

PRESCOTT CITY COUNCIL
WORKSHOP
June 3, 2008
PRESCOTT, ARIZONA

MINUTES OF THE WORKSHOP OF THE PRESCOTT CITY COUNCIL held on June 3, 2008 in the Prescott Municipal Building located at 201 S. Cortez Street, Prescott, Arizona.

◆ CALL TO ORDER

Mayor Wilson called the Work Session to order at 1:30 p.m.

◆ ROLL CALL

MAYOR AND CITY COUNCIL:

Present:

Mayor Wilson
Councilman Bell
Councilman Lamerson
Councilwoman Lopas
Councilman Luzius
Councilman Roecker
Councilman Suttles

Absent:

1. Discussion of policy for extending City service into unsewered developed areas.

Craig McConnell said this is the fifth in a series of recent workshops directed toward formulating policy for extending sewer service into existing platted undeveloped areas that are on city water but rely on other private systems for wastewater treatment and disposal. He said the objective of the series of workshops is to arrive at a combination of two primary components pertaining to dealing with unsewered areas. Mr. McConnell said the first area is selection of a financing mechanism and the second is determination of connection criteria. He said a list of FAQs addressing unsewered areas has been posted on the City's website in order for the public to access previously presented information.

Mr. McConnell said this workshop is to review policy alternatives, discuss special districts with the legal counsel, hear remarks from the City Council, and provide the opportunity for public comment. He said they will do another Workshop on Tuesday, June 10, 2008 at 5:30 p.m.

Mr. McConnell said the Wastewater or Sewer Fund is an enterprise Fund. He said the City has 16,800 residential and non-residential customers and the rates charged to those customers pays for operation and maintenance of the wastewater collection, reclamation and treated effluent recharge system as well

as capital projects for repair, rehabilitation and capacity upgrades required to correct existing system deficiencies. He said those rates do not include adding capacity or new growth as required by law. Mr. McConnell said new connections pay for their demand on system infrastructure through impact fees. He said there is a clear distinction in the law and in the City of Prescott the way its accounting system is set up, and many people do not understand, the wastewater fund is not supported by property tax or sales tax. He said as an enterprise fund the wastewater fund specifically is not supported by those taxes. Mr. McConnell said the statement, "the City should pay for sewer retrofit projects" really means existing customers would have to pay higher sewer bills for little or no direct benefit.

Mr. McConnell explained the wastewater fund does not make a profit and that sewer rates are set to provide adequate funding for operations and maintenance. He said as recommended by Dan Jackson, the Council adopted new rates last week. He said some property owners in unsewered areas have proposed a credit for the value of the quantity of treated effluent generated by each new connection. He explained existing customers receive no such credit. He said revenue from effluent sales partially offsets the cost of funding operations and maintenance and without this revenue the rates would have to be higher. He said the conclusion is that a credit for the value of effluent would serve no beneficial purposes.

Mr. McConnell said the value of effluent is another question that comes to fore in recent years. He said the revenue derived from the treated effluent is in line with the market value of water. He said they charge contract customers \$250 - \$291 per acre foot of treated effluent. He said pledging treated effluent for assured water supply for new development has to be for a 100 year supply of effluent so the City would have to pledge 100 times that amount.

Mr. McConnell referred to the Council Agenda packet and the three sample alternatives for the discussion in an attempt to hone in on specific alternatives that might be the basis for a sewer policy for the City of Prescott. He then explained the following:

- Alternative 1
Financing Mechanism: Improvement District.
Connection Criterion: Mandatory Connection when the sewer system is available to the property.
- Alternative 2
Financing Mechanism: Reimbursement District.
Connection Criterion: Non-mandatory connection with the exception when a sewer system is available to the property and the existing on-site system fails the health department will require connection.

- Alternative 3
Financing Mechanism: Sewer Fund.
Connection Criterion: Mandatory connection when the sewer system is available to the property.

Councilman Luzius said Mr. McConnell's Alternative 3 is different than Council's Alternative 3. Mr. McConnell said he added the mandatory part for discussion. Mr. McConnell said the second part of the presentation will be on the legal aspects associated with special districts.

Gary Kidd introduced Keith Hoskins and Andrew McGuire with Gust and Rosenfeldt. He said Mr. Hoskins is very experienced in the area of municipal financing and Mr. McGuire has served as city attorney for a number of valley cities.

