

PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, AUGUST 11, 2009
PRESCOTT ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL held on TUESDAY, AUGUST 11, 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:**

◆ Pastor James Taylor, Church on the Street, gave the invocation

◆ **PLEDGE OF ALLEGIANCE:**

Councilwoman Suttles introduced Police Officer Siegel who led the Council and audience in the Pledge of Allegiance.

◆ **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 noted that in April they asked for a grant for various pieces of equipment for the police department. They were notified by the Department of Justice that they received the full \$84,000 grant. There is no match, it is an outright grant, and it will be for needs that were not funded during the budget process.

Councilman Luzius gave an update regarding the Mingus Mountain fire. He said he was trying to get to Jerome, but the road was closed and he ran into Chief Ralph Lucas. The Chief was heading up the firefighting exercises on Prescott's side of Mingus Mountain; there were a total of 170 men up there. He was able to join with Chief Willis and became the command post. He was directing the helicopters. He said his heart went out to them, noting they were so organized. They work for 16 hours and sleep for 8. Chief Lucas has been there since Saturday afternoon. Councilman Luzius wanted to pay his respect to those on the wildfire crews, also to Jerome, Cottonwood and Camp Verde. It was great to see that kind of cooperation and teamwork. It is his understanding that the City of Prescott makes money when their firefighters are out there. They are on the government's payroll.

I. PUBLIC COMMENT

- A. Frank Creelman re actions of Police Department; two "no-show" policy; and possible Constitutional violation of rights and freedom of speech.

Mr. Creelman said his position toward supporting the Police Department was that he would like to see the \$80,000+ (grant) go to a video DVD head set so that everything the officer sees is recorded. His goal is to bring the truth to the department, even if they have to burn it to the ground and build it back up with honest officers, which is what he would do. He showed a report from Casey Cook regarding an event on July 12, 2009. He then discussed a prior incident where he said the officer lied to him and told him that in bad storms he could not give a ticket to someone driving 35 miles per hour on Montezuma. He said that a ticket could be given at five miles per hour on solid ice. He asked the Council to take out Casey Cook's police report that he gave them.

Mr. Creelman could not find his paperwork

Mr. Podracky told him that he is not allowed to disparage individuals in an open meeting. Mr. Creelman said that anyone can talk about the truth of a police officer. He said that Michael Turner was there and that he sterilized needles. Mr. Podracky reminded him that he was agenzized to talk about actions of the police department and to keep it general. Mr. Creelman said that he was talking about the SWAT team and what happened.

He borrowed Mr. Luzius' police report to read, but after being reminded by Mayor Wilson that he was out of time, he asked the Council to study it because he would be back. He asked them to consider it a verbal petition, to deal with this. The man was drunk. He said that he was going to ask for 15 minutes the next time. He said that he was going to file a lawsuit against the Council.

- B. Introductions by Harriet Oeser of The Niche, 222 South Cortez, and Beverly Beach of Her Fitness, 1046 Willow Creek Road.

Harriet Oeser, proprietress of The Niche, 222 South Cortez, said that she and Beverly live on Mt. Vernon about a block from each other. Beverly could not be there, but she continued, stating that Beverly had always dreamed about opening a fitness center, with a safe and caring atmosphere. Her Fitness, the name of her center, offers strength training and aerobics, using a 26 station circuit training course as well as cardio vascular equipment.

She offers pilates, stretching, balance and a weight loss support group. As she continues to learn what women of Prescott want and need, she will customize her fitness to fit those needs. She is extremely grateful to Prescott for the opportunity to provide the women a place to improve their body and spirit. She is located at 1046 Willow Creek Road in the Safeway/ Kmart shopping center.

Ms. Oeser said that she has The Niche, which is a gift boutique located across the street from City Hall, at 222 South Cortez. She said that they are proud to be the Prescott home of Nothing but Bundt cakes, with 4-5 varieties to choose from. They also have pasta for two, olive oils, hand-painted magnet boards, linen napkins, individual brewing machines, and similar gift items.

