



## AD HOC REDEVELOPMENT ADVISORY COMMITTEE

August 24, 2004

The Ad Hoc Redevelopment Advisory Committee met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on August 24, 2004 at 5:31 p.m.

### COMMITTEE PRESENT

Rex Griswold, Chairman  
Steve Adams  
Louise Daggs  
Alex Finter  
Alan Rash  
Dave Richins  
Chuck Riekema  
Jordan Rose  
Joe Shipley

### COMMITTEE ABSENT

Art Jordan  
Bev Tittle-Baker

### STAFF PRESENT

Paul Wenbert  
Debbie Spinner  
Joe Padilla  
Shelly Allen  
Lisha Garcia  
Patrick Murphy  
Bonnie Andersen

### OTHERS PRESENT

Tim Keller  
Tom Verploegen

1. Hear a presentation about the impact of Proposition 105 on the use of eminent domain for land acquisition for redevelopment.

City Attorney Debbie Spinner read the portion of the *City Charter*, Article I, Powers of the City, as follows:

#### Section 101.2, Restriction on Use of Eminent Domain

Private property shall not be taken for any use, except as specifically provided for in the Arizona Constitution. The City shall not take any property through eminent domain without a public hearing and public vote of the City Council.

Ms. Spinner noted that the above language has not changed, and that the City Council has always followed the procedure as stated.

In response to questions from Committeemember Shipley, Ms. Spinner advised that the City Council could conduct an executive session to discuss the condemnation, purchase, or sale of

property. She added that the City Council may also seek legal advice during an executive session, but the Council vote is required to take place during a public meeting. Ms. Spinner continued reading Section 101.2, which includes the amended language required by Proposition 105:

In no event may any private real property acquired by the City through eminent domain be dedicated, sold, leased or otherwise transferred to a private person, partnership, corporation or any other entity for a period of ten years following the acquisition of the property by the City.

Ms. Spinner explained that the above provision restricts the transfer of any property acquired by the City through the use of eminent domain for a ten-year period.

Responding to a question from Chairman Griswold, Ms. Spinner confirmed that a piece of property remaining from an eminent domain acquisition for the purpose of a road widening could not be sold for a period of ten years. She explained that the same methods utilized to acquire property remain available to the City, but the changes relate to the City's options regarding the disposal of property acquired through eminent domain.

Discussion ensued relative to the fact that the City could utilize and build on property acquired through the use of eminent domain; that the City cannot sell, lease or transfer property acquired by means of eminent domain for a period of ten years; that condemnation could continue to be utilized in a redevelopment area if the 17 conditions of the "Bailey decision" are met; that City property acquired through voluntary eminent domain must also be held for ten years, which eliminates a tool that was previously available to property owners; and that approximately 70 percent of eminent domain acquisitions are voluntary.

Chairman Griswold thanked Ms. Spinner for the presentation.

2. Hear a presentation about the Institute for Justice's perspective on redevelopment.

Tim Keller, Executive Director of the Arizona Chapter of the Institute for Justice, addressed the Committee and advised that the Institute for Justice does not oppose redevelopment. He stated that the organization is opposed to utilizing eminent domain as a redevelopment tool, which forces the transfer of private property from an individual to a private developer for the purpose of providing financial gain to a developer. Mr. Keller expressed the opinion that the only action that would prevent future "Bailey" types of abuse would be to repeal the Mesa Town Center Redevelopment Area.

Mr. Keller defined eminent domain as the power of government to force property owners to sell their property against their will. He stated the opinion that the historical utilization of eminent domain was intended for projects such as roads or buildings. Mr. Keller added that over the past 50 years there has been an erosion of Constitutional protections and traditional interpretations of the term "public use." He further stated the opinion that governments presently utilize eminent domain to effect economic development. Mr. Keller said that the utilization of eminent domain in order to provide financial gains to a private investor was comparable to the worst form of corporate welfare. He commented on recent organizational changes to the City's Town Center Development/Historic Preservation Office, and he stated the opinion that eliminating the

redevelopment function would not solve problems relative to the utilization of eminent domain. Mr. Keller also stated the opinion that as long as a redevelopment area exists, the possibility of utilizing eminent domain also exists. He urged the Council to eliminate the redevelopment area in order to end the threat posed by eminent domain.

