

COUNCIL MINUTES

December 1, 2003

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on December 1, 2003 at 5:45 p.m.

COUNCIL PRESENT

Mayor Keno Hawker
Rex Griswold
Dennis Kavanaugh
Janie Thom
Claudia Walters
Mike Whalen

COUNCIL ABSENT

Kyle Jones

OFFICERS PRESENT

Mike Hutchinson
Debbie Spinner
Barbara Jones

(Mayor Hawker excused Councilmember Jones from the entire meeting.)

Invocation by Mayor Hawker.

Pledge of Allegiance was led by Paul Emigh, Scout Troop No. 10.

Mayor's Welcome.

Mayor Hawker welcomed everyone to the meeting. A videotaped presentation was aired that outlined meeting procedures and provided attendees with instructions relative to addressing the Council.

1. Consider all consent agenda items.

At this time, all matters on the consent agenda were considered or were removed at the request of a member of the Council. All items identified with an asterisk (*) were approved with one Council action.

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Walters, that the consent agenda items be approved.

Mayor Hawker declared the motion carried unanimously by those present.

*2. Approval of minutes of previous meetings as written.

Minutes from the October 23, 30, November 17, 20 and 25, 2003 City Council meetings.

3. Conduct a public hearing for the following General Plan Amendment:

- *a. **GPMInor03-03 (District 6)** – The 5800 block of East Southern Avenue (south side) on the east side of the Roosevelt Water Conservation District Canal. Generally located south and east of Southern Avenue and Higley Road. Change the Land Use Map from high-density residential to medium-density residential. This will allow for development of a 139-lot residential development with 7.09 du/ac. **CONTINUED FROM THE NOVEMBER 3, 2003 COUNCIL MEETING. (See items 6a and 8a). THE APPLICANT HAS REQUESTED THIS CASE BE CONTINUED TO THE DECEMBER 15, 2003 CITY COUNCIL MEETING.**

4. Consider the following liquor license applications:

- *a. DENNIS CAVANAUGH, AGENT

Person Transfer Beer and Wine Bar License for Fozzles Restaurant, 721 S. Rochester. This is an existing business. This is a Person transfer from Willis Herman Miller, Agent, Sunland Village Golf Club, 721 S. Rochester. This license will transfer to the applicant.

- *b. OSAMA MAHAYNI, AGENT

New Beer and Wine Store License for Ramona Market, 1931 W. University Drive. This is an existing building. No previous liquor licenses at this location.

- *c. QUIT DUONG, INDIVIDUAL

New Restaurant License for Binh Minh Restaurant, 1116 S. Dobson Road, #113. This is an existing business. No previous liquor licenses at this location.

5. Consider the following contracts:

- *a. One-year supply contract for automotive batteries as requested by Fleet Support Services.

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Interstate Batteries for annual purchases estimated at \$87,227.18.

- *b. One new class 8 conventional semi-tractor for pulling a trailer of medical supplies as requested by the Fire Department.

The Purchasing Division recommends accepting the low bid by I-10 International at \$86,056.13 including extended warranty and sales tax. (This purchase is 100% grant funded by the U.S. Dept. of Justice).

- *c. Election Printing for the 2004 Primary and General Elections as requested by the City Clerk's Office.

The Purchasing Division recommends accepting the low bid meeting specification by Century Graphics at \$40,815.10 based on estimated requirements.

- *d. Three-year supply contract for insulated electrical separable connectors and accessories to be used by the Electric Division of Utilities.

The Purchasing Division recommends accepting the low bid by Wesco Distribution for option #2, at \$62,313.91 based on estimated annual requirements.

- *e. Three-year contract for landscape maintenance services for parks and retention basins, in an area designated as Zone 7, as requested by the Parks & Recreation Division.

The Purchasing Division recommends accepting the overall low bid meeting specification by Artistic Land Management, Inc. at \$275,610.34 based on estimated annual requirements.

- *f. Five-month supply contract for tires as requested by Fleet Support Services and Fire Support Services. These tires are stored in the City warehouses.

