

PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, MAY 11, 2010
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL held on TUESDAY, MAY 11, 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 3:02 p.m.

◆ **INTRODUCTIONS**

◆ **INVOCATION:** Pastor Steve Paglia, Heights Church

Pastor Paglia gave the invocation.

◆ **PLEDGE OF ALLEGIANCE:** Councilman Lamerson

Councilman Lamerson 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 final sales tax numbers for March were down less than 1%, which they had not seen in over two years; they were normally declining between 8% to 15% each month.

I. PUBLIC COMMENT

A. Bob Luzius re Charter amendments.

Mr. Luzius said that in the past he had suggested/requested that a special committee be formed to address the changes to the City Charter; consisting of Council members and citizens. He asked if there was a chance to have citizens on the committee.

Councilwoman Linn noted that they looked into Open Meeting Laws and noted that all of the meetings had been open and posted.

Mr. Luzius addressed some issues regarding the election process. He referred to ARS Section 16 which pertained to the signing of petitions. He wanted to make sure that it would be addressed in the City Charter and wondered how it would be policed. He thought that the City wanted to put a lot of the responsibility for the accuracy of the nominating petitions on the shoulders of the City Clerk. He felt that it was a considerable task and wondered how she could attest to each candidate's ethics and honesty.

Mayor Kuykendall asked him if he thought the chances of fraud were more prevalent than in the past. He noted that they had all been around for a long time. This was the first Council that had ever addressed the Charter Amendment. He hoped that Mr. Luzius had enough confidence in the Council that they would bring the issue to the public.

Councilwoman Linn said that in the past few years there was a lawsuit with a Yavapai County office where that issue was brought up. Her understanding was that they were too flexible in leaving the petitions out. That suit came down very firm. She had seen more oversight since that happened.

Mr. Luzius said that he would like to know when the next meeting was. Councilwoman Linn said that it had not been determined but she would e-mail him and that it would also be on the web site.

II. PROCLAMATIONS

A. May 2010 – *Historic Preservation Month*

Mayor Kuykendall read the proclamation and presented it to Elisabeth Ruffner.

Ms. Ruffner noted that historic preservation had been a feature of the community for more than 40 years. The strongest evidence of it was the

City's interest in historic buildings and restoration of the Elks Opera House. She noted that Cat Moody was carrying on for Nancy Burgess and doing a good job.

B. May 9 – 15, 2010 – *Hospital Week in Prescott, Arizona*

Councilwoman Linn read the proclamation and presented it to Mark Timm.

Mr. Timm noted that Tim Barnett could not be there that day and said that he extended his gratitude on behalf of 1800 employees and 900 volunteers and over 200 medical staff.

C. May 16 – 22, 2010 - *Public Works Week*

Councilman Blair read the proclamation and presented it to Mark Nietupski.

Mr. Nietupski said that on behalf of 150 people in Field Operations, Utilities and Engineering, the proclamation was deeply appreciated.

D. May 17 – 23, 2010 – *American Craft Beer Week*

Councilwoman Suttles read the proclamation and presented it to the owners of the Prescott Brewing Company, Mr. and Mrs. Nielsen.

Mrs. Nielsen noted that the American Craft Brewing industry was about 25 years old. There was resurgence in the 1970's. They still only have 4.4% of the beer market.

III. PRESENTATIONS

~~A.* Presentation of Medal of Merit Awards~~ **REMOVED FROM AGENDA**

B. Presentation of Life Saving Award

Chief Kabbel recognized Doug Hawk and noted that the Police Department and the Fire Department had shared a cooperative spirit. He said that the Fire Department trained all of their officers in first aid and CPR. On March 27 at about 6:30 a.m. Officer Hawk was dispatched to Overland Trail and Gurley Street, where the officer found a female victim lying on the ground and unresponsive. The officer began Cardio Pulmonary Resuscitation until the Fire Department arrived on the scene. The Emergency Medical Service personnel established a heart beat and transported the victim to the hospital. Had it not been for Officer Hawk, the victim would have died at the scene.

