

PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, MAY 25, 2010
PRESCOTT, ARIZONA

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

Councilman Lamerson presented Ben Hansen, who was retiring from the Daily Courier as editor, a Certificate of Appreciation for his work.

◆ **INVOCATION:** Pastor Wil Ryland, Church of Nazarene

Pastor Ryland was not present. Councilman Hanna gave the invocation.

◆ **PLEDGE OF ALLEGIANCE:** Councilwoman Suttles

Councilwoman Suttles introduced Chief Martinez to discuss the presentation that was given at the Special Meeting earlier that day.

Chief Martinez spoke about the six promotions they had in the Fire Department and the honoring of three Policemen who saved a man's life in a structure fire.

Chief Martinez then led the Council and audience in the Pledge of Allegiance.

◆ **ROLL CALL:**

Present:

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

Absent:

None

*Participated by telephone

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

City Manager, Steve Norwood, mentioned that Access 13 had their awards ceremony and Kim Kapin and Dave Veatch took home two awards for their video work.

I. PRESENTATIONS

- A. Introduction of new businesses.

Not present.

- B. Presentation of Stewardship Awards by the Prescott Preservation Commission.

Elisabeth Ruffner, Chairman of the Prescott Preservation Commission, invited Nancy Burgess forward to award her with the Elizabeth Ruffner Award for all of her good work as a City of Prescott Employee, writing books and working with the legislation.

Ms. Moody presented awards to the following:

Restoration Award: 1097 Old Hassayampa Lane, owner Steve Trainer.

Stewardship Award: 323 South Marina Street, owners Roger and Lynda Christner; 133 South Washington Avenue, owners Brock and Chantal McCaman; 336 Lindbergh Drive, owners Alan and Dana Grimley.

- C. Presentation of Certificates of Appreciation for outgoing Board/Commission/ Committee Members.

Councilwoman Suttles and Mayor Kuykendall presented Certificates of Appreciation to those present from the following:

Advisory and Appeals Board: Harry Wellens, Rick Ryan, David Kramer, and Gene Nelson

Board of Adjustments: Ken Mabarak, Bill Warren

Fire Board of Appeals: Jim Burch, George Taylor

Planning and Zoning: Richard Rosa, Seymour Petrovsky, George Wyatt

Prescott Preservation Commission: Steven Adams, Frank DeGrazia

Prescott Arizona Centennial City: Mic Fetty

Acker Trust: Judy Stewart

Mayor Kuykendall said that the City was honored by those who served on the Boards and Commissions and recognized how many hours were involved for each volunteer.

D. Presentation by Yavapai Center for Constitutional Principles.

Mr. Crooks and Ms. Dalton gave a PowerPoint presentation, Exhibit A attached hereto and made a part hereof by reference.

Councilman Hanna thanked them for their course and said that it should be taught in every high school and taught to every person holding a public office. He volunteered to put up money for five high school students to attend the course who could not otherwise afford it. Councilwoman Lopas and Councilman Blair said that they would do the same.

Councilman Blair said that he also attended the course and everyone stayed until the end.

E. Presentation by Miss Poppy, Nicolle Johnson, re poppy sales by the American Legion Auxiliary.

Councilwoman Linn was contacted by phone at this time. Mr. Tilmans, Captain of Prescott's American Legion Post 6 Honor Guard, introduced Ms. Nicolle Johnson.

Ms. Johnson spoke about the significance of the red poppy. She said that the sales from the handmade poppy assisted hospitalized and disabled veterans in need of rehabilitation and financial assistance.

F. Presentation by Councilwoman Tammy Linn re Volunteers in Prescott (VIP) and Town Square Ambassadors.

Since Councilwoman Linn was not present (other than by phone); the presentation would be rescheduled.

II. CONSENT AGENDA

CONSENT ITEM A THROUGH G 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 II-A THROUGH II-E; SECONDED BY COUNCILMAN BLAIR; APPROVED UNANIMOUSLY.

