

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, HELD APRIL 21, 2009, AT 6:00 P.M., AT THE CITY COUNCIL CHAMBERS BUILDING, 826 NORTH MAIN STREET, COTTONWOOD, ARIZONA.

---

CALL TO ORDER AND ROLL CALL

Mayor Joens called the regular meeting to order at 6:00 p.m. Roll call was taken as follows:

COUNCIL MEMBERS PRESENT

Diane Joens, Mayor  
Karen Pfeifer, Vice Mayor  
James Chapman, Council Member  
Tim Elinski, Council Member  
Duane Kirby, Council Member  
Linda Norman, Council Member  
Terence Pratt, Council Member

STAFF MEMBERS PRESENT

Doug Bartosh, City Manager	Steve Horton, City Attorney
Marianne Jiménez, City Clerk	Mike Casson, Fire Chief
Scott Mangarpan, Project Manager	Morgan Scott, Staff Engineer
Tim Costello, City Engineer	Dan Lueder, Utility Director
Shawn Kuykendall, Firefighter/Paramedic	Charlie Scully, Planner
Richard Faust, Parks & Recreation Director	Jeff Dollins, City Attorney
George Gehlert, Community Development Manager	Helen Bartels, Utility Bookkeeper
Troy Hoke, Firefighter	Kyla Allen, Executive Assistant

PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was led by Chelsie Wright, a participant in a fire department's Youth Development mentoring program.

BRIEF SUMMARY OF CURRENT EVENTS BY MAYOR, CITY COUNCIL AND/OR CITY MANAGER--  
THE PUBLIC BODY DOES NOT PROPOSE, DISCUSS, DELIBERATE OR TAKE LEGAL ACTION ON  
ANY MATTER BROUGHT UP DURING THIS SUMMARY UNLESS THE SPECIFIC MATTER IS  
PROPERLY NOTICED FOR LEGAL ACTION

Mr. Bartosh stated last weekend's first annual Brian Mickelsen Half Marathon, 10K Run and 2 Mile Walk was very successful with close to 450 participants. This Thursday, the Birding Festival would start and run through the weekend. The second state trust land annexation community meeting would be held on April 28th, at 10 a.m., at the Public Safety Building. At least 106 applications were received for our firefighter positions. These were applications that meet the basic requirements of having EMT training and firefighter I and II training.

Mr. Kirby stated he had been to a Senior Commission meeting last week and to a Head Start meeting as well, where plans were made for budget presentations to NACOG. There was an open house at the Justice Center in Camp Verde. On Thursday he would attend the NACOG Regional Council Meeting in Flagstaff, and later that day a Senior Commission meeting.

Vice-Mayor Pfeifer stated she had attended last Friday's NAMWAU meeting in Williams regarding water issues.

Council Member Norman stated last Wednesday she had attended the monthly NAIPTA meeting in Sedona and on Friday the NAIPTA general manager had made a presentation for the Verde Valley Leadership Group which she attended.

Mayor Joens stated she had attended the open house at the new Justice Facility. She participated in the Brian Mickelson 2 Mile Walk and attended a cookie contest fundraiser for the Light Heart Foundation. She also attended Mingus Union High School Car Club's car show on Saturday and she helped present a \$1,000 check from the Dog Agility Club to the Verde Valley Humane Society for their new building.

#### CALL TO THE PUBLIC

Ms. Elaine Bremner, Director of the Verde Valley Senior Center, distributed an invitation to a special gathering for the general public at the Senior Center regarding information on the Home Rule election that would be presented by Mr. Bartosh. She also distributed information regarding a Home Weatherization Program. Additionally, NACOG currently had about \$600,000 to complete the weatherization program for this part of the state but they had access to an additional \$8 million scheduled to come in the future. Funds were available for qualified landlords and renters, as outlined in her handout.

#### PRESENTATION OF EMPLOYEE OF THE QUARTER AWARD—HELEN BARTELS

A certificate and a check were presented to Ms. Bartels in recognition of her being selected to receive the employee of the quarter award.

#### PRESENTATION OF QUARTERLY SAFETY AWARD—SHAWN KUYKENDALL

A certificate and a check were presented to Mr. Kuykendall in recognition of his being selected to receive the quarterly safety award.

#### PRESENTATION OF PLAQUES TO FORMER PARKS & RECREATION COMMISSION MEMBER JIM BOSTWICK AND TO CIVIC CENTER RENOVATION COMMITTEE PRESIDENT, JANET BASER

Mayor Joens and Members of the Council presented Mr. Bostwick with a plaque in appreciation and recognition of over 6 years of service on the Parks and Recreation Commission.

Ms. Baser was unable to attend and accept her award.

#### PRESENTATION OF PLAQUES TO TENNIS COURT VOLUNTEERS

Mayor Joens and Council Members presented plaques to Wayne Cassatt, Rick Champion, Lynn Johnson, Reiner Kreuzer, Lee Sewell, and Bob Siracusa for volunteering their time to clean the tennis courts. Tony Durfor, Mary Miller, and Dick Willey were unable to attend and accept their plaques.

