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

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

◆ **INTRODUCTIONS**

Councilman Lamerson introduced Congressional candidate Bradley Beauchamp and thanked him for being there. He also introduced John Olson from the Elks Opera House Foundation.

Mr. Olson, President of the Elks Opera House Foundation, commented on how well the Opening Gala went and said that they had not given accolades to Mr. Fenech and his staff, Dawn Castaneda and Mr. Miller for the work they had done. He noted that the City was fortunate to have employees like them who were able to provide the expertise that they did.

◆ **INVOCATION**: Rabbi William Berkowitz, Temple B'rith Shalom

Rabbi William Berkowitz gave the invocation.

◆ **PLEDGE OF ALLEGIANCE**: Councilwoman Linn

◆ **ROLL CALL**:

Present:	Absent:
Mayor Kuykendall	None
Councilman Blair	
Councilman Hanna	
Councilman Lamerson	
Councilwoman Linn	
Councilwoman Lopas	
Councilwoman Suttles	

◆ SUMMARY OF CURRENT OR RECENT EVENTS

Mr. Norwood thanked Mr. Olson for his comments and agreed that Mr. Fenech and his staff did a great job and said that everyone enjoyed the Gala Opening at the Elks. He also noted that Prescott hosted the largest softball tournament on Friday, Saturday and Sunday. There were about 60 teams which filled the hotels. With the rain on Friday evening they played until 1:30 in the a.m. but they got them all done.

I. PUBLIC COMMENT

A. Frank Creelman re Lessons by J.C., the Constitution of the United States of America and the Declaration of Independence (understanding; kindness; caring; compassion; *"Do unto others…"*; and rights to life, liberty and pursuit of happiness).

Mr. Creelman was not present.

II. PRESENTATIONS

A. Introduction of new businesses.

David Maurer, Executive Director of the Chamber of Commerce, introduced the following businesses who each told a little about themselves:

- MAT Search, Inc., 928.778.2729, 223 White Spar Road.

- Pine Grove Preschool, 928.277.1424, www.pinegrovepreschool.com,

Councilwoman Linn suggested that they contact First Things First, a statewide program that may have grants available.

- Northern Arizona University, Prescott Campus, 928.771.6140, www.nau.edu/extended

B. Presentation of video commissioned by Prescottenews re Prescott.

Lynn LeMaster of prescottenews said that recently that had an intern, Andi Adams, who worked for them for about a month. She was a broadcast journalism student and was asked to create a video that would promote Prescott and prescottenews. She then showed the video to everyone.

C. Presentation of Award from Access 13 for *Government Program of the Year* for the Frontier Days Wrap-up.

Councilwoman Linn said that she served as the liaison between the City and Access 13 and had recently attended their Annual Banquet. At the banquet the City was presented the Access 13 Government Program of the Year award for its Rodeo/Frontier Days Wrap-up. Since Mr. Kapin and Mr. Veatch were unable to attend that banquet she asked them to come forward and presented them with the award.

III. 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.

Before action was taken Councilwoman Suttles asked that someone explain what a truck-mounted attenuator was. Chad McDowell said that it was a crash bumper that will go on the City's dump trucks to provide extra safety for City employees working in the medians on SR89, Prescott Lakes Parkway and Willow Creek Road.

COUNCILMAN BLAIR MOVED TO APPROVE CONSENT AGENDA ITEMS III-A THROUGH III-G; SECONDED BY COUNCILWOMAN LINN; PASSED UNANIMOUSLY.

A. Award of contract to Asphalt Paving and Supply in an amount not to exceed $100,000.00 citywide for aggregate materials.

B. Award of contract to Crafco, Inc., in accordance with ADOT contract T0721A0067 for a not-to-exceed amount of $100,000.00 for asphaltic rubber crack sealant.

C. Approval to purchase a truck-mounted attenuator from Highway Technologies in the amount of $22,965.55.

D. Adoption of Resolution No. 4032-1102 - A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, accepting a grant from the Governor's Office of Highway Safety to support officer overtime, employee related expenses and purchase of equipment necessary to support highway safety.

E. Adoption of Resolution No. 4033-1103 – 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 Maricopa County Sheriff's Office ("MCSO") to enhance the effectiveness of law enforcement by increasing information sharing related to crime and criminal activities through participation in the AZLink Program and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

F. Adoption of Resolution No. 4034-1104 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into a Right-of-Way Agreement with the State of Arizona, Arizona State Land Department, for the Northwest Tank Public Safety Communication Tower Site, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

G. Approval of the Minutes of the Regular Voting Meeting of July 13, 2010.

IV. REGULAR AGENDA

A. Public Hearing and consideration of a liquor license application submitted by Randy Nations, agent for The Club at Prescott for a new Series 6, Bar, license for The Club at Prescott Lakes located at 315 E. Smoketree Lane.

Ms. Burke reviewed the application submitted for The Club at Prescott Lakes, noting that the property had been posted and no public comments had been received. She noted that the agent was present should anyone have questions.

There being no public input, **COUNCILMAN LAMERSON MOVED TO CLOSE THE PUBLIC HEARING; SECONDED BY COUNCILWOMAN LINN; PASSED UNANIMOUSLY.**

COUNCILMAN HANNA MOVED TO APPROVE THE LIQUOR LICENSE APPLICATION SUBMITTED BY RANDY NATIONS, AGENT FOR THE CLUB AT PRESCOTT LAKES FOR A NEW SERIES 6, BAR, LICENSE FOR THE CLUB AT PRESCOTT LAKES LOCATED AT 315 E. SMOKETREE LANE; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

B. Authorization of payment to Tech Logic Corporation in the amount of $146,715.00 for automated Materials Handling equipment at the Prescott Public Library. (FUNDED THROUGH YAVAPAI COUNTY LIBRARY DISTRICT)

Library Director Toni Kaus said that she had come before Council last December for the RFID equipment that sounded an alarm if items were removed from the Library without being checked out. She said that the item today was the second phase of that project, purchase of a nine-bin

sorter to be attached to the book drop. She showed a short video of the equipment being proposed.

She said that TechLogic is the vendor selected by the Yavapai County Library District. Last year the District spent $78,000 for the RFID equipment; this year they will put in $50,000 toward the $296,715. In addition, the Friends of the Prescott Public Library have committed a $100,000 match and an additional $69,000 will come from a bequest to the Library. The remaining $77,000 will come from the County Automation Funds held by the City and governed by the Library Services Agreement between Yavapai County and the City of Prescott. They are the result of the Yavapai County Free Library District property tax levy and are designated for library automation and special projects. The expenditure is budgeted and will have no impact on the City's General Fund.

Councilwoman Suttles thanked Ms. Kaus for breaking down the funding for everyone. She asked if there were any other libraries that had the same system. Ms. Kaus said that at this point Prescott Valley and Prescott were the two libraries that had RFID. Prescott Valley was the first for the automatic bin sorting and she believed that yesterday Camp Verde started using RFID and the school district in Camp Verde was planning to use RFID. She said that in the long run plans are to do this at the County Library facility, but that will be a much larger system.

Councilwoman Suttles asked if there were service or maintenance fees. Ms. Kaus said that they usually run about 7% of the purchase price and those expenses would be paid out of the tax levy revenues.

Councilwoman Lopas said that she had the opportunity to tour the Prescott Valley facility and another feature was that the binds are raised so it is helpful physically.

Councilman Blair said that with the automation involved he would like to understand how many paid employees were doing the jobs and what happened to them. Ms. Kaus said that what they have seen at the library is that with the economy business has increased by 30%, but in the course of that time staff levels have gone down 10%. They have not had to lay off anyone because as people have left they have not been replaced. She said that this technology has allowed them to keep providing the same levels of service without asking for more staff.

Mr. Norwood noted that they have eliminated about 3.5 staff members in the Library. He said that with business increasing by 30% and that reduction in staff, they need this equipment to keep their service levels up.

He also added that at this time last year when the Library was going to have to close its doors on Sundays the Friends of the Library stepped in and provided funding to keep the doors open. He said that they were a great partner.