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Goodyear Tire & Rubber Company distributor, Wingfoot Commercial Tire, for annual purchases estimated at \$632,118.61.

- *g. Two-year renewal of the supply contract for traffic signal heads, pedestrian signals and LED modules for warehouse inventory to be used by the Transportation Division.

The Purchasing Division recommends exercising the two-year renewal option with the original low bidder for Category B, Jerry E. Fondaw & Associates, at \$228,491.47 based on estimated annual requirements.

- h. Miscellaneous Drainage Improvements, South Quinn Circle and North Stapley Drive, City of Mesa Project No. 01-477-001.

This project will lower the outlet of the drainpipe to provide positive drainage and eliminate ponding within the pipe and on South Quinn. On Stapley Drive, north of the consolidated canal, the existing grate only catch basins located in a sump condition will be modified to grate plus curb opening catch basins to eliminate plugging due to debris collection on the grates.

Recommend award to low bidder, Five Points Excavation, in the amount of \$22,252.00 plus an additional \$2,225.20 (10% allowance for change orders) for a total award of \$24,477.20.

Mayor Hawker declared potential conflicts of interest on items 5h, 5i, 5j and 5k and said he would refrain from discussion/participation relative to these agenda items. He yielded the gavel to Vice Mayor Kavanaugh for action on these agenda items.

It was moved by Councilmember Walters, seconded by Councilmember Thom, that the recommendation of staff be approved.

Upon tabulation of votes, it showed:

AYES - Griswold-Kavanaugh-Thom-Walters-Whalen
ABSTAIN - Hawker
ABSENT - Jones

Vice Mayor Kavanaugh declared the motion carried unanimously by those present and voting.

- i. University Drive Street and Utility Improvements, Stapley Drive to Gilbert Road, City of Mesa Project No. 99-46.

This project will construct approximately 5,000 feet of 30-inch sewer line, along with manholes, service markers and other sanitary line appurtenances. The project also includes installing over 2,000 linear feet of 2-inch and 6-inch gas line, nearly 5,000 linear feet of quad duct for future fiber optic cable use, and reconstructing 27,000 square yards of pavement.

Recommend award to low bidder, Blucor Contracting, in the amount of \$1,216,910.25 plus an additional \$121,691.03 (10% allowance for change orders) for a total award of \$1,338,601.28.

It was moved by Councilmember Whalen, seconded by Councilmember Griswold, that the recommendation of staff be approved.

Upon tabulation of votes, it showed:

AYES - Griswold-Kavanaugh-Thom-Walters-Whalen
ABSTAIN - Hawker
ABSENT - Jones

Vice Mayor Kavanaugh declared the motion carried unanimously by those present and voting.

- j. Utility Location and Potholing by Vacuum Extraction, City of Mesa Project No. 03-903-001.

This project is an annual contract for the upcoming year to perform non-destructive location and potholing of underground utilities in order to identify and avoid conflicts during design and construction of City capital improvement projects. The project provides the City an option to extend for up to two additional one-year periods.

Recommend award to low bidder, HMS Conco, Inc., as the primary contractor, and to second low bidder, Northern Pipeline, as the secondary contractor, in the total amount of \$250,00.00.

It was moved by Councilmember Griswold, seconded by Councilmember Walters, that the recommendation of staff be approved.

Upon tabulation of votes, it showed:

AYES - Griswold-Kavanaugh-Thom-Walters-Whalen
ABSTAIN - Hawker
ABSENT - Jones

Vice Mayor Kavanaugh declared the motion carried unanimously by those present and voting.

k. 2003/2004 Crack Sealing Project, City of Mesa Project No. 03-905-001.

This project will crack seal nearly 2,000,000 square yards of residential and collector street pavement surfaces throughout Mesa.

Recommend award to low bidder, CPC Construction, Inc., in the amount of \$458,190.97 plus an additional \$45,819.10 (10% allowance for change orders) for a total award of \$504,010.07.

It was moved by Councilmember Griswold, seconded by Councilmember Walters, that the recommendation of staff be approved.

