

PRESCOTT CITY COUNCIL  
REGULAR VOTING MEETING  
TUESDAY, FEBRUARY 8, 2011  
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL held on FEBRUARY 8, 2011 in the CITY HALL COUNCIL CHAMBERS located at 201 SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

Mayor Kuykendall called the meeting to order at 3:01 p.m.

◆ **INTRODUCTIONS**

◆ **INVOCATION:** Reverend Julia McKenna

Reverend Julia McKenna gave the invocation.

◆ **PLEDGE OF ALLEGIANCE:** Councilman Lamerson

Councilman Lamerson led the Council and audience in the Pledge of Allegiance.

◆ **ROLL CALL:**

Present:

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

Absent:

Councilman Hanna (excused)

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

**I. PRESENTATION**

A. Presentation on *The Shops at Prescott Gateway*.

Mr. Guice presented a PowerPoint presentation (attached hereto as Exhibit A), which he said would be presented in three parts. The Council would hear from Mr. Woodfill who would be talking about the financial and economic benefits of the project, followed by Brett Heron, RED Development Company out of Phoenix.

Mr. Guice noted that the last speaker would be Mr. Kidd, who would present the key facts of the Development Agreement and other documents associated with the project. He said that all would be followed by a short summary.

Mr. Woodfill began his presentation which included the following:

- ◆ INTRODUCTION
- ◆ FINANCIAL BENEFIT
- ◆ GENERAL FUND REVENUES – GRAPH
- ◆ GENERAL FUND REVENUES TREND – GRAPH
- ◆ GENERAL FUND EXPENDITURES – GRAPH
- ◆ FY 12 BUDGET CHALLENGES
- ◆ OTHER POTENTIAL CHALLENGES
- ◆ THE INVESTMENT
- ◆ THE RETURN ON INVESTMENT
- ◆ AN ENTREPRENEURIAL INVESTMENT

Mr. Heron continued the presentation and discussed the following:

- ◆ SITE PLAN AND PROJECT DETAILS
- ◆ MAPS

Mr. Heron noted that the plan for the project was to develop it in phases. He said that Trader Joe's would like to have the store open by the holidays of 2011. They wanted to start construction in April and open it to the public in November 2011.

He noted that financing was very tight in the current economy and this type of Public Private Partnership was needed to allow the project to happen. He also noted that investment dollars for new projects were hard to come by so it came down to an allocation of resources. He said that there were very few new commercial construction sites in Arizona and the ones that were out there were due to a nuance as to why they were moving forward.

Mr. Heron noted that they were happy to have structured a mutually beneficial deal for them and the City to get the project open and generating sales tax revenue in 2011. He said that their attorney, Gary Birnbaum was also there to answer questions.

Councilwoman Suttles asked if Trader Joe's had gone into a Public Private Partnership with any other municipalities. Mr. Heron said he could not speak for Trader Joe's, but there were not any that he knew of.

Councilwoman Suttles asked if this was their first project with Trader Joe's. Mr. Heron said no, Trader Joe's was in four of the other centers that they were involved with. Councilwoman Suttles asked if he could check into whether Trader Joe's was involved in any other Public Private Partnerships. Mr. Heron said that he would do that.

Councilwoman Suttles asked if any retail establishments had inquired about the pads next to Trader Joe's. Mr. Birnbaum said that they had several inquiries over the past month from retailers and restaurants.

Councilwoman Suttles noted that the City would build the entrance from Highway 69 and asked if the exit was on Lee Boulevard. Mr. Heron said that the City would only build the entrance from 69.

Councilman Lamerson said that once the property had been built on, it would be worth something different than what it was worth when it was purchased. He asked if the tax payers' investment was secured by something more than \$2 million. Mr. Birnbaum said that every dollar that they put into the project further enhanced the value of the property for the City.

Mr. Kidd continued the presentation covering the following:

◆ DEVELOPMENT AGREEMENT

The developers were responsible to enter into a 45 year lease of the property.

Mr. Kidd said that he did not want to subject the City to damages or attorneys fees. The City was going to use the City's standard boiler plate which provided that if there were not any damage remedies it could go to court. He noted that there was a waiver of jury trial provision and the City taxpayers would not get exposed to any contractual damages. He also noted the developer could assign the

Development Agreement, which would run with the land for the 20 year period that it was effective. He said that anyone who took over the Development Agreement would agree to assume all the rights and obligations of the agreement.

Mr. Kidd said that both parties agreed to defend the Development Agreement if it was challenged. He said that there were some provisions for normal delays and there were also standard warranties in the agreement.

