



COUNCIL MINUTES

November 15, 2004

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on November 15, 2004 at 5:50 p.m.

COUNCIL PRESENT

Mayor Keno Hawker
Rex Griswold
Kyle Jones
Tom Rawles
Janie Thom
Claudia Walters
Mike Whalen

COUNCIL ABSENT

None

OFFICERS PRESENT

Mike Hutchinson
Barbara Jones
Debbie Spinner

Invocation by Pastor Tony Frazee, Gateway Bible Church.

Pledge of Allegiance was led by Braylen Vchytal, Boy Scout Troop No. 530.

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.

Item 6n was removed from the consent agenda at the request of a citizen.

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 Walters, seconded by Councilmember Jones, that the consent agenda items be approved.

Carried unanimously.

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

Minutes from the November 1, 2004 Council meeting.

3. Conduct a public hearing and consider an amendment to the land use map for the following Major General Plan Amendment and possible adoption of the corresponding resolution:

- a. **GPMajor 04-01** Conduct a public hearing and consider an amendment to the land use map. Proposed General Plan Land Use Amendment: From Mixed Use/Residential (30% at 15+ du/ac) to Medium Density Residential 2-4 (2-4 du/ac), Medium Density Residential 6-10 (6-10 du/ac), High Density Residential 10-15 (10-15 du/ac), Office and Community Commercial for approximately 314.5 ± acres generally located south of Thomas Road between Val Vista Drive and Lehi Road. Various owners; Paul Gilbert; Beus Gilbert PLLC, applicant.

P&Z Recommendation: 3 Approval (Boardmembers Cowan, Adams and Esparza), 3 Denial (Boardmembers Saemisch, Carpenter and Finter). (Vote 3-3-1; Mizner absent).

Mayor Hawker announced that this is the time and place for a public hearing regarding an amendment to the land use map. Proposed General Plan Land Use Amendment: From Mixed Use/ Residential (30% at 15+ du/ac) to Medium Density Residential 2-4 (2-4 du/ac), Medium Density Residential 6-10 (6-10 du/ac), High Density Residential 10-15 (10-15 du/ac), Office and Community Commercial for approximately 314.5 ± acres generally located south of Thomas Road between Val Vista Drive and Lehi Road.

Mayor Hawker stated that the Council would hear from the applicant's representative followed by citizens who wished to address the Council regarding this agenda item. He added that the applicant's representative would have another opportunity to address the Council at the end of the public hearing.

Paul Gilbert, 4800 North Scottsdale Road, representing William Lyon Homes and the property owner, advised that although the subject property is located in Maricopa County, the applicant plans to have the property annexed into the City of Mesa. He stated that the current General Plan designation for the property is Mixed Use Residential. He explained that the use of the term "residential" was somewhat misleading because the primary intent of the General Plan is to provide high-density residential and office, community and business park uses. Mr. Gilbert added that none of the uses currently set forth in the existing General Plan Amendment category encourage or permit large acre lots. He stated that the applicant is seeking to change the current designation to a medium density residential of two to four, a medium density residential of six to ten, a high density residential of ten to fifteen, and a modicum amount of office and community commercial property. Mr. Gilbert advised that numerous meetings with the residential neighborhood held subsequent to filing the General Plan Amendment resulted in the applicant agreeing to substantially reduce the amount of proposed density on the property. He noted that if the subject application is amended or changed to reflect the reduced density, the applicant would have to start over and the project would be delayed for one year. Mr. Gilbert stated that the applicant requests approval of the amendment as filed, and he commits to the City Council that the applicant will reduce the density to "two to four" and "six to ten" medium densities. He added that the applicant is willing to record a deed restriction indicating that when the property is annexed into the City of Mesa, the property will be developed with the reduced

density. Mr. Gilbert stated that the applicant has also committed to file a Minor General Plan Amendment (following Council approval of the Major General Plan Amendment) to reduce the density that is set forth in the existing plan. He noted that the Minor General Plan Amendment does not need to abide by the year restriction and therefore, as an indication of their good faith, a pre-application package has been submitted to staff to initiate the process. Mr. Gilbert added that the City would also have the right to file a General Plan Amendment to reduce the density.

Mr. Gilbert advised that the majority of the neighbors most affected are in support of this proposal. He noted that the single most impacted residential development and the only residential development adjacent to the site, the Pleasant Grove Subdivision, is almost 100 percent in support. Mr. Gilbert added that the Lehi Community Improvement Association also supports the project as well as a majority of the residents in the north County area. He stated that a Council denial of the application could lead to mining development on the property.

Mr. Gilbert expressed the opinion that the mines, neighborhoods and developers would be able to cooperate with each other. Referring to the existing mine at Alma School and the 202, he cited that as an example of a mine that successfully coexists with adjacent residential development as a result of efforts by both parties. Mr. Gilbert stated that commitments have been made to install substantial buffers adjacent to the mines on both sides of the proposed site. He advised that the 370-foot strip along the New West Mine would be planted with trees to absorb sound, and that the existing citrus trees in that area would remain in place. He added that a substantial buffer will be provided in the area of the CEMAX Mine, and that studies are being conducted to determine if the full 370-foot strip would be required. Mr. Gilbert stated that the applicant contracted for sound studies in the area and that at a distance of 200 to 300 feet from the mines, the noise level with the buffer was reduced to 55 decibels, which is lower than the allowable standards commonly established for areas in the vicinity of airports. He added that the developer is attempting to be a good neighbor by buffering the mining operations, and that the developer's proposal indicates a level of confidence that the impact and noise of the mining operations can be buffered. He also expressed the opinion that the City should expect the mining operations to provide noise buffers, and he challenged the mining companies to cooperate with the developer.

Under the existing General Plan, Mr. Gilbert stated that "mixed use residential" density allows for 1700 multi-family units on the property, with the other 70 percent designated for business, commercial and industrial parks. He reported that the property had a "commerce park" designation from 1988 to 1996 and that no development offers were received during that timeframe. He quoted the City's Economic Development Director as follows, "The arguments put forth by the applicant are reasonable and would not seriously undermine implementation of Mesa's economic development strategy." In addition to the fact that the site is not desirable for a commerce park and/or industrial development, Mr. Gilbert noted that another challenge facing the developer is the direct competition from the City's Falcon Field area development plans.

Mr. Gilbert stated that the applicant's proposal would provide the best neighbor, produce the least amount of traffic and provide the most economic benefit to the City. He said that he would outline the criteria required for an amendment to the General Plan and explain how the applicant meets the criteria:

- The Plan Amendment must constitute an overall improvement to the General Plan.

Mr. Gilbert stated that the present “mixed use residential” designation is not viable and offers no value to the City or the neighbors. He added that “sand and gravel” would be a real possibility and is not under any scenario considered an improvement to the overall plan.

- The Major Amendment must be consistent with the intent of the General Plan adopted policies and ordinance.

Mayor Hawker suggested that Mr. Gilbert summarize his comments in order to provide citizens an opportunity to speak. He stated that Mr. Gilbert would have another opportunity to address the Council at the conclusion of the public comment period.

Mr. Gilbert noted that the citrus business in this area is no longer viable. He stated that selling the property to the mines would be more profitable for the property owner, but that alternative is not acceptable to the neighbors. Mr. Gilbert concluded his comments by stating that the applicant’s plan has overwhelming support of the neighbors who are most affected by this case.

Mayor Hawker stated that citizens who wished to address the Council would be called in alternate order by having a speaker in support of the amendment followed by a speaker in opposition.

Speaking in support of the General Plan Amendment were:

Keith B. Skovson, 2505 East Lehi Road, #7
Hal Fredrickson, 2505 East Lehi Road, #13
Rodney Engel, 3001 East Lehi Road
Clay C. Layton, 3405 East Inglewood Street
* Leslie Hansen, 3360 North Chestnut
Elizabeth Ortiz, 2223 East Riverdale Street
George (Tom) Merrifield, 2324 East Virginia Street
** Michelle S. McCroskey, 3021 North Chestnut Circle
Randy M. Hansen, 3360 North Chestnut
Robert M. Worsley, 3514 East Presidio Circle
Rulon Anderson, 665 North Roanoke Drive
Mark Dowling, 2310 East Virginia Street
David Nichols, 3347 North Chestnut
Jaime Merrifield, 2324 East Virginia

* Ms. Hansen submitted a petition (a copy is available for review in the City Clerk’s Office) signed by 108 people residing in 72 homes in the North Country Acres and Citrus Acres subdivisions in support of the amendment.

