



COUNCIL MINUTES

April 3, 2006

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on April 3, 2006 at 5:48 p.m.

COUNCIL PRESENT

Mayor Keno Hawker
Rex Griswold
Kyle Jones
Tom Rawles
Janie Thom
Claudia Walters
Mike Whalen

COUNCIL ABSENT

None

COUNCIL-ELECT PRESENT

Scott Somers

OFFICERS PRESENT

Christopher Brady
Debbie Spinner
Barbara Jones

Invocation by Pastor Paul Covert, Central Christian Church.

Pledge of Allegiance was led by Mayor Hawker.

Mayor's Welcome.

Mayor Hawker welcomed everyone to the meeting. A videotaped presentation was aired that outlined meeting procedures and provided attendees with instructions relative to addressing the Council.

1. Take action on all consent agenda items.

All items listed with an asterisk (*) will be considered as a group by the City Council and will be enacted with one motion. There will be no separate discussion of these items unless a Councilmember or citizen requests, in which event the item will be removed from the consent agenda and considered as a separate item. If a citizen wants an item removed from the consent agenda, a blue card must be completed and given to the City Clerk prior to the Council's vote on the consent agenda.

It was moved by Councilmember Griswold, seconded by Vice Mayor Walters, that the consent agenda items be approved.

Carried unanimously.

*2. Approval of minutes of previous meetings as written.

Minutes from the March 2, 16, 20 and 23, 2006 Regular Council meetings.

3. Take action on the following liquor license applications:

*3a. Barro's Pizza

New Restaurant License for A & D Pizza, Inc., 1113 S. Signal Butte. This is new construction with no current liquor license at this location. District #6.

*3b. Burrito Azteca

New Restaurant License for Burrito Azteca, 2753 E. Broadway Road, #112. This is an existing building with no current liquor license. District #2.

4. Take action on the following bingo applications:

*4a. BINGO LICENSE APPLICATION – CLASS A

Good Life RV Resort Spring
Daniel J. Martin
3403 E. Main Street
District #2

*4b. BINGO LICENSE APPLICATION – CLASS A

Good Life RV Resort Winter
Dawn Lessor
3403 E. Main Street
District #2

5. Take action on the following contracts:

*5a. Three-year Supply Contract for Painting Services as requested by the Facilities Maintenance Division.

The Purchasing Division recommends awarding the primary contract to Fabiani Painting & Decorating, LLC and secondary contracts to Work of Art Painting and Larkin Painting Contractors, Inc.

The total combined award is \$60,000.00 annually based on estimated requirements.

*5b. **Deleted.**

*5c. Furniture Installation for Phase III of the Municipal Building Remodel as requested by Development Services.

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Goodmans at \$95,894.06, including design, installation, delivery and applicable sales tax. Funding in the form of building permit fees are budgeted for this purchase.

- *5d. Microwave Radio Equipment – Phase II Microwave Upgrade as requested by the Communications Division.

The Purchasing Division recommends authorizing purchase from Harris Corporation at \$102,432.00, including applicable taxes.

- *5e. Maintenance Management Software for the Greenfield Water Reclamation Plant as requested by the Information Services Division.

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with ASAP Software for purchases totaling \$48,347.70, including applicable sales tax.

- 5f. Wastewater Line Extension at Power Road and Broadway Road, City of Mesa Project No. 02-372-001.

This project will connect the existing 15-inch wastewater line along Broadway Road with the existing 24-inch wastewater line along Power Road. Improvements include the replacement of approximately 50 lineal feet of the 15-inch wastewater line that is in poor condition. This extension is part of the City's Wastewater Master Plan.

Recommend award to the low bidder, SDB, Inc., in the amount of \$248,262.00 plus an additional \$24,826.20 (10% allowance for change orders) for a total award of \$273,088.20.

Mayor Hawker declared a potential conflict of interest and said he would refrain from discussion/consideration of this agenda item. He yielded the gavel to Vice Mayor Walters for action on this agenda item.

It was moved by Councilmember Thom, seconded by Councilmember Griswold, that the recommendation of staff be approved.

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Rawles-Thom-Walters-Whalen
NAYS - None
ABSTAIN - Hawker

Vice Mayor Walters declared the motion carried unanimously by those voting.

With action on this agenda item being completed, Vice Mayor Walters yielded the gavel back to Mayor Hawker.

- *5g. Kiln Court Canopy for Mesa Arts Center, City of Mesa Project No. 04-920-001.

