

PRESCOTT CITY COUNCIL  
REGULAR COUNCIL MEETING  
PRESCOTT, ARIZONA  
OCTOBER 23, 2007

A REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL WAS HELD ON TUESDAY, OCTOBER 23, 2007, in the Prescott Municipal Building, 201 S. Cortez Street, Prescott, Arizona.

CALL TO ORDER

Mayor Simmons opened the meeting at 3:05 P.M.

INTRODUCTIONS AND PLEDGE OF ALLEGIANCE: Councilman Blair

ROLL CALL:

Mayor Simmons asked City 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:

**SUMMARY OF CURRENT OR RECENT EVENTS**

City Attorney Steve Norwood reported on the current wildland fires in California, noting that the City of Prescott has sent an engine with some firefighters, and they could be sending more.

Mayor Simmons reported that he just got off the plane after twenty hours of travel, on a trip to Israel.

**I. PRESENTATION**

A. Presentation on the City's Revised Development Process.

Deputy City Manager Laurie Hadley said that a little over a year ago they were having some issues with the development community in that the

process was not working as smoothly as it could be. A development review committee was formed that was comprised of local engineers, architects, draftsmen, developers, etc. and found things needing revision. Part of what came out of that process was that the City needed a single contact point for the community to come to, to get them through the process smoothly. The City was able to get Gwen Rowitch from the Town of Prescott Valley, where she had done the same thing for them, and she was a highly respected member of the development community there. The City feels fortunate to have had her on board now for six months and she was then introduced to give a report.

Ms. Rowitch said that there were eight members on the review committee, and they all participated in giving input on how to improve the process. She then reviewed the four parts of development review: (1) Preapplication Conference; (2) Planning; (3) Permitting; and (4) Inspection Services/Closeout of the Project.

She said that development includes the many departments that are involved in development review, such as Planning and Historic Preservation, Fire, Engineering Services, Public Works, Building Safety, Field Operations, Streets & Solid Waste, GIS and Addressing. She said that they started review by looking at their forms.

Councilman Blair asked where someone would go if they are an owner/builder, and they have no idea. Ms. Rowitch said that they would come to the Building Safety Counter and then they are directed from there.

Ms. Rowitch said that they have corrected the process to integrate the processes of multiple departments into one place, so people don't have to go to multiple locations; they come to City Hall and get directed from there. Every project is different. In most cases it is a Preapplication Conference (PAC).

Councilman Blair asked, in general, if they let the people know how long the process is going to take. Ms. Rowitch said that she would be reviewing that within the presentation.

Ms. Rowitch then reviewed the presentation as follows:

1. PRE-APP PROCESS
2. PLANNING
3. FINAL PLAT SUBMITTALS

4. PERMITTING
5. RIGHT OF WAY PERMITS
6. INSPECTIONS
7. TRAK IT HISTORY
8. TRAINING
9. PUBLIC RELATIONS
10. WHAT DOES ALL THIS MEAN
11. WHAT'S NEXT

Councilwoman Suttles said that it appears to be extremely easy. She asked Ms. Rowitch if permits were flattening out, and what they were averaging.

Ms. Rowitch said that she is not involved in the day-to-day process and does not have those numbers with her; however, she can say that new home review is down and commercial review is up.

Mr. Norwood said that Ms. Rowitch has been here only six months and she has already improved the process. He added that she could not have done it without the help of Tom Guice; he has been very involved, and also Mark Nietupski, Darrell Willis, Craig McConnell; they have all worked together.

Councilman Blair said that the process was much better in building his house, to be able to call in for inspections to be scheduled. He asked about Code Enforcement and whether they were going to start tracking those phone calls.

Ms. Rowitch said that right before this meeting she was looking at a demonstration for an IVR system, and one of the key components they will be looking for is the ability for call-in complaints for code enforcement, as well as the ability for realtors and other professionals to call in for zoning and FEMA information.