** Ms. McCroskey submitted a copy of a letter dated October 20, 2004, addressed to the City Planning and Zoning Department from Mark Freeman, President of the Lehi Community Improvement Association (see Attachment 1).

Comments by the citizens listed as being in favor of the General Plan Amendment included the following:

- The majority of the Pleasant Grove residents, the only subdivision adjacent to the proposed development, are overwhelmingly in support.
- Failure to approve the General Plan Amendment could result in the property being sold for gravel pits and mining.
- The proposed development will be an asset to the City of Mesa.
- The property owner advised that the citrus business is no longer financially viable in this location.
- Representatives of the landowners met with retail developers such as Westcor, but the feasibility study did not support the development and no anchor tenants were interested.
- Neighborhoods that have held numerous meetings and conducted research support the amendment.
- A geologist and area resident presented air quality data regarding the adverse health effects commonly found in close proximity to mining operations.
- The current General Plan designation would allow the property to be turned into an industrial wasteland.
- One-acre lots are not economically feasible because the area will be expensive to develop and therefore an increased density is required in order to make the project viable.
- Mining companies are allowed to purchase land in the County and begin operations without regard to the residential neighborhood.
- Residential development along the 202 would be an asset for the economic development plans for the Falcon Field area.
- Approval of the General Plan Amendment will protect the existing residents.

Citizens present and completing a card in support of the General Plan Amendment, but who did not wish to address the Council included:

Clark R. Richter, 30 West 1st Street
Barbara Layton, 2305 East Inglewood
Janelle Engel, 3001 East Lehi Road
Beverly Self, 3414 North Ashbrook
Jaime G. Merrifield, 2324 East Virginia Street
Deniece Burden, 3325 North Val Vista
Raymond Burden, 3325 North Val Vista
Kent Howe, 2124 East Quince Street
Bret Judd, 3325 North Val Vista
Roenada Judd, 3325 North Val Vista
Kim D. Warden, 2343 East Riverdale Circle
Jack D. Warden, 2343 East Riverdale Circle
Linda Dowling, 2310 East Virginia Street
Todd Burden, 3404 North Val Vista
Lisa Burden, 3404 North Val Vista
Fred Whiting, 2342 East Riverdale Circle

Citizens speaking in opposition to the General Plan Amendment were:

Lew Lenz, 3717 East Pomegranate Street
Julee Brady, 3044 North 38th Circle
Christina M. Fetchick, 3336 East Tone Circle
Barbara Carpenter, 7130-6 East Saddleback Street
Bedford Douglas, 3834 East Oasis Circle
Jeff Crocket, 3259 East Jackaranda Circle
Dina Higgins, 2341 North Lemon Circle
Rick Dale, 2113 North Maple Street
Linda Miritello, 2575 North Val Vista Drive

Statements made by citizens in opposition to the General Plan Amendment are summarized below:

- Representatives of the Northeast Mesa Homeowners' Association, located to the south of the proposed development, stated that the proposed residential density is inconsistent with the neighborhood.
- The proposal reduces the amount of business and commercial space by 200 acres at the 202 interchange.
- Development proposals for the property were not forthcoming because that section of the 202 Freeway was not completed until recently.
- Some residential lots in the area are selling for \$350,000 and delaying action on this amendment would enable the property owner to benefit from the increased valuation while maintaining the citrus groves and a low-density, rural neighborhood environment.
- The proposal does not meet the burden of the four tests required for a major General Plan Amendment. In particular, the proposal does not provide overall improvement, and there is a lack of consistency with the General Plan's policy and ordinances.
- The proposal would result in the destruction of 25,000 citrus trees, which are a great asset and a significant resource in northeast Mesa.
- Effects of the mining industry will turn the properties into rental units and cause deterioration of the neighborhood.
- Some residents view the proposed General Plan Amendment as a slightly better alternative to the expansion of the mining interests.
- The additional development will negatively impact the Mesa Public School system.
- Commercial and professional businesses would be a better alternative and serve as a buffer to existing mining operations, which would be more compatible with the rural citrus character of the area.

Citizens present and completing a card in opposition to the General Plan Amendment, but who did not wish to address the Council included:

Cora Lenz, 3717 East Pomegranate Street
Michael Hazel, 3431 East Norwood Court

Representatives of the mining industry speaking in opposition to the General Plan Amendment included:

Nick Wood, Snell & Wilmer, 400 East Van Buren, Phoenix,
representing Vulcan Materials
Rick Merritt, Senior V.P., Elliot D. Pollack & Company,
representing Vulcan Materials
Stephen E. Glass, 2813 East Camelback, #400,
representing Vulcan Materials
Larry Lazarus, Lazarus & Associates, 420 West Roosevelt,
representing CEMEX

Comments made by mining company representatives in opposition to the General Plan Amendment are as follows:

- Approving a housing development in the proximity of mines or any heavy industrial development would be inappropriate.
- Living in the proximity of a mine can degrade the health and safety of area residents.
- Industrial development in the area was not feasible until the 202 Freeway was built, but this area now has the potential to be a major employment center.
- Retail development depends on the available population, and there is presently insufficient population in the area to support a large retail development.
- The mines operate within a regulatory framework for emissions and noise levels, and the fact that area residents continue to make complaints indicates that placing a high-density residential development in proximity of existing mines is inappropriate.
- CEMEX is not interested in purchasing additional property in the area, but the problems discussed at this meeting would increase if additional residential development is approved.
- Residential properties should be buffered from existing mines with business park and commercial development rather than adding residential development or expanding mining interests.

Mayor Hawker expressed appreciation for the articulate and well-spoken manner in which the public comments were presented. He stated that Mr. Gilbert, speaking on behalf of the applicant, had three minutes to close the discussion.

Mr. Gilbert noted that the speakers opposed to the General Plan Amendment agreed that this application would save the land from being developed by mines. He added that industrial developers were aware of the planned freeway for many years, but no interest was expressed in developing the area. Mr. Gilbert stated that the developer has agreed to preserve the historical crossing and markers, and to maintain citrus in the buffer, the perimeter and in the interior parks. He explained that the details would be available at the time of the zoning application. Mr. Gilbert noted that the present General Plan does not preserve any agriculture, and that the applicant's proposal would preserve some of the citrus groves. He added that the developer would do all that is required in regard to public schools. Mr. Gilbert questioned the reason that Vulcan's representatives were present at the meeting, because he was informed that Vulcan's contract with New West has expired. He concluded his remarks by noting that the neighbors immediately adjacent to the proposed development support the General Plan Amendment.

There being no additional citizens present wishing to speak on this issue, the Mayor declared the public hearing closed.

b. **GPMajor 04-01** Consider adoption of the corresponding resolution.

Planning Director John Wesley noted that staff reviewed and compared the amendment request to the statements in the General Plan that are to be considered as a test for approving a Major General Plan Amendment and concluded the following:

- There would be a loss of employment area that is important to the development of the Plan.
- The current Plan provides a mix of uses that would be important to the community.
- The proposed amendment is not consistent with the overall intent of the Plan.
- Concern exists that the proposed new residential area would experience an adverse environmental impact resulting from proximity to the mines.

Mr. Wesley stated that staff's recommendation to the Planning and Zoning Board (P&Z) was to deny the proposal, and the P&Z vote was split with 3 members voting to approve, 3 members voting to deny and 1 member absent.

Mayor Hawker requested a legal opinion regarding the issues raised earlier in the meeting, a possible deed restriction and the plan to file a Minor Plan Amendment.

