



TRANSPORTATION & INFRASTRUCTURE COMMITTEE

September 8, 2008

The Transportation and Infrastructure Committee of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on September 8, 2008 at 3:30 p.m.

COMMITTEE PRESENT

Alex Finter, Chairman
Kyle Jones
Dave Richins

COMMITTEE ABSENT

None

STAFF PRESENT

Christopher Brady
Debbie Spinner
Jack Friedline

Chairman Finter excused Committeemember Richins from the beginning of the meeting. He arrived at 3:37 p.m.

1. Items from citizens present.

Chairman Finter stated that the first speaker, Grace Cokely, provided the Committeemembers with written comments, which would be included as part of the record (a copy is available for review in the City Clerk's Office).

Grace Cokely, 858 North Power Road, a property owner in annexation case A08-12, which was recommended for denial, stated that the case should be judged on its own merits. She said that the case qualified under the City's annexation policy that was in place at the time the application was filed. Ms. Cokely stated the opinion that if Mesa was unwilling to grant annexations, then a "freeze" should have been placed on receiving applications at that time. Referencing a recent newspaper article that addressed the Fire Department's concerns regarding annexation requests, Ms. Cokely stated that a fire hydrant located on the west side of the street on the corner of Ensenada and Power Road was not mentioned in the article.

Chairman Finter referred Ms. Cokely to Deputy Fire Chief Richard Kochanski, who would be able to provide specific information relative to her annexation case.

Jack Gunter, 8540 East McDowell Road, #110, a homeowner at Thunder Mountain Estates, said their process began almost two years ago when an annexation required approval by 70 percent of the homeowners, but then the requirement was changed to 100 percent. He expressed concern regarding the requirement for a fire hydrant within 250 feet of each residence, and he noted that residents have offered to sign a waiver regarding this requirement. Mr. Gunter suggested that the City seek a solution that would enable the approval of the Thunder Mountain annexation request.

2. Hear a presentation, discuss and make recommendations on the annexation policy.

Deputy Building Safety Director Tammy Albright, Development Planning Analyst Beth Hughes-Ornelas and Deputy Fire Chief Richard Kochanski addressed the Committee relative to this agenda item.

Ms. Albright displayed a PowerPoint presentation (a copy is available for review in the City Clerk's Office) and reported that the purpose of today's presentation is to provide a brief overview of the following items related to annexation:

- The City's current policy.
- The issues and the ability of the City to provide service.
- Potential modifications.
- The impact on and the cost to City operations.

Ms. Albright highlighted various objectives with regard to the recent changes to the annexation policy, the most significant being the requirement that development pay for itself and removing the incentive for properties to develop in the County prior to annexing into the City. She explained that the philosophy includes the following: that annexations are voluntary; that all parcels within County islands could be annexed regardless of size; that property owners requesting City utility services should annex if annexation is in the best interest of the City; and that the process eliminates certain inequities. Ms. Albright described three different scenarios and noted the inequity present in the third scenario: 1.) A vacant parcel annexed into the City is developed to City standards and pays all fees. 2) The City provides utility services to a property that did not annex into the City by entering into a Utility Service Agreement, which imposes fees equivalent to what they would be if the property was developed in the City. 3.) A property developed in the County utilizing a County building permit is annexed into the City without paying the fees. Ms. Albright stated that the process was modified in order to eliminate this inequity.

Ms. Albright noted that the changes to the Codes and Ordinances were adopted in April and May of this year and that the Annexation Equity Fee (which applies to developed parcels) became effective July 1, 2008. She stated that the changes apply to applications received after July 1st (two cases are in the system under the new requirements), and she advised that 77 cases are being processed based on the rules in effect prior to July 1, 2008. Ms. Albright added that the current policy requires staff to more thoroughly investigate a proposed annexation with regard to being "in the best interest of the City," which resulted in the Fire Department identifying a number of concerns such as Fire Department access, hydrant spacing, water flow and pressure, and as a consequence, staff recommended denial for many of the annexation cases.

