

# COUNCIL MINUTES

December 19, 1997

The City Council of the City of Mesa met in a Study Session in the lower level meeting room of the Council Chambers, 57 East 1st Street, on December 19, 1997, at 8:20 a.m.

## COUNCIL PRESENT

Mayor Wayne Brown  
Pat Gilbert  
John Giles  
Dennis Kavanaugh  
Joan Payne  
Wayne Pomeroy  
Claudia Walters

## COUNCIL ABSENT

None

## STAFF PRESENT

C.K. Luster  
Neal Beets  
Denise Bleyle  
Dennis Compton  
Linda Crocker  
Mike Hutchinson  
Lars Jarvie  
Barbara Jones  
Harry Kent  
Ron Krosting  
Dorinda Larsen  
Greg Marek  
Jeff Martin  
Keith Nath  
Ruth Ann Norris  
Ellen Pence

## STAFF PRESENT

Bryan Raines  
Andrea Rasizer  
Tom Remes  
Becky Richardson  
Doug Tessendorf  
Mindy White  
Ralph Wisz  
Others

## OTHERS PRESENT

Robin Allen  
Keno Hawker  
Mark Miku  
Others

(Items on the agenda were discussed out of order but for purposes of clarity will remain as listed on the agenda.)

### 1. Hear and consider phasing alternatives for constructing and financing the Main Street Streetscape project.

Mayor Brown indicated that he had a potential conflict of interest in connection with the matter now under discussion which he wanted recorded in the minutes of the meeting, and because of such conflict of interest, he would refrain from voting upon or otherwise participating in any manner in connection with same.

Vice Mayor Gilbert indicated that he had a potential conflict of interest in connection with the matter now under discussion which he wanted recorded in the minutes of the meeting, and because of such conflict of interest, he would refrain from voting upon or otherwise participating in any manner in connection with same.

Councilmember Pomeroy indicated that he had a potential conflict of interest in connection with the matter now under discussion which he wanted recorded in the minutes of the meeting, and because of such conflict of interest, he would refrain from voting upon or otherwise participating in any manner in connection with same.

Mayor Brown requested that Councilmember Giles serve as Acting Chairman of the meeting during discussion of this agenda item.

(Mayor Brown and Vice Mayor Gilbert left the Council Chambers during discussion of this agenda item. Councilmember Pomeroy remained at the meeting.)

Redevelopment Director Greg Marek briefly highlighted the contents of a report presented to Council which contained recommended phasing alternatives for constructing and financing the Main Street Streetscape project. Mr. Marek informed the Council that staff recommends the approval of Option No. 3, which includes Main Street from Country Club Drive east to Lewis Street and Macdonald Street (First Avenue north to Pepper Place.)

Mr. Marek estimated that construction would occur from mid-May through mid-November and reported that the overall construction cost is estimated at \$6.3 million.

Discussion ensued relative to project funding and the proposed bidding process.

Councilmember Kavanaugh clarified that Option No. 3 also allows a tie-in with the anticipated reconstruction of the Bank One building by the Voit Companies. Councilmember Kavanaugh added that safety and liability issues are a major fact in recommending that Macdonald Street be completed as quickly as possible.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Payne, that the recommendations of staff be approved and that staff be directed to proceed with the implementation of Option No. 3.

Councilmember Walters complimented staff on the construction of the City Plaza project and requested information relative to increases in the cost of the project.

City Manager Charles Luster stated that the requested information will be forwarded to Councilmember Walters as quickly as possible.

Mr. Marek presented a brief synopsis of factors which resulted in an increase in the cost of the proposed project, including the replacement of water lines which were originally constructed during the early 1900's.

In response to a question from Acting Chairman Giles, Mr. Marek advised that the project would go out to bid by the end of February and that bid opening is scheduled to occur by the end of March.

