

PRESCOTT CITY COUNCIL  
REGULAR VOTING MEETING  
TUESDAY, AUGUST 25, 2009  
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL held on TUESDAY, AUGUST 25, 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**

A Rabbi from Temple B'rith Shalom, filling in for Rabbi Nina Perlmutter who had been in a car accident earlier in the day, gave the invocation.

◆ **PLEDGE OF ALLEGIANCE:**

Councilwoman Lopas 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 said that Prescott Gateway Mall was a great business partner with the City and it was also great to see the high-tech jobs coming into Prescott.

He said that he had been asked why the last few meetings had been so light with regard to the agenda, and he wanted to take a few minutes to explain. He said that the Council has been very aggressive with the Capital Improvements Plan and since January they have awarded nearly 15 engineering contracts totaling about \$5 million; construction contracts totaling well over \$11 million, and

material contracts totaling \$1.5 million, for a total of \$18 million with shovels and local engineers, construction contracts, grants, police cars, etc. He said that the budget has been cut so there is not as much, but they were busier earlier in the year.

Mayor Wilson noted that the Prescott Jazz Summit starts this coming Friday and this evening Mike Vax would be at the square at 6:30 p.m. with a 16-piece band.

## **I. PUBLIC COMMENT**

### **A. Joe Pendergast re street maintenance needs.**

Joe Pendergast, 699 West Lee Blvd, said that when he received the publicity pamphlet for the upcoming election he saw the issue of extending the ¾% sales tax and it had six articles in support and none in opposition. Had he known, he would have written one in opposition. He said that he has been a city engineer and knows how important street maintenance is and its funding.

He said that he sees a great amount of waste of street maintenance monies, such as the recent chip seal project in his neighborhood – The Ranch at Prescott. He said that two sections of that subdivision that were not done include the part of Lee Boulevard south of the Rainbow Ridge intersection, plus the majority of West Lee Boulevard, both areas where the pavement shows great distress. Additionally, he has noticed other street maintenance monies wasted on such things as the Rosser Street “traffic calming” and the “rattlesnake design” of the rip-rap on Prescott Lakes Parkway.

He said that he wished to criticize the fact that the City allows its subdividers to construct absolutely substandard streets—in line and grade, pavement width, and structural integrity. He said that streets are arbitrarily redesigned in the field to new alignments, and the original plans are finally signed at project’s end as as-builts, but do not indicate any of those changes.

He said that the City wastes money by bonding for street maintenance, which means that a portion of the money allocated to physical construction goes to paying interest, a worthless expense. Bonding is necessary for high cost projects that must be built immediately, but is not reasonable for an ongoing need.

He said that the City’s street maintenance sales tax funding program shows \$198,000,000 collected in sales tax over a twenty-year period, with about \$36,500,000 going towards debt service. He said that they should pay as they go and use the \$36,500,000 for physical street improvements.

In summary, he said they need to cut out the waste of doing things that should not be done and ignoring those that should be done; cut out the waste of accepting substandard construction; and cut out the waste of paying interest on an ongoing need. With the Council's correction of those three wastes he would support the initiative on the ballot, but not before.

Mayor Wilson asked staff to place this item on a future agenda to allow staff to respond.

## II. PRESENTATION

- A. Introduction of new businesses and special announcement of a new business.

Susan Cohen of the Prescott Chamber of Commerce introduced new businesses for the month, and each gave a brief review of their business:

▶ Board by Board Builders, 442-1387, [www.boardbyboard.com](http://www.boardbyboard.com), [boardbyboard@cablone.net](mailto:boardbyboard@cablone.net)

▶ Arizona Stone and Architectural Products, 2601 North Lake Valley Road, Prescott Valley, 772-0828, [www.arizonastone.com](http://www.arizonastone.com)

▶ AIM, Arizona Internet Marketing, 888-55AIMAZ, [www.aimaz.com](http://www.aimaz.com)

- B. Presentation of flag.

Mayor Wilson said that some time back Senator McCain presented the City with a U.S. Flag that had been flown over the capitol for Yavapai County Fallen Heroes, along with a certificate. He then presented the flag and certificate to Councilman Lamerson for his support of the troops and his support of the U.S. Constitution.

Councilman Lamerson said that he was accepting it in the spirit that it was given, and then read a quote that means a lot to him, "A constitution of government once changed from freedom can never be restored. Liberty once lost is lost forever." (John Adams, 1775).

- C. Presentation on Prescott Regional Asset Inventory.

Economic Development Director Jane Bristol said that she wanted to bring to everyone's attention a regional project recently completed. She said that they started the process by contacting NAU, asking for their services in putting together an exhaustive list of demographics that could be used by many different types of businesses. She then gave a brief presentation

of the Prescott Regional Asset Inventory, which is accessible from the City's home web page.

