

GENERAL DEVELOPMENT COMMITTEE MINUTES

February 17, 2005

The General Development Committee of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on February 17, 2005 at 10:04 a.m.

COMMITTEE PRESENT

Rex Griswold, Chairman
Kyle Jones
Mike Whalen

COUNCIL PRESENT

None

STAFF PRESENT

Paul Wenbert

Chairman Griswold excused Committeemember Jones at 11:01 a.m. at the conclusion of agenda item 3.

1. Discuss and consider issuance of a Request for Proposals for 51-55 East Main Street.

Senior Town Center Development Specialist Patrick Murphy provided background information on the two City-owned buildings at 51-55 East Main Street, which were purchased in 1999 and 2000 for a total of approximately \$1 million. He advised that Hunter Interests Inc., retained in 2002 to assist with the implementation of the Mesa Town Center Concept Plan, discussed the following concepts in their report:

Concept #1: Construct a new, two-story, 30,000 square foot building to accommodate a destination restaurant and an arts-oriented specialty retail operation.

Concept #2: Renovate the existing buildings to accommodate a destination restaurant and an arts-oriented special retail operation.

Mr. Murphy explained that interested developers could recommend a concept in the response to the Request for Proposals (RFP). He added that the subject RFP is more flexible than previously issued RFPs, and he outlined the steps involved in the revitalization of the subject property:

1. Development of the RFP has been completed.
2. Advertisement of the RFP and selection of a developer – approximately 5 to 7 months.
3. Negotiating a ground lease and obtaining Council approval – approximately 3 months.
4. Obtaining the building permit and preparing the Design Review Plans to the point where construction begins – approximately 10 to 12 months.

Mr. Murphy noted that on September 22, 2004, the Town Center Corporation Board recommended that the City solicit private sector bids for development of the subject property. He added that on January 10, 2005, the Ad-Hoc Redevelopment Advisory Committee recommended that the City implement the recommendations outlined in the Hunter Interests Inc. report dated September 12, 2002 including the use of, but not limited to the flexible and revised RFP system to develop the City-owned properties in the Town Center Redevelopment Area.

Responding to a question from Committeemember Whalen, Town Center Development Administrator Shelly Allen advised that retaining ownership of the property enabled the City to control any possible impact that the property could have on the adjacent Mesa Arts Center.

Committeemember Whalen expressed concern that a developer may be reluctant to invest a substantial amount of money in a leased property.

Chairman Griswold stated a preference for providing the developer an option to lease or purchase the property. He also noted that the purchase option could be required to enable the developer to obtain financing.

In response to a question from Committeemember Whalen regarding the type of controls that are in place to ensure that the building design will be compatible with the design of the Mesa Arts Center, Ms. Allen advised that the Design Review process would ensure that the building design is compatible.

Responding to Committeemember Jones' concern relative to retaining the existing tenants in the downtown area, Ms. Allen advised that staff is working with the tenants to secure other downtown locations. She added that the current tenants have short-term leases, and that they are aware of the City's plans.

In response to a question from Committeemember Jones, Ms. Allen stated that two developers appear to be very interested, and that other developers have expressed a casual interest in the project. She noted that staff receives at least one telephone call a week regarding the proposed project.

Mr. Murphy responded to Committeemember Jones' questions relative to the timeframe by advising that a 60-day window exists for advertising the RFP, and that the entire approval and review process relative to the project would take approximately one year and eight months before construction could begin. He noted that the legal requirement for advertising an RFP is 30 days.

Addressing Committeemember Jones' comment relative to shortening the advertising period from 60 to 45 days in order to speed up the process, Mr. Murphy said he would speak with the developers who have already expressed an interest to determine if the 45-day time period would be sufficient.

Chairman Griswold asked how the RFP would be advertised, and he expressed the opinion that a two-month period was desirable. He stated that he would like staff to go through Hunter Interests in order to obtain as many viable proposals as possible.

