



OFFICE OF CITY CLERK

COUNCIL MINUTES

April 7, 2008

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on April 7, 2008 at 5:45 p.m.

COUNCIL PRESENT

Mayor Keno Hawker
Kyle Jones
Tom Rawles
Scott Somers
Darrell Truitt
Claudia Walters
Mike Whalen

COUNCIL ABSENT

None

OFFICERS PRESENT

Christopher Brady
Debbie Spinner
Linda Crocker

Invocation by Executive Pastor Danny Dodson, Central Christian Church of the East Valley.

Pledge of Allegiance was led by Bennett Carpenter, Troop #396.

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.

Mayor Hawker acknowledged Councilmembers-Elect Alex Finter, Dennis Kavanaugh and Dave Richins, who were present in the audience. He noted that the citizens of Mesa have the opportunity to select a Mayor in the May 20th General Election, and he added that voters in District 5 would also select a Council representative at that time.

Presentation of the 2007 Spirit of Mesa Neighborhood Awards.

Neighborhood Services Director Ray Villa thanked the individuals who served on the panel of judges that selected the award winners. He introduced the winners of the 2007 Spirit of Mesa Neighborhood award and presented the awards with the assistance of the Councilmember representing that district:

- The Public Safety Award was presented to the Sherwood neighborhood by District 2 Councilmember Whalen.

- The Beautification Award was presented to the Park Place Association by District 3 Councilmember Rawles.
- The Events and Community Building Award was presented to Pioneer Estates II by District 6 Councilmember Somers.
- The Margie Frost Advocacy and Organization Award was presented to the La Cruz neighborhood by District 4 Councilmember Jones.
- The Virginia Lamb Award for Neighborhood Leadership was presented to Donna DiFrancesco and Teresa Salazar of the La Cruz neighborhood by District 4 Councilmember Jones.

Mr. Villa announced that a reception to honor the nominees and the award winners would be held at 6:30 p.m. this evening at the Mesa Arts Center.

1. Take action on all consent agenda items.

All items listed with an asterisk (*) will be considered as a group by the City Council and will be enacted with one motion. There will be no separate discussion of these items unless a Councilmember or citizen requests, in which event the item will be removed from the consent agenda and considered as a separate item. If a citizen wants an item removed from the consent agenda, a blue card must be completed and given to the City Clerk prior to the Council's vote on the consent agenda.

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

Councilmember Somers referenced item 5e (Case Z08-14) and stated that although the ordinance would remain on the consent agenda for introduction, he would continue to address design issues with the developer in the interim before the public hearing on April 21, 2008.

Mayor Hawker called for the vote.

Carried unanimously.

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

Minutes from the September 27, November 1, November 29, 2007 and January 3, February 14, February 20, March 3, March 17 and March 20, 2008 Council meetings.

3. Take action on the following liquor license applications:

*3a. Costco Wholesale #1028

Location Transfer Liquor Store License for Costco Wholesale #1028, 1444 S. Sossaman Road, Costco Wholesale Corp – Applicant; Clare Hollie Abel – Agent. This is new construction with no previous liquor license at this location **(District 6)**.

3b. Tacos Y Mariscos La Salsita

New Restaurant License for Tacos Y Mariscos La Salsita, 35 N. Country Club Drive, Tacos Y Mariscos La Salsita LLC – Applicant; Jorge L. Roldan – Agent. The previous Restaurant License held at this location by Santoyos Business Investments LLC, issued 04/07/2006, will revert back to the State **(District 4)**.

Financial Services Operations Director Jenny Sheppard addressed the Council and advised that staff recommends denial of this application. She reported that the applicant has not paid the Liquor License application or the Transaction Privilege Tax License fees for the subject application, and she added that the applicant operates other businesses in the City without a Transaction Privilege Tax License.

It was moved by Vice Mayor Walters, seconded by Councilmember Somers, that the New Restaurant License for Tacos Y Mariscos La Salsita be forwarded to the State Liquor Board with a recommendation for denial because the applicant has not paid the fees for the Liquor License application and the Transaction Privilege Sales Tax License.

Vice Mayor Walters offered an amendment to the motion, which was accepted by the seconder, that the New Restaurant License for Tacos Y Mariscos La Salsita be forwarded to the State Liquor Board with a recommendation for denial because the applicant has not paid the fees for the Liquor License application and the Transaction Privilege Sales Tax License for the subject location or the Transaction Privilege Sales Tax License fees for three additional businesses operated in the City of Mesa.

