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**TOWN COUNCIL MEETING  
6401 E. LINCOLN DRIVE  
PARADISE VALLEY, ARIZONA 85253  
MINUTES  
Thursday, September 28, 2017**

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**1. CALL TO ORDER / ROLL CALL**

Mayor Collins called to order the Town Council Meeting for Thursday, September 28, 2017 at 3:00 p.m. in the Town Hall Boardroom.

**COUNCIL MEMBERS PRESENT**

Mayor Michael Collins  
Vice Mayor Jerry Bien-Willner  
Council Member Paul Dembow  
Council Member Scott Moore  
Council Member Julie Pace  
Council Member David A. Sherf  
Council Member Mark Stanton

**STAFF MEMBERS PRESENT**

Town Manager Kevin Burke  
Town Attorney Andrew Miller  
Town Clerk Duncan Miller  
Town Engineer Paul Mood  
Police Chief Peter Wingert  
Deputy Town Manager Dawn Marie Buckland  
Public Works Director Brent Skoglund  
Community Development Director Eva Cutro

**2. STUDY SESSION ITEMS**

**17-327      Governance - Discussion #2**

Town Manager Kevin Burke explained that the Mayor and Town Council identified the broad topic of "Governance" as a priority discussion topic for this Council term. Governance was made up of 13 individual items that were discussed and prioritized at the September 14<sup>th</sup> meeting. The Council discussed and gave direction on the first three:

**Use of Consultants**

The Council reviewed a draft administrative policy on consultants. There was consensus to proceed with implementation of the policy with the addition of the following:

- Training should be provided to staff members who are responsible for overseeing contracts
- Appropriate performance metrics should be identified for each contract
- When possible, contracts for large projects should be broken down into phases to make it easier to suspend, change the scope, or terminate a project.
- Staff members should be ultimately responsible for, and present, the consultant's work.

(Consultants should be present to answer specific and detailed questions if called upon)

- o The Council may waive this requirement when appropriate, for example when a consultant is retained for a town-wide compensation and classification plan
- Council liaisons assigned to a project or selection of a consultant must be approved by Council

Secondly, there was Council consensus that there would be an annual look-back on all contracts during the budget process.

### **Transparency**

The Council discussed creating email accounts for all Town Committees to improve resident communication. Staff was directed to create email accounts for each committee (i.e. "BoardofAdjustment@paradisevalleyaz.gov"). Those emails would be forwarded to the staff liaison and the Town Clerk. The liaison would be responsible for providing all resident email to the committee members with the relevant meeting packet. Additionally, staff was directed to add language to the website explaining that emails sent to the committee email account would be provided to all members and that their correspondence would be considered a public record and subject to disclosure.

### **Cost Estimating**

The Council expressed a preference for staff to identify all project costs as early in the approval process as practicable. Four options were discussed:

1. List cost factors such as engineering studies and right-of-way acquisition
2. A system to quantify project costs with dollars signs (i.e. \$=hundreds, \$\$ = thousands, \$\$\$ = hundreds of thousands, \$\$\$\$ = millions)
3. Obtain actual cost estimates
4. Provide justification that it is too early to estimate costs because more direction is needed from the Council to define the project scope

### **17-309      Interview of Applicants for Appointment to the Municipal Property Corporation**

The Mayor and Council interviewed Ellen Andeen, Lou Baransky, and Rohan Sahani for a position on the Municipal Property Corporation (MPC). They discussed the qualifications of all the applicants interviewed on September 14 and 28. It was acknowledged that all candidates were exceptionally qualified and that volunteer opportunities should be found for all residents who are interested. There was consensus to consider Alec McAusland, who had applied for the Planning Commission in the spring, for appointment to the MPC.

### **17-307      Discussion of Kachina Estates Subdivision Sign & Modified Subdivision Wall**

Planner George Burton presented a request for approval of a subdivision sign and a modified subdivision fence wall submitted by Kachina Estates located at the northeast corner of Casa Blanca Drive and Malcomb Drive. He stated that Kachina Estates is a four-lot subdivision that was approved on October 23, 2014. The subdivision signs generally meet the requirements in Article XXV of the

Zoning Ordinance. However, the sign deviates from the maximum allowable size of eight square feet. He said staff supports the request because the applicant is only proposing one sign instead of two signs allowable by the Code.

