

GENERAL DEVELOPMENT COMMITTEE MINUTES

September 2, 1999

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 September 2, 1999 at 10:16 a.m.

COMMITTEE PRESENT

Jim Davidson, Chairman
Keno Hawker
Dennis Kavanaugh

COMMITTEE ABSENT

None

COUNCIL PRESENT

Bill Jaffa

STAFF PRESENT

C.K. Luster
Shelly Allen
Jan Amdahl
Wayne Balmer
Neal Beets
Linda Crocker
Jack Friedline
Mike Hutchinson
Barbara Jones
Greg Marek
Tom Mattingly
Frank Mizner
Joe Padilla
Tom Remes
Ed Tato
Others

OTHERS PRESENT

Julee Brady
Joe Dougherty
Mark Funk
Keith Hendricks
Joe Hernandez
Dan Reeb
Mark Reeb
Others

1. Hear a report and consider an appropriate course of action concerning development at The Commons Industrial Park.

Community Development Manager Wayne Balmer stated that this issue is being presented to the Committee for their input and recommendations. Mr. Balmer also discussed concerns expressed by staff relative to combining residential and industrial development in the same general area.

Mr. Balmer referred to handouts distributed to the Committee, which included a letter from Mark Reeb, President of the Commons Industrial Park at Falconview and a member of the Reeb (Development Group), to Mr. Balmer, as well as a letter from Mr. Balmer to Mayor Brown outlining the facts surrounding this case.

Planning Director Frank Mizner and Planner Ed Tato addressed the Committee regarding this issue and provided a brief overview of the zoning history at this location. Mr. Mizner informed the Committee that the land has been zoned industrial since 1984 although the site was initially zoned residential. Mr. Mizner noted that following the development of a residential (mansion) building and the establishment of the neighboring helicopter facility, the applicant applied for and was granted industrial zoning. Mr. Mizner noted that although the 1984 rezoning case was approved with minimum information, the stipulations governing the approval of this case referenced tentative or proposed CC&R's. Mr. Mizner commented that the reference

implied that the development of the property should be in conformance with the CC&R's. Mr. Mizner said that approximately 14 years later, the Somerset residential subdivision, located to the west of the parcel, began to develop. Mr. Mizner reported that in mid-1997, a group of investors which included Mark and Dan Reeb, purchased the property, began selling parcels, and proposed amendments to the CC&R's. Mr. Mizner noted that the proposed amended CC&R's were reviewed by City staff to ensure that the City would not be held liable for any situations that may occur in the future and were then approved and recorded. Mr. Mizner said that the staff member who approved the amended CC&R's was not aware of the fact that the existing CC&R's were a condition of approval in the 1984 zoning case. Mr. Mizner advised that the amended CC&R's were used by the applicant in communicating with potential developers and eventually business owners in this area.

Mr. Mizner informed the Committee that the first proposal to come before the Design Review Board at the site was a furniture company by the name of "Top Drawer." Mr. Mizner commented that the case was approved without any reference to the citrus trees that were present on the site at that time. Mr. Mizner added that the company later decided to build on another lot. Mr. Mizner reported that in mid-1998, the Reeb brothers removed all of the citrus on the property and noted that the City of Mesa does not have an ordinance prohibiting such action. Mr. Mizner commented that the removal of the trees generated a substantial amount of controversy among the neighbors. Mr. Mizner stated that during the same time period, businesses such as Dave's Construction Company and Red Mountain Rubbish were developed within the park. Mr. Mizner said that the removal of the citrus, combined with the development of industrial businesses, has generated extensive concern among the residents in the Somerset subdivision. Mr. Mizner added that the neighbors' concerns include the lack of mature citrus, the nature of the businesses, the aesthetics of the area, and noise/odor issues.

Mr. Mizner emphasized that the businesses followed all of the City's required permit requirements and said that the uses are permitted in accordance with M-1 zoning. Mr. Mizner added that if the City had enforced the original 1984 CC&R's, the businesses would not have been allowed to develop at that location. Mr. Mizner noted that City Attorney Neal Beets has rendered an opinion that the City should enforce the original CC&R's.