Andrew McGuire said he was asked to address Proposition 207 in the context of a mandatory sewer hook up. He said over the past few years he has heard some pretty creative comments and arguments about Prop 207. He said he does not think they could get to a land use taking issue on a particular assessment such as this. He said anytime they impose a charge on somebody's property that is a possibility for an argument. He said there are two hurdles and the first it has to be a land use decision and he does not think anyone in any court has found an imposition of a sewer fee or assessment to be a land use decision of any sort. Mr. McGuire said the second is they would have to have some sort of diminution of value of property and those are a couple of high hurdles. He said he is reluctant to give a straight opinion on whether a certain Prop 207 claim has any merit. He said he would be glad to evaluate it further if anyone actually brings a claim that has specific facts attached to it.

Mr. McGuire said he was also asked to address the authority to enter onto private property to inspect. He said they have dealt with this issue in other communities, in particular green pools that have become more common with the increase of foreclosures in the last few years. Mr. McGuire said they have come to the conclusion that administratively the only times they are entering properties without administrative warrants were under accident circumstances, such as an imminent threat to public health or safety. He said the City may have some kind of opportunities here. Mr. McGuire said he is not able to tell the Council under what circumstances they would be able to go into property but for the most part the systems that they have set up in other places have been limited intrusions to try and remedy the immediate problem followed up by an administrative warrant.

Mr. McGuire said the other question he was asked to address is if the forming a sanitary district as a possibility in the city limits. He said he does not believe it is a possibility because the formation statute is pretty clear that the formation is in the county areas. He said he highly recommends that the City not do that. He said most of the reason why a sanitary district is probably not a good idea for the

City is because it imposes a lot of the same problems an improvement district would in terms of financing. He said they would not really buy any assistance other than there would be a separate board making that decision.

Councilman Lamerson said his question is pretty specific because he has been asking it going on five years. He said not only have they not been able to define the origin of the problem they have not been able to identify the magnitude of the problem. He said what they have done is say they have a problem and to use that as justification to go into areas of town where people may have septic systems that function fine. Councilman Lamerson said they do not know whether 900 units have a problem or 9 units have a problem. He said when they talk about Prop 207 they are talking about the issue of somebody's perfectly functioning approved septic system and declaring them to abandon that system and it market value. He asked if those folks have any sort of right because something is being taken from them and that is the question.

Mr. McGuire said that the Prop 207 question specifically is one of a square peg in round hole. He said in the Prop 207 context it does not fit because it is not a land use issue and it is not necessarily a diminution of value.

Councilwoman Suttles said out of the four areas they are looking at about 620 homes without knowing how many are failing. She said if they do not take the initiative and go out to do something then there is harm to the lakes and creeks. She said she is trying to balance this out to the other few thousand people that live up there that do not have the problem. She asked why they are being made to go on this system.

Mr. McGuire said that is the policy decision before the Council and that this is not a new issue.

Mr. McConnell said, regarding Councilwoman Suttle's comment, one might be inclined to select Alternative 2, which is a reimbursement district and has no mandatory connection. He said that is why they have three alternatives and it is up to the Council to set policy for mandatory or non-mandatory connection.

Connie Tucker said she contacted the Yavapai County Environmental Services Department and the Northern Regional office of ADEQ. She said she asked the County how many failed septic systems have they seen in Prescott and they said that in the last five year they have seen fewer than five violations, a complaint submitted from a citizen indicating sewage on the ground surface, reported in all of Prescott on septic system. Ms. Tucker asked the County officials if a homeowner replaces a septic system of their own free will if the County keeps track of that and she was told they do not. She said the City does not know the magnitude of the problem based on those statistics.

Ms. Tucker said she spoke with the ADEQ Regional Office and asked what their role in this could be. She was told the Yavapai County Environmental Services

has a delegation agreement with ADEQ to regulate, monitor, permit and enforce the septic systems. She was also told that all systems will fail eventually and that old systems, although they are working fine, may not have been installed according to current codes. She said in terms of actual numbers the City sent out a survey a couple of years ago and received 264 responses. Ms. Tucker said of those 14 residents indicated their systems were not working adequately.

Mr. McConnell said if Council has no more questions they will proceed to public input.