Upon tabulation of votes, it showed:

AYES - Giles-Kavanaugh-Payne-Walters  
NAYS - None  
ABSTAIN - Brown-Gilbert-Pomeroy

Acting Chairman Giles declared the motion carried unanimously by those present and voting.

(Mayor Brown and Vice Mayor Gilbert rejoined the meeting at 8:56 a.m.)

2. Consider the employment status of Magistrate Robin Allen.

City Attorney Neal Beets provided the Council with brief background information relative to this agenda item. Mr. Beets noted that Special Counsel Gary Stuart has submitted an interim report on his investigative findings and that based on those findings, Mr. Beets would recommend that City Magistrate Robin Allen be directed to return to his duties at the Mesa City Court and that Mr. Allen be taken off administrative leave.

Mr. Beets also recommended that the Council initiate a due process public hearing to evaluate whether issues referred to in Mr. Stuart's report constitute violations of the City of Mesa's Personnel Rules on the part of Judge Allen. Mr. Beets stated the opinion that grounds for termination do not exist but added that prior to considering formal discipline actions, in the form of a written reprimand, censure, suspension without pay or demotion, Mr. Allen should be provided an opportunity to participate in a due process hearing. Mr. Beets requested that a hearing be scheduled as quickly as possible.

It was moved by Vice Mayor Gilbert, seconded by Councilmember Walters, that the recommendations of the City Attorney be accepted, that Mr. Beets be directed to schedule, without delay, a due process hearing for the purpose of evaluating whether City Magistrate Robin Allen has violated provisions of the City's Personnel Rules.

Carried unanimously.

3. Review a report concerning speed humps and consider adopting a policy.

It was moved by Councilmember Walters, seconded by Vice Mayor Gilbert, that the recommendation of staff be approved.

Mayor Brown declared the motion carried unanimously by those present. (This agenda item was discussed out of order and Councilmember Giles was excused from the meeting at the time of discussion.)

3.1. Further consideration of the proposal by Eskimo Air to purchase and develop City-owned property at the southeast corner of Second Avenue and Country Club Drive.

Redevelopment Director Greg Marek provided the Council with brief background information relative to this agenda item. Mr. Marek commented on surplus City-owned property located in the Town Center area and noted that the Redevelopment Office received two unsolicited requests to purchase the property located at the southeast corner of Second Avenue and Country Club Drive. Mr. Marek advised that following discussions with Real Estate Services' staff, the Redevelopment Office forwarded letters to the two interested parties, requesting that they submit proposals. Mr. Marek stated that adjacent property owners were not notified, nor were any other advertising or notification processes initiated. Mr. Marek advised that Mr. Mark Miku, owner of Eskimo Air, was the only respondent to the letter sent by the Redevelopment Office.

Mr. Marek informed the Council that following receipt of Mr. Miku's proposal, Mr. Keno Hawker, the adjacent property owner to the south, contacted City staff to express concern that he had not been notified and provided an opportunity to submit a proposal in order to allow him an opportunity to indicate his interest in purchasing the property. Mr. Marek stated that at the same time it was also determined that Mr. Miku's proposal contained 100 feet of land previously sold to Mr. Hawker and therefore contained inaccurate acreage dimensions for the site. Mr. Miku indicated that he would allow his bid price to remain unchanged despite the fact that the parcel is smaller than anticipated and that he was aware of the fact that his site design would require modifications.

Mr. Marek said that staff identified an additional City-owned parcel of land located on South Mesa Drive and offered it to Mr. Miku as an alternative site. Mr. Marek advised that Mr. Miku has indicated that his is not interested in purchasing the Mesa Drive property.

Mr. Marek commented that staff is recommending that the City advertise the property for sale and notify all property owners within 150 feet of the site, in addition to those parties who previously expressed interest in purchasing the property. Mr. Marek added that staff is also recommending that standards be established for use in evaluating the responses received in an effort to help determine which proposal, if any, should be accepted. Mr. Marek also recommended that all proposals received be evaluated by the Downtown Development Committee, which would forward a recommendation to the City Council on which proposal, if any, to accept.

