



# PRESCOTT CITY COUNCIL JOINT STUDY SESSION/ SPECIAL MEETING AGENDA \*A M E N D E D

**PRESCOTT CITY COUNCIL  
JOINT STUDY SESSION/SPECIAL MEETING  
TUESDAY, MARCH 17, 2009  
3:00 P.M.**

**Council Chambers  
201 S. Cortez Street  
Prescott, AZ 86303  
(928) 777-1100**

The following Agenda will be considered by the Prescott City Council at its Study Session pursuant to the Prescott City Charter, Article II, Section 13. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02.

- ◆ **CALL TO ORDER**
- ◆ **INTRODUCTIONS**
- ◆ **INVOCATION:** Pastor James Taylor, Church of the Street
- ◆ **PLEDGE OF ALLEGIANCE:** Councilwoman Lopas
- ◆ **ROLL CALL:**

MAYOR AND CITY COUNCIL:

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

- ◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

## STUDY SESSION

### I. PRESENTATIONS

- A. Presentation by Judge Arthur Markham regarding overtime parking ticket fines.

## II. DISCUSSION ITEMS

- A. Consideration of request from Great Lakes Airlines for letter of endorsement to USDOT regarding changes to service destinations and further authorizing the Mayor and City Staff to execute any and all related documents.
- B. Approval of grant funding as recommended by Prescott Area Arts and Humanities Council.
- C. Approval of contract with Prescott Frontier Days, Inc. in the amount of \$51,054.00.
- D. Authorize purchase of one stationary breathing air compressor station from LN Curtis & Sons in the amount of \$30,865.50, tax included.
- E. *Prescott: The Arizona Centennial City Committee:*
  - 1. Adoption of Resolution No. 3947-0946 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona repealing Resolution No. 3923-0929 and adopting a new resolution to establish the “*Prescott: The Arizona Centennial City Committee*”.
  - 2. Appointment of additional member to the *Prescott: The Arizona Centennial City Committee*.
- F. Adoption of Ordinance No. 4692-0935 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona authorizing purchase and acceptance of real property from Barbara J. Funk for the Downer Trail Pavement and Utility Reconstruction Project.
- G. Award of bid and contract to A. Miner Contracting Inc. for the Zone 39 Water Mains and Pump Station Upgrade Project in an amount not to exceed \$3,167,367.00.
- H. Adoption of Ordinance No. 4694-0937 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona authorizing purchase and acceptance of real property from various owners for right-of-way for the Demerse Avenue Reconstruction Project.
- I. Approval of the Revision of Plat for the Ranch at Prescott Retail Center, Owner: Bullwhacker Assoc., Agent: Scott Lee, APN: 103-49-005. RP09-001.

- J. Adoption of Resolution No. 3945-0951 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, amending the General Plan Land Use Map pertaining to that certain property generally located at the southwest corner of Fair Street and Gail Gardner Way and along the east side of Gail Gardner Way from Fair Street to Westridge Drive, described as Assessor Parcel Numbers: 111-11-001A, 111-11-067, 111-11-068, 111-11-069, 111-11-070, 111-11-071, 111-11-078, 111-11-079, 111-11-090, 111-11-092, 111-11-093, 111-16-001, 111-016-002, 111-16-003, 111-16-004, 111-16-005, 111-11-006, 111-16-007, and 111-16-011 (a portion thereof), from “Low-Density Residential (1-7 DUA)” to “Mixed Use”; and Assessor Parcel Numbers 115-08-033B (a portion thereof) and 155-08-081 (a portion thereof), from “Low-Density Residential (1-7 DUA)” to “Commercial”.
  
- K. Prescott Boulders – A Prescott Retirement Community:
  - 1. Public Hearing (3-24-09) and adoption of Ordinance No. 4693-0936 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, amending the zoning of certain property within the City of Prescott generally located at the north end of Canterbury Lane from Single-Family 9 (SF-9) to Multi-Family High (MF-H) consisting of approximately ±6.27 acres.
  
  - 2.\* Adoption of Resolution No. 3946-0952 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona authorizing the City of Prescott to enter into a Development Agreement with Arcadia Housing, LLC as the Assignee of Forest Glen, Inc., for “The Boulders, a Prescott Retirement Community”, a Planned Area Development, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above; and approval of associated Site Plan (SI09-002), a Planned Area Development of 132 units comprising 88 unassisted living units and 44 assisted living units.
  
- L. Approval of the Minutes of the Prescott City Council Study Session of March 3, 2009 and the Regular Voting Meeting of March 10, 2009.
  
- M. Selection of items to be placed on the Regular Voting Meeting Agenda of March 24, 2009.

### III. ADJOURNMENT

## SPECIAL MEETING

### I. Call to Order.

**II. Recess into Executive Session.**

**III. EXECUTIVE SESSION**

A. Discussion or consultation for legal advice with the attorney or attorneys of the public body, pursuant to A.R.S. 38-431.03(A)(3).

1. New Granite Dells Parkway (Side Road) Traffic Interchange project.

**IV. ADJOURNMENT**

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall on \_\_\_\_\_ at \_\_\_\_\_ .m. in accordance with the statement filed by the Prescott City Council with the City Clerk.

\_\_\_\_\_  
Elizabeth A. Burke, City Clerk

COUNCIL AGENDA MEMO – 03/17/09 & 03/24/09

DEPARTMENT: AIRPORT

AGENDA ITEM:

Request from Great Lakes Airlines for letter of endorsement to USDOT regarding changes to service destinations and further authorizing the Mayor and City Staff to execute any and all related documents.

Approved By:

Date:

Department Head: Benjamin Vardiman, Airport Manager	03-09-09
Finance Director:	
City Manager: <i>Blum</i>	03/11/09

BACKGROUND

This is a request by Great Lakes Airlines for a letter of endorsement from the City of Prescott to the US Department of Transportation (DOT) for an amended destination under the Essential Air Service (EAS) contract. Great Lakes Airlines wishes to terminate service to Phoenix Sky Harbor International Airport (PHX), Phoenix, AZ and replace it with service to Denver International Airport (DEN), Denver, CO starting on April 7, 2009.

Great Lakes Airlines staff will be present at the Council meeting to present their request.

**Recommended Action: MOVE** to authorize letter of endorsement to USDOT regarding changes to service destinations by Great Lakes Airlines and further authorizing the Mayor and City Staff to execute any and all related documents.

**COUNCIL AGENDA MEMO – March 17, 2009**

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<b>DEPARTMENT:</b>	<b>Economic Development</b>
<b>AGENDA ITEM:</b>	<b>Prescott Area Arts and Humanities Council (PAAHC) Grant Recommendations</b>

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head: Jane Bristol</b> <i>JAB</i>	<b>3/11/09</b>
<b>Finance Director:</b>	
<b>City Manager: Steve Norwood</b> <i>SNorwood</i>	<b>03/12/09</b>

**BACKGROUND**

The Prescott Area Arts and Humanities Council (PAAHC) were designated by City Council to review applications for grant awards for FY2009. City Council approved a new Agreement for Services with PAAHC in January, 2009.

A panel of PAAHC members met to review the grant applications, ranked them according to specific criteria, and submitted their recommendations for FY2009 funding. Deborah Thurston, PAAHC President, submitted the attached report and funding recommendations. Representatives from PAAHC will be present on March 17 to answer any questions related to their process and recommendations.

**FINANCIAL**

Funding for the arts is allocated as a percentage of transient occupancy (bed) taxes received in the prior year (FY2008).

When the bed tax was increased to 3% in 2008, it was understood that various groups receiving financial support from the City (much of it from the General Fund) could now expect a certain percentage from the Bed Tax Fund. The allocation percentage is as follows:

<b>Organization</b>	<b>Percent of Bed Tax</b>	<b>Amount Based on FY08</b>	<b>Received in FY09</b>
PACT	40.0%	\$210,768.21	August, 2008
City	40.0%	\$210,768.21	Yes
Rodeo	7.5%	\$ 51,054.00	No
PAAHC	7.5%	\$ 51,054.00	No
Chamber	5.0%	\$ 34,036.00	Sept., 2008

City Council may approve any amount up to the budgeted amount.

<b>Agenda Item: PAAHC Grant Recommendations FY2009</b>
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As indicated above, PAAHC is eligible to receive 7.5% of these funds which equates to \$51,054. In addition, a prior grant to Prescott Alternative Transportation in the amount of \$1,800 was not used; therefore PAAHC has added that to the funding amount, per the recent Agreement for Services. PAAHC receives \$500 to take and score applications and make recommendations. The following is a recap of funds allocated:

Bed Tax	\$51,054
Returned	1,800
Retained	(500)
Total	<u>\$52,354</u>

**FUNDING RECOMMENDATIONS**

The projects being recommended for funding include:

Phippen Museum Western Art Show	4,983.00
Tsunami on the Square	4,981.00
AZ Cowboy Poets Gathering	4,153.00
Prescott Bluegrass Festival	4,153.00
Prescott College Art Gallery Programming/Events	4,081.00
Prescott Fine Arts Production and Marketing	4,081.00
Yavapai College Hassayampa Institute	4,081.00
Yavapai Symphony Young Musicians' Competition	3,016.00
Smoki Museum Southwest Indian Arts Festival	2,721.00
Sharlot Hall Museum Day of the Dead Festival	2,651.00
Highlands Center – The Water Council	2,585.00
Prescott Pops Symphony Concerts	2,385.00
Elks Opera House Foundation Demolition Celebration	2,220.25
Embry-Riddle Trail Arches Workshop Project	2,220.25
Mountain Artist Guild Workshop Catalog & Promotion	1,850.25
Chaparral Arts Musicfest	1,136.00
Chalk It – MAG Sponsored Chalk Festival	1,056.25
Total	52,354.00

**Complete application forms for ALL projects listed above are available for review in the Economic Development Office.**

**City of Prescott Cultural/Performing Arts Grant Awards- 2009**  
**Panel Vote Summary**

	<b>Amount Requested</b>	<b>Creative Quality</b>	<b>Tourism Impact</b>	<b>Community Value</b>	<b>Management</b>
<b>Prescott College Art Gallery</b>	<b>\$ 6,000</b>				
Panelist 1		4	3	3	4
Panelist 2		5	3	4	5
Panelist 3		4	2	3	4
Panelist 4		5	3	4	5
Panelist 5		5	4	5	5
		<b>23</b>	<b>15</b>	<b>19</b>	<b>23</b>
<b>Mountain Artists Guild</b>	<b>\$ 5,000</b>				
Panelist 1		4	2	3	3
Panelist 2		1	1	1	4
Panelist 3		5	3	4	5
Panelist 4		4	2	5	5
Panelist 5		1	3	1	3
		<b>15</b>	<b>11</b>	<b>14</b>	<b>20</b>
<b>Embry Riddle</b>	<b>\$ 9,500</b>				
Panelist 1		4	2	3	4
Panelist 2		4	2	3	4
Panelist 3		3	1	2	3
Panelist 4		4	2	4	5
Panelist 5		5	4	5	4
		<b>20</b>	<b>11</b>	<b>17</b>	<b>20</b>
<b>Yavapai Symphony Guild</b>	<b>\$ 4,434</b>				
Panelist 1		4	3	4	4
Panelist 2		5	3	4	4
Panelist 3		5	4	4	5
Panelist 4		5	2	5	5
Panelist 5		4	4	4	4
		<b>23</b>	<b>16</b>	<b>21</b>	<b>22</b>
<b>Highlands Center</b>	<b>\$ 3,800</b>				
Panelist 1		4	2	4	4
Panelist 2		4	3	4	4
Panelist 3		5	3	5	5
Panelist 4		5	2	4	4
Panelist 5		5	4	5	5
		<b>23</b>	<b>14</b>	<b>22</b>	<b>22</b>
<b>Prescott Pops Symphony</b>	<b>\$ 4,500</b>				
Panelist 1		3	2	4	3
Panelist 2		5	3	4	3
Panelist 3		4	3	4	5
Panelist 4		5	2	5	4
Panelist 5		4	4	5	4
		<b>21</b>	<b>14</b>	<b>22</b>	<b>19</b>

**City of Prescott Cultural/Performing Arts Grant Awards - 2009**  
**Panel Vote Summary**

	<b>Amount Requested</b>	<b>Creative Quality</b>	<b>Tourism Impact</b>	<b>Community Value</b>	<b>Management</b>
<b>Prescott Fine Arts Assoc</b>	<b>\$ 6,000</b>				
Panelist 1		3	2	3	4
Panelist 2		5	3	5	5
Panelist 3		4	3	5	5
Panelist 4		5	2	5	5
Panelist 5		4	4	5	5
		<b>21</b>	<b>14</b>	<b>23</b>	<b>24</b>
<b>Prescott Bluegrass Event</b>	<b>\$ 5,000</b>				
Panelist 1		4	4	4	4
Panelist 2		5	5	5	5
Panelist 3		5	5	5	5
Panelist 4		5	5	5	5
Panelist 5		5	5	5	5
		<b>24</b>	<b>24</b>	<b>24</b>	<b>24</b>
<b>Yavapai College Foundation</b>	<b>\$ 6,000</b>				
Panelist 1		5	4	4	4
Panelist 2		5	3	4	4
Panelist 3		4	2	3	3
Panelist 4		5	2	4	5
Panelist 5		5	5	5	5
		<b>24</b>	<b>16</b>	<b>20</b>	<b>21</b>
<b>Chalk It - MAG Sponsor</b>	<b>\$ 2,855</b>				
Panelist 1		2	2	2	3
Panelist 2		5	2	4	2
Panelist 3		5	4	4	5
Panelist 4		5	1	5	4
Panelist 5		4	2	5	2
		<b>21</b>	<b>11</b>	<b>20</b>	<b>16</b>
<b>Tsunami on the Square</b>	<b>\$ 6,000</b>				
Panelist 1		4	4	5	4
Panelist 2		5	5	5	5
Panelist 3		5	5	5	5
Panelist 4		5	5	5	5
Panelist 5		5	5	5	5
		<b>24</b>	<b>24</b>	<b>25</b>	<b>24</b>
<b>Sharlot Hall Museum</b>	<b>\$ 5,000</b>				
Panelist 1		4	3	3	3
Panelist 2		4	4	4	5
Panelist 3		4	4	5	5
Panelist 4		5	3	3	4
Panelist 5		4	4	4	4
		<b>21</b>	<b>18</b>	<b>19</b>	<b>21</b>

**City of Prescott Cultural/Performing Arts Grant Awards - 2009**  
**Panel Vote Summary**

	<b>Amount Requested</b>	<b>Creative Quality</b>	<b>Tourism Impact</b>	<b>Community Value</b>	<b>Management</b>
<b>Elks Opera House</b>	<b>\$ 7,100</b>				
Panelist 1		3	2	3	3
Panelist 2		3	3	3	4
Panelist 3		4	3	4	4
Panelist 4		3	4	5	4
Panelist 5		3	1	4	3
		<b>16</b>	<b>13</b>	<b>19</b>	<b>18</b>
<b>Smoki Museum</b>	<b>\$ 4,000</b>				
Panelist 1		4	4	4	4
Panelist 2		4	4	4	4
Panelist 3		3	4	4	4
Panelist 4		5	3	5	5
Panelist 5		5	5	5	5
		<b>21</b>	<b>20</b>	<b>22</b>	<b>22</b>
<b>Phippen Museum</b>	<b>\$ 6,000</b>				
Panelist 1		4	4	4	4
Panelist 2		5	5	5	5
Panelist 3		5	5	5	5
Panelist 4		5	5	5	5
Panelist 5		5	5	5	5
		<b>24</b>	<b>24</b>	<b>24</b>	<b>24</b>
<b>Chaparral Arts, Inc.</b>	<b>\$ 2,145</b>				
Panelist 1		3	2	3	3
Panelist 2		5	3	4	4
Panelist 3		4	2	3	4
Panelist 4		5	2	5	4
Panelist 5		5	5	5	5
		<b>22</b>	<b>14</b>	<b>20</b>	<b>20</b>
<b>Arizona Cowboy Poets</b>	<b>\$ 5,000</b>				
Panelist 1		4	4	4	3
Panelist 2		5	5	5	5
Panelist 3		5	4	5	5
Panelist 4		5	5	5	5
Panelist 5		5	5	5	5
		<b>24</b>	<b>23</b>	<b>24</b>	<b>23</b>

**COUNCIL AGENDA MEMO – March 17, 2009**

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**DEPARTMENT: Economic Development**

**AGENDA ITEM: Prescott Frontier Days Inc. 2009 Agreement**

**Approved By:**

**Date:**

<b>Department Head: Jane Bristol</b> <i>JAB</i>	<b>3/11/09</b>
<b>Finance Director:</b>	
<b>City Manager: Steve Norwood</b> <i>SNorwood</i>	<b>3/12/09</b>

**BACKGROUND**

City Council has allocated funds annually to Prescott Frontier Days Inc. ® (PFD) to enhance the organization’s marketing of the rodeo, and thereby increase attendance and tourism. During the FY 2009 budget cycle, Council elected to allocate \$51,054 from the transient occupancy (Bed Tax) Fund to the marketing effort this year, which represents 7.5% of the bed tax collected in FY 2008.

When the bed tax was increased to 3% in 2008, it was understood that various groups receiving financial support from the City (much of it from the General Fund) could now expect a certain percentage from the Bed Tax Fund. The allocation percentage is as follows:

<b>Organization</b>	<b>Percent of Bed Tax</b>	<b>Amount Based on FY08</b>	<b>Received in FY09</b>
PACT	40.0%	\$210,768.21	August, 2008
City	40.0%	\$210,768.21	Yes
Rodeo	7.5%	\$ 51,054.00	No
PAAHC	7.5%	\$ 51,054.00	No
Chamber	5.0%	\$ 34,036.00	Sept., 2008

City Council may approve any amount up to the budgeted amount.

**AGREEMENT HIGHLIGHTS**

The proposed agreement presented for Council discussion and ultimate approval states that the City will contribute \$51,054 for advertising, promotion, and marketing of the 2009 Prescott Frontier Days Rodeo to be held Monday, June 29 through Sunday, July 5. The funds contributed by the City will be spent in accordance with the plan specified in Exhibit A attached to the agreement.

PFD is required to submit a final report to the city manager by December 31, 2009 detailing the marketing campaign and any additional events held at the grounds during the calendar year.

**Agenda Item: Prescott Frontier Days Inc. 2009 Agreement**

**FINANCIAL**

Adequate funds have been allocated in the Bed Tax budget for this agreement.

**Recommended Action: Approve the 2009 agreement with Prescott Frontier Days Inc. in the amount of \$51.054.**

## **AGREEMENT**

### **CITY OF PRESCOTT ~ PRESCOTT FRONTIER DAYS®, INC.**

**WHEREAS** the City of Prescott (hereinafter referred to as "City") is empowered to spend public monies for and in connection with economic development activities; and

**WHEREAS** Prescott Frontier Days®, Inc. (hereinafter referred to as "PFD") operates the annual Prescott Frontier Days Rodeo, which is also known as the World's Oldest Rodeo® (hereinafter referred to as the "Rodeo"); and

**WHEREAS** the parties hereto acknowledge the importance of the Prescott Frontier Days Rodeo to the City of Prescott, both as a historical ongoing event, and as an event which brings a substantial amount of tourism into the City, thereby improving and enhancing the economic welfare of the inhabitants of the City; and

**WHEREAS** the parties wish to enter into an Agreement to allow for the continuation of the World's Oldest Rodeo® within the City limits of Prescott, as well as to have the City financially assist PFD in its operation of the Rodeo.

**NOW, THEREFORE**, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

1. The City will contribute the sum of \$51,054.00 to PFD, which sum shall be used by PFD solely for advertising, promotion and marketing of the 2009 Prescott Frontier Days Rodeo. Said sum shall be paid in full to PFD within ten (10) days of the approval of this Agreement by the City Council.

2. The monies to be paid to PFD pursuant to Paragraph 1 will be spent as specified in Exhibit "A", attached hereto and made a part hereof. Invoices reflecting all said expenditures will be provided to the City no later than August 31, 2009. Any of the foregoing monies which are not spent in accordance with Exhibit "A" shall be returned to the City upon demand.

3. PFD, both through its Board and through its business manager, agrees to use its best efforts to utilize the Rodeo Grounds for events in addition to the Rodeo. The parties hereto acknowledge that the goal of PFD is to obtain a minimum of three additional events per calendar year at the Rodeo Grounds, which events would be of such magnitude and/or quality that it would increase tourism within Prescott and generate revenue for both PFD and the City. Said events can either be sponsored by PFD, or events conducted by entities independent of PFD. In addition, a PFD representative will report to the City Manager no later than December 31, 2009 the results of the 2009 Frontier Days Rodeo, its marketing campaign, and details of any additional events held at the Rodeo Grounds during calendar year 2009.

4. PFD will remain in the Prescott City limits, and will continue to operate Prescott Frontier Days and the World's Oldest Rodeo® within the Prescott city limits, pursuant to its Lease Agreement with the City of Prescott, for the term of the Lease Agreement dated February 3, 2002, unless terminated by the City of Prescott. In the event that PFD operates the Rodeo outside of the Prescott city limits prior to expiration or termination of the Lease Agreement, it is mutually agreed and understood by and between the parties that the City and the public will necessarily suffer great damages; that such damages would be extremely difficult and impractical to fix, and that the City is therefore entitled to injunctive relief in order to enforce the provisions of this paragraph.

5. Pursuant to A.R.S. Section 38-511, the City may cancel this contract without penalty or further obligation, if any person significantly involved in initiating, negotiation, securing, drafting or creating the Contract on behalf of the City is, at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract. In the foregoing event, the City further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting or creating the Contract on behalf of the City from any other party to the Contract, arising as a result of the Contract.

6. It is expressly agreed and understood by and between the parties that PFD is an independent contractor, and as such PFD shall not become a City employee, and is not entitled to payment or compensation from the City or to any fringe benefits to which other City employees are entitled other than that compensation as set forth in the Compensation Section of the Contract. As an independent contractor, PFD further acknowledges that it is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Contract, or as a result of its employment of a business manager. As an independent contractor, PFD further agrees that it will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the City, including but not limited to workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. The parties expressly acknowledge that provisions of this Paragraph shall also be binding upon PFD's business manager, and that PFD shall include this paragraph in any employment contract or contracts into which it enters.

7. PFD, with regard to the work performed by it after award and during its performance of the Contract, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of contractors, subcontractors, including procurement of materials and leases of equipment. PFD will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, and Executive Order 99-4.

8. This Contract is the result of negotiations by and between the parties. Although it has been drafted by the Prescott City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Contract is not to be construed against either party.

9. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The parties hereto further expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Carlo Pastore, President  
Prescott Frontier Days®, Inc.

ATTEST:

\_\_\_\_\_  
Rennie Anderson, Corporate Secretary  
Prescott Frontier Days®, Inc.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
ELIZABETH A. BURKE  
City Clerk

\_\_\_\_\_  
GARY D. KIDD  
City Attorney

**Prescott Frontier Days World's Oldest Rodeo  
2009 Proposed Advertising Schedule**

**EXHIBIT "A"**

<b>Publication</b>	<b>Size</b>	<b>Publication Date</b>	<b>Cost</b>
AAA Highroads	1/3 page	May/June	\$ 3,094.00
Arizona Daily Sun (Flag)	1/4 page	June (1 week)	\$ 2,373.00
AZ Horse Connection	1/2 page	May & June	\$ 340.00
AZ Tourist News	1/16 page	May/June	\$ 750.00
Bridle and Bit	1/2 page	May & June	\$ 524.00
Cowboys and Indians	1/2 page	Jan	\$ 2,800.00
Cowboys and Indians	1/2 page	June	\$ 2,800.00
Daily Courier	1/4 page	April-June(2 weeks ea)	\$ 4,452.00
Daily Courier	Tickets	Dec	\$ 410.40
Great Lakes Airlines	1/2 page	Dec/Jan	\$ 875.00
Horizon Air	1/3 page	April	\$ 969.00
Horizon Air	1/3 page	May/June	\$ 1,938.00
Navajo Hopi Observer	1/4 page	May(1 week) - June(2 weeks)	\$ 400.00
Phoenix Magazine	1/2 page	May (Travel)	\$ 2,683.00
Prescott Valley Tribune	1/4 page	June(1 week)	\$ 290.00
The Wickenburg Sun	1/4 page	May(1 week) - June(2 weeks)	\$ 255.00
True West	Dec	Sourcebook Annual	\$ 1,285.00
Verde Independent	1/4 page	May(1 week) - June(2 weeks)	\$ 1,581.00
<b><u>Internet</u></b>			
ProRodeo.com	Web Banner	May & June	\$ 500.00
DCourier	Web Main Page	May & June	\$ 1,150.00
<b><u>Radio/TV</u></b>			
AZTV		May & June	\$ 500.00
Cable One		May & June	\$ 1,000.00
KMLE (Phoenix)		May & June	\$ 8,000.00
KNIX (Phoenix)		May & June	\$ 5,000.00
Local Radio		May & June	\$ 5,000.00
<b><u>Miscellaneous</u></b>			
Chamber Map		Annual	\$ 590.00
Rack Cards	25,000	Phoenix, Tucson, So AZ, So NM	\$ 2,240.00
Rack Card/So AZ Tourist Guide	65,000	Phoenix, Tucson, So AZ, So NM	\$ 2,934.00
			<b>\$ 54,733.40</b>

*Since 1888*

# WORLD'S OLDEST RODEO®

March 3, 2009

Honorable Mayor and City Council  
Ms. Jane Bristol  
City of Prescott  
Prescott, Arizona

On behalf of the Board of Directors, the General Manager, and the Membership of Prescott Frontier Days®, Inc., I extend to you our sincere gratitude for your support and the partnership of the City of Prescott with the World's Oldest Rodeo®.

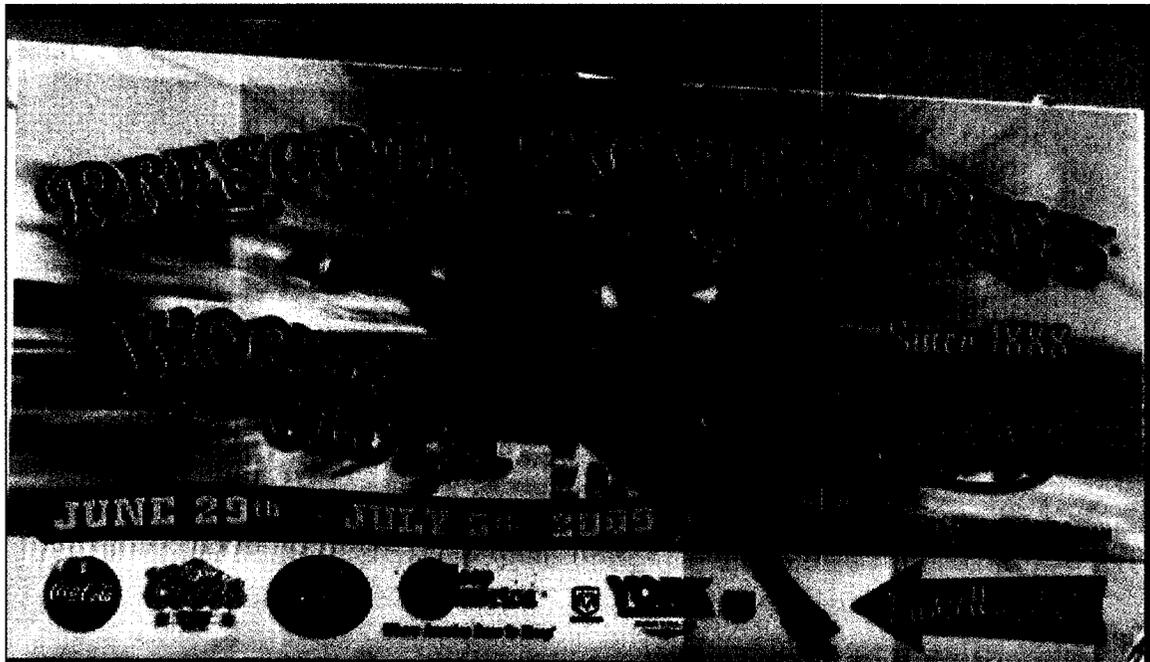
Although we anticipate a challenging year in view of the current economic climate, we are well underway in our efforts to have a successful 122<sup>nd</sup> Annual World's Oldest Rodeo®. Attached is our proposed advertising schedule which combines the sale of tickets with a tourism factor to draw people into our community, our current Rack Card and some of our recent and upcoming print ads. Based on last year's demographics, we are also putting a focus on drawing attendees from the surrounding communities which last year indicated a drastic downturn.

Once again, we express our sincere gratitude for, and look forward to, your continued support and partnership.

Sincerely,



Carlo Pastore  
President



2 Sided Billboard on Miller Valley Road



**RODEO SCHEDULE**

**2009**

Monday, June 29 - 7:30 PM - Day Courser  
 Tuesday, June 30 - 7:30 PM - Outback Steakhouse  
 Wednesday, July 1 - 7:30 PM - Country Bank  
 Thursday, July 2 - 7:30 PM - Jack Daniels  
 Friday, July 3 - 7:30 PM - Wrangler Tough Enough to Wear Pink  
 Saturday, July 4 - 1:30 PM - New Dodge  
 Saturday, July 4 - 7:00 PM - Coors/Coyote Distributing  
 Sunday, July 5 - 1:30 PM - Case-Cole

**SPECIAL EVENTS**

PRESCOTT FRONTIER DAYS R, INC. GOLF TOURNAMENT  
 May 28 - Antelope Mills Golf Course

CHUCK SHEPARD MEMORIAL ROPING  
 June 18 & 20 - Prescott Rodeo Grounds

HAPPY HEARTS RODEO FOR EXCEPTIONAL CHILDREN  
 June 21 - Prescott Rodeo Grounds

RODEO DANCE  
 July 2, 3 & 4, 8:00 PM - 1:00 AM - MM Barn Parking Lot

LEWIS & CLARK PARADE  
 July 3, 8:30 AM - Corner 3 & Goodwin

PRESCOTT FRONTIER DAYS R, INC. PARADE  
 July 4, 9:00 AM - Courthouse Plaza

PRESCOTT RODEO DAYS FINE ARTS & CRAFTS SHOW  
 July 3, 4 & 5 - Courthouse Plaza • www.prescottsbovshow.com

COWBOY CHURCH  
 July 5, 9:00 AM - Prescott Rodeo Grounds

COWBOY CAPITAL PROFESSIONAL BULL RIDING  
 August 22, 7:30 PM - Prescott Rodeo Grounds

[www.prescottsbovshow.com](http://www.prescottsbovshow.com)  
[www.prescottarizona.com](http://www.prescottarizona.com)

2009 Prescott Frontier Day's® World's Oldest Rodeo® Rack Card



Prescott explodes with old western hospitality & charm during Frontier Days Week! Enjoy "Everybody's Hometown" with our rich history & culture many have come to love!

Exciting Entertainment  
July 27-Aug 1, 2010



Call 866-407-6336 or visit [www.worldsolderodeo.com](http://www.worldsolderodeo.com)

For more information about Prescott, AZ visit [www.prescottcity.com](http://www.prescottcity.com)



Prescott explodes with old western hospitality & charm during Frontier Days Week! Enjoy "Everybody's Hometown" with our rich history & culture many have come to love!

Exciting Entertainment  
June 25-Aug 1, 2010  
August 27-Sept 4, 2010



Call 866-407-6336 or visit [www.worldsolderodeo.com](http://www.worldsolderodeo.com)

For more information about Prescott, AZ visit [www.prescottcity.com](http://www.prescottcity.com)

3.5x0.5



Prescott explodes with old western hospitality and charm during Frontier Days Week! Enjoy "Everybody's Hometown" with our rich history and culture many have come to love!

Exciting Entertainment  
June 25-Aug 1, 2010  
August 27-Sept 4, 2010



2x3



WORLD'S OLDEST  
**RODEO**  
PRESCOTT ARIZONA



**Rodeo is a way of life.**

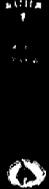
*With its long tradition and rich history, Prescott is the heart of the rodeo world. It's a way of life that's been passed down through generations and is still thriving today.*

Prescott explodes with old western hospitality and charm during Frontier Days Week! Enjoy "Everybody's Hometown" with our rich history and culture many have come to love!

Prescott County Fair & Rodeo is the annual World's Oldest Rodeo.

With its tradition, Prescott is the heart of the rodeo world from June 25th thru July 4th.

Exciting Entertainment  
June 25-Aug 1, 2010  
August 27-Sept 4, 2010

**Miscellaneous Print Ads**

COUNCIL AGENDA MEMO 3/17/09 & 3/24/09

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DEPARTMENT: Fire

AGENDA ITEM: Purchase Breathing Air Compressor

Approved By:

Date:

Department Head: Darrell Willis

Finance Director: Mark Woodfill

City Manager: Steve Norwood



03/05/09

**Background**

Prescott Fire Department's breathing air compressor at Station 71 has exceeded its useful life. It has been costly to maintain this past year and cannot be repaired any more as it is obsolete and parts cannot be found. The compressor is used to fill our self-contained breathing apparatus (SCBAs) with a quality of air required by OSHA standards.

**Status**

Sealed bids were solicited for one 15 HP, 6000 PSI, stationary breathing air compressor station. Only one response was received from LN Curtis & Sons for a Compair MAKO 20.7 CFM, 15 HP, 3-Phase Air Compressor, which does meet the bid specifications. The bid was \$30,865.50 including tax.

This particular model is also the same air compressor in service at the Prescott Fire Training Center, Yavapai College and Central Yavapai Fire District Fire Training Center.

**Financial**

\$40,000 was budgeted in FY08-09 to replace the existing air compressor.

**Recommendation:** MOVE to approve the purchase of one stationary breathing air compressor station, as specified, from LN Curtis & Sons in the amount of \$30,865.50, tax included.