- A. Adoption of Resolution No. 4022-1052 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into a Grant-in-Aid Financial Agreement on behalf of the Arizona Wildfire and Incident Management Academy with the Gila River Indian Community and acceptance of a \$75,000 grant from it, if awarded, for general operating expenses for the Arizona Wildfire Academy at ERAU and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
- B. Adoption of Resolution No. 4023-1053 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the Prescott Police Department to enter into a Memorandum of Understanding with Arizona State University to establish the basis for the Police Department to share with ASU police report information on incidents leading to violent deaths, as contribution to the Arizona Violent Death Reporting System.
- C. Adoption of Resolution No. 4024-1054 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the Prescott Police Department to accept grant funding in the amount of \$42,000.00 from the Governor's Office of Highway Safety.
- D. Approval of completion of a grant application to the U.S. Department of Justice, Bureau of Justice Assistance (BJA), for grant funds in the amount of \$17,749.00; funds to be used to purchase supplies and equipment necessary to improve and enhance law enforcement programs.
- E. Approval of the Minutes of the Workshop of the Prescott City Council held on May 11, 2010 (10:00 a.m.); the Workshop held on May 11, 2010 (2:00 p.m.); and the Regular Voting Meeting held on May 11, 2010.

III. REGULAR AGENDA

- A. Approval of purchase of insurance policies for FY11: (1) Excess Public Entity Liability from Traveler's - \$394,140.00; (2) Property Coverage from the Traveler's Indemnity Co. - \$113,000.00; and (3) Excess Worker's Compensation from Safety National - \$43,407.00; for a total of \$550,547.00.

Ms. Swain introduced the item and noted that the broker received competitive quotes.

Mr. Sellers from The Crossings at Willow Creek was a member who submitted a PPP proposal on the Big Chino. He spoke about risk management and The Crossings.

Mayor Kuykendall said that they were discussing the insurance premiums for the City and that Mr. Sellers was off of the agenda. He suggested that Mr. Sellers request to be on a future agenda to discuss The Crossings.

COUNCILMAN HANNA MOVED TO APPROVE THE PURCHASE OF INSURANCE POLICIES FOR FY11: (1) EXCESS PUBLIC ENTITY LIABILITY FROM TRAVELER'S - \$394,140.00; (2) PROPERTY COVERAGE FROM THE TRAVELER'S INDEMNITY CO. - \$113,000.00; AND (3) EXCESS WORKER'S COMPENSATION FROM SAFETY NATIONAL - \$43,407.00; FOR A TOTAL OF \$550,547.00; SECONDED BY COUNCILWOMAN SUTTLES; PASSED UNANIMOUSLY.

- B. Adoption of Ordinance No. 4744-1041 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, acquiring and dedicating for additional Estrella Drive public right-of-way a triangular shaped parcel of private property and authorizing the Mayor and City staff to take an necessary steps to effectuate such acquisition and dedication.

Mr. Nietupski noted that the acquisition was 325 square feet.

COUNCILWOMAN SUTTLES MOVED TO ADOPT ORDINANCE NO. 4744-1041; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

- C. Adoption of Ordinance No. 4745-1042 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, declaring that it is necessary to acquire portions of Yavapai County Assessor's Parcel Numbers 115-01-055, 115-01-056, 115-01-061A, 115-01-065 and 115-01-001F under the power of eminent domain for an authorized public use and need and authorizing and directing the City Attorney to condemn and acquire such property as necessary and declaring an emergency.

Mr. Nietupski noted that they had been in the process of right of way acquisition for a number of months for the Williamson Valley Road. Councilwoman Suttles asked how the process worked.

Mr. Kidd said that the ordinance declared a public purpose. Each parcel would have an individual appraisal done. A written offer would be sent to the owners and they had 20-30 days to accept the offer. If they had to go to court, the City would ask for immediate possession, which could take two to ten months.

Councilwoman Suttles asked if they needed all of the parcels before the City could begin the project. Mr. Nietupski said they did because some of the utilities needed to be relocated.

Councilman Blair said that they would have to have the properties secured before they could get a bid on the job. Mr. Nietupski noted that he was right and the bids were usually good for 60 days.

