

# UTILITY COMMITTEE MINUTES

October 24, 2002

The Utility Committee of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on October 24, 2002 at 2:05 p.m.

## COMMITTEE PRESENT

Janie Thom, Chairman  
Kyle Jones  
Mike Whalen

## COUNCIL PRESENT

Rex Griswold

## OFFICERS PRESENT

Mike Hutchinson  
Paul Wenbert

1. Discuss and consider a request for water and sewer services outside Mesa's corporate limits for a QuikTrip at the southeast corner of University and Ellsworth.

Deputy Building Safety Director Jeff Welker addressed the members of the Utility Committee and provided an historical overview of this agenda item. He reported that in the latter part of 2001, City staff was approached by representatives of QuikTrip Corporation with a request for water service to its new commercial development located outside of Mesa's corporate limits. Mr. Welker explained that at that time, staff notified the applicant's representatives that per City Ordinance No. 3880, new commercial developments occurring in Maricopa County, but not within Mesa's corporate limits, must be annexed into the City in order to receive Mesa utility services.

Mr. Welker commented that one of the unique aspects of the case is the fact that the proposed QuikTrip development site includes a vacant parcel of land, as well as a portion of an existing church site located at the southeast corner of University Drive and Ellsworth Road. He explained that although the church site has historically received water service from the City, the proposed combination of parcels, the establishment of new lot lines, and the change of use (from a church to a commercial development) disqualifies the development from receiving City of Mesa utility services. Mr. Welker added that the property is not immediately adjacent or contiguous to the City limits and therefore creates an additional challenge for the applicant.

Mr. Welker further commented that the original intent of City Ordinance No. 3880 was to assist the City in fulfilling its obligations to utility customers outside its corporate limits who were located in areas where the City had purchased water companies and taken over such obligations or, in some instances, where the City had made commitments to serve those customers as long as they continued to operate and develop their property in the same manner as when Mesa first provided service. He also stressed the fact that development guidelines in

Maricopa County are significantly less stringent and less costly than in Mesa; that the County does not guarantee that it will enforce City standards on developments occurring outside Mesa's corporate limits, and that staff's only option to guarantee Mesa's development standards outside its corporate limits is through annexing property into the City.

Mr. Welker concluded his remarks by stating that it is not economically feasible for Mesa to provide utility services to entities outside the City's corporate limits, and that with the exception of minimal utility service revenues which Mesa receives, Maricopa County collects the remaining fees, taxes and State-shared revenues.

Committeemember Whalen noted that in 2001 when he served as Chairman of the Utility Committee, staff conducted numerous public hearings to solicit citizen input relative to modifying the terms and conditions for the sale of utilities to developers/individuals residing outside Mesa's corporate limits, and that City Ordinance No. 3880 occurred as a result of that arduous process. He voiced appreciation to Mr. Welker for his insightful comments and stated that City Ordinance No. 3880 is an effective policy.

It was moved by Committeemember Whalen to recommend to the Council that staff's recommendation for denial of QuikTrip Corporation's request for water service to a new commercial development outside Mesa's corporate limits, be approved.

In response to a question from Committeemember Whalen regarding whether the Utility Committee has the authority to overrule the Council's previous policy, Deputy City Attorney Joe Padilla clarified that per City Ordinance No. 3880, the Committee could recommend that the Council either extend or deny the request from QuikTrip Corporation for water service outside Mesa's corporate limits. He commented that if the applicant disagreed with the Committee's recommendation, the matter would then be presented to the Council for consideration, at which time the Council could vote to change the policy if they so desired.

Discussion ensued relative to pre-annexation development agreements, which are designed to outline a developer's compliance to various City standards such as setbacks, sidewalks, improvements, landscaping; that per State statute, such agreements do not become effective until such time as the property in question is annexed into the City of Mesa, and that Mesa has acquired existing water companies and does provide water service to entities outside the City's corporate limits.

Jason Morris, an attorney representing QuikTrip Corporation, addressed the Committee and provided a brief explanation of the reasons behind the creation of City Ordinance No. 3880. He explained that the document contains a provision which allows the members of the Utility Committee to consider properties on a case-by-case basis, and added that he would like to request that an exemption be granted to QuikTrip.

Mr. Morris displayed a map of the proposed site and provided a brief analysis of the applicant's point of view regarding this issue. He stated that the applicant is requesting a continuation of existing service to the property and not an extension of its service area or infrastructure; that QuikTrip desires to annex the property into Mesa at the earliest opportunity; that in anticipation of annexation, the site was designed and will be developed per Mesa's development standards; that QuikTrip is willing to incur appropriate impact fees to develop the property; that QuikTrip is

willing to enter into a reasonable pre-annexation agreement to confirm that it will annex into Mesa and develop according to Mesa's development standards; that other properties in the County island continue to receive City utility services, and that Mesa's existing water and sewer systems in the area have sufficient capacity to accommodate QuikTrip's facility.

Further discussion ensued relative to the fact that the City has no legal mechanism available to enforce a pre-annexation agreement with QuikTrip until such time as annexation of the subject property occurs, and that under Subsection 17C of City Ordinance No. 3880, upon the recommendation of the Utility Committee, the Council may agree to exempt an individual parcel of real property located outside Mesa's corporate limits from the requirements of Section 3 of the Ordinance.

In response to a question from Committeemember Jones, Mr. Padilla advised that even if the applicant entered into a pre-annexation agreement, agreed to pay impact fees and comply with Mesa's design standards, it would not be possible to provide City utility services to that entity due to the fact that Mesa cannot require that the annexation take place. Mr. Welker also stated that prior to annexation, the City would not be permitted to enforce Mesa's building standards, and added that Maricopa County would receive all sales tax and building permit revenues generated as a result of the construction.

