

## COUNCIL MINUTES

August 28, 2006

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on August 28, 2006 at 5:45 p.m.

### COUNCIL PRESENT

Mayor Keno Hawker  
Rex Griswold  
Kyle Jones  
Tom Rawles  
Scott Somers  
Claudia Walters  
Mike Whalen

### COUNCIL ABSENT

None

### OFFICERS PRESENT

Christopher Brady  
Debbie Spinner  
Barbara Jones

Invocation by Mayor Hawker.

Pledge of Allegiance was led by Joshua Forsgren, Boy Scout Troop # 50.

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.

Presentation of the 2006 Spirit of Mesa Neighborhood Awards.

Acting Neighborhood Services Manager Kari Kent reported that this year, the Neighborhood Services Department received 14 nominations for the Spirit of Mesa Neighborhood Awards and explained that the efforts to improve Mesa's neighborhoods as outlined in the applications were exceptional. She expressed appreciation to all of the applicants and also acknowledged the community leaders who served as judges in the selection of tonight's winners.

Ms. Kent, with the assistance of various Councilmembers, presented awards to the following individuals:

- Neighborhood Public Safety Award – Thomas Wicke, representing the Villages of Eastridge Neighborhood.
- Neighborhood Beautification Award – Nikki Thackeray, representing the Duke Manor Neighborhood.
- Honorable Mention for Neighborhood Beautification Award – Roc Arnett, representing the Lehi Trailblazing Event.

- Neighborhood Events/Community Building Award – Sherri Glenn, representing the Emerson Manor Neighborhood, 4<sup>th</sup> of July Commemoration Event.
- Honorable Mention, Neighborhood Events/Community Building Award – Marlborough Mesa Neighborhood, Summer Arts and Crafts Classes.
- Honorable Mention, Neighborhood Events/Community Building Award – Marlborough Mesa Neighborhood, First Annual Vehicle Show.
- Margie Frost Neighborhood Advocacy and Organization Award – Jill Moughler, representing the residents of the Lehi Neighborhood, Creation of the Lehi Sub-Area Plan.
- Virginia M. Lamb Award for Outstanding Neighborhood Leadership – Dave Richins, representing the Mesa Grande Community Alliance.

Mayor Hawker, on behalf of his fellow Councilmembers, congratulated the recipients not only for their efforts and hard work, but also their commitment to the City of Mesa.

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 Somers, that the consent agenda items be approved.

Carried unanimously.

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

Minutes from the August 10 and 14, 2006 Council meetings.

3. Conduct a public hearing prior to releasing the petition for signatures for the following proposed annexations:

- 3a. A06-19 (District 6) Annexing land located on the northwest corner of Ellsworth Road and Southern Avenue (3.17 ± ac). Initiated by Lisa Luther representing the property owners.

Mayor Hawker announced that this is the time and place for a public hearing regarding annexing land located on the northwest corner of Ellsworth Road and Southern Avenue (3.17 ± ac).

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

4. Conduct a public hearing for Minor General Plan Amendment **GPMinor06-03 (District 6)** to change the General Plan Land Use Map from Medium Density Residential 4-6 dwelling units per acre (MDR 4-6) to Medium Density Residential 6-10 dwelling units per acre (MDR 6-10). The 2400-2700 blocks of South Signal Butte Road (west side) and the 10200-10700 blocks of East Guadalupe Road (north side). Located north and west of Guadalupe and Signal Butte Roads

(80± ac). Randall Jackson; JP175, LLC, owner/applicant. **COMPANION CASE Z06-45 (Related to Item Nos. 5 and 12d.)**

Mayor Hawker announced that this is the time and place for a public hearing regarding Minor General Plan Amendment **GPMinor06-03 (District 6)** to change the General Plan Land Use Map from Medium Density Residential 4-6 dwelling units per acre (MDR 4-6) to Medium Density Residential 6-10 dwelling units per acre (MDR 6-10). The 2400-2700 blocks of South Signal Butte Road (west side) and the 10200-10700 blocks of East Guadalupe Road (north side). Located north and west of Guadalupe and Signal Butte Roads (80± ac).

Tracey O'Neill, 10528 East Olla, stated that she recently attended a public meeting conducted by Jackson Properties with regard to the development of a residential master planned community at the above-referenced location. She commented that although there is a need within the community to provide higher density housing options for lower income individuals, she questioned the appropriateness and compatibility of the proposed densities in relationship to the currently existing neighborhoods.

Susan Celaya, 10605 East Medina Avenue, representing various property owners at the Villages of Eastridge, addressed the Council relative to this agenda item. She commented that while she generally supports Jackson Properties' Desert Vista residential project, in her opinion, there are two crucial issues that must be addressed. Ms. Celaya explained that in order to prevent significant traffic congestion on Vegas Street, she suggested that the two subdivisions (Villages of Eastridge and Desert Vista) not be connected via this main "feeder" street. She also noted that when 17 homeowners on the southern edge of the Villages of Eastridge initially purchased their property, they were informed that the lots would back up to State Trust land and there would be no development behind them. She said that Jackson Properties intends to share the existing homeowners' back wall. Ms. Celaya advised that she proposed to the developer the creation of a 27-foot wide greenbelt to "buffer" the respective subdivisions.

