

PRESCOTT CITY COUNCIL
JOINT STUDY SESSION/
SPECIAL MEETING
TUESDAY, APRIL 21, 2009
PRESCOTT, ARIZONA

MINUTES OF THE JOINT STUDY SESSION/SPECIAL MEETING OF THE PRESCOTT CITY COUNCIL held on APRIL 21, 2009, in the COUNCIL CHAMBERS located at CITY HALL, 201 SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

Mayor Wilson called the meeting to order at 3:00 p.m.

◆ **INTRODUCTIONS**

◆ **INVOCATION:** Father Darrell Olds, Sacred Heart

Father Olds gave the invocation.

◆ **PLEDGE OF ALLEGIANCE:** Mayor Wilson

Mayor Wilson led the Council and audience in the Pledge of Allegiance.

◆ **ROLL CALL:**

PRESENT:

ABSENT:

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

None

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

Mr. Norwood announced that Horizon Airlines would be having promotional activities on Saturday from 2:00 p.m. to 4:30 p.m. He said that their executives were coming in to try to generate more customers and tell them about the flight activities, and there would be a drawing for free tickets.

STUDY SESSION

I. PRESENTATION

A. Presentation by YMCA on *“Are You Tougher than a 10 Yr Old Girl?”*

Joanna and her daughter, Kendra, were attending the meeting representing the YMCA Gymnastics Team to invite everyone to their upcoming fundraiser, *“Are You Tougher Than a 10-Year Old Girl?”*

She said that the community girls have been working hard and have won a lot of first places. They wanted a way to get their community behind all that they do. They are signing up teams of six people for different events, relay races, three-legged races, pie eating contests, etc. The event is in three weeks, on Saturday, May 9, from 11:00 a.m. to 3:00 p.m. They have invited many people from the Fire Department and Police Department; there will be mascots from local schools as well as vendors, a live auction, and a band. They hope to make it an annual event and hope that they can count on the support of the City of Prescott.

Councilwoman Lopas challenged the Council and Administrative Staff. She said that she was unable to participate due to recent knee surgery, but she would pay the entry fee if they would form a team of six.

II. DISCUSSION ITEMS

A. Public Hearing on Draft FY2009 Annual Action Plan and Amendment to the 2005-2009 Consolidated Plan (CDBG Program).

Linda Hartmann, City of Prescott Grants Administrator, said that this was the fifth year for the action plan. Up until now they have done infrastructure, but right now they need a different tactic because there are people who need their help through job opportunities and bed nights.

She then reviewed each of the projects: Project Aware, Prescott Area Women's Shelter, Coalition for Compassionate Justice Mobile Home Roof Repair, Single Family Housing Rehabilitation, Campbell Street Improvements continuation and CDBG Grants Administration.

Councilwoman Suttles said this was the end of five year program and asked if they would be starting new next year with another five-year program. She wondered if Ms. Hartmann was secure with CDBG grants.

Ms. Hartmann said that they were anticipating a 10% increase. HUD told them to go big and bold, but she would rather have enough than to have

to take some out. They gave \$78,000 to the City of Prescott for rest of year in additional money, which is 27% of last year's grant.

Councilwoman Lopas asked what they would do if they got more money than is forecasted. Ms. Hartmann said that they can dump it in and increase the value of their projects.

Councilman Lamerson asked where the \$320,000 comes from. Ms. Hartmann said that it came from HUD. Councilman Lamerson asked if it was to be used for the largest amount of people in the City; she replied it was.

Councilman Lamerson asked if she could project how many people this may impact. Ms. Hartmann said that with the 166 bed nights, that would be 166 men. The Prescott Area Women's Shelter has 12 beds, they can house 12 women a night. She said that with everything considered, maybe 300 people a year. She added that it was a lot easier and more significant, in this environment, to help people in this manner than just do sidewalks. Sidewalks do not do any good if they do not have homes.

- B. Award of contract to EV Solar Products, Inc. in the amount of \$54,491.39 for installation of a grid-tie solar system for the Prescott Downtown Library.

