

FORMAL COMPLAINT

ORIGINAL



0000094895

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
SANDRA D. KENNEDY
PAUL NEWMAN
BOB STUMP

2009 MAR 19 P 1:38

AZ CORP COMMISSION
DOCKET CONTROL

W-01808A-09-0137

IN THE MATTER OF THE FORMAL
COMPLAINT OF CHARLES J. DAINS AGAINST
RIGBY WATER COMPANY

DOCKET NO. W-01808A-09-

FORMAL COMPLAINT

1 Pursuant to the provisions of A.R.S. §§ 40-246 and 40-248, and A.A.C. R14-3-106(L),
2 Charles J. Dains ("Mr. Dains") hereby files his formal complaint ("Complaint") against Rigby
3 Water Company ("Rigby Water"), and requests that the Arizona Corporation Commission
4 ("Commission") issue an order providing the relief requested herein.

5 **I THE COMMISSION HAS JURISDICTION OVER THIS DISPUTE**

6 Rigby Water is an Arizona corporation that is certificated to provide public water service
7 to customers in Maricopa County, Arizona, including customers located in the Terra Mobile
8 Ranchettes Estates ("Estates"). Mr. Dains, an 87 year old resident of Tolleson, Arizona,
9 developed Estates and is a party with Rigby Water to a Main Extension Agreement ("MXA")
10 concerning Estates.

11 **II MR. DAINS AND RIGBY WATER ARE PARTIES TO A MAIN EXTENSION**
12 **AGREEMENT**

13 Mr. Dains and Rigby Water are parties to a 1999 MXA concerning a planned
14 development known as Terra Mobile Ranchettes Estates in Avondale, Arizona.¹ At the time the
15 MXA was executed, Mr. Dains was 77 years old.

Arizona Corporation Commission
DOCKETED

MAR 19 2009

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¹ Copy attached as Exhibit A.

1 **III RIGBY WATER GROSSLY OVERESTIMATED FUTURE REFUNDS TO MR.**
2 **DAINS**

3 Prior to executing the MXA, Rigby Water estimated for Mr. Dains that if he signed the
4 MXA, he would receive refunds of approximately \$12,225 annually for 20 years, for a total of
5 \$244,500.² After executing the MXA, Mr. Dains caused to be constructed and advanced to
6 Rigby Water utility infrastructure valued at approximately \$237,000. In reliance upon Rigby
7 Water's representations and paragraph 16 of the MXA, Mr. Dains expected to be refunded the
8 entire value of the advanced \$237,000 over the next 20 years.

9 Since the date of the MXA, Mr. Dains has constructed and advanced to Rigby Water the
10 required facilities and the development has been fully built out to 83 homesites, which are
11 regularly occupied. However, recent refunds have averaged only about \$2,500/year, or
12 approximately 20% of what Rigby Water represented to Mr. Dains. Further, despite repeated
13 requests, Rigby Water has refused to provide an accounting for actual water usage at the Estates
14 since the time of the execution of the MXA, the total refunds provided to date, and how the
15 refunds were calculated.

16 **IV RIGBY WATER NEVER FILED THE MAIN EXTENSION AGREEMENT**

17 Commission Rule R14-2-406(M) provides as follows:

18 All agreements under this rule shall be filed with and approved by the Utilities
19 Division of the Commission. No agreement shall be approved unless
20 accompanied by a Certificate of Approval to Construct as issued by the Arizona
21 Department of Health Services. Where agreements for main extensions are not
22 filed and approved by the Utilities Division, the refundable advance shall be
23 immediately due and payable to the person making the advance. (Emphasis
24 added.)

25 There is no evidence that the MXA was ever filed or approved by the Utilities Division.

26 Therefore, in accordance with Rule R14-2-406(M), the entire amount of the refundable advance
27 (\$237,000 – refunds to date) is immediately due and payable to Mr. Dains.

² Copy attached as Exhibit B.