Upon tabulation of votes, it showed:

AYES - Griswold-Kavanaugh-Thom-Walters-Whalen
ABSTAIN - Hawker
ABSENT - Jones

Vice Mayor Kavanaugh declared the motion carried unanimously by those present and voting.

Vice Mayor Kavanaugh yielded the gavel back to Mayor Hawker.

6. Consider the following resolutions:

- *a. **GPMinor03-03 (District 6)** – The 5800 block of East Southern Avenue (south side). South of the Salt River Project sub-station on the west side of the Roosevelt Water Conservation District Canal. Generally located south and east of Southern Avenue and Higley Road. Adopting a minor amendment to the General Plan that would change 20± acres parcel from high-density residential (HDR) to medium-density residential (MDR). **CONTINUED FROM THE NOVEMBER 3, 2003 COUNCIL MEETING. THE APPLICANT HAS REQUESTED THIS CASE BE CONTINUED TO THE DECEMBER 15, 2003 CITY COUNCIL MEETING.**
- *b. Authorizing the City Manager to execute an agreement between the City of Mesa and the Driving Under the Influence Abatement Council for additional funds to pay overtime for extra DUI enforcement. (Federal Funds) – Resolution No. 8150.
- *c. Approving and adopting procedures for the auction of firearms disposed of by the Mesa Police Department – Resolution No. 8151.

- *d. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the City of Mesa and Maricopa County for improvements to Gilbert Road – Resolution No. 8152.
- *e. Deleted.
- *f. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the City of Mesa and Maricopa County for improvements to Power Road – Resolution No. 8153.
- *g. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the City of Mesa and Maricopa County to allow Maricopa County to pass Homeland Security Grant funds to the City of Mesa – Resolution No. 8154.
- h. Authorizing the City Manager to execute the First Amendment to the Site 21 Disposition and Development Agreement between the City of Mesa and Outsource International LLC for the redevelopment of Site 21, and all other documents necessary to carry out the provisions of the Amendment – Resolution No. 8155.

Redevelopment Director Greg Marek addressed the Council and provided a brief historical overview of this agenda item. He reported that on February 3, 2003, the Council approved the execution of the Disposition and Development Agreement (DDA) between the City of Mesa and Outsource International LLC (Outsource) for the redevelopment of Site 21 (One Macdonald Center). He explained that one of the stipulations contained in the DDA is that Outsource provides evidence to the City by December 8, 2003 that a lender has executed documents obligating such lender to finance the development and construction of One Macdonald Center. Mr. Marek stated that Donavon Ostrom, Managing Director of Outsource, sent a letter to City Manager Mike Hutchinson requesting a 75-day extension due to the fact that Outsource had not met its pre-leasing requirement and is unable to close its financing documents by the December deadline.

In response to a series of questions from Mayor Hawker, Mr. Ostrom clarified that Outsource currently has four financing options available for One Macdonald Center which require a pre-leasing requirement of 50-60%; that although Outsource has generated significant tenant interest in the development, it has not reached the required percentage established by the lender and is requesting a 75-day extension; that McShane Corporation, originally one of three major entities involved in the venture, has backed out of its commitment to fund the project and Outsource is now using its own bank sources for financing; that Outsource currently has 13,000 square feet of leased space committed and is in various stages of negotiations regarding another 100,000 square feet, and that because of the upcoming holidays, Outsource anticipates delays in receiving underwriting approval from the lenders and requests additional time to complete their due diligence.

Councilmember Walters expressed disappointment regarding the fact that during previous Council deliberations regarding the various proposals for One Macdonald Center, McShane Corporation was touted as having the ability to fund the construction of the entire project and noted that that was a major factor in her decision to select Outsource. She commented that although she is inclined to agree to the 75-day extension, she would be unwilling to grant further extensions beyond that time.

Councilmember Griswold concurred with Councilmember Walters' comments.