Councilwoman Linn said that they have the largest base of volunteers in any of the departments in the City at the Library and the VIP group has been working closely with them. One of the things that many people do not realize is that the City is mandated to provide workers compensation on volunteers and with the equipment addressing ergonomic issues they could be saving people's backs.

Councilman Lamerson said that it was a good presentation and he appreciated the questions from Councilmen Blair and Hanna. He said that it is a relationship between different agencies and the public and it was nice to see that the public would support the library.

COUNCILMAN BLAIR MOVED TO APPROVE PAYMENT TO TECHLOGIC CORPORATION IN THE AMOUNT OF $146,715.00 FOR AUTOMATED MATERIALS HANDLING EQUIPMENT AT THE PRESCOTT PUBLIC LIBRARY; SECONDED BY COUNCILWOMAN LOPAS; PASSED UNANIMOUSLY.

C. Adoption of Ordinance 4753-1104 - An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, amending Chapter 15-1-12: *Vehicles, Speed Limits and Parking*, of the Prescott City Code by adding sections thereto for regulating parking areas and fees under the jurisdiction of the Parks and Recreation Department with the City of Prescott; establishing fines for violations of said regulations; and authorizing the Mayor and City staff to take all necessary steps to effectuate said regulations.

Ms. Horton said that the City recently invested in the purchase of automatic kiosks at the City's lakes and trailhead for parking and this will allow them to enforce the parking requirements.

Ms. Horton said that questions have come up as to why they were raising their rates. She said that they have lowered them, kept them the same and raised them. She said that they can buy annual parking passes at $20 for 20 visits; for $40 they get 60 visits or $80 would provide unlimited parking throughout the year from the date of purchase. She said that it does not expire until they have used the 20 or 40, so one pass could past three years depending on how often they use them. Additionally, to be consistent with the national forests, all hikers will get a free day on Wednesdays.

She then reminded everyone that it was a parking fee. The volunteers walking dogs for the Humane Society on the Peavine Trail do not have to pay as they park at the Humane Society. She said that they do want to make sure that trail users are not parking at the Humane Society and then walking on the trails. She concluded by saying that they were existing fees, but this gives them the power to enforce.

Councilwoman Linn added that these passes were used via a number punched into the kiosk so they work well when more than one vehicle is used by a family.

Councilman Blair asked if it would create problems if the same code is used at two different facilities at the same time. Ms. Horton said that the only time that would create a problem is on the unlimited passes, and it will confuse the staff. She said that it is something they will need to monitor.

COUNCILMAN LAMERSON MOVED TO ADOPT ORDINANCE NO. 4753-1104; SECONDED BY COUNCILWOMAN LOPAS; PASSED UNANIMOUSLY.

D. Adoption of Resolution No. 4031-1101 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the application for and acceptance of a Transportation Enhancement Grant from Arizona Department of Transportation for a separated grade crossing for the City of Prescott's Peavine National Recreation Trail, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

Mr. Smith said that this resolution contained the language required by ADOT for submittal of the grant application and it is the last piece required in the application.

He said that the application is limited to Road 39 at the Peavine Trail. The project itself includes design and engineering, earthwork, bridge and other site features such as lighting. He said that they did inflate the cost of the project. The language from ADOT specified that the City would absorb any cost overruns so they asked Lyon Engineering to look at the budget and inflate some of the numbers so they put in a 20% contingency. The maximum that the project would cost would be $611,290.00 which means that once the federal money took care of 93.4% of the project, the maximum of City money would be $39,559.00, plus the $5,000 application fee.

Councilman Hanna asked if the $5,000 application fee was nonrefundable. Mr. Smith said that the fee is charged only if they are awarded the grant. If they are not successful there is no $5,000 administrative fee.

Councilman Lamerson said that understanding the condition the country is in, as well as the state and City, he was not sure he agreed with spending money that was not necessary. An at-grade crossing is perfectly safe which sounds like this is not a necessary endeavor. On the other hand, if the feds are taking money out of the budget and making it available to be spent within the country, he questioned whether Prescott should stand aside and say no. He asked if they could proceed with the application but still consider whether to accept it at a later time.

Mr. Smith said that they could. In previous transportation enhancement funds they have applied and if it is awarded they enter into an IGA. At that time they could decline the federal money. Councilman Hanna asked if that had every happened. Mr. Smith replied that he had never seen it happen.

Councilman Blair said that he had a real concern. If he were to vote yes at this time it would only be to allow the application to go forward. He was not convinced this was the way to go. He personally believed that a bridge would be better near the school and they have not addressed that. They have not addressed maintenance, snow, rain, liability of the bridge, etc. He said that if they do not address some of those issues in the future he will be a no vote.

Councilman Hanna said that he has a problem with this since they have an engineering firm telling them that they could have a safe at-grade crossing. He said that everyone thinks that grants are free money, but they all pay for them. Until they can get a better handle on the economics of the country they continue to take these grants.

Councilwoman Linn said that she agreed that she would prefer to have the bridge by the school, but it was going to be $1.2 million. She reminded everyone that they were high school students. She said that either way they will have liability. She would love to see statistics for at-grade or grade separated regarding liability.

She said that she wanted to remind everyone that this was the direction Council gave them. They discussed the plans and gave the go-ahead. If they get the grant they could say no, but out of respect for their prior decisions she will support the acceptance.

Councilman Blair asked who would be responsible if they were awarded the grant, moved forward with the construction and then the money went away. Mr. Smith said that if they were midway through the project and they decided to not complete the project they would have to pay the grant monies back.

Councilman Lamerson said that he appreciated Councilwoman Linn's comments. They did give them direction to search for grants, but they need to have their eyes wide open. Right now they were saying that if it is going to be spent somewhere else, he would rather spend it here, but he is not supporting the City paying more than what they were told was suitable and safe. It was his understanding that the total grant application and acceptance would not be more than what the City would have to pay for an at-grade crossing. He was putting them on notice that there may be a no vote in the future.

Mayor Kuykendall said that he goes out there twice a week, and he has a hard time understanding why they had a line of people talking about the grade-separated crossing. They have concentrated on Road 39 and for the next several years there will be very little traffic. He asked what was going to happen when Centerpointe East starts moving traffic.

Mr. Smith said that during this process they had hoped to do two bridges, but the bridge over Centerpointe East will require longer approaches, more fill, a longer bridge, etc. and they could not make it work within the $750,000. If the Council decided they want to put a bridge over Zone 39 now, they would come back in two years and try for the other.

Mayor Kuykendall said that they were not being honest with themselves by not considering using the money where it should be used which he believed was Centerpointe East. He asked if they were too late to give it some common sense. He believed they were looking at the wrong crossing.

Councilman Hanna said that he was concerned that they were spending $750,000 on something they may not need for 20 years. It seemed like they were spending taxpayers' money frivolously to put something up that was safe with an at-grade crossing.

Joyce Mackin reminded them that the trail advocates were directed by Mr. McConnell to deal with Road 39. They were all aware that Centerpointe East was going to be the big problem. She said that they just hired a Tourism Director and this is an attraction. Whatever they can do to promote the trail should be done.

Lisa Barnes, Prescott Alternative Transportation, said that there was confusion at one point. After they had been discussing Road 39 people started asking about Centerpointe East. She said that she did not remember how they started focusing on Road 39, and they would all agree that Centerpointe East should be the focus, but the cost is much more.

With regard to grants being taxpayer money, Ms. Barnes said that she agreed and they would like to use that to support their local economy, taking back what was theirs.

Ms. Barnes said that they were given the task to go and do this. Several of them have worked with Mr. Smith in putting it together to make it a good application, and she really appreciated Mr. Smith's work. She said that at this point, because of the discussions that have already happened and encouragement to go forward, it may be disrespectful to say no at this point. At least they should go forward at this time and then decide further.

Councilman Lamerson asked if they have to be site specific in asking for the federal money. He said that they may not be as opposed with getting taxpayer money back to the area if they were applying it to the right spot.