1 **V THE CITY OF AVONDALE IS ACQUIRING RIGBY WATER**

2 Rigby Water is in the planning area for the City of Avondale (“Avondale”). On
3 December 1, 2008, Avondale adopted Ordinance 1336-1208, which authorized the acquisition of
4 Rigby Water, by either purchase or condemnation.³ According to a published report, Avondale
5 and Rigby Water have been negotiating a purchase price for some time.⁴

6 As part of Rigby Water acquisition, Avondale will acquire the assets advanced by Mr.
7 Dains. Put another way, Mr. Dains has provided Rigby Water assets which will presumably be
8 acquired at or above the value of the assets at the time they were advanced. Rigby Water should
9 certainly be allowed to retain any gains on these assets, but it would be unjustly enriched if it
10 were also allowed to retain the un-refunded balance of the \$237,000 advanced by Mr. Dains.

11 Commission Rule R14-2-406(F) provides:

12 F. The Commission will not approve the transfer of any Certificate of Public
13 Convenience and Necessity where the transferor has entered into a main extension
14 agreement, unless it is demonstrated to the Commission that the transferor has
15 agreed to satisfy the refund agreement, or that the transferee has assumed and has
16 agreed to pay the transferor’s obligations under such agreement. (Emphasis
17 added).

18 Rigby Water’s refund obligation is equal to \$237,000, less all refunds provided to date.
19 This is based both on Rule R14-2-406(M) and upon Rigby Water’s written representations to Mr.
20 Dains. Rigby Water cannot transfer its CC&N until Rigby Water has satisfied its refund
21 obligation.

22 **VI REQUEST FOR RELIEF**

23 Mr. Dains asks that the Commission order Rigby Water to immediately refund to him
24 \$237,000, less all refunds provided to date, and for such additional relief as may be appropriate.
25

³ Copies of the Avondale City Council Report and December 1, 2008, Council Minutes are attached as Exhibit C.

⁴ A copy of a December 27, 2008, on-line article from the Arizona Republic is attached as Exhibit D.

1 RESPECTFULLY SUBMITTED on March 19, 2009.
2
3

4 
5

6 Craig A. Marks
7 Craig A. Marks, PLC
8 10645 N. Tatum Blvd
9 Suite 200-676
10 Phoenix, Arizona 85028
11 (480) 367-1956
12 Craig.Marks@azbar.org
13 Attorney for Charles J. Dains

14 Original and 13 copies **filed**
15 on March 19, 2009, with:

16
17 Docket Control
18 Arizona Corporation Commission
19 1200 West Washington
20 Phoenix, Arizona 85007
21

22
23
24 By:

25 
26 Craig A. Marks

RECEIVED MAR - 4 1998

M A I N E X T E N S I O N A G R E E M E N T

W A T E R F A C I L I T I E S

=====

=====

This Agreement is entered into at Mesa, Arizona on this 1st day of October, 1998, by and between Terra Mobile Ranchettes Estates, hereinafter referred to as Applicant and Rigby Water Company, an Arizona corporation, hereinafter referred to as Utility.

- 1) Applicant is the owner of the property as set forth in Exhibit A, a copy of which is attached hereto and made a part hereof and hereinafter referred to as Property.
- 2) Applicant intends to develop said Property within the property set forth in Exhibit A and will require domestic water service.
- 3) Applicant and Utility agree that said property lies within the Certificate of Convenience and Necessity of Utility and therefore Utility is obligated to provide said domestic water service in accordance with the rules and regulations of the Arizona Corporation Commission (ACC)

A G R E E M E N T

NOW THEREFORE, in consideration of the terms and conditions set forth below, the parties hereto agree:

- 1) Applicant shall cause the proposed domestic water system to be designed, constructed or installed as necessary to provide an adequate supply of domestic water to each and every dwelling unit within the property as described in Exhibit A. Said water system shall include all necessary water facilities including but not limited to mains, fittings, fire hydrants, service lines, meter assemblies, meters, storage and pumping facilities.
- 2) Applicant shall be responsible for all costs associated with the construction of the domestic water system including engineering, permits, easements, labor, materials, equipment, transportation, insurance and bonds if applicable.
- 3) Applicants cost, as set forth in Exhibit B, a copy of which is attached hereto and made a part hereof, shall be subject to refund in accordance with the rules and regulations of the ACC and further described in Section 16 of this Agreement.

