

PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, NOVEMBER 10, 2009
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL held on TUESDAY, SEPTEMBER 8, 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:** Rabbi Berkowitz, Temple B'rith Shalom

Rabbi Berkowitz gave the invocation.

◆ **PLEDGE OF ALLEGIANCE:** Councilman Roecker

Councilman Roecker led the Council and audience in the pledge of Allegiance.

◆ **ROLL CALL:**

PRESENT:

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

ABSENT:

None

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

Mr. Norwood reminded all that the following day was Veterans Day and at Veterans Memorial Park at Sheldon and Gurley, there would be a rededication. The plaque was removed during construction by ADOT and their crews, and thanks to Mr. Nietupski and Mr. Mattingly, they were able to recover it and have rebuilt it back.

I. CONSENT AGENDA

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

COUNCILMAN LAMERSON MOVED TO APPROVE CONSENT AGENDA ITEMS I-A THROUGH I-D; SECONDED MY COUNCILWOMAN SUTTLES; PASSED UNANIMOUSLY.

- A. Approve an increase of the Guaranteed Maximum Price (GMP) of the CM@Risk agreement for the Elk's Opera House Restoration by \$170,000.00.
- B. Approve a Plat Revision to create one new lot within the Idyllwild Tract subdivision for a water pumping station, APN 111-08-030 comprising .68 Acres; Owner: Roy and Donna Bennett, Agent: Jeff Low, City of Prescott Capital Projects Manager. (RP09-004)
- C. Adopt Resolution No. 3995-1025 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, approving a Sewer Service Reimbursement Agreement between Chad W. Beyea, Jason R. Beyea, Patrick Lee McCarty, Harry and Reeda McCarty, and Laurentian Development, Inc. and the City of Prescott, and authorizing the Mayor and staff to take any and all steps deemed necessary to accomplish the above.
- D. Approve minutes of the Prescott City Council Workshop of October 13, 2009, the Joint Public Workshop with Water Conservation/Safe Yield Committee of October 15, 2009; the Regular Voting Meeting of October 27, 2009 and the Study Session of November 3, 2009.

II. REGULAR AGENDA

- A. Public Hearing and adoption of Ordinance No. 4717-1014 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, amending the Zoning Map pertaining to that certain property located at the northwest corner of Whipple Street and Merritt Street from “Multi-family Medium (MF-M)” zoning to “Neighborhood Oriented Business (NOB)” zoning. (RZ09-002; Owner: Bill Resnick, Resnick Family Partnership; Agent: Tom Terry, Architect)

Mr. Guice noted that this was a **continuation** of the Public Hearing and consideration of the ordinance, to rezone property near Whipple and Merritt. Included in packet is a letter from Dr. Resnick requesting that the rezone be approved without a site plan. The Traffic Coordinating Committee met twice,

Committee met twice, on October 1, 2009 and in a special meeting on October 29, 2009. They provided a copy of the report from their discussion, and the Chairman of the Traffic Coordinating Committee was present for any questions.

The Planning & Zoning Commission did affirm recommendation by a vote of 4-2 to recommend the approval of the rezoning with the condition that there not be any direct access off of Whipple. They have provided two suggested actions for their consideration. Version A would not have a condition of site plan; Version B would have substantial compliance with site plan.

Mr. Nietupski presented the Traffic Coordinating Committee's discussions.

Mr. Nietupski said that it came to his attention the past week that the Ungers, the property owners on Merritt, were not at the Traffic Coordinating Committee of October 29, 2009, as they were not aware of it. It was posted, but they were not specifically invited or meant to be excluded. They attended the prior meetings and at the meetings of August 6, 2009 and September 3, 2009, when this was discussed.

The Ungers were at the October 1, 2009 meeting and did state their concerns. The October 29, 2009 meeting was scheduled a week in advance of their normally scheduled first Thursday of the month, which would have fallen on November 5. That was the deadline for the packet information for this meeting so the meeting was moved up one week to meet the deadline.

