

## UTILITY COMMITTEE MINUTES

February 6, 2006

The Utility Committee of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on February 6, 2006 at 2:32 p.m.

### COMMITTEE PRESENT

Janie Thom, Chairman  
Rex Griswold  
Tom Rawles

### COMMITTEE ABSENT

None

### STAFF PRESENT

Chris Brady  
Paul Wenbert

Chairman Thom acknowledged the presence of Carol Vanwassehnova, a member of the current Mesa Chamber of Commerce's Leadership, Training and Development (LTD) class, who has been her "shadow" today and voiced appreciation for her efforts in that regard.

1. Discuss and consider a request by East Valley Sports to provide water and sewer service outside the City limits at the northwest corner of North Power Road and East Boise Street.

Building Safety Director Terry Williams referred the Committee to the February 1, 2006 Utility Committee Report. He reported that in accordance with Ordinance No. 4213 (Terms and Conditions for the Sale of Utilities), staff is recommending Option 1, which would require annexation prior to granting water and/or sewer service. (See Attachment 1.) He displayed maps depicting the two parcels for which service is being requested by Dennis Callison, owner of East Valley Sports, and also a schematic drawing of the City's existing water service accounts in the surrounding area. Mr. Williams advised that the properties are located adjacent to Mesa City limits and said the ability for the parcels to be annexed is dependent upon the surrounding property owners agreeing to such annexation.

Mr. Williams advised that the applicant contacted the appropriate property owners in the area regarding annexation and collected responses. He said that three property owners support annexation, one declined, and three did not respond to the initial request. Mr. Williams advised that if two of the three non-respondents agreed to annexation, the requisite percentages would be met and annexation possible.

Discussion ensued relative to the fact that the vast majority of the existing water service accounts located in Maricopa County preceded the adoption of the City's policy in reference to providing water service outside Mesa City limits; that in the past, Mesa purchased several private water companies that supplied water to individuals residing in the County but within the City's planning area, with the intent that the City would be the only water provider within the community; that State law requires a property be contiguous to an existing city limit for at least 300 feet in order to be considered for annexation; and that because the subject parcels are too small to meet said requirement, staff created a map depicting the minimum annexation

boundary for East Valley Sports in an effort to derive the smallest amount of area that would be annexable by State law.

Committeemember Griswold stated that he recently received input from an attorney that the City of Mesa addresses annexation differently than other local municipalities. He questioned if staff is familiar with the manner in which this issue is addressed in, for example, Gilbert, Chandler and Glendale.

Responding to Committeemember Griswold's question, Deputy City Attorney Joe Padilla clarified that he is unaware of any cities that do not adhere to the State annexation statute, unless there is an interpretation within a city's legal department that applies in a different manner.

Committeemember Griswold further commented that he obtained information that Mesa has the strictest interpretation of the statute and said that if a property owner wanted to voluntarily join a community, the other municipalities had "found a way around it." He requested that staff research the matter to ensure that the information was not "an urban myth."

Mr. Padilla asked that Committeemember Griswold provide him with the name of the attorney he was referring to so that Mr. Padilla could contact him in this regard.

Further discussion ensued relative to the fact that if the City provides water service to a property owner in the County, the individual has the option to select Mesa sewer service or install a septic tank; that if water is available immediately adjacent to the site, the property owner is required to tie into the water; and that in this case, because sewer service is readily available, the County would most likely not grant permission for the installation of a septic tank.

Committeemember Griswold indicated that he has learned of a possible future proposal wherein Mesa would charge higher rates for water/sewer services in the County as opposed to properties located within the City limits. He said that offering a lower rate might provide an incentive for property owners to join the City when appropriate to do so.

Chairman Thom invited the applicant to address the Committee.

Clark Richter, an attorney representing Mr. Callison, 30 West First Street, stated that due to increased business, Mr. Callison is attempting to expand his company, currently located at 6306 East Main Street, to the northwest corner of Boise Street and Power Road. He acknowledged the complexity of the case, but said that Mr. Callison is desirous of his property being annexed into the City.

Mr. Callison recounted his efforts during the past year and a half in meeting with County and City representatives, contacting the appropriate property owners in the area in reference to annexation, and collecting responses in that regard.