Officer Hawk then introduced his family.

C. Antelope Hills Golf Course Update by Golf Club Advisory Group

Mr. Bayne said that in December a citizens committee was formed to discuss the Antelope Hills Golf Course. They tried to get a diverse group with different backgrounds, and they met weekly beginning in January and were given a list of concerns from the five local golf associations. The top three concerns were the pro shop, rates and course conditions.

The timing of things worked well with the arrival of Mac MacCarley, who had already made a big difference in the pro shop. He had done a lot of staff training and introduced new products, which were more modern with a larger selection.

He said that communication was another aspect that needed improving. One of the big things introduced was the EZ Links System. It gave the staff time to work with the people who came in the shop and would also help with marketing. With the new system, they would be able to trade databases with the cities of Phoenix and Tucson. The committee hoped to capitalize on that and bring in more out of town play. The biggest obstacles had been establishing rates. When they started the process, there were 57 rates being charged.

Mr. Bayne noted that the Phoenix market was not being catered to. They had approximately 1700 rounds in 2009 that were nonresident rounds and thought that they could do a lot more with that. They lowered the nonresident rate to be competitive to what Mac thought would be an incentive to bring groups to Prescott and stay the weekend.

He said that Ms. Bruce and the other hotels in town worked on some stay and play packages. They had ten of the local hotels participating in the packages.

The committee also lowered the resident rates to make them more competitive with the competition they now have. The Rewards Program was introduced so that the more they play; the cheaper the game becomes. It would be 10% off of normal rates. On the local levels they wanted the core golfers to play more golf. They got rid of the higher summer and winter rates.

He noted that they were currently working on course conditions. The rate structure was in place as well as the EZ Link System. The Committee continued to meet and the Council should expect to have a final written report by late summer 2010.

Councilwoman Suttles said that she was only able to attend one meeting but the feedback they were getting from such a mixed group was amazing. She appreciated the time they had put in, and thanked to Mr. MacCarley, Laurie Hadley and Councilman Hanna. She hoped to move on to other areas such as the airport.

Councilman Hanna thanked Mr. MacCarley. He noted that it was a pleasure to be the liaison to the group and also a privilege to have Mr. Bayne as the head of the committee. He congratulated Mr. Fenech and Ms. Hadley.

Mr. Bayne said that it was real important getting the five associations at the golf course together. That was the heart and soul of the golf course.

Councilwoman Linn thanked Joe and the committee.

Mayor Kuykendall said that when they started talking about putting that group together the known was that they had a municipal course, but the unknown was that it would become a world class municipal golf course.

IV. **CONSENT AGENDA**

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

A. Adoption of Resolution No. 4021-1051 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott Fire Department to enter into a renewal of the existing Intergovernmental Agreement (“IGA”) with Yavapai County Office of Emergency Management that establishes Unified Emergency Management for the tri-city area and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

~~B.* Adoption of Resolution No. 4017-1047 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott Police Department to enter into a Memorandum of Understanding with the Department of Veterans Affairs (“VA”) establishing jurisdictional, enforcement and reporting protocols regarding incidents occurring on lands, structures or spaces controlled by the VA within the City of Prescott and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.~~

REMOVED FROM AGENDA

C. Adoption of Resolution No. 4018-1048 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the

City of Prescott Police Department to enter into a Memorandum of Understanding with the Rocky Mountain Information Network to establish Regional Information Sharing System, Officer Safety Event Deconfliction System (RISSafe) and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

- D. Adoption of Resolution No. 4019-1049 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott Police Department to enter into an Intergovernmental Agreement with the State of Arizona Department of Public Safety, Arizona Counter Terrorism Information Center (“ACTIC”) to enhance domestic preparedness regarding chemical, biological, radiological, nuclear and explosive response service and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
- E. Adoption of Resolution No. 4020-1050 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott Police Department to enter into a Memorandum of Understanding with the State of Arizona Department of Public Safety Arizona Counter Terrorism Information Center (“ACTIC”), and Terrorism Liaison Office (“TLO”) Program and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
- F. Approval of the Minutes of the Regular Voting Meeting of the Prescott City Council held on April 27, 2010.

