

PRESCOTT CITY COUNCIL
REGULAR COUNCIL MEETING
PRESCOTT, ARIZONA
MARCH 13, 2007

A REGULAR MEETING OF THE PRESCOTT CITY COUNCIL WAS HELD ON TUESDAY, MARCH 13, 2007, in the Prescott Municipal Building, 201 S. Cortez Street, Prescott, Arizona.

Mayor Simmons opened the meeting at 3:00 P.M. and asked Councilman Luzius to lead the Pledge of Allegiance.

Mayor Simmons asked Clerk Elizabeth Burke to call the roll, which was as follows:

Present:

Mayor Simmons
Councilman Bell
Councilman Blair
Councilman Lamerson
Councilman Luzius
Councilman Roecker
Councilwoman Suttles

Absent:

None

SUMMARY OF CURRENT OR RECENT EVENTS

City Manager Steve Norwood was absent; Acting City Manager Mark Woodfill was in attendance.

I. PRESENTATIONS

A. Presentation on City of Prescott Immigration Issue Initiative.

Chief Randy Oaks began his presentation saying they had heard the Council's message loud and clear that something needed to be done regarding the issue of illegal immigrants and there had been some progress in working with the Federal and State governments. Changes had recently been made in the immigration office in Phoenix with a new head of investigations and a new detention and removal division was added along with two agents assigned to Northern Arizona. Teleconferencing methods would be used to process immigrants through the legal system. An 800 number was also available 24 hours a day.

Attorney Gary Kidd mentioned Federal Memorandums of Understanding were available to allow local police and sheriff's departments some

authority over specific activities once the public safety officers went through five weeks of training.

Councilwoman Suttles asked if more officers would be hired or current officers would be trained and whether Prescott police working with the Yavapai County Sheriff's office. Chief Oaks replied officers eligible for training had to have worked for the police department for at least two years so none of the current newly hired officers could take the training but existing officers would be trained; he had not talked with Sheriff Waugh. He said there would be some possible financial impacts to the department that detained an illegal immigrant.

Attorney Kidd explained the four types of MOU's available and Chief Oaks concluded saying the process would not happen overnight, there were many steps to take but it was hoped by Fall to have officers trained and a program in place.

Councilman Blair mentioned at the Lincoln Street crossing there were at least 65 people standing there recently and asked why they couldn't be moved. Chief Oaks replied the City put them there due to complaints they were on the sidewalks in front of businesses and Prescott College; the City allowed them to congregate on City property and asked them to keep the area clean.

II. CONSENT AGENDA

Councilman Roecker MOVED to ADOPT the Consent Agenda, Items II-A through II-F, which was SECONDED by Councilman Lamerson. The motion passed unanimously.

- A. Approve a CDBG contract with Down to Earth Contracting for the Dexter Neighborhood Sidewalk Improvements Project in an amount not to exceed \$365,202.95.
- B. Adopt Resolution No. 3804 - A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, amending Resolution Numbers 3013, 3266 and 3540 by amending Intergovernmental Agreement approved therein with amendments relating to the boundaries of the Highland Pines Domestic Water Improvement District.
- C. Adopt Ordinance No. 4580 - An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona abandoning a portion of unused and unimproved right of way located within the Pinnacle IV Subdivision at Prescott Lakes generally described as a portion of Trail Walk and authorizing the Mayor and City staff to take all necessary steps to effectuate such abandonment.

- D. Award bid for the FY 08 Rubber Chip Seal Pavement Preservation Project to Cactus Transport, Inc. in the total amount of \$902,800.00.
- E. Award bid for the Intersection Pavement Rehabilitation Project in the downtown area to Fann Contracting, Inc. in the amount of \$287,755.00.
- F. Approve the Minutes of the Workshop of the Prescott City Council Held on February 20, 2007, the Joint Special Meeting/Study Session of the Prescott City Council Held on February 20, 2007, and the Regular Voting Meeting of the Prescott City Council Held on February 27, 2007.

III. REGULAR AGENDA

- A. **Approval of an annual agreement with Prescott Frontier Days 2007 in the amount of \$30,000.00.**

Economic Development Director Jane Bristol commented she had no new information to present.

