



OFFICE OF CITY CLERK

COUNCIL MINUTES

November 1, 2007

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 November 1, 2007 at 7:30 a.m.

COUNCIL PRESENT

Mayor Keno Hawker
Kyle Jones
Tom Rawles
Scott Somers
Darrell Truitt
Claudia Walters

COUNCIL ABSENT

Mike Whalen

OFFICERS PRESENT

Christopher Brady
Debbie Spinner
Linda Crocker

Mayor Hawker excused Councilmember Whalen from the entire meeting and Vice Mayor Walters from the beginning of the meeting. She arrived at 7:32 a.m.

1. Review items on the agenda for the November 5, 2007 regular Council meeting.

All of the items on the agenda were reviewed among Council and staff and the following was noted:

Conflicts of interest declared: 9k (Hawker)

Items added to the consent agenda: None

Items removed from the consent agenda: 12c

2. Hear a presentation and discuss the West Main Street Neighborhood Area Plan.

Planning Director John Wesley noted that as directed by the Council, staff received input from the community and the Planning Advisory Committee in order to draft a plan to address the West Main Street Area in preparation for Transit-Oriented Development (TOD) as Light Rail Transit (LRT) is extended into this area. He advised that the draft plan is scheduled to be presented to the Planning and Zoning (P&Z) Board later in November, after which the plan would move forward for Council consideration in December.

GIS Administrator Hector Tapia introduced Planner Sabby Kapoor and Senior Planner Wahid Alam, both of whom contributed to the development of the plan.

Mr. Alam displayed a PowerPoint presentation (a copy is available for review in the City Clerk's Office) and reported that a Planning Advisory Committee (PAC) was formed that included representatives from the Mesa Grande Community Alliance and the West Mesa Community Development Corporation (CDC). He advised that the boundaries of the 2.5 square mile area, with a population of approximately 14,000, are University Drive on the north, Country Club Drive on the east, the Tempe Canal on the west, and Broadway Road on the south. Mr. Alam noted in addition to the PAC meetings, several larger community meetings held as part of the planning process were well attended. He said that the area is a close-knit, diverse community that welcomes change. Mr. Alam stated that the purpose of the plan is to create a place that will continue to represent the people and the community by incorporating the following elements:

- Placemaking/Urban Design
- Land Use
- Transportation
- Historic Preservation
- Open Space and Recreation Public Infrastructure
- Design Imperatives and Illustrations

Mr. Alam reviewed the following recommendations for the different areas in West Mesa:

TOD Station Areas (located within a five-minute walk from the LRT station) would include mixed use and high-density development, a minimum building height of three stories, residential and office space on the upper floors, and retail space and restaurants on the ground floor.

TOD Corridor Area (within walking distance of the LRT station) would have a moderate density and include residential and mixed-use development.

TOD Station and Corridor Areas would include plazas and small pocket parks. Alternatives to surface parking would also be considered.

Mr. Alam outlined the activities that would enable the implementation of the West Main Street Area Plan, such as amending the Mesa 2025 General Plan, creating a TOD ordinance, planning the capital improvements of infrastructure and creating a board or committee to serve as the "keeper of the vision." He added that suggestions made at the community meetings include forming public-private partnerships and assisting owners of small pieces of property.

In response to a question from Mayor Hawker, Mr. Tapia advised that based on a review by the Utilities Department, no major utility capital improvements would be required in order to address the increased densities. He explained that since the closure of the Motorola plant, which utilized a significant amount of water, there is presently unused capacity in this area.

Mayor Hawker stated the opinion that it would not be appropriate for the City to participate in or facilitate the assembly of pieces of land in this area. He noted that the large parcels formerly utilized by car dealerships and motels in the Main Street corridor are prime areas for redevelopment, which would then generate interest in the development of smaller parcels. Mayor Hawker expressed concern that the proposed transit stops were close together, and he suggested that the transit stops be placed mid-block at least one and a half to two miles apart.

Vice Mayor Walters noted that the West Mesa CDC could be the appropriate entity to facilitate the assembly of smaller parcels. She added that the property owners have a choice to “opt in” or “opt out” of the new zoning. She stated that the City is attempting to provide an opportunity to property owners to optimize the use of their land.

Councilmember Rawles concurred with Mayor Hawker that the City should not be involved in assembling parcels of land, and he expressed support for the “free market” approach.