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

V. REGULAR AGENDA

- A. Acceptance of Mechanical Wood Chipper from Prescott Area Wildland Urban Interface Commission.

Chief Martinez introduced Gary Roytson, Chairman of the Prescott Area Wildland Urban Interface Commission and noted that it was established in 1990. They were commissioned to identify, prioritize and guide the management of practices within Arizona, and they also secured grant funding. Since 2001 they had chipped brush for 3500 residents. The commission had voted to provide the City of Prescott with a new wood chipper which would cut their work in half due to its size.

COUNCILWOMAN LINN MOVED TO ACCEPT THE MECHANICAL WOOD CHIPPER FROM PRESCOTT AREA WILDLAND URBAN INTERFACE COMMISSION; SECONDED BY COUNCILMAN BLAIR; PASSED

PASSED UNANIMOUSLY.

- B. Appointments to various Boards/Commissions/Committees of the City of Prescott.

Ms. Burke introduced the item and reminded the Council that a subcommittee had been established to review the procedures that were used for selection of members to the City's Board and Commission Committees. They asked that all committee members reapply for the positions, and the City also advertised for new members. There were a few members who were unable to serve due to the changes that were made to residency requirements, and some of the terms had been changed. She said that those members who were not continuing to serve would be recognized at the May 25th meeting. There would be periodic training sessions for the members, Council and staff.

Councilman Blair noted that Councilman Hanna and Councilwoman Suttles were on the selection committee and they felt strongly about getting involved with the Boards and thanked the volunteers for their service to the community. He read the names for each of the Boards and Commissions.

COUNCILWOMAN SUTTLES MOVED TO APPOINT THE MEMBERS OF THE VARIOUS BOARDS/COMMISSIONS/COMMITTEES AS LISTED ON THE COUNCIL MEMO DATE 05/04/2010 (AND ATTACHED HERETO AS EXHIBIT A); SECONDED BY COUNCILMAN HANNA; PASSED UNANIMOUSLY.

- C. Public Hearing and approval of the Consolidated Plan FY 2010 – 2014 and Annual Action Plan FY 2010 as associated with the City's Community Development Block Grant (CDBG) Program.

Ms. Hartman noted that they had focused entirely on the human condition as much as they could. They were funding the Yavapai County Guidance Clinic for \$80,000. Project Aware would get a match for \$100,000 if they got the United States Vet grant. They had gone from a men's 16 bed emergency shelter in 2006 to 14 permanent housing units that had been constructed with grant funds. This would give them 6 more units, providing 20 more for men/women veterans.

They had more than doubled the funding for Meals on Wheels (MOW) from last year for their rural and homebound programs.

Fair Housing education was given \$3,000. The City was required by Housing and Urban Development (HUD) to educate the community on Fair Housing.

The Prescott Area Women's Shelter (PAWS) was one of the newest shelters in town for women, and they needed another bathroom.

The administration was \$63,766 which went toward advertising, mailings, binding, trainings and everything associated with the program. HUD gave them a raise to \$318,883. They applied part of that to administration and the other part of it to additional infrastructure in the Dexter Neighborhood.

Councilwoman Suttles asked where the money would go if Project Aware did not get their grant. Ms. Hartmann said that they would call another committee meeting and find something else. They would come to Council and ask for suggestions. Councilwoman Suttles asked if the money had to be spent within the year. Ms. Hartmann said that they would want it to be.

Councilwoman Suttles said that she was glad to see that Meals on Wheels got more money.

