

UTILITY COMMITTEE MINUTES

January 9, 2001

The Utility Committee of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on January 9, 2001 at 3:30 p.m.

COMMITTEE PRESENT

Mike Whalen, Chairman
Bill Jaffa
Claudia Walters

COUNCIL PRESENT

None

OFFICERS PRESENT

Mike Hutchinson

1. Discuss and consider changing City policy regarding the provision of water and wastewater service outside of the Mesa City Limits.

Development Services Manager Jack Friedline addressed the Utility Committee relative to this agenda item. Mr. Friedline stated that staff has been requested to provide the Committee with recommendations regarding the sale of utility services to individuals who reside outside of Mesa's corporate limits and added that a staff report has been prepared which delineates several alternatives (See Attachment). Mr. Friedline also introduced Development Services Administrator Jeff Welker, Development Systems Coordinator Randy Brown and Development Services Planning Analyst Beth Hughes-Ornelas.

Mr. Welker referred to graphics depicting the geographical area which will potentially be affected by the proposals and provided a brief overview of this issue. Mr. Welker advised that for many years, Mesa has provided water, sewer and gas utility services to properties located outside the City's corporate limits and noted that as a provision for such services, the property owners are required to develop per City standards. Mr. Welker commented that since 1996, Mesa has entered into development agreements with the landowners as a means by which to outline specific development requirements and said that the Mesa City Code authorizes developers and property owners to defer certain development requirements, such as street improvements, when an assessment reveals the existence of extraordinary conditions.

Mr. Welker explained that the City Attorney's Office periodically evaluates the legal defensibility of the development agreement, and that as a result of a recent study, the document was assigned a poor rating and the City's enforcement capability placed in question. Mr. Welker also spoke regarding Maricopa County's less rigorous development regulations in comparison to those of the City of Mesa.

Mr. Welker stated that as a result of the City Attorney's findings and the unpredictability of the County's development standards, Mesa is posed with a dilemma that can be best characterized by the following questions:

1. How can the City effectively enforce the terms and conditions for the sale of Mesa's utilities with new development?
2. How can the City effectively ensure that the first development requirements are ultimately fulfilled?
3. How can the City effectively ensure that the County properties benefiting from Mesa's utility services are developed in compliance with City standards and conform to the General Plan?
4. How can the City effectively ensure that County properties benefiting from City utility services do not have an economic advantage over properties that are developing in Mesa? and
5. How can the City effectively ensure that County properties benefiting from Mesa's utility services pay their fare share of the cost to expand other City facilities and services such as libraries and parks?

Mr. Welker advised that it is the recommendation of staff that the Utility Committee recommend to the City Council that Alternative No. 1 (A, B & C) be approved. Mr. Welker outlined Alternative 1 as follows:

- (A) Amend the Terms and Conditions for the Sale of Utilities such that any new development of property occurring outside Mesa's corporate limits shall be prohibited from obtaining City utility services until said property is annexed into the City of Mesa.
- (B) Amend Title Nine, Chapters Six and Eight of the Mesa City Code, such that any developer of property occurring within Mesa's corporate limits shall make payment to the City in lieu of causing the design, installation and/or construction of required public improvements when a deferral of said improvements is approved by the Development Services Manager.
- (C) Amend Title Five of the Mesa City Code by adding a new Chapter Twenty such that any development of property occurring outside Mesa's corporate limits shall be required to remit to the City of Mesa a payment in lieu of Development Impact Fees (Development Impact Tax) as a condition of receiving City utility services.

Mr. Welker emphasized the fact that with reference to Item No. 1(C), if property owners have previously executed development agreements requesting City services which have been approved by staff and the Utility Committee, the City will fulfill such obligations; however, impact fees will be assessed to offset the cost for City services including libraries and parks.

Mr. Welker provided the Utility Committee with a brief summary of Alternative No. 2 and Alternative No. 3.

Discussion ensued relative to the fact that a 1998 legal opinion issued by the City Attorney indicated that Mesa has no legal obligation to provide utility services outside its corporate limits, and the fact that neighboring Valley municipalities are currently experiencing similar challenges as the City of Mesa regarding the sale of utility services outside their respective corporate limits.