II. PRESENTATION

- A. Presentation by Mike Vax re Prescott Jazz Summit.

Mike Vax said that he decided that if they talk about jazz they have to hear it first, and then gave a brief trumpet solo. He said that it was a pleasure to be in front of Council. He has been there every year other than last year. This is his ninth year and he is looking forward to their biggest and best year yet.

He said that he had new posters for the show which is August 28-30, 2009. Toni Tenille will be singing on Saturday night. They will have over 150 music students from all over Arizona, and Saturday afternoon will be workshops for the kids, completely free to the students. Sunday, because the Elks is closed, he will be at Hendricks Theater at Mile Hi Middle School. He encouraged everyone to tell friends, and anyone 18 and under gets in free. He said they really want to get the kids there. Friday night is at the Hassayampa Inn, and here is a special performance at noon at the courthouse on 28th which is free. Tickets can be purchased at the Hassayampa Inn, the Chamber of Commerce, or go on line at

www.prescottjazz.com. He said they will have a banner up a week before festival and the tickets were selling well. He has listed the hotels that are sponsors on the website. They are all over town with their events. He said that in ten months from now they will be fulltime Prescott residents, and they looked all over the United States to find a replace to retire.

Councilman Bell said that he hoped Mr. Vax would use the restored Elks Theater for his 10th anniversary performances.

Mayor Wilson said that he thought that it was important for the community to understand that this is a volunteer effort. A portion of the funds raised go to help educate youth in music. He said that if people have not seen the efforts at Prescott High School, it is mind boggling to see the pros work with the kids.

Mr. Vax said that his plan is to get the festival big enough that they will have to use Hassayampa Inn and the Elks and another venue and have three venues going all weekend

B. Presentation of the Draft Airport Master Plan.

Mr. Vardiman presented the final draft of the Airport Master Plan. It was currently in front of Federal Aviation Administration for their review, and is also the beginning of the 30 day public comment period.

He gave PowerPoint presentation, Exhibit A attached hereto and made a part hereof, which addressed the following:

▶ MASTER PLAN PROCESS

The FORECASTS are one of two components of the Master Plan that must be accepted by the Federal Aviation Administration.

Based on 2007 data regarding enplanement, they were at 4,233 revenue passengers. By the year 2027, they anticipate roughly 36,673 passengers.

From January 1 to the end of July of 2009, Great Lakes and Horizon had 6,231 passengers. From the start of service from Great Lakes and Horizon there have been roughly 9800 passengers using the Prescott airport. If that continues they anticipate breaking the 10,000 passenger mark with relative ease.

Forecast numbers have been accepted and approved by Federal Aviation Administration.

- ▶ FACILITY REQUIREMENTS
- ▶ AIRSIDE FACILITY REQUIREMENTS
- ▶ MASTER PLAN ALTERNATIVES (Airside & Landside Alternatives)
- ▶ MASTER PLAN DRAFT PREFERRED ALTERNATIVE
- ▶ CAPITAL IMPROVEMENT PROGRAM
- ▶ CIP – Phase I
- ▶ CIP – Phase II
- ▶ CIP – Phase III

Mr. Vardiman said that the anticipated cost for the 20 year project is \$148,905,000 in airport improvement projects. The anticipated City share is 4.88%, roughly \$7.3 million over the 20 year planning cycle.

He announced the PUBLIC COMMENT PERIOD and that the final draft and the airport layout plan were available for review at Prescott Public Library, Prescott City Hall, Prescott Airport Administration as well as www.prescottairportmasterplan.com.

He also has drafts at other locations throughout the region, trying to get the information out to the public. They can be found at the Prescott Valley Library, Prescott Gateway Branch, Yavapai County Administration Offices, Embry Riddle University library and the Rowley Simmons Community Center.

Written comments will be received until 5:00 p.m. on September 12 and may be submitted to Mr. Vardiman at 6546 Crystal Lane, Prescott, AZ, 86301 or submit comments on line.

- ▶ NEXT STEPS

Councilman Luzius referred to table 6.1 2010-2015 – 1.d –commercial terminal building for roughly \$13 million, and asked if that would be built between 2010-2015.

