



“The mission of the City of Safford is to make Safford  
a great place to live, work, and visit”

**CITY OF SAFFORD - REGULAR COUNCIL MEETING MINUTES  
MONDAY, SEPTEMBER 12, 2011 @ 6:00 PM  
PHELPS DODGE ROOM - LIBRARY**

**PRESENT:** Wyn “Chris” Gibbs, Mayor; Jason Kouts, Vice Mayor Council Member’s Danny Smith, Ken Malloque, Jacque Attaway, Councilmember, Gene Seale, and Mary Bingham.

**STAFF PRESENT:** David Kincaid, City Manager; Sandra Findley, Executive Secretary; Christine Fisher, Personnel Director; John Griffin, Police Chief; Eric Buckley, Utilities Director; Randy Petty, City Engineer; Kim Larkey, Information Processing Supervisor; Marion Gauna, Lead Accounting Specialist; Jan Elliott, Library Director; Georgia Luster, City Clerk. Tom James, IT Specialist, assisted with the audio/video recording of the meeting.

**STAFF ABSENT:** Don Knight, Director Management & Budget; Ann Waite, Finance Director; and Rob Chesley, Public Works Director;

**OTHERS PRESENT:** Steve McGaughey, David Van Scogk, Eric Walker, Anna Elder, Helen Rivera, Matthew Player, Kristan Player, Ronnie Reynolds, Brad Reynolds, Kris Marciniak, Rene Nutall, Drew John, Lio Ozeta, Eric Bingham, Marshall McBride, Kent McKinney, Portland McKinney, George Jacobson, DeDe Jacobson, Jeremy Bingham, Jon Stewart, Valerie Buckley, Cherla Ramsey, Nicole Lunt, Tina Gonzales, Leonard Gonzales, Debit McCormick, Aaron McCormick, Halie Brinkerhoff, Melony Randels, Gabriella Young, Zach Cervantes, Gary Scott, Joey Scott, Chad Crockett, Mike Windsor, Bruce D. Taylor, Karla Pearody, Kody Evans, Jessica Gonzales, Alexis Sakelars, Ben Bohr, John Lee, Jennifer Seale, Taz Brinkerhoff, Ashley Walker, Jon Johnson, Eastern Arizona Courier; and others who did not sign in. Kelly Van Sharr video-taped the meeting.

- 1. WELCOME AND CALL TO ORDER:** Mayor Gibbs called the meeting to order at 6:00 p.m.
- 2. ROLL CALL:** A quorum of the council was present (7-0).
- 3. PLEDGE OF ALLEGIANCE TO THE FLAG:** Mayor Gibbs led the Pledge of Allegiance to the Flag.

4. **OPENING PRAYER:** Vice Mayor Kouts offered the opening prayer.
5. **CITIZEN COMMENTS ON AGENDA ITEMS:** Eric Walker, Nicole Lunt, and Drew John wish to address the Council regarding Item #9.
6. **CONSENT ITEMS:** The Mayor and City Council may wish to review and approve Items 1 through 10 as Consent Agenda Items. Item No. 7, Utilities Report, was not available.

1. July 5, 2011 Work Session Minutes; July 25, 2011 Council Minutes; August 8, 2011 Council Minutes; August 15, 2011 Special Council Minutes; and August 22, 2011 Work Session Minutes.
2. Police Report
3. Building Inspection Report
4. Public Works Report
5. Business License Report
6. Library Report
7. ~~Utilities Consumption Report~~ (Report not available)
8. Summary of Projects Planning and Grants Administration
9. Airport Report
10. Prosecution Report

It was moved by Councilmember Attaway, seconded by Councilmember Bingham, and carried unanimously (7-0) to approve Items 1 through 10, excluding Item No. 7, Utilities Consumption Report, as Consent Agenda Items as presented. **MOTION ADOPTED**

7. **PURCHASING CARD REPORT:** The Mayor and City Council may wish to review and approve the Purchasing Card Report for 05/18/2011 through 06/18/2011.

It was moved by Councilmember Attaway, seconded by Councilman Malloque and carried unanimously (7-0) to approve the Purchasing Card Report for 05/18/2011 through 06/18/2011 as presented.

**MOTION ADOPTED**

8. **2011 CONGRESS OF CITIES AND EXPOSITION:** National League of Cities, 2011 Congress of Cities and Exposition will be held in Phoenix from November 9-12.