Mr. Murphy explained that in addition to complying with the legal requirement to advertise the RFP in the newspaper, a sign would be posted on site and a notice placed on the City's website. He added that the following sources would also be utilized to advertise the RFP:

- A mailing to the database maintained by staff of inquiries received from developers regarding downtown.
- A mailing to a list of developers provided by Hunter Interests.
- A mailing to a database provided by the Economic Development Office (which has been checked to avoid duplication with other lists).
- An announcement on Channel 11.
- Contact and promotion with the Arizona Restaurant and Hospitality Association.

Discussion ensued relative to the fact that many developers who were contacted by Hunter Interests relative to their activities in implementing the Mesa Town Center Concept Plan have called the City to make sure that their firm is on the mailing list.

Chairman Griswold recommended that registered letters be sent to firms who have expressed an interest in the development. He also suggested that the RFP indicate that the City would consider selling the property to the developer or entering into a long-term lease. He stated that a determination could then be made relative to which approach would be the most beneficial to the City.

Committeemember Whalen noted that several interested parties were present in the audience, and he advised that this item would be considered by the City Council within the next 30 days, at which time there would be an opportunity for public comment. He also suggested that interested parties provide their comments directly to the Committeemembers.

In response to Committeemember Whalen's question regarding a pedestrian bridge between the subject site and the Mesa Arts Center, Ms. Allen stated that she was not aware of any plans for a pedestrian bridge, but she would check with the architect. She also noted that the RFP addresses the fact that the successful bidder would incorporate a restaurant capable of providing on-site catering services to the Mesa Arts Center.

It was moved by Committeemember Whalen, seconded by Committeemember Jones, that the Request for Proposals, amended to include both lease and sale options, be moved forward for Council consideration with a recommendation for approval.

Carried unanimously.

Committeemember Whalen noted that the City could determine which option is the most beneficial to the City.

Committeemember Jones urged staff to expedite the process to enable Council consideration of the RFP as soon as possible.

Chairman Griswold thanked staff for the presentation.

2. Discuss and consider retroactive refunds for plan review fees and street in-lieu fees.

Deputy Building Safety Director Jeff Welker introduced Assistant City Attorney Jim Smith who was present to provide legal advice regarding this agenda item. Mr. Welker noted that the Council routinely establishes new ordinances and adopts amendments to existing ordinances, which can be initiated by staff, the Council, developers, or by an individual. He cited two examples of individuals seeking relief regarding a code requirement:

Example 1: Mr. Martinez proposed to build a new, single-family home in an area originally developed in the County, which required an "In Lieu Payment" (ILP) for substandard streets. Mr. Martinez petitioned the Council for relief, as he believed this placed an undue financial burden on his project. Subsequently, Mr. Martinez paid the ILP in order to begin construction, and at a later date the Council created an ILP exemption for single-family lots in existing subdivisions.

Example 2: Mr. Thompson filed a permit application to build a new home, which provided 180 days in which to pull the permit to begin construction. The applicant waited more than 180 days to pull the permit, and he then objected to paying the additional fees to be processed through Plan Review a second time due to the fact that no substantive changes were made to the plans. Mr. Thompson paid the additional fees and began construction, and the Council subsequently adopted ordinances that authorize the City Manager to waive or reduce fees in these types of circumstances.

Mr. Welker noted that ordinance changes often do not benefit the individuals who initiated the process. He also noted that both individuals began construction of their projects prior to the Council adopting the ordinance changes. Mr. Welker stated that in response to a suggestion that the ordinances be made retroactive in order to benefit the individuals who initiated the changes, staff referred the matter to the City Attorney's Office. He advised that the City Attorney's Office determined that making the ordinances retroactive would not violate the intent of the State's gift law because a public purpose exists.