The specific charge for the Traffic Coordinating Committee at the October 29, 2009 meeting was to technically review the safest ingress and egress to the site, considering the location of the project and the bordering rights or way, and nothing more. The Ungers were provided with the recommendations, and the recommendations were ranked one to four, safest to least safe. The first one was no Whipple street access with full access off the alley onto Merritt. The second was right in access only on Whipple Street at the north side of the project with full access off the alley onto Merritt Street. The third recommendation was right in access only on Whipple Street at the north side of the site, right out access only on Whipple at the south side of the site with full access off the alley on to Merritt Street. The fourth recommendation would be a combination right in, right out access on Whipple Street, combined at the north side of the site with full access on to Merritt Street. In all cases, full alley access is recommended.

Councilwoman Suttles said that the big issue, at first, seemed to be how to get in and out of the property. Since then the Traffic Coordinating Committee and others have looked at it, discussed it and she thinks they are looking at it right now simply as a rezoning (A), and (B) if they want to take the rezoning and site plan. She feels that the Traffic Coordinating Committee stated that the rezone request could be voted on its own with the access and merits voted on by staff. They all have a different opinion. She does not think it is their charge, and she is in favor of version A, just the rezoning.

Councilwoman Lopas thanked the Traffic Coordinating Committee for putting the report together. She agrees with either one or two recommendations. She does not favor plans that are just a rezoning without knowing what is in there. There are a lot of things that fall into business oriented district. Having a more definite plan gives assurance to the residents, as well as an expectation. Things change down the road. She would hate to see this come back to a new council without background.

Councilman Roecker said that there are five curb cuts right now. If rezoning does not go through and stays multifamily medium, he asked how the ingress and egress be handled. Mr. Nietupski said that under the current conditions, with existing curb cuts, it could be developed as is.

Councilman Roecker asked with all of those curb cuts, could cars be turning right off of the property and left on Whipple into the property. Mr. Nietupski answered said that turning left off of Whipple would be illegal, but the chances are they may try it anyway.

Councilman Roecker asked if the adopted safety design standards for access were an issue, or if the Traffic Coordinating Committee said that the comings/goings off of Whipple were safe. Mr. Nietupski said that under a redevelopment scenario, from the staff's perspective, the ASHTO requirements for visibility would be required with any change. Appropriate site visibility triangles would be required to assure that that was there and maintained in perpetuity.

Councilman Roecker asked if Dr. Resnick had talked to the property owners to the north. He wondered if there was an agreement to provide the necessary site distance. Dr. Resnick, 1360 Winfield Circle, said that the neighbor to the north is Dr. Moore. He has talked with him periodically. He is quite cooperative and willing to work out any issues regarding site distance, but he does not have a specific agreement with him.

Councilman Roecker asked if the site distance thing will have to be worked out as the property is developed. Mr. Nietupski said that it would be under scenario #4.

Dr. Resnick said that it was a general plan with no specifics.

Councilman Roecker asked about the issue of sidewalks and if they were required or not. Mr. Nietupski said that as far as the City Code for offsite improvements, it specifically states that they are required where the property abuts the Right of Way.

Councilman Roecker confirmed that there was no requirement for the developer to extend the sidewalk. Mr. Nietupski said not to the alley.

Councilman Roecker asked when an alley becomes a road. Mr. Nietupski said that alleys are usually narrower. In this case, they do provide secondary ingress and egress, or the opportunity for it. It also provides the opportunity for utility service, etc.

Councilman Luzius said that he thinks it is saddening that the Ungers were not notified about the change in the Traffic Coordinating Committee meeting. It was well known of their interest in the project. He is on City Council and he does not come in the office every day. Anyone with any issues would have to check the board every day. He does not think that it was fair. It is another instance where the City and developer gangs up on the little people and does not give them an opportunity to have a voice.

He said he was adamantly against this. He drove down through the Lowe's construction area and can see what a disaster that is. That is another issue where the City and a developer wants to impose whatever they want to impose on a neighborhood and they get away with it. In this case he thinks this is a bad move to rezone. Dr. Resnick made the purchase with the land and the cuts and now finds that he made a mistake and he expects the Ungers and the people in the neighborhood to rectify the mistake.

Councilwoman Suttles disagreed with Councilman Luzius's comments.

Mayor Wilson believes that the web site is still operational and there have been no major outages.

Councilwoman Suttles asked if they have ever had rezonings done without site plans. Mr. Guice said yes, it has been a situation a number of times. The property along Highway 89 was rezoned to commercial; also, portions of the property on Highway 69. He said that is a discretionary aspect of a rezoning. Councilwoman Suttles said that she wanted to make sure it has been done

been done before.