Mr. Marek noted that should the Council not support staff's recommendation relative to readvertising the parcel, two additional alternatives are as follows: 1) Direct staff to accept Mr. Miku's original offer to purchase this property, or 2) Recommend acceptance of Mr. Miku's offer and direct staff to use the proposed disposition process criteria for evaluating proposals for the sale of surplus City-wide properties in the future.

Mayor Brown provided Mr. Hawker and Mr. Miku five minutes each to present their comments to the Council.

Mark Miku, President of Eskimo Air, stated that he has followed City procedures as requested by staff and the Downtown Development Committee (DDC). Mr. Miku noted that the DDC voted 5 to 2 in favor of the sale following Mr. Hawker's objections. Mr. Miku expressed the opinion that the sale of this particular piece of City owned property should be disposed of in accordance with existing, rather than newly developed guidelines. Mr. Miku pointed out that the property has been available for the last three years and that the availability of the parcel was advertised in the downtown advertising publication. Mr. Miku expressed the opinion that he did not have any advantage over any other possible buyer and commented on the time, monies and efforts expended by him in an effort to purchase this property. Mr. Miku also requested that he receive total reimbursement for his expenses should the Council decide not to allow him to purchase the property.

Keno Hawker addressed the Council and distributed notes relative to the Country Club Drive property. Mr. Hawker noted that Eskimo Air's bid in the amount of \$105,000 is under the minimum bid amount that was established for the property in 1994. Mr. Hawker added that anyone interested in the property should have been provided an opportunity to participate in the proposal process. Mr. Hawker commented that Requests for Proposals (RFPs) must be advertised in the newspaper and added that signage relative to the sale of the property

should also have been erected on the parcel. Mr. Hawker expressed the opinion that the Downtown Development Committee erred in their decision but that Eskimo Air acted in good faith and should be compensated for their expenses. Mr. Hawker stated that allowing only two parties to participate in the process is inappropriate and inequitable.

In response to a question from Councilmember Payne, Mr. Hawker advised that the cost of the property was previously substantially above market value and that due to the expansion of his business, the location would be appropriate for the development of an executive office at this time.

Real Estate Services Director Doug Tessendorf informed the Council that 'For Sale' signs were placed on the property by City staff in 1994 and added that Mr. Hawker purchased his first piece of property at that time. Mr. Tessendorf noted that the sign was erected until 1995 at which time it was replaced by Prudential Realty signs which remained in place for approximately a year and a half.

Discussion ensued relative to the fact that the property was listed with Prudential Realty for \$130,000; an appraisal on the property which listed the value at \$7.00 a square foot, or a total of \$105,000; Mr. Hawker's contact with the City following the submission of proposals from both applicants, and the fact that the Downtown Development Committee (DDC) voted 5 to 2 to recommend that the Council accept the proposal submitted by Eskimo Air.

Councilmember Payne indicated that she supports accepting the proposal from Eskimo Air and pursuing Option 2, directing staff to develop standards to be used in evaluating future proposals and that the adopted criteria be utilized in the sale of future surplus properties on a City-wide basis. Councilmember Payne expressed the opinion that should Mr. Hawker be allowed to bid on the parcel, the public's perception will be that he received special treatment.

Councilmember Walters stated the opinion that although the process was flawed, everyone involved in the sale of the property acted in good faith. Councilmember Walters added that Eskimo Air should not be penalized because of errors which occurred that were beyond the company's control. Councilmember Walters commented on the fact that Mr. Hawker did not receive notification of the fact that the selling price of the property had been lowered and pointed out that should the property go out to bid once again, there are no guarantees that Mr. Hawker's proposal would be selected.