Carried unanimously.

4. Take action on the following contracts:

- *4a. One light-duty replacement truck with utility body for the Utilities Department, Electric Division.

The Procurement Services Department recommends authorizing purchase from Avondale Dodge, Inc. at \$30,866.52, including applicable sales tax.

- *4b. One replacement heavy-duty truck with dump body for the Transportation Department, Field Operations.

The Procurement Services Department recommends awarding the contract to the lowest, responsive and responsible bidder, McCandless of Arizona at \$112,306.11, including applicable sales tax.

- *4c. One replacement asphalt path paver for the Transportation Department, Field Operations **(Single Bid)**.

The Procurement Services Department recommends authorizing purchase from Empire Southwest dba Empire Machinery at \$97,030.64, including applicable sales tax.

- *4d. Two-year renewal supply contract for chip seal aggregate for low volume roads for the Transportation Department, Field Operations.

The Procurement Services Department recommends authorizing renewal to Mesa Materials, Inc. at \$169,611.49 annually, based on estimated requirements, including contingencies and applicable sales tax.

- *4e. Purchase of one (1) replacement Uninterruptible Power Supply (UPS) for the Transportation Department, Traffic Engineering.

The Procurement Services Department recommends authorizing purchase from the State of Arizona contract with Titan Power, Inc. at \$39,113.63, including applicable sales tax.

- *4f. Purchase of a wireless water pressure monitor system for the Utilities Department, Water Division (**Single Bid**).

The Procurement Services Department recommends awarding the contract to the single bidder, Controls West, Inc. in the amount of \$129,050.86 including applicable sales tax.

- *4g. Ratify the purchase of one (1) replacement Uninterruptible Power Supply (UPS) for the Information Technology Department.

The Procurement Services Department recommends ratifying purchase from the State of Arizona contract with Gruber Technical, Inc. at \$88,745.01, including applicable sales tax.

- *4h. Purchase of large replacement water meters for the Utilities Department, Water Division.

The Procurement Services Department recommends awarding the contract to the lowest, responsive and responsible bidder, Industrial Automation Services, Inc. at \$30,151.07, including sales tax.

- *4i. Two-year renewal supply contract for automotive hydraulic hoses and fittings for the Fleet Services Department.

The Procurement Services Department recommends authorizing a two-year renewal contract to Kaman Industrial Technologies at \$66,239.26 annually, including contingencies and applicable sales tax, based on estimated requirements.

- 4j. Expand Desert Sage Pump Station No. 1, City of Mesa Project No. 04-066-001.

This project will increase the site's pumping capacity in order to meet the projected water demands and pumping capacity requirements specified in the 2004 City of Mesa Water Master Plan.

Recommend award to the low bidder, Weber Group LC, in the amount of \$311,834.00 plus an additional \$31,183.40 (10% allowance for change orders) for a total award of

\$343,017.40. Funding is available from the approved FY 07/08 Capital Water Bond Program.

Mayor Hawker declared a potential conflict of interest regarding agenda items 4j, k, l and n and stated that he would refrain from discussion/consideration of these items. He yielded the gavel to Vice Mayor Walters for action on these items.

Vice Mayor Walters announced that items 4j, k, l and n would be considered as a group by the City Council and would be enacted with one motion.

It was moved by Councilmember Jones, seconded by Councilmember Whalen, that staff's recommendation regarding agenda items 4j, k, l and n be approved.

Upon tabulation of votes, it showed:

AYES – Jones-Rawles-Somers-Truitt-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 for action on agenda item 6h.

4k. Expand County Line Pump Station No. 3., City of Mesa Project No. 04-065-001.

This project will increase the site's pumping capacity in order to meet the projected water demands and pumping capacity requirements specified in the 2004 City of Mesa Master Plan.

Recommend award to the low bidder, Arizona Pipeline Company, in the amount of \$849,292.50 plus an additional \$84,929.25 (10% allowance for change orders) for a total award of \$934,221.75. Funding is available from the approved FY 07/08 Capital Water Bond Program.

(Refer to item 4j for the Council action that approved this agenda item.)

4l. Convert Highlands Pump Station No. 2 (HLPS#2) to Range Rider Pump Station No. 1 (RRPS#1), 2762 N. Waterbury Road, City of Mesa Project No. 04-063-001.

