

TOQUERVILLE CITY COUNCIL
SPECIAL WORK MEETING Minutes
Held on January 15th, 2009; City Office - 212 Toquer Blvd

Council & City Officials Attendance: Mayor Ken Powell; Councilmen: Lynn Olds, Randy Scott, Darrin LeFevre, Paul Heideman, Daren Cottam (arrived 7:10); Pam Jarman (Treasurer); C. Pogue, (Recorder); ATT. Heath Snow (arrived 7:10).

7PM - Mayor Powell - called the Meeting to order; Flag Salute by Paul Heideman; Invocation by Randy Scott; request for Statement of Belief? None were given. Disclosures or Conflicts? None declared.

Mayor Powell asked for **Item #2 – Review and possible approval for acquisition of TRE Subdivision, Completion Bond held at Pulaski Bank.** Pam Jarman explained to Council of phone call received from Casey Craig (TRE) a few days ago regarding ANB Bank (under FDIC “receivership”) and City Bond funds of approximately \$100,000 held now at Pulaski Bank. She stated this Bank is not on the State list of “certified” Banks recommended and wants the City Council approval and Attorney Snow review of the process to make claim and deposit in another Bank. Randy Scott asked which bank should be used? Pam J. said we could use Wells Fargo or Zions – or others from the list; this also was a recommendation from City Auditors. **Paul Heideman MOTIONed to approve this bond acquisition and move it to the City Zion’a account per Attorney Snow approval; Darrin LeFevre seconded the Motion; roll call was taken: Paul Heideman – Yes; Randy Scott – Yes; Lynn Olds – Yes; Darrin LeFevre – Yes; vote carries in the affirmative. Note: Daren Cottam arrived after the count. Note: Ratify this vote at regular CC Mtg on Feb. 12th.**

Item #1 – Discussion and review of Annexation Petition for Babylon Valley Addition, and Annexation Agreement; owners: S. Eaton / M. Lowe. Lynn Olds stated one issue was for zoning request; his understanding was this area was to be kept at MU-20 (default) zone. Another he brought up his that some of the Annexation Agreement could be brought in at the Development Agreement stage later. Stacey Eaton said he “fully agreed” and that the first Agreement proposal was “bare bones”. Lynn O. said in (#5) (current proposed Agreement), it was clear for Annexation, then when development comes in, they will deal with all current Ordinances, Standards, Codes, etc.; this is stated but should be re-clarified.

ATT. Snow said they could restate and **add further statements for NO development rights, as they must come to the City for those approvals process for zoning and subdivision requirements at the time of development.** As we know those (requirements) do change - even in five years; the owners claim that development may not come in 20 yrs – Council will not restrict to the 2008 Ordinances. ATT. Snow also stated Para. 5 does identify with words “at time of development, restrictions for infrastructure, etc., etc., this does apply. We included obligation of annexed land by Agreement and this will “run with the land”, then recorded as obligation.

Lynn Olds said **another item in Agreement (4a) talks about developer vested rights “herein” – what are those rights? ATT. Snow said nothing more than zone designation or density – they have requested R-1-20 on this application, but the City has not carried out any zoning process, as required and stated in the Annexation Policy Plan.** S. Eaton said when they started the process, they were “encouraged to do a zone change” with the Annexation Agreement to minimize the process. Lynn O. said it’s not just a “paper change to move from the default zone” and must go through notices, public hearings, Mona Lowe asked “how long does that take?” ATT. Snow explained after noticing and public hearing with Planning Commission, then recommendation, noticing and public hearing with Council. Annette Kleinman (PC) said it was about two month process.

Lynn O. asked about **reviewing (4c) “impact fee credits” with “improvements” verified then credited? Randy Scott joined in with a question of “cash reimbursment” wording – that he’d never seen that before.** ATT. Snow said they should clarify the Capital Facilities Plan (CFP) must have the proposed improvement from developer, as a regional park (for example), to claim “system improvement” vs project improvement – thus requesting credit of impacts. ATT. Snow said they would also remove the word “cash”.

Paul Heideman stated if City is to make agreements with developers, we should not have it on this proposed Annexation Agreement (with owners). ATT. Snow said this (Agreement) is a sample from Enterprise the owners are using; **the paragraph will come out, and the system improvement must be in the City CFP.**

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Paul Heideman asked with the intention of owners not to develop for years, why do we need this (agreement, zoning, etc.) at all? ATT. Snow said that when we designate a higher density on the properties with the future development far off, it throws the planning off; (e.g.) 1/2 acre lots changed to commercial, industrial park use with infrastructure requiring oversized water and sewer lines. Darrin LeFevre stated it should remain MU-20.