City Manager Kincaid stated the National League of Cities, 2011 Congress of Cities and Exposition is normally held out of state. This year the conference will be held in Phoenix on November 9-12, 2011. He stated the conference would be a good event for the Council to attend because it is a national conference and is being held close to home. Approximately 12,000-15,000 elected officials will attend.

9. **CONDITIONAL USE PERMIT:** The Mayor and City Council may wish to consider granting a Conditional Use Permit to Cross Fit Nemesis for the use of a fitness center located at 420 W. 15<sup>th</sup> Street, Safford, AZ. This item will require a 75% affirmative vote by the Council to grant the Conditional Use Permit.

City Manager Kincaid stated the posted agenda states Item 9 will require a super majority (75% affirmative vote of the Council) to grant the Conditional Use Permit. He explained a letter of petition was submitted in opposition to the Conditional Use Permit. The petition is subject to the **City's** zoning ordinance which states a petition of 20% or more of the property owners within one-hundred-fifty feet of the property file a written petition against the proposed conditional use permit, it shall not become effective except by a favorable vote of three-fourths of all members of the City Council. However, one of the signatories who signed the petition has withdrawn his signature from the petition resulting in a reduction to 19% which causes a removal of the super majority vote of the Council. He read the law allowing a signatory to withdraw his name any time before official action has been taken. He suggested Dustin Welker present a staff report, allow the applicant to speak (will not be limited to speak 3 minutes because he is the applicant), and then anyone who submitted a request to address the Council in respect to this item may speak.

Dustin Welker presented a staff report and provided the background for the application, Cross Fit Nemesis Conditional Use Permit. The property location is 420 W. 15<sup>th</sup> Street, Parcel No. 101-09-007b and in an R-2 zone. He explained what a Conditional Use Permit (CUP) is - A permit with certain conditions set forth and authorized by the City Council granting the right to conduct certain activities within a zoning district that otherwise are not allowable according to the zoning ordinance. **CUP's** are typically attached to the property and business. If the business moves or ceases to exist, then the CUP would terminate as well and the property would be subject to the zoning under the R-2 classification once again.

He stated Eric Walker is the owner of Cross Fit Nemesis, who previously operated his business out of the old Wal-Mart building in Thatcher. Mr. Walker wanted to move his business to Safford and applied for a business license from the City of Safford for the property located at 420 W. 15<sup>th</sup> Street. The business license request was routed to the Planning and Zoning Building Department and was signed off by the building official with the assumption that the property was commercial, or at least had a history of being commercial. However, after a week of operating his business, complaints were received from neighbors about increased traffic and parking on 15<sup>th</sup> Street. After reviewing the situation it was determined that the property was not properly zoned for the business. Though it appears the property has been used for various commercial type activities in the past, it has never been officially zoned as commercial property. Accordingly, the fitness facility was operating on a residential zoned property and the business license should not have been issued originally. City staff met with Mr. Walker and explained that he would not be able to operate his business at that location within the R-2 zoning and Mr. Walker requested to pursue a Conditional Use Permit on the property. City staff met with Mr. Walker and explained that he would not be able to operate his business at that location within the R-2 zoning and Mr. Walker requested to pursue a Conditional Use Permit on the property. **We've** allowed Mr. Walker to continue running his business until the City Council hears the case as long as he can contain all the parking on his property and with the provision that Mr. Walker speak to his neighbors and discover all the concerns. Parking on the street since has not been a problem and applying the business to typical commercial property parking rules, Cross Fit Nemesis would be required to have eight on-site parking spots. Mr. Walker has displayed that the property can meet and exceed the parking requirement. Various complaints have been received from neighbors about the fitness center mainly due to the original parking issue and the increased traffic to the area as well as received various calls and letters from neighbors in support of the fitness center in the area. **We've** also received a letter of petition in opposition of the CUP from 5 property owners. The petition is subject to the City of Safford Zoning Ordinance 17.20.070 which states that if a petition of 20% or more of the property owners within 150 ft. of the property file a written petition against the proposed CUP, then it shall not become effective except by a favorable vote of three-fourths of all members of the City Council (see Conditional Use Permit Exhibit). City Staff does not support all comments in the petition, particularly that the public meetings were not lawfully scheduled. The CUP was properly scheduled for two public hearings, one for the Planning and Zoning Commission and one for the City Council. Notices were given to all property owners within 300 ft. of the subject property, notice was posted in two issues of the Courier, and the property was also posted; only one of any of these three is required to meet notification requirements. The general consensus of the Development Review Committee was that if the complaints from the neighbors could be mitigated or satisfied that it would support an approval of the request for the fitness center. Conditions of such approval may include all parking to be contained on the fitness center property, no visible signage from the street, constructing higher block walls, operating times, institute possible noise barriers, etc. However, if the neighbors cannot be placated with conditions and only request that the business just not be in the area altogether, then the zoning needs to be upheld. At the August 25<sup>th</sup> Planning and Zoning Commission meeting, the Commission recommended the denial of the Conditional Use Permit on the basis that the use did not fit the neighborhood and that the traffic