Councilman Hanna and Councilman Lamerson noted that they were opposed to taking people's private property. Councilman Lamerson said that he was not prepared to go to eminent domain when there may be another option.

Councilwoman Linn said that she agreed with Councilman Hanna and Lamerson and that she assumed the City was going through the process so they did not have to stop the construction.

Mr. Nietupski said that they could not go forward with the project. He believed that the three parcels of property that they may have some trouble with were dedicated by a plat to the City of Prescott for this project. Some of the property owners who were affected by the plat had dedicated that strip of property. The other four did not agree to what the plat language said. They needed to get declaratory judgment from the court to confirm what was on the plat or to say to the City that they needed to pay the owners for their property.

Mr. Kidd said that the agreements that they were talking about were the agreements to buy the property or declare that they did not have to buy it. The problem with Mr. Long's property was that the staff had made numerous efforts to contact him and he would not respond.

Councilman Lamerson asked why the City would not know whether they owned the property before they declared eminent domain. Mr. Kidd said that part of the parcels had a declaratory language that said 17 feet was for public right of way upon acceptance of the City Engineer. The attorney for the homeowners believed that it was called a reservation and the City believed that it was a legal declaration. If it was a reservation, the City would have to pay for it.

Mr. Kidd said that if they proceeded with an alternate count of eminent domain/declaratory judgment, which was what they had talked to the other attorney about, they would have an alternative theory which would provide them the property either way. The City would tender the money for the value of the property into escrow and that way, his clients would get fair value. They City would move forward with the road project and resolve the legal dispute one way or the other.

Councilwoman Lopas said that the majority of the property owners did not have an issue with the plat and the 17 feet. She asked that if the judge

decided that the property owners should be paid for the 17 feet, would the other property owners have to be reimbursed. Mr. Kidd said that he did not know.

Mayor Kuykendall said that the City had never been trying to take property without compensation. Mr. Kidd said that they had been trying to acquire the property for two years and they were down to the last few properties. Mayor Kuykendall said that it was the Council who said that the time was right to move forward and that there would be no taking without someone ending up with a check. Mr. Nietupski said that he was correct.

Monty Crook, 617 Damron Drive # 2, said that he was encouraged that his money was in good hands.

Mr. Luzius said that he was against eminent domain and that there was more room for negotiation. He asked if they were pursuing the project at this time because the County was working on the project sooner than they expected.

Mr. Nietupski said that they had worked on it for two years as a City project. It was his understanding that the Council wanted to see the project move forward. The Council would see contracts for approval for right of way for Williamson Valley Road the second week in June.

Mayor Kuykendall said that at least 26 of the properties were purchased when Mr. Luzius was on Council.

Councilman Lamerson asked if they were at the drop dead date. Mr. Nietupski said that it was a necessary measure to allow the City the opportunity to do what was necessary, if they had to. They were continuing to work with the individuals who were willing to cooperate.

Mr. Norwood said that they could defer the project for five years, but they were moving it forward at the request of Council.

Councilman Hanna asked if they held it off, if it would affect the County's portion.

Councilman Blair said that he thought that they should move forward with eminent domain for the owner they could not find. He thought that they should give the others two weeks and then get a report back to Council at the next meeting. Mr. Kidd said that they could remove properties 3, 4, 5 and 6 and leave properties 1 and 2.

Councilwoman Suttles said that maybe they did not have to do the Williamson Valley project and they could do the Park Street or Rosser

Street projects. Mr. Norwood said that they were trying to take advantage of a market that was very favorable to construction. That was why they were looking at issuing debt on four to five projects. They were trying to move them ahead quickly at the Council's recommendation.

Mayor Kuykendall said to table it for two weeks.

- D. Approval of resolutions to be submitted to the League of Arizona Cities and Towns for the 2011 Legislative Session.

Mr. Brehm spoke about the process for submitting resolutions to the League.

Councilwoman Suttles asked if they had the first resolution in front of the League before.

Councilman Lamerson said that it was important to remember that at the League of Cities, there was one vote per member and what was important to the City of Prescott may not be as important to a larger City.