Councilman Lamerson asked if Mr. Resnick had the right, with or without this rezone, to build, and what he had a right to build. He asked if it would be in the best interest of safety on that street.

Mr. Guice answered that it was zoned for multifamily medium, it allows for density up to about 21 units to an acre. Mr. Resnick has the ability to develop the property, under current zoning for single family residence, manufactured homes or 19 apartments or about 3 triplexes.

Councilman Lamerson asked if he had to come before Council to do any of those builds. Mr. Guice said that he does not see the Council needing to be involved in the approval other than a Water Service Agreement, depending on the total number of units.

Mayor Wilson said that he did not think that it was the same thing as rezoning to commercial. He thinks that Neighborhood Oriented Business gives them quite a bit of latitude concerning what can be put in there, and he is a little scared of that. On the other hand, he also understands Councilman Lamerson's argument regarding the rights of the property owner. In balancing of the safety issue, he would be in favor of the rezoning if they put in a stipulation of right in and right out on northernmost part of the property.

Councilman Roecker asked Dr. Resnick if he saw any downside on his behalf to require a site plan to go along with the zoning. Dr. Resnick said that there are certainly downsides. They made a decision to change because the access in and out has contributed to every one's time to figure out what the best thing would be. It is their hope that at some point he can work with the Ungers to arrange an agreement to purchase the property or something else. He has been in Prescott for six years and is a physician at the hospital. He can promise it will be something reasonable, attractive and appropriate for the area.

Councilman Roecker asked if he had tried to buy the Unger's property. Dr. Resnick said yes, several times. Councilman Roecker asked if it was just a matter of negotiation. Dr. Resnick said it was.

Councilman Roecker asked if thought that the site plan would change dramatically if he were successful in buying his property. Dr. Resnick said that he did not know whether they would change dramatically, but that corner allows different building configurations. The plan would change to some degree.

Councilman Roecker asked if they passed Version A without the plan, if there

there were elements in the site plan that are beyond technical issues and would require the site plan to come before the Council after zoning is approved.

Mr. Guice said that it would depend on whether Dr. Resnick wanted to plat and sell individual parcels. If so, that would come back. If it is going to be an apartment complex, it would be going in the direction of a commercial building permit. The site plan would be reviewed by all departments, but not before City Council.

If there are technical issues related to the site plan, he has the authority to take it to the Planning & Zoning Commission for their weigh in. Mr. Kidd said that the sale issue cannot be considered as part of the rezoning consideration.

Mr. Nietupski wanted to make sure that it was clear that the Ungers were not excluded from the process; the Traffic Coordinating Committee heard their concerns at the October 1, 2009 meeting. They did have input and their objections were heard.

Councilman Roecker what the Planning & Zoning vote was. Mr. Guice said that it was 4-2. From Mr. Scamardo's perspective none of the commissioners had a concern about the change in zoning with the condition that the site plans not allow for direct access onto Whipple.

Councilman Roecker noted that the Traffic Coordinating Committee said access onto Whipple is not dangerous.

Councilman Lamerson asked how many apartments could be built. Mr. Guice answered, around 19.

Councilman Lamerson asked if he had to grovel for permission for road entrance. Mr. Guice said no, he has a legal right to five curb cuts and the use of the alley.

Councilman Lamerson asked if they could end up with a lot more traffic. Mr. Guice said that he would prefer to have Ian Mattingly address the question.

Councilman Lamerson said that he is concerned with the safety issue on that small stretch of road and which proposal has the least significant impact with the oncoming traffic coming up the road.

Mr. Mattingly said that if there are five driveways; the traffic volumes might be different than what the rezoning would bring. There would be a lot more conflict points. Cars would be coming and going at five different points

instead of consolidated in one or two points. There would be a lot of curb cuts close together, which would be unexpected and less safe than one or two consolidated driveways.

Councilman Lamerson confirmed that he had the right in the code to do that, and he is coming before Council to decrease potential hazards.

Mayor Wilson said that it is not clear. If they looked at the site plan before, the traffic pattern will be different for a medical building.

Councilwoman Suttles asked if this was simply a zoning change that they are looking at. She asked where it stops and when they take care of city business and allow staff to take it on.

Mayor Wilson said that it was called delegation and that they had that discussion many times. It depends on their comfort level with technical issues and money.