Ms. Albright reported that in an effort to continue to implement the current policy, staff is proposing that an administrative process be implemented to enable the City to offer a Utility Service Agreement when the determination is made that annexation is not in the best interest of the City. She added that the requirement to develop to City standards and pay all fees would remain in place. Ms. Albright displayed a diagram titled "Proposed Process" (see Attachment 1) which outlines the current process and the proposed option (shown in the top box of the diagram) for an administrative process to sell utilities without each case being considered by the Committee and the Council.

Ms. Albright referred to the document titled, "Example of Potential Cost" (see Attachment 2), which depicts a typical property in the County and the costs associated with three different scenarios; 1.) A vacant, annexed property would pay impact fees, water and sewer impact fees and be responsible for the cost of street frontage development now or in the future; 2.) When the City provides utilities without annexation, the equivalent fees would be collected in a Utility Service Fee and the property owner would pay water and sewer impact fees upon connection in addition to being responsible for street frontage development; and 3.) A property that is already developed would pay the Annexation Equity Fees. She said that staff is attempting to "level the playing field" for all properties, properties that receive only utilities and properties annexed into the City.

Ms. Albright further advised that staff was asked to consider various cost options for infrastructure that would assist the property owners. She stated that the following suggestions have not been analyzed from a legal standpoint or researched for viability:

- Special Improvement Districts (possibly partner with the County to set up and process an Intergovernmental Agreement).
- Buy-in for utility line extensions (a process currently utilized and administered by the City).
- A payment plan (would be necessary to research the administrative costs).
- A Capital Improvement Project paid for by the City.

Ms. Albright displayed a list of annexation cases that have been included on current agendas (see Attachment 3). She stated that a reevaluation of these cases under a modified annexation policy could result in a significant number of the cases being denied for the reason that annexation would not be in the best interest of the City. Ms. Albright added that the provision of utilities to these properties could still be determined to be reasonable, which could be handled through the proposed administrative process.

In response to a question from Committeemember Jones, Ms. Albright explained that the column designations of A or D for "Current Agenda Cases" indicates a staff recommendation for approval or denial. She added that the chart also indicates the reasons why property owners were seeking annexation.

Chairman Finter commented that the potential costs for infrastructure are fairly significant and inquired if the applicants have had an opportunity to review construction costs.

Ms. Albright responded that staff always provides an applicant an estimate of the costs for that particular annexation case and that the costs depend on the amount of street frontage to be developed. Ms. Albright advised that the fees do not include mainline extensions, and she noted that a property owner may be required to hire an engineer to extend the water line. She explained that the costs would be the same for developing within or outside of the City.

Chairman Finter expressed appreciation to staff for the presentation. He explained that as a former member of the Mesa Fire Department, he came from a culture that believes in a "whatever it takes to get it done" approach. He now realizes as a Councilmember that there are tremendous costs to the citizens of Mesa when a similar philosophy is adopted for issues such as this. He stated the opinion that it is fair and reasonable for individuals who want to annex into the City of Mesa to absorb the full cost. Chairman Finter added that he strongly opposes allowing "wildcat subdivisions," such as those in the northeast area that obtained permits from the County, to be annexed without paying the appropriate fees. He noted, however, that this

would not be the case for Thunder Mountain, which was developed as a subdivision in the County.

Chairman Finter stated the opinion that property owners should pay the full cost to obtain services from the City of Mesa. He noted that fire trucks are not built to be four-wheel drive, off-road types of vehicles and the reality is that responding in areas that include washes poses a risk to the fleet of trucks. He noted that with regard to the homes in the Thunder Mountain subdivision, a sustainable, full water system provided by a fire hydrant is needed in order to be able to fight a fire. He expressed support for Thunder Mountain to be annexed into the City, but added that the development should provide the infrastructure to support the emergency services and that the costs should be paid by Thunder Mountain residents rather than the citizens of Mesa.

