PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
TUESDAY, MAY 8, 2012
PRESCOTT, ARIZONA

MINUTES OF THE REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL held on MAY 8, 2012, in the COUNCIL CHAMBERS located at CITY HALL, 201 SOUTH CORTEZ STREET, Prescott, Arizona.

◆ **CALL TO ORDER**

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

◆ **INTRODUCTIONS**

Councilman Lamerson introduced Pat Kuykendall, Executive Director of Employer Support of the Guard and Reserves. Mr. Kuykendall introduced Andy Wiktorowicz, as the Chairman; Mr. Wiktorowicz thanked everyone for their hospitality.

◆ **INVOCATION** Reverend Julia McKenna Johnson, Each One Reach One

Reverend McKenna Johnson gave the invocation.

◆ **PLEDGE OF ALLEGIANCE**: Councilman Carlow

◆ **ROLL CALL**:

Present:	Absent:
Mayor Kuykendall	None
Councilman Arnold	
Councilman Blair	
Councilman Carlow	
Councilman Kuknyo	
Councilman Lamerson	
Councilman Scamardo	

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

City Manager McConnell said there would be no meeting on May 15th and there would be a Budget Workshop on May 17th.

I. PRESENTATION

A. Presentation of the City of Prescott's debt handbook by Shawn Dralle, Managing Director, RBC Capital Markets.

Mr. Woodfill introduced Ms. Dralle, who went through the Debt Handbook for the City.

Ms. Dralle showed a presentation which covered:

- INTRODUCTION

  She said the purpose of the handbook was to show what the City's debt position was and the types of debt a city in Arizona was allowed to issue. She noted that the City had been conservative with its approach to debt. She talked about the bonds that would be retiring soon.

- GENERAL OBLIGATION DEBT CAPACITY

- SUMMARY OF FINANCING

- BOND RATINGS

  Councilman Blair asked if Tempe had a high rating due to the University. Ms. Dralle said Phoenix, Scottsdale and Tempe all were AAA rated because their tax base was larger. She also noted that the per capita income was high in Tempe and they were landlocked. She noted that they could not grow anymore and just spent money on upgrading their infrastructure.

  Councilman Blair asked if ratings were affected if cities had a golf course or library. Ms. Dralle said those services were considered in the rating but were small parts of the overall budget. Public safety was the biggest demand on the general fund budget.

  Councilman Blair asked if they put a number on what the private sector produced as opposed to what the government portion of that sector produced and how stable either one of those might be.

  Ms. Dralle said they looked at the economy of the area. She said they would look at a concentration of taxpayers and what types of industry the City had. She did say that top employers were important.

Mayor Kuykendall asked if it would change the rating enough to acquire a better interest rate if Prescott increased the property tax. Ms. Dralle said that Prescott's general fund was in balance and simply adding more revenue may not affect the rating.

II. CONSENT AGENDA

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

A. Approval of the Minutes of the Prescott City Council Special Meeting of April 17, 2012, and the Regular Voting Meeting of April 24, 2012.

COUNCILMAN ARNOLD MOVED TO APPROVE CONSENT AGENDA ITEM II-A; SECONDED BY COUNCILMAN SCAMARDO; PASSED UNIMOUSLY.

III. REGULAR AGENDA

A. Public Hearing and consideration of a liquor license application from Michael Adam Stanger, applicant for Granite Mountain Brewing, LLC, for a Series 03, *Domestic Microbrewery*, license for Granite Mountain Brewing located at 123 North Cortez Street.

Ms. Webb reviewed the application, noting that Audra Yamamota, Michael Stanger and Damon Swafford were there for questions. Ms. Yamamota said they were considered a nano brewery. They were going to open a small micro brewery and a tap room. Councilman Kuknyo asked if they would be able to sell beer in the establishment with a Series 3 license. Ms. Yamamota said they would be able to sell, as long as it was adjacent to the brew house.

COUNCILMAN LAMERSON MOVED TO CLOSE THE PUBLIC HEARING; SECONDED BY COUNCILMAN BLAIR.

COUNCILMAN LAMERSON MOVED TO APPROVE THE LIQUOR LICENSE APPLICATION FROM MICHAEL ADAM STANGER, APPLICANT FOR GRANITE MOUNTAIN BREWING, LLC, FOR A SERIES 03, DOMESTIC MICROBREWERY, LICENSE FOR GRANITE MOUNTAIN BREWING LOCATED AT 123 NORTH CORTEZ STREET; SECONDED BY COUNCILMAN KUKNYO; PASSED UNANIMOUSLY.