- 4) Applicant shall cause the domestic water system to be designed and constructed with sufficient capacity to serve the water needs of the Property, including fire protection.
- 5) Applicant may be required by Utility to provide "oversizing" in Applicants design and construction to benefit the needs of Utility. If oversizing is required by Utility, the Utility shall be obligated to pay those costs applicable to the oversized facilities. Said payment shall be based on material costs only and shall not include any costs for labor, equipment, transportation engineering, permits, disinfection, testing or any other costs not applicable in the sole discretion of Utility. Oversizing costs are set forth in Exhibit C, a copy of which is attached hereto and made a part hereof.
- 6) Applicant shall obtain all applicable permits, including zoning and other necessary permits which may be required prior to construction of the Domestic water system. All domestic water system facilities shall be constructed in accordance with the plans and specifications as prepared by Applicants engineer and reviewed by Utility's engineer and approved by Utility in writing. All domestic water system facilities shall be constructed in accordance with acceptable utility construction practices and in accordance with the rules and regulations of the ACC and the Arizona Department of Environmental Quality and the requirements of all other municipal and governmental agencies having jurisdiction.
- 7) Applicant shall comply with Utility's requirements for inspection and testing of the domestic water facilities constructed under this Agreement. Applicant shall provide Utility adequate notice when facilities under construction are ready for inspection and/or testing. Utility shall provide said inspection within five working days of being so noticed.
- 8) Utility shall provide Applicant written notice of any deficiencies discovered during said inspection within 10 working days of said inspection. Utility reserves the right to withhold acceptance of the facilities unless said facilities have been constructed in accordance with the requirements set forth herein.
- 9 Applicant herewith agrees to diligently pursue and promptly correct all deficiencies in construction, materials and workmanship as noted in Utilities written notice of deficiencies.

10) Applicant agrees to promptly correct all defects and deficiencies in construction, materials, and workmanship upon request by Utility and for one year following Utility's acceptance of the facilities at Applicants sole cost. It is understood that inspection and / or acceptance by Utility in no way relieves or limits Applicant of any responsibility and liability for construction and installation of the facilities in accordance with the terms of this Agreement.

11) The domestic water system facilities and all parts thereof, upon acceptance by Utility as provided herein, shall become and remain the sole property of utility without the requirements of any written document of transfer to Utility. However, Applicant shall furnish such documents pertaining to ownership and title as Utility may reasonably request to evidence or confirm transfer of possession and title t Utility free and clear of liens, or containing provision for satisfaction of lien claims by Applicant, acceptable to Utility. Applicant shall cause or cause to be repaired promptly, at no cost to Utility, all damage to the facilities caused by construction operations until all construction within the property is complete whether caused by Applicant or not.

12) Applicant shall convey or cause to be conveyed to Utility by Warranty Deed free and clear title to the land upon which any well and/or storage facility pertinent to the provision of domestic water is required. Any other lands applicable to and necessary for the provision of domestic water service as set forth on Applicants plans and specifications shall also be conveyed to Utility. Said lands are described on Exhibit C, a copy of which is attached hereto and made a part hereof.

13) Applicant shall, at no cost to Utility, grant or cause to be granted to Utility, perpetual right-of-ways and easements, in a form acceptable to Utility, for the facilities and future attachments to the facilities, including, but not limited to water mains, and access to the supply, production and storage sites. If any rights of way of easements are required by Utility for attachments to developments other than Applicants development, Utility and Applicant shall mutually agree on an acceptable location for such easements or rights of way.

14) Applicant shall, within 120 days following acceptance by Utility of facilities, furnish Utility with the following described original documents.

a) Copies of all invoices and billings and other statements of expenses incurred by Applicant for the construction of the domestic water system.

b) Releases and waivers from contractors, sub-contractors and vendors for materials, equipment, supplies, labor and other costs of construction of said facilities.

15) Utility will provide domestic water service to the Property in accordance with the rates, charges and conditions set forth in the tariffs of Utility as files with the ACC and in effect from time to time. It is agreed that water service to each and every dwelling unit within the Property will be metered accordingly. Applicant acknowledges and agrees that Utility has the right to and may in the future, connect the domestic water facilities to Utility's existing and/or future domestic water system.