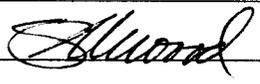
**COUNCIL AGENDA MEMO – 03/17/09 & 03/24/09**

**DEPARTMENT: ADMINISTRATIVE SERVICES**

**AGENDA ITEM: Repealing Resolution No. 3923-0929 and adopting a new Resolution for establishment of the *Prescott: The Arizona Centennial City Committee***

**Approved By:**

**Date:**

<b>Department Head: MIC FENECH</b>	<b>03/11/2009</b>
<b>Finance Director: MARK WOODFILL</b>	
<b>City Manager: STEVEN NORWOOD</b> 	<i>03/12/09</i>

**SUMMARY**

On December 16, 2008, the City Council established the **Prescott: The Arizona Centennial City Committee** by adopting Resolution No. 3923-0929. This original resolution established membership of the Committee at nine members; however, Councilman Bell (the Council liaison) would like to appoint another member to the Committee (under separate item). Since this Committee was first established by resolution, it is necessary to repeal the prior resolution and adopt a new one that includes the correct number of members. Mayor Wilson suggested that the number be increased "up to 11" so that future changes would not be required should the membership need to increase further in the future.

Additionally, the new resolution will not include an exhibit listing the initial members as some changes have been made by the respective organizations.

**BACKGROUND:**

The Arizona Centennial will be a year-long celebration beginning February 2011 and culminating on the 100<sup>th</sup> birthday of our state on February 14, 2012. This celebration will include identifying the rich history which exists in Yavapai County, identifying Centennial events by local governments, community organizations and individuals throughout the County, and encouraging legacy projects throughout Arizona and specifically Yavapai County which can be completed for this celebration. The resolution also petitions the Governor to designate Prescott as "Arizona's Centennial City".

The resolution identifies the mission of the City of Prescott Arizona Centennial Committee, which includes:

- (a) Identifying one or more legacy projects as approved by the City Council.
- (b) Assisting with the development of said projects.
- (c) Facilitating the community efforts by providing meeting space and hosting a web page to serve as a central location for City of Prescott networking & resource information.

**Agenda Item:** Repealing Resolution No. 3923-0929 and adopting a new Resolution for establishment of the *Prescott: The Arizona Centennial City Committee*

- (d) Making recommendations to the City Council on requests for City funding for state Centennial projects or events and on requests for official City support of any state Centennial projects.

Additionally, the resolution calls for the committee to be subject to Arizona Open Meeting Law, public records, conclusions through consensus, regularly scheduled meetings of the eleven-member committee appointed by City Council, funding through Prescott Bed Tax Revenue (subject to availability of funds), and staffing also subject to the availability of funds, with the duration of the committee to expire on February 14, 2013 or until dissolved by City Council.

**Recommended Action:** MOVE to adopt Resolution No. 3947-0953.

**RESOLUTION NO. 3947-0953**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA REPEALING RESOLUTION NO. 3923-0929 AND ADOPTING A NEW RESOLUTION TO ESTABLISH THE "PRESCOTT: THE ARIZONA CENTENNIAL CITY COMMITTEE"**

**RECITALS:**

**WHEREAS**, the City Council is authorized under the general powers found in A.R.S. §11-251 to establish advisory committees; and

**WHEREAS**, a need exists to prepare for the celebration of Arizona's Centennial in the City of Prescott and for the development of one or more legacy projects to bring attention to the rich history of the City of Prescott during the Centennial celebration; and

**WHEREAS**, the City Council has a unique opportunity to encourage the development of legacy projects and other Centennial events by community organizations and individuals throughout the City; and

**WHEREAS**, on December 16, 2008, the Prescott City Council adopted Resolution No. 3923-0929 to establish the "Prescott: The Arizona Centennial City Committee"; and

**WHEREAS**, it is the desire of the Prescott City Council to make changes to the number of members of the "Prescott: The Arizona Centennial City Committee."

**ENACTMENTS:**

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Prescott, Arizona as follows:

SECTION 1. THAT, Resolution No. 3923-0929 is hereby repealed.

SECTION 2. THAT, the City of Prescott will immediately request a Proclamation from the Arizona Governor's Office designating Prescott as "*Prescott: The Arizona Centennial City*".

SECTION 3. THAT the "*Prescott: The Arizona Centennial City Committee*" ("Committee") is hereby established, with the mission of the Committee to be:

- (a) Identifying one or more legacy projects that will bring attention to all parts of the City of Prescott, with such project or projects to be approved by the City Council.

- (b) Assisting with the development of approved projects.
- (c) Facilitating the efforts of local and Yavapai County government and community-based Centennial organizations by providing meeting space whenever possible and by hosting a page on the City of Prescott's website that can serve as a central location for networking and resource information.
- (d) Providing on the website a master calendar that will include all Centennial-related events on a City-wide basis.
- (e) Providing to the Arizona Centennial Commission information as may be deemed appropriate regarding Centennial celebration activities in the City of Prescott.
- (f) Reviewing and making recommendations to the City Council on requests for City funding for state Centennial projects or events, and on requests for official City support of any state Centennial projects. Any such approved funds are to come from the Prescott Bed Tax.
- (g) Appointing a liaison from the Committee to coordinate and communicate with a designated member of the Yavapai County Arizona Centennial Committee on a regular basis.

SECTION 4. THAT the Committee shall meet on a regular basis in order to identify one or more legacy projects for the City of Prescott and shall continue to meet in order to assist in the development of the projects. Any conclusions reached by the Committee regarding such projects shall be accomplished by consensus rather than voting. Consensus will be reached when no members present at the meeting have an objection. The Committee shall recommend a project or projects to the City Council for approval. The Committee shall be subject to the provisions of the Arizona Open Meeting Law, and all records received by or generated from the Committee shall be public except to the extent that such records may be deemed confidential pursuant to applicable statutes.

SECTION 5. THAT membership on the Committee shall be in three categories:

- (a) Advisors would include representatives from Prescott's education institutions (Prescott College, Yavapai College and Embry-Riddle Aeronautical University).
- (b) Agency representatives would include representatives of agencies such as the City of Prescott, Prescott Chamber of Commerce and Sharlot Hall Museum.
- (c) Professionals representatives would include Elisabeth Ruffner and someone from the media.

SECTION 6. THAT membership on the Committee shall consist of up to eleven persons appointed by the City Council. Each individual member is to have a genuine interest in the history of the City of Prescott. Members shall serve for the duration of the Committee, with any vacancies on the Committee to be filled by appointment by the Prescott City Council.

SECTION 7. THAT the Committee may establish policies and procedures for positions of Committee Chairman and Vice-Chairman.

SECTION 8. THAT the Committee shall have the authority to establish subcommittees, as it deems appropriate, and may use such technical and legal resources as may be necessary subject to available funds. Subcommittees established by the Committee shall be subject to the provisions of the Arizona Open Meeting Law, and all records received by or generated from the Committee shall be public except to the extent that such records may be deemed confidential pursuant to applicable statutes.

SECTION 9. THAT funding to support the activities of the Committee will be provided by the City of Prescott, subject to the availability of funds, and will come exclusively from Prescott Bed Tax revenue.

SECTION 10. THAT staffing for the Committee shall be provided by the City, subject to the availability of funds.

SECTION 11. THAT the duration of the Committee shall be from the date of its establishment by the City Council through February 14, 2013, except that the City Council shall have the authority to suspend or dissolve the Committee if it deems such action to be appropriate.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott on this 24th day of March, 2009.

\_\_\_\_\_  
JACK D. WILSON, Mayor

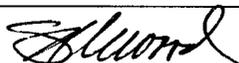
ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
ELIZABETH A. BURKE, City Clerk

\_\_\_\_\_  
GARY D. KIDD, City Attorney

<b>COUNCIL AGENDA MEMO – 03/17/09 &amp; 03/24/09</b>	
<b>DEPARTMENT:</b>	City Council
<b>AGENDA ITEM:</b>	Appointment of Member to the <i>Prescott: The Arizona Centennial City Committee</i>

<b>Approved By:</b>	<b>Date:</b>
<b>Council Appointment Committee:</b> Mayor Wilson, Councilwoman Suttles, Councilman Luzius	03/11/2009
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood 	03/12/09

**Item Summary**

Councilman Bell, the Council's liaison to the *Prescott: The Arizona Centennial City Committee*, has requested that Don Shaffer be appointed to the committee. Under separate agenda item a new resolution is being proposed which will repeal the prior resolution that established the committee and re-establish the committee with an increase in the number of members "up to 11" to accommodate this addition, as well as others that may be necessary in the future.

<b>Recommended Action:</b> MOVE to appoint Don Shaffer to the <i>Prescott: The Arizona Centennial City Committee</i> .
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**COUNCIL AGENDA MEMO – March 17, 2009**

**DEPARTMENT:** Public Works

**AGENDA ITEM:** Adoption of Ordinance No. 4692-0935 authorizing purchase and acceptance of real property from Barbara J. Funk for the Downer Trail Pavement and Utility Reconstruction Project

**Approved By:**

**Date:**

<b>Department Head:</b> Mark Nietupski	
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood <i>SNorwood</i>	<i>03/11/09</i>

**Item Summary**

Approval of this item will acquire real property for new right-of-way along the east side of Downer Trail south of Sierry Peaks Drive.

**Background**

The Downer Trail Pavement and Utility Reconstruction Project was completed in May 2008. Prior to construction of the project, Ms. Barbara J. Funk granted a temporary construction easement (TCE) to the City, across a proportion of her property, to provide a turn-around location for vehicles on the south side of the gate across Downer Trail at Sierry Peaks Drive.

The TCE area, 457.5 square feet, is now being acquired in fee title as public right-of-way to provide the turn-around location into the future. The purchase amount of \$2,000.00 is based on competitive market data provided by Briggs Appraisal and Consulting. A copy of the actual agreement is available in the City Clerks Office; the compensation worksheet is on file at the Public Works office.

Due to personal health issues Ms. Funk has requested the City adopt the recommended ordinance with the emergency clause to allow the transaction to proceed immediately.

**Budget**

FY 09 Funding for the right-of-way acquisition will be from the One Cent Sales Tax for Streets and Open Space. The total amount required for the acquisition is \$2,000.00, plus closing costs estimated between \$200 and \$1000. The actual closing costs will determine the final transaction amount.

**Attachments**

- Ordinance No. 4692-0935.

**Recommended Action: MOVE** to adopt Ordinance No. 4692-0935.

**ORDINANCE NO. 4692-0935**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE PURCHASE OF REAL PROPERTY BELONGING TO BARBARA J. FUNK THEREFROM FOR THE DOWNER TRAIL PAVEMENT AND UTILITY RECONSTRUCTION PROJECT, AUTHORIZING THE MAYOR AND CITY STAFF TO TAKE ALL NECESSARY STEPS TO EFFECTUATE SAID PURCHASES, AND DECLARING AN EMERGENCY**

**RECITALS:**

WHEREAS, the City Council has determined that certain real property was needed by the City for the Downer Trail Pavement and Utility Reconstruction Project; and

WHEREAS, the proposed purchase price of the following described property is deemed to be fair and equitable and will benefit the City of Prescott.

**ENACTMENTS:**

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

SECTION 1. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said property and easements from Barbara J. Funk, pursuant to the terms and conditions as set forth therein, for the purchase price of \$2,000.00 plus closing costs

SECTION 2. THAT upon payment of the foregoing sums, the Mayor and staff are directed to execute any and all documents in order to effectuate the foregoing purchases and acceptance of real property, including the payment of closing and other costs associated with the purchases and recordation of the closing documents.

SECTION 3. THAT, an EMERGENCY is hereby declared to exist and THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE, ADOPTION AND APPROVAL BY THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 24<sup>th</sup> day of March, 2009.

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JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

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ELIZABETH A. BURKE, City Clerk

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GARY D. KIDD, City Attorney

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**COUNCIL AGENDA MEMO – 03/17/09 & 03/24/09**

**DEPARTMENT:** Public Works

**AGENDA ITEM:** Award of bid and contract to A. Miner Contracting Inc. for the Zone 39 Water Mains and Pump Station Upgrade Project in an amount not to exceed \$3,167,367.00.

**Approved By:**

**Date:**

<b>Department Head:</b> Mark Nietupski	
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood <i>Wood</i>	<i>03/12/09</i>

**Item Summary**

This item is to award a construction contract for various distribution main and pump station improvements within water system Pressure Zone 39 in the south part of Prescott. The contract combines the following four separately budgeted projects, which will be constructed concurrently (see attached map for locations):

- 3,471 Linear Feet of New 20-inch Water Main in Aubrey street from south Pleasant to the new pump station at Pioneer Drive
- Pioneer Pump Station replacement at Pioneer Drive and south Hassayampa Drive
- 930 Linear Feet of new 16-inch DIP Water Main in Hassayampa Drive from new pump station to Park Avenue.
- 1,411 Lineal Feet of New 12 inch DIP Water Main in White Spar Road from Granite Street to Copper Basin Road

The Phase I Zone 39 system upgrades noted above will replace aged and undersized facilities and are necessary to meet current and future water demand. The new water mains and pump station will also enhance public safety by augmenting fire flow capability throughout Pressure Zone 39.

Phase II of Zone 39 improvements, will increase Indian Hill Reservoir storage from 400,000 to 1.33 million gallons and replace water and sewer main and services, and the pavement in Country Club Drive. This separate construction project will follow completion of Phase I.

The Zone 39 Water Mains and Pump Station Upgrade Project is another important step toward fulfillment of the “**First Class Utility System**” Council Goal.

**Background**

The City Water Distribution System Model, completed in 2005, identifies system deficiencies in conjunction with necessary improvements required to implement an

**Agenda Item:** Award of bid and contract to A. Miner Contracting Inc. for the Zone 39 Water Mains and Pump Station Upgrade Project in an amount not to exceed \$3,167,367.00.

operationally efficient water system with adequate storage capacity, pressure and fire flow capability.

The new 12" line in White Spar Road will replace an existing undersized 6" water main, increasing supply to the White Spar Pump Station and Copper Basin Road service area.

The 20" Line in Aubrey Street will replace existing undersized 14" welded steel and 8" lead-joint cast iron pipes that are in excess of 60 years old and severely deteriorated. Frequent leaks have occurred in this area resulting in numerous service outages requiring expensive repairs.

The Pioneer Pump Station will be relocated and increased in capacity from 1,000 to 1,400 gallons per minute (gpm). The scope of work include new pumps, piping, controls, an emergency backup generator, and building as the new equipment will not fit within the existing structure. Relocation will also enable uninterrupted service while the new facility is being constructed on adjacent City land.

The 16" line in Hassayampa Drive will replace an existing undersized 6" water main, conveying flow from the new Pioneer Pump Station to the Indian Hill tank, which supplies the Zone 39 Service Area.

## **Bid Results**

Fifteen bids were received and opened at the City Clerks office on February 26, 2009, with the following results:

<b>A. Miner Contracting, Inc.</b>	<b>Prescott, AZ</b>	<b>\$2,879,425.00*</b>
Hall Brothers Excavation	Yuma, AZ	\$3,148,173.00
Arizona Earthmovers	Prescott, AZ	\$3,169,400.00
Technology Construction	Prescott, AZ	\$3,260,130.00**
Hayden Building Corp.	Phoenix, AZ	\$3,266,385.00**
Citywide Contracting	Phoenix, AZ	\$3,514,888.00**
CS&W Contractors	Phoenix, AZ	\$3,563,464.63
Spire Engineering	Mesa, AZ	\$3,592,550.00
Harbor Company	Las Vegas, NV	\$3,667,675.00
Asphalt Paving & Supply	Prescott Valley, AZ	\$3,676,524.50
Kear Civil Corp.	Phoenix, AZ	\$3,797,180.75
Blucor Contracting	Queen Creek, AZ	\$4,135,303.00
Fann Contracting	Prescott, AZ	\$4,230,066.00
Johansen Construction	Prescott Valley, AZ	\$4,308,812.62
CNB Excavating	Sun City, AZ	\$4,723,473.25
Engineer's Estimate		\$4,249,780.00

\*Bid Confirmation received

\*\* Bid considered non-responsive due to significant errors or omissions in bid proposal / bid tab

**Agenda Item:** Award of bid and contract to A. Miner Contracting Inc. for the Zone 39 Water Mains and Pump Station Upgrade Project in an amount not to exceed \$3,167,367.00.

### **Budget**

The recommended contract amount is the construction bid amount of \$2,879,425.00 plus 10% (\$287,942) for a total not to exceed amount of \$3,167,368.00.

City Manager approval would be required to exceed the bid amount based on appropriate justification. City Council approval would be required above the total not to exceed amount of \$3,167,368.00.

FY 09 budgeted funds are available for the Zone 39 Water Mains and Pump Station Project, Total \$4,186,000.00 (Source: Water Fund Rates; \$2,178,200 and Impact Fees; \$2,007,800)

### **Schedule**

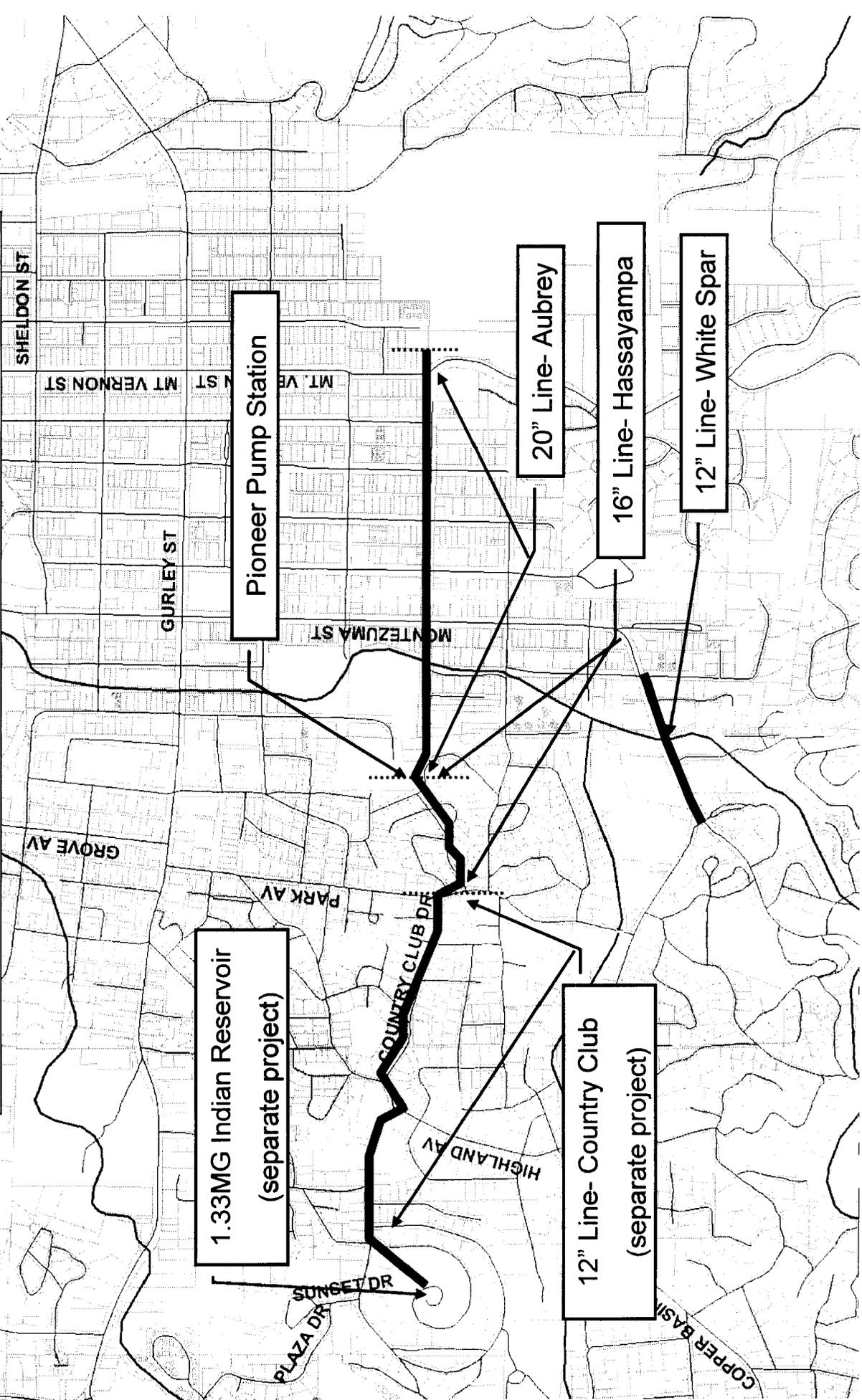
Construction work is scheduled to commence in early April 2009 and be completed in Spring 2010.

**Attachments**

- Location Map
- Zone 39 Project Chronology

**Recommended Action:** **MOVE** to award the bid for the Zone 39 Water Mains and Pump Station Upgrade Project to A. Miner Contracting, Inc., Prescott, in an amount not to exceed \$3,167,367.00.

# Zone 39 Water Main and Pump Station Upgrade Project



1.33MG Indian Reservoir  
(separate project)

Pioneer Pump Station

20" Line- Aubrey

16" Line- Hassayampa

12" Line- White Spar

12" Line- Country Club  
(separate project)

SHELDON ST

MT VERNON ST

GURLEY ST

MONTENZUMA ST

GROVE AV

PARK AV

COUNTRY CLUB DR

HIGHLAND AV

SUNSET DR

PLAZA DR

COPPER BASIN

## Zone 39 Project Chronology

- January 2003** City Council Annual Strategic Planning Meeting  
Identified Goal – First Class Utility System
- March 2004** Water System Model Project begins
- April 2005** Water Model Completed  
Provides basis for the Water System CIP with required projects identified
- July 2005** FY 06 Budget identifies Zone 39/Indian Hill Project
- Sept. 2007** City Contracts with PBS&J for Zone 39 Water Mains and Pump Station Upgrades Project
- Nov. 2007** Contract with PBS&J amended for design of Indian Hill Reservoir
- April 2008** Notice of public meeting mailed to residents
- May 2008** Public meeting held at Lincoln School
- July 2008** Public meeting held in Council Chambers
- July 2008** Prescott Preservation Commission Reviews Project
- August 2008** Prescott Preservation Commission recommends aesthetic treatments
- Sept. 2008** Contract Amendment Two with PBS&J for Country Club Drive sewer and street reconstruction recommended.

M	<b>COUNCIL AGENDA MEMO – 03/17/09 &amp; 03/24/09</b>
L	<b>DEPARTMENT:</b> Public Works
S	<b>AGENDA ITEM:</b> Adoption of Ordinance No. 4694-0937 authorizing purchase and acceptance of real property from various owners for right-of-way for the Demerse Avenue Reconstruction Project
M	

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b> Mark Nietupski	
<b>Finance Director:</b> Mark Woodfill	
<b>City Manager:</b> Steve Norwood <i>SNorwood</i>	<i>03/12/09</i>

**Item Summary**

Approval of this item will acquire rights-of-way from various property owners necessary for the Demerse Avenue Reconstruction Project, Whetstine Avenue to Montebello Lane. Exhibit "A" (attached) provides a summary of the acquisitions involving twenty-four (24) parcels of real property.

**Background**

Reconstruction of Demerse Avenue was identified in the Transportation FY09 Capital Improvement Program. The acquisition of twenty-four (24) relatively small parcels, the largest being 216 square feet, of new right-of-way is required to construct sidewalk improvements in compliance with the Americans with Disabilities Act (ADA).

Exhibit "A" identifies property owners, address, assessors parcel number, area of right-of-way acquisitions, compensation (including where applicable real property improvements) as well as other terms and conditions relative to each acquisition. The real property compensation amounts are based on competitive market data provided by Briggs Appraisal and Consulting. Copies of the actual agreements are available in the City Clerks Office; compensation worksheets are on file at the Public Works office.

**Budget**

Reconstruction of Demerse Avenue is identified in the FY 09 streets improvement program budget. (Account No. 66-88611: source One Cent Sales Tax for Streets and Open Space, Amount \$2,743,454.00). The total amount required for the acquisition listed on Exhibit "A" is \$9,206.00 plus closing costs estimated between \$200 and \$1000 for each closing. The actual closing costs will determine the final amount for each transaction.

**AGENDA ITEM:** Adoption of Ordinance No. 4694-0937 authorizing purchase and acceptance of real property from various owners for right-of-way for the Demerse Avenue Reconstruction Project

**Schedule**

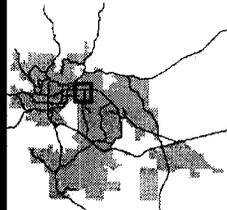
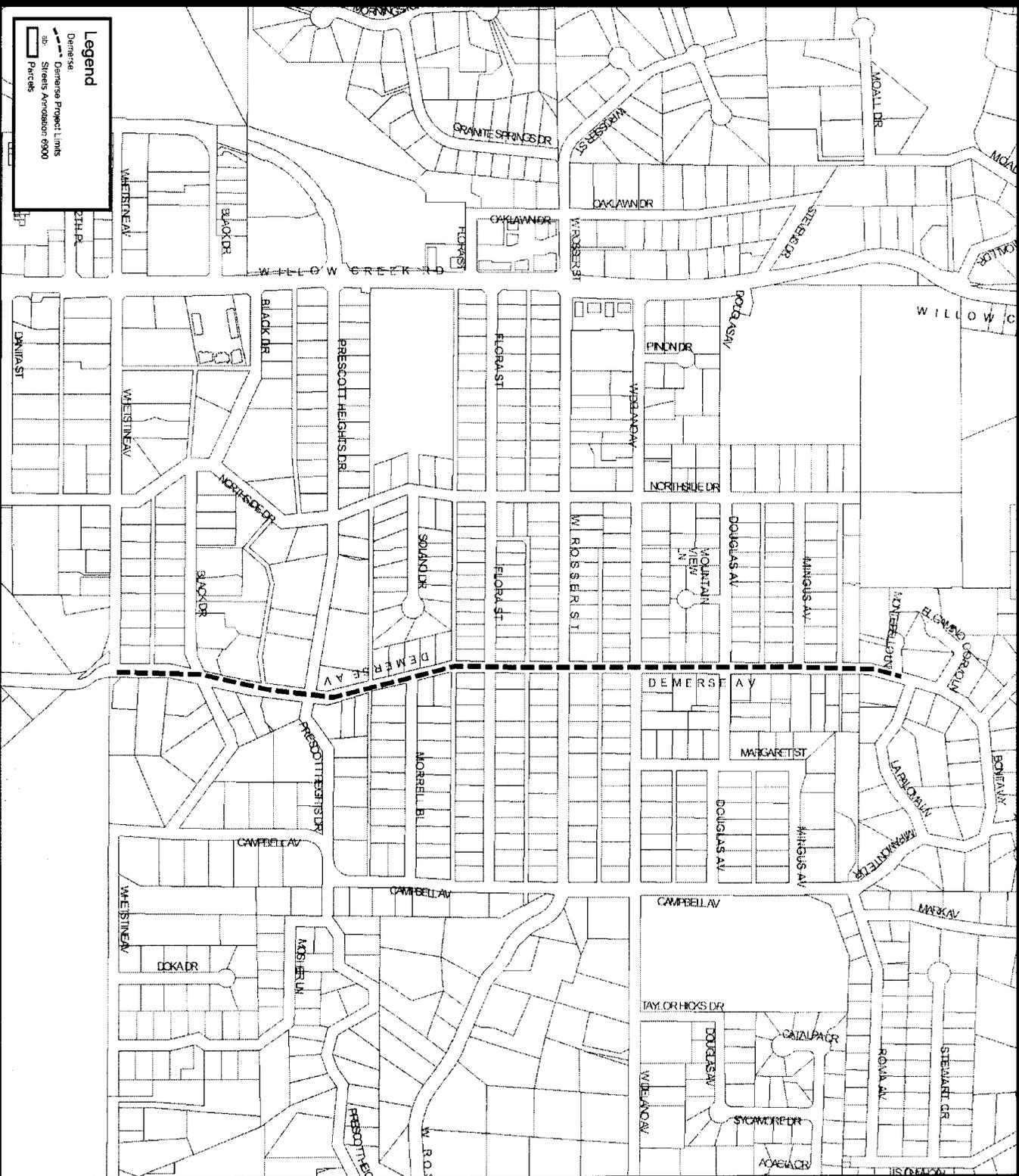
Advertisement for bids began on March 1, 2009, and construction is tentatively scheduled to commence in May, 2009.

- Attachments**
- Exhibit "A" summary of acquisitions
  - Ordinance No. 4694-0937
  - Map showing project limits

**Recommended Action:** MOVE to adopt Ordinance No. 4694-0937.

**Legend**

- Demerise
- Demerise Project Limits
- Streets Annotation 6900
- Parcels



**DEMERISE AVE.  
 PROJECT LIMITS  
 WHETSTINE AVE.  
 TO MONTEBELLO LN.**

This map is a product of the  
 The City of Prescott GIS



**Demerse Avenue Reconstruction Rights-of-Way  
Acquisition Summary  
March 17, 2009**

Owner Name	Property Address	Assessor Parcel No	Acquisition ROW / Easements	Compensation	Other Terms and Conditions
Palmer, Charles D & Roberts, Renae A.	650 W. Rosser Street Prescott, AZ 86301	116-13-001	R/W= 21.0 SF	\$150.00	
Roseberry, William P.	1711 Demerse Avenue Prescott, AZ 86301	116-13-022	R/W= 83.7 SF	\$503.00	
Schwartz, Joseph B. & Denyse E.	650 W. Delano Avenue Prescott, AZ 86301	116-13-065	R/W= 84.2 SF	\$506.00	
Purce, David A. & Gloria J.	1815 Demerse Avenue Prescott, AZ 86301	116-13-069A	R/W= 60.2 SF	\$362.00	
Shean, Holly	1903 Demerse Avenue Prescott, AZ 86301	116-13-072	R/W= 77.3 SF	\$464.00	
Cowin, Rodney J. and Amanda J.	704 Douglas Avenue Prescott, AZ 86301	116-16-010	R/W= 52.6 SF	\$316.00	
Bowman, Cynthia L.	701 Mingus Avenue Prescott, AZ 86301	116-16-011	R/W= 43.3 SF	\$260.00	
Cole, Michael E. & Susan G.	702 Mingus Avenue Prescott, AZ 86301	116-16-028	R/W= 44.9 SF	\$270.00	
Van Den Acre, Willie Joyce	705 Douglas Avenue Prescott, AZ 86301	116-16-031	R/W= 77.6 SF	\$466.00	
Hitson, Justin O. & Amber K.	701 W. Delano Avenue Prescott, AZ 86301	116-16-051	R/W= 67.0 SF	\$402.00	
Foley, Elsie	702 W. Delano Avenue Prescott, AZ 86301	116-16-052	R/W= 94.7 SF	\$569.00	

**Demerse Avenue Reconstruction Rights-of-Way  
Acquisition Summary  
March 17, 2009**

<b>Owner Name</b>	<b>Property Address</b>	<b>Assessor Parcel No</b>	<b>Acquisition ROW / Easements</b>	<b>Compensation</b>	<b>Other Terms and Conditions</b>
Tope, Clarence L.	703 W. Rosser Street Prescott, AZ 86301	116-17-045	R/W= 14.6 SF	\$150.00	
Renee, Jolene	702 Flora Street Prescott, AZ 86301	116-17-046	R/W= 83.2 SF	\$500.00	
Miller, Stephen L. & Blauer-Miller, Shoshana	701 Flora Street Prescott, AZ 86301	116-17-069	R/W= 89.5 SF	\$537.00	
Lira, Victor & Norma J.	649 W. Rosser Street Prescott, AZ 86301	116-17-070	R/W= 33.5 SF	\$201.00	City to remove landscape wall and install driveway entrance on Demerse Avenue
Hesson, Christena Lynn	650 Flora Street Prescott, AZ 86301	116-17-092	R/W= 2.0 SF	\$150.00	
Junkins, Roger A. & J. Raylene	651 Flora Street Prescott, AZ 86301	116-17-093B	R/W= 2.0 SF	\$150.00	
Isaacson, Mya	651 Morrell Blvd. Prescott, AZ 86301	116-17-115	R/W= 116.3 SF	\$698.00	City to replace tree in front yard and reconstruct disturbed fencing. City to remove tree along Demerse Avenue
Patterson, Claude V. & Dorothy F.	650 Morrell Blvd. Prescott, AZ 86301	116-17-116	R/W= 51.7 SF	\$311.00	
Emery, Calvin T.	1220 Demerse Avenue Prescott, AZ 86301	116-17-219A	R/W= 44.4 SF	\$267.00	
Colbert, Bruce & Kim	615 Black Drive Prescott, AZ 86301	116-17-231A	R/W= 10.1 SF	\$150.00	

**Demerse Avenue Reconstruction Rights-of-Way  
Acquisition Summary  
March 17, 2009**

Owner Name	Property Address	Assessor Parcel No	Acquisition ROW / Easements	Compensation	Other Terms and Conditions
Stolar, Jeanne A.	612 Black Drive Prescott, AZ 86301	116-17-243E	R/W= 128.9 SF	\$774.00	
Velonis, Kathryn A. & Linda L.	697 Prescott Heights Dr Prescott, AZ 86301	116-17-243J	R/W= 8.4 SF	\$150.00	
Grier, Donald S.	620 Prescott Heights Dr Prescott, AZ 86301	116-17-244F	R/W= 150.0 SF	\$900.00	
				\$9,206.00	

**SF =** Square Feet  
**R/W =** Right-of-Way  
**Drn Esmt =** Drainage Easement  
**Sip Esmt =** Slope Easement  
**TCE =** Temporary Construction Easement  
**SE =** Sewer Easement  
**QC =** Quit Claim

## **ORDINANCE NO. 4694-0937**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE PURCHASE OF REAL PROPERTIES BELONGING TO TWENTY FOUR (24) PROPERTY OWNERS ALONG DEMERSE AVENUE THEREFROM FOR THE DEMERSE AVENUE RECONSTRUCTION AND UTILITY UPGRADES PROJECT, AND AUTHORIZING THE MAYOR AND CITY STAFF TO TAKE ALL NECESSARY STEPS TO EFFECTUATE SAID PURCHASES**

### **RECITALS:**

WHEREAS, the City Council has determined that certain real properties are needed by the City for the Demerse Avenue Reconstruction Project; and

WHEREAS, the proposed purchase prices of the following described properties are deemed to be fair and equitable and will benefit the City of Prescott.