City Attorney Debbie Spinner stated that the item before the Council is a request for high density, and although the applicant indicates an intention to return to the Council with a Minor Plan Amendment, the Council should consider the item as submitted. She noted that deed restrictions would be a matter between the residents and the applicant, and the City of Mesa could not review, approve or enforce any deed restriction. Ms. Spinner added that the applicant could apply for a Minor Plan Amendment, but there is no legal obligation to do so. She noted that the City of Mesa could initiate the Minor Plan Amendment if so directed by the Council, and that the Council would have an opportunity to review the plan when annexation is requested.

In response to questions from Mayor Hawker, Ms. Spinner stated that the assumption is that the applicant would apply for annexation as the next step. She also advised that filing a Minor Plan Amendment by the applicant would not be appropriate until the Major Plan Amendment has been approved. Ms. Spinner added that if the Council approves the Major Plan Amendment at this meeting, the application for a Minor Plan Amendment could be filed tomorrow.

Mr. Wesley advised that the applicant filed a pre-submittal package today for a future Minor Plan Amendment, but staff did not have an opportunity to review the material.

Vice Mayor Walters stated that the Council has listened to many attorneys and many residents, and the Councilmembers have attended neighborhood meetings. She noted that the common thread is that everyone wants the best alternative for their neighborhood. Vice Mayor Walters noted that comments made by the mining representatives that placing homes next to mines was inappropriate seemed to be somewhat ironic when mines continue to be placed next to homes. She stated that additional issues remain to be discussed and resolved, and she also suggested that the applicant contact the Mesa Public Schools regarding the proposed development. Vice Mayor Walters noted that the public hearing was required at this meeting, but a vote by the Council could be delayed..

It was moved by Vice Mayor Walters, seconded by Councilmember Whalen, that the Major General Plan Amendment 04-01 be continued until the January 17, 2005 Council Meeting.

Councilmember Griswold noted that the mining laws of Arizona do not protect County residents even if they live in an urban setting. He supported the continuance and expressed the hope that a resolution could be reached by that date. He also stated the opinion that residential development should not be placed next to an open pit mining operation.

Councilmember Rawles indicated his support for the motion to continue, but he expressed concern that another hearing would be required at the January meeting. He added that he would like to provide feedback to the citizens who addressed the Council. Councilmember Rawles also disclosed that effective January 1, 2005, he planned to accept an offer to be the General Counsel and possibly the General Manager of Johnson Stewart Company, which owns property utilized for aggregate production. He said that the City Attorney advised him that his future representation of Johnson Stewart does not pose a conflict of interest with respect to consideration of this agenda item, but he wanted to be forthright regarding the issue. Councilmember Rawles stated that no one is forced to live next to a mine, and future owners have the freedom to choose whether or not to live in the area. He added that voters cannot deprive people of their fundamental property rights, and he expressed the opinion that the role of government is to protect freedom and to protect people's rights. Councilmember Rawles quoted the following comment made by Abraham Lincoln: "My faith in the proposition that each man should do precisely as he pleases with all which is exclusively his own lies at the foundation of the sense of justice that is in me." He explained that the quote describes his fundamental belief, and he expressed the opinion that Mr. Engel, as the owner of the property, could do precisely as he chooses with the property.

Councilmember Thom noted that the Council was faced with a difficult decision, and she thanked everyone who addressed the Council. She also stated that residents in the citrus area have discussed with her their preference for industrial and commercial applications near the 202 Freeway, but not significantly south of the Freeway. Councilmember Thom mentioned the threat to Indian mining operations created by the proposed restoration of the Salt River, and she stated that the Corps of Engineers are not in favor of mining in the area. Councilmember Thom added that the possibility exists that the City would be pressured to transfer aggregate operations into or near the City limits. She also stated that the proposed higher density residential is very different from the existing residential applications in the area. Councilmember Thom stated that a Minor General Plan Amendment could be withdrawn at any time and that deed restrictions are difficult to enforce. She noted that the General Plan is only a guideline, which can be amended by the City or the property owner. Councilmember Thom expressed opposition to action by the City to initiate zoning changes or plan amendments on private property. She added that the property owner could apply for annexation into the City, which would remove the property from Maricopa County jurisdiction and allay neighborhood fears regarding the mining operations. She expressed support for the motion to continue.

Councilmember Whalen stated that having representatives from New West present at the January meeting would be helpful in order to provide a better understanding regarding possible mitigation efforts and solutions.. Councilmember Whalen agreed with previous comments that annexing the property into the City would allay fears of the neighbors. He also expressed concern regarding flood protection for the area below the bluff, and he suggested that staff provide the Council with information on flood protection measures prior to making a decision.

Councilmember Jones stated that a Council decision would not satisfy everyone. He noted that aggregate mining is necessary to support the local construction industry, but the issue is the location of the mines. Councilmember Jones said that no one would choose to live near a mine, and he urged the residents to work together to arrive at a resolution on this difficult project. He expressed support for the continuance, but he noted that the Council would have no control if the property remains in the County.

In response to comments by Mayor Hawker, Ms. Spinner clarified that the Statutes state that a single public hearing must be held within a calendar year, but the vote does not have to occur at the same time.

Vice Mayor Walters stated that every citizen would have the right to speak regarding the issue at the January meeting, but she suggested that in the interest of time, citizens could appoint a representative to address their issues at the January meeting.

Mayor Hawker, referring to Councilmember Thom's comment that the Corps of Engineers does not favor mining, clarified that the City is partnering with the Salt River Pima-Maricopa Indian community to restore the depleted mine areas of the Salt River. He explained that "Va Shly'ay Akimel" is the Indian name for the Salt River, and that the joint effort is called the Va Shly'ay Akimel Salt River Restoration Project. Mayor Hawker advised that the first restoration area is located in the area above Tempe Town Lake extending to the Granite Reef Diversion Dam, but the project is broken down into five incremental reaches so that each can be accomplished in a sequence starting at the junction of the 101 and 202 Freeways where the mine has been depleted. He stated that the project includes restoration of the habitat, vegetation and a low-flow channel of water that will be contributed by the Indian Community. Mayor Hawker added that as the Indian community's mines along the river are depleted over a period of 25 or 30 years, the reuse plan would be in place to capitalize on that amenity. He noted that the Indian community has been very cooperative in developing this project and partnering with the City to obtain Federal funding. Mayor Hawker acknowledged that mining operations are not compatible with river restoration, but this approach will benefit both communities.

Ms. Spinner, referring to Vice Mayor Walters' comment that another public hearing would be held at the January meeting, noted that the "Growing Smarter" legislation provides for one public hearing to be held during the calendar year. She advised that the subject would be researched to determine if additional testimony could be heard at the January meeting.

Mayor Hawker called for the vote.

Carried unanimously.

Mayor Hawker announced that the Council would take a short recess.

RECESS: 8:30 p.m.

RECONVENE: 8:41p.m.

Mayor Hawker reconvened the Council Meeting at 8:41 p.m. with all members present.

- c. **GPMajor 04-02 (District 6)** The proposed General Plan Land Use Amendment was withdrawn at the request of the applicant.
- d. **GPMajor 04-02 (District 6)** Consider adoption of the corresponding resolution.

There was no action on this item due to the fact that the proposed General Plan Land Use Amendment was withdrawn at the request of the applicant.

- e. **GPMajor 04-03 (District 6)** Conduct a public hearing and consider an amendment to the land use map. Proposed General Plan Land Use Amendment: From Business Park to Medium Density Residential 4-6 (4-6 du/ac) and Community Commercial for approximately 283 ± acres bounded by Signal Butte Road to the east, Elliot Road to the south, Crismon Road alignment to the west and the transmission line corridor to the north. Various owners; Stephen C. Earl, Earl, Curley and Lagarde, applicant.

P&Z Recommendation: Denial. (Vote: 5-0-2; Boardmembers Carpenter and Mizner absent).

Mayor Hawker announced that this is the time and place for a public hearing regarding an amendment to the land use map. Proposed General Plan Land Use Amendment: From Business Park to Medium Density Residential 4-6 (4-6 du/ac) and Community Commercial for approximately 283 ± acres bounded by Signal Butte Road to the east, Elliot Road to the south, Crismon Road alignment to the west and the transmission line corridor to the north. Various owners; Stephen C. Earl, Earl, Curley and Lagarde, applicant.