#### PRESENTATION OF PLAQUES TO SKATE PARK VOLUNTEERS

Mr. Joshua Geddes was unable to attend and accept his plaque.

#### PRESENTATION OF A CERTIFICATE OF APPRECIATION FROM THE VERDE VALLEY SENIOR CENTER TO MEMBERS OF THE CITY COUNCIL WHO PARTICIPATED IN THE WALK-A-MILE FOR MEALS

Elaine Bremner presented certificates to Mayor Joens, Vice Mayor Pfeifer, and Council Members Elinski, Kirby, and Norman, who participated March 21, 2009, in the first annual March-A-Mile for Meals which raised \$5,000 for the Senior Center meal activities.

#### PRESENTATION BY REPRESENTATIVES OF THE YAVAPAI COUNTY COMMUNITY HEALTH SERVICES THAT PROVIDE HEALTH & DENTAL CLINIC SERVICES IN COTTONWOOD

Judy Moeser and Paul Mattson, of Yavapai County Community Health Services, gave a Power Point presentation outlining the health services provided by the Community Health Center of Yavapai County, which included medical, dental, mental health, and family planning services.

#### APPROVAL OF MINUTES—Special Meeting of 3/31/09, Regular Meeting of 4/7/09 & Special Meeting of 4/9/09

Council Member Chapman stated that on the next to last paragraph, page 13, of the minutes of 4/7/09, the word “Rise” should be “Rinse”.

Council Member Kirby moved to adopt the minutes of the three meetings as presented, with the correction made by Council Member Chapman. Council Member Chapman seconded the motion.

Mayor Joens stated on the last page of the minutes of April 9th, page 17, eighth paragraph, there are two different ideas which need a correction.

With that additional correction the motion and second were repeated, and carried unanimously.

UNFINISHED BUSINESS—None

CONSENT AGENDA—The following items are considered to be routine and non-controversial by the Council and will be approved by one motion. There will be no separate discussion of these items unless a Council Member or a citizen so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the Agenda.

APPROVAL OF INVOICE FROM SPRAY SYSTEMS IN THE AMOUNT OF \$39,166.20 FOR ASBESTOS ABATEMENT AND DEMOLITION OF A CITY-OWNED STRUCTURE LOCATED AT 12 E. PINAL STREET

SPECIAL EVENT LIQUOR LICENSE APPLICATION SUBMITTED BY THE VERDE VALLEY FAIR ASSOCIATION FOR AN EVENT SCHEDULED FOR MAY 8-9, 2009

APPROVAL OF PAY APPLICATION NUMBER 3 FOR THE RECREATION CENTER PROJECT

Mayor Joens asked if any Council Member or anyone from the public wished to have an item pulled from the consent agenda for discussion. There were no such requests.

Council Member Pratt moved to approve the consent agenda. Council Member Norman seconded the motion, which carried unanimously.

NEW BUSINESS

REJECTION OF BIDS RECEIVED FOR A STANDBY ELECTRICAL GENERATOR AND A TRAILER MOUNTED PORTABLE ELECTRICAL GENERATOR

Mr. Lueder stated that in conjunction with upgrading utility facilities, there was an Arizona Department of Environmental Quality requirement to provide back-up power. The first facility selected for upgrading was the Well 8-9 complex with the addition of a trailer mounted generator to power some of the smaller facilities. In response to advertisements, three bids were received. None of the bids met the specifications. Staff recommended rejecting the bids and re-advertising, making an effort to reach a larger market and find vendors who could comply with the specifications.

Council Member Pratt moved to reject the three generator bids opened by the City Clerk on March 29, 2009, as not meeting the specifications. The motion was seconded by Council Member Elinski, and carried unanimously.

AWARD OF ON-CALL UNDERGROUND CONTRACTING SERVICES FOR THE UTILITY DEPARTMENT

Mr. Lueder stated in April 2007 the Council awarded the initial request for proposals (RFP) for underground services to Tiffany Construction. Because only one proposal was received, the specifications were revised and the proposal re-advertised. Six proposals were received

in response, with two being rejected by the review committee for being non-responsive. The committee reviewed the remaining bids and made a recommendation. He and the City Manager determined that perhaps the City's RFP was not detailed enough to explain to all the contractors how we scored the proposals. On December 2, 2008, the proposals were brought before the Council with the recommendation to reject them all. A revised RFP, which much more clearly defined the scoring parameters, was re-advertised, again. Five proposals were received in response. A review committee consisting of staff engineer Morgan Scott, utility project coordinator Roger Biggs, and utility inspector David Hausaman scored the proposals as follows: Whitetail, 60.67; Tiffany, 87; Tom Mulcaire Construction, 77.33; DeWitt, 34; and Mulcaire & Sons, 63. These were reviewed by himself, the City Manager, and the City Attorney who felt the statutory requirements had been met for this proposal. The recommendation was to award the contract to Tiffany Construction, for a one year period, with 2 additional one year extensions, at the sole discretion of the City Council. There was also an escalation factor of a maximum of three percent a year, also at the sole discretion of the City Council, and with the contractor's justification why increases would be needed.

