

PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, APRIL 28, 2009
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL held on TUESDAY, APRIL 28, 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:** Margaret Lambert of the Baha'i Faith

Ms. Lambert gave the invocation.

◆ **PLEDGE OF ALLEGIANCE:** Councilwoman Suttles, introducing the Prescott Fire/Police Honor Guard Posting the Colors

Councilwoman Suttles introduced the Prescott Fire/Police Honor Guard, who then posted the colors and led the Council and audience in the Pledge of Allegiance. Tim Fletcher of the Prescott Police Department said that along with the invitation to post the colors he had been asked to say a few words about what they do. He explained that their primary mission was to represent the City of Prescott at functions designated by the Chief of Police and Fire Chief. He said that they have done a lot of details and if anyone needed more information they could contact Jeremy Brinkerhoff with the Prescott Fire Department or Kevin Perlak with the Prescott Police Department.

◆ **ROLL CALL:**

PRESENT:

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

ABSENT:

None

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

Mr. Norwood said that on some occasions projects come before the Council for change orders because quantities are more than anticipated. He reported that they just finished a \$1.5 million project on a water line along SR89A that came in \$200,000 under budget. He said that they do not usually bring those back publically, but thought it was worth mentioning.

I. PROCLAMATIONS

A. May 1, 2009 as *Loyalty Day*

Councilwoman Suttles invited Jim Wilhelm forward, who served on the City Council from 1981 through 1987. She then read the proclamation proclaiming May 1, 2009 as *Loyalty Day* and presented it to Mr. Wilhelm. Mr. Wilhelm said that on behalf of more than 750 local members of Buckey O'Neill's VFW Post 541 and their auxiliaries he thanked them and invited everyone to a dinner commemorating it tomorrow evening. He said that the Council would be represented by Councilmen Luzius and Roecker and they appreciated their participation. He added that their speaker would be Secretary of State Ken Bennett.

B. May 1-7, 2009 as *National Youth Week*

Mayor Wilson invited forward representatives of the Elks and presented the proclamation proclaiming May 1-7, 2009 as *National Youth Week* to them after it was read.

The Elks representative said that they were dedicated to helping the community and country, and do a lot of work with Veterans, needy people, and their main focus of youth. He said that they give out more scholarships to high school seniors than anyone else other than the Federal government. This year they have given out 700-800 dictionaries to third graders and also have programs regarding drug awareness, hoop shoots, soccer shoots and Americanism.

II. PUBLIC COMMENT

A. Maria Flurry regarding the Chaparral Music Fest.

Maria Flurry, Artistic director of the Chaparral Music Fest, said that they would be celebrating their third season in June. She said that the festival brings internationally-acclaimed musicians to Prescott. Last year the City gave them funds to present an orchestra and they appreciated that. She said that the musicians that came last time cannot present again, but those that are coming back plan to make it a weekend. She wanted to give

a public thanks to volunteers, businesses, musicians and audiences for giving their time and resources. She was delighted to say they can offer more scholarships, concerts and educational activities this year than last year.

She then presented a Music Fest t-shirt signed by the musicians, who lined up to sign, to show thanks. She thanked the Mayor and Council for their leadership and support of the community.

B. Mike Fann re the Granite Dells Parkway (Side Road) Interchange Project.

Councilman Bell said that on advice of the City Attorney he was recusing himself from the meeting due to a possible conflict of interest.

Mike Fann said that first his hat went off to the Council and staff, and everyone that runs for public office. He found out recently that people without all of the knowledge and facts of an issue can say mean and nasty things and attack someone personally even when it is not founded. He said that he thought he had pretty thick skin, but he found that he does care about what people say and do about him, and he was there to share his side of the story.

He said that the first issue was the first solicitation. He wanted to remind the public that it was not a bridge project to his property. It was schedule to be under construction this year under two different agreements and they were in place before he bought his property. The said that the private consultant hired by the City attributes about 20% of the traffic using that bridge to be from his development; and 80% to the other areas. When they negotiated the development agreement, at the end of the negotiations the responsibility and authority to build the bridge was shifted to Granite Dells Estates Properties.

He said that he bid the project in accordance with the specifications given to him and in accordance with Arizona Revised Statutes, which was part of the development agreement. He received two bids, one from Asphalt Paving & Supply and the other from Fann Contracting.

Since that time there have been a number of accusations and assumptions that he would reject AP&S's bid in order to procure the work for Fann Contracting. With all due respect, he has not done that and did not do that and that has not been his motivations. He suggested another reason for his actions. AP&S provided him a long list of projects that list their experience, but there was not a single bridge project which they had been responsible for as a prime contractor or as a subcontractor.

The Granite Dells Estates Parkway project is a bridge project, built over a four-lane, active high-speed highway. The bridge portion over the traffic has to be constructed at night between the hours of 9:00 p.m. and 5:00 a.m. and it has to be opened up to four lanes of high-speed traffic every morning at 5:00 a.m.