This project will convert an existing Highlands Pressure Zone Pump Station, which is no longer needed with the zone split, to serve the independent Range Rider Pressure Zone.

Recommend award to the low bidder, Blucor Contracting Inc. in the amount of \$680,849.00 plus an additional \$68,084.90 (10% allowance for change orders) for a total award of \$748,933.90. Funding is available from the approved FY 07/08 Water Bond Program.

(Refer to item 4j for the Council action that approved this agenda item.)

- *4m. Relocation of Wastewater Metering Station, City of Mesa Project No. 01-671-006.

This project will remove approximately 6-feet of the existing wastewater metering station off of the Roosevelt Water Conservation District (RWCD) right-of-way and re-construct it on the Maricopa County Flood Control District (MCFCD) right-of-way.

Recommend award to the low bidder, PMB Construction, LLC, in the amount of \$86,772.00 plus an additional \$8,677.20 (10% allowance for change orders) for a total award of \$95,449.20. Funding is available from the approved FY 07/08 Wastewater Bond Program.

- 4n. Kino Junior High School Pool Rehabilitation, City of Mesa Project No. 01-862-001.

This project will include replacement of the existing facilities with both recreational and competitive swim areas. One pool will have six 25-yard warm-up/lesson lanes, zero-depth entry with splash features, and a water slide. The second pool will have a diving well and eight 50-meter racing lanes which can be reconfigured into twenty-five yard racing lanes and water polo courses capable of staging a variety of events. A building with enclosed restrooms, lockers, and a classroom will also be constructed.

Recommend award of the construction phase service contract to Low Mountain Construction, Inc., with a Guaranteed Maximum Price (GMP) of \$7,802,697.00 plus an additional \$390,134.85 (5% allowance for change orders) for a total award of \$8,192,831.85. Funding is available from Quality-of-Life Funds.

(Refer to item 4j for the Council action that approved this agenda item.)

5. Introduction of the following ordinances and setting April 21, 2008, as the date of the public hearing on these ordinances:

- *5a. Amending various sections of the Mesa City Code regarding the following traffic modifications:

10-4-3 Speed Limits (45 mph) and 10-4-4 Speed Limits (40 mph)

Decreasing the speed limit from 45 mph to 40 mph on Main Street from the west City limits to 159 feet west of Pew. (Main Street west of Alma School Road (**District 3**).

10-4-4 Speed Limits (40 mph) and 10-4-5 Speed Limits (35 mph)

Increasing the speed limit from 35 mph to 40 mph on Main Street from 159 feet west of Pew to Alma School Road. (Main Street west of Alma School Road (**District 3**).

- *5b. **A07-38 (District 6)** Annexing land located south and east of Ellsworth Road and Pecos Road (0.01 ± ac). Initiated by the property owner, Williams Gateway Airport Authority.

- *5c. **A07-39 (District 6)** Annexing land located south and west of Ellsworth Road and Pecos Road (0.08 ± ac). Initiated by the property owner, Williams Gateway Airport Authority.

- *5d. **Z08-13 (District 5)** Parcel 8 at Stone Bridge Mountain, the 2000 to 2200 blocks of North Hawes Road (east side); Parcels 12-13 at Stone Bridge Mountain, the 8900 to 9000 blocks of East McKellips Road (south side). Located west of Ellsworth Road and north and south of McKellips Road (70.9± ac.). Rezone from R1-35 (conceptual R1-15 and R1-9) to R1-15 PAD DMP (29.6± ac.) and R1-15 PAD DMP (41.3± ac) and Site Plan Review. This will allow for the development of residential subdivisions. Jeff Blandford, Manager, Pinnacle Ridge Holdings, LLC, owner; Paul Dugas, Pinnacle Ridge Holdings, LLC, applicant; Darrell Smith, Wood Patel and Associates, Inc., engineer. ***(Held a neighborhood meeting, notified property owners, homeowners associations and registered neighborhoods.)***

P&Z Recommendation: Approval with Conditions. (Vote: 6-1 with Boardmember Carter nay).