Committeemember Jaffa voiced concerns regarding increased growth and development outside of Mesa's corporate limits but within the City's planning area and also the establishment of a level of conformity to provide utility services to the property owners. Committeemember Jaffa also commented on the unwillingness of the Maricopa County Board of Supervisors to assist Mesa in meeting its goal to develop land in accordance with the City's General Plan.

Mr. Friedline spoke regarding the Desert Uplands guidelines, lot splitting and PM10 mandates.

Chairman Whalen noted that although the Utility Committee meeting is not a public meeting, due to the vast number of individuals in attendance, he will permit limited input from speakers who wish to address their concerns.

Mr. Welker clarified that in Alternative No.1 (C), relative to the "Phase-in Period," it is the recommendation of staff that the paragraph be amended to read: "All existing/executed "deferral" or "extension" of utility service development agreements shall be honored. Landowners that can authenticate the issuance (prior to January 1, 2001) of a Maricopa County Building Permit will be permitted to apply for City utility services in conformity with Alternative No. 2 (A, B, C & D) of this report." Mr. Welker added that subsequent to obtaining the building permit, landowners will be required to make a formal application to the City for utility services before July 1, 2001.

In response to questions from Committeemember Jaffa regarding the establishment of the January 1, 2001 cutoff date, Mr. Welker clarified that it is staff's recommendation that a specific date be established, recognizing the fact that under unique circumstances, the landowners will retain the ability to appeal the decision of staff to the Utility Committee. Mr. Welker added that as staff administratively processes the pending cases, an attempt will be made to segregate the builder/owner category from commercial developers.

The following speakers in order of appearance spoke in opposition to staff's recommendation for the implementation of Alternative No. 1 (A, B & C) and expressed concerns regarding the fact property has been purchased based on the premise the owners will receive City utility services; the fact that permits for utility services have been delayed; the fact there have been lengthy and unnecessary construction delays; the fact that impact fees may not be utilized for their intended purpose; the fact that a property owner should not be required to be on a timeline to construct his/her home; the fact that the City should be required to supply utility services to individuals who have already paid into water improvement districts, and the fact that impact fees should be utilized to improve the surrounding area.

| NAME | ADDRESS |
|----------------|---|
| Brian Boles | 4220 North Tabor Street, Mesa |
| Ben Self | 52 South Stilton, Mesa |
| Rick Palmer | No address provided |
| Don Ohnstad | No address provided |
| Neil Lannuier | No address provided |
| Gary Peterson | No address provided |
| Jay Douglas | 6737 East Villeroy Circle, Mesa |
| Kurt Louvier | 537 North 90 th Street, Mesa |
| Larry Kaiser | 7649 East Euclid, Mesa |
| Scott Gillette | 3850 East Baseline Road, Mesa |
| Robert Watson | 1527 North Crismon Road, Mesa |
| Mark Breen | No address provided |

Chairman Whalen and Committeemember Jaffa thanked the speakers for their valuable input and urged staff to provide the necessary assistance to resolve the property owners' current cases.

It was moved by Committeemember Jaffa, seconded by Committeemember Walters, to recommend to the City Council that Alternative No. 1 (A, B & C) be approved and that public input be considered when developing an ordinance.

Committeemember Walters commented that it is not the intent of the City to create problems for the landowners who reside outside of Mesa's corporate limits, but emphasized the fact that Mesa's residents bear the burden with regard to recent development in the County which does not meet City standards. Councilmember Walters spoke in appreciation of the speakers who participated in the hearing process and provided compelling testimony.

Mr. Welker advised the Utility Committee that there are currently 90 cases which staff is attempting to resolve.

In response to a question from Chairman Whalen relative to grandfathering in cases which are currently in the system, meet the specified provisions and are owned by individuals who are willing to sign development agreements, Mr. Friedline advised that those individuals would be accommodated.

Committeemember Walters noted that Councilmember Jaffa's motion does not include the January 1, 2001 cut-off date as previously discussed by staff.

Discussion ensued relative to the manner in which staff will attempt to expedite the application process for pending cases.

Carried unanimously.

Chairman Whalen thanked staff for their input.