He said, again, AP&S has never built a bridge of any kind, any type, anywhere. They have suggested that they will hire a bridge contractor to build it, but just because they hire a qualified subcontractor does not make them qualified. He said that he would use the example of a kitchen remodel. If he was to have his kitchen remodeled, he would be living in the house and would need it while the remodel is going on and would hire a contractor that has built at least one kitchen before. He would not care if they hire the very best plumber and the best cabinet maker, but if they are not scheduled properly and coordinated properly, the end result will not be what he wanted and the kitchen would not be usable. He said that all he was asking was the ability to hire a bridge contractor that has built a bridge before.

Mr. Fann said that he has tried to remove himself from the middle. They have had meetings with the City of Prescott and it was suggested that the City hire AP&S, but those discussions were terminated. He also asked to be taken out of the bid process; the City refused to allow him to do that.

He said that he has heard that it involves complex legal issues, but he respectfully disagreed. The wording of the documents, legal agreement, specifications, ADOT standards, etc. is clear and simple. What has made the process complicated is the fact that they are leaving the responsibility to build the bridge to him, but they are attempting to take the authority to actually hire a contractor that has built a bridge before away from him.

Mr. Fann said that the Council will be hearing two more issues later in the meeting—hiring outside counsel to help with the matter and authorizing the Public Works Department to hold a hearing. He suggested that the specifications were very clear and were provided to him by the City of Prescott associated with the job.

At this time Mayor Wilson asked Mr. Fann to wrap up his comments as he was out of time. Mr. Fann requested a few more minutes as it was an important matter. Mayor Wilson said that he was at seven minutes, but would allow two more.

Mr. Fann said that the specifications said “in case of any bid protest the award, if any, must be made by the City Council no later than 75 calendar days after the opening of proposal.” That date was April 11, and there is no active bid protest; the time was up.

He said that they have solicited new proposals. His development agreement with the City of Prescott required that he be under construction by June 30. The specifications provided him by the City of Prescott said that the contractor had 45 days from issuance of Notice of Award to begin construction, and that date would be May 15. The City had also said they want to submit to the Council for reimbursement the approval of any award to this body. That had to be by May 12 and May 7. They went on to say it has to be in the City's hands the week before to get in the packets, which was this week. He did not have a choice other than to rebid this and get it going, or he runs the risk of being in breach. He asked City staff to sit down and work on the language and they refused, after four requests from him. He was told "you do what you've got to do." He said that he has been in an uncomfortable and awkward situation.

They now have a bid from Vasco Contracting, out of Chino Valley, at \$300,000 and \$500,000 below the last two bids, and they are a qualified bridge contractor. He said that they can agree with him that all bids were rejected appropriately and that the time has passed to hear a protest (and the dispute would be all but over), or continue to hold him responsible to build a bridge, forcing him to hire a contractor that has no bridge building experience.

C. Presentation on the Prescott Frontier Days World's Oldest Rodeo and its interrelationship with the City of Prescott.

Carlo Pastore, President of the Frontier Days, addressed the Council to give a presentation on the status of the Rodeo. He provided a PowerPoint presentation that addressed the following:

- ▶ Back to 1888
- ▶ Historic Landmark Status
- ▶ Projects – Then and Now
- ▶ Past Fiscal Concerns
- ▶ Premier Rodeos of the 1920's
- ▶ Our Inherited Responsibilities
- ▶ JC Trujillo – Four generations of cowboy
- ▶ Revenue Generation

- ▶ Schedule
- ▶ Cowboy Capital of the American West

It was noted that this year they are trying to get the community involved again and have people dress in their western wear and promote the western theme. Mayor Wilson noted that as part of that they are trying to get businesses and residences to return to the tradition of buntings on the buildings.

Councilwoman Suttles noted that quite a few members in the audience were with the Prescott Frontier Days, and she asked them all to stand and be acknowledged.

III. PRESENTATION

A. Introduction of new businesses.

Susan Cohen of the Prescott Chamber of Commerce then introduced three new businesses, who each gave some information regarding their business:

- ▶ Sacred Bean, 928.778.1712, www.prescottsacredbean.com
- ▶ Versatility, www.versablity4u.com, 928.458.9303.
- ▶ American Solar Electric, 928.499.4329, www.americanpv.com.

IV. CONSENT AGENDA

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

COUNCILWOMAN SUTTLES MOVED TO APPROVE CONSENT AGENDA ITEMS IV-A THROUGH IV-J; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- A. Award 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.
- B. Adopt 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.

- C. Award 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.
- D. Approve purchase of a replacement sanitation truck with extended warranty from Trucks West of Phoenix in the amount of \$227,850.00.
- E. Adopt 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.
- F. Adopt 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.
- G. Approve 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 to fly the U.S. and State of Arizona Flags, with flag size limited to not more than 3x5 feet.
- H. Adopt 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.
- I. Adopt 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.

- J. Approve 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.