Mayor Hawker advised that the applicant is requesting a modification to the proposed General Plan Land Use Amendment. He asked the applicant's representative to address the Council to explain the requested modifications. Mayor Hawker advised that following the applicant's presentation, the City Attorney and City Zoning staff would be asked to provide direction to the Council regarding the request.

Stephen Earl, representing the applicant, noted that following a comment period and two public hearings before the Planning and Zoning Board (P&Z), the applicant realized there were two factors for which the City rejected any request for residential development.

1. The potential impact on the City's valuable asset, the Williams Gateway Airport.
2. The potential for negatively affecting the employment core surrounding the airport.

Mr. Earl stated that the impact on the airport decreases in the areas further to the east of the airport. He advised that the original application has been reduced to 75 acres at the extreme northeast corner (at Signal Butte and the transmission lines), and that the other property owner will no longer pursue their portion of the application for the property closest to the airport. Mr. Earl noted that he disagreed with the City Attorney's opinion that a General Plan Amendment could not be reduced in size. He reported that several other Valley cities were contacted to obtain their opinions, and all agreed that a reduction in size did not constitute a substantial change to a General Plan Amendment. Mr. Earl stated that the purpose of the process was to gather information and evidence to utilize as the basis for the Council decision. He said that the applicant could not add areas beyond the original boundaries or increase the amount of density, and he noted that the public and the P&Z Board have had an opportunity to comment on the

application. Mr. Earl stated that he would like to present the merits of the case if the Council could consider the General Plan Amendment, which has been reduced in size to 75-acres.

Responding to Mayor Hawker's request, Planning Director John Wesley expressed the opinion that reducing the size to 75 acres is not a substantial change and that Council consideration of the amendment could proceed.

City Attorney Debbie Spinner advised that no case law exists, and that the State Statutes do not address last minute changes to a Major General Plan Amendment. She said that the Statutes do state that the governing body shall adopt procedures and rules to deal with receiving public comment and disbursement of proposals and alternatives, but the City has not yet adopted these procedures. Ms. Spinner noted that significant material changes to a zoning case require that the case go through another public comment period. She stated that staff would rely on the expertise of the Planning Director, who has determined that reducing the size of the subject amendment is not a significant material change. Ms. Spinner said the Council could consider the amendment or return the item to the Planning and Zoning (P&Z) Board, but she recommended that the public hearing be held during this meeting.

Councilmember Rawles stated the opinion that the Council could consider the reduced version of the General Plan Amendment at this meeting.

In response to Mayor Hawker's question as to whether the 75 acres has a commercial component, Mr. Wesley noted that the subject acreage has always been residential in the proposed amendment and that the acreage excluded from the reduced amendment contained mixed use residential and commercial. He explained that the public had an opportunity to comment on the 75-acre residential proposal.

Vice Mayor Walters noted that the P&Z recommendation for denial was based on the original proposal for 283 acres. She asked if the proposal for only 75 acres could be returned to the P&Z Board for consideration.

Ms. Spinner advised that the State Statutes do not prohibit returning the project to P&Z, but that doing so would take the process out of order. She added that the State Statutes do not prohibit taking the process out of order, but in doing so the City would be "treading on new ground."

Mayor Hawker stated the opinion that the change to the proposed Amendment is substantial. He added that if the same logic was applied to the P&Z recommendation as was applied to the public comment, then the P&Z recommendation for denial should remain the same.

Mr. Wesley concurred with Mayor Hawker's comments regarding the P&Z recommendation, and he added that the P&Z Board was adamant regarding the prohibition of residential development under the Williams Gateway Airport flight path.

Ms. Spinner concurred with Vice Mayor Walters' comment that the public hearing could be held at this meeting and that the Council vote could be delayed to another meeting.

Mayor Hawker stated that the public hearing on Major Plan Amendment 04-03 would proceed.

Mr. Earl expressed appreciation for the opportunity to present the applicant's smaller request for a Major General Plan Amendment. He noted that the proposal by Engle Homes is for a single-family development, and that the issue before the Council is to determine whether the location is appropriate for residential development. Mr. Earl noted that residential zoning was approved for the area south of the subject property, and that aircraft noise levels decrease in the areas to the east.

Mr. Earl stated the opinion that when the City's plans for Williams Gateway are realized, larger aircraft will utilize the airport and the nature of the airport and the flight patterns will change. He noted that noise complaints seem to lessen in the areas east of the airport. He quoted from the Williams Gateway Airport's question and answer section on the web site: "The angle between the runways and this requested right turn (which is the fly friendly procedures) out to the east requires turns in excess of 150 degrees and steep bank angles while smaller jets and many military aircraft are often able to complete this requested departure turn close to the airport, larger commercial aircraft may not be able to do so. Steep turns such as this may exceed FAA (Federal Aviation Administration) standards or airline policies. If so, we will stress the use of other procedures, such as climbing as high as possible." Mr. Earl stated that the future of the airport does not include the "fly friendly" procedure.

Noting that disclosure and affirmative action on the part of the developer are important factors to be addressed, Mr. Earl listed items to be incorporated into the construction to address noise attenuation: 2 x 6 construction, extra insulation in the walls and ceilings, dual pane windows, and solid core doors. He stated that these items have been proven to reduce noise levels by as much as 20 decibels. Mr. Earl added that permanent disclosure signs would be installed over each street sign in the subdivision with the wording, "Influence area of Williams Gateway Airport" or "Over flight area of Williams Gateway Airport." He stated that every precaution would be taken to ensure that each buyer was fully informed.

Mr. Earl noted the projected areas of employment surrounding Williams Gateway are three times larger than the existing area at the Scottsdale Airport, considerably larger than the Deer Valley Airport and even larger than Sky Harbor Airport. He summarized by stating that the subject 75 acres are not well suited to commercial or employment interests, but the proposed residential development could serve the largest employment core in the Valley.

Mayor Hawker stated that Mr. Earl would have another opportunity at the end of the public hearing to address the Council for three minutes.

Barbara Carpenter, 7130-6 East Saddleback Street, a member of the Planning and Zoning Board, stated that she was not present at the P&Z meeting when this case was considered, but she advised that her vote would have been in opposition to the Major General Plan Amendment as presented to the Board.

Nick Wood, Snell & Wilmer, representing Williams Gateway Airport (WGA), stated that protecting the airport is paramount. He noted that the goals are to create the second largest economic engine in the Valley and to enable WGA to be Sky Harbor's "reliever." Mr. Wood advised that the Council has denied residential zoning in many other areas, and he emphasized that maintaining the integrity of the protection area is critical.

Reese Anderson, Snell & Wilmer, representing Williams Gateway Airport, clarified that when RNAV (Area Navigation) Procedures to depart WGA are instituted, a new FAA tool for the pilot's toolbox could provide a two to three percent change in the flight path if the pilot elects to use that departure path. He also noted that when RNAV is instituted, flights would continue over the same areas and that an increased number of flights should be anticipated in the future. He expressed opposition to the Major General Plan Amendment and to the reduced proposal.

Lynn Kusy, Executive Director of the Williams Gateway Airport Authority, thanked the City of Mesa and the Council for their continued support. He noted that the Airport Authority has consistently supported the General Plan, which was approved by voters following two years of deliberation and public comment. Mr. Kusy expressed the opinion that the proposed General Plan Amendment not only constitutes a threat to the airport, but is also an example of poor planning. He reported that WGA is presently generating approximately 1,000 jobs and approximately \$250 million in annual economic activity. Mr. Kusy noted that when RNAV procedures are instituted, additional aircraft will fly north of the power lines, but there will not be a reduction in the number of aircraft flying south of the power lines. He noted that the FAA advised last week that the RNAV procedures development process continues to be on hold.