3. Adjournment.

Without objection, the Utility Committee Meeting adjourned at 5:21 p.m.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Utility Committee Meeting of the City of Mesa, Arizona, held on the 10th day of January, 2001. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____ 2001

BARBARA JONES, CITY CLERK

UTILITY COMMITTEE REPORT

DATE: January 3, 2001
TO: Utility Committee
THROUGH: Mike Hutchinson
Paul Wenbert
FROM: Jack Friedline
SUBJECT: **TERMS & CONDITIONS FOR THE SALE OF UTILITIES CITYWIDE ISSUE**

PURPOSE

This report presents staff's recommendations for amending the Terms & Conditions for the Sale of Utilities and amending Title Five by adding a new Chapter Twenty and amending Title Nine, Chapters Six and Eight of the Mesa City Code. Via this report, staff offers alternatives in response to the Utility Committee and City Council's direction regarding this subject.

Staff recommends approval of Alternative No. 1(A, B & C) as presented in this report.

BACKGROUND

Via Ordinance, previous City Councils established terms and conditions for the sale of Mesa's utility services. Said terms and conditions attempt to ensure (among other things) that land, which develops under the jurisdiction of either Mesa or Maricopa County, shall not connect to City utility services without adhering to all of Mesa's development regulations. City Code presently authorizes developers and property owners to defer certain development requirements (i.e. street improvements) when "an individualized assessment reveals the existence of extraordinary conditions involving topography, land ownership, adjacent development, parcel configuration, or other factors relating to the proposed development". The current method of deferring these requirements is via formal development agreements.

Developments seeking deferrals range from individual custom residences to commercial projects and large subdivisions. Mesa's agreements identify development requirements deferred and stipulate obligations imposed upon the "developer(s)". Many of the obligations involve substantial long-range economic responsibilities (i.e. financial participation in future street improvements). When a particular development is outside Mesa's corporate limits, these agreements typically specify obligations as follows:

- A. Developer pays applicable utility fees and charges.
- B. Developer consents to future annexation by Mesa.
- C. Developer dedicates, or causes the dedication of, required public rights-of-ways and easements.
- D. Developer extends any public utility mainlines needed to serve its property.
- E. Developer accepts financial responsibility for construction of public street(s) improvements adjoining its property through contracts or participation in special improvement districts ("SID").

During the last four years, the City has executed approximately 400 development agreements for projects both within and outside Mesa's corporate limits.

DISCUSSION

Periodically, staff requests that the City Attorney's office evaluate the legal defensibility of Mesa's development agreement documents. Staff recently received commentary and opinion from the City Attorney regarding the "deferral" type development agreements as follows:

1. The original developer and/or owner cannot deny subsequent owners their legal right to protest future annexations and/or SID via a development agreement.
2. Defensibility of the existing "deferral" or extension of utility service development agreement documents is rated at 20%.
3. Recommend that revised development agreement documents be drafted that would rectify some of the legal issues that exist.
4. Present each "deferral" or extension of utility service development agreement to the City Council for review and approval via the Utility Committee.
5. Monitor all "deferral" or extension of utility service development agreements for property owner long-range compliance.
6. Legal staff is still concerned that an improved development agreement document is not necessarily bulletproof. The defensibility of a revised agreement, even when approved by the City Council, only improves from 20% to 65%.

The City's ability to require developers and subsequent property owners to comply with many of the obligations contained in these development agreements is clearly in doubt. Of utmost concern are those developments that occur outside Mesa's corporate limits. The greatest assurance the City can receive that its General Plan and development requirements will be met is to not provide utility services outside our corporate limits until a property annexes into the City. Once annexed, state law and City Code (not disputable agreements) defines development obligations and Mesa's duties as a municipality. The Code also provides consequences for non-compliance. There are mechanisms in-place (i.e. use permits, building permits, field inspections, etc.) that give the City more control over a development to assure that the City's General Plan and development standards are indeed met.

Furthermore, it is becoming increasingly difficult to resolve differences that exist between the City of Mesa and Maricopa County Development regulations. Typically, County standards are less rigorous and comprehensive than those enforced by Mesa. In addition, the County may be willing to grant zoning for a property that is contrary to Mesa's General Plan. Potentially, this can result in a controversial and expensive problem for the City to solve upon future annexation (i.e. incompatible land uses, upgrading street improvements, drainage structures, etc). In addition, the County "influence" on these developments creates an uneven playing field between developments within Mesa's corporate limits and those outside said limits. Staff questions the fairness of this disparity in development requirements. Should land outside Mesa's corporate limits enjoy and benefit from City utility services without having to comply with the same development requirements Mesa imposes upon sites within its corporate limits?