Mayor Brown expressed the opinion that the parcel currently under discussion is an 'awkward' piece of property and added that Mr. Hawker's adjacent property ownership indicates that the property would be most advantageous for Mr. Hawker. Mayor Brown added that Mr. Hawker demonstrated a lack of initiative in regard to displaying an interest in purchasing the property.

Additional discussion ensued relative to the fact that Eskimo Air has submitted a proposal but no agreement to purchase the property has been prepared, and Eskimo Air's impression that following submission of site plans and Council approval, the company's purchase of the property would proceed.

Councilmember Giles stated the opinion that procedural errors were committed on the part of the City and that Eskimo Air should be awarded damages. Councilmember Giles stressed the overall importance of selecting a project which will benefit downtown Mesa.

Councilmember Kavanaugh expressed the opinion that City staff followed appropriate procedures and added that the process should be changed in the future to avoid a reoccurrence of this dilemma. Councilmember Kavanaugh stated that he concurs with Councilmember Payne's recommendation that Option 2 be approved.

It was moved by Councilmember Payne, seconded by Councilmember Pomeroy, that the Council approve Option 2, directing staff to proceed with the sale of the property to Eskimo Air and that staff initiate action to develop a specific disposition policy for the sale of surplus City-wide properties in the future.

Councilmember Walters indicated that she would not support the motion and stated that she sympathizes with Eskimo Air's position and agrees that the company should be awarded damages. Councilmember Walters stated the opinion that City staff acted appropriately and in good faith.

In response to a question from Mayor Brown, Councilmember Walters said that she would have voted in support of a motion to allow Mr. Miku and Mr. Hawker to rebid the parcel and submit proposals. Councilmember Walters added that in her opinion, the quality of the project as it relates to downtown development, rather than the cost of the parcel, should be the first consideration.

Mr. Hawker informed the Council that minimum bid requirements were eliminated sometime after 1994 and that a new Request for Proposals (RFP) was never issued. Mr. Hawker stressed the importance of abiding by a process which provides any and all interested citizens in Mesa an opportunity to participate in the proposal process.

Mr. Mark Miku, President of Eskimo Air, expressed the opinion that everyone in the City was given an opportunity to participate in the RFP process and noted that the property was advertised, signs were erected, and the parcel was listed with a reputable real estate company.

Upon tabulation of votes, it showed:

AYES - Gilbert-Kavanaugh-Payne-Pomeroy  
NAYS - Brown-Giles-Walters  
ABSENT - None

Mayor Brown declared the motion carried by majority vote.

(Mayor Brown excused Councilmember Giles from the meeting at 10:05 a.m.)

4. Appointments to boards and committees.

HOUSING AND HUMAN SERVICES ADVISORY BOARD

Dan Bell - To fill the unexpired term of Troy Glover. Term to expire 6/30/99.

Angie Gann - To fill the unexpired term of Maria Davis Franciosi. Term to expire 6/30/98.

It was moved by Councilmember Kavanaugh, seconded by Councilmember Giles, that the Council concur with the Mayor's recommendations and the appointments be confirmed.

Carried unanimously.

5. Hear reports on meetings and/or conferences attended.

Mayor Brown advised that there were no reports on meetings and/or conferences attended.

6. Scheduling of meetings and general information.

City Manager Charles Luster advised that the meeting schedule is as follows:

Monday, January 5, 1998, 5:45 p.m. - Regular Council Meeting

7. Prescheduled public opinion appearances (maximum of three speakers for five minutes per speaker).

Mayor Brown advised that there were no prescheduled public opinion appearances.

8. Items from citizens present (maximum of three speakers for five minutes per speaker).

Mayor Brown advised that there were no items from citizens present.

9. Adjournment.

Without objection, the Study Session adjourned at 10:05 a.m. (and convened a Utility Committee Meeting).

WAYNE BROWN, MAYOR

ATTEST:

BARBARA JONES, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Mesa, Arizona, held on 19th day of December 1997. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 23<sup>rd</sup> day of January 1998

BARBARA JONES, CITY CLERK