16) The cost of construction and installation of facilities as evidenced by invoices furnished to Utility pursuant to Section 14 shall be advances in aid of construction subject to refund by Utility to Applicant. Utility shall make refunds annually to Applicant on or before August 31 for the preceding July 1 through June 30 period. The amount to be refunded annually shall be ten percent (10%) of the revenues (excluding sales taxes and all District, Municipal, County State or Federally imposed regulatory assessments) derived from the provision of metered domestic water service to the Property. Refunds shall be payable for a period of twenty (20) years from the date metered domestic water service is initiated to the Property. In no event shall the refunds paid to Applicant exceed the amount of the advanced in aid of construction. Any balance remaining at the end of the twenty year period shall become non-refundable. No interest shall be paid on any amount(s) advanced.

17) Applicant will furnish Utility with appropriate certificates of insurance, each containing a thirty (30) day notice of cancellation clause, stating collectively that Applicant or its contractors and subcontractors has the following insurance coverage during the period of construction hereunder.

a) Workman's Compensation Insurance in the amounts required by the laws of the state of Arizona.

b) Comprehensive General Liability Insurance including Products/Completed operations, with limits of not less than Two Million Dollars (2,000,000.00) combined single limit for bodily injury (including death) and property damage.

18) Applicant hereby assumes the full and entire responsibility and liability for any and all incidents of injury or death of any person, or loss or damage to any property contributed to or caused by the active or passive negligence of Applicant, its agents, servants, employees, contractors or subcontractors, arising out of or in connection with the construction of the domestic water facilities prior to Utility's acceptance as set forth herein. Accordingly, Applicant will indemnify and hold harmless Utility, its officers, directors, agents and employees from and against claims or expenses, including penalties and assessments, and attorneys' fees to which they or any of them may be subjected by reason of such injury, death, loss, claim, penalty assessment of damage, and in case any suit or other proceeding shall be brought on account thereof, Applicant will assume the defense at Applicant's own expense and will pay all judgments rendered therein.

19) Applicant shall furnish Utility within sixty (60) days after completion of construction "As-Built" drawings certified as to correctness by an engineer registered in the State of Arizona showing the locations and respective sizes of all supply, transmission, production, storage, pumping facilities, and distribution facilities up to the curb valve of service connections to all dwelling units and/or structures served by the domestic water system.

20) Applicant shall cause any Department of Real Estate Subdivision reports issued regarding the Property, clearly to state that water services are to be provided by Utility and that Utility shall own all facilities utilized in providing said services, other than the service connections from the curb line into the dwelling unit premises.

21) The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall, nevertheless, be and remain in full force and effect.

22) Communications hereunder shall be sent to the respective parties, addressed as follows:

APPLICANT: Terra Mobile Ranchettes Estates
4439 W. Glendale Boulevard
Glendale, AZ 85301

UTILITY: Rigby Water Company
P.O. Box 2899
Gilbert, AZ 85299-2899

or to other such address as the parties may advise each other in writing.

23) It is agreed that Utility is not an agent of Applicant and shall not incur any costs or expenses on behalf of Applicant and that Applicant is not an agent of Utility and shall not incur any cost or expenses on behalf of Utility.

24) This Agreement shall be governed by the laws of the State of Arizona and shall be subject to the approval of the ACC and such other regulatory agencies as may be required under the laws of said State.

25) This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and assigns. However, neither Applicant nor Utility shall assign its rights, obligations and interest in this Agreement without the prior written consent of the other and such consent shall not be unreasonably withheld or delayed by either Applicant or Utility. Any attempted assignment without such consent shall be void and of no effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the day and year first above written.

APPLICANT

Terra Mobile Ranchettes Estates Rigby Water Company

By: Charles Deines
Charles Deines DAVIS

UTILITY

By: Fred T. Wilkinson
Fred T. Wilkinson, President

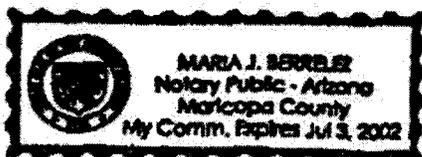
By: Judy A. Lopez
Judy A. Lopez, Secretary,
Treasurer

STATE OF ARIZONA)
County of Maricopa) SS

The foregoing instrument was acknowledged before me this ___ day of March, 1999, by Charles DAVIS known to me to be the ___ of ___, and authorized by said corporation to make this acknowledgement on its behalf.