B. Renewal of Off-track Pari-mutuel Wagering permit for Matt's Saloon located at 112 S. Montezuma Street submitted by Turf Paradise.

Ms. Webb reviewed the request.

COUNCILMAN ARNOLD MOVED TO RENEW THE OFF-TRACK PARI-MUTUEL WAGERING PERMIT FOR MATT'S SALOON LOCATED AT 112 S. MONTEZUMA STREET SUBMITTED BY TURF PARADISE FOR A TIME PERIOD OF JUNE 1, 2012, THROUGH MAY 31, 2015; SECONDED BY COUNCILMAN KUKNYO; PASSED UNANIMOUSLY.

C. Public Hearing and approval of the CDBG 2012-2013 Annual Action Plan.

Ms. Dudek said that it was the third public hearing for the Annual Action Plan for the CDBG Program. She showed a slide of proposed projects, which included:

Fair Housing
Prescott Meals on Wheels
Catholic Charities
Coalition for Compassion and Justice
Dexter Neighborhood Improvements
West Yavapai Guidance Clinic
Administration, general

She said their major focus was for the Dexter neighborhood and said their boundaries had increased. She said they would be working on streets, sidewalks and curb gutter cuts.

Councilman Blair asked about the administrative costs and said that it seemed that the advertising and bid preparation had already been done. Ms. Dudek noted that the costs would be for the following year. Councilman Blair asked if the money included paying the inspectors for sidewalks, etc. Ms. Dudek said the City was doing the work gratis.

Councilman Kuknyo asked if she was working with Public Works in the Dexter Neighborhood. She said Public Works was going through some infrastructure improvements.

Councilman Scamardo asked about the $60,473.00 and the double asterisks after the number. Ms. Dudek said if there were unallocated funds, the committee agreed to move those funds into the Dexter Neighborhood project.

COUNCILMAN CARLOW MOVED TO CLOSE THE PUBLIC HEARING; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

COUNCILMAN CARLOW MOVED TO APPROVE THE CDBG 2012-2013 ANNUAL ACTION PLAN; SECONDED BY COUNCILMAN ARNOLD; PASSED UNANIMOUSLY.

D. Approval of Contract with Badger Roofing, Prescott Valley, AZ, for roof replacement, West Yavapai Guidance Clinic, 642 Dameron Drive, in an amount not to exceed $171,285.22. (CDBG FY11 Funding)

Ms. Dudek introduced the item and requested approval of the contract and the extra money needed to repair the roof, if needed.

Councilman Arnold asked if the flashing was not needed, would the excess cash roll over into the current year. Ms. Dudek said that it could be reallocated for other projects. Councilman Arnold noted that the contractor was in the process of submitting credentialed bond and insurance documents and asked if that had happened. Ms. Dudek said that it would happen once the contract was approved.

COUNCILMAN ARNOLD MOVED TO APPROVE THE CONTRACT WITH BADGER ROOFING, PRESCOTT VALLEY, AZ, FOR ROOF REPLACEMENT, WEST YAVAPAI GUIDANCE CLINIC, 642 DAMERON DRIVE, IN AN AMOUNT NOT TO EXCEED $171,285.22; SECONDED BY COUNCILMAN SCAMARDO; PASSED UNANIMOUSLY.

E. Approval of multiple contracts for the purchase of library materials.

Roger Saft, Deputy Library Director, introduced the item and said that library materials were items that could be checked out by card holders. He noted that vendors offered different discounts depending on type of item. He said to obtain the best pricing for the taxpayer, a “not to exceed” bid was requested.

Councilman Arnold asked if they were approving a multi-year contract not to exceed $363,000 with the understanding that should the Council approve the budgeted amount for 2013 of $185,000, that would be the maximum spent the next year.

Mr. McConnell said that he would not be approving for $300,000 plus of materials. The contracts were the mechanism to purchase library materials subject to the appropriation of funds in each fiscal year. He said there was no guarantee that the library would spend any money for any of the suppliers.

Councilman Kuknyo said they were purchasing a lot of eBooks. He asked what would happen when the technology changed and if they were

purchasing the rights to download the books. Mr. Saft said they were purchasing the right to download the books. He said since they were in a digital format, he would assume that if a transition took place in technology, Overdrive would shift.