Councilwoman Suttles declared a conflict of interest due to her serving on the Prescott Frontier Days Rodeo Board.

Councilman Blair MOVED to APPROVE the annual agreement with Prescott Frontier Days 2007 in the amount of \$30,000.00, which was SECONDED by Councilman Lamerson. The motion passed unanimously with Councilwoman Suttles excused.

- B. **Public Hearing and consideration of a liquor license application from Clyde Kekahili Woode, Agent for The International Wine and Culinary Institute, L.L.C., for a New, Original, Series 10, Beer and Wine Store, License for the Royal Hawaiian Coffee and Wine Company, to be located at 1957 Commerce Center Circle.**

Clerk Elizabeth Burke explained this was a liquor license application from The International Wine and Culinary Institute, L.L.C., for a New, Original, Series 10, Beer and Wine Store, License for the Royal Hawaiian Coffee and Wine Company, to be located at 1957 Commerce Center Circle. The property was posted on February 15 and no comments were received.

Mayor Simmons asked if this was at the Prescott Gateway Mall and the applicant, Clyde Woode explained it was off Prescott Lakes Parkway in the vicinity of the Courier building.

Councilman Bell MOVED to CLOSE the public hearing, which was SECONDED by Councilwoman Suttles. The motion passed unanimously.

Councilman Lamerson MOVED to APPROVE the liquor license application from Clyde Kekahili Woode, Agent for The International Wine and Culinary Institute, L.L.C., for a New, Original, Series 10, Beer and Wine Store, License for the Royal Hawaiian Coffee and Wine Company, to be located at 1957 Commerce Center Circle, which was SECONDED by Councilwoman Suttles. The motion passed unanimously.

Mayor Simmons asked the applicant to tell Council about his operation. Mr. Woode replied it would be a high-end espresso café serving a variety of Hawaiian coffees, some food items and decadent desserts and there would be a fine wine shop with imported wines and all accessories, such as wine bottle openers, wine glasses, etc.

Councilwoman Suttles asked what the hours of operation would be and Mr. Woode replied the wine shop would be open from 10:00 A.M. to 7:00 P.M. and the café would be open from 7:00 A.M. to 7:00 P.M.

C. Public Hearing and consideration of a liquor license application from Mark Harold Evenson for a New Series 12, Restaurant, License for Chuy's Mesquite Broiler located at 576 Miller Valley Road.

Clerk Elizabeth Burke explained this was a liquor license application from Mark Harold Evenson for a New Series 12, Restaurant, License for Chuy's Mesquite Broiler located at 576 Miller Valley Road. The property was posted on February 12 and no comments were received.

Councilman Lamerson MOVED to CLOSE the public hearing, which was SECONDED by Councilman Suttles. The motion passed unanimously.

Councilman Roecker MOVED to APPROVE the liquor license application from Mark Harold Evenson for a New Series 12, Restaurant, License for Chuy's Mesquite Broiler located at 576 Miller Valley Road, which was SECONDED by Councilman Lamerson. The motion passed 4-3 with Councilmembers Blair, Luzius, and Suttles casting the DISSENTING votes.

D. Appointments to Parks, Recreation and Library Advisory Committee and the Prescott Preservation Commission.

Michael Todd was in attendance and recognized. Mayor Simmons thanked Mr. Todd for volunteering his time and service to the Preservation Commission.

Councilman Bell MOVED to APPOINT Ali Schroeder to the Parks, Recreation and Library Advisory Committee, term to expire 03/2008; and

appoint Michael D. Todd to the Prescott Preservation Commission, term to expire 02/2010, which was SECONDED by Councilman Lamerson. The motion passed unanimously.

E. Approval of contribution to Upper Verde River Watershed Protection Coalition Project/Program Funding Plan in the amount of \$65,000.00 annually, for the next three years.