In response to a question from Councilmember Thom, Mr. Ostrom assured the Council that he does not foresee problems with the leasing of One Macdonald Center and added that it is fairly typical of businesses anticipating relocation to go through a negotiation process.

Councilmember Whalen stated that he hoped the Council would take the posture that not only is it up to Outsource, but also the City to recruit tenants for One Macdonald Center. He added that although the tone of the Council's comments this evening may be somewhat discouraging to Outsource, in his opinion, the Council is very much encouraged with the efforts and hard work of Outsource thus far to lease the facility. Councilmember Whalen cautioned, however, that he senses the Council is unwilling to grant further extensions beyond the 75 days.

Discussion ensued relative to proposed first-floor dining options for One Macdonald Center.

Mayor Hawker suggested that it may be more appropriate to deny Outsource's request and put the property back on the open market for sale now or, in the alternative, wait until the Mesa Arts Center is open and put it back on the market at that time.

Vice Mayor Kavanaugh commented that although Outsource's proposal for One Macdonald Center was not his first choice, he is supportive of granting the 75-day extension. He noted that City staff has been working diligently with Outsource on the project, and added that there is a good faith reliance issue in terms of the partnership that Mesa has entered into with the private sector.

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Whalen, that Resolution No. 8155 be adopted.

Councilmember Thom voiced opposition to the motion and stated that the building has been off the tax roles for many years and should be placed in private hands as soon as possible in order for the property tax income from the facility to be collected by the County, the school district and other entities. She added that the building is creating an excessive burden for Mesa businesses and residents and that it should be sold for whatever it is worth.

Mayor Hawker stated that although he will support Outsource's 75-day extension, he stressed that additional extensions will be unacceptable.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Kavanaugh-Walters-Whalen
NAYS - Thom
ABSENT - Jones

Mayor Hawker declared the motion carried by majority vote of those present and Resolution No. 8155 adopted.

7. Consider the following recommendation from the General Development Committee:

- *a. Approving a new procedure that requires applicants scheduled to appear before the Design Review Board provide notification to the adjacent neighborhoods by mail indicating the meeting date, time and location of the meeting.

7.1. Consider the following recommendations from the Fire Committee:

- *a. Approving the donation of three surplus Fire Department vehicles (two fire pumper trucks and one air/light unit) to the Mesa Community College Fire Service Program, the East Valley Institute of Technology, and the Apache Junction Fire District.
- *b. Approving the proposal by Southwest Ambulance/Rural Metro to provide Emergency Medical Services Transportation for a three-year contract, subject to the successful negotiation of an operational contract based on the terms of the RFP and Southwest Ambulance's proposal.

*7.2. Consider the acquisition of a 5-acre parcel of property located at the southwest corner of Sossaman and McDowell Roads for the purpose of constructing a detention basin and a sulfide control station.

8. Consider the following cases from the Planning and Zoning Board and possible adoption of the corresponding Ordinances:

- *a. **Z03-44 (District 6)** - The 5800 block of East Southern Avenue (south side). South of the Salt River Project sub-station on the west side of the Roosevelt Water Conservation District Canal (20 ± ac.) Generally located south and east of Southern Avenue and Higley Road. Rezone from R-3 to R1-6 PAD. This request is for the development of a residential subdivision. Harris Bank, N.A., owner; Chris Clonts, KB Homes, applicant. **CONTINUED FROM THE NOVEMBER 3, 2003 COUNCIL MEETING. APPLICANT HAS REQUESTED THIS CASE BE CONTINUED TO THE DECEMBER 15, 2003 CITY COUNCIL MEETING.**

P&Z Recommendation: Approval with conditions. (Vote passed 6-0, Esparza absent.)

1. Compliance with the basic development as described in the project narrative and as shown on the site plan and elevations submitted, (without guarantee of lot coverage) except as noted below.
2. Compliance with all City development codes and regulations.
3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
4. All street improvements and landscaping to be installed in the first phase of construction.
5. Compliance with all requirements of the Subdivision Technical Review Committee.
6. Recordation of cross-access easement over Tract F of the Stonegate Estates subdivision plat between the Stonegate Estates Board of Directors, on behalf of Stonegate Estates, and the property owner, Harris Bank, N.A., prior to recordation of the final plat.

