



COUNCIL SUBCOMMITTEE ON WATER ISSUES MEETING

REGULAR SUBCOMMITTEE

MEETING MINUTES

TUESDAY NOVEMBER 2, 2021, 9:30 AM

201 S Cortez Street
Prescott, AZ 86303
Council Chambers

Steve Blair, Councilman - Chairman

Phil Goode, Councilman – Member

Steve Sischka, Councilman - Member

MINUTES OF THE REGULAR SUBCOMMITTEE MEETING OF THE PRESCOTT COUNCIL
SUBCOMMITTEE ON WATER ISSUES HELD ON NOVEMBER 2, 2021, IN THE 201 S CORTEZ STREET
PRESCOTT, AZ 86303 COUNCIL CHAMBERS.

The following Agenda will be considered by the Prescott Council Subcommittee on Water Issues at Regular Subcommittee Meeting pursuant to the Prescott City Charter, Article II, Section 13. Notice of the meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02. One or more members of the Council may be attending the meeting through the use of a technological device.

1. CALL TO ORDER

Chairman Blair called the meeting to order at 9:30 a.m.

2. ROLL CALL

Chairman Steve Blair
Member Steve Sischka
Member Phil Goode

3. PUBLIC COMMENT

Public Comment will be accepted following each agenda item and limited to three (3) minutes. Please complete a comment card and return it to the City Clerk, speakers will be called in the order received.

4. ACTION ITEMS

A. Approval of the October 5, 2021 Meeting Minutes.

MOTION BY MEMBER SISCHKA TO APPROVE ITEM 4.A; SECONDED BY MEMBER GOODE: PASSED [3-0].

B. Consideration of WSA21-015, a Water Service Agreement Application Submitted by Michael Lafferty on Behalf of Property Owner Petroglyph Pointe Doyar, Inc.
Location: APN 105-04-217A, Comprising 6.9 Acres in T14N, R02W, Section 23, NE1/4, NW1/4, SE1/4.SW1/4, SE1/4.

Public Works Deputy Director Gwen Rowitsch provided a brief review of WSA21-015 to the Subcommittee:

- Requester submitted a demand analysis for a 224 unit multi-family apartment complex
- City uses the Water Resources Management Model to estimate water usage
- The average City-wide demand for multi-family uses is .12 acre feet (AF) per dwelling unit
- Estimated potable water usage for this project is 26.88 AF
- There are 2.44 acres of landscaped areas. At 1.5 AF per acre, the estimated use for the landscape portion is 3.66 AF per year
- The proposed fitness center, pool and on-site restaurant are estimated at 3.60 AF per year
- The total estimated demand is 34.14 AF per year for this project

Interim City Attorney Matt Podracky stated that upon review of the development agreement (DA), he has determined that it does not need to go to Council for further review due to changes made and added that the developer only needs to provide information as to what changes will be made, as noted in Section 3.8 of the DA. He also noted in Section 3.8 of the DA, Council approval for new final plats may not be unreasonably withheld as long as the density requirements and underlying zoning is met.

Maximum Density

- Section 3.4 of the DA allows for maximum density of 3,504 dwelling units within Prescott Lakes
- Density may be moved between parcels within the development at the developer's discretion
- Section 3.6 of the DA states that if the proposed density would be higher than reflected on preliminary or final plats, the project must be allowed as long as unused density is available

Water for Development

- Section 3.11 of the DA provides water for up to 2,718 dwelling units; as of 2021, 1,972 dwelling units have been approved or constructed
- Water entitlement is transferrable between parcels covered by the DA
- Prescott Lakes may request or bring additional water for 786 dwelling units, up to a maximum density of 3,504, but city approval is not guaranteed

Ms. Rowitsch reviewed Prescott Lakes' history of amended and restated development agreements, stating that only dwelling units are tracked. Under the 2004 amended and restated DA, the total number of dwelling units with a water allocation is 2,718, the total number of dwelling units that have been approved or constructed to date is 1,972, leaving a remaining 746 dwelling units under the original water allocation of 2,718. There are currently three (3) projects that are in review for a total of another 306 dwelling units. The DA states that an additional 786 dwelling units may be allocated water by the city at a future date; this amount added to the 2,718 comprises the 3,504 maximum density.