- *5e. **Z08-14 (District 6)** The 8800 to 9200 blocks of East Elliot Road (north side) and 3200 to 3600 blocks of South Ellsworth Road (west side). Located west of South Ellsworth Road and north of East Elliot Road (127± ac.). Rezone the northern portion (67± ac.) from R1-43 to C-2 DMP (28± ac) and PEP DMP (39± ac.); and a rezone and Site Plan Review for the southern portion (60± ac) from R1-43 to C-2 DMP. All part of a Development Master Plan. This request will allow for the development of a retail power center. Douglas Himmelberger, DeRito Partners Development, Inc., owner; Michelle Santoro, Withey Morris, PLC, applicant; Jeffery S. Erickson, Erickson & Meeks, Engineering, LLC, and Tove Christina White, Kimberly-Horn and Associates, Inc., engineers. ***(Held a neighborhood meeting, notified property owners, homeowners associations and registered neighborhoods.)***

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

- *5f. **Z08-15 (District 5)** 4608 East Virginia Street. Located east of Greenfield Road and south of Loop 202 Freeway (19.4± ac.). Rezone from M-2 to M-2 PAD and Site Plan Review. This request will allow the development of an industrial subdivision. Dorsey Abshier, Mesa Virginia Street LLC, owner; Henry Chan, Ware Malcomb, applicant; Brian Smith, Hunter Engineering, Inc., Engineer. ***(Notified property owners and the Falcon Field Area Alliance.)***

P&Z Recommendation: Approval with Conditions. (Vote: 6-1 with Boardmember Carter nay).

6. Take action on the following resolutions:

- *6a. Extinguishing two Temporary Drainage Easements at 342 West Baseline Road – Resolution No. 9212 **(District 4)**.

These easements are no longer required as the design of the property has changed and new easements will be dedicated.
- *6b. Extinguishing a Drainage Easement at 8902 East Waltham Avenue – Resolution No. 9213 **(District 6)**.

This easement is no longer needed as the drainage area has been redesigned to avoid conflicting with the proposed improvements.

- *6c. Extinguishing two Temporary Drainage Easements and two portions of a Public Utility Easement at 5835 East Still Circle – Resolution No. 9214 (**District 6**).

These easements are no longer required as the design of the property has changed and new easements will be dedicated.

- *6d. Vacating an alley located in the 1500 Block of East Dover Street and the 600 Blocks of North Hunt Drive and North Hall Street – Resolution No. 9215 (**District 2**).

This alley is being vacated at the request of the adjacent property owners to better secure the area. A Public Utility and Facilities Easement will be retained for access by the utility companies.

- *6e. Approving and authorizing the City Manager to execute an Intergovernmental Agreement with the Maricopa County Department of Transportation for cost sharing in the design and construction of a traffic signal at the intersection of Broadway and Hawes Roads. The estimated cost to the City is \$97,500 and will be funded with Transportation Sales Tax and HURF funds – Resolution No. 9216 (**District 6**).

- *6f. Approving and authorizing the City Manager to execute a Transfer, Consent and Novation Agreement which transfers and assigns the obligation under two separate December 2003 agreements to provide up to a total of 45 MegaWatts of power supply from the Public Service Company of New Mexico to Coral Power, LLC – Resolution No. 9217.

- *6g. Approving and authorizing the City Manager to execute a Waiver of Receipt of Agricultural Irrigation Water Service for two City well sites in the vicinity of Germann and Meridian Drive – Resolution No. 9218.

- 6h. Approving and authorizing the City Manager to proceed with an application to the Department of Housing and Urban Development (HUD) for FY 2008-2009 funding for nonprofit organization projects through the Community Development Block Grant (CDBG) program – Resolution No. 9222.

Councilmember Jones declared a potential conflict of interest and said he would refrain from discussion/consideration of this agenda item.

It was moved by Vice Mayor Walters, seconded by Councilmember Somers, that Resolution No. 9222 be adopted.

Councilmember Rawles stated the opinion that spending by the Federal government is excessive, and therefore he would vote in opposition to agenda items 6h, i, j, k, l, and m.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

AYES – Hawker-Somers-Truitt-Walters-Whalen
NAYS – Rawles
ABSTAIN – Jones

Mayor Hawker declared the motion carried by a majority of those voting and Resolution No. 9222 adopted.

- 6i. Approving and authorizing the City Manager to proceed with an application to the Department of Housing and Urban Development (HUD) for FY 2008-2009 funding for City Department projects through the Community Development Block Grant (CDBG) program – Resolution No. 9223.

Mayor Hawker announced that agenda items 6i, j, k, and n would be considered as a group by the City Council and would be enacted with one motion.

It was moved by Vice Mayor Walters, seconded by Councilmember Somers, that Resolution Nos. 9223, 9224, 9225 and 9227 be adopted.

