

PRESCOTT CITY COUNCIL  
COUNCIL STUDY SESSION  
PRESCOTT, ARIZONA  
OCTOBER 16, 2007

A STUDY SESSION OF THE PRESCOTT CITY COUNCIL WAS HELD ON TUESDAY, OCTOBER 16, 2007, in the Prescott Municipal Building, 201 S. Cortez Street, Prescott, Arizona.

Mayor Pro Tem Lamerson opened the meeting at 3:01 P.M. Councilman Bell led the Pledge of Allegiance.

ROLL CALL:

Present:

Councilman Bell  
Councilman Blair  
Councilman Lamerson  
Councilman Luzius  
Councilwoman Suttles

Absent:

Mayor Simmons  
Councilman Roecker

□ SUMMARY OF CURRENT OR RECENT EVENTS

Mr. Norwood reported that the Milken Institute came out with their 2007 of Best Performing Cities. They look at job growth, salary growth, gross domestic product, high tech gross domestic product and out of 179 SMA's (Small Metropolitan Areas) the City was ranked number seven in the country.

Councilman Blair said that he is proud to be a relative of Matt Holliday, who took it to the Arizona Diamondbacks last night. Although he wanted the Diamondbacks to win, Matt did well and he's proud of him. Mayor Pro Tem Lamerson noted that he had also received Series Most Valuable Player, and Councilman Blair added that he also received National League Player of the Month for September.

**I. PROCLAMATION**

A. October 20, 2007 – *American Walk for Diabetes Day*

Councilman Bell read the proclamation and presented it to representatives of the American Diabetes Association. The representative said that this year is the seventh annual Walk for Diabetes in the Prescott area, and it would be held at the Yavapai Prescott Indian Tribe reservation. This year they've increased the teams registered as well as the individuals, and they exceeded their goal in revenues.

Carol, a volunteer, reported that they are holding a raffle with some good prizes. She said that they also need some cheerleaders on Saturday, October 20.

## **II. PRESENTATION**

### **A. Presentation by Becky Garvin on Dogtoberfest.**

Becky Garvin of the Special Events Department gave a brief review of the recent Dogtoberfest held on October 7, noting that they had over 30 dogs adopted and over 2,000 people attend.

## **III. DISCUSSION ITEMS**

### **A. Upper Verde River Watershed Protection Coalition:**

Mr. Holt said that this item is comprised of two items—the adoption of a resolution amending the IGA to include the safe-yield goal of the Prescott Active Management Area, and the appointment of a representative to the Technical Advisory Group.

Mr. Holt reviewed the qualifications required for the TAC representative. Councilwoman Suttles asked if there is a list of people or if it is a new employee. Mr. Holt said that is left over for Council consideration. The Town of Prescott Valley appointed their Water Resource Manager to fill the role and he would envision that the Council would consider something similar.

Mayor Pro Tem Lamerson said that he was at the meeting and he thinks it is incumbent on every member of that organization to select who they want as their technical advisor to sit in that role and it is within the purview of the Council to decide who they want to sit in that capacity, similar to the representative sitting on the Coalition. He suggested that the top water guy for the City sit on the TAC, that being Mr. Holt.

Mr. Kidd said that this would require a vote during the voting session. Mayor Pro Tem Lamerson said that his understanding is that it could be on the Consent Agenda, but doesn't have to be if they wanted more discussion.

Councilman Bell said that he would agree that Mr. Holt is the most knowledgeable and he would support that recommendation.

Councilman Luzius said that he would like to see this item not on the Consent Agenda in case those absent had more input.

Councilman Blair and Councilwoman Suttles both agreed with the recommendation to appoint Mr. Holt. Mayor Pro Tem Lamerson said that he would have this item on the regular agenda for further discussion next week. After brief discussion, it was agreed that both of these items would be on the regular agenda.

1. Adoption of Resolution No. 3861-0829 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, amending Resolution Number 3760, by amending the Intergovernmental Agreement approved therein to include the safe-field goal of the Prescott Active Management Area in its statement of purpose.
  2. Appointment of City representative to the Technical Advisory Committee of the Upper Verde River Watershed Protection Coalition.
- B. Approval to purchase a Digital Eyewitness Media Manager (DEMM) 10 TB System from Kustom Signals Inc., in the amount of \$31,834.94.

Deputy Police Chief Dave Benner said that this item is for hardware and software that supports the in-car camera system. They currently have about 19 of the systems that record digitally. They have a small amount of retention within the camera system itself, and then they have to be downloaded and this system will provide that storage.

- C. Approval of Amendment No. 1 to City Contract #05-251 with Monarch Aviation, L.L.C., and Prescott Hangar L.L.C.

