

COUNCIL MINUTES

June 12, 2003

The City Council of the City of Mesa met in a Study Session in the lower level meeting room of the Council Chambers, 57 East 1st Street, on June 12, 2003 at 7:30 a.m.

COUNCIL PRESENT

Mayor Keno Hawker
Rex Griswold
Kyle Jones
Janie Thom
Claudia Walters
Mike Whalen

COUNCIL ABSENT

Dennis Kavanaugh

STAFF PRESENT

Mike Hutchinson
Debbie Spinner
Barbara Jones

(Mayor Hawker excused Vice Mayor Kavanaugh and Councilmember Whalen from the meeting. Councilmember Whalen arrived at the meeting at 7:35 a.m.)

1. Discuss and consider issues associated with property zoned R-3 at the southeast corner of Elliott and Power Roads.

Project Manager for Williams Gateway Regional Economic Activity Area Wayne Balmer addressed the Council relative to this agenda item. He advised that staff is seeking direction and clarification relative to an issue that has come up lately regarding both zoning and the General Plan. He displayed maps in the Council Chambers and provided a brief historical overview of this issue. Mr. Balmer noted that the property under discussion is located at the southeast corner of Elliot and Power Roads and is currently a field. He said that in 1999, the City Council approved a development master plan for this property that called for commercial on the corner, apartments in the center, and industrial uses on the south side of the property. Mr. Balmer stated that at the time the Council approved the master plan, discussion occurred relative to how the property might be affected by Williams Gateway Airport and the noise from the airport. He added that the map reflects the 65 and 60 DNLs for the noise contours for the airport. Mr. Balmer added that when the Council approved the zoning, they indicated that the development plan, as contained in the packet, was not the final plan and that each applicant would be required to seek development approval because these were conceptual approvals of the plans.

Mr. Balmer reported that the property has remained vacant since 1999 until now and added that last year, a new General Plan was developed and significant discussion took place regarding the proximity of residential development to Williams Gateway Airport. He explained that the General Plan Committee decided to divide the "mixed use" designation into two designations, one which continued to allow 30% of the property to be used for residential purposes (Mixed

Use/Residential) and one that did not (Mixed Use/Employment). He stated that the property in question is designated "Mixed Use/Employment" and as a result, the zoning plan approved in 1999 is no longer consistent with the City's General Plan.

Mr. Balmer reported that Ruiz Engineering is now proposing to develop a 348-unit apartment complex on the R-3 portion of the property and that they have initiated the process of filing for Site Plan Approval for their proposed new project. He explained that at the time of their pre-application conference, they were made aware of the conflict between their existing zoning and the new General Plan.

Mr. Balmer discussed the Paloma Estates subdivision, which is located less than a mile northeast of the site, and said that in that case, the applicant was proposing to subdivide a 26-acre property zoned R-1-43, but shown in the new General Plan as "Mixed Use/Employment," into 21 residential lots. He commented that in that case, the City Council directed staff to initiate rezoning of the property to M-1, limited industrial, in order to make the zoning consistent with the General Plan. Mr. Balmer also stated that staff was further instructed to initiate rezoning on all the other parcels currently zoned R-1-43 in the vicinity of Williams Gateway Airport with the goal being that there would be no additional residential development in the areas near the ends of the airport runways. He added that given the prior Council direction, staff is requesting additional clarification on how to proceed in this case.

Mr. Balmer informed the Council that the applicant is present as well as his attorney, Sean Lake, and they will be happy to respond to questions regarding this item. He stated that the question staff would like Council clarification on is "What do we do with the property now?" He inquired whether they should propose, as Alternative One, that they rezone the property to be consistent with the City's General Plan, or Alternative Two, designate the existing R-3 zoning as "nonconforming" by virtue of the history of the property and allow the zoning to remain, or Alternative Three, initiate a General Plan Amendment to designate the property as Mixed Use/Residential.

Mayor Hawker commented that legal discussions took place because there was residential development in that area and they talked about what was vested zoning and what was not. He stated that a decision was made by the Council to look at those residential areas and do zoning initiated by the City to bring them into conformance with the General Plan. He added that this situation is a little more unique in that there was a zoning case that was brought forward in 1999. Mayor Hawker said he had some questions as to whether there is a difference between owner-occupied single family residential versus apartments and in individuals able to move out because they did not possess ownership of the parcel. He noted that Mark Meyers said he would conduct research with regard to other airports to determine whether there was a difference in single family versus apartments, and asked him to come forward at this time and present his findings.

Airport Director Mark Meyers said in looking at the noise study that Williams Gateway has conducted, there seems to be some indication that there is a difference. He stated that Scottsdale's noise study indicates that there is less sensitivity to single family than there is to apartments. He added that there seems to be a little bit of a persuasion that because of the transitory nature of apartments and the lack of equity in an apartment complex, that if you had to choose between the two, apartments would probably be the better choice of the two uses.

