

# TRANSPORTATION & INFRASTRUCTURE COMMITTEE

March 19, 2007

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 March 19, 2007 at 3:31 p.m.

COMMITTEE PRESENT

Kyle Jones, Chairperson  
Rex Griswold  
Scott Somers

COMMITTEE ABSENT

None

STAFF PRESENT

Debbie Spinner  
Jack Friedline

1. Items from citizens present.

Chairman Jones noted that agenda item number 1 is "Items from citizens present." He said that the Committee would hear public comment at this time and that anyone wishing to address the Committee at the end of the meeting would have an opportunity to do so.

Scott Grainger, 4135 East Fairview Circle, Chairman of the Summer Mesa Homeowners' Association (HOA) Irrigation Committee, addressed the Committee regarding a request for the City's endorsement of their application to Maricopa County relative to the formation of an Irrigation Water Delivery District (IWDD). He noted that the Committee would address this topic under agenda item number 5, and he explained that an IWDD would enable their HOA to fund repairs to their irrigation delivery system through a County tax assessment. Mr. Grainger said that State law requires that the City adopt a resolution in support of Summer Mesa's request for County approval to form an IWDD.

2. Discuss and make a recommendation to Council regarding the request from Terra Verde Land Management, LLC for water and wastewater service outside the City limits at the southwest corner of East Main Street and South 97<sup>th</sup> Street.

Chairman Jones declared a potential conflict of interest and stated he would refrain from discussion/consideration of this agenda item. He yielded the gavel to Committeemember Griswold for action on this agenda item.

Deputy City Manager Jack Friedline outlined the terms and conditions applicable to this request, which is based on a 2002 agreement between the City and the developer. He stated that staff recommends Option 3 (see Attachment 1).

In response to a question from Committeemember Somers, Mr. Friedline confirmed that the applicant is responsible for the installation of sidewalks, curbs, gutters and streetlights.

Responding to a question from Committeemember Somers, Michael Brungard of Wood/Patel & Associates, speaking on behalf of the applicant, said that the development would adhere to the City of Mesa's fire protection standards. He stated that sprinkler systems would be installed in the 39 townhome units and that fire hydrants would be located throughout the complex.

It was moved by Committeemember Somers to recommend to the Council that staff's recommendation for Option 3 (see Attachment 1) be approved.

City Attorney Debbie Spinner advised that Options 2 and 3 include a stipulation requiring the applicant to sign a general release of all claims against the City regarding this issue. She explained that the applicant has a lawsuit pending against the City relative to waiving provisions of the General Plan. Ms. Spinner suggested that the motion include a reference to the requirement.

Committeemember Somers amended his motion to recommend to the Council that staff's recommendation for Option 3 (see Attachment 1), including a requirement that the applicant sign a general release of all claims against the City, be approved.

Committeemember Griswold seconded the amended motion and expressed support for the project. He indicated a preference that properties receiving City services be annexed, and he added that in the future the Council could consider adopting the City of Glendale model regarding annexation agreements.

Ms. Spinner, noting that the Council has not chosen to adopt the Glendale model, stated that the Council could request that a discussion of the Glendale model be scheduled for a future meeting.

Committeemember Griswold called for the vote.

Upon tabulation of votes, it showed:

AYES – Griswold-Somers  
NAYS – None  
ABSTAIN – Jones

Committeemember Griswold declared the motion carried unanimously by those voting.

Committeemember Griswold yielded the gavel back to Chairman Jones.

3. Discuss and make a recommendation to Council regarding the request from Rick Johnson for water service outside the City limits at the northeast corner of Oasis Street and 79<sup>th</sup> Street.

Mr. Friedline reported that Rick Johnson is requesting water service to a single-family custom home on property in the Desert Uplands area, which is not contiguous to City of Mesa boundaries and therefore ineligible for annexation. He said that staff recommends Option 2 (see Attachment 2) as a reasonable alternative. Mr. Friedline noted that the "payment-in-lieu" street construction costs of \$100 per linear foot were revised to an estimated \$85 per foot for a

“suburban ranch” type of street with a ribbon curb that is characteristic of the Desert Uplands area. He reported that the revised estimate reduces the one-time fees from \$23,694 to approximately \$20,650 and that Mr. Johnson has agreed to the fees.

In response to a series of questions from Committeemember Somers, Mr. Friedline said that the City maintains the collected funds in an “in-lieu” account until the street is constructed. He stated that staff has been more proactive in conducting physical inspections to verify that future street alignments will require asphalt construction. Mr. Friedline added that staff cooperates closely with the County and encourages them to install dustless surfaces although the County has no requirements in place relative to paving roadways.

Development Services Director Christine Zielonka advised that the County funds the construction of asphalt roadways without imposing assessments on the owners of existing homes.