Council Member Kirby stated this clearly showed how the scores were arrived at, something that had not been the case in other matters, such as the RFP for the architect of the utility building. The extra detail requested made it clearer to the public as well.

Council Member Elinski asked what the differences were between an RFP and a request for qualifications (RFQ).

Mr. Lueder stated that price could be considered with an RFP but not with an RFQ until the top qualifiers had been ranked. For this particular type of proposal, price was an important component and could be more objectively evaluated than with design professional services.

Council Member Elinski asked what sort of circumstances would use an RFP.

Mr. Horton stated the qualifications based process was directed by statute to be used for technical registrants, design professionals, engineers, and assayers. The RFP was for less subjective services where price could be considered earlier without the public body being bound to accept a low bid that maybe was not ultimately the best product or the best price.

Tom Mulcaire, of 9535 E. Mulcaire Road, Cornville, stated although he was not a citizen of Cottonwood he did have a business here, Bedrock Landscape. He was here because of the Mayor's "My Turn" column. The committee was composed strictly of city employees who worked for the water company. They did not ask about Tiffany's safety record. They did not ask what percent of his work had to be redone. My headquarters are right here in downtown Cottonwood, not in Phoenix. I have donated over \$100,000 to the local community. His superintendant had put in over 86,000 feet of water lines in the city. If that didn't make him qualified, there was nothing that did, other than the 44 years he had been in business. In your "My Turn" it says "we must select the lowest price for the product or work to be received", but Mr. Lueder threw my bid out. After eight and a half months, Tiffany still had

carte blanche. He wanted to give them a chance to own up to what you put in the paper that "if we do not award the job to the lowest bidder we had to provide justification". He wanted justification.

Mr. Lueder stated we had several qualified people. The person with the lowest price was not in the top three. This was based on a lot of factors. He had removed himself entirely from the process, with the exception of reviewing it and making a recommendation to the Council, based on someone else's review. Staff had followed statute. There was a mistaken idea that Tiffany had no employees in the Verde Valley, whereas 23 of their employees live in Cottonwood or Clarkdale and 44 were from the Verde Valley. The committee reviewed it. Mr. Scott was not one of his employees, but rather worked for Mr. Costello and was brought in for that very reason.

Mayor Joens asked if possibly we could expand the people who were chosen (to serve on the committee) to include someone other than staff.

Mr. Bartosh stated, the first time Mr. Lueder was not involved at all, at my direction, until he reviewed it. Finally, he and I reviewed it together. Mr. Mulcaire had actually been disqualified as non-responsive. We went back and looked at the directions and he and Mr. Lueder determined it was not quite clear in the RFP, so we came to the Council to request the bids be rejected and bid again. We watched very closely this time the scoring process and who might be qualified or not disqualified based on this response. We worked very closely with the city attorneys on this process as well. We made it as fair and as objective as we possibly could. This was a tough decision but it was the decision the raters came up with. The documentation he saw bore out their decision. Based on that criteria, it would not be fair to the top qualifying candidate to say we were not going to go with them. We went with what the facts indicated.

Mayor Joens stated there still seemed to be confusion between the SOQ and the RFQ processes and what applied to each circumstance.

Vice Mayor Pfeifer stated, she still did not see prices. We saw handwritten comments and, the scoring. It was very confusing. The last time we were told we couldn't go by price, but we could see prices because of the type of process. That was not so here, but we still did not see prices, just reviewers' numbers.

Council Member Pratt stated all of the Council here was interested in hiring locally. With the SOQ, legally, you cannot look at price till afterwards. With this you could. Prices were on one part of the score sheets.

Vice Mayor Pfeifer stated she wanted a bottom line price.

Council Member Pratt stated hourly rates were given. With emergencies there was no way to tell how long the call out would be.

Mr. Lueder stated points were assigned based on total price. In the description, 80 percent of the scoring for the price was for the 2-man crew, truck, and tools, which was our primary use. The average of the other prices was used for the remaining twenty percent. Points were assigned based on what your score came in at. The person that came in best on the pricing came in at fourth place on the scoring because they did not have the availability and things along those lines. This was for hourly rates just for repairs and leaks that came up. Routine work was done with job order contracting that Council approved.

Council Member Norman asked what constituted an emergency.

Mr. Lueder stated basically it was not new system improvements. In fiscal year '08 we had over 400 leaks, 45 percent of those in Clarkdale for whom we had responsibility at that time. If we had a leak that was endangering property or pulling the system down and leaving people without water, that would be when we would use this on call contract. If system improvements were involved that was what the job order contract was for. For instance the ten fire hydrants that were put in the Verde Villages went under the job order contract, with the job going to the lowest price.