Chairman Thom apologized to Mr. Callison for the difficulties he has encountered in expanding his business and said that she is always happy to welcome new businesses to the community.

Committeemember Griswold stressed the importance of the City addressing the legislative component of annexation.

It was moved by Committeemember Griswold to recommend to the Council, that Option 2 be approved.

Committeemember Rawles commented that he is torn by this matter not only because he is opposed to Mesa providing water and sewer service to individuals residing outside of City limits, but also “forcing” property owners to be annexed into the City when they do not want to do so. He expressed opposition to Option 1 because it would require the applicant to convince the unwilling adjacent property owners to agree to annexation in order to “satisfy an artificial legislative mandate.” Committeemember Rawles added, however, he would support the motion to move it forward to the full Council, but said he was unsure how he would vote at that time.

Committeemember Rawles seconded the motion.

Mr. Callison stated that would continue to work to satisfy the requirements listed under Option 1.

Chairman Thom provided a brief historical overview of the acquisition of private water companies by municipalities in the 1970’s. She commented that it is important to listen to County residents and noted that it is not always in a community’s best interest to “just annex people” into a municipality. Chairman Thom indicated that the applicant was required to survey the property owners in the adjacent residential subdivision regarding annexation and said that the Committee is not even being asked to consider whether or not those residents wish to be annexed into the City of Mesa.

Committeemember Rawles said that he has determined “the lesser of two evils” would be for the City to provide water/sewer service outside of Mesa’s City limits as opposed to forcing property owners to be annexed into the City. He suggested that the applicant not pursue satisfying the requirements of Option 1 and added he would support Option 2 when the case is brought before the Council for consideration.

Chairman Thom called for the vote.

Carried unanimously.

2. Discuss and consider a request by the Maricopa County Parks and Recreation Department to provide water service outside the City limits to Usery Mountain Regional Park.

Building Safety Director Terry Williams reported that this case is unique in that Maricopa County has requested water and sewer service in an area outside of the City limits known as Usery Mountain Regional Park. He explained that because State law requires that the County agree to allow a park to be annexed and also because of the County’s current stand not to permit the annexation of regional parks by adjacent cities, staff is unable to recommend annexation of the subject property prior to connecting to City water service. Mr. Williams stated, therefore, that staff is recommending Option 2, which would require that the County enter into a Utility Service agreement with Mesa to provide water service to Usery Mountain Regional Park. (See Attachment 2.)

Mr. Williams referred to the February 1, 2006 Utility Committee Report and highlighted various discrepancies on Page 3 listed under “Potential Revenue, One-Time Fees.” (The complete report is available for review in the City Clerk’s Office.) He explained that it would be necessary to service the park with a six-inch water meter (as opposed to two two-inch water meters), at a revised fee of \$50,550. Mr. Williams noted that if the Committee concurs with staff’s

recommendation and the matter is brought forward to the Council for approval, staff would begin to work on the Utility Service agreement to clarify the above-referenced fees.

In response to a question from Chairman Thom, Kenneth Mouw, Engineering Manager for Maricopa County Parks and Recreation Department, 234 North Central Avenue, Phoenix, clarified that County officials have not yet discussed the possibility of the County paying the fees referenced by Mr. Williams. He explained that at this time, the County is merely seeking permission from the City to receive water service and would address the particular requirements of the Utility Service agreement at a later time.

In response to a question from Committeemember Griswold, Mr. Mouw explained that the County is requesting water service only and not sewer. He said that a two-inch water meter currently serves the park and noted that the water requirements are minimal.

City Engineer Keith Nath indicated there is an existing six-inch water line in the Range Rider water system that runs to Ellsworth Road. He advised that the water demand the County is requesting should not cause a problem with Mesa's system.

In response to a question from Chairman Thom, Mr. Mouw stated that it is his understanding there would be 56 pounds per square inch of water pressure at the end of the Range Rider system, which would adequately service the park.

Committeemember Rawles expressed support for moving the case forward to the Council with a positive recommendation, with the understanding that he would not support the City underwriting any costs for the County. He added that beyond the development fees outlined in staff's report, if there comes a time when, for example, it is necessary to expand the water line or install a pump station, the County and not the City would fund such costs.