Library Director Toni Kaus said that the Downtown Library is open every day of the week to the public, and keeping it comfortable, well lit and well-automated does not come cheap. They have been doing different things to reduce the amount of energy the Library uses. They have purchased software to make the night-time setbacks to keep the building warmer in the summer and cooler in the winter. They have tried to reduce the cost of energy they use and have been exploring solar on the roof. She said that they could not afford to put solar panels over the whole roof so they thought they would start small and expand as more funds become available.

Ms. Kaus said that the Purchasing Department issued a Request for Proposals for a minimum 8.2 Kw grid solar system which is comparable to what is used on a home. Fifteen firms came to a mandatory pre-bid meeting and they asked the contractors to design an easily-expandable system and also help them attain any renewable energy incentives.

She said that eight firms submitted proposals and six of the eight firms offered to factor the APS incentives into the system cost, allowing them to increase the cost of their initial installation by almost 50%. EV Solar of Chino Valley was the low bidder and the included inverters at each solar

module. She said that the system will allow them to expand in increments as small as three panels at a time.

She said that initial installation will be funded by Yavapai County Library District property tax money for library automation and special projects. Per the library service agreement between Yavapai County and the City of Prescott, the funds must be spent by June 30, 2009, and Ben Mancini of EV Solar was there to answer questions.

Councilwoman Lopas asked if the bidders were local or from around the State. Ms. Kaus said that they were from around the State and they gave well thought out, comprehensive proposals. One local bidder did not factor the APS incentives into their bid, which made it less attractive. Councilwoman Lopas said that she was happy to see EV Solar coming in and meeting all of the criteria.

Councilwoman Suttles said that she appreciated them shopping around and thought it was amazing that they will get a payback of over 522% in a 25-year period. She asked if the panels would actually last that long. Ms Kaus said that all of the vendors talk about a 25-year life cycle. With the proposal being recommended they would have to replace the inverters after 15 years but that was factored into the cost.

Councilman Bell said that he was assuming that someone checked the roof load to make sure that it could stand the extra weight limit. Ms. Kaus said that there was discussion of that issue at the pre-bid meeting.

Ben Mancini, owner of EV Solar Products, said that each panel adds about four pounds per square foot and the bid includes an engineer's estimate to look at the roof. Councilman Bell asked if the City would be protected if there was a failure of the roof. Mr. Mancini said that the engineering report should guarantee that nothing should collapse from the extra weight.

Councilman Roecker asked what the average monthly utility bill was for the Library. Ms. Kaus said that the average was close to \$7,000. Councilman Roecker said that he was not sure what the 522% savings meant. Ms. Kaus said that all of the contracts gave them different ideas of how the payback might work.

Mr. Mancini said that the figure comes from the software that most solar bidders use throughout the country. The software assumes a 5.5% utility rate increase each year. If it is stretched out over 25 years, the utility rates are quite high, and that is the reason for the 522% savings.

Councilman Luzius said that he appreciated that Councilman Bell brought out the stress capacity of roof. He would entertain the thought of getting some certification that it is not going to cave in with solar panels, so the City of Prescott is held harm free.

Mr. Mancini said that the Planning & Zoning Department has been stressing that they have had to address that and that is why the bid includes an engineering report to ensure that it is sound. The report is part of the bid.

Councilman Bell asked about the method of attaching panels and wondered if they would penetrate the roof, wanting to make sure there would be no leaks.

Mr. Mancini said that they are using Quickmount TV which is designed to bolt into the rafters. As a result of that interaction with Planning and Zoning, they got an engineering report on how it would affect structural integrity of the rafters and the report showed that it would have no affect on that. That mounting system has been approved by a local engineer.

Councilman Bell said that his experience is that roofs are great until they start putting things in them.

Councilman Roecker asked how visible will they be. Mr. Mancini said that they would be on the same plane as the roof – about five inches above the roof, and very visible.