Lynn O. went on to a **“redline” area on pg 4, referencing the “cliff area”, rocks, etc. which he felt the designated land should be looked over – not just stated as (with development) to be so many feet away from those areas.** Stacey Eaton said he can “live with” City Ordinances as Hillside, etc. but he felt this would be “extremely restrictive”. Lynn O. said he did not know of any (City) Ord. that prevents a developer from building homes in the middle of “rock outcroppings”; Darrin L.- other than “slopes”. ATT. Snow added we are working on “Sensitive Lands”, but as Lynn O. requested at our last meeting regarding this problem, we could require a survey done to identify “no build” areas with a legal description. This could be a \$30-40,000 cost; but you could do a (less expensive) “general description”, as a conservation easement.

Mayor Powell added this fear comes up at times – to keep protection for the future – when owners sell property and new builders and developers come in. Anita Lowe (PC) asked whether this should not be part of the Development Agreement and not in Annexation Agreement; that all they want is to annex to City boundaries. Sensitive Lands and Hillside Ordinances can be added, but **to identify a specific “cliff”? then you must look at other areas around Town - and this becomes a “naming” of locations.**

Paul Heideman added if you look at the **Hillside Ord., it gives no “credit for unbuildable area” and most of that property (Babylon Addition) is not buildable; perhaps they could look at area to “preserve” and get that credit.** Stacey Eaton said that may be “do-able”, but believes not with the Annexation Agreement. Lynn O. stated he believed that is “exactly where it should go”. Mona Lowe added that it still must go through Planning Commission (process). ATT. Snow said he believed this (issue) shows the motivation of the City to bring this property in with concerns of preservation, even with the area being far away from the current developed area of Toquerville; I believe (Council) they are asking if you are willing to preserve - and write a different (Agreement) version?

Mayor Powell questioned, “how does this (annexation) version restrict any more than a development agreement?” Darrin L. stated that the (development agreement) would come later when more funds are available. Annette Kleinman asked if the Annexation Agreement could reference future ordinances? ATT. Snow answered that it currently does have words to that effect.

John Shaw (“Sensitive Lands” Committee) was recognized and (as Mayor Powell) asked “if there is no problem agreeing to the restrictions, why not have them in the Annexation Agreement”; and **if City Council is wanting restrictions in certain areas, can this be part of negotiations to accept or reject the annexation.**

Mark Fahrenkamp (PC Chair) – There is some language in the Sensitive Lands Ord. that talks about ridge lines, distances and building heights; not sure how much was covered, as (per CC request) we did not want this to be too overwhelming, prior to passing to Council; we felt we could add important parts after we get this in place. **I do feel the Annex. Ord. should fit just about any situation and if not, could be covered in our Sensitive Lands language, as certain details of cliff heights, lines, etc. - this (area) is vague.**

Anita Lowe (PC) said this (Annex. Agreement) is not very descriptive yet; but it doesn’t have to be if the “Sensitive Lands” is the descriptor – and if you don’t name a particular place. I will name one, which is (I think) why Toquerville wants to protect this and wants it annexed, rather than with the County or Leeds (in future) by default, choice, or whatever it may be. **The “devil’s hole” would be included in the “Hillside Ord.” due to the slopes of that property;** this (I feel) would be a reason for it not to be with Annexation Agreement and be in the Development Agreement coming much later.

Mayor Powell said he did not know of any areas with that description; Anita responded there has only been one (reference to east hillsides) with other concerns of hillside and building on top, along with other structures; why is this Agreement requested to be so specific and the other was not?

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ATT. Snow – Reading in the Development Agreement on pg 3, para. 3; “property owners acknowledge they will comply with all applicable ordinances, resolutions, policies and procedures, and construction guidelines of the City necessary for approval of subdivision plats, site plans, conditional use permits, building permits, construction permits, grading permits, etc., for the annexed property in affect at the time the land use approval is sought”. Land use approval refers to subdivision plats, site plans, etc.. Annette Kleinman reminded that Sensitive Lands Ord. is not in place; ATT. said yes, but if in place by time of development, they are agreeing to be bound by all applicable Ordinances and Resolutions. Anita L. said and that is fine – but to say “cliffs”? Darrin L. said there could be specific language as to include they will abide with the Sensitive Lands Ordinance. ATT. Snow added we could include language that they will agree to be bound by pending Sensitive Land Ordinance that may be adopted.

