

PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, APRIL 27, 2010
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL held on TUESDAY, APRIL 27, 2010 in the COUNCIL CHAMBERS located at CITY HALL 201 SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

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

◆ **INTRODUCTIONS**

◆ **INVOCATION:** Pastor John Chanillor, Heights Church

Pastor Chanillor was not present; Councilman Hanna led the invocation.

◆ **PLEDGE OF ALLEGIANCE:** Councilman Blair – introducing the Central Arizona Young Marines

Councilman Blair introduced The Young Marines who posted the colors and led the Council and audience in the Pledge of Allegiance.

◆ **ROLL CALL:**

PRESENT:

Mayor Kuykendall
Councilman Blair
Councilman Hanna
Councilman Lamerson
Councilwoman Linn
Councilwoman Lopas
Councilwoman Suttles

ABSENT:

None

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

City Manager Steve Norwood noted that the City had hosted the Whiskey Off-Road race. He said that there was a great turn out and he thought that every hotel room was full and the restaurants did well. The race went from 750 entrants last year to over 1,000 this year. This is one of the events from which the City

was seeing the impact. Next weekend would be another good turnout for the Whiskey Row Marathon, with over 1000 entrants.

I. PROCLAMATIONS

A. May 1, 2010 as *Loyalty Day*

Councilman Linn read the proclamation and presented it to VFW Post 541 whose logo was vets helping vets.

II. PUBLIC COMMENT

A. Bob Luzius re changes to City Charter.

Mr. Luzius was ill and not present.

III. PRESENTATIONS

A. Introduction of new businesses.

Susan Cohen of the Prescott Chamber of Commerce, 445-2000 www.prescott.org introduced the following businesses:

▶ City of Prescott, Antelope Hills Golf Course, new General Manager and golf pro Mac McCarley.

Mr. McCarley said that Antelope Hills had a proud history of being a member of the Chamber for many years. He noted that Antelope Hills Golf Course was there to provide affordable, quality golf recreation for citizens and tourists. They were getting a new phone system and he did not know what the phone number was. It was called an EZ Links reservation system that would be up by Saturday. It would allow their golfers to call in 24 hours a day and make a tee time at Antelope Hills Golf Course. It would alleviate much of the staff pressure while waiting on customers. The system would allow them to have a more extensive database for marketing. Information concerning the golf course was available at Prescott-az.gov

▶ Sages Healing Center, owner by Dr. Damon and Dr. Kathryn Sage. Dr. Sage said that he was a licensed acupuncturist and his wife was a Naturopathic physician. They were a primary care facility open to working with all members of the quad city area, especially with diabetes and lower back pain. They were located at 1101 East Gurley, next to Red Arrow Realty and Compass Bank. Their phone number was 458-6748 or web site www.sageshealingcenter.com. Their main focus was helping people in the Quad Cities get healthy again.

▶ Olive U was in Bashford Courts. The owner could not attend, however Bev Shaw was there to represent the business. There were over 45 balsamic vinegars and olive oils. They were on the 2nd floor; their phone number was 928-778-2337 with a web site address of www.oliveunaturally.com

▶ Bo Tech Communications was introduced by Renee Mezilla, a Michigan based company that now has a local office in Prescott. They engineered software to increase business productivity and profitability. Call 928-237-9800 or log on to their web site at www.botech.net.

▶ RES Contracting, Ed and Connie Stahl owners; their web site was www.prescottbuilder.com. They had been building energy efficient custom homes since 1987. For the past four years they had been building energy star homes and were currently building a home to be Leadership in Energy and Environmental Design (LEED) certified. Most of their work came from referrals. Their business had slowed with current economic conditions but they have kept jobs under construction and are optimistic about the future. They have had a reputation for energy efficiency even before it was popular. Their phone number was 776-0301.

▶ Northern Arizona Council of Governments, Terri Drew, Regional Director was a six year member of the Chamber Board, and Ginger Johnson from Yavapai College, who does custom training programs, spoke about a new division.

Ms. Drew introduced the Business Assistance Center, developed and designed to assist Prescott area as well as Yavapai County businesses with office facilities and job training grants.

Ginger Johnson of Yavapai College would be the primary partner at the center. There was a dedication on Friday from 10:00 am – 12 noon. A plaque will be partly dedicated to the City for their support. The dedication would be to grow the center into the technology park coming to the area.

Ms. Johnson, 221 North Marina Street, 778-1422, said the center had two private conference rooms, a training room, WIFI and broadband.

- B. Presentation by Community Garden Committee re their plans for a community garden.

Rebecca Doyle, Agricolgy instructor at Prescott College, announced the plan for a community garden. They would like to use the land at the Rodeo Grounds on Gail Gardner Way and would call it the Prescott

Victory Garden, expanding on the WWII Victory Garden, where members of community could apply for plots.