Councilman Blair asked Mr. Kidd if this was a solid contract and document that he would defend. Mr. Kidd said yes. He then continued the presentation:

- ◆ PROPERTY PURCHASE AGREEMENT
- ◆ GROUND LEASE AGREEMENT

Councilman Blair said that it would make sense that the developer would not want the City to be the landlord for a long time, recognizing that the City was buying the property at the bottom of the market. Once the economy turned around the City would have to sell the properties for the highest and best value. He said that if in two years, the assets raised \$1 million, the City was held by law to sell for the appraised value. He said that it did not seem that there was a value to the developer to allow the City to keep the property any longer than the City had to.

Mr. Kidd said that his last statement was correct. The lease agreement was structured so that the developer had the option to exercise the purchase option in whole or part on the property during the time period when the lease was up. The City tried to structure the agreement where the City would not be holding money on the property for a long period of time. The idea was to try to encourage the developer to have an incentive to buy the City out.

Councilman Blair said that if the City determined after two years or more that the economy had turned around and the property went up, he said that the City was held by the procurement law to sell the property for the highest and best value. Mr. Kidd said that under the terms of the lease agreement they would have to sell it for the total municipal investment plus 4 percent for years 6 through 10. In the years after that, years 11 through 45, the buy out might be much higher than the actual value.

Mr. Guice showed the remainder of the presentation, which included:

- ◆ SUMMARY OF KEY POINTS
- ◆ SCHEDULE FORWARD

Councilman Lamerson said that it sounded like a good business venture. He said that it had been in the making for awhile and that the City was not actually paying someone to come to the City; there was no tax rebate. He said that the City could not depend on the State or Federal government, especially when it came to some of the monies that they had taken away from Prescott. He said that if Prescott was not willing to invest in itself, other people were not willing to invest in them either. He noted that he appreciated all of the work the Jane Bristol and Gary Kidd did to bring the project forward.

Mayor Kuykendall said that this Council had been faced with losing employment and sales tax revenue. For the last several months their major goal had been to satisfy those two losses. He said that this particular site was the site inside the City limits that Trader Joe's said they would locate. It was also land that needed to be developed. He noted that it was part of the original development of that area. When the opportunity from Trader Joe's was acknowledged and a developer that had the connections and ability to do the construction surfaced, the staff was very interested.

He said that the City had embarked, many years ago, on a potential project for a hotel/convention center, committing \$5M to the project. He noted that it, too, was an economic opportunity. The economy went south and the project was not able to be built. That project did not have a 100% repayment to the City as this did. He said that there were a lot of reimbursements designed into it. He thought it was a good idea to stress the Trader Joe's points again.

He said that the City would use capital development money that could not be used for the General Fund. Ms. Hadley said that it could not be used for ongoing operations. Mayor Kuykendall said that they were receiving less than two percent interest on that money. By using the money for this project, he said that they would make it earn a six percent return. In addition, he noted that the City would receive 100 percent of the sales tax. He said that the rent from the developer to the tenants was also a taxable event.

He noted that at five years there was an option for the developer to take the City out, which the City would like. He said that the City would still receive 100 percent of the sales tax and 100 percent of the rental tax. He said that the proposals were designed to encourage the developer to take the City out as soon as possible. As other businesses were built and produced sales tax in that area, he thought it was just a small part of what the total opportunities were.

Mayor Kuykendall pointed out that there was no exposure unless the world came to an end. He said that the City had the number one marketer for their type of business. They did more retail business per square foot than anyone in that business and their track record was 100 percent. He appreciated what RED had done. He said that it was truly an example of what a Public Private Partnership might look like. The public portion got 100 percent recovery plus the benefits. He wished them all the success in the world.

Councilwoman Linn said that she wanted to applaud Jane Bristol, Steve Norwood, Jim Lee, Mayor Kuykendall and RED for all of their tenacity and determination. She said that her comments were not directed to any of them.

She said that her responsibility was to do her due diligence and make choices with taxpayer dollars that were hard to come by. She had core beliefs and values that people elected her to uphold. She said that she did not believe this was part of government's responsibility, especially with the current economy and individuals struggling in the economy.

She said that to take \$2.2 million of taxpayer funds to purchase commercial real estate was not an appropriate use of the funds, even though it was presented with a long term impact. She said that she had 12 years in banking and had been on the Loan Committee for 10 years. She had seen projects like this with no taxpayer dollars fall through. She had seen deals where long term leases had been signed by major corporations and the investors took the hit, because the corporation just walked away from the lease. She said that she did not think that it was going to happen with that project.

Councilwoman Linn said that she called five banks to see if the Federal government was really coming down on them. She said that she knew that they could look at the banks' portfolios and say that a certain amount of their money could go to raw land. She

noted that of the five banks, three of them said they would do commercial loans and one of them said that his commercial loan expectations and goals were immensely grown. She said that his transactions were put on the front burner and were 25 percent of what he did previously. She said that they would lend to Limited Liability Companies (LLC's) and corporations and that the City was a municipality with taxpayer dollars.

