



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

SUMMARIZED SPECIAL MEETING MINUTES

June 7, 2012

CALL TO ORDER

Mayor LeMarr called to order the Town Council special meeting of the Town of Paradise Valley, Arizona, held at Town Hall 6401 E. Lincoln Drive, on Thursday, June 7, 2012 at 3:00 PM.

COUNCIL MEMBERS PRESENT

Mayor Scott P. LeMarr
Vice Mayor Mary Hamway
Council Member Michael Collins
Council Member Paul E. Dembow attended by telephone conference call.
Council Member Pam Kirby
Council Member Vernon B. Parker arrived at 3:09 p.m.
Council Member Lisa Trueblood
Councilmember-elect Dan Schweiker

STAFF MEMBERS PRESENT

Town Manager James C. Bacon, Jr.
Town Attorney Andrew M. Miller
Town Clerk Duncan Miller
Community Development Director Eva Cutro
Planner George Burton
Senior Planner Molly Hood
Police Chief John Bennett

ACTION ITEMS

**Adoption of Ordinance Number 652 Amending Town Code Chapter 2 Mayor and Council;
and Adoption of Resolution Number 1257 Calling a Special Election for Voter
Consideration of Repealing Direct Election of the Mayor**

Town Attorney Andrew Miller explained that Council discussed reconsideration of the ballot measure that implemented the direct election of the Mayor at its work session meeting on May 24, 2012. This was partially in response to the submittal of 500 unofficial petition signatures during the Call to the Public on May 10, 2012 council meeting. In 2009, the Council voted to refer Ordinance Number 606 to the voters at the regular election in March 2010. The proposition passed by a vote of 1,617 to 1,434.

He stated that if the Council desires to place the question on the ballot again, it would be appropriate to adopt a resolution calling for a special election on November 6, 2012 and refer Ordinance Number 652 which repeals Ordinance Number 606 to the voters.

Residents and former mayors Robert Plenge and Ed Winkler spoke in favor of placing the matter on the ballot. Mayor Plenge stated that question has been on the ballot twice. It failed in 1998 and passed in 2010, both by narrow margins.

Resident Ross Mosser read a statement written by resident Linda Peterson Warren

Residents Joy MacLean, Bill Bowen, Marsi Johnson, Bunny (Nancy) Hall, Nan Murley, Russ Mosser, Phil Daspit, and Liz Clendenin spoke in favor of putting the question on the ballot in November.

Resident Edward Westerfield spoke against putting this matter on the ballot. He said the voters have already made a decision.

Resident and former Councilmember Jini Simpson stated that it was her belief that the question of direct election of the mayor was put on the ballot two years ago because the previous process by which the council selected the mayor had not been transparent or collegial.

Resident Rod Cullum questioned if there was an alternative way to elect a mayor or if campaigning for mayor could be prohibited.

Responding to a question from Council the Town Clerk stated that the signature requirement for official initiative petitions was 1,544. He said that in 1998, the question was put on the ballot as a result of an official initiative petition. In 2010, the Council voted to put it on the ballot.

Responding to a question from the Council, the Town Attorney stated that the Town Code provides that the mayor is the chief executive officer of the Town. The mayor does not have veto power or an extra vote. The mayor helps set the agenda and if there is a true crisis the mayor exercises emergency management authority.

There was Council discussion that it may be premature to assess the process of the direct election of the mayor since it has only been used in one election. On the other hand, there were concerns that the cost to run for mayor in 2012 was so great that potentially good candidates may not run for mayor in the future, especially since it is an unpaid volunteer position.

Motion and vote: Vice Mayor Hamway moved to adopt Ordinance Number 652 and Resolution Number 1257. Councilmember Collins seconded the motion which passed by a vote of 4 – 3.

| | |
|----------------|------------------|
| “Aye” | “Nay” |
| Collins | Kirby |
| Dembow | Parker |
| Hamway | Trueblood |
| LeMarr | |

Councilmember Dembow departed the meeting.

EXECUTIVE SESSION

- a.** 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.
- 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, MTS Land LLC, and/or Crown Development related to Mountain Shadows Resort as authorized by A.R.S. §38-431.03.A.4.

These items were not discussed.

PUBLIC HEARINGS

Adoption of Ordinance Number 649 Approving the Camelback Golf Club Special Use Permit Amendment

Ms. Cutro briefed Council on the Camelback Golf Club SUP history, redevelopment request, and Planning Commission recommendation.