It was moved by Committeemember Rawles, seconded by Committeemember Griswold, to recommend to the Council that Option 2 be approved, and that Committeemember Rawles' above-referenced comments be incorporated thereto.

Carried unanimously.

3. Discuss and consider a request by Dillon's RV City to provide water and sewer service outside the City limits at 9452 E. Apache Trail.

Building Safety Director Terry Williams displayed a map of the properties owned by Dillon's RV City, as well as schematic drawings of the existing City water and sewer utility service in the area. (The documents are available for review in the City Clerk's Office.) He reported that in accordance with Ordinance No. 4213, staff is recommending Option 1, which would require annexation of the properties prior to connecting to Mesa's public water and wastewater systems. (See Attachment 3.) Mr. Williams explained that the City's Planning Division has worked extensively with the applicant regarding his request for service and acknowledged that "there is a great hurdle to overcome" in order for the properties to be annexed. He stated that Option 2 would require the property owner to enter into a Utility Service agreement with the City in order for Mesa to provide the requested service.

Chairman Thom commented that in reviewing the various drawings, it appears as though the parcels in question, as well many in the surrounding areas, already have water service.

In response to Chairman Thom's observation, Mr. Williams clarified that there was previous water service at that site for a mobile home. He explained that the expansion of Dillon's RV City and the change of use would require an entirely new service.

Chairman Thom invited the applicant to address the Committee.

Chairman Thom further noted that the schematic drawings also reflect the location of a City water main on both sides of Main Street, from Ellsworth Road to Crismon Road, which would include Mr. Dillon's property.

Richard Dillon, President of Dillon's RV City, stated that he began work on this project in 2003. He questioned why, subsequently, the City did not personally notify him that Mesa would no longer provide water hook-ups to properties located in County islands and said that it was his understanding that such notice was published in the Mesa Tribune. Mr. Dillon clarified that because septic tanks were previously installed on his property, he is not asking for sewer service.

Discussion ensued relative to the adoption of three ordinances related to the Terms and Conditions for the Sale of Utilities.

Nat Sojourner, a representative of Dillon's RV City, offered a short synopsis of the efforts undertaken by the business to survey the surrounding property owners with reference to annexation. He stated that less than the majority of the property owners in the survey area were supportive of annexation.

Committeemember Griswold acknowledged that the applicant has done everything within his power to pursue annexation. He stated that although he was generally opposed to providing water service outside of Mesa's City limits, particularly when Mesa is losing sales tax revenues to the surrounding communities, in this case, he would support recommending Option 2 to the Council for approval.

In response to a question from Committeemember Griswold, Mr. Dillon stated that if, in the future, it was possible for his property to be annexed into the City of Mesa, he would support such action.

It was moved by Committeemember Griswold to recommend to the Council that Option 2 be approved.

Further discussion ensued relative to the fact that the applicant is requesting water service only, but "left open" the option to come back to the Utility Committee to request sewer service in the future; and that under Option 2, the applicant would be required to comply with City development standards.

Committeemember Rawles noted that in reviewing the schematic drawings, they clearly demonstrate that a water main runs along the north side of Main Street and also that there are numerous properties located in this unincorporated area of the County that are provided City water. He added that some also receive sewer service.

Committeemember Rawles seconded the motion.

Chairman Thom called for the vote.

Carried unanimously.

4. Discuss and consider a request by Chris and Cassie Plourd to provide water service outside the City limits in the 8200 block of East Redberry.

Building Safety Director Terry Williams reported that the applicants, Chris and Cassie Plourd, have requested water service to a three-quarter acre parcel that is proposed for the development of a family residence. He explained that the property was recently subdivided from a larger five-acre parcel that was previously served with City of Mesa water for a mobile home. Mr. Williams advised that there is an existing City of Mesa water main immediately in front of the property, and said that the existing water meter that served the mobile home is currently inactive. He also noted that staff is recommending Option 1, which would require annexation prior to the City providing water and sewer service to this location. (See Attachment 4.) He added that sewer service is not convenient to this site.