Councilwoman Linn said that the City already owned the airport property. She said that the City did not own the mall. She said that it was not fair to pay \$2.2 million when other businesses who had gone out of business would have loved to have the City step up for them. She asked if they thought it was fair to get into a land leasing commercial business when private enterprise could do it.

She said that if she would have known, she would have looked for private investors. She did not think that it was the government's responsibility. She thanked the companies who stuck with the City of Prescott. She said that they had paid for the City's police and firefighters and it would be unfair to give the \$2.2 million to a company that had not.

Councilman Blair said that he saw it as a return on the City's investment that they could not lose. He said that the City knew that the state government was going to take away some of the General Fund which had to do with the police and fire department. He said that they also knew that Walmart was going to Prescott Valley and it would take 40 – 60 percent of taxable revenue from the Walmart in Prescott on Highway 69.

He said that the government had the responsibility to make sure that they looked outside the box when necessary to provide gap measures that stopped the bleeding. He noted that with Trader Joe's coming in, it provided the City with an immediate stop bleeding of the sales tax revenues. He said that he supported it 100%. The return on investment was better than any deal he had seen. He said that the City had zero to lose.

Mayor Kuykendall said that the total package would be available the next afternoon. Mr. Kidd said that he would make them available with the City Clerk. He said that they would be mostly final versions of the documents. He noted that they would be stamped "Drafts", but were 99.9 percent final.

Mayor Kuykendall said that they would have public input on them one week from that day and the Council would decide which direction to go.

## II. CONSENT AGENDA

**CONSENT ITEMS A – C LISTED BELOW MAY BE ENACTED BY ONE MOTION. ANY ITEM MAY BE REMOVED AND DISCUSSED IF A COUNCILMEMBER SO REQUESTS.**

**COUNCILWOMAN SUTTLES MOVED TO APPROVE CONSENT AGENDA ITEMS II-A THROUGH II-C; SECONDED BY COUNCILMAN LAMERSON; PASSED UNANIMOUSLY.**

- A. Adoption of Resolution No. 4064-1134 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, adopting a Council policy regarding contracts with the City by public officers and employees of the City.
- B. Adoption of Ordinance No. 4777-1128 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, granting an underground electric utility easement to Arizona Public Service Company.
- C. Approval of the minutes of the Prescott City Council Workshop of January 18, 2011, and the Regular Meeting of January 25, 2011.

## III. REGULAR AGENDA

- A. Approval to accept Title III Forest Project Funds from Yavapai County by the Prescott Fire Department in the amount of \$75,000.00.

Mr. Willis noted that this was a pass-through grant from Yavapai County, passed through from the Department of Agriculture. He said that in the year 2000 the Rural Schools and Community Self Determination Act was enacted by Congress and amended in 2008. The amendment allowed the City to get involved.

He said that due to the reduction in timber harvesting and minerals that were withdrawn from national forests, the Congress decided to pay back a little money into the rural communities. He said that it was called Title III Funding and Yavapai County was awarded \$700,000 this year to put back into the community. He noted that there were stipulations on where they could spend the money. One of them was to support Firewise communities and the other one was search and rescue activities on the forest or in the County.

He said that they applied for the grant and it was a 100 percent, \$75,000 grant with no required match. They should receive funding in May. He noted that they had been informed that the grants were awarded in mid January. He said that they anticipated using the funds in next fiscal year's budget to help offset some costs.

**COUNCILWOMAN LINN MOVED TO APPROVE ACCEPTANCE OF TITLE III FOREST PROJECT FUNDS FROM YAVAPAI COUNTY BY THE PRESCOTT FIRE DEPARTMENT IN THE AMOUNT OF \$75,000.00; SECONDED BY COUNCILWOMAN SUTTLES; PASSED UNANIMOUSLY.**

- B. Award of contract for auditing services to Henry & Horne LLP for fiscal years 2011, 2012, and 2013, in the amount of \$95,255.00 for the City of Prescott and \$9,515.00 for the Hassayampa Community Facilities Districts.

Mr. Woodfill noted that the City was required to be audited every year and the Charter required a change in auditors every three years. He said that the City received bids from six Certified Public Accounting firms.

Mayor Kuykendall asked if it was the total for three years. Mr. Woodfill said yes. Councilwoman Linn noted that she used to work in the accounting profession and they were a well respected firm.

**COUNCILWOMAN LINN MOVED TO AWARD CONTRACT FOR AUDITING SERVICES TO HENRY & HORNE LLP FOR FISCAL YEARS 2011, 2012, AND 2013, IN THE AMOUNT OF \$95,255.00 FOR THE CITY OF PRESCOTT AND \$9,515.00 FOR THE HASSAYAMPA COMMUNITY FACILITIES DISTRICTS; SECONDED BY COUNCILWOMAN SUTTLES; PASSED UNANIMOUSLY.**

- C. Legislative Update by Joe Brehm.