Councilman Carlow asked how the $185,000 related to last year. Mr. Saft said the material budget last year was $200,000.

Councilman Arnold said he was not clear on the contract. He asked how the mechanism for purchases worked for a multi-year contract.

Mr. McConnell said it was in effect for three years. He noted that during that period of time the City of Prescott may choose to purchase materials. If they chose to purchase materials from any of the providers, it would be at the discount provided in the contract. He said there was no obligation for a minimum for any of the contracts.

Councilman Scamardo said the City needed to guarantee that anytime within the next three years, if the City decided to buy anything, they would get a 43.5 percent discount off of the retail price of the items. Mr. McConnell said that was correct. Councilman Lamerson said it sounded like an obligation to a future Council. Mr. McConnell said there was no financial obligation. He noted that it was just putting a mechanism in place to be able to purchase materials at that specified discount, if the City chose to do so.

Councilman Scamardo said it was entering into an agreement where they would sell the City whatever they were looking for at a 43 percent discount, because of the value of the City's business. Mr. McConnell said it was an agreement between the City and the companies with respect to pricing. He said it was the City's annual budget. The library requested to use up to $185,000. He said the purchasing procedure required bidding for most purchases.

Mr. Matson said that he was not accustomed to seeing an item that was so vague. He said that usually the vendors were named. He asked if it was an oversight. He said he was not opposed to the library buying materials.

Mr. McConnell the staff reports were available on line.

COUNCILMAN SCAMARDO MOVED TO AUTHORIZE MULTIPLE CONTRACT AWARDS FOR THE FURNISHING OF LIBRARY MATERAILS FOR A TERM OF THREE (3) YEARS, TO INCLUDE AN OPTION TO RENEW FOR TWO (2) ADDITIONAL ONE (1) YEAR TERMS, TO 1) BAKER & TAYLOR, INC., BRODART CO., AND INGRAM

LIBRARY SERVICES, INC. EACH NOT TO EXCEED $100,000; AND 2) FOR SOLE SOURCE MATERIALS, RECORDED BOOKS AND GALE GROUP, EACH NOT TO EXCEED $15,000.00; AND OVERDRIVE, INC., NOT TO EXCEED $33,000.00; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

F. Adoption of Resolution No. 4126-1236 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into an Intergovernmental Agreement with Yavapai County for the purpose of renting a horizontal brush grinder owned by the County, including use of personnel qualified to operate the grinder, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

Field and Facilities Services Director Stephanie Miller said the equipment was also known as a wood chipper. She said the City collected over 556 tons of yard waste in the first quarter of 2012, much of it coming in from the fist storm. She noted that the division normally rented a brush grinder, but the County had purchased one with a grant. She said they needed to use the equipment to try to make fuel out of wood. The City staff found out that it was not in use full time and wanted to create an agreement to use the equipment. She said there was a rental fee of $145.32 per hour, which included fuel, maintenance costs and services of a qualified person to operate the equipment. She said they estimated using the equipment for 40 to 60 hours to catch up on the back load they currently had.

Councilman Blair said they used to pay $250 per hour and asked if that was for a piece of machinery that was not leased by the County at the time. Ms. Miller said they rented it through a private sector. Councilman Blair asked how much the equipment was if the City were to buy it. Ms. Miller said it would be about $500,000. Councilman Blair asked if it made any sense for the City to own one. Ms. Miller said that this would be the best route to go for the next few years.

Councilman Blair asked if it would be more appropriate to take the green waste to the County's site, than to transport the equipment to the City's site. Mr. Frisk said the County sites were not centrally located and they would have to drive quite a ways to get rid of their brush. Councilman Blair asked if they were giving the chips and shredded materials away. He asked if they were trying to recoup any of the rental costs by charging for the chips. Ms. Miller said they charged for the brush as it came in at $59.00 per ton. She noted that once it was ground up, they would give it to the citizens, if it was requested. She said that staff was looking into alternatives to clean up the bush and sell it.

Mayor Kuykendall said the IGA was a good idea. Councilman Arnold said it was a good way to go and thought it was a reasonable price. Councilman Kuknyo said it was a good deal for an excavator and an operator at $18.00 per hour. He asked if the bark beetle could be reintroduced into the community if the chips went back to the citizens. Ms. Miller said she would look into it.

Councilman Scamardo asked why the item was not on the consent agenda. Mr. McConnell said an IGA was usually placed on the regular agenda.