This project will construct a metal canopy over the kiln court area of the Mesa Arts Center. Improvements include canopy lighting, skylights for natural lighting, and a fire protection system. The new canopy will provide protection for the equipment in the court area and shade for its occupants.

Recommend award to the low bidder, Evans & McKinney Construction, Inc., in the amount of \$79,739.00 plus an additional \$7,973.90 (10% allowance for change orders) for a total award of \$87,712.90. The Mesa Arts and Entertainment Alliance will fully reimburse the City for the costs of this project.

- *5h. Gilbert Road and University Drive Intersection Reconstruction, City of Mesa Project No. 01-373-001.

This project will widen the intersection with additional lanes and includes improvements to the medians, signals, lighting and landscaping. Also included in the work is the relocation of SRP power and irrigation facilities and other utilities. This project will be completed using the Construction Manager at Risk (CM@R) delivery method. This initial phase will be the Design Phase Services. During this phase, the CM@R will work closely with City staff and the design professional to develop the project design.

Recommend award to the Construction Manager at Risk, Hunter Contracting, Inc., in the amount of \$61,918.32 for Design Phase Services.

6. Introduction of the following ordinances and setting April 17, 2006, as the date of public hearing on these ordinances:

- *6a. **Z06-15 (District 6)** The 10800 to 11000 block of East Broadway Road (south side). Located at the southeast corner of Signal Butte Road and Broadway Road (12.55± ac). Rezone from C-2 and R1-7 to R1-6-PAD and Site Plan Modification. This request will allow for the development of a single residence subdivision. Todec Properties, LLC, (Thomas C. Decker) owner; Lyle Richardson, Lazarus & Associates, applicant. ***(Held two neighborhood meetings, notified property owners and interested neighbors.)***

P&Z Recommendation: Approval with Conditions. (Vote: 6-0 with Boardmember Carpenter absent)

- *6b. **Z06-17 (District 6)** The 8400 and 8500 blocks of East Southern Avenue (north side). Located at the northeast corner of South Hawes Road and East Southern Avenue (2.8± ac). Rezone from AG and R-4 to C-1 and Site Plan Review. This request will allow for the development of a retail building. Crescent Run Limited Partnership (Patricia L. Koslow), owner; Jessica Sarkissian, applicant. ***(Held two neighborhood meetings,***

notified property owners, neighbors, registered neighborhoods and homeowners associations.)

P&Z Recommendation: Approval with Conditions. (Vote: 6-0 with Boardmember Carpenter absent)

- *6c. **Z06-18 (District 4)** 410 South Nevada Way (west side). Located west and south of the southwest corner of South Stapley Drive and East Broadway Road (0.15± ac). Rezone from C-1 to R1-6. This request will allow for the development of a single residence. Bradley MacLay, owner/applicant. ***(Notified property owners and delivered fliers to residences and businesses.)***

P&Z Recommendation: Approval with Conditions. (Vote: 6-0 with Boardmember Carpenter absent)

- *6d. **Z06-19 (District 6)** 3635 East Inverness Avenue (south side). Located north and east of the northeast corner of South Val Vista Drive and East Baseline Road (1.13± ac). Rezone from C-2 to C-2 PAD and Site Plan Modification. This request will allow for the development of medical/office buildings. DFFM Yukon, LLC, (Francis J. Marotta) owner; Francis J. Marotta, MarCor Commercial Real Estate Services. ***(Held a neighborhood meeting, notified property owners, neighbors, registered neighborhoods and homeowners associations.)***

P&Z Recommendation: Approval with Conditions. (Vote: 6-0 with Boardmember Carpenter absent)

- *6e. **Z06-20 (District 6)** The 7600 and 7700 blocks of East Elliot Road (north side). Located at the northeast corner of Sossaman and Elliot Roads. (17.7± ac). Rezone from AG to C-2. This request is to rezone property for future development. SLPR, LLC, an Arizona Limited Liability Corporation (Patrick E. Sovereign), owner; Lindsay Schube, Beus Gilbert, PLLC, applicant. ***(Notified property owners, registered neighborhoods and homeowners associations.)***

P&Z Recommendation: Approval with Conditions. (Vote: 6-0 with Boardmember Carpenter absent)

- *6f. **Z06-21 (District 6)** The 2700 to 3000 blocks of South Sossaman Road (west side). Located at the northwest corner of Sossaman and Guadalupe (5.2± ac). Rezone from R1-7 to C-2 and Site Plan Review. This request will allow for the development of a daycare building and retail shops. Chris Huss, owner; Kevin D. Kerpan, applicant. ***(Held a neighborhood meeting, notified property owners, registered neighborhoods, homeowners associations and schools affected by the proposed development.)***

