



# COUNCIL MINUTES

February 12, 2009

The City Council of the City of Mesa met in a Special Council Meeting in the lower level meeting room of the Council Chambers, 57 East 1st Street, on February 12 2009, at 9:01 a.m.

## COUNCIL PRESENT

Mayor Scott Smith  
Alex Finter  
Dina Higgins  
Kyle Jones  
Dennis Kavanaugh  
Dave Richins  
Scott Somers

## COUNCIL ABSENT

None

## OFFICERS PRESENT

Christopher Brady  
Debbie Spinner  
Linda Crocker

### 1. Take action on the following recommendations from the Transportation and Infrastructure Committee.

- a. Request by Tim Jones for water service outside the City limits at 6718 East Avalon Street.

Committee Recommendation: Approval of Option 1. (Vote: 3-0)

Development and Sustainability Department Director Christine Zielonka introduced Development Planning Coordinator Beth Hughes-Ornelas, Tim Jones, the applicant, of the Elks Lodge, and Jeff Blilie, an attorney representing the applicant.

Ms. Zielonka displayed a map of the subject property, which is the existing Elks Lodge located north of Main Street on Avalon and Sunaire. (See Attachment 1) She reported that the Elks Lodge currently receives City of Mesa water through two meters and explained that the applicant has requested permission to consolidate the meters for a new facility that is being constructed. Ms. Zielonka advised that the change in service triggered the request for compliance with Mesa standards and added that the property, which is adjacent to the City, is eligible for annexation.

Ms. Zielonka noted that the request was first presented to the Transportation and Infrastructure Committee (TIC), and explained that based on the Committee's discussion, staff has provided four options for the Council's consideration (TIC recommended Option 1). (See Attachment 2) She further remarked that regarding Options 1, 2 and 3, staff worked with the Engineering Department to determine cost estimates for the extension of the utility lines and road

improvements, based on recent bids from the City of Mesa (See Attachment 3) and also compiled the potential revenue from the Elks Lodge to the City relative to the four options. (See Attachment 4)

In response to a series of questions from Councilmember Higgins, Ms. Hughes-Ornelas clarified that if the applicant fully extended the water and sewer lines along the property frontage, an adjacent property owner who wanted to extend the lines to his or her property would have the ability to enter into a buy-in agreement with the City in order to reimburse the Elks Lodge for connecting to those lines. She also noted that the neighbors across the street from the Elks Lodge that are situated in the City of Mesa have existing curb and asphalt, with sidewalks and streetlights adjacent on Main and 67<sup>th</sup> Street, but said that there are no sidewalks or streetlights on Avalon or Sunaire.

Mayor Smith clarified that it was his understanding of Ms. Hughes-Ornelas' statement that the properties located in the City of Mesa that are across the street from the Elks Lodge and front on Sunaire and Avalon are not built to City standards, and yet staff is recommending that the applicant be held to that standard.

Ms. Hughes-Ornelas confirmed that Mayor Smith's understanding was correct.

Responding to comments made by Vice Mayor Jones, Mr. Blilie explained that the Elks Lodge has an existing one-inch meter and a three-quarter inch meter and said that the applicant is requesting permission to consolidate the meters into a one and one-half inch meter for the new building. He also noted that the existing Elks Lodge does not have sprinklers, but said that sprinklers are being incorporated into the construction of the new building and a fire hydrant would be installed. Mr. Blilie added that the facility has an existing septic system, which the applicant intends to upgrade as part of the construction project.

In response to a question from Mayor Smith, Ms. Zielonka explained that it was her understanding that the County has not issued a permit for the applicant to upgrade the septic system and indicated that the County would require a letter from the City indicating its approval that the new facility would not be connecting to Mesa's sewer system. She added that staff would prefer that the Elks Lodge connect to Mesa's sewer system.

Councilmember Somers commented that the properties to the south of the Elks Lodge that are now part of the City, but have been designed to County standards, are "a manifestation" of Mesa's annexation policy. He also stated that the installation of sidewalks and streetlights are not, in his opinion, higher level standards, but rather basic City standards that should be enforced. Councilmember Somers added that it would be in the best interest of the City to annex this property and inquired whether the applicant had any objections in doing so.