Ralph Pew, 1930 East Brown Road, Suite 101, an attorney for the applicant, reported that the reason for bringing forward the Minor General Plan Amendment is that when Jackson Properties' project evolved in its design and land use categories, it was determined that the overall density was slightly above the six units allowed in the current General Plan. He explained that Planning staff reviewed the matter and concluded that it would be "prudent" to apply for a Minor Plan Amendment, of which both staff and the Planning & Zoning Board (P&Z) recommended approval.

Mr. Pew further commented that the zoning case (item 12d) incorporates significantly more open space and merits the slight increase in density. He added that prior to the P&Z meeting concerning the zoning case, the Gilbert School District requested that Jackson Properties reserve a site within the project for a potential elementary school, and noted that if the district purchased the site, the Minor Plan Amendment would not be necessary.

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

5. Take action on the following resolution:

**GPMinor06-03 (District 6).** The 2400–2700 blocks of South Signal Butte Road (west side) and the 10200–10700 blocks of East Guadalupe Road (north side). Located north and west of Guadalupe and Signal Butte Roads (80± ac). Minor General Plan Amendment to change the General Plan Land Use Map from Medium Density Residential 4-6 dwelling units per acre (MDR 4-6) to Medium Density Residential 6-10 dwelling units per acre (MDR 6-10). Randall Jackson; JP175, LLC, owner/applicant – Resolution No. 8812. **COMPANION CASE Z06-45 (Related to Item No. 12d).** *(Held a neighborhood meeting, notified property owners, registered neighborhoods and homeowners' associations.)*

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

It was moved by Councilmember Rawles, seconded by Councilmember Somers, that Resolution No. 8812 be adopted.

Carried unanimously.

6. Take action on the following liquor license applications:

\*6a. Organizacion Maya Guatemalteca

Special Event License Application: Jaime Diego Gaspar – Applicant. This is a one-day civic event to be held on Saturday, September 16, 2006, from 6:00 p.m. to 1:00 a.m. at 3929 East Main Street, Suite #12. District # 2.

\*6b. Arco AM/PM

New Beer & Wine Store License for Arco AM/PM, 363 South Gilbert Road, BPG Station LLP – Applicant, Sukmdev Singh Gill – Partner. The Beer & Wine Store license previously held at this location by Sigma USA LLP, issued 05/15/2003, will revert back to the State. District # 2.

\*6c. Thai Hut Restaurant

New Restaurant License for Thai Hut Restaurant, 1245 West Baseline Road, Suite 101, Tammasak Rojchankakasetchai – Applicant. The Restaurant license previously held at this location by Los Portales Mexican Restaurant LLC, issued 09/08/2004, will revert back to the State. District # 3.

7. Take action on the following contracts:

\*7a. 400 Wireless Computer Modems – **Deleted.**

\*7b. Two Replacement Pickup Trucks and Four Replacement Light-Duty Emergency Response Vehicles as requested by the Fire Department.

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Courtesy Chevrolet at \$274,059.62, including applicable sales tax.

- \*7c. Three-year Supply Contract for Automotive Fasteners, Related Hardware and Electrical Supplies as requested by the Financial Services Department, Fleet Support Services Division.

The Purchasing Division recommends authorizing a three-year contract to Southwestern Supply Co., Inc. at \$42,000.00 annually, based on estimated requirements, including contingencies and applicable sales tax.

- \*7d. Three-year Supply Contract for Children's Pre-Bound Books as requested by the Community Services Department, Library Division.

The Purchasing Division recommends authorizing three-year contracts to PermaBound at \$20,000; Children's Plus at \$5,000; and Bound to Stay Bound at \$5,000 for a combined total award of \$33,000 annually, based on estimated purchases, including contingencies and applicable sales tax.

- \*7e. Three-year Supply Contract for Large Print Books as requested by the Community Services Department, Library Division.

The Purchasing Division recommends authorizing a three-year contract to Thomson Gale at \$60,500 annually, based on estimated purchases, including contingencies and applicable sales tax.

- \*7f. Three-year Supply Contracts for Library Books, Educational CDs/Video Tapes/DVDs and Audio Books as requested by the Community Services Department, Library Division.

The Purchasing Division recommends authorizing a three-year contract to Baker and Taylor, Inc. at \$750,000 and Ingram Library Services, Inc. at \$35,000 for a combined total award of \$863,500 annually, based on estimated purchases, including contingencies and applicable sales tax.

- \*7g. Three-year Supply Contract for Children's Paperback Books as requested by the Community Services Department, Library Division.

The Purchasing Division recommends authorizing a three-year contract to Book Wholesalers, Inc., dba BWI, at \$27,500 annually, based on estimated purchases, including contingencies and applicable sales tax.

- \*7h. Three-year Supply Contract for Traffic Paint as requested by the Development Services Department, Transportation Division.

The Purchasing Division recommends authorizing the purchase from the State ADOT contracts with Pervo Paint Company at \$116,992.19 annually, based on estimated requirements, including contingencies and use tax.

- 7i. Falcon Field Airport Runway Safety Area (RSA) Improvements, City of Mesa Project No. 02-397-003.