In response to a question from Chairman Thom, Mr. Morris clarified that at the present time, the property cannot be annexed due to the fact that it does not have a contiguous boundary with the City.

Councilmember Griswold suggested that if the owner of the property located to the northwest of the applicant's property was willing to be annexed into the City, that would provide the applicant with an opportunity for immediate annexation.

In response to a question from City Manager Mike Hutchinson, Mr. Welker commented that City staff has not contacted the adjacent property owner with regard to the possibility of being annexed into the City.

In response to a question from Committeemember Jones regarding why the Council would not consider granting an exemption to QuikTrip in light of all the conditions the company is willing to meet, Mr. Welker noted that staff is concerned that the impact of the Council's decision on this case could set a precedent for individuals wishing to combine a small property currently receiving City of Mesa utility services with a larger piece of property that does not and expecting that Mesa will provide utility services to the entire area.

In response to a question from Committeemember Jones regarding whether the Committee must render a decision today, Mr. Hutchinson stated that he would recommend that the matter be continued to a future meeting to provide staff and Mr. Morris additional time to pursue scheduling a meeting with the neighboring property owner to discuss the possibility of annexation.

Mr. Morris advised that he is currently facing contract deadlines and would prefer that the Utility Committee formulate a recommendation to the Council at this time. He added that this would

provide him additional time to communicate with the applicant and to contact the adjacent property owner relative to the possibility of annexing into the City.

Chairman Thom commented that she was told that when Committeemember Whalen Chaired the Utility Committee, he was not receptive to conducting appeal hearings from citizens relative to this issue.

Chairman Thom commented that prior to future appeal hearings, she would like staff to provide the Committee with information relative to existing utility services which are provided in the surrounding areas, as well as their distance from the subject property. She also voiced concerns that the applicant may have grounds for a lawsuit if the Committee denies an exemption; noted that if the QuikTrip development is delayed, the City will lose valuable sales tax revenues, and suggested that the City maintain a friendly dialogue with the applicant in an effort to resolve this matter.

Committeemember Whalen withdrew his motion for lack of a second.

Committeemember Whalen responded to Chairman Thom's previous comment and noted that during his tenure as Chairman of the Utility Committee, citizens were encouraged to attend hearings when they disagreed with City staff or the Utility Committee decisions.

It was moved by Committeemember Jones, seconded by Chairman Thom, to recommend to the Council that QuikTrip Corporation's request for water service outside Mesa's corporate limits, be approved.

Upon tabulation of votes, it showed:

AYES - Thom-Jones  
NAYS - Whalen

Chairman Thom declared the motion carried by majority vote.

Chairman Thom thanked everyone for their input.

2. Discuss and consider a request for water and sewer service outside Mesa's corporate limits for property at Hawes and Range Rider Roads.

Mr. Welker addressed the members of the Committee relative to this agenda item. He reported that staff recently received a request from Leo Beus, the attorney representing the owners of approximately 90 acres of unimproved real property (the Range Rider Road Property), for water service to a new subdivided residential development located outside Mesa's corporate limits. (See Attachment 1.)

Mr. Welker stated that although the Range Rider Road Property has always been located outside of the City's corporate limits, it has been within the City's water service area; that in 1976, the Maricopa County Board of Supervisors adopted a resolution approving the establishment of the Range Rider Improvement District for the specific purpose of installing domestic water lines; that as specified in the terms of the Improvement District, the owners of

the Range Rider Road Property paid for the construction and installation of the domestic water lines to serve the property; that it is the applicant's position that pursuant to the legal obligations created by the Improvement District, each of the lots into which the Range Rider Road Property, or any part thereof, may be legally subdivided within the County and has a legal right to receive domestic water from the City.

Mr. Welker noted that in reviewing the Range Rider Improvement District legal documents, the City Attorney's Office and staff concurred that the property must comply with the terms and conditions set forth in City Ordinance No. 3880. He added that the property is contiguous to the City's corporate limits and suitable for immediate annexation. Mr. Welker stated that it is the recommendation of staff that the applicant's request be denied at this time. He said that pending completion of a successful annexation process, the property would be eligible to receive Mesa utility services. Mr. Welker further commented that the City would also have the ability to enforce City development standards and assess/collect all appropriate fees.

Discussion ensued relative to the fact that the owners of the Range Rider Road Property have paid assessments into the Improvement District, and that the City has provided water service to this area for over 20 years.

It was moved by Committeemember Jones to recommend to the Council that staff's recommendation for denial of the applicant's request for water service to a new subdivided residential development outside Mesa's corporate limits, be approved.

Committeemember Whalen stated that for discussion purposes, he would second Committeemember Jones' motion.

In response to a question from Chairman Thom regarding the fact that the applicant's attorney was not present to address this issue, Mr. Welker advised that Mr. Beus was notified of the date, time and location of today's meeting and that it was staff's understanding that he intended to participate in the hearing process.

Chairman Thom stated that she would prefer to postpone the agenda item until such time as Mr. Beus is available to attend the meeting.

City Manager Mike Hutchinson advised that he would recommend that the matter be continued to a future meeting.

Committeemember Jones withdrew his motion and Committeemember Whalen withdrew his second to the motion.

In response to requests from Committeemember Jones and Chairman Thom, Mr. Welker clarified that prior to the next meeting, staff will provide the Committee with information relative to the number of properties currently being provided water service, an estimate of the future subdivided lots that will receive water, and also maps depicting City of Mesa water line locations to adjacent parcels in the area.

Chairman Thom thanked staff for the presentation.

3. Adjournment.

Without objection, the Utility Committee Meeting adjourned at 3:08 p.m.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Utility Committee meeting of the City of Mesa, Arizona, held on the 24<sup>th</sup> day of October 2002. 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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Attachment