Discussion ensued relative to the fact that the applicant's initial request was not to extend the sewer line but to remain on a septic system; that the applicant has a limited budget and is attempting to upgrade the existing facility; that the applicant has obtained site plan approval, a Special Use Permit, and building permit approval from the County and would prefer that the process not be delayed; that Mesa would honor the building permits the applicant has obtained through the County and would not require the applicant to go through the City's building process; that if the applicant agreed to annex into the City, it would take approximately four to six months for the City to process the applicant's annexation application; and that if the

applicant pulled the County building permits before annexation was finalized, construction could begin while the annexation process takes place.

Councilmember Somers stated that it is reasonable and prudent to annex the subject property and would encourage that the process take place as soon as possible. He added that Option 4, which requires annexation prior to receiving utility service, is the only option he would support.

Mr. Blilie commented that with regard to the issue of annexation, it was his understanding that if the applicant pulled the building permit or the building was under construction, the applicant would have "some kind of grandfathered right" to continue in the City once the property was annexed. He explained that the development schedule consists of five phases, the first being parking lot upgrades, and stated that if Mesa were to annex the property in four to six months and the new facility was not yet constructed, the applicant could find himself in a position where he did not have a vested right to continue under the grandfather status and it would be necessary to go back through a site planning process.

Mayor Smith commented that although the Council has not formally adopted an annexation policy, they have stated that the City would consider providing utility service "without forcing annexation." He acknowledged that the issues regarding this case are difficult to resolve and noted that the Council would like to see the improvements to the Elks Lodge, including the installation of fire sprinklers, which would benefit the community. Mayor Smith added, however, that it also appears as though the City is "setting up a Catch 22" in which it encourages improvements to the facility, but also sets up roadblocks to prevent the applicant from making such improvements.

Mayor Smith reiterated his prior concerns that the City is asking the applicant to improve the property frontage (i.e., sidewalks) on Avalon to a standard that is higher than what currently exists on the other side of Avalon, which is located in the City of Mesa, but does not have sidewalks.

Deputy City Manager Jack Friedline explained that even if an area of the City is developed, it will eventually be redeveloped and the City will require sidewalks and vertical curbs.

City Manager Christopher Brady indicated that when a property is annexed into the City, it is developed to City standards. He stated that if a property was developed prior to being annexed, which might include the property referenced by Mayor Smith, the City would not have had the opportunity to require that it be built to Mesa standards.

Mayor Smith stated that he would prefer to have fire sprinklers installed in a new building and a parking lot upgraded as opposed to requiring that an applicant install sidewalks. He noted, however, that such a preference "goes against the City's overall objective," which is that an entire street be built to City standards. Mayor Smith added that he is unsure which requirements would be more beneficial to the community.

Mr. Blilie informed the Council that as a result of the discussions that at the TIC meeting, the applicant has agreed to extend the sewer line to the property and eliminate the septic system. He stated that incurring those additional costs would impact the applicant's limited budget and inquired if it would be possible to defer the completion of the half street improvements to Sunaire and Avalon to a future date.

Mayor Smith suggested the inclusion of a stipulation in the Utility Service Agreement which would require that if the neighbors across the street from the Elks Lodge upgraded Avalon and Sunaire to City standards, that the applicant would agree, within a certain period of time, to install sidewalks commensurate to those installed by the neighbors. He stated that if the applicant failed to perform per the agreement, the City could not cut off water service to the property, but could enforce the contract through appropriate legal channels.

Councilmember Finter concurred with Mayor Smith's proposal and stated that the possible outcome of this case is "in line" with what the TIC was attempting to accomplish.

Councilmember Kavanaugh stated that this case illustrates why he is opposed to the proposed changes to Mesa's annexation policy that will be considered by the Council at the February 17, 2009 Regular Council meeting. He also concurred with Councilmember Somers' comments relative to this issue.

Extensive discussion ensued relative to the applicant's preference to annex into the City after all five phases of the development are completed (pave the parking lot, raze the existing building, construct one larger building, make site improvements and improve the landscaping); the possibility of the City and the applicant entering into an agreement that would allow the applicant to proceed through the annexation application process, but annexation would not become effective until construction was completed; that the City could enter into a Utility Service Agreement with the applicant to provide utility service and that said agreement would terminate on the date that annexation becomes effective; and the deferral of street improvements (sidewalks and street lights).