- C. Adoption of Resolution No. 3950-0956 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into Intergovernmental Agreements (“IGAs”) with the Yavapai County Library District, Yavapai County Community College District, the Town of Chino Valley, the Town of Prescott Valley, the Town of Camp Verde, the City of Cottonwood, Humboldt Unified School District, Prescott Unified School District, the Chino Valley Unified School District, and the Sedona Public Library Board of Trustees, and authorizing Agreements with Prescott College, Embry Riddle Aeronautical University and the Orme School for participation in a library network and integrated library system and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

Ms. Kaus said that item this concerns new participating library agreements with the libraries in the Yavapai Library Network. The Council last approved these agreements in 1993. She said they have grown from 13 libraries to now include 41 public school and college libraries. Between computers and the internet, the way libraries do business has changed dramatically. The original funding formula that was included has become

outdated. The Network Management Committee worked with a consultant over the last year to develop a new funding formula based on dynamic and timeless criteria.

She said that the fees are based on how many active library patrons there are and how many books are checked out. The idea was to balance the costs fairly among member libraries. Had it been in place this year, the City of Prescott would have saved \$11,742. She said the resolution approves new Intergovernmental Agreements, and all 13 have been approved and signed by the fiscal agents of the other libraries. She added that the directors of two of the other libraries were present at the meeting, Sarah Thomas from Embry Riddle and Lisa Grist from Yavapai College.

Mayor Wilson was at the meeting where the new formula was presented and he went through it in detail.

Councilman Roecker wondered if the new library in Prescott Valley will change anything.

Ms. Kaus said that they would not know until they open, but it will be larger than Prescott's library and six times more expensive. She would imagine that because they have a new library, they will experience increased use, and that will work to Prescott's benefit and to their increased costs.

Councilman Lamerson said that in reading the packet, the second paragraph said that on average, each item is checked out 2.2 times a year. He wondered if that meant that because they have 1 million items in inventory they actually have 2.2 checkouts for the system for each item in inventory. Ms. Kaus said that on average each is checked out 2.2 times. Some may go out 40 or 50 times, some may sit on the shelf. Councilman Lamerson asked what they do with those items that sit on shelf.

Ms. Kaus said that they use an automation system to tell them what items sit for two years with no checkouts. They look through those and generally if an item is not popular, they turn it over to the Friends of the Library for their book sales, and those funds then go back to the Library.

- D. Award of contract for library periodical subscription services to EBSCO Subscription Services for three years at a discount of 3% off list resulting in a total cost of \$15,264.74 for FY2010, with the option to renew for two additional one-year extensions.

Ms. Kaus discussed the award of a contract for library periodical subscription services. She said that after a bid process in 2006, EVA Subscription services was awarded the contract to provide subscriptions for over 300 magazines and newspapers, beginning with 2007 calendar year, but it was a total disaster. After consultation with the legal department, the contract with EVA was terminated and awarded to EBSCO Subscription Services for fiscal year 2009. She said that they believe that continuing with EBSCO is in the best interest of library patrons. She asked that a three-year award be given to them with a 3% discount from list with the option to renew for two additional one-year extensions. The total cost for fiscal year 2010 would be \$15,264.74.

- E. Approval to purchase a replacement sanitation truck with extended warranty from Trucks West of Phoenix in the amount of \$227,850.00.

Chad McDowell gave some background on the 14 bids they received. The truck they selected was the third lowest, the other two low bidders were prototype trucks and Field Operations was not ready to jump into one at this time. He also asked for additional money for extended warranty and some specialty items for each truck.

Mayor Wilson asked what kind of bids he got for prototype units. Mr. McDowell said that they were \$1,500 to \$3,000 less and it would cost them about \$4,000 in inventory to stock parts. He said that the prototype was a truck and has only been used on a recycle route in Arizona.

Mr. Roecker asked what would happen if they didn't buy a truck. Mr. McDowell said that they would spend about \$50,000 to \$60,000 a year on the current truck and the employees would begin pitching by hand. He said that they have not replaced all of the older trucks, but the back up truck is in the shop more than on route.