He explained that the applicant proposes to modify the existing subdivision view fence adjoining Malcomb Drive by placing metal screens behind the view fence in order to provide privacy and security. This is inconsistent with the intent of the original approval. He noted that the contractor has already built the fence with the modification.

He stated that the Planning Commission voted 7 – 0 to recommend approval of the sign application and 5 – 2 to recommend approval of the modifications to the view fence.

Rich Brock, Bedbrock Development, was the developer on the Kachina Estates subdivision project. spoke in favor of the application.

The Council discussed refining internal procedures to discourage or penalize construction that is contrary to approved plans.

Mr. Burton stated that this item would be brought back for Council action on October 12, 2017.

**A motion was made by Council Member Stanton, seconded by Council Member Sherf, to go into executive session for item 17-329. The motion carried by the following vote:**

- Aye:** 7 - Mayor Collins
- Vice Mayor Bien-Willner
- Council Member Dembow
- Council Member Moore
- Council Member Pace
- Council Member Sherf
- Council Member Stanton

Mayor Collins recessed the meeting and went into Executive Session at 5:05 PM.

### **3. EXECUTIVE SESSION**

- 17-329 Discussion and Consultation with the Town Attorney regarding the Town Council's position on potential litigation regarding the Ritz Carlton Resort Special Use Permit setbacks for Areas B and C as authorized by A.R.S. §38-431.03(A)(4) and legal advice regarding zoning law as authorized by A.R.S. §38-431.03(A)(3).**
  
- 17-311 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 items listed on the agenda as authorized by A.R.S. §38-431.03(A)(3).**

### **4. BREAK**

**5. RECONVENE FOR REGULAR MEETING**

Mayor Collins reconvened the meeting at 6:05 PM

**6. ROLL CALL**

**COUNCIL MEMBERS PRESENT**

Mayor Michael Collins  
Vice Mayor Jerry Bien-Willner  
Council Member Paul Dembow  
Council Member Scott Moore  
Council Member Julie Pace  
Council Member David A. Sherf  
Council Member Mark Stanton

**STAFF MEMBERS PRESENT**

Town Manager Kevin Burke  
Town Attorney Andrew Miller  
Town Clerk Duncan Miller  
Town Engineer Paul Mood  
Police Chief Peter Wingert  
Deputy Town Manager Dawn Marie Buckland  
Public Works Director Brent Skoglund  
Community Development Director Eva Cutro

**7. PLEDGE OF ALLEGIANCE\***

Graham Jacoby from Boy Scout Troop 818 led the Pledge of Allegiance.

**8. PRESENTATIONS\***

**17-331      Public Safety Personnel Retirement Board Update**

Richard Fincher, Chair of the Public Safety Personnel Retirement Board, presented the Board's annual update. He described the Board's purpose and membership. He reviewed the Town's officer disability audit and pension liability. Finally, he highlighted proposed reforms at the state level.

**17-330      Historical Advisory Committee Update**

Catherine Kauffman, Chair of the Historical Advisory Committee, presented the Committee's annual update. She reviewed the committee's purpose and membership. She listed the Committee's accomplishments over the past year including the oral history project. She noted that the Book of Interviews is now available online. Additionally, the Town's scrapbooks from 1961 – 2007 have been digitized and will be available online in the near future. Finally, she stated that the Committee drafted a policy regarding recognition of notable residents.

**9. CALL TO THE PUBLIC**

Resident Dorothy Smith thanked Public Works Director Brent Skoglund for coordinating with the City of Phoenix to clean the right-of-way on Tatum Blvd north of Caida del Sol. She also thanked Chief Wingert for hosting the various education events at the Police Department.

**10. CONSENT AGENDA**

Mr. Burke summarized the items on the consent agenda.