## II. CONSENT AGENDA

**CONSENT ITEMS A THROUGH I LISTED BELOW MAY BE ENACTED BY ONE MOTION. ANY ITEM MAY BE REMOVED AND DISCUSSED IF A COUNCILMEMBER SO REQUESTS.**

**COUNCILWOMAN SUTTLES MOVED TO ADOPT THE CONSENT AGENDA, ITEMS II-A THROUGH II-I; SECONDED BY COUNCILMAN BELL; PASSED UNANIMOUSLY.**

- A. Approve purchase a Digital Eyewitness Media Manager (DEMM) 10 TB System from Kustom Signals Inc., in the amount of \$31,834.94.
- B. Approve Amendment No. 1 to City Contract #05-251 with Monarch Aviation, L.L.C., and Prescott Hangar L.L.C.
- C. Adopt Ordinance No. 4628-0830 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the purchase of real property belonging to Hisokota Irrevocable Trust for the acquisition of 8.75 acres of natural parkland/open space within Granite Dells located immediately northeast of Willow Lake and includes part of the Willow Creek Corridor and scenic rock formations and authorizing the Mayor and staff to execute any and all documents to effectuate said purchase.
- D. Adopt Ordinance No. 4631-0833 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the granting of certain easement rights to Arizona Public Service Company (APS) upon City-owned real property located in the vicinity of Wilkinson Drive and authorizing the Mayor and staff to execute all necessary conveyance documents.
- E. Approve 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.
- F. Approve 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.
- G. Approve 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.

- H. Amendment to Building Code:
1. Adopt 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. Adopt 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.
- I. Approve the Minutes of the Joint Study Session/Special Meeting of the Prescott City Council held on October 2, 2007.

### III. REGULAR AGENDA

- A. Public Hearing and consideration 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 this is a liquor license application for a new Series 12 License, which is a restaurant license, for Porky’s Smoke Bar-B-Q located at 330 West Gurley Street. She said that the property was posted on September 24, and ended October 16; the City has received no public comment.

Mayor Simmons said that he was amazed that in only three months they have become world famous.

Councilman Luzius said that he was astonished at how quickly the restaurant was opened, and the liquor license was done very well. It goes to show that if the applicants will rely on the City, the City will help them fill out the application properly.

**COUNCILMAN BELL MOVED TO CLOSE THE PUBLIC HEARING;  
SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.**

**COUNCILMAN BELL MOVED TO APPROVE THE 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; SECONDED BY COUNCILMAN ROECKER;  
PASSED UNANIMOUSLY.**

B. Upper Verde River Watershed Protection Coalition:

Mr. Holt said that this item contains two items: the resolution to amend the IGA to include the safe-yield goal to its mission statement and the appointment of a TAC representative.

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-yield goal of the Prescott Active Management Area in its statement of purpose.

Mayor Simmons said that he thinks that Mr. Holt is the obvious person to be appointed.

**COUNCILWOMAN SUTTLES MOVED TO ADOPT RESOLUTION  
NO. 3861-0829; SECONDED BY COUNCILMAN ROECKER;  
PASSED UNANIMOUSLY.**

2. Appointment of City representative to the Technical Advisory Committee of the Upper Verde River Watershed Protection Coalition.

**COUNCILWOMAN SUTTLES MOVED TO APPOINT JIM HOLT  
AS THE CITY REPRESENTATIVE TO THE TECHNICAL  
ADVISORY COMMITTEE OF THE UPPER VERDE RIVER  
WATERSHED PROTECTION COALITION; SECONDED BY  
COUNCILMAN BELL; PASSED UNANIMOUSLY.**

C. Granite Dells Estates I & II

**COUNCILMAN ROECKER RESPECTFULLY REQUESTED TO TABLE  
THIS ISSUE FOR A PERIOD OF ONE WEEK, CALLING FOR A**

**SPECIAL MEETING ON OCTOBER 30, 2007 TO ADDRESS AND VOTE ON THE ISSUE; SECONDED BY COUNCILMAN LUZIUS.**

Councilman Bell reported that they received a written request from the Yavapai County Contractors Association to endorse postponement of this for one week so that further negotiations may be explored.