- F. Adoption of Ordinance No. 4696-0939 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the sale of miscellaneous surplus property including vehicles and equipment that were replaced in FY08 and authorizing the Administrative Services Director to execute any and all documents to effectuate said sales.

Administrative Services Director Mic Fenech asked the Council to consider an ordinance authorizing the sale of surplus property, as they do

every year. This year they have nine vehicles to go to auction, the reason being that they are conserving capital and spending less money. He said that Rene Bates is an online auction house that they have used before successfully. He said that the Procurement Code requires Council authorization to go forward with a surplus sale that might exceed \$3,000.00.

- G. Adoption of Resolution No. 3955-0961 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into an amended Intergovernmental Agreement with the Arizona State Land Department-Fire Management Division for a Cooperative Agreement for fires on forest, wild and agricultural lands, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

Chief Willis announced this item was a cooperative Intergovernmental agreement with the Arizona Division of Forestry, (the Arizona State Land Department) which allows them to go directly to purchase from GSA. Currently their arrangement is to buy wildland fire fighting gear through GSA and they fill out what they need and go through State Land and they add 10% charge. An example is that two years ago they bought some fire shelters, \$20,000 worth. GSA sent it there and the City paid them \$2,200 to use GSA. They complained about that and now they agreed to amend the agreement. They are doing that with four departments throughout the state and it allows them to buy through GSA directly.

- H. Adoption of Ordinance No. 4698-0941 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona authorizing the purchase of utility easements from Robin R. Gregor and James G. Gregor; John E. Partin and Elisabeth R. Partin; Yahya R. Kamalipour and Mahboobeh Kamalipour; Reeds Restin Ranch LLC; Donald L. Fisk and Janet K. Fisk; Floriberto Gonzalez and Irene Gonzalez; Alabama Farmers Cooperative, Inc. and Greg Baker for the Big Chino Water Ranch Project, authorizing the Mayor and staff to execute any and all documents to effectuate said purchases, and declaring an emergency.

Mr. Holt said that this ordinance was to authorize acquisition of utility and temporary construction easements for the Big Chino Water Ranch Project. He said that Exhibit A included eight parcels of property and Exhibit B depicted the locations of those easements for construction of the pipeline.

He said that while ARS 45-555 allows for the transportation of groundwater by Prescott AMA municipalities from the Big Chino Subbasin for use inside the AMA, it is 45-555(E) that specifically and separately

entitles the City of Prescott of up to 14,000 ac. ft. of water from the Big Chino for use within the AMA.

He said that in October of 2007 the City of Prescott filed its Application for Amendment of its Assured Water Supply for inclusion of those water resources. On November 12, 2008, the Department of Water Resources issued a draft decision and order finding that the City's applications satisfied all of the requirements for a designation of assured water supply and for the inclusion of groundwater from the Big Chino Subbasin. ADWR's preliminary decision and order has been the subject of an administrative hearing that they expect to be included by June 16, 2009.

The total amount required for the acquisitions of easements requested in the ordinance before them was \$22,015, plus closing costs. He said that there would be a cost share with the City of Prescott paying \$11,910.12 and Prescott Valley would pay \$10,104.88.

Councilman Luzius asked to have item pulled off the Consent Agenda.

Councilwoman Suttles asked how many properties they would have and how many would remain to be purchased, after these properties were acquired. Mr. Holt said that with the properties in this ordinance, they will have acquired about 25% of the easements needed for the pipeline.

Councilwoman Suttles asked if they were moving along as he would like. Mr. Holt said that he wished to be further along, although he does have negotiators working with dozens of property owners, but he thinks that they are making good progress.

- I. Approval of a Special Use Permit for 105 S. Cortez Street – SUP09-001 – to allow the 20' flagpole on the rooftop of the Knights of Pythias building.

Mr. Guice gave some background on the item and said that the Historic Preservation Commission and the Planning and Zoning Commission both recommended approval of it.