### **ENACTMENTS:**

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

SECTION 1. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said property and easements from Charles Palmer and Renae Roberts, pursuant to the terms and conditions as set forth therein, for the purchase price of \$150.00 plus closing costs

SECTION 2. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from William P. Roseberry, pursuant to the terms and conditions as set forth therein, for the purchase price of \$503.00 plus closing costs.

SECTION 3. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Joseph B. and Denyse E. Schwartz, pursuant to the terms and conditions as set forth therein, for the purchase price of \$506.00 plus closing costs.

SECTION 4. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property

from David A. and Gloria J. Purce, pursuant to the terms and conditions as set forth therein, for the purchase price of \$362.00 plus closing costs.

SECTION 5. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Holly Shean, pursuant to the terms and conditions as set forth therein, for the purchase price of \$464.00 plus closing costs.

SECTION 6. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Rodney J. and Amanda J. Cowin, pursuant to the terms and conditions as set forth therein, for the purchase price of \$316.00 plus closing costs.

SECTION 7. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Cynthia L. Bowman, pursuant to the terms and conditions as set forth therein, for the purchase price of \$260.00 plus closing costs.

SECTION 8. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Michael E. and Susan G. Cole, pursuant to the terms and conditions as set forth therein, for the purchase price of \$270.00 plus closing costs.

SECTION 9. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Willie Joyce Van Den Acre, pursuant to the terms and conditions as set forth therein, for the purchase price of \$466.00 plus closing costs.

SECTION 10. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Justin O. and Amber K. Hitson, pursuant to the terms and conditions as set forth therein, for the purchase price of \$402.00 plus closing costs.

SECTION 11. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Elsie Foley, pursuant to the terms and conditions as set forth therein, for the purchase price of \$569.00 plus closing costs.

SECTION 12. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Clarence L. Tope, pursuant to the terms and conditions as set forth therein, for the purchase price of \$150.00 plus closing costs.

SECTION 13. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Jolene Renee, pursuant to the terms and conditions as set forth therein, for the purchase price of \$500.00 plus closing costs.

SECTION 14. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Stephen L. Miller and Shoshana Blauer-Miller, pursuant to the terms and conditions as set forth therein, for the purchase price of \$537.00 plus closing costs.

SECTION 15. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Victor and Norma J. Lira, pursuant to the terms and conditions as set forth therein, for the purchase price of \$201.00 plus closing costs.

SECTION 16. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Christena Lynn Hesson, pursuant to the terms and conditions as set forth therein, for the purchase price of \$150.00 plus closing costs.

SECTION 17. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Roger A. and J. Raylene Junkins, pursuant to the terms and conditions as set forth therein, for the purchase price of \$150.00 plus closing costs.

SECTION 18. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Mya Isaacson, pursuant to the terms and conditions as set forth therein, for the purchase price of \$698.00 plus closing costs.

SECTION 19. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property

from Claude V. and Dorothy F. Patterson, pursuant to the terms and conditions as set forth therein, for the purchase price of \$311.00 plus closing costs.

SECTION 20. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Calvin T. Emery, pursuant to the terms and conditions as set forth therein, for the purchase price of \$267.00 plus closing costs.

SECTION 21. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Bruce and Kim Colbert, pursuant to the terms and conditions as set forth therein, for the purchase price of \$150.00 plus closing costs.

SECTION 22. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Jeanne A. Stolar, pursuant to the terms and conditions as set forth therein, for the purchase price of \$774.00 plus closing costs.

SECTION 23. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Kathryn A. and Linda L. Velonis, pursuant to the terms and conditions as set forth therein, for the purchase price of \$150.00 plus closing costs.

SECTION 24. THAT the City Council hereby accepts the offer to purchase certain real property more particularly described in that certain Agreement for Sale of Real Property dated February 26, 2009 and agrees to purchase and accept said real property from Donald S. Grier, pursuant to the terms and conditions as set forth therein, for the purchase price of \$900.00 plus closing costs.

SECTION 25. THAT upon payment of the foregoing sums, the Mayor and staff are directed to execute any and all documents in order to effectuate the foregoing purchases and acceptance of rights of way and easements, including the payment of closing and other costs associated with the purchases and recordation's of the closing documents.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott this 24<sup>th</sup> day of March, 2009.

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JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

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ELIZABETH A. BURKE, City Clerk

---

GARY D. KIDD, City Attorney

**COUNCIL AGENDA MEMO – 3/17/09 and 3/24/09**

**DEPARTMENT:** COMMUNITY DEVELOPMENT

**AGENDA ITEM:** Revision Plat to abandon a portion of a drainage easement, and to establish new easements on Lot 5 of the Ranch at Prescott Retail Center Plat located at the corner of Ranch Drive and Liese Drive- RP09-001– Owner: Bullwhacker Associates / Applicant: Scott Lee (APN 103-49-005).

**Approved By:**

**Date:**

**Department Head:** Tom Guice

**Finance Director:**

**City Manager:** Steve Norwood *SNorwood*

*03/11/09*

**REQUEST**

A Revision Plat of Lot 5 of The Ranch at Prescott Retail Center Plat which requests: **1)** to abandon the northerly 18-feet of a 30-foot wide drainage easement; **2)** to dedicate a new 42-foot wide drainage, slope and public utility easement (P.U.E.) along Liese Drive; and **3)** to dedicate a 5-foot wide sidewalk easement and P.U.E. along Ranch Drive.

The property is zoned Business General (BG), and is located at the corner of Ranch & Leise Drives.

**STAFF ANALYSIS**

In accordance with Section 9.10.5.C.1.d of the Land Development Code, substantive changes in these types of easements require City Council action.

**Reasons for Map Changes**

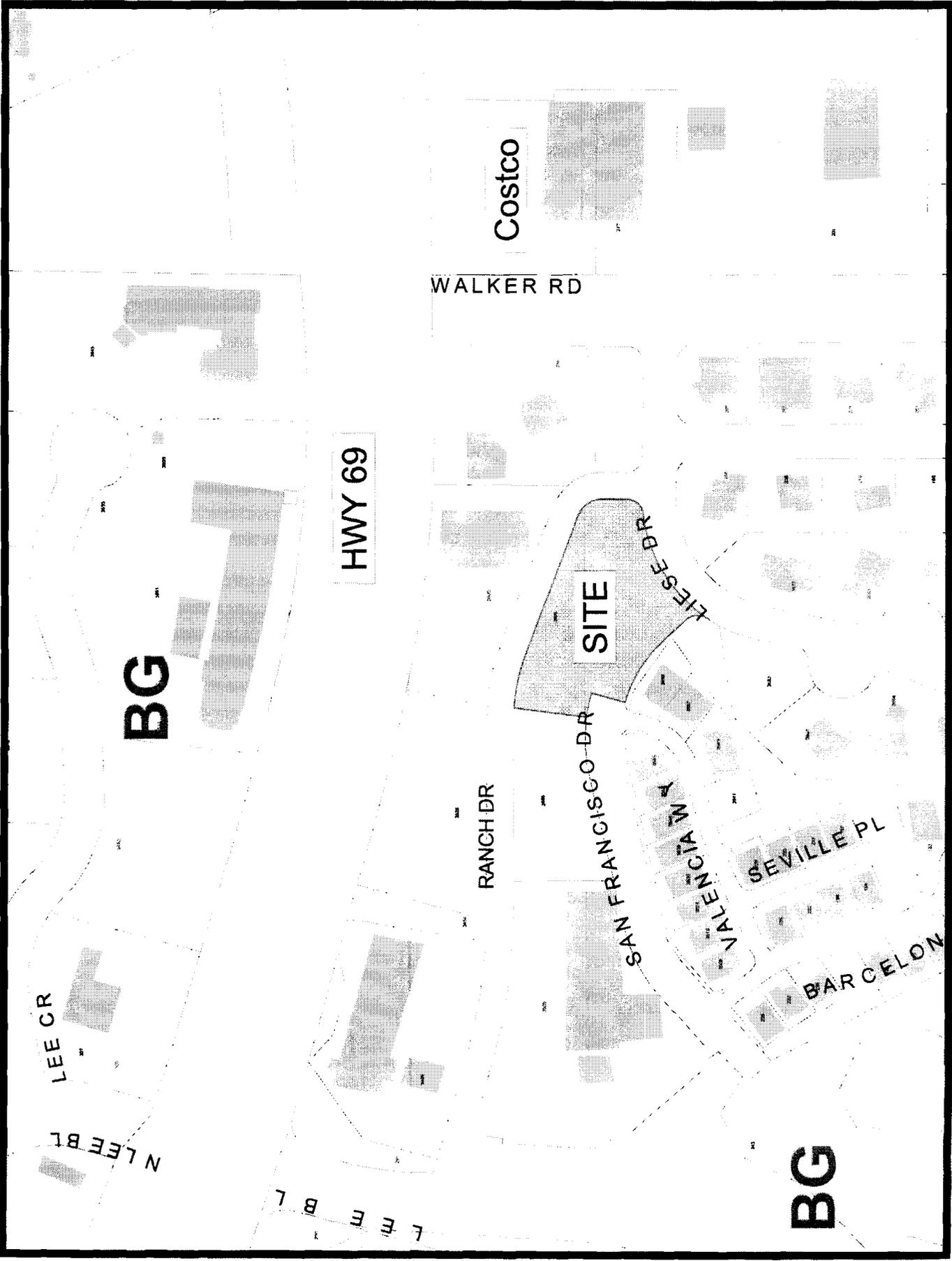
These changes are requested to address the existing 2009 drainage conditions of this 1995 approved plat, and to change the purpose of some easements.

1. Along Liese Drive, a reduction in the drainage easement from 30-feet to 12-feet addresses the actual drainage conditions on the site, and also allows an increased parking area for a proposed medical office building on this site.
2. A new 42-foot wide easement along Liese Drive combines the remaining easements (the 12-foot drainage easement, and a 30-foot existing slope, right-of-way, and P.U.E. easement into only one 42-foot wide easement.
3. Along Ranch Drive, a sidewalk easement is needed to accommodate a new sidewalk which will lie outside the existing right-of-way. The purpose of the existing 5-foot P.U.E will now include allowance for this sidewalk.

**STAFF RECOMMENDATION**

Staff recommends approval of this request.

**Recommended Action:** MOVE to approve the abandonment of a portion of a drainage easement and dedication of new easements in Revision Plat #09-003.



Costco

WALKER RD

HWY 69

BG

SITE

LEE CR

N LEE BL

RANCH DR

SAN FRANCISCO DR

LISEE DR

VALENCIA W

SEVILLE PL

BARCELON

LEE BL

BG

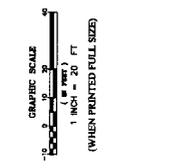
REVISIONS
OWNER INFORMATION: BULLWHACKER ASSOCIATES P.O. BOX 471 PRESCOTT, ARIZONA 86302

PLAT FOR PARTIAL EASEMENT ABANDONMENT

APN 103-49-005, LOT 5 OF THE RANCH AT PRESCOTT RETAIL CENTER  
STATE IN SEC. 31, T14N, R18E, THE G.S.R.M., YAVAPAI COUNTY,  
ARIZONA  
AMENDED, AS RECORDED IN BOOK 32 OF MAPS AND PLATS, PAGE 48 OF Y.C.O.R.  
PRESCOTT VALLEY, AZ 86314  
770-8990 FAX (209) 770-8991

DATE: 03-04-09	SCALE: 1" = 20'	SHEET: 1	OF ONE
JOB#: 08-0198			

FIELD AND RECORDED AT REQUEST OF  
BULLWHACKER ASSOCIATES, P.O. BOX 471,  
PRESCOTT, ARIZONA 86302



**LEGEND**

- ⊙ FOUND 1/2" REBAR WITH CAP RLS 16871
- ⊙ FOUND 1/2" REBAR WITH CAP RLS 8889
- ⊙ FOUND CENTERLINE MONUMENT
- ⊙ SET MONUMENT WITH CAP OR TAG RLS 33861
- 545'45" W MEASURED DATA (89°53'57")
- RECORD DATA
- PARCEL LINE
- EASEMENT LINE
- CENTER LINE OF ROAD
- EASEMENT AREA TO BE ABANDONED

**PLAT FOR PARTIAL EASEMENT ABANDONMENT**

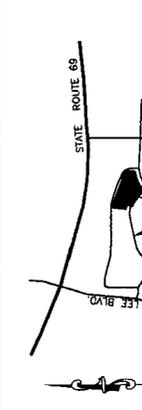
APN 103-49-005

LOT 5 OF THE RANCH AT PRESCOTT RETAIL CENTER AMENDED AS RECORDED IN BOOK 32 OF MAPS AND PLATS, PAGE 48 OF YAVAPAI COUNTY OFFICIAL RECORDS.

SITUATE IN SECTION 31, TOWNSHIP 14 NORTH, RANGE 1 WEST OF THE GILA & SALT RIVER MERIDIAN, YAVAPAI COUNTY, ARIZONA

**BASES OF BEARINGS:**

THE BASIS OF BEARING FOR THIS SURVEY IS S89°12'30"E 224.87' ALONG THE CENTERLINE OF RANCH DRIVE BETWEEN TWO FOUND MONUMENTS.



**SURVEYOR'S NOTES**

- THIS SURVEY WAS PERFORMED BY MY ASSIGNS IN NOVEMBER OF THE YEAR 2008. THE CREW WAS COMPRISED OF MIKE FINN AND JAMIE FREEMAN. THIS PLAT WAS PREPARED BY ME OR MY ASSIGNS BASED ON THE INFORMATION OBTAINED IN THAT SURVEY.
- THE PARCEL WAS NOT OCCUPIED AT THE TIME OF SURVEY.
- ALL EASEMENTS AS SHOWN HEREON ARE FROM THE FINAL PLAT FOR THE RANCH AT PRESCOTT RETAIL CENTER AMENDED AS RECORDED IN BOOK 32 OF MAPS AND PLATS, PAGE 48, UNLESS NOTED OTHERWISE.
- THE WORD CERTIFY AS SHOWN OR LISTED HEREON MEANS AN EXPRESSION OF PROFESSIONAL OPINION REGARDING THE FACTS OF THE SURVEY AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTEE EXPRESSED OR IMPLIED.
- DECLARATION IS MADE TO THE ORIGINAL PURCHASER OF THIS PARCEL THAT THIS SURVEY IS TO BE REFERRED TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.
- THE INTENT OF THIS SURVEY IS TO REScind THE EASEMENTS AND ABANDON A PORTION OF THE EXISTING DRAINAGE EASEMENT.
- THE PROPERTY AS DEPICTED HEREON REPORT THE CONDITION IN WHICH IT EXIST AT THE FIELD. VARIOUS THIS WERE FOUND.
- THE FOLLOWING DOCUMENTS WERE USED IN THE PERFORMANCE OF THIS SURVEY. A REFERENCE CAN BE MADE TO THESE DOCUMENTS FOR RECORD INFORMATION.

BOOK 32 OF MAPS AND PLATS, PAGE 48

**DEDICATION**

KNOW ALL MEN BY THESE PRESENTS:

THAT THE PARTNERSHIP ASSOCIATES, AN ARIZONA LIMITED PARTNERSHIP, IS ABANDONING A PORTION OF A DRAINAGE EASEMENT AND IS CHANGING THE PURPOSE OF THE SAME TO BE USED AS A DRAINAGE EASEMENT FOR THE RANCH AT PRESCOTT RETAIL CENTER AMENDED, SITUATE IN SECTION 31, TOWNSHIP 14 NORTH, RANGE 1 WEST, OF THE GILA AND SALT RIVER BASE, COUNTY OF YAVAPAI, STATE OF ARIZONA, AS REFLECTED ON THIS PLAT, HEREBY PUBLISHES THE LOCATION AND GIVES THE DIMENSIONS OF THE LOT AND EASEMENTS CONSTITUTING SAME, AND THAT EACH LOT AND EASEMENT SHALL BE KNOWN BY THE NUMBER, LETTER OR NAME GIVEN EACH RESPECTIVELY, AS SHOWN ON SAID PLAT. ALL OTHER EXISTING EASEMENTS SHALL REMAIN IN TACT AND UNAFFECTED.

IN WITNESS WHEREOF, BULLWHACKER ASSOCIATES, AN ARIZONA LIMITED PARTNERSHIP, HAS CAUSED THE NAME OF THE PARTNERSHIP TO BE AFFIXED HEREUNTO, AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF JIM N. LEE, AS PRESIDENT, BEING DAILY AUTHORIZED TO DO SO, ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

BULLWHACKER ASSOCIATES, AN ARIZONA LIMITED PARTNERSHIP

BY: JIM N. LEE, PRESIDENT

**APPROVALS**

APPROVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF PRESCOTT ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

MAYOR \_\_\_\_\_ CITY CLERK \_\_\_\_\_

APPROVED BY THE CITY OF PRESCOTT ENGINEERING DEPARTMENT ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

CITY ENGINEER \_\_\_\_\_

APPROVED BY THE CITY OF PRESCOTT COMMUNITY DEVELOPMENT DIRECTOR ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

COMMUNITY DEVELOPMENT DIRECTOR \_\_\_\_\_

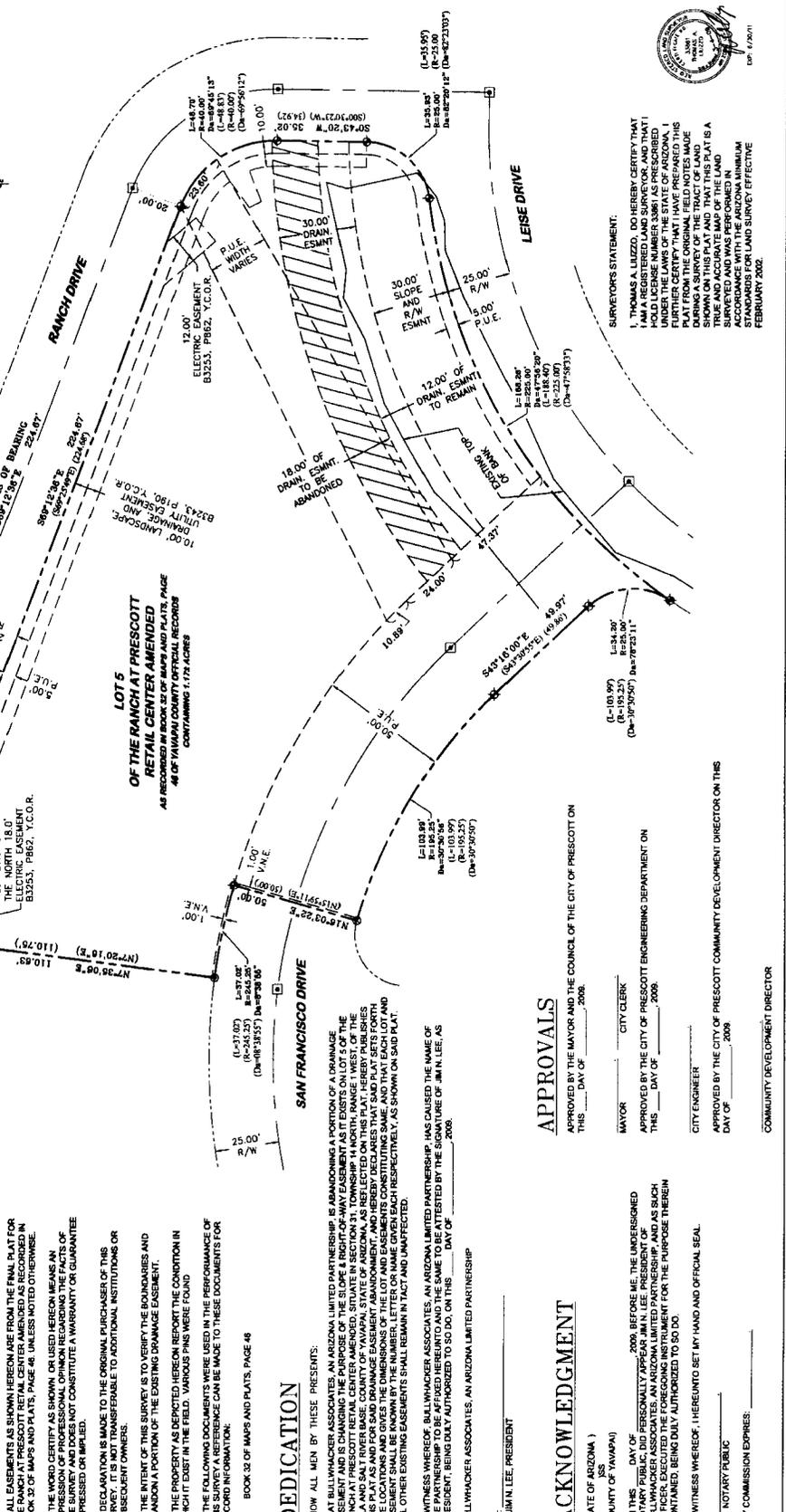
**ACKNOWLEDGMENT**

STATE OF ARIZONA )  
COUNTY OF YAVAPAI )  
SS: \_\_\_\_\_ )  
ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008, BEFORE ME, THE UNDERSIGNED )  
NOTARY PUBLIC, DID PERSONALLY APPEAR JIM N. LEE, PRESIDENT OF )  
BULLWHACKER ASSOCIATES, AN ARIZONA LIMITED PARTNERSHIP, AND AS SUCH )  
OFFICER, DECIDED THE FOREGOING INSTRUMENT FOR THE PURPOSE THEREIN )  
CONTAINED, BEING DAILY AUTHORIZED TO DO SO.

IN WITNESS WHEREOF, I HEREINTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_



**SURVEYOR'S STATEMENT:**

I, THOMAS A. LEE, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR AND THAT I HOLD LICENSE NUMBER 33861 AS PRESCRIBED UNDER THE LAWS OF THE STATE OF ARIZONA. I HAVE PERSONALLY CONDUCTED THIS SURVEY PLAT FROM THE ORIGINAL FIELD NOTES MADE DURING A SURVEY OF THE TRACT OF LAND SITUATE IN SECTION 31, TOWNSHIP 14 NORTH, RANGE 1 WEST OF THE GILA & SALT RIVER MERIDIAN, AND THAT THIS PLAT IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEYED AND WAS PERFORMED IN ACCORDANCE WITH THE ARIZONA MINIMUM STANDARD PRACTICES FOR LAND SURVEY EFFECTIVE FEBRUARY 2002.



<b>COUNCIL AGENDA MEMO</b> 3/17/09 & 3/24/09
<b>DEPARTMENT:</b> Community Development
<b>AGENDA ITEM:</b> City Initiated Minor General Plan Amendment located generally east of Gail Gardner Way between Westridge Drive & Fair Street--GP08-006

<b>Approved By:</b>	<b>Date:</b>
<b>Department Head:</b> Tom Guice	
<b>Finance Director:</b>	
<b>City Manager:</b> Steve Norwood <i>SNorwood</i>	<i>03/11/09</i>

**REQUEST**

City Initiated General Plan Amendment from *Low-Density Residential (1-7 DUA) to Mixed Use* for properties with the following Assessor Parcel Numbers (APNs) 111-11-001A, 111-11-067, -068,-069,-070,-071,-078,-079,-090,-092,-093; 111-16-001,-002,-003,-004 -005, -006,-007, and -011 (a portion thereof); and from *Low-Density Residential (1-7 DUA) to Commercial* for APN 115-08-033B (a portion thereof); and APN 155-08-081 (a portion thereof);

**Location:** An area generally described as the Southwest corner of Fair Street and Gail Gardner Way, and along the east side of Gail Gardner Way from Fair Street to Westridge Drive.

**PREVIOUS COUNCIL ACTION**

Along the east side of Gail Gardner there have been two rezonings with a General Plan Amendment (GPA). In 2001 City Council approved General Plan Amendment (GP05-003) for APN 111-11-089 at 653 Gail Gardner Way from Low-Medium Residential to Mixed Use, and a subsequent rezoning (RZ05-001) of the property from Single-Family Residential 9,000 sq. foot min. lot size (SF-9) to Residential Office (RO). Another rezoning from SF-9 to RO took place in 2001 at 671 Gail Gardner Way.

The past several years have seen several requests for rezoning on the west side of Gail Gardner Way from Fair Street to Westridge Drive along with a new designation of Mixed Use in the 2003 General Plan.

**STAFF ANALYSIS**

This is a minor amendment to the General Plan because the project size is less than 40 acres and less than 400 homes within a ¼ mile radius.

In November 2008 a property owner met with Staff at a Pre-Application Conference to discuss another rezoning of property along the east side of Gail Gardner. This would have required another individual GPA. It was at this time that Staff proposed a City

initiated General Plan Amendment for the east side of Gail Gardner because of the trend to office uses that is now occurring in this area.

**Consistency with the General Plan:** The General Plan endorses specific area plans as a means of establishing planning policy and overall development concepts for comprehensive land use, circulation, open space for various areas of the City. One such plan is the Gail Gardner Neighborhood Plan which was adopted in 2000 and updated in June 2002.

**Gail Gardner Neighborhood Plan:** The plan was developed over a 6-month period with participation of many residents and owners in the overall area. The plan acknowledges the transition and mix of land uses that is occurring in the area north of Fair Street, while maintaining the single-family nature of the area south of Fair Street. The plan also encourages that when reuse or redevelopment is proposed, that to the extent possible, the look of a residential neighborhood be maintained (page 13). The Goals and Objectives of the Gail Gardner Neighborhood plan include the following.

Goal 1.3

Create a dynamic neighborhood that can adapt to changes in land use for the benefit of the residents of the Gail Gardner Neighborhood.

“Objective 2B: when commercial areas are sought for existing residential properties north of Fair Street, encourage the use of Neighborhood Services (NS) or Residential Office (RO) zoning districts for lower intensity commercial uses so long as adequate parking facilities can be provided in the rear portion of these properties”.

**Neighborhood Compatibility:** The project area is in transition. New medical offices have been built on the west side of Gail Gardner which are changing the character of that side of the street from primarily single-family residential to commercial offices. The east side of Gail Gardner still remains primarily residential; however, as noted above, zoning changes have been made and another is being explored.

The Residential-Office (RO) Zoning District was created to provide for the transition of land uses along collector and arterial streets. Gail Gardner is a designated collector street. The intent of the RO zone is to allow for an assortment of land uses that do not overly impact nearby residential areas.

Staff finds that the approval of this General Plan Amendment will recognize the changes that are occurring, reduce the cost of development by providing for this City initiated proposal, and will allow property owners to keep their property in a residential classification without the need for commercial loans to improve residential properties.

**AREA MEETING**

No area meeting was held because this General Plan Designation could potentially increase the number of uses a property owner may have—not restrict them.

**UNIFIED DEVELOPMENT CODE COMMITTEE RECOMMENDATION**

The Committee recommended this GPA proceed forward at its December 11, 2008 meeting.

**PLANNING COMMISSION RECOMMENDATION**

The Commission recommended approval of this request by a vote of 5:0 at its January 29, 2009 meeting.

**RESOLUTION NO. 3945-0951**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AMENDING THE GENERAL PLAN LAND USE MAP PERTAINING TO THAT CERTAIN PROPERTY GENERALLY LOCATED AT THE SOUTHWEST CORNER OF FAIR STREET AND GAIL GARDNER WAY AND ALONG THE EAST SIDE OF GAIL GARDNER WAY FROM FAIR STREET TO WESTRIDGE DRIVE, DESCRIBED AS ASSESSOR PARCEL NUMBERS: 111-11-001A, 111-11-067, 111-11-068, 111-11-069, 111-11-070, 111-11-071, 111-11-078, 111-11-079, 111-11-090, 111-11-092, 111-11-093, 111-16-001, 111-16-002, 111-16-003, 111-16-004, 111-16-005, 111-16-006, 111-16-007, AND 111-16-011 (A PORTION THEREOF), FROM "LOW-DENSITY RESIDENTIAL (1-7 DUA)" TO "MIXED USE"; AND, ASSESSOR PARCEL NUMBERS 115-08-033B (A PORTION THEREOF) AND 155-08-081 (A PORTION THEREOF), FROM "LOW-DENSITY RESIDENTIAL (1-7 DUA)" TO "COMMERCIAL"**

**RECITALS:**

WHEREAS, the City of Prescott has requested an amendment to the General Plan Land Use Map pertaining to its property; and

WHEREAS, the Planning and Zoning Commission of the City of Prescott has held public hearings regarding said General Plan Land Use Map Amendment, subject to certain conditions; and

WHEREAS, the City Council of the City of Prescott has determined that it would be in the best interest of public necessity, interest, convenience or general welfare to amend the General Plan Land Use Map pertaining to said properties;

WHEREAS, the requirements of the City of Prescott *Land Development Code* have been complied with.

**ENACTMENTS:**

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

SECTION 1. THAT, the General Plan Land Use Map pertaining to the following described parcels of land, generally located at the southwest corner of Fair Street and Gail Gardner Way and along the east side of Gail Gardner Way from Fair Street to Westridge Drive, described as Assessor Parcel Numbers: 111-11-001A, 111-11-067, 111-11-068, 111-11-069, 111-11-070, 1 11-11-071, 111-11-078, 111-11-079, 111-11-090, 111-11-092, 111-11-093, 111-16-001, 111-16-002, 111-16-003, 111-16-004, 111-16-005, 111-16-006, 111-16-007, AND 111-16-011 (a portion thereof), from "Low-Density Residential (1-7 DUA)" to "Mixed Use"; and, Assessor Parcel Numbers 115-08-

033B (a portion thereof) and 155-08-081 (a portion thereof), from "Low-Density Residential (1-7 DUA)" to "Commercial".

SECTION 2. THAT the Mayor and staff are hereby authorized to take all such steps as may be necessary to effectuate said General Plan Land Use Map Amendment.

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott on this 24<sup>th</sup> day of March, 2009.