COUNCILMAN ARNOLD MOVED TO ADOPT RESOLUTION NO. 4126-1236; SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

G. Award of a bid and contract to Fann Contracting, Inc., for the South Mount Vernon/Senator Highway Improvements Project in the amount of $5,770,000.00.

Councilman Arnold recused himself due to possible conflict of interest.

Mr. Nietupski showed a map and said the project was about 6,100 feet in length. He said it would be a complete reconstruction within the limits of curb and gutter for the South Mt. Vernon section from Gurley Street to the transition at Senator Highway. He said it would be a reconstruction and widening of Senator Highway from Mr. Vernon to Nathan Lane at City Lights. He noted that they would widen that section to 28 feet with new curb and gutter and a sidewalk constructed along one side. The project included some retaining walls and drainage improvements in conjunction with utility upgrades that would be 12 inch water main and 8 inch sewer main and manholes and all new services to the customers along the alignment. He said they would protect the historic features in the Mt. Vernon historic district.

He noted that City forces would replace the electrical system that served the historic pedestrian lights. He said the project had a compressed schedule that required a commencement in May and finish in October. He said that traffic control would be flexible to allow the contractor efficiency to accomplish the task. He noted that there would be a public meeting prior to the commencement of work. He noted that the project was funded through the One Cent Sales Tax for Streets and Open Space, the Water Fund and Sewer Fund.

Councilman Blair asked if the outer limits to the South went to Nathan Lane. Mr. Nietupski said that Nathan Lane was the City limits. He said a left turn pocket would be constructed into a subdivision at that point.

Councilman Blair asked if there would be a sign about speed to let the drivers know that they were entering a residential area prior to the Mt. Vernon Street section. Mr. Nietupski said they had the ability to implement a sign under the contract. Councilman Blair said it would be appropriate to warn the drivers of the historic neighborhood.

He said that because the road was so utilized by tourists, he asked if there was any thought to leave the turnouts in place around Nathan Lane. Mr. Nietupski said the cross section was widened through that area and they were installing sidewalks in the section between Nathan Lane and Haisley. He said the sidewalk would be on the easterly side of the roadway. There would also be drainage construction along that area. He said that by making the improvements, they would be unable to accommodate the pullouts. He noted that there was a large pullout in the County section that would be retained.

Councilman Lamerson said that he noticed it was not a CM at Risk bid. He also noticed that the bid did not say, not to exceed. He said the staff estimate was also very close to that of the highest bidder. He asked what assurance they had that they would not get a lot of change orders. Mr. Nietupski said the project was a unit cost contract. He noted that Fann Contracting confirmed the bid amount that they provided. If they built more units the cost could go up. Councilman Lamerson asked why that would happen. Mr. Nietupski said the engineers did the best they could and it could happen that unforeseen things may cause them to do additional work.

Mayor Kuykendall asked if the project went north to Gurley. Mr. Nietupski said yes. He said there would be some water utility construction that would affect the intersection. Mayor Kuykendall asked if the City had done some sewer work on the North side, continuing on to Mt. Vernon. He asked if there would be a 12 inch line to connect to. Mr. Nietupski said the 12 inch line would extend through the intersection to the north side of Mt. Vernon and intersect with an existing line that ran east and west on Gurley Street, which would be lowered.

Mayor Kuykendall asked if they anticipated any night work. Mr. Nietupski said there were no provisions for night work because it was a very residential area.

COUNCILMAN KUKNYO MOVED TO AWARD THE BID AND CONTRACT TO FANN CONTRACTING, INC., FOR THE SOUTH MOUNT VERNON/SENATOR HIGHWAY IMPROVEMENTS PROJECT IN THE AMOUNT OF $5,770,000.00.

Councilman Blair asked about the bike lanes and how they would be defined. Mr. Nietupski said they would be retained on Mt. Vernon. He said that as they went South on Senator Highway they would not be a stripped.

SECONDED BY COUNCILMAN BLAIR.

Mayor Kuykendall asked if there would be a sidewalk on one side of the street. Mr. Nietupski said it would extend from the existing sidewalk on Mt. Vernon the full length on the west side of Senator Highway. He said that the sidewalk would pick up on the other side of the street at Haisley and go along the east side of Senator Highway down to Nathan Lane, connecting to Foothill Subdivision.