It was moved by Chairman Jones, seconded by Committeemember Somers, to recommend to the Council that staff’s recommendation for Option 2 (see Attachment 2) be approved.

Carried unanimously.

4. Discuss and make a recommendation to Council regarding the request from David E. Willard for water service outside the City limits at 7711 E. Plymouth.

Mr. Friedline stated that Mr. Willard is seeking a variance to the obligation for right-of-way improvements required by Mesa’s City Code. He explained that staff responded to Mr. Willard’s first request for water service in March of 2005 (see Attachment 3). Mr. Friedline reported that no further contact occurred until the City received a second request from Mr. Willard in January of 2007 and that staff’s response (see Attachment 4) to the second request, based on the current Code requirements that require offsite improvements, estimated the fees at \$64,981. He said that as the result of an on-site inspection conducted by Deputy Building Safety Director Tammy Albright, staff determined that improvements to North 77<sup>th</sup> Street would not be required, which eliminates approximately \$30,000 from the 2007 estimate. Mr. Friedline added that staff recalculated the costs for East Plymouth Street based on the “suburban ranch” type of construction at \$85 per linear foot rather than \$100 per linear foot. He advised that staff is recommending Option 3 (see Attachment 5) with a reduction in the “right-of-way payment in lieu of construction of improvements” from \$60,000 to approximately \$26,000. Mr. Friedline noted that his only concern relative to mitigating the cost of these improvements would be a decision by the applicant to divide the 2.14-acre parcel at a future date.

Discussion ensued relative to the fact that this request is for water service only; that the City is requesting that the applicant contract for the construction of East Plymouth Street rather than paying the in-lieu costs to the City; and that Mr. Friedline’s opinion was the applicant may be able to obtain lower bids for the street construction than the estimates provided by staff.

In response to a question from Committeemember Griswold, Ms. Albright advised that Mr. Willard’s property currently qualifies for water service under Section A. She stated that Mr. Willard’s objection to paying the development fees is the reason Committee consideration of the application is required. Ms. Albright explained that if Mr. Willard contracted for the construction of the roadway and then decided at a future date to split the lot, staff could address the

application for water service to the new lot for a home. The new lot would be required to comply with the City standards as far as size, General Plan compliance, etc.

Responding to a question from Ms. Spinner regarding the impact of a lot split on 77<sup>th</sup> Street, Ms. Albright advised that it would fall under the Subdivision Regulations. She further advised that the property owner to the west is exploring development options, one of which is the reconfiguration of the lots in order to eliminate any frontage on 77<sup>th</sup> Street. She noted that this would negate a requirement for 77<sup>th</sup> Street in that area.

It was moved by Committeemember Griswold to recommend to the Council that staff's recommendation for Option 3 (see Attachment 5) be approved.

In response to a question from Chairman Jones, Mr. Friedline advised that staff suggests that Option 3 include a requirement for a half street improvement of a "suburban ranch" type construction, which consists of 24 feet of asphalt with a ribbon curb.

Committeemember Griswold amended the motion to recommend to the Council that staff's recommendation for Option 3 (see Attachment 5), including a requirement for a half-street improvement of a "suburban ranch" type construction, be approved.

Chairman Jones seconded the amended motion.

David E. Willard, the applicant, came forward to address the Committee and stated that he is requesting that the City adhere to the fees outlined in staff's original communication dated March 16, 2005. He explained that he purchased the land and obtained a construction loan based on the fee information provided by the City. Mr. Willard said that his construction loan does not include an extra \$30,000 for the cost of the half-street improvement, and he stated the opinion that he performed due diligence with regard to this issue. He added that the requirement for street improvements could delay construction of the home beyond the term of his loan, which would result in increased fees and costs.

Committeemember Griswold stated that based on the information presented by Mr. Willard and with the concurrence of the seconder, he would withdraw the motion.

Mr. Friedline advised that providing City water service to Mr. Willard's property is contingent on the applicant complying with the City's terms and conditions. He explained that prior to the 2006 Code change, developers in the County requesting City services were required to enter into development agreements that provided for the payment of fees at a future date when the property was annexed into the City. Mr. Friedline said that based on legal advice and the difficulty of collecting the fees subsequent to providing service, the requirements were changed by Council action in 2006. He noted that the price of each home purchased in the City of Mesa includes development fees, and he stated the opinion that Mesa homeowners should not be required to subsidize the cost of new development.

Responding to a question from Chairman Jones, Ms. Albright noted that the Code changes adopted in 2006 implemented a requirement that single-family homeowners located in the County who request City services pay for off-site development fees.

In response to a request from Chairman Jones for a legal opinion regarding the City's obligation to Mr. Willard, Ms. Spinner advised that the estimate provided to Mr. Willard in 2005 was non-

binding. She stated the opinion that the Committee could recommend maintaining the fees at \$60,000, reducing the fees to \$30,000 or imposing the original \$3,600 in estimated fees, if the Committee determined that the recommended action serves the best interest of the City of Mesa.