After the presentation, Councilwoman Lopas said that as a realtor she thanked them for the project, as it was a great asset for assisting people that are relocating to the area. She asked if it also included such assets as the parks and recreation amenities. Ms. Bristol said that they are listed under the Cultural Amenities link.

Councilman Luzius thanked Ms. Bristol for the presentation and Wendy (Bridges) for her hard work on the project. Ms. Bristol added that Wendy was instrumental in getting it on the website.

Mayor Wilson said that when they get down to some of the detail level, much of the information is what was needed on a business license, but he still wanted a business license. Two weeks ago he saw an article in the Arizona Republic about a company in Prescott that was listed on the Fortune 500. He and Ms. Bristol went out to lunch with the President of that company; they have 135 employees and are postured for explosive growth because they were getting into a new venue, and they were completely under the radar as they were not a member of the Chamber.

He said that the next question becomes how many more of these businesses are out there. He said that he still believes the question of business licenses is up for debate.

Councilwoman Suttles said that she agreed with everything the Mayor just said. She said that it was great information in the program and asked how it would be kept updated. Ms. Bristol said that they are targeting to update it at least once a year.

Councilwoman Suttles said that it is another example of the regional concept that they are constantly looking for. Ms. Bristol said that they all did a lot of work, but they had quite a bit more just coordinating the information and getting it there on time.

Councilman Lamerson said that he respected the Mayor's right to still want a business license but he maintained that if the company did not want to be under the radar they would not be, and said he was still not a proponent of business licenses.

### **III. CONSENT AGENDA**

**CONSENT ITEMS A THROUGH C 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 III-A THROUGH III-C; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.**

- A. Approve amendment to agreement with Yavapai Combined Trust.
- B. Adopt Resolution No. 3987-1017 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into a Library Services Agreement for FY2009/2010 with the Yavapai County Library District to participate in cooperative funding to the benefit of the City of Prescott Public Library, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
- C. Approve minutes of the Prescott City Council Public Regular Voting Meeting of August 11, 2009 and the Joint Study Session/Special Meeting of August 18, 2009.

**IV. REGULAR AGENDA**

- A. Public Hearing and approval of a License Agreement between the City of Prescott and Cable One, Inc.

Mr. Fenech said that this was continuation of the public hearing opened last week. He said that last week there were some questions raised, and he then reviewed those and provided further explanation to each.

He said that last week the question was asked if they had any idea of what the other communities did with their revenues from these fees, and he offered the following answer:

- ▶ Yavapai County - \$300,793 – goes into the General Fund with no targeted expenditure
- ▶ Prescott Valley - \$252,000 – goes into the General Fund with about 20% targeted to Access 13
- ▶ Chino Valley - \$67,000 – goes into the General Fund with no targeted expenditure
- ▶ Dewey-Humboldt - \$13,700 – goes into the General Fund with no targeted expenditure

Additionally, he said a question was raised as to why a ten-year contract was being presented. He said that the license agreement is for use of the City's rights of way; it is a nonexclusive agreement. Cox Cable could come in, and any other companies, and approach the City to say they wanted the same services, subject to the terms of the agreement. He said that a

short term could actually hurt the City and the strategy of staff was to get all that they could under both federal and state statutes.

In the agreement there was a section that talks about the option to increase the fee upon 90 days notice, in the event that there are any future changes in the state/federal legislation or regulations. If it goes down, they would be subject to reducing that at the term of the agreement. He said that Cable One prefers a ten-year agreement as well, as they have said it typically takes 5-7 years to recover their return on investment for capital investment or technology changes. He said that there is no competitive damage to the City for a short agreement.

Mr. Fenech said that there were some not happy with the issue of the public service announcements no longer being provided for the City and the fact that cable service could be expensive. He said that Dennis Edwards from Cable One was present and wanted to make a few comments in those regards. He added that although the new legislation does not require that the cable company provide PSA's at no cost, it also does not preclude it, so they would still be providing those PSA's under a separate contract.

Mr. Edwards, 3201 Tower Road, said that they have always offered a lowest level, basic service which included Channels 2-22 for \$20 a month. In June they launched a lower level of internet for \$20 a month and also a lower level telephone service, so for \$60 a month they could get one level of all three services.

Councilman Luzius said that he was going by his experiences at home, noting that they pay almost \$100 a month for cable, and they do not have phone or internet. He was wondering how much of an increase there would be on a bill. Mr. Edwards said that on a \$100 monthly bill, it would be roughly a \$1 increase.

Councilman Luzius said that he was pleased that they will continue the PSA announcements and thanked Cable One for that.