Mayor Kuykendall said that residents on Mt. Vernon had asked where the sewer line would be extended to. Mr. Nietupski said the services for each resident would be extended to the back of curb. He said the City maintained the main and the lateral was the responsibility of the property owner. He said the laterals would be extended out of the pavement to the back of the curb into the parkway area where they would be connected with a new backflow preventer and clean out. He noted that the remainder of their service line up to the residence would be their responsibility. Mayor Kuykendall asked if they would have that opportunity. Mr. Nietupski said yes, if they wanted to.

MOTION PASSED 6-0, WITH COUNCILMAN ARNOLD ABSTAINING.

H. Approval of a professional services agreement with Atkins Engineering for engineering of stormwater drainage system improvements within Yavapai Hills Subdivision in an amount not to exceed $136,272.00 (Yavapai county Flood control District Funding).

Mr. Nietupski said a master plan for drainage improvements was developed a couple of years ago. He noted that the Intergovernmental Agreement approved funding for Fiscal Year 2012 in the amount of $200,000.00 for the project. The design of the improvements was in the areas of Cactus Place, Coal Drive, Dragonfly and the second area of Shadow Mountain Drive, Star Rock Drive and Turnstone, Otis Court and Deer Horn. He said one of the areas would receive a subsurface stormwater improvement. The second area would involve a retro fit of the existing ditches and culverts.

He noted that both projects would capture stormwater more effectively and reduce localized flooding. The design costs were in excess of the budgeted amount, the amount that was authorized by the IGA. He said those excess funds would be available in carryover for use in the

construction of the planned improvements. He said the project would begin in May and be completed in November.

Councilman Blair asked what the participation would be on the construction phase from the Yavapai Flood Control. Mr. Nietupski said they were working with the Flood Control District to secure $390,000.00 to go toward the development of the improvements, which would come before the Council. Councilman Blair said that it went back to the lack of good design on the subdivisions. He said they were going back and retro fitting flood control issues that should have been taken care of during the design phase of the developments. He said it was taxpayers' money and it should have been from the contractors and engineering group at the time the subdivision was built. He said that he hoped it was corrected sometime in the future.

Mr. Nietupski said their drainage criteria manual was in the process of being updated. He said there was focus on ensuring that future projects complied with the updated standards. Councilman Blair said the funds that were in the Flood Control District were assessed based on property values. He said that it was interesting that the County was taking on property taxes based on a flood control district.

Councilman Scamardo said the Land Development Code (LDC) looked at the issues four to five years ago and recognized there was a lack of oversight in how subdivisions were approved. He said they combined the land development and zoning books and the responsibility was now placed on the developers. He said modifications used to be done without the design engineers looking at it. He said that would happen with all of the old developments.

Councilman Lamerson said that the water that was being redirected should go into some receptacle. He said that he was concerned where the water ended up. He said a scenario was being proliferated by creating water that was not there before. Mr. Nietupski said the water would end up into Watson Lake or the Lynx Creek watershed. He said the City was in compliance under Arizona Department of Environmental Quality.

Councilman Blair left the room at 4:30 p.m.

Mr. Nietupski said they were doing drainage system improvements which were in compliance with their drainage criteria manual and were suitable for the areas for which they were being provided.

Councilman Blair returned at 4:43 p.m.

COUNCILMAN ARNOLD MOVED TO APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH ATKINS ENGINEERING FOR ENGINEERING SERVICES OF STORMWATER DRAINAGE SYSTEM IMPROVEMENTS WITHIN YAVAPAI HILLS SUBDIVISION IN AN AMOUNT NOT TO EXCEED $136,272.00. (YAVAPAI COUNTY FLOOD CONTROL DISTRICT FUNDING); SECONDED BY COUNCILMAN BLAIR; PASSED UNANIMOUSLY.

I. Discussion / possible action re Downer Trail gate south of Sierry Peaks Drive.

Mayor Kuykendall read the summary.

He said the Council received information from two different law firms in the way of letters. He said they were led to believe that someone would be here from the other residence which did not happen. He read a letter sent from J. Jeffrey Coughlin who had been retained by a group of residents. He read the letter and said they were hoping to get some guidance to make a decision.

Mr. Nietupski said the engineering staff conducted analysis south of the gate after March 20th to understand issues that were raised in respect to safety and potential impacts, should the gate be opened. They evaluated sight distance and many of the existing driveways had some issues due to vegetation. He noted that some of the vertical and horizontal curvature of the roadway contributed to the obstruction of visibility in certain locations.