Discussion ensued relative to meetings that have been held with the applicants, the residents, business owners, and homeowners' association members in an effort to arrive at a compromise agreement, Mr. Balmer's August 23, 1999 letter to Mark Reeb containing recommendations relative to resolving outstanding issues and arriving at a mutually agreeable development proposal for the remainder of the property, and remaining items of contention, including the fact that the Roosevelt Water Conservation District (RWCD) owns the property located between an existing drainage line and a proposed buffer wall and the fact that the RWCD has tentatively agreed to cooperate with the City relative to landscaping proposals pending the City's acceptance of landscape maintenance responsibilities, liability issues and competing land-use interest in this area.

Mr. Mizner referred to an area land use map and noted that the Able Steel Company, a heavy industrialized steel fabrication company, is located in the general area. Mr. Mizner said that previous noise concerns resulting from the installation of a loud air-cleaning system, which generated complaints from neighboring residents were addressed by the company with the assistance of City staff. Mr. Mizner added that one of the businesses involved in the Commons Industrial Park utilizes a similar type air handler and will most likely also generate noise complaints. Mr. Mizner commented on the close proximity of the City of Mesa's Police and Fire Training Facility and discussed efforts that were expended by the City to address and resolve complaints relative to that facility. Mr. Mizner expressed the opinion that landscaping requirements that are established for The Commons should also apply to the Training Facility located to the north.

Additional discussion ensued relative to recommendations from the adjacent neighbors that Dave's Construction Company and Red Mountain Rubbish be relocated, the fact that the businesses have been legally established and were granted building occupancy permits, staff's recommendation that a new wall be installed

along the property line based on input from the property owners, the fact that the wall would be 6 feet above the maintenance road for the Canal which may result in 10-foot sections in certain areas, screening benefits and unresolved landscaping issues and development criteria for the remainder of the park.

Mr. Mizner informed the Committee that staff has intentionally delayed development in this area in order to avoid further impacting the neighbors. Mr. Mizner added that there are speakers present who will voice concerns regarding the financial effect of the delays on their businesses.

Chairman Davidson thanked Mr. Mizner for his input.

Mr. Balmer stated the opinion that three outstanding issues remain to be addressed and requested consideration of staff's recommendation that a cohesive, compatible wall design be developed for the east side of the canal bank that will be acceptable to the City of Mesa and homeowners in the Somerset Estates subdivision. Mr. Balmer added that the Committee will also have to determine whether the proposed wall should be constructed in phases or all at once. Mr. Balmer noted that the walls behind Dave's Construction and Red Mountain Rubbish may have to be removed and rebuilt in order to achieve consistency in design.

Mr. Balmer also discussed the issue of landscaping on the east side of the canal and reported that Mark and Dan Reeb have agreed to install the landscaping but noted that this offer is contingent upon the City's acceptance of maintenance responsibility. Mr. Balmer stated that staff does not support agreeing to landscape maintenance responsibilities at this site.

Mr. Balmer also informed the Committee that staff is seeking direction relative to the establishment of enhanced levels of Design Review requirements as outlined in the proposed August 17, 1999 checklist developed by Ed Tato, for specific lots, including lots on the west side of Maple, immediately adjacent to the canal; lots on the east side of Maple which may be viewed from the Somerset Estates subdivision until the lots to the west are built; near the entrance from McDowell, and the properties around the drive that leads to the training facility. Mr. Balmer noted that all of the above listed lots would be coded into the City's computer system and would be subject to the additional design standards.

Discussion ensued relative to staff's recommendation that the west side of the property be governed by the 1984 CC&R's and the east side of the property be subject to the amended guidelines, including adjustments that may be necessary to meet existing design requirements, staff's intention to obtain input from the Council, the homeowners' association, and the Reeb Group relative to the execution of an agreement outlining the proposed recommendations prior to proceeding, and staff's intention to also work with the Reeb Group to notify property owners who purchased their land in accordance with the revised deed restrictions that they will be subject to enhanced design review requirements.

Chairman Davidson encouraged speakers to present their input relative to this issue.

