

**CITY OF EL MIRAGE
PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES
April 12, 2011**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Doug Doede called the meeting to order at 6:01 p.m. and led the Pledge.

II. ROLL CALL

Members present were Doug Doede, Beth Simek, Brandon Forrey, and Mary Koestner. Staff members present were Senior Planner Mark Smith and Technician Margarete Aranda.

III. APPROVAL OF THE MINUTES OF JANUARY 11, 2011

Beth Simek made a motion for approval of the January 11, 2011, minutes as presented, seconded by Mary Koestner. Motion passed four to zero.

IV. CONTINUANCES [NONE]

Site Plan for B&F Contracting Office/Yard at 9755 N. El Mirage Rd.

Planner Smith referred to the staff report and a letter from the owner's attorney showing reluctance to do perimeter road improvements. Staff recommended tabling the case until these items could be worked out.

Andrew Moore, attorney for Bruce Balls, apologized for running late and asked the Commission not to table it since they need to be off the property they are presently on. The engineer thought the city staff was wonderful but the owner was concerned about off-site improvements. Moore met with the City Attorney and Bill Pupo. Mr. Smith was out of town on family business. The owner wants the site plan approved and is okay with all the stipulations including a development agreement, but wants to work out the specifics. If the Commission hears the case this evening with the stipulations as they are, Moore will continue to work with the City to work it out before City Council. Moore was not able to meet again with the City Attorney and expected he was busy and had not talked to staff. If the Commission does not hear it, the timetable will be off and it may kill the project. The downside is in the details.

The Chair considered it tough to proceed without all the information. He asked if others had a chance to read the items from staff. Mary Koestner asked what happened. The Chair thought it was negotiations and interpretations. Doede has been in the Valley since 1984 and worked in Cities from Wickenburg to Queen Creek and Buckeye to Fountain Hills and all have the same requirement. If someone is improving property they are responsible for off-sites. That is what staff is trying to get across. The Commission could table it and allow staff to work it out. Koestner asked what the downside was. Doede believed it was not having clear

expectation of what the City required. Moore stated he has been a zoning attorney a long time and believed if you leave the Council with a vague stipulation it takes more time to clarify.

Brandon Forrey did not think anyone wanted to table it but asked staff to explain the City's opinion on implications. Mr. Smith responded that if the Commission wanted to discuss it and go over stipulations one by one he was fine with that, but the letter states that the owner did not want to do improvements and staff is saying they are required. He understood delaying improvements but a development agreement must be in place for when and how they will be done. If they are not willing to actually do the requirements, there is no point. Any actual waiver would have come from Council with the development agreement or a variance. Forrey suggested hearing it and continuing it. The Chair recommended discussion and recommendation.

Beth Simek had a concern that the applicant would like to negotiate the stipulations but they are required by code. If the applicant was not willing to adhere to the stipulations she was not sure what they would be listening to. Moore referred to an administrative approval process in Arizona Revised Statutes that allows a hearing officer to decide. If approved as staff suggested and it went to a hearing officer, it would be up to the hearing officer. Moore would rather have that than tabling it until it died. Koestner asked if the owner agreed with the stipulations. Moore said the engineer at one time worked these out. After the process is done it could be appealed. The Chair was willing to listen to explanations from both sides. Other Council members agreed.

Moore thanked the Commission for hearing them. He explained the site with the front ten acres undeveloped and the rear 10 acres a yard. Industrial uses lie north and south with no road along 121st Avenue. East of it was the River owned by Native American tribes. There are existing industrial developments on El Mirage Road. The proposal is to put in a 10,000 square-foot building and store equipment. Moore reviewed the stipulations recommended by staff and asked where water and sewer were. Smith replied they were adjacent. Moore highlighted the exception to the required 20% landscaping and the proposal for a variance to landscape El Mirage Road where it can be seen instead. If the Commission agreed with these stipulations, he asked them to go ahead and approve it with them as written. He referred to a residential subdivision putting in improvements for thousands of people. An industrial property being rezoned can be required to put in improvements, but not a site plan. He was not arguing that City Code did not require it, but it was not legal. The City Attorney had been polite and congenial but busy with other clients. Koestner thought that was unconscionable. Moore wanted to work it out with the Attorney.