This project will make necessary improvements to the runways and signage at Falcon Field to meet Federal Aviation Administration (FAA) standards. Improvements include installing asphalt blast pads on both ends of the runways and upgrading the existing runway guidance signage. These improvements were recommended by the FAA's Runway Safety Action Team (RSAT).

Recommend award to the low bidder, Nesbitt Contracting Company, in the amount of \$645,050.00, plus an additional \$64,505.00 (10% allowance for change orders) for a total award amount of \$709,555.00. An FAA grant will fund 95% of the construction cost. An Arizona Department of Transportation (ADOT) grant will fund 2.5%. The remaining 2.5% local match is budgeted in the FY 06/07 Falcon Field Airport capital budget. **(Related to Item No. 9m).**

Mayor Hawker, Councilmember Whalen and Councilmember Griswold declared potential conflicts of interest and said they would refrain from discussion/consideration of this agenda item. Mayor Hawker yielded the gavel to Vice Mayor Walters for action on this agenda item.

It was moved by Councilmember Jones, seconded by Councilmember Somers, that the recommendation of staff be approved.

Upon tabulation of votes, it showed:

AYES - Jones-Rawles-Somers-Walters

ABSTAIN - Hawker-Griswold-Whalen

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

With action on this item being completed, Vice Mayor Walters yielded the gavel back to Mayor Hawker.

8. Introduction of the following ordinances and setting September 5, 2006 as the date of the public hearing on these ordinances:

- 8a. **Z06-57 (District 1)** The 1800-1900 block of West 8<sup>th</sup> Street (north side). Located north and east of West 8<sup>th</sup> Street and North Dobson Road (9.02 ac. ±). Site Plan Modification. This request will allow for the development of a retail building. DeRito/Kimco Riverview, LLC – Doug Himmelberger, owner; Vince DiBella, Saemisch DiBella Architects, applicant. ***(Held a neighborhood meeting with the Mesa Grande Community Alliance, notified property owners and homeowners' associations.)***

Planning Hearing Officer Recommendation: Approval with Conditions.

Mayor Hawker and Councilmember Rawles declared potential conflicts of interest and said they would refrain from discussion/consideration of this agenda item. Mayor Hawker yielded the gavel to Vice Mayor Walters for action on this agenda item.

It was moved by Councilmember Whalen, seconded by Councilmember Jones, that the above-referenced ordinance be introduced and that September 5, 2006 be set as the date of the public hearing on the ordinance.

Upon tabulation of votes, it showed:

AYES - Griswold-Jones-Somers-Walters-Whalen  
ABSTAIN - Hawker-Rawles

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

With action on this agenda item being completed, Vice Mayor Walters yielded the gavel back to Mayor Hawker.

- \*8b. **Z06-01TC (District 4)** 270 North Country Club Drive (parcel number 135-59-073). Generally located on the southwest corner of Country Club Drive and 3<sup>rd</sup> Street (0.15 ± acres). Rezone from TCR-3 to TCB-1. This request is to expand the existing Carwasher business, currently located at 324 North Country Club Drive. They are building a new detail carwash facility on the south side of 3<sup>rd</sup> Street at 270 North Country Club Drive and will also keep their existing facility at 324 North Country Club Drive. Kenneth Bond, owner; Boyd Thacker, applicant. **(Property owners within 300 feet and registered neighborhoods within one-half mile were notified). (Related to Item No. 8c).**

DDC Recommendation: Approval with conditions. (Vote: Passed 5-0)

- \*8c. **CUP06-01TC (District 4)** – 270 North Country Club Drive. Located on the southwest corner of Country Club Drive and 3<sup>rd</sup> Street (0.55 ± acres). Request to obtain a Council Use Permit to allow a car wash facility in the TCB-1 Zoning District for The Carwasher located at 270 North Country Club Drive. Kenneth Bond, owner; Boyd Thacker, applicant. **(Property owners within 300 feet and registered neighborhoods within one-half mile were notified) (Related to Item No. 8b).**

DDC Recommendation: Approval with conditions. (Vote: Passed 5-0)

9. Take action on the following resolutions:

- \*9a. Approving and authorizing the City Manager or his designated representative to execute an Intergovernmental Agreement (IGA) between the State of Arizona Department of Transportation (ADOT) and the City of Mesa for the freeway interchange improvements at the Superstition Freeway and Higley Road. The City's estimated share for the enhancement costs is \$337,334.00 – Resolution No. 8801.

- \*9b. Approving the submittal of a grant application to the Gila River Indian Community – Resolution No. 8802.

This application in the amount of \$240,000 is submitted by the City of Mesa Police Department to assist in upgrading to a wireless communications system.

- \*9c. Approving the submittal of a grant application to the Gila River Indian Community – Resolution No. 8803.

This application in the amount of \$300,000 (over three years) is submitted by the City of Mesa Utilities Department for a home weatherization program.

- \*9d. Approving the submittal of a grant application to the Gila River Indian Community – Resolution No. 8804.

This application in the amount of \$192,300 is submitted by the City of Mesa Fire Department for equipment to upgrade current cardiac monitoring for emergency medical teams.

- \*9e. Approving and supporting the submittal of a grant application to the Gila River Indian Community – Resolution No. 8805.