Stacey Eaton felt the property owners and City want the same thing; we could agree to work with CC and abide by all Ordinances, and will continue with the property, identifying specific sites the Council would like preserved; and in exchange for preserving the land we could request higher density in other areas to off-set the cost of that. ATT. Snow added that usually is done in the development stage; Stacey E. said and that’s why we think, taking care of this (preservation exchange) should be part of that development agreement when you get down to that portion of it.

Mayor Powell said he still can’t understand why it’s any more restrictive; Anita said it’s the word “cliffs” and explained if it gets placed in the Development Agreement (much later), then goes to Planning & Zoning – taking more time. CC could **Finish up “Sensitive Lands”, of which we say there’s no hurry - due to “no intention or hurry for development agreement”.** ATT. Snow felt the easiest solution is to finish the **“Sensitive Lands” Ord., pass and tie the definition of what you will not develop or build upon as “sensitive lands” and refer to that Ordinance;** do you want to wait or use some other definition if you don’t like “cliffs”. Lynn O. pointed out the owners knew (pretty close) what would come to the “sensitive lands” and could put that verbiage in; if it fits the protection we want to see, it could be in that part of final Annexation Agreement.

Daren Cottam asked **why we needed that when the other verbiage is in previous paragraph for Ordinance compliance; we should avoid confusion.** Darrin LeFevre said **this would be more restrictive** with matching verbiage to the “Sensitive Lands” which will add more verbiage and clarity. Stacey E. added we could tie future Ordinance, named specifically, to abide with that. ATT. Snow asked for timing on this Ordinance (from PC)? Mark F. said Draft is in typing and should be ready to look at next month. ATT.Snow said if that’s not going to change we could use the definition from that ORD. and insert in this Agreement. Annette K. said Public Hearing on this is next month.

Paul Heideman said he would like to assure with the Sensitive Lands Ord. there, but if they were to be gone tomorrow, **would this continue to protect the property 15-20 years.** Stacey E. added **when it “goes with the property”, yes.** Paul H. – **And I would like to see that written in to the Agreement; Stacey E. – we can agree whatever is adopted, it goes with the land.**

John Shaw stated that he and Greg Walker were part of the Committee to adopt Sensitive Lands Ordinance, designed to allow development based on slopes and land form type, restricting density. It does not require absolute preservation (at my last reading) unless you can define the open space you are trying to define. It allows for development restricting density based on slope – and nobody can build on a cliff itself – but how far back or preservation was not addressed. **Mark F. said it does designate ridge lines and building distances away from the cliff** is basically the same thing; (PC) knowing this issue and developing this section before it goes up for review to CC, we can have a more detailed section that specifically deals with this issue. I think it will be addressed in the Sensitive Land Ordinance, although you could also leave it in this (Agreement).

Paul Heideman restated that he would feel more comfortable if the Agreement did address this in a general way, as to which portion of land would be designated “sensitive land”. Randy Scott felt if concern was, say with “devil’s hole”, an inexpensive survey could encompass the areas with restrictions. Mark F. said this is a reason for holding off on zoning until they decide what they plan to do out there, then talk exchange of land.

It will be City cooperation in that trade-off of open space that we want for open view corridors, etc. during the subdivision development. Mayor Powell said he thinks we're saying the same thing over and over. Mona Lowe said if the City was worried about preservation, she could fence the whole 80 acres and enjoy the "preserve". Anita Lowe felt City should let "Sensitive Lands" do the protecting, not the Annexation Agreement. Stacey E. said he believed the zoning and Sensitive Lands Ord. can give all the protection the City asks for; and we cannot do anything (future) without approval as well.

Daren Cottam said we could put verbiage in to say if the City does not have "Sensitive Lands Ord." at time of development, we would review at that time. Anita L. said you could "table" the Development Agreement forever if you wanted. Mayor Powell stated the language will be addressed by ATT. Snow.

Mayor Powell excused Darrin LeFevre for another appointment (7:50 PM); noted in these Minutes.

ATT. said he had not reviewed any drafts of "Sensitive Lands" yet; I think there ought to be a provision that says the applicant (Babylon Valley) agrees not to build, then preserve as "open space" those areas on their properties that are defined "sensitive lands" by any City Ordinance. Then, we need to work in haste to pass that Ordinance; my understanding is City will re-notice the annexation to give Leeds an opportunity to make protest or comment what they deem necessary. If that is a 30-day notice, I don't see this Annexation Agreement being finalized, we're going to approve this the same night as we approve the Ordinance. This review is to get the final language and then the Ordinance for Annexation along with the Annexation Agreement can be approved the same night referring to the Sensitive Lands Ordinance being approved in 30-60 days; no development is going to occur in that time. **Mark F. said PC would be looking at a 3-month window to have it in place;** there is also a consideration of proposed road out to that property.