John R. Smith, 251 West Main, President of Housing our Communities, addressed the Council in support of item 6j. He thanked the Council and the community for supporting the organization in the past, and he reported that the housing programs have been very successful.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

AYES – Hawker-Jones-Somers-Truitt-Walters-Whalen
NAYS – Rawles

Mayor Hawker declared the motion carried by a majority vote and Resolution Nos. 9223, 9224, 9225 and 9227 adopted.

- 6j. Approving and authorizing the City Manager to proceed with an application to the Department of Housing and Urban Development (HUD) through the Maricopa HOME Consortium for FY 2008-2009 funding for nonprofit organization projects through the HOME Investment Partnerships (HOME) program – Resolution No. 9224.

(Refer to item 6i for the Council action that adopted Resolution No. 9224.)

- 6k. Approving and authorizing the City Manager to proceed with an application to the Department of Housing and Urban Development (HUD) through the Maricopa HOME Consortium for FY 2008-2009 funding for City Department projects through the HOME Investment Partnership (HOME) program – Resolution No. 9225.

(Refer to item 6i for the Council action that adopted Resolution No. 9225.)

- 6l. Approving and authorizing the City Manager to proceed with an application to the Department of Housing and Urban Development (HUD) for FY 2008-2009 funding through the Emergency Shelter Grant (ESG) program – Resolution No. 9226.

Councilmembers Jones and Whalen declared potential conflicts of interest and said they would refrain from discussion/participation in this agenda item.

It was moved by Vice Mayor Walters, seconded by Councilmember Somers that Resolution No. 9226 be adopted.

Upon tabulation of votes, it showed:

AYES – Hawker-Somers-Truitt-Walters
NAYS – Rawles
ABSTAIN – Jones-Whalen

Mayor Hawker declared the motion carried by a majority of those voting and Resolution No. 9226 adopted.

- 6m. Approving and authorizing the City Manager to amend the current fiscal year 2007 Annual Action Plan to add rehabilitation at the Mesa Senior Center through the Community Development Block Grant (CDBG) program – Resolution No. 9227.

(Refer to item 6i for the Council action that adopted Resolution No. 9227.)

- *6n. Ordering the sale of \$15,450,000 principal amount of City of Mesa General Obligation Bonds, Series 2008; and authorizing the reimbursement from bond proceeds of certain advances on construction projects – Resolution No. 9219.
- *6o. Ordering the sale of \$52,875,000 principal amount of City of Mesa Utility Systems Revenue Bonds, Series 2008; and authorizing the reimbursement from bond proceeds of certain advances on utility construction projects – Resolution No. 9220.
- *6p. Ordering the sale of not to exceed \$21,125,000 principal amount of City of Mesa Utility Systems Revenue Refunding Bonds, Series 2008 – Resolution No. 9221.

7. Discuss, receive public comment, and take action on the ordinances introduced at a prior Council meeting. Any citizen who wants to provide comment should submit a blue card to the Clerk before the item is voted on. If a citizen wants to comment on an item listed with an asterisk (*), a blue card must be given to the Clerk before Council votes on the consent agenda.

- *7a. Amending Title 8, Chapter 2; Title 1, Chapter 26; and adding Title 6, Chapter 20 to the Mesa City Code relating to compliance with State mandated Particulate Pollution (PM-10) control requirements imposed under Senate Bill 1522 (2007 Air Quality bill) – Ordinance No. 4820.
- 7b. **Z08-05 (District 3)** The 2200 and 2300 blocks of South Country Club Drive (west side). Located south of Baseline Road on the west side of Country Club Drive (15± acres). Site Plan Review and Council Use Permit. This request will allow the development of a big

box retail development in an M-1 zoning district larger than 10,000sf. Brandon Wolfswinkel, Vanderbilt Farms, LLC, owner; W. Ralph Pew, Pew and Lake, PLC, applicant; Peter Vesecky, P.E., DEI Professional Services, engineer – Ordinance No. 4822. ***(Held a neighborhood meeting, notified property owners and the neighborhood steering committee.)***

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

Mayor Hawker announced that the Council would first hear from the applicant, after which the City Attorney would address the legal issues relevant to this case, followed by public comment, staff recommendations and Council discussion.

Ralph Pew, an attorney with Pew and Lake, 1920 East Brown Road, addressed the Council on behalf of the applicant. He reviewed the details of the project and advised that staff recommends approval of the case. Mr. Pew reported that the Planning and Zoning (P&Z) Board unanimously approved the project and that the Design Review Board approved the elevations and landscaping. He added that the Mesa Chamber of Commerce submitted a letter in support and that several residents of the area are present to express support for the project.