Councilman Blair asked who was going to do the Dexter Neighborhood improvements. Ms. Hartmann replied that it would be the City's Field Services Department. Councilman Blair asked how they credit Field Services for doing that and was it credited back into the general fund. Ms. Hartmann said that Community Development Block Grants paid their wages with American Recovery and Reinvestment Act funds.

Councilwoman Linn thanked Ms. Hartmann for her effort.

Councilman Lamerson said that he was happy to see Meals on Wheels getting an increase.

COUNCILWOMAN SUTTLES (1) MOVED TO CLOSE THE PUBLIC HEARING; AND (2) MOVED TO APPROVE THE CONSOLIDATED PLAN FY 2010 – 2014 AND ANNUAL ACTION PLAN FY 2010 AS ASSOCIATED WITH THE CITY'S COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM; SECONDED BY TAMMY LINN; PASSED UNANIMOUSLY.

- D.* Award of bid and contract for Small Water Mains – Rodeo Grounds, Tolemac Drive to Wildwood Drive Connection, and Ute Road Project to JWJ Pipeline & Excavation, Inc. **CLM Earthmovers, LLC** in an amount not to exceed ~~\$283,858.18~~ **\$319,388.15**, requiring Davis-Bacon wages.

Mr. Nietupski said that it was the continuance of an ongoing program to replace undersized water mains within the City that were old and deteriorated. It was about 2000 lineal feet of water main that would be installed. They learned through another source that there was an issue with the JWJ Pipeline & Excavation license. It was then recommended to

go to the second low bidder. The project would commence in May and be completed August of 2010. The work would not conflict with the rodeo performance in 2010.

The estimate was \$458,000 and the net was below the high bid of \$542,000.

Mayor Kuykendall asked why the Davis Bacon bid on the JWW paperwork was less than their base bid. Mr. Nietupski said that was the calculation they did and the City accepted it.

Councilman Hanna said that he appreciated him looking into the bid process. Mr. Nietupski noted that their specifications boilerplate had been updated to reflect the requirements to have the appropriate license at the time of bidding so they avoided those circumstances in the future.

COUNCILWOMAN SUTTLES MOVED TO AWARD THE BID AND CONTRACT FOR SMALL WATER MAINS – RODEO GROUNDS, TOLEMAC DRIVE TO WILDWOOD DRIVE CONNECTION, AND UTE ROAD PROJECT TO CLM EARTHMOVERS, LLC IN AN AMOUNT NOT TO EXCEED \$319,388.15, REQUIRING DAVIS-BACON WAGES; SECONDED BY COUNCILMAN HANNA; PASSED UNANIMOUSLY.

- E. Award of bid and contract for Small Water Mains – Flatau Drive, Overstreet Drive, Leroux Street, and Granite Street Project to CLM Earthmovers, LLC, in an amount not to exceed \$523,129.28, requiring Davis-Bacon wages.

Mr. Nietupski noted that it was a similar contract for the same purpose of replacing deteriorated, undersized mains. The project was split up in order to provide a greater opportunity to some of the local firms to participate in the City improvements. It would be 2,500 feet of water main to be installed. It had the same frame of May to August 2010 and under the estimate of \$802,000.

COUNCILMAN BLAIR MOVED TO AWARD THE BID AND CONTRACT FOR SMALL WATER MAINS – FLATAU DRIVE, OVERSTREET DRIVE, LEROUX STREET, AND GRANITE STREET PROJECT TO CLM EARTHMOVERS, LLC, IN AN AMOUNT NOT TO EXCEED \$523,129.28, REQUIRING DAVIS-BACON WAGES; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- F. Consideration of a request for a Second Amendment to Development Agreement No. 03-243 between the City of Prescott and Tri-City Prep.

Mr. Nietupski said that the item was a result of a letter submitted to the Mayor and City Council by Dr. Halverson of Tri-City Prep.

The sewer main was not active at that time and not anticipated to be connected for at least one to three years. The design of the project to the north of 89A would begin this coming year. The schedule for construction of that facility (lift station and main line extension) was not firm. As development occurred north of that; it would drive the construction. It could be awhile before that was available.