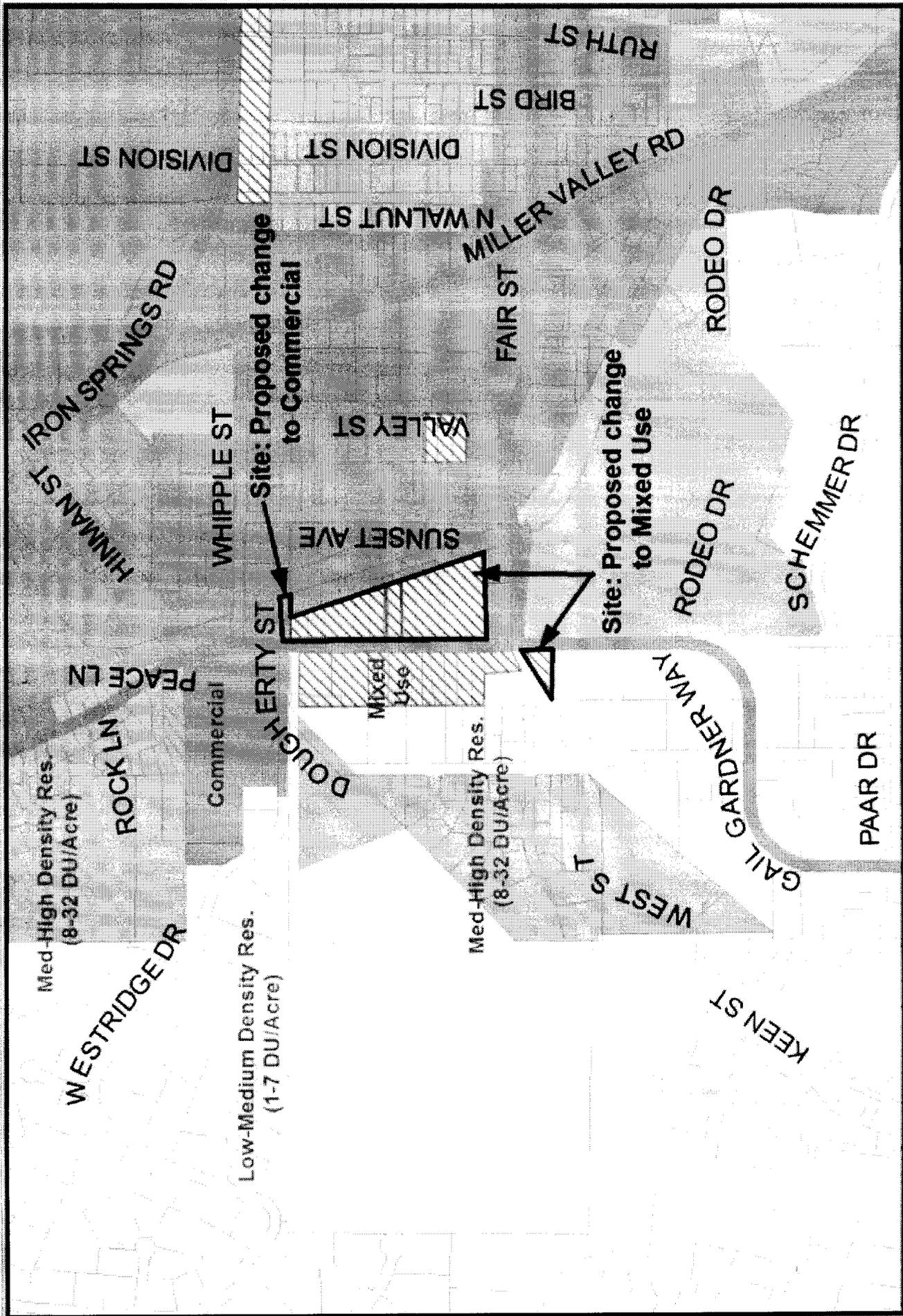
\_\_\_\_\_  
JACK D. WILSON, Mayor

ATTEST:

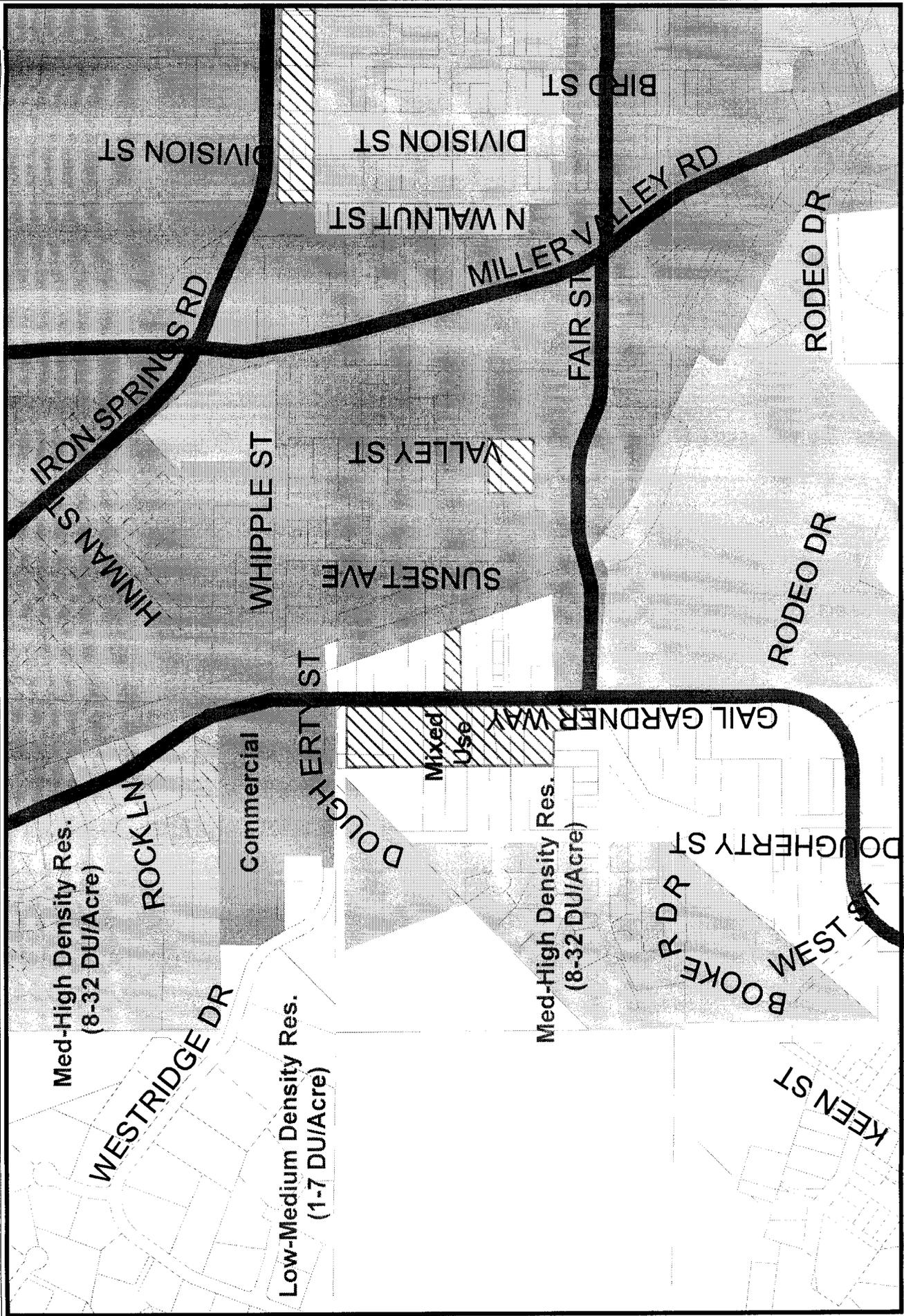
APPROVED AS TO FORM:

\_\_\_\_\_  
ELIZABETH A. BURKE, City Clerk

\_\_\_\_\_  
GARY D. KIDD, City Attorney



# Proposed General Plan Land Use Designations



# Existing General Plan Land Use Designations

II-K

**COUNCIL AGENDA MEMO**

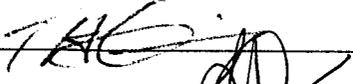
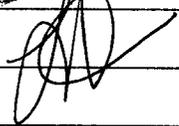
**3/17/09 & 3/24/09**

**DEPARTMENT:** COMMUNITY DEVELOPMENT

**AGENDA ITEM:** REZONE from SF-9 to MF-H (RZ09-003) and DEVELOPMENT AGREEMENT for The Boulders, A Prescott Retirement Community--A Planned Area Development (Formerly Canterbury Gardens Senior Apartments) with accompanying Site Plan for a Planned Area Development--located at 910 Canterbury Lane (north of Whipple Street) on ±6.27 acres

**Approved By:**

**Date:**

<b>Department Head:</b> Tom Guice		3-12-09
<b>Finance Director:</b>		
<b>City Manager:</b> Steve Norwood		

APNs: 116-19-017, -017A, -017B, -21B, -022 (±6.27 acres)      **Zoning:** SF-9  
 Owner: Arcadia Housing, LLC, c/o Bill Spring, 2305 Edgewood Dr, Sedona, AZ  
 Agent: CivilTec Engineering, 2050 Willow Creek Rd, Prescott

**REQUEST**

This is a request to rezone approximately 6.27 acres from Single-Family 9 (SF-9) to Multi-Family High Density (MF-H) located on Canterbury Lane north of Whipple Street. Associated with this rezoning is a new Development Agreement which includes provisions for a Site Plan approval by City Council.

The site plan indicates a redesign of the site plan, grading plan, and building configuration of the prior 2003 Council approved 132-unit senior apartment complex on a ±6.27 acre site. The applicant has submitted the attached narrative which describes the proposed project in detail. A Planned Area Development is proposed in order to address the new site and grading design.

**Background.**

On February 17, 2009, the City Council considered SI08-002-The Boulders, A Prescott Retirement Community - A Planned Area Development which was recommended for approval by the Planning Commission on February 12. At the Council meeting a question arose about the possibility that the zoning had reverted to SF-9.

**Purpose for this Rezone.** In order to address the above question, the purpose of this rezone application is to remove this cloud and to *reestablish the zoning* for this subject property, and confirm the Planning Commission's recommendation for this site plan for this project in conjunction with a rezoning recommendation. The City Attorney decided that the rezoning of the property was the clearest and most transparent approach. Legal Counsel for both the property owner and Las Fuentes (the adjoining property owner) have submitted correspondence (attached).

**Previous Council Action**

This property was first approved in 1999 and has had an involved history since that time (see Council actions below). These actions have included extensions of time in order to complete the project.

**Agenda Item: Rezone 09-003 from SF-9 to MF-H  
Development Agreement with Site Plan**

- ❑ **1999, Dec.** Council approved rezoning (RZ9902 / Ord 3934) from SF-9 to MF-H with an associated Development Agreement (DA#99-233) by a unanimous vote of 7:0. The project consisted of 132 residential units and restricted the residential uses to a combination assisted living facility and non-assisted living facility for seniors over 55 years of age. The DA included provisions for Council review and approval of site, final grading and drainage plans, along with an allocation of water to the 1999 Water Budget, and a reversion to SF-9 zoning if the site was not developed within 5 years.
- ❑ **2000, May.** Council approved the Canterbury Gardens Senior Community Preliminary Plat (SP-0003) for 85 condominium units within one building on 6.27 acres. A revised DA (#99-223A) was prepared to address the same issues as the first DA, plus acknowledge the potential for the development to occur either as a rental project or a condominium project.
- ❑ **2003, Aug.** Council approved the Site Plan (SI03-004) for the Canterbury Gardens Planned Area Development. This project proposed a senior apartment complex of 85 units on 6.27 acres with a new DA (#03-201). A corner of one building was approved to a height of 45 feet.
- ❑ **2003, Aug.** Council approved RZ03-007 (Ord. 4332) by a unanimous vote of 7:0 which amended Ordinance 3934 that included the zoning expiration date of August 18, 2008, removed the zoning expiration date from the DA.
- ❑ **2006, Oct.** Council approved a revised DA 2003-201B to extend the date to file a final plat of one year to December 31, 2007.
- ❑ **2007, March.** Council approved a revised Development Agreement #2003-201C with a height of 45-feet for all buildings, and again extended the deadline to file a final plat until December 31, 2008, and the water allocation until December 31, 2013.

### **STAFF ANALYSIS**

#### **REZONE**

**Density.** The MF-H zone permits a maximum density of 32 units per acre. The proposed 132 apartment unit project for this site (SI09-002: The Boulders—A Prescott Retirement Community) will have a density of 21 DUA (Dwelling Units per Acre) which is about 1/3 less than the allowed maximum density of 32 DUA. As a point of comparison, the Las Fuentes Resort Village to the north of the project site has 240 units on 16.1 acres for a density of 14.6 units per acre. The SF-9 zone permits a density of 4.4 units per acre which could potentially allow 27 single family units.

**2009 Traffic Impacts.** Traffic impacts from single-family zoning have been evaluated by the City Traffic Engineer and are attached. His conclusion is the existing traffic control at the intersection of Canterbury Lane and Whipple Street can accommodate the peak hour turning movements. (See attached analysis and additional comments under Site Plan and Grading Plan).

**Sun Street Access:** The project's generated traffic, and cut-through traffic from Whipple Street were issues raised by neighborhood residents when the initial rezoning from SF-9 to MF-H (RZ#9902) was considered in 1999. This restriction is accomplished by provisions in the Development Agreement for the property and indicated on the Site Plan for the "The Boulders-A Prescott Retirement Community"

**Agenda Item:** Rezone 09-003 from SF-9 to MF-H  
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**Land Uses and Zoning.** An attached area map illustrates the surrounding zoning.

<u>Direction</u>	<u>Existing Zoning</u>	<u>Land Use</u>
East	MF-M (MH)	Single-Family Mobile Homes (primarily)
West	SF-9	Single-Family
North	MF-H	Las Fuentes Resort Village
South	MF-H and RO	Commercial and Single-Family

**Consistency with the Prescott General Plan.** The project is consistent with General Plan designation of Medium High Density (8-32 DUA).

**Neighborhood Comments.** Only one response (Las Fuentes) has been received to date from the surrounding property owners. Las Fuentes opposes the rezoning and the site development plans. Correspondence from both legal counsels for Las Fuentes and The Boulders are attached.

**Proposed Development.** In conjunction with this rezoning request, the applicant has submitted a site plan and grading plan which the Planning Commission approved by a vote of 6:0 at its February 12 Commission meeting, and reaffirmed their approvals by a vote of 5:0 at its March 12, 2009 meeting for the PAD site plan and rezoning from SF-9 to MF-H.

**DEVELOPMENT AGREEMENT**

The 2007 DA stipulates that the site plan and grading plan be reviewed and approved by Council if they were not in substantial conformance with the Council approved 2003 site plan and grading plan. A new Development Agreement is presented to Council which will reference the Council approved site plan and grading plan. This DA is needed because, if one takes the position that the zoning expired in 2008, then the 2007 DA is also in question. These are the same plans reviewed by the Commission at their January 29, 2009, February 12, 2009, and March 12, 2009 meetings. The suggestion by the Commission to include reference to the proposed valet parking in the new Development Agreement has been included.

The Development Agreement has the following provisions which were similar in nature to the prior 2007 DA. Other than referencing the new exhibits, the new additions are placed in **bold**.

- 4. That pursuant to this Agreement, the subject Property shall develop in substantial conformance with the site plan attached hereto as Exhibits "B-1," "B-2", "B-3", "B-4" dated January 9, 2009.
- 5. That prior to any development of the Property which is not in substantial compliance with Exhibits "B-1", "B-2", "B-3", "B-4" dated January 9, 2009 and attached hereto, the Property Owner must first obtain site plan approval of the revised site plan by the Prescott City Council. The City Council shall have sole discretion to approve or disapprove that revised final site plan.
- 6. The Grading Plans dated January 29, 2009 are on file in the Community Development Department. The final grading plans must be in substantial conformance with the conceptual grading plan dated January 29, 2009 which is incorporated herein by reference. In the event that said final grading plan is not in substantial conformance with said conceptual grading plan, then and in that event, the City Council shall have sole discretion to approve or disapprove that revised final grading plan.

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7. That prior to any development of the Property, the Property Owner must first obtain approval by the Prescott Public Works Director of a drainage study for the Property, said study to be obtained and paid for by the Property Owner. Furthermore, the Property Owner shall address all drainage concerns to the satisfaction of the Prescott Public Works Director in the development of the Property.

8. That notwithstanding the underlying zoning of the Property, the Property Owner hereby agrees as follows:

A. The Property shall only be used for non-assisted housing for those over 55 years of age and/or a combination of non-assisted housing and assisted housing for those over the age of 55 years.

B. That the total number of units to be constructed on the Property shall not exceed one hundred thirty-two (132) rental and/or condominium units.

C. That the height of any structure constructed on the Property shall not be in excess of **forty-nine and one-half (49.5) feet.**

D. That Sun Street may be used as an emergency access for the property and Property Owner shall install an emergency access gate limiting access from the Property to Sun Street.

E. That the Property Owner will provide the following parking spaces on the Property:

(i) 1.0 spaces for each non-assisted care living unit that is developed on the Property;

(ii) 0.5 spaces for each assisted care living unit that is developed on the Property;

(iii) 1.5 spaces for each condominium unit that is developed on the Property;

(iv) 1 space for each employee on the Property, based upon the maximum number which would be working on any one shift.

**F. That the Property Owner will provide on-site valet parking services for the residents.**

9. The Property Owner agrees that any painting or color on the exterior of any building or structure on the Property will have an LRV of not more than 60.

10. The City shall provide a total of not more than 46.2 acre feet of potable water per year for the Property (based upon .35 acre feet per unit); provided, however, that in the event that less than 46.2 acre feet of water is being utilized by December 31, 2013, then and in that event the amount of potable water set aside for the Property pursuant to this Agreement shall be reduced proportionately and that unused allocation shall be returned to the City of Prescott's water portfolio.

11. The Property Owner shall submit a landscape plan for the approval of the Community Development Director, which shall include (but not be limited to):

A. Provisions to retain mature trees on the Property outside of the building envelope.

B. Provisions to preserve rock outcroppings at Property boundaries wherever **reasonable.**

C. Provisions to insure that boulders on the Property which must be moved for construction purposes will be relocated and reused on the property.

## **SITE PLAN and GRADING PLANS**

### **Area Meeting**

An area meeting was held January 15 at 5:30 PM in Council Chambers with 18 residents attending. Property owners questions and concerns addressed by the developer included access, drainage, lighting, wall heights, building setbacks, construction traffic, noise from

**Agenda Item: Rezone 09-003 from SF-9 to MF-H  
Development Agreement with Site Plan**

ambulances, security, and traffic. Mr. Bill Spring noted that the assisted living portion would be a 'Level 1' facility which does not include Alzheimer's and dementia patients and would, therefore, decrease the need for ambulance calls. He also illustrated through a PowerPoint Presentation that the building mass would be lower than the previously approved project because of the difference in finish floor elevations.

**A Planned Area Development**

A Planned Area Development is being proposed for this site in order to accommodate the applicant's request for reductions in the residential buffer (from 24.75-ft to a minimum of 10-foot 4 inches along Building #1), increases in the maximum wall height of 8 feet to over 8 feet in several areas, an increase in the building height from 45-feet to 49.5 feet, and the parking required per the Development Agreement (which is addressed in the below Site Plan and Grading Analysis).

The applicant's narrative indicates the site and grading plans are in substantial conformance with the 2003 Council approved plans and 2007 DA because of its better design, along with the flexibility needed in meeting the LDC requirements (such as the residential buffer and wall heights) via an approval of a Planned Area Development. The 2007 DA required that the Council consider a site plan and grading plan which are not in substantial conformance with the Council approved 2003 site plan and grading plan. The new 2009 DA keeps the same language for any future changes.

Some of the more changes in the proposed site plan and grading plan are: 1) change from a monolithic building of a larger size and mass to more architecturally articulated buildings; 2) increasing the building setbacks from the western property line at the middle portion of the site; 3) increasing the undisturbed open space and some building setbacks along the eastern property line by utilizing retaining walls; 4) converting the fire lane to a driveway entrance; 5) constructing only surface parking and eliminating the underground parking; 6) use of retaining walls along the western property line. Other differences are noted below:

<u>Site Plan</u>	<u>2003</u>	<u>2009</u>
Building Coverage	20%	18.2%
Open Space – landscaped	34%	28.4%
Open Space – undisturbed	24%	17.7%
Road Area	22%	35.7%

Building Height: The 1999 DA#99-233 stated a 40-foot maximum height, the 2003 DA(#03-201A stated a 40-foot maximum height with a height of 45-feet for a portion of the southern building, while the 2007 DA2003-201C stated a maximum height of 45-feet. The new DA states a new maximum height of 49.5-feet.

**Access, Parking, and Traffic**

Access remains as previously planned-one private driveway entering from Canterbury Street. Sun Street will be gated as an emergency egress/ingress only. There will be no through traffic from Canterbury to Sun Street. The building's main entrance has been moved from the east side to the west side. Residential driveways now encircle the buildings on the 2009 site plan, rather than just only on the east site in the 2003 site plan.

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Parking meets the LDC requirements and the DA: 127 are required and 127 are provided. Both the developers for this project and another approved senior housing apartment project (The Bradshaws) have indicated in other past public meetings that senior housing has a lower parking demand, and that our LDC requires more than what will be utilized on-site--thus resulting in an excess of parking spaces. Planned Area Developments (PADs) are offered by the LDC Section 9.5 to allow Council to approve projects which offer a more creative approach to development. In accordance with Section 9.5.1.H (PAD Purpose) and Section 9.5.8 (parking under a Development Agreement) the project meets the LDC requirements. The City has no specific "Senior Apartments" parking requirement.

Traffic. Traffic entering and exiting the site is from Whipple Street only. This development was reviewed for traffic impacts and it was determined that no traffic control changes are required at the intersection of Canterbury and Whipple. It was also determined that:

- Sight distance at the intersection is very good with 600+ feet to the south east and 1600+ feet to the west.
- Whipple has a two-way center turn lane that provides auxiliary storage of vehicles making lefts into and out of Canterbury Lane.
- Whipple Street currently has a 24 HR traffic volume of 32,000 which results in limited gaps for turning movements during peak hours.
- The highest peak HR turn movement under all uses shown would result in an outbound left turn volume of 20 vehicles during the morning.
- Senior communities typically experience reduced site generated trips because of higher transit use and increased services provided on site.

This comment is repeated from Rezone analysis above: Traffic impacts from single-family zoning have been evaluated by the City Traffic Engineer and are attached. His conclusion is the existing traffic control at the intersection of Canterbury Lane and Whipple Street can accommodate the peak hour turning movements. (See attached analysis and additional comments under Site Plan and Grading Plan).

Construction Traffic. The applicant would like to have the option of having construction traffic also utilize Sun Street, not just Canterbury to allow the project to be completed in a shorter period of time. There is nothing to prohibit him from doing so in the Development Agreement. Only emergency access by fire and police is proposed in the 2009 site plan.

**Grading and Drainage Plans.** Although some minor changes are expected with the Civil Plans (water and sewer), Public Works Department finds the plans to be satisfactory.

**Water.** Water is agreed to be granted for this 132-unit project through December 31, 2013 by the Development Agreement.

**Agenda Item:** Rezone 09-003 from SF-9 to MF-H  
Development Agreement with Site Plan

**PLANNING COMMISSION RECOMMENDATION**

On March 12, 2009 The Commission voted 5:0 to recommend approval of this rezone request from SF-9 to MF-H and site plan.

The approval of the resolution approves the Development Agreement and associated site plan and grading plan subject to the City Department Comments within the Staff Council Memo dated March 17 and March 24.

**SUPERMAJORITY VOTE**

Las Fuentes Resort Village has submitted a protest (attached) to the proposed rezoning. Under Arizona Revised Statutes a supermajority vote (3/4's of City Council) is needed in order to approve this rezoning request.

**SUGGESTED MOTION**

1. Move to Approve Ordinance No. 4693-0936
2. Move to Approve Resolution 3946-0936 subject to the City Department Comment's within the City Council Memo dated March 17 and March 24, 2009.

**Agenda Item: Rezone 09-003 from SF-9 to MF-H  
Development Agreement with Site Plan**

**CITY DEPARTMENT COMMENTS--SI09-002 (formerly SI08-002)**

The following City Department comments will all be addressed either at the time of Grading Permit or Building Permit approval:

**Engineering Services**

1. When Site Plans are approved by Engineering and Public Works, it is a conceptual approval only and shall not be construed as an approval to construct until the Civil Plans and Plats are approved.
2. We will need more dimensional info for circulation along with utility info at the North/West portion of the Assisted Living Parcel. It appears there may be a conflict with the existing power pole, telephone junction, access road and bridge. Please show how this will be addressed.
3. Owner information and easements shall be shown for the portion of the access road connecting Sun Street to your project and the access improvements to the adjacent residential parcel.
4. Civil improvement plan comments are noted below for ENG08-026 and ENG08-027.
5. There is significant amount of grading to prepare the site for the proposed structures. Erosion control and slope stabilization must be addressed on the civil improvement plans.
6. The project engineer (Civiltec) has made an application to FEMA for a Letter of Map Revision (LOMR) for the portion of North Granite Creek that encroaches into the site. As of this date, FEMA has not responded.

**Fire Department**

1. Required width of roadway shall be 26 feet. If sidewalk is to be part of this 26 feet, the sidewalk shall be at fire lane grade with no curb.
2. Add a fire hydrant in the island southwest of building 1.
3. Adjust turning radius into the canopy southwest corner of island.

**Historic Preservation**

1. A Class III Archeological Report is required prior to grading and site work.

**Planning**

1. Submission of the landscape plans for the Council Approval is for the concept only. Per the LDC, Tree Replacement calculations will be reviewed by Staff at the time of Grading Permit application, and the 80% screening / buffering requirement at the time of Building Permit application.
2. Label the site plan "A Planned Area Development".
3. If needed for the construction of this project, construction and maintenance and any other easements from the several property owners adjoining the proposed wall which abuts their property are to be submitted at the time of Building Permit Application.
4. A revised landscape plan to be submitted at the time of Building Permit Application which incorporates the following modifications:
  - A. Moderate to Fast growing overstory trees, a minimum of 3-inch caliper at the time of planting, shall be planted in the residential buffer area along the western property line and the center parking island at the building entrance, in order to provide privacy protection for the single-family homes to the west. The 3-inch caliper size trees shall be the following approximate heights:

**Agenda Item: Rezone 09-003 from SF-9 to MF-H  
Development Agreement with Site Plan**

*Conifers:*

Blue Ice Arizona Cypress - 14'

Deodar Cedar - 10'

Rocky Mountain Juniper - 8' to 10'

*Deciduous:*

Arizona Ash - 14'

Raywood Ash - 14' to 16'

Chinese Pistache - 12'

- B. Moderate growing overstory trees shall be included in the plant palette adjoining the apartment buildings along both the east and west sides of the building.
- C. Moderate to Fast growing overstory trees shall be included in the plant palette on the east side of the building.
- 5. All Department comments are to be met at the time of either Grading Permit and/or Building Permit Approval (as applicable).
- 6. The final site and grading plans submitted for Building Permit shall be in substantial compliance with Exhibits B-1, B-2, B-3, B-4 (site plan), 'BE' (building elevations), 'C' (wall treatment and landscaping), 'D' (landscaping), 'E' (grading plans) on file within the Community Development Department and Exhibit 'F' (Wall Height Presentation) dated January 29, 2009 on file within the Community Development Department, and Exhibit 'G' (Elevation Analysis).

**Utilities Department**

**Sheet 2:**

- 1. Public Utility Easements are not specified. The comments under the "Note" are not specific. The site plan has no reference to PUE boundaries.
- 2. The arrow pointing to the 8-inch water main at top of sheet is pointing to the wrong location.
- 3. The water main at the top of the sheet needs to be located so that future maintenance can be accomplished without interference with the underground water retention. Move water main placement further to the north.

**Sheet 3:**

- 1. All water service lines should call out diameter, meter and PRV.
- 2. All sewer service lines should call out diameter and backwater valves.
- 3. Public Utility Easements are not called out or specified.
- 4. Could not find a water service line for building number one.
- 5. Water and sewer line notation is not uniformly clear.
- 6. The fire hydrant west of building number two should be shortened back to the west so that fire line length is no farther than the back of curb and is contained within the PUE.
- 7. The sewer service for building number four should terminate in the sewer main not in the sewer manhole.
- 8. The City needs additional details and info regarding Canterbury Lane.
  - A. Because of the poor condition of the existing sewer line that approaches this development from Whipple on Canterbury Lane; off site improvements are required to the sewer system. The existing sewer main is to be replaced from the existing manhole in Canterbury Lane to approximately 130LF to the south

**Agenda Item:** Rezone 09-003 from SF-9 to MF-H  
Development Agreement with Site Plan

where the old clay pipe turns to ductile iron. These off site improvements need to be clearly shown.

- B. Detail is not clear for the water main connection on Canterbury Lane.

**Utilities Department/Water Service Agreement**

1. Pursuant to the Development Agreement No. 2003-201C, Resolution No. 3808, section 11, effective April 27, 2007, the City has agreed to allocate water for a maximum of one hundred thirty-two (132) dwellings totaling 46.2 acre feet (based upon .35 acre feet per unit). In the event that less than 46.2 acre feet of water are being utilized by December 31, 2013, then in that event the amount of potable water set aside for the Property pursuant to the Agreement shall be reduced proportionately and that unused portion shall be returned to the City's water portfolio.

**Field-Ops- Solid Waste**

1. See City standard commercial comments located in your P.A.C. handout.
2. Dumpster enclosures should be facing the same way so truck travels through the complex once.

**CITY DEPARTMENT COMMENTS - ENG08-026**

**Engineering Services**

Reviewer: John Lambert 777-1694/Dick Mastin 777-1273 Greg Toth 777-1622

Drainage Comments: See redline comments on plans and report;

1. Floodplain analysis (HEC-RAS) of both channels is required for existing conditions without the culvert/bridge and for proposed with the culvert/bridge is required. The 2, 10, 25 and 100 year flows should be used.
2. Please provide HGL for the outlet pipe and demonstrate that the underground pond outlet is not affected by tail-water for the 2, 10, and 100 year storms. Starting elevation should correspond with hydraulic analysis requested in above comment.
3. Pond release rates should be set at 90% of existing.
4. Please provide stage discharge and stage storage data. I could not find the information in the Pond Pack or TR20 analysis.
5. The four catch basins size and calculations for intake capacity not clearly shown. This includes drainage area, gutter flow-line slope, flow spread, basin flow depth, and basin length.
6. Revise plat to abandon all existing easements not used, and create the new easements when alignments and locations are finalized. Include open space, ingress/egress in favor of both parcels and all off-site documents/permission letters from adjacent parcels that will be required for this project to go forward.
7. Address all redline comments on plans, reports and documents or provide a statement as to why revisions are not necessary.
8. Structural engineering is required for all non-standard drainage structures (box culverts and bridges) along with retaining walls over 4ft.
9. More information and further investigation is required for the Whipple St. drainage connection, as shown it is not acceptable. Please arrange a meeting if necessary to discuss any of the above

**Agenda Item: Rezone 09-003 from SF-9 to MF-H  
Development Agreement with Site Plan**

**Utilities**

Reviewer: John Lambert 777-1694

1. Refer to redlines for specific comments and locations.
2. Revise waterline depth to minimize areas exceeding 3' minimum to 6' maximum criteria and location of water main to eliminate installation under bridge and box culvert. Suggest meeting with design engineer to discuss alternative alignments.
3. Refer to comments on ENG08-026 for comments regarding water and sewer reports.
4. Revise location of waterline to provide additional separation from underground storm drain detention.

Provide additional waterline connection to Las Fuentes 6" water main to north for additional redundancy and flow capability—or otherwise as approved by Staff.

**CITY DEPARTMENT COMMENTS - ENG08-027**

**Engineering Services**

Reviewer: John Lambert 777-1694/Dick Mastin 777-1273/Greg Toth 777-1622

1. Engineering will need revised plat showing all abandoned easements not used and all new easements, PUE's and off site documents/permission letters etc. once utility alignments and locations have been finalized. Submit all the above info with next review or as soon as it is available
2. Structural Engineering is required for all non-standard or approved drainage details (box culvert/bridge) and all non-standard retaining walls, or CMU retaining walls over 4ft.
3. Address or comment back with explanations for all redline comments on plans, reports and documents returned for corrections.

**Drainage Comments**

1. Subarea flow paths, flow combinations, calculations, and locations are not clear.
2. Please provide HGL for all storm sewer pipes for the 2, 10, 25, and 100 year storms. Starting elevation should correspond with connecting outflow system.
3. The catch basins size and calculations for intake capacity is not clearly shown. This includes drainage area, gutter flow-line slope, flow spread, basin flow depth, and basin length.
4. Pond release rates should be set at 90% of existing onsite flow.
5. Please provide stage discharge and stage storage data.
6. Pond discharge pipe connection to existing dual 8" pipes is not acceptable. Please check connection to existing Whipple Street storm sewer.

**Utilities**

Reviewer: John Lambert 777-1694

1. Refer to redlines for specific areas requiring revision.
2. Connection of both water & sewer mains into Canterbury indicates potential for significant construction and separation conflicts. Suggest moving sewer into new trench toward center of road with water also moving as shown.
3. Show new proposed storm drain on utility profiles with new sewer/water shaded back on respective profiles.
4. Service line for all new and existing meters should be shown on plan view with appropriate callouts and details, including backflow protection.

**Agenda Item: Rezone 09-003 from SF-9 to MF-H  
Development Agreement with Site Plan**

5. Revise sewer report as redlined with additional information regarding anticipated flows compared to adjacent facilities.
6. Provide total and remaining capacity calculation of downstream collection main.
7. Provide location for pretreatment and/or grease trap facility for any kitchen facilities.
8. Revise water report as redlined for "C" factors, flow requirements and system capabilities, including effects on sprinkler design an/or fire pump requirements.

SI08-002

The Boulders, A Prescott Retirement Center (Original Zoning Traffic Analysis)

by Ian Matting, City Traffic Engineer

**Development Summary:**

The proposed development is located on the north side of Whipple Street off of Canterbury Lane. The site is approximately 6.27 acres in size and is located in a mixed use area. The proposed land use is

The existing land use would allow 27 Single-Family Detached Housing units (210). This land use includes all single-family detached homes on individual lots. The peak hour of the generator typically coincides with the peak hour of the adjacent street traffic.

**Trip Generation:**

Based on the 27 units this site would generate the following vehicular trips.

<u>Land Use</u>	<u># Units</u>	<u>Daily Trips</u>	<u>Peak HR Trips</u>
Existing SF-9 Zoning 6 acres	27	258	(21, 28)

This trip rate results in a highest peak hour turn movement of 16 left turn vehicles occurring in the morning.

**Land Use Traffic Generation Comparison:**

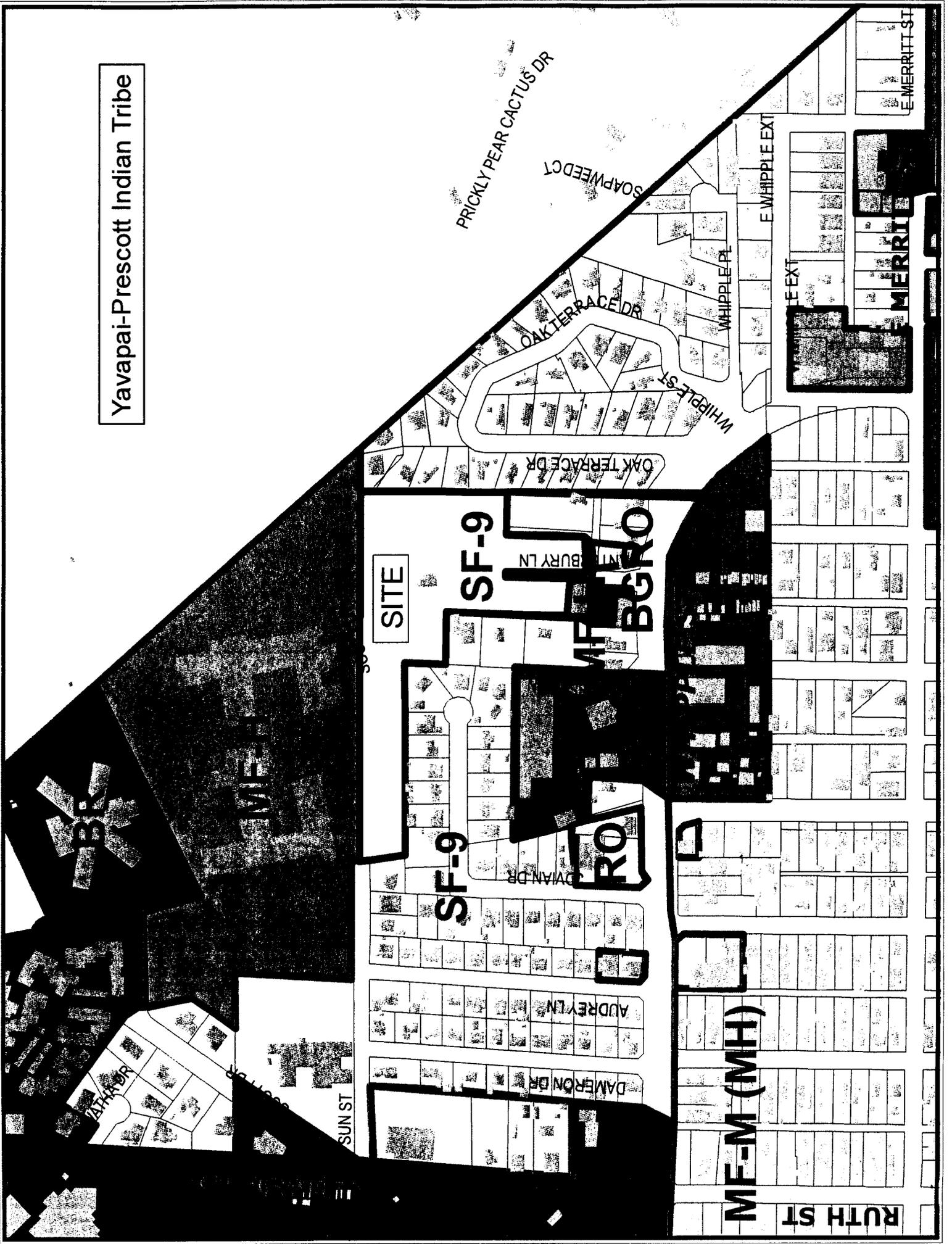
When we compare the original 27 single-family detached housing units with the proposed 132-unit senior apartment housing complex we see that overall the new designation creates 336 additional 24HR trips and (22,28) additional peak hour trips. These trips result in an overall increase of 4 vehicles turning left from Canterbury to Whipple in the morning peak hour.