Mr. Friedline responded to a question from Chairman Jones by advising that the other options available to Mr. Willard are the installation of a well, if that is possible on the site, or utilizing a water tank.

Chairman Jones noted that the street construction would be required in the future, and he added that the City would incur the expense if the costs of the improvements were not addressed at this time.

Mr. Friedline stated the opinion that staff has made every effort to mitigate Mr. Willard's costs with regard to this project.

Mr. Willard stated that the construction of a roadway was in his best interest, and he inquired about the possibility of the City deferring the construction requirement until he obtained his permanent loan.

Ms. Spinner advised that State law mandates that the only legal reason for terminating City services is non-payment of charges. She suggested that the City Attorney's Office could research the possibility of including a clause in the Utilities Agreement that states that the property owner understands and agrees that a failure to pay the in-lieu costs would result in the termination of service. Ms. Spinner added that she could not provide assurances at this time that such an agreement would be legally enforceable.

Committeemember Griswold suggested adding a clause to the agreement to address the possibility that the parcel could be sold or subdivided before the off-site improvements are in place and include a stipulation that the City would receive the in-lieu fees from the sale proceeds. Committeemember Griswold noted that although he was confident Mr. Willard would meet the terms of an agreement, certain protections should be in place for the City.

Committeemember Somers said that he is obligated to represent the best interests of the citizens of Mesa and to ensure that the City is not burdened to pay for the cost of the roadway. He expressed support for Option 3 with direction to staff to develop a method of deferring the roadway construction or the applicant's payment of the in-lieu costs to a future date.

It was moved by Committeemember Somers to recommend to the Council that staff's recommendation for Option 3 (see Attachment 5), including a condition that a binding agreement prepared by the City Attorney's Office is executed between the City and the applicant that enables the applicant to defer the in-lieu costs or construction of the road, be approved.

In response to a question from Chairman Jones, Ms. Spinner advised that staff would make a timely effort to develop an agreement that protects the City's interests and defers the applicant's in-lieu costs or roadway construction requirement to a future date.

Committeemember Griswold seconded the motion.

Carried unanimously.

5. Discuss and make a recommendation to Council on whether the City should form Irrigation Water Delivery Districts within City boundaries.

Water Resources Coordinator Kathryn Sorensen displayed a PowerPoint presentation (a copy is available for review in the City Clerk's Office) to provide an overview of Irrigation Water Delivery Districts (IWDD), which are special taxing districts included in the Arizona Revised Statutes. She explained that although certain lands are entitled to receive water directly from the canals, the Salt River Project (SRP) and the Roosevelt Water Conservation District (RWCD) are not responsible for the infrastructure that delivers the water. Ms. Sorensen advised that various methods are available to address the cost and maintenance of the infrastructure, including payment by individuals, neighborhoods, homeowner associations (HOA) and IWDDs. She reported that official City endorsement is required in order for an entity to receive County approval to form an IWDD within the City's boundaries.

Ms. Sorensen stated that three IWDDs presently exist within the City of Mesa's boundaries (Tanner Groves, Groves of Superstition Ranch and Groves of Hermosa Vista), none of which ever received a City endorsement. She noted that the City no longer has recourse with respect to the IWDDs and that only the State of Arizona could challenge their formation. Ms. Sorensen advised an IWDD has the legal authority to levy assessments and charge delivery fees, the amounts of which are unregulated. She outlined the following implications of forming an IWDD:

- No effect on water rights.
- Property owned or used by IWDDs is exempt from taxation when utilized for district purposes.
- IWDDs may use public roads for rights-of-way (any dispute between the City and an IWDD would be resolved by the Corporation Commission).
- IWDDs can exercise the power of eminent domain (the extent of this power is uncertain and relatively untested).

Ms. Sorensen advised that although Council action to approve or not approve an IWDD would incur no costs to the City, the district has the potential to be exempt from a future primary or secondary property tax and City of Mesa property located within a district could be subject to assessments.

Ms. Sorensen stated that staff has researched several questions posed by the Committee at a previous meeting in regard to Summer Mesa's request for a City of Mesa endorsement of their efforts to form an IWDD. She reported that Summer Mesa's irrigation delivery infrastructure is completely separate from other systems.

Utilities Attorney Bill Taebel addressed the issue of eminent domain and advised that an IWDD would have the power of eminent domain on properties outside of the district.

Ms. Sorensen said that in researching the issue with Maricopa County, she was advised that the City of Mesa owns property within the Groves of Hermosa Vista IWDD and that the City and the County have been in a dispute regarding the payment of assessments. She reported that the City recently paid the assessments under protest. Ms. Sorensen said that the IWDD could terminate water service to property owners who refuse to pay the assessment. She stated that

the City of Mesa does not own any property in the proposed Summer Mesa IWDD and that a property owner could be exempted from an IWDD subject to approval by the IWDD Board.