Mr. Welker stated that staff is concerned that retroactive ordinances will "open the door" to challenges in other areas. He noted that laws are usually "forward looking" with future effective dates. He explained that if laws are enacted to be retroactive, the legal compliance circumstances might change from what was in effect at the time. Mr. Welker added that other ramifications of making a law retroactive could result in developers and individuals seeking credit for installation of a system, such as a fire suppression system, that may no longer be required under the current ordinance. He also noted that a future area of contention could be permit fee calculations. Mr. Welker advised that the present method of calculating fees is consistent and legally defensible, but staff is considering a simplified method of calculating fees that could result in some permit application fees being lowered if the new methodology was applied. He stated that the proposed Alternative Number 1 strongly recommends that ordinances not be adopted with retroactive dates in order to avoid these types of complications. Mr. Welker advised that Alternative Number 2 would amend the City Code Subsection 4-1-8(A) to be retroactive to October 1, 2003, and that date would allow Mr. Martinez and Mr. Thompson to apply for refunds and authorize the City Manager to waive fees. He added that other applicants who received a permit during that time period would be eligible to apply for a refund of fees.

Mr. Welker noted that Mesa's historic practice of not making ordinances retroactive, as described in Alternative Number 1, would have no fiscal impact. He advised that implementing Alternative Number 2 could result in the City being required to issue refunds in the amount of approximately \$350,000.

Chairman Griswold noted that laws were changed in order to address some type of injustice. He noted that in one case the applicant's contractor left town, and when a different contractor was retained, the applicant was a few days past the 180-day time period for pulling the permit. Chairman Griswold said that the other case required an "In Lieu Payment" (ILP) where the applicant's funds would be held for ten to twenty years prior to initiating the street repairs. He noted that the law was changed to provide department heads with the flexibility to address these types of situations.

Committeemember Whalen expressed concern related to the issue of fire sprinkler systems. He asked if making the subject ordinances retroactive would open the door for changes in these requirements.

Mr. Smith stated that changes relative to the requirements for fire sprinkler systems would not be impacted if the subject ordinances were changed to be effective to a retroactive date. He noted that Council approval of a retroactive effective date could result in a number of appeals to the Council regarding other ordinances.

In response to a question from Committeemember Whalen, Mr. Welker advised that the ILP payment records are identifiable, but that the retroactive effect of other fees would be difficult to determine. He advised that \$350,000 was staff's "best guess" as to the impact of making these two ordinances retroactive to October 1, 2003.

Committeemember Whalen stated the opinion that Mr. Martinez paid the ILP fee with full knowledge, but he expressed concern regarding Mr. Thompson's case where he was required to pay the full fees a second time.

Mr. Welker explained that Mr. Thompson could have come forward at any time during the 180-day period to request that the permit be withdrawn. He advised that the City would have refunded a portion of the fee, and that Mr. Thompson could then have reinstated the permit at a later date.

Chairman Griswold asked if providing a retroactive effective date on these two ordinances would impact any other laws.

Mr. Smith stated the opinion that the State Statute requirements relative to the gift clause are met due to the fact that the retroactive effective date provides a public purpose and the action clarifies a fee structure that appeared to be unfair. He reported that very little case law exists regarding retroactive fee refunds, and he noted that Maricopa County unsuccessfully sued the State twice in an attempt to initiate refunds on certain taxes. Mr. Smith explained that the County lost these cases due to the fact that the Court of Appeals determined that the County failed to prove their cases, and he expressed the opinion that the Court of Appeals was attempting to avoid the issue. He also advised that Council action authorizing retroactive refunds or waivers of fees could expose the City to future litigation.

Development Services Manager Jack Friedline stated the injustice of the existing ordinances has been discussed, but he noted that the rationale for the ordinance establishing the 180-day period is that the recipient of a building permit was reasonably expected to begin construction within the 180-day time period. He noted that an extended time period increases the possibility that the project would be subject to outdated building codes. Mr. Friedline addressed the "In Lieu Payment" by noting that street repairs are not a matter of "if" but rather a matter of "when." He explained that the proposal enables an exception to be made for one owner when the other property owners on that street were required to make the payments. Mr. Friedline noted that different Councils have differing opinions regarding retroactive fee refunds and waivers, and stated that staff would comply with the Council's determination.

Chairman Griswold stated that the Council did not intend to change the 180-day permit time period, but wants to provide department heads with the discretion to make exceptions or provide waivers in certain instances where an injustice appears to exist.