Anna Trujillo, an undergraduate at Prescott College, said that as part of her studies she met a group planning the Prescott Victory Garden. She was so excited that she ran out and told everyone that she knew and met. She had two reactions from everyone. The first was the excitement behind the opportunity to have a space for an individual to grow fresh vegetables. The second reaction was the excitement for opportunity to be part of a community group, centered outside in a beautiful place and sharing knowledge of growing food. Another comment was that “the land that the city of Prescott was built upon was once a flourishing food system.” She had a lot of people coming to her about the garden and said that people were ready for it.

Collene Sorenson, Northern Arizona grad student involved in the project, said this was her thesis research. She showed a design put together by Barnabus Kane of the land they had chosen for 60 10x10 plots. The main focus for the land was education. The community needed to think about growing vegetables in a desert. The Garden’s focus would be on rainwater harvesting, soil building, composting and learning how to grow in an arid area.

She said that she knew that the garden had to be beautiful and inviting. They have a garden committee with four directors and nine members. They heard that there might be two obstacles, finances and water. They were working on a nonprofit status so they would be able to take donations. She spoke to JC Trujillo about doing rain water harvesting off of some of the metal roofs. They had a vision for the State of Arizona to be the garden that was run by harvested rain water. They saw the project as an opportunity, especially for children, as they move towards stewardship of the land.

C. Report by Chairman Gillis of the *Prescott: The Arizona Centennial City Committee*.

Barbara Gilliss noted that the state commission had determined that instead of holding a two year celebration it made sense to run it from September 2011 through 2012. It made Prescott the principle kick off city. The State Centennial Committee was planning to have, at their expense, a series of “Best of Arizona” festivals in the three cities that have been capitals of Arizona.

She would like there to be a strong relationship between the committee and the new tourism department, especially since there was not funding for the committee from the Bed Tax.

They still very much needed Council involvement and support in getting it off the ground. Their web email address was www.prescottaz100th@gmail.com for those interested in volunteering.

Councilwoman Linn said that a fact sheet with dates and timelines would be beneficial. She asked if the State had a template for her to use as to what needed to be done. Ms. Gilliss said that the state had a 44 page toolkit.

Councilwoman Linn said that she was willing to help if she knew exactly what the committee was doing. Ms. Gilliss asked for the okay to have their own website.

Councilwoman Suttles asked Councilwoman Linn how they would reinstate the subcommittee. Councilwoman Linn said that they needed to think about that. Ms. Gilliss agreed.

Councilwoman Linn said that people would contact the City to participate.

Councilwoman Suttles asked if the County and City were counter productive by each having a committee. Ms. Gilliss said that they were working closely together. The County was doing everything outside of the City of Prescott. If the event was going to take place in the City then it would be up to the City to advertise and support it.

Councilwoman Suttles said that if they could partner on anything, it would be good. Ms. Gilliss said that they had already agreed to link websites.

IV. CONSENT AGENDA

Mayor Kuykendall pulled Item A from the Regular Agenda so that more work could be done on it.

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

Councilwoman Suttles requested that Item B of the Consent Agenda be pulled for further discussion.

COUNCILMAN HANNA MOVED TO APPROVE CONSENT AGENDA ITEM IV-A AND IV-C THROUGH IV-E; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

- A. Appoint Councilwomen Suttles and Linn and Councilman Hanna to the Prescott/Yavapai Enterprise Zone Commission.
- B. Approve an increase of \$25,000.00 to the Construction Manager at Risk contract between the City of Prescott, the Elks Opera House Foundation, and Haley Construction, changing the contract from \$1,409,032.00 to \$1,434,032.00. (100% private/grant funds)

Councilwoman Suttles asked how much the grant was for from the Arizona Department of Commerce, Main Street Program. Mr. Fenech said it was \$15,000. Councilwoman Suttles asked if he got the \$25,000 by combining their \$15,000 and \$10,000 from the Foundation. Mr. Fenech said yes.

Councilwoman Suttles asked what the City of Prescott paid at the Elks. She asked if they insured the building, paid for lights or paid for staff. Mr. Fenech said that for the past ten years the City had funded the operating expenses, payroll, utilities, expenses for office supplies and various line items common to most budgets, around \$130,000 to \$175,000 per year.

Councilwoman Suttles asked if there would be someone marketing for the Elks when it opened or would it fall under the tourism group. Mr. Fenech said that the May 31 date on the contract was the close of the construction. The Theater would open on the 24th. They had budgeted for expenses. There was a Performing Arts Fund that would be used to bring in performers for the theater.

Councilwoman Suttles said that she was trying to figure out when it was going to end and thanked everyone for their help.