Sean Lake, 10 West Main Street, an attorney representing the applicant, stated that Ruiz Engineering intentionally selected this site because they want to be at that location, they recognize the proximity of the airport and also understand that the site will be an economic hub with many students and jobs, and that they feel it is important to have housing opportunities near that economic hub. He added that they believe this to be an excellent site and have done a lot of due diligence in preparation for acquiring the site and working with the State on some bonds for the development of the site. Mr. Lake commented on the extensive discussions that took place between the applicant and the City prior to becoming involved in the site and stated the opinion that a great deal of difference exists between this and the Paloma Estates situation because of the apartment nature of development versus single family development. He said that because of that distinction they believe, as the Council did in 1999, that there is a difference and this is an appropriate land use at this location and one that can be very successful. He also noted that people who do not want to live near an airport have the ability to move to a more suburban location, but added that a lot of people simply don't care.

Discussion ensued relative to noise attenuation measures that would be included as part of the project and public disclosure that will take place.

Mr. Lake expressed the opinion that the proposal represents a compatible land use and asked the Council to maintain consistency regarding their decisions.

In response to a question from Mayor Hawker relative to an application for Federal Bond Cap Funds for the development of the site for affordable housing, Mr. Lake advised that the application has been accepted and the bonds have been issued and deposited. He emphasized that they are a lot further down the line and the bonds are not transferable at this stage. He said that bonds are transferable prior to them being issued, but in this instance, they have already been issued.

Mayor Hawker stated that there appeared to be some conflicts in legal opinions regarding this matter (outlined in a letter dated October 15, 2002 contained in the Council's packet) and asked Deputy City Attorney Joe Padilla to address this issue. Mr. Padilla advised that the letter was issued as the result of the question of whether or not they could require a property owner to come back and do a General Plan Amendment when he already had existing zoning. He stated that an opinion was issued that there was no mechanism in place to require a property owner to submit his own General Plan Amendment if he had his existing zoning, and added that the property owner could build in conformance with that zoning. Mr. Padilla commented that this particular property does not have vested rights and they are not alleging that they have vested rights to the R-3 zoning. He said that the Council action, if it decides to move forward, would be to direct staff to initiate a rezoning. He added that this would not be in violation of the property owners' vested rights or a violation of any State or City ordinance.

Mayor Hawker commented on the fact that the previous zoning allowed for a 30% residential component and that is what they are proposing at the current time with the R-3. He said that if they went forward without going back through a rezoning, then they could go ahead and build that without doing a General Plan Amendment. Mr. Padilla concurred with the Mayor's statement.

Mr. Balmer noted that staff is currently involved in the annual update to the Plan and those items are up for comment now. He said that if the Council elects to move forward with this, staff

would propose that they modify the property back to "Mixed Use/Residential." He added that they could do so in this cycle and it would come forward with all of the other applications to enable the Council to review them simultaneously.

Further discussion ensued relative to timeframes; the fact that a General Plan Amendment is not needed for the applicant to build what they were already approved for in 1999, and the fact that a General Plan Amendment could be done this year or next year and it will not affect their schedule.

In response to a question from Councilmember Walters relative to why they are bringing this issue forward, Mr. Lake stated that they have filed an application with the City and have been working with staff for several months now through the pre-application process. He added that they have also filed a formal application for Site Plan approval for this site to be developed consistent with the zoning.

Councilmember Walters commented that when she looks at this, she doesn't see an issue with having apartments at this location. She said she understands the thought process that went on with the previous Council, but stated that it is not the same for her in terms of single family residential. She added that she is comfortable in allowing the applicant to move forward with this.

It was moved by Councilmember Walters that the applicant's request for the development of property zoned R-3 at the southeast corner of Elliott and Power Roads be approved.

In response to a question from Councilmember Griswold, Mr. Lake said that to the best of his recollection, in 1999 discussion took place regarding this, both at Planning and Zoning and Council meetings, and it was determined that with the proper disclosure and noise attenuation measures, that this is a compatible land use. He added that the applicant has followed through on those discussions by preparing a disclosure that will be given to each of the residents who locate or choose to live at this apartment complex.

Councilmember Griswold stated the opinion that it is important to remain consistent, and for that reason he will support the motion.