She said the Indian Bend Golf Course which is part of the 250 acre Camelback Inn Golf Course was issued an SUP in 1971. The course is approximately 167 acres and extends into the City of Phoenix. It is currently 18 holes with flat topography.

Camelback Properties Inn, Inc submitted an application for an intermediate amendment to its SUP to completely renovate the existing Indian Bend Golf Course. The proposed improvements include alternate tee box locations, the restructuring of individual holes, resurfaced and reconfigured golf cart paths, new sand traps, new berms and reconfigured water obstacles. The proposal is unique in that there is no additional lot coverage, lighting, uses, or any major

structures proposed. A 14 acre undeveloped parcel owned by the Merrill Cantatierra subdivision will be leased to Marriott for inclusion in the golf course. In addition, the landscaping will be converted to a native palette with greatly reduced Bermuda grass.

The course redesign requires extensive earthwork with major grading and earth moving operations. The Maricopa County Flood Control District will review the engineering plans as well as the engineering firm Wood/Patel to certify that the modifications will not adversely affect flows in the Indian Bend Wash.

She said the Planning Commission reviewed the application in April and May. The Commission asked the applicant to provide additional information on the pathways, the construction time frame, and identify the wildflower mix. The applicant provided the information and the Commission voted 6 – 1 to forward the application to Council with a recommendation for approval subject to stipulations.

Planning Commissioner Mahrle briefed Council on the Commission's recommendation. He said the entire Commission expressed concerns about the 45 day review period specified by the SOD. He said the final recommendation might have been better and more complete had the Commission had more time to review new material that was provide to commissioners the night of the public hearing. For example, they would have liked more time to craft stipulations regarding tree replacement and a fence barrier that were important concerns of residents who attended the hearing. He said the Commission's recommendation is to approve the SUP application but they included a stipulation to bring the fence design back as a minor amendment.

Attorney Nick Wood spoke on behalf of the applicant. He said they conducted 6 neighborhood meetings. Neighbors within a 1,000 foot radius were invited. There are 113 homes adjoining the golf course. He said there was little opposition at the Planning Commission hearing because they had met with neighbors and made adjustments based on those meetings. He said the fence mentioned by Commissioner Mahrle was brought up by 3 neighbors who asked for a barrier to discourage pedestrians from leaving the sidewalk and walking to their backyard. He said the fence has not been designed. The applicant is will to design and construct it but does not want to have to come back to the Commission with a minor amendment. He asked that the stipulation state that it is a managerial or administrative amendment instead.

Generally speaking he said the fence will be a split rail fence approximately 300 feet on one side of a wash and 100 or 200 feet on the other side. It will meet drainage requirements so it does not impede flows.

Responding to a question from Council, Commissioner Mahrle stated that the Commission's concern is with the esthetics of the fence, not drainage. Since it will be visible off-site, the SUP ordinance would seem to suggest that it would qualify as a minor amendment.

Mr. Wood expressed concern that time is of the essence on starting construction given the planting and seeding deadlines. There would not be time to go back through the Commission process. He said improvements would take 16-18 months.

Mr. Bacon stated that the staff supports the Planning Commission's position that the fence is a minor amendment. The fence will be visible and usually that triggers a commission review.

Council responded that recent code amendments to the SUP process allows for landscaping and other visible items will be reviewed by staff.

Mr. Wood also suggested that one of the Commissioners stipulations regarding tree replacement be clarified to state the minimum number of trees on the course would be 474. If trees die, Camelback Golf Club will replace them.

Mayor LeMarr opened the public hearing.

David Sherf resident in Merrill Cantatierra thanked Marriott for their accommodations. He spoke in support of the project.

Resident Tom Beal spoke in favor of the project. He said the renovation would improve property values.

Robert Puskar spoke in favor of the project. He expressed concern about open access of the Course. He said many people use it as a dog run and for other trespassing activities. He asked that the access easement be abandoned.

Mr. Mahrle stated that the Commission did not discuss these concerns because it is a private matter between the HOA and Marriott and it was not part of the SOD.

Michael Grady spoke in favor of the project. He stated this project has many challenges because the course is not a blank canvass and sits in a wash. The emphasis should be placed on the stakeholders not people who do not adjoin the course. He said the Town is fortunate to have someone will to go at-risk to renovate the course.