Committeemember Jones commented that having participated in these discussions for years during his tenure on the Council and attempting to make changes to the annexation policy to accommodate property owners, every scenario is different. He stated the consistent theme in all discussions has been that the residents of Mesa cannot be expected to pay for those who made a decision to avoid costs by locating in the County and then later applied to become a part of the City. He stated that the City implemented in lieu fees and requirements for properties to develop to City standards to enable these property owners to obtain services. Committeemember Jones noted that another critical issue is location, and he added that multiple scenarios exist for which the City cannot implement a "one size fits all" policy. He suggested that the City must exercise a certain level of flexibility that allows for the availability of services. He further stated that if a group of property owners joined together to form a Special Improvement District to pay for infrastructure costs, the City should be able to facilitate that process.

Committeemember Jones said that property owners should be able to annex if that is their desire, but the City has to consider all aspects of the annexation to ensure that these properties pay the full cost to do so. He stated the opinion that staff should have the flexibility to make the assessment and proceed without the Committee hearing each case. Committeemember Jones added that reasonable assistance should be provided to those property owners seeking annexation without the City bearing the burden of cost. He noted that a major change made in the past few years is to allow the annexation of non-contiguous properties.

In response to a series of questions from Committeemember Richins, Ms. Albright advised that Council direction to permit an administrative process to allow staff to process Utility Service Agreements (for water and wastewater) without annexation when annexation is not in the best interest of the City would require modifications to the "Terms & Conditions for the Sale of Utilities" and the "Annexation Guidelines," and would need to include the requirement that the property be developed to City standards and that the property owner pay all fees. She added that an applicant could appeal a decision of staff to this Committee.

Committeemember Richins said he concurred with the comments made by Committeemember Jones. He stated that the City has certain standards for a reason, such as preventing damage to fire trucks caused by inadequate infrastructure. Committeemember Richins said he sympathized with many of the County residents, but he expressed the opinion that the City has to utilize a measured approach.

Chairman Finter stated that there appears to be a consensus on the part of the Committee to support the proposal to modify the process that would enable an administrative review. He also noted that there would be support for staff to continue to explore "every option possible" with regard to various options to address the cost of infrastructure.

City Attorney Debbie Spinner stated that staff is seeking a motion from the Committee with regard to this issue and that an affirmative vote to recommend policy changes would be presented to the full Council. She explained that subject to Council concurrence with the recommendation, staff would prepare changes to the annexation policy and the ordinance.

Committeemember Richins stated the opinion that property owners who desire to annex into the City and receive utility services should have every opportunity to do so. He suggested that the City be as flexible and as helpful as possible to provide an array of options, such as Special Improvement Districts or extending waterlines.

Responding to concerns expressed by Committeemember Jones with regard to the number of pending cases, Ms. Albright advised that staff would reevaluate the cases that are pending. She said that annexation cases determined by staff not to be in the best interest of the City would be evaluated regarding the possibility of providing the property with utility service, which would be handled at an administrative level. Ms. Albright added that the applicant would still be required to meet City standards and pay the appropriate fees. She further stated that an appeal by an applicant regarding any of the conditions would be directed to this Committee.

City Manager Christopher Brady clarified that City policy has always included a staff review of annexation proposals to ensure the action would be appropriate for the City and that service could be provided. He added that staff did not establish new criteria for the Fire Department and that staff has been consistent in exercising the same types of reviews over time. Mr. Brady added that the problems are compounded by the large number of annexation cases currently pending and the fact that many cases are geographically distant from the existing infrastructure. He said that the administrative process would enable staff to address four of the cases regarding the provision of utility services. Mr. Brady noted that a recommendation to Council would be required to enable staff to make a determination regarding the sales of utility services and to change the policy that links annexation to the provision of utility services.

Committeemember Jones said that the ordinance includes an exception to the annexation requirement by making an appeal to this Committee for a variance.

In response to a question from Committeemember Richins regarding the long-term maintenance costs for extending utility service into County areas, Mr. Brady advised that the City presently serves customers in County island areas that have not been annexed.

Ms. Albright stated that the infrastructure belongs to the City.