Airport Manager Ben Vardiman said that this is a request for approval of Amendment No. 1 to the Airport Lease agreement with Monarch Aviation LLC and Prescott Hangar LLC. He said that it is due to the differences in the grade elevations between the subject property and the neighboring property to the south. To accommodate that grade difference, the developer decided that they wanted to flip parcels which results in an increase of the parcel size. The amendment will also allow for a financing option by splitting the original lease parcel into two parcels for the duration of the financing after which the parcels will recombine into the original lease parcel.

Councilman Luzius asked if it affected the relocation of Clubhouse Drive. Mr. Vardiman said that this project is on the north side of the crosswind runway, off of Melville.

Councilman Bell said that this lease was executed two years ago, and asked if they are about ready to go ahead with the improvements. Mr. Vardiman said that they are currently constructing the improvements in anticipation of the amendment being adopted. The parcel has slabs poured and they have building steel on site to meet the construction requirements as outlined in the original lease. Councilman Bell said that he would feel a lot more comfortable if the requests came before the Council before construction started. Mr. Vardiman said that he completely understood and would do so in the future.

- D. Adoption of Ordinance No. 4628-0830 - Purchase of open space owned by Hisokota Irrevocable Trust.

Eric Smith said that this is a proposal to purchase natural parkland and open space, consisting of 8.75 acres in the Granite Dells, immediately downstream from the dam on Willow Creek, in the amount of \$525,000.00.

Mayor Pro Tem Lamerson said that about four years ago the Council went into a Retreat, and one of their high priorities was open space acquisition in the Granite Dells area, and he asked Mr. Smith to refresh his memory on other purchases in that area. Mr. Smith said that some of the very first purchases they did were in the Granite Dells area, although they were on the other side of the highway, along Granite Creek. The first purchase was the Erickson purchase of about 25 acres north of Watson Lake along Granite Creek. Two years after that they made a purchase from Trust Republic Land of the Payne parcel, about 28 acres within Granite Dells. Both of these purchases were on the other side of the highway. Other than the CVID purchases of the lakes, this will be the first purchase along Willow Creek on the west side of the highway.

Mr. Smith said that they are making headway on purchases in the area, and they are encouraged by some of the recent discussions with other property owners in that area.

Councilman Blair asked how many acres have been purchased since the Open Space Initiative. Mr. Smith said that he believes around 120 acres, but he doesn't have the exact number with him, and then there have been some donations of land as well. In the Granite Dells area, it would be around 60 acres that have been purchased, and this would add another 8.75 acres.

Councilman Luzius said that he was out with the Open Space Acquisition Committee and toured the property and it was beautiful, and he was in favor of the purchase. He asked Mr. Kidd about the purchase agreement mentioned in the memo, but was not included in the packet. Mr. Kidd said that he is not sure why it is not in the packet, but it has been reviewed and

approved. Councilman Luzius asked that they be provided with one before next week.

Bill McMahon said that he lives on Calvary Lane and this property is located on Calvary Lane. He is all for the acquisition of open space; however, he's been there for ten years and during that time he's put a lot of hard work and money into the road that goes into the area. He asked if this purchase would mean that the City would be assuming some of the responsibility of the road. He asked if there was a guarantee that they'd be able to maintain the road.

Mr. Smith said that he would suggest that they meet on site and see what it has taken to maintain the road and share in that responsibility. Mr. Norwood said that they will get more information for next week because they are not buying the private road. Mayor Pro Tem Lamerson said that the issue of maintenance is really not on the agenda, and he suggested that a separate item be put on the agenda at another time.

Mr. McMahon said that the article in the paper said that they wanted to purchase this for connecting the trails, which are not terribly accessible, but they are doable. He wants to make sure that something is required without having some input in the plans.

Councilman Blair suggested that this be a separate item on the next Council agenda. Open space is a wonderful thing, but maintenance to the proximity of the open space, the trails and the roads to access the trails needs to be looked at and the Council has to make some decisions on how to fund the maintenance, ingress/egress or this will come up time and time again.

Councilwoman Suttles said that Mr. Smith needs to stay in contact with Mr. McMahon and any other property owner in that area.

- E. Adoption of Ordinance No. 4631-0833 - Granting a utility easement to Arizona Public Service Company for the Airport Well #2 capital improvement project.

Mr. McConnell said that this item is consideration of an ordinance granting a utility easement to Arizona Public Services Company to provide electrical power for Airport Well #2, which is a capital improvement project budgeted for this fiscal year. The operational target for having this well operational is summer of 2008.