Jeff Gaia spoke in favor of the project. He said the course is part of the reputation of the town and it generates tax revenue. The course has not been maintained. The silting is a safety hazard and must be resolved.

Guy Labelle spoke in favor of the project but preferred more trees to be planted. He suggested that access to paths be restricted and enforce them.

Benny Avrahami asked that the trees on Invergordon Rd be preserved or replanted.

Rusty Davis spoke in favor of the project.

Commissioner Marhle stated that the Commission was aware that trees in the middle of the course will have to be removed for drainage reasons. The applicant met with many neighbors some of whom asked that the trees be removed because they spoiled views. The issue of tree removal was not discussed in detail until the hearing because they did not learn the scope of the tree removal until then.

Mayor LeMarr closed the public hearing.

There was Council discussion to amend the recommendation to make the addition of the split rail fence a managerial amendment.

Motion Councilmember Parker moved and Councilmember Trueblood seconded the motion to adopt Ordinance Number 649 subject to the following new stipulations:

1. All improvements to the property shall be in substantial compliance with the following:
 - a. Project Narrative/Statement of Use, prepared by: Snell & Wilmer, dated May 31, 2012
 - b. Camelback Golf Club – Indian Bend Course booklet, prepared by Hurdzan/Fry Environmental Golf Design, dated May 4, 2012.
 - c. Construction Schedule dated May 15, 2012
 - d. Clean Water Act Section 404 permit letter, from Department of the Army, dated October 20, 2011
 - e. Exhibit illustrating revised cart path at Hole 14
2. The proposed gate at the well access point by Hole 2 must be placed on the golf course property; cannot open into the Town ROW; and, is limited to a 6 foot maximum height.
3. All directional and informational signage shall comply with Special Use Permit Guidelines.
4. “No Trespassing” signs are limited to three square feet in size and a maximum height of three feet.
5. The mechanical equipment enclosure wall shall not exceed ten feet in height.
6. The mechanical equipment enclosure roof shall not exceed fifteen feet in height.
7. The plans for the fence/wall along Doubletree Ranch Road must be reviewed as a Managerial Amendment to the SUP.
8. At any time within two (2) years from the completion of construction of the course improvements, should the landscaping plants originally installed pursuant to the requirements of this intermediate SUP Amendment experience significant dying or be deemed unhealthy and in need of replacement in any identified area, as solely determined by the Town Manager or his designee (hereinafter the “Plant Repair Areas”), said Plant Repair Areas shall be reseeded, replaced, or replanted (including the possibility that new plant plans or an alternate set of natural plantings should be substituted for those originally planted) by Camelback Golf Club such that the Plant Repair Areas will be able to maintain a complete and adequate amount of plant material that is consistent with the approved plans and as described in the Narrative.

9. At any time within two (2) years from the completion of construction of the course improvements, the Town Manager or his designee may inventory the trees on the course to physically confirm that there are no less than 474 trees on the course within the portions of the course located within Paradise Valley. Should any of the 474 trees retained pursuant to this stipulation be deemed by Town staff to be unhealthy and, as a result, in need of replacement, such trees shall be replaced or replanted by the Camelback Golf Club (or its successors) within 60 days of written notification by the Town of said determination. Replacement trees shall be 48" box trees and may be of the same species or an alternative species (as approved by the Town Manager or his designee).
10. Prior to any earthmoving work, the crossing at Invergordon Road and the construction management plan must be reviewed and approved by the Town of Paradise Valley.
11. The Town of Paradise Valley is included in Maricopa County's PM-10 non-attainment area. The applicant, therefore, shall demonstrate and provide written documentation describing how they will comply with Maricopa County Rule 310 (Fugitive Dust from Dust Generating Operations) and specifically PM-10 requirements prior to any earthmoving work.

Vote: Motion passed 6 - 0

Mayor LeMarr recessed the meeting at 5:30

WORK SESSION

Discussion of Mountain Shadows

Mayor LeMarr reconvened the meeting at 5:43 p.m.

Mayor LeMarr announced that there would be a Special Meeting on June 20 at 3:00 p.m. entirely devoted to the Statement of Direction (SOD) for Mountain Shadows Resort.