This application in the amount of \$200,000 is submitted by the MARC Center for the construction of a vocational training facility that will provide training and job placement services to school-aged children and adults with severe physical and developmental disabilities who reside in eastern Maricopa County.

- \*9f. Approving and supporting the submittal of a grant application to the Gila River Indian Community – Resolution No. 8806.

This application in the amount of \$300,000 (over three years) is submitted by A.T. Still University to develop and conduct a project to address the retention of minority graduates from their undergraduate programs to graduate school.

- \*9g. Approving and adopting the City of Mesa Hazard Mitigation Plan. This plan was approved by the City Council on August 16, 2004. The County requires adoption of a resolution to allow the City of Mesa to take advantage of Stafford Act funding and to receive Federal mitigation funds in the event of a disaster – Resolution No. 8807.

- \*9h. Granting an Aerial Easement to Salt River Project at the McLellan Road alignment, east of the proposed Loop 202 of the Red Mountain Freeway – Resolution No. 8808.

This easement is necessary to relocate electrical lines for the construction of the Loop 202 Red Mountain Freeway.

- \*9i. Granting a Power Distribution Easement to Salt River Project for the Town of Gilbert Water Reservoir Pump Station Facility at 19662 South Greenfield Road – Resolution No. 8809.

This easement is necessary for electrical service to be installed for the construction of the new pump station.

- \*9j. Extinguish a Public Utility and Irrigation Easement at 733 West Main/51 South Extension Road – Resolution No. 8810.

This easement is no longer necessary as the new development has provided the needed easements for the project.

- \*9k. Vacate Right-of-Way at 414 South Stapley Drive – Resolution No. 8811.

This right-of-way is not needed at this time and will allow the developer to better position their monument sign and offsite landscaping.

- 9l. Approving and authorizing the City Manager or his designated representative to execute Airport Improvement Program (AIP) Grant Agreement No. 3-04-0023-014-2006 between the Federal Aviation Administration (FAA) and the City of Mesa for the installation of perimeter fencing (Phase I) – Resolution No. 8813.

Councilmember Griswold declared a potential conflict of interest and said he would refrain from discussion/consideration of agenda items 9l and 9m.

It was moved by Councilmember Jones, seconded by Vice Mayor Walters, that Resolution No. 8813 be adopted.

Upon tabulation of votes, it showed:

AYES - Hawker-Jones-Rawles-Somers-Walters-Whalen  
ABSTAIN - Griswold

Mayor Hawker declared the motion carried unanimously by those voting and Resolution No. 8813 adopted.

- 9m. Approving and authorizing the City Manager or his designated representation to execute Airport Improvement Program (AIP) Grant Agreement No. 3-04-0023-014-2006 between the Federal Aviation Administration (FAA) and the City of Mesa for runway safety area improvements and taxiway guidance signs – Resolution No. 8814. **(Related to Item No. 7i).**

Mayor Hawker and Councilmember Whalen declared potential conflicts of interest and said they would refrain from discussion/consideration of this agenda item. Mayor Hawker yielded the gavel to Vice Mayor Walters for action on this agenda item.

It was moved by Vice Mayor Walters, seconded by Councilmember Jones, that Resolution No. 8814 be adopted.

Upon tabulation of votes, it showed:

AYES - Jones-Rawles-Somers-Walters  
ABSTAIN - Hawker-Griswold-Whalen

Vice Mayor Walters declared the motion carried unanimously by those voting and Resolution No. 8814 adopted.

With action on this agenda item being completed, Vice Mayor Walters yielded the gavel back to Mayor Hawker.

10. Take action on the following recommendations from the Transportation Committee.

\*10a. Approving the results of the corridor modeling studies for Southern Avenue, Mesa Drive and McKellips Road.

10b. Approving a City-funded Speed Hump Program.

Glen Fuller, P.O. Box 9222, addressed the Council and voiced a series of concerns regarding ACORN's "interference" in representing Mesa property owners with regard to the issue of the City-funded Speed Hump Program.

The following speakers spoke in support of a City-funded Speed Hump Program (Alternative 3 - \$150,000 funding option):

Tammie Pursley	1544 West 1 <sup>st</sup> Place
Todd Selleck	1839 West 3 <sup>rd</sup> Place
Judy K. Link	445 North Yucca Circle
Marjorie Malarkey	861 South Kachina
Maria Mancinas	542 North Lewis Street
Roger Hester	509 North Drew East
Beverly Podany	917 South Lazona
Paul Brusstar	308 West 9 <sup>th</sup> Place South

City Manager Christopher Brady clarified that Alternative 3, which has received the support of various speakers this evening, was an earlier alternative proposed to the Council. He explained that staff is now recommending Alternative 1, which includes a similar \$150,000 funding limit for the Speed Hump Program as previously mentioned in Alternative 3.

Acting Transportation Director Dan Cleavenger displayed a PowerPoint presentation in the Council Chambers and offered a short synopsis of the Speed Hump Program. (The complete PowerPoint presentation is available for review in the City Clerk's Office.) He spoke regarding the Program's funding history; speed hump funding/eligibility variables; three alternatives (1. Construct speed humps by priority and set funding limit, 2.) Three levels of neighborhood participation based on traffic volumes, and 3.) Continue the resident-funded Speed Hump Program; and a speed hump cost comparison by each alternative.