Steve Blair, 1802 Northside Drive, said that the man had a right to ask for a rezone, but not a given right to get the rezone. It has to be tied to a site plan specific. He has not heard that it would not be medical, and that draws more parking spaces than a regular office building would. He wanted to hear from Dr. Resnick that there will be no medical. Also, when they start looking at infrastructure improvements Mr. Guice commented that he only had to go to the end of the property. Mr. Blair disagrees and said that the City Council could ask for more. They just heard that he wants to use the alley for access. He wondered why they would stop the sidewalk and curb at the property line and allow people to move into the alley without any infrastructure improvements on Merritt Street up to the alley.

They are hearing from the Traffic Coordinating Committee on ingress and egress, but they are not hearing that any rezoning has to have an area meeting. There has not been an area meeting. The people on the alley to the west have not had a chance to weigh in.

From a Planning & Zoning standpoint, when they start talking about rezonings, the public edification of what they are going to do with the Ungers, if they decide to stay at that location, dictates in the code that they will be shielded by a screening wall and vegetation because their zoning will not change. When the Council decides to do what they are going to do, they should make sure they are touching all of these things, as far as the code. If they do not like the code they should bury it in a box and put it underground. As long as they have a code by the City of Prescott called the General Plan and Zoning Code, they need to uphold the Unger's right to have a residential house with screening, noise buffers and all the things that they decide not to

that they decide not to sell. Dr. Resnick has a right and has to work around the elements. He asked the Council to table it and send it back to Planning and Zoning and look at the different elements. This is a pie that has been in the oven and it is not baked.

Mayor Wilson asked about the requirement for an area meeting. Mr. Guice said that it is discretionary on the developer's part. They did not require one on this project because there are very few numbers of people who could be impacted. There are three to four on the west side of the alley and the Ungers. It is not necessary to get the work out when the staff has worked with all of the property owners. All of those on the west side have received notice and two of them have signed opposition to rezoning. The third one withdrew her opposition.

Mayor Wilson said that there was an assertion that the Council could require a sidewalk along Merritt between Whipple and the alley and asked if they could do that as a condition of rezoning. Mr. Guice said that he would defer to the City Attorney. Usually the application of offsite improvement ordinance is for frontage properties only. The Ungers currently park their truck in that location.

Mr. Kidd said that it was a technical issue in the code. He did not have that section in front of him, and he would have to look at it. A lot is done administratively through the plan review process.

Mayor Wilson said that he believes the residential screening comes at the time of site plan. Right now they are not talking about site plan, they are talking about rezoning. Mr. Guice said that it was correct.

Councilman Roecker asked Mr. Scamardo about the value of sending it back to Planning and Zoning.

Mr. Scamardo, 314 Double D, member of the Planning and Zoning Commission thanked Mayor Wilson, Councilman Roecker, Councilman Luzius and Councilman Bell for their service. There was an overlay district in the General Plan that specified that consolidation was something they would like to see rather than five to six parcels. This was something that this developer did do, which eliminated a need for the curb cuts. When they look at it, and ask if it fits the General Plan, the answer is yes. If the question is should it be rezoned to Neighborhood Oriented Businesses, the zoning conformed to the General Plan that they were in favor of.

When they got into the discussions on if it was going to be medical offices, they would have to reduce the footprint of the building to increase parking spaces required. The heavy discussion they had was that it was on a curve and it would prevent a sight line of cars making a turn into the property with a

property with a street light coming up that they would not see until they would be at the apex of the curve. It settled that the best access was off of the alley. The first proposal called for access as the site plan showed, both right in/right out and it did not get a second; it got nowhere. The next proposal was for access off the alley only and it got a 4-2 vote.

Michael Allen Peters, 640 West Lee Blvd., said that if they rezone for the purpose of rezoning, then what they have done is created a residential declared area into a light business commercial area and they have talked about the aspect of parking. Maybe three to five residents who purchased their property, even though they abut the alley, they purchased their property to have their property rights unenfringed upon by commercial use of that alley way.

If they rezone it to have an increase in property tax benefits, he does not think that is the proper motivation. The motivation should be addressed with that area meeting. Those people's property rights, as well as those of the Ungers regardless of their style of living, does afford them an opportunity to have a declaration. Dr. Resnick knew before he presented this issue to City Council that it was zoned single family or residential. He bought it like that. They should let him do with it in maintaining the original declared residential zone, Do not change it to rezone for light commercial.