P&Z Recommendation: Approval with Conditions. (Vote: 6-0 with Boardmember Carpenter absent)

- 6g. **Z06-22 (District 3)** The 1000 to 1200 blocks of West Grove Avenue (north side). Located south of Southern Avenue and east of Alma School Road (4.9± ac). Rezone from C-2-DMP to C-2-BIZ-CUP and Modification of the Fiesta Quadrant Development Master Plan and Site Plan Review. This request will allow for the development of a mixed-use high-rise condominium project with first floor retail. TR Alma Partners, LLC; Thomas Roszak, owner/applicant. ***(Held a neighborhood meeting, notified property owners, neighbors, registered neighborhoods and homeowners associations.)***

P&Z Recommendation: Approval with Conditions. (Vote: 5-0-1 with Boardmembers Carpenter absent and Saemisch abstaining)

Reese Anderson, 1930 E. Brown Road, # 101, an attorney with Pew and Lake, explained that Thomas Roszak, the developer of the project, would be out of the country on April 17, 2006 when the public hearing and the Council vote on the rezoning request is scheduled to occur. He stated that Mr. Roszak wanted to briefly address the Council tonight and respond to any questions they may have concerning this item. Mr. Anderson noted that the project has received overwhelming support from the neighbors and business owners in the area and said that the development team welcomes their continued support. He also thanked the City's Planning, Economic Development and Neighborhood Outreach staff for their efforts and hard work in this regard.

Thomas Roszak, a principal with Roszak/ADC, played a DVD in the Council Chambers depicting the proposed architectural design of the Fiesta Towers. He also responded to questions posed by the Council regarding the siting of the four condominium structures; their proximity to transportation corridors and retail and employment venues; the market niche for the condominium residents; and the projected phasing of the development.

Mayor Hawker expressed appreciation to Mr. Roszak for taking the time to address the Council. He stated that he looks forward to the development of the Fiesta Towers, which, in his opinion, would be "a magnificent project" for the City of Mesa.

Councilmember Griswold commented that the Fiesta Towers development would serve as a powerful economic engine for the Fiesta Mall area.

It was moved by Councilmember Rawles, seconded by Vice Mayor Walters, that the above-referenced ordinance be introduced and that April 17, 2006 be set as the date of the public hearing on the ordinance.

Carried unanimously.

- 6h. **Z06-23 (District 1)** The 900 and 1000 blocks of North Dobson Road, west side. Southwest corner of US 202 and Dobson Road. (32.3 ac). Site Plan Review. Specific location of the private drive through the future Riverview Auto Mall site. KRS Acquisitions Corp., c/o Mike Withey, owner; Withey, Anderson & Morris, c/o Mike Withey, applicant. **(Notified property owners, neighbors, registered neighborhoods and homeowners associations.)**

P&Z Recommendation: Approval with Conditions. (Vote: 5-0-1 with Boardmembers Carpenter absent and Saemisch abstaining)

Mayor Hawker and Councilmember Rawles declared potential conflicts of interest on agenda items 6h and 6i and said they would refrain from discussion/consideration of these items.

Mayor Hawker yielded the gavel to Vice Mayor Walters for action on this agenda item.

It was moved by Councilmember Griswold, seconded by Councilmember Jones, that the above-referenced ordinance be introduced and that April 17, 2006 be set as the date of the public hearing on the ordinance.

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Thom-Walters-Whalen
NAYS - None
ABSTAIN - Hawker-Rawles

Vice Mayor Walters declared the motion carried unanimously by those voting.

- 6i. **Z06-24 (District 1)** The 1000 and 1100 blocks of North Alma School Road, west side. Southwest corner of US 202 and Alma School Road. (47.96 ac). Site Plan Review. Specific location of private drive extending from Bass Pro Drive east to Alma School. KRS Acquisitions Corp., c/o Mike Withey, owner; Withey, Anderson & Morris, c/o Mike Withey, applicant. **(Notified property owners, neighbors, registered neighborhoods and homeowners associations.)**

P&Z Recommendation: Approval with Conditions. (Vote: 5-0-1 with Boardmembers Carpenter absent and Saemisch abstaining)

It was moved by Councilmember Jones, seconded by Councilmember Griswold, that the above-referenced ordinance be introduced and that April 17, 2006 be set as the date of the public hearing on the ordinance.

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Thom-Walters-Whalen
NAYS - None

ABSTAIN - Hawker-Rawles

Vice Mayor Walters declared the motion carried unanimously by those voting.