Mr. Cleavenger informed the Council that staff is recommending Alternative 1, "Construct humps by priority (speed and volume)," and reviewed the various component of this option as follows:

- Residents pay for speed and volume counts.
- City pays for speed hump construction, signing, striping and maintenance.
- Maintain 85<sup>th</sup> percentile threshold speed at "8 miles per hour over" the posted speed.
- Set funding limit of \$150,000 per year.
- Neighborhood participation of \$500 per speed hump if traffic volume is under 500 vehicles per day.
- Qualifying low volume streets considered only after all other fully qualified streets (if funding remains).

It was moved by Vice Mayor Walters, that the City-funded Speed Hump Program (Alternative 1) be approved.

Vice Mayor Walters commented that although many of the speakers expressed interest in speed humps being installed on specific streets, Council approval of this item does not, in fact, guarantee that will occur. She stressed that the Speed Hump Program would be "very budget constrained" and that all of the criteria as outlined by Mr. Cleavenger must be met in order for a street to be eligible for speed humps. Vice Mayor Walters further stated that funding for the Speed Hump Program is available as a result of the recent sales tax election and indicated that a portion of the funding is dedicated to streets. She added that in recommending Alternative 1, the Transportation Committee made it very clear that funding was limited and not all of the speed hump needs throughout the community would be met.

Councilmember Griswold seconded the motion.

Councilmember Griswold stated that he has been an advocate of speed humps for many years. He acknowledged that with over 130 square miles of roads in the City of Mesa, the proposed funding for the Speed Hump Program is only "a drop in the bucket," but noted that at least it is a start in the process.

Mayor Hawker called for the vote.

Carried unanimously.

11. Discuss and take action on the streetlight request from Kensington Grove Homeowners' Association.

Deputy Transportation Director Lenny Hulme addressed the Council and provided a brief overview of this agenda item. He reported that the Kensington Grove Homeowners' Association (HOA) is requesting that five streetlight poles bordering three separate private retention basins be retrofitted with dual arms in order to provide lighting in the basins. Mr. Hulme explained that staff is recommending that the request be denied and said that other programs, such as one sponsored by Salt River Project (SRP), could provide the requested lighting to the basins.

In response to a question from Mayor Hawker, Mr. Hulme clarified that in the past, the City has installed additional arm lighting in retention basins, however, those basins were owned by the City of Mesa. He explained that this practice was discontinued in the early 1990's because the retention basins were not sufficiently lit.

Councilmember Somers, who serves as Chairman of the Transportation Committee, noted that when this item was first presented to the Committee, he supported the concept because the City would not only be reimbursed by the HOA, but also partner with the neighborhood to provide more security to the area. He referred to a map displayed in the Council Chambers and commented, however, that in reviewing the location of the three retention basins, the lighting provided by the retrofitted poles would not light the areas to a significant level and said that the level of security to be gained "is not really worth the effort."

Vice Mayor Walters indicated that in recent years, Mesa has cut back on many services to its residents. She stated that in this instance, the Kensington Grove HOA has agreed to enter into

a legal agreement with the City to pay for all of the associated costs. Vice Mayor Walters noted that in addition, the HOA is fully aware of the "light spread" at the retention areas. She said that she sees nothing harmful with the City entering into such an agreement and added that it would provide the City with an opportunity to partner with the neighborhood.

Skip Carney, 2926 East Huber Street, a representative of the Kensington Grove HOA, reported that the HOA Board has worked with SRP regarding the utility's "Dusk to Dawn" lighting program. He explained that the projected cost estimate is \$100,000, plus ongoing electricity costs, which would be cost prohibitive to the residents. He advised that the intent of the proposal is to light a concrete path around the perimeter of the basin rather than lighting the entire basin. Mr. Carney also referred to the map and discussed various locations in the three retention basins that have raised safety concerns for the neighborhood.

Mr. Carney reiterated Vice Mayor Walters' comments that the HOA would be willing to reimburse the City for the costs to retrofit the five streetlights and would also assume responsibility for added maintenance and power costs. He acknowledged that the retention basins are privately owned and maintained, but said that the public also has access to the areas. Mr. Carney indicated that a portion of one of the basins is City-owned and said that the HOA provides free maintenance for that area.

Councilmember Jones voiced support for granting the lighting request and the City entering into a legal agreement with the HOA. He stressed the fact that the HOA, and not the City, would pay for all of the associated costs and added that the City would partner with the HOA to improve the safety of the neighborhood.

Councilmember Rawles expressed a series of concerns regarding potential liability issues that the City could encounter if the City retrofit streetlight poles that inadequately lit a certain area of a privately owned retention basin. He explained that he is not so much concerned with the HOA as he would an individual, for instance, who became the victim of a crime in one of the retention basins and sued the City because the lighting that the City installed was, by industry standards, inadequate. Councilmember Rawles suggested that one way to address the issue would be an indemnity agreement, wherein the HOA would hold the City harmless for any liability that might be imposed on it. He added that in the absence of that, he would be concerned about potential liability for the City.