Councilman Luzius asked if there was any guarantee that when pole is installed they would not come back and want to make it a cell tower. Mr. Guice said that if that request was made, they would need to come back through a Special Use Process.

Councilman Lamerson asked if within the Special Use Permit they restrict the use of the flag pole, in the nature of the American flag. Mr. Guice said that included within the staff report is a very specific condition of approval for the flying of the U.S. and Arizona flag, and limitation of size. The size

is limited by the electronic function of raising and lowering the flag. Mayor Wilson said that he supported the item.

- J. Approval of a professional services agreement with Post Buckley Schuh & Jernigan for engineering support services for the Zone 39 Water Mains and Pump Station Upgrade Project in an amount not to exceed \$54,987.00.

Mr. Nietupski said that this was a professional services agreement with PBS&J for construction phase engineering support for the Zone 39 Water Mains and Pump Station Upgrade Project that was recently awarded in March to A Miner Contracting. The specific project includes a number of water mains, but the major component needing the technical expertise is the pump station, as the electrical and mechanical aspects of that facility are quite technical and will require some more evaluation in the submittal process, drawing review, special inspections, start up testing and staff training as required by the City when the project is completed. Construction begins the first Monday in May with completion anticipated in the spring of 2010 and the project is funded from the Water Fund.

Councilman Luzius asked to have it removed from Consent Agenda.

- K. Award of bid to Spire Engineering, LLC for the Demerse Avenue Reconstruction Project, Whetstine Avenue to Montebello Lane, in an amount not to exceed \$2,548,937.00.

Mr. Nietupski said that this was award of a bid to Spire Engineering, LLC for the Demerse Avenue Reconstruction Project, Whetstine Avenue to Montebello Lane, in an amount not to exceed \$2,548,937.00. He said that it was a full reconstruction of Demerse, about 4,400 lineal feet that will include water mains (4,300 feet of new mains – 8, 6, 10 and 12 inch). Additionally, it will have new sidewalks on both sides, and all new grading and paving.

He said that they received seven bids for the project, two locally and five from out of town. Spire Engineering was the low bid, substantially less than the engineer's estimate. He said that it is funded by both the one-cent sales tax and the water fund.

Councilman Luzius said that he noticed in the specs that they are going to replace the concrete with asphalt and he wondered why they do not consider concrete. Mr. Nietupski said that concrete is an opportunity for construction, but it is more expensive than asphalt paving. To meet the structural needs of the roadway, the recommendation was to go with asphalt.

Councilman Luzius asked if the start date was May 11. Mr. Nietupski said that the project schedule would be based on a preconstruction meeting happening after award of contract. The start date could be as early as May 11, but it may be a week or two later.

Councilman Lamerson said that he noticed a substantial difference between the engineer's estimate and the low bid. He wondered if, when they are presented the contract, it would be a contract limited to a bid and not open to a percentage override. Mr. Nietupski said that the contract award is based on the amount of the low bid, with no contingency cost on top of it.

Councilwoman Suttles asked that the item be pulled from the Consent Agenda because of the dollar amount. She said that it states that Demerse is a deteriorated street that requires complete construction and she wondered where the project has been all along. Mr. Nietupski said that Demerse Street is like a number of streets that require reconstruction and rehabilitation. He said that as budget has allowed they have been attempting to improve those streets.

Councilwoman Suttles said that she noticed that they were adding water mains, drainage, sidewalks, and it looks like it was a project that had been out there quite awhile. She wondered how they decided where they were going with repairs. Mr. Nietupski said that when they develop their program they look at service benefit and the safety aspect. They look at the condition of the street and determine if it is a critical public need.

Councilwoman Suttles said that each of the neighborhoods is pleased when the City goes in, but they are running out of money.

Councilman Bell said that he was surprised that they stopped it two blocks short of Bonita. He said that two more blocks would have completed the whole stretch, and he asked what the reason was for that.