V. REGULAR AGENDA

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

Ms. Hartmann said that they were talking about their CDBG Annual Action Plan and Five-Year Consolidated Plan, of which they were in the last year. The Committee recommended several items below, different than the path usually taken with these funds:

- ▶ Project Aware – Homeless and Temporary Shelter for men including Vets who are working. (\$7,000)
- ▶ Prescott Area Women’s Shelter (Year round shelter for women and female children under 12) (\$32,000)
- ▶ Coalition for Compassionate Justice Mobile Home Roof Repair (\$15,000)
- ▶ Single Family Housing Rehabilitation (\$100,000)
- ▶ Campbell Street Improvements continuation (\$102,000)
- ▶ CDBG Grants Administration (\$64,000)

COUNCILWOMAN SUTTLES MOVED TO CLOSE THE PUBLIC HEARING; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- B. Public Hearing 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 briefly review the application, noting that the applicants were present should anyone have a question.

COUNCILMAN ROECKER MOVED TO CLOSE THE PUBLIC HEARING; SECONDED BY COUNCILWOMAN SUTTLES; PASSED UNANIMOUSLY.

COUNCILMAN ROECKER MOVED TO APPROVE THE LIQUOR LICENSE APPLICATION SUBMITTED BY BRADLEY CHRISTENSEN, AGENT FOR PRESCOTT HOTEL GROUP, LLC, FOR A SERIES 07, BEER & WINE BAR, LICENSE FOR RESIDENCE INN BY MARRIOTT LOCATED AT 3599 LEE CIRCLE; SECONDED BY COUNCILMAN BELL; PASSED UNANIMOUSLY.

C. Special Election

1. Adoption of Ordinance No. 4695-0938 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, ordering and calling a Special Election to be held on September 1, 2009, to vote on municipal measures.

Ms. Hadley said that staff has been working with a citizens committee for the past several months in an effort to bring forth a solid recommendation to the Council regarding the sales tax for streets and open space. Consensus was difficult in the beginning to be reached. A contract with a public opinion research firm was entered into in late March and a survey followed. Today she was bringing the recommendation of the citizens committee as well as raw data results from the survey.

The general question of support for continuation of the sales tax met with over 60% support from the community polled. They also felt that if one-cent went forward it should be proposed as 80% streets and 20% open space.

She said that the citizens committee was unanimous in its recommendation to hold a September 2009 for streets only at $\frac{3}{4}$ of one percent. The committee received a lot of input from different organizations and all have expressed their broad support. She said that there are many details to be worked out, but if they adopt the ordinance today they are simply putting in a placeholder. She said that there were members of the committee in the audience that wanted to share information.

Milbeth Mauer, 1410 Kiwana Court, said that as well as serving on the citizens committee she was a member of the Citizens Tax Committee who had information to share as well. She said that they sent out a written questionnaire on their own with five questions, multiple choice, with the percentage of response shown in parenthesis below.

- 1) Would you support an extension of the existing one percent sales tax beyond its current expiration of 2015 to any of the following?
 - a. $\frac{3}{4}$ of a percent for roads only (37% approval)
 - b. 1% for roads only (40%)
 - c. a combination of roads and open space (If so what ratio?)(1 yes, 1 no)
 - d. None of the above (4)
 - e. Other, please state (1 suggested $\frac{3}{4}$ % roads, 1/8% open space and 1/8% for trails)
- 2) Would you support such an extension to last:

- a. 15 years (28% support)
 - b. 20 years (38% support)
 - c. 25 years (27% support)
 - d. Other (4 - 1 never, 1 forever, 1 one year, nothing)
- 3) Would you support an extension of ¼% for open space only?
- a. Yes – 29% support
 - b. No – 71% support
- 4) Over a 10 year period the percentage of increase derived from City sales tax on food has been approximately 15% of the total, would you support the concept of raising the overall tax rate by an equivalent percentage if food tax was eliminated?
- a. Yes - 46% support
 - b. No – 54% support
- 5) Would you support the concept of bond issues affecting your property tax for capital improvements, including road projects, in lieu of a sales tax?
- a. Yes – 27% support
 - b. No – 65% support
 - c. Small % depending on circumstances involved.

Ms. Mauer noted that they were partial results as they had indicated on their survey that they had until May 15 to respond, based on the City's earlier calendar.

Bill Warren, 2126 Charter Oak Drive, Chairman of the Citizens Tax Committee, noted that the full results would not be back in until May 15 and in June they would have a decision on where they would stand.

Councilwoman Lopas asked if their survey went to just their members. Mr. Warren said that it did go to just their members, approximately 70-80 members.

Councilman Bell asked if he understood correctly that even though they had set this date, they would have some length of time to eliminate it or change. Ms. Hadley replied that they have to have enough information decided on today so they could advertise for pro and con statements for the publicity pamphlet, and they need to have that early next week.

Councilman Bell asked what the last day would be to cancel the election completely. Ms. Burke said that the ballots would have to be ready the first part of August, which means they would be printed mid-July. Ms. Hadley said that they had until June 5 to perfect and come up with the exact ballot language.

Councilman Luzius asked for clarification on cancelling the election at a later date. Ms. Burke said that if they adopted the Ordinance calling the election they would need to adopt an ordinance cancelling that election. Mr. Kidd agreed, stating that they would repeal the prior ordinance, and that would have to be done before any votes were cast.