Committeemember Griswold commented that the property is located in the Range Rider utility district, which was formed by the surrounding homeowners years ago. He stated that the property owners paid for the water lines and established their own water system. Committeemember Griswold noted that this is an unusual case in that the applicants paid a premium for their parcel so they could be in close proximity to the water line. He also stated that because the owners of the other subdivided parcels have drilled wells and installed septic tanks, only the Plourds would be tapping into the existing line. Committeemember Griswold added that there are currently a number of difficulties relative to annexation in the area and stated that he would prefer the applicants not be involved in that process.

It was moved by Committeemember Griswold to recommend to the Council that Option 2 be approved.

Discussion ensued relative to the fact that the larger five-acre parcel is 330 feet wide, which exceeds the size requirement for annexation; that the property owners to the north are in discussions with the City Planning Division regarding annexation; that once the property to the north is annexed, the entire five-acre parcel could easily be annexed; that the applicants have indicated to staff that they do not want to be annexed; that per Section 17(A) of the Terms and Conditions for the Sale of Utilities, the applicants would not be eligible to receive water service under that exception because the development pattern is not compatible with Mesa's General Plan designation of Low Density Residential 0-1 dwelling units per acre; and that if the Committee recommended that the Council approve Option 2, the property owners would be required to enter into a Utility Service agreement with the City and comply with all of Mesa's development standards.

Committeemember Rawles stated that relative to one of the development standards outlined under Option 2, which would require dedication of adjacent rights-of-way (25 feet along the west property line for the future development of 82<sup>nd</sup> Street), he suggested taking the right-of-way from the eastern edge of an adjacent City park (to the west of the Plourds' parcel) as opposed to the 25 feet along the applicants' west property line.

In response to a series of questions by Committeemember Rawles, Mr. Williams clarified that in order to comply with the City's development standards, it would be necessary for each of the adjacent property owners on the proposed street to give up half of the right-of-way. He added

that if there was no need for the street or the City chose to place the street entirely on the park property, it would be necessary to require modification to the City's Transportation Plan.

City Engineer Keith Nath further explained that staff's concern regarding the City obtaining frontage on 82<sup>nd</sup> Street is the necessity for the parcel located to the north of the applicants' property having frontage on a dedicated street to develop in the future. He advised that Council could direct staff to take the right-of-way from the park site to the west as opposed to the applicants' parcel.

Committeemember Rawles commented that of the four cases presented to the Committee today, this one is the most complicated. He questioned why the applicants would want to proceed with Option 2 because of the requirement to comply with Mesa's development standards, which cannot be met due to the size of their parcel. Committeemember Rawles stated that he would be willing to move the item forward to the Council for consideration, but noted that he has serious concerns regarding the case.

Committeemember Griswold stated that the property owners located in the Ranger Rider water district have certain legal rights that must be addressed. He suggested that because the applicants have a unique situation, he would be willing to approve the connection of City water service to their parcel only, but not to the other subdivided properties within the original five acres.

Chairman Thom invited the applicants to address the Committee. She commented that in researching the Range Rider water district, she learned that the property owners in the subdivision paid for the necessary infrastructure; that the system was engineered by the City of Mesa; and that there were agreements to provide water. She noted that if the City does not provide water in this area, there might be some legal standing on the part of the residents.

Chris Plourd spoke regarding his and his wife's efforts to contact property owners in the area concerning annexation; the difficulties and costs that they would encounter if required to install a sewer line to their property; that with regard to the 25-foot right-of-way, the two lot owners to the north would not accept the easement; and that the other subdivided lot owners have entered into a shared well agreement.

In response to a question by Committeemember Rawles, Mr. Nath clarified that sewer service is unavailable in the immediate vicinity, but that the County would allow a septic system on the property.

Cassie Plourd stated that she and her husband requested input from the City regarding the development costs to install a sewer line to their property. She commented that they purchased the property in good faith and paid an escalated amount in order to obtain City water.

Committeemember Griswold suggested an Option 3, which would provide water service to the applicants only and no other property owners in the subdivided five-acre parcel; that subsequent to building in the County, the applicants would install a septic tank per County regulations; that the City may charge a higher rate in the County for water service than it would for City customers; that the applicants would agree to be annexed into the City; and that the applicants would enter into a service agreement with the City pursuant to the same rights they received from the original water company.