City Attorney Debbie Spinner concurred with Councilmember Rawles' concerns and questioned if the City was brought into a lawsuit whether the indemnification would be sufficient. She stated that another option might be to require some type of insurance from the HOA, with the City named as an additional insured. Ms. Spinner added that if the Council directed staff to enter into an agreement with the HOA regarding this item, staff would pursue these legal concerns with the HOA.

Councilmember Rawles indicated that he would need to see the legal issues addressed and "in place" before he could vote in favor of this item. He commented that he likes the concept of the neighborhood "stepping forward" and stated that the streetlight poles not entirely lighting the retention basins is not so much a political problem for him, but rather a potential legal problem for the City. Councilmember Rawles also requested that staff and Mr. Carney research whether the HOA's insurance company would agree to name the City as an additional insured or indemnify the City in the event of a loss.

Councilmember Whalen voiced support for the agreement, but also shared Councilmember Rawles' concerns regarding the City's potential liability issues.

Mayor Hawker stated that there appears to be some movement by the Council to support the proposal, but concurred that the liability issue must first be addressed before the City enters into an agreement with the Kensington Grove HOA.

It was moved by Vice Mayor Walters, seconded by Councilmember Griswold, that staff be directed to work with the Kensington Grove HOA in an attempt to resolve the liability and insurance issues; that when the matter is brought forward to the Council, the legal agreement would contain the previously-discussed provisions, including the fact that the HOA will provide funding for all of the capital costs and be responsible for the additional ongoing operational costs for the lights; and that the matter be brought back to the Council for action in a timely manner.

Ms. Spinner clarified that as long as the direction contained in the motion is the consensus of the Council, a formal vote would not be necessary.

Discussion ensued relative to the guidelines that the City must adhere to regarding light distribution; and that staff would research the issue of possibly incorporating street lighting with park lighting in the retention basins in an effort to cast different light patterns without disrupting the neighborhood.

Councilmember Somers reiterated his previous comments that he likes the fact the neighborhood has been working with the City, but noted that there is already perimeter lighting on the streets. He added that he supports the City Attorney's Office researching the liability issues regarding the matter.

12. 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.

- \*12a. **A06-11 (District 6)** Annexing land located on Broadway Road east of Sossaman Road. (0.17 ± ac.). Initiated by the property owner, Spencer Vanderpool – Ordinance No. 4580.
- \*12b. **A06-12 (District 6)** Annexing land located on Broadway Road west of Hawes Road. (0.39 ± ac.). Initiated by the property owner, Spencer Vanderpool – Ordinance No. 4581.
- \*12c. Adoption of the 2006 amendments to the Privilege and Excise Tax Code of the City of Mesa as required by the Municipal Tax Code Commission. Establishes retroactive applicability and provides for severability – Ordinance No. 4852.
- 12d. **Z06-45 (District 6)** The 2400–2700 blocks of South Signal Butte Road (west side) and the 10200–10700 blocks of East Guadalupe Road (north side). Located north and west of Guadalupe and Signal Butte Roads (175± ac). Rezone from AG to R1-9 PAD R1-6 PAD and R-2 PAD and the establishment of the Desert Vista Development Master Plan. This case will allow the development of a residential master planned community. Randall Jackson; JP175, LLC, owner/applicant – Ordinance No. 4589. **COMPANION CASE**

**GPMInor06-03. (Held a neighborhood meeting, notified property owners, registered neighborhoods and homeowners' associations.)**

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

Susan Celaya, who addressed the Council under agenda item 5, reiterated her previous comments regarding this case.

Mayor Hawker commented that he inadvertently called Ms. Celaya out of order and that the Council's normal procedure with regard to zoning cases is to first hear from the applicant, the public, staff and then the Councilmembers.

Ralph Pew, 1930 East Brown Road, Suite 101, addressed the Council and provided an extensive overview of the case. His comments included, but were not limited to, the following: the proposed residential master planned community includes five different lot sizes and home configurations and is designed around a central park theme for open space; the project has been reviewed and scrutinized significantly by Planning and Transportation staff to address the issues of connectivity and access to the school site; at least 25% of the acreage is dedicated to open space; the center of the project is a nine-acre site that will contain a feature very similar to a water park (i.e., swimming pools, tot lots, ramadas, spas, sundecks); and that while the project does represent a slight increase in density, it is truly a sustainable community.

Mr. Pew indicated that along the northern boundary of the applicant's property, Madero Street, which goes from Signal Butte to the west, does not go all the way through to Gilbert High School. He explained that when the Villages of Eastridge was developed, the City did not require Madero to go all the way through and noted that at that location, those lots would immediately back up to the lots in the applicant's project. Mr. Pew stated that in an effort to resolve a majority of the traffic problems previously addressed by Ms. Celaya, the applicant has created a new design that would allow the new residential subdivision to have an internal connection to the elementary and high school site to the west.

Ms. Celaya spoke further regarding possible solutions to the "buffer" issue. She also provided the City Clerk with a petition signed by the Villages of Eastridge homeowners urging support for the two amendments to Jackson Properties' Desert Vista subdivision plat plan that she addressed earlier. Ms. Celaya, in addition, questioned the applicant's efforts to notify the neighbors regarding the public meeting concerning this case, as well as tonight's meeting.