Mr. Friedline expressed appreciation for the Council's support. He noted that the proposal provides staff the flexibility to adjust the fee for reissuing a building permit in accordance with the amount of staff time required.

Committeemember Jones stated that the Council was attempting to address the issue of fairness, and that the proposed ordinance changes are an effort to provide department heads with the flexibility to adjust fees in reasonable instances. He advised that the question presently before the Committee relates to the possibility that approval of the proposal opens a "Pandora's Box" relative to other fee refunds. Committeemember Jones noted that the City Attorney's Office has indicated that approval of the ordinance changes could open the City up to potential legal problems.

Mr. Smith confirmed that the proposed ordinance revisions expose the City to potential liability.

Chairman Griswold stated the opinion that very few cases would be eligible to apply for a retroactive refund.

Committeemember Jones indicated support for the ordinance changes to provide additional flexibility to department heads, but he also expressed concern relative to making the changes retroactively effective to October 1, 2003.

It was moved by Committeemember Whalen, seconded by Committeemember Jones, that the City maintain the historic policy of not making ordinances retroactive, and that Ordinances No. 4265, 4232 and 4242 be maintained in their present form.

Committeemember Whalen stated the opinion that making refunds and fee waivers available retroactively was not a good practice. He cited the example regarding the "In Lieu Payment" and noted that the applicant could have waited for the Council to change the ordinance. He noted that in the other case, the applicant failed to comply with the existing law regarding the 180-day permit time period. Committeemember Whalen inquired whether the subject item ends with the Committee's decision or if the topic would move forward for Council consideration.

Discussion ensued relative to the fact that the Committee could determine if the topic should be moved forward to the full Council.

Further discussion ensued relative to the fact that the ordinances to correct the inequity have been passed; that the applicants decided to proceed with their projects under the old law; and that amending ordinances to provide for retroactive refunds and waivers would be an example of inferior legislation.

Chairman Griswold expressed the opinion that the two cases cited as examples were instances where the law was not fair to the applicants, and that the City of Mesa should be a kinder, gentler and more efficient government.

Chairman Griswold called for the vote.

Upon tabulation of votes, it showed:

AYES - Jones-Whalen
NAYS - Griswold

Chairman Griswold declared the motion carried by majority vote.

Chairman Griswold advised that the subject of retroactive refunds of fees would not be moved forward for Council consideration, and he thanked staff for the presentation.

3. Discuss and consider amending sections of the Zoning Code pertaining to Chapter 15 (Site Development Design Standards) to reduce building/landscape setbacks along four-lane arterials as identified in the Mesa 2025 Transportation Plan.

Planning Director John Wesley stated that the proposed changes relate to building setbacks along four-lane arterial streets. He reported that the 2025 Transportation Plan identified four-lane arterials that will continue to be four lanes in the future, and therefore these arterials require different setbacks than the six-lane arterials. Mr. Wesley advised that staff proposes to reduce the required setback from 30 feet to 20 feet for four-lane arterials that will remain four lanes in the future. He noted that if the Committee supports the proposed amendments, the process would include reviews and recommendations by Planning and Zoning and the Design Review Board prior to consideration by the City Council.

Chairman Griswold commended staff for proactively addressing this issue.

In response to Committeemember Whalen's comment that developments in the area of Country Club and University have no setbacks, Principal Planner Laura Hyneman advised that a Development Incentive Permit (DIP) is available for infill properties. She stated that the process involves an evaluation of each site's ability to accommodate setbacks on a case-by case basis.

Mr. Wesley advised that adopting the Code revision would change the required setbacks for the properties on the north side of University referred to by Committeemember Whalen. He added that Substantial Conformance Improvement Permits (SCIPs) and DIPs are available for locations determined to be appropriate.

Responding to Committeemember Whalen's question regarding the Light Rail Transit corridor along Main Street, Mr. Wesley advised that staff has not specifically reviewed that area relative to setbacks.