Big Chino Project Manager Jim Holt explained this item was a request to consider an annual contribution of \$65,000 for the next three years to the Upper Verde River Watershed Protection Coalition. He said the mission of the Coalition was to protect the base flow of the Upper Verde River to maximum extent possible by incorporating Best Management Practices that would establish science based water resource planning and equalization of conservation of all water resources within the Upper Verde River area. Funding would allow the Coalition to construct the framework within which it might begin to develop strategies for initiating selected projects, specific projects, additional cost share opportunities, scopes of work and project oversight decisions have not yet been made and would be addressed by the Coalition. The Town of Chino Valley had agreed to serve as the fiscal agent. Any expenditure of funds would come out only after careful consideration and decision of the Coalition members. The request was to authorize a contribution of an amount not to exceed \$65,000 annually for the next three years to assist the funding of projects for the UVRWPC.

Mr. Holt clarified for Council:

1. When projects were selected by the Coalition members, Council would be given an update on those specific projects.
2. Council could be a member of more than one of the various water groups.
3. The Prescott representative on the Coalition (Mayor Simmons) had only one vote, but Council was the voice of that representative.
4. There would be more communication from the Water Advisory Committee and the Coalition and regular updates.

Councilman Luzius remarked he was against spending \$65,000 until Council could be assured what the Coalition was going to do; many tests and studies needed to be done; Prescott should be a member of the Verde River Basin Partnership and Federal money could be received and not use taxpayers money; and he asked this item not be put on the Consent Agenda to allow the public an opportunity to address the subject.

Councilwoman Suttles remarked Federal money was taxpayers money and Mr. Luzius replied that was true but it was from a wider taxpayer base and not just from local taxpayers.

Councilman Roecker asked Mr. Holt to explain to the public the differences between the Coalition projects and what was expected to come out of the Partnership. Mr. Holt responded the Verde River Basin Partnership was authorized from Title II and allowed the Partnership to undertake a number of studies and he didn't believe they were authorized to enter into agreements for development projects. The Coalition was specifically interested in implementing a number of projects. Some of the efforts of the Verde River Basin Partnership would be dedicated to conduct studies relative to water resources of the middle Verde River and the Coalition was focused on issues of the Upper Verde River.

George Seaman, 1830 Idylwild Hill, made the following points:

1. Taxes were an enforced taking of private property; the use of them should be examined very closely.
2. Council was possibly funding a new layer of bureaucracy, a new layer of government; maybe even a new kind of government.
3. Ronald Reagan once said "more government is not the solution, it is the problem."
4. Many unanswered questions:
 - Who was the bureaucracy going to ultimately answer to?
 - Who had the responsibility to hire and fire?
 - If an executive director was hired and Prescott didn't like them who would the Council go to have them fired?
 - Who would own the properties to be acquired to facilitate the programs Mr. Holt talked about?
 - Would the properties be owned by the Coalition?
 - Would the City of Prescott receive their share of ownership?
 - What if the properties needed to be dissolved?
 - Who received benefit from the sales of them?
 - There would be no authority over the Coalition and over the funding Council was getting ready to vote on. It would allow any single entity on the Coalition to veto the action of the rest of the people.
 - The City of Prescott was sitting in a veto position currently because they had not voted to fund their share.
 - Other major problems could arise. It was possible the County could then exclude themselves from the Coalition if Supervisor Springer or Thurman were voted out of office.
 - The change of one seat could alter the functioning of the group.

- All the functions of the agency could be handled by organizations that already existed.

Mr. Seaman asked Council to reconsider any funding of this unnecessary and redundant bureaucracy.

Joanne Ollers, 11201 Western Sunset Drive, Dewey, representing the Center for Biological Diversity, had a question for Mr. Holt saying she had read the mission statement of the Coalition and liked to hear protection of the Verde River was put first; but if the \$65,000 was to be used to form the framework within which selecting projects would occur, had projects already been selected or was this a process that was starting. Mr. Holt assured Ms. Ollers that the Coalition had not selected any projects and had only identified a list of projects that they felt were worthy of future consideration.

