



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

September 27, 2012

CALL TO ORDER

Vice Mayor Collins called to order the Town Council meeting of the Town of Paradise Valley, Arizona, held at Town Hall 6401 E. Lincoln Drive, on Thursday, September 27, 2012 at 4:00 PM.

COUNCIL MEMBERS PRESENT

Mayor Scott P. LeMarr arrived at 4:42 p.m.
Vice Mayor Michael Collins
Council Member Paul E. Dembow attended by telephone conference call
Council Member Pam Kirby
Councilmember Dan Schweiker
Council Member Lisa Trueblood

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
Police Chief John Bennett
Presiding Judge Ty Taber
Municipal Court Director Jeanette Wiesenhofer
Public Works Director Jim Shano
Finance Director Scott McCarty
Town Engineer William C. Mead

WORK SESSION

Discussion of Proposal to Change State Law Regarding Fire Districts

Town Manager Jim Bacon introduced Lee Miller and John Flynn. He said they were invited to present a proposal to change state law regarding fire districts. Presently, fire districts are separate units of local government with their own boundaries and elected officials. They are created by an act of the county Board of Supervisors after the Board has received a sufficient

number of petitions. Once created, fire districts may acquire assets and hire employees. The proposal is to allow the Town Council to serve concurrently as the Board Members for a fire district which has boundaries identical to those of the municipality.

Mr. Flynn explained that the proposal is to seek legislative enactment of a law that would authorize cities and towns to form a fire district for the singular purpose of funding contract fire services and associated expenditures. The municipal fire district would have the following characteristics:

- Form a fire district with the same boundaries as the municipality
- The governing board for the fire district would be the town council
- The fire district would be contract only with no employees, assets, or debt
- Fire district formation would be by simple majority vote at a local election

A second piece of legislation would enable cities, towns, and fire districts which contract for fire services to be credited with their communities' portion of the Fire Insurance Premium Tax. The amount to be used to offset contract costs.

The benefits to the Town if this legislation were adopted would be:

- It would provide a sustainable and reliable revenue source to fund fire service
- It would remove annual fire service IGA costs from the general fund
- The Town would maintain governance of the fire district
- The Town could realize approximately \$400,000 in revenue from its share of the fire district assessment tax and \$150,000 in revenue from its share of the Fire Insurance Premium Tax

Mr. Bacon reminded Council that forming a fire district was one of many alternatives discussed over the last two years as a means of funding the intergovernmental agreement with the City of Phoenix for fire and emergency services. A primary property tax was another alternative. Ultimately the Town decided to proceed with a fire service fee. One of the primary reservations against implementing a property tax was that the revenue generated by the tax is deposited in the General Fund to be used for any purpose and once the tax has been adopted it cannot be eliminated. The concern with forming a fire district was that it has its own board with its own administrative resources. It was felt that this would be duplicative and unnecessary.

There was Council consensus to authorize the Town Manager to request a cost proposal from Mr. Miller and Mr. Flynn to lobby the legislature to adopt these proposals. It was further decided that the proposal should be reviewed by the Town's Fire Service Fee Committee who would then forward a recommendation to the full Council.

Discussion of Town's Photo Enforcement Program

Mr. Bacon stated that in May 2012, the Council agreed to a short-term and long-term review process for the Town's photo enforcement program. On May 24, 2012, the Council voted to extend the current contract with Redflex Traffic Systems for a one-year period. It was understood that Staff would report back to Council with a proposal for improvements to the photo enforcement program in the fall. He said these proposed improvements would serve as the basis for developing a request for proposal (RFP) for a new long-term contract, should the Council wish to proceed.

Police Chief John Bennett described the features of the current photo enforcement program. He said the vendor (Redflex) maintains and upgrades all 5 fixed site locations; maintains, upgrades, and deploys two mobile units; administers violations processing; and works with the process service company to ensure service of citations.