**17-313 Minutes of Town Council Meeting September 14, 2017**

**17-304 Consideration of a proposed lot split 6001 E Cactus Wren Road**

A motion was made by Council Member Sherf, seconded by Council Member Stanton, to approve the Consent Agenda. The motion carried by the following vote:

**Aye:** 7 - Mayor Collins  
Vice Mayor Bien-Willner  
Council Member Dembow  
Council Member Moore  
Council Member Pace  
Council Member Sherf  
Council Member Stanton

**11. PUBLIC HEARINGS**

There were no public hearings.

**12. ACTION ITEMS**

**17-332 Discussion and Direction to Staff Regarding Ordinance Number 694, The Ritz-Carlton Resort Special Use Permit and Potential Settlement Agreement with Shea Homes**

(This item was moved to the end of the meeting.)

**17-310 Confirmation of Appointments and Reappointments to the Municipal Property Corporation, the Mummy Mountain Preserve Trust, and Advisory Committee on Public Safety**

Mr. Burke presented the list of applicants for appointment and reappointment to the Municipal Property Corporation and Mummy Mountain Preserve Trust. He noted that the Council held interviews for one

seat on the Municipal Property Corporation on September 14 and 28.

Furthermore, he explained that the Town ordinance governing committee meeting attendance states that any member who is absent from three consecutive meetings shall be automatically removed from the committee. Victoria Bellomo-Rosacci had missed four consecutive ACOPS meetings and had been removed. However, she attended a meeting held earlier in the week and expressed interest in remaining on the Committee. Council Member Sherf suggested that the Council not reappoint her because there were more residents who wanted to volunteer than there are positions available. Council Member Pace, Chair of ACOPS, stated Ms. Bellomo-Rosacci has been the Committee's point person on outreach with the schools. There was Council consensus to refer the matter to ACOPS for review and recommendation.

**A motion was made by Vice Mayor Bien-Willner, seconded by Council Member Dembow, to reappoint Ron Clarke and Fred Pakis to the Mummy Mountain Preserve Trust; reappoint Richard Gordon to the Municipal Property Corporation; and appoint Alec McAusland to the Municipal Property Corporation. (ACOPS reappointment was referred back to ACOPS). The motion carried by the following vote:**

**Aye:** 7 - Mayor Collins  
Vice Mayor Bien-Willner  
Council Member Dembow  
Council Member Moore  
Council Member Pace  
Council Member Sherf  
Council Member Stanton

**17-314      Appointment of the Presiding Judge and Associate Judges of the  
Municipal Court**

Mr. Burke presented the list of Municipal Court Judges recommended for reappointment. The Council thanked the judges for their service. There was an acknowledgment that the Court would draft a transition plan over the next two years to identify and train new judges when positions become available.

**A motion was made by Council Member Moore, seconded by Council Member Pace, to Make the following appointments to the Paradise Valley Municipal Court for the term November 1, 2017 - October 31, 2019:**

J. Tyrell Taber, Presiding Judge  
John L. Auran, Associate Presiding Judge  
Steven A. Cohen, Associate Judge  
Jack Cunningham, Associate Judge  
Charlene D. Jackson, Associate Judge  
Stanley J. Marks, Associate Judge  
Jeffrey R. Timbanard, Jr., Associate Judge  
Terry A. Gould, Associate Judge

**The motion carried by the following vote:**

**Aye:** 7 - Mayor Collins  
Vice Mayor Bien-Willner  
Council Member Dembow  
Council Member Moore  
Council Member Pace  
Council Member Sherf  
Council Member Stanton

Mayor Collins administered the oath of office to the Judges who were present. Presiding Judge Taber remarked that all of the judges in Paradise Valley are volunteers, accepting no payment for their time and service.

**17-308      Authorization to Purchase and Outfit of Police Patrol Vehicles**

Police Chief Peter Wingert summarized the request to purchase four replacement patrol vehicles. Responding to questions from the Council, Chief Wingert explained that most in-car technology would be transferred to the new vehicles but other equipment such as the light bars would not. He stated that there might be opportunities to donate the used vehicles to other law enforcement departments or they would be sent to auction.