- *b. **Z03-50 (District 6)** 9355 East Southern Avenue, south and east of Southern Avenue and Ellsworth Road. (36.1± ac.) Rezone from M-1 to R-2 PAD. This request is for the development of a residential subdivision. Will Cardon, owner; Sean Lake, Pew & Lake, P.L.C., applicant – Ordinance No. 4132.

P&Z Recommendation: Approval with conditions. (Vote passed 7-0)

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, preliminary plat and elevations submitted, (without guarantee of lot yield, building count, lot coverage) except as noted below.
2. Compliance with all City development codes and regulations.
3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
4. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, at the time of recordation of the subdivision plat, or at the time of the City's request for dedication, whichever comes first.
5. Compliance with all requirements of the Subdivision Technical Review Committee.
6. Full compliance with all current Code requirements, unless modified through appropriate review and approval of the modifications outlined in the staff report.
7. Owner granting an Avigation Easement and Release to the City, pertaining to Williams Gateway Airport, which will be prepared and recorded by the City (concurrently with the recordation of the final subdivision map, prior to the issuance of a building permit).
8. Retention basins to be 6:1 slopes maximum when adjacent to public rights-of-way or pedestrian walkways.

- *c. **Z03-51 (District 5)** 6063 East Arbor Avenue, south and east of Main Street and Recker Road. (1.6 ac. ±) Rezone from C-3 to R-4 and Site Plan Modification. This request is for the expansion of an existing assisted living facility. Arbor Rose LLC, owner; Ron Genenbacher, Arbor Rose LLC, applicant. **(CONTINUED TO THE JANUARY 20, 2004 CITY COUNCIL MEETING.)**

P&Z Recommendation: Approval with conditions. (Vote passed 7-0)

1. Compliance with the basic development as described in the project narrative and as shown on the site plan and elevations submitted, (without guarantee of lot coverage) except as noted below.
2. Compliance with all City development codes and regulations.
3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.)

- d. **Z03-38 – (District 6)** The 3800 block of South Power Road (east side) and the 6900 block of East Elliot Road (south side) (20.63 ac.±). Site Plan Review. This case involves development of an apartment complex. Farnham Realty, Inc., owner; Sean Lake, Pew & Lake, PLC, applicant. **CONTINUED FROM THE OCTOBER 13, 2003 CITY COUNCIL MEETING AND THE NOVEMBER 17, 2003 CITY COUNCIL MEETING.**

P&Z Recommendation: Denial (Vote: 5-2 Carpenter, Esparza voting nay)

Sean Lake, 10 West Main Street, an attorney representing the applicant, addressed the Council and provided a brief historical overview of the case. He stated, among other things, that the application before the Council this evening (a 348-unit apartment complex on the R-3 portion of the property) is not a rezoning application, but a Site Plan application; that the issues associated with land use were decided by a previous Council in 1999; that staff cited the following reasons why the Site Plan should be denied: the zoning plan approved in 1999 is no longer consistent with Mesa's General Plan, the applicant has not complied with the neighborhood notification process, and the subject property does not have vested rights; that the property was zoned in conformance with a master plan and the conceptual plan that was approved by the Council in 1999, and that the Site Plan is in conformance with City, State and Federal guidelines and the project should move forward.

Mr. Lake reported that the applicant, Ruiz Engineering, anticipates proceeding with the apartment complex and will be the owner/operator of the project on a long-term basis. He commented that the property is an excellent site for an apartment development, as well as a good opportunity for mixed housing adjacent to employment areas. Mr. Lake added that the property is located 2.2 miles from the end of the runway at Williams Gateway Airport (WGA) and that it is not located in either the 60 or 65 DNL (identified as "no residential within that line") areas.