Tracey O'Neill expressed additional concerns regarding the different home configurations and reiterated her previously stated concerns regarding the overall density of the project.

Mr. Pew responded to the previous speakers' comments regarding the public hearing process, the "buffer" issue, and the overall density of the project.

Planning Director John Wesley stated that Planning staff and the P&Z Board both recommend approval of the case. He explained that staff is particularly supportive of the various land use types and the integration of the two developments to provide overall circulation throughout the area. Mr. Wesley added that the property to the west on Guadalupe Road does have a higher General Plan designation of 10 to 15 dwelling units per acre and also creates a good overall flow in land use types.

An extensive discussion ensued relative to the connectivity between the two subdivisions.

Councilmember Somers expressed support for the case, but urged the applicant to continue to address some of the concerns expressed by the speakers.

It was moved by Vice Mayor Walters, seconded by Councilmember Whalen, that Zoning Case Z06-45 be approved and Ordinance No. 4589 adopted.

Vice Mayor Walter voiced support for the motion and stated that the applicant has made certain accommodations regarding the neighbors' concerns.

Mayor Hawker called for the vote.

Carried unanimously.

- \*12e. **Z06-48 (District 3)** 1010 West Southern, Suite 1. Located east of Alma School Road and north of Southern Avenue (6500±sf). Council Use Permit. This request is to allow a bar in a C-2 zoning district. Ray O'Sullivan, owner/applicant – Ordinance No. 4583. ***(Held a neighborhood meeting, notified property owners, registered neighborhoods and homeowners' associations.)***

P & Z Recommendation: Approval with Conditions. (Vote: 5-2 with Boardmembers Finter and Langkilde nay.)

- \*12f. **Z06-49 (District 5)** 5761 East Brown Road, Suites 9, 14, 19 & 21. Located west of Recker Road and south of Brown Road (16,734 sf). Council Use Permit. This request will allow the operation of a charter school in an existing retail center. David Allen, owner; Evelyn Taylor, applicant – Ordinance No. 4584. ***(Held a neighborhood meeting, notified property owners, registered neighborhoods and homeowners' associations.)***

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

- \*12g. **Z06-50 (District 5)** 6420 to 6450 block of East Broadway Road (north side). Located west of the northwest corner of Broadway Road and Power Road (2± acres). Site Plan Review. This request will allow for the development of a day care center with accessory outdoor play yards. Steve Ellis, Banner Baywood Medical Center, owner; Robert Short, Studio One Architecture, Inc., applicant – Ordinance No. 4585. ***(Held a neighborhood meeting, notified property owners, registered neighborhoods and homeowners' associations.)***

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

- \*12h. **Z06-51 (District 6)** 10800 to 11000 block of East Baseline Road (south side). Located on the southeast corner of Signal Butte Road and Baseline Road (5.9± ac.). Rezone from R1-6 DMP to C-2 DMP and Site Plan Review. This request will allow for the development of a retail center. DTCREH, LLC, Trustee: Desert Trust Co., owner; Joe Murray, DFD CornnoyerHedrick, applicant. **LEGAL PROTEST FILED, ¾ VOTE REQUIRED. (CONTINUED TO THE SEPTEMBER 18 COUNCIL MEETING.)**

P & Z Recommendation: Denial. (Vote: 7-0)

- \*12i. **Z06-52 (District 6)** 1100 block of South Crismon Road (east side). Located at the northeast corner of Crismon Road and Southern Avenue (2.14± acres). Site Plan Review. This request will allow for the development of an automobile service station with fuel pumps and a convenience store. QuikTrip Corporation, owner; David Cisiewski, applicant – Ordinance No. 4586. ***(Held a neighborhood meeting and notified property owners.)***

P & Z Recommendation: Approval with Conditions. (Vote: 6-0 with Boardmember Salas abstaining due to a potential conflict of interest.)

- \*12j. **Z06-53 (District 6)** 10000 and 10100 blocks of East Southern Avenue (north side) and the 1100 block of South Crismon Road (east side). Located at the northeast corner of Crismon Road and Southern Avenue (16.45± acres). Site Plan Review. This request will allow for the development of a retail center. Robert A. Stave, Pros Investments, LLC, owner; Kevin Kerpan, applicant – Ordinance No. 4587. ***(Held a neighborhood meeting, notified property owners, registered neighborhoods and homeowners' associations.)***

P & Z Recommendation: (Vote: 6-0 with Boardmember Salas abstaining due to a potential conflict of interest.)

- 12k. **Z06-54 (District 6)** 3135 South Eastridge. Located south of Guadalupe Road and east of Hawes Road (4.2± ac.). Rezone from R1-43 to R1-6. This request will allow for the development of a single residential subdivision. Reese L. Anderson, Pew and Lake, PLC, owner/applicant – Ordinance No. 4590. ***(Held a neighborhood meeting, notified property owners, registered neighborhoods, homeowners' associations and Gilbert Public Schools.)***

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

Tom Pielach, 8529 East Portobello, President of the adjacent Eastridge Homeowners' Association, expressed support for the location of single-family homes in the area. He stated, however, his biggest concern is that the development would include "three parcels of retention basins" and requested that as a condition of approval, the developer be required to form an HOA to maintain these areas.