He proposed the following improvements:

- Discontinue deploying the mobile vans on Lincoln Drive and Tatum Blvd so they could be utilized in other parts of Town.
- Maintain the 5 current fixed site combo approaches (speed and red light)
- maintain 2 current mobile units
- Add 3-5 additional fixed combo approaches (speed and red light)
- Add 1-5 H.A.L.O. (HALO approaches detects red light violations and holds the cross traffic with the "all red" phase allowing the violator to clear the intersection before cross traffic is allowed to enter the intersection.)
- Add 1-3 police vehicle mounted License Plate Reader (LPR reads each license plate that passes the system and compares the information against programmed lists.)
- Add 1-4 fixed location L.P.R.'s
- Maintain current violation administration effort

There was Council consensus to authorize Staff to develop an RFP to send to the two vendors (American Traffic Systems and Redflex Traffic Systems) who provide photo enforcement equipment and services. Council stressed the value in providing an opportunity for both vendors to submit proposals that would be evaluated based on the same criteria. It was agreed that the Council would be given a chance to review the RFP before it is released. There was interest in requiring the vendors to provide information on capital and ongoing costs, as well as, anticipated profit and loss statements.

Discussion of Mountain Shadows Special Use Permit Applications

Mr. Bacon reported that in an August 27, 2012 memo, he outlined the concept of development envelopes for the Mountain Shadows Resort SUP application review. This concept was used by the Planning Commission during its review and hearing process. He said when the concept was

developed and sent to the Planning Commission as part of the Statement of Direction (SOD), the applicant was not invited to review or comment on the concept. He said that the applicant also did not provide input on the SUP stipulations drafted by the Planning Commission and forwarded to the Council this week. However, following the Commission's recommendation, the applicant's attorney submitted a response to the development concept and will have comments on many off the recommended stipulations. It would be appropriate for the applicant to have an opportunity during an upcoming public meeting to present feedback.

Community Development Director Eva Cutro reported that the Planning Commission held a hearing on September 24, 2012 and unanimously voted to forward the Mountain Shadows Resort SUP with 105 stipulations to the Town Council with a recommendation for approval. She said the SUP and stipulations were available for review on the Town's website.

She said six neighbors spoke at the public hearing. Both the Mountain Shadows East and West Homeowners' Associations provided a list of stipulations they would like added to the SUP. She said many of the requests are either already addressed in the SUP or will be addressed in the Development Agreement. The remaining issues are mostly private matters between the applicant and the neighbors.

Council discussed how best to consider the differences between the SOD, the Planning Commission's recommendation, the Staff, the applicant, and the HOAs. Mr. Bacon responded that Staff would create a matrix for the next meeting that would compare each of the parties' positions for each provision of the SOD, SUP, and/or stipulation. The residents would also have an opportunity to address the Council during the public hearing.

Mr. Bacon stated that there would be a Special Meeting held on October 4, 2012 at 5:00 p.m. devoted entirely to the Mountain Shadows SUP. He said it would be an opportunity for all stakeholders to share their concerns. No decisions would be made at the meeting, but rather it would be a time for the Town, the applicant, and the neighbors to see where there is agreement and what disagreements still remain to be resolved.

Open Meetings Law and Public Records Law Training

Town Attorney Andrew Miller stated that last January concerns were raised that there could have been an Open Meeting Law (OML) violation when some emails were exchanged between some Planning Commissioners and Town Council members. In response, the Town self-reported the Arizona Attorney General's Office. As part of the consent decree, the Town agreed to provide refresher training on OML specific to email for the Council and Commission.

He explained that the OML applies not just the Council, but also to the Planning Commission and all subsidiary boards, committees, or commissions of the Town. This includes "Advisory Committees" or groups officially established to make recommendations to the Council, such as

the Water Utility Committee. It could also include an unofficial group set up to provide a formal recommendation to the Council.

He clarified that a "meeting" is a gathering, in person, of a quorum to discuss, propose or take legal action including through technological devices such as email, phone, etc. He noted that there is a 2005 Attorney General Opinion (I05-004) that provides guidance on when an exchange of e-mails may constitute an illegal meeting.

Responding to a question from Council, Mr. Miller stated that it would not be a violation of OML if a quorum of Councilmembers attended a social or sporting event together, so long as the members did not discuss any pending or possible future matters that would come before them. Even so, if Staff knows that a quorum may be present at an event, it is customary to prepare a courtesy public notice posting to inform the press and the public of the gathering.