Mr. Smith said that the grant application is written to where it says an overpass over a roadway. It does not specify Road 39 or Centerpointe East; it was not locked into either roadway. He said that the difference would be in the budget. If they decide that Centerpointe East was a higher priority that would be an $823,000 project (conservatively) which would mean they would have to match with $75,000 from the Peavine Trail kiosks. He said that they are up to a deadline with CYMPO and then it goes to ADOT so they need to have an accurate budget. It would be best to decide which roadway they want now.

He said that part of the rating criteria they look at is safety and urgency. They would look at Centerpointe East differently than Road 39, and they might score higher with Centerpointe East. He said that they have an opportunity to change the scope of the application, but there is not much time.

Mr. Smith said that if they put in an application for the grant and use Road 39, the acceptance or rejection would be based on Road 39. If the review committee decides to come to Prescott they would want to see the location. It would be helpful to know which roadway they would be showing them.

Ms. Horton said that if they do select Centerpointe East there is a deficit of funds. The City would have to match and they would be short a substantial amount of money and they would have to pledge more up front.

John Sellers said that he was in a meeting about six months ago with city officials in another state and they were excited that they were getting some grant funds. They asked them if they would still do the project if they said no and they said they would not, and they walked out. He commended the Council because just because the money is free it does not mean they have to take it. Additionally, over the weekend Secretary of the Treasury Geiger said that the free public monies were gone.

Mayor Kuykendall said that his concern was that in a few years someone will be screaming at the Council on why they let Centerpointe East continue as an at-grade crossing.

Thomas Slaback, Prescott, said that right now they will have the money and can do Road 39. If they put that off 20 years and then try to fund it, it will be at a cost exceeding $1 million. They have the availability, chance and should act on it.

Mayor Kuykendall asked him if he would be content with Centerpointe East staying as it is. Mr. Slaback said that he would temporarily. Looking at tourists' use, they would have the longest usable length if they did Road 39 first. Councilman Hanna asked if they would not have that anyway if they took the trail to Prescott Valley. Mr. Slaback said that they would if they wanted to go to Prescott Valley, but they may not want to go there.

Councilwoman Linn said that when they were out there and with the comments they received, it is not just walking. They have equestrian use and bikes. She said that Road 39 was really important to them. Not having that knowledge, she has had about 20 giving her that input.

Rob Halen, Prescott, said that when they were talking about safety and at-grade crossings, they were looking at a pedestrian crossing the street. Their safety studies were based only on pedestrians. They did not at all address bikes or horses.

In addition, a year ago they were talking about five of these crossings happening at development and it was decided that each crossing would be addressed one at a time. What came up first was Road 39 even though Centerpointe East was ahead of the construction. There was never any public discussion about it. If they had started there they would be talking about that crossing and not Road 39.

He said that any crossing on Peavine would be good to have grade-separated. It is the flattest trail in town and gets a lot of young kids riding their bikes on it.

Mr. Smith said that he wanted to bring to their attention that the way the resolution was currently worded it was for *"application for and acceptance of."* Mr. Norwood said that if they only want to approve the application they can change the wording of the resolution.

COUNCILWOMAN LOPAS MOVED TO ADOPT RESOLUTION NO. 4031-1101 – A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING APPLICATION FOR A TRANSPORTATION ENHANCEMENT GRANT FROM ARIZONA DEPARTMENT OF TRANSPORTATION FOR A SEPARATED GRADE CROSSING FOR THE CITY OF PRESCOTT'S PEAVINE NATIONAL RECREATIONAL TRAIL AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE; SECONDED BY COUNCILWOMAN LINN; PASSED 5-2 WITH COUNCILWOMAN SUTTLES AND COUNCILMAN HANNA CASTING THE DISSENTING VOTES.

E. Peavine Trail / Granite Dells Estates:

Mr. Nietupski said that although this is related to the previous item, these were three instruments that would allow for some grading to occur within the Peavine Trail right-of-way to provide for drainage improvements and the ultimate dedication for the construction of Road 39 crossing the Peavine Trail. It is a follow-up to the April 13 meeting where they discussed the concept for the potential opportunity to resolve the issue at some point in the future, whenever it was appropriate and the Council determined it was time to go forward with a grade-separated crossing.

Mr. Fann, through grading improvements that have been designed, would embank the approaches for potential grade-separated crossing, dependent on a grant approval and acceptance at some point in time. This work can be allowed to proceed with the understanding that the schedule is not fixed. It does not have to be related to the timing of the bridge, although it is relevant to the commercial subdivision construction at this point.

The dedication of the right-of-way for the roadway and utilities to ingress/egress across the trail is necessary. A temporary construction easement would allow for the construction activity and drainage improvements, and the license agreement provides for the stabilization of

slopes parallel to the western boundary of the trail right-of-way and the commercial subdivision.

The license agreement provides for stabilization and has maintenance and warranty provisions that require that at either three years, or ultimately five years, 75% of the vegetation planted there must be established and thriving before acceptance of it.

These documents allow for those activities to occur. It grants no permanent right to Granite Dells Estates Properties or the subdivision in the Peavine Trail; the City retains and will be the owner of the improvements at the end of the term of either three or five years, dependent on the maturity rate of the vegetation. It does provide for reestablishment of more vegetation if it is necessary in the future.

Mr. Nietupski said that one thing he did want to mention was in Item #6 Indemnification Clause it was different than shown in the package. It should read *…by any CONDITION OR EVENT ARISING OUT OF THE USE DURING ANY CONSTRUCTION activity OR FOLLOWUP REPAIR AND MAINTENANCE UNDERTAKEN BY LICENSEE, LICENSEE AGENTS, EMPLOYEES, OFFICERS OR ASSIGNS DURING THE WARRANTY PERIOD of the license areas….*

Councilman Hanna asked what happened if they do not get the grant or if they do get it but decide not to go forward.

Mr. Fann said that they will move about 70,000 more yards than they would otherwise. It is a win/win for the trail users, the City and or himself. Extending the slopes out will aesthetically make the trail look better and it makes his property more valuable. He said that he may not agree with the trail users, but he respects their opinions. He admires their tenacity and believes they will get it done one way or the other. He said that regardless of when it gets done, his interest is that when it is, the approaches do not look like an add-on.

Councilman Hanna said that he appreciated that. He thought everyone needed to know that Mr. Fann was not doing it just to benefit him, but also the City. Councilman Blair added that he appreciated him saying that it is enhancing his property as well.

Mr. Nietupski said that in the interim the Peavine would be realigned. When the road is open there would be an at-grade crossing with stop signs, for the interim approach dealing with that intersection.

Councilman Lamerson said that he wanted to clarify that if they approve these documents, it in no way obligates the Council to accept the grant.

He asked what happens if they do all this work and then they did not accept the grant. Councilman Hanna said that was his point. It will enhance the property whether or not it goes in.

Mr. Fann said that a big bulk of the improvements on the south side of the plan is separate and apart from the bridge. It is being done to flatten out the property and makes it more aesthetically pleasing. There will be no liability if the bridge does not go through sooner or later.

Joyce Mackin said that Centerpointe East is almost finished and the new trailhead will be on the north side. When they park their horse trailer the very first thing they will have to do is cross Centerpointe East. She suggested that some kind of a user-activated stop light be placed on the road. Mayor Kuykendall said that was not on the agenda but he agreed with her.

1. Adoption of Ordinance No. 4754-1105 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, dedicating a right-of-way across the Peavine Trail for public access purposes and authorizing the Mayor and City staff to take all necessary steps to effectuate such right-of-way acceptance.

   COUNCILWOMAN LOPAS MOVED TO ADOPT ORDINANCE NO. 4754-1105; SECONDED BY COUNCILWOMAN LINN; PASSED UNANIMOUSLY.

2. Approval of a Right-of-Entry and Temporary Construction Easement.

   COUNCILWOMAN LINN MOVED TO APPROVE A RIGHT OF ENTRY AND TEMPORARY CONSTRUCTION EASEMENT TO GRANITE DELLS ESTATES PROPERTIES, INC.; SECONDED BY COUNCILWOMAN LOPAS; PASSED UNANIMOUSLY.

3. Approval of a License Agreement with Granite Dells Estates Properties, Inc.

   COUNCILWOMAN LOPAS MOVED TO APPROVE A LICENSE AGREEMENT WITH GRANITE DELLS ESTATES PROPERTIES, INC.; SECONDED BY COUNCILMAN HANNA; PASSED UNANIMOUSLY.