Councilman Lamerson said that while he appreciated Mr. Fenech's attempt last week to describe the difference between a tax or use fee, he thinks they are all taxes. He asked if the City's agreement with Channel 13 would be compromised. Mr. Fenech said that the agreement with Channel 13 calls for a pass-through of \$5,000 from CableOne. The City will continue to pay that \$5,000 for equipment and hardware; it just won't be a pass through.

Councilman Lamerson asked how the City would be damaged if they did nothing. Mr. Fenech said that in the staff report they tried to point out the

differences in revenues. He said that if they go forward with the increased fee the City would receive around \$84,000 more in the General Fund (based on this year's numbers).

Michael Allen Peters, 640 West Lee Blvd., said that in referring to the notes, and since he did not have the actual agreement to peruse before today, he asked if there was ever an increase or decrease over the last 17 year period. Ms. Tucker said that there were no restrictions until HB2812. She said that there were many municipalities charging more than 5% and had more benefits in terms of channels, etc.

Mr. Peters asked if the feds could override the agreement if they or the state challenges get more restrictive and reduce it back to 4%. Mayor Wilson said that they were trying to avoid that in the contract language. Mr. Kidd said that the Telecommunications Act has a unique ability to do away with certain contract provisions but the theory is that the best way to protect it is to have a preexisting contract in place.

Mr. Peters said that regardless of whether the feds or state impose a reduction, if they agree on the 5%, the percentage they negotiate with the cable company was subject to their negotiations versus a federal or state limitation. Mayor Wilson said that was correct.

Kathleen Murphy, Big Brothers/Big Sisters, said that she wanted to take the opportunity to thank Cable One for helping serve over 1,000 kids in Yavapai County. She said that they gave BB/BS \$50,000 in free advertising and also provided free internet service for all that work for them. She said that they do not ask her to tell anybody that but she thought it was a great opportunity to state what great neighbors they had.

Councilwoman Suttles said that on the back of the memo there were a number of things listed that Cable One does and asked if it was done through Access 13. Mr. Fenech said that it was done by Cable One.

Councilman Lamerson said that when Ms. Murphy talked about certain things, he wanted to clarify that whether it is 4% or 5%, it does not affect Cable One; it just affects their subscriber. Mr. Fenech said that was correct.

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

**COUNCILWOMAN SUTTLES MOVED TO APPROVE THE LICENSE AGREEMENT BETWEEN THE CITY OF PRESCOTT AND CABLE ONE,**

**INC.; SECONDED BY MAYOR WILSON; PASSED 6-1 WITH COUNCILMAN LAMERSON CASTING THE DISSENTING VOTE.**

- B. Award of bid and contract for the Airport Zone North and South Loop Water Main Improvement Project to Sellers and Sons, Inc., in an amount not to exceed \$1,887,796.00. (Pulled from the Consent Agenda by Councilwoman Suttles)

Mr. Nietupski said that last week the question was raised as to the anticipated total cost of the project. He then reviewed a summary – Engineering \$191,880; Construction Contract - \$1,887,796; estimated Inspection Testing and Administration at \$113,000 – Total of \$2,192,676, slightly more than what the ARRA funding is, which is forgivable principal, so they are talking \$40,000 out of pocket, with \$4 million in fiscal year 10.

**COUNCILMAN LUZIUS MOVED TO AWARD THE BID AND CONTRACT FOR THE AIRPORT ZONE NORTH AND SOUTH LOOP WATER MAIN IMPROVEMENT PROJECT TO SELLERS AND SONS, INC., IN AN AMOUNT NOT TO EXCEED \$1,887,796.00; SECONDED BY COUNCILWOMAN LOPAS; PASSED UNANIMOUSLY.**

- C. Authorization of application for a Federal Aviation Administration (FAA) Grant project in the amount of \$85,000 (\$80,750.00 Federal Share and \$4,250.00 City Share) for conducting an FAA mandated Wildlife Hazard Assessment at Ernest A. Love Field.

Airport Manager Ben Vardiman reviewed this item, noting that it was to conduct a wildlife hazard assessment. The FAA recognizes that wildlife and aircraft do not mix, most recently evident on a national scale by the US Airways flight which crashed into the Hudson River this past year.

This assessment is a requirement of the FAA under the City's operating certificate from them and is required if the City has a triggering event which they suffered in the early spring of this year. He said that they were notified in June that it would qualify and would require such assessment and were also notified at that time that there was a potential for federal funding of the project.

Councilman Roecker asked what triggered the requirement. Mr. Vardiman said that Great Lakes Airlines struck a bird as they were entering the airport environment and it was reported to the FAA and placed into the National Wildlife Strike Database, which is developed and operated by Embry-Riddle out of Prescott for the FAA.