Ms. Spinner said that although the City has the right to charge additional service fees to individuals located outside the City of Mesa, the City presently charges the same fees for both residents and non-residents.

Ms. Spinner read the following proposed motion: "To amend the Terms & Conditions for Utility Service and the Annexation Guidelines to allow staff to enter into a Utility Service Agreement if the applicant is willing to meet all requirements in the Terms & Conditions, but staff

recommends denial of annexation due to operational issues.” She stated that this would be applicable only in those limited circumstances where the applicant is willing to meet all the requirements under the current ordinance, but staff would still recommend denial because of the operational issues. Ms. Spinner said that a Committee recommendation to move forward that is approved by the Council would enable staff to enter into a Utility Service Agreement if the applicant is willing. If the applicant is not willing to enter into the agreement, the applicant could appeal to this Committee.

Deputy City Manager Jack Friedline questioned whether a new policy and different fees would be applicable if the Council denied 16 or all of the 22 pending applications.

Mr. Brady said that in fairness to the applicants, the pending applications could be evaluated to determine if the applicant wants to purchase utility services only.

Mr. Friedline noted that the new policy imposes higher fees.

Ms. Albright advised that 77 cases are in the queue under the old regulations and if any of the 77 had pulled a County building permit or developed prior to entering, they would not pay many of the fees.

Mr. Friedline said he wanted to clarify the process for the 77 cases. He explained that if staff determined that annexation should be denied and the applicants want to go through the administrative process when the new policy is approved, the fees charged would be comparable to the fees for an annexation. Mr. Friedline stated that presently the applicants fall under “the old policy” and that a decision to enter into the new administrative process results in higher fees. He noted that this raises a question of timing or fairness. Mr. Friedline added that many property owners applied in order to avoid paying the higher fees under the new policy, which raises the issue of fairness: should the applicant pay fees that are equitable or should the fees be based on the date the case entered the queue?

Chairman Finter stated that although some policy changes may be implemented, he expressed the hope that fairness and equity would favor the applicants in any way possible so as not to overburden them as a result of a bureaucratic change.

Mr. Brady noted that future developments in the County that are constructed to City standards are likely to meet the City’s criteria for annexation.

In response to a question from Committeemember Richins, Mr. Brady stated that the applicants paid a fee when applying for annexation and that the Council could decide that a refund was appropriate in those cases where staff determined that the application did not qualify for annexation. He explained that the fees charged typically cover the costs of staff time.

Committeemember Richins expressed support for refunding the fee because of the turmoil involved in policy and Council changes

Mr. Brady commented that when a property owner seeks an application for annexation, all the information could be provided so that the applicant is made aware of the requirements for fire hydrants, etc.

Chairman Finter also said that he could support the possibility of issuing a fee refund. He expressed appreciation for the clarity that this major policy change could provide by allowing services without the property being annexed. He requested that staff provide a decision-making matrix for the 77 cases.

Responding to a question from Chairman Finter, Mr. Brady stated that the desired Committee action today would be to move forward with the proposal to allow staff administrative flexibility and discretion regarding the provision of utility services without requiring annexation. He added that current and proposed policy would continue to allow staff to review every application for annexation to determine whether the services can be provided. Mr. Brady suggested that staff could present to the Committee at a future meeting some options, such as the formation of special districts or improvement districts, for residents of County islands who would like to become part of the City, but are not able to do so because of issues related to fire hydrants. Mr. Brady said the message to County residents regarding annexation should be positive with the expectation that developments in the County should comply with City standards in order to facilitate annexation.

Chairman Finter said that the two key issues are allowing staff to have an administrative option and then identifying other tools that might facilitate the process for County residents.

Committeemember Jones suggested that the Committee direct staff to draft an appropriate ordinance that provides staff the flexibility to make a determination regarding utility service.

Mr. Brady clarified, and the Committee concurred, that an application that is submitted under the current policy would continue under that policy when that applicant meets the City's criteria for services and pays all the associated fees.