Responding to another question, he stated that there is no statute of limitations on a meeting held in violation of the OML.

He stated that email communications are treated the same as any other form of communication between members. Emails exchanged among a quorum of the members that involve discussions, deliberations, or taking legal action on matters that may come before the Council constitute a "meeting" and thus violate the OML. However, an email from a single member to a quorum of the other members that simply includes information would not violate OML so long as other members do not respond. Similarly, emails from third parties to a quorum of the members would not violate OML, provided that the members do not send a response and include all other members. He suggested that it would be best to reply to the sender only and send a copy to Staff for inclusion in the official project file. This way the email could be sent to the rest of the Council and to the public as part of the Council meeting packet.

Responding to a question from the Council, Mr. Miller stated it would not be appropriate for one member to send serial emails to all the other members or to act as a "hub in a wheel". Moreover, Councilmembers cannot direct Staff to serve as a conduit for Council discussion or decision making in violation of the OML.

In conclusion, he stated that emails related to official duties are public records and must be maintained for public reproduction and inspection, even if maintained on a private computer. Responding to a question from Council regarding the retention period for email, Town Clerk Miller stated that the content of email determines its retention period. Generally, the retention period for Council correspondence is three to four years. Council requested additional guidance on retention requirements.

Motion and vote: Councilmember Kirby moved to go into executive session at 6:00 p.m. Vice Mayor Collins seconded the motion which passed by a vote of 6 – 0.

EXECUTIVE SESSION

- a.** Discussion and consultation with town representatives concerning the purchase, sale or lease of real property in the vicinity of the 7000 block of Highlands Drive, 4200 block of East Lamar Road, and 7000 block of Invergordon Road as authorized by A.R.S. §38-431.03.A.7.
- b.** Discussion and consultation with Town Attorney regarding contract negotiations with Redflex Traffic Systems as authorized by A.R.S. §38-431.03.A.4; and legal advice related to photo enforcement as authorized by A.R.S. §38-431.03.A.3.
- c.** Discussion and consultation with Town Attorney regarding contracts negotiations, pending or contemplated litigation, or settlement discussions conducted in order to avoid or resolve litigation related to contract with Ganem Construction, LLC as authorized by A.R.S. §38-431.03.A.4.
- d.** Discussion and consultation with legal counsel regarding pending or potential litigation regarding current development agreement with Potomac Hotel Limited Partnership and future development agreement with MTS Land LLC and MTS Golf LLC related to the Mountain Shadows Resort as authorized by A.R.S. §38-431.03.A.4; and legal advice related to bankruptcy and other legal matters connected with the Mountain Shadows Resort project as authorized by A.R.S. §38-431.03.A.3.
- e.** 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 8:30 P.M.

COUNCIL MEMBERS PRESENT

Mayor Scott P. LeMarr
Vice Mayor Michael Collins
Council Member Pam Kirby
Councilmember Dan Schweiker
Council Member Lisa Trueblood

Council Member Paul E. Dembow was not present

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
Police Chief John Bennett
Public Works Director Jim Shano
Town Engineer William C. Mead

PLEDGE OF ALLEGIANCE

Mayor LeMarr led the Pledge of Allegiance.

PRESENTATIONS

There were no presentations

CALL TO THE PUBLIC

There were no public comments.

CONSENT AGENDA

- a. Minutes of Town Council Meeting September 13, 2012**
- b. Minutes of Town Council Special Meeting September 20, 2012**

c. Authorization of Town Participation in and Administrative Support for the Town of Paradise Valley Eighth Annual Veterans' Appreciation Vintage Car Show

Recommendation: Authorize Town participation in and administrative support for the Town of Paradise Valley Eighth Annual Veterans' Appreciation Vintage Car Show to be held on Saturday, November 10, 2012.

d. Approval of Purchase of Replacement Vehicles for the Police Department

Recommendation: Approve the purchase of one 2012 Chevrolet Silverado pickup truck and the purchase of one 2012 Ford F-150 pickup truck for use by the General Investigations Unit of the Police Department.

e. Adoption of Resolution Number 1263, Abandoning a Portion of an Existing Drainage Easement on Lot 15 of Bret Hills Subdivision

Recommendation: Adopt Resolution Number 1263.