By: Maria J. Berber
Notary Public

My Commission Expires _____



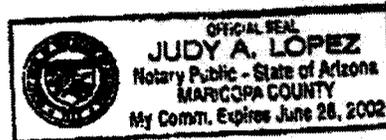
STATE OF ARIZONA)
County of Maricopa) SS

The foregoing instrument was acknowledged before me this
5th day of May 1999, by Fred T. Wilkinson
known to me to be the President of Realty
Widener Company, and authorized by said corporation to
make this acknowledgement on its behalf.

By Judy A. Lopez
Notary Public

My Commission Expires

6/28/02



MEC No. RWC-002

Date February 18, 1999

Applicant: Terra Mobile Ranchettes Estates

TIERRA MOBILE RANCHETTES

EXHIBIT B

Distribution System:

5,440 L/F 8" C-900 P.V.C.	\$11.20	\$60,928.00
4,400 L/F 6" c-900 P.V.C.	\$9.00	\$39,600.00
1 only 6" 90 Bend	\$87.00	\$87.00
18 each 6" Gate Valve	\$580.00	\$10,440.00
1 only 6"x6" Reducer	\$140.00	\$140.00
2 each 8" 45 Bend	\$98.00	\$196.00
8 each 8"x6" Tee	\$220.00	\$1,760.00
8 each 6" Fire Hydrant	\$890.00	\$7,120.00
2 each 8" 90 Bend	\$105.00	\$210.00
4 each 8" Gate Valve	\$780.00	\$3,120.00
7 each 6"x6" tee	\$190.00	\$1,330.00

Sub-Total		\$124,931.00

Services:

83 each 1" Corp. Stops	\$52.00	\$4,316.00
83 each 1" Angle Meter Stops	\$48.00	\$3,984.00
83 each Meter Boxes	\$70.00	\$5,810.00
1 only 8" 22 1/2 Bend	\$158.00	\$158.00

Sub-Total		\$14,268.00

Reservoir:

1 only 50,000 gallon Tank	\$27,000.00	\$27,000.00
Clean up and testing costs	\$2,600.00	\$2,600.00

Sub-Total		\$29,600.00

Booster Pumps:	\$50,851.00	\$50,851.00
Easement:		
Art Tobin Easement	\$16,000.00	\$16,000.00
Miscellaneous:		
Bonds	\$672.00	\$672.00
Permits	\$666.68	\$666.68
	Sub-Total	\$1,338.68

SUMMARY:

Distribution System:	\$124,931.00
Services:	\$14,268.00
Reservoir:	\$29,600.00
Booster Pumps:	\$50,851.00
Easement:	\$16,000.00
Miscellaneous:	\$1,338.68

Total

\$236,988.68

MEC No: RWC-002
Dated: February 18, 1999
Applicant: Terra Mobile Ranchettes Estates.

EXHIBIT C

OVERSIZING COSTS

No oversizing costs are required under this agreement.



**FIRST
NATIONAL
MANAGEMENT
INCORPORATED**

1832 S. Mac Donald, Suite 201 • Office: (602) 833-2027
P.O. Box 1289 • Mesa, AZ 85211-1289 • FAX: (602) 833-3250

June 26, 1998

Mr. Charlie Daines
c/o Sun Dance Motors
4439 W. Glendale Boulevard
Glendale, AZ 85301

Dear Charlie:

We have estimated the annual refund applicable to the water system serving your Terra Mobile Ranchettes Estates subdivision. The estimate is based on the following:

- 1) Assumes the subdivision is fully owner occupied.
- 2) Assumes the average annual water billing is 719,050 gallons per lot.

In determining the average annual consumption, the current consumptions were annualized to reflect the total estimated consumption for the totally occupied subdivision.

Based on the above, the annual refund is estimated to be \$12,225.00. If the occupancy or consumption varies so will the annual refund. Assuming the estimated refund is reasonably accurate, the refund agreement should be for approximately 20 years.

In the event you or your accountant have any questions or comments regarding this matter, please contact us.

Sincerely,

Fred T. Wilkinson
President

cc: RF
File

Included is copy of contract to be signed this week - ~



CITY COUNCIL REPORT

SUBJECT:

Ordinance 1336-1208 - Authorizing the Purchase of the Rigby Water Company

MEETING DATE:

December 1, 2008

TO: Mayor and Council

FROM: Wayne Janis, Water Resources Director, (623) 333-4444

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting the City Council adopt an ordinance approving the acquisition of the Rigby Water Company, located in the Southern Avondale Planning Area, by purchase or condemnation.