Dr. Halverson, 2965 Pleasant Valley Drive, Prescott, was representing Tri-City College Prep High School, located at 5522 Side Road, Prescott. She said that the high school was listed in US News and World Report as one of America's best high schools. It helped when they tried to encourage different businesses or organizations to come to the Prescott area.

She wanted to divide the water situation into two issues; 1) abandonment of existing well and 2) connecting to City water and sewer. There was a difference between potable water and irrigation water. The Development Agreement amendment does state potable water. She also wanted to be sure that she was correct in making the next statement, so she obtained a well driller and went to Arizona Department of Water Resources and went through the process of obtaining a second well permit for the property. The abandonment of one well and drilling another well was silly. The abandonment of the existing well would not bring the City any water credits or benefits. For it to have water credits attached it had to be an irrigation well, irrigating 2+ acres and this was a domestic well.

The last point in regards to the well was that she understood that the amendment to the Development Agreement did not include abandonment of the well. In paragraph 1 of the agreement, it tied the agreement to the amendment stating that the school was required to connect to City water system and was amended by that amendment. Paragraph 2 explained the reason they were doing the Development Agreement (DA) which was for fire and safety purposes only and they would install two fire hydrants on the property and put sprinklers in the gym. To do that, they crossed another person's property and tied into Centrepointe East. It was not to supply water to the students; it was for the safety of the students. Paragraph 3 had requirements for the school to tie into the City sanitary sewer system at such time that the school tied into the City water system to obtain potable water. If they were abandoning the well, it would have said "potable and irrigation" or it would have just said "water". It would not have taken the time to just say "potable water". Paragraph 7 said it was the entire agreement.

Since the abandonment of well was not included, it was no longer on the table. It was her understanding that it was not an issue. She said that in case there were any questions left under miscellaneous; it stated that in the event any inconsistencies existed between the terms of that amendment and the agreement, that amendment shall control.

Her understanding at that time and still was that abandonment of the well was not part of that amendment and was not intended. They needed clarification from Council on that issue.

Councilwoman Suttles said that she needed more clarification. Mr. Nietupski said that he did not know that he could disagree with Dr. Halverson. He would have to review it with regard to the well. A lot of what she said made sense.

Mr. Kidd said that there was a bit more history to it. This had to do with fire flow and providing water for fire flow purposes without requiring impact fees and other development and infrastructure. What was missing from the recitation was, in the miscellaneous section, except as expressly modified by the provisions of this amendment, the terms of the DA number 03-243 shall continue unchanged and in full force and affect. It was intended to be a limited modification in those particular areas in paragraphs 1 and 2, primarily dealing with fire flow. He said that Mr. Guice was involved in some of the initial discussions. They were trying to get fire flow without triggering all of the expenses at that point for sewer and water.

Councilwoman Suttles asked Dr. Halverson if she agreed with that. Dr. Halverson said yes and said that it was very specific that they were doing it for fire but she thought that the abandonment of the well was left out of the amendment.

Councilwoman Suttles noted that the minutes from those meetings would be more informational.

Councilman Blair said that at that time there was no water/sewer line out to the property. As well as paying the fees, it was Council's policy that once water/sewer lines were connected to the property the well was taken out and they would be hooked up and paying the fees. There was no conversation regarding an irrigation well. In the past they had issued irrigation wells as long as there was a separate meter and they were taken away from water supply system for irrigation only.

Mr. Nietupski said that based on the City Attorney's comments, he believed that the agreement, as amended, provided for Tri-City Prep to hook up to those facilities when they were operational and that was not at that time.

Councilman Blair asked if they should extend the amendment to let them continue on with what they were doing until they had a functioning water and sewer line to the property. It had always been made very clear that the City had a policy that was not to waiver for Tri-City Prep. Mr. Nietupski said that he would agree.

Councilwoman Suttles asked how long that would be. Mr. Nietupski thought the short term would be two years; but it could be longer and would be driven by the development north of the highway.