F. Adoption of Resolution No. 4035-1105 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the application for and acceptance of a Transportation Enhancement Grant from Arizona Department of Transportation for West Gurley Street Pedestrian Enhancements (Cory Avenue to Plaza Drive), and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

Mr. Mattingly said that this was the same application process and if they were to consider it they would need to remove "acceptance of" from the resolution. He said that this was brought forward because of past discussions regarding grants and other communities that were receiving them. He said that staff has been looking at different areas in town that need improvement and this area covers Gurley from Cory to Plaza Drive. He said that the logical location to address would be from Park Avenue to Cory, but there were right-of-way concerns in that area. All of the right-of-way issues are okay in this section.

Mr. Mattingly said that this would include new sidewalks, ADA ramps, handrails and retaining walls where needed. It will address driveways and traffic signal improvements at Gail Gardner and Gurley. Some areas of damaged sidewalk would be removed and this would include approximately 3,000 feet of new sidewalk.

He said that these improvements will provide connectivity from the residential area to the downtown area. He had one correction to make in the numbers presented in the packet. He said that they made some corrections based on the preliminary application review by CYMPO and due to some design administration and environmental fees that were not included it increases the amount and the City's match would be increased by $8,000. The $5,000 administrative fee would be separate.

He said that this is a competitive process. There was talk about the multiuse path in Prescott Valley getting these types of grant funding and staff felt they needed to be proactive to look for activities. He said that they have ideas for other locations as well.

Councilman Blair said that he supports connectivity for pedestrians and thought this was needed. He said that it seemed open ended in the scope of work and asked how they would address it if they did not have to do as many driveways as they thought. Mr. Mattingly said that there was a detailed cost estimate done; he knows every driveway and ramp needed. There is a lump sum of sidewalk work for spot replacement for damaged sections. Those have not been identified specifically, but overall it is a highly-detailed estimate.

Councilman Blair asked if there was any cost sharing to the adjoining property owners. Mr. Mattingly said that there is a 5.7% match to the City.

Councilman Lamerson said that he thought they did not have all the rights-of-way. Mr. Mattingly clarified that on this section, from Cory to Plaza Drive, the City does have all of the required rights-of-way.

Councilwoman Suttles asked if there was a limit on the number of grants that a community can submit if it is all coming form the same pocket of money. Mr. Mattingly said that he did not believe there was a limit. He said that it is a set pot of money, but there are separate categories so this would not be competing with the Peavine Trail application.

Councilwoman Suttles asked what would happen if the construction costs change between now and when the project would actually be built. Mr. Norwood said that there is a cap on the federal money. When those funds are expended, they would have to consider that, but they can make those decisions later during the budget process.

Councilman Hanna asked why this particular area was picked, if there had been accidents, etc. Mr. Mattingly said that the City has a Pedestrian and Bike Element in the General Plan and it categorizes improvements on public roadways and most of those have been done. Gurley is a major entry point into the City and has been identified as pedestrian use. He said that there are other locations but they were first looking at arterials.

Councilman Hanna said that it seemed like there has to be a big safety issue. Mr. Mattingly said that it was not based on safety, but rather an enhancement.

Councilman Blair noted that there were a lot of drug and alcohol recovery businesses in that part of town and this will give people in that area a safe place to walk.

COUNCILWOMAN LOPAS MOVED TO ADOPT RESOLUTION NO. 4035-1105; SECONDED BY COUNCILMAN BLAIR.

Councilwoman Linn said that she thought it was a great project, but she had a problem with it coming in at $423,000 and her vote will reflect that.

PASSED 5-2 WITH COUNCILWOMAN LINN AND COUNCILMAN HANNA CASTING THE DISSENTING VOTES.

G. Changes to commercial solid waste hauling:

1. Adoption of Resolution No. 4036-1106 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, declaring as a Public Record that certain document filed with the City Clerk and entitled *"Chapter 2-13, Field Operations Department; Solid Waste Division of the Prescott City Code."*

Mr. McDowell said that with recent legislation changes private haulers will now be allowed to come into the City for commercial service. He said that most of the changes being proposed are promoting competition. They were not asking anything from the privates that they do not ask from themselves.

He said that they revised Chapter 2-13 of the City Code to allow private businesses to come in. They will take the fees and charges out of the City Code and they will be part of the budget process.

He said that the changes will require that private haulers comply with City, county and federal regulations and require a right-of-way permit for any private company coming into the City, at a charge $20 per permit. He said that is in the City Code and something that is needed when they are serving in the City's right-of-way. They have been working with Risk Management and Legal to make sure those are acceptable. All containers and trucks will be required to be marked with their logo and phone number.

Mr. McDowell said that they were asking for a 5% fee of gross revenues. The City has been charging itself up to $16,000 per truck for the wear and tear on their roadways.

Councilman Hanna said that he had received a call just before coming into the meeting and they wanted to know what the 5% fee was for. Mr. McDowell said that the City is already paying this fee, and it goes into the Streets Department for road maintenance. He said that with the way the trucks run a route they find that the heavy equipment creates wear and tear on the roads.

Councilwoman Linn asked about the semis, cement trucks, etc. and if they charged them anything. Mr. McDowell said that it is something they could look at in the future but those vehicles do not travel the same path over and over again. He said that he will be charging the residential trucks the same fee.

Jay Ebey, Patriot Disposal, said that he was still not clear on the 5% charge. He asked if that money would not go into the General

Fund. He said that he could charge himself internally but it is not real money. Mr. McDowell said that the City Solid Waste Division is an enterprise fund; they do not get General Fund monies. They operate separately and the General Fund revenues give them nothing. Since their trucks tear up the roads they give that money to the street maintenance fund; it goes to a different fund.

Councilwoman Linn said that the Patriot money would go right to the Streets Fund; it would not go to the General Fund.

Councilman Blair said that they were talking about a commercial vehicle running in the same location at least a few times a week and that is where the deterioration of the road goes. Mr. McDowell said that it could be up to six times a week.

Councilwoman Lopas said that to her she did not think the money was enough as there will be more trucks on the street.

Mr. McDowell said that a standard dumpster coming in to the City of Prescott, a lot will probably be three to six yard dumpsters. The price range, if serviced once a week, is about $23 to $60, so they would be talking 5% of that; it was not a big fee. They were trying to make this fair. He said that Jay's business will be one of the biggest along with Waste Management; however, they have others such as Best Pick Disposal. He said that they did not want to go at a per-truck fee because it would not be fair to them. They tried to make it as fair as possible, supporting the competition all the way around.

Mr. Ebey said that they would be charging only those types of businesses that they were competing with. Mr. McDowell said that Prescott was not the only city doing this. A lot of the larger cities were, such as Mesa, Glendale, and others do application fees. He said that one city charges a business $6,200, and it does not matter if they service one or one hundred accounts.

Mr. McDowell said that with regard to the right-of-way fee, anyone that has something in the right-of-way pays a fee now. The City builds the dumpster enclosures in their right-of-way so they are paying a lot more than the $20.

Councilman Hanna asked who would be liable if someone gets hurt on a dumpster. Mr. McDowell said that was why they were working with Risk Management. The private businesses have to have certain insurance. It is on the City property so it could be liable as

well. Mr. Kidd said that they will be required to have insurance and have the City named as an additional insured.

Mr. Ebey said that his insurance will cost more to add the City as an additional insured.

COUNCILWOMAN LOPAS MOVED TO ADOPT RESOLUTION NO. 4036-1106; SECONDED BY COUNCILWOMAN SUTTLES; PASSED UNANIMOUSLY.

2. Adoption of Ordinance No. 4755-1106 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona amending the Prescott City Code by deleting Chapter 2-13, *Solid Waste Department*, and adopting by reference that certain document entitled "Chapter 2-13, *Field Operations Department; Solid Waste Division of the Prescott City Code*," made a public record by Resolution No. 4036-1106; setting penalties therefor; and declaring an emergency.