Mr. Bacon stated that the point of this meeting is to provide another overview of the conceptual plan and introduce ideas that will be included in the Statement of Direction. The June 20 meeting would be devoted to finalizing the SOD. He said the Planning Commission would be invited to the June 28 meeting when the SOD will be discussed and adopted by Council. The Planning Commission has tentatively scheduled its first meeting on Mountain Shadows for June 29.

Mr. Bacon briefed Council on the history of the Mountain Shadows Resort, the redevelopment request, and the proposed Statement of Direction.

He said Crown's revised application is unique for two reasons. Mountain Shadows is the only resort property in Paradise Valley without an SUP. Moreover, the SUP approval would be based on concepts, not actual plans.

He said the Town annexed Mountain Shadows in 1992. The site is approximately 68 acres in size with a golf course and driving range. The existing, but now closed, hotel portion of the resort occupies the remaining 31 acres. An application for a Special Use Permit (SUP) was filed on October 31, 2005. That application was revised and reactivated on May 15, 2012. The applicant has agreed that the revised submittal will go through the town's current review process starting with the SOD.

He stated that SUP application requests a mix of resort, residential, and golf course uses. The conceptual plans submitted by the applicant splits the property into 6 sections labeled A – F. He said during the review process, the development project will be considered by section. The application provides that east side of 56th Street (Section E) would be subdivided into a maximum of 50 residential lots with tracts of landscaped open space. The west side (Sections A, B, C, and F) would contain a resort hotel (100 minimum to 289 maximum resort hotel keys), approximately 189 resort residential units, resort retail, and golf facilities. The golf course (Section D) would remain with several holes reconfigured and the driving range would be eliminated and replaced with an indoor virtual driving range. The plan also includes improvements to 56th Street with a round-a-bout.

The proposed development includes a mix of one, two, and three story buildings with heights up to 36 feet. The setbacks for the structures range from 100 feet minimum on Lincoln Drive to 20 feet minimum along 56th Street. He said the density will be based on the Town's Floor Area Ratio (FAR) calculation. He said trellises will be included in the residential FAR calculation but not included in the resort and commercial sections. The FAR shall be 25% or less and shall be computed using the total lot area (68.48 acres) which includes the golf course.

He then summarized the Statement of Direction (SOD) Topics. He said the Planning Commission would focus its review on public improvements including Lincoln Dr., 56th St., and McDonald Drive and view corridors. The Commission may draft stipulations to address landscaping, mechanical equipment, resort operational issues and other land use concerns. The Commission is to complete its review on or before September 11, 2012.

Attorney Doug Jorden spoke on behalf of the applicant. He noted that the applicant is agreeable to terminate the development agreement and obtain an SUP for the property but he made it clear that by doing so the resort owner would be making many concessions. His client is also comfortable with the Town's FAR calculus so long as true roof overhang and courtyards are excluded from commercial and residential development on both sides of 56th Street. Otherwise, the design might suffer if it is driven by the FAR. He suggested that the focus should be on livable FAR because that is what everyone understands.

Mr. Bacon stated the Town might compromise by establishing a maximum square footage of overhangs in the SOD and any proposal beyond that would require an amendment to the SUP.

Council raised questions about the 36 feet height of the residential component and if that would be adequate for three stories.

Council asked to be provided with the original and current grading of the property.

Responding to a question from Council, Mr. Bacon stated that the preliminary plat will be processed concurrently with the SUP. He also stated that questions regarding taxes, in lieu payments, and inclusion of residential units in the rental pool will be included in the development agreement and not in the SUP.

Robert Watson, President of Solage Resort and Hotels responded to questions from the Council. He stated that a 100 key resort is consistent with their business plan. He provided examples of other Solage properties of similar size.

Mr. Bacon stated the next step is to hold a Special Meeting on June 20 to review the SOD and then invite the Planning Commission to attend the regular meeting on June 28 to approve the SOD.

Robert Flaxman, President of Crown Development, stated he is willing to tear up the current development agreement if the SUP is "bankable" with full vested, identifiably, reliable rights without the need for future approvals.

Resident Dennis Wurst asked for information from the applicant about the current ownership of the property, the foreclosure notice, and how it will be financed.

Becky Bennett, Mountain Shadows Resort Committee, stated there is a need more information. Her concerns on the east side included density, wall heights on Lincoln Drive, and if the ROW would be abandoned on 56th St. She also questioned the reconfigured golf course, the club house and fitness center, and the heights of the buildings.