Member Goode asked if Predator Ridge has been platted.

Ms. Rowitsch responded it has not.

Chairman Blair inquired about vacant parcels in Prescott Lakes and asked if there will be enough water if developed.

Ms. Rowitsch responded that there would still be 522 dwelling units remaining if this request is approved and, if requested, Council may consider approving additional water up to the 3,504 dwelling units.

Member Sischka asked for confirmation that the focus is dwelling units.

Ms. Rowitsch confirmed that this DA is predicated on dwelling units.

Member Sischka asked Mr. Podracky if this is a first-come, first-served basis.

Mr. Podracky responded yes.

Member Goode noted that there is a potential increase in density now that the allocation of water has changed from .20 to .12.

Member of the public Deborah Pernice addressed the Subcommittee stating that when she moved here, she believed that this would be a single family residential area. She believes the DA and Master plan have been violated and requests a deferral of all actions or a denial on this request.

Member of the public Ken Janecek addressed the Subcommittee stating he believes this is a rush to lock up water before the Arizona Department of Water Resources' (ADWR) Decision and Order (D&O). The prudent policy would be to wait for the D&O.

Member of the public Jim Garing addressed the Subcommittee stating that, by his calculation, 211 units have already been allocated to an area intended to have 250. He disagrees with the calculation Ms. Rowitsch presented, feels there is 2,492 units currently and that Prescott Lakes as a whole is already 124 units over.

Member of the public Jim Tomei addressed the Subcommittee stating that when the DA uses the word developer with a capital "D" it is referring to the developers Davis and Brownley, and that any third party, developer with a small-case "d", mentioned in the DA cannot unilaterally take unused density and reallocate it. He added that he also disagrees with Ms. Rowitsch's calculation; with the loss of the 350 units in 2017 due to lack of final plat, and the current request of 224 units, that leaves 83 units.

Member of the public Jim Joannes addressed the Subcommittee stating that the DA has the same effect as zoning and that they are concurrent; both requirements have to be met to get Business General Zoning (BG). In Section 3.5 of the DA, it states the final plats cannot be changed. There has been a recorded final plat of Peaks II, meaning no density transfers are available. Only the developer with a capital "D" of the DA has the right.

Member of the public Robert Sisley addressed the Subcommittee stating that the Prescott Lakes Board of Directors unanimously opposes the application and the awarding of any additional water rights. Personally, he has a major concern about his home value and his way of life, encourages subcommittee to deny the request.

Attorney Joel Fornara with Musgrove, Drutz, Kack & Flack, PC, addressed the Subcommittee stating that the applicant requesting approval of allocation of water units is not a successor to the subject DA, and as such, has no rights or responsibilities under the DA. This fact is enough to "muddy the waters" and should be looked into and the action should be deferred.

Member of the public D. Carter Lebarge addressed the Subcommittee stating they should deny the application until the legalities have been worked out. Asked Subcommittee to take a closer look at growth and make sure they are not approving overdevelopment and to deny the request until data proving there is enough water is available.

Chairman Blair commented that it's apparent that some people have not viewed the reports located on the city website that discuss the city's water structure, policy and what is being done in Prescott and encouraged the public to do so.

Member of the public Michael Brogie addressed the Subcommittee stating that Mr. Lafferty made an agreement based on trust and committed to withdraw if the project was opposed. He is asking Mr. Lafferty to keep his promise and for the city to stand up for the homeowners.

Developer David Parker addressed the Subcommittee stating Prescott Lakes was allotted so many AF when first developed and was not restricted to single family. He does not understand the fight; claims Prescott is in need of apartments and that apartments will not detract from home values.

Chairman Blair asked Ms. Rowitsch if the numbers presented are used with ADWR and if those numbers are going to ADWR.

Ms. Rowitsch responded yes and that staff is updating and adding any lots platted after 2009.

Member Sischka asked for some clarity to the capital "D" mentioned previously.