COUNCILWOMAN LOPAS MOVED TO ADOPT ORDINANCE NO. 4755-1106; SECONDED BY COUNCILWOMAN SUTTLES; PASSED UNANIMOUSLY.

3. Adoption of Resolution No. 4037-1107 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, rescinding Resolution No. 3405 and adopting a new Valuation Table and Methodology for the calculation of such fees for the Solid Waste Division.

COUNCILWOMAN LOPAS MOVED TO ADOPT RESOLUTION NO. 4037-1107; SECONDED BY COUNCILWOMAN SUTTLES; PASSED UNANIMOUSLY.

H. Review, approval and ratification of the 2003 Plat adoption for the Crossings at Willow Creek - Residential.

Mr. Kidd noted that this item was requesting a review by the Council and approval and ratification of a plat that was recorded on November 20, 2003, referred to as the Crossings at Willow Creek. The packet included final plat #1 which was approved by City Council in November 2002, but was not recorded. Final plat #2 was the actual recorded plat, recorded by the City in November of 2003. He cannot find that it was approved by the Council as an amended final plat. The plat was signed off by the Mayor, Planning Director and City Engineer. There are some differences between the two plats. The covered bridge on Clearwater Drive was added as a second private segment. The public access easements were dedicated

over the low water crossings and a covered bridge and private street sections were also dedicated to public access easements. The developer/owner signed off on those public access dedications through the Trust; the plat was then recorded.

Approximately 79 lots have been sold in reliance of that plat. Some property owners in the subdivision approached the City to discuss making it a private roadway, but the City did not approve making it a private roadway because of the importance of the secondary access of Sandretto Hills. During 2008 and 2009, the issue came up again regarding the low water crossing, specifically in terms of issues that were raised by the Homeowners Association with regard to safety. Some interim steps have been taken about a month ago in terms of getting a license agreement where the City covers liability. There is maintenance and operating agreement in place at this time.

The request that the City has is to resolve some of the issues that were floating around to the extent that there was an administrative error in the recordation of the plat, which has been argued and submitted by a number of property owners in order to clear up the plat issues. This is the recommended course of action to ratify that clearly indicating the intent of the Council to approve the 2003 plat.

There are other steps he anticipates taking at a later point in time. Most importantly, they will be submitting a revised plat to deal with the low-water crossing and propose that the Council accept that low-water crossing consistent with other low-water crossings. They are not dealing with that issue at the time, but with an amended plat and requesting that the Council ratify the approval of that plat.

Councilwoman Linn said that it was her understanding that this plat and any other plat in this situation, that had changed, did not have to come before Council. She asked if he was bringing it forward to ratify the decision that did not have to come to Council in 2003.

Mr. Kidd said that it was a good question. He noted that none of them were with the City in 2003 and that it was difficult to reconstruct. They are operating under the new Land Use Development Code. In 2002 there was a separate code and there were provisions of that code that allowed acceptance of certain kinds of modifications in the plat administratively. There was language in the code that suggested that it can be done that way. Whether these are modifications that would fall under that is an issue that could be argued both ways. In 2002, they may have felt that they did not need to go back to Council with the modifications. Ratifying this plat addresses the issue administratively, whether that had to be done or not.

There are other issues on plat dedication. When a plat is dedicated to the public, any plat signed off by the then owner, has different issues as to the dedication. It may be a common law dedication or it may have been dedicated apart from the subdivision plat being filed. When lots are sold in reliance upon a recorded plat, they need to know whether or not the dedication may be valid just because of that particular legal reason. Those are all legal issues that pertain to the recording of the plat. There would be a notice to the people who buy it that those are the conditions that they are buying under. Those were all present when it was recorded.

Celeste Roberts, Crossings resident, asked if they required the Crossings to take a vote to pass their ballot in order to come before them today. She thought they had.

Mr. Kidd asked her if she was asking if the City required her to do that. He said that he thought that their own rules required them to do that with respect to the common property. The Homeowners Association (HOA's) attorney was present to answer her question. He thought that in order to give the HOA Board direction as to what to do with common areas, there had to be a Board vote.

Ms. Roberts asked if he was basing the ratification on the fact that the HOA took a ballot vote on this issue to agree with the City. She asked that if they had not taken the ballot vote in the HOA, whether it would be coming before Council at this time or would they have done this anyway.

Mr. Kidd said that he could not speculate. The Council has the power to ratify or approve a subdivision plat which is apart from anything that was done. They were talking about 2003. It was helpful if there was a comment by the homeowners in the area and by the Board in terms of whether or not the ratification was acceptable to the homeowners that are in charge of the property.

Ms. Roberts said that they were led to believe, as homeowners, they had to take a vote on the measure in order for them to do what they were doing today. It sounds like that is not necessarily true. She was there to challenge how that vote was done in the HOA and make the Council aware that there was some "magic" going on with the HOA Board who took what was to be a single day on July 15th, when the ballot was supposed to be given and transformed that single day over a two-week period of time, extended the meeting and ending it on July 26th, in order to get the 75% ballot vote.

She was asking that this be sent back to the Board and tell them they need to do it legally. There was a law that was quoted to them saying that if HB2154 passed in 2005, it said the ballot for an HOA was valid only for

one specified meeting or election and expired after that meeting date. She felt that the vote was done in a way that would invite a legal challenge and it needed to be redone.

Mayor Kuykendall asked if her vote was a “NO”. Ms. Roberts said that she did not vote at all. She abstained because they needed a quorum of 41 votes to establish a quorum. She did not want to help establish the quorum. Mayor Kuykendall asked if she was there with an opinion.

Ms. Roberts said that her opinion was that it was the wrong direction to take with the Council. They had been told that all that needs to happen was to take it to the judge and ask which plat was legal. At that point they could go forward. It seems like they are doing legal gymnastics to accomplish several tasks at once. The measure that day was giving away a section of property that was currently private to the City of Prescott. The Board has managed enough votes to get it through. They want it given to the City without compensation to the homeowners. She felt that it should be going before a judge to figure out which plat was correct. From there they could negotiate to give away a piece of land, if they wanted to. At this point, they were trying to negotiate four different items with one action and she did not feel that it was the right thing to do.

Councilman Hanna asked how it would benefit the City. Ms. Roberts said that it would give them a piece of land on which to take liability. Councilman Hanna asked if that benefitted the City. Ms. Roberts said that Councilman Blair mentioned in a previous meeting that the road was never meant to be anything but a connector collector. It could eventually benefit the City. She did not know about the current time. She asked if there was another connector collector in the City. She said that Rosser and Gail Gardner were comparable. She thought that it seemed odd in their little private community. To give that to the City and condone the amount of traffic; they already have 1,000 cars a day and the lots are only 25% filled. That seems an inordinate amount of traffic to be going through that neighborhood.

Councilwoman Linn asked if there had been a traffic study done in that area. Mr. Nietupski said that he did not believe that they had counted the cars recently. Councilwoman Linn said that it seemed like a lot compared to some of the other road studies and said that she would love to see some statistics on it. Ms. Roberts said that Ian Mattingly did a study a few years ago. Mr. Nietupski said that he would get the information.

Councilman Hanna asked if it made any difference if they ratified it that day or not, whether the HOA voted on it or not. Mr. Kidd said that it did to the extent that their HOA rules require them to comment on it and it would be helpful to eliminate one legal issue if the HOA that is in charge of the

common area favors the ratification of the plat. Secondarily they will go through an amended plat that they will need the homeowners' consent in order to deal with the property. The only way they could actually do that in an amended plat was if the person who owned the property or was in charge of the property, on behalf of the other property owners, signs off on the last plat.

They looked at the process as something to get everyone involved in. They wanted the HOA to comment on and see what there position was before the City moved forward on it. Their consent does help eliminate the legal issue that the HOA itself did not want the City to go forward.

Councilman Hanna said that he thought they had the approval of the HOA. Mr. Kidd said that he could not address some of the homeowner's nuances that happened because he was not involved in it.