Ms. Ollers continued she heard at both Coalition and Council meetings the idea of putting the protection of the Verde River first and she appreciated that; but it confused her as to how they could talk about protecting the Verde when a project was proceeding, a project that seemed like it might have a potential for having an effect on the protection of the Verde, so she saw money being spent on producing a framework within which projects would be selected and yet saw permits in the wings and other decisions being made about pipeline issues and that seemed like not putting the Verde River first. Philosophically the statement sounded great but it didn't seem like it was happening.

Ms. Ollers asked if anyone had looked at a habitat conservation plan and wondered why some elected officials resisted a plan that was based on sound principals and would act as a protection in many ways for the Coalition.

Jack Wilson, 1514 Eagle Ridge Road, made the following points:

- \$65,000 commitment over 3 years was really a \$195,000 commitment.
- Don't waste taxpayer's money on duplicate efforts; he showed a one-page flyer the group passed out at the State Capitol a couple weeks ago at the Arizona Water Expo recapping what the Verde River Basin Partnership had already done.
- When Mr. Holt discussed framework and planning, he wanted Council to reference the hydrology science plan developed in concert with the USGS which laid out the plan for the Verde River Basin Partnership over a four-year time period. They weren't guessing at what they were going to do, they had documented what they were going to do.

- Ask Prescott to join their Partnership and not waste money on the Coalition.

Councilwoman Suttles asked Mr. Wilson what he found detrimental about the Coalition's list of projects and Mr. Wilson replied there was no scientific basis to go forward with any of the projects and it was basically a wish list at this point. He gave as an example, one of the projects was taking junipers out or cutting down ponderosa pines – there currently was a lot of debate that the cost benefit ration was not supportable, and the only effective way to take junipers out was to cut them down and treat the top of the stumps and it wasn't cost effective given the payback expected and the list wasn't doable or economically viable.

Councilwoman Suttles remarked the list of 10-12 projects looked like good projects and asked Mr. Wilson what was wrong with the list that offended him and he responded nothing offended him—there just wasn't a scientific basis for the list. The list was a list of Best Management Practices, which was a falsehood. Best Management Practices was a litany of professional approaches, and the list was not; it was a wish list of projects that the group hoped would produce results but they didn't have any scientific data to back it up.

Councilwoman Suttles questioned the idea that five government entities working on the issues weren't capable of putting together a list of projects and said she got very frustrated with the public saying the City wasn't doing enough and should do more; here was a list and now others said the City shouldn't be doing that.

Mr. Wilson added the Partnership was already doing the kind of studies that would allow the Council to make the decisions they needed to make with the kind of information Council needed to base those decisions on; and the list of Coalition projects had no scientific information to back them up; it was only a laundry list of potential projects.

Councilwoman Suttles asked when the Coalition was formed and Mr. Holt replied the Coalition was formed as a result of a series of Intergovernmental Agreements with other entities in May 2006.

Councilwoman Suttles mentioned one of the projects was a water conservation plan which was the development to a "healthy watershed management program, to protect and acquire locations" and it seemed like a good project. Mr. Wilson responded he had asked Prescott Valley Water Resources Manager John Munderloh where the Best Management Practices came from, and Mr. Munderloh replied it was based on his experiences – the experience of one man who was a water professional, but it didn't draw from experts across the United States as it should.

Leslie Hoy, 1880 Coyote Road, thanked Councilman Luzius for allowing public to speak and thanked Councilman Lamerson for encouraging Council to join the Verde River Basin Partnership; she wanted to ask Council to delay the approval of the expenditure of \$65,000. A new opportunity had arisen and Leslie Meyers of the U.S. Bureau of Reclamation would be making a presentation to the Water Advisory Committee at their April meeting to present an opportunity for Yavapai County to have the Bureau do an appraisal study. If the offer was accepted by Yavapai County to proceed it was possible this area could cooperate with Coconino County regarding a large pipeline to bring water into the area.

She said there would still be a need for the Big Chino pipeline but the City could avoid the Federal nexus and wouldn't need projects such as vegetation removal, flood control and other mitigation projects designed to avoid the impact of the pipeline or damage to Verde River. If Yavapai County joined Coconino County in the larger pipeline there wouldn't be damage to the Verde River and the projects wouldn't be needed for many years. She again requested the Council delay spending the \$65,000 until they had an opportunity to listen to Leslie Meyers' presentation to WAC.