He said it would be their recommendation, if a decision was made to open the gate, that removal of vegetation, minor embankment work and signage installation be implemented. He said there was currently no stripping on Downer Trail, South of the gate. They would implement a yellow center line along the length of that segment. He noted that there were also no sidewalks South of the gate or along Oregon Avenue. He noted that they looked at site history and crash history analysis on Downer Trail and Oregon Avenue and found no record of bicycle or pedestrian collisions in the past nine years.

He said they looked at the potential costs for improving Downer Trail to meet the current standard, which was 28 feet of pavement width with curb and gutter on both sides and a sidewalk on one side. The preliminary cost estimates for the Downer Trail segment was between $425,000 and $540,000. He said they also looked at the construction of the same cross section between Gail Gardner Way and the Oregon Avenue intersection with Downer Trail to the City limits, which was just beyond the intersection. He noted that the estimate to build the same configuration would be $1.6 - $1.9 million. He said that it did not consider the impact

that widening the street would have in the historic neighborhood. He noted that there were some economic challenges with respect to their programs and all of the current projects. He said they had prioritized projects in the roadway network.

He said if a decision was made to open the gate, it would not mean the City spend money to improve Oregon Avenue or Downer Trail. He said it left the Council and City with a number of options. The gate could remain in place, the gate could be removed or the gate could be removed for a specified period to observe changes in traffic.

Councilman Blair asked what the cost would be to retrofit the intersection. Mr. Nietupski said it would $25,000 to $35,000. Councilman Blair asked about the price for a key pad or automatic gate opener. Mr. Nietupski noted that it would be around $10,000.00.

Councilman Lamerson asked if they would get the same results from a traffic study done currently. Mr. Nietupski said the older traffic studies were based on assumptions of potential use. He said those assumptions would not be the same, due to changes in the economy.

Councilman Arnold asked why Downer Trail was paved. Mr. Nietupski said it was due to a number of development agreements entered into to provide for the East/West Connector. He said that as a result of those agreements, a six party agreement was initiated and adopted through a resolution, which provided for the paving of Downer Trail between the gate at Sierry Peaks and Oregon Avenue.

Councilman Arnold asked what the trigger was that caused the road to be paved south of the gate. Mr. Nietupski said the trigger was a Council authorization of a budget and approval of a construction contract. He noted that it came about after the six-party agreement was approved, which made provisions for the East/West connector. He said that was completed in advance of the Downer Trail project, south of the gate.

Councilman Arnold asked if it was ever discussed that the gate would be opened in the December 2006 meeting. Mr. Nietupski said that it was communicated to the people at the meeting that the gate would be installed in its present location.

Mayor Kuykendall read a portion of the Council memo dated May 2007 referring to the six-party agreement.

Mr. Coughlin said that he submitted a letter to Mr. Kidd the previous day. He said the most important part was on page three, which had to do with the protections that cities and other subdivisions of the State had for

decisions they made. He noted one that said that neither the public entity nor a public employee was liable for an injury arising out of a plan or design for construction or maintenance of, or improvement to highways, roads, streets, bridges or rights-of-way, if the plan or design was prepared in conformance with generally accepted engineering of design standards in effect at the time of the preparation of the design. He noted that the area south of the gate had site line issues. He said if the City did not come up with a plan to make the area safe a statue protected the City. He noted the jury could disagree. He said the opening of the gate temporarily or permanently would be a problem; the statute would not protect the City if they opened the gate. He noted that if the City opened the gate, they had better make it safe.

Mr. Musgrove handed the City Clerk three copies of his April 15, 2012, public records inspection requests, copies of the documents retrieved from 42 files that the City furnished to him in response to records requests, all of the contents of the files, a letter to the Mayor delivered that afternoon and the May 2012 City of Prescott data and traffic count.

He said he had time to think about the issue and his conclusion was supported by people who had stopped him on the street. In April 2006 the City of Prescott rescinded multiple development agreements for the design and development of Sierry Peaks/Forest Trails area. He said that in rescinding the agreements, the City perpetrated a disservice on the volunteers who expended time to put together neighborhood plans, but also those people who bought lots in those subdivisions.

He said that it would not be a monumental cost or effort for the Council to remove the gate. He noted that Mr. Coughlin said that if they opened the gate, they better make it safe. According to Mr. Nietupski's report, that would involve cutting some limbs to improve the sight. He said it was disingenuous that the protest group was trying to stress the fact that Downer Trail was through an historic section of town. He noted that Mt. Vernon was also historic and they had plans for major street construction there.