This is the edge of the City. The client did not need Mountain View and 121st does not exist. The City has asked dedication of right-of-way and improvements. There is already a 30-foot' right-of-way but the staff wanted more. Moore does not believe 121st will ever go through without right-of-way along the whole road. It was not as if this were the last piece Road is two lanes and will have to be improved, but the best time for that is when the front develops. The owner is willing to dedicate Mountain View Road and negotiate a development agreement. It did not have to be built until something more profitable came along, and the owner would have to sell that to the other guy; he did not want to do any of 121st or other perimeter roads. If Moore got his way, the Commission would approve it with stipulations and he will work with the Attorney.

Doede asked if B&F Contracting did earth moving. Bruce Balls introduced himself as the General Manager for B&F Contracting which does underground pipe and sewer restoration plus traffic cameras and had a contract with the City right now. Doede asked what kind of equipment would be on the street. Balls replied they had dump trucks, service trucks, and were not just a storage yard but had a mechanical facility on site, with excavators and backhoes from time to time. Some of the equipment and materials in 10-foot diameter steel pipe will be hard to keep below the 8-foot wall. Doede was concerned about transports and scrapers. Balls affirmed B&F did not have those. Doede asserted the street required is more than normal. The access must support the weight of equipment moving on them daily.

Balls pulled the case last month to consider whether to use this yard or not. He bought the property a year ago and thought there was time. He talked to Mark in September, but was not comfortable with all the requirements. He agreed to move to the back to allow a higher and better tax-generating use. He is a contractor, not a developer, so he hired legal counsel. He wanted to know what he would be required to do and what the improvements meant.

Doede told Balls the City worked on a General Plan and approved it and was trying to grow and improve as it grows. That is why the City is asking for improvements. Balls did not believe that 121st will go in, but he does not know that. Mountain View will be a through street. Even vacant and farm land is designated for something. The City was not asking for Balls to pay for everything, only for his portion. Balls was okay with that if he was going to use it. He was willing to carry his weight, but not to build the City's streets. B&F offered something. They employ 125 to 300 people. They buy parts for equipment and taxes come to the community. They buy thousands of gallons of diesel with road tax, but Balls could not in clear conscience sign an obligation to pay more for the improvements than he had for the property itself.

Forrey thought the majority of the issues were not the Commission's to mete out but took exception to a lot he was hearing; it is a developer's responsibility to develop off-sites, but is it appropriate to do everything for a storage yard? There will have to be a compromise between the City and the developer for the project to move forward. Based on that Forrey was comfortable moving forward with the stipulations as written knowing that there was still a lot of groundwork for the Attorney and Moore to do as well as Council. Simek agreed and had no problem moving forward with the stipulations as written. Koestner also agreed; she thought Moore made his case well and she got a lot more understanding in a far shorter time than she would have thought.

Smith gave the Commission some perspective on the need for the roadways. The letter maintains that the business will not front El Mirage Road so the owner did not want to improve it, but the traffic will impact it. Fortunately the County is looking at El Mirage Road as a regional project in the next few years as part of Prop. 400 monies. Mountain View is the midsection and there is even more need for it if 121st is not developed. This use fronts on that roadway. The letter states they will improve up to it but not in front. If the owner does not do his own frontage, who will? It would have to be done by the developer or the local taxpayers. Moore asserts there is no road on 121st, but there was a road in use five years ago. It was closed due to maintenance issues. Moore stated the City ends there, but the tribe is negotiating with the City for annexation starting last year and hopes to complete it in fall. The City will then go another half-mile to the limits of Youngtown. That property will not be developing for several years since it is mining property, but will be reclaimed for other uses in compliance with the master plan for the Agua Fria. It is now a quiet place, but it will be surrounded with other parts of the City and there will be a need for those roadways in the future. They do not go far now but they will. There are dedications on 121st, but they are easements and need to be converted to City right-of-way dedications.