Mr. Podracky responded that the argument is whether the density can be transferred to a third party, and added that it refers to someone who buys property that is subject to the development agreement.

Member Goode asked if any new property owner automatically defaults as an assignee and, if so, are they subject to the all the conditions of the previous DA.

Mr. Podracky responded yes, they step into the shoes of the original property owner.

Mr. Podracky addressed the white papers stating that there is a claim that the unused density cannot be transferred to a third party however, as stated in the DA at Article 3.6, it can be transferred by the developer and any successors and assigns.

Member Goode asked for the legal distinction between a third party and a successor.

Mr. Podracky responded that he is unsure in this case, he believes the current applicant is an assignee subject to this contract.

Assistant City Attorney Dana Walsh stated that in the DA, paragraph 2.1 speaks of all owners of the property within Prescott Lakes being subject to certain paragraphs, one of them being article 3. That, in addition to what Mr. Podracky has said, informs us that successors to the original capital "D" developer are bound by the DA.

Member Goode asked Ms. Walsh to speak to the claim that the Prescott Lakes Community Association was the specific assignee after Davis and Brownley were no longer involved as major developers.

Ms. Walsh stated she does not have the history regarding the original development but notes that they are a party to this agreement.

Member Goode stated that it seems the community association became the primary assignee and was/is responsible for managing the DA as it proceeds forward, whether it is for dwelling units or water allocation units.

Member Sischka asked if the community association assigns all of their rights. It has been said that dwelling units can be moved and then that they cannot. Asked where the idea that they can be moved come from.

Ms. Walsh responded that it does not appear that way. She is interpreting Article 3 and the water and dwelling units. She has not read the document from the rights and responsibilities of the Community Association. Section 3.6 and, specifically with regard to water section 3.11, talks about the city's duty as the water service provider. Also, there is some correspondence from ADWR from 2019 on this issue where ADWR clarified that it is the city's duty and responsibility to manage its water resource portfolio; it is not implied that different amounts of water can only be used within different pieces of property.

Chairman Blair called Mr. Joannes to the podium.

Mr. Joannes addressed the Subcommittee stating that the definitions on page 2 of the agreement refer to the capital "D" developers as PL Developer One, LLC, Davis and Brownley. The only developer that can transfer water units is PL Developer One, LLC.

Mr. Podracky added that the definitions also states "and its successors and assigns".

Chairman Blair addressed the public stating they will have an opportunity to address all other concerns when this item is brought to Council. Right now the topic is whether there is enough water in the Prescott Lakes Master Plan.

MOTION BY MEMBER SISCHKA TO RECOMMEND FORWARDING WSA21-018 to COUNCIL FOR APPROVAL; SECONDED BY MEMBER BLAIR: PASSED [2-1]; MEMBER GOODE DISSENTING.

CHAIRMAN BLAIR CALLED FOR A 5-MINUTE BREAK AT 11:02 A.M.

MEETING RECONVENED AT 11:07 A.M.

MEMBER SISCHKA CORRECTED PREVIOUSLY MISTATED MOTION:

MOTION BY MEMBER SISCHKA TO RECOMMEND FORWARDING WSA21-015 to COUNCIL FOR APPROVAL; SECONDED BY MEMBER BLAIR: PASSED [2-1]; MEMBER GOODE DISSENTING.

- C. Consideration of WSA21-018, a Water Service Agreement Application Submitted by Granite Dells Estates Properties, Inc. on Behalf of Property Owner Granite Dells Estates Properties, Inc. Location: APN 103-04-009P, Comprising 421.08 Acres in T14N, R01W, Section 5, SE1/4, NW1/4 and APN 103-04-009V, Comprising 4.18 Acres in T14N, R01W, Section 6 SE1/4, SE1/4, SE1/4.

Water Resource Project Manager Kay Sydow provided a presentation to the Subcommittee regarding WSA 21-018 for Granite Dells Ranch Estates Phase 4, comprised of 273 single-family lots on approximately 425 acres. Based on .017 AF per single family home dwelling unit, the estimated residential demand is 46.41 AF/year. Landscaping is estimated at 25.74 AF/year based on developer plans to use low water plants along the parkway. The total estimated demand for the development is estimated at 72.15 AF/year.