COUNCILWOMAN SUTTLES MOVED TO APPROVE AN INCREASE OF \$25,000.00 TO THE CONSTRUCTION MANAGER AT RISK CONTRACT BETWEEN THE CITY OF PRESCOTT, THE ELKS OPERA HOUSE FOUNDATION AND HALEY CONSTRUCTION, CHANGING THE CONTRACT FROM \$1,409,032.00 TO \$1,434,032.00 (100% PRIVATE/GRANT FUNDS); SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- C. Adopt Ordinance No. 4742-1039 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, accepting a water line easement from Dr. Brian Schilperoort, owner of Centerpointe West Medical Center.

- D. Approve extension to the unit price contract, per bid specifications to Traffic Safety, Inc., of Prescott Valley, Arizona, in the total amount of \$130,995.92 for annual pavement marking.
- E. Approve the Minutes of the Prescott City Council Special Meeting of April 6, 2010; the Workshop of April 13, 2010; and the Regular Voting Meeting of April 13, 2010.

V. REGULAR AGENDA

- A. Adoption of Resolution No. 4014-1044 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into a Supplemental Intergovernmental Agreement (“IGA”) with the Town of Prescott Valley clarifying and memorializing the authority, procedures and responsibilities of Prescott and Prescott Valley for administration of the requirements and costs of the Big Chino Water Ranch project and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

ITEM A WAS PULLED FROM THE AGENDA FOR FURTHER DISCUSSION.

- B. Adoption of Ordinance No. 4743-1040 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, accepting the dedication of certain roadway right-of-way within the City of Prescott and referred to as a portion of State Route 89 between Overland Trail and Aven Drive and Sheldon Street from its intersection with Gurley Street westerly approximately 400 feet, for the operation and maintenance of the former ADOT highway system and authorizing the Mayor and City staff to take necessary steps to complete acceptance and dedication as a City of Prescott public roadway.

Mr. Nietupski noted that the dedication was a result of an Inter Governmental Agreement (IGA) first passed in 2002 and then amended four times. The IGA’s were for several projects to improve highway facilities in and around Prescott. This was the completion of the obligations under the IGA and the City’s acceptance of this portion of right of way would finalize all of those projects that were contemplated and had been completed. This portion of roadway did become the City’s responsibility for operation and maintenance.

This was right of way under another JPA which was approved under Resolution 3666 in April 2005. Provisions were made for the multiuse path that existed within the ADOT Right of Way. The City contributed \$177,000 toward its construction. By that IGA it would become the City’s responsibility to maintain, operate, sign, irrigate, and light.

Councilman Blair asked if the bridge was still under State control. Mr. Nietupski said yes.

Councilman Blair noted that over the past five years they had added it to their road infrastructure and asked how much it cost the City to maintain. Mr. Nietupski said that in the last few years Field Operations had a decline in personnel and he could not give him a specific number. He thought that Mr. McDowell would have more of that information.

Councilman Blair said that the City should approve another ¼ percent sales tax for road maintenance for added lane miles.

Mayor Kuykendall asked if the bridge construction further north would become City of Prescott responsibility. Mr. Nietupski said that there were no plans for that to become City right of way.

Councilman Lamerson thanked Councilman Blair for bringing the issue up. He said that they had difficulty taking care of the roads with a 1% increase. He wondered if they should continue to take roads over from the State.

Councilman Blair asked if the City owned Willow Lake Road from the Highway to Willow Creek Road. Mr. Nietupski said yes. Mr. Blair noted that the City was getting roads from the State and County and the City's revenues were getting cut.

Councilman Hanna asked what happened if they did not accept them. Mr. Nietupski said that it was a commitment under a JPA. The State of Arizona had the ability to abandon a state highway without any approval by the city. In that case, the State contributed to the improvements for the roadway system and requested that the City consider that contribution. That happened in other jurisdictions as well.

Mayor Kuykendall said that generally when they inherit the roads they were at a quality condition. Also, they needed to continue to make the public aware that the City had 500 miles of roads in Prescott to maintain. The deterioration was about three times as bad as usual, last winter. It was a major burden on the City.

COUNCILMAN BLAIR MOVED TO ADOPT ORDINANCE NO. 4742-1040; SECONDED BY COUNCILMAN HANNA; PASSED UNANIMOUSLY.

- C. Adoption of Resolution No. 4016-1046 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott Central Garage to enter into an Intergovernmental Agreement (IGA) with the Groom Creek Fire District (G.C.F.D.) to allow City of Prescott to provide preventative maintenance services to the G.C.F.D. fire apparatus and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

Mr. Fenech said that the City of Prescott was approached by Groom Creek Fire Chief, Chief Bentley, and he was there to answer questions if any. They requested that the City of Prescott look at providing maintenance for their fleet, which consisted of two water tenders, chipper, chipper dump truck and 2006 Harvester engine. They asked the City because the Central Yavapai Fire Department moved to a new location farther away. The Prescott location was more central with competitive rates at \$95/hour. He constructed an IGA which was looked at by the Legal and Risk Departments. They had been spending about \$13,000 a year on maintenance. It gave the City an opportunity to raise a little more revenue. Charlie Potts, the Fleet Superintendent was there to answer any questions.