Councilman Blair said he had sat at the Council table and listened to the public say Council needed to slow down, do more research, do more studies, etc. A group of elected officials from several communities in the Upper Verde area collectively believed this was the right way to proceed; water experts had been hired who believed part of the overall framework was what should be done and he was tired of hearing people say out of one side of their mouth "let's do more" and out of the other side of their mouth "let's do less". He felt that more was better, there were people in several communities that agreed with this mission and he supported it 100%.

Councilman Lamerson commented no decisions had been made as yet that the Coalition would move forward with the projects; the \$65,000 was Prescott's fair share to be in the group and was based on population.

Howard Mechanic, 309 Bloom Place, referred to Councilman Blair's comments about doing more or doing less and asked the Council to do more; he said Supervisor Springer had asked if this was the list for the next three years and Chino Valley Water Resources Manager Mark Holmes said this was the list and no more projects would be added.

Mayor Simmons remarked that might be so, but he felt there was some latitude.

Mr. Mechanic continued:

- As Prescott's representative, Mayor Simmons should say he didn't want their hands tied for the next three years.
- When asked if the representative would come back to Council before funds were spent, he had been told "yes".
- Mr. Holt had read the goal of the Coalition was to protect the Upper Verde. There were two major threats – the extraction of water through a pipeline to export water from the Big Chino Basin and pumping from the Big Chino and Williamson Valley area by private development. There were hundreds of thousands of acres that could and would be developed unless changes were made. Thousands of wells could be drilled and pumped.

Mr. Mechanic asked the potential impacts of the two threats on the Upper Verde be studied; once the effects were understood they could develop a plan knowing the extent of the problem.

Mr. Mechanic continued, during one meeting Jim Holt, John Munderloh, and Mark Holmes suggested the formation of a district to manage the Big Chino and the Coalition members told them that wasn't the direction they wanted to go.

Mr. Mechanic concluded saying the City of Prescott and Prescott Valley shouldn't be responsible for development in the Big Chino; the Coalition needed to request State legislation to protect the Upper Verde. He asked if the City funded the cost to mitigate the pipeline but there was no mitigation for the development and the river was gone, what their money had gotten them.

Thomas Slaback, 715 Goodwin Street, wanted to clarify Chino Valley was not the fiscal agent for the Coalition; Prescott Valley Vice Mayor Mike Flannery volunteered Prescott Valley would be the fiscal agent and he hoped to see better communication.

Walt Anderson, 1964 Sherwood Drive, said he was pleased with Council's concerns about fiscal responsibility; Council needed good scientific information to base decisions on; need to save water and officials shouldn't just look at the supply side, but the demand side as well. Council should look beyond the Big Chino area including the Prescott area. In the San Pedro River area they started the idea of catching water from roofs to keep water from just running off and a significant amount of water was retained; that would also work in Prescott and if the demand side could be controlled, there won't be the need for so much water through the pipeline.

Councilman Bell asked if the Coalition bylaws prevented other members and Attorney Kidd replied “no”, when the Coalition was formed there was a provision made for encouraging Salt River Project to get involved as a major water provider and also with water rights, and another provision was for the Yavapai-Prescott Indian Tribe to get involved.

Mayor Simmons commented the Tribe had recently agreed to join the Coalition.

Councilman Bell asked if any one else was allowed to join the Coalition, that Council was asked to join the Verde River Basin Partnership but why couldn't the Partnership join the Coalition and Attorney Kidd responded the Coalition was set up to include only elected officials from Yavapai County, Dewey-Humboldt, Chino Valley, Prescott Valley and Prescott within the Prescott AMA. The Yavapai-Prescott Indian Tribe would be participating and Salt River Project (SRP) had a large interest in the water in this area and the Verde Valley and was a quasi-governmental group; there was nothing to stop other governmental agencies from joining the Coalition.

Mayor Simmons commented Council was getting off track and the item was a funding issue and membership issues should have been discussed in May.

