

**SPECIAL MEETING OF THE COMMON COUNCIL  
OF THE CITY OF EL MIRAGE  
EL MIRAGE MUNICIPAL COURT  
14010 N. EL MIRAGE ROAD  
5:00 P.M., TUESDAY APRIL 21, 2009**

**MINUTES**

- I. **CALL TO ORDER** – The meeting was called to order by Mayor Fred Waterman at 5:04 p.m. Council led the public in the Pledge of Allegiance and a Moment of Silence.
- II. **ROLL CALL** – Present were: Mayor Fred Waterman, Councilmember Roger Cleveland, Councilmember William Conner, Councilmember Roy Delgado, Councilmember David Shapera, Councilmember Adam Super  
Absent: Vice Mayor Michele Kern

III. **SPECIAL SESSION**

City Attorney Rick Flaaen gave a presentation regarding agenda items A, B, and C.

City Attorney Rick Flaaen stated that in 1985, the El Mirage City Council annexed most of the Thunderbird and Dysart roads intersection but instead of annexing up to the center line, the City annexed approximately 55 feet past the center line.

City Attorney Rick Flaaen discussed the BNSF Railway agreement which will provide for the enhancement of the gates and warning devices at the Dysart and Thunderbird Road intersection. BNSF is requiring these safety devices as part of their support for going to the Corporation Commission in order to get permission to improve the intersection.

The IGA with the City of Surprise will provide for the joint cost sharing for the improvement of the Dysart and Thunderbird Road intersection. The City of Surprise recognizes that the intersection is a border intersection and since they own one roadway that approaches the intersection, or approximately 25% of the intersection, the 2.3 million slated for the project on their behalf is greater than 25% of the total project cost so they feel that this amount is adequate.

The City of El Mirage has looked into the possibility of a lower scope project which would cost approximately \$900,000 less than the proposed full scope project, but if this route is chosen, the City of Surprise would not contribute any funds towards the project.

The sources of funds for the full improvements are as follows: City of El Mirage general fund: 2.6 million, City of Surprise: 2.3 million, Wal-Mart contribution: \$800,000, HURF funds: \$433,000.

The Development Agreement with PWP Dysart and Thunderbird LLC calls for the development at the southeast corner of the Dysart and Thunderbird road intersection and also provides for the dedication to the City of the right-of-way.

The Park West development agreement requires the City to complete the offsite improvements. These types of improvements are generally completed by the developer but in this case, it is the only way the City will be able to obtain the right-of-way. If this agreement is not approved, because of the agreement with Surprise, the City would have to either buy or through condemnation, the City would have to acquire the right-of-way so that the improvements could be completed which the City of Surprise has stated is a requirement for their assistance in the project. If the City of El Mirage does not agree with the improvements, then the City would have to buy the right-of-way for approximately \$500,000 to \$750,000 and would still have to complete the improvements.

The Spectra Group inc. is currently looking to develop the southeast corner of Dysart and Thunderbird Roads. They are a company that specializes in developing compatible retail businesses near Wal-Mart's.

Councilmember Delgado asked what the time frame will be for a return on investment regarding the intersection improvements.

City Attorney Rick Flaaen said that he is not sure when the City will see a complete return on investment but the Spectra Group inc. intends to have Phase I open and ready to go by March 2010.

Councilmember Delgado asked about the current lawsuit against the city that was filed by Park West/Bashas.

City Attorney Rick Flaaen stated that if the development agreement passes tonight, the lawsuit against the city would be dismissed.

Councilmember Shapera asked why the Spectra website said that the development site was listed at 51,000 square feet but he adds up the total square footage as 45,300 square feet.

Economic Development Director Scott Chesney said that the square footage number listed on the Spectra website was the first estimate but the more accurate number is 45,300 square feet.

Councilmember Shapera asked if BNSF has ever offered to help pay for the improvements at the Dysart and Thunderbird road intersection.

City Manager BJ Cornwall said that he was not aware of any offer to help pay for the improvements by BNSF.

Councilmember Shapera asked whether or not the City sought stimulus funding for the project.

Public Works Director Lance Calvert said that this project doesn't qualify for stimulus funds because any project that uses federal funds has to go through an environmental assessment. Any project that requires an environmental assessment is automatically not qualified for stimulus funding since the process takes up to a year or two to complete.