Councilwoman Suttles said that she would like to hear from the Granite Dells Estates I and II group because last week they indicated that they wanted to have a vote on this today.

Mr. Fann said that he has got serious heartburn for postponement; the impacts are being felt. He said that if they felt that one week will make a difference, he would agree, but after that he will have to withdraw. If they are going to end up with the same answer.

Councilwoman Suttles said that they had a presentation regarding development agreements at 2:00 p.m. and he had issues to ask about: (1) guaranteed water, (2) insurance coverage, (3) violation of budget law, (4) delay from City causing risk to developer and (5) binding future councils. She asked if they are going to be able to clean it up in a week.

Councilman Blair said that he is optimistic. Based upon the attorney from Phoenix that gave some suggestions, recommendations and ideas, he thought it was worth waiting the seven days to try and get it resolved.

Mr. Fann said that to comment on the attorney's presentation—attorneys do what they are paid to do, and they are very good at giving opinions. He said that Gust Rosenfeld has represented the City in the past for many decades and he could bring in Grady Gammage in to a meeting to tell the Council what a great development agreement it is, but he is not going to do that, as he finds it disingenuous. He said that Mr. Ruby commented on binding future councils with regard to budget, and municipalities do that all the time; it is a common practice to bind future councils, boards, etc.

Councilman Luzius said that in hearing Mr. Fann, it is not going to make a difference as it seems like there won't be any adjustment or modification on their end.

Mr. Fann said that they have acquiesced on every issue; they have been working on it for over a year. He said that it is down to one clause, and he doesn't want the clause there. If they wanted to go silent on remedies, they can, and let the laws of Arizona cover it. He said that it is the City that wants to interject language that takes away all of his legal rights, and not only is that unacceptable to him, it is unacceptable to the people he needs to get a loan from. The language is a poison pill.

Councilman Roecker said that he cannot guarantee that anything is going to change, but if they are down to one phrase, he is not ready to give up on it because he does not think that history is going to treat them very kindly if they do not annex the property. In the long term, it is the best thing for the community.

Councilman Roecker said that he has been gone and has not had a chance to talk with Mr. Kidd, but he would call for the question, and ask for one more week.

Councilman Lamerson said that he appreciates Mr. Fann's honesty and candor. He asked Mr. Kidd if he recommended the contract as presented, and if not, if he saw an avenue to get over the clause.

Mr. Kidd said he did not, and he has made the same comments in his staff report. He said that each one of the "shalls" included in the agreement sets the City up for damages. Damages waived in the current contract are not waiving consequential damages. They have made some changes; they have made changes to the attorneys' fee section, and they are in agreement with that. The remedy section is concerning because of all of the other issues brought up by Mr. Ruby. Section 26 states that even if the court says they don't have to perform because part of the agreement is invalid, or part of the agreement cannot be done, or the City is right in the law suit, there is still the possibility, based on the current writing of the contract, of facing damages. He would be concerned with the way they set out the water allotment and Mr. Ruby suggested some type of crediting, which would make it a better and more legal contract for both the developer and the City.

He said that they could do a better job with some of the issues that they have discussed. Ultimately, if they are in the same issue or same areas of remedy, the issues will remain and that will be a stumbling block.

Councilman Lamerson said that this is a huge thing for the Fann family, which has been very good to the community and has been for many years, and also for the citizens of Prescott. There is no reason, except for the clause, to not go forward.

Mr. Kidd said that he does not know the answer to that; he does not know that his opinion would change.

Councilman Bell said that Mr. Kidd has had a lot of experience in it, and has been a city attorney for a long time. He asked how often they see a City default on their agreements. Mr. Kidd said that it is seldom, but he has seen a lot of law suits against cities for defaulting.