Council Member Elinski asked if with an RFP, price could be considered but was not the deciding factor in who was chosen for the work.

Mr. Horton stated with RFPs you solicit both a proposed scope of work and a price. You have an idea of what it is the service product you want and you solicit a scope of work. There were a variety of procurement mechanisms. Staff had to select the correct one to employ for a particular procurement. The City had procurement provisions in the City Code that probably needed to be reviewed and updated to make sure they were consistent with what the Council wanted to be doing with respect to procurement, and what City Code provides does not conflict with state law.

Council Member Elinski stated he would like this to be discussed at a work session to go over the process a little more in detail and to find a way to keep the process consistent and transparent to the public. A standardized form that was simple to understand would be desirable.

Mayor Joens stated she had asked the City Manager to find some people who could help with the education process.

Mr. Bartosh stated it would be hard to come up with just one standard form because there were different procurement processes.

Council Member Elinski stated he wanted to be more educated on the entire topic in order to be able to respond to concerns from the public.

Council Member Kirby stated it would behoove the Council to do as much as it could to educate local contractors in the submission of RFPs. It was absolutely essential that they

know exactly what they had to do and how they had to do it. We picked Tiffany, for one reason, we've done business with them. We knew what we could expect. We were assured of the quality we would get. What we needed to do was to provide a training base for local vendors to tell them what it took to submit a RFP for anything, from a pencil to a contract.

Mr. Bartosh stated that would be pretty burdensome. We could look to see if there were resources available to come in and provide that kind of training to contractors and vendors. We were getting a lot of contractors interested in city jobs than we had had previously because of the economy. They weren't familiar with the process and the fact that when it said it had to be in at a certain time. They came in five minutes late and expected us to accept it when we couldn't accept it legally. There were very specific requirements.

Council Member Elinski asked if there wasn't a form that was available or could be sent out to clearly go over the process for contractors.

Mr. Bartosh stated most of that was covered in the RFP. The RFP was very comprehensive in terms of exactly what the requirements were. Where we felt they were not clear, they were rewritten and went out again.

Mayor Joens stated the other thing she would ask our City Attorney to comment about was we so much appreciated the magnificent donations that we got from so many of the contractors and so many citizens, but if we used that as a basis to choose somebody for a contract, what type of legal issues would we be facing?

Mr. Horton stated it was problematic because it suggested a *quid pro quo*. As a public body, regardless of what set of rules you are operating under, making sure you are invoking the right process, this was complicated stuff. He noted that a lot of jurisdictions had purchasing departments and procurement officers whose job it was to take all these procurement requests, all the different purchasing needs of the whole jurisdiction, and making sure the different procurements were conceived and implemented and supervised to the completion of the work. In each particular procurement, you had to decide what was the very best use of the public dollars you were spending.

Mr. Mulcaire stated the selection committee was a tool. There was a smokescreen here. He wanted to know, in writing, what statutes you were doing this under. RFP for 44 years had been the price. The number one thing you wanted to do was just get a price from somebody, hire a man who knew more than the contractor to sit out there and watch him, and you would save money, instead of going through all this that you're going through.

Mr. Bartosh stated that the correct statute was § 34-600.

Mayor Joens asked what the timeline was to contract for underground contractor services for emergencies. If the Council asked you to go back and redo this and add some citizens to the selection committee, what problems would you have with providing the services you needed to provide.

Mr. Bartosh stated the current contract would be extended. That was the only legal mechanism we had to continue to provide that service.

Mayor Joens asked if there were some obligations to Mr. Tiffany through this process.

Mr. Bartosh asked for clarification.

Mr. Horton stated he believed the question was whether there would be legal liability for the Council directing staff for tabling this item, which would be his recommendation. His recommendation was to proceed or table it but not to take any definitive, alternative act other than following staff recommendation.

Council Member Pratt stated he favored tabling the matter.

Mayor Joens asked if he was suggesting tabling it, getting more information, and putting it on the next agenda again when we could get appropriate legal advice after research.

Mr. Horton stated that was one option. You could either follow staff's recommendation and proceed, but rather than take legal action, direct staff to cancel the solicitation and rebid it now. He would rather the matter be tabled now so you could be given a correct answer, under law, whether you could or could not, should or should not.

Vice Mayor Pfeifer stated she favored tabling the matter.

Council Member Kirby moved to table this item until the next regular Council meeting. Council Member Pratt seconded the motion, which carried unanimously.

Mayor Joens asked if there were any objections to moving up the lease agreement item for the Old Town Association. There were no objections. Item nine was moved forward on the agenda.