Councilmember Shapera asked how the City of Surprise came up with the 2.3 million dollars of their share for the improvements.

City Manager BJ Cornwall said that many years ago, the original project was estimated to cost roughly 2 million dollars. In 2003, an engineer's estimate was 4 million dollars. As talks with the City of Surprise ensued, the Mayor of Surprise at that time, committed to our current Mayor, 1 million dollars for the improvements. At this time, the City of Surprise controlled the northwest corner, the southwest corner was controlled by the County and the northeast and southeast were controlled by the City of El Mirage. Thereafter, the City of Surprise annexed in the southwest corner. Since the City of Surprise now controlled the southwest corner, they offered to contribute 2 million dollars for the improvements. The \$300,000 was for improvements such as temporary lighting and turn lanes. This is how the 2.3 million Surprise contribution was derived.

Councilmember Shapera stated that he is worried that tax dollars are going to be spent on the improvements when traditionally the developers pay for the improvements and is worried that this might set a precedent for future developments.

City Attorney Rick Flaaen said that the set of circumstances regarding this intersection are unique and is unlikely that these same set of facts would occur again in the City of El Mirage.

Councilmember Cleveland asked if there has been a recent traffic count conducted at the Thunderbird and Dysart roads intersection.

Public Works Director Lance Calvert said that the city is still compiling recent traffic count data.

Councilmember Super asked if the negotiations with the City of Surprise were always an all or nothing deal.

City Attorney Rick Flaaen said that it was always an all or nothing deal. They would not contribute for a reduced scope project.

Michael Barvitz – 12510 W Rosewood Dr.

Mr. Barvitz said that he has no problems with developing the southeast corner of the intersection of Thunderbird and Dysart roads but he is concerned with how the item was presented to the Planning and Zoning Commission. More information and time was needed to make an informed decision.

Hugh Flisyn – 12811 W Willow

Mr. Flisyn said that he felt that the items were rushed and there wasn't enough time allowed to go over the agreements.

- A. Consideration and action approving an IGA with the City of Surprise providing for the joint improvement of the intersection of Dysart and Thunderbird/Waddell Roads.**
- B. Consideration and approval of Resolution R09-04-10, approving a Development Agreement with PWP Dysart and Thunderbird LLC providing for the development of the southeast corner of the intersection of Thunderbird and Dysart Roads.**
- C. Consideration and approval of an Agreement with BNSF Railway Company providing for the improvement of the railroad crossings for the spur line on Dysart and Thunderbird/Waddell Roads.**

Councilmember Super made a motion to approve items A, B, and C together as one item; seconded by Councilmember Conner.

VOTE: Yea: Cleveland, Conner, Delgado, Super, Waterman  
Nay: Shapera  
Absent: Kern  
Motion: Carried

Councilmember Conner made a motion to approve Agenda items A, B, and C; seconded by Councilmember Cleveland.

Councilmember Conner said that he supports the intersection Improvements because the traffic improvements may help generate the numbers that the City is looking for in economic development but is unhappy with how the project was presented to the Planning Commission. Councilmember Conner stated that the citizens have to have confidence in the process, not just the end product.

Councilmember Cleveland said that he would like to see these types of agreements go through the proper channels in the future before it reaches

the City Council.

Councilmember Shapera said that he would like to see the public have more input regarding these types of agreements in the future and would like to see more transparency.

Councilmember Super said that he felt that the intersection improvement costs should have been split since it is a border intersection but the 2.3 million dollars that the City of Surprise is contributing is 2.3 million dollars that the City of El Mirage does not have to spend.

VOTE: Yea: Cleveland, Conner, Delgado, Super, Waterman  
Nay: Shapera  
Absent: Kern  
Motion: Carried

#### IV. ADJOURNMENT

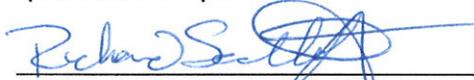
Mayor Waterman adjourned the meeting at 6:14 p.m.

  
Fred Waterman, Mayor

ATTEST:

  
Richard Saathoff, City Clerk

I hereby certify the foregoing minutes are a true and accurate record of the City of El Mirage Special Council Meeting held Tuesday, April 21, 2009 and a quorum was present.

  
Richard Saathoff, City Clerk