Councilman Blair said that he assumed that the IGA would waive all liability to the City for repairing someone else's vehicles. He wanted to make sure that the money that was raised offset the operations of the garage.

Councilman Hanna asked if they had the manpower and time with the cutbacks that the City has had. Mr. Potts said yes.

COUNCILWOMAN LINN MOVED TO ADOPT RESOLUTION NO. 4016-1046; SECONDED BY COUNCILWOMAN SUTTLES; PASSED UNANIMOUSLY.

- D. Approval of Preliminary Plat for Gardner Cove, A Planned Area Development comprising 16 townhomes located on Gail Gardner Way, east of Pike Place, and Water Service Agreement No. 10-004 in the amount of 3.85 ac. ft., Owner and Agent: Rick Radovich of Advanced R.E. Management, APN: 115-08-034C, File No. PP10-001.

Mr. Guice noted that the access was one-way off of Gail Gardener Way. The applicant was requesting waivers for rear and side yard setbacks. The Land Development Code did provide provisions for the Council to approve that type of waiver. The Planning and Zoning Commission considered it at the April 8, 2010 meeting and voted to recommend it 5-0 with a condition that the distance from the garage to the back of the curb was reduced from 22 feet to 20 feet and that the one way drive was

increased from 20 feet to 22 feet. He said that Mr. Radovich was there for any questions.

Councilman Blair said that the 22 feet was not an issue for him, but he asked what type of physical separation there was from the one-way right of way to Gail Gardner. Mr. Guise noted that there would be a distance and width of the sidewalk of 4-5 feet and then a 5 foot landscaping strip.

Councilwoman Suttles asked if any of the neighbors had comments about 16 homes going in to the area. Mr. Guise said that unlike most projects that were plats, they generally did not give notice. They did provide notice to the neighbors in the area, and they received a letter of support.

Councilwoman Suttles asked if the landscaping she saw in the plans was what it would really look like. Mr. Guise said that was a good question for Mr. Radovich and added that as a single family subdivision, there was not a landscaping requirement.

Mr. Radovich, 3200 Lakeside Village Drive, said that it was their intent was to do all of the landscaping she saw in the plan. The front yards would have a 24 inch box tree. They would try to seclude it a bit from Gail Gardner.

Councilwoman Suttles asked if they were selling or renting the houses. Mr. Radovich said that they were looking to sell each individual unit for \$165,000 to \$185,000.

Councilman Hanna said that he had no problem with the 20 foot road. He noted that down the road from that area there was a similar situation with two-way traffic and he believed that was only a 20 foot road. Mr. Guise said that he believed that it was either 20 or 24 feet.

Mr. Guise said that they asked the Fire Department for their response. Their primary concern was with ingress and egress and that there be appropriate radius at those locations. They were fine with the configuration.

Councilman Lamerson asked if the motion should be made as one or two motions. Mr. Kidd said that he could do it either way, but he would do it with one motion.

COUNCILMAN LAMERSON MOVED TO APPROVE THE PRELIMINARY PLAT FOR THE GARDNER COVER TOWNHOMES, A PLANNED AREA DEVELOPMENT, COMPRISING 17 TOWNHOMES; AND TO ADOPT WATER SERVICE AGREEMENT NO. 10-004; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

- E. Approval of License and Operations Agreement with the Crossings Homeowners Association for City operation of the Clearwater Drive low-water crossing.

Mr. Nietupski noted that the plat was originally designated to be owned by the Home Owners Association (HOA) and maintained by them while the private street was also dedicated with a public ingress/egress easement. There were issues of concern expressed by the HOA regarding that structure and the City had been working with them to address those concerns. This was an interim agreement for the City Operation of the facility until a more permanent solution could be found. In this case, the City of Prescott would operate the crossing as it did all other 28 low-water crossings. The agreement was drafted through the legal department with an attorney representing the HOA.

There were mutual indemnification clauses and the agreement was also severable with 30 days notice by either party. The HOA voted on approval of the agreement at their April 22 board meeting.

Councilman Blair said that he and Councilwoman Lopas met with the HOA. He asked when the permanent fix would be put in place and what the fix might be. Mr. Nietupski said that the legal department was continuing to work with the HOA attorney. His understanding was that there was some pending court action and he could not give a time.

Councilman Blair asked if they were still looking at amending the original plat. Mr. Kidd said yes, if it had to be done.

Councilwoman Lopas asked by what percentage OF the HOA passed the agreement. Jim Atkinson, attorney for the HOA, said that the Board of Directors was the entity that approved the agreement, not the members of the association. There was a quorum present at the April 22 meeting. All of those members unanimously approved the agreement. The intent was to have something in place to deal with maintenance while they resolved the other issues involving the plat.