Mr. Keith Hendricks, a homeowner, attorney, and member of the Somerset Homeowners' Association Board of Directors, stated that due to a lack of prior meeting notification notice, a number of residents were unable to attend the meeting. Mr. Hendricks stated the opinion that the Committee has two choices: (1) enforce the 1984 CC&R's, or (2) adopt a new ordinance. Mr. Hendricks stressed the importance of attaining closure on this issue and encouraged the Committee to submit appropriate recommendations to the Council regarding this matter. Mr. Hendricks noted that current uses, setbacks and building materials are in violation of the 1984 CC&R's and are potentially subject to law suits and continuing dispute. Mr. Hendricks recommended that the Committee consider a solution regarding the properties other than the existing uses and then strive to reach an agreement between the parties to accommodate the existing uses. Mr. Hendricks stated the opinion that failure to achieve an acceptable agreement would result in a lengthy legal case.

In response to a question from Chairman Davidson, Mr. Hendricks stated the opinion that following the development of an acceptable agreement, preferably an ordinance, to address screening, noise and odor issues, the matter of the two existing businesses may also be addressed.

Mark Funk, President of the Somerset Homeowners' Association, discussed residents' concerns relative to the establishment of adequate buffering between the residential and industrial sites. Mr. Funk discussed odor and noise complaints resulting from the two existing businesses which he has received from homeowners and added that architectural issues also remain to be addressed. Mr. Funk informed the Committee that a large number of homeowners in the Somerset Estates subdivision performed extensive area/zoning research prior to purchasing their lots, and stated the opinion that the rights of the homeowners' must be protected. Mr. Funk commented that the Homeowners' Association is anxious and willing to address and hopefully develop a proposal to eliminate the remaining issues of concern.

Julee Brady, a member of the Northeast Mesa Homeowners' Association, stated the opinion that an adequate and appropriate buffering plan can be achieved and requested that the members of the Committee consider this issue as if they themselves are residents in the adjacent subdivision. Ms. Brady discussed the negative impacts of industrial noises and odors on residential properties and thanked the Committee for their consideration and support.

Mark Reeb, President of the The Commons Industrial Park at Falconview, noted the complexity of this issue and stated that discussions are centered around achieving compatibility between residential and industrial uses. Mr. Reeb expressed the opinion that the property rights of a number of property owners in The Commons are being overlooked and requested that the property owners in the Park stand up and be recognized. (At this time, approximately 20 members of the audience stood and were recognized as property owners in The Commons.)

Discussion ensued relative to a questionnaire that was forwarded by the developer to 12 lot owners in The Commons, representing 295 employees, and the fact that 4 of the business have relocated to Mesa from other cities, efforts expended by the developer in 1997 to meet with staff, the fact that he was not informed that the 1984 CC&R's were a stipulation of zoning approval, the subsequent issuance of building permits by staff, and CC&R revisions that were approved by the City in 1997.

Joe Hernandez, the owner of Joe's Backhoe Service, discussed extensive delays that have surrounded the purchase of lot number ten in The Commons Industrial Park. Mr. Hernandez stated the opinion that the Somerset Estates Homeowners' Association should be involved in the development, design and implementation of a cooperative landscaping/buffer plan. Mr. Hernandez stressed the importance of compromising to reach an acceptable solution to concerns.

Joe Dougherty, a property owner in The Commons, informed the Committee that he owns nine buildings which house small businesses and said that he employs 110 employees. Mr. Dougherty added that one of his tenants employs an additional 100 people and another employs a total of 80. Mr. Dougherty stated that although not all of the employees work in The Commons, they do work within Mesa. Mr. Dougherty informed the Committee that the six buildings that are being proposed in his second phase of development are already completely rented and commented that a need must exist for this type of activity to occur. Mr. Dougherty commented on the fact that he and his wife have invested significantly in The Commons and urged the Committee to eliminate further delays which will negatively impact his business.

Mr. Balmer noted that a number of the buildings being proposed will be metal and contain required street landscaping but minimum interior landscaping. Mr. Balmer reiterated the remaining issues to be addressed by the Committee and requested input and direction.

In response to a question from Committeemember Hawker, City Attorney Neal Beets stated the opinion that the City has a legal obligation to comply with the zoning ordinance that was adopted in 1984. Mr. Beets added the opinion that it would be inappropriate to compound the error that occurred in 1997 when the CC&R's were amended and building permits were issued.

Discussion ensued relative to the performance of due diligence and staff's responsibility to be aware of existing regulations.