was not conducive to the neighborhood.

Vice Mayor Kouts asked Dustin Welker to explain when the property was removed from commercial zoning. Dustin Welker responded that the zoning in this area was never conducive to commercial business. He pointed out that the area is an old neighborhood and that the City has not always had zoning. Several businesses existed within the area when the area was zoned residential. Unfortunately, original zoning maps are not available on the properties. Schools and churches are allowed within a residential zone.

**Eric Walker, 1407 South 5<sup>th</sup> Avenue, Safford, Arizona:** Mr. Walker addressed the Council at this time. He stated he served as an officer for the Safford Police Department for fifteen years. About a year ago he decided to open up his own business and was located at the old Wal-Mart in Thatcher. Recently, he was approached by a couple who are relocating to Alaska to purchase their home and lease/purchase the old Talley and Son business property as a package deal. They were under the assumption that the area was zoned commercial property. He explained he started the process of applying for a business license and zoning approval. He received approval and proceeded to move forward with the fitness center. He pointed out that several businesses exist in the area. He referred to a PowerPoint illustrating fitness center clients, the neighborhood and plans to improve the property instead of devalue the property. He added that he plans to renovate the building. They are closed on the weekends, open early in the mornings (open 6:00 a.m. close at 1:00 p.m.; peak hours 6AM-9AM) and open back up in the afternoons at 4 p.m. and close at 7 p.m. (peak hours 5PM-7PM). He believes there is plenty of parking with additional overflow parking in his yard at his residence. In closing, Mr. Walker stated his intention is to improve the neighborhood not degrade the neighborhood. He wants to be an important part of the neighborhood.

**Nicole Lunt, 1420 South 5<sup>th</sup> Avenue, Safford, Arizona:** Nicole Lunt spoke in support of Cross Fit Nemesis. She and her family live at the corner of 15<sup>th</sup> Street and 5<sup>th</sup> Avenue just a couple of houses down from Cross Fit. She noted that she has not noticed any increased traffic or loud noises since Cross Fit moved in. Her family has noticed joggers running down the street warming up, but to her opinion the joggers have not caused a disturbance. In fact, the joggers have motivated her family to exercise.

**Drew John, 2305 Branding Iron Road, Safford, Arizona:** Drew John spoke in opposition to granting a conditional use permit for Cross Fit Nemesis. He stated that his father lives at the front of the property at 416 15<sup>th</sup> Street. The property is owned by the family trust. He noted that Mr. Walker is a good person and has a good business. However, the issue is that the area is zoned residential. He noted that Safford Funeral Home and other existing businesses in the area existed before any zoning laws were put into place. He does not support granting a conditional use permit because he believes it will set precedence. He is concerned about increased traffic, devaluation of his father's property and the zoning being non-compliant.

Vice Mayor Kouts stated that he is a supporter of small businesses. He stated he sympathizes with Mr. John. Vice Mayor Kouts **motioned** to accept the Conditional Use Permit for Cross Fit

Nemesis.

Councilman Malloque commented that he understands both sides of the situation. Mr. Walker has some investments and believes he will do nothing but improve the property. He pointed out that a conditional use permit allows the business to operate as long as they remain at that location. If Cross Fit were to move or close down, the area would be subject to R-2 zoning. He stated Eric Walker did do his due diligence. **Councilman Malloque seconded the motion.**

Councilman Smith commented that he believes Eric Walker did his due diligence and has followed the rules. He believes the Planning and Zoning Commission made the best decision because they look at just the facts and just the zoning in an attempt to eliminate emotions and the politics of the situation. He has been watching the operations of the fitness center and has observed Mr. Walker keeping parking off the street. He can support granting the conditional use permit but with some stipulations. He recommends requiring permanent restrooms constructed by a certain date, retain current operating hours, and review operating conditions in three years. He also noted Mr. Walker has been in contact with some of the property owners and that one property owner has agreed to construct a privacy fence.