Mr. Lake concluded his remarks by noting that property owners and developers should be able to rely upon representations made by the Council, staff and WGA representatives concerning the appropriateness of a land use, especially when the decision was made in 1999. He stated that the applicant has spent a substantial amount of money in processing the Site Plan through the City, as well as complying with the necessary regulations. Mr. Lake added that the applicant also hired consultants to conduct noise, safety and land use studies and that the consultants have indicated that the plan does comply with Federal and State regulations for the development of property within several miles of an airport. He urged the Council to grant approval of the proposed Site Plan.

In response to a question from Mayor Hawker, Mr. Lake concurred that Condition No. 6 in the 1999 zoning case, "The documented building sizes, numbers, locations, etc. on the land use plan are for illustration only and not guaranteed at build out.) was agreed to by the applicant.

David Guthrie, 5000 E. McDowell Road, a pilot employed at Boeing, addressed the Council and expressed a series of concerns regarding the proposed apartment development and its impact on WGA. He noted that the "Fly Friendly" procedures at WGA allow an aircraft to land and take off with a reduction of noise complaints and commented that residents who live in a flight corridor are subjected to significant noise. Mr. Guthrie added that he wants to ensure that flight access in the corridor is protected with minimal impact on neighborhoods, that the airport is not encroached upon, and that the zoning for the subject property should follow the City's General Plan.

Mayor Hawker stated the opinion that the issue before the Council is a Site Plan Review as a result of the previously referred to Condition No. 6 and commented that the Council has the ability to set parameters (i.e. densities) for the type of development it would prefer at this location. He indicated that he is uncomfortable with the applicant's proposed 16.86 dwelling units per acre and would prefer a target density of 14. Mayor Hawker also suggested that he would prefer that the three-story structures be eliminated and reduced to one or two stories.

In response to a series of questions from Councilmember Walters, City Attorney Debbie Spinner clarified that it is not necessary for the Council to adopt an ordinance in order to conduct a Site Plan Review; that if the Council does not approve the proposed Site Plan, direction to the applicant would be beneficial in order for it to bring something forward that is acceptable to the Council, and that there is nothing in the 1999 zoning case that would legally require the Council to allow the maximum density in a specific zoning category.

Councilmember Walters commented that she wants to ensure that whatever is built at the proposed location is the best possible project for the City of Mesa. She noted that she is leaning toward 12 dwelling units per acre, but could possibly be persuaded to go as high as 14.

In response to Mayor Hawker and Councilmember Walters' comments, Mr. Lake clarified that Condition 6 did not address density, and stated that to have this guise that it does is somewhat disappointing to him. He reiterated his previous comments that the proposed apartment development is in compliance with all City Code regulations and guidelines, including Mesa's recently adopted Design Guidelines.

Discussion ensued relative to the fact that under Section 11-5-6 of the City Code, the Council has the discretion to allow up to 17 dwelling units per acre; that with regard to the Site Plan, the Council can vote to deny the Plan, give direction to the applicant (i.e. a reduced target density between 12 and 14; limit the development to less than three stories), and the case would come back through the zoning process again.

Councilmember Griswold expressed concerns relative to the potential for a narrow ingress and egress into and out of the proposed development and stated that he too would prefer a lower density in the range of 12 to 14 dwelling units per acre.

Mr. Lake commented that it is interesting to note that density has always been associated with compliance with development standards. He said that he can think of numerous projects wherein a developer exceeded the density allowable in a particular zoning category, which was subsequently approved by the Council, provided the developer met the development standards. Mr. Lake added that is what has been presented before the Council in this case and is also the reason why the proposed density is not 17 dwelling units per acre but less, because the applicant cannot comply with the density or the development standards and still achieve 17 dwelling units per acre.

In response to Mr. Lake's comments, Principal Planner Dorothy Chimel indicated that she was not aware of any cases similar to what Mr. Lake just referenced. She added that if this case proceeds forward with a recommendation for approval by the Council, the Design Review Board may have difficulty not only with the separation between buildings, but also the need for Site Plan modifications.