#### LEASE AGREEMENT WITH THE OLD TOWN ASSOCIATION FOR USE OF THE CITY-OWNED OLD TOWN JAIL BUILDING

Council Member Elinski asked Mr. Horton if he (Council Member Elinski) had a conflict of interest regarding this item since a while back he had given a bid for restoration work on the jail for the consortium.

Mr. Horton stated if he was uncomfortable, he should step down.

Council Member Elinski stated he was not uncomfortable, but merely asking.

Mr. Bartosh stated The Old Town Association (OTA) was interested in allowing the Verde Valley Wine Consortium (VWVC) use of the Old Town Jail as an office and headquarters. As a first step, a lease agreement between the City and the OTA was prepared for the use of the

Old Town Jail at the rate of \$1 a year, consistent with what we did with the Boys & Girls Club.

Ms. Lisa Pender, President of the OTA, stated sharing space at the jail between the OTA and VVWC had been discussed with the City Manager and Economic Development Director. Since no previous lease agreement was found, it was desirable to have one made and signed. With the grant money the OTA received from the City, improvements in the facility would be made, starting with the carpet. She reviewed projects and activities sponsored by the OTA over the past couple of years and those for this year.

Council Member Pratt stated there was no reason not to approve this lease agreement.

Vice Mayor Pfeifer moved to approve the lease agreement between the City and the Old Town Association for the use of Old Town Jail. The motion was seconded by Council Member Norman, and carried unanimously.

Mayor Joens asked if anyone objected to moving item 4, the proposed zoning amendments, forward at this time. There were no objections.

PROPOSED AMENDMENTS TO THE COTTONWOOD ZONING ORDINANCE REGARDING NEW DEFINITIONS, STANDARDS, AND PROCEDURES FOR GROUP HOMES, BOARDING HOMES AND SIMILAR SPECIAL NEEDS HOUSING TYPES

Mr. Scully stated the Planning & Zoning Commission, staff, City Manager, and City Attorney had all spent considerable time addressing the issue of group homes, boarding houses, and special needs homes. The existing ordinance had one short clause addressing zoning for boarding houses. One of the starting points, for what would essentially be new legislation, was the Federal Fair Housing Act of 1968. It was amended twenty years later to include a ban on discrimination against persons with disabilities. The bill described in detail what types of persons with disabilities were covered under the act as well as those not covered. People in recovery from substance abuse were regarded as disabled and covered under the Act's anti-discrimination clauses. Covered persons constituted a protected class and were exempt from standing zoning regulations. A group of people, such as those recovering from alcohol or drug use were the same as a family and could be put in a single family home in an R-1 zone. The law did give local jurisdictions an ability to create a system to make sure it was in compliance. Part of that was to make sure they were qualifying because they were not included in these other types of classifications. As part of what would be a new section to the Zoning Ordinance, there would be a section on these group homes for the handicapped which included the broadest range of disabled people. As many other communities did in Arizona in order to determine they were in compliance, there would be a registration process. Added, too, was a spacing requirement, so that there would not be a cluster of these changing the character of a neighborhood. There would be an annual process conducted by a third party professional to certify that all the people there were qualified. Under disability law you could not require people to give details of their disability. The boarding house element would be fairly standard. It must fit in a zone and meet parking standards and size restrictions. Then there were correctional transitional facilities which

were managed, supervised half-way facilities for those getting out of jail, prison, or hospital. This was not a protected class, so site consideration was difficult. Discussions had been held with two operators in town, with Rudy Stadelman, a property owners' representative, and Bob Morse, with Chapter 5, a recovery home which had been in Cottonwood since 2005 and would be affected by this. More feedback from them was needed.

Council Member Elinski asked if it would be possible for there to be a recovery home which was also a boarding house, correctional/transitional facility and a bed and breakfast.

Mr. Scully stated people had a right to propose anything.

Council Member Elinski asked how they could be regulated and how other cities did it.

Council Member Kirby stated if we could not ask, and all people had to do was declare they were incapable in some way, there was nothing we could do. This would make our housing inspectors the housing police. If there was one person in a home of eight who did not meet qualifications, what would that do? How would we deal with that?

Mr. Horton stated there were a couple of responses to that. If it were a step-down facility and a recovery home, whichever use was afforded more in deference under the law, would be how we had to categorize that use and treat it. Tonight we were talking about an identification and registration process, not zoning, regulatory and enforcement issues.

Mayor Joens stated what if it were a disruption in a neighborhood, neighbors had rights too.

Mr. Scully stated it related to persons who were a threat or danger to the neighborhood. If someone really was not managing a home, with a registration process you had something that could be revoked. Having a framework, instead of nothing as we do now, would enable us to have more control.

Mr. Darold Smith, of Cottonwood, stated he had 30 years experience with group homes and treatment centers. On page 3, regarding annual certifications, there was a problem because group homes had turnover because most people did not stay a year. Annual certification would be ineffective. These were businesses that should be in a properly zoned area, not a residential area. Under the Americans Disability Act such facilities must be structurally modified to meet the needs of the disabled. If a group home were to constitute a threat to neighbors, by virtue of activities which required police responses, who would make that determination? It was not addressed. On page 5, item 4, regarding correctional facilities, would there be supervisors? What would their qualifications be? Who would check on those who might be felons, current drug users, or drug manufacturers? There appeared to be a lack of supervision or control.