With action on this agenda item being completed, Vice Mayor Walters yielded the gavel back to Mayor Hawker.

- *6j. **Z06-26 (District 1)** The 100 block of West McKellips Road (south side). Southwest corner of Center and McKellips Road. (3.73 acres). Rezone from C-2 to R-3 PAD and Site Plan Modification. This request will allow for the development of a townhome subdivision. Ross Farnsworth, RSB Partners LLC, owner; Jeff Welker, Welker Development Resources LLC, applicant. ***(Held two neighborhood meetings, notified property owners, registered neighborhoods, homeowners associations and schools affected by the proposed development.)***

P&Z Recommendation: Approval with Conditions. (Vote: 6-0 with Boardmember Carpenter absent)

7. Take action on the following resolutions:

- *7a. Extinguishing a Public Utility Easement located at 2761 S. Yucca Street – Resolution No. 8686.

This easement needs to be extinguished to allow the construction of a swimming pool.

- *7b. Granting a Power Distribution Easement to Salt River Project at the Central Arizona Project Water Treatment Plant at 7750 E. Brown Road – Resolution No. 8687.

This easement is needed for SRP to have their facilities on City-owned property.

- *7c. Approving and supporting the submittal of a grant application to the Gila River Indian Community – Resolution No. 8688.

This application is submitted by the Child Crisis Center – East Valley to construct a new and larger Family Resource Center to house the Children’s Behavioral Health Program.

8. Take action on the following recommendation from the Utility Committee:

- 8a. Request by Dillon’s RV City to provide water and sewer service outside the City limits at 9452 E. Apache Trail.

Utility Committee Recommendation: Approval of Option 2. (Vote 3-0)

Mayor Hawker stated that the Council has extensively discussed this matter on several occasions, most recently at the Study Session held immediately prior to this meeting.

Building Safety Director Terry Williams advised that staff is recommending Option 2, whereby the City would provide water service to Dillon's RV City, not require the annexation of Dillon's property, and require compliance with all of Mesa's development standards, including the extension of the sewer main system and street frontage improvements.

Mayor Hawker noted that the Council has reviewed the March 20, 2006 Planning Division Memorandum that outlines various options proposed by staff regarding the applicant's request for water service. (See Attachment 1.)

Richard Dillon, 1017 S. Terripin Circle, the applicant, expressed frustration regarding the inability of his property to be annexed into the City of Mesa. He also voiced concerns regarding the requirements, as outlined in a Utility Service Agreement, to extend the sewer main system and install the street frontage improvements near his business. Mr. Dillon commented that he is aware of a 24-inch City water main located 200 feet from his property and said that he is hopeful the Council would approve the connection of a 6-inch water line from his property to that site. He added that he is merely requesting that Mesa grant his request for water service, but prefers not to enter into any conditions or stipulations with the City in that regard (except the payment of various fees).

In response to a series of questions from Mayor Hawker and Councilmember Jones, Mr. Dillon clarified that his business currently receives water from an adjacent mobile home park, but explained that the park may be sold and he would like an assured water supply. He also commented that when he originally purchased the property, he did not perform his due diligence with regard to what utilities were available at that location.

Discussion ensued relative to an analysis of Option 2, Sections 5 and 8 of the Utility Service Agreement; that the business is currently using a three-quarter inch water line and staff estimated that it would require a two-inch water line (as opposed to the six-inch alluded to by Mr. Dillon); that per Section 17(C) of the *Terms and Conditions for the Sale of Utilities*, if the Council determines it is in the best interest of the City, they may agree to exempt an individual parcel located outside of Mesa's corporate limits from the requirements of Section 3 of the ordinance; and that any Council decision to exempt would be made pursuant to a recommendation from the Utility Committee.

It was moved by Mayor Hawker, that the request by Dillon's RV City for water service outside of Mesa's corporate limits be denied.

Mayor Hawker stated the opinion that it is not in the City's best interest to grant the applicant's request for water service. He encouraged Mr. Dillon to continue to pursue annexation, but noted that if Mesa did provide water to the business, any onsite improvements would be in accordance with County, as opposed to City, standards.

Vice Mayor Walters seconded the motion.

Vice Mayor Walters concurred with Mayor Hawker's comments. She said that she would prefer to move forward with a scenario whereby Mr. Dillon's property was annexed into the City, and he and the City entered into some type of revenue sharing agreement that would pay for the previously mentioned improvements.