Mr. Pew stated that the requirements for a Council Use Permit (CUP) have been met, and he noted that the site is presently zoned M-1. He expressed the opinion that the project would benefit the neighborhood and could improve property values. Mr. Pew said that the proposed use complies with the City's ordinances regarding lighting, noise and traffic. He cited other successful projects in the City that have substantially smaller buffers than the buffer proposed for this project.

Mayor Hawker requested the City Attorney to comment on the legal issues relevant to this case.

City Attorney Debbie Spinner advised that in February, at the request of a Deputy City Manager, the Zoning Administrator provided a generic interpretation of the Code regarding the Council Use Permit in the event of future protests. She referred to the buffer on the south and west sides of the subject site plan and noted that the buffer exceeds 150 feet, which complies with the requirements for a Council Use Permit. Ms. Spinner reported that the buffer on the north side of the subject site is less than 150 feet and that the wall has a separation. She said that based on the Zoning Administrator's interpretation of the Code, the 150 foot radius extends from each section of the wall and that, although a separation exists in the wall, both sections comprise one side of the site plan. She said that after the Zoning Administrator's interpretation was issued in March, the residents on the south and west portions of the site appealed that decision to the Board of Adjustment. Ms. Spinner stated that the residents are seeking a continuance of this case until the Board of Adjustment has an opportunity to review the Zoning Administrator's decision.

Ms. Spinner stated the opinion that the Zoning Administrator's interpretation and the appeal of that interpretation relate to the Zoning Code and are not specific to the subject case; therefore, the appeal did not initiate a stay of further action regarding the zoning case. She added that if the residents had filed a protest on the zoning case and then appealed the Zoning Administrator's decision, action on the subject case would have been stayed. Ms. Spinner advised that the appeal pending before the Board of Adjustment refers to the generic

interpretation of the Code. She added that the Council has the option to consider the case at this meeting or continue the case to a future date.

Discussion ensued relative to the fact that a valid protest would require property owners representing at least twenty percent of the affected area along the north wall to file a protest; that the property to the north owned by Daryl A. Burton represents 3.6 percent of the affected area; that property owners opposed to a Council decision to approve the project would have the option to file a lawsuit in Superior Court; that a decision by the Board of Adjustment to overturn the Zoning Administrator's interpretation would not affect this case because the property owners failed to file a timely protest; and that staff utilized the same process for the recent Hurricane Bay Nightclub zoning case and the subject case.

Mayor Hawker announced that the Council would hear public comment at this time.

Robert Emmelkamp, 2605 South Orange, spoke on behalf of a number of Rancho del Mar and Hunters Ridge homeowners, and said that the individuals he represented were seeking due process under the law. He stated the opinion that filing an appeal of the Zoning Administrator's decision should have imposed a stay on all action regarding this zoning case because the Zoning Administrator's opinion was specific to this zoning case. Mr. Emmelkamp added that he was requesting a sixty-day continuance of this case.

The following citizens addressed the Council in support of Zoning Case Z08-05:

Cheryl Hartzler, 766 West Medina
Jim Hartzler, 766 West Medina
Matt Tolman, 236 East 7th Place
Bruce McGreevy, 2536 South Hosick
David Breslauer, 558 West Monte Avenue
Teri Smithers, 663 W. Natal Circle
Timothy Heywood, 108 South Olive Street
Todd Skousen, 521 North Hall Street

Comments made in support of the zoning case included the following:

- Lowe's would provide a positive impact in an area where many businesses have closed.
- Lowe's maintains their properties and this project is a valuable use of vacant land.
- Mesa needs to attract business such as Lowe's in order to provide additional sales tax revenue.
- Office space is not likely to be constructed in this area because there is presently an abundance of available office space.
- Development would improve the site, which is presently littered with trash and debris.
- Lowe's is a good neighbor that will also provide jobs for the community.
- Property values in Rancho del Mar are more likely to be negatively affected by factors that already exist within the neighborhood.
- Mesa should encourage new businesses.