Council Member Kirby stated there was no way you could use any of that information. It was all a matter of privacy and all you could accept was if they told you they were in rehab then they were in rehab. They didn't need to be certified. They just needed to tell you that they're

there for that reason. He didn't understand why we would worry about certification when you can't verify the need for the use of the home.

Council Member Pratt stated correctional transitional facilities typically had structured supervision.

Council Member Elinski stated that he did not know that it was the City's role to get involved in making sure that the people who oversaw these properties were certified or not. Additionally, the work being done by Planning and Zoning was excellent. It was good to identify the different types of housing opportunities that could be out there. It seemed if we were having a problem with a particular property, it could be addressed at that time.

Mr. Smith stated this City had no one who could even go inside to see what kind of living conditions were available. Some had 12 people in a three bedroom house.

Council Member Elinski stated we really did not need to be prying into the lives of the people going into these group homes right off the bat. If we had a problem, a continual problem, we could get more restrictive, and find out what the issue was.

Mr. Smith stated the Council was opening the door to anyone that wanted to turn it into a group home.

Council Member Elinski stated it did not mean that tomorrow, all of a sudden, Cottonwood would become the hub of recovery homes. It was based on need, and there were people out there who needed recovery homes. He would not want Cottonwood to take the approach and single out people and find out their background information.

Mr. Smith stated if you were in a group home and you didn't pay the rent, they kicked you out in the street or called your probation officer and put you back in jail. These were not altruistic services.

Mayor Joens stated that Mr. Scully was just introducing the idea to the Council. There would be further discussions.

Mr. Scully stated the operators were talking with us but could not be here tonight. They wanted an opportunity to respond.

Mayor Joens stated this should be a subject for a work study session.

Mayor Joens then asked if anyone objected to moving item seven, legal update on airport land leases, up on the agenda. There were no objections.

Mr. Bartosh suggested that since this item would probably take some time to discuss, the water conservation discussion and future planning and configuration of State Route 260 should be rescheduled.

Mayor Joens moved to table items number six and number three because of the length of the agenda and the night was going long. The motion was seconded by Council Member Pratt, and carried unanimously.

PRESENTATION OF THE UTILITY DEPARTMENT'S WATER CONSERVATION ACTIVITIES & DIRECTION REGARDING THE ESTABLISHMENT OF A WATER CONSERVATION COMMITTEE

This item was postponed until the first regular meeting in May 2009.

FUTURE PLANNING AND CONFIGURATION OF STATE ROUTE 260 FROM THOUSAND TRAILS TO I-17

This item was postponed until the first regular meeting in May 2009.

LEGAL UPDATE AND DIRECTION TO STAFF REGARDING THE AIRPORT LAND LEASES

Mr. Bartosh stated this matter came up about a year ago as a concern of a group of citizens regarding the airport leases and their history and what our legal position was regarding them.

Mr. Horton stated this discussion would involve a series of contracts. In 1983 there was a concept to encourage commercial development and create an industrial/commercial airpark at the airport. Some long-term, and very favorable rent/leases for a block of land, subject to the creation and implementation of a development plan and master lease, was entered into. From there, there has been a long series of transactions. There was an enormous volume of paperwork to go through, for what has been the Balkanization of the master lease, dividing it up into little lots and sub-assignments. There was a provision in the master lease about subleasing as contrasted from assigning. When you assign something you assign with the City's consent all of the rights and duties. When you sublease, the sublessor still retained the duties to the City for that particular parcel. The way the master lease was written, it said the City would be consulted with regard to assignments which could not be unreasonably withheld and had not been for sixteen times now. There was a question of subleasing which appeared not to have required City consent. Now, virtually all of the airpark property was being leased from the City by parties other than the original lessee. It was a complicated process and there had also been a pretty substantial departure, in a number of respects, from what we thought was the original intent of the City Council. Not whether there were breaches, whether they were material breaches, and whether they were actionable breaches; these were independent questions that would have to be looked at in isolation and on a microscopic level whether and in what manner the City would proceed in a way that could spawn a lifetime's worth of litigation. Conceptually, what the 1983 town council envisioned for what would exist up at the airport in 2008 probably has not been realized. There have been some uses that exist up there that are not perfectly consistent with the intent. Whether they constituted breaches, material breaches, or actionable breaches were different questions. There have been some folks doing what folks in this county do: taking a right they have secured and attempting to turn a profit on it. It did not appear to be

absolutely barred by the terms of the original lease or assignments or subleases, but did that absolutely coincide with the intent? No. To get into much more detail, because of the City's legal interest, the Council might want to convene into executive session.