Councilmember Griswold stated that Section 17(C) exists to enable the Council to grant exemptions under special circumstances. He commented that generally, he does not support Mesa providing water service outside its corporate limits and prefers that property owners be annexed into the City. Councilmember Griswold noted, however, that in this particular case, the applicant has done everything that staff has asked him to do in order to obtain water and has been "looked upon negatively." He said for those reasons, he would oppose the motion.

Councilmember Rawles commented that the case has taken various "twists and turns" since it was first heard by the Utility Committee. He highlighted the various options proposed by staff and commented that ultimately, it is difficult for him to understand how the City's granting of water service to the applicant would be in Mesa's best interest.

Councilmember Thom voiced opposition to the motion and noted that as Chairman of the Utility Committee, she has been supportive of the City providing water to properties without the requirement of annexation. She stated the opinion that Mr. Dillon's property, as well as those adjacent to the business, would eventually be annexed into Mesa and suggested that the City's granting of water service to Mr. Dillon be approved as "a good faith gesture."

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

AYES - Hawker-Jones-Rawles-Walters-Whalen
NAYS - Griswold-Thom

Mayor Hawker declared the motion carried by majority vote.

9. Discuss, receive public comment, and take action on the ordinances introduced at a prior Council meeting. Any citizen that wants to provide comment should submit a blue card to the Clerk before the item is voted on. If a citizen wants to comment on an item listed with an asterisk (*), a blue card must be given to the Clerk before Council votes on the consent agenda.

- *9a. Amending various sections of the Mesa City Code regarding the following traffic modifications – Ordinance No. 4531:
Changing the Name of a Street

East 9510 through East 9590 Harmony Avenue to the name of Hampton Avenue (west of Crismon Road and south of Southern Avenue, Council District 6).

No Parking: 10-3-24 (D) (Full Time No Parking)

On the north side of Auto Park Drive from a point 300 feet west of Superstition Springs Boulevard to a point 515 feet west of Superstition Springs Boulevard (north of US 60, Superstition Freeway and west of Superstition Springs Boulevard, Council District 6).

On the west side of Auto Loop Avenue from Auto Park Drive to a point 295 feet south of Auto Park Drive (north of US 60, Superstition Freeway and west of Superstition Springs Boulevard, Council District 6).

On Hobson from Baseline Road to a point 250 feet north of Baseline Road (north of Baseline Road and east of Mesa Drive, Council District 4).

On Mesquite Street from a point 740 feet west of Mountain Road to a point 135 feet east of Mountain Road (south of Elliot Road at Mountain Road, Council District 6).

No Parking: 10-3-24 (F 9) (10:00 p.m. to 4:00 a.m. No Parking)

On Auto Center Drive from Mesa Drive to Horne (north of Baseline Road and east of Mesa Drive, Council District 4).

On Hobson from a point 250 feet north of Baseline Road to Auto Center Drive (north of Baseline Road and east of Mesa Drive, Council District 4).

- 9b. Amending Section 11-13-2 of the Zoning Ordinance to allow the platting of condominium subdivisions without requiring a Planned Area Development (PAD) overlay or frontage on a public street for individual units – Ordinance No. 4532. **CONTINUED FROM THE MARCH 20, 2006 COUNCIL MEETING.**

P&Z Recommendation: Approval. (Vote: 7-0)

DDC Recommendation: Denial. (Vote: 6-1 with Boardmembers Riekema and Close absent and Chucri voting for approval).

Mayor Hawker stated that he requested this item be removed from the consent agenda.

Kay Bigelow, a representative of Gammage & Burnham, 2 North Central Avenue, #1800, Phoenix, responded to questions raised by the Council at the March 30, 2006 Study Session regarding the issue of amenities when four-plexes are converted to condominiums. She stated that in her opinion, potential homebuyers would not purchase a condo in a four-plex because it would offer no

open space or amenities and also that obtaining financing for such a property would be difficult. Ms. Bigelow commented that a lack of amenities would prevent "an already substandard property" from being developed into a property that is more difficult for City Code Enforcement to regulate.

Mayor Hawker disagreed with Ms. Bigelow's opinion and stated that he would assume an individual who rented an apartment in a four-plex for many years would be anxious to buy the unit, experience homeownership, and build equity in the property.

In response to a series of questions from Mayor Hawker, City Attorney Debbie Spinner clarified that A.R.S. 33-1205 prohibits local ordinances, rules and building codes from imposing any additional requirements on a physically identical development under a different form of ownership at the time of conversion to a condominium form of ownership. She commented that although the statute has been in existence for quite some time, the City's Zoning Ordinance does require that a property owner desirous of converting a multi-family building to a condominium form of ownership must proceed through the zoning process and obtain a Planned Area Development (PAD) overlay through the Council.