Responding to a question from Councilmember Truitt, Mr. Alam stated the minimum building heights were specified in order to increase the density.

Mayor Hawker commented that the property owners were likely to construct a higher building in order to capitalize on their investment, and he suggested that a maximum height be stipulated rather than a minimum.

Councilmember Rawles stated the opinion that the manner in which an owner chooses to invest in his property should not be a concern to the City, and he added that a property owner might not wish to optimize his investment.

Councilmember Jones noted that the “opt in” or “opt out” feature of this zoning enables property owners to retain the current zoning or utilize the new zoning. He stated the opinion that the role of the City is to be of assistance to property owners by providing tools that facilitate transit-oriented development, if that is their choice.

In response to comments made by Councilmember Rawles, Mr. Tapia explained that the zoning does not change when a property is sold, and that the new owner continues to have the choice to “opt in” or “opt out” of the new zoning.

Mr. Wesley advised that the plan outlines the community’s goals, and that staff is in the process of developing the TOD ordinance for that area that would reflect the plan. He said that staff is investigating the possibility that the Council could adopt the ordinance specific to that area and that each individual property owner could choose to apply the new zoning to his property. He added that an individual purchasing a property with TOD zoning could apply for rezoning.

Vice Mayor Walters noted that various zoning regulations apply to all parts of the City. She said that under this plan, property owners in the West Main Street area could utilize the existing zoning or choose to apply the TOD zoning without being required to file a Plan Amendment.

City Manager Christopher Brady advised that staff’s proposal was driven by public input and attempts to reflect the vision of the community. He stated that this was not an effort by the City to dictate to the community or to individual property owners.

Responding to a question from Mayor Hawker, Mr. Alam stated that the buffers between residential and commercial would be developed with community input and considered in the design after the plan is approved.

In response to a question from Councilmember Truitt, Mr. Wesley advised that staff is considering adding a new Land Use Plan category to the General Plan that would be flexible in addressing these types of mixed-use developments.

Councilmember Truitt stated the opinion that the plan language should reflect that certain requirements, such as minimum building heights, are encouraged rather than mandated by ordinance.

Mayor Hawker thanked staff for the presentation.

3. Hear a presentation, discuss and provide direction on the transfer of City properties to A New Leaf, including La Mesita, East Valley Men's Center and MesaCAN building.

Acting Neighborhood Services Director Ray Villa introduced Housing and Revitalization Director Carolyn Olson. He said that the subject properties are currently being leased from the City and have not yet met the minimum requirements established by the Council in 2003 for the transfer of ownership. Mr. Villa reported that A New Leaf is in the process of making improvements to each of the properties, and that potential donors have expressed concern that A New Leaf does not own the properties. He advised that staff recommends the transfer of ownership as being in the best interest of the City. Mr. Villa noted that A New Leaf (formerly Prehab of Arizona) has partnered with the City for more than 35 years, has proven to be financially responsible, and currently has a \$23 million operating budget and 375 employees.

In response to questions from Mayor Hawker regarding other City-owned properties, Community Revitalization Specialist Lisa Hembree advised that CARE Partnership constructed their facility on leased City property that was purchased with CDBG (Community Development Block Grant) funds and General Fund dollars. She noted that the A New Leaf organization leases several other properties from the City that were acquired with CDBG funds and another that was acquired with General Fund dollars. Ms. Hembree added that the Child Crisis Center operates on leased City property and although this property would be eligible for a transfer of ownership in 2008, the Center has not expressed an interest in doing so. She added that the City purchased the property at 805 North Country Club for the Child Crisis Center, which is currently constructing the Family Resource Center on that site.

Discussion ensued regarding the fact that A New Leaf would be required to sign an agreement that each of the properties would continue to be utilized for the same purpose for the subsequent five years in order to meet the fifteen-year requirement; and that a non-profit agency could secure ownership by reimbursing the City for CDBG funds that were utilized to purchase the property.

Mayor Hawker expressed support for transferring the ownership of the three properties to A New Leaf.

Responding to a question from Councilmember Rawles, Mr. Villa advised that the requirement that a City-owned property leased to a non-profit agency must maintain the same use for a fifteen-year period is a City-imposed restriction, which was included in the 2003 policy established by the Council. He added that the restriction imposed by the Federal government regarding properties purchased with CDBG funds and leased to a non-profit agency is that the use of the property be maintained for a period of five years.

Councilmember Rawles expressed support for the transfer, and he added that Council consideration of each of these individual cases seemed unnecessary and that the decision could have been made at the staff level.

It was moved by Vice Mayor Walters, seconded by Councilmember Jones, that the City transfer ownership of the properties for La Mesita, the East Valley Men's Center and the MesaCAN building to A New Leaf.

Vice Mayor Walters explained that the 2003 policy was designed to prevent disreputable individuals from forming a non-profit organization with the intent to secure property from the City.

In response to a comment by Councilmember Rawles that staff was seeking direction in order to prepare a resolution, City Manager Christopher Brady concurred that a motion by the Council was not necessary. (The motion was withdrawn by the maker and the seconder.)

Mayor Hawker confirmed that the Council had provided direction to move forward, and he thanked staff for the presentation.

4. Hear a presentation, discuss and provide direction on code changes regarding deferral of off-site improvements.

Development Services Director Christine Zielonka introduced City Engineer Beth Huning and reported that staff is proposing modifications to two sections of Title 9 of the City Code regarding off-site improvements. She displayed a PowerPoint presentation (a copy is available for review in the City Clerk's Office) and stated that new development is required to pay for itself. Ms. Zielonka advised that the proposal would allow a deferral of the in-lieu payment or the actual construction of the street improvements or utility line extensions when it serves the best interest of the City. She said that these situations would occur in new areas where the road construction or utilities may not be needed or desired immediately. Ms. Zielonka explained that in these cases the in-lieu payment or construction could be deferred with the approval of the City Manager and the Council. She noted that the primary advantages to the City are that a deferral would allow for proper planning of infrastructure and the cost of the improvements would be based on the value at the time of construction. She explained that in-lieu payments do not include an inflation factor.

Ms. Zielonka outlined the required conditions for granting an off-site deferral:

- City Manager's discretion.
- Non-residential development for land zoned commercial or industrial.
- 125 acres or include at least one mile of total frontage.
- Site is not in the Regional Transportation Plan.
- Site is not in the City's Five-Year Capital Improvement Program.
- Approval of a development agreement by the City Manager and the Council.
- Financial assurance that is acceptable to the City Engineer and City Attorney, which is generally a Performance Bond.

Ms. Zielonka said that staff proposes to introduce the Code modifications to Title 9-6-7 (Subdivisions) and Title 9-8-4 (Off-Site Improvements) at the November 5th Regular Council meeting for consideration at the November 19th Regular Council meeting.

Mayor Hawker expressed support for the concept and agreed that the developer should be responsible for constructing the road and/or making the infrastructure improvements at the time they are needed.

In response to a question from Mayor Hawker regarding the size restriction, Ms. Huning advised that granting deferrals to sites of less than 125 acres are difficult to administer. She noted that Performance Bonds have a typical "shelf life" of two to five years and that the off-site improvements may not be required for ten or more years. Ms. Huning noted that staff would have to call the bond at the expiration date or request that the bond be extended.

Ms. Zielonka advised that the development agreement would be recorded against the property and be disclosed as part of any future real estate transaction involving that property.

Councilmember Truitt suggested that the size be less restrictive so that the City has the flexibility to offer the deferral option to the developer of a smaller site when it serves the best interest of the City. He noted that this policy is an option offered by the City, and that the City is not required to offer a deferral for any project.

Councilmember Jones expressed support for flexibility within the Code to enable the deferral option to be available to smaller parcels.

Responding to comments by Mayor Hawker, Ms. Zielonka advised that references to size restrictions would be removed from the proposed Code modifications.

In response to a series of questions from Vice Mayor Walters regarding performance bonds, Ms. Huning explained that the Code change would utilize the term "financial assurance." She stated that financial assurance could take many different forms and that the most common form is a performance bond. Ms. Huning advised that a performance bond typically costs from one to ten percent of the value of the project, depending on the type of project, the duration of the bond and the financial capability of the property owner. She noted that approximately twenty percent would be added to the bond amount to account for inflation. Ms. Huning said that the development agreement would stipulate that at the expiration date, the performance bond could be called or renegotiated for a longer term.

Assistant City Attorney Jim Smith addressed a question from Vice Mayor Walters by advising that problems with unenforceable in-lieu payments in prior years resulted from the fact that the agreements were not recorded against the property. He stated that although this proposal has not been legally tested regarding enforceability, the requirement for financial assurance and recording the development agreement against the property provides protection to the City. He added that individual residential properties were excluded from the proposal in order to avoid the necessity for the City to take legal action against an individual homeowner to enforce a development agreement.

Discussion ensued relative to the fact that the current proposal applies only to commercial and industrial developments; and that offering the option to a residential development would be cumbersome because each individual home would require a separate agreement and financial assurance.

Councilmember Rawles suggested that the inflationary factor for performance bonds be identical to that utilized in the budget in order to be consistent and provide a defensible position for the City.

In response to a question from Councilmember Rawles, Mr. Smith advised that the proposed language refers to "financial assurance" rather than specifying a performance bond. He stated that major corporations could provide a letter of credit as financial assurance.

Councilmember Rawles stated the opinion that the Council should have the flexibility to waive the requirement for a performance bond or a letter of credit for entities that are considered financially capable of meeting the obligation.

Mr. Smith stated that the development agreement would probably be sufficient assurance for these types of entities.

Councilmember Rawles stated that he objects to the language that states that the amount and form of the financial assurance must be acceptable to the City Engineer and the City Attorney. He said that the Council should have the flexibility to determine the level and type of financial assurance that is acceptable.

Ms. Zielonka explained that the intent of the wording was to establish an acceptable level of financial assurance at the staff level before moving the proposal forward to the Council.

Councilmember Rawles noted that the staff's "acceptable level" is always subject to an override of the Council.

Assistant City Attorney Alfred Smith advised that the Council has the authority to change and/or eliminate the assurance requirements, and he added that the Code language could be changed to clearly reflect that authority.

City Manager Christopher Brady suggested that the wording could be changed to reflect that the amount of the financial assurance is recommended by the City Engineer and the City Attorney.

Mr. Smith noted that the language proposed in the ordinance is similar to language that the Council has approved in the past.

Councilmember Somers stated the opinion that the amount of the financial assurance should be recommended by staff. He noted that he does not have the engineering background or legal knowledge in these areas to make such a determination.

Mayor Hawker said he was not seeking flexibility in this area. He noted that the amount charged by a bonding company for a performance bond would be determined by the market and the status and financial condition of the developer.

In response to a question from Councilmember Truitt, Ms. Zielonka stated that the development agreement is a negotiated document between the City and the developer. She added that an agreement would not be brought forward for Council consideration without both parties reaching a consensus.

Vice Mayor Walters noted that many reputable, large firms have experienced financial difficulties in recent years. She stated the opinion that the City has a responsibility to require financial assurance for all deferred off-site improvements.

Councilmember Jones concurred that the requirement for financial assurance should be included in the Code. He noted that the only area in which he was interested in having flexibility related to the size of the project.

Mayor Hawker noted that there was concurrence among a majority of the Councilmembers to eliminate the reference to size restrictions and to move forward with the proposed Code modifications. He thanked staff for the presentation.

5. Acknowledge receipt of minutes of various boards and committees.

a. Transportation and Infrastructure Committee meeting held on October 11, 2007.

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

Mayor Hawker declared the motion carried unanimously by those present.

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

Councilmember Somers: Arizona Town Hall Meeting

Vice Mayor Walters: Latino Town Hall Meeting
"Art on the Move" Event

7. Scheduling of meetings and general information.

City Manager Christopher Brady stated that the meeting schedule is as follows:

Saturday, November 3, 2007, 10:00 a.m. – City Hall at the Mall

Monday, November 5, 2007, 3:45 p.m. – General & Economic Development Committee

Monday, November 5, 2007, TBA – Study Session

Monday, November 5, 2007, 5:45 p.m. – Regular Council meeting

Thursday, November 8, 7:30 a.m. – Study Session

Friday, November 9, 2007, 8:00 a.m. – Transportation Road Show

8. Items from citizens present.

There were no items from citizens present.

9. Adjournment.

Without objection, the Study Session adjourned at 9:09 a.m.

KENO HAWKER, MAYOR

ATTEST:

LINDA CROCKER, 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 1st day of November 2007. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK

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