Dr. Halverson asked if she could address the water/sewer issue. She thought that it was silly to tell someone to drill a second well because they want her to close the first.

Councilman Blair said that he had a problem with Arizona Department of Water Resources (ADWR) because they should not have issued her a permit until they checked with the City of Prescott. The City was the acting authority over her property when it came to decommissioning a well after hooking up to City services. He did not know why the state would circumvent an agreement that they had in principle.

Dr. Halverson said that part of it was because she had two parcels. The DA was only tied to the first parcel, which was three acres and only part of the school. Councilman Blair said that if the parcels were sold separately, she had a right to do that.

Councilman Lamerson said that he remembered the piece of property that had the school having to hook up to water and sewer when they become available. With regard to ADWR, the law was very specific. If it cost more to hook up to municipal water, ADWR would issue a well in the City of Prescott. He had brought that up many times.

Dr. Halverson said that in that respect, she could just drill a well and do everything. She could hook into the City water and never use it. She thought that they should just work together for the betterment. She thanked them for the three years and said that she had been given a three year extension over the phone. It was granted on the financial state of affairs of Arizona.

She said that Arizona did not pay the schools, districts or charter schools for the month of October and in May they were told they would have to get

half of their money from somewhere else. They applied for Federal Stabilization Funds to meet the payroll. Dean Martin, the State Treasurer, said that charter schools received 2/3 of what district schools get in the State. Charter schools did not get any property tax money. He also said that there were more people receiving AHCCCS in the State than children in all of Kindergarten-12 grades. On top of this year's cuts they would have those cuts again next year plus more cuts. There was no end in sight. Historically Arizona had not funded education. They were now well below what Mississippi spent on education.

She had considered getting City water a luxury. She would no longer have to deal with Arizona Department of Environmental Quality or run a water company and a school. The costs of Impact Fees to hook up right now were over \$35,000. Three years from now it would be over \$71,000. Putting it off for three years is going to double her problem.

The only thing that did not have a statute of limitations was murder. She thought there should be a term limit to a DA. If it did not work out for everyone in a certain amount of time, she would like to see a limit.

She suggested that it was in the best interest of the Council in representing the needs of the community, students, parents and staff to put the DA to rest in regards to the water, well and sewer and enter into a resolution that resolved that matter.

Councilwoman Linn noted that Tri-City Prep was not a private school and they could not charge tuition. There were two types of public schools. They got 2/3 of the funding and no property taxes.

Councilwoman Suttles said that she understood the dilemma. Things had changed, but they had changed all around the City, not just her school. The Council had to be able to deal with this agreement. She could not strike it. She asked what the possibility of holding her impact fees at the price they were for when she did connect in the future.

Councilwoman Lopas said that she heard her say that she had private property rights that she could exercise, but she was hoping to work out something that was more of a win/win. Dr. Halverson said yes. She would like to see the Council do whatever they could do to amend the agreement.

Councilman Hanna noted that they needed more people like Dr. Halverson. He did not think that they should ever cap a well. If someone had a private well, they should be able to keep it.

Once a contract was made, he did not want to set precedence down the road. He agreed that after a period of time something had to be done. He asked when the agreement went into effect.

Mr. Nietupski said that it was a standing agreement as far as the timing. The tying in and the payment of the fees were the issues they were discussing.

Councilman Hanna asked if it would be acceptable if they could come up with some way to maintain a fee. Dr. Halverson said that everything would help. Councilman Hanna said that if they started taking away from schools, they would be contributing to the “dumbing down” of America.

Councilman Lamerson asked if there was a difference between a commercial well and a domestic well regarding access to water. Mr. Kidd said yes.