Ms. Spinner further indicated that the City zoning requirement has never been challenged; however, if it was challenged, staff believes it may be deemed unenforceable and inconsistent with the State statute. She also highlighted the impact on the City if a lawsuit was brought in this regard, including incurring significant legal fees to defend the action.

Mayor Hawker expressed a series of concerns regarding the sustainability of four-plex condo conversions that do not have amenities and may deteriorate over time.

Discussion ensued relative to the fact that the State statute requires the formation of a Homeowners' Association that would be responsible for the maintenance, repair and replacement of common property; that as an alternative, the Council could consider a change to the City Code to impose the same kind of limitations on condos as it does on other multi-family facilities; and that a City Charter change would be required in order to implement a "slum landlord" law.

Mayor Hawker voiced opposition to the proposal and commented that it has not been "very well thought out." He added that he anticipates certain kinds of condo conversions would be unsustainable over time and even worse than they are today.

It was moved by Councilmember Rawles, that Ordinance No. 4532 be adopted.

Councilmember Rawles said that the proposal would streamline the current process and bring Mesa into compliance with State law. He noted that unlike some of his fellow Councilmembers, he is not necessarily concerned with the issue of amenities. Councilmember Rawles added that he encourages

homeownership and not doing so because a governmental entity might have to deal with more property owners makes no sense to him.

Councilmember Griswold seconded the motion.

Vice Mayor Walters clarified, in response to Councilmember Rawles' comments, that the issue of concern at the March 30th Study Session was not homeownership per se, but rather the ownership of units that become rental properties and the difficulty of dealing with absentee landlords.

Vice Mayor Walters acknowledged that staff is conducting an ongoing review of the City Zoning Code and said that there are various changes that need to be made to the document. She commented that she previously requested that the issue of four-plexes be addressed at the upcoming Legislative session because, in her opinion, such units may not be appropriate for condo conversions. Vice Mayor Walters further indicated that she would like a "slum landlord" law included as a future ballot measure. She also stated that although she would prefer to oppose the motion, in her opinion, the most appropriate manner in which to address this issue is through the above-referenced suggestions/input.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Rawles-Thom-Walters-Whalen
NAYS - Hawker

Mayor Hawker declared the motion carried by majority vote and Ordinance No. 4532 adopted.

10. Take action on the following subdivision plat:

- *10a. "GATEWAY AIRPORT COMMERCE PARK" (**District 6**) – 8800-9000 blocks of East Germann Road (north side) located north and west of Germann Road and Ellsworth Road. 48 M-1 PAD commercial/industrial lots (38.05 ac) Gateway Airport Property Investors Limited Partnership, A. Brent Payne, General Partner, owner; Allen Consulting Engineers, Inc., engineer.

11. Items from citizens present.

There were no items from citizens present.

12. Adjournment.

Without objection, the Regular Council Meeting adjourned at 6:55 p.m.

KENO HAWKER,

MAYOR

ATTEST:

BARBARA JONES, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Council Meeting of the City Council of Mesa, Arizona, held on the 3rd day of April 2006. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK

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attachment

MEMORANDUM

To: City Council

Through: Christopher J. Brady, City Manager
Paul Wenbert, Deputy City Manager
Jack Friedline, Development Services Manager
Kari Kent, Assistant Development Services Manager

From: John Wesley, Planning Director
Terry Williams, Building Safety Director

Date: March 20, 2006

Subject: Update to the City Council Report
Dillon's RV City Request for Water Service Outside City Limits

Background:

At the March 6, 2006 City Council Meeting, the Council reviewed this case in detail and discussed the recommendation of the Utility Committee. The Utility Committee voted 3-0 to recommend the Option 2. Option 2 included providing water service without annexation but requiring compliance with all of the City development standards. This includes the requirement to provide sewer line extension to the nearest practical point of connection to the City's existing sewer system. The Council also discussed additional scenarios to provide water service without requiring annexation and without requiring compliance with all of the City's development standards. Staff recommended that the Utility Committee choose Option 1 that includes requiring the Dillon parcel be annexed into the City in order to receive City water and wastewater service, and compliance with all of the City's development standards.