Staff is also concerned that "deferral" type development agreements executed for properties within the City limits are similarly indefensible. These agreements typically defer some aspect of Mesa's public street improvement requirements as contained in 9-6 and 9-8 of the City Code. The developers and subsequent property owners are obligated to remit their prorata share of the unknown costs for future public street design and construction. Said costs are assessed when the obligee's public street improvements are installed by an adjacent development, by a City Capital Improvement Project, or by a City Special Improvement District at some future date. Because the exact amount and future date for assessing these costs is not reasonably definable

in these agreements, it is likely that the City will have difficulty collecting these costs from subsequent property owners that may not have been a party to the original agreement.

ALTERNATIVES

ALTERNATIVE NO. 1 - STAFF RECOMMENDATION

- A. Amend the terms & Conditions for the Sale of Utilities (see Exhibit A) such that any new development of property occurring outside Mesa's corporate limits shall be prohibited from obtaining City utility services until said property is annexed into the City of Mesa.
- B. Amend Title Nine, Chapters Six and Eight of the Mesa City Code (see Exhibits B & C) such that any developer of property occurring within Mesa's corporate limits shall make payment to the City in lieu of causing the design, installation and/or construction of required public improvements when a deferral of said improvements is approved by the Development Services Manager.
- C. Amend Title Five of the Mesa City Code (see Exhibits D) by adding a new Chapter Twenty such that any developer of property occurring outside Mesa's corporate limits shall be required to remit to the City of Mesa a payment in lieu of Development Impact Fees (Development Impact Tax) as a condition of receiving City utility services.
- **WHAT ARE OTHER MUNICIPALITIES DOING?** *A survey was conducted by staff and a matrix developed (see Exhibit E) that compares the official position of other municipalities and Tucson.*
 - **CAN MESA LEGALLY REFUSE UTILITY SERVICE TO PROPERTIES LOCATED OUTSIDE ITS CORPORATE LIMITS?** *The City Attorney has affirmed that Mesa has no legal obligation to serve its utility services outside its corporate limits (see Exhibit F). An exemption to this alternative would also be extended to any properties or subdivisions located outside Mesa's corporate limits and within the service area of a previous utility company since purchased by the City with contractual obligations to provide utility service to specific parcels/lots.*
 - **HOW DOES THIS ALTERNATIVE AFFECT EXISTING CITY UTILITY CUSTOMERS?** *This alternative is not intended to apply to existing City utility customers within or outside Mesa's corporate limits.*
 - **IS THERE A PHASE-IN PERIOD?** *All existing/executed "deferral" or extension of utility service development agreements shall be honored. Landowners that can authenticate the issuance (prior to the implementation of this ordinance) of a Maricopa County Building Permit will be permitted to apply for City utility services in conformity with Alternative No. 2(A, B, C & D) of this report.*
 - **IS THERE AN APPEAL PROCESS?** *Any entity seeking an appeal to this alternative would make application through staff to the Utility Committee and City Council.*
 - **COULD LAND CONTINUE TO DEVELOP WITHOUT CITY UTILITY SERVICES?** *It is unlikely that commercial, industrial or residential subdivision developments would be viable without City utility services. However, unsubdivided single residences could potentially develop by hauling water and making use of septic systems. Drilling wells for water is both financially and legally improbable.*
 - **WILL THIS ALTERNATIVE INCREASE REQUESTS FOR ANNEXATIONS?** *Staff does anticipate there could be a rise in requests for annexations. However, due to State law prohibiting "strip" annexations, many properties will not be eligible for annexation because they are not immediately adjacent to existing City boundaries.*
 - **HOW WILL LANDOWNERS AND DEVELOPERS BE NOTIFIED OF THIS CHANGE?** *Staff proposes to notify Maricopa County's Planning & Development Department, the Homebuilders Association of Central Arizona, the Arizona Multihousing Association, the Valley Partnership and the Arizona Association of Realtors.*

ALTERNATIVE NO. 2

- A. Amend the Terms & Conditions for the Sale of Utilities such that any new single residence being developed on property that is located outside Mesa's corporate limits shall be required to remit to the

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City of Mesa a payment in lieu of Development Impact Fees (Development Impact Tax) as a condition of receiving City utility services and to cause the design, installation and extension of any City utility mainlines necessary to serve said single residence per Section 3 of the Terms and Conditions for the Sale of Utilities.