Councilwoman Lopas said that she wanted to hear from the other residents.

Deborah Sellers, 595 Robin Drive, read an affidavit prepared by her husband John Sellers, who was unable to attend. (See Exhibit A)

She also read her statement that the agreement to give away her property rights had been cooked up without her knowledge. She repudiated any question of anyone signing the agreement because the ownership was

hers; she had not been consulted. The HOA was given the agreement on Thursday night and then they were suddenly on the agenda. None of the homeowners had been contacted or asked for any input. She asked what the rush was and why it had to be signed that day.

She said that the City and the developer, Ty Myers, colluded to defraud the purchases of lots in the Crossings that were both marketed and sold as an exclusive development on a cul-de-sac by changing the City Council approved plat of November 14, 2002 to the illegal plat signed in 2003. As a direct result of the actions, they had been cheated by owning property where their title was compromised or non-existent and making their investments unsellable. They now had a highway running through the middle of their subdivision. The low water crossing was not built to City Code, never meant to carry daily or commuter traffic and was compromised by the 100 year floods that occurred in January of 2010.

She said that some of their plots need to be raised by more than three feet to be considered safe for human habitation. They were duped into purchasing their lots and building expensive custom homes because the City did not want to follow its historic plan to build a very expensive bridge over Lorraine Drive. The developer did not want the highway that ran through their subdivision to run through his commercial development. She asked the Council to do the right thing and stop the cover up.

Mayor Kuykendall asked if they were in a legal situation. Mr. Kidd said that John Sellers had a pending lawsuit. Mayor Kuykendall asked if the HOA was a legal representative of the area. Mr. Kidd said yes and that he could not address the legalities of their Board meeting. The signature was from the Board which dealt with the common areas, which was what they were dealing with. This was the licensing agreement where the City assumed some of the liabilities for its actions and the public roadway.

Mayor Kuykendall asked if the action that they were taking that day was taking a position either way or if they were giving up any rights toward the pending lawsuit. Mr. Kidd said no.

Judy Zerbregann said she owned four lots in the Crossing. She asked why there was a rush for pushing the agreement. The members or property owners of the subdivision had not been asked for input or a vote, which carried huge consequences. The liabilities were all still skewed on the back of the HOA. The City was getting off very easily. The main focus for providing for maintenance before final negotiations may be needed. The agreement was poorly drafted and highly in favor of the City of Prescott. It caused them to give up their rights with no way to recover legal fees. They were being short shifted on the issue. She saw no reason why they needed to vote on it that day.

Celeste Roberts said that she was in agreement with the past speakers. She was at the board meeting where this was approved and felt it was quite hasty. Subsequent to the meeting, she started to think about what was being done. She was alarmed by the wording. She asked the City to postpone it until all of the residents had a chance to review it.

Mayor Kuykendall asked her if she accepted her HOA as being a legal representative of the homeowners. Ms. Roberts said yes, as far as she knew.

John Roberts, 680 Robin Drive, said that this all started with the Lorraine Drive being abandoned. The people who bought dirt in the Crossings were told that it was one big cul-de-sac. The City felt they could save a lot of money by abandoning Lorraine Drive and not putting in the costly bridge; they would just run the traffic through the crossing. They dedicated that low water crossing for public use but that was not what they bought. Now they have 1,000 cars running through there, but they bought a cul-de-sac. That was what was on the 2002 plat approved by the City Council and never legally recorded.

When they called the City staff to close it because of the hazardous condition, they would not close it. That was the result of some bait and switch to run all the traffic through their property. He wanted to discourage the Council from approving it.

Councilman Lamerson said that it seemed that they were asking to be complicit in a 5th Amendment issue and he was not prepared to vote on it until he found out information regarding HOA and private properties.

Mr. Kidd said that is was a license agreement requested by the HOA in order to deal with those other issues. One of their issues was the liability on the low water crossing. The City assumed the liability of operating and maintaining the low water crossings. It was not changing the ownership; it did deal with liability issues.

He cannot address the homeowners themselves. Councilman Lamerson said that the explanation did not clarify his confusion.

Councilman Blair said that he was not willing to sit there and listen to it. He sat on the City Council when the plat was approved. Regarding secondary access through Robin Drive and never Lorraine, it was never intended to be Lorraine. From the day that Sandretto Hills went through, that road was meant to be a collector and a connector. He was part of that resolution. It was never meant to be a gated closed community. Because of the clamor of the neighborhood they are trying to make that low water

crossing a City operated crossing. They had driven a spike through that neighborhood over all of the fundamental traffic that they say they have. He has driven the street four times a day and did not see all of the traffic they talked about.

Mrs. Sellers said that they if those documents were so readily available, she asked why they had not surfaced before then. The issue had been going on for three years and the Council had done nothing about it.