Mark Metzger of the Boeing Company advised that Boeing came to the Falcon Field area of Mesa because the location is user friendly and provides an isolated, unobstructed area, good flying weather, and good land uses and zoning. He stated that the reason Boeing left Culver City, which initially had all of the same qualities as Mesa, was that the land slowly changed to residential and became unfriendly to their operation. He also provided information on the noise levels that would be generated by various aircraft as they fly over the subject property. Mr. Metzger stated that pilots are attempting to comply with the "fly friendly" program, and he advised that the reason many pilots are able to make the turn is that the planes are seldom loaded to the maximum weight capacity. He noted that during his interaction with Scottsdale Airport personnel, he did not hear any comments to the effect that increased residential development around the airport was desirable.

Mr. Earl stated that 25 square miles around Williams Gateway is designated for industrial use, and that the applicant's property consists of 75 acres located five miles from the airport and two miles from the new freeway. He expressed the opinion that the subject property was not a major encroachment on the airport. Mr. Earl noted that the area will support a projected 74,000 jobs at buildout, and he added that the subject development would provide needed housing for those employees. He also stated the opinion that the future of the airport is commuter and cargo aircraft, and that these flights would fly north of the subject property.

There being no additional citizens present wishing to speak on this issue, the Mayor declared the public hearing closed.

f. **GPMajor 04-03 (District 6)** Consider adoption of the corresponding resolution.

Mr. Wesley advised that staff applied the four tests for consideration of a Major Amendment to the General Plan and determined that the Amendment does not provide an overall improvement to the plan; that the Amendment is not consistent with the intent of the General Plan to protect Williams Gateway; that adverse impacts of the Amendment include placement of housing in the over flight area and across the street from the Browning substation; and that residential

development would curtail the potential for industrial development to the west and the south. Mr. Wesley reported that the P&Z Board and staff both recommend denial.

Mayor Hawker stated that he would not support the amendment because the property appears to be an ideal buffer to the two industrial developments in the area, the power plant and the CAP water treatment plant. He expressed the opinion that approval of the subject 75-acre parcel would lead to the 75 acres to the south also being proposed for residential development.

In response to questions from Councilmember Rawles, Mr. Earl stated that no one would be forced to live in the proposed development. He confirmed that anyone making a purchase would do so voluntarily. Mr. Earl advised that notice to potential customers regarding the airport would include:

- An aerial map located in the entrance to the model home complex that indicates the location of the airport and the flight paths over the development.
- A document to be signed by potential customers that discloses the location of the airport and flight paths.
- An aviation easement would be placed on the property.
- Disclosure regarding the airport would be placed clearly in the public report.
- A permanent notice will be placed on every street sign in the subdivision.

Responding to additional questions from Councilmember Rawles, Mr. Earl stated that he spoke to the Commander at Luke Air Force Base regarding the above notification items and that these are items requested by the Air Force for residential areas near the base. Mr. Earl also stated that the property owner is willing to include disclosure language in the deed, and he would also consider including the word "airport" in the name of the subdivision. He advised that information regarding the General Motors Proving Ground would be added to the aerial map, the disclosure documents, and the public reports.

Vice Mayor Walters advised that she was unprepared to address the case at this meeting, and she requested that the Council delay the vote until another meeting so that she can physically visit the site.

It was moved by Councilmember Rawles, seconded by Vice Mayor Walters, that this case be continued to the January 3, 2005 Regular Council Meeting.

Vice Mayor Walters expressed the belief that the function of zoning is an appropriate activity for the City, and she added that the airport should be protected. She also stated that at some point a boundary must exist, and that any residential development further to the west of this property would not have her support.

Councilmember Thom indicated support for the motion to continue, and she expressed appreciation for the public input. She added that the input from the Boeing representative was persuasive, and she noted that the presence and anticipated growth of other industrial plants in the area might not be conducive to residential development.

Mayor Hawker called for the vote.

Carried unanimously.

4. Consider the following liquor license applications:

*a. KIM KENNETH KWIATKOWSI, AGENT

New Beer & Wine Store License for Circle K #6641, 4353 S. Power Road. This is an existing building. The license previously held at this location by Stephen Mark Horton, Agent, Horton Brothers II (Northgate) LLC, will revert back to the State. District #6.

*b. KIM KENNETH KWIATKOWSI, AGENT

New Beer & Wine Store License for Circle K #6642, 425 S. Crismon Road. This is an existing building. The license previously held at this location by Stephen Mark Horton, Agent, Horton Brothers One LLC, will revert back to the State. District #6.

c. TIMOTHY RAYMOND O'SULLIVAN, AGENT

Person and Location Transfer Bar License for R.T. O'Sullivan's, 6646 E. Superstition Springs Blvd. This is an existing building. This is a person and location transfer from Everett Thomas Lee, Agent, Arizona Golf Outfitters, LLC at 18439 S. Arizona Avenue, Chandler. This license will transfer to the applicant. District #6.

Mayor Hawker advised that when the Council heard the subject case at an earlier meeting, concern was expressed regarding the property's C-2 zoning. He stated that the application seeks a Series 6 bar license that will enable the applicant to perform off-premises catering.

In response to questions from Mayor Hawker, City Attorney Debbie Spinner advised that only one liquor license is allowed per location, and that the State Liquor Board will not issue both a license for the restaurant and a Series 6 license for the catering operation.

Councilmember Griswold explained that in most catering operations, the customer provides their own license, and the caterer provides a bartender and the food, unless the caterer has the Series 6 license.

Ms. Spinner responded to Mayor Hawker's question regarding the audit provisions by advising that the State Liquor Board will not impose any type of condition on a Series 6 license, and that a business with a Series 6 license could legally operate as a bar regardless of the zoning. She noted that a deed restriction is not possible because the applicant does not own the property. Ms. Spinner stated that the applicant has agreed to allow the City of Mesa to audit the establishment to determine if food comprises at least 40 percent of the sales. She explained that non-compliance with the required 40 percent in food sales would be the trigger to cite the applicant for a zoning violation. Ms. Spinner added that if the applicant transfers or sells the Series 6 license, future owners of the license would not be restricted in any way.

Timothy O'Sullivan, the applicant, addressed the Council and stated that he will agree not to sell or transfer the Series 6 license, and he added that if he sold the business the purchaser would have to apply for a Series 12 or a Series 6 License.

Mayor Hawker stated the opinion that Mr. O'Sullivan was a reputable business owner, but he expressed concern that the Council was establishing a precedent by allowing a Series 6 license in a C-2 zone, and that another owner applying for the same license would fail to comply with an agreement.

Mr. O'Sullivan explained that he was seeking the license prior to making a commitment to purchase the building, and if he does purchase the building a deed restriction could be placed on the property.

In response to Mayor Hawker's question regarding the City's recourse if the applicant failed to comply with the agreements, Ms. Spinner advised that the City could not legally require the applicant to record a deed restriction or prevent a transfer or sale of the Series 6 license. She expressed the opinion that the applicant intends to comply with these restrictions, and she added that any transfer of the Series 6 license would return to the Council for a recommendation to the State Liquor Board.

Mayor Hawker suggested that the applicant provide a letter to the City stating that he agrees not to sell or transfer the license at a future date.

Councilmember Whalen moved for approval of the license, and noted that he did not understand the reason for the City's prohibition of a Series 6 license in a C-2 zone. He suggested that the Council review this issue in the future, and he expressed the opinion that bars could operate as well-run establishments within the City of Mesa.

Councilmember Rawles stated that there were a number of reasons why the Council should recommend approval of the Series 6 license:

- The applicant is an established and well-respected Mesa business owner who has demonstrated the ability to comply with liquor and zoning laws.
- The City should encourage entrepreneurial effort and creativity.
- Prohibiting Series 6 licenses in a C-2 zone seems unreasonable.
- The applicant has voluntarily agreed to allow the City to audit the books.
- The applicant is willing to provide the City with a written agreement stating that the license will not be transferred if the business is sold at a future point in time.
- If the applicant purchases the property, he has indicated a willingness to add a deed restriction.

Councilmember Rawles noted that this was a unique case, and that he was prepared to trust Mr. O'Sullivan and give him the benefit of the doubt.