Mr. Keller questioned the enforceability of Proposition 105 due to the fact that the power of eminent domain belongs to the State, and only the State can dictate the manner in which the power can be employed, including the method by which property is transferred. He expressed the viewpoint that City Attorney Debbie Spinner's Proposition 105 opinion letter was well reasoned, but he added that court decisions are issued on a case-by-case basis.

Mr. Keller expressed the following viewpoints of behalf of the Institute for Justice:

- The only way to truly protect private property rights is to repeal the redevelopment designation.
- Repealing the redevelopment area designation is also the best method to promote redevelopment due to the fact that a redevelopment designation automatically "generates a cloud regarding condemnation" relative to city governments utilizing the power of eminent domain, and that the system tends to favor large developers.
- Redevelopment flourished in the City of Scottsdale when the redevelopment designation was removed.

Chairman Griswold noted that the Committee previously received information on a Tempe redevelopment district that prohibited the use of eminent domain, and said that other tools were provided to the district to assist in the redevelopment process. He expressed the opinion that the City of Mesa will not utilize eminent domain as a redevelopment tool in the future. Chairman Griswold stated that the "one-stop shopping" approach for Planning and Zoning, Design Review, etc., as is currently available for the Town Center could be expanded to the entire City.

Mr. Keller expressed the opinion that redevelopment areas are an impediment to revitalization of downtown areas, and that the City of Mesa should focus on eliminating the downtown redevelopment area rather than eliminating a particular City department.

In response to a comment by Committeemember Adams, Mr. Keller expressed the opinion that a court challenge could determine that Proposition 105 is invalid due to the fact that the State would not permit cities to dictate the method of transferring property. He added that the Institute for Justice would continue to litigate eminent domain cases. Mr. Keller also stated the opinion that the current political climate in the City of Mesa favors private property rights, but he also noted that changes could occur quickly.

Responding to a question from Committeemember Rose regarding the list of redevelopment tools (see Attachment 1), Mr. Keller advised that the list appears to include many good ideas, but he noted that he was not a land use attorney and therefore was unaware of the statutory authorization for the tools listed. He expressed the opinion that a specific area need not be designated in order to accomplish redevelopment activities.

Deputy City Attorney Joe Padilla advised that the City's current *Zoning Code* does not provide economic development incentives for any type of overlay zone. He noted that State Statutes include provisions for certain types of improvement districts.

Committeemember Rash commented that Mr. Keller's objection to redevelopment districts seemed to extend beyond the issue of eminent domain to being fundamentally opposed to government involvement in economic affairs and community development.

Mr. Keller stated that his position was that a City-driven approach to economic development was not beneficial to growth due to the fact that the process encouraged the City to assist in acquiring parcels of land for developers rather than the developers acquiring the properties on their own through private negotiations. He added that this process inhibits development and results in developers seeking lucrative City subsidies unavailable to smaller entrepreneurs.

Committeemember Richins noted that the State Legislature has made a number of tools available for redevelopment to occur outside of downtown districts without having a specific redevelopment designation. He stated that these tools facilitate a bottom to the top approach, which encourages grass roots' entities to assume responsibility for redevelopment in their neighborhoods. Committeemember Richins stated that redevelopment is driven primarily by profit margins, and he expressed the opinion that encouraging redevelopment required more than simplifying the permit process and waiving fees.

Chairman Griswold thanked Mr. Keller for his presentation.

3. Committee discussion about potential recommendations and format for the final Committee report and additional research required prior to completion of the final Committee report.

Committeemember Shipley suggested that the City provide an incentive or a method to reduce risk in order to encourage developments that project a less favorable return on investment. He concurred with Mr. Keller's opinion that city governments are not effective developers. Committeemember Shipley recommended that the City identify and address certain negative aspects of specific projects in an effort to make the project more attractive to developers.

Committeemember Finter expressed the opinion that the downtown area redevelopment effort has made good progress, and that the same tools available to the downtown area should also be made available to the Fiesta Mall area. He stated that he was very impressed with the performance of the Town Center Development/Historic Preservation staff, and that rather than eliminating the office, he expressed support for expanding their efforts, utilizing the tools available and changing the culture of Planning and Zoning. Committeemember Finter noted that when the term "handholding" was mentioned, he thought of customer service. He added that the City is being innovative in many areas, such as the infill policy and the creation of this committee, and that the City should continue to be innovative in providing redevelopment tools.