Jim Atkinson, attorney for the HOA, explained what the vote was about. The members were voting on four different things at the meeting that commenced on July 15. The first vote was whether or not they were in favor of ratifying and rerecording the 2003 plat. Approval of that required a majority of those voting. Even if the position of Ms. Roberts was correct, they had 60 ballots on the 15th from the members of the association. There were 79 lots. 60 out of 79 people gave them ballots on that issue. Out of those, 58% voted in favor.

The second issue was whether the replat that Mr. Kidd referred to, would be approved by the members. They would vote on the replat and dedication of the low water crossing, the bridge deck and some center islands. That also required the majority of those voting to approve it to pass. Again, of the 60 ballots, 58 were in favor, 2 against.

Councilman Hanna asked if those votes all took place on July 15; Mr. Atkinson replied that they did.

Mr. Atkinson continued and said that when the issue came up to accomplish the dedication of those areas, they would have to amend the CC&RS of the association. In order to do that, they need 75% of the members to vote in favor or to give them a written approval of that, approving the amendments. That was a separate issue and something they want to do. They were talking with those members who objected to their continued meeting. That issue was not in any way related to today's issue.

The fourth issue was that under their documents they had to approve a change of use in the event that they were changing how common areas were used. Since the low-water area was a common area, they had to

have 65% of those voting to approve that change. Again, they had 58 for and 2 against.

They felt that they had a right to extend the meeting to the 26th. As far as the vote on this issue the Council was considering, it was 96% of those voting voted in favor, which was 76% of all of the lots.

Councilman Lamerson asked if the ratification of this plat would redirect the liability on something the City does not have right now. The private HOA had the liability of what happened in the low-water crossing. Mr. Kidd noted that it did not belong to the City, but the recorded plat indicated that it was a public right of access. He said that the specific action today would not redirect liability. The action taken a month ago allowed the City to take over the liability for the low-water crossing temporarily. This action would ratify the plat recorded by the City in 2003 which provided for a right of public ingress and egress going through the low-water crossing and across the bridge area.

Councilman Lamerson asked who would have the liability of managing the low-water crossing once the temporary agreement went away. Mr. Kidd said that if the revised plat did not go through, the HOA would have the same responsibility they did under the current plat.

Councilman Lamerson asked what the advantage was to the City of managing the low-crossing, with the liability. Mr. Kidd said that the advantage in taking it over was to manage it consistently with the others that the City maintained. Part of it was working with the HOA and trying to handle their concerns. One of the only ways to get involved in that was to go through the amended plat. They felt they could not close the road because it was required to be a public access. Yet water was going across and the HOA was worried about accidents and its liability. They will get out of the liability and it will resolve a contested issue that they have had for a long time.

Councilman Lamerson said that regardless of the two plats the road was intended to be considered a public road and it currently could be obstructed in the middle, the low-water crossing, which the City was not responsible for. Mr. Kidd said that right now with the recorded plat they were responsible for it. The only thing that makes the City responsible is the temporary agreement. Councilman Lamerson asked if any other portions of the road were subject to the same conditions as the low-water crossing. Mr. Kidd said that just the bridge was subject to the same conditions as the low-water crossing, under the recorded plat.

Ms. Roberts said that one thing that Mr. Atkinson left out was the statement made to the residents that if all four of the measures did not

pass, then none of them would pass. That was the issue they had because the meeting was continued to enable them to get the required votes. She said that she did not want a legal challenge, but if they were going to get a vote they need to get it the right way.

She said that as far as the low-water crossing, as one of the co-chairs of the traffic calming committee she knew that the issue they faced was that because of the private nature of the low-water crossing they had the liability, but they had no control. The City controlled the gating so they could not protect the public from the issues. She said that it is about control. They believed that the section of road was put there as a protective measure for them against traffic and they should be able to close it and gate it as needed when the conditions prohibit traffic from going through there. That has been up to three months out of the year that the road impassible. The idea was that the road was never built to specifications and would have to be improved, and it is the lowest of the low-water crossings in the City. She said that they cannot protect anyone at this point.

Councilwoman Linn asked how many low-water crossings the City had.

Debborah Sellers, Crossings resident, said that the one thing that Jim Musgrove (Mr. Atkinson) neglected to mention was that although the first three of the four measures passed on the vote that was legal on July 15, the fourth vote could not pass because they did not have enough votes, which meant that all four issues would fail. They illegally extended the meeting for two more weeks and flagrantly garnered two more votes, so there will be a challenge to it.

Ms. Sellers said that in the Public Report, which is what people have to rely on, it showed only one way in and out of the Crossings. Clearwater Drive was going to the commercial development. The actual low-water crossing was private to be maintained by the property owners. Everyone knew they would be responsible, but it did not stop anyone from buying the lots.

John Sellers, Crossings resident, said that he took issue with a comment made by Mr. Kidd. He said that he has made a lot of public records requests (over 1400 documents he has reviewed), and part of those was the old LDC and the LDC adopted in 2003. If they check those codes they would find that both of them require that an abandonment or dedication of a public street come before the public body.

He said that the reason he was correcting his wife previously was because there would be a challenge of the ballots, filed in Superior Court tomorrow so he would not speak to the issue other than to say that any

vote taken today by the Council, they believe, would be an expropriation of property under Proposition 207.

Mr. Sellers said that they paid $1 million cash for their house. Because of the administrative error that Mr. Kidd described they have been declined three times by well-known national reverse mortgage lenders until the "sticky title mess" was cleaned up. The administrative error is a carefully orchestrated series of events with the masterminds being the developer Ty Myers and City officials at the time, some of whom are currently sitting in the room. They believe that ratifying the 2003 plat means granting them amnesty which they do not believe they could do. Furthermore, legal research suggests that even if the 2003 plat had been properly approved it would have still been illegal because of its form, because of the splitting of the right-of-way and the ownership of the land. If that was true the good of the City could own the Crossings.

He said that he has seen white collar crime and does not jump to conclusions easily. Councilman Blair alleged criminality to him at Murphy's Bar in July 2009 on the part of Craig McConnell and Ty Myers. Despite his allegations, his (Mr. Sellers') sworn affidavit a few weeks later still reflected what he thought was the hard evidence in the facts where he said *"my strong suspicion without knowing all the facts and for the avoidance of doubt only with respect to paid public officials is this was simple disorganized ineptitude on the part of the City compounded by some very poor legal advice. I have no evidence or belief that paid officials' action merit an FBI or criminal investigation."*

He said that opinion changed later with evidence supplied unasked by City staff which showed that Ty Myers applied for abandonments of Lorraine Drive in his commercial subdivision in early 2002. He said that the unlawful plat together with that abandonment constitutes a swap of the traditional neighborhood road through his commercial subdivision into their residential one.

He then gave an analogy of the City Council approving plans for Rosser Road with a private gate in the middle, closing it to through traffic. People then buy lots based on that, but behind closed doors the developer and the City delete the gate in the plat when recorded and Rosser becomes a main thoroughfare.

He said that Mr. Musgrove stood before the Council on April 27, 2010 and said that there had been too much made of the whole situation because no one had sat down and looked at it as a whole. He said that was not true because Eric English, an attorney with his firm had done so seven days earlier. He sent his analysis on April 23, 2010 to their title insurer. His description of the administrative error was that the developer and

Mayor, City Engineer, and Planning Director circumvented the final plat approval process by failing to satisfy the requirement in Section 9-10-9 of the new Land Code. He added that the developer and City of Prescott were liable if title failed due to an invalid plat. The developer had a duty to ensure that the plat was properly approved by the City Council and the City of Prescott incorrectly approved the plat. He said that Mr. English had indicated in his memo to Mr. Musgrove that he was the strategist and their best course of action would be to go after the City and let the City pursue the developer.

Mr. Sellers said that once his title company saw that memo, they e-mailed it to Mr. Musgrove but not to him, and it had a note that they could all agree that the effect of a court-ordered invalidation of the 2003 plat may have some disastrous consequences for everyone. The same title company e-mailed him the same day saying that they had attached a preliminary report for a loan policy which did not disclose that as a title issue. They did not see any reason why an appraiser would pick it up as a title issue and they saw no obstacle to selling or refinancing.

He concluded in saying that his questions to Council were 1) if the plat would be approved by a judge with a declaratory action because that was a condition of the special vote? and 2) who was actually opining on the legality of all of it?