Vice Mayor Kouts stated that he can support conducting a review of operating conditions in three years, but he believes Mr. Walker should work with the building official because the building official should verify and enforce restroom requirements per Code because a public restroom facility is required on site because the Fitness Center is a commercial business. He amended his motion by requiring a review of the conditions concerning the operations (parking, noise, improvements, etc.) of the business in three years.

City Manager Kincaid stated that Joe Dominguez is checking to see if a water line runs within the area and back to the property. If not, it could take Mr. Walker some time to install a water line to the property. He clarified restroom facilities are required on site.

City Manager Kincaid believes the Council should consider the conditions submitted by Mr. Peterson withdrawing his signature from the petition. He stated that Mr. Peterson supports the efforts of Mr. Walker, but with stipulations as indicated in his letter:

- Conditional use permit is issued only to Mr. Walker
- Mr. Walker continue to not allow his building at 420 W. 15<sup>th</sup> Street to be sublet by him in the future for any commercial purposes
- Mr. Walker continues to screen his clientele and maintain his high level of credibility for his client
- Mr. Walker continue to recognize the his conditional use permit is valid only for the life of his business at 420 W. 15<sup>th</sup> Street

- Mr. Walker continues requiring all patrons parking off street as he presently does. All patrons presently park off street at either 420 W 15<sup>th</sup> Street or 1407 S 5<sup>th</sup> Avenue.
- City of Safford conditional use permit will become null and void and the property will revert to R-2 zoning when and if Mr. Walker decides to partially or completely move Fitness Center to a different physical location
- Mr. Walker alone continues to manage his business and continue the high level of service and supervision
- Mr. Walker continues to maintain the excellent level of managing the parking and noise discipline
- Mr. Walker pay for all materials and labor to install a sturdy visual privacy/noise abatement wall around his business to the maximum height allowed by the **City's** Code. I believe a six feet tall wall is allowed. This wall would serve the purpose of blocking out the patrons from peering into my back yard and provide an elevated degree of privacy in my own backyard. Respectfully demand this be done with 120 days of Mr. Walker receiving his conditional use permit.
- Mr. Walker continues to maintain the music level at the minimal level he currently practices
- Mr. Walker continues to strive to perform renovations on the building at 420 West 15<sup>th</sup> Street and to continue to beautify the neighborhood as his driving goal. i.e. painting, soundproofing, paving and so on and so forth.
- Mr. Walker considers developing and instituting an annual **“opportunity for improvement survey” for the neighborhood.**

Councilman Seale asked Mr. Walker if he supports the conditions Mr. Peterson presented with his petition to withdraw and what timeframe does he anticipate to complete some of the work, i.e. recoat the roof, paving, painting, etc. He clarified Mr. Peterson placed the conditions for withdrawing his complaint.

Mr. Walker responded that he supports the stipulations indicated by Mr. Peterson because the improvements will do nothing but improve the neighborhood as well as his business. He hopes to improve the property a piece at a time (hopefully within six months). He added that he plans to enclose a portion of the building which will help abate the noise and extend floor space, and extend the fence adjoining Mr. Welch (Mr. Peterson stipulated the wall to be completed within 120 days).

It was moved by Councilman Smith, seconded by Councilman Seale to amend Vice Mayor Kouts motion to grant a Conditional Use Permit to Cross Fit Nemesis for the use of a fitness center located at 420 W 15<sup>th</sup> Street, Safford, AZ with the following stipulations: Review conditions concerning operations (parking, noise, improvements, etc.) of the business in

three years; Retain current operating hours of business; Construct permanent on-site restroom facilities; construct a sturdy visual privacy/noise abatement wall around his business within 120 days as stipulated in Mr. Peterson's withdrawal letter; and maintain parking spaces at either 420 W 15<sup>th</sup> Street or 1407 South 5<sup>th</sup> Avenue. The motion carried 6-1. Vice Mayor Kouts opposed. **MOTION ADOPTED**

It was moved by Vice Mayor Kouts, seconded by Councilman Malloque, and carried unanimously (7-0) to grant a Conditional use Permit to Cross Fit Nemesis for the use of a fitness center located at 420 W 15<sup>th</sup> Street, Safford, AZ.