Councilman Bell said that the public deserves the right to vote on it and put it on the ballot to let them have their say.

Councilman Roecker asked why it was called a special election when it was already called as the primary election. Ms. Burke said that when a question is placed on the ballot it is called a special election, but it would not be a separate process

Councilwoman Suttles said that she believed they cut short some of the committees that have been studying the issue, such as the open space committee.

Councilwoman Lopas said that what she heard from the citizens committee was contrary to what the polling showed.

Ms. Mauer said that the consensus of their opinion was that since they preferred 3/4 of one percent they wanted it to be for roads only, allowing for the fact that there are advocates of open space but would not feel they were taking away the full amount for open space in the future. She said that it was not a matter of need, but rather a matter of the voters going for it.

Ms. Hadley said that it was asked to stay together or go separate but when it was asked for the proportions, it was 80% to streets and 20% to open space (mean and median number). After much discussion it was felt the open space people were not ready to go forward with their 1/4 of one percent because they needed more time to plan and evaluate projects.

Councilwoman Lopas said that if the people were saying they should keep it combined, and she was good with that, she asked why they would not do that. She was concerned that roads, on its own, will not pass. Ms. Hadley said that they did not get a clear-cut answer through the poll, but they talked with the Open Space Alliance and trusted their judgment.

Councilman Lamerson asked Ms. Hadley how many calls were made. She said that the research firm called about 700 people to get 600 full-length responses. A significant percentage of the folks did not complete the survey, some were employees of other research firms, some were

employees of the City. She said that there was a very small handful that did not want to take the survey.

Tom Pettit, 813 Walnut Street, President of the Open Space Alliance, said that they have discussed this for a few months. They prepared a statement at that time and then have more discussion over the last few months and revised it, sending the Council an e-mail. They felt that the current tax program, since 2000, would be setting aside .75% for roads and .25% for open space. They would recommend that if they were going to extend the tax that it be at .75% for roads only. If they increase it to 1% they are giving roads an increase. They believe it should be separated and judged on their own merits. They feel that the open space advocates have a strong support in the community and at a future date, when they are clearer of where they are at, they would approach the other .25%, possibly through a referendum or initiative.

He said that another concern that comes up in conversations, that the money for roads is for maintenance and they feel it should stay with Prescott's fundamental principle that growth should pay for growth. Some thought should be given on how to get funds from growth. He said that the Open Space Alliance worked diligently to pass the issue in 2000. They do have a concern with this issue and that was what they had agreed upon at this time.

He said that the Courier did come out with an editorial today about the polling, stating that they hoped that it was right. He looked at it at noon and there were comments re the editorial. There were four comments and three were supporters of open space, so they are a player in this issue. He was glad the City was listening to them. They need to work together as a community.

Councilman Lamerson asked Mr. Kidd to refresh the wording of the original initiative. Mr. Kidd said that it stated that the City had discretion on how to allocate the funds, whether streets, open space or both.

Steve Blair, 1802 Northside Drive, said that they should not make a mistake like they did with open space and be sure to include maintenance. By saying "roads only" it is a fatal flaw. He would suggest that it be worded for roads, transportation and issues that go along with that. He supports it 100%, but he would like to understand that if 3/4% of one cent passes how much would be generated and how many projects would be done. He said that the public deserves to know those answers.

Ms. Hadley said that the exact ballot language and publicity pamphlet would include all of that, but it would include acquiring right of way, alleys,

etc. Once they know they are going forward, then they will identify the streets that would be done.

Mr. Blair said that at one time they had a street program, unpaved alley program, sidewalks, etc. but they were all put to the side. He said that if it said infrastructure improvements they could have the street improved, but could also include the ancient sewer lines underneath. Mayor Wilson said that the revenue generation information was provided to the committee and will be addressed when they put the ballot language together. He said that they need to get through today before moving to the next step.

Councilman Roecker asked how much they would generate from $\frac{3}{4}$ of one percent at 20 years. Mr. Woodfill said that it depends on the growth rate. If they assumed a 0% growth rate it would be just short of \$200 million; 3% growth rate would be \$320 million; it all depends on the economy.

Mr. Blair said that he thought it was important for the public to understand that because if it does pass it gives the Council to bond the projects today and put people back to work.

Jason Gisi, 3200 Lakeside Village Drive, President of the Central Arizona Partnership, and a citizen participating on the committee. He said that in addition to Mark's estimate on the cash generation, he did not believe that included HURF funds, which have basically been flat at \$3.2 million, so that is another \$60 million, plus or minus, that would be accumulated. That program could change, but there should be an additional chunk over and above these revenues.

Mr. Gisi said that he was also a member of the 2050 Sustainable Funding committee and in that committee they made a recommendation that open space would be included with roads. They were silent on what the percentage would be because they could not agree. At the High School Open House there were many folks that said one percent for roads only and many that asked if they were including open space. He can understand where Councilwoman Lopas was coming from, especially as President of Central Arizona Partnership where they endorse a 1% for roads only. However, on Friday he voted for $\frac{3}{4}$ of one percent because there was an opportunity to form an alliance, a grass roots coalition to get it passed. As a citizen, whether roads are getting 75% or 80%, the 5% does not matter. The chunk of the money is what he is focused on. The committee discussed the issue and unanimously decided to go that route.