Committeemember Hawker concurred that the height of the proposed perimeter wall should be 6 feet measured from the grade level of the Canal bank. Councilmember Hawker also stated reluctance to require businesses with existing walls, which were built to comply with previous City requirements to meet the revised height requirement. Committeemember Hawker also questioned whether Maple Street should be included in the wall proposal and recommended that one wall be constructed along the entire length of the project as soon as possible. Committeemember Hawker discussed the landscaping issue and indicated that he would not be in favor of the City assuming responsibility for the landscape maintenance as recommended by the RWCD. Committeemember Hawker added the opinion that the east side of Maple Street should not be included in the design proposal as long as the perimeter wall is constructed without further delay.

Committeemember Kavanaugh stressed the importance of maintaining realistic expectations regarding this issue and concurred with Committeemember Hawker's comment that the entire wall should be constructed at the same time. Committeemember Kavanaugh also spoke in support of the proposed development criteria as outlined by staff. Committeemember Kavanaugh discussed the landscaping issue and cautioned against the City setting a precedent by agreeing to maintain the landscaping. Committeemember Kavanaugh added that staff may pursue entering into an agreement with the RWCD, whereby maintenance funding would be generated in cooperation with the Somerset homeowners. Committeemember Kavanaugh stressed the importance of proceeding without further delay.

Chairman Davidson concurred with the Committeemembers' remarks that the entire wall should be constructed at the same time. Chairman Davidson added that although he concurs that the City should not be involved in the maintenance of the landscaping, he is also cognizant of the fact that the City failed to carry out their responsibilities in an accurate manner. Chairman Davidson stated the opinion that the modified CC&R's should apply to the lots on the west side of Maple Street and commented on the fact that proposed businesses will generate noise.

Discussion ensued relative to the willingness of the proposed developer to baffle the potential noise that will be generated by a 36 foot high air handler, a question from Chairman Davidson relative to the feasibility of allowing the City to construct the wall and requiring the developer and/or the homeowners' association to assume responsibility for the landscaping and maintenance; the fact that the RWCD has indicated that they will not permit landscaping to occur in their easement unless the City agrees to assume maintenance responsibility, enforcement responsibility, the Reeb Group's willingness to work with the remaining lot owners and require a minimum of two rows of trees on 15-foot centers, on the east side of the wall, the fact that both CC&R's contain nuisance language, and the fact that a number of the 1984 CC&R's are less restrictive than the 1997 CC&R's.

Chairman Davidson clarified that the Committee is requesting that Mr. Reeb work with the Association and install landscaping on all of the properties located on the east side of the site and said that the City of Mesa may then be willing to cover part of the cost of constructing the new wall.

Mr. Reeb stated that if the City will assume all of the costs associated with constructing the wall, he is willing to pay for the purchase and installation of two rows of 24" box trees from McDowell all the way north and added that he will work with the lot owners to install the trees on their properties. Mr. Reeb stated the opinion that the remaining seven lot owners will allow this to occur. Mr. Reeb informed the Council that

discussions had occurred with the residents in the Somerset Estates Homeowners' Association and they had agreed to a number of restrictions on the three lots under his control. Mr. Reeb added that he is also willing to unilaterally place deed restrictions on those three parcels. Mr. Reeb informed the Council that he cannot speak for or control the parcels of the owners who already back up to the canal, such as Able Asphalt.

In response to a request for input from Chairman Davidson, Mr. Balmer advised that although Able Asphalt does not intend to mix asphalt on their property, they will operate asphalt service vehicles, and their hours of operation may be similar to the early hours kept by Red Mountain Rubbish. Mr. Balmer discussed concerns relative to resulting odors and noise. Mr. Balmer commented that the proposed facility will consist of a square metal box building with bay doors on the north and west. Mr. Balmer informed the Committee that to date Able Asphalt has not been issued a building permit. Mr. Balmer advised that staff informed Able Asphalt that the company does not meet the 1984 requirements and will have to locate an alternate site. Mr. Balmer said that the company does not agree with staff's assessment and insists that they be allowed to locate their business within The Commons.

Committeemember Hawker noted that typically stockpiled asphalt and/or asphalt that has adhered itself to the vehicles does not create odors.