Councilman Luzius remarked when the Upper Verde River Watershed Protection Coalition was formed he said some of the meetings had been clandestine in nature; now the question came up that maybe the Verde River Basin Partnership should become a member; a question about who was handling the funds had come up and he wouldn't vote to approve the funding.

Councilman Blair MOVED to APPROVE a contribution to the Upper Verde River Watershed Protection Coalition Project/Program Funding Plan in the amount of \$65,000.00, with clarification of who was handling the funding for the Coalition, which was SECONDED by Councilman Roecker.

Acting City Manager Mark Woodfill verified Prescott Valley would act as fiscal agent for the Coalition.

The motion passed 6-1 with Councilman Luzius casting the **DISSENTING** vote.

- F. Adoption of Resolution No. 3805 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona expressing its support for Arizona House of Representatives HB 2589 providing for an expansion of the definition of criminal trespass to include unlawfully standing or remaining on public highways, streets or any public property and obstructing/impeding vehicle or pedestrian traffic for the purpose of soliciting either personal employment or labor for money.**

Attorney Gary Kidd explained this was a request from State Representative Lucy Mason for support on House Bill 2589 which expanded the definition under State Statutes regarding criminal trespassing to include unlawfully obstructing or impeding public highways, streets, and sidewalks, for the purpose of soliciting personal employment or labor for another person or soliciting labor and services and offering payment for such services. There were no comprehensive State Statutes that dealt with the types of criminality or types of impeding behaviors that were complained about in Prescott. Some public nuisance laws existed and there were others that dealt with impeding traffic and pedestrian movement.

The amendment was designed to deal with common complaints about the day laborers situation, such as where they congregated, stopping people on sidewalks, public roadways and sidewalks, keeping people from going into areas such as parks, etc.; traffic issues were also involved and it was suggested one Statute could address all those issues.

Representative Lucy Mason and Representative Andy Tobin were asking for Council support and this had gone through the House of Representatives and would be going to the State Senate. The resolution would be sent to other governmental entities as well as Senator Tom O'Halleran.

Howard Mechanic, 309 Bloom Place, said a few months ago Chief Oaks was asked if there were problems with people causing interference with traffic and he said the group was instructed that if there was any hindrance to the flow of traffic he would take action which indicated there was some action that could be taken. He asked if it was illegal to impede traffic and Mr. Kidd replied it pertained to public highways; this Statute was broader and would pertain to public roadways, sidewalks and public property and would be a misdemeanor for unlawful conduct.

Leslie Hoy, 1880 Coyote Road, asked if this was a similar, or the same, trespass bill that Governor Napolitano vetoed last session and what the legislation would do, and Mr. Kidd responded this was a brand new bill and would address the obstruction or impediment of vehicle or pedestrian

traffic in the solicitation of personal employment for money, or with the intent of procuring employment or payment.

Ms. Hoy asked how this was different from prostitution solicitation and Mr. Kidd responded they were different sets of criminal elements and different conduct and came under different Statutes.

George Seaman, 1830 Idylwild Hill asked if someone was soliciting for employment if they have First Amendment Rights for freedom of speech and did this bill have an impact on their ability to solicit for employment. Mr. Kidd said they had a right to assemble and solicit for employment but they could not impede vehicle or pedestrian traffic, cause an accident or create a disturbance or other type of issue and the Legislation dealt with impacts.

Mr. Seaman asked if that meant he couldn't have a sign at an intersection that said "Will work for food" and Mr. Kidd replied he could, but he couldn't go out into traffic.

Councilman Roecker MOVED to ADOPT Resolution No. 3805, which was SECONDED by Councilman Lamerson. The motion passed unanimously.

IV. ADJOURNMENT

There being no further business to come before the Prescott City Council, Mayor Simmons ADJOURNED the meeting at 4:37 P.M.

ROWLE P. SIMMONS, Mayor

ATTEST:

ELIZABETH A. BURKE, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Voting Meeting of the City Council of the City of Prescott, Arizona held on the 13th day of March, 2007. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2007.

AFFIX
CITY SEAL

ELIZABETH A. BURKE, City Clerk