John Philips, 2280 Sandia, said he is there on his own and does not represent any group. Mr. Philips said he has been involved with this issue for a couple of years and thanked the Council for their attention to the issue. He said he is in favor of sewers and that it would increase the value of his property, however two questions have yet to be answered. He asked, first, if they need the sewers and, second, who will pay for the sewers. He said they still do not have an answer as to how many systems are failing and said alternative systems actually cost less than the sewer hook up. Mr. Philips said the City has no evidence the septic systems are leaking into the lakes. He said the sewer plant next to the lake seems to be a more likely suspect to be leaking and he has not heard of any studies about that.

Mr. Philips said the Marks Avenue area that originally came to Council's attention has a sewer line that goes right across the street on Roma. He asked why they should attach the sewer system that is not needed to 400 homes when they have sewer travelling right by the area with the concern. He said he has not heard of any failing systems outside of that area but they do not know because they have not counted them.

Mr. Philips said they do not know if they can afford the new sewer because although they have spent hundreds of thousands of dollars on engineering they still do not have a price. He said what they have is unsewered areas as the number one goal of the Council. He said they need to consider the value the effluent will derive for the City on the increased growth and tax revenues on that growth.

Henry Flurry, 406 Arena Drive, said he is the first person of a line of people from that area who would like to present a comprehensive presentation of questions, Exhibit A attached hereto and made a part hereof.

Tom Cahill, 2291 Alta Vista Place, continued reading the attached concerns and questions.

Ann Sult, 2215 Sandia Drive, said she is happy to be a lady speaking to Council and it is good to see ladies on the Council. She continued reading the attached concerns and questions.

Richard de Laveaga, 403 Arena, said he lives in North Prescott and is a single income provider for his family. He said they moved here because it was affordable to live having come from a very unaffordable state. He said he is familiar with what governments can do and is in opposition to it and he will fight it. Mr. de Laveaga said he has a working septic system in a 43 year old home and he has no reason to lose money. He continued reading the attached concerns and questions.

Glen Wright, 2301 Nolte Drive, said the alternative septic systems never wear out as long as they are maintained. He said he is very concerned that they do not have anything other than the idea that the septic tanks are polluting something. Mr. Wright said before they charge and bankrupt a bunch of people it is time they think about that. He said with this issue hanging over the district it makes a real problem for people trying to sell their homes and may result in significant foreclosures in the area.

Nancy Del Mar, 4 Perkins Drive, said she contacted the Mayor and Council with questions and has not received answers from any of them. She said her home has a 44 year old septic system that has been inspected and maintained and has no problems. She said as a community they all benefit from many different municipal functions. She said as an individual and as a community member she supports all of them. She said if this is a quality of life, health and fiscal health issue they all have a responsibility to support this but individuals should not be burdened with having to pay thousands of dollars.

Andy Newton, 1220 Linda Vista Lane, said the previous group of citizens quoted a figure of \$8,000,000 for the project but if they use a calculator and multiply the number of houses times the figures on the FAQ it comes out to about \$15,000,000. Mr. Newton said he does not think anyone really knows how valuable the property is with a functioning septic system versus a sewer line. He said a lien of \$30,000 - \$40,000 on a house is valued at that much less. He said the City of Prescott would have to keep a monthly statement on each house and how much its debt has gone down with each payment. He said assessing a lien on a house is basically forcing residents to take a home equity loan and not letting them deduct the interest. He said it would be better if they could borrow the money and deduct the interest over 25 years. Mayor Wilson said they have that option.

Bob Remp 2206 Sandia Drive, said in talking with the neighbors they felt the survey was inconclusive and misleading. He said they passed out a private survey and received over 280 responses to the following statement:

We/I the undersigned feel that the City of Prescott should finance the proper proposed sewer project through city funds. The property owners should not be required to pay for the main trunk line. It should be the decision of each property owner with adequate operating septic systems as to when an actual connection be made from private property to the

main sewer line. It should be the right of each property owner to decide whether to have the City make the sewer connections from the septic systems to the main trunk line or higher private contractors to make the connection. If the City Council mandates that each property owner must pay for the entire costs for the proposed sewer project we will vote no in forming a sewer district.

Mr. Remp said people printed their names and put that addresses, phone numbers, date and they have signed them and sent them back. He said they have over 281 and more are still trickling in.