**MOTION ADOPTED**

10. **RESOLUTION NUMBER 11-024:** The Mayor and City Council may wish to consider approving and adopting Resolution Number 11-024, a Resolution of the City of Safford adjusting rate schedules for the provision of natural gas services effective November 1, 2011 as attached for residential, small natural gas commercial, medium natural gas commercial, and large natural gas commercial.

City Manager Kincaid explained previous discussions were held with the Council regarding the City providing a lower gas rate to its customers and building a gas reserve fund account. The BP gas contract was renegotiated and the City will receive lower gas rates. He stated this resolution adjusts the rate schedules to reflect such.

It was moved by Vice Mayor Kouts, seconded by Councilmember Attaway, and carried unanimously (7-0) to approve and adopt Resolution Number 11-024, a Resolution of the City of Safford adjusting rate schedules for the provision of natural gas services effective November 1, 2011 as attached for residential, small natural gas commercial, medium natural gas commercial, and large natural gas commercial. **MOTION ADOPTED**

11. **MEETING/ ACTIVITIES HELD BY COUNCIL OR CITY STAFF:** The League of Arizona Cities and Towns Annual Conference was held at the Starr Pass Resort in Tucson last week.

City Manager Kincaid stated staff is nearing the conclusion of negotiations with Qwest, now Century Link, regarding Pole Agreements. A new agreement reflecting the new rates will be presented to the Council on October 10<sup>th</sup>.

Councilman Seale will attend a Library District Feasibility Committee meeting this

week.

The City will host the SEAGO Executive Committee on October 21 at the Annex. A continental breakfast and a catered lunch will be provided.

Mayor Gibbs will respond to a request for a letter of support in respect to rural airports and broadband merger to the FCC (ATT and T-Mobil merger).

City Manager Kincaid reminded the Council of the September 26<sup>th</sup> work session, of which Heinfeld, Meech and Company; the City's Auditing Firm will discuss and explain the benefits of internal service charges.

**12. COUNCIL OR STAFF REQUESTS FOR AGENDA ITEMS: NONE**

- 13. CITIZEN COMMENTS ON NON-AGENDA ITEMS:** David VanScogk, 1692 North Y-Rock Road, Safford, AZ: Mr. VanScogk addressed the Council concerning a utility easement that the City would like to run a water line through his property. He said the City is proposing to run a new 12" water line to serve the Airport Road area of which a forty foot easement will run along the east side of his property for 433 feet which amounts to about 17,380 sq. ft. or 4/10's of an acre of his property. He explained the City has offered him the following for the easement: City will construct a two inch water line from the four water service stub-outs to each of the newly divided properties at no cost. These stub-outs will remain locked until the appropriate impact fees are paid in full. The City will install a fire hydrant at the entrance of the proposed Cul-de-sac at no cost to Mr. VanScogk. The City will reduce the width of proposed easement from forty feet to twenty feet if Mr. Van Scogk accepts the City's offer. Mr. VanScogk asked the Council to also consider waiving the impact fee for the four (4) water service meters for the proposed lots.

Mayor Gibbs informed Mr. VanScogk that the Council could not take action on his request tonight. He asked staff to bring back a recommendation to Council at a future meeting.

- 14. ADJOURN:** It was moved by Councilman Malloque, seconded by Councilman Smith, and carried unanimously (7-0) to adjourn the special council meeting at 7:04:39 p.m.

**MOTION ADOPTED**

APPROVED:

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Wyn "Chris" Gibbs, Mayor  
City of Safford

ATTEST:

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Georgia Luster, MMC  
City Clerk

CERTIFICATION

STATE OF ARIZONA     )  
                                  )   ss  
County of Graham    )

I hereby certify that the foregoing minutes are a true and correct copy of the regular council meeting of the City of Safford, Graham County, Arizona held Monday, September 12, 2011, and approved at a Regular Council Meeting on October 10, 2011. I further certify the meeting was duly called, held and that a quorum was present.

Dated: October 10, 2011

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Georgia Luster, MMC  
City Clerk