Council Member Elinski asked how much land was involved, how many leases, how much vacant land, and whether maps were available.

Mr. Horton stated there originally were about 18 lots. A few years ago the Backus group did a series of transactions that led to the creation of smaller lots which numbered now about 35 different lots.

Council Member Elinski asked if the 177 acres was divided into 18 lots. He asked if land was still available.

Mr. Horton stated not from the City. While originally part of the master lease, there had been any number of transactions and the City had purchased some land back. By and large, what we were talking about was land that others had legal interest to for a very long time. The airport lots were subject to 25 year leases and the possibility of renewal. The airpark leases were for 99 years with the possibility of renewal.

Council Member Elinski asked if the master lease originally covered 18 lots.

Mr. Horton stated he did not know if the platting took place before the original airpark lease. It was originally one lot.

Council Member Elinski asked where the 99 year leases came into play.

Mr. Costello stated they were a pair of 50's, referred to as 99, really 100. That was really what everything that was out there currently as a leasehold interest. They were mentioned in the lease documents.

Council Member Kirby asked if the 117 acres was the airpark and did not include the airport.

Mr. Horton stated, yes.

Council Member Kirby asked whether most of the hangers that had been built were at the airpark or airport property.

Mr. Costello stated, both. The bulk of the hangers that were on the west side of the runway were all in the airport.

Mr. Horton stated that during the course of the life of this lease, there had been re-plats.

Council Member Kirby asked who the original leasee was.

Mr. Horton stated it was Mr. Jack Seitz, as president of the airpark association.

Council Member Elinski asked how many leases were out there.

Mr. Horton stated he did not know. Less than 100, including subleases. He recommended including Mr. Oliphant in any discussions because of the time he had put into the matter and knowledge gained from it.

Mr. Bob Richards, of 1495 East Crestview Drive, stated he had looked at the original lease and did not believe that Exhibit A, the original map used in 1983, was available. He was not certain that the boundaries then were the same as they were now.

Mr. Costello stated the original boundary for land acquired for the airport minus the active airport area was the leasehold area. He pointed out various subdivisions and the dividing line for 60 acres in the west.

Mayor Joens asked if there were four properties there leased by four people in that 60 acres.

Mr. Costello stated, yes.

Council Member Elinski asked what happened when Jack Seitz had the original lease and how did the City oversee whether or not what he developed there was in accordance with the lease agreement.

Mr. Horton stated there was an attachment to the original lease which required the submission of a development timetable. And there were development benchmarks along the way. Some of them were met. Some probably were not. To answer the question "What does the City do?", you have to look at this on a much closer level as to a particular lessee because even though the use was not perfectly consistent with the intent in 1983, the City had an awful lot to consent to and approve those uses, those assignments, releases of assignors, and would promise that it would look only to the assignee, not only for payment of rent, but as to all of the duties that were originally imposed on the original lessee, and maybe to other assignees. There were things the City could look at doing prospectively to try to re-conform what was going on up there with the original intent. That was going to be a pretty slow process because people who had leaseholds right now had enforceable legal rights.

Mr. Oliphant stated a great difficulty you had was that there was a lot of paper. There was insufficient detail about anything other than public documents to tell us what was going on. And the leases had value that could be sold if there were buyers.

Mayor Joens stated they paid \$137 to lease an acre of land and could now sell it for \$130,000 and it didn't necessarily provide jobs for economic development.

Mr. Oliphant stated as far as we could figure out, the city council in 1983, in good faith, to encourage an industrial park, encouraged businesses to come in and would gave them a terrific incentive to develop it. The developers would put in the streets and roads and all the expenses and get a reasonable profit when they sold it. They simply focused all their energies on this small strip of land on the east side. So it didn't materialize the way they hoped it would. In May of 2005, 60 acres was simply turned over to three small corporations for which we had nothing more than public documents.

Mayor Joens stated in all the 23 years she had lived here it seemed like nothing ever happened at the airport for the longest time. In the past few years it had all taken off like wildfire.

Council Member Pratt asked if there were not specifics in the original lease that said something about job creation and economic development. We could pursue that and say you haven't fulfilled the requirements of the lease. When you sign a sublease, are you legally required to include that same language that you were bound by to the person you leased it to?

Mr. Horton stated a sublease would keep the lessor on the hook to the City for the original promises, whether that was the original lessor or not. There was a difference between a purpose and a condition: a purpose of a contract and a condition in a contract. Because our expectations weren't realized, is not actionable. It didn't give the City a right to sue if it did not extract a specific promise to do something that would further that expectation. There are other legal conditions that come into play such as waiver and estoppel. Those were doctrines that suggested if the City behaved in a certain way that was inconsistent with what it later claimed to be its position, as a matter of equity, that party could be barred from making certain arguments notwithstanding language in the lease which stated that just because the City didn't notice or enforce some breach by the lessor, it didn't have the right to enforce it later on.