Mr. Balmer advised that Able Asphalt's building would be located next to the canal and at this point will consist of a relatively inexpensive steel structure with minimum landscaping in the front and no landscaping in the rear. Mr. Balmer suggested that the company be asked to provide an enhanced elevation to the building, which may be other than a metal building, and install additional landscaping in the front and plant two rows of trees in the rear. Mr. Balmer stated the opinion that although staff's proposal may improve the aesthetics of the site, early morning noise will still occur.

In response to a question from Chairman Davidson relative to whether the City of Mesa has the ability to modify the CC&R's (by adopting the 1984 CC&R's and adding/applying them to the properties located on the eastern side of the property) without participating in an extensive zoning process, Mr. Beets expressed the opinion that although the City may proceed in this manner, consideration must be given to the fact that the three major parties in this dispute, (the City, the owners of The Commons and Somerset Estates homeowners), may not ultimately honor their commitments. Mr. Beets emphasized that an informal consensus of opinion and direction, such as what is currently under discussion, cannot be legally enforced.

Mr. Balmer recommended that a written agreement, which has received the approval of the Council, the owners of The Commons, and the homeowners in the Somerset Estates subdivision, be developed and signed by all three parties. Mr. Balmer indicated staff's willingness to prepare a draft agreement and present it to the Committee for review and consideration. Mr. Balmer noted that at that point, the Committee will have to determine whether to assume that the parties will honor their commitments and proceed in that manner with the signed document or proceed to the next level, which would entail the development of an ordinance to amend the 1984 zoning ordinance/deed restrictions, which could then be legally enforced in the future.

Committeemember Hawker commented that based on the fact that the 1984 CC&R's contained stipulations which, according to the City Attorney, are still in effect, this matter should proceed through the entire zoning process for the purpose of adopting a new ordinance for Council approval.

Mr. Dan Reeb suggested that the Committee allow each Canal-abutting lot owner to enter into a development agreement which outlines the steps that have been agreed to by all of the major parties. Mr. Reeb stated that the agreement will clearly state the requirements that must be followed in order to develop those properties, i.e. the construction of a fence, landscaping and uses. Mr. Reeb expressed the opinion that this procedure would eliminate the need to adopt a new zoning ordinance. Mr. Reeb said that he would be willing to develop such an agreement for the four lots abutting the Canal that are under his control and said that efforts would be expended to encourage the remaining lot owners to follow suit. Mr. Reeb explained that the document would

define what constitutes a nuisance, require building enhancements, and contain other stipulations that must be met in order to proceed with the development of the properties.

Committeemember Hawker commented that he supports Mr. Reeb's recommendation to attach the added requirements to the Canal-abutting lots.

Mr. Beets indicated that the matter may proceed as discussed but expressed concern relative to whether the proposed development agreement will be contrary to the underlying zoning. Mr. Beets explained that typically the purpose of a development agreement is to carry out and indicate in a detailed manner the proposed zoning implementation. Mr. Beets added that a potential contradiction exists between the existing zoning ordinance from 1984 and the proposed development agreement.

Committeemember Hawker expressed the opinion that at some point the Council should formally address the 1984 CC&R's and render a determination on whether they are still in effect and/or have been adequately modified and combined with other regulations.

Additional discussion ensued relative to the fact that Mr. Reeb will contact Dave's Construction and Red Mountain Rubbish relative to rebuilding their wall at the Reeb's expense, Mr. Reeb's willingness to construct the wall on their remaining lots at the time those lots are sold, wall design, and the importance of building the entire wall at one time.

Committeemember Hawker recommended that the Reeb's build the wall for their contracting and bidding services, that the City of Mesa reimburse the Reeb's for the cost of the wall that will be built behind Dave's Trucking and Red Mountain Rubbish, and that the Reeb's be responsible for the cost of constructing the remaining wall. Committeemember Hawker also added that the landscaping should be limited to the east side of the wall, to avoid the issue of potential City maintenance.

Mr. Balmer discussed staff's recommendation that the conditions contained in Mr. Tato's memo be reviewed by the appropriate parties and that effort be made to emphasize that the recommendations are actual standards that were contained in the 1984 CC&R's.