Mr. Vardiman said that it was anticipated when the project would start and when the funding would be sought. In 2007, using the Federal Aviation guidelines, they needed a terminal of 19,000 square feet; the existing terminal is around 6,000 square feet. They are a third of the size

recommended for the types and number of operations they have. It is a priority project for the public in meeting their capacity at airport.

Councilman Luzius asked if he anticipated reaching the passenger enplanement required to qualify for grants. Mr. Vardiman said that he does. Since the start of service in September 1, 2008 until now, there have been 9800 enplanements. As long as the trend continues, they will be fine. Councilman Luzius hoped that it would continue. He thought it was a good thing when Horizon came to their doorstep.

Mayor Wilson said that they need to continue to promote Horizon and that there are still some people who do not know it is in Prescott. They need to let the public know that they have a premier carrier and they need to keep the number of seats sold up so that they stay in Prescott.

Councilwoman Suttles asked Mr. Vardiman when they started work on the Master Plan. She thought that it looks like it is on the City of Prescott's table, with not a lot of the communities around them in on it dollar-wise. She asked what the plan would be if it does not all fall together.

Mr. Vardiman said that the projects are all demand-based. When the demand is there they will pursue the project. If they cannot pay for a project, they will rank the highest priority project to bring the highest return on dollars spent. They will continue to look for other funding sources and continue to work with community and all partners to develop and expand it. He thought that maybe now was the time to look at an airport authority or maybe not. He thought there was some benefit to retaining control of the asset. Subject to future annexations, the airport may be located entirely within the City limits.

Councilwoman Suttles asked what project they could get into regionally, and Councilman Luzius suggested the airport which she thought was a good point. She did not feel that they were getting regional backing.

Mr. Vardiman said that he understood what she was saying and said that all communities recognize the airport is an important part of their communities. If they look toward a regional authority, all of those questions could be resolved; it may require setting aside past experiences and biases.

Councilwoman Suttles said that they have not been able to get the community together since 1946 for a buy in, and she did not know why.

Councilman Luzius said that he did bring it up at one of the CYMPO meetings some time ago. There did not seem to be a lot of interest in

cooperation in becoming an authority or regional airport. He thought it was something they still needed to consider because Prescott can do it on their own, but believes it will be a benefit to the region. It should be necessary for other entities to step up to the plate and help out. They have a plan that will take time and hopefully they can change people's thinking.

Councilwoman Lopas said that the design company said that it is not the time to look at becoming an authority. They suggested that this is more of the planning itself. She also understood that Mary Baker from Prescott Valley, in 90's, worked on an airport authority plan. She asked if anyone had a copy of the plan to please bring it to City Hall. She would like to see what was already done.

Councilman Roecker asked at what point they become an Enterprise Zone. They mentioned that they want to buy property on the South portion of the airport. He asked where that money would come from and if the funds were available so that the money would not have to come out of the General Fund.

Mr. Norwood said that he thought Councilman Roecker was referring to the Enterprise Fund. The airport is the only one that City Council has made past policies that on grant matches through the Federal Aviation Administration, the General Fund would be used for the 5% - 10% matches. If there are grant opportunities that 5% - 10% would come from the General Fund, if not, there is no big pot of money that the airport has generated. It would be either through debt issue with voter approval or from the General Fund.

Councilman Roecker said that the concept of Enterprise Fund implies that at some point in the future they pay as they go and paying for the process itself. Mr. Norwood said that fund generates its expenses and those are paid from revenues that has been generated.

Councilman Roecker asked if there had been any time spent to find out when it would not come from General Fund, or the taxpayer would not be paying for it. Mr. Norwood said that it has not been looked at. It would be at such a point when the airport grows enough. Councilman Roecker said that he did not see how it could happen financially.

Mayor Wilson said that there were two overriding considerations. Funding for all airports across the United States comes from FAA primarily, so if the game changes, it changes for everyone. The same is true within Arizona; if it changes in the State it changes fro everyone.