- F. Approval of First Extension for the Revised Preliminary Plat for Cloudstone Unit II, a Planned Area Development for 78 condominium units on 5.5± acres located on the southwest corner of Rosser Street and Blooming Hills Drive.

Community Development Director Tom Guice said that this item is a request for the revised preliminary plat for Cloudstone Unit II. He said that the letter requesting this revision was in the packet, and their reasons were primarily for market conditions of residential development. The applicant is in attendance should they have any questions.

Mayor Pro Tem Lamerson asked what the downside to respect someone's request to postpone this. Mr. Guice said that staff would not see any downside; this has typically been approved.

Mr. Wilson said that he drives by the site several times a day since he lives in Eagle Ridge and he'd like to make them aware that there are big piles of dirt and weeds, so if they're going to wait two years to do anything, he'd like to see it cleaned up.

- G. Approval of Replat of Lots 1 and 2, Block 2, Norris Addition along with adjoining parcels, located at 303 South Washington; Applicants are James and Nancy Burgess, Badger Mountain Restorations.

Mr. Guice said that this a request to replat two lots in the Norris Addition, along with an adjoining property into a single lot. The applicant is present for any questions.

- H. Approval of Water Service Agreement for Bradshaw Senior Community for 16.1 acre feet per year for a 46-unit senior apartment complex located east of Bradshaw Drive and south of Stetson on ±2.86 acres.

Mr. Guice said that this is a water service agreement for the Bradshaw Senior Complex located south of Stetson Drive and east of Bradshaw. The Council approved the site plan in February of this year and typically when site plans go through the approval process, the water service agreement accompanies the project, but because this went through a very competitive process for low-income tax credits through the Arizona Department of Housing, they withheld bringing forward the water service agreement until they knew there would definitely be a project. They have now been notified that they have received funding.

Mr. Guice said that they will need to be making a very small change to paragraph D of the water service agreement. Usually water service agreements accompany preliminary plats, but given this is an apartment

project and not a plat, the wording will need to be changed to reflect 46 dwelling units constructed within a three-year time frame.

Councilman Luzius said that in reviewing the minutes of the study session in February 2007, it looked like this was at one time 52 units; now it's going to be 46 units. He said that he didn't have a problem with that, but nowhere in the memo does it say anything about affordable housing, or workforce housing. He understands that it is for seniors; however, in the minutes of February, Mayor Simmons had made a comment that it was a good affordable housing application.

Mr. Spritzer said that the program they utilize is the Housing Tax Credit Program as administered by the Arizona Department of Housing for their financing. The Department of Housing requires restrictive covenants be filed and recorded against the property and those run with the land for a period of 30 years. They restrict the use of the development to households earning 60% or less of the area median income. They will offer rents for households, restricted to 62 years of age or older, or handicapped, at rates of \$300-\$450 for one bedrooms, \$425-\$600 for two bedrooms, depending on income.

Howard Mechanic said that he appreciated Councilman Luzius clarifying that issue. They are asking for market water and the City sets aside water for affordable housing and workforce housing. He talked with Mr. Worley and he said the policy doesn't apply to this type of policy because it is a rental project, and when they had a definition of what they call workforce housing, the definition is only for individually-purchased properties. He would suggest that the Council review that policy to include this type of program.

Mayor Pro Tem Lamerson said that the Water Allocation Committee, when it brought its recommendations forward to the Council to draft a policy, was fairly specific with their definition of workforce and it didn't necessarily mean retirement or people who need help. If there's a demand in the marketplace for retirement homes and people challenged to have homes, it is not the same as the spirit and intent of setting aside 20% of the water portfolio specifically for workforce housing. He said that they didn't discuss the issue of rental. He said that he believed they were very specific that it was water set aside for privately-owned condos, apartments, single-family units, for the construction and development industry to have a "bone" to address the shortage for workforce housing. He doesn't think it will be palatable to try and dilute the intent of the workforce water policy to include something different than housing for the workforce.

Mr. Mechanic asked if that included workforce rentals. He said that half of the workforce is renting, not owning, so if they're trying to serve the workforce in the community and ignore the rental aspect, they're ignoring a lot of the workforce.

Mayor Pro Tem Lamerson said that the agenda item is not to discuss the policy, but the specific project.

Mr. Mechanic said that he would suggest that the Water Allocation Committee put it on their agenda to discuss if there's interest in expanding the definition to include rental.

Councilman Blair said that he would like to see that clarified on another agenda. In his mind it was not depicted as to whether it was rental or owned, as long as it was affordable.

I. Amendment to Building Code:

Mr. Guice indicated that this item is a clerical correction to the Plumbing Code that was recently adopted. Staff realized after Council's adoption that a portion of the Mechanical Code had inadvertently been included in the Plumbing Code. He said that it included an emergency because the recently-adopted code went into effect yesterday and adopting this with an emergency would allow the correction to become effective sooner.