The Chair thought the portion of street not being developed could be a setback due to future owners saying if B&F did not have to develop their street, why should others? Smith noted they had played that game for some time. Forrey was confident that the City would address all the perimeter roads. He cited a waiver in Peoria where a street was dedicated but not improved because of the situation, but it was not the Commission's place to involve themselves with the specifics. Smith noted Mike Colfacker was present representing the engineer, but he had nothing to add. Forrey asked Smith if he was comfortable with the stipulations. Smith was, but time periods and other vague stipulations were too hard to enforce. Forrey surmised if they needed no permits, would there be no trigger for any improvements. Doede referred to the 10,000 square foot office. Forrey responded it had no time line. Moore said they could not

build that building unless Council agreed. Smith averred that “any structures” included the temporary office, so it cannot go in without the development agreement. The Chair called for a motion. Simek made a motion to recommend approval subject to staff stipulations:

1. Development shall conform to the approved site plan and elevations & all applicable City codes and policies plus specific stipulations set forth below.
2. Access drive shall be paved from El Mirage Road to the equipment yard.
3. Temporary and permanent office shall connect to City water and sewer.
4. Developer shall enter into a development agreement for the timing of improvement to perimeter roadways per City standards. No development above grade, except landscape and perimeter walls, shall be permitted until a development agreement has been worked out between B&F and the City.
5. Gate shall be at least 20’ wide and be approved by Fire per IFC 503.6.
6. Above-ground fuel storage tank requires permits per IFC 105.6.16.
7. An automatic sprinkler system is required per NFPA 13 & IFC 903.2.
8. Office requires installing hydrants & FDC on looped fire line per 903.2.
9. Access drives must be all-weather and support 75,000 lbs, per D102.1.
10. The office trailer or building must meet zoning setback requirements.
11. Proposed landscaping requires approval by hearing officer or Council.
12. Walls facing El Mirage Road shall be painted an ivory or sand color.
13. The west half of the property shall not be used for storage of materials or equipment. It shall be kept clear of debris and bermed to prevent access.
14. Equipment behind walls shall be kept as low as possible and materials stored on site shall be kept below the height of the 8’ block perimeter walls.
15. Yard shall meet dust control standards per Chapter 94 of the City Code.

Koestner seconded the motion which then passed unanimously. Smith commented that the item had to be set for City Council agenda and details may have to be worked out beforehand.

V. NEW BUSINESS

Proposed code amendments for a form-based development code

Smith presented the separation of the Commerce Park [CP] from the Employment/Industrial [EI] district with the difference being more industrial uses by right in EI. He referred to the map proposing the arterial frontages of El Mirage, Olive, and Peoria in CP and the areas off the main arterials in EI, with T5 district at Olive and El Mirage Road. Smith asked for feedback. Doede liked the way it buffered the industrial parks and exposed shopping for family needs like auto parts and hardware stores. Smith compared it to the El Mirage Commerce Center. Staff did not push for CP on properties already in industrial use due to Prop. 207. Doede said he thought the ordinance would open up the area to businesses. He asked if the area east of the Burger King still had a petroleum plant. Smith replied Pro Petroleum was still there but may have changed names. He noted that the corner of El Mirage and Olive was reserved for retail uses and concluded the next step was to mesh it with the existing code and

show what will be replaced and what will remain such as signs, landscaping, etc.

VI. STAFF'S REPORT

Smith let the Commission know that the Sign Code Revisions and Medical Marijuana Code will be going to Council this Thursday, April 14th. Staff is also processing pre-applications for a metal recycling center on Butler Drive and a charter school at the Mercado on Thunderbird Road.

VII. COMMISSIONERS' COMMENTS

Beth Simek asked about the status of the annexation of the tribe on the River. Staff is working with their attorney on the annexation agreement and will be bringing it to the Commission for initial zoning for mining.

IX. ADJOURNMENT

The Chair adjourned the meeting at 7:10 p.m.

Mark L. Smith, Senior Planner

Doug Doede, Commission Chair