Mayor Hawker said that he was going to remain with the Master Plan designation on this parcel for "Mixed Use/Employment" and stated that the site is so close to the exit corridors and south of the power lines, where he said he doesn't believe there is a big enough difference between owner-occupied and apartments as far as the number of complaints. He commented on low flights over the area on every single take-off and noted that it is a mile and three quarters off of the end of the runway. Mayor Hawker stated the opinion that this is a "problem waiting to happen" if the City allowed apartments to go in and said he would not vote in support of the project. He added that he believes this is similar to Luke Air Force Base and stressed that the City has the opportunity to do this once and do it right. Mayor Hawker also emphasized that this is going to be a major employment center and should not have residential units mixed in with it. He suggested that the City go through a re-zoning process, similar to the other one, and change the designation from "Mixed-Use/Residential" to "Mixed-Use/Employment" before the applicant has vested rights in the property.

Councilmember Whalen asked whether this specific site was discussed during the General Plan Update, and Mr. Lake clarified that he had attended many of those meetings, but does not recall any discussions pertaining to this location. He added that there were discussions regarding the area, but not this specific site.

In response to a question from Councilmember Whalen, Mr. Padilla stated that if the Council denies the case and the applicant decides to litigate, the possibility exists that the City could be tied up with this matter for less than a year.

Councilmember Whalen seconded the motion.

Councilmember Thom discussed difficulties associated with living with decisions rendered by previous Councils. She said her dilemma is that this is already zoned for residential, but it is not in what she would consider a good location. She added that one of her biggest concerns is that if Council allows this project to go forward, they will in the future have other property owners coming forward with more plans for residential that will have a very negative effect on the airport. She commented on the fact that when they discussed this issue previously, they had talked about the possibility of including some commercial development and said she was really hoping that there would be some compromise.

Mr. Lake said that the applicant is asking that the proposal proceed forward with the approved plan, which shows commercial development on the corner, and assured the Council that ample commercial development will exist at the site.

Councilmember Thom said that she usually leans in the direction of what the property owners want, but added that in view of the fact that this is so close to the end of the runway and presents noise, safety and precedence setting issues, she would not vote to approve the applicant's request.

Councilmember Jones said that despite the disclosure regarding noise and noise attenuation efforts, he cannot understand how people could be comfortable living at this site. He also questioned whether the renters will actually read the disclosure form and comprehend it.

In response to a question from Councilmember Jones, Mr. Lake clarified that the apartment leases would typically run for a one-year timeframe.

Mr. Lake said he believes the wrong impression is being given that airplanes are going to be flying over the apartments and creating extremely loud noises. He noted that the proposed site is outside of the 65 DNL line, which has been identified as "no residential within that line," and added that it is outside the 60 DNL line as well. Mr. Lake stated that this noise level is typically associated with a freeway and that apartments are located next to freeways quite often.

Councilmember Jones said that he recognizes the actions previously taken and the unique zoning issues associated with this case, and for those reasons he will vote in support of the request. He noted, however, that he does have serious reservations about people living that close to the end of the runway.

In response to a request for input from Mayor Hawker, Mr. Meyers clarified that what he sees as a national trend is overall time weighted noise, which is the DNL, and commented that is what

the FAA has used traditionally to protect airports. He added that the single event seems to be coming up more and more and that is that someone will be okay with the overall noise. He said that looking at noise coming from streets is an interesting issue and he would like to know how it relates to the overall time weighted noise, but reiterated that it is the single event that seems to be getting the attention today.

In response to a question from Councilmember Whalen as to the possibility of developing a hotel on this site, Mr. Lake stated that excellent opportunities exist for hotels in this area. Councilmember Whalen commented that if you look at any major airport in the country, there are hotels, including many five star hotels, next to landing aircraft. He added the opinion that the City needs a retail center at this site to buffer the Town of Gilbert because it is currently building across the street.

In response to a question from Councilmember Walters, Mr. Padilla stated that liability for building at the end of the runway may or may not attach, depending on whether or not it is built in conformance with FAA height restrictions, local City ordinances and applicable safety requirements. He stated the opinion that the answer is unpredictable.

City Attorney Debbie Spinner said that assuming the City is complying with FAA regulations with regard to height and distance from the runway and in compliance with the standards that are in existence at this time, there should not be any liability associated with the Council allowing the construction to move forward.

Additional discussion ensued relative to the fact that the City builds in accordance with FAA requirements, and the fact that funding that is coming forward for the purchase of property by Luke Air Force Base is actually coming through the State and the Federal government.

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Walters-Whalen
NAYS - Hawker-Thom
ABSENT - Kavanaugh

Mayor Hawker declared the motion carried by majority vote.

2. Hear a Legislative Update.

Assistant to the City Manager/Intergovernmental Relations Assistant Jim Huling addressed the Council and said that they are now in day one of the 100-day session. He reported that the Legislature passed the State budget last night and said that he wanted to apprise the Council regarding some of the direct impacts the budget may have on the City of Mesa. Mr. Huling explained that the State Senate released its budget which contains a provision requiring the courts (municipal and county) to turn over to the State's General Fund 75% of their baseline court collections for Fiscal Years 2002/2003. (Up to a total of \$45 million). He advised that to put this into perspective for Mesa, it is staff's estimate that this year, the City will receive \$6.9 million that will be retained for the City's General Fund and that next year the amount should increase by an additional \$250,000. Mr. Huling added that based on the Senate's budgetary provision, it is anticipated that Mesa will turn over approximately \$187,500 to the State next year and thereafter 75% of any increase over the baseline amount.