DISCUSSION:

The City of Avondale has been in negotiations with the principals of Rigby Water Company regarding possible acquisition since 2006. Rigby's service area is located in southern Avondale near and around Avondale Blvd., El Mirage Road, Broadway Road, and Southern Ave.

Currently, all existing City of Avondale residents are also Avondale water and sewer customers. As the City expands and grows to the south, it is in the City's best interest to continue providing its residents with those services. The Rigby Water Company currently serves the small neighborhood of Tierra Ranchettes. As the incorporated area moves south to include areas like the Ranchettes, and as new development occurs, it is important for the City to manage the delivery of these basic life services. In doing so, these residents will obtain the same quality water and sewer services as their neighbors to the north. In addition, when all City residents are also City customers, future bond votes that affect the delivery of water and sewer services are decided by only those individuals with a vested interest in those infrastructure improvements.

BUDGETARY IMPACT:

Funding is available in the Water Resources Capital Improvement Program Budget, Line Item No. 514-1212-00-8520.

RECOMMENDATION:

Staff is recommending the City Council adopt an ordinance approving the acquisition of the Rigby Water Company, located in the Southern Avondale Planning Area, by purchase or condemnation.

ATTACHMENTS:

[Click to download](#)

■ [Ordinance 1336-1208](#)

ORDINANCE NO. 1136-1208

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE ACQUISITION OF THE RIGBY WATER COMPANY, INCLUDING ALL REAL AND PERSONAL PROPERTY RELATING THERETO, BY PURCHASE OR CONDEMNATION.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That the City Council of the City of Avondale hereby approves the acquisition of the Rigby Water Company, including all real and personal property relating thereto, by purchase or condemnation, for the purpose of incorporating the facilities of such water company into the municipal water system.

SECTION 2. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, December 1, 2008.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

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Minutes of the Regular Meeting held December 1, 2008 at 7:00 p.m. in the Council Chambers.

MEMBERS PRESENT

Mayor Lopez Rogers and Council Members
Mayor

Ken Weise, Vice

Jim Buster
Jim McDonald
Frank

Scott

EXCUSED ABSENCE

Chuck Wolf
Stephanie Karlin

ALSO PRESENT

Charlie McClendon, City Manager
Andrew McGuire, City Attorney
Scott Wilken, Planning Manager
Kevin Artz, Finance and Budget Director
Carmen Martinez, City Clerk

Mayor Rogers called the meeting to order and led those present in the Pledge of Allegiance and a moment of reflection.

2 UNSCHEDULED PUBLIC APPEARANCES

(Limit three minutes per person. Please state your name.)

3 CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

Mayor Rogers asked if Council wishes to have any items pulled from the consent agenda. There being no requests, Mayor Rogers asked City Attorney to read the resolutions and ordinance by title only.

a. APPROVAL OF MINUTES

Work Session of November 17, 2008
Regular Meeting of November 17, 2008

b. SERVICE AGREEMENT WITH SPECIALIZED SURFACING, UTILITY PAVING AND CONSTRUCTION, LLC, FOR THE INSTALLATION OF TRAFFIC CALMING DEVICES

Approval of a Purchase Agreement with Specialized Surfacing, Utility Paving, & Construction LLC, for the installation of speed humps and speed tables in the amount of \$59,009 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

c. PROFESSIONAL SERVICES AGREEMENT WITH DIBBLE AND ASSOCIATES FOR THE DESIGN AND CONSTRUCTION MANAGEMENT OF WELL 20

Approval of a Professional Services Agreement with Dibble and Associates to design and provide construction management services for Well 20 with a not-to-exceed amount of \$108,385 and authorize the Mayor or City Manager and City Clerk to execute the contract document.

d. PROFESSIONAL SERVICES AGREEMENT WITH DIBBLE AND ASSOCIATES FOR THE DESIGN AND CONSTRUCTION MANAGEMENT OF WELL 24 AND TRANSMISSION LINE

Approval of a Professional Services Agreement with Dibble and Associates to design and provide construction management services for Well 24 and an associated water transmission line with a not-to-exceed amount of \$133,310 and authorize the Mayor or City Manager and City Clerk to execute the contract document.

e. RESOLUTION 2788-1208 -AMENDING SANITATION SERVICE RATES

A resolution amending the monthly sanitation service rates.

f. ORDINANCE 1337-1208 -TRANSFER OF PROPERTY TO EL PASO NATURAL GAS NEAR BUCKEYE ROAD AND AVONDALE BLVD.