**A motion was made by Council Member Pace, seconded by Council Member Moore, to approve the purchase of four 2018 Chevrolet Tahoes for the Police Department to be used as patrol vehicles. The motion carried by the following vote:**

**Aye:** 7 - Mayor Collins  
Vice Mayor Bien-Willner  
Council Member Dembow  
Council Member Moore  
Council Member Pace  
Council Member Sherf  
Council Member Stanton

**A motion was made by Vice Mayor Bien-Willner, seconded by Council Member Moore, to go into executive session regarding item 17-329. The motion carried by the following vote:**

**Aye:** 7 - Mayor Collins  
Vice Mayor Bien-Willner  
Council Member Dembow  
Council Member Moore  
Council Member Pace  
Council Member Sherf  
Council Member Stanton

Mayor Collins recessed the meeting at 7:13 PM

Mayor Collins reconvened the meeting at 7:50 PM

**15. CONTINUED STUDY SESSION ITEMS****17-324            Discussion of Draft Policy Regarding Recognition of Individuals,  
Groups or Organizations**

Historical Advisory Committee Chair Catherine Kauffman presented a draft policy regarding the recognition of notable individuals, groups, or organizations. She stated that the Mayor had tasked the Committee with formalizing a policy and application process to honor residents who had made a meaningful contribution to the Town. She summarized the purpose of the policy, the qualifications criteria to be recognized, and the application procedure.

There was Council discussion regarding acceptance of monetary donations accompanying an application for recognition. There was consensus that the policy would permit donations but it would be within the purview of the Council to consider and not the Historical Advisory Committee.

The Council suggested the following edits:

- Clarify language exempting recognition of first responders
- Expand point #2 under Guidelines for Recognition to take into consideration impacts on visitors and neighbors

Mr. Buke stated that the policy would be amended and brought back for Council action on October 12, 2017.

**13. FUTURE AGENDA ITEMS****17-312            Consideration of Requests for Future Agenda Items**

Mr. Burke summarized the items on the future agenda schedule. He stated that the meeting on October 12, 2017 would begin at 3:00 PM. He noted that Resolution creating the Advisory Committee on Public Safety included a sunset clause. It was staff's intention to bring back another resolution to Council repealing the clause and make it a permanent advisory committee.

There was no discussion and no additions.



**14. MAYOR / COUNCIL / MANAGER COMMENTS**

Mr. Burke stated that October is Domestic Violence Awareness month and the Town planned several ways to promote awareness including placing purple filters on all outdoor lighting at the Town complex. He also encouraged everyone to wear purple for the October 12<sup>th</sup> Council meeting.

**Discussion of Leadership Team Meetings**

Mayor Collins announced that the bi-weekly agenda-setting meetings with the Mayor, Manager, Attorney, Clerk, Vice Mayor and a rotating member of the Council would be moved from Thursdays to Tuesdays. It was felt that this change would allow more time to prepare staff reports based on feedback received at these meetings.

Council Member Dembow requested that if it is moved, that future meeting dates and times be fixed and not rescheduled so that Council Members could organize their calendars accordingly.

**15. CONTINUED STUDY SESSION ITEMS**

The Council took a five-minute recess and reassembled in the Boardroom.

**17-323 Indian Bend Traffic Calming Measures**

Mr. Burke summarized previous discussions regarding the proposed traffic control improvements on Indian Bend Road between Mockingbird Lane and Scottsdale Road at the Palmeraie secondary entrance/exit. The developer had initially proposed, and the City of Scottsdale approved, a traffic control device referred to as "the Swoop" which directed traffic exiting on Indian Bend to the east. The Town Council subsequently asked the developer's traffic engineer CivTech to come up with other options to improve traffic flow east and west even if that resulted in increased traffic volumes entering the Town.

Dawn Cartier with CivTech presented the Swoop (Option A) and two alternatives. Option B was a roundabout at Palmeraie. Option C was a roundabout at Indian Bend and Mockingbird Ln with chicanes along Indian Bend.