<u>Land Use</u>	<u># Units</u>	<u>Daily Trips</u>	<u>Peak HR Trips</u>
Existing SF-9 Zoning 6 acres	27	258	(21, 28)
Rental/Condo (50/50 combo)	132	594	(43, 56)

**Conclusion:**

*The change in zoning results in additional traffic from the site however because the senior apartments use spreads the traffic more throughout the day as compared to the single family use; the peak hour turn movements are quite similar and can be accommodated under the existing traffic control.*

Yavapai-Prescott Indian Tribe



# NARRATIVE

The Boulders at Prescott — S108-002 (S109-002)

## Arcadia Independent Living LLC and Arcadia Assisted Living LLC

### Rezoning Application Hearing Narrative

#### Proposed Uses, Residential Types and Densities

The Boulders at Prescott Housing project is proposed as a 132 unit mixed use multi family senior apartment development. The Arcadia Assisted Living section will encompass one building that will house 44 units of assisted living apartments along with attendant food service and other amenities. The Arcadia Independent Living section will consist of 2 residential buildings each with 44 units and a Recreation Center building with various offices and amenities (welcoming entry, movie room, exercise room, coffee counter, etc.) that will be the central focus of the development. All buildings will be connected with a weather protected aerial walkway such that an individual could progress from the far end of one building, through the Recreation Center, to the far end of the farthest opposite building at the same elevation.

This project unifies parcels 116-19-017, 017A, 017B, 021B & 022 into two separate parcels: one for Arcadia Independent Living LLC and one for Arcadia Assisted Living LLC. The street address for the Assisted Living building (Building 4) is to be 918 Canterbury Lane. The street address for the Recreation Center Building is to be 916 Canterbury Lane and the street addresses for the two Independent Living buildings are to be 916 & 914 Canterbury Lane. Final proposed density for the 132 units over the 6.27 acre site is 21 units per acre.

#### Building and Parking Locations, Access, Landscaping, Topographic Conditions, Building Heights and Screening Proposal

The buildings will be located on the site as shown on the site plan. Final building locations were sited to accommodate the requirements of the Fire Department for 360 degree access. Buildings were also sited to protect the maximum amount of native open space possible.

The main parking area for the project is along the west leg of the site down toward Sun Street. There is also parking around the buildings in designated areas for handicap and employee parking as well as visitor parking. Parking volumes are discussed in the Provisions for Parking Spaces section later in this narrative.

Landscaping on the site is being designed to blend with and enhance the natural vegetation and exposed rock outcrop acreage that will be preserved. The designated open space areas will be fenced to keep construction activities from impacting or damaging any of the existing vegetation or rock outcrops. The look of the site from the neighbors' perspective will be as natural as possible. The retaining wall along the westerly property

line has been designed with an enhanced aesthetic appeal for the neighbors along this side of the property since the retaining wall will be constructed along the property line to serve as a boundary wall as well. This wall has been minimized in height to avoid an overwhelming look. The majority of all tall retaining walls are inside the site only visible to the residents and visitors to the site or to the commercial area to the south along Whipple Street. Wall landscaping enhancement is discussed in the Features Requesting Modifications from the Land Development Code / Residential Protection Standards section later in this narrative

The parcel is "L" shaped with the two major legs pointing west and south. The buildings will be constructed in the central area where the legs meet and down the southern leg. The topography is relatively steep (6 to 12%) with the parcel draining down each leg from the center. Within the areas of the parcel being disturbed there is a vertical elevation difference of approximately 55 feet from behind the Recreation Center building to the bottom of both the west and the south legs of the parcel.

The original Development Agreement and building layout had many large cuts on the site with the main facility at the center of the site. The original agreement and plan was mostly an excess excavation export job. The new plan attempts to use the topography of the land in order to limit the cuts and fills on the site by stepping the buildings and situating them in a fashion that takes the most advantage of the difficult terrain. The proposed current plan is close to balancing the earthwork on the site, provided that an approval to process the excavated material for reuse as backfill and structural fill is received from the City.

The current proposed planning for the buildings is for 4 separate buildings with variable roof elevations. This was done in order to minimize the impact to the viewshed for the adjoining property owners. The overall impact to the viewshed for the current proposed development is in substantial compliance with the previously approved 2003 proposed development.

Building heights are held to 49.5 feet for the three residential buildings with the central Recreation Center building being less than 35 feet. This conforms to the conditions set within the project's development agreement and in compliance with the City of Prescott Land Development Code Section 9.16.2. These heights also are in substantial compliance with the previously approved development plan of 2003 for this site. The previous 2003 site plan utilized a single monolithic structure. The current site plan calls for 4 separate structures. The central Recreation Center structure is only 2 stories. The three residential structures are all split level stepping down the hill conforming to the natural terrain. It is felt that the separation of the structures and the lowered central Recreation Center structure actually improves the visual look of this project for the adjoining property owners relative to the previously approved 2003 site plan.

The entire site is 6.27 acres. Of this acreage; the buildings encompass 1.14 acres (18.2%), the paved surfaces (asphalt and concrete) encompass 2.24 acres (35.7%), the landscaped

disturbed areas encompass 1.78 acres (28.4%) and the natural vegetation/rock outcrop areas encompass 1.11 acres (17.7%).

### **Compatibility with the Surrounding Area**

There is a similar development (Las Fuentes Care Center) immediately adjacent to the north of the proposed project. There is commercial development along the Whipple Street – Canterbury Lane frontage portion of the proposed development. The remaining portion of the existing neighborhood is a quiet residential one and the quiet nature of the senior apartments and assisted living should blend in well. The enhanced aesthetics of the property line wall along with the landscaping placed along the property perimeter as well as throughout the site, including the 5 areas of maintained natural open space spread throughout the site, also help to make this proposed residential development compatible with the surrounding area.

### **Conformity with the Policies, Goals and Objectives of the General Plan**

The project as proposed is in full conformance with the policies, goals and objectives of the General Plan. There is a known shortage of senior and assisted living residences in the area and this development helps to fill that need of the community in a responsible and aesthetically pleasing manner.

### **No Adverse Affect on Adjacent Development**

There will be no adverse affect to any neighboring properties surrounding this site. All new construction will be taking place within the limits of the property or will be mitigated by the developer through agreements with adjoining property owners.

Preserved open spaces and additional new landscaping will be used as a buffer for neighbors and to enhance the overall look of the project. The developer is committed to working with the adjoining property owners to accommodate their desires and mitigate their concerns as best as possible. The boundary/retaining wall along the western edge of the southern leg will be architecturally enhanced with the use of multi-colored multi-textured block. The developer commits to providing additional landscape planting on each individual adjoining lot along the west wall if desired by the property owner. Noise, except during the temporary construction phase, and excessive vehicle traffic will not be an issue given the type of community that will inhabit the facility. The viewshed for adjoining properties has been protected to the greatest extent possible through the use of split elevation buildings and separation between individual buildings rather than the development of a single large monolithic structure as previously approved in 2003.

### **Access to Public Street**

The main entrance will be in the south leg from Whipple Street via Canterbury Lane. An emergency only entrance to the site off of Sun Street at the bottom of the western leg will also be constructed. This entrance will be chained/gated off with signage allowing

emergency access only. City of Prescott staff has acknowledged that the anticipated traffic generated by this site will be adequately served by the single access off Whipple Street.

Handicapped accessibility to all buildings is available from the handicapped spaces as well as from almost all of the regular parking spaces around the buildings.

### **Provisions for Parking Spaces**

The Development Agreement for this project required parking at the rate of 1.0 space for each independent living unit and 0.5 spaces for each assisted living unit and 1.0 space for each staff person at maximum staffing levels. The City Land Development Code for handicapped parking also required, for the number of total parking spaces for this development, that 5 of the total spaces must be handicapped with at least one being van accessible. The total parking requirement is 127 total: 110 resident; 17 staff; 5 handicapped (2 van accessible) distributed and included within the 127 total.

The project proposes 127 total parking spaces. Handicapped spaces for cars will number 3 and van accessible handicapped spaces will number 2 for a total of 5 handicapped spaces. There will be 122 regular sized parking spaces. All handicapped and 42 regular spaces will be distributed around the four buildings. A major parking area down the west leg toward Sun Street provides for an additional 80 regular parking spaces.

While the project is providing for 127 total spaces broken down as explained above, it is anticipated that the parking spaces for residents will be significantly underutilized. Experienced managers of this type of facility state that approximately 10% of residents in assisted living use a parking space for their privately owned vehicle. Using this percentage, the project anticipates an average of 20 parking spaces remaining open and usable for visitors and other temporary parking needs.

### **Provision of Adequate Water Supply and Sewer Service**

Water and Sewer service is to be supplied by the City of Prescott. Water supply is available pursuant to the Development Agreement.

A proposed public water system water loop, as requested by the City of Prescott, is being proposed and will be constructed as part of this project. This loop will not only provide adequate domestic and fire flow service to the proposed development but will also serve to improve the pressures and water flow availability throughout the entire neighborhood thereby improving the City of Prescott's system in this area. The loop will tap an existing 6 inch water main in Sun Street and an existing 6" water main in Whipple Street.

An existing 8" sewer main that provides service to this project's property is old and in bad shape. This project will connect to this sewer main. Upon the request of the City of Prescott this project will also reconstruct the portion of the existing line off site between

the property line and Whipple Street down Canterbury Lane thereby improving the City's sewer infrastructure serving the adjacent properties in this area also.

### **Provision of Adequate and Effective Drainage**

Drainage on this property splits along the central ridge with approximately half flowing down to the south toward Whipple Street and half down to the west toward the wash near Sun Street. The drainage on the site has been enhanced in that the water that now flows off the site onto adjoining residential properties to the west will now be captured and remain on the site and will be discharged either to the south into the City's storm water system or the west directly into the existing wash. Both drainage basins (south and west) will have adequate detention designed to City standards.

### **Provision of Adequate Public Improvements**

The nature of this development (senior and assisted living) lends itself to the quiet centrally located facility proposed for this project. Proximity to existing medical, commercial, educational and recreational facilities from the main entrance off the Whipple Street corridor means this development has provided its residents with adequate public improvement accessibility.

### **Features Requesting Modifications from the Land Development Code**

The following features of the project require modifications from the existing City Land Development Code in order to be successful or in order to not conflict with other provisions of the Code. These features/requests are found in the following sections.

**Easements:** Each newly created parcel (Assisted Living and Independent Living) shall have access and parking cross-easements created to provide for legal access between and amongst all buildings. All new utilities will be installed in newly created Public Utility Easements. All existing utilities that are to remain will have their existing blanket utility easements eliminated and replaced with new PUE's. All easements will be described in a manner approved by City staff and will be recorded and noted on a Record of Survey also recorded at the Yavapai County Records Office.

**Retaining Wall Height:** Section 6.8.4.D of the City Land Development Code specifies a maximum wall height for any single wall of 8 vertical feet. In order to maximize the protection of natural open space with native exposed rock and mature vegetation (Section 6.8.4.C) on this site, of which there are 5 separate areas so proposed, a small percentage (approximately 10% to 15%) of the necessary retaining walls need to be greater than 8 feet. These walls will be masonry walls developed within the style and color palette of the landscape and building architecture and will be between 8 and 13 feet tall. Only one of these wall's faces will be visible from the exterior of the property and this wall face is towards the commercial area to the south along the Whipple Street entrance. All other masonry retaining walls greater than 8 feet will be visible only to the interior residents of the property. These walls not only minimize the amount of excavation and cut/fill slopes

to protect the natural open spaces of the site by accommodating the split levels of the buildings but, by stepping the roof lines of the buildings, the viewshed of the adjoining uphill properties is also protected to the greatest extent possible. Fire department access to all sides of all buildings was also maintained due to the use of these taller walls without encroaching into the preserved open spaces.

There will be two short sections (approximately 30 feet in length) that will be cast-in-place reinforced concrete retaining walls that will be between 18 and 22 feet tall. These walls will be adjacent to each side of the Recreation Center building and are needed to accommodate the split level of the Recreation Center building which has 16 feet between the first and second floors. These tall walls will also be visible only from the interior of the property and tucked between two buildings.

Residential Protection Standards: A request for a modification to the strict interpretation of Section 6.13.4.B is requested. The rationale again is the protection of natural open space per Section 6.8.4.C and the accommodation of fire department access on all sides of all buildings. This request impacts the three residential properties along the western side of the southern leg of the site.

In return for a reduction in the full width of non-paved landscaping required by the Code and City staff the project proposes an enhancement to the landscaping width that is available. This landscape enhancement is to consist of additional number of vegetation plantings (trees and shrubs) as well as the incorporation of larger caliper trees than what is called for in strict interpretation of the Land Development Code. The retaining wall along this portion of the project will be limited to between 4 and 6 feet tall. These masonry walls will be enhanced with multi-colored and multi-textured block and with stone veneer at the property lines. In addition to the style and color palette matching the landscape and building architecture the face of this wall will also be enhanced with the attachment of a steel mesh between each property corner centered on the lot. This steel mesh would accommodate a climbing plant if the property owner so desired to plant and maintain such vegetation. Otherwise the mesh will serve solely as a visual break in the face of the wall using contrasting color and texture. The developer commits to installing plantings on the adjoining property below the wall if desired by the property owner to further enhance the aesthetics of this boundary/retaining wall. These plantings would be maintained by the property owners.

Above the exterior boundary wall, in the 9 foot wide area between the exterior boundary/retaining wall and the top vehicle light screen wall, the project proposes enhanced landscaped vegetation fully maintained by the project. This vegetation will be installed at greater than the minimum required by the City Code for number and size of plantings. The final quantities and sizes will be determined in consultation with City staff.

Beyond this heavily landscaped buffer a short 3 foot tall wall will be constructed that will define the far edge of the landscaping. This wall will shield the homes adjacent to this side of the property from light from vehicle light trespass.

## **Conclusion**

It is felt that the intent of all applicable City Code sections are best met by the proposed site plan. The proposed site plan develops a nicely landscaped multi level buffer that follows the natural topography while simultaneously protecting a series of natural open space areas on the site. Development through a literal interpretation of the Code would not allow for the preservation of the natural open space areas and, further, would require excessive rock excavation that would disturb neighboring residences and scar the existing hillsides that would otherwise have been left in a natural state. The full access provided to the Fire Department on all sides of all buildings would also be detrimentally limited without the approval of these requests.

The developers of The Boulders at Prescott are proud of the fact that the current proposed development has not only substantially met all requirements of the originally approved development first proposed in 2003 in terms of site planning, building elevations and grading planning but has substantially improved upon the originally approved development. The improvements include, but are not limited to; improved 360 degree fire department access to all buildings, minimized view shed impacts through split level residential buildings and a lower height for the central Recreation Center building, protection of 5 separate natural open space areas throughout the site, enhanced landscaping along the western boundary wall of the southern leg.

The Boulders at Prescott, Arcadia Assisted Living and Arcadia Independent Living, look forward to meeting with the Planning and Zoning Commission and City staff in order to more fully discuss this project.

RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO A DEVELOPMENT AGREEMENT WITH ARCADIA HOUSING, LLC AS THE ASSIGNEE OF FOREST GLEN, INC., FOR "THE BOULDERS, A PRESCOTT RETIREMENT COMMUNITY", AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE.**

**RECITALS:**

WHEREAS, Arcadia Housing, LLC, as the Assignee of Forest Glen, Inc., is the owner of certain real property in the City limits; and

WHEREAS, the parties wish to enter into a Development Agreement, pursuant to ARS Section 9-500.05 relating to the development of that property, which amends and supersedes all prior Development Agreements.

**ENACTMENTS:**

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

SECTION 1. THAT the City of Prescott hereby approves the Development Agreement with Arcadia Housing, LLC, as the Assignee of Forest Glen, Inc., attached hereto as Exhibit "A."

SECTION 2. THAT the Mayor and Staff are hereby authorized to take all such steps as may be necessary to effectuate said Development Agreement.

**PASSED AND ADOPTED** by the Mayor and Council of the City of Prescott on this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
ELIZABETH A. BURKE, City Clerk

\_\_\_\_\_  
GARY D. KIDD, City Attorney

**DEVELOPMENT AGREEMENT  
THE BOULDERS, A PRESCOTT RETIREMENT COMMUNITY**

THIS AGREEMENT ("Agreement"), is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the **CITY OF PRESCOTT**, an Arizona municipal corporation (hereinafter "CITY") and Arcadia Housing, LLC (as the assignee of **FOREST GLEN, INC.**, a Nevada corporation) or its duly nominated Assignees, (hereinafter "Property Owner"). Collectively City and Property Owner are referred to herein as "Parties."

**RECITALS:**

WHEREAS, Arcadia Housing, LLC, the Assignee of Forest Glen, Inc., is the owner of certain real property in the City limits; and

WHEREAS, the parties wish to enter into a new Development Agreement pursuant to ARS Section 9-500.05 relating to the development of that property which amends and supersedes all prior Development Agreements.

WHEREAS, the Property Owner is successor in interest to the fee title of the real property described on Exhibit A attached hereto (the Property).

WHEREAS, the Property Owner's predecessors in interest have heretofore entered into a prior Development Agreement No. 2003-201C on March 27, 2007.

WHEREAS, the Parties desire to enter into a new Development Agreement, superseding in their entirety the provisions of the prior Agreement. Upon approval of this Development Agreement, the parties hereto agree that the prior Development Agreement on the above-described property shall be rescinded and revoked and this Agreement, and any subsequent addendums thereto, shall be the sole effective Development Agreement as to such Property.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS CONTAINED HEREIN, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

1. That this Agreement shall relate to that real property described in Exhibit "A" attached hereto and made a part hereof the Property.
2. That this Agreement shall become operative only upon the recordation of same in the Office of the Yavapai County Recorder.
3. That the development of the Property shall be consistent with the City's General Plan, as ratified on May 18, 2004.
4. That pursuant to this Agreement, the subject Property shall develop in substantial conformance with the site plan attached hereto as Exhibits "B-1," "B-2," "B-3," "B-4" dated January 9, 2009.
5. That prior to any development of the Property which is not in substantial compliance with Exhibits "B-1," "B-2," "B-3," "B-4" dated January 9, 2009 and attached hereto, the Property Owner must first obtain site plan approval of the revised site plan by the Prescott City Council. The City Council shall have sole discretion to approve or disapprove that revised final site plan.

6. The Grading Plans dated January 29, 2009 are on file in the Community Development Department. The final grading plans must be in substantial conformance with the conceptual grading plan dated January 29, 2009 which is incorporated herein by reference. In the event that said final grading plan is not in substantial conformance with said conceptual grading plan, then and in that event, the City Council shall have sole discretion to approve or disapprove that revised final grading plan.

7. That prior to any development of the Property, the Property Owner must first obtain approval by the Prescott Public Works Director of a drainage study for the Property, said study to be obtained and paid for by the Property Owner. Furthermore, the Property Owner shall address all drainage concerns to the satisfaction of the Prescott Public Works Director in the development of the Property.

8. That notwithstanding the underlying zoning of the Property, the Property Owner hereby agrees as follows:

A. The Property shall only be used for non-assisted housing for those over 55 years of age and/or a combination of non-assisted housing and assisted housing for those over the age of 55 years.

B. That the total number of units to be constructed on the Property shall not exceed one hundred thirty-two (132) rental and/or condominium units.

C. That the height of any structure constructed on the Property shall not be in excess of forty-nine and one-half (49.5) feet.

D. That Sun Street may be used as an emergency access for the property and Property Owner shall install an emergency access gate limiting access from the Property to Sun Street.

E. That the Property Owner will provide the following parking spaces on the Property:

- (i) 1.0 spaces for each non-assisted care living unit that is developed on the Property;
- (ii) 0.5 spaces for each assisted care living unit that is developed on the Property;
- (iii) 1.5 spaces for each condominium unit that is developed on the Property;
- (iv) 1 space for each employee on the Property, based upon the maximum number which would be working on any one shift.

F. That the Property Owner will provide on-site valet parking services for the residents.

9. The Property Owner agrees that any painting or color on the exterior of any building or structure on the Property will have an LRV of not more than 60.

10. The City shall provide a total of not more than 46.2 acre feet of potable water per year for the Property (based upon .35 acre feet per unit); provided, however, that in the event that less than 46.2 acre feet of water is being utilized by December 31, 2013, then and in that event the amount of potable water set aside for the Property pursuant to this Agreement shall be reduced

proportionately and that unused allocation shall be returned to the City of Prescott's water portfolio.

11. The Property Owner shall submit a landscape plan for the approval of the Community Development Director, which shall include (but not be limited to):

A. Provisions to retain mature trees on the Property outside of the building envelope.

B. Provisions to preserve rock outcroppings at Property boundaries wherever reasonable.

C. Provisions to insure that boulders on the Property which must be moved for construction purposes will be relocated and reused on the property.

12. This Agreement shall run with the land, and shall be binding upon the Property Owner's successors-in-interest and assigns.

13. All of the Parties hereto shall execute and deliver all such documents and perform all such acts as are reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

14. Pursuant to A.R.S. Section 38-511, the City of Prescott may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. In the event of the foregoing, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City of Prescott from any other party to the Agreement arising as a result of this Agreement.

15. That the Property Owner hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of this Agreement, whether said claims, liabilities, expenses or lawsuits arise by any negligent acts or negligent omissions or any such alleged acts of omissions of the Property Owner.

16. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the Parties hereto waives any right to a trial by jury. In the event of litigation, the Parties hereby agree to submit any such litigation to the Court and that the Parties agree that this contract shall be deemed to have been created in Yavapai County, Arizona, and to be subject to the jurisdiction of the Yavapai County Superior Court, and that any claims to alternative jurisdiction based on diversity of citizenship, corporate location, etc., are waived by the Parties pursuant to this Agreement.

17. The Parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither Party shall be entitled to an award of attorneys' fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute. The parties further agree that there shall be no damage remedy for breach of any provisions of this Agreement and that the sole remedy for any breach shall be specific performance.

18. This Agreement is the result of negotiations by and between the Parties. Any ambiguity in this Agreement is not to be construed against either Party.

19. Time is of the Essence in this Agreement. The failure of either Party to require the strict performance by the other of any provision of this Agreement shall not be deemed a waiver of the right of said Party thereafter to require strict performance of that or any other provision of this Agreement in accordance with the terms hereof and without notice.

20. For purposes of this Agreement, the following definitions shall apply:

(A) "Assisted living facility" is a public or private residential care institution or condominium development, which contains facilities for living, sleeping and sanitation, and may include facilities for eating and cooking, to be used for occupancy that provides supervisory care services, directed care services or personal care services on a continuing care basis.

(B) "Directed care services" means programs and/or services, including personal care services, provided to persons who are incapable of recognizing danger, summoning assistance, expressing need, and/or making basic care decisions.

(C) "Personal care services" means assistance with activities of daily living that can be performed by persons without professional skills or professional training, and includes the coordination or provision of intermittent nursing services and/or the administration of medications and treatments by a nurse who is licensed pursuant to Title 32, Chapter 15, A.R.S, or as otherwise provided by law.

(D) "Supervisory care services" means general supervision, including daily awareness of resident functioning and continuing needs, the ability to intervene in a crisis, and/or the assistance in the self-administration of prescribed medicine.

21. This Development Agreement rescinds and supersedes in its entirety all Prior Agreements regarding the Property.

22. The undersigned specifically acknowledges that the attached Exhibit "C", entitled CONSENT TO CONDITIONS/WAIVER FOR DIMINUTION OF VALUE, is knowingly and voluntarily executed pursuant to this Agreement, and that such waiver shall be a condition of this Development Agreement between the City of Prescott and Arcadia Housing, LLC (as the assignee of FOREST GLEN, INC.) and its duly nominated assignees, and is specifically incorporated herein.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott  
this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
JACK D. WILSON, Mayor



EXHIBIT A  
PAGE 1 OF 2

A parcel of land lying within the Southeast quarter of Section 28, Township 14 North, Range 2 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

BEGINNING at a found ½" rebar at the Northwest corner of "Oak Terrace", recorded in Book 17 of Maps, page 40, records of Yavapai County, Arizona, and as shown on the "Record of Survey" recorded in Book 53 of Land Surveys, page 43, records of Yavapai County, Arizona;

THENCE South 00°00'26" East, along the West line of said "Oak Terrace", 406.82 feet to a found 1/2" rebar;

THENCE North 87°07'29" West, 111.32 feet (11.32 feet, record as per Book 4502 of Official Records, page 648, records of Yavapai County, Arizona);

THENCE South 03°44'00" West, 240.12 feet;

THENCE North 87°07'00" West, 109.84 feet;

THENCE North 03°44'00" East, 60.19 feet;

THENCE North 87°12'09" West, 109.86 feet;

THENCE North 03°42'17" East, 338.83 feet to a found 1" bar;

THENCE North 87°13'12" West, 155.92 feet to a point on the East line of "Sun Land Subdivision", recorded in Book 7 of Maps, page 96, records of Yavapai County, Arizona;

THENCE North 03°18'14" East, along said East line, 102.84 feet to a found ½" rebar at the Northeast corner of Lot 20 of said "Sun Land Subdivision";

THENCE South 89°58'31" West, along the North line of said "Sun Land Subdivision", 525.31 feet to the Southeast corner of Lot 30 of said "Sun Land Subdivision";

THENCE North 08°00'54" West, along the East line of said Lot 30, a distance of 121.27 feet;

THENCE North 89°54'00" East, 1011.22 feet to the TRUE POINT OF BEGINNING.



# Yavapai Surveying, LLC

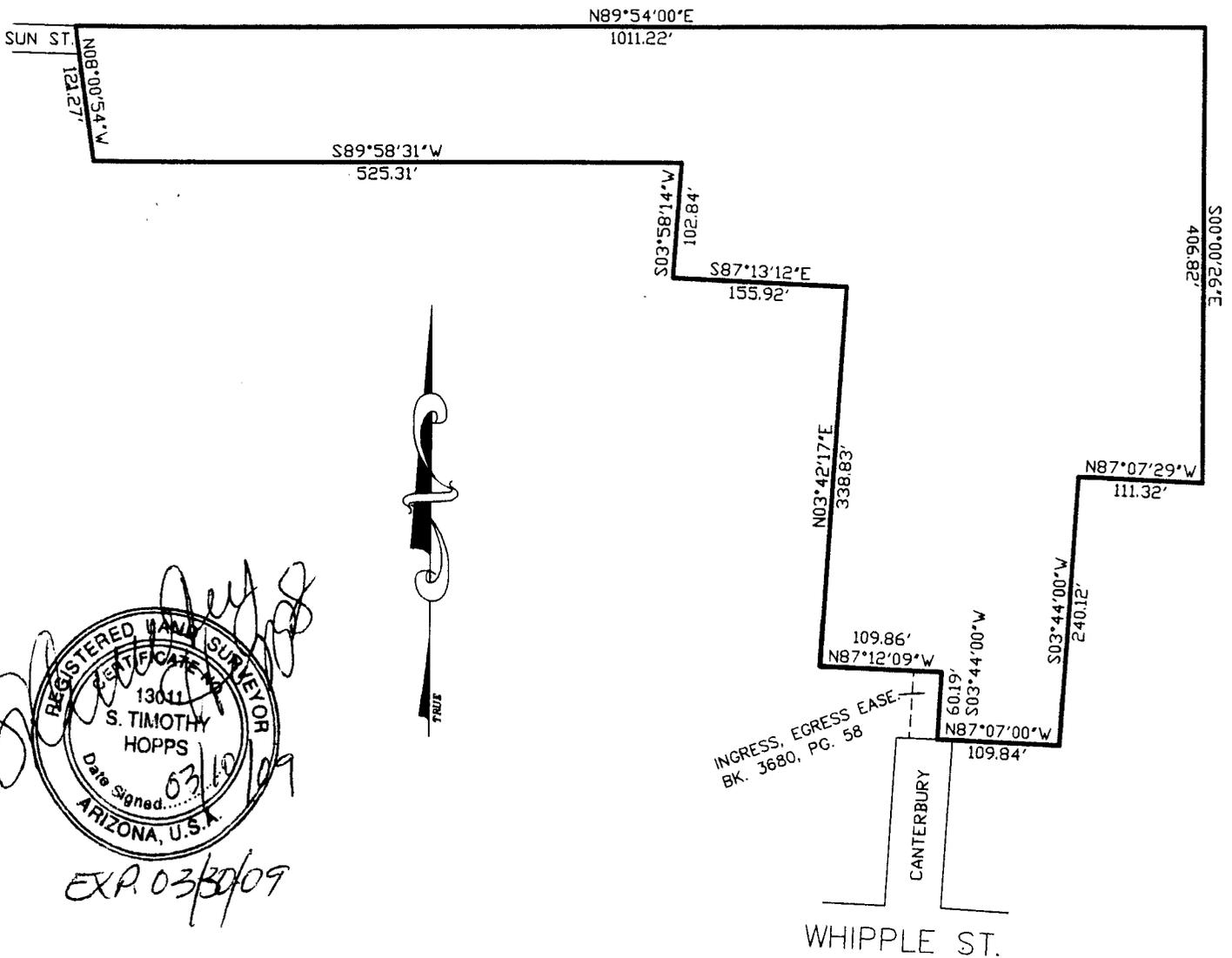
2805 Willow Creek Rd. ~ Prescott, AZ 86301

Phone: 928-772-6842 ~ Fax: 928-772-6865

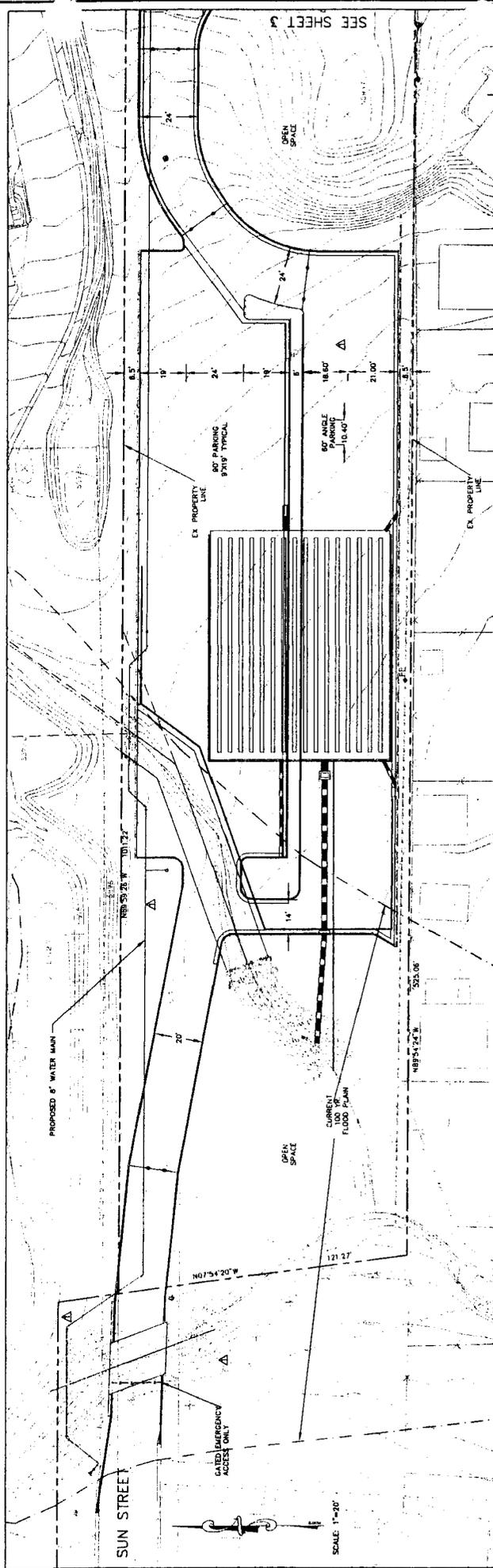
Email: yava@cableone.net

EXHIBIT **A**  
PAGE 2 of 2

"THE BOULDERS—A PRESCOTT RETIREMENT CENTER"  
6.27 ACRES







SEE SHEET 3

**NOTE:**  
 1) ACCESS AND PARKING WILL BE SHOWN THROUGHOUT THE SITE BY WAY OF INGRESS/EGRESS AND WILL BE COVERED BY A PUBLIC UTILITY EASEMENT.  
 2) BOUNDARY SHOWN IS PER ALTA/DESK PER YANAPAI SURVEYING

112  
 11712 104 106 107  
 FROM 14 2012-2013



**SWIETEC**  
 SURVEYING & ENGINEERING, INC.  
 2000 N. White Dove Rd.  
 Phoenix, AZ 85021  
 Phone: (602) 711-2379  
 Fax: (602) 711-2377



DESIGN BY: JOR  
 OWNER: STRUBB, N/A  
 CHECKED BY: BJB  
 DATE: SEPT. 2008

NO. REVISIONS  
 1  
 REVISION: MARK PARALLEL WATER, BEYOND EXISTING AND DIMENSIONING AND THE HYDRAULIC, DEPENDING TO 4 SHEETS.