Ms. Hyneman noted that plans for the Light Rail Transit include attracting development as close as possible to the corridor in order to provide a direct pedestrian connection. She added that the majority of the lots in the area would qualify for a Development Incentive Permit (DIP).

It was moved by Committeemember Whalen, seconded by Committeemember Jones, that staff's recommendations for proposed amendments to the Zoning Ordinance, Chapter 15 (Site Development Design Standards), be moved forward to the full Council with a recommendation for approval.

Carried unanimously.

Chairman Griswold thanked staff for the presentation.

Chairman Griswold excused Committeemember Jones who left the meeting at 11:01 a.m. prior to the discussion of agenda item 4.

4. Hear a report on CIP project coordination.

Capital Improvement Project Administrator Anthony Araza stated that he would provide a brief overview on the coordination of the Capital Improvement Program (CIP). He utilized a PowerPoint presentation (a copy is available for review in the City Clerk's Office), and he advised that the two components are "Financial Coordination" and "Design/Construction Coordination."

Financial Coordination

Mr. Araza stated that "Joint/Master Planning" includes all projects in the Five-Year Plan that were derived from the Master Plans that have been recently completed by the Mesa 2025: A Shared Vision Committee. He explained that the Master Plans of numerous subcommittees were combined into one Master Plan, and that the Joint/Master Planning Committee's (JMPC) recommendations are based on the input from the subcommittees, such as Utilities, Transportation, and Economic Development, the General Plan, and the capital components within these plans. Mr. Araza advised that CIP Geographic Information Systems (GIS) maps are utilized, and that numerous CIP meetings are held with Engineering and the project owners.

Addressing "Project Activity Accountability," Mr. Araza advised that each project requires coordination of the required physical improvements, such as water lines and sewer lines, and coordination of the financing to accomplish the improvements. He noted that although the City of Mesa operates on a program-based budget, a project that reaches the CIP office is moved into a project-based budget in order to provide a clear picture of all the components and activities. Mr. Araza outlined some of the activities that could be included in a CIP project: land acquisition, pre-design, an alignment study for an arterial street widening, design, construction, construction administration of large projects, and the purchase of furniture, fixtures and equipment (FF&E). He noted that the data provides a complete picture of the capital requirements, and that the Operations & Maintenance (O&M) costs can be estimated if the

Council approves the project. Mr. Araza advised that budget adoption meetings are held in the next phase, which includes staff from the CIP office, Engineering, Real Estate, and the Responsibility Center (RC) staff involved in the project. He added that the next step is a meeting with the project owner(s) to ensure that the desired improvements are being addressed prior to arranging for the project financing.

Mr. Araza reported that his office is preparing a "project cost handbook" to track three years of project costs and the three lowest bids for a project in order to provide improved project cost estimates prior to adoption of the budget.

In response to questions from Chairman Griswold, Mr. Araza confirmed that O&M costs are listed in the CIP budget below the capital portion of the project.

Mr. Araza stated that coordination of schedules in the different program areas is the last component of the financial area. He added that bonds represent a significant portion of the CIP budget, and that all costs for a project must be included in the program areas in order to provide a complete picture. Mr. Araza noted that the bond information is reviewed, that the bond expenditure reports indicate the balances in the bond program funds, and that the information is summarized in the CIP book.

Design/Construction Coordination

Mr. Araza noted that coordination of this area addresses the technical and logistical aspects of the project. He explained that public input is solicited during the design phase after which the project is reviewed by a citizen advisory group, such as the Transportation Advisory Board in the case of a street-widening project, followed by City Council consideration for approval of the final plan. Following Council approval, he advised that Engineering provides information to outside agencies that could be affected by the project, such as: Arizona Department of Transportation (ADOT), Maricopa County Department of Transportation, Flood Control, Roosevelt Water Conservation District (RWCD), Salt River Project (SRP), and Cox Communications. He added that following the contract award by Council, the contractor and Engineering agree to a "Notice to Proceed" date, and that information, including the dates on which construction will take place, is distributed to the affected business owners, residents, outside agencies, and the driving public. Mr. Araza advised that the City also utilizes the following methods to provide information: large signs, variable message signs, personal contacts with businesses and residents, and weekly contractor meetings that are open to public.