He said that to the extend that there was a legal action pending on the ballots he would not get into that, but they had not yet retained counsel to action on the title issue.

Mayor Kuykendall said that he was disappointed that Mr. Sellers did not read his letter that he previously forwarded to everyone. He said that they met some time back and he had a lot of confidence and enthusiasm that he was one of those guys that came to Prescott because he wanted to be there and be a part of the community and would offer his expertise and help in some areas. He also understood that he wanted to go into business in Prescott and that the City might potentially be a customer.

He said that the part that disappoints him is some of the accusations that he made, without proper background or knowledge, to be accusing people of being “co-perpetrators, corruption in government, brazenly caught up in a cover-up” and then trying to remind them of how President Nixon got involved in a White House cover-up. He said that Mr. Sellers suggested that they were really being asked to grant amnesty. He disagrees with those things and disagrees with the liberty he took with the “he said, she said, I said.”

Mayor Kuykendall said that he took issue and there was nothing “classic bait and switch” and also that Mr. Musgrove lied to him. He did not believe in those things and Mr. Sellers had also made mention several times that Mr. Musgrove was they Mayor’s attorney which was not true. He said that one of his associates had done work for him, but if he needed help he would not hesitate to go to him because he was a fine attorney.

He said that he did not know where they were going to end up with the situation; they had been told twice today that they would end up in court. With that coming from Mr. Sellers and Ms. Roberts he guessed that was where they should head. He hoped they could move forward without making accusations about people who have been there a long time. He said that a reverse mortgage usually means they wanted to get some money out of something. He said that he did not want the community to think that what Mr. Sellers was spouting out was all factual and maybe the court was the right place to do it.

Mr. Sellers said that he did not read the document that the Mayor had just eluded to. Mayor Kuykendall said that he wished he would have because it was so close to being on liable, which they may want to pursue. It proved what his intent was.

Mr. Sellers said that there has been no action filed against the City and he did not believe he ever said that they were filing an action against the City, nor did his wife. Mayor Kuykendall said that is a right he has and he had been threatened it long enough. Mr. Sellers said that he did not come there today to engage in a personal attack. Mayor Kuykendall said that the prior letter he sent to everyone made it very personal. Mr. Sellers said that was a different document. Councilwoman Linn noted that anything sent to the Council is a public record and available to everyone.

Mr. Sellers said that he would go back to his earlier question of whether there would be a declaratory judgment. He said that he did not want to make it personal.

Councilman Blair said that he was there in 2003 and he wanted to clarify something, and he was also on the Planning and Zoning Commission and was involved all the way through. His understanding was that Lorraine Drive was traded back to the Crossings Drive based on Mr. Myers’ commitment to the City to do commercial first and to participate in a light whenever warranted. Lorraine Drive was stipulated to be a problematic situation that had been washed out numerous times and was deemed to be unusable. The tradeoff was clear.

He said that then when it came up with Rocky Anochinni through the development process of the Crossings, of not having a secondary access

for the Sandretto Hills neighborhood based upon the Crossings being developed in the commercial properties, Robin Drive was negotiated to be a full-blown thoroughfare to give secondary access, not only to the Crossings, but to those in Sandretto Hills and everyone on the other site of the creek.

He said that he wanted people to understand that regardless of what people have stated, the creek has been closed numerous times, but without that secondary crossing on Robin they would not have had an out; they would have been stuck. It was beneficial both ways and when the conversation with Mr. Sellers at Murphy's took place he had stated that if anyone had done anything outside of the scope of being legal in the City they should be fired and convicted and he made that statement clearly to Mr. McConnell and other City staff. He said that he stood behind those comments.

Councilman Blair said that based upon a plat being drawn and the Council approving it that also had footnotes on the plat, the City has a right to alter changes administratively. There were two plats, but only one was submitted for approval and that was the one with the new verbiage that clarified what was already footnoted on the original plat. That was ratified by the fact that they sent that through the process at the County and on to the State with the realtors. That plat was accepted as a legal plat and was the only plat that the purchasers saw to be able to buy a piece of property. He said that he found it difficult to understand the issue when there is a legal plat that has been recorded within a year's time frame called out in the Code of the City of Prescott, and it was recorded and was what people bought properties under.

Mr. Kidd said that the 2003 plat was the only recorded plat. Councilman Blair said that the reason they were there today was that in the wisdom of the past Public Works Director (Mr. McConnell) and the past City Attorney, before it was submitted for recording the City asked why they should take on the responsibility for the crossings that gave the City the liability. That was on the footnotes stating those two areas would be the HOA's. They were there today to say that, if it has become an issue of who closes the gates, operates it, etc. the City will modify the plat and move forward.

Jim Musgrove said that he was not going to address the libelous and slanderous communications made by Mr. Sellers with regard to him much less the members of the Council, on advice of those he consulted with today regarding those statements. His main purpose for being there was to advise that they were all way off track. They were not there today to discuss whether or not to assume the ownership and liability of the water

of the low-water crossing on Robin Drive. They were there for a simple administrative task to ratify and confirm the 2003 plat.

He said that the reason for that is that there has been a question as to whether or not the signing off by certain of the City administrators (Mayor, Clerk, etc.) was correct because there was a change in the dedication language. This is a question because of confusion within the Land Development Code. If they go back to the minutes of the 2002 meeting they will find that the corrections or changes made to the dedication language as signed and recorded reflect 100% and absolutely the charges by the Council to staff that the City did not want the ownership of the low-water crossings and its liability, but the low-water crossing was to be a public access. That was the change.

With regard to the other matters on whether Robin Drive was to be gated or closed off he did not know and he had nothing to do with that. He was hired simply to be sure that title was valid for the 79 lot owners. With regard to the memorandum that Mr. Sellers seemed so excited about, as a lawyer he was hired by the title company to be sure that the title of those properties were clear and the homeowners would have no problem with the title to their property. One of his jobs, having represented title companies since August 1980 and representing six of them today, was to work out “what ifs” such as, “What if Yavapai Superior Court, in a challenge by somebody, determined that the plat was invalid?” That memorandum was prepared on his instructions by an attorney working for him to address a “what if the title fails?” That would be his position that the City screwed up, if the court found that the plat was not legal. He asked that they stick to the subject at hand and ratify the 2003 plat so they can move on. At another point they will to determine whether they will replat to take over the ownership of the low-water crossing.

Councilman Blair asked Mr. Musgrove if the Council’s ratification of the action today would clear title to the properties. Mr. Musgrove said that in his opinion it would, but as he recommended to Matt Podracky and Jim Atkinson at an earlier meeting, they should ratify the plat and then take a declaratory judgment to Superior Court and ask for it. He has not pursued that because that action should come from the City of Prescott. In view of what has been happening it would be his opinion that it would be in the best interest of the City and the lot owners.

Mr. Sellers agreed with Mr. Musgrove on the declaratory judgment as they would like to have a clear title. He said that the minutes in 2002 do not bear out what they say. Additionally, he said that the Land Development Code was clear that it was unlawful to modify a plat where there is a dedication or abandonment of a street without going back to the City Council.

Ms. Roberts said that she wanted to clarify that she had not threatened a lawsuit; she simply was warning the Board and people there that she was aware that the Sellers were planning to file.

COUNCILMAN BLAIR MOVED TO APPROVE AND RATIFY THE 2003 PLAT ADOPTION FOR THE CROSSINGS AT WILLOW CREEK – RESIDENTIAL; SECONDED BY COUNCILWOMAN SUTTLES; PASSED UANANIMOUSLY.

I. Discussion/direction of continuing with two Regular Voting meetings a month as previously adopted in Resolution No. 4001-1031.

Councilwoman Linn said that it does not matter to her as a person, but she has talked with 40 people and all but one said that they would prefer to have weekly meetings. She said that one person mentioned that back in 2004 the Council considered and took action on the same day and they were offended that they did not have a chance to talk to them about it. She said that she was fine with whatever they decide.