Staff's position was based on the current City Council policy to not provide utility services to properties outside city limits as stated in the *Terms and Conditions for the Sale of Utilities*. This policy was derived in 2001 and was intended to demonstrate the City's preference toward promoting proper development, i.e. Development that meets the City's development standards. It was believed to be more prudent to limit the provision of water and wastewater services to areas within the City limits where City regulations are applicable and enforceable. The City Council at that time recognized that providing City utility service to property owners that were not required to comply with the City's regulations fostered more development outside of the corporate limits that would eventually become problematic for the City.

At the March 6 City Council meeting, the City Attorney provided Council with an alternative interpretation of the State of Arizona's annexation law (A.R.S. §9-471) that would allow the Council to annex a parcel of property that is within a County island surrounded by the City, is contiguous to the current City limits, and without meeting the normal minimum size restrictions. Staff posed the possibility of annexing the north portion of Main Street (Apache Trail) from Ellsworth to the front of the Dillon's property. This would make Dillon's contiguous with the City limits under the alternative interpretation of the City Attorney. The Dillon representatives informed the Council that they are in favor of annexation and are willing to provide the sewer line extension if that was required to obtain City water services. Staff estimates the cost of the sewer line extension to be approximately \$90,000. To minimize the cost, City staff can establish a private "buy-in" program to assist the owner in recovering their sewer line extension costs from other property owners who connect to this line.

Staff explained that the cost of improving the north portion of Main Street (west bound lanes) from the current City boundary to the Dillon property was estimated to be \$365,000. This includes: rebuilding the street, storm drainage, curbs and sidewalks, street lighting and landscaping. This would be a City expense. Dillon's would be responsible for this same work for the portion of Main Street fronting their property at an estimated cost of \$165,000.

The Council also received advice from the City Attorney's Office regarding their interpretation of Section 17-C of the *Terms and Conditions for the Sale of Utilities*. The City Attorney indicated that Section 17-C granted discretion to the Council to waive the requirement for annexation as a prior condition to granting water and sewer service. Council also has the authority to waive other City standards that would normally be required of County parcels prior to receiving water/wastewater services. The Council was informed that their authority in these matters did not permit the Council to grant annexation, grant water/sewer services and then eliminate any of the City development standards.

Ultimately, City Council declined taking action on any of the options, and instead, asked staff to work with the Dillon representatives to reach consensus on the terms for a Utility Service Agreement. Staff met and discussed several aspects concerning the Dillon's request. The outcome of those discussions is as follows.

Analysis:

Staff looked into various options for this project. First, as proposed to the City Council at the March 6 meeting, staff recommended annexing the Dillon's property as well as the north portion of Main Street at least as far as the Dillon's property. This approach is permitted by the City Attorney's recent alternative interpretation of State law. It does create a contiguous adjacency to the existing City limits. If annexation were approved for this approach, Dillon's would be able to receive water and wastewater as would any other City resident or property owner. Dillon's would be responsible to extend the wastewater main to serve their property as well as comply with all other City requirements.

The Engineering and Transportation Divisions expressed several concerns with this approach, including: requiring the City (existing residents and property owners) to pay for the required improvements for portions of Main Street between Ellsworth Road and the Dillon's property, and delineating ownership and maintenance responsibilities for Main Street in a piece meal manner would be problematic for field personnel.

Staff looked at the sales tax offset possibilities as well. Based upon the actual sales taxes Dillon's paid to the State in a recent 12 month period, it would take at least 7 years to offset the City's costs. Further, the owner has indicated that they are negotiating the sale of this property to a third party. There is a potential that Dillon's could sell and lease-back this property or they could simply sell and move their sales operation to an entirely new site. Staff finds that this uncertainty weakens the City's ability to rely upon future sales tax revenues to offset the City's improvements.

The most straight forward option that staff considered was to recommend the denial of the request. That is, do not provide water service as requested. Dillon's would have to find another source for water at this property. Staff believes that substandard properties should first be brought up to City Standards before being annexed. This may be most readily accomplished through the formation of Special Improvement Districts. However, successfully forming a Special Improvement District may be unlikely. Under such an approach, property owners would bear the expense of the improvements needed to bring their properties up to City standards. This is preferred over other scenarios in which the public shoulders some or all of that burden.

City Council will have other options to consider. The *Terms and Conditions for the Sale of Utilities* gives the Council the authority to grant water and wastewater service without requiring annexation, as well as the ability to eliminate compliance with some of the City standards usually required under the Utility Service Agreement. The following are options staff has provided with suggested refinements for consideration:

Options & Staff Recommendation:

Option 1:

Initially, staff recommended annexing the Dillon's property as well as the north portion of Main Street at least as far as the Dillon's property in order to comply with the City requirements to provide water as requested. Staff no longer recommends Option 1 for the reasons listed previously.