Responding to a question from Chairman Griswold, Mr. Araza stated that the State Statutes have been changed to allow incentives or disincentives on a construction project. He added that the Construction Manager at Risk approach could now be utilized for street projects in addition to building facilities.

Mr. Araza explained that the Street Maintenance area receives information related to upcoming construction projects, which is then overlaid on the Street Maintenance schedule. He added that the street maintenance projects are then realigned or rescheduled to avoid conflicts. Mr. Araza noted that Development Services holds public meetings that provide an opportunity for citizens or businesses to obtain input regarding projects in the design or construction phase. He added that Building Safety representatives are also present to provide updates on the status of developer projects in the community. Mr. Araza advised that a GIS map of street maintenance

activities, published annually by Maintenance Superintendent Lenny Hulme, is shared with Utilities and Engineering personnel.

Responding to comments by Chairman Griswold, Mr. Araza advised that the level of shared information between departments has increased significantly as a result of the GIS capability and improvements to the City's shared network drives.

Discussion ensued relative to the fact that aging infrastructure is a matter of concern, particularly in the area of west Mesa; that Utility personnel and the CIP office have prepared a plan to address aging infrastructure whenever financing becomes available; and that new development on the east side as well as existing infrastructure in other areas of the City need to be addressed.

Mr. Friedline responded to a question from Committeemember Whalen by advising that the expected life of an arterial is approximately 30 years with the proper maintenance. He noted that in the past few years, the City of Mesa has utilized slurry seal to extend the life of some arterials beyond the 30 years due to budget constraints.

Responding to Chairman Griswold's question regarding the Quality of Life tax, Mr. Friedline advised that Assistant Development Services Manager Jeff Martin and Transportation Director Jeff Kramer prepared spreadsheet information for a presentation to the Financing the Future Committee relative to extending the 0.25-cent sales tax, and that they also provided a second scenario represented by a 0.35-cent sales tax. He stated that the dedicated transportation tax would address maintenance and capital projects over a 20-year time period.

Deputy City Manager Paul Wenbert advised that the Financing the Future Committee's final report would address the issue.

In response to Committeemember Whalen's concern that the information is important to the Council's upcoming budget process, Mr. Wenbert advised that the Financing the Future Committee's report and recommendations would not be available for some time, and that no new revenue streams are anticipated for the 2005/2006 budget.

Committeemember Whalen noted that efforts to extend the Quality of Life tax would be better received by the citizens of Mesa if a road project was implemented that indicated the appropriate manner in which these tax dollars are being utilized. He suggested that Quality of Life funds be transferred immediately into Transportation in order to address a major road project.

Mr. Araza stated that an analysis of the Quality of Life tax and information regarding the account balances would be provided to the Council as part of the budget process.

Chairman Griswold concurred that the information should be provided to the entire Council. He noted that for the past three years the City's balanced budget was achieved by under funding roads by \$10 million each year.

Further discussion ensued relative to the fact that street projects should be accomplished as quickly as possible in order to minimize traffic interruptions; that construction time for work on Baseline was shortened by four months as a result of closing the intersection; that closing an

intersection at night results in fewer traffic problems; that contractors find it difficult to hire employees who are willing to work during the evening hours; that road construction during the night would disrupt residential neighborhoods; that construction during the night would be limited to commercial areas; that residents and businesses along a street in disrepair are usually in support of the project; and that a street reconstruction project takes less time than a street widening project.

Mr. Araza noted that the City is reaching a point where sufficient maintenance funds are not available, and that some projects, which could have been addressed as normal maintenance-related projects, now qualify as capital projects because of the extensive work required.

Chairman Griswold thanked staff for the presentation and expressed appreciation for their efforts with the limited resources available.

5. Adjournment.

Without objection, the General Development Committee meeting adjourned at 11:25 a.m.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the meeting of the General Development Committee of the City of Mesa, Arizona, held on the 17th day of February 2005. 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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