APP. DATE  
 JOB 1/9/08

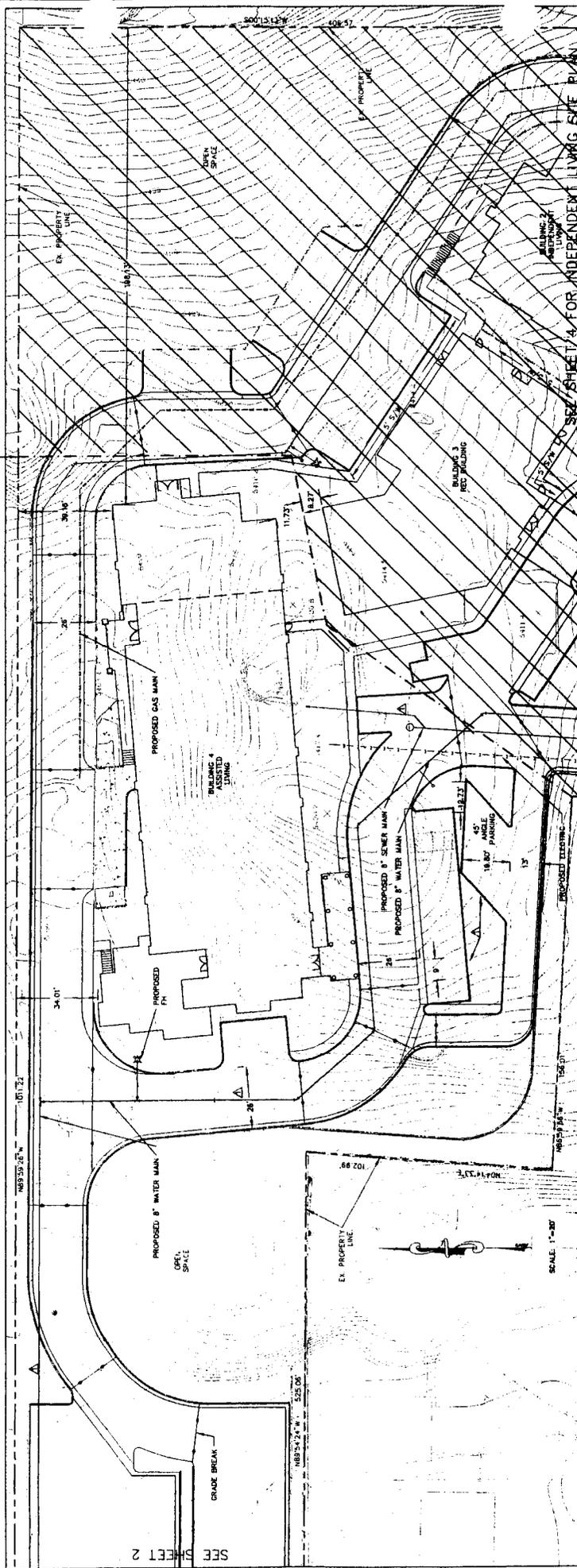
**SITE PLAN**  
**THE BOULDERS AT PRESCOTT**  
**ARCADIA ASSISTED LIVING, LLC**  
 ARCADIA ASSISTED LIVING, LLC  
 PRESCOTT, ARIZONA

SHEET 2  
 OF 4  
 JOB NUMBER: 2007740

EXHIBIT B-2

6/9/09

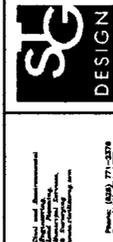
ASSISTED LIVING INDEPENDENT LIVING



NOTE:  
 1) ACCESS AND PARKING WILL BE SHARED THROUGHOUT THE SITE BY VIRTUE OF INGRESS/EGRESS AND PARKING EASEMENTS. ALL UTILITIES WILL BE COVERED.  
 2) BOUNDARY SHOWN IS PER ALTA/ACEN PER YAVAPAI SURVEYING



SCOTT A. SMITH  
 REGISTERED PROFESSIONAL ENGINEER  
 License No. 17000  
 State of Arizona  
 Expired 08/31/2010



NO.	REVISIONS	DATE
1	ISSUE DRAWING WITH REVISIONS, JOB IMPROVEMENTS AND PER LOCALITY, ENLARGED TO 4 SHEETS.	JOB 1/9/08

DESIGN BY: JGR  
 DRAWN BY: RLE/JAM  
 CHECKED BY: RLB  
 DATE: SEPT. 2008

**SITE PLAN**  
**THE BOULDERS AT PRESCOTT**  
 ARCADIA ASSISTED LIVING, LLC  
 ARCADIA ASSISTED LIVING, LLC  
 PRESCOTT, ARIZONA

SHEET: 3  
 OF 4  
 JOB NUMBER: 200740

EXHIBIT 'B-3'  
 1/9/09



**EXHIBIT "C"**  
**CITY OF PRESCOTT**  
**AGREEMENT TO WAIVE CLAIMS FOR DIMINUTION IN VALUE**  
**PURSUANT TO A.R.S. § 12-1134 – Since January 2008**

Arcadia Housing, LLC, as the Assignee of Forest Glen, Inc., a Nevada Corporation, ("Owner") is the owner of real property ("Property") generally located at 910 Canterbury Lane, APN 116-19-021B, consisting of approximately ± 6.27 acres, referenced in the Development Agreement to which this Agreement is attached.

The Property is subject to the land use laws of the City of Prescott, Arizona. For purposes of this Waiver, "land use law" shall be defined as set forth in A.R.S. § 12-1136.

Arcadia Housing, LLC, as the Assignee of Forest Glen, Inc., has requested that the City approve the land use action, Rezoning Number RZ09-003.

Arcadia Housing, LLC, as the Assignee of Forest Glen, Inc., acknowledges that as the request is processed for approval, changes may be made to the details and requirements for approval of the request. Some of these changes may materially alter the request so that the final approval may be substantially different than originally requested. Arcadia Housing, LLC, as the Assignee of Forest Glen, Inc., understands and agrees that execution of an additional waiver will be required for approval if the request is altered.

Arcadia Housing, LLC, as the Assignee of Forest Glen, Inc., acknowledges that the Requested Action may alter our rights to use, divide, sell or possess our Property, and that, pursuant to A.R.S. § 12-1134, as the owner of property directly regulated by a land use law, Arcadia Housing, LLC, as the Assignee of Forest Glen, Inc., may be entitled to compensation from the City for diminution of value in the property if the action Arcadia Housing, LLC, as the Assignee of Forest Glen, Inc., has requested from the City reduces the fair market value of the above-described property.

By signing this Agreement, Arcadia Housing, LLC, as the Assignee of Forest Glen, Inc., hereby agrees to waive any and all claims for diminution in value for the Property which may arise pursuant to A.R.S. § 12-1134 as a result of the City's actions including, but not limited to, approvals, denials or conditions of approvals with respect to the above-described Requested Action. This written agreement shall not serve as a waiver by Arcadia Housing, LLC or its assignees) of any claims it might assert relating to the denial or revocation by the City of MF-H zoning status of the Property.

Arcadia Housing, LLC as the Assignee of Forest Glen, Inc., hereby further understands that the City is acting in reliance upon the representations of Arcadia Housing, LLC as the Assignee of Forest Glen, Inc., in this waiver.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2009.

Arcadia Housing, LLC, as the assignee of Forest Glen, Inc., a Nevada corporation

By: Forest Glen, LLC., as the Managing Member of Arcadia Housing, LLC, by Forest Glen, Inc as the Managing Member of Forest Glen, LLC,

\_\_\_\_\_  
By William A. Spring  
Title: President of Forest Glen, Inc.

STATE OF ARIZONA            )  
  ) ss.  
COUNTY OF YAVAPAI        )

3 The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by William A. Spring as President of Forest Glen, Inc. the Manager of Forest Glen, LLC as the Manager of Arcadia Housing, LLC on behalf of Arcadia Housing, LLC, as the assignee of Forest Glen, Inc., personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that (s)he executed it for the purposes therein contained and, that (s)he has the authority to so execute.

[Seal]

\_\_\_\_\_  
Notary Public

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AMENDING THE ZONING OF CERTAIN PROPERTY WITHIN THE CITY OF PRESCOTT GENERALLY LOCATED AT THE NORTH END OF CANTERBURY LANE FROM SINGLE-FAMILY 9 (SF-9) TO MULTI-FAMILY HIGH (MF-H) CONSISTING OF APPROXIMATELY ± 6.27 ACRES.**

**RECITALS:**

WHEREAS, the owners of certain properties within the corporate limits of the City of Prescott have requested a rezoning of their property; and

WHEREAS, the Planning and Zoning Commission of the City of Prescott has held public hearings regarding said rezoning; and

WHEREAS, the City Council of the City of Prescott has determined that it would be in the best interest of public necessity, interest, convenience or general welfare to rezone certain property; and consistent with the General Plan; and

WHEREAS, the requirements of Section 9.15 of the City of Prescott *Land Development Code* have been complied with.

**ENACTMENTS:**

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

SECTION 1. THAT, the following described parcel of land, consisting of approximately ± 6.27 acres and further described in Exhibit A attached hereto and made a part hereof, is hereby reclassified as follows: ± 6.27 acres from Single-Family 9 (SF-9) to Multi-Family High (MF-H).

SECTION 2. THAT the Mayor and Staff are hereby authorized to take all necessary steps to effectuate such rezoning.

ORDINANCE NO. \_\_\_\_\_

Page 2

PASSED AND ADOPTED by the Mayor and Council of the City of Prescott on  
this \_\_\_\_ th day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
JACK D. WILSON, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
ELIZABETH A. BURKE, City Clerk

\_\_\_\_\_  
GARY D. KIDD, City Attorney

EXHIBIT A  
PAGE 1 OF 2

A parcel of land lying within the Southeast quarter of Section 28, Township 14 North, Range 2 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

BEGINNING at a found 1/2" rebar at the Northwest corner of "Oak Terrace", recorded in Book 17 of Maps, page 40, records of Yavapai County, Arizona, and as shown on the "Record of Survey" recorded in Book 53 of Land Surveys, page 43, records of Yavapai County, Arizona;

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THENCE North 87°07'29" West, 111.32 feet (11.32 feet, record as per Book 4502 of Official Records, page 648, records of Yavapai County, Arizona);

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# Yavapai Surveying, LLC

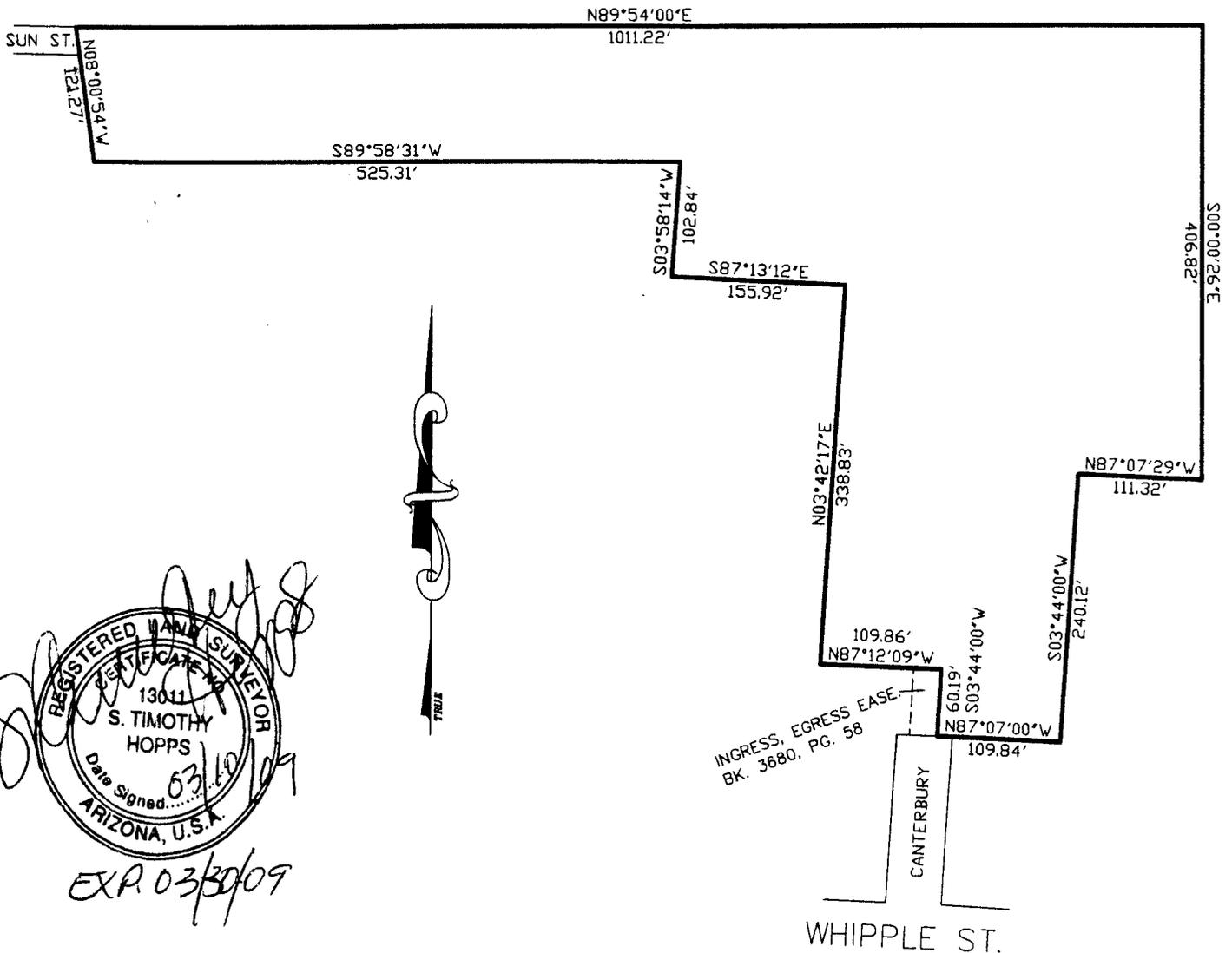
2805 Willow Creek Rd. ~ Prescott, AZ 86301

Phone: 928-772-6842 ~ Fax: 928-772-6865

Email: yava@cableone.net

EXHIBIT **A**  
PAGE 2 of 2

"THE BOULDERS—A PRESCOTT RETIREMENT CENTER"  
6.27 ACRES



# **SI09-002 EXHIBITS**

**(formerly SI08-003)**



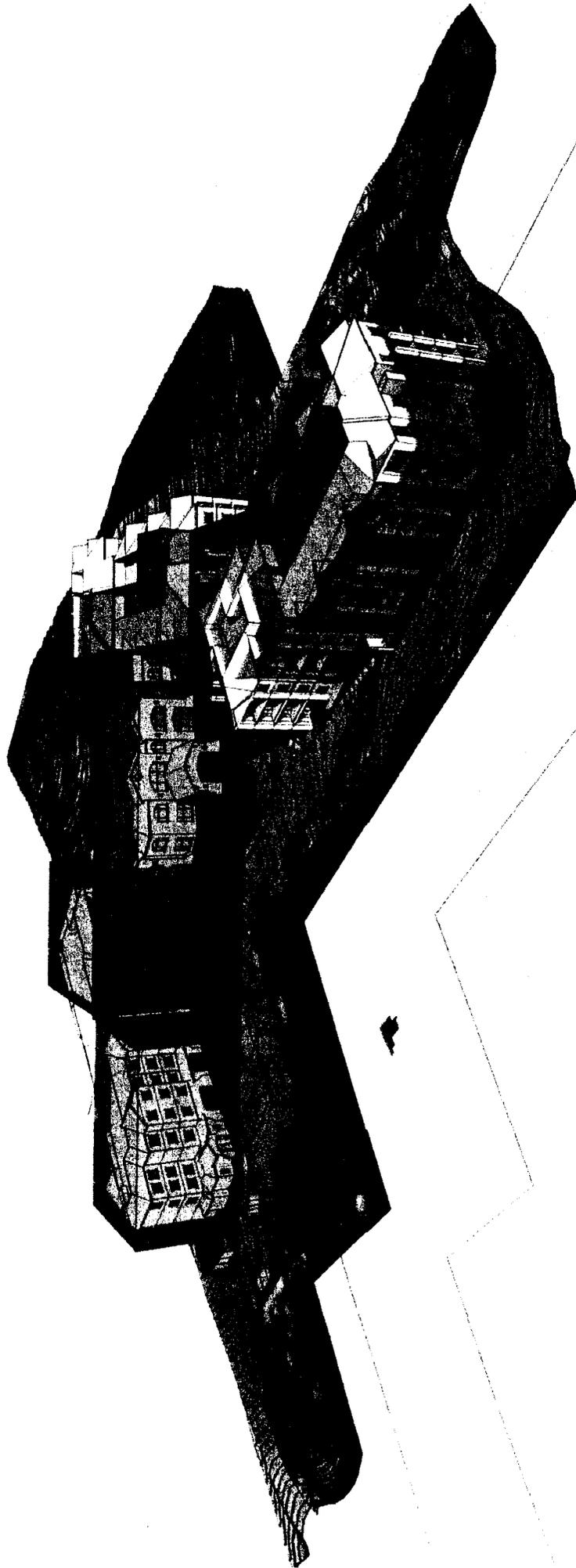


EXHIBIT 'BE' Page 1 of 5

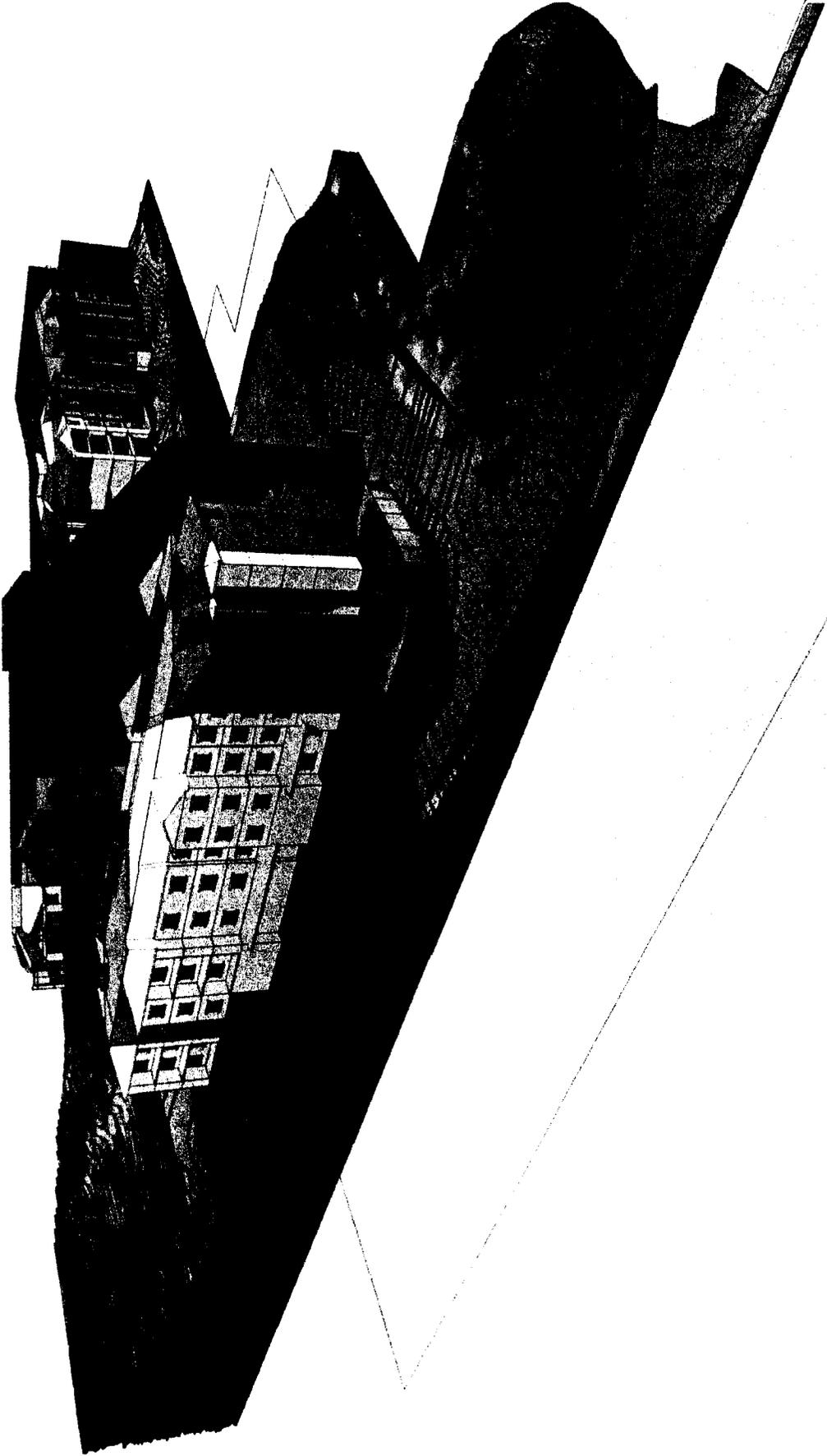


EXHIBIT 'BE' Page 2 of 5

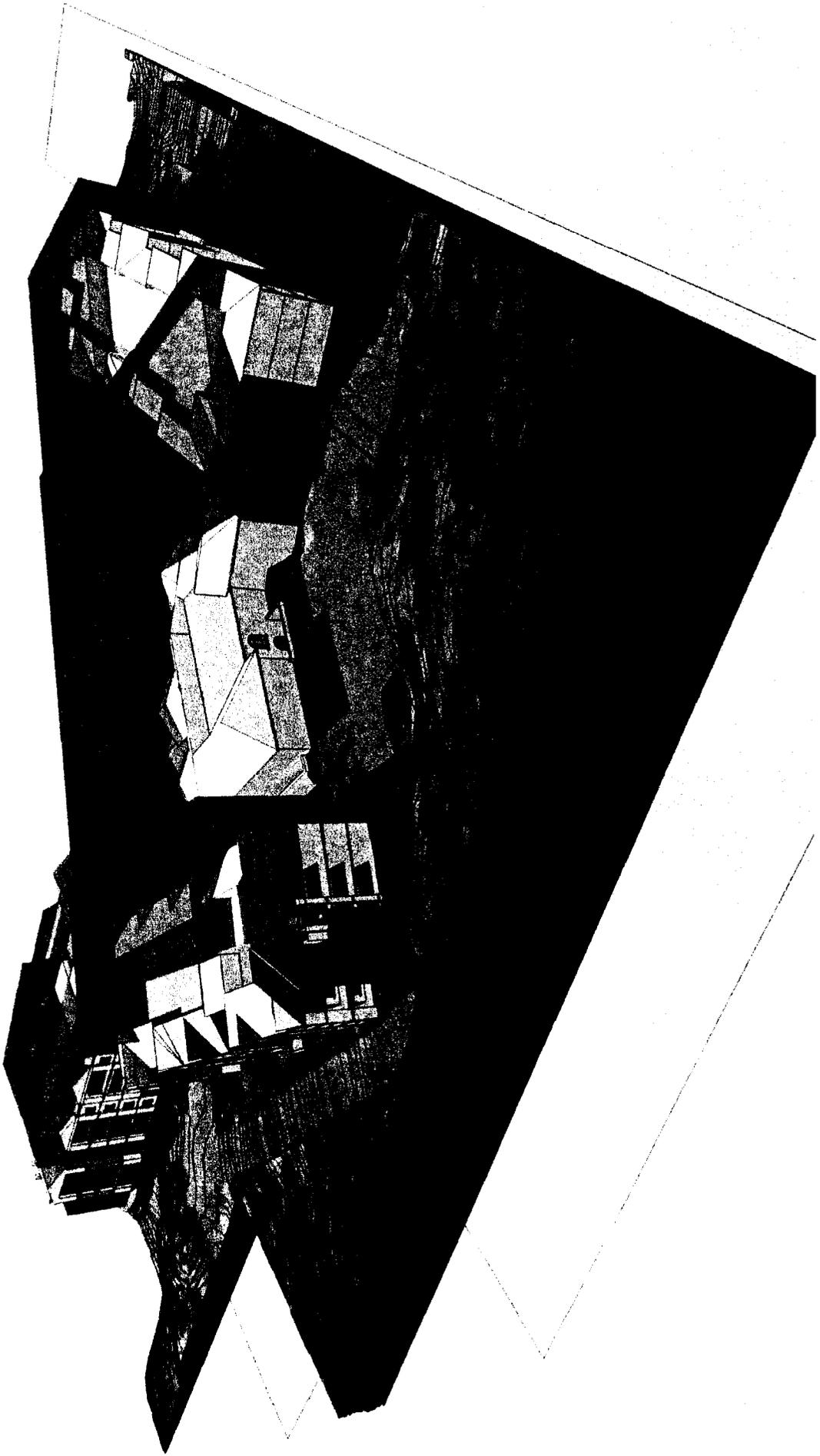


EXHIBIT 'BE' - page 3 of 5



EXHIBIT 'BE' page 4 of 5

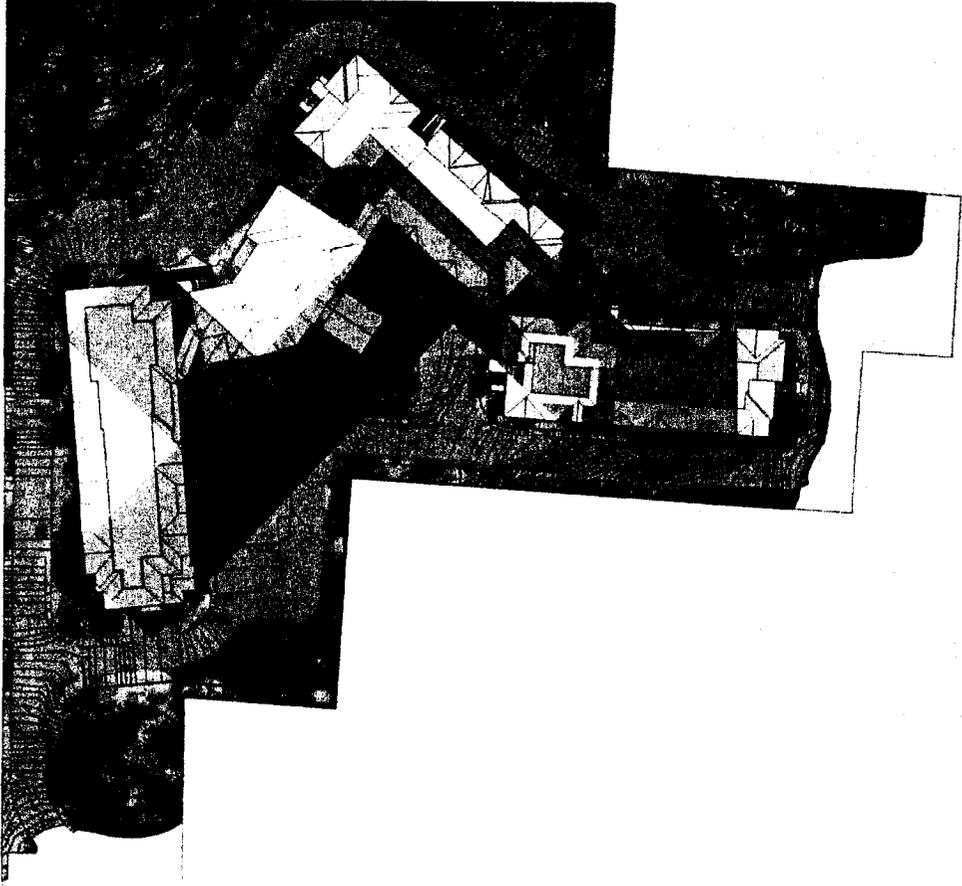
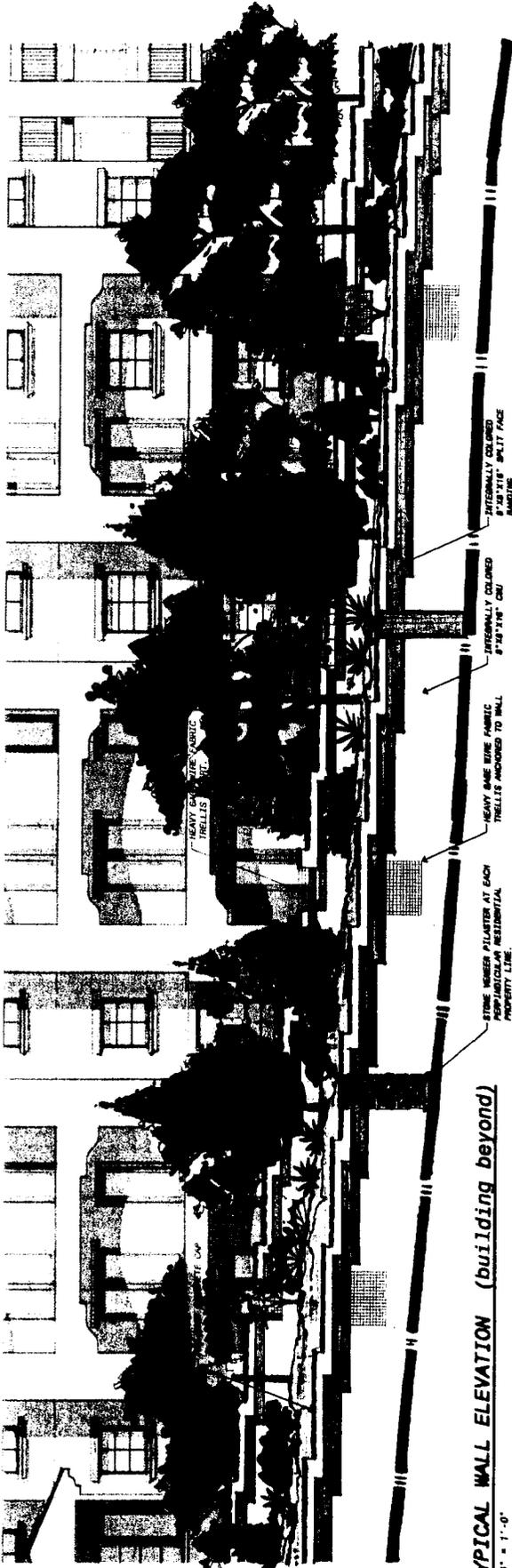
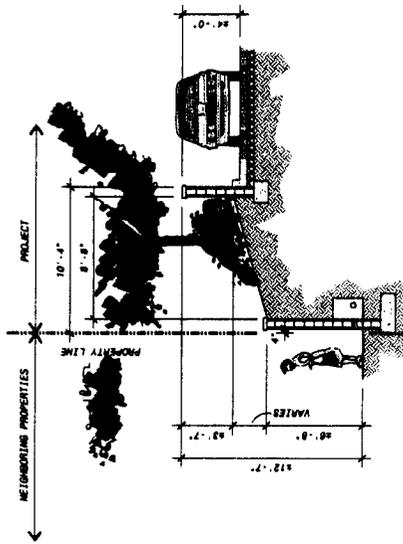


EXHIBIT 'BE' page 5 of 5



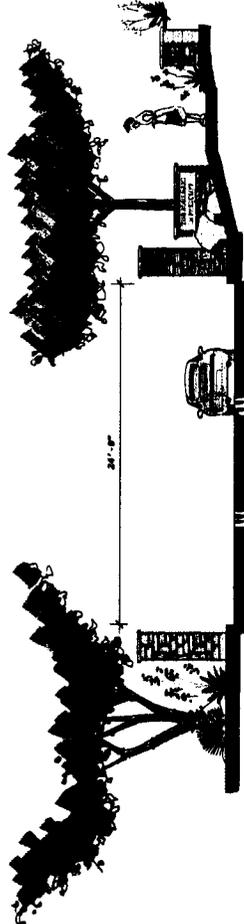


TYPICAL WALL ELEVATION (building beyond)  
1/4" = 1'-0"



TYPICAL WALL SECTION  
1/4" = 1'-0"

Tiered landscape concept



GATED ENTRY  
1/4" = 1'-0"