Discussion was held on the need for the emergency. Mr. Guice said that one of the sections deleted from the adopted code was regarding back-flow valves. Councilwoman Suttles asked the attorney how important it was to adopt this with that emergency. Mr. Kidd said that the Risk Management Department has dealt with several issues involving back-flow valves, so it would be appropriate to get the correct wording in place as soon as possible.

1. Adoption of Resolution No. 3862-0830 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, repealing Resolution No. 3845-0813, declaring those certain documents entitled the 2006 International Plumbing Code, as adopted by the International Code Council, Inc., and the City of Prescott 2007 Amendments to the 2006 International Plumbing Code Dated October 23, 2007, as public records, directing the City Clerk to retain three copies thereof on file and declaring an emergency.
2. Adoption of Ordinance No. 4629-0831 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, amending Title III, Chapter 6 of the City Code of the City of Prescott

entitled "International Plumbing Code" by repealing Sections 3-6-1 and 3-6-2 and adopting new Sections 3-6-1 and 3-6-1 by adopting by reference that certain document entitled the 2006 International Plumbing Code, and that certain document entitled the City of Prescott 2007 Amendments to the 2006 International Plumbing Code dated October 23, 2007, both of which were made public records by Resolution No. 3862-0830, providing penalties therefor and declaring an emergency.

- J. Notice of Public Hearing (October 23) of a liquor license application from Don Karcie, Agent for Porky's Smoked Bar-B-Q, Inc., for a new Series 12, Restaurant, license for Porky's World Famous Bar-B-Q, located at 330 West Gurley Street.

Ms. Burke reported that a public hearing has been scheduled for October 23 for a new restaurant liquor license for Porky's Smoked Bar-B-Q, Inc. located at 330 West Gurley. She said that the property was posted and no public comments had been received to date.

Councilman Blair asked for clarification on what a No. 12 license was. Ms. Burke said that it was a Restaurant license, that allowed on-site sale of all types of alcohol, but 40% of the gross revenues must come from the sale of food.

- K. Approval of the Minutes of the Joint Study Session/Special Meeting of the Prescott City Council held on October 2, 2007, and Minutes of the Regular Voting Meeting of October 9, 2007.
- L. Granite Dells Estates I & II
  - 1. Development Agreement with Granite Dells.
  - 2. Review of Cost-Benefit Analysis.
  - 3. Proposed Annexation.

Mr. Norwood said that this item was placed on the agenda in case there was any further public comment or Council questions. The Council met last Thursday afternoon in Executive Session and those comments were passed on to the applicant. This will be an action item on the October 23, 2007 agenda; they're still working through the comments. He said that the Cost Benefit Analysis has been finalized and copies are available on the back table. He noted that it is also posted on the City's web site.

Paul Roberts, attorney for the applicant, said that there are some real concerns with regard to the agreement. He doesn't know what direction Council gave staff at the Executive Session last week; however he needs

to set forth the applicant's position in regard to certain of the legal issues which are confused.

Mr. Roberts said that the issues have to do with the taking of legal rights that the owner would have except for his agreement to give up those legal rights by a way of demand by the City of Prescott. Those legal rights include a right to a jury trial, a right to request attorneys' fees on breach of the agreement by either party, and the right to certain remedies which are at this point proposed by the City Legal Department. He doesn't believe that any member of the City Council is in opposition to the American jury system. Mr. Fann has agreed to waive the right to a jury trial, but it is a very slippery slope and once a citizen commences waiving legal rights, particularly on the demand of a governmental entity, that sort of action should be taken very judiciously and carefully. It is his advice to Mr. Fann to not waive his right to a jury trial. He would like to know if any member of the Council is opposed to the jury trial system.

Mr. Roberts said that the second problem has to do with the right of the party to request attorneys' fees. Generally in the State of Arizona, in the breach of a contract by either party, the successful party has the right to request an award of attorneys' fees from the court. What the City Legal Department is demanding today is that Mr. Fann either give up his right, or at least limit that right. Mr. Fann has agreed to a limitation of that right by capping the amount of the award fees. He would be surprised and concerned if any member of the Council actually believes it is appropriate to limit a citizen's rights that are given under the law of the State of Arizona.