The following individuals completed speaker/comment cards in support of the zoning case, but indicated that they did not wish to address the Council:

Lee Adams, 756 West Medina Avenue
David Evangelisti, 2344 South Revere Street
Tyler Wincup, 2942 S. Mollera
Dan Cahill, 1851 South Saguaro Circle

Citizens addressing the Council in opposition to the zoning case are listed below:

Dennis Kavanaugh, 2146 West Isabella
Jason Sanks, 1806 East Ellis Street, Phoenix
Natalie Hassler, 2428 South Colleen Street
Rick Rumack, 2431 South Date Street
John Nedin, 3428 South Colleen Street
David Healey, 536 West Madero
John Hoover, 2446 South Colleen
Emerson Turner, 2427 South Colleen
Maria Sykora, 445 West Monterey Avenue
Laurel Ginsburg, 433 West Monterey Avenue
Laurie Buckles, 559 West LaGuna
Christopher Sykora, 445 West Monterey Avenue
Gary Palangian, 454 West Madero Avenue
Michael Ginsburg, 433 West Monterey Avenue
Mark Phipps, 424 West Madero Avenue

Comments made in opposition to the case by the above individuals include the following:

- When a previous Council approved residential developments in the area, the property owners were assured that incompatible uses would not be allowed in the future.
- The project does not meet the guidelines of the General Plan.
- The Zoning Administrator's interpretation was specific to this case.
- Approving the project would deny the property owners due process.
- Lowe's has not been a good neighbor in all communities.
- The value of homes adjacent to big box stores are negatively affected.
- The presence of Lowe's will create increased crime, noise and traffic congestion in the neighborhood.
- Landscaping proposed by Lowe's is inadequate.
- The appeal of the Zoning Administrator's decision should stay further action on the case.
- The design report regarding noise was inadequate.
- Citizens were denied the right to comment during Study Sessions and P&Z Board meetings.
- A continuance of this case should be granted.
- Lowe's hours of operation will disturb the neighborhood.

The following individuals completed speaker/comment cards in opposition to the zoning case, but indicated that they did not wish to address the Council:

Greg McCae, 2433 South Colleen

Robert Harold George, 534 West Mendoza Avenue
Kathleen George, 534 West Mendoza Avenue
Jessica Ebel, 620 West Mendoza
Dennis Ebel, 602 West Mendoza
Scott Rand, 459 West Madero Avenue
Stacy Rand, 459 West Madero Avenue
Kelly Palangian, 454 West Madero Avenue
Kelly McKelvey, 448 West Madero Avenue
Robert Martin, 448 West Madero Avenue
Chad Heywood, 10254 East Isleta
Brad Toth, 2422 South Colleen
Lee Toth, 2422 South Colleen
Rui Ran, 435 West Madero Avenue

There being no additional speakers, Mayor Hawker closed the public comment period and requested that Ms. Spinner address the legal issues raised by the speakers.

Ms. Spinner advised that at the time the Zoning Administrator's interpretation was requested, the intent was that the findings would apply to this case and to all future cases with similar issues in the event a protest is filed. She stated that the interpretation is not unique to this particular case. Ms. Spinner explained that the appeal of the Zoning Administrator's interpretation is not relevant to this case because a protest was not filed and therefore, the zoning interpretation was not applied to this case. She added that the continuances were granted to the applicant on prior occasions in order to allow the applicant to complete the administrative process set forth in the Code that are required of the applicant.

Mr. Pew advised that the citizens' appeal to the Board of Adjustment would continue. Referring to an earlier comment that a prior Council made a commitment to the neighborhood regarding future uses of this property, he stated that no promise was made that the acreage would be set aside for office use. Mr. Pew noted that once a property is zoned, the General Plan has no impact if the property owner develops the property under the existing zoning. He requested that the Council approve the zoning case.

Planning Director John Wesley noted that staff has been addressing this case for over a year. He stated that the site plan with the buffer is compatible with the adjacent neighborhood, and he advised that staff and the Planning and Zoning Board recommend approval of this case.

In response to a series of questions from Councilmember Truitt, Mr. Wesley advised that the buffer area could be developed for other uses with a new application process for site plan approval. He reported that at the April meeting of the Design Review Board (DRB), the site plan was reviewed and approved. Mr. Wesley advised that a Council Use Permit has not been utilized in the past to approve a big box facility adjacent to a residential area.

