.

**Approval of Intergovernmental Agreement for the Provision of Fire Protection Services to Clearwater Hills Fire District**

Town Attorney Andrew Miller stated that since July 1, 2007, the Town has provided fire services to the Clearwater Hills Improvement Association pursuant to an annual fire service agreement. In the past year, the Clearwater Hills HOA formed a Fire District. The main reason for creation of the Fire District was to have an organized property tax collecting entity to contract with the Town for the provision of fire services. The proposed Intergovernmental Agreement with the new Fire District is similar to the previous agreement with the HOA with the following notable changes:

- The annual fire service fee payment has been broken into two semi-annual payments which follow the collection schedule by the County Treasurer of fire district property taxes, the fees being paid in arrears in equal installments semi-annually on December 1 and June 1 of each year
- Because of the adjustment to starting payments in arrears, the time value of money is recognized by having the annual fees increased to \$ 190,000
- Annual fees shall now increase to match the Town's year-to-year cost increases under the Town's fire services intergovernmental agreement with the City of Phoenix instead of using a consumer price index inflator
- The IGA provides that the HOA must provide insurance coverage, as well as indemnification
- New sections were added to the IGA to address the possible needs for additional infrastructure with the Fire District and for addressing safety concerns
- The annual service fee does not include the cost of ambulance services as these costs would be billed separately by the ambulance service provider

Attorney Paul Gilbert, representing Clearwater Hills Fire District, thanked Council for its consideration. He stated that the newly created Fire District provides a much more reliable mechanism for collecting the fire fee from the District's residents and delivering payment to the Town. Mr. Gilbert stated that his clients are agreeable to the terms of the IGA with the exception of the insurance requirement. He argued that the provision which requires the Fire District to obtain primary and non-contributory insurance is unnecessary and expensive. He said the City of Phoenix does not require it of the Town, and the Town did not require it from the Homeowners Association in the past. He suggested that the insurance would not be necessary since the Fire District has agreed to indemnify the Town.

**Motion and vote:** Councilmember Parker moved to go into executive session at 7:37 p.m. Vice Mayor Hamway seconded the motion which passed by a vote of 7 – 0.

Mayor LeMarr reconvened the meeting at 7:52 p.m.

**Motion:** Vice Mayor Hamway moved to authorize the Town Manager to execute the Intergovernmental Agreement for the provision of Fire Protection Services to the Clearwater Hills Fire District with the following amendments:

1. Strike Paragraph 3 regarding renewal
2. Add the following sentence to Paragraph 13 regarding insurance: "The Town and the Fire District shall share in the cost of the procurement of such insurance, provided, however, that the Town's contribution for such insurance shall be a maximum of \$10,000."
3. The Town and the Fire District shall expediently negotiate new contract provisions for the continuation of this agreement with the stipulation that the fire insurance provision requiring the District to obtain a primary and non-contributory rider be retained in future agreements.

**Vote:** Councilmember Trueblood seconded the motion which passed by a vote of 6 – 1.

**Aye:** LeMarr, Hamway, Dembow, Kirby, Parker, Trueblood

**No:** Collins

**ADJOURNMENT**

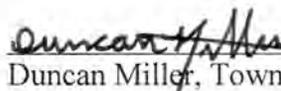
**Motion and vote** – Vice Mayor Hamway moved to adjourn. Councilmember Kirby seconded the motion which passed by a vote of 7 - 0.

Mayor LeMarr adjourned the meeting at 7:58 p.m.



Scott P. LeMarr, Mayor

ATTEST:



Duncan Miller, Town Clerk