Councilwoman Suttles said she felt like they were in the middle of it and asked what had been going on for three years. Councilman Blair said that they needed to do what they did with the parking garage and ask for an update at every meeting. He believed that this would relive the property owners from liability. He did not see anything about that being bad. The City needed to move as fast as they could. He said that the documentation was available and that they needed to have it resolved.

Councilman Suttles asked if they should vote on it or talk about it later. Councilman Blair said that the question was whose responsibility it was if someone got killed on that bridge. He asked if the City was doing the right thing in his opinion to take on that responsibility, until they resolved the plat.

Mayor Kuykendall said that they had a body that could take action and asked if they had a body that the City could do business with today. He asked if the HOA had legal status to become involved in the transaction. Mr. Kidd said that Mr. Atkinson was the best one to represent the association. It would be a matter of how the association was formed and how they govern private property. Generally speaking the HOA had jurisdiction over the common areas and streets. If they were to sell this to the City it would require a vote. This was a liability issue shifting from the HOA to the City of Prescott.

Mayor Kuykendall asked Mr. Atkinson why the association would take this on if they did not have to. Mr. Atkinson said it was just the opposite and that they now had the liability; the corporation that was the association, owns the low water crossing and it was responsible for the maintenance and liability. The HOA was trying to shift that liability from the association members to the City of Prescott and City had considered doing this, while the other issues got resolved.

Mayor Kuykendall asked why the members would want to retain that liability. Mr. Atkinson said that he did not know what their concern was. Oftentimes there was a concern that the HOA board was trying to pass something that they did not understand. He said that he thought that it was the best agreement they could get from both sides.

Councilman Hanna said that he thought that the only people benefitting were the HOA, because the City was taking on the liability. He asked how many people belonged to the HOA. Mr. Atkinson said that there were 79 lots in association and 5 board members that were duly elected under the bylaws. Councilman Hanna said that he did not see a problem with entering into an agreement with them.

Councilwoman Lopas said that it was a convoluted situation. She noted that it was not a bad thing for the residents. It was good that the City take on the liability. She understood why people were upset and would have made sure that everyone had been given a copy of the agreement. She thought that it was a good solution especially since they were coming up on monsoon season. She challenged everyone to get in resolved within 90 days.

Councilwoman Suttles asked why everyone did not receive the information. Mr. Atkinson said that they had been negotiating it for two months and they had just agreed on the language the day before. The ideal thing would be to get it out to everyone but legally, they do not get to vote on it. The board had to decide what was best for all of the members. Some feel it was the wrong thing to do but, the board had to do what they thought was right.

Councilwoman Linn said that she was not up to speed on the State statutes on HOAs. Councilman Lamerson asked why the City would be willing to assume the responsibility. He asked why he would do that to the rest of the citizens of Prescott.

Councilwoman Suttles asked if they should pull it. Councilman Lamerson said that there was one out of seven people sitting there who were not prepared to vote on it. At that time he did not have the answer on what was .best for the citizens.

Councilwoman Suttles reminded him that he had an attorney who had gone through the agreement and said that it was just temporary. Councilman Lamerson wanted to feel comfortable knowing that the deal was just temporary. Mr. Kidd said the deal was a license agreement that could be cancelled by either party with thirty days notice. If they did not pass it, the HOA would retain liability of the low water crossing. If there was a flood and other issues, the big concern would be the liability issues pending the resolution.

Mr. Kidd said that the question was why the City would take over the liability. One reason was because there was public traffic going across the low water crossing. To some extent the liability should remain on the City

as with the other low water crossings that they maintain, since it was public.

Councilman Lamerson said that he thought he heard that they wanted to get it resolved within 90 days. If that was the case, he wanted it to be time specific.

Mr.Kidd said that if the City took over the street, it would involve the HOA getting a vote of the homeowners. It would not transfer title.

Councilman Blair said that the City had been closing this crossing anyway and asked what kind of liability they had in doing that. He said that this would be resolving the City from protecting the citizens of Prescott and getting in harms way. It would put the City in a better standing. He felt that they would be crazy to not sign it that day.

Councilwoman Linn said that she was bothered that the homeowners had said that the City had not been responsive. She did feel that it was less desirable for the City and better for the homeowners on a temporary basis because it would guarantee them that the City would take the liability.

Councilman Blair agreed with the 90 days.

Mr. Musgrove said that he represented one of the owners of a lot in the Crossings. He said that the agreement should have happened in February and that 90 days was not acceptable. He was told the week prior that they would have the plat and low water crossing resolved by the last week of May. Councilwoman Suttles asked him what his timeframe was. Mr. Musgrove said the end of May.

Councilwoman Lopas said that it was a City street with the HOA responsible for the middle of it which was not okay. She would take the challenge to get it done by the end of May.