- B. Amend the Terms & Conditions for the Sale of Utilities such that any new residential, multiple-residence, commercial, and industrial development of property occurring outside Mesa's corporate limits shall be required to remit to the City of Mesa a payment in lieu of Development Impact Fees (Development Impact Tax) as a condition of receiving City utility services and cause the design and installation of certain required public improvements per 9-6-7 and 9-8-4 of the Mesa City Code.
- C. Amend Title Nine, Chapters Six and Eight of the Mesa City Code such that any developer of property occurring within Mesa's corporate limits shall make payment to the City in lieu of causing the installation or construction of required public improvements when a deferral of said improvements is approved by the Development Services Manager.
- D. Amend Title Five of the Mesa City Code by adding a new Chapter Twenty such that any developer of property occurring outside Mesa's corporate limits shall be required to remit to the City of Mesa a payment in lieu of Development Impact Fees (Development Impact Tax) as a condition of receiving City utility services.

Be advised that Alternative 2A, B, C & D will not put an end to the conflicts, which exist between the City of Mesa and Maricopa County Development regulations, neither will these alternatives help Mesa achieve the vision of it's General Plan in these unincorporated areas nor encourage properties to annex.

ALTERNATIVE NO. 3

- A. Maintain the status quo and continue the current process of authorizing developments outside Mesa's corporate limits to receive City utility services via a development agreement that defers specific developer obligations by not amending the Terms & Conditions for the Sale of Utilities.
- B. Maintain the status quo and continue the current process of deferring public improvement requirements for properties developing within Mesa's corporate limits (without an in lieu payment) by not amending Title Nine, Chapters Six and Eight of the Mesa City Code.

Be advised that Alternative 3A & B will not put an end to the conflicts, which exist between the City of Mesa and Maricopa County Development regulations, neither will these alternatives help Mesa achieve the vision of it's General Plan in these unincorporated areas nor encourage properties to annex.

FISCAL IMPACT

ALTERNATIVE No. 1(A) represents a negligible decrease in potential water and wastewater revenues from future developments that may occur outside Mesa's corporate limits. An accurate estimate of the potential revenue loss is not achievable. However, the Utilities Manager surmises that any potential revenue loss would be insignificant when compared to the City's future capital improvement costs for the installation of deferred public improvements (i.e. upgrading street improvements, drainage structures, etc).

ALTERNATIVE No. 1(B) represents a potential reduction in the City's future capital improvement costs for the installation of public improvements previously deferred via unenforceable development agreements (i.e. upgrading street improvements, drainage structures, etc).

ALTERNATIVE No. 1(C) represents a potential reduction in the City's future capital costs for expansion of key public facilities (one or more elements of the City's water and wastewater systems, parks, cultural

facilities, libraries, fire facilities, and police facilities) to accommodate the demand created by new development outside Mesa's corporate limits.

ALTERNATIVE NO. 2(A, B, C & D) represents a potential reduction in the City's future capital improvement costs for the installation of public improvements previously deferred via unenforceable development agreements (i.e. upgrading street improvements, drainage structures, etc). This alternative also has the potential to reduce the City's future capital costs for expansion of key public facilities (one or more elements of the City's water and wastewater systems, parks, cultural facilities, libraries, fire facilities, and police facilities) to accommodate the demand created by new development outside Mesa's corporate limits.

ALTERNATIVE NO. 3(A & B) represents maintaining the status quo. However, staff cannot reasonably estimate the future costs the City may incur for installation of public improvements previously deferred via unenforceable development agreements. Furthermore, staff cannot reasonably estimate the future capital costs incurred by the City for expansion and maintenance of key public facilities (one or more elements of the City's water and wastewater systems, parks, cultural facilities, libraries, fire facilities, and police facilities) to accommodate the demand created by new development.

CONCURRENCE

The Development Services and Utilities Departments are directly affected by these recommendations. The appropriate department managers and division directors have reviewed this report and support staff's recommendation.

Staff Originator - Jeff D. Welker
DEVELOPMENT SERVICES ADMINISTRATOR

Frank Mizner
PLANNING DIRECTOR

Jack Friedline
DEVELOPMENT SERVICES MANAGER

David Plumb
UTILITIES MANAGER

Paul Wenbert
Deputy City Manager

Mike Hutchinson
CITY MANAGER