Ms. Spinner responded to questions from Councilmember Whalen by advising that if the Council grants a continuance, a stay of this process would be imposed and the timeframe would be extended in which the property owners could file a protest. She advised that if the Board of Adjustment rejects the Zoning Administrator's interpretation, the Board would establish the guidelines for determining the affected area. Ms. Spinner explained that property owners accounting for twenty percent of the affected area could then file a legal protest, which would

then require a three-quarters vote by the Council to approve the case. She added that filing a lawsuit in Superior Court does not automatically stay the process, but the neighbors could request that the Court impose a stay. Ms. Spinner confirmed that the only process in place to appeal a Board of Adjustment decision is to file suit in Superior Court within thirty days.

Councilmember Rawles noted that most of the speakers in opposition to the case reside on the south or west sides of the site and that only Mr. Burton has standing in this case because he owns property on the north side, which is the area addressed by the Zoning Administrator's interpretation. He said that Mr. Burton, who was represented by counsel, did not file a protest or an appeal. Councilmember Rawles stated the opinion that the request for a continuance is an effort to have the case considered by a new Council at a later date. He expressed the opinion that there is no detrimental impact on the neighborhood and the case is consistent with the City's Zoning Code and policies.

It was moved by Councilmember Rawles, seconded by Councilmember Whalen, that based on the facts that the case poses no health hazard or detrimental impact on the neighborhood and the case is consistent with the City's Zoning Code and polices, that Ordinance No. 4822 be approved.

Vice Mayor Walters stated the opinion that the law and the wording are ambiguous. She noted that the memorandum regarding the Zoning Administrator's opinion referred specifically to this case.

Responding to a question from Vice Mayor Walters, Mr. Pew stated that the applicant would agree to a deed restriction or other legal mechanism to guarantee that the buffer zone would not be utilized for development purposes.

In response to comments by Councilmember Truitt, Ms. Spinner confirmed that a deed restriction or other legal mechanism could not be imposed by the Council as a stipulation for approval of the case.

Mr. Wesley responded to a question from Councilmember Somers by advising that the parking lot is included in the Council Use Permit, and he confirmed that parking was included in other Council Use Permits.

Mayor Hawker stated the opinion that 150 feet was an adequate buffer, and he noted that the property owner to the north owns only 3.6 percent of the affected area.

Councilmember Jones expressed the opinion that it was inappropriate for individuals who disagree with opinions or policies to challenge the morals or integrity of the parties involved. He stated that the Council's decisions are based on property rights.

Councilmember Truitt said he would oppose the motion in order to enable a continuance.

Vice Mayor Walters addressed earlier comments that citizens were denied their right to speak at Council Study Sessions. She explained that Study Sessions are devoted to Council discussions and that citizens may speak at Study Sessions by submitting a request in advance to the City Manager's Office.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

AYES – Hawker-Jones-Rawles-Somers -Whalen
NAYS – Truitt-Walters

Mayor Hawker declared the motion carried by a majority vote and Ordinance No. 4822 adopted.

- *7c. **Z08-12 (District 6)** 5520 East Baseline Road. Located east of Higley Road on the north side of Baseline Road (2.5± acres). Rezone from AG to O-S and Site Plan Review. This request will allow the development of two office buildings. Kelly Morris, owner; Vincent P. DiBella, Saemisch+diBella Architects, Inc., applicant; Ramakrishna Inti, Inti, LLC, engineer – Ordinance No. 4821. ***(Notified property owners, homeowners associations and registered neighborhoods.)***

PHO Recommendation: Approval with Conditions.

8. Take action on the following subdivision plats:

- *8a. “LEGACY AT MOUNTAIN BRIDGE” **(District 5)** 8404 East Mountain Bridge Drive (east side) located south and west of McKellips Road and Ellsworth Road. 90 R1-15 PAD DMP single residence lots (49.81 ac.) Pinnacle Ridge Holdings, L.L.C., Jeff Blandford, manager, owner; Darrell D. Smith, Wood, Patel & Associates, Inc., engineer.
- *8b. “EGG’S PLACE AMENDED” **(District 6)** 1200 block of South Sossaman Road (west side) located south and west of Southern Avenue and Sossaman Road. 2 C-2 DMP commercial lots (3.26 acres) Fresh and Easy Neighborhood Market, Tom Scorer, Real Estate Director, and Sossaman and Southern, LLC, Michael L. Ebert, statutory agent, owners; Charles R. Paddack, Olsson Associates, engineer.

9. Items from citizens present.

There were no items from citizens present.

10. Adjournment.

Without objection, the meeting adjourned at 8:30 p.m.

KENO HAWKER, MAYOR

ATTEST:

LINDA CROCKER, 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 7th day of April 2008. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK

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