Carl Unger, 114 West Merritt, said that a few things have been said by the staff about the meeting that were not true. They were there the first time on the first of October. The only thing that was discussed was the traffic man held up a picture of the building. Dr. Resnick did not make him several offers to buy his property. Some of the City staff need to me fired for lying to the Council especially Mr. Nietupski and Mr. Guice. He feels like he has been discriminated. He does not live in the Council Chambers to see a flyer that was up for one day and he does not own a computer. A few days later he found an estimate, an appraisal on his property. Dr. Resnick found a guy who gave him an appraisal for \$60,000. The sooner they get rid of some of the staff, the better.

Barbara Vincent, 813 Second Street, across from the project said she has not been offered a wall, barrier, no one has offered to buy her property. She is concerned with the Ungers being eight feet away from their window and her property will be right on the border of the alley way development. She has had her gas meters hit by people who were living there in single wide mobile units. She does not know what is going in across the alley. She asked what would happen if he gets this rezoning and it goes to Planning and Zoning and they want to say he can put what he wants in there. He would not have to put up a barrier for her because she is not abutting the project, but she feels that she is. She is the only owner occupied resident on that street. She does not like this project. She would like to know what it is going

like to know what it is going to be and where will she go if it is rezoned and it goes to another department.

She said that she does not feel like she has any rights. She and the Ungers were adamant about attending the meeting that got switched on them. She believes what Councilman Luzius said, that it was criminal to do that. They knew that they wanted to be heard and they had a right and it was taken away, by a 24 hour notice. She knows that they have had rezoning before, on high 69 and 89. It is not in a narrow alley way with residents on one side of it. She thanked the Council for their time.

John Hanna, 2503 Willow Creek Road, asked if Mr. Resnick bought the property with the intent of getting the zoning changed. If so, maybe that was a mistake. He believes that staff tries to bully people around sometimes. He owned a piece of property and they pushed him into selling it. He was told by Mr. Moffitt that if he did not sell, they would tie it up.

As Council, they need to take a look at what is there. If he bought it with the intent to rezone and they are trying to force people to do it because of his status in the community that is a wrong outlook. He does agree that the piece of property needs to be changed to commercial if they change the whole section. It needs to be done in a different way and a different light.

Councilman Lamerson said that if they choose to vote to keep it the way it is, it does not mean they will not be back there next month when Dr. Resnick decides to build apartments, etc. as long as he is complying with the current City Code. Mr. Guice said not with respect to a site plan, a water services agreement only.

Councilman Lamerson said that if he comes in with affordable housing they have water set aside for that. He said that he has a right to develop.

Mrs. Unger, 114 West Merritt Street, read the definition in the LDC article 11.2.5 concerning abutting, which was having a common border with or being separated by an alley, an easement or a right of way. They need to be protected with residential standards. She asked why the code provides for residential protection along the borders for her, but not the alley where all the traffic is. The lady who withdrew her opposition, said that on condition that she gets her sound barrier, but that was not stated. That was not in the minutes either, but that is what she said. The definition of alley was a service or secondary means of ingress/egress to the service side of abutting properties.

They did attend some prior Traffic Coordinating Committee meetings. Their

Their item was not on the agenda so they did not get to speak. The October 1, 2009 meeting was interrupted and halted so they could receive the appraisal that Dr. Resnick was going to provide and make them an offer. He argued that he would get the appraisal if they pay half. It then came is at \$60,000 which they cannot even consider. They are still open for negotiation and discussion any time he is willing to do so.

They never spoke on their behalf at any Traffic Coordinating Committee meetings. The site plan says that for double frontage lots they need more setbacks and that has not been provided for. They are also not in compliance with the visibility at the intersection. The building will have to be set further back in order to meet the code requirements. Regarding the parking spaces, according to rezoning requirements, he is supposed to provide and meet at the time of applying and prior to coming to Council, he is to meet all of the requirements 9.8.4.B. Very few of those are met or indicated on the plan.

Even for retail parking, every 200 square feet requires a parking space – so it is inadequate. She said that they think based on what has been provided to date that the Council should not approve the site plan that is still up in the air.