Mr. Nietupski said that he cannot speak to that reason; he believes that that is where concrete pavement ends. Concrete pavement was in more of a deteriorated state. This was originally coupled with improvements of Ruth Street when the limits were set.

Councilman Bell said that the street is in distress, and wondered if he planned to keep traffic moving through the street during construction. Mr. Nietupski said that the contractor will be required to submit a traffic plan that will propose his approach. They have to do the water main as one of the first action items. The street will have to be maintained for through traffic so people can access their residences.

Councilman Lamerson said that it sounds like when they take a fund designed for road repairs and maintenance, they run out of necessary revenues needed to maintain those streets.

- L. Adoption of Ordinance No. 4697-0940 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona amending Title XIII, Floodplain Regulations, of the Prescott City Code.

Mr. Nietuski said that this was necessitated to assure the City compliance with FEMA requirements and ADWR. They recently conducted a community assistance audit, and several areas needed to be improved. He mentioned the memo that was included in the packet.

Councilman Luzius said that he talked to someone that lives off of Willow Lake Road where the manufactured homes are situated, and they got a notification from their mortgage company that they have to subscribe to flood insurance. The house had been there for 25 years and he wondered if current certificates would be provided to people showing that they were outside of the floodplain.

Mr. Nietupski said that was part of the process improvements discussed and recently amended. He does not know the specifics of this property, but he would look into it. He said that there are properties in Prescott in floodplains and it may be that documentation fell through the cracks, but anything newly constructed would have related documentation.

Councilman Luzius said that he understands that they are doing it now on new construction, but his concern was with those that have had their homes for 25 years.

Mayor Wilson said that FEMA and the lending institution are both culprits. The Certificates of Elevation are available in an office in Prescott. Councilwoman Lopas said that it is also in the title search. It should be available information and if they are not aware of it, there is a huge gap in the system.

- M. Adoption of Ordinance No. 4699-0942 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the purchase of real properties, easements and improvements from Ronald R. & Billie Jo Nelson and Randall & Mary Beth Woods (Woods Family Trust) and Daniel & Julie Pentico and Michael & Marjorie Strasser for the widening of Williamson Valley Road, and authorizing the Mayor and staff to execute any and all documents to effectuate said purchases.

Mr. Nietupski said that this involves six pieces of real property and represents about half of the acquisitions required for the project. The

prices were based on appraisal work done by Michael Woolf and prepared by acquisition agent Russell Briggs. He said that it would be paid for by the one-cent sales tax.

At this time they are continuing with acquisition to move forward. It would be a good time to continue acquisition for now so when the project is ready to go they will have it.

Councilman Luzius asked that it be taken off the Consent Agreement.

Councilwoman Suttles said that she realized that this was an opportune time because of real estate etc., she but wondered if the money was available. Mr. Nietupski said that this was a budgeted project for this year.

Councilwoman Suttles asked that with some of the things out there they still feel that these parcels should be picked up at this time. Mr. Nietupski said that he did believe it would be prudent to proceed at this time.

Councilwoman Suttles asked if that took care of all of the parcels for this project. Mark Nietupski repeated that it would get them about half way. They have a number of the parcels owned by single individuals or married couples. Some of those are deeds that need to be dedicated for platted property designated for Williams Valley Road use. He said that it is taking time and they have been methodical with the process.

Councilwoman Suttles asked when he planned to come back with the remaining parcels. Mr. Nietupski said as quickly as possible.

- N. Adoption of Resolution No. 3953-0959 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, adopting a policy for an identity theft prevention program as set forth herein, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

Mark Woodfil read a memo about the Credit Transaction Act of 2003 requiring an identity theft prevention policy, adding that the policy needs to be in place by May 1, 2009, and the proposed resolutions adopts such a policy.

- O. Approval of a contract with Gervasio and Associates in the amount of \$30,000.00 to serve as a testifying expert in Brighton Patio Homes v. City of Prescott.

Councilman Bell asked to be recused from the next two items.