He said the letter that he delivered to the Mayor said that the $1,274,361.22 that the City of Prescott spent in 2007 and 2008 on a short South Downer Trail was and is in violation of the Arizona State Constitution for specific areas. He said that was only four areas that could be litigated if the City did not serve all of the people in the Westside neighborhood. He said that he hoped that the Council would not succumb to the people who were screaming the loudest. He said they were talking about a important part or people's lives and fortunes in not being able to use South Downer Trail.

He asked if it would not make more sense to spend the public's money to determine all of the facts rather than spending the same amount of money to defend the City in litigation.

Councilman Lamerson asked Mr. Nietupski if the standard the street was built to was safe. Mr. Nietupski said it was constructed to 22 feet in width which was 2 feet wider than the American Association of State Highway and Transportation Officials (AASHTO) standard, which was nationally recognized. Councilman Lamerson asked if there were other streets that were 20 to 22 feet within the City. Mr. Nietupski said yes. Councilman Lamerson said that he would have trouble telling those people that their streets were not as important. Mr. Nietupski said that everyone was entitled to safety in their community.

Mr. Nietupski said the rural width of that street was in compliance with the standard. The curvature of that roadway, as it was platted, is what was reconstructed. He said they did not change the alignment of the roadway.

Councilman Lamerson asked Mr. Kidd if he was in agreement that the City's legal footing regarding meeting the AASHTO standard gave them grounds for making the decision different than what they might have made a few years ago.

Mr. Kidd said that he did not know that AASHTO was the only standard. He said that he did not see Mr. Musgrove's letter long enough to analyze it. He said he got Mr. Coughlin's letter last night. He said the City Council had discretion on when to open the roadway. The standard of care for negligence was whether it was unreasonably dangerous. He said the City had to act with reasonable care. The issue of whether there was statutory immunity, he said that he understood that there was Design 1 which was the new construction. He said that new construction came into Design 2 which was the old street.

He said the old street would be subject to whether or not it was reasonably designed in those standards in effect when the street was originally constructed. He said the Courthouse Square was constructed to older standards. They would have to determine if it was reasonable to open the gate. He said that they would have to consider the cost to bring it into safe conditions and make sure the City had not ignored an unreasonably unsafe condition.

He said Council had been confronted with the issue of whether it was quicker to get somewhere if the gate were open. He said there was a good case with the State where a landowner wanted to keep a road unimproved. No person had a right to tell the Council whether or not they should or should not do that. He said that it was up to the Council.

He mentioned the Copper Basin stop sign and all of the issues that had to be considered with that decision. He said the Council could not act arbitrarily. It had to be done with consideration to the facts. His opinion was that there was a lot of latitude and discretion.

Councilman Arnold said if they opened the gate and then decided to close it, he felt that it would be a trap. He said they would recreate the previous condition and it would lend credence to an individual's claim.

Mr. Kidd said there were a line of cases that showed that once a road was open for a period of time, the public acquired a right of user or right of public access. He said it was harder to close a street that had been opened and they decided that they no longer needed it. He said that if they kept it open for a couple of years, there would be an argument that they created a public necessity.

Councilman Arnold asked what issues would arise if they opened the gate and changed the condition of the existing roadway. Mr. Kidd said that he would take the new construction and say that it was designed to the current engineering standards at the time of construction. He said the old street was presumably designed by older standards. He said the flip side argument was that they would create a new road and connect it to an existing road. The questions would be whether they would have to retro fit the existing road.

Councilman Arnold asked if there was a single document in the public domain that ever indicated that the gate would be opened. Mr. Kidd said there was one development agreement that said it would be opened but it was changed by the six-party agreement. Councilman Arnold asked if the ordinance of 1981 was ever repealed by any of the agreements. Mr. Kidd said the ordinance was still in effect. Councilman Arnold noted the ordinance said the developer would install a crash gate at the South entrance to the subdivision until such time as the City Council deemed it necessary to open the road.

Councilman Arnold told Mr. Musgrove that he tried to take the emotional side out of it. He said he was trying to find something that said why they should open the gate. He asked if there was a fact that said the gate should be opened.