COUNCILWOMAN LOPAS MOVED TO APPROVE THE LICENSE AND OPERATIONS AGREEMENT WITH THE CROSSING HOMEOWNERS ASSOCIATION FOR CITY OPERATION OF THE CLEARWATER DRIVE LOW-WATER CORSSING AND COME TO A CONCLUSION BY MAY 31, 2010; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- F. Adoption of Resolution No. 4015-1045 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, supporting and authorizing applications and requests for grants from the Arizona State Department of Transportation for Transportation Enhancement Act (TEA) grants for Peavine Rails-to-Trails improvements.

Ms. Horton said that her department was seeking support for this grant. If funding was awarded it would be used for an overpass. There was a 5.7% match required.

Councilwoman Suttles asked what amount 5.7% was. Ms. Horton said that it would be around \$45,000.

Councilwoman Suttles asked that if they were lucky enough to get the grant, where would the matching coming from. Mr. Norwood said that they had appropriations in the grant funds. They put aside money for grant matches; primarily for the airport. They rarely got all of the grants that they hoped for, so money was left over.

Councilwoman Suttles asked if the Council was okay with the \$45,000 match.

Mayor Kuykendall said that they kept hearing the amount of \$50,000 as an enhancement to that crossing above the standard crossing. He asked if that was still a number that they were okay with. Mr. Norwood said that they were not planning on spending that for enhancement. Mayor Kuykendall noted that there was \$50,000 that may have been spent if they decided not to go forward with the grant. Mr. Norwood said yes.

Councilman Hanna said that from the beginning he did not feel that the taxpayers should have to pay for this. He was told that it was a 100% funded grant. Now they were finding it to be a cost of \$45,000. He wanted everyone to realize that 85% of the population did not use that trail. He did not feel that he could vote yes for these grants knowing that they were only going for a small percentage of the people in Prescott.

Ms. Horton said that they were putting a kiosk out at the trailhead and that was approved to go back to the enhancement. That money could be used for the match. Councilman Hanna said that he was all for that and asked how long it would take to get the \$50,000. Ms. Horton noted that the lakes had collected just under \$10,000 in 21 days.

Councilwoman Linn noted that the match was mentioned in the presentation. Rob Halen was insinuating that the Lyons Study said if the City did the crossing as they recommended, it would be around \$50,000, which would be for 2 crossings.

Councilwoman Linn asked how much money they were saving by not having the dirt moved. Ms. Horton answered around \$150,000.

Councilwoman Suttles said that she did not think the City of Prescott was ever going to move that dirt. She said that her biggest concern would be to get the grant, the trail users would not have the money to match the grant and then the City would be committed.

Ms. Horton said that the department did turn back in \$750,000 from two previous grants, the Heritage and the Greenway. The money was there that was always meant for trails. Otherwise they would use the revenue from kiosks which would all be from trail users.

Councilwoman Lopas noted that when Rob Halen made the presentation and during the tour, his point was that if the City was spending \$50,000 for enhancements, as recommended, then why not use it for the grant matching.

Councilman Hanna said that the problem was that he did not believe that the City ever committed to \$50,000. Mr. Norwood said no and that it was just suggested.

Councilman Lamerson, asked what the cost estimates were for the enhanced crossing. Mr. Nietupski said that the estimated cost for an *enhanced* at-grade crossing was around \$50,000. An at-grade crossing as discussed at last meeting would be appropriate at the location based on the anticipated volumes through 2030.

Councilman Lamerson said that they had talked about the second crossing in a commercial/industrial area for a road that was being used temporarily. Mr. Nietupski said that he thought he was talking about Centrepointe East Drive. That roadway was an extension of and product of the traffic interchange project to provide access to the Centrepointe East subdivision. Where it crossed Peavine Trail was designed as an at-grade crossing. An opportunity would be there in the future if the Council decided to proceed with a grade separation.

Councilman Lamerson asked if they could use the grant for both locations. Mr. Nietupski said yes. Councilman Lamerson said that they had instructed the staff to pursue any and all grants that might be appropriate for that purpose. The \$50,000 match may or may not be used if they do not get the grant.

Thomas Slaback, 715 East Goodwin Street, Prescott, recommend that they pass the resolution. If they did get a grant it was a win-win situation. They would get two grade separated crossings for the price of one at-grade crossing.

COUNCILWOMAN LINN MOVED TO ADOPT RESOLUTION NO. 4015-1045; SECONDED BY COUNCILWOMAN LOPAS; PASSED 6-1 WITH COUNCILMAN HANNA CASTING THE DISSENTING VOTE.

G. Discussion and general direction on Prescott tourism efforts.

Mr. Norwood said that it was a phased approach that would take some time He noted that when they get a new tourism director, the plan that he was presenting could change. The tools and funding should be in place to promote the City's assets.

A job description was ready to be posted when the Council gave the okay. There would be no additional dollars required and no additional positions. The presentation covered:

▶ PHASE I

▶ RFP for local, state and international promotion.