He said that they viewed the \$47.6 million worth of work that could start in July as the City's own stimulus package. He said that he hopes they have the makings of a coalition that will be very formidable to give the best chance of passing. He said that he appreciated the fact that the Open

Space Alliance came out early, in public and in writing, and that was how he made up his mind.

Mr. Gisi said that the City's budget presentation for fiscal years 2009 through 2016 dated May 22, 2008 is the "Bible" for all things done and was looked at by the committee. He said that \$180 million is plugged in for new roads of the \$784 million estimate. The last time he was speaking the math was simple that $\frac{3}{4}$ of the money would toward existing needs. \$784 million minus \$85 million of interest expense puts them at \$700. If they divide \$180 million by \$700 million, they get 74%. They have a detailed budget through 2015 but they do not moving forward. In his opinion that falls to the discretion of a professional staff and elected body.

Councilman Roecker asked Mr. Gisi what CAP supports. Mr. Gisi said that they support 1% roads only. Councilman Roecker asked what CAP's position was on "growth paying for growth." Mr. Gisi said that it is a nice sound bite, but he did not know how practical it is. An example was Willow Creek Road that was improved in four phases. He asked what portion of that was for growth and what portion was taking a two lane road, the main arterial coming in from the north off of 89 and improving for all the citizens that use it on a daily basis. It is a hard distinction to make in his mind. He thinks they will see growth paying for growth as it relates to streets in the impact fee "battle". Impact fees, as they relate to roads, is one issue. The other issue is it is not as nice and neat a package as some may think it is.

Councilman Roecker said that he was indicating that CAP supports open space but he is hearing from open space that they may be jeopardized by having 1% go to roads. He asked how that was rectified. Mr. Gisi said that the Board has not voted and he was pushing the agenda and making the best decision that he can on the fly based on the timing. Their Board meets in two weeks and he is prepared to advocate it to their Board and in their organization and he believes it is the right thing to do.

Councilman Lamerson said that if was not mistaken at some point Mr. Nietupski gave the Council a projection of roads projects that were needs. He asked if they had enough revenue coming in to the community to pay for the needs. Mr. Nietupski said that they currently do not have available revenues to address the needs in the streets programs. There are a number of projects that have been discussed that have been deferred. Councilman Lamerson said that was why he was reluctant to diminish the revenue they have to set aside.

Mayor Wilson asked Mr. McConnell to address the "growth paying for growth" comment mentioned by Councilman Lamerson as it relates to the annexation areas approved in the general plan north of the Airport.

Mr. McConnell said that Mr. Gisi had made a valid point; it is not black and white. Looking into the future as they see more and more development in the area which puts more vehicles on the highway they have to build the interchange. They cannot be sure of where the traffic is coming from. There is always some portion that the City is going to have to fund to make it a complete project. He said that they can have impact fees, but on the highway system there will always be some through traffic, so it is not black and white.

That component is always there; they cannot add it into impact fees because those developing in the City are not causing that impact. But, the majority is such that they can recover enough, and if it is disclosed when they do economic analysis there is a rigorous process. They will see such a report in conjunction with a project on agenda next week. If they think they are doing the best they can with financing and holding growth accountable, that is the best they can do.

With respect to the annexation area in the airport vicinity, the policy direction and General Plan has brought to bear that growth pays for growth to the extent just mentioned. That is the policy of this Council and the City. They do have funding mechanisms which are set up to enforce that. They cannot by law request that a developer pay more than their fair share.

Jim Lawrence, 345 High Chaparral Loop, said that they have a clear cut growth pay for growth policy. Unfortunately, the concern of the Open Space Alliance is they need to have the discussion being held today. Right now the fees that they are able to collect for the streets is \$400. From a practical standpoint they have no mechanism in place to allow for growth to pay for growth and that is the difficulty. They cannot go to the citizens and ask them to pay the sales tax as their fair share and allow the growth to not have a way of doing that. There are other ways that growth can pay. The City must, between now and 2015, try to make certain that the revenues are set so they can get that fund to come in, along with the sales tax funds. He said that they are also having difficulty with the HURF funds.

Mr. Lawrence said that they would have loved to have been able to have the roads and open space on the same ballot, but separate items, to allow the citizens to vote on it at this time, but the difficulty is the timing. They are not in a situation to say what their requirements should be, what their needs are with respect to open space and how to handle maintenance, etc.

He said that they have the same type of problem as far as roads, but the difference is that there is no reason for them to have to present

information regarding open space before 2015. From the standpoint of the streets, they must be able to do the borrowing on a long-term basis or they will be in deep trouble, so it needs to be done now for streets.

Mr. Lawrence said the he could pledge from the open space community that open space is not going to go away. They will be presenting some type of initiative or referendum before 2015 specifying what is needed and how the best way is to meet those needs.