Mr. Bacon summarized the items on the consent agenda.

Motion and vote: Councilmember Schweiker moved to adopt the Consent Agenda as submitted. Councilmember Kirby seconded the motion which passed by a vote of 5 – 0.

PUBLIC HEARINGS

There were no public hearings.

ACTION ITEMS

Adoption of Ordinance Number 655 Amending Section 2-5-5 Personnel Appeals Board

Mr. Bacon stated that Ordinance Number 655 was discussed at the last work session. It reduces the number of members on the Personnel Appeals Board to three and makes those members the same as the civilian members on the Public Safety Personnel Retirement Board.

Motion and vote – Councilmember Schweiker moved to adopt Ordinance Number 655. Councilmember Kirby seconded the motion which passed by a vote of 5-0.

Appointments to Committees, Commissions, and Boards

Mr. Bacon stated that the Council held interviews on September 20, 2012, for residents interested in serving on the Planning Commission, Board of Adjustment, Hillside Building Committee, and Water Committee.

Mayor LeMarr stated that there is one vacancy and two expiring terms on the Mummy Mountain Preserve Trust. He said he would talk to the incumbents in the next two weeks about whether they want to be reappointed.

Councilmember Kirby asked not to be reappointed to the Water Utility Committee. Mayor LeMarr stated he would withdraw his appointments to the Water Committee until after such time the Council has an opportunity to discuss the goals and future role of the Committee.

Motion and vote – Councilmember Schweiker moved to make the following appointments. Councilmember Trueblood seconded the motion which passed by a vote of 5 – 0.

	TERM
ARTS ADVISORY COMMITTEE Bets Manera Bunny Gordon Mary Hamway	October 1, 2012 – September 30, 2015
BOARD OF ADJUSTMENT Catherine Kaufman Richard Chambliss	October 1, 2012 – September 30, 2015
HILLSIDE BUILDING COMMITTEE Tom Norris	October 1, 2012 – September 30, 2014
HISTORICAL ADVISORY COMMITTEE Catherine Kauffman Kathryn Gasser Patricia Livi Jini Simpson Maureen Strom Beth Wickstrom	October 1, 2012 – September 30, 2015
MUNICIPAL PROPERTY CORPORATION Dan Taylor Robert Coulter Alan Prince	October 1, 2012 – September 30, 2015
PLANNING COMMISSION Jerald Bien-Willner Pat Hurley	October 1, 2012 – September 30, 2015
PUBLIC SAFETY PERSONNEL RETIREMENT BOARD Richard Fincher, Chairman Dorothy Smith James Van Houten	October 1, 2012 – September 30, 2013

REQUESTS FOR FUTURE AGENDA ITEMS

Councilmember Trueblood requested to add a discussion of speed limits on Lincoln Drive and Tatum Blvd to the November 15 agenda.

Councilmember Kirby requested to add a discussion of the appointment to fill the Town Council vacancy on October 11.

Councilmember Schweiker requested to add a discussion of the SUP SOD on November 1 and a discussion of the role of the Planning Commission at a meeting in January.

Mayor LeMarr requested that the regular meeting on December 20 be cancelled unless an important matter comes up that must be addressed.

Motion and vote - Mayor LeMarr moved to add these items to future agendas. Councilmember Trueblood seconded the motion which passed by a vote of 5-0.

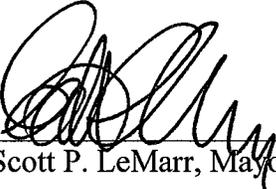
MAYOR / COUNCIL / MANAGER REPORT

There were no reports.

ADJOURNMENT

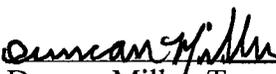
Motion and vote – Councilmember Trueblood moved to adjourn. Councilmember Schweiker seconded the motion which passed by a vote of 5 - 0.

Mayor LeMarr adjourned the meeting at 8:39 p.m.



Scott P. LeMarr, Mayor

ATTEST:



Duncan Miller, Town Clerk