After much Council discussion, there was preference for the roundabout at Palmeraie (Option B) and a second roundabout at Indian Bend and Mockingbird. It was understood that the second roundabout would not be the developer's responsibility. Rather, it would be considered when the Town reconstructs Mockingbird Lane.

Mr. Burke stated that he would contact Five Star Development and the City of Scottsdale to discuss replacing the Swoop with a roundabout.

A motion was made by Council Member Pace, seconded by Vice Mayor Bien-Willner, to go into executive session regarding item 17-329. The motion carried by the following vote:

Aye: 7 - Mayor Collins  
Vice Mayor Bien-Willner  
Council Member Dembow  
Council Member Moore  
Council Member Pace  
Council Member Sherf  
Council Member Stanton

Mayor Collins recessed the meeting at 9:00 PM

Mayor Collins reconvened the meeting at 9:11 PM

**17-332            Discussion and Direction to Staff Regarding Ordinance Number 694, The Ritz-Carlton Resort Special Use Permit and Potential Settlement Agreement with Shea Homes**

The Town Council reconvened in the Council Chambers.

Town Attorney Andrew Miller stated that recently when Shea Homes submitted house plans it was discovered that there were some questions about how to interpret some of the setback provisions regarding accessory structures for Area B of the Five Star Development Project (Ordinance Number 694 – The Ritz Carlton Resort Special Use Permit). He said stipulations 42 and 43 both address setbacks for accessory structures. Stipulation 42 refers to Exhibit F-2 which lists a 10-foot setback and Stipulation 43 F list a 10-foot setback for casitas, patios, and gazebos; however, Stipulation 43 G list a 20-foot setback accessory structures with livable square-footage, thus creating confusion. Initially, the Zoning Administrator issued an interpretation letter clarifying the belief that Stipulation 43G, requiring the 20-foot setback, took precedence over Stipulation 43 F. It became clear that Shea Homes had relied on Exhibit F-2 and 43 F regarding casitas. He said productive discussions followed with representatives from Shea Homes regarding the Council's intent.

Mr. Miller stated that his interpretation of the Council's legislative intent for accessory structures was to prioritize larger setbacks for properties that could be seen from the exterior of the Five Star project area – Lincoln, Mockingbird, Indian Bend and Saint Barnabas Church. He suggested the Council go on record to clarify their legislative intent after which he would prepare a settlement agreement formalizing the interpretation of those provisions of the Special Use Permit.

He noted that the Area B accessory structure stipulation language is identical to the language for Area C. He said the interpretation that has been rendered for Area B should apply equally to Area C. Accordingly, part of the process to formalize the interpretation for Area B would also be done for Area C, to avoid similar confusion when plans are submitted for Area C.

Council Member Stanton agreed that the intent was to focus on generous setbacks for the parameter of the property.

Vice Mayor Bien-Willner noted that there is always a chance that documents could include ambiguity, but what is unambiguous was the Council's unanimous agreement to maintain an open visual effect along public streets surrounding the project. He said the proposed motion clarifies what the Council has always understood and expected to be the setbacks.

Council Member Moore stated that he served on the Planning Commission when this project was being reviewed. He stated that the Commission spent much time on the visual impacts of the property from the surrounding rights-of-way for Areas B and C. The proposed clarification is consistent with those discussions.

Mayor Collins agreed that priority was given to the view sheds and view corridors surrounding the property. The wall that is currently being constructed on Mockingbird Lane is setback off the street to provide a greater feeling of openness. The hope was to push the project off the arterials as much as possible with the recognition that what occurs in the interior of the project were less significant than what the impacts might be on the external or public-facing side of the property.

Jordan Rose, (Rose Law Group) representing Shea Homes confirmed that her client was in agreement with the proposed clarification.