Councilman Bell asked Mr. Kidd what he thought about having Arizona law govern. Mr. Kidd said that they do not have to do a contract, or a development agreement. He said that by entering into an agreement, the City is subjecting itself to remedies. There is no right to a development agreement. By just letting Arizona law prevail, they have the full realm of remedies.

Howard Mechanic said that he thinks they need to work on this and make it work for both parties. He said that the major issue is performance by the City on infrastructure projects, and asked if there was any way for the developer to take the responsibility of those projects, possibly under a design/build framework.

Mr. Kidd said that there were some discussions about financing a portion of the infrastructure, but the problem is that even if there is an infrastructure agreement, they still have to go through the public bidding process.

**MAYOR SIMMONS READ THE MOTION TO TABLE THE ITEM FOR ONE WEEK, FOR A SPECIAL MEETING TO BE HELD ON OCTOBER 30, 2007, AT 3:00 P.M.; PASSED UNANIMOUSLY.**

1. Adoption of Resolution No. 3864-0832 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into a Pre-Annexation Development Agreement with Granite Dells Estates I and II, LLC, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
2. Adoption of Ordinance No. 4632-0834 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, extending and increasing the corporate limits of the City of Prescott by annexing 1,142 acres of land located south of Highway 89A and bounded on the West by the Peavine Trail, on the East by the Prescott/Prescott Valley IGA line and Granite Dells to the South and also a 16.6 acre parcel west of the Peavine Trail, which is owned by Granite Dells Estates I and II, LLC, Mike Fann, and Assigning zoning classifications thereto.
3. Approval of Water Service Agreement with Granite Dells Estates Properties, Inc. and Granite Dells Estates Properties II, Inc.

D. Discussion with Global Water on potential partnership for water delivery.

Mr. Norwood said that this is a presentation that he wanted to put at the end, to give them ample time. He said they are out of Phoenix and the Mayor has seen the presentation, as well as Councilman Luzius, and also the Town of Prescott Valley. He said that it is an alternative water delivery for the Big Chino Water Ranch.

Trevor Hill said that they had an opportunity to talk with staff at the beginning of the summer a little about public/private partnerships and water, and some alternative methodologies that might potentially be of interest to the City. He said that they have done quite a few public/private partnerships with cities in the Phoenix area, with some very unique success.

Mr. Hill introduced Leo Commander, from Global Waters, along with Rita Maguire, and then gave a PowerPoint presentation, attached hereto as Exhibit A.

Councilman Blair said that when they get into a public-private partnership, a lot of the transparencies of government are gone and he asked how they would address that with regard to meetings, questions, law suits, effects to the Verde River, etc.

Mr. Hill said that first they need a position that it is comfortable, that is a better alternative for the City than what they are thinking about doing today. Second, he said that it would have to work for Prescott and for Prescott Valley.

He said that, with regard to the Verde River and SRP, etc., he keeps asking Rita the same question. He asks her what it is, if it is a risk, how they mitigate it, is if there is an opportunity to come up with a treaty or truce. He does not know what the answer to that question is, but he has spent the last five years negotiating all types of things, including treaties with Indian tribes, and he has to think somehow they have to avoid the massive law suit.

Councilman Blair said that he appreciated that comment, but added that this area is probably a little different than most because they are in an AMA (Active Management Area) and have been mandated to reach safe yield by 2025, which means importing water, and then there is the mitigation of the Verde River if there are any impacts to the River. He said that he has mentioned several times the possibility of dredging Sullivan Lake. He asked how they will deal with all of these things, working with staff, or if they would go it alone.

Mr. Hill said that they would not consider going it alone. They do deal with safe yield on a daily basis as they are only in AMA's today. It is a very complicated effort and it would be a joint effort. They don't come to the table with any arrogance, and collectively a strategy would be developed.

Councilman Roecker asked if the spread sheet didn't identify that what Councilman Blair asked was not their responsibility. Mr. Hill said that is an example of one way of sharing risk; it's not the ultimate. He would stay clear of it until he was invited to the table.