Thirdly, Mr. Roberts said, the law allows remedies and they can be varied. In this instance, those remedies could include a specific performance, declaratory judgment, damages, injunctive relief, etc. What the City Legal Department is demanding of Mr. Fann is that he limit his right to his remedies that he would otherwise have under the Arizona law to the right to specific performance and the right to declaratory judgment. What that means is that if there is a breach, if the City doesn't perform, Mr. Fann has the right to file a law suit in Yavapai County, and all that the judge can say is that the performance should have taken place, and order it to be done. He said that with the investment that Mr. Fann has in the property, he cannot allow that. The financial result of a delay due to such a lawsuit, will cause the project not to go forward. Mr. Fann has requested that if a breach occurs, by either party, the opposing party has the right to seek whatever remedies are available under the law. He would be surprised in any member of the Council believes that Mr. Fann should be denied any of his remedies under the law.

Mr. Roberts said that Mr. Fann has agreed to waive the jury trial and limit his attorneys' fees, but he cannot agree to give up his remedies under the law. He said that Mr. Fann would be willing to agree to a clause in the contract having to do with all of these issues that simply says, "Each party will have their rights as allowed by the laws of the State of Arizona."

Mayor Pro Tem Lamerson asked Mr. Kidd if the City asked Mr. Fann to bring his property into the community. Mr. Kidd said that they did not; Mr. Fann came to the City and also requested the Development Agreement. Mayor Pro Tem Lamerson asked if the City was working from its contract that states what the City needs, and what is in the best interests of the taxpayers. Mr. Kidd said that the contract was originated by Mr. Fann's attorneys and they've worked backwards from that. Mayor Pro Tem Lamerson said that he wasn't aware of the City demanding anything of Mr. Fann. He said that Mr. Fann came to the City and asked the City to take them in and the City said yes, but there are some things they need to do that.

Mr. Roberts said that he disagreed with that comment, that what occurred was there was discussion on both sides about whether or not it was appropriate for the property to be within the City of Prescott, and he believes that both sides thought that the answer to that question was yes. He also noted that the first form of contract provided was from the City Attorney's Office. Mr. Kidd said that those provisions that have been talked about were deleted by the developer's attorneys.

Mayor Pro Tem Lamerson said that there have been discussions for about two months on the project, and he agrees that the Council thinks it is in the best interest of the community to have 1,100 acres in the City of Prescott, but they didn't necessarily ask that it be there. He also thinks they should have the ability to annex everything from Prescott to Phoenix to have influence over it, too, but when someone comes and says they want into the City, he has the obligation to point out what they believe is in the best interest of the City. It doesn't sound to him like there's been much progress from last week.

Mr. Roberts said that it not as simple as some changes to legal verbiage. It is the taking of legal rights where in this instance, there has to be some limitation because of the circumstances surrounding the agreement. Mayor Pro Temp Lamerson said that once it is annexed into the City under the terms of the developer, and something doesn't happen the way they'd hoped it would happen, they cannot deannex them. Mr. Roberts said that was their concern as well, that there is not a mechanism for deannexation so that if the City does not perform, the property cannot be deannexed.

Councilman Luzius said that he came in to the meeting feeling like a pretty good guy, and now Mr. Roberts has the whole Council painted as bad guys, and they're really not. They are trying to look out for the citizens of the City, and that's what they're elected to do. They do want them to annex into the City, and he knows that they want to be annexed into the City, but beyond that, they have to come up with a Development Agreement that is acceptable to both parties and right now they are not there. He would like to see them get there, but he doesn't think that having Mr. Roberts come up and calling them bad guys is going to help.

Mr. Roberts said that his intention is to do his best to make it clear that what the nature of the agreement is that there are certain rights that the law provides, and what's happened is that those rights, through the negotiation of the agreement and the demands, are being taken away. His reaction to the entire thing is that it would be better if everyone had their rights as allowed by the law.

Councilman Blair asked, if that was the case, why they have any type of Development Agreement with anyone. Mr. Kidd said that part of the issue here is rights, but there are no rights being taken away. There is an agreement being negotiated. A long time ago they used to not have development agreements, or contractual remedies in zoning cases, so everyone developed under existing City standards. When the development agreement statute was passed, that created a contractual right to certain kinds of zoning classifications and densities and it enabled developers that were aggrieved to sue cities and towns for breach of contract. What is beginning to happen is developers have gotten into agreements where the city has a number of obligations, which for different reasons they can be sued for, and now they're exposed to a fairly extreme amount of damages. What staff has tried to do in their development agreements, being aware that they're paying a lot of money to supply water and infrastructure in order to comply with its end of the deal, is take a look at the attorneys' fees issues and performance issues, and also downside of damages, and damages are fairly extreme. By entering into this agreement, there are contractual rights created; those rights do not exist unless it's done by contract. It is a matter of contract on whether the City decides it wants to agree to pay unlimited damages. His advice has consistently been to cap the damages, do not pay attorneys' fees to anybody suing the City. The cities and towns don't normally get awarded attorneys' fees. He tries to make the agreement balanced, cap the damages, because they're going to be paying a lot of money on the other end of the spectrum. This was the advice they've had on other development agreements from Gust Rosenfeld, who has done hundreds of these types of agreements in the Valley.