Mr. Brehm said that he wanted to give a quick legislative update on the bills that had been dropped (introduced) the past month. He showed a video interview of the League of Arizona Cities and Towns Executive Director, Ken Strobeck, on the Horizon Show.

Mr. Brehm said that Senate Bill (SB) 1322 City Service and Managed Competition had changed the population requirements from 500,000 to 200,000.

If a change were to occur that would include Prescott's population, they would be forced to go out for competitive bids for departments. The bill would allow the bidder to use any municipal facility or equipment. He said

that it would also allow any state agency or city to bid for municipal service contracts. He said that other cities could bid on Prescott's departments and visa versa.

Mr. Brehm noted that the Governor received support for her budget initially because it only included a \$20 million hit to cities and towns. He noted that the hit was a sweep of Highway User Revenue Funds (HURF) fees and Arizona Department of Water Resources (ADWR) would implement a water fee. He said that Prescott could lose \$118,000 in HURF funding and the water fee would be approximately \$54,000.

Acting City Manager Hadley noted that the City of Prescott would have to charge their customers the water fee and the money would go directly to the State. It would be a tax that the State would force Prescott to implement. Councilwoman Linn asked if there would be any exemptions. Mr. Brehm said that all cities and towns would pay. Acting City Manager Hadley said that it would be for anyone who had water service through a municipality or something like Salt River Project (SRP).

Councilman Lamerson said that the state had laid claim authority over the water and issued the water to different people differently.

Mr. Brehm noted that SB1221 Urban Revenue Distribution Freeze put a cap on the income tax that the cities and towns received from the state. He said that the bill would redirect anything over the \$424 million to go back to the state's obligations that they had to sell state property and lease it back for one time cash.

Acting City Manager Hadley said that anything that had to do with state shared revenue would require voter approval or a super majority of the House and Senate.

Mr. Brehm said that SB1220 Uniform Sales Tax Base would repeal the Model City Sales Tax Code as of June 30, 2012. It would force all cities and towns to have the same tax base and definitions as the state, minus four exemptions. He said that it would repeal any local taxes that were not part of the State Code; an example being jet fuel tax. He noted that the bill would require the Department of Revenue to perform all tax collections and audits for municipalities.

He noted that the changes would result in millions of dollars of lost revenue to cities and towns with no benefit to the state government. The four exemptions would be Local Transaction Privilege Tax on residential and commercial rental property, food and advertising.

Mr. Brehm said SB1220 and 1221 would negatively affect cities and towns, which would affect their bond ratings.

Mayor Kuykendall said that regarding sales tax, Prescott usually had its money in by the end of the second month billed. He said that if the state did the collection they would hold the money for two months before they disbursed it back to the city, noting that there would be a 60 day lag in cash flow.

Mr. Brehm finished with SB1525 Development Fees and said that it had a lot of cosponsors in the Senate. He said that the bill would drastically restructure how impact fees would be collected, determined and handled. He noted that there were tax credits that nearly nullified impact fees and said that the city must appoint an Infrastructure Improvements Advisory Committee, composed of five members, 40 percent of who must be representatives of the real estate, development or building industries and 20 percent must be from the home building industry.

Councilwoman Suttles asked Mr. Brehm to stay on top of the issues. She asked if the cities and towns were going to rebel. Mr. Brehm quoted Mr. Strobeck by saying that a lot of the bills would have negative, long lasting consequences.

Councilman Lamerson said that Prescott needed to take care of itself.

Acting City Manager Hadley said that the City chose its battles carefully. She said that before they would take a strong stand, they would bring it before the Mayor and Council. Mayor Kuykendall said to make sure that they kept an eye on the bills that were in the Senate and House in the same day because they were on the Governor's desk the next day.

Councilwoman Linn said that if the City could keep the people informed, they would make calls and send emails to the legislature. She noted that a few call and emails could make a big difference. She said that Prescott was an engaged community. She asked if the City could add the Bills that they were tracking to the website.

Acting City Manager Hadley said that they could have Mr. Brehm do a weekly update on the City web page to list what was currently being tracked and include a link in to [azleg.gov](http://azleg.gov).

**IV. ADJOURNMENT**

There being no further business to be discussed, the Regular Voting Meeting of the Prescott City Council held on February 8, 2011, adjourned at 4:38 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 8th day of February, 2011. I further certify the meeting was duly called and held and that a quorum was present.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

AFFIX  
CITY SEAL

\_\_\_\_\_  
ELIZABETH A. BURKE, City Clerk