In response to a question from Vice Mayor Walters, Ms. Spinner advised that a Council recommendation for approval of the subject license would not automatically require the Council to recommend approval of future applications for a Series 6 license in a C-2 zone, but she stated that a basis for distinguishing between the applications should exist. She noted that the additional requirements agreed to by this applicant could distinguish the subject application from that of future applicants who may be unwilling to meet the same criteria. Ms. Spinner asked if Councilmember Whalen intended to include the additional requirements as part of the motion.

Councilmember Whalen stated that he would agree to include the requirements as part of the motion.

Councilmember Rawles seconded the motion.

Vice Mayor Walters stated that the record should reflect that the Series 6 license is being considered to enable Mr. O'Sullivan to operate a catering business, and that his stated intent is not to operate a bar. She added that these facts are the extenuating circumstances that are unique to the application.

Councilmember Rawles clarified that the applicant would continue to have a bar in conjunction with his restaurant business.

Vice Mayor Walters concurred and noted that a difference exists between a restaurant with a bar component and a business that operates only as a bar, and she requested that the record of the meeting reflect her comments.

Councilmember Griswold stated the opinion that Mr. O'Sullivan has a good business operation. He further stated that the assurances provided by Mr. O'Sullivan enables the Council to reject future undesirable C-2 applications. Councilmember Griswold advised that he would support the motion.

In response to Councilmember Thom's question regarding a possible zoning change, Mr. O'Sullivan stated that he considered applying for C-3 zoning when he owns the property, but Deputy City Attorney Joe Padilla advised him that a zoning change was not feasible due to the fact that the other area restaurants were zoned C-2.

Councilmember Thom noted that many other restaurants may come forward in the future, but she stated that as a result of the assurances provided by the applicant, she would support the application.

Mayor Hawker noted that a C-2 zone includes the typical strip mall with multiple uses such as a grocery store, pharmacy and a check-cashing establishment. He expressed concern that recommending approval of this application would open the entire City of Mesa for license applications for catering business ventures. Mayor Hawker noted that he could support a favorable recommendation if a deed restriction or some other stipulation were in place, but the proposed action represents a policy change that he is unable to endorse.

In response to Vice Mayor Walters' request for an assurance that future applications could be rejected, Ms. Spinner advised that a mechanism has been established to draw a distinction between the current applicant and future applicants, but she noted that the Council is "treading on a new area."

Councilmember Whalen noted that the price of a Series 6 license is between \$80,000 and \$100,000. He expressed the opinion that the price would be prohibitive to establishing this type of business on every street corner. He also expressed the opinion that Mesa's population could support a neighborhood bar.

Councilmember Thom advised that the subject application is in an area along Superstition Springs Boulevard devoted to restaurants and entertainment.

Mayor Hawker repeated the motion as follows:

It was moved by Councilmember Whalen, seconded by Councilmember Rawles, to forward a recommendation for approval to the State Liquor Control Board regarding the request to transfer the Series 6 license to the applicant, with the stipulations that the applicant provide the City of Mesa written confirmation that a deed restriction would be imposed if the applicant purchases the property, that the applicant will not transfer or sell the Series 6 license, and that the applicant will enter into a written consent agreement that enables the City to audit the establishment.

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Rawles-Thom-Whalen

NAYS - Hawker-Walters

Mayor Hawker declared the motion carried by majority vote.

5. Consider the following contracts:

- *a. Covert video equipment for the Police SWAT team members as requested by the Fire Department Emergency Services Section.

The Purchasing Division recommends accepting the only bid by Everest VIT, Inc. at \$55,308.00. (Sole source, 100% funded by a federal Urban Area Security Initiative grant).

- *b. DNA Quantitation System for the Police Department Crime Lab.

The Purchasing Division recommends accepting the only bid by Applied Biosystems, Inc. (ABI) at \$50,519.04. (This purchase is 100% funded by a federal grant for the DNA Backlog Reduction Program) (Sole Source)

- *c. Replacement of microwave equipment as requested by the Communications Division.

The Purchasing Division recommends authorizing purchase from the Western States Contracting Alliance (WSCA) contract with Harris Corporation for \$249,073.21.

- *d. Additional funds to be added to the previously approved contract for a new citywide telecommunications system, as requested by the Communications Division

The Purchasing Division recommends authorizing an additional \$275,640.82 for additional equipment to be purchased under the previously approved contract with Norstan Communications. The original award in October 2003 was \$3,277,562.15 and would be increased by this action to \$3,553,202.97.

- *e. 1,000 Personal Protective Equipment (PPE) kits for Police personnel as requested by the Fire Department Emergency Services Section.

The Purchasing Division recommends accepting the only bid by Aramsco at \$49,726.00. (Sole source, 100% funded by State Homeland Security grant funds).

- *f. Additional Hardware for the Police (PD) Records Management System (RMS) Network Encryption Upgrade as requested by the Information Services Division (ISD).

The Purchasing Division recommends the purchase of additional hardware from the State of Arizona contract with Qwest Communications for a total of \$66,155.58.

- *g. Robson Substation relay panels as requested by the Utilities Department.

The Purchasing Division recommends accepting the low bid for item one by Electrical Power Products at \$60,234.43.

- *h. Twenty Tactical Ballistic vests for the SWAT team members within the Police Department as requested by the Fire Department Emergency Services Section.

The Purchasing Division recommends accepting the only bid by Arizona Tactical Inc. at \$36,780.00. (Sole source, 100% funded by a federal Urban Area Security Initiative grant).

- i. 6th Street Fleet Support Building Expansion and Remodel, City of Mesa Project No. 01-847-001.

This project will add a new parts room that is approximately 1,300 sq. ft., remodel the existing administration area, and provide code upgrades for the entire building approximately 26,000 sq. ft.

Recommend award to low bidder, Niche Contractors, Inc. in the amount of \$997,648.00 plus an additional \$99,764.00 (10% allowance for change orders) for a total award of \$1,097,412.00.

Mayor Hawker declared a potential conflict of interest and said he would refrain from discussion/participation in this agenda item. He yielded the gavel to Vice Mayor Walters for action on this agenda item.

It was moved by Councilmember Rawles, seconded by Councilmember Jones, that staff's recommendation be approved.

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Rawles-Thom-Walters-Whalen
NAYS - None
ABSTAIN - Hawker

Vice Mayor Walters declared the motion carried unanimously by those voting.

Vice Mayor Walters yielded the gavel back to Mayor Hawker.

- *j. Communications Building Cooling Towers Replacement; 161 East 6th Place; City of Mesa Project No. 03-909-001.

This project will replace two approximately seventy (70) ton cooling towers at the Communications Building with two new cooling towers, including associated piping, electrical and other work per the approved plans and specifications.

Recommend award to low bidder, Jay Pacific Corporation, in the amount of \$51,864.80, plus an additional \$5,186.00 (10% allowance for change orders) for a total award of \$57,050.80.

- *k. Deleted.

- l. Property and liability insurance coverage as requested by the City Attorney's Office.

Recommend award of a property insurance policy from Hartford Fire Insurance Company for up to \$165,000,000 in property insurance. The cost is \$294,303.00.

Recommend purchase of a liability insurance policy from Munich-American Reinsurance Company in the amount of \$10,000,000. The cost is \$366,538.00.

Recommend purchase of an additional \$5,000,000 in excess liability insurance from Clarendon America Insurance Co. The cost is \$92,295.00.

Recommend purchase of an additional \$10,000,000 in excess liability insurance from Arch Specialty Insurance Co. The cost is \$97,425.00.

Mayor Hawker noted that the Council had an unresolved issue regarding the City's self-insured retention level for liability insurance coverage.

Councilmember Rawles advised that he supported a self-insured limit of \$2,000,000.

It was moved by Councilmember Rawles, seconded by Vice Mayor Walters, to approve a self-insured retention level of \$2,000,000 and purchase the following insurance policies: the Hartford Fire Insurance Company property insurance policy for up to \$165,000,000 at a cost of \$294,303; the Munich-American Reinsurance Company liability policy in the amount of \$10,000,000 excess at a cost of \$542,243; the Clarendon American Insurance excess liability policy in the amount of \$5,000,000 in excess of the \$10,000,000 at a cost of \$122,125; and the Arch Specialty excess liability policy in the amount of \$10,000,000 in excess of the previous \$15,000,000 at a cost of \$126,625.