Mayor Smith summarized the key points of the above-referenced discussion as follows:

- The City would agree to provide utility service, connecting the sewer and water lines to the corner of the property.
- The City would allow the applicant to proceed through the existing County process for the phase of the project that is currently ongoing.
- The applicant would begin the annexation process as a parallel process and that annexation would become effective after the completion/signoff by the County of the improvements.
- The applicant would agree that when the property is annexed into the City, the half street improvements would be deferred until such time as the neighbors on Avalon and Sunaire (located within the City) make improvements to Mesa standards, at which time the applicant would make similar improvements.
- That the commitment to complete half street improvements would run with the land as part of the Utility Service Agreement.

Mr. Jones concurred with Mayor Smith's proposal.

Ms. Zielonka clarified that per the direction of the Council, the applicant would submit the annexation application; that staff would work with the City Attorney's Office so that annexation becomes effective once all five phases of construction are completed; that the City would enter into a Utility Service Agreement with the applicant in order to extend the water and sewer lines to the property; and that the agreement would terminate once annexation becomes effective.

Mayor Smith stated that the Council would prefer that the City have an approved annexation prior to the Utility Service Agreement coming into force. He noted that the Agreement would be subject to the annexation approval, although the effective date of the annexation would not take place until the five phases of the development are completed.

Mr. Brady offered, as an alternative solution, that as a condition for the sale of utilities, that the applicant must have initiated the annexation application process.

Further discussion ensued relative to the fact that it would be necessary for the City Attorney's Office to work through various "timing issues" as related to the drafting of the Utility Service Agreement (i.e., providing utility service to the applicant/good faith effort on the part of the applicant to complete the annexation process).

In response to a question from Councilmember Richins, Ms. Zielonka clarified that the City would require that the applicant install sidewalks and streetlights on the property frontage on Avalon and Sunaire, but not extend water or sewer lines along the property frontage.

Additional discussion ensued relative to the potential fees that the applicant would be assessed with regard to the proposed development.

In response to a question from Mayor Smith, Ms. Spinner clarified that the Council has deviated from the recommendation of the TIC and stated that it would be necessary to take action on this item. She summarized what she believed would be the Council's motion as follows: That staff be instructed to move forward with Option 1, that the applicant would begin the annexation process, and that annexation would become effective after the project is completed.

Mayor Smith added that the applicant would also defer completion of the street improvements (streetlights and sidewalks) until a future date.

It was moved by Councilmember Higgins, seconded by Councilmember Finter, that the above-stated motion be approved.

Councilmember Somers commented that although the modifications to the original proposal are an improvement and he is encouraged that the applicant is willing to annex into Mesa, he would oppose the motion. He expressed the opinion that the case creates a disincentive for a property owner to annex into the City prior to receiving utility service. Councilmember Somers also questioned whether the City would have the ability to enforce the completion of half street improvements in the future and whether it would be necessary for Mesa taxpayers to "foot the bill" in that regard.

Councilmember Richins stated that because the Elks Lodge is already a City of Mesa water customer, he would support the motion. He thanked staff for their efforts and hard work to assist the applicant in finding a solution in this matter.

Councilmember Finter commented that if the proposal to defer half street improvements proves to be successful, he would hope that such a tool could be considered by the TIC in future cases when individuals are requesting City utility service.

Councilmember Higgins voiced support for the motion and said that she is pleased with the progress that has occurred in this case.

Mayor Smith commented that although he appreciates Councilmember Somers' concerns, in his opinion, this case is unique. He stated that if there were other property owners in the County who had an existing building, were receiving Mesa utility service and agreed to develop to City standards, he would have no objection affording them the same treatment as in this case.

Mayor Smith called for the vote.

Upon tabulation of votes, it showed:

AYES - Smith-Finter-Higgins-Jones-Richins  
NAYS - Kavanaugh-Somers

Mayor Smith declared the motion carried by majority vote.

Mayor Smith thanked everyone for the presentation.

2. Items from citizens present.

There were no items from citizens present.

3. Adjournment.

Without objection, the Special Council Meeting adjourned at 10:06 a.m.

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SCOTT SMITH, MAYOR

ATTEST:

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LINDA CROCKER, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Special Council Meeting of the City Council of Mesa, Arizona held on the 12<sup>th</sup> day of February, 2009. I further certify that the meeting was duly called and held and that a quorum was present.

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LINDA CROCKER, CITY CLERK

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(attachments – 4)