Ms. Burke noted that if resolution number four did not go anywhere with the League this year, the City would still bring it before the citizens in November.

Councilwoman Linn noted that resolution five would have more of an effect on the County than the State and that the County would have to do their due diligence.

Councilwoman Suttles asked for more information on resolution number six that Page was looking for a cosponsor on. Mr. Brehm said that Page was trying to get a law concerning being intoxicated in public. Page had experienced some issues with the City owned parks and intoxicated people causing damage. The City could not use any loitering laws because they were public property.

Mr. Norwood said that it was relatively new and that it did sound good in some respects, on the surface. However, there could be some concerns about putting officers in a position to determine if it was a civil or criminal offense. They would also have to decide what to do with the intoxicated people; they may not have the facilities to keep them in.

Chief Kabbel said that if a person was drunk in public, they would be responsible for their own behavior. If they made it a crime of civil action against them, he asked what the liability to the City would be. If they had an intoxicated person who they had given a citation to, he asked what

would happen if that person then left the scene and was hit by a car. He was concerned with the fact that no one would take these people.

Councilman Blair asked if they help Page sponsor the bill, if that mean that they would enact the same bill.

Mr. Norwood said no and that many of them did not even get to committee. Councilwoman Linn noted that it would just allow them to write an ordinance if they chose to do so.

Mr. Slaback, 715 East Goodwin Street, asked about the resolution dealing with voluminous requests for public documents. He asked what defined voluminous. He would hate for it to have any impact on citizens to find out what was going on in the government.

Mr. Kidd said that the proposal said over 100 pages. Mr. Slaback said that 100 pages was a very small amount for a document. Mr. Kidd said that most of the contracts and public documents were fewer than 100 pages. The City was concerned about the amount of staff time involved in acquiring the documents and there was no way to recover those costs at .25 per page.

Mr. Slaback said that he felt that it was probably due to the Salt River Project/City engagement over water rights on the Verde. Mayor Kuykendall asked him if he had a number in mind. Mr. Slaback said that perhaps they should look at the particular project.

Mr. Luzius, Prescott, echoed the concerns of Mr. Slaback. He thought it should be considered the cost of doing business if it cost the City money to supply requested information to the citizens. Mayor Kuykendall appointed Mr. Luzius and Mr. Slaback to come back to Council in two weeks with a recommendation and they would table it for now.

Mr. Lamerson said that he did not read that they were restricted to 100 pages. The resolution was about charging in excess; no one was being denied access to the material. Mr. Kidd said that he was correct and that it also mentioned paying more if it involved more than an hour of staff time.

Councilwoman Linn said that Mr. Slaback and Mr. Luzius should consider charging for the amount of time it took the staff to compile the information.

Mr. Norwood said that they could vote on all of the resolutions with the exception of number three.

COUNCILWOMAN SUTTLES MOVED TO SUBMIT RESOLUTIONS TO THE LEAGUE OF ARIZONA CITIES AND TOWNS, PRESCOTT RESOLUTION 1, 2, 4, 5 AND CO-SPONSOR THE RESOLUTION FROM THE CITY OF PAGE; SECONDED BY COUNCILWOMAN LINN; PASSED UNANIMOUSLY.

- E. Continuation from the May 24, 2010 Budget Workshop of FY 2011 Budget discussions (if necessary).

Mr. Woodfill noted that the Council wanted to add a Neighborhood Clean Up Program for \$10,000, a Willow/Watson Lake Algae Control Study for \$25,000, a Downtown Parking Study, a grant had changed from \$150,000 to \$197,000 and the City's share of that was \$5,000. He said that there was an election budget for \$50,000. He showed some slides and recapped the budget discussions. He noted that they were still down 15%. The staff would bring Council a tentative budget on June 8, 2010. June 26 would be a public hearing, if they proceeded and a tax levy on July 13, 2010.

Mr. Norwood said that they had to budget the entire grant amount and they would get reimbursed.

Mr. Hanna asked why they needed a parking study to show that the downtown parking garage was not working. He thought that they should put meters in. He asked if they had to do the study.