It was moved by Committeemember Jones, seconded by Committeemember Richins, that staff be directed to draft an ordinance for Council consideration that provides staff with administrative flexibility and discretion regarding the provision of utility services without requiring annexation.

Carried unanimously.

3. Discuss and make a recommendation to Council regarding the request from Joseph Rubanow and Matthew Schmitz for water and wastewater service outside the City limits in the 1400 block of North Crismon Road (Crismon Peaks).

Development Planning Analyst Beth Hughes-Omelas advised that the subject request for services has some unique situations that the applicant would like the Committee to consider. She said that staff has reviewed the request and proposed three options:

Option 1: Require the property owners to complete the annexation process prior to receiving City services. Staff recommends denial of annexation based on the conditions, the fact that the appropriate right-of-way dedication and road construction have not been completed, and there is non-compliance with the General Plan.

Option 2: Require the property owners to enter into a Utility Service Agreement for City water and wastewater service without annexation. The agreement would require payment of Utility Service fees, compliance with all of the City's development standards, payment of fees, extension of the utility lines, and the construction of the required public street improvements.

This option is consistent with the "Terms and Conditions for the Sale of Utilities," but the parcels are not in compliance with the General Plan.

In response to questions from Committeemember Richins, the applicant, Joseph Rubanow, said that four homes have been constructed and three vacant lots remain. He stated that utilizing the homes as assisted living facilities would be his "Plan B" if he was unable to sell the homes. Mr. Rubanow noted that it is difficult to sell homes priced at approximately \$1 million that have well water and septic systems. He added that the streets have been developed, except for Crismon Road, utilizing County permits.

Deputy City Manager Jack Friedline said that staff could not substantiate that the streets meet City standards, particularly the private streets that must meet City standards for Fire Department and Solid Waste vehicles.

Responding to comments by Mr. Rubanow, Chairman Finter suggested that staff complete their presentation, after which the applicant would have an opportunity to address the Committee.

Ms. Hughes-Omelas continued the presentation by noting that Option 2 would require development to City standards and that although the agreement could specify that the development would be for a single-family home subdivision in compliance with the General Plan, it would be difficult to enforce the agreement if the applicant opted to convert the homes to assisted-living facilities.

Option 3: Council has the option to modify the requirements listed in Option 2, as outlined in Section 23 (A) of the "Terms and Conditions for the Sale of Utilities."

Ms. Hughes-Omelas referred to the table titled, "Potential Revenue" (see Attachment 4), which lists the fees for the three options.

Chairman Finter requested that the applicant provide the Committee with a brief overview of his request.

Mr. Rubanow said that his efforts to sell these newly-constructed, luxury custom homes have been unsuccessful because buyers of million-dollar homes expect to receive City water and sewer services. He explained that if his "Plan B" for assisted living-facilities was implemented, he would address the concerns that the homes would be sold when the market rebounded by installing one meter to serve five homes and installing separate meters for each of the other two homes.

Committeemember Jones noted that the City's requirements for constructing the roadways to City standards are the same under Options 1 and 2.

Mr. Rubanow stated that he was willing to meet the City's requirements, and he expressed the opinion that the existing roadways were properly constructed.

Ms. Hughes-Omelas advised that staff has been working with Mr. Rubanow and his engineer in an attempt to identify the work that remains to be done.

Committeemember Jones explained that the City's standards must be met in order to receive water and sewer services, whether or not the property is annexed. He stated that annexation

would provide fire and police protection and garbage pickup, in addition to the water and sewer services. Committeemember Jones added that the City requires each home to have a separate meter.

Discussion ensued regarding the fact that Mr. Rubanow would be required to absorb the cost to bring the roadway up to City standards in accordance with the City's guidelines; to pay the costs to extend the sewer and water lines; and to be in compliance with all standards, including the General Plan.