An ordinance authorizing a transfer of property near the northeast corner of Buckeye Road and Avondale Boulevard from the City of Avondale to El Paso Natural Gas and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

g. ORDINANCE 1336-1208 -AUTHORIZING THE PURCHASE OF THE RIGBY WATER COMPANY

An ordinance approving the aquisition of the Rigby Water Company located in the Southern Avondale Planning Area, by purchase or condemnation and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

Andrew McGuire, City Attorney read Resolution 2788-1208 and Ordinances 1336-1208 and 1337-1208 by title only.

Vice Mayor Weise moved; Council Member Scott seconded to approve the consent agenda and adopt the Resolution and Ordinances as presented.

ROLL CALL VOTE AS FOLLOWS:

Council Member Scott	Aye
Council Member Buster	Aye
Mayor Lopez-Rogers	Aye
Vice Mayor Weise	Aye
Council Member Wolf	Excused
Council Member Karlin	Excused
Council Member McDonald	Aye

The motion passed 5-0.

4. PUBLIC HEARING -CU-08-5 CAMP BOW WOW

A public hearing and consideration of a request from Heather Frane on behalf of Avondale Commerce Center LLC for approval of a Conditional Use Permit for Camp Bow Bow, a 4,988 sf animal boarding facility located at the northwest corner of El Mirage Road and Van Buren Street.

Scott Wilken indicated that the proposal is for a 5,000 square foot pet resort to accommodate about 83 dogs. The facility is located at the Avondale Commerce Center Phase II, north of the northwest corner of El Mirage and Van Buren. The property is zoned PAD and is surrounded mostly by vacant or agricultural uses with the nearest residence being approximately 1100 feet to the east of the proposed use. The site has full access driveways from surrounding streets 127th Ave, Corporate Drive, Garfield Street, and El Mirage Road. The facility will also include an outdoor area for small supervised groups. The outdoor area will be surrounded by an 8' masonry wall and will be cleaned immediately after dogs use the area to ensure that there are no offending odors from the outdoor area. The outdoor area will be covered with ½" pea gravel 4" deep. Mr. Wilken indicated that the Planning Commission recommended approval of the request subject to 7 stipulations.

Council briefly discussed the issue of noise. Mr. Wilken that the architect has determined that the noise coming from the facility will not exceed 45 decibels and therefore it is not expected to disturb surrounding neighbors.

Mayor Rogers opened the public hearing. There being no requests to speak, Mayor Rogers closed the public hearing.

Vice Mayor Weise moved to approve the Conditional Use Permit as requested subject to the following seven stipulations; Council Member Scott seconded the motion.

1. Development shall be in substantial conformance with the application narrative, site plan, floor plan, building elevations, and landscape plan dated November 4, 2008.
2. Direct access shall not be provided from animal housing units to the outside of the building.
3. The building shall be constructed in a manner that limits exterior noise from activities inside the building to a maximum of forty-five (45) DBA measured at the exterior building wall. A statement from a registered architect to this effect is required at the time of construction plan submittal.
4. Animals shall be supervised by a facility employee at all times when in an outdoor area.
5. Animals shall not be allowed in the outdoor area between the hours of 7:00 p.m. and 7:00 a.m.
6. A solid block wall with a minimum height of eight (8) feet shall enclose the perimeter of the outdoor area. The wall shall be constructed to match the colors, materials, and design of the existing building.
7. Animal waste shall be removed from outdoor play/exercise areas every five hours during time periods when these areas are in use and shall be bagged separately from other refuse.

ROLL CALL VOTE AS FOLLOWS:

Council Member Scott	Aye
Council Member Buster	Aye
Mayor Lopez-Rogers	Aye
Vice Mayor Weise	Aye
Council Member Wolf	Excused
Council Member Karlin	Excused
Council Member McDonald	Aye

The motion passed 5-0.