Mayor Joens asked how the Council felt about receiving legal advice.

Council Member Elinski stated he liked to receive legal advice in executive session but any background information or history he would like to receive publicly.

Council Member Kirby stated that one of the things that bothered him about this discussion was that we were trying to interpret the concept of people in 1983 in terms of 2009. He found it difficult to do. He found it difficult to believe that with all the construction that's been done at the airport that it didn't have some use that empowered people. We never said it had to be manufacturing employment. There were other methods of employment.

Mr. Smith stated the land was extremely valuable and no taxes were paid on this property because it was City property which gave an advantage compared to people who conducted business elsewhere in town. The mini park employed one person and paid no taxes. The RV park paid no taxes.

Mayor Joens stated the leases were really long and some day, future generations would own all the facilities on these properties.

Mr. Horton stated, yes, but it seemed like an awful long time. The land was valuable. The airpark concept was not invented in Cottonwood. The fact that people were turning a nice profit because they were in the right place at the right time and saw the opportunity was not unique to Cottonwood.

Mr. Oliphant stated with regard to Council Member Kirby's question about 1983, the drafters of the lease were very specific. The language in the first three paragraphs made it very clear what they were trying to do here. It was not ambiguous. They were trying to set up access to improve job opportunities. They were trying to provide opportunity for industrial development. They were trying to create new employment opportunities. Also, the City was subsidizing a private business where there were other similar businesses in town.

Council Member Elinski asked to hear what the legal options were.

Mayor Joens moved to go into executive session to obtain legal advice on the options that the Council may be facing concerning airport leases and whether there were any options for us to do anything about this.

Mr. Horton stated the executive session statute allowed you bring into the session those members of the public body whose presence was reasonably necessary to accomplish the purpose of having the executive session. You could find that the presence of Mr. Oliphant would advance the purpose of having that discussion.

Mayor Joens made the suggestion that Mr. Oliphant and Council Member elect Smith be invited into the executive session. She made the motion to go into executive session and include Mr. Darold Smith and Mr. Bob Oliphant. Vice Mayor Pfeifer seconded the motion, which carried 6-1 with Council Member Kirby dissenting.

Council Member Norman moved to reconvene into regular session. Vice Mayor Pfeifer seconded the motion, which carried unanimously.

#### APPROVAL OF AWARD OF CONTRACT FOR THE 2009 PAVEMENT PRESERVATION PROJECT

Mr. Costello stated bids were solicited in the standard manner for public bids for a rubberized chip seal job. Two bids were received. Prices were reduced by 25 percent from a similar project two years ago. The low bidder was Cactus Asphalt who was the one who did it last time. This was under budget. Staff recommended awarding the contract to Cactus Asphalt. The area to be considered was the Mingus and Main neighborhood.

Vice Mayor Pfeifer asked if she needed to declare a conflict of interest since she lived in that neighborhood.

Mr. Horton stated no, since her home was not being treated in a way different from any other.

Mayor Joens asked if because we were under budget and there were other streets which were really falling apart, whether we really ought to consider doing them. She suggested Beech and Aspen.

Mr. Costello stated others were being considered as add alternates which could be included. The basic rule was up to 20 percent addition they had to hold the price.

Mayor Joens asked that Mr. Fleishman's concerns be addressed for Beech and Aspen.

Mr. Bartosh stated that it would be taken care of.

Council Member Kirby moved to award the 2009 pavement preservation project to Cactus Asphalt. Council Member Elinski seconded the motion, which carried unanimously.

#### REQUEST FROM THE FOREST SERVICE TO REMOVE TOILET FACILITIES AT VERDE RIVER ACCESS SITES LOCATED AT PRAIRIE LANE AND SKIDMORE LANE

Mr. Faust stated this regarded a grant project between the U.S. Forest Service and the City of Cottonwood. It pertained to toilet services provided at Skidmore Lane and Prairie Lane. Since the facilities were obsolete and no longer used and had been vandalized to the point of being a risk to the public, the Forest Service was requesting the Council's consent to demolish and remove these facilities. A modern facility would be installed at White Bridge.

Mayor Joens stated there were no repercussions or long term grant requirements that needed to be considered. She moved to approve the demolition of toilet structures at Prairie Lane and Skidmore Lane as requested by the U.S. Department of Agriculture/U.S. Forest Service in accordance with the 1992 SLIF project Verde River access agreement document. Council Member Pratt seconded the motion, which carried unanimously.

#### CLAIMS & ADJUSTMENTS

Council Member Kirby moved to pay the claims and adjustments. Vice Mayor Pfeifer seconded the motion, which carried unanimously.

#### ADJOURNMENT

Mayor Joens moved to adjourn. The motion was seconded by Council Member Norman, and carried unanimously. The regular meeting adjourned at 10:28 p.m.

---

Diane Joens, Mayor

---

Marianne Jiménez, City Clerk