Councilwoman Suttles said that when they first decided to try it she thought it was going to be more than they ended up with. She thought they would have their regular meetings and workshops. She said that she received a sheet from Laurie Hadley with comments from various departments and also a sheet showing what a number of cities in Arizona do. She said that out of the 41 cities that responded, only 7 or 8 had 4 meetings a month. She was on the bubble. She said that if they stayed with two meetings a month she would like to see the other Tuesdays used better, perhaps for presentations, workshops, liquor licenses, etc.

Mayor Kuykendall said that he had brought the idea (for two meetings a month) forward soon after he got on Council as he found they had a lot of inefficiencies. They were asking people to do more with less and he thought this was the most accessible Council that he has seen. He thought his job would be three to four hours a day but he has been there every day except one Friday, and he averages seeing five people calling or walking in the door. He has not turned one down. Additionally, he averages three to five events a week. Last Saturday he had four events and one on Sunday.

He said that they have not turned anyone down from being able to speak on an item. He has not had one phone call or comment about two times or four times a month. He said that he has seen efficiency approve and the City Clerk has been able to stay afloat without having help in the last few months, and that tells him a lot. He said that they have only had one Tuesday since they started that they did not have any type of meeting.

Councilwoman Suttles said that she was an advocate for the two meetings. Those two meetings each month are packed. She has no issue as she was there every Tuesday along with him, but she wants the off Tuesdays to be used better.

Councilman Hanna said that he found it interesting to look at the list of cities, to see that 25 or more have two meetings or less a month and workshops as needed. He also found it interesting the amount of time it saves the Clerk's Office in eliminating additional packets. He thought it was working and he has not heard anything ill about having two meetings a month. Perhaps they could use the other Tuesdays better, but his personal opinion is that he did not have a problem with twice a month.

Councilman Blair said that he does not like it. He schedules his Tuesdays to be productive and they have not been productive. He understood that staff was saving time. Councilwoman Linn asked questions off the cuff today and if they were having a study session and regular meeting those answers could have come back next week. He said that it gives an opportunity for the public to hear it on TV. He prefers four times a month.

Mr. Slaback said that he thought they needed to go back to the weekly meetings. The last time he spoke he sat there for four hours. Today he attended the workshop so he is getting close to five hours and they have not finished the agenda. He said that they were eliminating public process at the meetings.

Councilman Lamerson said that he, like Councilman Blair, did not like the two meetings a month. He did not think they had been as constructive as anticipated. They have not had as many workshops as they thought they were going to have. He said that they need to be around the dais more frequently than twice a month, whether it is a workshop or regular meeting. With more meetings they would have less items on the agenda and they would not pile up.

Mayor Kuykendall asked how they would get less items on the agenda if they were discussing an item at the study session and the voting session. He said that everyone should have input on what they discuss at workshops. It should not be staff having to determine what workshops are going to consist of. The Council was the policymaker. If they feel they need a workshop they could call one. He said that they have had workshops on every Tuesday except one.

Councilwoman Linn said that she was all for efficiencies. If they do go back to four she would like to see one Tuesday dedicated to the committees' liaison's reporting to the others. It would make them more

accountable and give the audience an opportunity to understand other things that are going on.

Daniel Franz, Prescott, said that he liked the two meetings a month and it sounded like staff liked it. He suggested that they consider extending the test period and work out the kinks using the other Tuesdays more efficiently.

Mayor Kuykendall said that back in the 1970's they had a study session at 3:00 p.m. and came back at 7:00 p.m. and voted, and they got it all done. Then there were two meetings a month for years.

Councilwoman Suttles said that they could extend the trial period and she would like to sit with everyone and try to be more efficient with working with staff on the off-Tuesdays.

Mayor Kuykendall said that they have been very receptive with everyone that comes in and makes an appointment to be on the agenda for a presentation. Sometimes they bury themselves with those before they get started. Perhaps they could do those once a month.

Councilman Blair said that if they were going to restructure it then there needs to be more structure to it. Perhaps they could have new businesses put on an off-Tuesday and presentations.

Brief discussion was held on the Open Meeting Law and how the general public does not always understand how it works.

Councilwoman Suttles said that she would consider continuing for three months and sit with staff and Council to refine the off-Tuesdays.

Councilwoman Lopas said that when they first discussed this she had done some research on other cities. There are a lot that have two meetings, and one off-Tuesday is a workshop and the other is a policy decision week. She added that she likes having agendas ready on Wednesdays.

COUNCILMAN HANNA MOVED TO CONTINUE WITH TWO REGULAR VOTING MEETINGS A MONTH UNTIL JANUARY 1 AND REEVALUATE THE OTHER OFF-TUESDAYS; SECONDED BY COUNCILWOMAN LOPAS; PASSED UANANIMOUSLY.

J. Consideration of cancellation or postponement of August 24, 2010 Council meeting due to the conflict with the Annual Conference of the League of Arizona Cities and Towns.

After brief discussion, **COUNCILWOMAN LOPAS MOVED TO CHANGE THE AUGUST 24, 2010, MEETING TO AUGUST 31, 2010; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.**

K.* Acceptance of a Federal Aviation Administration grant in the amount of $186,405.75 (City matching share $4,905.41) and authorizing the application for a grant from the Arizona Department of Transportation – Aeronautics Division in the amount of $4,905.42 for construction of Airport Pavement Preservation and Markings.

Mr. Vardiman said that this item had two parts—acceptance of an FAA grant and submittal of a grant for replacement of centerline markings to the Arizona Department of Transportation.

COUNCILWOMAN LOPAS MOVED TO ACCEPT A FEDERAL AVIATION ADMINISTRATION GRANT IN THE AMOUNT OF $186,405.75 (CITY MATCHING SHARE $4,905.41) AND AUTHORIZE THE APPLICATION FOR A GRANT FROM THE ARIZONA DEPARTMENT OF TRANSPORTATION – AERONAUTICS DIVISION IN THE AMOUNT OF $4,905.42 FOR CONSTRUCTION OF AIRPORT PAVEMENT PRESERVATION AND MARKINGS, AND FURTHER AUTHORIZE THE MAYOR AND CITY STAFF TO EXECUTE ANY AND ALL RELATED DOCUMENTS; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.

L.* Adoption of Ordinance No. 4756-1107 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, quitclaiming a certain municipal right-of-way which consists of a portion of Lorraine Drive located north of Robin Drive and authorizing the Mayor and City staff to take all necessary steps to effectuate such quitclaim deed.

Mr. Nietupski said that this was part of the settlement agreement with the Rabers. It is a quit claim deed for a portion of Lorraine Drive, and the City would retain ingress/egress and a public utility easement in the area.

Mayor Kuykendall said that at the end of last week he was asked by staff to sit in on the negotiating meeting where Dr. Raber wanted $90,000 and then it went to $60,000. He said that staff did a great job and within half an hour they were able to move forward with what was being presented.

COUNCILMAN LAMERSON MOVED TO ADOPT ORDINANCE NO. 4756-1107; SECONDED BY COUNCILMAN HANNA; PASSED UNANIMOUSLY.

M.* Adoption of Ordinance No. 4757-1108 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, abandoning existing water line easements and pipeline right-of-way north and west of Robin Drive and Lorraine Drive specifically located on the current Assessors Parcel Numbers 106-07-030, 106-07-006, 106-007-003 and 106-07-002E as shown on Exhibits "A", "A1" and "A2" and accepting a grant of water line easement with the right of ingress and egress to and from the same across the property as shown on Exhibits "B" and "B1" water line easement and record of survey and authorizing the Mayor and City staff to take all necessary steps to effectuate such abandonment and dedication.

Mr. Nietupski said that this was part of the same agreement as above. It cleans up some issues with the easements as they existed.

Councilman Blair asked if they were able to, without a doubt, put those lines where they actually belong. Mr. Nietupski said that they were excavated and surveyed to create this document. There was no question on where they were.

COUNCILMAN LAMERSON MOVED TO ADOPT ORDINANCE NO. 4757-1108; SECONDED BY COUNCILMAN HANNA; PASSED UANANIMOUSLY.

V. ADJOURNMENT

There being no further business to be discussed the Regular Voting Meeting of July 27, 2010, adjourned at 7:07 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 July, 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