Deputy City Attorney Joe Padilla clarified that Committeemember Griswold's motion would be in direct violation of a City ordinance. He advised that per Ordinance No. 4213, if the City provided water service to the applicants, they would be required to enter into a Utility Service agreement and comply with all City of Mesa development standards.

Committeemember Griswold stated that it is his belief there have been other cases related to the Range Rider water district in which the property owners did have certain water rights, whether they were located within Mesa City limits or not.

Committeemember Rawles commented that in reading the language of the exceptions listed under Sections 17(A) and (B), both make reference to compliance with the General Plan and various City development regulations. He noted, however, that 17(C) does not list similar requirements. Committeemember Rawles stated that what Committeemember Griswold is proposing in Option 3 is that under Section 17(C), the City could enter into a Utility Service agreement with the applicants, but not require that they comply with all development regulations because of the prospect that they may, indeed, have a legal entitlement to the water service. He added that in an effort to resolve the matter, he would request that staff provide the Council with an analysis of the City's legal responsibilities/duties with regard to the issue of providing water outside of Mesa's City limits.

Responding to Committeemember Rawles' comments, Mr. Williams clarified that the applicant's property would not be eligible for an exception under Section 17(A) because it has been subdivided and would default to Section 17(B).

Chairman Thom stated that the issue of the parcel being subdivided is moot. She explained that the applicants have a vested right in City water service and should not be required to come before this Committee to request such service.

Mr. Williams respectfully disagreed with Chairman Thom's comments and indicated that the subdividing of the property is a key element in the case. He advised that the water service originally provided was for a mobile home on a five-acre parcel. He noted that the applicants have purchased a three-quarter acre parcel subdivided out of the original property.

An extensive discussion ensued relative to the purpose of Section 17(C), which was to provide a "hardship" exception that the Council could consider if an applicant requesting water and/or sewer service outside the City limits was unable to meet the exceptions listed under Sections 17(A) or (B).

Committeemember Rawles requested that staff's legal opinion include the vested water rights issue and also whether, under the unique circumstances in this case, the Council would have the discretion to allow the applicants to receive water service and not be required to develop their property according to City standards.

Committeemember Griswold modified his previous motion and moved that the Committee forward to the Council Option 2, as outlined in the staff report, and also Option 3, which would allow the City to provide water service to the applicants under exceptional circumstances.

Mr. Williams stated that the Committee raised some unique questions that staff has not answered or considered in the past. He indicated that he would be agreeable with the two options proceeding forward to the Council and asked that staff be allowed a two to three week

timeframe within which to respond to the Committee's requests and make further recommendations.

Committeemember Rawles seconded the motion, but cautioned the applicants that the Committee does not know what staff's ultimate recommendations and legal opinion would be.

Mr. Plourd expressed appreciation to the Committeemembers for their willingness to move the case forward to the Council.

Chairman Thom called for the vote.

Carried unanimously.

Chairman Thom expressed appreciation to staff for their input.

At the request of Chairman Thom, Mr. Padilla introduced Adam Martinez, a second-year law student at Arizona State University, who is observing him today.

5. Adjournment.

Without objection, the Utility Committee Meeting adjourned at 4:15 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 6<sup>th</sup> day of February 2006. I further certify that the meeting was duly called and held and that a quorum was present.

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BARBARA JONES, CITY CLERK

## ATTACHMENT 1.

**Option No. 1** - Require the annexation of the property prior to connecting to Mesa's public water and wastewater systems. Following annexation the property would be required to develop to Mesa's standards and connection to the water and wastewater systems then permitted. This option is consistent with the City of Mesa's **Terms and Conditions for the Sale of Utilities** as adopted by the City Council.

If the Utility Committee recommends Option 1, City Council action will only be required to approve the required annexation.

