

COUNCIL MINUTES

October 30, 2006

The City Council of the City of Mesa met in a Special Council Meeting in the lower level meeting room of the Council Chambers, 57 East 1st Street, on October 30, 2006 at 8:00 a.m.

COUNCIL PRESENT

Rex Griswold
Kyle Jones
Tom Rawles
Scott Somers
Claudia Walters
Mike Whalen

COUNCIL ABSENT

Mayor Keno Hawker

OFFICIALS PRESENT

Christopher Brady
Debbie Spinner
Barbara Jones

Vice Mayor Walters excused Mayor Hawker from the entire meeting and Councilmember Somers from the beginning of the meeting.

1. Take action on the following contract.

- 1a. Two Counter-Terrorism Support Vehicles as requested by the Fire Department. (Fully Grant Funded UASI Federal Homeland Security Program).

The Purchasing Division recommends authorizing purchase from the State of Arizona Contract with Five Star Ford at \$96,148.30, including applicable sales tax.

Councilmember Griswold stated that Councilmember Somers had inquired whether the City could purchase the vehicles from a Mesa car dealership in an effort to support the local economy.

Materials Management Director Ed Quedens clarified that the City is utilizing the State of Arizona contract with Five Star Ford to purchase the Counter-Terrorism Support vehicles. He explained that if the City elected to implement an alternative procurement method, staff would be required to obtain bids, which would not necessarily guarantee that the successful bidder was a Mesa vendor.

Assistant Fire Chief Gil Damiani and Police Lieutenant Tony Lythgoe responded to an extensive series of questions posed by Councilmember Rawles. Their comments included, but were not limited to, the following: that the Mesa Police and Fire Departments each have one staff member who works as a Terrorism Liaison Officer (TLO) at the Arizona Counter-Terrorism Information Center (ACTIC) and would be assigned to the vehicles; that the Fire representative

would spend 25% of his time working as a TLO and the remainder devoted to City Emergency Management duties; that the Police representative would spend 40 hours per month in his capacity as a TLO, with the remainder of his time assigned to Mesa's Counter-Terrorism Unit; that the responsibilities of a TLO include responding to various events (i.e., chemical, radiological, nuclear explosions), assisting in the collection of data, and relaying such information to a command post, sharing information obtained from ACTIC with local public safety personnel, and conveying information to ACTIC received by local law enforcement; that the duties also include conducting threat and vulnerability assessments in the City and throughout the Valley; and that the vehicles contain a significant amount of communication equipment (i.e., Mesa's 800-megahertz radio and a GPS radio system), as well as personal protective equipment.

Chief Damiani reported that for several years, there have been ongoing discussions regarding interoperability and said that the State is working on a plan that would allow all public safety responders throughout Arizona to communicate with one another. He explained that Mesa Police and Fire personnel are able to communicate with each other in order to respond to various emergencies, but noted that outside the City it becomes more difficult to do so.

(Councilmember Somers arrived at the meeting at 8:13 a.m.)

Discussion ensued relative to the fact that Federal Grant funds available from the Homeland Security Program, 2005 Urban Area Security Initiative, would be specifically utilized for this purchase; and that the Terrorism Liaison Officer program is sponsored by the State as opposed to the Federal government.

Councilmember Griswold commented that to his recollection, one of the terrorist pilots who flew one of the planes into the World Trade Center on 9/11 had received his flight physical in Mesa. He stated that such an incident illustrates the fact that Mesa is by no means a remote community, nor exempt from terrorist activities.

It was moved by Councilmember Whalen, seconded by Councilmember Jones, that staff's recommendation to purchase two Counter-Terrorism Support Vehicles be approved.

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Somers-Walters-Whalen
NAYS - Rawles
ABSENT - Hawker

Vice Mayor Walter declared the motion carried by majority vote of those present.

2. Discuss and take action on the following resolution:

- 2a. Approving and authorizing the City Manager to execute a Development Agreement between Pecos Capital Group, LLC, North Valley Corporate Center, LLC, and Gateway 230, LLC, and the City of Mesa for the development of the Paragon Properties generally located on both sides of Ellsworth Road south and east of Williams Gateway Airport.

Assistant City Attorney II Jim Smith stated that it is staff's recommendation that this item be continued to the November 6, 2006 Regular Council meeting. He explained that as of late Friday afternoon, the City Attorney's Office and the applicant had modified and agreed upon a Development Agreement. He commented, however, that he learned just this morning that new concerns have been raised regarding specific language in the document and said those matters have not yet been resolved.

Vice Mayor Walters stated that at the October 16, 2006 Regular Council meeting when this item was discussed, the Council was informed there would be a problem with the applicant closing escrow on the property if this case were delayed beyond today. She invited Paul Gilbert to address this matter.

Paul Gilbert, 4800 North Scottsdale Road, an attorney representing the applicant, addressed the Council and introduced Mike Blenis, the applicant, who was prepared to respond to any questions the Council may have.