City Attorney Debbie Spinner clarified that by requiring the applicant to annex into the City, the property would come into the City with comparable zoning, but the applicant would not be entitled to have an assisted living facility unless the applicant applies for and receives approval for a rezone and a General Plan amendment. She added that by entering into a Utility Service Agreement (Option 2), the applicant would have to initiate the County zoning process for an assisted living facility. Ms. Spinner added that Option 2 would also require a modification to the Terms and Conditions to allow the applicant to receive water and sewer with the understanding that the applicant may not be in compliance with the General Plan.

Committeemember Jones expressed the opinion that the Council was not likely to support the use of the property for assisted-living facilities. He suggested that the applicant annex into the City and invest in the improvements in order to meet City standards.

Chairman Finter noted that the Zoning Code does not permit assisted living or group homes within 1,200 feet of each other, and therefore he would not support an annexation request

Committeemember Jones clarified that his suggestion for annexation was for use as residential property only and that he would not support the property being utilized for an assisted living facility.

In response to a question from Planning Director John Wesley, Mr. Rubanow advised that there are no assisted living facilities on his property at the present time.

Ms. Spinner advised that staff, as outlined in the ordinance, is required to annex the property, if possible. She said that if the applicant requests water and sewer or other City services without annexation, staff is then required to present the issue to the Committee for a recommendation to the full Council.

Responding to comments regarding fire protection, Mr. Brady confirmed that the City would not be a first responder to a request for fire or police protection without annexation into the City. He added that if a request was received from within the County, service could be provided as a part of mutual aid. He requested that staff outline the other fees that would be applicable.

Ms. Hughes-Omelas explained that the Utility Service Agreement has a Utility Service fee equal to the impact fees that are assessed within the City limits. She said that the Annexation Equity fee would not apply because the fee was not in place when Mr. Rubanow made his application.

Further discussion ensued relative to the fact that Option 2 requires the applicant to improve the roadways.

Mr. Friedline stated that the applicant would not pay the Utility Service fee (\$24,094) if the property is annexed into the City and therefore, Option 1 is more economical based on the existing land use.

Committeemember Richins expressed support for Option 1.

Chairman Finter said that he favored Option 2, and he stated the opinion that when the utility services are in place, the homes are likely to be sold.

Committeemember Jones stated that he supported Option 1 with a provision that the existing zoning remain in place and that the development complies with all applicable City standards.

Mr. Rubanow explained that he has received approval from the County for one assisted living/group home, but he has not yet been licensed.

Mr. Friedline advised that under Option 1, the City controls the zoning.

Mr. Wesley stated that the comparable zoning of R1-35 would apply if the property were annexed, which is consistent with the General Plan in the area. He added that although he would have to check, he believed it would be possible for the applicant to have one assisted-living home, but that the 1,200 foot limitation would exclude additional homes.

In response to a question from Chairman Finter, Mr. Rubanow said that without water and sewer service, he is unable to sell the homes. He added that the costs for annexation are quite high.

Mr. Brady addressed Mr. Rubanow and explained that the Committee is reluctant to approve an option that would result in more than one assisted-living/group home. He said that Option 1 would allow for one home, but a recommendation for Option 2 could result in more than one assisted-living home in the area.

Chairman Finter said that the Committee recognized the difficult circumstances faced by the applicant, but he noted that members of the Committee are concerned regarding the possibility of multiple assisted-living homes in the area.

Committeemember Jones said he favored Option 1 with the condition that City standards be met.

Mr. Brady stated that both Options 1 and 2 require the applicant to comply with City standards.

Ms. Spinner advised that the property would be in non-conformance with the General Plan because the applicant plans to have more than one assisted-living facility.

It was moved by Committeemember Jones, seconded by Committeemember Richins, to recommend to the Council approval of Option 1 for water and wastewater service for the 1400 block of North Crismon Road (Crismon Peaks) and that a condition of annexation is compliance with City Codes and standards under the current policy.

Carried unanimously.

4. Adjournment.

Without objection, the Transportation and Infrastructure Committee meeting adjourned at 5:00 p.m.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Transportation & Infrastructure Committee meeting of the City of Mesa, Arizona, held on the 8th day of September 2008. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK

pag/baa

Attachments (4)