**Option No. 2** - Require the property owners to enter into a Utility Service agreement with Mesa that requires their compliance with all City of Mesa's development standards / payment of fees and authorizes the connection of the identified properties to the City's public water and wastewater systems. The requirement to develop to Mesa standards shall be understood to mean all development standards, including, but not limited to:

1. Water line installations necessary to provide service/protection to the development.
2. Improvements to Mesa Standards on adjacent street frontages.
3. Onsite and offsite drainage must be addressed.
4. Compliance with Mesa's building setbacks and all other Code requirements.

Per Section 17(C) of the **Terms and Conditions for the Sale of Utilities**, Option 2 requires Utility Committee recommendation and City Council approval.

## ATTACHMENT 2.

**Option No. 1** - Require the annexation of the property prior to connecting to Mesa's public water system. Following annexation the property would be required to develop to Mesa's standards and connection to the water and/or wastewater systems then permitted. This option is consistent with the City of Mesa's **Terms and Conditions for the Sale of Utilities** as adopted by the City Council. This option only requires the approval of the Utility Committee and would only require City Council action to approve the required annexation.

**Option No. 2** - Require the property owners to enter into a Utility Service agreement with Mesa that requires their compliance with all City of Mesa's development standards / payment of fees and authorizes the connection of the identified property to the City's public water. The agreement shall specify that the water service shall only be available for Maricopa County Park facilities. No subsequent owners/developers shall be entitled to service. The requirement to develop to Mesa standards shall be understood to mean all development standards, including, but not limited to:

1. Water main line extension (including service, meter and backflow assembly installation) on East Range Rider Trail to North Ellsworth Rd., adjacent to the park's frontage.
2. All proposed line extensions beyond the meters, within Usery Mountain Park, will be private lines, owned and maintained by Maricopa County Parks.

Per section 17(C) of the **Terms and Conditions for the Sale of Utilities**, this option requires Utility Committee recommendation and City Council approval.

Option 2 provides the quickest means of providing service to Usery Mountain Park and maintains the County's jurisdictional ownership / maintenance responsibilities of the park.

### ATTACHMENT 3.

**Option No. 1** - Require the annexation of the property prior to connecting to Mesa's public water and wastewater systems. Following annexation the property would be required to develop to Mesa's standards and connection to the water and wastewater systems then permitted. This option is consistent with the City of Mesa's **Terms and Conditions for the Sale of Utilities** as adopted by the City Council.

If the Utility Committee recommends Option 1, City Council action will only be required to approve the required annexation.

**Option No. 2** - Require the property owners to enter into a Utility Service agreement with Mesa that requires their compliance with all City of Mesa's development standards / payment of fees and authorizes the connection of the identified properties to the City's public water and wastewater systems. The requirement to develop to Mesa standards shall be understood to mean all development standards, including, but not limited to:

1. Water line installations necessary to provide service/protection to the development.
2. Sewer line extension to reach the site.
3. Pavement, curb, gutter, street lighting, across adjacent street frontages.
4. Onsite and offsite drainage must be addressed.
5. Compliance with Mesa's building setbacks and all other Code requirements.

Per Section 17 (C) of the **Terms and Conditions for the Sale of Utilities**, Option 2 requires Utility Committee recommendation and City Council approval.

## ATTACHMENT 4.

**Option No. 1** - Require the annexation of the property prior to connecting to Mesa's public water system. Following annexation the property would be required to develop to Mesa's standards and connection to the water system then permitted. This option is consistent with the City of Mesa's **Terms and Conditions for the Sale of Utilities** as adopted by the City Council.

If the Utility Committee recommends Option 1, City Council action will only be required to approve the required annexation.

**Option No. 2** - Require the property owners to enter into a Utility Service agreement with Mesa that requires their compliance with all City of Mesa's development standards / payment of fees and authorizes the connection of the identified properties to the City's public water system. The requirement to develop to Mesa standards shall be understood to mean all development standards, including, but not limited to:

1. Water line installations necessary to provide service/protection to the development.
2. Dedication of adjacent Rights-of-Way (25' along west property line for future 82<sup>nd</sup> Street)
3. Onsite and offsite drainage must be addressed.
4. Compliance with Mesa's building setbacks and all other Code requirements.

Per Section 17 (C) of the **Terms and Conditions for the Sale of Utilities**, Option 2 requires Utility Committee recommendation and City Council approval.