Councilman Bell said that he had a meeting with Mr. Pettit and Mr. Lawrence and they were clear that they were willing to let open space be set aside for now. He asked if their organization would support what the Council decided on, either $\frac{3}{4}$ of one percent or one percent, but he did not get an answer. Mr. Lawrence said that their recommendation was for $\frac{3}{4}$ of one percent and anything more than that would be a raise, and they felt this was not the best time to be asking for an increase. He said that if they went with anything more than the $\frac{3}{4}$ % they would have to go back to their membership.

Mayor Wilson said that he has heard several people say $\frac{3}{4}$ % was the way to pass it and if they cannot pass something, it will not mean anything.

Dave Maurer, CEO of the Chamber of Commerce, 117 W. Goodwin, said that they support it. He said that the citizens committee gave the Council a unanimously recommendation and the open space folks will support the $\frac{3}{4}$ %, and the poll results were positive. He said that they do not see the stars align this well for many issues and believes they should go to the voters now as they deserve to vote on the issue.

Councilman Roecker asked for clarification of what the Chamber supported. Mr. Maurer said that the position of the Chamber was 1% for roads, for 20-25 years; however, he feels as Mr. Gisi, that they are in a world of compromise and if $\frac{3}{4}$ % still gives the City a lot of money and he notified his Board last Friday and believed they could support the $\frac{3}{4}$ %.

Mayor Wilson said that he liked the cooperative spirit between the multiple organizations and believes the stars are aligned. As long as he was on the Council he would vote for referral to the voters.

Mr. Mechanic, 309 Bloom Place, said that they can estimate what growth's responsibility is; they cannot charge more that what they are responsible for and that is all he thought they should charge. The City staff can do a reasonable estimate and they need to tell the public that they are not asking them to pay for growth.

Mr. Mechanic said that the Arizona and local taxes are burdens for those on a fixed income because sales tax is a regressive burden. Those funds should not provide for the impacts caused by new residential growth.

He said that the impact fee for roads is \$469, which is about 30% of the average in the state of transportation impact fees. They bring in about \$281,000 per year. The sales tax would bring in about \$10 million a year, or more. Even with the 75% ratio, they are nowhere close to covering 25% for growth, and he asked if they were asking sales to pick that up.

He said that they need language that proceeds from the tax may not be used to provide for that portion of street projects needed to serve new Prescott population growth, unless those proceeds are to offset other contributions by the growth towards streets. If they are asking people to pay the tax, which is a burden, they should accept the burden. He supports the City continuing the roads program, but they do not need to ask the existing residents to cover what growth should pay for in a highly regressive manner.

He asked when people would know what the ballot language would be available so people could submit their arguments. Ms. Burke said that they need to notify the public the first part of next that they are accepting argument so they will not have the actual ballot language. They would need to be submitted to the City by June 3 and the ballot language would have to be available by then as well.

Steve Silvernale, 820 E. Sheldon, said that sales tax is the most nondiscriminatory tax they have. He said that anyone that works as hard as Mr. Gisi does for Central Arizona Partnership, for nothing, is safe and secure. He did not know where the idea came from that the CAP organization was not for open space. He said that open space is one of the reasons he lived in Prescott.

Councilman Roecker said that in the past he has made the comment that he would like to see 1% in perpetuity, but he realized that is not realistic. The way it is going to get passed is to seek the support of all the committees and move forward so it likes like $\frac{3}{4}\%$ for streets for 20 years is a compromise and would work.

COUNCILWOMAN SUTTLES MOVED TO ADOPT ORDINANCE NO. 4695-0938; SECONDED BY COUNCILMAN BELL; PASSED UNANIMOUSLY (6-0 with Councilman Lamerson no longer present).

2. Discussion and consideration of terms (percentage, use, length) for Special Election to be held on September 1, 2009.

MAYOR WILSON MOVED TO PLACE ON THE BALLOT THE ISSUE OF EXTENDING THE ONE-CENT SALES TAX AT $\frac{3}{4}$ OF ONE PERCENT FOR THE PURPOSE OF ROADS FOR THE LENGTH OF 20 YEARS; SECONDED BY COUNCILWOMAN SUTTLES; PASSED UNANIMOUSLY (6-0 with Councilman Lamerson no longer present).

- D. 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. (Pulled from Consent Agenda by Councilman Luzius)

Mr. Holt briefly reviewed the ordinance to approve acquisition of property for the Big Chino Water Ranch project. Councilman Luzius said that he had asked to pull this item because in view of the fact that they have litigation between Salt River Project and the City of Prescott, and now the Center for Biological Diversity and the City of Prescott, he was wondering why they were buying the property and continuing with development if they could not use it.

Mayor Wilson said that Councilman Luzius was assuming that the lawsuits were going to prevail. Councilman Luzius said that he was not saying that.

Councilman Roecker said that considering they were going to acquire them at the lowest possible cost, **COUNCILMAN ROECKER MOVED TO ADOPT ORDINANCE NO. 4698-0941; SECONDED BY COUNCILWOMAN SUTTLES.**

Steve Silvernale, 820 E. Sheldon, said that Councilman Luzius should exercise a little faith and they should move forward.