Reese Anderson, 1930 East Brown Road, Suite 101, an attorney representing the applicant, advised that on several occasions, the applicant has stated on the record that the project includes one retention basin and another easement for SRP access. He explained that in multiple conversations he has had with Mr. Pielach, the primary concern has been that the two areas be maintained and beautified. Mr. Anderson stated that the applicant is not prepared to join the Eastridge HOA today, but assured the Council that the applicant is committed to maintaining those areas either by forming its own HOA or joining the Eastridge HOA.

Mayor Hawker commented that the City is trying to get away from retention basin maintenance.

In response to a question from Mayor Hawker, Mr. Anderson clarified that this zoning case does not include a stipulation that an HOA be created to maintain the retention basin. He noted, however, that Planning staff has indicated the City's unwillingness to maintain the area, which will place that responsibility on the part of the applicant, either by creating its own HOA or joining the Eastridge HOA.

Development Services Manager Jack Friedline assured the Council that the maintenance of the retention basin would be the responsibility of the developer. He added that staff would ensure there is some type of legal obligation to do so, most probably through an HOA.

Mayor Hawker stated the opinion that if a retention basin is created for a specific subdivision to, for instance, hold storm water runoff, then it should be the responsibility of the entity (or an HOA) to maintain the basin unless the City takes on the responsibility.

It was moved by Councilmember Rawles, seconded by Vice Mayor Walters, that zoning case Z06-54 be approved and Ordinance No. 4590 adopted.

Discussion ensued relative to the fact that the City has taken on the maintenance of some retention basins in Mesa because the property owners will no longer assume said responsibility.

Mayor Hawker stated that he would not delay approval of this zoning case, but requested that the issue of retention basin maintenance be included as an agenda item at a future Study Session.

Vice Mayor Walters stated that she is comfortable moving forward with the case, especially with Mr. Anderson's commitment on the record that the applicant would either form its own HOA or join the Eastridge HOA in order to maintain the retention basin and SRP easement.

Mayor Hawker called for the vote.

Carried unanimously.

- \*12l. **Z06-58 (District 5)** The 1350 to 1450 block of North 72<sup>nd</sup> Street (west side). Located north of Brown Road and east of Power Road (5.18± ac.). Rezone from R1-35 to R1-35-PAD. This request will allow for the development of a single residential subdivision. Kevin Kellis, Blaupunkt, LLC, owner; Kevin Kellis, CRE Real Estate Services, applicant – Ordinance No. 4588. ***(Held a neighborhood meeting, notified property owners, neighbors, registered neighborhoods, homeowners' associations and surrounding churches and schools.)***

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

13. Take action on the following subdivision plats:

- \*13a. "MONTEGO VILLAS CONDOMINIUMS" – **(District 3)** – 949 South Longmore (east side) located north and west of Southern Avenue and Alma School Road. 154 R-4 condominium units (6.23 ac) Montego Villas Development, LLC, Alex Zdanov, member, owner.

- \*13b. "MAP OF DEDICATION FOR SOUTH PIERPONT" – (**District 6**) – 1640 – 1820 blocks of South Pierpont (both sides) located north and west of Baseline Road and Higley Road. Banner Health, Peter Fine, President and Crisko, LLC, Paul Skogebo, member, owners.
- \*13c. "KEIGHLEY PLACE" – (**District 6**) – 11200 – 11600 blocks of Ray Road (north side) and the 4800 – 5200 blocks of South Meridian Road (west side) and the 5000 – 5200 blocks of South Mountain Road (east side) located north and east of Ray Road and Mountain Road. 34 R1-9 single residence lots and 251 R1-6 single residence lots (99.4 ac) Newcastle Development, LLC, John Poulsen, owner.
- \*13d. "PLAZA WEST BROADWAY LLC" – (**District 3**) – 1720 West Broadway Road (north side) located north and east of Broadway Road and Dobson Road. 3 M-1 PAD commercial lots (17.79 ac) Plaza West Broadway, LLC, Robert Nuttal, manager and 1720 West Broadway Commons, LLC, Robert Nuttal, manager, Broadway Mesa Commons, LLC, Robert Nuttal, manager and Patrick Bitter, owners.
- \*13e. "MARABRISA, A CONDOMINIUM" – (**District 5**) – 234 North 75<sup>th</sup> Street (west side) located south and west of University Drive and Sossaman Road. 112 R-4 condominium units (5.61 ac) WB AZ Equities, II, LLC, David Alcorn, partner, owner.
- \*13f. "WHISPER VIEW" – (**District 5**) – 9800 – 10000 blocks of East Brown Road (north side) located north and west of Brown Road and Crismon Road. 33 R1-15 PAD single residence lots (16.99 ac) VIP Construction Inc., Evelyn H. Petersen, Vice President, owner.

14. Items from citizens present.

Sandra Landeen, 4073 E. Lafayette, addressed the Council and discussed the untimely death of her son.

15. Adjournment.

Without objection, the Regular Council Meeting adjourned at 8:15 p.m.

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KENO HAWKER, MAYOR

ATTEST:

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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 28th day of August 2006. I further certify that the meeting was duly called and held and that a quorum was present.

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BARBARA JONES, CITY CLERK

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