Councilmember Rawles stated that the net result is that the City would have a self-insured retention level of \$2,000,000 rather than \$3,000,000 at a cost difference of approximately \$240,000. He added that during a previous meeting Mayor Hawker estimated that the City could recover that amount over a period of three or four years.

Mayor Hawker called for the vote.

Carried unanimously.

6. Introduction of the following ordinances and setting December 6, 2004 as the date of public hearing on these ordinances:

- *a. Amending various sections of the Mesa City Code regarding the following traffic modifications.

No Parking: 10-3-24 (D) (Full Time No Parking)

On the north side of Main Street from Stapley Drive to a point 373 feet east of Stapley Drive and on the south side of Main Street from Stapley Drive to a point 290 feet west of Stapley Drive (at the intersection of Main Street and Stapley Drive, Council Districts 1, 2, and 4).

- *b. Amending Chapter 10 of Title 6 of the Mesa City Code relating to consumption of spirituous liquor in public parks.
- *c. **A04-11** Annexing the northwest corners of Ray and South Mountain Roads (412 ± acres). Initiated by the property owner (See attached list in packet).
- *d. **Z04- 80 (District 6)** Southwest corner of Southern Road and Crismon Road (1.15± ac.). Site Plan Review. This request is to allow for the development of a bank. Southern & Crismon Road Property II, owner (J. White); Paul Gilbert, Applicant.
- *e. **Z04-89 (District 6)** The 4300 Block of East Southern Avenue (south side). Located south and west of Southern Avenue and Greenfield Road (1.86± ac.). Site Plan Modification. This request is for the development of a neighborhood commercial building. Paul Mathews, Lexon Developer Services, LLC, owner; Mark Bowker, K&I Architects, applicant.
- *f. **Z04-90 (District 3)** The 450 Block of West Holmes Avenue. Located west of Country Club Road and north of US 60 (2.4± ac.). Rezone from C-2 BIZ to C-2 and Site Plan Modification. This request is to allow the development of a church. Rajeshwar Sharma, owner; Vincent P. DiBella, Saemisch, DiBella Architects, applicant.
- *g. **Z04-91 (District 6)** The 1200 Block of South Greenfield Road (west side). Located south and west of Southern Avenue and Greenfield Road (1.72± ac.). Site Plan Modification. This request is for the development of a neighborhood commercial building. Paul Mathews, Lexon Developer Services, LLC, owner; Mark Bowker, K&I Architects, applicant.
- *h. **Z04-92 (District 6)** 4704 East Southern Avenue. Located north and east of Southern Avenue and Greenfield Road (2.2± ac.). Rezone from AG to O-S PAD and Site Plan Review. This request is for the development of office buildings. James Hold, owner; Daniel Brock, Brock, Craig, Thacker, applicant.

- i. **Z04-93 (District 4)** The 100 – 400 Block of West Baseline Road (north side). Located north of Baseline Road and east of Country Club Drive (32.82± ac.). Site Plan Modification. This request is to allow for the development of a commercial shopping center. John E. Clarke/Wal-Mart Stores, Inc., owner; Sean B. Lake, Pew & Lake, applicant.

Vice Mayor Walters declared a potential conflict of interest and said she would refrain from discussion/participation in this agenda item.

It was moved by Councilmember Thom, seconded by Councilmember Rawles, that Z04-93 be introduced and setting December 6, 2004 as the date of the public hearing.

Councilmember Jones stated for the record that he would not oppose this project, but he expressed the opinion that this Wal-Mart was situated too close to an existing Wal-Mart location.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Rawles-Thom
NAYS - Whalen
ABSTAIN - Walters

Mayor Hawker declared the motion carried by a majority of those voting.

- *j. **Z04-94 (District 4)** 1511 South Mesa Drive. Located north of the Superstition Freeway and east of Mesa Drive (2.39± ac.). Rezone from R1-6 to C-1 and Site Plan Review. This case is to allow for the development of a retail center. Venancio Macias, owner; Robert Gomez, applicant.
- *k. **Z04-95 (District 4)** The 1100 block of West Birchwood Avenue. Located east of Alma School Road and north of Broadway Road (0.79± ac.). Council Use Permit and Site Plan Review. This request is to allow for the development of a recycling center. E.W. Buehner, Jonathon Buehner, owners; Ralph Pew, Pew and Lake, PLC, applicant.
- *l. **Z04-96 (District 5)** The 3600 Block of North Power Road (west side). Located north of Thomas Road and west of Power Road (5.5± ac.). Rezone from C-2-DMP to C-2-PAD-DMP and Site Plan Modification. This case is to allow for the development of an office condominium complex. Brendan Lundy / SPB Commercial, LLP, owner; Erik Peterson / Peterson Architecture, applicant.
- *m. **Z04-98 (District 6)** The 10700 Block of East Pecos Road (north side). Located north and west of Pecos Road and the Signal Butte Road alignment (40± ac.). Rezone from R1-43 to M-1. This request is to bring the existing zoning into conformance with the General Plan. Dave Jarvis, owner; Wayne Balmer, applicant.
- n. **Z04-99 (District 6)** The 7600 to 7800 Blocks of East Baseline Road (north side). Located north of Baseline Road and east of Sossaman Road (8.7± ac.). Rezone from C-2 to R-3-PAD and Site Plan Review. This request is to allow for a townhouse/condominium development. Baseline Sossaman II Partnership, Charles Clausen, owner; Del Pueblo Homes, Elizabeth Ross, applicant.

Mayor Hawker stated that this item was removed from the consent agenda by a citizen.

Councilmember Griswold advised that Beverly Selvage, Public Awareness Chairman for Sunland Village East, requested that this item be removed from the consent agenda, and she submitted a letter dated November 10, 2005 (see Attachment 2) that outlined areas of concern. He added that Ms. Selvage was unable to stay for the meeting. Councilmember Griswold noted that introduction of the ordinance was the action before the Council, and that any questions could be addressed at the public hearing.

It was moved by Councilmember Griswold, seconded by Mayor Hawker, that Z04-99 be introduced and setting December 6, 2004 as the date of the public hearing.

Carried unanimously.

- *o. **Z04-101 (District 4)** 1152 East Broadway Road. Located at the northwest corner of Broadway Road and Stapley Drive (0.5± ac.). Rezone from C-1 and R-2 to C-1 and Site Plan Review. This request is to allow for the development of a retail building. Ken Crane, owner; Tim Rasnake, Archicon, applicant.

7. Consider the following resolutions:

- *a. Extinguishing a Drainage Easement and a portion of Public a Utility and Facilities Easement in the 1300 block of North Greenfield Road – Resolution No. 8357.

These easements are no longer required.
- *b. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the Arizona Department of Transportation and the City of Mesa for landscape maintenance and landscape enhancements along the Red Mountain Freeway from Gilbert Road to Higley Road (ADOT JPA NO. 02-138) – Resolution No. 8358.
- c. Deleted.
- *d. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the Maricopa County Department of Transportation, the Town of Gilbert and the City of Mesa for the design and construction of a traffic signal at the intersection of Power and Monterey Road – Resolution No. 8359.
- *e. Approving and authorizing the City Manager to execute a Development Agreement for City Share reimbursement between Wal-Mart Stores, Inc., a Delaware Corporation, and the City of Mesa for regional street and street lighting improvements that are being constructed in conjunction with the development of a Wal-Mart Super Center located at 1710 South Greenfield Road – Resolution No. 8360.
- *f. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the City of Mesa and the United States Department of Justice, Drug Enforcement Administration (DEA) to reimburse the Mesa Police Department for overtime expenses related to the DEA Task Force – Resolution No. 8361.