Golf Course Architect Forrest Richardson stated the course was 2500 yards when first designed. A length of 3000 yards is necessary for a transient handicap, but it is not possible to achieve 3000 yards on this course. He stated that the current course needs new infrastructure and needs to be rebuilt to improve safety and improve play.

Edward Coyne II opposed any encroachment into the golf course. He asked that the review period be expanded beyond the current schedule.

Roger Nelson, President of Mountain Shadows Men's Club, requested that as much of the golf course be preserved as possible. He expressed concern that a smaller "pitch and putt" course would not be economically viable.

Robert Flaxman stated he was sensitive to the residents' concerns regarding the resort property and golf course that they are passionate about; while at the same time being sensitive to the

incentives necessary to compel Crown and Solage to invest the money necessary to turn Mountain Shadows into the vision that everybody wants. He explained that in preparation to reactivate this application he did a great deal of research on the history of the resort and golf course. He understood that some prior and current Mountain Shadows residents purchased their property with the understanding that the golf course would remain as it is today.

Mr. Flaxman stated, in April 1962, James Paul, the owner of each and every lot, signed a covenant to restrict the use of most of the golf course to be used only as golf course until December 31, 1987 at which point that covenant terminates. In addition, Mr. Paul when he created the covenant specifically excluded certain portions of the golf course, in particular most of the driving range and all of hole number one and all of hole number two from that covenant. So from the beginning of time those portions of the property were never restricted and were always intended to be the expansion area for the resort.

He stated that he has researched each and every grant deed of every property in Mountain Shadows West from the first time it was transferred from Mr. Paul to the original owners and confirmed that not a single home was purchased prior to the recoding of the golf course covenant. Every property owner who bought, knew, if they looked at their title, that the golf course was restricted only until December 31, 1987.

He stated that Mr. Paul was deposed in 2005. At the time that Mountain Shadows West was developed, Mr. Paul entered into a joint venture with Del Webb which meant he was no longer exclusively in control. Del Webb assigned his in house counsel named Tom Hetherington to oversee the development along with Jim Paul. Mr. Hetherington instructed Mr. Paul that there needed to be a time limit on the golf course and that everyone needed to know there was a time limit. One of the original homeowners hired attorney Frank Snell to review the contract for purchase of sale and review and negotiate with Tom Hetherington the golf course covenant. Mr. Flaxman stated that he has the letter written by Mr. Snell to his client that attached the purchase agreement, the golf course covenant, and the declarations of restrictions, and specifically called out to his client the cross-hatched portions of the course that are excluded from the covenant and the fact that the covenant was due to expire in 1987.

In December 1983, Jim Paul wrote two letters to the homeowners of Mountain Shadows urging them to address the expiring golf course covenants. However, the HOA board at the time either did not address the issue or Host Marriott would not entertain an extension of the covenants.

He concluded that when Mountain Shadows Resort was annexed into the Town in 1992, the golf course covenant had already expired.

He said it is not his intention to remove the golf course. It will continue to be an important part of the resort and the community. However, there are portions of the resort that must be expanded to make it viable. In order to do that, parts of the course must be used for other purposes. He said he would continue to meet with Mountain Shadows west residents on a compromise.

Mayor LeMarr stated that this item will be discussed again on June 20 and June 28.

Discussion of Alarm User Permit Fee

Mr. Bacon explained that during the last legislative session, HB2748 was adopted and signed by the Governor. The new law pre-empts municipalities from requiring alarm companies to obtain licenses. Instead, alarm companies will now obtain certificates from the State Board of Technical Registration. However, the certification requirement does not apply to an alarm company operated by a city or town.

He said as a result of the State's pre-emption, the Town Code must be amended to comply with state statute. Additionally, the Town Code provisions requiring alarm users to register with the Town will also be deleted. He said Draft Ordinance Number 651 makes those changes and Resolution Number 1259 amends the Master Fee Schedule to remove the associated alarm licensing fees.

Mr. Bacon stated that this ordinance will be placed on the June 28th agenda for consideration.

ADJOURNMENT

Motion and vote – Councilmember Parker moved to adjourn. Councilmember Kirby seconded the motion which passed by a vote of 6 - 0.

Mayor LeMarr adjourned the meeting at 8:00 p.m.



Scott P. LeMarr, Mayor

ATTEST:



Duncan Miller, Town Clerk