Member Sischka commented that the landscape estimate seems excessive.

Developer Mike Fann explained that there are 171 acres of mostly native open space that will not be landscaped and requested that the landscaped areas be separated from open space for the calculation of estimated water demand.

Member Goode suggested the number be modified before a vote.

Mr. Fann commented that the water has already been allocated through a water service agreement and the preliminary plat was approved by Council.

Public Works Director Craig Dotseth stated that water allocation is not the focus, the discussion today is about potable water supplies to serve 273 single family lots which, along with the allocation of water, is already in the DA. The mistaken assumption of landscape water will be corrected by staff.

Member Goode requested that staff provide better maps at future meetings to help the Subcommittee and the public have a better understanding of the proposed WSAs.

Member Sischka agrees that staff should present better maps, but commented that this vote is to move the application on to Council where airport specific plans and such will be considered adding that the water situation is perfunctory.

MOTION BY MEMBER SISCHKA TO RECOMMEND FORWARDING WSA21-018 TO COUNCIL FOR APPROVAL; SECONDED BY MEMBER BLAIR: PASSED [2-1]; MEMBER GOODE DISSENTING.

5. DISCUSSION ITEMS

A. Infrastructure Topic – Pumping Vs. Recharge 2021 Update

Water Resource Project Manager Leslie Graser provided a presentation to the Subcommittee on the pumping vs. recharge 2021 update, noting that with the recent rain, the reservoirs have filled allowing water supplies to be released to the recharge facility.

- Total pumped to date – 5702.15 AF
- Total recharge to date – 3185.66 AF
- Percent of water pumped vs. delivered to recharge facility in 2021
 - September – 150%
 - Average – 60%

Member Sischka asked how much pressure has been taken off of Chino Valley Wells.

Ms. Graser responded that the airport wells are pumping approximately 60% of the water.

This item was for discussion only, no formal action was taken.

B. Focus Topic – Comprehensive Agreement No. 1.

Ms. Graser provided a presentation to the Subcommittee on the Comprehensive Agreement No. 1 Fiscal Year 2021 Annual Report, eighth amendment. The final amendment for the modeling is projected to be completed by the end of FY22, the Golder contract will close no later than July 15, 2022 and the final

annual report of the CA#1 project will be complete by the end of FY22. The financial condition for this project remains strong, cost savings have been sought out and transferred over to the modeling which was more expensive than anticipated.

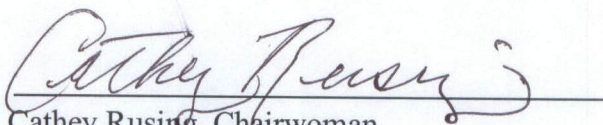
Member Goode stated that he feels staff is moving in the right direction and is anxious to see the final modeling results and share them with the public.

Member Sischka stated that he appreciates Chairman Blair's leadership on the WIC and wishes him good luck in all of his future endeavors.

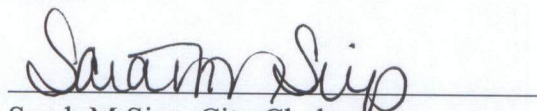
This item was for discussion only, no formal action was taken.

6. ADJOURNMENT

There being no further business to discuss, Chairman Blair adjourned the meeting at 11:34 a.m.


Cathey Rusing, Chairwoman

ATTEST:


Sarah M Siep, City Clerk

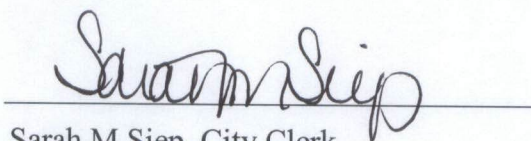
CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular Subcommittee Meeting of the Council Subcommittee on Water Issues of the City of Prescott, Arizona held on November 2, 2021. I further certify the meeting was duly called and held and that a quorum was present.

Dated this 7 day of December, 2021

AFFIX
CITY SEAL




Sarah M Siep, City Clerk