Mr. Kidd said that they are requesting a litigation expert as a consultant to determine causation and damages of a project on Gurley Street.

Councilman Lamerson asked him to explain the need for a consultant. Mr. Kidd said that there is an individual claim against one of the City's employees and their engineering staff does not feel they can testify on this item. They tried to get some of their engineering people, and it is an issue of experience and their ability to testify with one of their employees being named.

Mayor Wilson asked for the amount of the claim damages. Mr. Kidd said that they are at \$180,000 at this point in time.

- P. Approval of a contract in the amount of \$75,000.00 with Jones, Skelton & Hochuli for legal services regarding the 89A/Granite Dells Parkway (Side Road) Traffic Interchange Project.

Mr. Kidd said that he was requesting outside legal counsel to assist in litigation matters that are now pending regarding the bid award for Asphalt Paving. His department is involved and will continue to help offset some of the costs; however, it is going to be a huge, specialized litigation. Because part of the claim involves the development agreement, there is a potential that part of his office might be called on behalf of the City. He is recommending retaining Mr. Berger who has significant construction litigation.

Councilwoman Suttles asked why the City of Prescott has to go out for outside legal information when that development agreement and the contract was verified by the Council and they did what they were supposed to do. They put it out for bid and picked the low bidder. She asked why they would have to pay the \$75,000 to clean this up.

Mr. Kidd said that they were named as a defendant on the one case and will probably come in as a cross claimant on the other. The issue is whether the development agreement fully affords Granite Dells Estates Properties the right to award. He said that it is complicated by the fact that within the development agreement itself, there are bid specifications and State Statutes that are incorporated. ADOT has indicated they will not issue the permits until there is a longer bid time.

Councilwoman Suttles said that the two bids have been refused by GDEP. She asked if this money spent will clear it up for the City. Mr. Kidd said that the litigation will clear those issues up. Whether there will be additions is an issue that is open at this point. Right now there has been a rebid issued by GDEP. ADOT said they will not award any permits on the construction of this project. Along with that goes the \$1.2 million unless

there is a longer time period. That is a new issue that came up that is not part of this litigation. Assuming that becomes part of the litigation, then the whole litigation will eventually resolve all of the issues.

Councilwoman Suttles asked if they were going to get a contract lawyer to see if what they did was done correctly and wondered if it stopped GDEP from putting the bid out. Mr. Kidd said that there has been no injunction that has been issued and that hearing is after the bid closing.

Councilwoman Suttles asked if there was a winner for the bid at this point. Mr. Kidd said that very seldom in litigation is there ever an absolute winner. It is going to be a mess, and most of the attorneys would probably concede that. He thinks that they should have the best resources available.

Councilwoman Suttles said that this was supposed to be a successful endeavor. She thinks that the \$75,000 is going to be nothing compared to what the City is going to have to pay to clean this up.

Mr. Kidd said that he hoped she was wrong. One thing that is good is that the development agreement does not allow for damages other than arbitration or nonpayment of reimbursement amount. Also, he believes that the nature of the development agreement and the way that the project bidding is set out, reduces the exposure of the City on the other parts of the claim.

Councilwoman Suttles asked how they are looking at other companies/developers that want to come in and deal with the City of Prescott for annexations. She wondered if all of this had to be cleaned up before they went anywhere.

Mr. Kidd said that some issues are policy issues, but he could address some of the legal issues. After this development agreement went through the City Council had their retreat and they revised and standardized the annexation process. They started with standard formatting, and their contract. They have gotten a few that they have been working through. They have a new process put in place and their forms and contracts are much more favorable to the City because they are starting with their negotiating points. They have changed the whole process in part, because of some of the development agreements.

Developers are expecting development agreements every time they do a project. They want the contract to favor the developer, and a lot of times the City gets caught holding the bag. They want to make sure on every annexation that they get what they bargain for.

Councilwoman Suttles asked if this was up to \$75,000 coming out of the Legal Department budget. Mr. Kidd replied that it was.