Councilmember Walters noted that in her experience reviewing zoning cases, the Council has taken into consideration issues such as surrounding uses in terms of how much density it would allow. She noted, however, that she cannot recall a case in which the Council considered permitting less density of an apartment complex development because of its close proximity to the end of an airport runway.

In response to a question from Councilmember Walters, Deputy City Attorney Joe Padilla clarified that it is appropriate for the Council to take into consideration the surrounding land uses when determining the appropriate density in this case.

Councilmember Walters expressed her willingness to make a motion, but commented that she was unsure regarding the manner in which it should be formulated.

Mayor Hawker suggested that the Council take a short break to confer with staff relative to the formation of a motion.

(Mayor Hawker declared a recess at 7:05 p.m. The meeting reconvened at 7:15 p.m.)

It was moved by Councilmember Walters, seconded by Mayor Hawker, that the Site Plan approval of Z03-38 (3800 block of South Power Road and the 6900 block of East Elliot Road), be denied.

Mr. Lake stated that as a result of the Council's previous comments, it appears as though the Council would be satisfied with a lower density project. He questioned whether it is the Council's direction to the applicant to rely upon such direction and expend additional funds on the development of a less dense project or is it just a guise to further delay the project. Mr. Lake commented that he would not want to spend additional money in this process only to have agenda item 8.1 (Instruct staff to rezone property in the 3800 block of South Power Road and the 6900 block of East Elliot Road from Residential to another use.) approved by the Council to rezone such property.

Councilmember Whalen indicated that approval of 8.1 would nullify any action taken by the Council with regard to this issue. He urged the Council that whatever action it does take relative to this matter, that it do so in good faith.

Councilmember Walters commented that she does not view the Council's action as a guise and that she has only considered the land use issues relative to this case up until today when she focused on the Site Plan for the first time. She noted that it was not her intention to direct the applicant to bring back a revised Site Plan with lesser density to the Planning & Zoning Board, but rather to the Council to expedite the case and not hinder the applicant any further.

Vice Mayor Kavanaugh expressed opposition to the motion. He commented that based on all of the evidence presented to the Council this evening, the applicant's Site Plan is in compliance with Mesa's General Plan and Design Guidelines and therefore deserves approval.

Councilmember Whalen voiced opposition to the motion and stated that because of the site's close proximity to WGA, in his opinion, it is not an appropriate location for the development of a multi-family apartment complex.

Councilmember Griswold expressed support for the motion.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Thom-Whalen
NAYS - Kavanaugh-Whalen
ABSENT - Jones

Mayor Hawker declared the motion carried by majority vote of those present.

Councilmember Walters suggested that the applicant bring back a revised Site Plan with a maximum density of 14 dwelling units per acre to the Council for further consideration as opposed to the Planning & Zoning Board.

Additional discussion ensued relative to the public notification process and the potential waiving of zoning fees.

- 8.1. Z03-38 – (District 6)** The 3800 block of South Power Road (east side) and the 6900 block of East Elliot Road (south side) (20.63 ac.±). Site Plan Review. This case involves development of an apartment complex. Farnham Realty, Inc., owner; Sean Lake, Pew & Lake, PLC, applicant. Mayor Hawker reported that this item is a request by staff to rezone the parcel previously discussed in agenda item 8d. He explained that the City has rezoned several properties in the area at the request of the Council that were originally designated Residential (due to County annexation) and was required to assume such zoning classification. Mayor Hawker commented that this particular property does not have vested rights, however, the Council has the ability to rezone the property prior to assuming those rights.

Mark Dioguardi, 2525 E. Camelback Road, Phoenix, an attorney representing the property owner, Farnham Realty, expressed opposition to rezoning the subject property. He stated, among other things, that his client purchased the property that was zoned for a multi-family component and that it is now in a configuration that is undevelopable for any use other than as an apartment complex development; that his client and City staff have been working on an alternative resolution to this matter; that the City has asked his client to give up the property in exchange for another piece of property and that the property owner would consider such an offer if the City also reached a resolution with Ruiz Engineering. He added that if the Council directs staff to rezone the property, he would encourage the Council to consider a Commercial designation.