Mr. Kidd said that the City of Peoria does not allow any type of damages in their contracts for this very reason; they're putting up City funds and see no reason that the public should have to pay loss of interest or investment damages and millions of dollars worth of damages by entering into the contracts, which the City does not have to do. The City does not have to enter into development agreements at all; there is no right to that. It is a negotiated exchange, the question is whether the damage issue is acceptable or whether the City wants the taxpayers to pay attorneys' fees. If there is no contract, there is no right to those damages.

Mayor Pro Tem Lamerson said that it sound like the 1,142 acres has no rights in the City of Prescott, and they would like to acquire development rights within the City. The City is asking for a contractual agreement that states what is required to get those rights, including water.

Mr. Roberts said that he did not agree that the rights do not exist. Those rights recited do exist under the law. Mr. Fann does have a right to not annex into the City. He does not agree that the City should, as a matter of course, negotiate agreements that take away rights that are there under the law and available to the contracting parties. It is only because the City demands that they be taken away that they are not otherwise within the contractual arrangement within the law, and that is the problem.

Mayor Pro Tem Lamerson said that he is in business, too, and he doesn't hold a gun to anyone's head to come by. He is not a bad guy either. Mr. Roberts said that he was not suggesting he was a bad guy, but rather that the rights are available under the law and the demand that they be removed as part of the agreement is a slippery slope, when the City in its negotiations commences to demand those rights be eliminated.

Mayor Pro Tem Lamerson said that the City pays its attorney, manager, department heads, a great deal of money to give them advice on which make decisions and he hasn't had three of them say it is a good idea—he hasn't had one. What he has heard is that there are problems that need to be worked out. He would like to have them in the City limits, but the current agreement isn't it.

Jack Wilson said that as he was listening to Mr. Roberts, he was taken by his comments regarding takings and he believes it was a reference to the Constitution. He agrees completely with the City Attorney; they are taking away no rights. It needs to be reasonable on both sides.

Roger Nelson said that if they pass the annexation, they are setting precedence which will cost the City millions of dollars. Anyone that wants to be annexed from then on will have the right to demand water and sewer be paid by the City. He feels that the new cost benefit analysis should

include the \$21 million for the roads, which he asked about last time, along with the \$40 million, and if they apply the present value of money where the City is going to lay out \$60 million in the first five years, and then they'll start having the taxes trickle in, that figure could double over the fifteen years. He would appreciate that the Council consider the citizens. He asked who would be paying on the bonds.

Howard Mechanic said that the previous comments were talking about having the cost benefit analysis done on a net present value basis. Dr. Danforth recommended that two weeks ago. As mentioned last week, there were some responses to the comments made at the previous meeting, but there was no response to his recommendation to see the net present value on the cost benefit analysis.

Mr. Mechanic said he is glad that the City is asking Mr. Roberts and his clients to give up his rights to Prop. 207, and if it didn't the City would be negligent because that proposition that passed recently would give him the right to come in and say that any action that the City does that might negatively affect the value of his property. He could sue the City, tie the City up, have all kinds of legal fees and ask for damages. Prop. 207 is an onerous proposition and any time the City has the opportunity it is going to use its negotiating power to ask the other side to give up their Prop. 207 rights. Mr. Kidd said that he is not sure that would happen every time, but his advice would be to do a Prop. 207 waiver in all development agreements and other types of zoning cases.

Mr. Mechanic said that he would like to see it annexed. Going back a couple of years, the reason that Prop. 400 passed was that the City had worked up a development agreement with the previous owner of this property and others that was bad, and the public asked as part of Prop. 400 to have some input in the deal and understand what the deal is before there is a vote. He said that it is planned to have a vote next week, but the public does not know what the deal is, the public cannot comment on a deal. He doesn't believe that is enough time.

Mayor Pro Tem Lamerson said that he doesn't believe there is a deal right now. Mr. Mechanic said that the public needs at least two weeks after they see a final deal, for the public to absorb the deal, understand what it is about, and have the Council absorb it.

Mr. Mechanic said that when the cost benefit analysis was delayed he asked the City Manager if the public could have more time to comment, past the 60 day limit, and Mr. Norwood said they could. They need to have at least two weeks to review the final form of agreement as well.

Councilman Blair said that if they go to the County, there will be no time to comment, and he thinks they will see a lot of repercussion as to what Prop. 400 created. He would suggest that a deal be worked out with the annexation, or there will be no control over what they create.