Mayor Wilson said that they are proceeding with other annexations, Such as the commercial annexation of Cavan, and there are others underway as well.

Councilman Luzius said that it pains him to see this happen. He knows they approved the development agreement unanimously almost two years ago. It would behoove him and legal department to provide them with a contract that did not have a loophole in it. Mr. Fann is going to find every loophole that he can. He is disappointed in how this is going. He said they stand to lose a \$1.2 million from the state and he would like to see Mr. Fann pay for this. He does not think this \$75,000 is going to cover this; he feels that they are probably looking at \$300,000 - \$400,000. He would like it removed from the consent agenda.

Councilman Roecker asked if they had been sued. Mr. Kidd replied that they had been sued by Asphalt Paving and Supply for acting in an arbitrary and capricious way by refusing or failing to award the bid to the lowest responsible bidder.

Councilman Roecker asked if it does not say that they do not make the award. He is with Councilwoman Suttles on this and does not see why they have to spend \$75,000 for something that they should be able to handle in house. There are two people fighting like bullies on the playground, and they need to work it out and square this away. He does not want to spend \$75,000 of taxpayer money at this time.

Mayor Wilson said that they are facing lawsuits. He feels that \$75,000 is good insurance, which may not be spent. He feels that their leverage is with ADOT, and with the Attorney General's Office. He said that they have to protect themselves. He reminded them that they modified the development agreement at the very end to include this provision. They got themselves into this situation, and now that they are in it they need to take the position that protects the City.

Councilman Lamerson said that it was not his intent to throw City employees under the bus because the Council elected to do something. They were apprised that it was very sticky. The first time around they were told it was not an acceptable development agreement. But, the agreement passed which put the Council in the position to either deny the annexation or vote for it. If he heard correctly, because of the potential implication of legal department and because they may be called as

witnesses or experts, it might be more prudent from a legal perspective to divest themselves from their own legal representation.

Mr. Kidd said that the waiver of attorney/client is an issue that could happen in this case. It could also be that they could be witnesses on City's behalf. It would create a conflict of interest and that could happen any time based on number of letters they have and it could happen in the middle of a case. There is a real risk.

Councilwoman Suttles said that they are trying to authorize a bid on this of over \$17 million and they are going to pay someone \$17 million to do this interchange and they have to go court. Mr. Kidd said that the more money on the table, the more likely to have competing litigation.

- Q. Notice of Public Hearing (April 28, 2009) and consideration of liquor license application from Bradley Christensen, applicant for Prescott Hotel Group LLC, for a Series 07, Beer & Wine Bar, license for Residence Inn by Marriott located at 3599 Lee Circle.

Ms. Burke said that this application is scheduled for public hearing next week.

- R. Approval of the Minutes of the Prescott City Council Joint Study Session/Special Meeting of April 7, 2009 and the Regular Voting Meeting of April 14, 2009.

- S. Selection of items to be placed on the Regular Voting Meeting Agenda of April 28, 2009.

Councilman Bell listed items for the consent agenda. They were Items B, C, D, E, F, G, I, L, N, and R. The others would be on the Regular Agenda.

III. ADJOURNMENT

The Regular Study Session of April 21, 2009, adjourned at 4:26 p.m.

SPECIAL MEETING

I. Call to Order.

Mayor Wilson called the Special Meeting of the Prescott City Council to order at 4:31 p.m.

II. Recess into Executive Session.

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

III. EXECUTIVE SESSION

- A. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation, pursuant to ARS 38-431.03(A)(4).
1. Asphalt Paving & Supply, Inc. v. Granite Dells Estates Properties, Inc., Granite Dells Estates Properties II, Inc.; City of Prescott.
 2. High Gate Senior Living Center.

IV. ADJOURNMENT

The Prescott City Council reconvened into Open Session at 5:18 p.m. at which time the Special Meeting of April 21, 2009 adjourned.

JACK D. WILSON, Mayor

ATTEST:

ELIZABETH A. BURKE, City Clerk