Discussion ensued relative to proposed banned uses for Canal abutting lots developed by the Reeb's, identifying the properties that the standards will apply to, the requirement to plant a minimum of two rows of trees in the rear yards, building upgrades, staff's recommendation relative to requiring metal building components to be stuccoed and/or aesthetically improved in an acceptable manner, and Mr. Balmer's suggestion that from this point on, anyone who does not already possess a building permit will be subject to the revised design standards.

Bob Gillette, the owner of Able Asphalt Company, described the appearance of his building to the members of the Committee and noted that the plans will include two shielding walls, which will block the parking lot area from the street. Mr. Gillette informed the Committee that had he been aware of the possibility of adopting revised guidelines, he would have developed plans which conformed to those requirements. Mr. Gillette added that requiring changes at this point may result in his inability to locate his company in The Commons.

In response to a question from Chairman Davidson, Assistant City Manager Mike Hutchinson expressed the opinion that staff has received sufficient direction and will proceed with the development of a proposal containing the Committee's input as quickly as possible.

Mark Funk, President of the Somerset Estates Homeowners' Association, stated that the residents are amenable to the construction of the fence and the proposed enhanced landscaping. Mr. Funk commented that

the issue of uses remains to be addressed and discussed noises and odors that emanate from businesses at The Commons.

Mr. Balmer presented an overview of the direction to staff provided by the members of the Committee, which includes:

1. A six-foot high wall, constructed by the Reeb's, will be built at the grade of the Canal bank as quickly as possible and the City of Mesa will assume responsibility for the portion of the wall that is built behind Dave's Construction Company and Red Mountain Rubbish;
2. All of the new lots will require two rows of staggered trees, 15 feet on center, on the east side of the wall, in a 20 foot landscaped area (rather than 10 foot);
3. Existing businesses will be contacted by the City and/or Mr. Reeb regarding the installation of additional landscaping;
4. The proposed heightened design criteria will be used for the McDowell Road frontage and those lots on the west side of Maple, and the standards prepared by Mr. Tato will be redrafted and combined with the current design standards. Additional input on other issues will also be solicited from the involved parties;
5. Active City of Mesa code enforcement would occur for Dave's Construction and Red Mountain Rubbish, should Code Enforcement Officers determine that noises and/or odors are excessive, and
6. Staff will prepare a proposed draft ordinance for the City Council to review and consider that will replace the earlier condition of approval contained in the 1984 CC&R's. This will be included as a zoning condition and applicants for building permits will be subject to this addition to the Zoning Code.

Discussion ensued relative to the importance of requiring two rows of trees along the entire length of the wall, the fact that the wall will be aesthetically acceptable, the bid process, the importance of defining the lots that back up to the Canal, and the importance of ensuring that the mix of residential and industrial development in the future is clearly defined and subject to definite standards.

City Manager Charles Luster commented that this issue may be placed on the agenda of the September 16, 1999 Council Study Session.

Mr. Balmer suggested that staff provide the Committee with a follow-up presentation at the September 16, 1999 Council Study Session and added that the Committee can determine at that time whether to place this issue on a future Council agenda for their consideration.

Committeemember Hawker expressed concerns relative to additional delays and the negative impacts of the delays on remaining development at The Commons.

Mr. Beets noted that a variety of issues may be addressed during the interim period, including the design of the wall, and stated the opinion that the bidding process should be delayed pending Council action on September 16, 1999.

Mr. Beets clarified that a zoning case will not be presented at the meeting and said that the Council will make a motion on whether to adopt the compromised settlement, which hopefully will be agreed to by all of the parties involved.

Committeemember Hawker expressed concern relative to the absence of an actual zoning case but agreed that the zoning process would be lengthy and result in added delays. Committeemember Hawker noted that the stipulations could be tied to the specific properties.

Mr. Balmer also clarified that staff will attempt to define the intent of the 1984 stipulations and apply same to the lots that back up to the Canal.

Chairman Davidson expressed appreciation to everyone for their input and encouraged all of the parties to continue to work together to reach acceptable resolutions to concerns.

2. Adjournment.

Without objection, the meeting of the General Development Committee adjourned at 12:21 p.m.

Carried unanimously.

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 2nd day of September 1999. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____ 1999

BARBARA JONES, CITY CLERK