Bill Kindig said that he raised some questions regarding the cost benefit analysis at previous meetings. He said that the first question he was asked after talking about a technical issue was what his background was. He has a Ph.D, he has taught business finance, and he retired as Director of Finance from the U.S. Department of Interior. He has written about 20 professional articles, so he does have a background in it. Going back to a question he asked at the prior meeting at the Library—he is not used to seeing something that goes out that far in the future simply have a point estimate of one number in the financial statements. There is something called a sensitivity analysis that takes a look at all of the assumptions (and he thinks they made some good assumptions) and determines how sensitive it would be to a change. Two major items they are dealing with are very sensitive. Six months ago they could not have known the impact of the subprime mortgage impact on the economy. To project into the future the way they are is a serious problem without asking what would happen if the inflation factor was substantially increased or decreased.

Mr. Kindig said that the second area, directly related to the subprime mortgage rate, is the build out rate. He would like to see the numbers that answers if that time period is 18, 22, or 24 years, and how would those numbers be affected. He thinks those are the two most important things in terms of changes that should be asked about.

He talked with Tom Guice after the Library meeting and he thought they had an agreement that they would have a sensitivity analysis for one thing. He has not seen it. If he were in the Council's position, he would be asking for it. This is something that can be done by City staff. They can use the numbers and statistics and assumptions that are there and the Finance staff can do those projections.

Councilwoman Suttles asked Mr. Kindig if he ever sat down with the Granite Dells people about his feelings on the study. Mr. Kindig said that he simply passed it on to City staff, and it was his understanding that they were going to pass it on to them regarding the need for a sensitivity analysis.

Councilwoman Suttles asked Mr. Kindig if he went to the meeting where they discussed their cost benefit analysis. Mr. Kindig said that he did, and he raised these same issues. He did not speak to anyone from Granite Dells, but he did speak with Mr. Guice after the meeting and it was his understanding that they would get a sensitivity analysis. He thinks it is the

developer's responsibility to make sure the Council gets one, but he would leave it up to the Council as to who prepares it. Mayor Pro Tem Lamerson said that he would prefer to have City staff do it.

Leslie Hoy first thanked the Council and Mr. Kidd for holding out for a good agreement. Last week when Mr. Fann was present, and when Mr. Roberts spoke today, there was a "bullying" attitude that she didn't appreciate as a citizen. Mr. Fann sort of threatened them that he wasn't going to annex if they didn't do the agreement the way they wanted.

Ms. Hoy said that she thought last week it was discussed that the performance deadline was one of the problems—that the City had to have the infrastructure in place by June of 2009. Mr. Kidd said that they are still talking terms with regard to phasing City infrastructure in conjunction with the developer, so there is a performance obligation on both parts, and he believes they have had some progress on those issues.

Mr. McConnell said the current draft of the agreement does require performance on utilities, specifically water, by June of 2009. Previously staff had recommended that it be expanded to include June 2009, or 18 months after annexation, whichever was later; however, in further discussions with the applicant they did not need to add the 18 months or later because he made it clear that if the annexation stalled he was going to withdraw his request for annexation. The current draft does provide for utility capacity of 2000 gpm at the northwest corner by June of 2009.

Ms. Hoy said that she believed that last week it was discussed that the developer wanted the utilities capacity at the northeast corner. Mr. McConnell said that the draft agreement provides for the City to provide water at the northwest corner of 2000 gpm by June of 2009. The developer stated that he proposes to commence his development at the northeast corner, which would necessitate that the developer extend utility service from where the City provides it all the way to the east side of the property. Ms. Hoy asked if the developer would be paying for that on his own. Mr. McConnell said that it was more complicated than that because there is a water storage facility, so there may be some opportunity for the utilities to be extended part of the way by the City under its capital projects, but the developer would have the responsibility to get it to where he wants to start.

Ms. Hoy asked Mr. Kidd if the part of the agreement that protects the City from Prop. 207 liability was the part that Mr. Roberts was objecting to by saying that his rights were being taken away. Mr. Kidd said that he didn't think so. He was talking about the general remedies section. Once they enter into a development agreement, which is a contract between the City and a developer, it also gives rise to the contractual remedies and the

right to a jury trial by breach of the contract. The right to jury trial is in the State Constitution if they have a civil claim. They don't automatically get attorneys' fees and damages unless there is a contract. He thinks what Mr. Roberts was addressing was the remedies section of the contract. He said that in the City's agreements over the last few years, they provide the specific performance and/or declaratory judgment or they keep a cap on damages in terms of remedies. What Mr. Roberts was talking about was the remedies section which is unlimited for both parties. They have agreed to a waiver of loss profit and there is a cap of \$250,000 for attorneys' fees, but the City is arguing about the remedy section as to whether the City should be exposed to things such as interest rate on the property for so many days, which potentially could be an astronomical amount.