He said that they have also looked at the airport as a driver of economic development for the City. It is not a stand alone; otherwise they would have a general aviation airport.

Councilman Roecker asked if any redundancy would be required if they extended the main runway. Mr. Vardiman said that there would be none required. They do have a parallel runway and one of the projects would be to extend that as well, but it would not be as large as the primary runway.

Councilman Roecker asked if when they extend the runway they would have to rebuild the entire thing. Mr. Vardiman said that they would extend the runway, and then harden the entire length to provide for Design Group C-3 aircraft. He said that would provide service to companies that use larger private jets or their businesses, and that all, in turn, generates jobs and economic development.

Councilwoman Suttles said that the plan talked of public meetings and input, and asked who they expected to hear. Mr. Vardiman said that so far they have held three public meetings and five advisory committee meetings. They have consisted of representatives from surrounding municipalities, chambers, large landowners, Antelope Hills Homeowners and Prescott Resort. They have also had representatives from different organizations that have a stake in the airport. He said that they will advertise through different media, including the newspaper, website, press releases, etc. Councilwoman Suttles said that they should do everything they can do without spending a ton of money.

III. CONSENT AGENDA

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

COUNCILMAN BELL MOVED TO APPROVE THE CONSENT AGENDA ITEMS III-A THROUGH III-E; SECONDED BY COUNCILWOMAN LOPAS; PASSED UNANIMOUSLY.

- A. Accept a Federal Aviation Administration Grant in the amount of \$23,750.00 and approval of a Contract Amendment with the Louis Berger Group in the amount of \$25,000.00 (\$1,250.00 City Share) for additional work performed on the Airport Master Plan at Ernest A. Love Field.
- B. Approve Amendment One to Contract No. 2009-114 with TransitPlus for Central Yavapai Metropolitan Planning Organization (CYMPO) FTA Grant Management Services, in an amount not to exceed \$15,000.00.

C. Granite Haven Property:

1. Adopt Resolution No. 3984-1011 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, for acceptance of donation of real property from Granite Haven LLC and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
2. Adopt Ordinance No. 4713-1010 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, accepting title to real property known as the Granite Haven LLC property located in the Granite Dells, and authorizing the Mayor and staff to execute any and all documents to effectuate said purchase.

D. Gardner Property:

1. Adopt Resolution No. 3986-1013 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, for acceptance of donation of real property from Joseph and Barbara Gardner and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
2. Adopt Ordinance No. 4714-1011 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, accepting title to real property known as the Gardner property located in the Thumb Butte Area, and authorizing the Mayor and staff to execute any and all documents to effectuate said purchase.

- E. Approve minutes of the Prescott City Council Public Joint Regular Voting/Special Meeting of July 28, 2009 and the Joint Special Meeting/Study Session of August 4, 2009.

IV. REGULAR AGENDA

- A. Reappointment of member to the Board of Adjustment.

Ms. Burke said that the term of Johnnie Forquer on the Board of Adjustment had expired in July of this year and she had indicated an interest in being reappointed, and the Council Appointment Committee was recommending her reappointment.

COUNCILMAN LUZIUS MOVED TO REAPPOINT JOHNNIE FORQUER TO THE BOARD OF ADJUSTMENT, TERM TO EXPIRE JULY 2012; SECONDED BY COUNCILMAN BELL; PASSED UNANIMOUSLY.

- B. Resolution No. 3985-1012 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing amendments to lease agreements with Texas Telecommunications LP (Sprint) and AT&T for communication sites located at the Indian Hill Water Tank site.

Mr. Guice briefly reviewed the item, noting that the resolution provided for amendments to two contracts for wireless telecommunication services.

Mr. Guice said that there has been a question raised as to whether a Special Use Permit would be required and the answer was no. He said that back in the mid 1990's there was a task force created with representatives from Prescott, Prescott Valley and Chino Valley and they arrived at the Wireless Communications Plan for Central Yavapai County through Ordinance 3770, which stipulates that properties owned by jurisdictions are permitted uses and do not require a Special Use Permit. He said that the Ordinance included an appendix which listed specific properties, and the Indian Hill site was included on that appendix.