Mr. Huling commented that staff met with Legislators last Friday in an all-day meeting. He reported that although the elected officials were receptive to the City's dilemma, they indicated that this was a carefully crafted deal and they were amenable to modifying it as part of either further legislation, a Special Session the beginning of next year, or what is called the Trailer Bill. He explained that the Trailer Bill, which is currently on the Governor Napolitano's desk, would be passed this session in an effort to correct a series of budgetary issues that have been identified. Mr. Huling also stated that with regard to the court bill, it would allow cities and counties to have a 7% increase in their normal growth rate and that the State would take 75% of anything above that rate. He added that the City of Mesa is not growing at a 7% growth rate currently, but said that it does not mean that it could not occur in any given year.

Mr. Huling informed the Council that staff is also evaluating other items in the Trailer Bill that could be of a concern to the City including the granting of \$10 million to community colleges in FY 2005 in an effort to restore their growth; a change in the eligibility determination for individuals with indigent health care so that they would not have to apply every six months, and an increase in defensive driving fees and judicial filing fees which would be used to offset the \$45 million that the State would receive from the local courts. He stated the opinion that the most controversial provision that could cause the Trailer Bill to become vetoed would be the addition of a sales tax factor for corporate, multi-state companies on the corporate income tax provision. Mr. Huling added that this would result in an estimated \$5 million tax break which has been vigorously opposed by the Governor's Office.

Mr. Huling further advised that ADOT has expressed concern that the Legislature's budget restricts the manner in which their funds can be spent, and added that ADOT would like to see \$50 million moved back into the highway construction portion of its budget. He commented that if this does not occur, the possibility exists that ADOT will be compelled to lay off freeway construction workers and thereby delay the completion of various freeway construction projects.

Mr. Huling concluded his remarks by noting that Governor Napolitano has five days to sign or veto the budget. He also provided additional information relative to the University Research Bill, the Maricopa Hospital District Bill, and the Phoenix Civic Plaza Bill.

Mayor Hawker thanked Mr. Huling for the presentation.

3. Acknowledge receipt of minutes of boards and committees.

- a. Downtown Development Committee meeting held May 15, 2003.

It was moved by Councilmember Walters, seconded by Councilmember Griswold, that receipt of the above-listed minutes be acknowledged.

Mayor Hawker declared the motion carried unanimously by those present.

4. Hear reports on meetings and/or conferences attended.

The following members of the Council provided brief updates on various meetings/conferences they attended as follows:

Councilmember Walters

Mesa Grande Community Alliance Meeting;

Councilmember Griswold
Mayor Hawker

Community and Economic Development Steering
Committee Meeting
Mesa Police Academy Graduation Ceremony
Maintenance Responsibilities for Freeway Systems
Committee; MAG Transportation Policy Committee
Meeting

Councilmember Whalen reported that he recently had a conversation with Tourism and Sports Authority (TSA) President Ted Ferris and was advised that the TSA is proceeding with its Request for Proposals (RFP) process to fund various youth sports programs. He explained that he has received numerous complaints from Mesa residents relative to the elimination of many of the programs due to the City's current budget constraints.

5. Scheduling of meetings and general information.

City Manager Mike Hutchinson stated that the meeting schedule is as follows:

Thursday, June 19, 2003, 7:30 a.m. – Study Session

Tuesday, June 24, 2003, 7:30 a.m. – Joint Meeting – Mesa City Council and Gilbert Schools

Thursday, June 26, 2003, 7:30 a.m. – Study Session

Monday, June 30, 2003, 2:00 p.m. – Transportation Committee Meeting

Monday, June 30, 2003, TBA – Study Session

Monday, June 30, 2003, 5:45 p.m. – Regular Council Meeting

6. Prescheduled public opinion appearances.

a. Hear from Willie Willis regarding transportation issues.

Willie Willis, 930 North Mesa Drive, # 1008, addressed the Council and voiced a series of concerns regarding the potential reduction of a number of local bus routes and the negative impact on individuals who rely on this service as their sole source of transportation.

Councilmember Walters requested staff to provide the Council with a brief update at a future Study Session relative to the type of riders who use Mesa's transit system, as well as a breakdown of the cost per ride.

7. Items from citizens present.

There were no items from citizens present.

8. Adjournment.

Without objection, the Study Session adjourned at 8:50 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 Study Session of the City Council of Mesa, Arizona, held on the 12th day of June 2003. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK

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