Option 2:

The City Council can accept the recommendation of the Utility Committee that utilizes Section 17C, as mentioned previously in this memorandum, **to approve providing water service, not requiring the annexation of the Dillon's property, and requiring compliance with all of the City's development standards.** Dillon's would then be required to enter into a Utility Service Agreement that would identify the requirements. Staff suggests the following be outlined in the Utility Service Agreement should the City Council agree with this option:

1. Applicant will not be required to annex into the City as a prior condition of receiving water service. Applicant shall agree to the annexation of their property by the City at such time as deemed necessary and desirable by the City.
2. Applicant to pay all fees associated with providing water service and meter.
3. Water and wastewater services are the only City service provided under this agreement.
4. Applicant to pay the Water and Wastewater Development Impact Fees plus the Utility Service Agreement fees equal to all of the other City of Mesa Development Impact Fees for commercial properties.
5. Applicant shall comply with all other requirements of the *Terms and Conditions for the Sale of Utilities*. All other such compliance requirements shall be in place before water and wastewater services are provided, **including improvement of Main Street, extension of the sewer main system, and installation of curbs/gutters, sidewalks, landscaping and streetlights.**
6. Future development of the applicant's property will be required to comply with the City's General Plan.
7. Applicant's development shall comply with Maricopa County Building Codes.
8. **City will establish a private "buy-in" program to assist the applicant in recovering some of their sewer line extension costs, if requested by the applicant.**

Option 3A:

Council may accept the Utility Committee recommendation to **provide water service without annexation under Section 17C, but also agree to not require the extension of sewer main at this time, in which case, the following points should be adopted:**

1. Applicant will not be required to annex into the City as a prior condition of receiving water service. Applicant shall agree to the annexation of their property by the City at such time as deemed necessary and desirable by the City.
2. Applicant to pay all fees associated with providing water service and meter.
3. Water service is the only City service provided under this agreement: The requirement to provide sewer extension and wastewater service is deferred.
4. Applicant to pay the Water Development Impact Fee plus the Utility Service Agreement fees equal to all of the other City of Mesa Development Impact Fees for commercial properties.
5. Applicant shall comply with all other requirements of the *Terms and Conditions for the Sale of Utilities*. All other such compliance requirements shall be in place before water services are provided, **including improvement of Main Street and installation of curbs/gutters, sidewalks, landscaping and streetlights. The required extension of the sewer main system shall be deferred.**
6. Future development of the applicant's property will be required to comply with the City's General Plan.
7. Applicant's development shall comply with Maricopa County Building Codes.
8. **Applicant shall agree to the payment of the applicant's share of costs for providing wastewater service to this property, in the future, when the sewer line is installed.**

Option 3B:

Council may accept the Utility Committee recommendation to **provide water service without annexation under Section 17C, but also agree to not require the extension of sewer main and the street frontage improvements at this time, in which case, the following points should be adopted:**

1. Applicant will not be required to annex into the City as a prior condition of receiving water service. Applicant shall agree to the annexation of their property by the City at such time as deemed necessary and desirable by the City.
2. Applicant to pay all fees associated with providing water service and meter.
3. Water service is the only City service provided under this agreement. The requirement to provide sewer extension and wastewater service is deferred.
4. Applicant to pay the Water Development Impact Fee plus the Utility Service Agreement fees equal to all of the other City of Mesa Development Impact Fees for commercial properties.
5. **Applicant shall comply with all other requirements of the Terms and Conditions for the Sale of Utilities. All other such compliance requirements shall be in place before water services are provided, except improvement of Main Street, extension of the sewer main system, and installation of curbs/gutters, sidewalks, landscaping and streetlights.**
6. Future development of the applicant's property will be required to comply with the City's General Plan.
7. Applicant's development shall comply with Maricopa County Building Codes.
8. **Applicant shall agree to the payment of the applicant's share of costs for providing improvement of Main Street and installation of curbs/gutters, sidewalks, landscaping and streetlights to this property as an "in-lieu" payment.**
9. **Applicant shall agree to the payment of the applicant's share of costs for providing wastewater service to this property, in the future, when the sewer line is installed.**

Options 2, 3A and 3B are in accordance with Section 17-C of the *Terms and Conditions for the Sale of Utilities* as interpreted by the City Attorney's Office and the recommendation of the Utility Committee. These options satisfy the applicant's original request for water service to their property.

Recommendation

Staff recommends Option 2