**A motion was made by Council Member Moore, seconded by Council Member Sherf, to:**

a) Provide clarification to the Town Manager and Zoning Administrator regarding Ordinance #694, the Five Star Development Resort Communities, LLC rezoning request (Resort SUP 15-01) that the Council's legislative intent was that the increased setback requirements for "accessory structures containing livable square footage" in Areas B and C (including accessory structures labelled as "casitas" and as identified in stipulations 42, 43, 44, and 45 and pages F-2 and F-3 of the Approved Plans) applies only to the 20' setback for the rear or front yard setbacks of the lots in Areas B and C that have a rear or front yard that faces toward the public streets of Indian Bend Road, Mockingbird Lane, and Lincoln Drive or that faces toward the St. Barnabas Church property and, as for Area C, the Open Space-Wash Corridor referenced in Stipulation 48 and shown on Page H-6 of the Approved Plans ; which would mean that for Area B, the platted lots numbered 8-9, 13-28, and 31-32 will have a 20' rear yard setback for casitas and other livable structures and that for Area C a similar approach shall apply once the final plat lot #s are assigned to the Area C lots, provided further that any side yard in Area C that faces toward the public streets of Indian Bend Road, Mockingbird Lane, and Lincoln Drive or that faces toward the St. Barnabas Church property and the Open Space-Wash Corridor referenced in Stipulation 48 and shown on Page H-6 of the Approved Plans shall still maintain a minimum 15 foot setback on said side; and

b) That the Town Manager is authorized to execute a settlement agreement with Shea Homes that has the following required terms:

- That Shea agrees with any clarification of the Zoning Administrator interpretation (the "Interpretation Clarification") that is consistent with the Council's legislative intent and shall not appeal any such Interpretation Clarification to the Board of Adjustment or challenge it in a court of law;
- That Lot 33 shall have a 20' setback from the side that faces Indian Bend Road, whether that be a rear or side yard area;

- That Shea acknowledges that any such Interpretation Clarification does not change any other development terms in Ordinance #694 or the associated development agreement. Thus, for example, the total FAR, structure heights, and density limitations do not change as a result of the Interpretation Clarification;
- That Shea will provide a general release of all claims related to the Interpretation Clarification and any alleged delays of its project due to the prior Zoning Administrator Interpretation, including any and all damages alleged in the letter from the Rose Law Group dated September 20, 2017;
- That no damages are to be paid to Shea or the Town and that each party bear its own attorneys' fees and costs;
- That Shea Homes retains the ability to request future amendments to SUP 15-01 to change the Area B setback stipulations, with any such amendment request to go through the appropriate SUP amendment application process; and
- If any third party challenges the Interpretation Clarification, the Council will entertain an amendment to the SUP that will result in modifications to the stipulations in Ordinance 694 so as to be consistent with the terms of the Interpretation Clarification."

**The motion carried by the following vote:**

**Aye:** 7 - Mayor Collins  
Vice Mayor Bien-Willner  
Council Member Dembow  
Council Member Moore  
Council Member Pace  
Council Member Sherf  
Council Member Stanton

**16. ADJOURN**

Mayor Collins announced that a special meeting would be held on October 12, 2017.

**A motion was made by Vice Mayor Bien-Willner, seconded by Council Member Stanton, to adjourn. The motion carried by the following vote:**

**Aye:** 7 - Mayor Collins  
Vice Mayor Bien-Willner  
Council Member Dembow  
Council Member Moore  
Council Member Pace  
Council Member Sherf  
Council Member Stanton

Mayor Collins adjourned the meeting at 9:28 p.m.

TOWN OF PARADISE VALLEY

SUBMITTED BY:

*Duncan Miller*  
Duncan Miller, Town Clerk

STATE OF ARIZONA )

:ss.

COUNTY OF MARICOPA )

CERTIFICATION

I, Duncan Miller, Town Clerk of the Town of Paradise Valley, Arizona hereby certify that the following is a full, true, and correct copy of the minutes of the regular meeting of the Paradise Valley Town Council held on Thursday, September 28, 2017.

I further certify that said Municipal Corporation is duly organized and existing. The meeting was properly called and held and that a quorum was present.



*Duncan Miller*  
Duncan Miller, Town Clerk