Mr. Norwood said that they did not have to do a study, but it would have more credibility coming from an independent source. There were more options than the meters.

Mr. Hanna said that past councils had wasted more monies on studies which were needless if they just used some common sense. He asked if they put it in the budget, would it be OK to do the study themselves. Mr. Norwood said yes.

Councilwoman Lopas asked if they could invite the downtown business owners to bet some more input and do some of the legwork themselves. Mr. Norwood said that they could but he was not hopeful because they had tried that a few times.

Mayor Kuykendall said that they were trying to figure out a way to use the parking garage and offset the deficit that it incurred each year. They were trying to get more of the merchants to use the garage and free up space in the streets. Mr. Norwood said that it was difficult to make a free parking garage pay for itself. He noted that most people were accustomed to paying for parking.

Councilman Lamerson agreed with Councilman Hanna and said that they had the same conversation when they talked about building the garage. He thought that they needed to talk about putting the meters back.

Mayor Kuykendall said that the discussion came about when they had to decide how to make up \$17,000 for the parking garage. Councilwoman Suttles said that the parking garage was her claim to fame and that they put \$6 million into the garage with hopes that it would end up paying for itself at some point. They were told early on that they could not charge for it because people would not go there. They now charge for about 30 special events per year. But they were still taking money from the General Fund to pay for the parking garage.

Councilman Blair said that there should be a golf cart to shuttle people where they wanted to go from the garage. He agreed with Councilwoman Lopas and thought that they should get some business owners involved. Councilwoman Linn agreed.

Mayor Kuykendall said that there was a component of the parking garage that would allow access from the garage to Whiskey Row, which would have made it more convenient. He asked if they wanted to leave it in the budget.

Mr. Luzius, Prescott, said that there were parking meters in the 1940's and 1950's and up to the 1970's. He suggested that they should put in the meters and charge for parking in the garage. They should start a shuttle system with the revenues to take people from the garage around downtown and back.

Mr. Slaback said that he thought that it should be kept in the budget. He said that it cost money to maintain parking meters. He did not see meter as a money-making venture, just a way to manage parking. He said that they should remove all on-street parking around the plaza and close the streets off to vehicle traffic, forcing everyone to use the parking garage.

Mayor Kuykendall said that the consensus was to leave Open Space as it was. They put \$500,000 into the budget which would allow them to catch up on the extreme deterioration on the streets due to the weather. All of the numbers for streets was predicated on using the streets fund except \$500,000 which could be used by the Open Space advocates if Council desired, for options and other things.

Councilman Lamerson was not in agreement to take any City fund to zero. The Council could then determine what to do with that fund. Mr. Norwood

said that there were reserves in all of the funds that were based on operation expenses.

Mr. Luzius asked if this would be discussed again prior to Council voting on the budget. He asked if it would be brought up for public comment again. Mr. Norwood said that there would be a public comment opportunity on June 8 and a public hearing on June 22.

Mr. Lamerson said that he heard that the Legal Department was working through the allocation to the \$2.7 million for Big Chino expenditures. If it was to pay for past legal expenses, it would not be the same issue as incurring new expenses. Mr. Norwood said that he would have a revised budget on the Big Chino soon. There had been some developments in the past month that would allow them to lower the number.

Councilwoman Suttles asked if there were a Council Committee that was looking at different things to put on the Charter Election in November. Councilwoman Linn said that they had met several times. Councilwoman Suttles asked her what some of the issues were. Councilwoman Linn said that she was not really prepared to answer that at the moment.

Councilman Lamerson said that they were still getting verification on some of the items. Mr. Kidd said that they were also looking at the franchise section of the Charter that had not been revised in a number of years. Ms. Burke said that they needed to have that in place by the end of June. They would have to take action at the meeting on June 22.

Councilman Lamerson said that they had to take the time and get the right information. They were not going to rush through it.

IV. ADJOURNMENT

There being no further business to be discussed, the Regular Voting Session of the Prescott City Council of May 25, 2010 adjourned at 5:20 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 25th 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