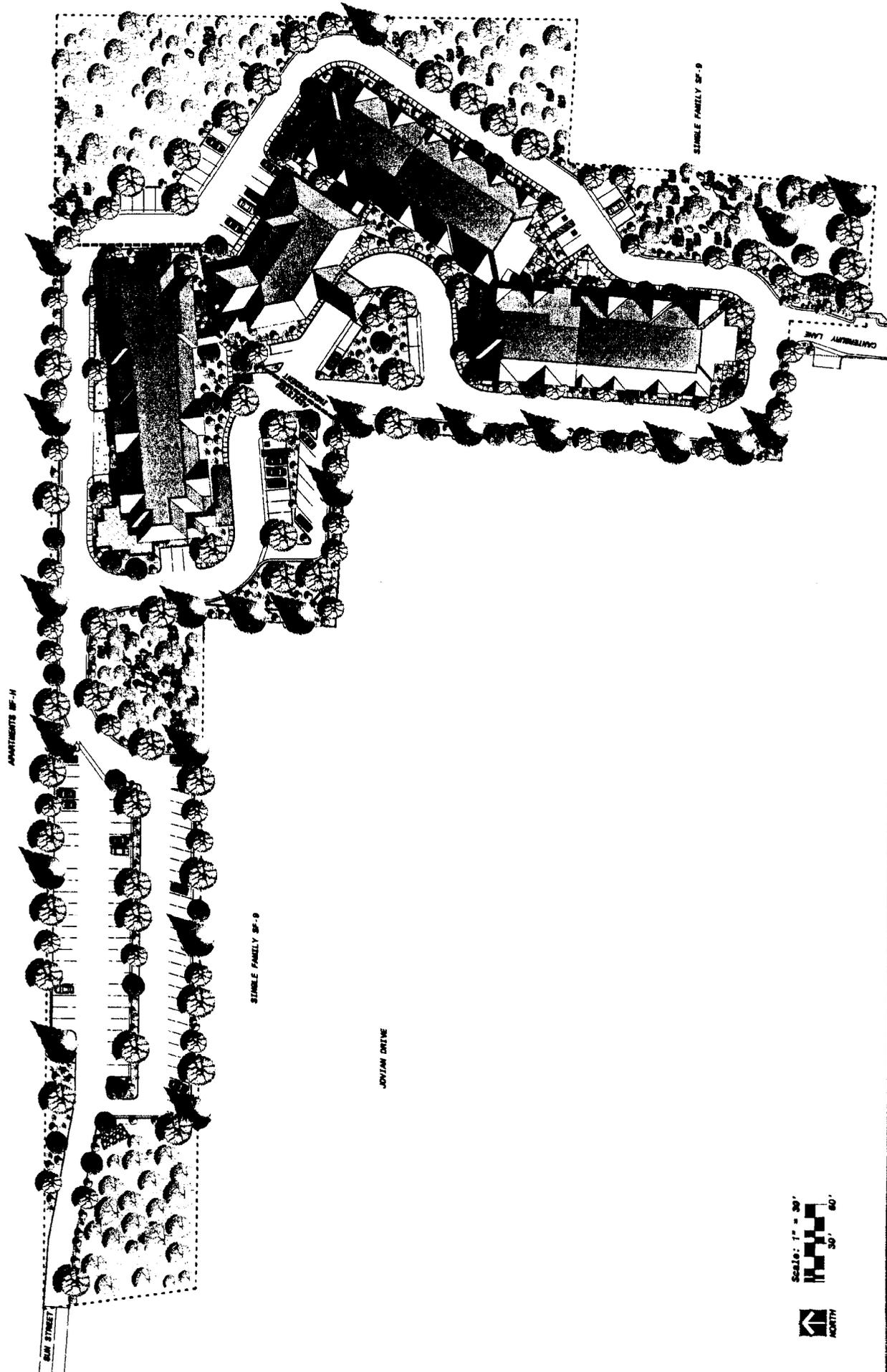
THE BOULDERS AT PRESCOTT

Arcadia Independent Living LLC & Arcadia Assisted Living LLC : Prescott, Arizona

BMG  
INC. AIA

November 26, 2008

EXHIBIT 'C'



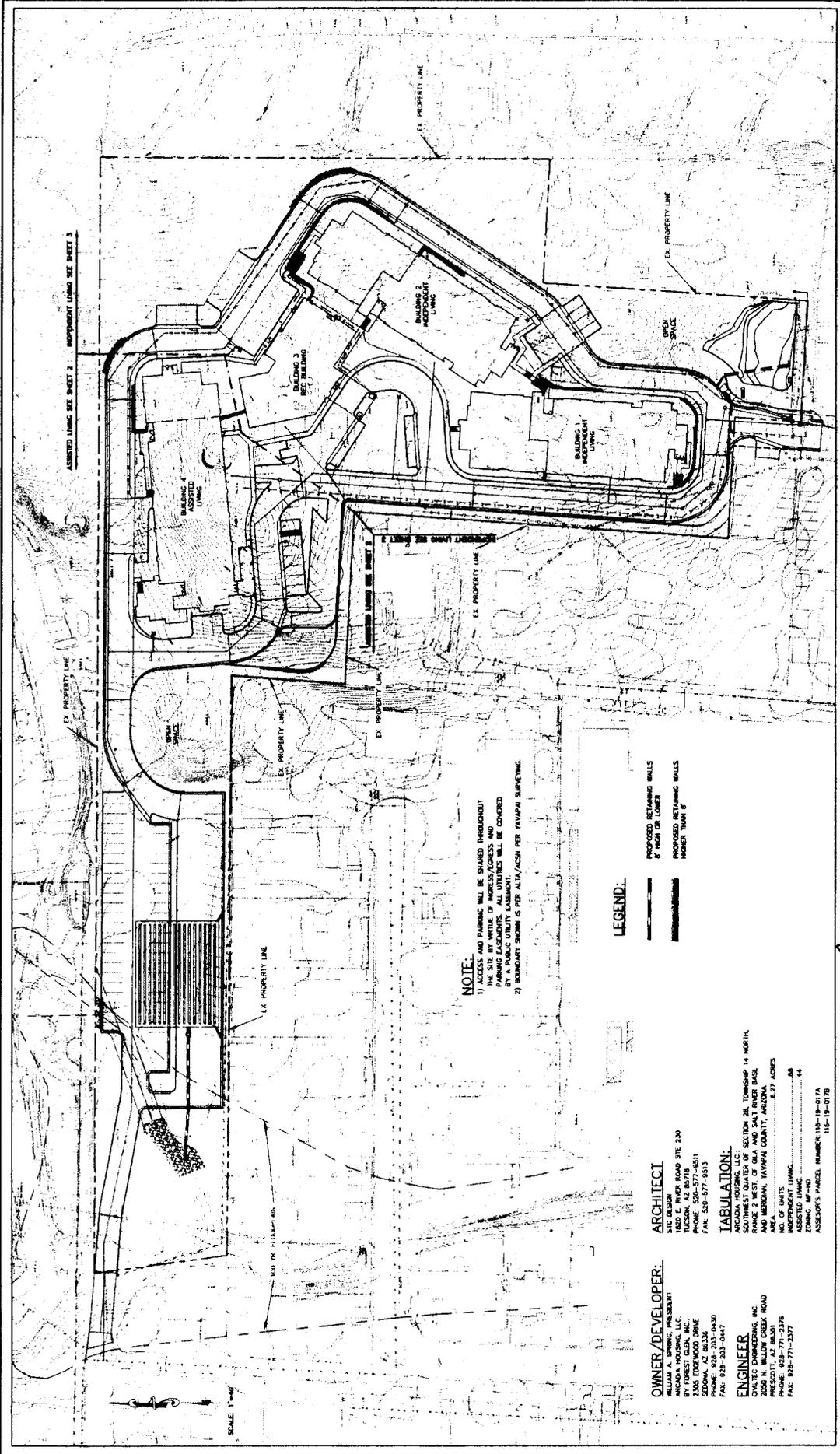
**THE BOULDERS AT PRESCOTT**

Arcadia Independent Living LLC & Arcadia Assisted Living LLC : Prescott, Arizona

**BMG**  
INC - AIA

November 26, 2008

Exhibit 'D'



ASSISTED LIVING SEE SHEET 2 - ASSISTED LIVING SEE SHEET 3

**NOTE:**  
 1) ALL PROPOSED PARKING WILL BE GRADED THROUGHOUT THE SITE BY WRITE UP ADDRESS AND PARKING EASEMENTS. ALL UTILITIES WILL BE COVERED BY A PUBLIC UTILITY EASEMENT.  
 2) BOUNDARY SHOWN IS PER ALTA/ASCH PER TAMPA SURVEYING.

**LEGEND:**

- PROPOSED RETAINING WALLS 6' HIGH OR LOWER
- PROPOSED RETAINING WALLS HIGHER THAN 6'

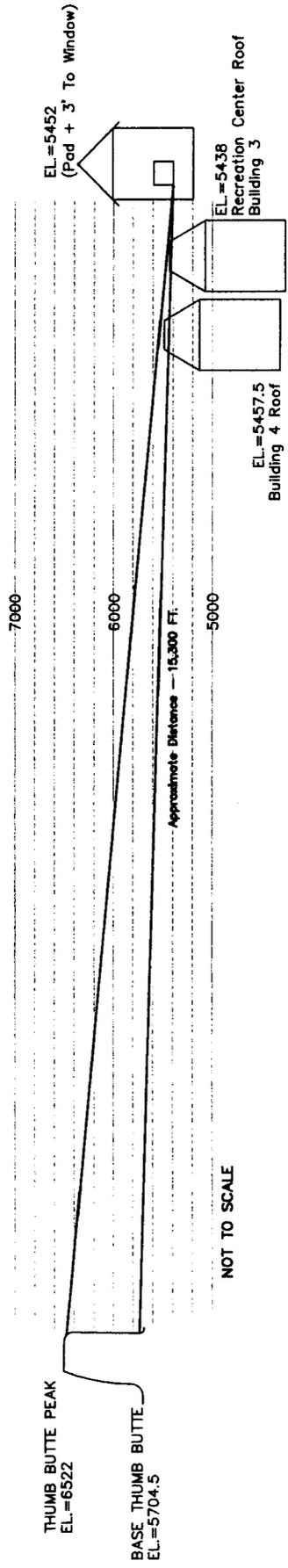
**OWNER/DEVELOPER:**  
 WILLIAM A. SPRING, PRESIDENT  
 2305 ENWOOD DRIVE  
 PRESOTT, AZ 85301  
 PHONE: 928-771-2376  
 FAX: 928-771-2377

**ARCHITECT:**  
 STC DESIGN  
 1001 W. FLORISSANT  
 TUCSON, AZ 85718  
 PHONE: 520-577-9511  
 FAX: 520-577-9513

**TABULATION:**  
 ARIZONA HOUSING, LLC  
 SOUTHWEST QUARTER OF SECTION 28A, TOWNSHIP 14 NORTH,  
 RANGE 3 WEST OF RANGE 1 AND S41, T14R3W B3E  
 AREA, MARICOPA COUNTY, ARIZONA, 6.27 ACRES  
 NO. OF UNITS: 68  
 ASSISTED LIVING: 44  
 ZONING: MF-10  
 ASSESSOR'S PARCEL NUMBER: 110-18-017A  
 110-18-017B

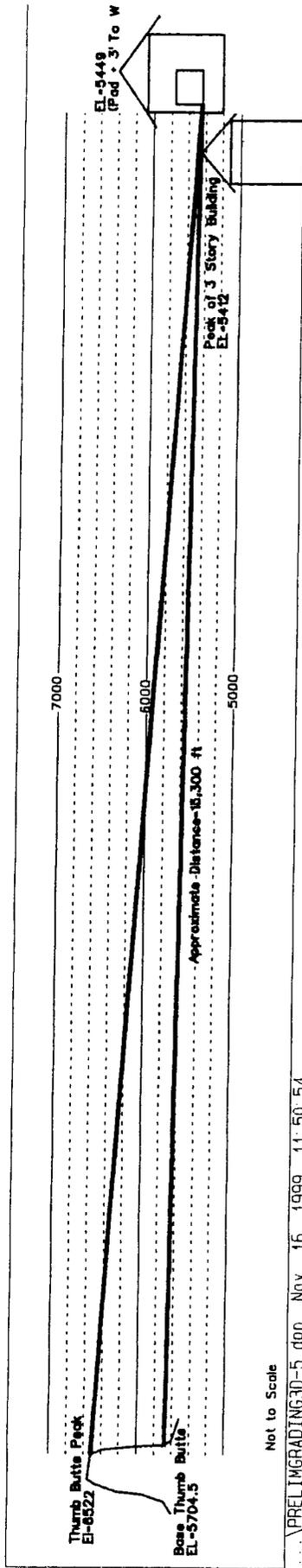
DESIGN BY: RAB	DATE: _____	REVISION	BY
CHECKED BY: RAB	DATE: SEPT. 2006		
<b>WALL HEIGHT PRESENTATION          OVERALL SITE PLAN          THE BOULDERS AT PRESCOTT</b> PRESCOTT, ARIZONA			
SHEET: 1		OF 1	
		JOB NUMBER: 200774D	

Exhibit F - Wall Height Presentation



The Boulders at Prescott  
Elevation Analysis

2009  
EXHIBIT 'G'



Not to Scale

... \PRELIMGRADING3D-5.dgn Nov. 16, 1999 11:50:54

# ELEVATION 1999 ANALYSIS

MUSGROVE, DRUTZ & KACK, P.C.  
ATTORNEYS AT LAW  
POST OFFICE BOX 2720, PRESCOTT, ARIZONA 86302-2720

JAMES B. MUSGROVE  
MARK W. DRUTZ  
THOMAS P. KACK  
SHARON SARGENT-FLACK  
STACIE B. ROBB  
CATHERINE L. SHUGRUE-SCHAFFNER  
EMILY C. DOLAN

PRESCOTT OFFICE  
1135 IRON SPRINGS ROAD  
PRESCOTT, ARIZONA 86305

PRESCOTT VALLEY OFFICE  
3001 MAIN STREET, SUITE 2C  
PRESCOTT VALLEY, ARIZONA 86314

TELEPHONE  
(928) 445-5935  
(928) 445-5980 (FAX)

TELEPHONE  
(928) 775-9565  
(928) 775-9550 (FAX)

GRANT K. MCGREGOR (1959-2005)

File No. PV 593-1

March 12, 2009

SENT VIA FACSIMILE & US MAIL

Janet B. Hutchison  
Jennings, Strouss & Salmon, PLC  
201 E. Washington Street, 11<sup>th</sup> Floor  
Phoenix, Arizona 85004-5911

Re: *Arcadia Housing, LLC, The Boulders - 910 Canterbury Lane*

Dear Janet:

I received a copy of your letter of March 10, 2009, on March 11<sup>th</sup> and finished a response about 5:00 p.m. on the 11<sup>th</sup>. I enclose a copy of my response.

In response to your letter of March 11, 2009 regarding "defective notice:"

I agree that the neighborhood meeting at issue was in 2008 as evident in the attachments to that letter including the notice received by your client. The gravamen of my notation was that the LFRV, LLC, (Las Fuentes) letter did not specify in its February 2008 letter that notice should be mailed to the Scottsdale office. The "misstatement" was, in fact, a typographical error.

If we assume, for the sake of argument, that Las Fuentes had made a proper request for notice under the statute, and it did not, the notice was sent to the address of the owner of record which still meets the statutory requirements. Further, Las Fuentes had actual notice because you wrote your first letter before the first meeting and attended the others until this last one.

Arcadia Housing, LLC is the assignee of Forest Glen and is the owner of the Property.

Very truly yours,

MUSGROVE, DRUTZ & KACK, P.C.

---

Thomas P. Kack, Esq.

TPK/djh  
cc: Prescott City Council  
Prescott Planning & Zoning Commission  
Gary Kidd  
Tom Guice

MUSGROVE, DRUTZ & KACK, P.C.

ATTORNEYS AT LAW  
POST OFFICE BOX 2720, PRESCOTT, ARIZONA 86302-2720

JAMES B. MUSGROVE  
MARK W. DRUTZ  
THOMAS P. KACK  
SHARON SARGENT-FLACK  
STACIE B. ROBB  
CATHERINE L. SHUGRUE-SCHAFFNER  
EMILY C. DOLAN

PRESCOTT OFFICE  
1135 IRON SPRINGS ROAD  
PRESCOTT, ARIZONA 86305

PRESCOTT VALLEY OFFICE  
3001 MAIN STREET, SUITE 2C  
PRESCOTT VALLEY, ARIZONA 86314

TELEPHONE  
(928) 445-5935  
(928) 445-5980 (FAX)

TELEPHONE  
(928) 775-9565  
(928) 775-9550 (FAX)

GRANT K. MCGREGOR (1959-2005)

File No. PV 593-1

March 11, 2009

SENT VIA E-MAIL & HAND DELIVERY

Prescott City Council  
Planning & Zoning Commission  
City of Prescott, City Hall  
City Council Office  
201 South Cortez Street  
Prescott, AZ 86303-3938

Re: Subject: *The Boulders, A Prescott Retirement Center – A Planned Area  
Development*  
Owner: *Arcadia Housing, LLC, the Assignee of Forest Glen, Inc.*  
Location: *910 Canterbury Lane (North of Whipple Street)*

Dear Chairman Wiant and Commission Members  
& Mayor Jack Wilson and Members of the City Council:

The only party actually opposing this project is local competitor Las Fuentes. The Las Fuentes property is directly north of the Boulders project, is zoned MF-H and includes assisted and non-assisted living for seniors. The City initiated re-zoning/reinstatement of zoning to MF-H on The Boulders property and the intended use of the property is for assisted and non-assisted living for senior citizens. Las Fuentes' opposition is truly akin to the owner of a *McDonald's* objecting to approval for a new *Wendy's*.

The property to the south of the project also includes MF-H zoning. Two (2) neighbors actually went to the trouble of appearing at the recent Commission/Council meetings, voicing their support for this project.

The project design is far superior to what was approved in the past. This probably explains why City Staff supports this project. This project is exactly the same now as when this Commission unanimously recommended approval of the site plan subject only to a couple of provisos, such as adding valet parking to the Development Agreement which is being done. Moreover, this property was re-zoned in 1999 to the equivalent of MF-H zoning and in 2003 to MF-H zoning. The City and the

Prescott City Council  
Planning & Zoning Commission  
City of Prescott  
March 11, 2009  
Page 2 of 3

neighbors have been well aware of the likelihood that this property would be developed for multi-family senior use for ten (10) years. The present developer has financing and that expected development can now proceed.

Las Fuentes' latest objection letter dated March 10, 2009, is, again, belated and does not add anything of substance to the discussion before the Commission. Las Fuentes is essentially restating and rehashing the "issues" and "concerns" posed in their prior letters including, most particularly, the January 28, 2009 letter to this Commission. We responded to that letter in some detail and I attach a copy of that response because the issues are essentially the same. (See attached **Exhibit A**).

It is surprising that Las Fuentes is still raising some of the same issues that have been disposed of or were shown to be non-issues, for example: Licensing is alleged to raise "numerous concerns" but licensure is regulated by the State and is not at issue before this Commission. Parking is alleged to be inadequate but the parking provided is more than what the City had required and agreed to in the 2007 Development Agreement. The Code Sections Las Fuentes quotes are superseded by the pending PAD designation and the 2007 Development Agreement and will be superseded by the new Development Agreement. Most importantly, City Staff believes sufficient parking is provided and expert engineers have opined that it is more than will be needed. Similarly, Las Fuentes alleges "Access is a huge issue and concern" but this allegation/opinion is not supported by any expert opinion and is contrary to two (2) studies performed by the City.

Some additional responses to some of Las Fuentes allegations are warranted and are as follows:

Las Fuentes highlights the "history" of this property as if it is a negative issue when it is a plus. The background of the property demonstrates that the City has historically approved this site for high density development and 132 living units since 1999. Las Fuentes has no cogent argument for why the City should change course, particularly now that there is a vastly improved design and the financing to complete the project.

Las Fuentes alleges the unsupported allegation and opinion that the site is not suitable for this development in various forms, labeling the property as "not a viable pallet for multi-family use" and "unacceptable for senior housing." City Staff, the owners, engineers and architects and HUD all disagree. Previous Planning and Zoning Commissions and City Councils and, judging by its recent recommendation, this Commission all disagree with Las Fuentes' opinion.

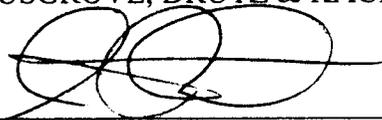
The opinion that the Development did not previously proceed because of the terrain of the project is similarly unsupported. The fact that prior owners did not proceed with development is not particularly relevant. What is relevant, true and undisputed is that the present owner is proceeding and

Prescott City Council  
Planning & Zoning Commission  
City of Prescott  
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Page 3 of 3

has approval for financing from HUD subject to final approvals by the City and acceptable bids all being received in a timely fashion.

Very truly yours,

MUSGROVE, DRUTZ & KACK, P.C.



---

Thomas P. Kack, Esq.

TPK/djh

Enclosure: Letter addressed to Gary Kidd  
Letter from Stave Properties, LLC with attached notice

cc: Tom Guice  
Garry Kidd

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# Jennings Strouss

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March 10, 2009

**Via Facsimile (928) 777-1258 and Via Federal Express**

Prescott City Council  
Planning & Zoning Commission  
City of Prescott, City Hall  
City Council Office  
201 South Cortez Street  
Prescott, Arizona 86303-3938

**Re: Subject: RZ09-003, 910 Canterbury Lane**  
**Location: 910 Canterbury Lane**

Dear Chairman Wiant and Commission Members:

This Firm represents L.F.R.V., L.L.C. and its property, Las Fuentes Resort Village, and lodges these protests, ~~comments~~ and concerns with you in regard to rezoning application RZ09-003 including the ~~site plan~~ for the Boulders, a Prescott Retirement Center, a planned area development ("~~Boulders~~").

The site of the proposed rezoning is located at 910 Canterbury Lane (north of Whipple Street) and is comprised of approximately 6.27 acres (the "Subject Property"). Our client's ~~property~~, Las Fuentes, ~~comprises over 16 acres and is located on the north boundary of the Subject Property.~~

It is our understanding that the rezoning is to be tied to a ~~site plan identical to the site plan proposed under application S108-002. We have, by letters dated January 28, 2009, February 17, 2009 and February 18, 2009, previously lodged protests, comments and concerns to the site plan application and the site plan ("Previous Objections"). Those letters, and the protests, comments and concerns set forth therein, are incorporated herein by reference. We object to the proposed rezoning are outlined below. Further, we reassert and continue our objections to the site plan as set forth in the Previous Objections. We firmly believe that rezoning and the site plan are fraught with major problems so severe that it is most likely doomed to failure and clearly will have a serious negative impact on the community.~~

We urge the Commission to carefully review this application, the history of attempted development of the Subject Property with its challenging terrain and consider the

**Phoenix ▶ Peoria ▶ Washington, D.C. ▶ Las Vegas**

March 10, 2009

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appropriateness of the requested rezoning in light of the neighborhood, history of failure of prior development and the many numerous **deviations** from the Code being requested by the applicant. This Commission should carefully consider all of these problems and, in the best interest of this City and especially this community, deny this application.

### Current Zoning

The property is currently zoned SF-9. This zoning allows 27 lots on this 6.27 acre site. SF-9 is a medium-density, single-family residential district with a suburban or semi-urban character. The standards set for these districts reflect residential patterns found in older urban areas and foster a compact, efficient, neighborhood pattern while providing a comfortable single-family ambience with useable private yards and open space. See Land Development Code, City of Prescott ("Code"), § 3.6.1.

The Subject Property lies within the center of similar established uses. Applicant, however, seeks to rezone to MF-H (Multi-Family High Density). District standards for this high density use provide for a very compact residential pattern. "The provision of community open space, neighborhood parks, outdoor recreational areas and pedestrian facilities is strongly encouraged in these districts." Code, § 3.10.1.

Over the last ten years, owners and developers have sought and obtained various multi-family rezonings and proposed a variety of site plans but throughout that time period have been completely unsuccessful in developing this property for a multi-family use. The reality is that the Subject Property, with its location and **challenging, steep** terrain is just not a viable pallet for multi-family use and is completely **unacceptable** for senior housing.

### History

The very history of attempted rezoning, changed site plans and delays on development of this property speaks volumes. Even with the City's full cooperation for ten years, the owners of the Subject Property have been unable to develop the Subject Property for any multi-family use.

As the Commission is aware, in 1999 the Prescott City Council approved a rezoning of the Subject Property with conditions and a reversion clause if the property was not developed within a certain period of time. The Council clearly understood the challenges of the Subject Property and sought to protect the City from permanent, unrealistic zoning. Since that time the Subject Property owners and developers have presented several different site plans and use proposals but were never able, even in that decade of prosperity and strong development environment, to even "break ground." Eventually, the owners let the zoning lapse and revert back to RA-9/SF-9.

The owner was on notice of the zoning, timeframes, conditions and stipulations. Despite this, and representations that they could work with those timeframes, the owners failed to develop the Subject Property. Given the history and the importance to the neighborhood, this matter must be carefully considered by the Commission.

Prior to 1999, the Boulder's property was zoned RA-9.<sup>1</sup> That zoning would have allowed 27 lots on the Subject Property. The revision being proposed at this time is to allow

<sup>1</sup> Referred to currently as SF-9.

March 10, 2009  
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for 132 units, on this challenging site with its steep elevation changes, representing a density increase almost five times that of the current zoning.

During 1999 and 2000, the prior owner of the Subject Property presented the City with two separate but related proposals for development of the property. Those proposals resulted in rezoning the property. An ~~associated development~~ agreement was approved at that time and given number 99-223A. According to our understanding, that development agreement ~~provided for the construction of either a 132-unit assisted care facility, or an 85-unit age restricted condominium project.~~ That agreement also included a condition that if either project ~~was not constructed within 5 years (by 4/11/05), the zoning would revert to RA-9 (SF-9).~~ The project was never constructed.

In the summer of 2002, the owner sought to rezone the Subject Property to Residence C (PAD). That application also sought amendment to the development agreement to permit 50 lots on this 6.27 acres. That proposed project included an "affordable housing" element consisting of 10-15 of the 50 lots. After opposition at the Council level, it is our understanding that the 2002 proposal was withdrawn.

Apparently, later in 2003, another site plan was presented and approved; this one for Canterbury Gardens PAD, a senior apartment complex of 85 units. The Council also approved RZ03-07 (Ord. 4332) that included the zoning expiration date of August 18, 2008. Thereafter, in 2006 the Council ~~approved a revised development~~ agreement and in March 2007, the Council again was asked to approve a revised development agreement to grant extensions of time.

### **Opposition**

The current proposal seeks rezoning from SF-9 to MF-H (Multi-Family High Density) tied to a site plan for senior living apartment units with some portion of an assisted care facility. The proposal is for a 132-unit project with a "minor component" of assisted care.<sup>2</sup> The majority of the project (88 units) would be independent living apartment units. The independent section of the project consists of ~~two separate residential buildings~~ each with 44 units (for a total of 88 units) and a recreation center building. The buildings are proposed to be ~~connected with a covered walkway.~~ There is ~~no parking structure~~ for any of the buildings and only very limited parking close to the buildings despite the number of units and the terrain.

The ~~requested rezoning~~ ties the proposed zoning to the previously reviewed site plan. (See Minutes of Planning and Zoning Commission, February 12, 2009). At the time of review and recommendation, however, ~~the Commission was mistaken~~ and informed that the zoning on the Subject Property was MF-H, a classification that allows multi-family development. In fact, the zoning is SF-9, a classification that ~~does~~ not allow multi-family or assisted living facilities. Thus, the proposed site plan considered was not in compliance with the Land Development Code for the City of Prescott (the "Code"). Accordingly, the rezoning must be evaluated and the site plan must be reviewed in strict compliance with the Code.

Interestingly, in the ~~past 10 years, even with appropriate zoning,~~ the various owners of the Subject Property ~~have been unable to develop a senior housing project (or any~~

<sup>2</sup> The documentation indicates that only 44 of the 132 units would be assisted care, all housed in one building along with attendant food service and other amenities. Interestingly, other documentation indicates that they will address food service for the buildings at a later date.

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project)! It is clear that the numerous problems presented by the site and its location dictate that the current zoning is the most appropriate, viable zoning.

A. **Rezoning Issues.**

In determining whether to approve, approve with modifications, or deny a rezoning request, the City must consider many issues including, but not limited to, the suitability of the property for uses permitted in the ~~existing~~ zoning district and suitability for uses permitted in the proposed zoning district. The applicant has made no showing that the Subject Property is suitable for multi-family use, let alone senior living and ~~assisted~~ assisted living apartments. Whether or not the applicant has spent money to design buildings is irrelevant to the City's ~~review~~. The critical issue is whether the Subject Property is suitable for the proposed use. Clearly, it is not.

The Subject Property suffers from significant elevation changes, drainage issues and serious access issues. These alone make the Subject Property unsuitable for multi-family uses. Apparently to avoid the ~~parking~~ parking and traffic issues imposed by a multi-family use, the applicant seeks to use the Subject Property for "senior" housing, claiming that less parking is needed and less traffic ~~generated~~, but then seeks numerous deviations from the Code requirements. While the parking and traffic claims are disputed, other issues render the Subject Property ~~completely unsuitable~~ for the proposed use - senior housing - particularly at the proposed density and design. Given the gravity of the issues involved, the City should be even more ~~cautious in considering~~ this application.

B. **Site Plan Issues.**

Even under the ~~appropriate~~ zoning, the Code requires that the facility be in strict compliance with the Code and the City's development requirements. Code, § 1.9.2(A). Thus, all components of the proposed site plan must be developed in strict compliance with the Code.

1. **Licensing.** As ~~previously~~ discussed, the very issue of assisted living service raises numerous concerns. The applicant has strenuously ~~objected~~ objected to any dictate from the City that the facility be licensed. It has indicated that ~~licensing was not~~ the City's concern. In fact, however, the Code requires that all assisted living facilities and nursing homes shall be subject to certain standards including, but not limited to, requirements that all facilities shall comply with all applicable federal, state and local requirements for the location and operation of such facilities and the provision of safe outdoor recreation areas and gross floor areas for every person that the facility is licensed to accommodate; include 24-hour caregivers on site; and compliance with the ADA.

As indicated above, an assisted living service requires licensing. Accordingly, the proposed development ~~agreement~~ must be revised to provide that this is a "licensed assisted living facility." This is extremely important as unlicensed living facilities in Arizona are a continuing problem. ~~Not only do~~ these facilities not conform to care requirements but they are a danger to their residents. The City should assure that this project is legitimate and meets the mandatory licensing requirements.

2. **Parking.** The site plan provides inadequate parking both in terms of location and number. This site plan eliminated the prior concept of underground parking and, instead, proposes constructing substantial surface parking. This change is certainly cheaper for the applicant but extremely detrimental to the future residents. A ~~review~~ of the

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site plan reveals that the majority of this surface parking is located in the northwestern corner of the property a long distance from the independent living buildings. In fact, for the south "independent living" building of 44 units (and perhaps meant to serve both independent living buildings with 88 units total), there appear to be only 5 regular spaces and 2 handicapped spaces! Where are the residents going to park and what do they have to do to get to their parking?

Developers of senior housing should be fully aware that parking access is more important for a senior citizen than any segment of our society. The prior planned underground parking was a much better plan for residents of this project, and for the neighbors. Further, making a mistake like this is a fatal flaw which can never be corrected and can ~~doom a project~~.

The developer responds with the commitment to provide "valet" parking. Neither that term nor the components of this type of parking are provided. Further, the developer admits that valet parking is a new concept and provides no authority that it is a viable alternative, especially in this climate and on this terrain.

Additionally, the applicant has represented that, location of spaces aside, the number of spaces complies with the "development agreement." The correct review, however, is whether the number of spaces complies with the Code. Section 6.2.5(E) of the Code applies. This provision states that for senior apartments there must be one space per unit plus 0.50 spaces per unit, up to 20 spaces maximum, for visitor parking. For assisted living units, there must be 0.5 per dwelling plus 1 per employee per shift. Thus, the independent living component requires  $88 + 20$  for a total of 102 spaces and the assisted living requires  $22 + 17 = 39$  for a combined total of 141 spaces. The Code also requires certain loading facilities and handicapped spaces. The site plan only provides ~~127 spaces including 5 handicapped stalls~~.

3. **Height Limit.** The site plan also fails to comply with the Code in that structures exceed the maximum height limit. The current application seeks 49.5 feet, a substantial deviation from the Code. In fact, the Development Code provides that the maximum building/structure height in MF-H zoning is 40 feet and in the current SF-9 is 35 feet. See Code, §§ 3.6.3 and 3.10.3(E). The applicant is, therefore, requesting a huge variation from the requirements even for MF-H, an almost 24% increase above the Code.<sup>3</sup> When questioned about the additional height, the owner indicates that it is for aesthetics!

4. **Density, Open Spaces and Residential Buffer.** The site plan also fails to comply with the Code requirements relating to density, open spaces and residential buffer zones. The Subject Property particularly with its topography is not meant to support the requested density. Further, and importantly, the request seeks to reduce the amount of open space and landscaped area and instead substitute roadways.

Further, the revised site plan offers only a 10 foot 4-inch residential buffer with 1 retaining wall of varying heights. Under the Code requirements for MF-H zoning, the required minimum landscaped buffer would be 24.75 feet from the western property line for the proposed 49.5 foot tall Building #1. The proposed site plan should be carefully

<sup>3</sup> Interestingly, this variation was not disclosed to the neighbors at the neighborhood meeting held in connection with the original site plan application but was only disclosed by the engineers after that meeting.

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reviewed for its decrease of open space and development closer to neighbors than known to be good planning.

Finally, no where in the site plan is there designation of safe, outdoor recreational areas. In fact, there is no reference to any outdoor recreational areas!

5. **Traffic and Access.** Traffic and access are critical concerns.

(a) Roadways. As previously noted, the roadway is not in compliance with City Code requirements for fire access. The safety of residents is critical and justifies compliance.

(b) Traffic. After repeated requests by this neighbor for traffic information, the current staff report, for the first time, includes information about the traffic impacts as evaluated by the City Traffic Engineer. The engineer estimates that 336 additional 24HR trips and (22,28) additional peak hour trips will be generated with the new designation. Despite this, the memorandum then summarily concludes that traffic will not be an issue. At a minimum, some restriction on left turns from Canterbury should be provided.