Mr. Norwood said that he wanted to emphasize that the City did not initiate this but once it gets recorded to the FAA they looked to see if the City had

ever had an assessment. He said that the City does not have a choice; they just want to make sure they can get a federal grant to offset the cost.

Councilman Roecker asked what would happen if they voted this down. Mr. Vardiman said that they would still be under obligation to conduct the assessment, or they would have to revoke the City's 139 status and operating certificate, which would mean they would have to suspend air carrier service and lose federal funding.

Councilman Bell said that it was ridiculous and a waste of the taxpayers' money. He asked how the study would prevent wildlife at the airport. Mr. Vardiman said that it would look at the airport environment, a five-mile radius, and identify the habitat and look at different mitigation techniques to resolve the issue.

Councilman Roecker asked if anyone applies a "reasonableness" test to such issues and asked where the logic was.

Councilman Lamerson asked if a bird could bring a plane down. Mr. Vardiman said that it could. Councilman Lamerson said that is what they need to concentrate on, whether or not it seems logical. The fact is they have an airport that they are trying to sustain its viability of and if the federal government says it is a safety issue they have to address it.

Mayor Wilson said that he was out at the airport last weekend and there was a leer jet parked on the tarmac. He said that if geese get in the jet engines they can kill the engines.

Councilwoman Suttles asked where the City's \$4,250 would come from to match the grant. Mr. Vardiman said that it would come from other grants that had been budgeted but were not expected to be received; it would be a reallocation of funds.

Councilwoman Suttles said that this is another mandate that they have to meet at the airport and she would like a list of all of the requirements that have been placed out there recently.

Councilwoman Lopas said that it seems like a ridiculous amount of money, but she thinks they have a much bigger opportunity for a bird to bring a plane down than a terrorist. She said that they have migration patterns that change which is why the FAA does these things, to make sure the growth is not changing those patterns.

Mr. Vardiman said that they have an average of five or six bird strikes a year on an average, but it was the airline operation that determined it to be a qualifying event.

Councilman Bell asked what the deadline was to apply for the grant. Mr. Vardiman said that they were trying to get in with the FY09 funding which ends on September 30, as there is no such funding identified in FY2010 so they would have to look at their programming for 2010 to readjust. Councilman Bell asked what the penalty could be. Mr. Vardiman said that they would have to pay the entire cost if they do not seek the funding now.

Mayor Wilson said that regardless of the distaste, they either apply for the grant and pay \$4,000 or get their backs up and pay \$85,000 later.

Councilman Lamerson said that one other option would compromise the regional air service and he did not think anyone wanted to do that.

Councilman Luzius asked where the \$4,250 would come from. Mr. Norwood said that the Council has had a long standing policy that when they apply for state grants at the airport the match would come from the General Fund, so it would come from the General Fund. Councilman Luzius said that it was a small price to pay if they can save a life or lives.

Councilman Luzius asked if the LaGuardia Airport had a Wildlife Hazard Assessment. Mr. Vardiman said that he did not know but could find out. Councilman Luzius said that if the City could pay \$12,000 a month for a not-so-good public relations firm they could spend \$4,250.

Michael Allen Peters, 640 West Lee Blvd., asked if the study would mandate other measures to keep the birds away from the airlines. Mayor Wilson said that it was very possible. Mr. Peters said that if they did nothing, that was asking for more lawyers to invade Prescott.

Ed Parry, 228 Park Avenue, said that he flew airplanes for 59 years and birds can affect more than just the airlines. He said that it was frightening to have a bird strike on a small plane. He said that he understands why they were frustrated but they all need to sit back and voice their opinions, but in the end do the right thing.

Councilman Bell said that they could do it, but it was not going to stop one bird strike. Councilman Roecker said that if they took that money and put two more cops on the street they would save more lives as they lose 40,000 Americans every year on the highways.

**COUNCILMAN BELL MOVED TO AUTHORIZE THE APPLICATION FOR A FEDERAL AVIATION ADMINISTRATION (FAA) GRANT PROJECT IN THE AMOUNT OF \$85,000 (\$80,750.00 FEDERAL SHARE AND \$4,250.00 CITY SHARE) FOR CONDUCTING AN FAA**

**MANDATED WILDLIFE HAZARD ASSESSMENT AT ERNEST A. LOVE  
FIELD; SECONDED BY COUNCILMAN ROECKER; PASSED  
UNANIMOUSLY.**

**V. ADJOURNMENT**

There being no further business to be discussed, the Regular Voting Meeting of the Prescott City Council held on August 25, 2009 adjourned at 4:22 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 25th 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