In response to a question from Chairman Jones regarding the possibility that a City endorsement of an IWDD include a condition that excludes City property from the district, Ms. Spinner stated the opinion that after the district was formed, the City could then petition an IWDD governing board for an exemption.

Mr. Taebel said that the Arizona Revised Statutes includes several types of special taxing districts, and that a Maricopa County attorney advised that the County would not accept a City's conditional endorsement for a special taxing district.

Responding to questions from Chairman Jones regarding the use of eminent domain in right-of ways, Mr. Taebel advised that the IWDD would be responsible for returning the right-of-ways to the original condition. He added that any dispute regarding this issue would be addressed by the Corporation Commission. Mr. Taebel stated that he is unaware of another instance where the Corporation Commission has regulatory authority over a City, and he added that he has no knowledge that the Corporation Commission has ever addressed this type of case.

Ms. Sorensen reported that at least forty IWDDs have existed in the Valley without problems for a number of years. She noted that many areas in Mesa that are eligible to form an IWDD have installed xeriscape landscaping and are not likely to return to irrigation. Ms. Sorensen added that several Valley cities that recently received IWDD applications are delaying their decisions until the City of Mesa takes action.

Scott Grainger, Chairman of the Summer Mesa Homeowners' Association (HOA) Irrigation Committee, said that Summer Mesa did not anticipate that their request would establish policy for the City of Mesa or other cities in the Valley. He stated the opinion that a special taxing district is the most efficient manner in which to address their irrigation infrastructure improvements. Mr. Grainger advised that he did not envision any situation in which the IWDD would utilize the powers of eminent domain. He said that the formation of an IWDD would enable Summer Mesa to pay for the irrigation system repairs in an efficient manner.

Chuck Brown, President of the Summer Mesa HOA, stated that their irrigation system infrastructure is almost thirty years old and that their HOA would experience difficulty collecting the assessments necessary to fund a major repair.

Ms. Sorensen noted that many existing irrigation systems have aging infrastructure, which could generate additional requests for future endorsements of IWDDs.

Committeemember Griswold concurred that many neighborhoods are encountering problems with aging irrigation systems, and he noted that when a system fails, the accumulated water could damage City streets. He stated that although he would consider other comments on the issue, he held the opinion that Summer Mesa was pursuing a reasonable approach by forming an IWDD.

Mr. Grainger advised that their impact statement addresses the problem of water accumulating in the streets. He expressed the opinion that the formation of an IWDD would enable Summer Mesa to improve their control of the irrigation system.

Chairman Jones noted that the existing HOA has the power to collect the necessary funds. He expressed concern relative to providing taxing authority to a small group of individuals, and he stated that he was opposed to the City endorsing the formation of IWDDs.

Mr. Taebel advised that the Arizona Revised Statutes require the IWDD board to prepare and submit to the County an estimate of annual expenses on which the tax rate is based. He said he was unaware of any County requirement that the taxes be received in advance of the disbursement of funds to the IWDD. Mr. Taebel noted that the State Statutes also require that the IWDD Boardmembers be bonded and that the books be audited on a regular basis by an independent entity.

Ms. Sorensen stated that the County accepts the statement of annual expenses as presented by an IWDD Board and allocates the assessment among the property owners. She added that the IWDD board also has the power to impose a delivery charge and to establish the amount of the charge.

In response to a question from Committeemember Somers, Mr. Grainger and Mr. Brown concurred that approximately ten to fifteen percent of the Summer Mesa property owners fail to pay their assessment fees.

Ms. Sorensen advised that staff was seeking policy direction regarding the formation of IWDDs in addition to consideration of Summer Mesa's request for the City's endorsement.

Chairman Jones stated the opinion that the Committee's action on this item would be setting a precedent.

It was moved by Committeemember Somers, seconded by Committeemember Griswold, to recommend to the Council that the formation of Irrigation Water Delivery Districts be approved.

Committeemember Griswold stated that although he offered a second to the motion, he might not support the formation of IWDDs when the matter is considered by the Council. He added that he favors a full Council discussion of the issue.

Mr. Brown advised that four Summer Mesa property owners who do not receive irrigation also support the proposed IWDD for the reason that the problems associated with the aging infrastructure affect all property owners.

Chairman Jones called for the vote.

Upon tabulation of votes, it showed:

AYES –           Griswold-Somers  
NAYS –           Jones

Chairman Jones declared the motion carried by a majority vote.

Chairman Jones thanked staff and the representatives of Summer Mesa for their participation in the discussion of this issue.

6. Adjournment.

Without objection, the Transportation & 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 and Infrastructure Committee meeting of the City of Mesa, Arizona, held on the 19th day of March 2007. 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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Attachments (5)