He recommended using a firm in Prescott.

▶ Hiring a director by August 2010.

▶ Mayor and Council appoint a Tourism Commission to be in place by October 2010.

Councilwoman Suttles asked what the Tourism Commission would do for the Director and what the Director would do for spending.

Mr. Norwood noted that the Tourism Commission would be similar to Planning & Zoning, advisory in nature only so that the Director would not have two bosses. The Director would report to the City Manager but would get input from the commission. The Council would have the ultimate authority for what got approved in the budget.

▶ PHASE 2 Years 2-3

▶ PHASE 3 Years 3-5

Mr. Norwood said that he would bring back a Director for Economic Development. The definition of Economic Development had changed from jobs and retail to tourism. He would like to see a conference hotel go in.

▶ ORG CHART

▶ BUDGET

▶ TASKS

Mayor Kuykendall said that considering tourism as the economic engine he felt the director could only be accountable to one person, which was the City Manager. He realized that it could not be run by the elected people because they come and go and it had to be sustainable. The commission/board could not be a part of the hiring process; they could be advisory. The Council, through the City Manager, could have input in the hiring process. When the commission was hatched it would become advisory through the City Manager to the Tourism Director. That was where the leadership and guidance would come from.

Other places had Convention and Visitor Bureaus, etc. In Prescott's case, where the community owns, operates and is responsible for the assets, it can only work one way.

He spent all day Saturday with Todd Sadow from the Whiskey Off-road. He noted that the motels were loaded, bars, restaurants, other merchants all did well. It was because of a team effort. The Fire Department, Police Department, Public Works and the community came together to support the activity. He hoped the Council saw fit to put the confidence in the management team and department heads.

Mr. Norwood noted that they had their first staff meeting that morning. They needed to be aggressive with their marketing.

Councilwoman Suttles said that she hoped that during budget time they would be able to break it down and talk more about it.

Councilwoman Linn appreciated the enthusiasm for the project and thought that it was a good idea to be cheerleaders. Word of mouth was invaluable.

Mr. Norwood noted that he got a lot of good advice from people like Jack Wilson, Bill Geist, Dave Maurer, Prescott Area Independents, among others.

Councilwoman Linn noted that she hoped the conversation continued to be open and that the team worked with the Chamber, CVB and other associations because they would be more powerful as a team.

Councilman Blair thought that they needed a focus on what they need to improve and build a Master Plan for the rodeo grounds and hotel. He also wanted to make what they had the best they could. That was the sustainability of how neat and clean the community was. Focusing on Granite Creek Park, close the gate from Walgreens, fix fences and clean up fallen trees. The City should be able to say that their streets were clean in front of the bars, curbs are painted red and green and that they have a vision for the future.

Mr. Norwood noted that he was correct and that before they took on anything more, they should make sure that what they had was being maintained. The City's tipping fee at the landfill for Granite Clean was over \$2500 and it was still not done. They were trying to clean up from the 100 year storm with a Parks and Recreation budget that had been cut in half.

Councilman Lamerson thought it was a good presentation and said that they were a Territorial Capital and the Centennial City was a big deal. He agreed with everyone who was talking about working on what they had. He felt that the staff did a good job and they could handle tourism in the City.

Councilwoman Lopas thanked the staff and felt that it was a new beginning for the City, which was overdue. Whatever she could do to move it forward, she would do.

Elisabeth Ruffner, Prescott, said she was pleased with the plan. She said that it was newspaper-ease to call the area The Quad Cities; it was the Central Arizona Highlands, which would appeal to more visitors. She said that the volunteers would always be there to help them.

Jack Wilson, Prescott, said that he supported everything that was presented and would continue to volunteer in this area, especially in the IT field.

Frank Creelman said that tourism was all the City had and that they should have more bathrooms. He let them know that he was going to apply for the job and they should not wait until August. He was available immediately.

Noel Breen said that the presentation provided a hopeful future. He said that he thought that the ego problem would be gone with the new plan. He prayed that the funding would continue. He said that people needed to be

patient and that it would be three to four years down the road before they saw a lot of measurable effects.

Barbara Bruce said that it was invigorating to see the value placed in tourism and the targeted action taken to elevate their destination to become all that they have known it to be. She asked Mr. Norwood to consider some diversification beyond hotels and restaurants to recognize the integral synergy between tourism, hospitality, Economic Development and real estate and that all of the facets be represented in the commission.

Councilman Blair said that the City now had to perform and they needed to work collectively and get it done.

VI. ADJOURNMENT

The Regular Voting Meeting of April 27, 2010 adjourned at 6:20 p.m.

MARLIN D. KUYKENDALL, 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 27th day of April, 2010. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2010.

AFFIX
CITY SEAL

ELIZABETH A. BURKE, City Clerk