(c) Access. Access is a huge issue and concern. The staff reports have consistently indicated that access will be through the one private driveway entering from Canterbury Street. Sun Street will be gated as an emergency egress/ingress only. There will be no through traffic from Canterbury to Sun Street. However, the driveways that circle the buildings on the plan go from Sun Street to Canterbury Street. The staff report dated January 29, 2009 (included with the Commission packet) indicates that an alternative would involve closing the Sun Street entrance to the parking lot and moving this entrance to the northern property line. This alternative was deleted at the Planning and Zoning Commission meeting of February 12, 2009. Some vestiges of the alternative, however, still remain. If approved, the recommendation must clearly state that the Sun Street entrance will not be moved, access is from Canterbury Street and that Sun Street is a gated, emergency-only access for the Subject Property.

(d) Construction Traffic. Further, the applicant originally asked to have construction traffic utilize Sun Street. Accordingly, it is clear that Sun Street is not envisioned to be a gated emergency egress/ingress. The issue was not clearly addressed at the Planning and Zoning Commission meeting. In fact, however, the residents of the Sun Street area object to such construction traffic and, if it is allowed, will be forced to suffer with continual traffic through an open access point while construction workers, large trucks and heavy construction vehicles access through their neighborhoods. Not only is this a horrible idea and disruptive and dangerous, it is seriously doubted that Sun Street can accommodate such traffic. Accordingly, Sun Street must not be allowed to be utilized for any regular access, including construction traffic.

L.F.R.V. is the bordering neighbor. It will be impacted with development on the Subject Property and particularly by the deviations allowed from the Code. All the neighbors will, however, be severely impacted if the City allows a poorly planned project to proceed.

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**Conclusion**

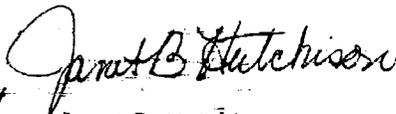
This letter is intended as a protest pursuant to the Land Development Code, City of Prescott and any and all applicable ordinances, statutes and laws, and invokes all requirements including voting requirements therein.

L.F.R.V. sincerely requests that the Commission deny this application. The citizens of Prescott look to the Commission to make sure that their City is planned thoughtfully and in compliance with the rules. This rezoning with site plan application is requesting approval of a project with which the City and the community, including specifically the surrounding neighbors, will have to live with for many years. As currently structured, however, the project creates numerous problems in the neighborhood and sets a precedent to allow other developers and owners to fail to meet their commitments to the community. The request should be denied or, at the very minimum, appropriate conditions must be imposed and a reversion clause included.

We respectfully request that the Commission deny this request. We further request that this letter be made part of the record in this matter.

Very truly yours,

JENNINGS, STROUSS & SALMON, P.L.C.

By   
Janet B. Hutchison

JBH/tv

cc: Community Development Director  
L.F.R.V.

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GRANT K. MCGREGOR (1959-2005)

File No. PV 593-1

March 5, 2009

SENT VIA E-MAIL & HAND DELIVERY

Prescott City Council  
Planning & Zoning Commission  
City of Prescott, City Hall  
City Council Office  
201 South Cortez Street  
Prescott, AZ 86303-3938

Re: Subject: *The Boulders, A Prescott Retirement Center – A Planned Area Development*  
Owners: *Forest Glen, Inc. or its duly nominated assignee*  
Location: *910 Canterbury Lane (North of Whipple Street)*

Dear Chairman Wiant and Commission Members  
& Mayor Jack Wilson and Members of the City Council:

The above project is back before the Commission based upon concerns regarding the zoning of the property. We understand the City initiated the "reinstatement/re-zoning" of the property in order to avoid any challenge that could be posed based upon the assertion that the zoning of the property has reverted to SF-9 and the delay any such challenge would cause. Arcadia Housing, LLC's position that the zoning has not reverted and the zoning remains MF-H is more fully addressed in the attached letter to City Attorney Gary Kidd presented for the Commissions and Council's review. Notwithstanding that belief, Arcadia Housing, LLC signed off on the "Rezone Application" to avoid delay and the loss of pending HUD financing.

The Boulders is the same project that was recently presented to the commission and which the commission unanimously recommended be approved. We fully expect there will be objections posed by Las Fuentes. Las Fuentes objected to MF-H zoning in 1999 and 2003 and the MF-H zoning designation was recommended by the Commission and approved by a super majority of the City Council on both of those occasions. The major difference between then and now is that the present project design is far superior to those presented in the past.

Prescott City Council  
Planning & Zoning Commission  
City of Prescott  
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Page 2 of 2

City Attorney Gary Kidd has already disposed of the allegations of defective notice alleged and realleged in writing and orally by Las Fuentes. The notices clearly complied with the law. However, a further word on the subject is appropriate because the letter that Las Fuentes alleges requests that notice be forwarded to a new/different address did not in fact make that request but, rather stated . . . "we ask that you direct any information about this project as it becomes available" (see attached letter and notice), *i.e.*, it did not instruct regarding an alternate address and the letter itself demonstrated that Las Fuentes had received notice. In that letter Las Fuentes complained of notice regarding a (a non-required and non City sponsored) neighborhood meeting scheduled for February 14, 2009 but the Las Fuentes letter was dated February 13, 2009 and had a copy of the notice attached to it (copies attached). The fact is that Las Fuentes has opposed this project commencing in 1999 and it will continue to do so on any ground possible.

Arcadia Housing, LLC purchased this property in 2007, commenced development of the property shortly thereafter and has diligently pursued development of the process ever since. Almost \$600,000 has been expended in that process to date and the result of those expenditures is evident in the superior design of the project.

Arcadia Housing, LLC respectfully requests that the Prescott Zoning Commission recommend approval of the re-zoning request and that the Mayor and City Council approve of the Ordinance regarding zoning and the Development Agreement presented to it.

Very truly yours,

MUSGROVE, DRUTZ & KACK, P.C.



Thomas P. Kack, Esq.

TPK/djh

Enclosure: Letter addressed to Gary Kidd

Letter from Stave Properties, LLC with attached notice

cc: Tom Guice

Garry Kidd

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GRANT K. MCGREGOR (1959-2005)

File No. PV 593-1

March 5, 2009

SENT VIA E-MAIL & HAND DELIVERY

Gary Kidd  
City of Prescott Legal Department  
PO Box 2059  
Prescott, AZ 86302-2059

Re: *Arcadia Housing, LLC, The Boulders - 910 Canterbury Lane*

Dear Gary:

Pursuant to our discussion on Friday, February 20, 2009, Arcadia Housing, LLC, has received mailed notice of the City directed and Planning Department initiated "reinstatement of zoning/rezoning" for the above property to MF-H zoning. Arcadia Housing, LLC, confirms that it has reserved and not waived its legal position that the property is currently zoned MF-H. I understand the City is concerned that Ordinance 4332 is not well written and, whether meritorious or not, this could lead to a challenge on the basis that the zoning has reverted to SF-9. Arcadia Housing, LLC signed off on the City initiated rezoning process while reserving its rights and position that the zoning remain MF-H. Arcadia did so to help avoid any such contest and, most importantly, the consequent potential delay and derailing of the project. Arcadia Housing reserved its rights because it is my belief and Arcadia Housing, LLC's legal position that the zoning has not reverted from MF-H to SF-9 zoning under the language set forth in SECTION 2 of Ordinance No. 4332 and that the requirements of that Ordinance have been and currently are fully satisfied. That Ordinance, executed August 19, 2003, provides in part:

SECTION 2. THAT the rezoning of the parcel described in Ordinance No. 3934 is subject to the following condition: If the Property does not develop in substantial conformance with Paragraph 7(A) of that certain Development Agreement approved pursuant to Resolution No. 3554 within five (5) years of this date of the Ordinance....in that event the rezoning shall automatically revert back to residence A9 without further action of the City Council, unless granted an extension by the City Council. (underscore emphasis added).

Paragraph 7(A) of that Development Agreement simply provides:

Gary Kidd  
City of Prescott Legal Department  
March 5, 2009  
Page 2 of 3

7. That notwithstanding the underlying zoning of the Property, the Property Owner hereby agrees as follows:
  - A. That the Property shall only be used for a combination assisted living facility and non-assisted living facility for those over 55 years of age.<sup>1</sup>

The conditional language of SECTION 2 is clear. The condition “does not develop” is in the present tense. It does not provide for or require the completion of development, completion of construction or even commencement of construction.

The Webster’s dictionary defines develop or development as “to show or work out by degrees” and “to grow, increase or evolve gradually.” The Boulders numerous activities have clearly satisfied this definition starting in 2007 as follows:

1. The expenditure of \$580,000 from 2007 to date for expenses on the project including payment to architects, engineers, surveyors, archeologists, soil boring geologists, landscape architects, interior designers and others, almost all of which was incurred and paid prior to the August 19, 2008 potential reversion time frame indicated in SECTION 2.
2. 18 separate email correspondences, all prior to August 19, 2008, to and from The Boulders professionals and various city departments, reflecting numerous meetings between The Boulders’ architects, engineers and other professionals and the staff of various City departments. The correspondence and meetings resulted in the substantial development modification of building plans to meet City requirements and City staff’s comments.
3. Actual physical presence and work on the site, including soil borings and soil excavations for foundation engineering, physical archeological review on site, debris removal, survey staking and re-staking all in accord with HUD development requirements.

Finally, the May 27, 2007 Potable Water Agreement and the 2007 Amendment to the Development Agreement are “extensions of the zoning” and are an acknowledgment that Arcadia Housing, LLC’s proceeding with development met and was in accordance with the terms of the 2003 Ordinance. The Potable Water Agreement allocates 46+ acre feet of water to this project with a reversion of any water remaining unused as of March 27, 2012. There is a provision in the 2007 Development Agreement confirming a time line and reversion of unused water to the City on December

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<sup>1</sup> There is no question that The Boulders project complies with this provision.

Gary Kidd  
City of Prescott Legal Department  
March 5, 2009  
Page 3 of 3

31, 2013. The application of the five to six (5 - 6) year time lines by the City in both in the Development Agreement and the Potable Water Agreement demonstrates that the City did not take the position that to "develop" was other than an ongoing process that would extend beyond 2008. If this was not the case, it would be logical and expected that the City would have set the time limit for the reversion of water rights in the 2007 Potable Water Agreement and 2007 Development Agreement to coincide with the August 19, 2008 time limit imposed in Ordinance 4332 and the City would presumably be estopped from taking any other position. The pending rezoning would render these issues moot.

We understand that the City of Prescott is proceeding as it is in an abundance of caution to avoid potential claims that could derail or stall the process and the development or result in a lawsuit and litigation expense due to a challenge to present zoning. We truly appreciate the City's position and the staff's efforts in expediting the reinstatement/re-zoning process. However, I must reiterate that it is critical for financing that all final approvals be in place by late March and that is cutting it very close. The construction of the project will cost close to \$30,000,000 and there is no other financing available. The expected loss if the project cannot proceed is in excess of \$10,000,000. Thus, I ask that you contact me immediately if there is any issue that arises or you expect may arise which could delay the process.

Very truly yours,

MUSGROVE, DRUTZ & KACK, P.C.



Thomas P. Kack, Esq.

TPK/djh  
cc: Bill Spring  
Z:\TPK\1-CLIENTS\Spring PV 593-1\Bacon\_2-3-09.doc

**MUSGROVE, DRUTZ & KACK, P.C.**  
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GRANT K. MCGREGOR (1959-2005)

File No. 10062-3

March 5, 2009

SENT VIA E-MAIL & US MAIL

Tom Guice  
City of Prescott  
201 South Cortez Street  
Prescott, AZ 86303-3938

Re: The Boulders – 910 Canterbury Lane

Dear Tom:

I have received notice of the March 12, 2009, rezoning hearing on the above property. I need to confirm timing and some issues.

- I understand we have a hearing before the Planning Commission on March 12<sup>th</sup> and we will have a study session and then a voting session before the City Council on March 19 and 24 respectively.
- Please confirm that the site plan approval process will proceed simultaneously and sequentially with the zoning issues all culminating in a March 24<sup>th</sup> Council vote on both re-zoning and the subsequent site plan approval. I understand the Site Plan will not need to be reconsidered, (re-reviewed), by the Planning and Zoning Commission. If there is any question we ask it be submitted for recommendation by the Commission. The same is true of city study session, i.e., do we need another site review separate from the Development Agreement?
- I understand the “new” Development Agreement does not have to be presented to the Commission but needs to be submitted with a resolution to the Council at the study session and then the voting session. Please advise if I am in error on this.
- I believe that any new Ordinance generated regarding zoning should reflect that it supersedes and renders all prior Ordinances, null and void. I believe this is necessary because Ordinance 4332 may still be effective. (I believe it is effective.)

# Exhibit A

MUSGROVE, DRUTZ & KACK, P.C.  
ATTORNEYS AT LAW  
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GRANT K. MCGREGOR (1959-2005)

File No. PV 593-1

February 5, 2009

SENT VIA E-MAIL & HAND DELIVERY

Planning & Zoning Commission  
City of Prescott, City Hall  
Council Chambers  
201 South Cortez Street  
Prescott, AZ 86303-3938

Re: Subject: *S108-002 The Boulders, A Prescott Retirement Center – A Planned Area Development*  
Owners: *Forest Glen, Inc. or its duly nominated assignee*  
Location: *910 Canterbury Lane (North of Whipple Street)*

Dear Chairman Wiant and Commission Members:

Attorneys for Las Fuentes Resort Village raised various issues regarding The Boulders retirement center in a letter submitted at the 11<sup>th</sup> hour. Most of the issues raised by that letter were addressed in the January 29<sup>th</sup> hearing before the Commission. Bill Spring was correct in his comment at the recent hearing that Las Fuentes' objection resembles *McDonald's* complaining about a *Wendy's* opening next door. This is graphically demonstrated by the Las Fuentes letter comments that the project is "doomed to failure" and will have a "negative impact" on the community. There have been three feasibility studies on The Boulders project, including one by HUD, all with positive results, demonstrating significant demand for senior retirement housing in Prescott. The negative impact alluded to by their attorneys, is simply rhetoric by a competitor. We will further respond to the Las Fuentes letter by section for sake of clarity.

**Prior History:** The "Prior History" section of the Las Fuentes letter is inaccurate in various areas. There were prior owners and prior development plans but there is only one effective Development Agreement, all prior Development Agreements having been rescinded, and that is the one dated March 27, 2007. That Agreement provides for: 132 rentals or condominiums; that the property be used for 55 year old plus residents; and that it include non-assisted living or a combination of assisted and non-assisted living. The current and only Development Agreement also provides for a height of 45' and specifies a formula for determining the required parking. Interestingly, the current and only

Development Agreement is quite similar in intent and terms to the first Development Agreement effected in November 1999, as reflected in the staff report. (It provided for 132 units of independent living or a combination of independent and assisted living.)

The previous site plan approved for this property was and is a condominium development. The present project is far superior to the approved condominium project in areas of site impact, building density, parking and traffic generated. The Owner has provided plans and elevations for The Boulders project to the City commencing in December 2007 and is proceeding as directed by City staff.

**Opposition:** The fact that Las Fuentes is fixed on the competitive aspect of this project is evident from the text of this section including Las Fuentes' statement that "The very issue of assisted living service raises numerous concerns." The "concerns" Las Fuentes raises relative to the assisted living vs. independent living are red herrings as is Las Fuentes' "conclusion that the owner has either not determined the exact scope of this project, or is unwilling to share that information with the City and neighbors." There have been six public meetings on the current Development Agreement and this project, and various staff of Las Fuentes were in attendance at several of them. The plans, elevations and documents submitted to the City and available to the public are quite clear as to the nature and scope of this project. The owner has even produced full architectural renderings and interior floor plans of various common areas. Indeed, Las Fuentes' assertion that the development components are unclear is belied by the fact that Las Fuentes was aware there are 88 independent living units and 44 assisted living units in the development.<sup>1</sup> Incidentally, Las Fuentes would know that connecting walkways between the buildings are enclosed with glass walls and heated and air conditioned if they had bothered to investigate.

**Licensing:** Licensing is controlled by the State of Arizona and is not relevant to the City's decision regarding site approval. However, the management company hired by Owner is licensed in Arizona and several other states.

**Parking:** There is sufficient parking on site. The parking provided conforms to relevant requirements, including the formula set forth in the Development Agreement.

The owner's architect, Mr. Larry Meeks, has experience on these types of projects across the United States. He made it clear in the Commission Hearing that valet parking to be provided is consistent with the trend in the industry. Mr. Bill Spring confirmed that valet service is a selling point for residents and, thus, will be provided and that he would agree to inclusion of provisions in revisions to the Development Agreement to provide valet service.

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<sup>1</sup> Similarly erroneous is the comment that "It is also not clear the exact nature of the units."

**Height Limit:** The present Development Agreement provides for a 45' height limit. Owner is seeking an additional 10% or 4.5 feet to accommodate the roof design extension of the building. This design presents the more expensive but far more attractive sloped roof view facade and dormer elevations rather than a flat line parapet wall edge. This, in conjunction with the various balconies, stepped elevations and architectural features of the buildings, renders this project far more aesthetically pleasing than previous plans. Indeed, a comparison of this design to the previous monolithic condominium design demonstrates that the present design, including see through elevated walkways, presents a far less imposing view than the previous approved design. Owner has expended and/or contracted for in excess of \$700,000 in proceeding with these plans due to the understanding, dating back to December 2007, that the adjustment would be allowed.

The height adjustment allows for a superior design and does not impact Las Fuentes. Las Fuentes lies to the northwest and, due to its topography, substantially below the level of The Boulders project. Neither the project, nor its height, materially impairs any "view" from Las Fuentes.

**Density Open Space Residential Buffer:** This project has been approved for 132 units since 1999. The open space under the present design has shrunk somewhat due to new Fire Department requirement for 360° fire lane access around the onsite buildings. However, present designs still provide 46% open space, 21% more than the code required open space of 25%. The Fire Department's extra loop road requirements will cost the Owner between two and two and one half million dollars in extra site prep, landscaping work and paving. That site prep will include retaining walls that are stepped and landscaped. It is noteworthy that the landscaping to be provided exceeds code requirements in density and size of and materials used. Per the landscape code section, landscaped buffers are subject to variation and adjustment by the Development Director or Council when appropriate due to topography/elevation variations from neighbors on a site.

**Traffic & Access:** The City traffic engineer, Ian Mattingly, spoke at the hearing and clarified that the City had twice studied the traffic impact on Canterbury Street had found that a stop light is not required even if condominiums were built. The traffic impact will be far less with the senior living, including 1/3 assisted living, as planned. Sun Street is a public dedicated road and, unmentioned by Las Fuentes is that it has full access to and use of Sun Street for traffic and parking. On the other hand, the connection between the project to Sun Street is only to provide secured (chained) emergency fire access to The Boulders. The only other use sought for Sun Street is during the construction process. This will shorten the construction timeline of the project and other neighbors have voiced their support for this access for this purpose.

**Federal Funding:** Las Fuentes objected to inclusion of the notation in the staff report that Federal funding is available for The Boulders project. This information is pertinent because it tells the Commission that, after more than one developer and almost a decade, the project is poised to go forward. More importantly, the Owner has a deadline in April 5, 2009 in which to present full

Planning & Zoning Commission  
City of Prescott, City Hall  
Council Chambers  
February 5, 2009  
Page 4 of 4

municipal approvals and full bids (based on those approvals) to the Federal government so that the funding may proceed. Las Fuentes' 11<sup>th</sup> hour letter caused the type of last minute delay obviously intended that, if compounded, will derail this project.

**Other Issues:** Las Fuentes' concerns in this section are also misplaced. This project does not require any easement Agreements temporary or otherwise by or with Las Fuentes.

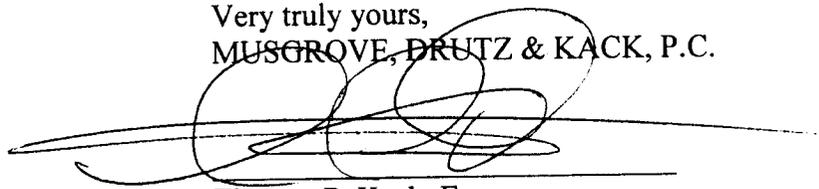
Las Fuentes' reiterated assertion that Owner has not made a commitment to a senior living project is simply wrong. It is this commitment and plan that will cause the competition to which Las Fuentes actively objects. This commitment has been apparent in the expenditure of hundreds of thousands of dollars in plans and consulting work and obtaining financing, all designed to bring this senior living project to fruition.

The alleged lack of notice is a red herring. There have been six (6) public meetings over the last two years, three on the Development Agreement and three on the plans. Notices are mailed to LFRV's address of record and City paperwork reflects notice given to LFRV at that address for the recent hearing. Regardless LFRV is aware of the project and had and has the ability to review plans and records on the same.

**Conclusion:** The Owners have expended and contracted to expend in excess of \$700,000 in plans, feasibility studies, and consulting to progress to the present point. This project has evolved over time and the present plans present an aesthetically pleasing and fully integrated project that is heads and tails above the previously approved site plan. This project will be a credit to the community and inject much needed business activity and real estate and rental tax revenue at a time of stagnation.

Owner respectfully requests the new site plan be approved.

Very truly yours,  
MUSGROVE, DRUTZ & KACK, P.C.



Thomas P. Kack, Esq.

TPK/djh

cc: Mike Bacon  
Tom Guice  
Goerge Worley  
Bill Spring

# Jennings Strouss **RECEIVED**

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JAN 29 2009

## CITY OF PRESCOTT COMMUNITY DEVELOPMENT

**Janet B. Hutchison**  
Direct Dial: 602.262.5945  
Direct Fax: 602.495.2638  
jhutchison@jsslaw.com

January 28, 2009

**Via Facsimile (928) 777-1258 and Via Federal Express**

Planning and Zoning Commission  
City of Prescott  
Council Chambers  
City Hall  
201 South Cortez Street  
Prescott, Arizona 86303-3938

Re: Subject: S108-002 The Boulders, A Prescott Retirement Center - A  
Planned Area Development  
Location: 910 Canterbury Lane (north of Whipple Street)

Dear Chairman Wiant and Commission Members:

This Firm represents L.F.R.V., L.L.C. and its property, Las Fuentes Resort Village, and lodges these protests, comments and concerns with you in regard to application S108-002, site plan review for the Boulders, a Prescott Retirement Center, a planned area development ("Boulders"). The site of the proposed development is located at 910 Canterbury Lane (north of Whipple Street) and is comprised of approximately 6.27 acres (the "Boulders property"). Our client's property, Las Fuentes, comprises over 16 acres and is located on the north boundary of the Boulders property

The application/request is yet another proposed redesign of the site plan and building configuration for the Boulders property. This site plan, however, is fraught with major problems so severe that it is most likely doomed to failure and clearly will have a serious negative impact on the community.

We urge the Commission to carefully review this application, the history of attempted development of this property with its challenging terrain and consider the "pronounced changes" being advanced in this site plan. If considered, it will be clear that this site plan is neither an improvement nor in substantial conformance with prior actions of the Prescott City Council. While the staff report glosses over or completely ignores the material deviations and the obvious pitfalls with this site plan, this Commission must carefully consider these problems and, in the best interest of this community, deny this application.

**Phoenix ▶ Peoria ▶ Washington, D.C. ▶ Las Vegas**

The staff report indicates that the current application is superior to the 2003 site plan, apparently because of the architectural design of the buildings. The report also acknowledges, however, while appearing to ignore, the "pronounced changes" in the proposed site plan. While reciting that the applicant says the site plan is in substantial conformance with the 2003 site plan, the staff report does not include staff's analysis of this issue. In fact, there are many material differences which result in applicant's requests for substantial variations from prior orders and the Development Code. The application should be denied.

### **Prior History**

The Boulder's property has been the subject of several other development proposals and rezoning applications. It has been the focus of development interest since its initial rezoning in December, 1999 via ordinance which was subject to the provisions of a Development Agreement 99-223.

Prior to 1999, the Boulder's property was zoned RA-9.<sup>1</sup> That zoning would have allowed 28 lots on this rather challenging site with steep elevation changes. The revisions being proposed at this time appear to allow for 132 units, representing a density increase almost triple that of the original zoning.

During 1999 and 2000, the prior owner of the Boulder's property presented the City with two separate but related proposals for development of the property. Those proposals resulted in rezoning the property. An associated development agreement was approved at that time and given number 99-223A. According to our understanding, that development agreement provides for the construction of either a 132-unit assisted care facility, or an 85-unit age restricted condominium project. That agreement also included a condition that if either project was not constructed within 5 years (by 4/11/05), the zoning would revert to RA-9. Interestingly, it is believed that a review of that original rezoning file will reveal that the owner justified to the City a rezoning from RA-9 to RC on the basis of an argument that 28 homes on this site would produce too much traffic and be a safety concern. The preferred solution was to build an assisted living project which they claimed would generate less traffic than the homes. Now, the owner proposes a 132-unit apartment complex and assisted living center component but merely indicates that traffic should not be an issue.

In the summer of 2002, the owner sought to rezone the Boulder's property to Residence C (PAD). That application also sought amendment to the development agreement to permit 50 lots on this 6.27 acres. That proposed project included an "affordable housing" element consisting of 10-15 of the 50 lots. After opposition at the Council level, it is our understanding that the 2002 proposal was withdrawn.

In the summer of 2003, it is our understanding that the owner sought to return to the concept of an 85-unit apartment complex for senior residents of over 55 years of age. The documentation regarding that proposal did not provide sufficient information to understand exactly what the owner was attempting to do. Our understanding, however, was that the documentation made reference to a "minor component" of assisted care and further indicated that van transport would be a key service of the project. There was no actual specificity, however, regarding use.

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<sup>1</sup> Referred to by staff as SF-9.

## **Opposition**

The current proposal appears to again return to the earlier concept of some portion of an assisted care facility. This proposal, however, is for a 132-unit project but with reference to only a "minor component" of assisted care.<sup>2</sup> The remaining portion of the project would apparently be independent units. The independent section of the project consists of two residential buildings each with 44 units (for a total of 88 units) and a recreation center building. The buildings are proposed to be connected with a covered but not enclosed walkway.

The very issue of assisted living service raises numerous concerns. Even a minor component of an assisted living service requires licensing by the Department of Health Services of the State of Arizona. Further, the applicant and staff appear to intimate that residents will not be independent driving seniors.<sup>3</sup> These two statements are contradictory. The lack of detail leads this neighbor to the conclusion that the owner has either not yet determined the exact scope of the project, or is unwilling to share that information with the City and its neighbors.

A. **Licensing.** As indicated above, an assisted living service requires licensing. Accordingly, if there is any component to this project which is "assisted living," the proposed development agreement must be revised. The agreement should provide that this is a "**licensed** assisted living facility." This is extremely important as unlicensed living facilities in Arizona are a continuing problem. Not only do these facilities not conform to care requirements but they are a danger to their residents. The City should assure that this project is legitimate and meets the mandatory licensing requirements. If there is no assisted living component, this should be specifically stated in the application and in the development agreement.

It is also not clear the exact nature of the units. It is believed that the development agreement called for residential units and the preliminary plat was for condominium units. Later revisions appear to propose a senior apartment complex. At this time, however, the applicant indicates that these will be apartment units and assisted living units. There is no indication in the documentation provided to us regarding how the "units" will be managed and maintained. At this point in the process, the applicant should know and disclose if this is an apartment complex, senior assisted living project or something else.

B. **Parking.** The most critical issue necessitating denial of this application is the parking component. This application indicates that it is eliminating the underground parking component and, instead, constructing substantial surface parking. This change is certainly cheaper for the applicant but extremely detrimental to the future residents and the community. A review of the site plan reveals that the majority of this surface parking is located in the north western corner of the property a huge distance from the independent living buildings. In fact, for the south "independent living" building of 44 units (and perhaps meant to serve both independent living buildings with 88 units total), there appear to be only 5 regular spaces and 2 handicapped spaces! Where are the residents going to park and what do they have to do to get to their parking? Developers of senior housing should

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<sup>2</sup> The documentation indicates that only 44 of the 132 units would be assisted care, all housed in one building along with attendant food service and other amenities. Interestingly, other documentation indicates that they will address food service for the buildings at a later date.

<sup>3</sup> Our client has substantial experience in the senior housing market. Quick research would reveal to staff that the majority of independent living seniors drive.

be fully aware that parking access is more important for a senior citizen than any segment of our society. The prior planned underground parking was a much better plan for residents of this project, and for the neighbors. Further, making a mistake like this is a fatal flaw which can never be corrected and can doom a project.

C. **Height Limit.** Another major problem with the proposed use is the request, once again, for a new, higher height limit. As disclosed in the staff report, the building height limit in 2003 was 40 feet with a 45-foot request for one specific small area. The current application seeks 49.5 feet, a substantial deviation from the original request and the Code. In fact, the Development Code provides that the maximum building/structure height in MF-H zoning is 35 feet. The applicant is, therefore, requesting a huge variation from the requirements, an almost 41.5% increase. Interestingly, this variation was not disclosed to the neighbors at the meeting but was only disclosed by the engineers after the meeting.

D. **Density, Open Spaces and Residential Buffer.** Another major problem with the proposed project is the excessive density. The subject property particularly with its typography is not meant to support the requested density. Further, and importantly, the request seeks to reduce the amount of open space and landscaped area and instead substitute roadways. In fact, the proposed site plan increases the road area (asphalt) by over 14% and substantially decreases undisturbed open space and landscaped open space.

Further, the revised site plan offers only a 10 foot 4-inch residential buffer with 1 retaining wall of varying heights. Under the 2004 Development Code, the required minimum landscaped buffer would be 24.75 feet from the western property line for the proposed 49.5 foot tall Building #1. While the prior Zoning Code setback was about 23 feet with no landscaped buffer except a 5-foot parking lot setback, the proposed site plan should be carefully reviewed for its decrease of open space and development closer to neighbors than known to be good planning.

E. **Traffic and Access.** Traffic and access are major concerns.

1. **Traffic.** The primary concern with the proposal is its potential serious impact on the surrounding community. The proposal indicates that access will be by way of Canterbury Street. While there have been previous concerns by the City, the applicant indicates that traffic through the one access point is not a problem. The idea that a 132-unit residential project with support services which include kitchen staff, attendants and health care workers will not increase the traffic on Canterbury is ludicrous. Further, while the reports indicate that traffic will not go between Canterbury and Sun Street, the largest parking areas are directly off Sun Street Drive.

2. **Access.** Further, access is a huge issue and concern. The staff report indicates that access will be through the one private driveway entering from Canterbury Street. The report then indicates that Sun Street will be gated as an emergency egress/ingress only. The report further indicates that there will be no through traffic from Canterbury to Sun Street. However, the driveways that circle the buildings on the plan go from Sun Street to Canterbury Street. The report indicates that an alternative would involve closing the Sun Street entrance to the parking lot and moving this entrance to the northern property line. "The parking lot would then access the Las Fuentes driveway."!! Our client has not been contacted regarding this issue, has not received information regarding the applicant's desire for access to the Las Fuentes property and does not desire a full drive at Sun Street or across its property.

3. **Construction Traffic.** Further, the applicant has asked to have construction traffic utilize Sun Street. Accordingly, it is clear that Sun Street is not envisioned to be a gated emergency egress/ingress. In fact, the residents of the Sun Street area will be forced to suffer with continual traffic through an open access point while construction workers, large trucks and heavy construction vehicles access through their neighborhoods. Not only is this a horrible idea and disruptive and dangerous, it is seriously doubted that Sun Street can accommodate such traffic.

It appears that the developer has not adequately studied, or addressed the impact of the project on traffic and access issues relative to the project.

F. **Federal Funding.** The staff report indicates in the beginning of the report that this project has now received "federal funding" and is ready to proceed as a Planned Area Development. This statement raises serious concerns. When did funding become a material component to the City's approval? Is the City expected to approve any project that has funding? Further, this neighbor is unaware of any direct federal funding. While staff indicated verbally that the applicant has HUD financing, such financing is not direct federal funding. Either the applicant has not fully disclosed evidence of "federal funding" or staff has not fully investigated this issue.

G. **Other Issues.** The staff report refers to some "separate agreements" with neighbors. The report does not, however, identify the nature of those agreements or indicate with whom the agreements have been made. Such information should be disclosed. Finally, the staff report and the utility department report discuss certain utility related issues with the site; however, the staff does not specifically include the sewer issue in its recommendation. The developer must be required to do all work necessary for development of the site and must specifically do all off site improvements for the existing sewer line(s).

L.F.R.V. is the bordering neighbor. It will be impacted with any project on the Boulder's property. It will, however, be severely impacted if the City allows a poorly planned project to proceed. If this applicant truly desires to develop a senior living project, the commitment to that project should be revealed to the City in an explicit outline of the project.

### **Lack of Notice**

It should be noted that despite being the largest neighbor in the area and the bordering property, Las Fuentes was not given notice of the area meeting and was not included in that meeting with a group of neighbors. Further, Las Fuentes does not receive notice of the upcoming hearing before the Commission. Notice was not provided to Las Fuentes even despite the fact that Las Fuentes sent the City a request for any such notices and included its proper address just last year. This letter, therefore, is intended as a protest pursuant to the Development Code, City of Prescott and any and all applicable ordinances, statutes and laws, and invokes all requirements including voting requirements therein.

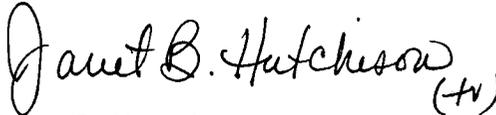
L.F.R.V. sincerely requests that the Commission deny this application and request. The City has the right to request full information and the neighbors deserve this information. People of Prescott look to the Commission to make sure that its City is planned with a view to the future. This site plan is requesting approval of a project with which the City and the community including specifically the surrounding neighbors will have to live

with for many years. As currently structured, however, the project creates numerous problems in the neighborhood and sets a precedent to allow other developers and owners to fail to meet their commitments to the community.

Again, we respectfully request that the Commission deny this request. We further request that this letter be made part of the record in this matter.

Very truly yours,

JENNINGS, STROUSS & SALMON, P.L.C.

By  (tv)  
Janet B. Hutchison

JBH/tv

cc: Community Development Director