It does not meet the General Plan where there is a conflict between homeowners and business, neighborhoods should come first. The Dexter Plan says that the eight lots on the east side of the alley should be combined to have adequate access which he needs the corner to widen the alley because the alley is 24 feet which can not be available once APS puts in their power poles. It will take 2 ½ feet away from there.

Rebecca Sittman, 489 Wolsey Drive, said she owns 815 Second Street and has since 1995. She has not lived there but it is her main income right now. Her work has been cut to two days a week and she depends on that rent. She has had that tenant for four years now. He enjoys the peace and quiet. She is concerned about what is going to happen and is really upset about it.

She thinks that there should be some type of barrier between the business and residential. She said that the properties would be devalued and asked who would want to buy a property next to a business.

Councilman Luzius asked if the traffic predicated on the fact that it could be medical buildings and that they may have 200-300 cars going down the alley.

Mr. Mattingly said that the staff has done trip generation for all the possibilities, including multifamily, medical and regular offices and condos.

Based on the worst case scenario it was determined that around 19-25 cars would be coming in the morning and slightly less turning out. That was the worst case, and the numbers went down from there. There were about 450 cars a day – over a 24 hour period if it was medical.

The Neighborhood Oriented Businesses would peak around normal peak hour times. If they brought in apartments, they might have cars coming and going at later and earlier times of day and heavier on the weekend. When he first looked at right in and right out, it met ASHTO standards.

Councilman Luzius said that he thought he had heard about 450 cars, and asked if that was cars or cars in/out. Mr. Mattingly said that 450 was the total trip generation in and out of the site.

Councilman Luzius said that it is a very small alley. He would hate to be located right next to the alley with 450 cars going in and out. He asked his fellow Council members how they would feel if it were happening in their neighborhood.

Councilwoman Lopas asked if they notice the property owners by the tax record. Mr. Guice said that there was a requirement to post the property, or advertise, or do direct mail. They did all three.

Councilwoman Lopas asked if there was any attempt to reach the tenants. Mr. Guice did not recall if they had. They did follow the statutory requirement to notice the property owner as of the last assessment.

Councilwoman Lopas thought that the City had a legal duty and also an ethical duty to the tenants. She proposed that they table this discuss until there is a neighborhood meeting, to talk with the actual residents. With the APS power lines coming in; she had business owners calling her to find out what was going on. Notices went to the property owners, but not the businesses. That is a problem they tend to get into. It is not right with those living there.

Mr. Norwood asked Council to vote the request down. He agreed with Councilman Luzius and said that this would take a supermajority and they do not have it. Sending it back to Planning and Zoning will not change anything.

Councilman Bell asked if Dr. Resnick decides to revert to what he can build without going through this process and goes to affordable housing, if barriers would be required.

Mr. Guice said no. Councilman Bell asked if he could then utilize the five curb cuts that currently exist. Mr. Guice said that it would depend on the

configuration of his proposal. He said that there is a barrier wall along the west property line.

Dr. Resnick asked Council to vote for this. He said there are a lot of subjective comments that have been made. There have been eight to nine meetings and the Ungers have been present at all of them. They have had subjective comments and Council has asked for objective findings from the Traffic Coordinating Committee and they have made recommendations. He has tried to address all of the issues in an appropriate manner. He hired an architect to generate the renderings needed by Planning and Zoning. He has gone through all of the steps. All of the experts have weighed in to say that it is an appropriate plan and requirements have been met. He feels that he is entitled to move this forward. He has made very generous offers to the Ungers throughout this process.

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

**COUNCILWOMAN SUTTLES MOVED TO ADOPT ORDINANCE NO. 4717-
1014 VERSION A; SECONDED BY COUNCILMAN LAMERSON**

Councilman Roecker asked if it did not seem right to tie the site plan to the rezoning so there could be further discussion. It may allow more time to allow the parties to negotiate concerning the development of the property.

Councilwoman Suttles answered that this was the second time they have looked at the project. It was brought up a few weeks ago and was then sent back to the Traffic Coordinating Committee. She asked how it would be different this time.

Mayor Wilson thought that Councilman Roecker was suggesting that the site plan come back to the Council for approval, as a condition of rezoning. Councilman Roecker said that he thought that was Version B.

Mayor Wilson said that it would actually be affirming the site plan. He felt that Councilman Roecker was saying that he wanted Version A with a condition that a site plan come back to Council. Councilman Roecker said that he wanted the site plan connected to the rezoning.