Rita Maguire said that one thing to consider is that Global Water is heavily regulated by the Arizona Corporation Commission, the Department of Water Resources and the Department of Environmental Quality. Any of the documents they file with those agencies become public record, so there is a great deal of transparency with respect to their entity as a public utility. Councilman Blair said that is more state regulated; he was talking more about locally.

Councilwoman Suttles said that it was suggested that they encourage staff to continue dialogue. She asked if the dialogue would get more tweaked on what they would be doing with them, or if they were looking four to five years out.

Mr. Norwood said that if they are still moving forward on this within the next two to three years, it is something to put together quickly. There is still some question as to whether it would be on the City's balance sheet; they need to speak with their financial advisors and auditing firm. Prescott Valley is their partner, with 46 percent share, and they have interest. The thought of not having to go through the entire bidding, construction management, change orders, etc. would be great. That transfer of risk being referred to is worth pursuing, but if it is going to be a huge price tag on the citizens, then that would need to be addressed, and he would probably not recommend it.

Councilwoman Suttles asked how they would begin to pay them. Mr. Norwood said that the per-thousand-gallon charge is where they get their money.

Councilwoman Suttles asked if they would be the City's partner for life. Mr. Norwood said that is something to be addressed, but he is sure they're going to look at it for more than a 20-year relationship.

Councilwoman Suttles said that she would like the discussions to continue. Councilman Lamerson thanked them for coming up. He said that there's always more than one option, and he thinks it is a good idea to look into this further.

Councilman Luzius thanked Mr. Hill for coming as well. He said that he thinks it is just another aspect of government and private enterprise that they could enter into, and perhaps save the taxpayers some money in bonding, and use their bonding capabilities for other issues.

Mayor Simmons said that when they met earlier in the summer, the question came up about balance sheet, and he asked if there has been any movement in clarifying that. Mr. Norwood said that the City's financial adviser has looked at it and is not convinced, but they are now looking at a new option which they will pursue.

Howard Mechanic said that he certainly thinks it is worthwhile to look at an alternative way to build, and they certainly have expertise in the area. He said that he does have a concern about Global Water operating the City's water system. As far as building, a private company is needed, but as far as operating, he thinks the citizens should be able to call the City and file complaints or concerns.

Mr. Mechanic asked Mr. Hill what he meant by "wheeling of water." Mr. Hill said that to him it means transportation, or moving the water.

Jim Jensen said that when Mr. Mechanic was up talking about the Fann issue, he directed a question to City staff about a private partnership and the City Attorney said that Arizona Revised Statutes are in place that negate that. He said that the gentleman from Global Water talked about 3Ps for thirty minutes, and he asked for some clarification from the Mayor and Council.

Mr. Kidd said that what they were talking about earlier was whether, in the context of the development agreement, the City could do an agreement with Mr. Fann to put in the public infrastructure. His answer was that when they do a direct public private agreement, there is still the need to go through the public bidding processes. They couldn't directly contract with someone in the private sector for building road construction over a certain amount of money.

Mr. Jensen asked if Global Water was going to be the lowest bidder. Mr. Kidd said that he made a note during the discussions that if the City were interested in going forward with a project like this, they would probably be at least doing RFP's to look at different proposals. There are a few processes they have used that are allowed by State law, such as the City Manager at Risk.

- E. Recess into Executive Session.

**COUNCILMAN ROECKER MOVED TO RECESS INTO EXECUTIVE SESSION; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.**

The Prescott City Council recessed into Executive Session at 4:49 p.m.

#### **IV. EXECUTIVE SESSION**

- A. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property, pursuant to ARS 38-431.03(A)(7)
1. Potential purchase of property located in the downtown area.

#### **V. ADJOURNMENT**

The Prescott City Council reconvened into Open Session at 5:10 p.m. at which time the Regular Meeting of October 23, 2007, was adjourned.

\_\_\_\_\_  
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 23rd day of October, 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