5. PUBLIC HEARING AND ORDINANCE 1338-1208 – WATER & SEWER USER CHARGES

A public hearing and consideration of an ordinance amending water & sewer user charges.

Kevin Artz, Finance and Budget Director indicated that the request is for Council to hold a public hearing and adopt an ordinance amending the water and sewer rates. He indicated that as has been done over the last five years based on the five year rate plan increase model approved by Council in 2004, staff is recommending a 3% total combined revenue increase and explained that water requires a 3.8% revenue increase and wastewater require a 1.76% revenue increase. Mr. Artz indicated that staff has published the required notice, filed the report with the City Clerk and held an open house.

Mayor Rogers opened the public hearing. There being no requests to speak, Mayor Rogers closed the public hearing.

Andrew McGuire, City Attorney read Ordinance 1338-1208 by title only.

In response to a question from Mayor Rogers, City Manager indicated that while this is the fifth year for the rate increases that the Council approved in 2004, Council will need to review the rates next year.

Vice Mayor Weise moved to adopt Ordinance 1338-1208; Council Member Scott seconded the motion.

ROLL CALL VOTE AS FOLLOWS:

Council Member Scott	Aye
Council Member Buster	Aye
Mayor Lopez-Rogers	Aye
Vice Mayor Weise	Aye
Council Member Wolf	Excused
Council Member Karlin	Excused
Council Member McDonald	Aye

The motion passed 5-0.

6. EXECUTIVE SESSION

An executive session pursuant to ARIZ. REV. STAT. § 38-431.03 (A)(4) for discussion or consultation with the City's Attorney in order to consider its position and instruct the City Attorney regarding the Council's position regarding (i) a potential economic development agreement, (ii) a recycling

contract subject to negotiation and (iii) the Home Builders Association of Central Arizona v. City of Avondale litigation.

Vice Mayor Weise moved to adjourn the meeting to executive session; Council Member Scott seconded the motion.

ROLL CALL VOTE AS FOLLOWS:

Council Member Scott	Aye
Council Member Buster	Aye
Mayor Lopez-Rogers	Aye
Vice Mayor Weise	Aye
Council Member Wolf	Excused
Council Member Karlin	Excused
Council Member McDonald	Aye

The motion passed 5-0.

7 ADJOURNMENT

There being no further business to come before the Vice Mayor Weise moved to adjourn the meeting. Council Member Buster seconded the motion. The motion passed unanimously.

Meeting adjourned at 8:05 p.m.

Mayor Lopez-Rogers

Carmen Martinez, CMC
City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the Council of the City of Avondale held on the 1st day of December, 2008. I further certify that the meeting was duly called and held and that the quorum was present.

City Clerk

Avondale considers condemning water company



Avondale considers condemning water company

by **David Madrid** - Dec. 27, 2008 08:00 AM
The Arizona Republic

Avondale's negotiations to buy the Rigby Water Co. aren't bearing fruit, so the city is considering condemning the Rigby property in Avondale in hopes that a fair settlement can be determined.

Wayne Janis, Avondale's water resources director, said the city and the water company are far apart in what they consider a fair price.

And while the city is open to further negotiations, the price continues to be the sticking point, so the City Council approved the beginning of eminent domain proceedings. Janis said he doesn't know when condemnation proceedings will begin.

"People prior to me have tried to negotiate with Rigby, and they weren't successful, and things kind of came to a halt," Janis said. "So we went to council for direction, and council asked us to go try and negotiate some more, and also to attempt a partial purchase."

The partial purchase would be of a part of the company's service area that is mostly vacant land, Janis said.

The city presented a couple of options to the water company, which Janis said weren't rejected, but the two entities still could not agree on a price.

Rigby, owned by Apache Junction-based First National Management Inc., serves about a square mile of southern Avondale along the Gila River. The area includes the neighborhood known as Tierra Ranchettes and parts of the proposed Hillcrest and Lincoln Ranch neighborhoods.

Judy Lopez, Rigby Water secretary and treasurer, said she understands the city will make one more offer in January, and she said the company will determine what it will do after that.

She said Avondale and Rigby Water have been negotiating for a long time.

About a year ago, the council approved a pre-annexation agreement with Evergreen-Hillcrest LLC to bring about 249 acres near the southwestern corner of 107th Avenue and Broadway Road into the city.