Mr. Musgrove told him to go back to his Ordinance 1559 in 1981. He said that every development agreement after that had the same language. He said it was meant to be by looking at the West Area Plan, that it was a recommendation by the volunteers of the group, that the gate was recommended to be removed when at such time 50 percent of the lots in

the north of the gate area were purchase, or four years from the date of the plan, whichever occurred first. He said that the language would be found near the end of the plan. He said they were doing a disservice to all of the people who worked with the staff to create an area plan. He said that he knew that the emails that Mr. Arnold received were emotional. He said those people were parking, had fenced or landscaped on the City right-of-way.

He said the reason there was not 28 feet was because those people were parking on or had landscaped that land. He said the residents of the City of Prescott owned that land and one person did not have the right to park on it.

Councilman Arnold said that he saw the part in the Westside Study specific to the emergency gate. However, he also saw a multitude of other recommendations. He said the study did allow for modification to take place over time.

Mr. Musgrove asked what had significantly changed since the West Area Plan was prepared and adopted by the City of Prescott. Councilman Arnold said that he could not speak to the previous Council's decision to change to the six-party agreement.

Mr. Musgrove asked what facts had changed. He said the area had not built out. The traffic was not near what it was supposed to be. He said the resulting analysis showed an overall net reduction in the estimated trips generated. He asked why a net reduction in traffic would trigger making the gate permanent. Councilman Arnold said the traffic count was less and the area was not built out as in a recorded document to open the gate. He said he was looking for the fact that showed him the intention in a recorded document to open the gate.

Councilman Scamardo said that Ordinance 1559 was adopted by the Council in December 1981, wherein Section 2 and 5 it stated that to install a crash gate at the South entrance of the subdivision until such time as the City Council deemed it necessary to open the road. He said that they had not found anything that deemed it necessary to open it at the present time, other than to create traffic on some streets that were substandard.

Councilman Kuknyo asked why Sierry Peaks was 28 feet if 22 feet was the AASHTO standard. Mr. Nietupski said Sierry Peaks was part of a subdivision. He noted that Downer Trail south of the gate was a rural street.

Councilman Kuknyo said that he saw different street widths, different grades and curves. He said the street had the same public access as

many of the other streets. Once a short cut was known the traffic would increase. He said that his street should be kept as a dead end, but people wanted to make it a through street. He said he disagreed with calling the people protestors. He said the gate should remained shut.

Councilman Blair talked about what the streets used to be like. He said that Sierry Peaks came into existence for the fire department. He said that Mr. Anderson knew the gate was in place when he bought the property. He was not compelled to say the road had a right to be opened. He was not compelled to open it.

Mayor Kuykendall said there would be a legal dispute however they voted. He said he had no strong feelings either way. He noted that if the City had not spent $1 million in 2007, he would feel differently. Since that money was spent on a publically owned piece of property, it should belong to the public. He said that he would uphold the City of Prescott.

Mr. Matson, Prescott, said that Downer Trail North was wide; he did not see that it was a short cut. The people to benefit would be those who wanted to go north. He said the street was too narrow and not designed to southbound traffic.

Mayor Kuykendall said that the people delivering Meals on Wheels drove on very narrow streets. He did not buy the argument that the roads were dangerous. He said it was the drivers that made the roads dangerous. He said that $1 million to make the street safe enough was a small price to pay for what ownership of all the property in Prescott was about.

COUNCILMAN SCAMARDO MOVED TO APPROVE OPTION A OF THE DOWNER TRAIL GATE AS DEFINED IN THE COUNCIL MEMORANDUM (TO LEAVE THE GATE IN PLACE); SECONDED BY COUNCILMAN CARLOW; PASSED 5-2 WITH MAYOR KUYKENDALL AND COUNCILMAN LAMERSON CASTING THE DISSENTING VOTES.

J. Discussion of 2012 Legislative Session.

Mr. Brehm noted that Council had been provided with issues from the recent legislative session and he was available for questions if the Council had any.

Councilman Blair asked about consolidated elections and where the Governor was with it. Mr. Brehm said the Governor had a ten day requirement to act on bills. He said that while the Legislature was in session, she had five days to sign, veto or take no action on the bill; which would allow the bill to come into law. He said she had taken no action so

she had an additional ten days. He noted that her new deadline was Tuesday the 15th.

IV. ADJOURNMENT

There being no further business to be discussed, the Prescott City Council Regular Voting Meeting of May 8, 2012, adjourned at 5:53 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 May, 2012. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2012.

AFFIX
CITY SEAL

_____
ELIZABETH A. BURKE, City Clerk