In response to a question from Mayor Hawker, Ms. Chimel clarified that it is staff's recommendation that the property be designated C-2.

Discussion ensued relative to the fact that the Mesa General Plan, which was approved by voters in November 2002, changed the area's designation to Mixed-Use Employment from Mixed Use-Residential and thereby eliminated the 30% residential component.

Mr. Lake objected to rezoning the property for all the reasons previously stated in agenda item 8d.

Councilmember Thom expressed support for rezoning the property. She noted that the Mesa General Plan indicates the area should be designated for Mixed-Use Employment and commented that either a Commercial or Industrial zoning designation would be appropriate.

Councilmember Thom added that she has received input from Howard Morrison, co-owner of Arizona Dairy, and also representatives from the Gilbert School District who have expressed their preference that the property not be zoned Residential.

Councilmember Whalen commented that by starting this process this evening, the Council is sending a message that the subject property should not include a residential component in the future as the City works towards the development of Williams Gateway Airport. He assured Mr. Lake and Mr. Dioguardi that the initiation of this process will not stop the City from working in concert with both Ruiz Contracting and Farnham Realty in an effort to reach an amenable solution with regard to both entities' current concerns. Councilmember Whalen also expressed appreciation to Mayor Hawker for his efforts and hard work with regard to his ongoing commitment to make Williams Gateway Airport a major economic center for the City of Mesa.

Vice Mayor Kavanaugh voiced opposition to this item and stated that it is important for the Council to remember that the decisions it makes must create a sense of consistency, expectation and reliance within the business community, residential areas and developers. He also stated that while he understands his fellow Councilmembers' concerns relative to the property's zoning, in 1999 there was a full, fair and extensive discussion involving these issues and a residential component at the proposed site was deemed appropriate. Vice Mayor Kavanaugh added that there was no opposition expressed at that time by the Gilbert School District, Williams Gateway Airport or Boeing.

Mayor Hawker concurred with Vice Mayor Kavanaugh on a number of issues, except that the apartment complex development has not been constructed due to the fact it has not received Site Plan approval at the appropriate densities. He commented that as a result of the passage of the Mesa General Plan in November 2002, City voters indicated their preference with regard to residential areas and job centers, and stated that the focus has come back to Williams Gateway Airport as a regional job center in Maricopa County. Mayor Hawker also stated that in his opinion, a residential apartment complex in close proximity to the end of the airport runway is not appropriate. He added that in 1999 when decisions were made regarding this property, it is conceivable that the Council did not consider the magnitude of Williams Gateway Airport at build out. Mayor Hawker said that he would like the City to continue to work with the property owner and the applicant to arrive at a compromise that is agreeable to all the parties.

It was moved by Mayor Hawker, seconded by Councilmember Thom, to instruct staff to rezone property in the 3800 block of South Power Road (east side) and the 6900 block of East Road (south side) from Residential to another use.

Councilmember Walters expressed support for the motion and acknowledged that Mr. Ruiz and the property owner were relying on a 1999 decision of the Council. She stated that if the property remains a residential designation, the Council could end up in the same position it is today, but with another developer.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Thom-Walters-Whalen
NAYS - Kavanaugh
ABSENT - Jones

Mayor Hawker declared the motion carried by majority vote of those present.

9. Consider the following subdivision plats:

- *a. "NEIGHBORHOOD MARKET @ HAWES & GUADALUPE", – (Council District 6) – 2800 block of South Hawes Road (west side) located south and west of Guadalupe Road and Hawes Road. 4 C-2 DMP commercial lots (13.32 ac) Wal-Mart Stores, Inc., a Delaware Corporation, owner; Kimley-Horn & Associates, engineer.

10. Items from citizens present.

There were no items from citizens present.

11. Adjournment.

Without objection, the Regular Council Meeting adjourned at 7:53 p.m.

KENO HAWKER, MAYOR

ATTEST:

BARBARA JONES, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Council Meeting of the City Council of Mesa, Arizona, held on the 1st day of December 2003. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK

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