- *g. Approving and authorizing the City Manager to execute a Grant Agreement between the City of Mesa and the Arizona Criminal Justice Commission to acquire a Universal Latent Workstation for the Forensic Services Unit of the Mesa Police Department – Resolution No. 8362.
- *h. Approving and authorizing the City Manager to execute a Grant Agreement between the City of Mesa and the Arizona Criminal Justice Commission to provide advanced education for the Forensic Services Unit of the Mesa Police Department – Resolution No. 8363.
- *i. Approving and authorizing the City Manager to execute a Highway Safety Contract between the City of Mesa and the Governor’s Office of Highway Safety to reduce the number of high-risk drivers in the City of Mesa – Resolution No. 8364.
- j. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the Regional Public Transportation Authority and the City of Mesa for fixed-route transit services – Resolution No. 8367.

It was moved by Vice Mayor Walters, seconded by Mayor Hawker, that Resolution No. 8367 be approved.

Councilmember Rawles expressed his opposition to subsidizing fixed-route transit services, the Dial-A-Ride Service (Agenda Item 7k), and the passenger shelters, benches and pullouts (Agenda Item 10).

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Thom-Walters-Whalen
NAYS - Rawles

Mayor Hawker declared the motion carried by majority vote and Resolution No. 8367 adopted.

- k. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the Regional Public Transportation Authority and the City of Mesa for East Valley Dial-A-Ride Service – Resolution No. 8368.

It was moved by Vice Mayor Walters, seconded by Mayor Hawker, that Resolution No. 8368 be approved.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Thom-Walters-Whalen
NAYS - Rawles

Mayor Hawker declared the motion carried by majority vote and Resolution No. 8368 adopted.

- *l. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the City of Mesa and the Flood Control District of Maricopa County for the discharge of treated effluent to East Maricopa Floodway on a periodic or emergency basis – Resolution No. 8365.

8. Consider the following ordinances:

- *a. Repealing Title 5, Chapter 4 of the Mesa City Code relating to the sale of jewelry at public auction – Ordinance No. 4313.
- *b. Repealing Title 5, Chapter 5 of the Mesa City Code relating to going out of business sales – Ordinance No. 4314.

*9. Consider the following resolution and ordinance amending Title 5, Chapter 12 of the Mesa City Code relating to massage therapists and establishments – Resolution No. 8366, Ordinance No. 4315.

10. Consider acceptance of the City of Mesa Bus Stop Master Plan and approve the development of an additional \$600,000 in passenger shelter, bench and bus pullout projects.

It was moved by Councilmember Griswold, seconded by Vice Mayor Walters, that the Bus Stop Master Plan be accepted and that staff's recommendation be approved.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Thom-Walters-Whalen
NAYS - Rawles

Mayor Hawker declared the motion carried by majority vote.

11. Consider the following subdivision plats:

- *a. "AUGUSTA RANCH PROFESSIONAL VILLAGE", – (Council District 6) – 2900 block of South Ellsworth Road (east side) located south and east of Guadalupe Road and Ellsworth Road. 22 C-2 PAD DMP office condominium units (6.64 ac) Augusta Ranch PV Development, L.C., an Arizona Limited Liability Company, Craig Willett, President, owner; Hunter Engineering, engineer.
- *b. "MESQUITE CANYON PROFESSIONAL CENTER CONDOMINIUMS", – (Council District 6) – 3100 block of South Ellsworth Road (east side) located south and east of Guadalupe Road and Ellsworth Road. 6 O-S PAD DMP office buildings (2.74 ac) Mesquite Canyon Professional Center, LLC, Marshall C. Reynolds, President, owner; Landmark Engineering, Inc., engineer.
- *c. "MOUNTAIN VIEW PLAZA OFFICE CONDOMINIUMS", – (Council District 5) – 1300-1400 block of North Greenfield Road (east side) located north and east of Brown Road and Greenfield Road. 10 C-2 PAD office condominium units (1.98 ac) Brownfield

Condominium Corporation, an Arizona Corporation, owner; HEC Engineering, L.L.C., engineer.

- *d. "HERMOSA ESTATES", – (Council District 5) – 2200-2400 blocks of North Hawes Road (west side) located north and west of McKellips Road and Hawes Road. 31 R1-35 single residence lots (37.15 ac) U.S. Development Land, LLC, Michael Nicholas, Manager, owner; Sunrise Engineering, Inc., engineer.

12. Items from citizens present.

There were no items from citizens present.

Councilmember Whalen recognized a member of the audience, Mrs. Mary McDonald, a volunteer at the Mesa Senior Center.

13. Adjournment.

Without objection, the Regular Council Meeting adjourned at 10:14 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 15th day of November 2004. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK

baa

Attachments 1 & 2

October 20, 2004

City of Mesa, Planning & Zoning Department
Mr. Wahid Alam / Mr. John Wesley
55 North Center Street
Mesa, Arizona 85211

Re: Lehi Farms / Lehi Crossing. Applicant: Beus, Gilbert, PLLC

Gentlemen,

Regarding the project known as Lehi Farms / Lehi Crossing currently under review by P&Z, we would like to advise you of our current position regarding the annexation of this property and the proposed development.

Let us first state that we, as a community, are in complete opposition to the land use for this location as designated in the General Plan. Without question our desire for development of the property would be in keeping with the rest of the Lehi area at R-143 zoning.

On October 19, 2004, Beus Gilbert and William Lyon Homes presented to the Lehi Community Improvement Association and the Citrus Sub Area CAH a modified version of the original proposed general plan amendment that is currently under consideration by your department. A vote was taken by the Lehi Community Improvement Association board and it was determined that while ***we would much prefer to see the property in question zoned R-143***, the revised version of the development would be preferable to having the property sold to a mining interest.

PLEASE NOTE: It is imperative that city records show the commitment made by the petitioner to attach the proposed deed restrictions (modified version presented 10/19/04 to Lehi CIA) to the original project in perpetuity. Without these proposed changes, the project's residential density is unacceptable and we will strongly oppose the project in its entirety.

Thank you for your time and consideration. If you are in need of any further input or information, please feel free to contact me (or any board member) at your convenience.

Sincerely,

Mark Freeman
President, Lehi CIA

Board members present and voting: Mark Freeman, Page DeWitt (abstained), Vern Watson, Kevin Rogers, Jill Moughler, Beverly Self, Michelle McCroskey.

Attachment 2

2627 S. Hibiscus
Mesa, Az. 85208
Nov. 10, 2004

Mayor Hawker and Council members: Thom, Walters, Rawles, Griswold and Jones,
Whalen

Concerning: Zoning Cases: GPMinoro4-09(District 6) and Zow-99(District 6)

This property is located on the North side of Baseline East of Sossaman, between the canal and 78th street. The plan is to develop a Master-Planned-key card gated community of 121 Town homes. This property is across the street from the retirement community of Sunland Village East. Forty residents of Sunland Village East attended a meeting held by Sean Lake. The residents want something done with that area, but had some concerns.

Concern #1 **Traffic:** Since the Sossaman off ramp and onramp going East has been permanently deleted, we have had a tremendous amount of traffic on Baseline. The Village has a signal light at their entrance, but the worry is with at least 240 cars or more coming out of that area will there be an accident ready to happen. For the residents of that development, it will be difficult to turn East or left.

Concern#2 **Density:** We understand that in order to have pools, playground equipment and green areas that it has to pay for itself, but we also foresee that the area to the East of 78th st all the way to the church, which has been for sale off and on in the last 10 years, will most probably ask for the same zoning with the same density.

Concern#3 **How Many Children:** Since some of these town homes are 2 and 3 bedroom, it would most likely have several children. Mr. Lake said that they would go to Mesa Schools so now we have school buses going by at all times of the day.

Concern# 4 **Could an investor buy them out and rent them out:** A few years ago there were a few nice single story town homes built to the East of the Church parking lot. I brought up the question of someone buying them out and renting them out and sure enough not too long ago, that is just what happened. I asked at the planning and zoning meeting if there is anything to prevent this from happening and they said NO.

Concern # 5 **How long would it remain a card-gated community:** The planning and zoning dept. does not have anything preventing this but did stipulate that it could recommend that if the HOA voted to discontinue the card-gate, they would have to get approval for from the City of Mesa.

Sincerely,

Beverly Selvage, Public Awareness Chairman for Sunland Village East