Mr. Gilbert offered a brief update of the case and reported that as of late Friday afternoon, it was his belief that he and City staff had successfully negotiated all of the terms and conditions of the Development Agreement. He stated, by way of explanation, that the applicant owns two thirds of the property; that the remaining third, which the applicant anticipates closing on shortly, is owned by other parties; that over the weekend, the attorney for the other landowners raised concerns regarding Paragraph 1 of the Development Agreement, which would hold his clients "jointly and severally" liable for the applicant's obligation if the applicant failed to close escrow; and that the landowners are agreeable to sign the Development Agreement as long as they are responsible only for those items that pertain to their property.

Vice Mayor Walters questioned why language could not be added to the Development Agreement that would satisfy the concerns expressed by the property owners.

In response to Vice Mayor Walters' inquiry, Mr. Smith clarified that this issue was not raised until this morning and said he has not had an opportunity to discuss it with all of the parties involved. He said that he would prefer that staff be given sufficient time to draft new language to address those concerns.

City Attorney Debbie Spinner informed the Council that she was personally told a month ago that the property in question was due to close in mid to late November and that a continuance of the case to the November 6, 2006 Regular Council meeting would not cause a problem with regard to the sales transaction. She said that staff would ask for a continuance regarding the approval of the Development Agreement and adoption of the zoning ordinance. She noted that once the zoning is granted, if the parties do not reach an agreement relative to the Development Agreement, staff would be required to start the entire process over again in order for the City to rezone the property.

Mr. Gilbert confirmed that he would agree to a one-week continuance. He also noted that his client raised another issue of concern that was clarified by Planning Director John Wesley late Friday afternoon.

Councilmember Somers stated that it was his recollection that today's Special Council meeting was convened because the applicant could not wait until the November 6, 2006 Regular Council

meeting in order to close escrow. He expressed frustration that the Council was convened for the purpose of staff requesting a further continuance of this case.

City Manager Christopher Brady stated that he did not receive a draft of the Development Agreement on Thursday afternoon or Friday morning of last week and had instructed staff to cancel this meeting. He apologized to the Council for the inconvenience and assured everyone that staff worked diligently with the applicant's attorney to finalize the Development Agreement in a timely manner. Mr. Brady added that what particularly concerns him is the fact that a third party who is "driving this discussion" is not in attendance at this meeting.

Mr. Brady further indicated that he would recommend a continuance of this case to the November 6, 2006 Regular Council meeting on the condition that the Development Agreement is signed and executed by all the parties no later than Wednesday of this week.

Vice Mayor Walters concurred with Councilmember Somers' recollection of the previous events and commented that the Council convened today in an effort to assist the applicant in meeting his timeline to close escrow on the property.

Mr. Gilbert spoke regarding the fact that several items were added to the Development Agreement by staff that he had not included in the draft document. He cited, for instance, that the applicant is required to file a preliminary plat on the east and west half of the property, to which the applicant does not object. Mr. Gilbert noted, however, that the City also added a provision that required the applicant to prepare design guidelines at the same time that the preliminary plat is filed. He added that the issue was raised with Mr. Wesley and Mr. Wesley confirmed that the design guidelines only needed to be general in nature as opposed to specific guidelines that would be required later on in the development process.

Mr. Wesley concurred with Mr. Gilbert's statements regarding their conversation.

Councilmember Rawles commented that Mr. Gilbert specifically told the Council at the October 16th meeting that continuing this case to the November 6th Regular Council meeting would "destroy" the applicant's ability to close escrow on the property. He expressed his displeasure with being required to attend today's meeting if, in fact, an additional week is now necessary in order to resolve the various issues discussed this morning.

In response to Councilmember Rawles' comments, Mr. Blenis clarified that the reason he wanted the zoning ordinance adopted today is because he intends to close on the property towards the end of November. He stated that to his recollection, once the zoning has been approved, there is a 30-day period in which it could be challenged or a referendum filed against it. Mr. Blenis also noted that he did not receive the redline version of the Development Agreement until late Friday afternoon and said that his attorney and City staff worked diligently to resolve all areas of concern. He thanked the Council for convening and said that it was his belief that the matter could be resolved today.

Discussion ensued regarding the timeframe within which the Council could make a motion for reconsideration with regard to adoption of the zoning ordinance.

It was moved by Councilmember Rawles, seconded by Councilmember Griswold, that this item be continued to the November 6, 2006 Regular Council meeting.

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

3. Discuss and take action on the following ordinance.

- 3a. **Z06-69 (District 6)** The 8200 block to 9200 block of East Pecos Road (north side) and the 9200 block to 10000 block of East Pecos Road (south side). Located north of Pecos Road, east and west of Ellsworth Road (604.8± ac.) Rezone from AG to M-1 and C-2. This request will change the zoning to allow light industrial and commercial uses. Michael Blenis, Paragon Properties, owner, Paul Gilbert, Beus Gilbert, PLLC, applicant.

P&Z Recommendation: Approval with conditions and recommendation that a Development Agreement be considered. (Vote: 6-0 with Boardmember Adams absent.)

(Discussion regarding this item is listed under agenda item 2.)

It was moved by Councilmember Rawles, seconded by Councilmember Griswold, that Zoning Case Z06-69 be continued to the November 6, 2006 Regular Council meeting.

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

4. Items from citizens present.

There were no items from citizens present.

5. Adjournment.

Without objection, the Special Council Meeting adjourned at 8:40 a.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 Special Council Meeting of the City Council of Mesa, Arizona, held on the 30th day of October 2006. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK