



To: Mayor and Councilmembers
From: Debbie Spinner
Date: September 11, 2007
Subject: Z07-43
Queens Park

In response to Council's request at the September 4, 2007 Council meeting, this memorandum attempts to answer several legal questions regarding Z07-43. If Council has additional questions, I will supplement this memorandum or attempt to answer the questions at the study session or Council meeting on September 17.

General Plan Designation: Light industrial
Current Zoning: AG
Current Use: Vacant
Requested Zoning: O-S PAD and M-1 PAD

Residential Zoning: R1-43

The applicant in Z07-43 requests that this parcel be rezoned from AG to O-S PAD and M-1 PAD to allow for the development of an office/warehouse development. The requested zoning is consistent with the General Plan, which designates this area light industrial.

Information Requested:

1. Under the zoning ordinance, is the requested rezoning to O-S and M-1 an illegal encroachment on the adjacent residential neighborhood; a nonenforcement of the Mesa code; or a circumvention of the Mesa code?

No. The zoning code does not prohibit locating O-S and M-1 next to a residential zone. Mesa City Code (MCC) 11-4-1(A)(2) states that it is *the intent* of the R1-43 district to "allow for areas where semi-rural residential and agricultural uses can be maintained without conflict from commercial, industrial or high-density residential development." This is a statement of intent. It does not contain any legally limiting language. Whether a conflict exists, and if so how to mitigate that conflict, is up to the discretion of the Council, given the entirety of the circumstances.

This opinion is also supported by MCC 11-15-2(B), which sets out the minimum setbacks when O-S or M-1 zones are adjacent to residential zones, including R1-43. This section, read in conjunction with the MCC 11-4-1(A)(2), establishes that although it is the intent of the zoning ordinance to minimize the conflict between R1-43 and O-S, M-1, the zoning ordinance does not prohibit one being located next to the other.

2. What setback is required by the zoning code for this project?

MCC 11-15-2(B)(1) applies to this project and requires a minimum landscape/parking setback of 20'.

The revised site plan includes an 80' setback, and meets this zoning code requirement.

3. Does Proposition 207 create potential liability for the City of Mesa if Council approves this zoning case?

No. Proposition 207, codified as A.R.S. 12-1134, does not create a cause of action for the adjacent landowners. The applicable portions of the statute state:

(A) If the existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law enacted after the date the property is transferred to the owner and such action reduces the fair market value of the property the owner is entitled to just compensation from this state or the political subdivision of this state that enacted the land use law.

(B) This section does not apply to land use laws that:

(6) Do not directly regulate an owner's land;

In this case, the zoning action considered by Council does not "directly regulate" the residential landowners. Additionally, this zoning case does not reduce the residents' "rights to use, divide, sell or possess private real property." Thus this statute does not create a cause of action for these residents.

4. Background of the Queen's Park Subdivision: This information is provided by the planning department.

The Queen's Park subdivision was recorded as a plat on March 31, 1981. The subdivision was reviewed and approved in the County, not the City of Mesa. At the time of the subdivision review and recordation, the Mesa General Plan did not extend to this current part of Mesa.

The 1988 General Plan designated the entire area, including the Queen's Park area as general industrial.

The entire area was annexed December 18, 1989 through ordinance 2473. The 1990 map of that annexation area shows the residential subdivision known as Queen's Park. The owner of the Queen's Park subdivision land was noted in the annexation case file as:

Queens Park Associates. The air force base was north of the subdivision and operational when the subdivision was platted. The base closed in 1993, and reopened 6 months later as WGAirport. It appears that 1993 was the first year that lots were sold to individuals.