MOTION PASSED 5-1 WITH COUNCILMAN LUZIUS CASTING THE DISSENTING VOTE.

- E. 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. (Pulled from Consent Agenda by Councilman Luzius)

Mr. Nietupski briefly reviewed the project. Councilman Luzius said that he had pulled this item from the Consent Agenda because in his opinion the pipeline and water tank on Indian Hills has been rammed down the citizens and he would be voting no. Mayor Wilson said that he vehemently disagreed with that, that they had given the public ample time to speak on the issue.

COUNCILMAN LOPAS MOVED TO APPROVE 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; SECONDED BY COUNCILWOMAN SUTTLES; PASSED 5-1 WITH COUNCILMAN LUZIUS CASTING THE DISSENTING VOTE.

- F. 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. (Pulled from Consent Agenda by Councilwoman Suttles)

Mr. Nietupski gave a brief review of the project. Councilwoman Suttles said that she had asked to pull the item from the Consent Agenda, first because of the dollar amount, but secondly she wanted attention brought to the Council and community that they were spending over \$2 million to do construction on a Prescott street again because they were not able to do what they should be able to do.

Mr. Norwood noted that the award was for the contract amount and contained no contingency. Anything above and beyond would be coming back to the Council. He said that it was not just a road, but also included a utility project.

Councilman Luzius asked if there would be an impact fees used for payment of the project since there were new home sites going on the reservation. Mr. Nietupski said that it was a rehabilitation project. They were not adding capacity so no impact fees would be associated.

Councilman Luzius said that he thought it was a good project as the road was in dire need.

Councilman Bell asked how long it sat there unimproved. Mr. Nietupski said that the Prescott Heights Subdivision was platted in the area of Rosser and Demerse in 1947 and they were implemented thereafter, so more than 50 years.

Councilman Bell asked Mr. Nietupski if he had followed up on his comment from last week on why they did not take it on to the next two blocks. Mr. Nietupski said that he did not, but if it was the Council's desire to look at that, they could look at it with the contractor. He said that it would take time to develop that information. Councilman Bell said that he felt they needed to move forward with the project.

COUNCILMAN LUZIUS MOVED TO AWARD 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; SECONDED BY COUNCILMAN BELL; PASSED UNANIMOUSLY.

- G. 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. (Pulled from Consent Agenda by Councilman Luzius)

Councilman Luzius said that he had pulled this item from the Consent Agenda to ask if impact fees were being used to improve this road. Mr. Nietupski said that they are increasing capacity on Williamson Valley road and it would be eligible for impact fees. He said that his understanding is that currently impact fees that are received are going to offset some of the costs for Willow Creek Road.

Mr. Woodfill said that the streets impact fees are not bringing in a lot of money and they have been using them for Willow Creek Road. He said that they could use them on any that increase capacity.

Councilman Luzius said that his understanding was that they had pulled this road from the priority list because the County is not doing their construction on the remaining portion of the "Springer Highway." Mr. Nietupski said that the City's recommendation to not go forward with construction at this time is based on economics. The City does not have the revenues available to immediately construct the improvements. It has no relevance to what the County's plans are. Councilman Luzius said that it was his understanding that it was not only economics, but because the County was putting their project on the back burner. He said that he could not see the City building a road for the County to accommodate the County and their developers.

Mayor Wilson said that he thought Councilman Luzius was off base. He said that if they look at the topography of what Williamson Valley Road is in the City compared to the rural area in the County, they are completely different. To link the two is a disservice and he did not appreciate him maligning Supervisor Springer.

Councilman Bell asked if they were not just purchasing right of way. Mayor Wilson replied that was correct.

COUNCILMAN ROECKER MOVED TO ADOPT ORDINANCE NO. 4699-0942; SECONDED BY COUNCILWOMAN LOPAS; PASSED 5-1 WITH COUNCILMAN LUZIUS CASTING THE DISSENTING VOTE.

- H. 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. (Pulled from Consent Agenda by Councilman Bell – COI)

Councilman Bell said that at the advice of the City Attorney he would recuse himself from this and next item due to a conflict of interest.

Councilman Luzius asked if this would come from budgeted funds. Mr. Kidd said that it would come from his budget, from City Attorney and Risk Management, which come from the General Fund.

COUNCILWOMAN SUTTLES MOVED TO APPROVE 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; SECONDED BY COUNCILWOMAN LOPAS; PASSED 4-1 WITH COUNCILMAN LUZIUS CASTING THE DISSENTING VOTE AND COUNCILMAN BELL ABSTAINING.

- I. 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. (Pulled from Consent Agenda by Councilman Bell – COI)

Mr. Kidd gave some brief background on this request. Councilwoman Suttles said that she was going to vote for it but she felt they were being held because of the litigation they are having with two contractors over the project that they cannot come up with an answer on, and how they have to go to court. She said that they now have to go to court to defend themselves for what they did two years ago. She was not happy at all with having to go to outside counsel, but if they do not protect themselves it could get worse.