Councilwoman Lopas asked for clarification on what happens if this is voted down; and what the timeline would be for Dr. Resnik to bring this back.

Mr. Guice said that there were provisions in the City Code; he believes six months or 180 days unless there are substantial changes.

Councilwoman Lopas said that they would be tying his hands for six months. Mr. Guice said that they would take it back to the Planning and Zoning Commission if there are significant changes.

Councilman Lamerson said that they were not tying anyone's hands. No one has denied Dr. Resnick the right to build on his property. He has a right to build now. He is asking for permission to change that right. He is asking for buy-in with a potential idea. He has not formulated that idea fully. The opportunity is if they want to rezone the property now, or not. If not, he understands that. However, he can bulldoze it now. He is asking if the City would like something other than apartments.

Councilman Roecker said he can always do that. If they connect the site plan to the rezone and the site plan does not get approved, there could be further discussions with the neighbors and something might change to make everyone satisfied. The Council does have a responsibility to protect the residents.

Mayor Wilson said that he believed that Councilman Roecker was asking for a modification to the motion.

Councilman Lamerson asked if the zone change was approved and Dr. Resnick decided to develop his property commercially, if he would have to bring in a site plan for Council Approval.

Mr. Guice said that it would depend on how the motion is conditioned. The suggestions presented would be that he develop substantial conformance to the site plan. He is hearing that the Council wants the final call on the site plan. The Staff's approach was to tie it to substantial conformance to what they saw on the screen.

Mayor Wilson asked if Councilman Lamerson would consider modifying his motion. Councilman Lamerson said that the man needs to know whether he can get his job on the way or not. He will consider out of courtesy. Councilwoman Suttles also agreed.

Mayor Wilson said that they have a motion and a second, as modified that would tie the eventual site plan coming back to Council, rather than being handled by staff.

Dr. Resnick asked how that was different from Version B. Mayor Wilson said that they were not approving the site plan submitted. They are saying that when he eventually comes up with site plan, it will come back to the City Council for consideration and approval.

Dr. Resnick asked if along with that the zoning is going to be granted with final site approval. Mayor Wilson said that if it passes, the zoning would be changed, but site plan would have to come back to City Council for approval.

Dr. Resnick said that if approved, rezoning would go through, but the final site plan, when that occurs, would have to come before Council for further discussion. Mayor Wilson said that was correct. Dr. Resnick said that he was okay with that.

Councilman Luzius asked if it was approved and Dr. Resnick sells the property, if it would go with the property. Mr. Guice said the staff's interpretation would be that it runs with the land. If a different project is proposed, it would need to come back through rezoning process to remove that condition.

MOTION PASSED 6-1 WITH COUNCILMAN LUZIUS CASTING THE DISSENTING VOTE.

- B. Approval of expenditure for construction of SR 89A Granite Dells Parkway Traffic Interchange Project in an amount not to exceed \$17,095,996.12.

Mr. Nietupski said that it was for an authorization for the Traffic Interchange project. There are 495 days provided for the construction phase, from the Notice to Proceed, which has not been issued. That time is also augmented by 180 days for landscape establishment to ensure that it grows. In the ADOT standards specification provisions for liquidated damages in the amount of nearly \$2400 per day for projects over \$10 million. The ADOT permit is nearing release. AP&S has made progress in setting up their offices and building necessary for construction management. Pending that release of that permit, work on the storm water pollution prevention plan, can begin quickly. The preconstruction meeting is scheduled of November 23, 2009.

Councilman Bell said that he asked that it be pulled from consent agenda because of the amount of money and to make sure there were liquidated damages connected with it. That satisfies his questions.

Councilman Luzius said that there were many citizens wondering why they were doing this at this time. He asked if there was not a lawsuit that stipulates that they need to build within a certain timeframe.

Mr. Nietupski said that there was a lawsuit over the development of property in the vicinity of that interchange, the Country Dells subdivision. There was a settlement that the interchange be built by the City. There is an IGA with

an IGA with Yavapai County which also speaks to the construction of the interchange by which the County will contribute \$1.5 million toward the cost of the project. There is also a Development Agreement with Granite Dells Estates Parkway that refers to the construction of the interchange. There are three agreements in place that provide for this.