Mayor Powell questioned what if the owners had issues with or "not like" the Sensitive Lands (adopted). ATT. Snow said any definition of "sensitive lands" that had gone through public comment, review and City legislative process, they will "buy that". Mayor said he felt concern (at this mtg) over time being spent over just a couple words in this Agreement.

Lynn Olds said his main concern was that it be protected and that people can have access to enjoy those beautiful places as the people were born and raised (here) enjoying it. Mona Lowe stated her family had owned (and protected) that property since before he was born. Lynn O. said he's looking at protecting those areas by supporting this annexation – referring to the Annexation Agreement as a "bird in a bush", dealing with sensitive lands may be even more restrictive. Stacey E. said he believed it (Sensitive Lands Ord.) would be better defined.

Greg Walker (worked on Sensitive Lands) was recognized – **he hoped the CC would preserve Toquerville as the General Plan states, to protect things that always made Toquerville what it is;** stating he had started "Sensitive Lands" with a Scottsdale model. It could allow development, but it may not address CC concerns for annexation – as distances from the ridges. ATT. Snow said yes it will, because they agree to be probably more restrictive than the Sensitive Lands. Greg said he believes during his work on this Ordinance, it should define "preservation" or "natural" and "open space"; to let a "natural area" take care of itself.

Paul Heideman asked if it **would be better to name areas as "devil's hole" for priority – but not a must?** **Anita L. said we can't name it. ATT. Snow said it would not be considered a "taking" if they volunteer to agree; but to use a common or local name is not legally enforceable.** Stacey E. expressed if they agreed now; then when in Development Agreement time, they may want to do something there and more density elsewhere. ATT. Snow said you are saying you think this would give up the ability to negotiate density or clustering (later) if you carry out this Annexation Agreement. Paul H. stated my thought is if you do (designate areas), City is saying this area is the first priority - a "little give and take."

Mayor Powell said most do want that trade – clustering with open space; it still must be in an agreement. He then stated this is a work meeting and no decisions will be made. Are there any further comments?

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Greg Walker stated it appears they (owners) want to hold that open so they can come into the City and say “we’ll preserve that - if you give us higher density over here”. The “Sensitive Lands” that you’re working on is based on slopes tied into density, so you may get into a deal of going against that Ord. **Mark F. said the Scottsdale model has whole sections where restricted areas were made to trade off for parcels; we’re leaving lots of that language out or we’d never get it done. They (Scottsdale) worked on that one for 19 years** using individual cases as it went along. We realize this can shape our Ord. as it goes on; we need to get the first part up now and get something in to address this now. As far as trade-offs – there are many ways to complicate that in this version; by the time any development comes, this can be addressed in detail as to land swaps, or describing features and limitations.

Stacey Eaton said he goes along with what Heath said and ties it into the Sensitive Lands Ord. with definitions, etc.; and then go forward. The next paragraph – pg 4, F. discusses roads, right-of-ways, etc. will need to be obtained with BLM; (stating) property owners will take care of that. The BLM prefers the City to approach them with right-of-way; they charge the owners and is more difficult process; when City does it, they give it to them and easier process.

Also on next pg, **5.D, Eminent Domain; City agrees toobtaining easements or right-of-ways for purpose of construction or improvements for annexed property, etc.** Basically it says we’d pay for any costs there are, but **we would like to have the City agree they would help in obtaining any right-of-ways – as you did in the last annexation.** ATT. Snow – **The key word, “may assist” doesn’t bind the City power;** If you want to address that in relation to public lands, City can have me be the conduit for that; but as it’s recognized by CC input, your property is a buffer with BLM between yours – if you have to redo infrastructure for your purposes, it’s your costs; if you are the first out (developing), it’s your obligation. I do agree it would be easier to have the assistance.

Mtg was adjourned by Mayor Powell at 8:07 PM, consent of Council Members was unanimous.

Actions & Assignments

1. ATT. Snow – (a) final Annexation Agreement Draft for review by City Council and Babylon Valley Applicants. (b) Give Pam ruling / process for obtaining the funds at Pulaski Bank (\$100,000 approx.) holding TRE funds.

The preceding Minutes of the Toquerville City Council Special Meeting will be presented for review and approval – Feb. 12th, ’09 City Council Meeting:

Approved: _____ Dated: _____
Mayor Ken Powell

Attested: _____ Recorded and Typed by Carol Pogue
Carol Pogue, Recorder