Discussion ensued and Committeemembers offered the following comments and potential recommendations:

- Rehabilitation and Planning and Zoning activities should be treated differently.

- City leaders should be aware that decisions made at the Planning and Zoning level or the Master Planning level affect quality of life issues such as Light Rail and mass transit.
- Redevelopment efforts need to be more focused and defined.
- The City has done a good job of planning for the Williams Gateway area.
- A Master Plan should be utilized as a guideline that will allow exceptions and changes.
- Redevelopment efforts should not be abandoned as a result of a poor decision regarding “Bailey’s Brake.”
- The City invested \$92 million in the Mesa Arts Center in order to create an urban core and encourage redevelopment.
- A Master Plan exists, but the City lacks vision and aggressiveness in marketing.
- Redevelopment is a Citywide problem, and the Town Center Development/Historic Preservation Office has established a successful model that could be implemented Citywide.
- The City should encourage the establishment of community development entities or community development corporations.
- In depth research should be conducted with property owners in addition to calling other cities for information on their redevelopment activities.
- A recommendation for a City policy that may be in place for a number of years should be the result of extensive research.
- Redevelopment is also related to neighborhood preservation, historic preservation, crime-free multi housing, mass transit, and well-maintained streets.
- The City has done a poor job of maintaining the infrastructure surrounding Fiesta Mall.
- A program to “buy down” interest rates could be offered as an incentive to develop certain parcels or rehabilitate a building.
- The City needs a clear understanding relative to a developer’s expectation regarding a return on investment.
- The Town Center Development/Historic Preservation Office has been very effective in working with developers, and the positive aspects of the operation (without utilizing eminent domain) should be made available citywide.

Committeemember Rose referred to the list of “Tools and Incentives” (see Attachment 1) and stated the opinion that the following should be available citywide:

- Demolish existing buildings, structures, streets, utilities, etc., and construct site improvements, streets, and utilities essential to the preparation of the site in accordance to a development plan.
- Arrange or contract for services, streets, roads, public utilities or other facilities in connection with a development project.

Committeemember Rose suggested that the tool, “Abate property taxes for development projects (Government Property Lease Excise Tax [GPLET] abatement),” could be a topic for further discussion. She noted that the tool, “Form improvement districts for enhanced municipal services,” could be accomplished anywhere in the City. Committeemember Rose added that the following tools would also be effective on a citywide basis:

- Streamlined development process for zoning and design review approval.
- Same staff member works with developer from pre-application meeting to Certificate of Occupancy.

- Special signage allowed (e.g., A-frames, projecting signs, hanging signs).

Committeemember Rose expressed the opinion that these changes would send a message that Mesa "is a new kind of City" that is anxious to cooperate with developers.

Neighborhood Services Manager Lisha Garcia stated that some Committeemembers have submitted a list of recommendations, and she requested that the remaining members of the Committee provide a brief list of recommendations and comments to enable staff to prepare an outline for review by the Committee. She noted that several terms such as economic development and redevelopment have been used interchangeably, and that staff will attempt to clarify the definitions to be used in the Committee's recommendation.

Ms. Garcia suggested, and Chairman Griswold concurred, that Economic Development Director Dick Mulligan be invited to address the September 28<sup>th</sup> Committee meeting in order to provide information on development occurring in the City outside of the downtown area. She stated that staff would draft a framework of recommendations based on the Committee's discussions, and that staff would provide additional information if requested by the Committee.

In response to a question from Committeemember Richins regarding how business and property owners view the redevelopment designation, Tom Verploegen, Executive Director of the Mesa Town Center Corporation, advised that the opinions vary and often depend on the personal experience of each individual.

Ms. Garcia stated that the Committee would be able to obtain this type of information at the public meeting scheduled for Tuesday, September 14<sup>th</sup>.

Responding to Committeemember Richins' concern relative to the Committee's need for a better understanding of the economics that drive development and the economic impact of abandoning a redevelopment district, Ms. Garcia noted that presentations to the Committee offered two differing opinions: One is that the private sector does not "step up to the plate," and the other is the example of Scottsdale, where private investment flourished. She noted that most studies indicate that the private sector does not continue to participate when a redevelopment district is abandoned.