Councilman Lamerson said that they had several people who have been employed by the City, who had shown inconsistencies in State Water Law regarding active management area water consumption. A domestic well, if it costs more to hook up to city provided services, the state would issue them a well. He asked what they should do on an impasse that would be beneficial to all of the parties concerned. He noted that they had a valuable contributor to the City of Prescott in the product that was turned out, namely education. Many of those who attend the school were residents of the City of Prescott. The City wanted to make sure there was adequate fire flow and they did that. It would come down at some point that water and sewer were going to be there. The law of the state had not changed. She was entitled.

Mr. Kidd said that they did not see the moratorium coming so there was a problem with the fees. When it was done and impact fees were raised, there will be higher fees. In terms of fee waivers, in order to have valid impact fees it had to be uniform and uniformly applied. When they got into special waivers then the whole fee structure would be called into question. That was something that they would be stuck with according to State Law. It was a little convoluted because the agreement predated the set of fees.

Councilman Lamerson asked if it was a possibility that rather than take action on the item, they could work on it and bring it back. Mr. Kidd said that they had some time before the main triggering event occurred, which was when the City had sewer and water to work through the fee issues.

Councilman Hanna asked if they had fire flow now.

Councilman Blair said that he had a philosophical difference in that the City

City had a right to do what they wanted done when it benefited the City. They were the ones putting the item off because development had not initiated them to go forward. When they did the agreement they assumed that those lines would be operable. He could assume that in six years from now, they may be in the same situation and asking her to pay fees that would be totally unreasonable. The fees should be capped that day, since she had no control of the situation, regardless of what the law said. They should amend the contract until the City had the lines operable. Councilman Hanna agreed.

Councilwoman Suttles said that she would like to table it and get together with Dr. Halverson and the City to come up with some answers that would be good for both sides. Councilwoman Linn agreed.

Councilman Blair asked what the assumption was for the fees when the Development Agreement was made. Mr. Nietupski said that he was not involved and could not answer. Councilman Blair said that they needed to get Mr. Guice into the discussion. He agreed to pull the item.

Mr. Norwood said that he would just remove the item since there was no sense of urgency. They should have two to three Council members and some staff to discuss it. When it came to impact fees, they could not waive them. It was acceptable to Dr. Halverson.

Mayor Kuykendall asked Councilwoman Suttles and Councilman Blair to work with Dr. Halverson on the item.

- G. Approval for Arizona Public Service Company (APS) to perform night work in the downtown area.

Mr. Nietupski said that APS had been installing a new transmission facility between the substation off of White Spar Road to the north, off of Granite north of Willis. They completed a majority of that project. They now had a significant portion between Willis and Goodwin that needed to be completed, installing the large metal poles. APS had requested to do that work at night to minimize the impact to business during the day. It would be between 10 p.m. and 6 a.m.

Councilwoman Suttles asked if APS had contacted the downtown businesses and residents.

APS representative said that Bert Sommer, the area manager, had done that in the past two days. They did not hear any backlash.

Councilwoman Lopas asked if the notifications went to the business owners and the property owners. He said yes.

COUNCILMAN HANNA MOVED TO APPROVE NIGHT WORK BY APS IN THE DOWNTOWN AREA FOR INSTALLATION OF NEW 69KV TRANSMISSION FACILITIES; SECONDED BY COUNCILWOMAN SUTTLES; PASSED UNANIMOUSLY.

H. Recess into Executive Session.

COUNCILWOMAN LINN MOVED TO RECESS INTO EXECUTIVE SESSION; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

The Prescott City Council recessed into Executive Session at 5:00 p.m.

VI. EXECUTIVE SESSION

A. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property, pursuant to A.R.S. §38-431.03(A)(7).

1. Possible open space properties (Councilwoman Lopas)

B. Discussion or consultation for legal advice with the attorney or attorneys of the public body, pursuant to A.R.S. §38-431.03(A)(3).

1. Williamson Valley Road Right-of-way

VII. ADJOURNMENT

The Prescott City Council reconvened into Open Session at 5:50 p.m. at which time the Regular Voting Meeting of May 11, 2010 adjourned.

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 11th day of May, 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