Councilman Roecker said that he has wrestled with the issue. He would

look at both of the principals in the eye and say the City is getting ready to spend \$75,000 of the citizens' money. He said that they need to settle it after the meeting and then call him and he would take them to dinner. He said that they need to resolve it and move on. Steve Silvernale added that he would take care of the taxi ride home.

COUNCILWOMAN LOPAS MOVED TO APPROVE 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; SECONDED BY COUNCILWOMAN SUTTLES; PASSED 3-2 WITH COUNCILMEN LUZIUS AND ROECKER CASTING THE DISSENTING VOTES AND COUNCILMAN BELL ABSTAINING.

- J. Direction to the Public Works Director to conduct a hearing regarding the bid protest filed by Asphalt Paving and Supply, Inc., and make final recommendation to the Council as to the award or rejection of bids for the SR89A/Granite Dells Parkway (Side Road) Traffic Interchange project.

Councilman Bell did not participate in the discussion due to a possible conflict of interest.

Mr. Nietupski said everyone was familiar with the history of the project, as outlined in the staff memo. The project bid documents Special Provisions modified ADOT Standard Specifications Section 103.10 – Bid Disputes, placing the Public works Director in the role of State Engineer and City Council in the role of the State Transportation Board in determining the final decision as to the award or rejection of bids in the case of a bid protest.

He said that in consideration of the ADOT process pursuant to the recited specifications section, it was recommended that he, in his capacity as Public Works Director, conduct a hearing on the protest within seven calendar days of Council direction to do so.

Mayor Wilson referred to the statement made by Mr. Fann about 75 days and the period having passed in which to do a formal bid protest. Mr. Kidd said that this is one of the things raised by Mr. Fann's attorney and addressed by AP&S's attorney. He said that the City's attorneys have reviewed the issue as well and all three groups differ. He said that it was his recommendation that the bid protest currently pending needs to be handled in the way recommended. They believe that is how ADOT would handle it and the City made recommendations to adopt specifications of ADOT. If they do not they may be litigating with a bunch of lawyers and then six to eight months later, the judge would refer it back because of a matter of procedure. He said that he would hate to see that happen

Councilman Roecker asked for the representatives from ADOT to address the issue. Floyd Worrick, State Engineer with ADOT, said that he wanted to recognize the City's staff. He said that as they work through the issue their openness and wiliness to share information and work together with a professional attitude has been great. He said that he wanted to reaffirm from ADOT's perspective that they support the decision in the public works project and in their opinion and by State Statute it is a public facility. They were there to reaffirm their support for the City to use their discretion to move forward in the application of the specifications and decisions they would make, either on the existing bid or some justification for moving forward with rebidding. As they work together to submit their permit and provide the funding they were there to reaffirm that was what they would do. They are part of a partnership for a long history with the interchange and its benefits to the locals.

Councilwoman Suttles said that she appreciated them coming in. She asked if the funding that ADOT was going to contribute would be jeopardized if this issue goes to court. Mr. Worrick said that they have all kinds of projects, but they are a partner on this and the funding would be there.

COUNCILWOMAN SUTTLES MOVED TO DIRECT THE PUBLIC WORKS DIRECTOR TO CONDUCT A HEARING REGARDING THE BID PROTEST FILED BY ASPHALT PAVING AND SUPPLY, INC., AND MAKE FINAL RECOMMENDATION TO THE COUNCIL AS TO THE AWARD OR REJECTION OF BIDS FOR THE SR89A/GRANITE DELLS PARKWAY (SIDE ROAD) TRAFFIC INTERCHANGE PROJECT; SECONDED BY MAYOR WILSON; PASSED 5-0 WITH COUNCILMAN BELL ABSTAINING.

- K. Recess into Executive Session.

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

The Prescott City Council recessed into Executive Session at 5:40 p.m.

VI. 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. City of Prescott v. CVID.
2. Hensley v. City of Prescott.

VII. POST EXECUTIVE SESSION

- A. Approval of Settlement of Hensley v. City of Prescott and authorizing Mayor and City staff to execute all necessary settlement documents.

The Prescott City Council reconvened into Open Session at 6:10 p.m.

COUNCILWOMAN SUTTLES MOVED TO APPROVE SETTLEMENT OF HENSLEY V. CITY OF PRESCOTT AS OUTLINED (\$55,000.00 WITH THE CITY TO PARTICIPATE IN HALF OF THE FEES) SECONDED BY COUNCILMAN ROECKER; PASSED UNANIMOUSLY.

VIII. ADJOURNMENT

There being no further business to be discussed, the Prescott City Council Regular Voting Meeting of April 28, 2009, adjourned at 6:10 p.m.

JACK D. WILSON, Mayor

ATTEST:

ELIZABETH A. BURKE, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Voting Meeting of the City Council of the City of Prescott, Arizona held on

the 28th day of April, 2009. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2009.

AFFIX
CITY SEAL

ELIZABETH A. BURKE, City Clerk