Further discussion ensued relative to Community Development Block Grants (CDBG) funds and the fact that the City receives approximately \$4.2 million annually; that expenditures of CDBG funds are limited to low and moderate income level areas; that the majority of the funds are utilized for housing and housing rehabilitation; that staff will provide a list of CDBG fund expenditures to the Committee; and that the City partners with many private, non-profit organizations to accomplish the projects funded by CDBG dollars.

In response to Committeemember Finter's concern relative to streamlining processes administered by citizen boards, Deputy City Manager Paul Wenbert advised that Senior Planner Gordon Sheffield's recent presentation to the Committee indicated that projects can be processed through the Planning and Zoning Board and the Design Review Board on "parallel tracks." He added that the Planning and Zoning Board is statutorily required..

Mr. Verploegen noted that the downtown area is a very diverse, one-mile square area. He stated that the streamlined process was required in order to address the unique nature of this area. Mr. Verploegen explained that implementation of a streamlined process for the entire City or for a specific area would require additional staff.

Chairman Griswold advised that the Committee is reviewing the "lessons learned" from the downtown redevelopment area in an attempt to determine if any of the lessons are applicable Citywide.

Town Center Development Administrator Shelly Allen provided an overview of the approval process required for a developer in the Town Center area. She noted that staffing is the significant obstacle to applying the process Citywide.

Ms. Garcia stated that the success of the streamlined process might better be applied to certain areas of the community that require more attention rather than attempting to implement the process Citywide.

Mr. Wenbert advised that an infill policy report would be presented to the Council in the near future that includes a recommendation for an "infill specialist" position that would provide services similar to those provided by Town Center Development staff members. He further advised that the report focuses on specific geographic, high-priority areas.

Committeemember Rose stated that the Town of Gilbert developed a process to quickly move certain projects through the approval process. She suggested that staff arrange for Greg Tilque, the Town of Gilbert's Director of Economic Development, to address the Committee regarding their streamlined approval process.

Ms. Allen noted that many of the functions of economic development and redevelopment are similar. She stated that she would contact Mr. Tilque regarding the Town of Gilbert's approval process.

Chairman Griswold stated that both Mr. Mulligan and Mr. Tilque should be invited to address the Committee on September 28<sup>th</sup>.

Ms. Garcia reported that a marketing plan has been implemented to solicit public participation at the September 14<sup>th</sup> meeting.

Chairman Griswold requested that the public meeting notice include the information that eminent domain is no longer a redevelopment tool being utilized by the City, and therefore eminent domain will not be a topic of discussion at the September 14<sup>th</sup> meeting. He stated that the Committee would like to hear from the downtown business community regarding their experiences and opinions on redevelopment.

In response to a question regarding the length of time required for normal approvals, Ms. Allen advised that the Planning and Zoning Board process takes approximately six months. She cited an example of a piece of property that must be rezoned from C2 to C-3 and would include the following: hiring an engineer to prepare the drawings; site plan modification; rezoning; design of the building; the Design Review process; and determining the need for variances, setbacks,

parking, landscaping or other requirements. She advised that following Design Review approval, the next step would be the Board of Adjustment or the Zoning Administrator, followed by the Building Department process for approval of the building plans.

Chairman Griswold explained that each Board needs to be educated regarding the project, but the education process is much faster when one group provides the approvals. He noted that other requirements add to the normal approval timeframe, such as: legal posting requirements, public meetings, and the fact that the Boards meet only once a month. Chairman Griswold also noted that an "expedited" permit process is available to developers who are willing to pay double the fees in order to go through the process in half the time.

4. Other items.

Ms. Garcia advised that the September 14<sup>th</sup> Public Meeting would be held in the Lower Level Council Chambers at 5:30 p.m.

5. Adjournment.

Without objection, the Ad Hoc Redevelopment Advisory Committee adjourned at 7:25 p.m.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Ad Hoc Redevelopment Advisory Committee meeting of the City of Mesa, Arizona, held on the 24<sup>th</sup> day of August 2004. 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

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Attachment 1