Mr. Guice added that there were representatives from the telecommunication companies present to answer any questions.

Councilman Luzius asked if the agreement from 1998 that was mentioned was included in the Land Development Code passed and approved by the Council a few years ago. Mr. Guice said that portions of that Ordinance made it into the Code, and more specifically in 2.4.5(1) related to telecommunication, it reiterates the owners being exempt.

Debra Kaukol, 432 Shalimar, said that she disagreed with Mr. Guice. She said that there were two cell sites owned, operated and controlled by AT&T. Under the Land Development Code 2.4.5(1), they do require a Special Use Permit. She asked who regulates the noise that comes from the generators. She said that she spoke with the cell companies and they own, operate and control the cell so the City would need a Special Use Permit, except for the Public Safety antenna which was exempt.

She said that the LDC also states that the City Council may approve an application for a Special Use where it reasonably determines that "there will be no significant negative impact." She said that there will be significant negative impact with the cell tower franchises on Indian Hill. AT&T and Sprint are cell tower franchises. Per Arizona State Constitution, Article 13, Section IV, it requires City voter approval of the cell towers, so the City does need a SUP, and voter approval.

She said that upon complete application, public notices should be issued per Section 9.1.7. Planning and Zoning then reviews the application and public hearing. Since the cell towers do affect the neighborhood

environment in a residential medium housing, under Section 106 National Historic Preservation Act of 1966, the Commission is required to do an independent review of a preconstruction environmental assessment. If that has been done, she would like a copy.

She said that before the Council voted, she urged them to abide by Arizona State law 9-461.01(9) and (10) which establishes zoning for manmade hazards to life and/or property. The law also states ordinances setting forth standards to preserve historical character of the area designated. She said that people love wireless convenience but research has turned up disturbing results such as numerous cancers, immune system suppression and birth defects.

She said that people that use cell phones engage in voluntary exposures, while those living near the towers are being forced into involuntary exposures. She said that Prescott has over 65 active cell tower sites between Verizon, Sprint, AT&T and the list goes on.

She said that the City needs to stop ignoring laws. Under the Antiquities Act of 1906 “any person who shall excavate, injure or destroy any historic or prehistoric ruin situated on lands controlled by the government shall be fined \$500, or be imprisoned, or both, by the discretion of the court.” She said that two wrongs do not make a right and it was time to stand up for Indian Hill.

Councilman Luzius asked if the matter needed to be researched further and **MOVED TO TABLE THE ITEM; MOTION DIED FOR LACK OF A SECOND.**

Councilman Lamerson asked the legal counsel if there as the potential for Constitutional interpretation that is different than what was being suggested. Mr. Podracky said that placement of cell towers was preempted by the Telecommunications Law which allows, and encourages, them. He said that it does allow municipalities to retain zoning jurisdiction, but they have already heard about the zoning. He said that the City was okay on the four or five different grounds brought up.

Ms. Kaukol said that she had a copy of the Land Development Code and found nothing that Mr. Guice specified. Mr. Guice referred them to 2.4.5(1), exemption 2 and said that out of the Wireless Communication Plan of 1998, the task force agreed that in the event that applications are received for properties other than those listed on Appendix A, a Special Use Permit would be required. The aesthetics relationship is controlled in the Lessor/Lessee relationship.

MAYOR WILSON MOVED TO ADOPT RESOLUTION NO. 3985-1012; SECONDED BY COUNCILWOMAN SUTTLES; PASSED 6-1 WITH COUNCILMAN LUZIUS CASTING THE DISSENTING VOTE.

- C. Recess into Executive Session.

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

The Prescott City Council recessed into Executive Session at 4:05 p.m.

V. 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. Seastrand v. Prescott Unified School District; City of Prescott.
 2. Claim settlement offer by Kimley-Horn for the Copper Basin Road project.

VI. ADJOURNMENT

The Prescott City Council reconvened into Open Session at 4:46 p.m. at which time the meeting of August 11, 2009, adjourned.

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 11th day of August, 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