Mayor Wilson asked about incorrect statements included in the document, that if the residents voted no the City of Prescott would pay for the district. Mayor Wilson said he responded in a letter to Mr. Remp about that incorrect statement. Mr. Remp said this comes from minutes, "The City is planning to install sewer lines in this area in the future if an improvement district is formed after necessary trunk lines are built." Mayor Wilson asked where the minutes come from. Mr. Remp said they are from the Zoning Commission meeting from May 29, 1973. Mayor Wilson said the City Council needs to make a statement like that for it to be law. Mr. Remp asked if the sewer line is put in and the people do not pay for it who does.

Steve Francis, 2511 Nolte, thanked the Mayor, Council and Staff for allowing them to speak. He said they made up copies of the document for Council. He thanked Councilman Lamerson for expressing some of their concerns. Mayor Wilson instructed Mr. Francis to give the Clerk a copy of the document before he leaves.

Reva Litt, 2155 Nolte Drive, said she has worked in public health for the last 30 years at the state and federal level. She thanked the Council for listening and the people who prepared the document. She asked that the document be available electronically to the entire community. She asked that the responses be answered as promptly as possible.

Vaughn Delp, 2104 Miramonte Drive, said she has lived in the house 22 years and the house is about 60 years old. She said she has had a failing septic system and is on her third leach field. Ms. Delp said she is concerned and hates to live in fear but she does not know what to do. She said the City has been talking about this for 15 years that she knows of and that originally it was going to cost her about \$4500 She said she would like to know what her alternatives are and she needs information.

Mayor Wilson said the FAQ has the City's best estimates at this point and suggested that she get that before she leaves.

Mary Hawks, 1980 Campbell, thanked the Council for the opportunity to be there. She said her comment is strictly emotional because if the City is asking individual

homeowners to pay \$25,000 - \$40,000 that is asking an awful lot. She said many of the people in these homes do not have that kind of money.

Marlin Kuykendall, 2233 Clubhouse, said he does not have a dog in this hunt at all but he has been in Prescott for 40 something years. He said probably every Council has had an opportunity to address this and because no one wants to have their name on a sewer line they would overlook and decide to do other projects. Sewer was not available when a lot of the homes were built so he thinks it is more than dollars and cents and a bond issue.

Mr. Kuykendall said with the creative financing they have been able to do over the years, that there might be a way the sewer main can be built and let the buy in fee of about \$3300 multiplied by 618, which is a lot of money. He said maybe the City could allocate their monthly sewer charges to the repayment of that debt, keep it out of the big picture by letting the users pay for it and the City might gain some additional effluent. He said it is people and community and this is the community where everybody wants to live. He said he probably voted for a lot of the laws there and that the first enterprise fund was for the old clubhouse and the airport. He said it did not fit a program and they did not intend for it to work this way; they just wanted to build stuff.

Allan Weiss, 2003 Miramonte Drive, asked if they were to surcharge the other users in the City how much would their bill would be raised to pay for the sewer. Mayor Wilson said the estimate is \$3.00 per month for 25 years. Mr. Weiss asked about residents who pay for schools but do not have children or people who pay for libraries but buy their own books. Mayor Wilson said the issue is the enterprise fund and as Mr. McConnell explained earlier that the property taxes and the sales taxes do not pay for sewers. Mr. Weiss said he is asking for everyone to share the burden.

Steve Blair, 1802 Northside Drive, said the City did not have a policy regarding unpaved streets and unpaved alleys so six years ago Council changed the policy and have since paved numerous unpaved streets and allies. He said this sewer district is also a quality of life issue. He said they have spent hundreds of thousands of dollars on lakes and recreation for quality of life but the creeks have sewage in them. He said the Council has a responsibility to address that issue by the City putting in the main line and then allowing each individual customer to hook up their own sewer system. Mr. Blair said he understands they are in a money crunch but the folks in the sewer district are in the same position.

Mr. McConnell announced that there will be another workshop at 5:30 p.m. on June 10, 2008 at City Hall for the public to have input on the issue. Mayor Wilson said the workshop is scheduled to accommodate people who work during the days and to make this process as transparent as possible.

2. Adjournment.

There being no further business to be discussed, the Prescott City Council Workshop of June 3, 2008 adjourned at 2:47 p.m.

JACK D. WILSON, Mayor

ATTEST:

Elizabeth A. Burke, City Clerk