Jason Gisi said that the first time they met on this property with Public Works was in April of 2006, prior to Mr. Fann closing on the property. He hears various comments regarding timing and there is no doubt that at the end, Mr. Fann wants to get to the end. They are 18-20 months into a process where the remedies section has been on the board for probably 120 days. He knows that they have an owner who is aware of the risk he would take being annexed and not having the ability to deannex in the event of a meltdown, and having an attorney (Mr. Kidd) that is protecting his client to the best of his abilities, and saying they don't want to agree to such verbiage. He understands that this could also potentially set precedence for future development agreements. There is not only Mr. Fann's property, but also Dave Cavan that somewhere around 3,000 to 5,000 acres that should be in the City of Prescott. The tough part about putting together a Development Agreement that could then be transferred deal to deal is the medium that they're dealing with, land, is unique and different in every instance.

Mr. Gisi said that he has gotten to know Ms. Hoy quite well, and someone he probably would not have gotten to meet if not for this process. She brings up the issue of a *threat*. He had gotten hammered by Planning and Zoning about the *threat* because they had already filed the public record and split the property. The reason for that is disclosure. That was the backup plan in the event that the annexation could not be attained. They are dealing with tens of millions of dollars and there has to be a backup plan. As the emotions run high, he realizes that there potentially the black cloud, but from Day One that was disclosed at the Council level, staff level and Commission level. He doesn't view that as a threat, but as a complete disclosure.

Mr. Gisi said that in the Lima, Carollo and now ESI studies, Mr. Fann is paying his pro rata share 100%. They have never had any kind of variance along those lines. There are financing mechanisms that come

into play with regard to bonding, but those dollars attributable to Granite Dells Estates will be paid in one form or another by Granite Dells Estates, most notably with the major infrastructure on the east/west connector (Dells Ranch Road) that provides a parallel route to 89A.

Outside of the above, they have a problem and have had one for quite some time. How they resolve the issue, he doesn't know. He knows that the City staff has worked hard with them to try to solve it, and he believes they have reciprocated. They have an issue where the performance of both parties is in question. From Mr. Fann's perspective, the traffic interchange is going to be built, as a result of settlement of law suit with Country Dells. It will now be phased and if annexed, Mr. Fann, would have to pay his pro rata share of \$4.11 million. The water improvements, although there is benefit to Granite Dells Estates, is also resolving an issue in the Centerpointe area with fire flows. It is not the whole issue, but they are a part of solving that problem, because they are contributing to that infrastructure.

Mr. Gisi said that when Mr. Fann looks at it and sees the City building the traffic interchange, whether he's in the city or not; the City is going to build a big bulk of the water improvements through the 2008 budget, he asks why the City is afraid to sign that guarantee. He said that last week Councilwoman Suttles said that both parties have a long history of meeting their performance requirements, and asked what the problem is. He said that he wished he could give some great idea, but they are in trouble.

Councilman Blair said that from his standpoint, they have had a lot of developments—Prescott Lakes, Ranch at Prescott, etc. The City has performed in every one of them. His problem is that they are scheduled for a vote next week. Either it is delayed and they all act like big boys and work it out, or they will vote on it next week and vote it down. He challenged Mr. Kidd and Mr. Roberts to decide if it is going to go for a vote and fail next week, or postpone it.

Mayor Pro Tem Lamerson said that he never took anything as a threat, and the lawyers are just being lawyers. Mr. Kidd represents 45,000 people, through the Council; Mr. Roberts represents one. He puts a lot of faith in their attorney and if his attorney is telling him they still have a problem, and if the Manager, Public Works, Roads, are all saying they have a problem, it needs to be figured out, otherwise he doesn't see this going forward. He sees it being a black eye for everyone and it doesn't need to be.

Councilwoman Suttles asked Granite Dells Estates if they wanted to pull the item or if they want it voted on next week. Mr. Gisi said that he has been instructed that it needs to stay on for a vote.

- M. Selection of items to be placed on the Consent Agenda for the Regular Voting Meeting of October 23, 2007.

Councilwoman Suttles noted that everything but A, J and L will be on the Consent Agenda.

#### **IV. ADJOURNMENT**

The Study Session of the Prescott City Council held on October 16, 2007, adjourned at 4:50 p.m.

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ROWLE P. SIMMONS, Mayor

ATTEST:

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ELIZABETH A. BURKE, City Clerk