Councilman Luzius asked what the amount was that the County was contributing. Mr. Nietupski said \$1.5 million. The State is contributing \$1 million.

Councilman Luzius asked if the other developer that won the case against the City contributing anything. Mr. Nietupski said that they have an obligation if \$480,000.

Councilman Luzius said that they are looking at \$2 million. He asked if that was subtracted from the \$17 million. Mr. Nietupski said that it was closed to \$3 million. Councilman Luzius said that they are really looking at a cost to the citizens of \$14 million.

Mr. Nietupski said that there are other project costs beyond the construction costs. There are the construction management costs which the ADOT contribution was for. Costs associated with construction would pertain to the Country Dells \$480,000 and Yavapai County contribution. \$2 million would reduce the \$17 million.

Mr. Kidd said that regarding the recent lawsuit settlement, there were some bidding specification that provided for time frames for construction. That is one other contract issue that requires the construction as well.

expenditure for construction of SR 89A Granite Dells Parkway Traffic Interchange Project in an amount not to exceed \$17,095,996.12.

COUNCILMAN BELL MOVED TO APPROVE THE EXPENDITURE FOR CONSTRUCTION OF SR 89A GRANITE DELLS PARKWAY TRAFFIC INTERCHANGE PROJECT IN AN AMOUNT NOT TO EXCEED \$17,095,996.12; SECONDED BY COUNCILWOMAN SUTTLES; PASSED UNANIMOUSLY.

- C. Approval of Official Canvass of Election Results from the General Election of November 3, 2009.

MOTION: **MOVE** to approve the Official Canvass of Election Results from the General Election of November 3, 2009.

Ms. Burke reviewed the results of the Official Canvass of the November 3, 2009 General Election, which were:

NUMBER OF REGISTERED VOTERS:

24,996

NUMBER OF BALLOTS CAST IN THE ELECTION:	13,227
VOTER TURNOUT PERCENTAGE:	52.9%

COUNCIL

Blair, Steve	6,761
Hanna, John	7,609
Linn, Tammy	7,027
Luzius, Robert	5,950
Peters, Michael Allen	4,370

<u>WRITE-IN CANDIDATE</u>	2,201
Katan, Paul	2,140

Proposition 400 – Home Rule

Yes	8,886
No	3,363

Proposition 401 – Taxpayer Protection Initiative

Yes	8,320
No	4,221

COUNCILWOMAN SUTTLES MOVED TO APPROVE THE OFFICIAL CANVASS OF THE GENERAL ELECTION HELD NOVEMBER 3, 2009; SECONDED BY COUNCILMAN BELL; PASSED UNANIMOUSLY.

D. Recess into Executive Session.

MAYOR WILSON MOVED TO RECESS INTO EXECUTIVE SESSION; SECONDED BY COUNCILMAN LUZIUS; PASSED UNANIMOUSLY.

The Prescott City Council recessed into Executive Session at 4:32 p.m.

III. EXECUTIVE SESSION

- A. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, pursuant to ARS §38-431.03(A)(1).
 - i. Annual review of City Clerk.
 - ii. Annual review of City Attorney.

IV. POST EXECUTIVE SESSION

The Prescott City Council reconvened into Open Session at 5:15 p.m.

- A. Possible amendment to Employment Agreement with City Clerk.

COUNCILWOMAN LOPAS MOVED TO EXTEND THE EMPLOYMENT AGREEMENT WITH THE CITY CLERK, WITH THE EXCEPTION THAT IT WILL TERMINATE JUNE 30, 2010, TO BE CONSISTENT WITH OTHER EXECUTIVE MANAGEMENT TEAM MEMBERS AND NO SALARY INCREASE; SECONDED BY COUNCILMAN ROECKER; PASSED UNANIMOUSLY.

- B. Possible amendment to Employment Agreement with City Attorney.

COUNCILWOMAN LOPAS MOVED TO EXTEND THE EMPLOYMENT AGREEMENT WITH THE CITY ATTORNEY THROUGH JUNE 30, 2010, DELETING THE LAST SENTENCE TO CLAUSE #1 ON THE AMENDMENT, AND NO SALARY INCREASE; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

V. ADJOURNMENT

There being no further business to be discussed, the Regular Meeting of the Prescott City Council held November 10, 2009, adjourned at 5:17 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 10th day of November, 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